

**Tuesday, May 21, 2013, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://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](http://www.ci.tracy.ca.us)

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS - Tracy Police Officer Association Scholarships

Drowning Prevention

Certificate of Appointment Parks and Community Services Commission

Proclamation - Stroke Awareness Day

- Lyme Disease Awareness Month

- Water Awareness Month/Delta Appreciation Week

D.A.R.E. Graduates

1. CONSENT CALENDAR

A. Approval of Minutes

B. Authorization to Submit the Annual Claim to the State of California, through the San Joaquin County Council of Governments, for Transportation Development Act Funds in the amount of \$3,471,959 for Fiscal Year 2012-2013, and for the Finance and Administrative Services Director to Execute the Claim

C. Adopt a Resolution Authorizing the City Manager to Execute Contracts Necessary for the Purpose of Obtaining Proposition 63 Funds in the Amount of \$200,000 for the Mayor's Community Youth Support Network Grant Program and Appropriating \$200,000 from the San Joaquin County Behavioral Health Services Community Service Agreement

2. ITEMS FROM THE AUDIENCE

3. REVIEW AND DISCUSS INFORMATION SUBMITTED BY MR. ROGERS RELATED TO SEVEN CORPORATIONS, PENDING JUDGMENTS, LIENS AND BANKRUPTCY, AND PERSONAL FINANCIALS; DIRECT STAFF TO CEASE NEGOTIATIONS FOR A NEW EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN THE SPIRIT OF CALIFORNIA ENTERTAINMENT GROUP, INC. AND THE CITY OF TRACY; AND ADOPT A RESOLUTION TERMINATING THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST LLC AND FIRST AMENDMENT WITH TRACY BLAST DEVELOPMENT, LLC

4. REALLOCATION OF \$368,204 OF FEDERAL HOME INVESTMENT PARTNERSHIP ACT (HOME) FUNDS FROM THE BOUNCE BACK PROGRAM TO THE WOMEN'S CENTER TO ESTABLISH A SHELTER FOR BATTERED WOMEN AND CHILDREN IN TRACY

5. PROVIDE DIRECTION ON THE DISPOSITION OF THE CITY-OWNED SCHULTE ROAD PROPERTY

6. ITEMS FROM THE AUDIENCE

7. STAFF ITEMS

A. Receive and Accept the City Manager Informational Update

8. COUNCIL ITEMS

9. ADJOURNMENT

**March 19, 2013, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

The invocation was offered by Pastor Jessica Richmond, Seventh Day Adventist Church.

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

Mayor Ives and Police Chief Hampton swore in Police Officer Philip Guisto, and Police Corporals Tim Bauer, Mark Bergman, Trevin Freitas, Ed Gilmore, Greg Gilstrap, Rich Graham, Ricardo Hernandez, Octavio Lopez, Scott Muir, Dan Pasquale, Mike Richards and Mike Rickman.

Mayor Ives presented a proclamation to Liza Cruz, Regional Manager, San Joaquin American Red Cross, on behalf of American Red Cross Month.

Mayor Ives presented a Certificate of Recognition to outgoing Committee Member, Larry Hite, for his service on the Measure E Resident's Oversight Committee.

1. CONSENT CALENDAR - It was moved by Council Member Manne and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
  - A. Approval of Minutes – Regular meeting minutes of February 5, 2013, and closed session minutes of March 5, 2013, were approved.
  - B. Approve Revised Boundaries of the Targeted Employment Area (TEA) for the San Joaquin County Enterprise Zone – Resolution 2013-039 approved the revised boundaries.
  - C. Acceptance of the Police Firearms Practice Range (FPR) – Septic System – CIP 71072B, Completed by Taylor Backhoe Services Inc., of Merced, California, and Authorization for the City Clerk to file the Notice of Completion – Resolution 2013-040 accepted the project.
  - D. Approve Professional Services Agreements (PSA) with Schack and Company, Inc. and Kjeldsen, Sinnock & Neudeck, Inc. (KSN) to Provide Technical Support Services for Multiple Capital Improvement Projects, Authorize the Mayor to Execute the Agreements, and Authorize the Director of Development Services to Extend the Agreement/s for Another Year if Needed – Resolution 2013-041 approved PSA with Schack and Company, Inc. Resolution 2013-042 approved PSA with Kjeldsen, Sinnock & Neudeck, Inc.

- E. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Class Specification and Pay Range for a Part-time, Limited Service Drug Abuse Resistance Education (D.A.R.E.) Officer – Resolution 2013-043 authorized the amendment.
2. ITEMS FROM THE AUDIENCE – Jo Hensel, North School, indicated Mayor Pro Tem Maciel spoke at North School and invited students to attend Council meetings. Four of the students addressed Council and respectfully requested the City build a basketball court at El Pescadero Park.
- Paul Miles, 1397 Mansfield Street, asked Council to consider forming an independent commission to review the disposition of Police complaints and adopt an open government ordinance.
- Dave Helm addressed Council voicing his support and respect of Police Chief Hampton.
- Steve Abercrombie echoed sentiments of Mr. Helm and stated he appreciated the implementation of the reading of the Code of Conduct when recognizing new and promoted Police Officers at Council meetings.
- John Favors, 2119 Laura Lane, Tracy Airport Association, stated the Association was holding an Open House and festival at the airport on June 29, 2013, celebrating aviation. Mr. Favors asked that the City sponsor their event.
3. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTIONS 10.12.060 AND 10.12.080 AND ADDING A NEW SECTION 10.12.065 RELATING TO COMPLIANCE WITH REGIONAL HOUSING NEEDS ALLOCATIONS AND STATE AND FEDERAL LAW RELATING TO DEED RESTRICTIONS – THE APPLICATION IS INITIATED BY THE CITY OF TRACY – APPLICATION NUMBER ZA12-0008 – Victoria Lombardo, Senior Planner, provided the staff report. Ms. Lombardo stated that the State Department of Housing and Community Development (HCD) requires that cities adopt Housing Elements for five-year cycles. Adoption of the document should address housing needs of all economic segments of the community, identifying how housing needs of existing and future residents of Tracy can be met. Tracy's Housing Element for the 2009-2014 cycle was adopted by City Council on May 15, 2012, and certified by HCD on July 26, 2012.
- Part of the approval of the City's Housing Element is a Housing Plan that includes implementing tools for the 2009-2014 Housing Element. Program 13 of this plan, under the category of "Remove Governmental Constraints" is a proposal to amend the City's Growth Management Ordinance (GMO) to remove the governmental constraint of annual limitations on Residential Growth Allotments (RGAs) and building permits. The amendment would allow the City to issue building permits up to the Regional Housing Needs Allocation (RHNA) number to achieve its obligation in each income category. The program also requires that due to the inconsistency with state and federal housing programs, the deed restriction of 55 years on affordable units must be revised to a deed restriction of ten years.
- Tracy's GMO allows for a maximum of 750 RGAs and building permits to be issued annually, with an average of 600 to be maintained. These limits were established in

2000, by an initiative measure ("Measure A"). There are several exemptions to these annual caps, including home remodels, house replacements, secondary residential units (also referred to as mother-in-law units), and small projects such as single custom homes that meet certain requirements.

The City's RHNA obligation for this Housing Element Cycle (2009-2014) is 4,888 units total (divided among all four income categories: Very Low, Low, Moderate and Above Moderate). The numerical limits of the GMO (600 annual average) would not allow a rate of residential construction during this Housing Element cycle that would achieve the RHNA. With less than two years left in the cycle, that would allow only 1,800 new housing units – 2,695 short of the RHNA.

Measure A contains the following language:

Nothing in this Initiative Ordinance shall be construed to preclude, prohibit or limit the City from complying with any requirements under State housing law. To the extent that any provision of this Initiative Ordinance can be read to conflict with state housing law, it shall be read to allow for compliance with state housing law, while honoring the intent and purpose of the Initiative Ordinance.

In order to comply with State law while honoring the intent of Measure A, on March 1, 2011, Council directed staff to propose to HCD an amendment to the City's GMO that would allow for building permits for housing units to be issued in order to meet the City's RHNA obligation. Staff proposed the amendment to HCD in the form of a revised draft Housing Element with such provisions, and HCD responded by certifying the Housing Element upon the condition that the City amend the GMO accordingly. The amendment must be completed by July, 2013, one year from the certification of the Housing Element. Additionally, the program requires the City to reduce the deed restriction on affordable units from 55 years to ten years.

The proposed amendment to the GMO contains limited changes to the existing regulations in order to keep the scope of changes as narrow as possible, while still meeting requirements of State law. The proposal would add a section discussing RHNA compliance that would allow for building permits for residential housing units to be issued in excess of the 600 average and 750 maximum in order to meet the RHNA for Tracy for the Housing Element cycle.

Although the Housing Element characterizes the proposed amendment to the GMO as an "exemption," what the proposed amendment actually does is clarify that the GMO does not apply to the extent that there is a conflict with State law RHNA requirements. The proposed amendment provides in relevant part that ". . . in any calendar year, once building permits have been issued for the number of residential units permitted by this chapter, the City shall issue additional building permits for residential dwelling units if they are necessary to achieve the RHNA goals in a particular income category (during each planning period)."

The proposed amendment also provides that, for the sole purpose of calculating the RGA and building permit averages contained in the GMO, any building permits issued under the authority of the proposed amendment shall be treated as if an RGA and a building permit were issued under the GMO. The provision was clarified based on comments received at the Planning Commission hearing on the proposed amendment.

Discussion at the Planning Commission meeting involved why building permits, but not RGAs were proposed to be issued to meet the RHNA. RGAs and building permits are tracked in the same manner, and the same number of each are available every calendar year. At one time, the RGA process was used to ensure that infrastructure requirements (water, sewer, schools, parks, etc.) had been met prior to the issuance of a building permit. There are numerous other regulations and systems in place that cause these requirements to be met before any project application can even be considered complete and potentially approved. These include the Subdivision and Development Review processes in accordance with Tracy Municipal Code Chapter 12 and Sections 10.08.3290 through 10.08.4110. Acquiring RGAs prior to building permits no longer serves any practical purpose. The sole reason RGAs remain within the Tracy Municipal Code is that Measure A is in place and requires them.

The amendment also makes the timeframe for maintenance of housing affordability consistent with State and Federal law requirements. Minor clarifications to Tracy Municipal Code Section 10.12.060 regarding exemptions are also proposed, and do not add, change, or delete any exemptions, but create sub-titles to ease understanding and readability of the section.

Proposed amendments to the GMO are consistent with the Initial Study and Negative Declaration for the Housing Element adopted by Council on May 15, 2012. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15183, no further environmental review is required.

Implementing a regulation to allow for the issuance of permits up to the RHNA does not have any environmental effects that were not already analyzed in the General Plan and in the Initial Study and Negative Declaration for the Housing Element.

There are no environmental effects that are peculiar to the project or that have not been previously analyzed because it does not affect a specific site, but rather implements a policy within the General Plan. Any future development that may result from the amendment will be subject to further site-specific environmental analysis. There are also no significant off-site or cumulative impacts that have not been previously discussed or any new information that was not known at the time of the Initial Study and Negative Declaration for the Housing Element.

The Planning Commission held a public hearing to discuss the proposed ordinance on November 14, 2012, and voted 3-2 recommending that Council not approve the proposed ordinance because it did not clearly state that RGAs would be counted as a part of building permit issuance. This provision has been added to the ordinance.

Staff recommended that Council introduce an Ordinance adding Tracy Municipal Code Section 10.12.065, and amending Tracy Municipal Code Sections 10.12.060, and 10.12.080, regarding building permit issuance for housing units to meet the RHNA for the Housing Element cycle and revising the timeline of affordable housing deed restrictions.

Dan Sodergren, City Attorney, indicated that Council Member Manne had considered the item as a Planning Commissioner and that it was appropriate for him to consider it in his new position of Council Member.

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

The Clerk read the title of proposed Ordinance 1184.

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

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to introduce Ordinance 1184. Voice vote found all in favor; passed and so ordered.

4. FOLLOW UP DISCUSSION AND DIRECTION TO STAFF RELATED TO EXPANDING PROVISIONS OF THE EXISTING BOARDING UP OF BUILDINGS WITH UNSECURED OPENINGS ORDINANCE – Ana Contreras, Community Preservation Manager, provided the staff report. Ms. Contreras stated that since February 21, 2012, discussions have been held with Council regarding Council Member Rickman’s request for information regarding vacant buildings in the City of Tracy. Code Enforcement staff presented Council with a discussion item regarding the effects of long-term vacant, boarded properties in the City of Tracy and the concepts of:

- Amending the Tracy Municipal Code’s (TMC) by expanding the provisions of the existing Boarded Buildings Ordinance to control the length of time vacant buildings are boarded, with the goal of eliminating the problems of boarded buildings, and associated blight.
- Establish a vacant building registry requiring property owners to register vacant buildings with the City.

*Problems Associated with Vacant Boarded Buildings* - Longstanding, boarded buildings and neglected maintenance boarded buildings tend to become neglected buildings which develop into both the cause and source of blight in both residential and non-residential neighborhoods. The situation holds true especially when the owner of the building fails to actively maintain and manage the building to ensure it does not become a liability to the neighborhood.

Neglected buildings and/or substandard or unkempt buildings discourage economic development and hinder appreciation of property values. It is the responsibility of property owners to prevent buildings from becoming a nuisance to the neighborhood and community as well as a threat to the public health, safety, and welfare.

As such, these buildings constitute a nuisance. To adequately protect public health, safety and welfare, Section 9.60 of the Tracy Municipal Code was adopted, which provides for the manner in which open, unsecure buildings are addressed. The ordinance has been an effective tool by providing staff with the enforcement means to abate nuisance conditions.

Since enacting the Ordinance in 2006, approximately 17 buildings have gone through the boarding up process. These properties largely remain boarded today.

There are two continuums of boarded buildings: (a) vacant, boarded buildings and (b) vacant, boarded buildings which are dilapidated and in dangerous, substandard condition. Since the latter part of 2012, staff has repositioned its priorities and has proactively inspected all boarded buildings in Tracy. Following these inspections, staff discovered that of the 13 boarded buildings; five are in a dilapidated state and structurally unsound; therefore qualify for abatement under the Abatement of Dangerous Buildings Code. In addition to these proactive inspections, staff has substantially accelerated its enforcement efforts to (1) address the life safety problems associated with their condition, and (2) to prevent further neighborhood decline and begin the process of rebuilding surrounding neighborhoods.

Open and unsecured buildings, and other violations that may exist on these properties, may be addressed by use of the following tools: Administrative Citations, Criminal Penalties, a combination of both administrative and civil penalties, City-initiated abatement proceedings (when voluntary compliance measures are not achieved), City-initiated Receivership.

In extreme cases, the City may consider using the option of a Receivership process to address boarded, derelict properties when property owners fail to comply with other enforcement measures. California Health and Safety Code sections 17980.6 and 17980.7 set forth criteria as to whether a property qualifies for this receivership option. Properties eligible for Receivership include properties that show evidence of the following: The building is residential; and, the building is deemed unsafe or dangerous; or the building is an attractive nuisance (e.g. drug or gang house, homeless people squatting in the building and engaging in unsafe practices, minors using the building and engaging in unsafe practices, etc.).

Receivership cases are uncommon, because this process is only available under certain conditions. Also, the cases can be costly and the up-front costs to pay for a Receiver's services would come from the City's General Fund. Recovering these costs could ultimately be a lengthy process. In addition to these remedies, vacant property owners may post "No Trespassing" signs on the property and file a "No Trespassing" letter with the Tracy Police Department, pursuant to California Criminal "Trespass & Trespassing" Laws.

Property owners have been responsive to code enforcement actions relative to nuisance issues that are found to exist in these properties using the above remedies. Enforcement of violations on these boarded buildings and the land they reside on have been abated on a voluntary basis by the property owner(s) without the use of forced compliance measures.

While these properties have complied with Tracy existing vacant and abandoned building codes, they remain in a boarded up condition which may impact the aesthetics and value of the neighborhood.

The existing 13 properties identified as vacant and boarded meet existing City codes and are properly secured and boarded. These properties could remain vacant and boarded indefinitely provided they continue to meet code standards. Since the last Council discussion on this matter, Code Enforcement has been made aware of a new product that secures vacant property without exposing its vacancy to onlookers and provides an aesthetically pleasing alternative to traditional plywood boarding. The



product material consists of recyclable/recycled polycarbonate materials, which protect vacant buildings from intrusion, as well as providing the appearance of common glass windows.

Traditional plywood boarding discloses a property as being vacant. The surrounding homes and commercial real estate may drop in value, and invite vandalism, additional crime, squatting, graffiti, etc. In consideration of the expenses incurred by property owners when securing property with glass windows and/or plywood boarding, the City has identified an alternative material for permanently securing a property that is both less expensive than glass windows, and has greater resistance to inclement weather than traditional plywood boarding. This alternative material is a polycarbonate product. It is a viable, long-term alternative to plywood boarding. The material is made of 100% recycled polycarbonate material and is virtually unbreakable. Additionally, when securing the property, it gives the building a visually appealing appearance to surrounding neighbors as well as preserving the quality of those neighborhoods.

In addition to securing the structure, the see-through material is a safer alternative to traditional plywood boarding for first responders, because they can have a clear vision into the building prior to entry. Unlike plywood, the polycarbonate material does not warp or mold during inclement weather and only needs to be installed once, as opposed to plywood boarding which can require multiple replacements due to deterioration.

TMC Section 9.60.040 (b), standards for securing open and unsecured buildings, states alternative methods of securing doors, windows or other openings of any building or structure must be approved by the Building Official. In the Building Official's determination, consideration is given to aesthetics and other impacts on the immediate neighborhood and the extent to which the method provides adequate and long-term security against the unauthorized entry to the property.

Community meetings have been held with the Tracy Association of Realtors and with owners of property living near or adjacent to the boarded buildings. The goal of these meetings was to obtain comments, opinions and concerns regarding neighborhood impacts associated with these vacant buildings, in addition to obtaining feedback regarding possible amendments to the Boarded Buildings Ordinance. During a June 5, 2012, meeting with the Tracy Association of Realtors, the Association was not supportive of any changes to the existing Boarding of Buildings Ordinance. The topic of residential resale inspections was discussed, which had been mentioned by a member of the real estate community at the February 21, 2012, Council meeting. The program would require owners of single family residences and duplexes to pay a fee and submit to a city inspection in order to receive certification that the home contains no unpermitted construction, particularly extra rooms or secondary units prior to selling properties. This program was also rejected by the Association.

Based on staff's knowledge of resale inspection programs and in researching other cities' practices regarding these programs, there were substantial variances among the approaches taken by each jurisdiction relative to resale inspections. While the program would have an imposed fee as a partial funding mechanism, the staff hours necessary to perform these inspections would far exceed the intake fees. Staffing levels and budgetary constraints would make such a program infeasible to implement at this time.

On November 20, 2012, a community meeting was conducted at the Tracy Transit Station to hear concerns and comments from owners of vacant and abandoned properties as well as residents of property within 400 feet of boarded buildings. Over 200 letters were sent notifying owners and residents of the meeting. Seven people attended the meeting with five being owners of boarded buildings. The property owners were opposed to any amendments to the Boarding of Unsecured Buildings Ordinance, especially as they pertain to establishing a timeline for these buildings to be boarded.

The now abolished Community Development Agency adopted a Downtown Agency Plan in July 1990, with the specific goal of eliminating or reducing instances of blight and blighting conditions within the Community Development Project Area. The goals of the Agency were developed to illustrate a broad range of concerns that the Agency intended to address over the life of the Plan. The vast majority of the boarded buildings in the City of Tracy are located within the downtown area. The blighted conditions of this area were identified in the Plan as being in need of attention. Property values and building maintenance appeared to have improved at that time; however, there was still substantial evidence of deferred maintenance, lack of general upkeep, litter, graffiti, inappropriate signage and other blighted conditions; including vacant, undeveloped railroad property that was used by transients for sleeping and loitering.

The Community Development Agency and the Council placed a major emphasis on the revitalization of the downtown area. Projects in excess of \$50 million have been completed or are in various stages of development. They include the Downtown Streetscape Project, the Grand Theater, the Downtown Plaza, the Transit Station and the restructured Fire Administration Building.

To ameliorate improvement efforts in the Downtown area, the Community Development Agency approved a series of programs which staff implemented that are designed to assist with revitalization efforts within the boundaries of the Downtown Redevelopment Program area. These programs consist of three small grant programs to assist owner/occupied homeowners with needed property improvements, two low interest loan programs for substantial health and safety property rehabilitation, and a down payment assistance program to assist first time homebuyers in buying owner/occupied residences. In addition, a graffiti abatement program was established to help property owners purchase paint and materials to remove graffiti on private property. These programs were created as an incentive for property owners and to enhance property values downtown.

Since the abolishment of redevelopment agencies in 2011, all but one program has been eliminated. The one remaining program currently in place is the City's Free Tow program for inoperable vehicles on private property. This is a voluntary program with funding from the City's General Fund. Unfortunately, the loss of redevelopment funds has removed an essential tool for combating blight.

Ms. Contreras outlined the options for Council consideration relative to expanding existing codes regarding vacant and abandoned buildings.

Option 1 - Continue enforcing Tracy's existing codes to ensure open, unsecured buildings comply with the Boarded of Unsecured Buildings Ordinance. Staff will maintain monthly, proactive inspections of these buildings to ensure they meet all code provisions

and properties are maintained nuisance-free. This would likely result in maintaining the existing status of the vacant and boarded properties.

Option 2 - Amend the Tracy Municipal Code regarding vacant and abandoned buildings (residential and commercial). Establish timeframes for how long a vacant building can remain in a boarded state (must replace boards with windows or suitable substitute within 90 days of notice (suitable substitute could be this polycarbonate product) and allow existing boarded buildings no longer than 120 days to remove plywood and replace with a more permanent material, such as glass or polycarbonate product.

This option would ensure open, unsecured buildings comply with the Boarded of Unsecured Buildings Ordinance while providing a viable, long-term alternative to plywood boarding. This option would also provide visual appeal to surrounding neighbors and to neighborhoods in general.

Option 3 - Same as Option 2, but limited to commercial establishments regarding vacant and abandoned buildings. Establish timeframes that include only commercial properties (must replace boards with windows or suitable substitute within 90 days of notice (suitable substitute could be polycarbonate product)) both because they are generally more susceptible to unwanted intrusions and to aid with economic development in the community. This option takes into account the visibility of commercial properties which are more evident to residents and guests entering the City, as they are typically located on major streets.

The Resale Inspection Program would require additional staff hours to carry out the labor intensive functions of the program. Current staffing levels and budgetary constraints render the program unfeasible to implement at this time. The local Real Estate Associations have voiced opposition to the program. Should Council direct staff to pursue Option 2, there may be impacts to the General Fund if the City takes action to pay for window replacement from non-responsive property owners. These funds could be recovered when the affected property is sold or through other legal means such as through small claims court proceedings. However, this would require a reprioritization of staff time to focus on these vacant and abandoned properties. Alternatively, staff could continue to fine these property owners through its administrative penalties until compliance is achieved.

Staff recommended Council consider Option 2 as a means to proactively address the problem of long-standing vacant and abandoned buildings, and provide staff direction accordingly.

Mayor Pro Tem Maciel asked how the resale inspection issue emerged from the boarding building discussion. Ms. Contreras indicated a speaker at one of the meetings requested that the City look into it. Mayor Pro Tem Maciel asked if staff inspected the vacant buildings monthly. Ms. Contreras stated yes, and that she and the Supervising Building Inspector inspected the vacant properties, which was when it was determined that some of the properties fell into the dangerous building category.

Council Member Young stated the abandoned building windows would look better with the polycarbonate material, but the buildings would still look dilapidated. Council Member Young asked if the boarding costs were the responsibility of the property owner. Ms. Contreras indicated the City could step in and board the building and once all due

process has failed, could place a lien on the property. Council Member Young asked what the difference in cost was between plywood and polycarbonate. Ms. Contreras stated a 48 x 96 inch polycarbonate sheet cost approximately \$115 per sheet which includes the necessary brackets while the same size plywood costs approximately \$30 per sheet.

Council Member Rickman asked about the availability of the material. Ms. Contreras stated the material could be ordered and available within one week. Council Member Rickman referred to the house that burned and asked how long ago that happened. Ms. Contreras stated approximately ten years ago.

Council Member Manne asked when an inspection took place, what were some of the health and safety issues noted. Ms. Contreras stated truss failures, chunks of building falling off, water damage, and deferred maintenance.

Council Member Manne asked if updating the Municipal Code would reduce the squatter issue. Ms. Contreras stated it would reduce the blight and appearance of it being unkempt and unmaintained. Ms. Contreras added polycarbonate gives the illusion of someone living there lessening the chances of squatting and dumping.

Mayor Pro Tem Maciel stated he was concerned that the material would not make a difference on the buildings that have been vacant for decades.

Mayor Ives invited members of the public to address Council.

Dave Helm stated property rights were important and that they should be considered on a case-by-case basis.

George Riddle, 1850 Harvest Landing Lane, asked if the Tracy Association of Realtors had any comments. Ms. Contreras stated they asked that the ordinance remain as is. Mr. Riddle stated 20 years was plenty of time for property owners to remedy the problem.

Ricki Hippa asked about the graffiti resistance of the polycarbonate product. Mayor Ives stated any surface could become a subject for graffiti.

Guy Burns, P.O. Box 930, owner of a boarded building, stated the polycarbonate would not resist graffiti and asked about odd-sized windows, fumes when the product burned, and security issues because of transparency. Mr. Burns also asked for the life of the product and if it had been tested. Mr. Burns stated he was not convinced that the 12 properties will be enhanced with the addition of the polycarbonate product and urged Council to pursue Option 1.

Mayor Pro Tem Maciel asked Mr. Burns how long his property been boarded. Mr. Burns stated he applied for the boarded building permit two years ago for some of the windows.

Mayor Pro Tem Maciel indicated he believed that most property owners were waiting for the market to change and that the key is cooperation, asking how long is too long for a property to remain stagnant. Mr. Burns indicated not every property was the same and that he should be able to do with his property what he wants.

Mayor Ives asked how many of the boarded buildings meet the code for boarding. Ms. Contreras stated nine currently meet boarding standards. Mayor Ives indicated the plywood was used to make the structure secure and asked how many of the boarded properties were commercial. Ms. Contreras stated just the Long John Silvers site.

Mayor Ives thanked staff for their efforts.

Council Member Young stated the situation was definitely a problem and asked what the real issue is and what the viable solution is. Council Member Young indicated some people are apathetic and even though they did not show up does not mean they aren't concerned. Council Member Young stated something needed to be done, but she did not know what the answer was.

Council Member Manne stated he held private property rights highly and that while it is true we have the right to do what we want, there comes a point when it affects those surrounding you. Council Member Manne stated it was up to the property owners to do something with those buildings and that he was not sure putting plastic on them would resolve the issues. Council Member Manne stated he was in favor of Option 1 and asked staff to continue to look into the health and safety issues of those properties.

Mayor Pro Tem Maciel stated he reluctantly believed Option 1 was appropriate, but was not sure maintaining status quo was the answer.

Council Member Rickman stated the main issue was blight and that staff has the tools necessary to fight blight. Ms. Contreras stated staff does not have an ordinance that restricts ugly or unattractive properties.

Council Member Rickman asked how staff determines if a building falls under a health and safety issue and asked Ms. Contreras what she recommended. Ms. Contreras indicated if staff questioned the structural integrity of a building, they considered having the property owner submit a structural engineer report regarding the building.

Andrew Malik, Development Services Director, stated staff has been looking at these eight properties for some time and that most of these properties were in family trusts which hold a sentimental and emotional attachment. Ms. Contreras further indicated she has met with all the property owners and they are fully aware that something needs to be done and are aware of the City's next steps.

Mayor Ives indicated he was happy to stay with Option 1, stating the problem was not huge, was well known, and wanted to move along in dealing with the properties.

Council Member Rickman stated the main issue was health and safety and the incompatible use of commercial properties which can be done through zoning. Council Member Rickman asked staff if they have the tools they need. Mr. Malik stated yes.

It was moved by Council Member Young and seconded by Council Member Rickman to direct staff to pursue Option 1. Voice vote found all in favor; passed and so ordered.

Mayor Ives called for a recess at 8:57 p.m., reconvening at 9:08 p.m.

5. DIRECT STAFF TO CEASE NEGOTIATIONS WITH SPIRIT OF CALIFORNIA ENTERTAINMENT GROUP, INC., FOR A NEW EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT; ADOPT A RESOLUTION TERMINATING THE EXISTING EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC AND FIRST AMENDMENT WITH TRACY BLAST DEVELOPMENT, LLC; AND DIRECT STAFF TO RETURN AT A LATER DATE WITH OPTIONS FOR POSSIBLE USES OF THE CITY-OWNED PROPERTIES OUTSIDE OF THE CITY LIMITS ON THE WEST SIDE OF TRACY BOULEVARD ADJACENT TO LEGACY FIELDS AND ON THE EAST SIDE OF TRACY BOULEVARD NORTH OF ARBOR ROAD AND NORTH OF THE CITY'S WASTEWATER TREATMENT PLANT ("HOLLY SUGAR PROPERTY") – Andrew Malik, Development Services Director, provided the staff report. Mr. Malik stated on April 29, 2011, the City entered into an Exclusive Negotiating Rights Agreement ("ENRA") with Tracy's California Blast, LLC regarding City-owned properties outside of the City limits on the west side of Tracy Boulevard adjacent to Legacy Fields and on the east side of Tracy Boulevard north of Arbor Road and north of the City's Wastewater Treatment Plant ("Holly Sugar Property"). On September 18, 2012, the City entered into the First Amendment to the ENRA with Tracy Blast Development, LLC (Tracy's California Blast, LLC and Tracy Blast Development, LLC are collectively referred to as "Tracy Blast").

On November 7, 2012, Council directed staff to enter into negotiations with the Spirit of California Entertainment Group, Inc. ("Spirit of California") for a new ENRA regarding the Holly Sugar Property. At that time, Council also directed that the ENRA with Tracy Blast should remain in place until a new ENRA with Spirit of California was approved.

Since November 7, 2012, it has come to staff's attention that James B. Rogers may be or may have been associated with a number of other companies, lawsuits, bankruptcy proceedings, and judgment liens. Mr. Rogers is listed as the Chief Executive Officer, Secretary, and Chief Financial Officer of the Spirit of California in forms Mr. Rogers has filed with the Secretary of State. He is listed as the sole Director as well. Mr. Rogers also identified himself as the Chief Executive Officer of Tracy Blast. Therefore, on February 7, 2013, staff sent Mr. Rogers a letter requesting additional information on these matters, specifically requesting that all responses be of sufficient detail to allow staff to independently verify the information.

On February 20, 2013, Mr. Rogers sent a letter to staff in response to staff's request. Attached to his letter were three reference letters from: James P. Nichols, Attorney at Law; Sheryl Madison Lancaster; and Phillip L. McKitterick, with the Artisan Company. Many of the responses in Mr. Roger's letter were general in nature and were not supported by any documentation that staff could rely on to independently verify the information. Also, some of the responses seem to conflict with court documents. For example, in his letter, Mr. Rogers describes one lawsuit he is involved in (*Bennett v. Superior Court*) as relating to ". . . a private lender who is suing another private lender in a transaction I was involved in 4 years ago. Because I was a party to the transaction I was sued as well." The following is a description of the facts from the Court of Appeal's opinion in the case: Bennett filed this action on May 6, 2010, naming only James B. Rogers, the primary source of the alleged fraud. According to the original complaint as well as his subsequent pleadings, in August 2007, Bennett loaned Rogers \$2 million. Rogers represented that he planned to construct a home and "Guest House" on a parcel of land in Los Gatos and then sell the property to recoup Bennett's investment. In exchange for the loan, Rogers gave Bennett a promissory note, secured by a deed of

trust on the property. The deed of trust allowed Bennett to “call the loan due in full” if Rogers transferred any or all of the property.

On April 1, 2008, Rogers persuaded Bennett to “go off title” to the Guest House, ostensibly so he could refinance that part of the loan. The papers Bennett signed, however, transferred to Rogers all of Bennett's title to and interest in the *main property* as well as the Guest House. In his first amended complaint Bennett alleged that he had mistakenly signed these documents in reliance on Rogers's representation that only title to the Guest House was being transferred.

On August 7, 2008, Rogers conveyed the property to Lexington Consulting, Rogers's solely owned entity. Less than two weeks later, Lexington Consulting filed for bankruptcy protection. According to Bennett, Rogers had made no payments on the note since September 2007. When Bennett discovered that he had been removed from title to the main property, he contacted Rogers, who first blamed the title company for incorrectly drafting the documents, but then explained that he needed Bennett's name and deed of trust removed from the main property to facilitate the transfer to Lexington Consulting and the bankruptcy filing. Rogers allegedly told Bennett that Bennett had to be removed from the title to the main property because Rogers needed another \$250,000 to complete construction on the main property in order to sell it. In addition, Rogers explained, the second lienholders reportedly would not provide the additional funding unless Bennett was removed from title, because he had not signed a subordination agreement. These second lienholders were real parties in interest Magnate Fund # 2, LLC; Lodgepole Investments, LLC; and LHJS Investments, LLC (collectively, real parties). (*Id.* at p. 2.)

In the Bennett case, the question before the court was a procedural one -- whether the plaintiff's lis pendens he filed on the property should be expunged. A lis pendens is a recorded document giving constructive notice that an action has been filed affecting title or right to possession of the property. The Court of Appeal concluded that the lis pendens should not be expunged because the plaintiff adequately pleaded a claim for fraudulent conveyance. In his letter, Mr. Rogers also describes two other federal lawsuits he was involved in (*Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc.* and *James B. Rogers, et al. v. Federal Bureau of Investigation*) as follows: “In most cases when a lawsuit with a federal institution is initiated, the FBI has to be involved due to its federal insurance. I prevailed in both of these joint cases. I was awarded 350k dollars in damages. This case was closed 15 years ago.” According to a federal District Court's opinion in the case involving the FBI (*James B. Rogers v. Federal Bureau of Investigation*), Mr. Rogers and the other plaintiffs were alleging, among other things, that the FBI and IRS violated their civil rights during the course of the criminal investigation into a company they operated, Preferred Financial Group, Inc. The company purported to provide securities brokerage services to cater to European clients. It appears as if this case was dismissed by the Federal District Court.

Mr. Rogers has failed to provide staff with sufficient information on the matters outlined in its February 13, 2013, letter to allow staff to negotiate and recommend entering into a new ENRA with Spirit of California. Tracy Blast is currently in default under the ENRA, in part because Tracy Blast failed to provide required financial information. At the November 7, 2013, Council meeting, Mr. Rogers did not dispute the fact that Tracy Blast was in default under the existing ENRA.

Staff recommended that Council: (1) direct staff to cease negotiations with Spirit of California for a new ENRA; (2) adopt a resolution terminating the existing ENRA with Tracy Blast; and (3) direct staff to return at a later date with options for possible uses of the Holly Sugar Property.

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

James Rogers addressed Council outlining the process involved in the Exclusive Negotiating Rights Agreement and provided responses to staffs' concerns. Mr. Rogers requested that the meeting be extended to provide him time to work with staff to clear any concerns. Mr. Rogers stated he was in the process of completing the required financial information.

James Nichols, an attorney in San Mateo representing Mr. Rogers, addressed Council indicating he had not seen the letter asking for clarification of any lawsuits. Mr. Nichols commented on what he believed were misconceptions in the staff report.

Council Member Manne asked Mr. Rogers to speak to the bankruptcy. Mr. Nichols answered stating his understanding was that Lancaster had virtually no assets and no liabilities, and it was filed to clarify an issue regarding a bankruptcy transfer.

Cheryl Madison Lancaster indicated she has invested thousands of dollars with Mr. Rogers, has been treated with respect and honesty, and supported Mr. Rogers. Ms. Lancaster stated Mr. Rogers did not file bankruptcy to hurt her.

Susan Alcala, a resident on Hollywood Avenue, spoke in support of the project referring to its potential for job generation. Ms. Alcala asked that Council support the project.

Cindy Banister asked that Council give Mr. Rogers the time he needs to answer questions.

Steve Brenkwitz, a resident for 50 years, stated he trusted Mr. Rogers and was in favor of the project.

Angel Moreles, a resident since 2005, spoke in favor of the project.

Robert Dell Aringa, 18581 Bachetti Road, asked Council to direct staff to work with Mr. Rogers.

Arnold Fish, 17571 W. Bethany Road, spoke in favor of the project and the value it would add to the City's youth.

Dennis Lancaster stated he heard more about boarding windows than about this project.

Chelsey Adamson, a senior at Kimball High School, stated this project could change Tracy forever and that it was time for a change.

Mayor Ives asked staff to outline what has happened since November 2007, and negotiating the ENRA. Mr. Malik stated staff held a couple of meetings with Mr. Rogers on the ENRA in regard to the Cost Recovery Agreement. Mr. Malik stated meetings held



in December 2012, and January 2013, covered the Cost Recovery Agreement and that in early January some issues came to light.

Mayor Ives asked if back and forth communication took place regarding the Cost Recovery Agreement and at what point did it get hung up. Mr. Malik stated he did not believe it was hung up, but that staff was looking at deposit amounts and what would be necessary to move forward.

Mayor Ives asked how Mr. Rogers was notified. Mr. Malik stated he and Rod Buchanan, Interim Director Public Works, called Mr. Rogers on March 14, 2013, and left a message stating this item would be on the agenda March 19, 2013. Mr. Malik added that staff followed up with an e-mail which contained the staff report. Dan Sodergren, City Attorney, stated he was contacted in October 2012, by an attorney who indicated he was representing the Spirit of California, and therefore notified that attorney that the item would be on the March 19, 2013, agenda which the attorney acknowledged receiving.

Mr. Rogers indicated he has not met or had a conversation with staff since November 7, 2012.

Mayor Ives informed Mr. Rogers that Council was in a tough position and that he has spoken with Mr. Rogers regarding the project and indicated that he had to show the Council that the project is viable. Mayor Ives stated it was incumbent on Mr. Rogers to convince Council, without a shadow of a doubt that the project can happen. Mayor Ives indicated Mr. Rogers should have brought his best consultants to the meeting to support the project and show Council what has been done. Mayor Ives stated Council represents approximately 85,000 individuals and needs to assure the residents that this project is a good deal for the City.

Mr. Rogers indicated that is why he has been forwarding Council his newsletter. Mr. Rogers stated he has been waiting on direction from Mr. Malik and came to this meeting because of an attack on his reputation. Mr. Rogers further indicated he was spending \$100,000 per month on the project. Mr. Rogers referred to the bankruptcy mentioned indicating he did it to help a local investor safeguard their funds. Mr. Rogers stated he will work with staff but that he cannot get a Cost Recovery Agreement from staff. Mr. Rogers further stated he has been working for a year on the financial models for the project and has \$300 million lined up for the project.

Mayor Pro Tem Maciel stated when the project came to Council in its first iteration as a racetrack it sounded interesting and asked then how it was going to be paid for. Since then, the project has become grandiose and the same questions remain. Mayor Pro Tem Maciel further stated the City has requested financial information on Mr. Rogers and asked if that information had been provided. Mr. Malik stated staff has no financial information on Mr. Rogers or any expressions of interest from investors.

Mayor Pro Tem Maciel stated it appeared that those questions have not been answered and was concerned about the Merced project indicating he did not want to put the residents of Tracy at a similar risk. Mayor Pro Tem Maciel stated if Council agrees to give Mr. Rogers an additional 30 days it will be the last chance and that every question will need to be answered. Mayor Pro Tem Maciel suggested that the project be scaled down.

Council Member Manne indicated the project would put Tracy on the map. Council Member Manne, addressed Mr. Rogers, stating the responses to the letter requesting information were poor and incomplete. Council Member Manne stated Mr. Rogers partners with his investors well, but not with the Council. Council Member Manne indicated if Council extends the time period, 30 days should be sufficient to clear up the concerns.

Council Member Young indicated it was her first time addressing the project as a Council Member and that Council needed to be notified of meeting dates and copied on all correspondence. Council Member Young stated she was willing to give additional time for due diligence.

Council Member Rickman stated it was staff's job to bring concerns to Council and that there appeared to be a lack of communication on both sides. Council Member Rickman stated he would like Mr. Sodergren, Leon Churchill, Jr., City Manager and Maria Hurtado, Assistant City Manager, involved in a meeting that addressed any unanswered questions or concerns of litigation. Council Member Rickman suggested that if Mr. Rogers has investors in town, the Mayor or Council should be contacted to meet with them. Council Member Rickman indicated Council was not trying to kill the project, but concerns needed to be addressed.

Mayor Ives stated it looked like Council was willing to provide Mr. Rogers more time but specifics were needed regarding what Mr. Rogers should provide. Mayor Ives indicated they have talked about an ENRA and a reimbursement agreement.

Mr. Sodergren indicated staff did send a letter requesting documents and information to independently verify some of the issues. Mr. Sodergren added that the reason the lawsuits were listed in the staff report was because that was all staff was able to verify. Mr. Sodergren suggested that the requested information should come from Mr. Rogers in an official document form.

Ms. Hurtado suggested a two phase approach; the initial piece of information related to the financials that staff has not been able to verify, and the listed litigations and lack of documentation that can be independently verified.

Ms. Hurtado stated if Council were to give Mr. Rogers an additional 30-60 days to respond, the financial verification needed would be based on what the City's consultant says is true verification, as well as the litigation that Mr. Sodergren outlined in his letter, and the status of the corporation, its officers, purpose of the corporation and his involvement, and any legal settlement obligations that can be verified. Ms. Hurtado stated at that point staff could bring the information to Council and if it is satisfactory, then staff can begin ENRA discussions and a Cost Recovery Agreement. Ms. Hurtado indicated she understood that Council would like to be copied on all correspondence between staff and Mr. Rogers.

Mayor Ives asked if staff were to get the financial information and proper responses, would that provide what is needed for negotiation on the ENRA and Cost Recovery Agreement. Ms. Hurtado stated the City still needs the financial verification. Mayor Ives asked if it was plausible that the Reimbursement Agreement could be negotiated if all information is provided.

Mr. Sodergren indicated it was his understanding that Council would like to see the items outlined in Mr. Malik's letter of November 7, 2012. Mr. Sodergren reminded Council that the existing ENRA with Tracy Blast was in default, mainly due to the lack of financial information and that Council directed staff to keep it in place until a new ENRA is negotiated. Mr. Sodergren indicated direction was needed on that item.

Mayor Ives asked Mr. Rogers if he could fulfill the requests within 30 days. Mr. Rogers stated he would be able to provide the information contained in the letter within 30 days, after that point they would need to enter into an ENRA that had financial requirements tied into it. Mr. Rogers stated he could show the larger sums of money within 90 days.

Mayor Ives stated he was not asking for \$300 million dollars, just proof that it existed. Mr. Rogers stated the money is available to do projects but needed to go through the process.

It was Council consensus to provide Mr. Rogers with 30 days to answer questions posed to him in the February 7, 2013, letter. Mr. Sodergren indicated staff would need an additional 30 days to review the information Mr. Rogers provides.

Council Member Rickman indicated a meeting was necessary to mend fences.

James Nichols stated some records are not readily accessible from various cities, counties, or courts, but indicated they would respond within 30 days with the information that is available, so staff could begin work to verify the information.

Ms. Hurtado responded that bi-monthly meetings could be held with Mr. Rogers with the City Manager and City Attorney present. Ms. Hurtado stated staff would calendar an item to update Council within 60 days.

Mayor Ives indicated that process would begin building the confidence Council needs.

Mr. Rogers indicated it would be helpful if he could meet with Mr. Sodergren. Mr. Sodergren indicated he was contacted by an attorney who stated he represented the applicant and it was not professional courtesy to meet with an applicant without his attorney.

Mayor Ives stated the reason he wanted it clear to everyone what was required, was because there will be a bottom line, and a better working relationship will be established along with more confidence in one another.

Ms. Hurtado added that staff would need Mr. Rogers' financial information also.

Mayor Ives indicated to Mr. Rogers that at some point he would need to show that the corporation is able to perform in this manner. Mr. Rogers stated he would like to have a Council member present at the meeting.

Council Member Manne stated Mr. Rogers' personal financial information was absolutely needed; that it provides credibility.

Mr. Sodergren asked Council for direction regarding the existing ENRA. Mayor Ives asked Mr. Rodgers if he would honor the conditions of the original ENRA. Mr. Rogers stated yes.

Mr. Sodergren stated the ENRA was in default which is why staff recommended cancelling the ENRA. Mr. Buchanan added that payments for January, February, and March 2013, were due.

6. SECOND READING AND ADOPTION OF ORDINANCE 1182 AN ORDINANCE OF THE CITY OF TRACY APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002 - The Clerk read the title of Proposed Ordinance 1182.

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

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

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Ordinance 1182. Roll call vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.

8. COUNCIL ITEMS

- A. Appointment of City Council Subcommittee to Interview Applicants for Vacancies on the Transportation Advisory Commission - Council Member Rickman and Council Member Manne were appointed to interview applicants for vacancies on the Transportation Advisory Commission.

Mayor Pro Tem Maciel requested an agenda item to discuss the possible naming of the Tracy Fire Range Facility after the late Police Captain John Serpa. Ms. Hurtado indicated staff would return to Council with the naming policy.

Council Member Young announced that the World Series Trophies would be present at City Hall Wednesday, March 20, between 4:00 p.m. and 6:00 p.m.

Council Member Rickman wished everyone a happy Easter.

Council Member Manne thanked Police Chief Hampton and Officer Brian Azevedo for allowing him to participate in a recent ride-along.

9. ADJOURNMENT - It was moved by Council Member Young and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered. Time: 11:06 p.m.

The above agenda was posted at the Tracy City Hall on March 14, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor

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City Clerk

**April 2, 2013, 6:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

1. Mayor Pro Tem Maciel called the meeting to order at 6:00 p.m.
2. Roll call found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel present; Mayor Ives absent.
3. Items from the Audience – None.
4. CONDUCT A CITY COUNCIL WORKSHOP TO REVIEW THE PROPOSED FY 13/14 CAPITAL IMPROVEMENT PLAN (CIP) – Jenny Haruyama, Administrative Services Director, provided the staff report. Ms. Haruyama stated the Capital Improvement Plan (CIP) is comprised of current, new, and future projects. Current projects are those that have not yet been completed and were funded in FY 12/13 or in prior fiscal years. If any of those projects require additional funding it is noted in the year in which the funding is proposed. The CIP also reflects new projects proposed for FY 13/14 or projects anticipated to occur in a future year.

The CIP is organized into groups by the type of project. Groups include: General Government and Public Safety Facilities, Traffic Safety, Streets and Highways, Wastewater Improvements, Water Improvements, Drainage Improvements, Airport and Transit Improvements, Parks and Recreation, and Miscellaneous Projects.

CIP projects are funded by various funding sources, including the General Projects Fund (Fund 301), Special Revenue Funds, Capital Project Funds, Enterprise Funds, Internal Service Funds, and Other Sources.

The General Projects Fund, known as Fund 301, is the only fund that can be used to support any type of project. Revenue that is appropriated to this fund is General Fund revenue. A small portion of CIP projects are funded via the General Projects Fund.

The majority of CIP projects are funded through funding sources that have unique limitations. For instance, the Special Revenue Fund receives gas tax, which is legally restricted for specific purposes. Gas tax must be spent on roadway and traffic safety improvements and transit funds spent only for transit purposes.

The Capital Projects Fund also support a number of CIP projects, which are funded through various fees, like development impact fees. Development impact fees are collected in various areas of the City, such as the North East Industrial (NEI) or Gateway and provide funding for infrastructure improvements associated with a particular development. These funds must be spent on projects that were identified in establishing the fee.

Enterprise Funds, which support water and wastewater services, can only be spent on enterprise projects.

CIP projects can also be funded through Internal Service (IS) Funds. Revenue acquired through the IS Fund is accounted for by charges to City departments for city-wide services that support most City programs, including information technology, building maintenance, risk management, and equipment replacement.

Some CIP projects are supported through Other Sources, which is comprised of developer contributions and various local, state, and federal grants.

The total proposed FY 13/14 CIP is approximately \$57.7 million. Of that amount, \$39.4 million is for current projects and \$18.3 million is for new projects.

Formal adoption of the CIP will occur in June 2013. Adoption of the FY 13/14 CIP only appropriates funding for new projects or additional funding for existing projects that are scheduled to occur in FY 13/14.

General Projects Fund 301 is funded through General Fund revenue; however, this has only occurred when the operating budget has excess revenue over expenses or the City receives unexpected one-time revenue. There is no ongoing, dedicated funding source to support capital projects.

It is anticipated that in FY 13/14, there will be approximately \$3,097,073 available for CIP projects.

#### CIP SOURCE OF FUNDING

<b>Beginning Fund Balance</b>	<b>\$ 15,782,200</b>
Tracy Rural Fire Department Grant	925,000
Close-out RDA, Housing	570,500
Close-out RDA, Projects (Estimate)	317,000
Property Tax Administration Fee Refund	847,960
Close-out Debt Fund 405	1,327,600
Close-out Assessment District & CFD Funds	50,680
Total	<b>\$ 19,820,940</b>
Projects Budgeted for FY12-13	<b>\$ 16,723,867</b>
Available Funds for FY13-14	<b>\$ 3,097,073</b>
Projects Proposed for FY13-14	<b>3,000,100</b>
<b>Unallocated funds</b>	<b>\$ 96,973</b>

For FY 13/14, approximately 113 projects requiring Fund 301 money were submitted and evaluated for consideration. Of the amount, only 11 were recommended for funding, given the limited amount of available Fund 301 monies. Approximately \$3,000,100 is being requested from Fund 301 for FY 13/14. The total remaining unallocated funds is \$96,973. It is recommended not to completely allocate all available funding as costs associated with FY 12/13 budgeted and FY 13/14 proposed projects are subject to change.

These projects were internally reviewed and evaluated based on several criteria, including but not limited to:

- Public Safety: Does the project eliminate or prevent an existing health, environment, or safety hazard?
- Neighborhood/Community Impact: Does the project enhance property or increase quality of life within the City of Tracy?
- Legal Requirements: Is the project in accordance with state, local and federal laws or regulations?
- General Plan: Does the project advance the goals of the City of Tracy's General Plan?
- Population Served: Who in the community will the project serve?
- Fiscal Impact: Will the project have a net positive, neutral or negative impact on the City's finances? Does the project represent a good financial value for the cost? Does the project have high ongoing operational and maintenance costs?
- Life Expectancy: How long is the improvement expected to last?
- Economic Development: Does the project promote Economic Development?
- Sustainability: Does the project promote sustainability efforts?

FY 13/14 recommended projects to be funded with Fund 301 are:

PROJECT TYPE	PROJECT NAME	FUND 301	OTHER FUNDING	TOTAL PROJECT COSTS
General Government & Public Safety	Animal Shelter, Increment I	\$908,000		\$4,723,000
	Fire Station 91 Quarter Modifications	\$29,300		\$29,300
Parks and Recreation	Tracy Ballpark Phase 1 – Stakeholder Outreach	\$25,000		\$25,000
	El Pescadero Park – New Restrooms	\$434,500		\$434,000
	Demolition and Sale of Bessie Building	\$140,000		\$140,000
	MacDonald Park – Restroom Replacement	\$476,200		\$476,200
	MacDonald Park – Handball Court	\$34,500		\$34,500
	Facilities Reservation Software	\$20,000	\$20,000 (TDA Grant)	\$40,000
Airport and Transit Improvements	Airport Pavement Rehabilitation, Phase II of V, Project 3A (Runway 12/13, Taxiway B,D,E)	\$447,600*	\$13,255,740 (FAA Grant Funding)	\$15,589,000
Miscellaneous	Human Resources/ Financial Information System	\$300,000	\$450,000 (Internal Service Fund - Equipment Replacement)	\$750,000
	Wireless Infrastructure	\$185,000		\$185,000
<b>TOTAL</b>		<b>\$3,000,100</b>	<b>\$13,725,740</b>	<b>\$22,426,000</b>



The recommended Fund 301 project matrix reflects the total cost of the Airport Pavement Rehabilitation project, which is \$15.6 million. Not noted is the total cost for Phase 2 in FY 13/14, including the City's share and a matching grant from the Federal Aviation Administration (FAA). Combined, the FY 13/14 project cost is \$4.78 million.

The Airport Pavement Rehabilitation project is a multi-phased project and will require approximately \$2.3 million from Fund 301 over the next four years, assuming that the City receives \$13.3 million in FAA grant funding. It should also be noted that between 1997 and 2009, the Airport Fund, to finance various capital projects, borrowed \$1,263,622, including interest from the Water Fund, and \$250,000 from the State. In 2012, the loan from the Water Fund was consolidated to \$862,500 with an updated interest rate based on current Local Agency Investment Fund rates. Under the consolidation agreement, the first three years' payments are interest only payments of \$20,873. Beyond the three years, annual payments of \$40,770 are to be made to the Water Fund over a period of 30 years. The State loan will be paid in full in 2014.

There is no fiscal impact associated with the acceptance of this report. Based on Council feedback, the proposed Five-Year FY 13/14 – FY 17/18 CIP will be presented for Council consideration and adoption in June 2013.

Mayor Pro Tem Maciel asked if demolition and subsequent sale of the Bessie Avenue property could add to the remaining \$96,973 balance of unallocated funds. Ms. Haruyama indicated that was entirely up to Council.

Mayor Pro Tem Maciel referred to the software upgrade for facility rental asking if the revenue generated from rentals was known. Rod Buchanan, Interim Public Works Director, indicated the software cost was shared with the Transit Fund and will be used to rent all facilities. Mr. Buchanan further indicated other companies that have used this software saw an immediate 10%-15% increase in revenue. Mr. Buchanan stated a savings in staff time will be realized because users of the software will be able to take a virtual tour of the facilities and book them online.

Ms. Haruyama added that yearly revenue from facility rentals totaled approximately \$100,000 which could be used as a benchmark to evaluate any changes in revenue generated.

Council Member Rickman referred to the Tracy Ballpark asking why the City needed to spend \$25,000 on a consultant. Leon Churchill, Jr., City Manager, stated the City could certainly do its own outreach, but that existing staff did not necessarily have the skill set to translate those ideas into a design.

A discussion ensued regarding ways to decrease the amount spent on a consultant for the Tracy Ballpark. Ms. Haruyama added that the scope of work in a professional services agreement can be negotiated and that staff will look for every opportunity to minimize costs.

Council Member Young asked if any funds would be available for modifications to the Tracy Ballpark after the community has provided their input. Mr. Churchill stated at this

point no funds were budgeted for construction at the Tracy Ballpark. Mr. Churchill added that the Tracy Ballpark was a high ranking project for Council and that it would be prudent to have the design process underway or completed in order to qualify for any possible grant funding.

Council Member Rickman referred to a future communication tower project and asked if staff had approached the California Highway Patrol (CHP) to partner with them on their proposed 100-foot tower. Police Chief Gary Hampton stated staff has had conversations with the CHP, but due to the towers' proximity in the eastern part of the city, the tower would not meet City needs. Chief Hampton added that the CHP tower had a 10 year radio communication plan which would consume all of their tower space. Chief Hampton stated the City's 180-foot tower proposed for the opposite end of the City would cover areas impacted by recent and forecasted growth. Chief Hampton added that staff was looking at other funding options for the proposed tower.

Council Member Young referred back to the Tracy Ballpark project asking if staff knew whether or not it could be completed in less than five years. Mr. Churchill indicated that would be up to future Councils and the appropriation process. Mr. Churchill added that the project was ranked high and would likely be recommended for construction.

Council Member Young voiced concerns about the airport rehabilitation pavement project that covered multiple years, asking how the City can commit future funds. Mr. Churchill stated he strongly recommended Council consider financial policies that direct one-time revenues for capital investments that will be needed over the next several years. Mr. Buchanan added that this was a worst case funding scenario from Fund 301. Mr. Buchanan indicated staff intended to apply to the State of California for matching funds and was dependent on the FAA's ability to fund the project. Mr. Buchanan further stated it was unusual for an airport our size to get a commitment of \$15 million.

Mayor Pro Tem Maciel invited members of the public to address Council on the item.

Ray Morales, 1801 Foxwood Drive, representing Southside Communities, addressed Council regarding MacDonald Park. Mr. Morales indicated it was difficult to have organized functions at the park due to the lack of handicapped facilities. Mr. Morales stated the handball court was heavily used and that he was aware of future activities that would require additional use of the handball court. Mr. Morales asked Council to support funding for MacDonald Park improvements.

Jo Hensel, an 8<sup>th</sup> Grade teacher at North School and students, addressed Council regarding "Operation Hoop It Up" asking if there might be Capital funds available to build a basketball park in El Pescadero Park.

Mayor Pro Tem Maciel indicated he had visited North School where he urged the class to be an advocate for the project and asked if any estimates were available from staff.

Kuldeep Sharma, City Engineer, indicated an estimate was prepared totaling \$60,000-\$65,000 which includes excavation for the court, installation of asphalt, grading, and striping.

David Duncan, President, Tracy Express Girls Softball, asked for funds for the design of Phase II softball fields at Legacy Fields. Mr. Duncan indicated Tracy Unified School District was not maintaining the fields to their needs and would not allow the league to maintain the fields.

Trina Anderson thanked Council for their support of the airport projects listed in the CIP budget.

Robert Tanner, 1371 Rusher Street, referred to Fund 301, asking if the estimate was accurate for the closeout of the Redevelopment Agency. Ms. Haruyama stated it was very accurate. Mr. Tanner then suggested taking some of those funds, not demolish the Bessie Avenue building, and allocate it to the basketball court in El Pescadero Park as requested by the youth from North School.

Dave Anderson, 1940 Earl Way, suggested the City salvage the Bessie Avenue building and have the salvage company pay the cost of demolition. Mr. Anderson referred to the costs of the Human Resource and Parks software and asked if the two systems could be combined or farmed out.

Craig Saalwachter, 4083 Peyton Lane, addressed Council regarding the lack of planned facilities for seniors.

Council Member Rickman asked what the liability would be if nothing was done with the Bessie Avenue property. Dan Sodergren, City Attorney, stated he was not aware of any immediate liability. Council Member Rickman asked if the City has looked at another party performing the demolition. Mr. Buchanan stated staff explored that option and that risk management indicated because of the condition of the building, especially due to the existence of mold, it was not advisable.

Council Member Manne asked if the value of the building was known. Andrew Malik, Development Services Director, two homes could be built on the lot and the property was valued at approximately \$50,000.

Mayor Pro Tem Maciel stated he understood that proposed CIP funding calls for demolition of the Bessie Avenue building and resale of the property, which would be added back into CIP funds. Mayor Pro Tem Maciel asked if funds from the resale of the property could be earmarked toward a basketball court at El Pescadero Park. Ms. Haruyama indicated there are times when excess revenues can be put into Fund 301.

Mayor Pro Tem Maciel stated he was an advocate for adding restrooms to both El Pescadero and MacDonald Parks and rehabilitation of the MacDonald Park handball courts.

Council Member Young asked what the estimate was for the design of Phase II of Legacy Fields. Mr. Buchanan indicated the design for Phase 1 was \$1 million, and Phase II is estimated at \$200,000.

Council Member Rickman asked if there was any money left over from Phase I. Mr. Buchanan stated no; that the project was right on budget.

Council Member Young stated there were many worthy projects for youth and seniors and advocated anything that builds our parks and encouraged creative fund raising.

Ms. Haruyama indicated rather than waiting for potential proceeds from the sale of the Bessie Avenue property, Council allow staff to come back and add the El Pescadero basketball court as part of the proposed projects to see what funding was available after projects are complete. Ms. Haruyama indicated it might take a couple of months to determine the level of available funding.

Council Member Manne asked Ms. Haruyama to address unallocated funds. Ms. Haruyama stated it provides flexibility for unseen costs. Ms. Haruyama indicated staff had been very conservative in their estimates. Council Member Manne asked if there was a typical benchmark. Ms. Haruyama stated there was no established past practice.

Council Member Manne stated he would like children to know that they do not come last or behind \$15 million projects. Council Member Manne stated he was in favor of using funds for the basketball court.

It was Council direction to accept the proposed projects and asked staff to add the basketball court to the list of projects when future estimates return.

5. Adjournment – It was moved by Council Member Manne and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 7:07 p.m.

The above agenda was posted at the Tracy City Hall on March 28, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor Pro Tem

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City Clerk

AGENDA ITEM 1.B

REQUEST

**AUTHORIZATION TO SUBMIT THE ANNUAL CLAIM TO THE STATE OF CALIFORNIA, THROUGH THE SAN JOAQUIN COUNTY COUNCIL OF GOVERNMENTS, FOR TRANSPORTATION DEVELOPMENT ACT FUNDS IN THE AMOUNT OF \$3,471,959 FOR FISCAL YEAR 2012-2013, AND FOR THE FINANCE AND ADMINISTRATIVE SERVICES DIRECTOR TO EXECUTE THE CLAIM**

EXECUTIVE SUMMARY

The City of Tracy (City) annually receives funds from the Transportation Development Act (TDA). Authorization to submit the claim is necessary for the City to continue to receive TDA funding. The amount the City will claim for FY 2012-2013 from the Local Transportation Fund (LTF) and the State Transit Assistance Fund (STA) is \$3,471,959. TDA funds are used for City TRACER operations, capital, streets and roads, and pedestrian and bike paths. Staff recommends that the City Council approve the claim for TDA funds for FY 2012-2013.

DISCUSSION

Under the provisions of the Transportation Development Act (TDA), the City is required to make an annual claim for funds apportioned to the City under the Local Transportation Fund (LTF) and the State Transit Assistance Fund (STA). This claim is made to the State through the San Joaquin County Council of Governments.

The available TDA funding for FY 2012-2013 for the City of Tracy under the LTF and STA is \$4,512,976. The amount the City will claim is \$3,471,959.

Public Transportation:

Operating	Article 8, 99400 (c)	\$ 687,450
Capital	Article 8, 99400 (e)	\$ 410,227
Roads and Streets	Article 8, 99400 (a)	\$ 2,175,484
Pedestrians and Bicycles	Article 3, 99234	\$ 52,316
TDA Administration		<u>\$ 76,100</u>
	Total:	\$ 3,471,959

The difference of \$1,041,017 is the unclaimed apportionment under the Local Transportation Fund (\$1,027,387) and the State Transit Assistance Fund (\$13,630). These funds will be available to the City in future years when requested for applicable project/program reimbursement.

FISCAL IMPACT

There is no impact to the General Fund. Authorization to submit the claim is necessary for the City to continue to receive TDA funding. Such funding is already budgeted for FY 2012-2013 for the transit program and to support various street programs.

RECOMMENDATION

Staff recommends that the City Council approve, by resolution, the claim for TDA funds for FY 2012-2013 in the amount of \$3,471,959 and authorize the Director of Finance and Administrative Services to execute the claim.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works  
Allan J. Borwick, Budget Officer

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

RESOLUTION \_\_\_\_\_

AUTHORIZING THE SUBMISSION OF THE ANNUAL CLAIM TO THE STATE OF CALIFORNIA, THROUGH THE SAN JOAQUIN COUNCIL OF GOVERNMENTS, FOR TRANSPORTATION DEVELOPMENT ACT FUNDS IN THE AMOUNT OF \$3,471,959 FOR FISCAL YEAR 2012-2013, AND AUTHORIZING THE FINANCE AND ADMINISTRATIVE SERVICES DIRECTOR TO EXECUTE THE CLAIM

WHEREAS, Under the provisions of the Transportation Development Act (TDA), the City is required to make an annual claim to the State of California for funds apportioned to the City under the Local Transportation fund and the State Fund; and

WHEREAS, The City's FY 2012-2013 claim under the Local Transportation Fund and the State Transit Assistance Fund is \$3,471,959; and

WHEREAS, Unclaimed amounts are carried forward to the next fiscal year for use in that time period.

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes a claim for TDA Funds for FY 2012-2013 in the amount of \$3,471,959 (Local Transportation Fund and State Transit Assistance Fund), to the State of California, through the San Joaquin County Council of Governments, and authorizes the Director of Finance and Administrative Services to execute the claim.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.C

REQUEST

**ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS NECESSARY FOR THE PURPOSE OF OBTAINING PROPOSITION 63 FUNDS IN THE AMOUNT OF \$200,000 FOR THE MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK GRANT PROGRAM AND APPROPRIATING \$200,000 FROM THE SAN JOAQUIN COUNTY BEHAVIORAL HEALTH SERVICES COMMUNITY SERVICE AGREEMENT**

EXECUTIVE SUMMARY

Proposition 63, known as the Mental Health Act, funds were approved by California voters in November of 2004 general election. These funds may be used toward a broad continuum of community services, prevention, early intervention and service needs and the necessary infrastructure, technology and training that will effectively support mental health services. San Joaquin County Behavioral Health Services administers these funds on behalf of the State of California and has offered the City of Tracy a 12-month contract in the amount of \$200,000 for services provided by the Mayor's Community Youth Support Network (MCYSN) Service Provider Team members.

DISCUSSION

Proposition 63, known as the Mental Health Services Act (MHSA) passed on November 2, 2004. The Act provides increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, transition age youth, adults, older adults and families. This Act imposes a 1% income tax on personal income in excess of \$1 million. Majority of the funding was provided to county mental health programs to fund programs consistent with their local plans.

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

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

STRATEGIC PLAN

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



FISCAL IMPACT

Receipt of County contract funds totaling \$200,000 for the MCYSN Reconnecting Our Youth Grant Program is a direct match to the current funding by the City of Tracy. There is no impact to the general fund. Prop 63 funding will be granted to MCYSN Service Providers to expand behavioral health services through current grant agreements.

RECOMMENDATION

Adopt resolution authorizing the City Manager to execute grant contracts necessary for the purpose of obtaining proposition 63 funds in the amount of \$200,000 for the Mayors Community Youth Support Network and appropriating \$200,000 from the San Joaquin County Behavioral Health Services Community Service Agreement

Prepared by: Monica Gutierrez, Management Analyst

Reviewed by: Maria Hurtado, Assistant City Manager

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

Attachments: Exhibit A

RESOLUTION 2013-\_\_\_\_\_

AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS NECESSARY FOR THE PURPOSE OF OBTAINING PROPOSITION 63 FUNDS IN THE AMOUNT OF \$200,000 FOR THE MAYOR'S COMMUNITY YOUTH SUPPORT NETWORK GRANT PROGRAM AND APPROPRIATING \$200,000 FROM THE SAN JOAQUIN COUNTY BEHAVIORAL HEALTH SERVICES COMMUNITY SERVICE AGREEMENT

WHEREAS, Proposition 63, known as the Mental Health Services Act (MHSA) passed on November 2, 2004. The Act provides increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, transition age youth, adults, older adults and families, and

WHEREAS, In April of 2009, San Joaquin County released a Three Year Program and Expenditure Plan Executive Summary which outlined a \$200,000 allocation for the MCYSN to conduct outreach and case management with high-risk youth, and

WHEREAS, To continue receiving the allocated amount of \$200,000 the City must submit a signed contract detailing services provided by the Mayor's Community Youth Support Network Service Provider Team Members including contract assurances signed by the Authorized Agent;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes the City Manager to execute grant contracts necessary for the purpose of obtaining Proposition 63 funds in the amount of \$200,000 for the Mayor's Community Youth Support Network Grant Program and appropriates \$200,000 from the San Joaquin County Behavioral Health Services Community Service Agreement.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the City Council of the City of Tracy on the 21st day of May, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

A-13-\_\_\_\_\_

**SAN JOAQUIN COUNTY BEHAVIORAL HEALTH SERVICES  
COMMUNITY SERVICE AGREEMENT**

City of Tracy  
Mental Health Services Act: Prevention & Early Intervention  
Mayor's Community Youth Support Network

July 1, 2013 – June 30, 2014

This AGREEMENT made and entered into this day \_\_\_\_\_, 2013 by and between the COUNTY OF SAN JOAQUIN, a political subdivision of the State of California, acting through **BEHAVIORAL HEALTH SERVICES**, (hereinafter "COUNTY"), and City of Tracy, (hereinafter "CONTRACTOR").

1. **Scope of Contractor Services:** The services to be performed by CONTRACTOR under this Agreement shall include, but are not limited to, those items described in the Scope of CONTRACTOR'S Services, set forth in Exhibit A, attached hereto and incorporated herein. CONTRACTOR shall provide the services under the direction of COUNTY'S Director of Behavioral Health Services (DIRECTOR).
2. **Governance:** This contract shall be governed by the Short-Doyle Act (Welfare and Institutions (W&I) Code, Division 5, Title 9 of the California Administrative Code), Short-Doyle and Short-Doyle/Medi-Cal policies as identified in policy letters, the Mental Health Services Act, the Cost Reporting/Data Collection (CR/DC) Manual, and California Administrative Code (CAC), Title 22.
3. **Term:** The term of this agreement shall be from July 1, 2013 through June 30, 2014. Nothing in this Agreement shall be interpreted as requiring either party to renew or extend this Agreement.
4. **Non-Discrimination Requirements:** Non-discrimination requirements are set forth in Exhibit B, attached hereto and incorporated herein. DIRECTOR may determine patient eligibility under the Short-Doyle Act, the Medi-Cal Program, the Mental Health Services Act and the non-discrimination requirements. Patient rights shall comply with W&I Code, Division 5, Section 5325; and CAC, Title 9, Article 6.
5. **Fiscal Provisions:**
  - a. COUNTY shall pay CONTRACTOR an amount not to exceed \$200,000 (Two Hundred Thousand Dollars) for the twelve month period, based on reimbursement of actual costs incurred.
  - b. Payment shall be made in accordance with the requirements as set forth in Exhibit C, attached hereto and incorporated herein.

- c. The basis for this agreement shall be COST REIMBURSEMENT as agreed to by both parties and as provided for and governed by policies of the State Department of Health Care Services. Payment shall not exceed CONTRACTOR's actual costs. Contractor shall provide COUNTY with quarterly invoices no later than 15 days after the end of the quarter in which the costs were incurred. The final adjustment to actual cost or maximum contract, whichever is less, will be made within 60 days after the end of the fiscal year or end of the contract.
6. **Disallowances:** If CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY's request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement.
  7. Upon the written approval of the DIRECTOR, CONTRACTOR may make line item changes in Exhibit C. CONTRACTOR will comply with the COUNTY's Budget Modification Policy. CONTRACTOR may purchase equipment on behalf of the COUNTY by insuring that title is vested with COUNTY. DIRECTOR approval in writing must be obtained prior to equipment purchase and CONTRACTOR must submit an attachment listing all equipment purchased.
  8. CONTRACTOR shall maintain financial records that clearly reflect the cost of each type of service. Appropriate service and financial records must be maintained and retained for at least five years, or until audit findings are resolved, whichever is later. Any cost apportionment shall be made under generally accepted accounting principles and shall evidence proper audit trails reflecting the true cost of services.
  9. CONTRACTOR shall provide DIRECTOR annual financial statements within sixty (60) days after the end of the fiscal year including a report of the final adjustment to actual cost.
  10. CONTRACTOR agrees to limit indirect cost rates charged to the COUNTY in accordance with the COUNTY'S Indirect Rate Guideline.
  11. This agreement is contingent upon receiving State or Federal funds for the service described in Exhibit A. If the County does not receive sufficient State or Federal funds for this service described in Exhibit A, this agreement may be modified or terminated. If the State Department of Health Care Services disapproves this agreement, it shall be null and void.
  12. **Confidentiality:** CONTRACTOR shall comply and require its officers, employees, agents and/or subcontractors to comply with all Health Insurance Portability and Accountability Act (HIPAA) regulations. CONTRACTOR agrees to abide by the terms and conditions contained within COUNTY'S Business Associate Agreement, which is attached hereto as Exhibit "D" and incorporated by reference herein. The provisions of

Exhibit D shall survive the termination of this agreement. CONTRACTOR shall adhere to Confidentiality of Patient Records as specified under W&I Code, Section 5328; Code of Federal Regulations, Title 45, Section 205.50. CONTRACTORS providing inpatient services must submit all patient admission and length of stay requests for utilization review through existing hospital systems or Professional Standards Review Organizations or other method approved in advance by COUNTY.

13. **Compliance with Applicable Statutes, Ordinances and Regulations:** CONTRACTOR shall comply with the applicable Federal, State, County and local laws in performance of work under this Agreement. During the performance of this Agreement, CONTRACTOR shall comply with all Federal, State, County and local laws, rules, and regulations applicable to its performance under this Agreement. Should Federal, State, County, local laws, rules, regulations or guidelines touching upon this Agreement be adopted or revised during the term hereof, CONTRACTOR shall comply with them or notify COUNTY, in writing, that it cannot so comply so that COUNTY may take appropriate action.
- a. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in California. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a professional manner and conform to the standards of quality normally observed by a person practicing in CONTRACTOR'S profession.
  - b. CONTRACTOR and its employees shall not engage in any activities that violate any laws, regulations, or rules, and shall adhere to the highest ethical standards of conduct in all business activities, including integrity, honesty, courtesy, respect and fairness. CONTRACTOR and its employees are expected to promptly report any activities that may be in violation of any COUNTY policies, standards of conduct or any federal, state or local laws, regulations, rules or guidelines. Any violations or alleged violations may be disclosed anonymously.
  - c. CONTRACTOR shall be liable for knowingly presenting or causing to be presented, submitting or causing to be submitted, a false or fraudulent claim, record or statement for payment (Federal False Claims Act - 31 United States Code, Chapter 37, Sections 3729-3733), and California False Claims Act - Government Code, Sections 12650-12656.
  - d. CONTRACTOR shall comply with all Medi-Cal program integrity requirements including but not limited to those set forth in Exhibit E, attached hereto and incorporated herein.
  - e. **Compliance with Immigration Law:** CONTRACTOR shall employ only individuals who are in compliance with any and all current laws and regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Service.

- f. **Drug Free Workplace:** CONTRACTOR shall comply with the provisions of Government Code section 8350 et seq., otherwise known as the Drug-Free Workplace Act.
  - g. **Licenses and Permits:** CONTRACTOR represents and warrants to COUNTY that CONTRACTOR has all licenses, permits, certificates, qualifications and approvals of whatsoever nature, which are legally required for CONTRACTOR to practice its profession.
  - h. **Suspension and Debarment:** By executing this Agreement, CONTRACTOR certifies that CONTRACTOR is not suspended, debarred or otherwise excluded from participation in federal assistance programs. CONTRACTOR acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.
14. **Patient Records:** CONTRACTOR shall maintain adequate records. Patient records must comply with all appropriate state and federal requirements. At the COUNTY's discretion, CONTRACTOR will use COUNTY'S Electronic Health Record (EHR). Individual records shall contain intake information, interviews and progress notes and sufficient detail for evaluation of services. If not using COUNTY'S EHR, CONTRACTOR will maintain program records for a minimum of seven (7) years after the end of the agreement. The State Department of Health Care Services, COUNTY and/or the appropriate audit agency shall have the right to inspect all records to evaluate the cost, quality, appropriateness and timeliness of services. Requirements for Medi-Cal providers are set forth in Exhibit E.
15. **Program Reports:** CONTRACTOR shall provide quarterly and annual program reports to the COUNTY on a schedule and in the format determined by the DIRECTOR, focusing on the progress made towards meeting the goals and objectives described in Exhibit A.
16. **Provision of Bilingual Services:** When the patient served by CONTRACTOR is a non-English or limited-English speaking person, CONTRACTOR shall take all steps necessary to develop and maintain an appropriate capability for communicating in that patient's primary language to ensure full and effective communication between the patient and CONTRACTOR staff. CONTRACTOR shall provide immediate translation to non-English or limited-English speaking patients whose conditions are such that failure to immediately translate would risk serious impairment. CONTRACTOR shall provide notices in prominent places in the facility of the availability of free translation in necessary other languages.
17. **Availability and Accessibility of Services:** CONTRACTOR will ensure that, or make arrangements for, services are available 24 hours a day, seven days a week when medically necessary.
18. **Audit Provisions:** CONTRACTOR shall provide an annual organizational audit including a separate schedule of revenue and expenditures of COUNTY program

prepared by a Public Accountant or Certified Public Accountant, or the San Joaquin County Auditor's Office, in accordance with Generally Accepted Audit Standards. The use of the County Auditor is discretionary with COUNTY. Contractors receiving less than \$25,000 annually from COUNTY are not required to obtain an outside audit.

- a. Audits must be submitted within the earlier of thirty (30) days after receipt of the Certified Public Accountant's report or nine months after the end of the County's fiscal year period. The Audit Report shall be submitted to:

San Joaquin County Behavioral Health Services  
Attn: Contract Management  
1212 North California Street  
Stockton CA 95202

- b. CONTRACTOR shall maintain accurate and complete records including a physical inventory of employee payroll timesheets. These records shall be preserved in accordance with recognized commercial accounting practices so they may be readily audited and shall be held until costs have been finally determined under this Agreement and payment or final adjustment of payment has been made.
- c. CONTRACTOR shall permit COUNTY to examine and audit these records and all supporting records at all reasonable times. Audits shall be made not later than (a) five calendar years after completion of services rendered or (b) five calendar years after expiration date of this Agreement, whichever comes later.

19. **Indemnification:** CONTRACTOR agrees that it shall indemnify, defend and hold harmless COUNTY, its agents, elected officials, officers, volunteers, authorized representatives and employees from any and all losses, liabilities, costs, expenses, charges, damages, claims, liens, and causes of actions, of whatsoever kind or nature, including, but not limited to, reasonable attorney's fees, which are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of CONTRACTOR or CONTRACTOR'S officers, agents, employees or authorized representatives, which relates in any manner to this Agreement, any work to be performed by CONTRACTOR arising from the operation of this Agreement, or any authority delegated to CONTRACTOR under this Agreement, even though the same may have resulted from the joint, concurring or contributory negligence, whether active or passive, of COUNTY or any other person or persons, except those injuries or damages that are the result of willful acts or the sole negligence of COUNTY, its officers, agent or employees.

Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons and damage to any property, regardless of where located, including the property of COUNTY, and any liability of COUNTY for private attorney general fee awards. It is further expressly understood and agreed that the duty to indemnify shall include, but not be limited to, any internal costs for staff time, investigation costs and expenses, and fees of County Counsel reasonably incurred as a result of any act,

omission, fault or negligence, whether active or passive, of CONTRACTOR or CONTRACTOR'S officers, agents, employees or authorized representatives, which relates in any manner to this Agreement, any work to be performed by CONTRACTOR under this Agreement, or any authority delegated to CONTRACTOR under this Agreement.

20. **Insurance Requirements:** During the term of this Agreement, CONTRACTOR shall maintain and carry in full force insurance of the following types and minimum amounts with a company or companies as are acceptable to COUNTY, insuring CONTRACTOR while CONTRACTOR is performing duties under this Agreement:

- a. **Worker's Compensation:** A program of Worker's Compensation Insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including employer's liability with one million dollar (\$1,000,000) limits, covering all persons providing services on behalf of CONTRACTOR and all risks to such persons under this Agreement.
- b. **Comprehensive General Liability Insurance:** The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000), single limited liability.
- c. **Automobile Liability:** CONTRACTOR agrees to hold harmless and indemnify COUNTY for any and all liabilities associated with the use of any automobiles in relation to tasks associated with this Agreement. In addition, if vehicles are used to transport clients, CONTRACTOR shall maintain comprehensive automobile liability, with the following minimum limits:

Bodily injury each person	\$ 100,000
Bodily injury each occurrence	\$ 300,000
Property damage	\$ 100,000
Automobile liability umbrella coverage	\$1,000,000

- d. **Additional Named Insured:** All policies except for workers' compensation shall contain additional endorsements naming COUNTY and its officers, employees, agents, servants and volunteers as additional insured with respect to liabilities arising out of performance of services.
- e. **Policies Primary and Non-Contributory:** All policies required above are to be primary and non-contributory with any self-insurance programs carried or administered by COUNTY.
- f. **Proof of Coverage:** CONTRACTOR shall immediately furnish certificates of insurance to COUNTY department administering the contract evidencing the insurance coverage, including endorsements above required, prior to the commencement of performance of services, which certificates shall provide that such



insurance shall not be terminated or expire without thirty (30) day's written notice to COUNTY. CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within thirty (30) days of the commencement of this Agreement, CONTRACTOR shall furnish certified copies of the policies and all endorsements. If COUNTY elects to renew this Agreement, CONTRACTOR shall provide COUNTY with copies of the policies and all endorsements for each additional term of this Agreement. All insurance shall be in a company or companies authorized by law to transact insurance business in the State of California.

- g. **Liability:** Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR from liability in excess of such coverage, nor shall it preclude COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

21. **Conflict of Interest:** CONTRACTOR has read and is aware of the provisions of Sections 1090 et seq. and 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees and agrees to be bound thereby. CONTRACTOR certifies that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, COUNTY may immediately terminate this agreement by giving written notice thereof.

CONTRACTOR certifies that its employees and officers of its governing body shall avoid any actual or potential conflicts of interest and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

CONTRACTOR shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose that could result in private gain or that gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family or business ties.

Further, any member of CONTRACTOR's Board of Directors or officers is prohibited from working for CONTRACTOR except by consent of the DIRECTOR, which consent shall not be unreasonably withheld for exceptional or unusual circumstances.

22. **Nepotism:** Nepotism occurs when relatives are in the same chain-of-command. A management official or supervisor with authority to take personnel management actions may not select a relative for a position anywhere in CONTRACTOR's organization under his or her jurisdiction or control. Such persons having the authority to appoint, employ, promote, or advance person or to recommend such action, may not advocate or recommend a relative for a position in CONTRACTOR's organization. For purposes of this statement, relative is defined as a spouse, parents, children, siblings, aunts or uncles,

in-laws or step-parents or step-siblings. Except by consent of DIRECTOR, which consent shall not be unreasonably withheld for exceptional or unusual circumstances, no person shall be employed by CONTRACTOR who is in a direct chain-of-command or supervision with any relative, as defined above.

23. **Non-Exclusive Rights:** This Agreement does not grant to CONTRACTOR any exclusive privileges or rights to provide services to COUNTY. COUNTY may contract with other counties, private companies or individuals for similar services.
24. **Governing Law:** The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.
25. **Venue:** Venue for any action arising out of this Agreement shall be the County of San Joaquin, California.
26. **Entire Agreement:** This document contains the entire Agreement between the parties and supersedes oral or written understanding they may have had prior to the execution of this Agreement. If any ambiguity is created between this Agreement and its exhibits, this Agreement shall prevail.
27. **Severability:** Each paragraph and provision of this Agreement is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Agreement will remain in full force and effect.
28. **Enforcement of Remedies:** No right or remedy herein conferred on or reserved to COUNTY is exclusive of any other right or remedy herein or by law or equity provided or permitted but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.
29. **Modification, Amendments, and Waiver:** No supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
30. **Exhibits to Contract:** Additional provisions shall be attached hereto and incorporated herein as sequentially numbered exhibits and shall have the same force and effect as set forth in the Agreement.
31. **Headings:** Paragraph headings are not to be considered a part of this Agreement and are included solely for convenience of reference and are not intended to be full or accurate description of the contents thereof.

32. **Force Majeure:** Without affecting any right of termination set forth in this Agreement, either party may suspend this Agreement at any time because of strike of its personnel, war, declaration of state of national emergency, acts of God, or other cause beyond the control of the party, by giving the other party written notice of, and reason for, the suspension.
33. **Independent Contractor:** In the performance of work duties, and obligations imposed by this Agreement, CONTRACTOR is at all times acting as an independent contractor practicing his or her own profession and not as an employee of COUNTY. CONTRACTOR shall perform CONTRACTOR'S work in strict accordance with approved methods and standards of practice in CONTRACTOR'S professional specialty. The sole interest of COUNTY is to assure that CONTRACTOR'S services are rendered in a competent and efficient manner in order to maintain the high standards of San Joaquin COUNTY. CONTRACTOR shall not have any claim under this Agreement or otherwise against COUNTY for vacation, sick leave, retirement benefits, social security or worker's compensation benefits. CONTRACTOR acknowledges the fact that it is an independent contractor and is in no way to be construed as an employee of COUNTY, nor are any of the persons employed by CONTRACTOR to be so construed. CONTRACTOR shall furnish all personnel, supplies, equipment, furniture, insurance, utilities, telephone and facilities necessary except as provided in Exhibit C.
34. **Non-Assignment:** This Agreement is binding upon COUNTY and CONTRACTOR and their successors. Except as otherwise provided herein, neither COUNTY nor CONTRACTOR shall assign, sublet or transfer its interest in this Agreement or any part thereof or delegate its duties hereunder without the prior written consent of the other. Any assignment, transfer, or delegation made without such written consent shall be void and shall be a material breach of this Agreement.
35. **Termination:** Either party to this Agreement may for any reason terminate this agreement at any time by giving to the other party thirty (30) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

If CONTRACTOR materially breaches the terms of this Agreement, COUNTY shall have the following alternative remedies:

- a. Immediately terminate the Agreement with CONTRACTOR.
- b. Complete the unfinished work, under this Agreement, with a different CONTRACTOR.
- c. All other remedies provided by law.

Upon written notice from State Department of Health Care Services to the COUNTY or CONTRACTOR that CONTRACTOR is not complying with law or regulation, this agreement shall be terminated immediately. CONTRACTOR is to supply promptly all information necessary for the reimbursement of any outstanding claims.

36. **Notices:** Notices concerning this agreement shall be given by regular mail address as follows:

COUNTY:

San Joaquin County  
County Administration Building  
44 N. San Joaquin Street, Suite 640  
Stockton CA 95202

CONTRACTOR:

Name  
Attn: Executive Director  
Stockton CA 95202

COPY TO:

San Joaquin County  
Behavioral Health Services  
Attn: Contract Management  
1212 N. California Street  
Stockton CA 95202

IN WITNESS WHEREOF, the parties have executed this Agreement the date first written above:

ATTEST: MIMI DUZENSKI,  
Clerk of the Board of Supervisors  
of the County of San Joaquin,  
State of California

COUNTY OF SAN JOAQUIN  
a political subdivision of the  
State of California

By: \_\_\_\_\_ (seal)  
Clerk

By: \_\_\_\_\_  
KEN VOGEL, Chairman  
Board of Supervisors

Hereinabove referred to as "COUNTY"

By: \_\_\_\_\_  
R. Leon Churchill, Jr., City Manager  
City of Tracy

Approved as to Form:

\_\_\_\_\_  
City Attorney

Hereinabove referred to as  
"CONTRACTOR"

**APPROVAL RECOMMENDED:**

By: \_\_\_\_\_  
Kenneth B. Cohen, Director  
Health Care Services

By: \_\_\_\_\_  
Victor Singh, Director  
Behavioral Health Services

**APPROVED AS TO FORM:**

DAVID WOOTEN  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

**Exhibit A**  
**City of Tracy**  
**Mental Health Services Act: Prevention & Early Intervention**  
**Mayor's Community Youth Support Network**  
**July 1, 2013 to June 30, 2014**

**Scope of Work**

The City of Tracy Mayor's Community Youth Support Network (MCYSN) will provide comprehensive outreach, engagement, and mentoring to middle school youth and youth aged 16 to 24 years experiencing or at risk of violence, unplanned parenting, gang involvement, substance abuse and/or mental health issues.

Participants are expected to learn positive ways to interact with peers and other adults, to control anger or disruptive behavior, and to develop positive interest and expectations for the future. Participants will receive mentoring as well as opportunities to learn new skills and approaches for resolving conflicts.

The City of Tracy will provide services to high risk youth through a network of community service providers. Once the network of community service providers is finalized for 2013-14, the City of Tracy will provide a description of the specific services to be provided by each of them using county funding. The City of Tracy will also provide a line item budget for each community service provider detailing the use of the county funding. City of Tracy will ensure that all community service providers will comply with the terms and conditions as set forth in the Behavioral Health Services/City of Tracy contract.

**Limitations:**

- This agreement is funded with Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) funds intended to prevent mental illnesses from becoming severe and disabling. PEI funds are to be used to provide services proven to be effective in preventing mental illness from becoming severe and disabling and in reducing the duration of untreated severe mental illness. The funds are intended to be used to implement strategies to reduce the following negative outcomes that may result from untreated mental illness: suicide, incarcerations, school failure or dropout, unemployment, prolonged suffering, homelessness and removal of children from their homes.
- In addition, funds must be used to implement key PEI community mental health needs identified by the State of California Mental Health Services Oversight and Accountability Commission: 1) Reducing disparities in access to early mental health interventions due to stigma, lack of knowledge about mental health services or lack of suitability of traditional mainstream services; 2) Reducing the negative psycho-social impact of trauma on all ages; 3) Increasing prevention efforts and response to early signs of emotional and behavioral health problems among at-risk children, youth, and young adult populations; 4) Reducing stigma and discrimination affecting individuals with mental illness and

mental health problems; 5) Increasing public knowledge of the signs of suicide risk and appropriate actions to prevent suicide.

**Project Goals and Objectives:**

The overall goal of the project will be to provide high-risk youth the supports and skills needed to reduce harmful or risky behaviors related to risk of homelessness, acceptance of violence, unplanned parenting, gang involvement, substance abuse and development or exacerbation of mental health issues. Specific objectives are as follows:

1. At least 250 high-risk youth will participate in program activities as a direct result of targeted outreach efforts to build relationships with such youths.
2. 80% of program participants will not be arrested or rearrested during program participation.
3. At least 75% of program participants will learn new skills and approaches for resolving conflicts and achieving goals, as measured by pre- and post-surveys.
4. At least 75% of program participants will participate in the mentoring component of the program designed to promote positive, trusting relationships with caring adults and overall resiliency.
5. At least 75% of program participants will participate in activities designed to engage youth and strengthen their commitment to program participation via workshops and/or seminars.

**Program Evaluations:**

The effectiveness of the program will be evaluated on the contractor's achievements towards the program goals and objectives as listed above. The evaluation process will consist of progress reports to be submitted by the Contractor and program audits to be conducted by BHS.

Contractor will submit quarterly reports in the format specified by BHS and will report the contractor's progress and achievements on the program goals and objectives specified in this agreement. One paper and one electronic copy of each quarterly report are due to BHS on the following schedule:

Quarter	Time Period Covered	Progress report due
First Quarter	7/1/13 -9/30/13	10/31/13
Second Quarter	10/1/13-12/31/13	1/31/14
Third Quarter	1/1/14 – 3/31/14	4/30/14
Fourth Quarter	4/1/14 – 6/30/14	7/31/14

Mail paper copies of quarterly reports to:

San Joaquin County Behavioral Health Services

Attn: Contracts Management  
1212 N. California Street  
Stockton, CA 95202

Email electronic copies of quarterly reports to: [contracts@sjcbhs.org](mailto:contracts@sjcbhs.org)



**EXHIBIT B**  
**Non-Discrimination Requirements Statement**

**Conditions of Employment**

All persons employed in the Behavioral Health Program (directly or through contract) meet applicable requirements contained in Division 5 of the Welfare & Institutions Code and Title 9 of the California Administrative Code unless otherwise noted in this Exhibit B.

Employment of personnel shall be made solely on the basis of merit, without regard to race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status.

1. Affirmative action shall be taken to ensure that applicants are employed, and that employees are treated during employment without regard to their race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status.
2. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; rates of pay or other forms of compensation; and selection of training, including apprenticeship. There shall be posted in conspicuous places notices available to employees and applicants for employment provided by the County officer responsible for contracts setting forth the provisions of the Equal Opportunity clause.
3. All solicitations or advertisements for employees placed by or on behalf of the contractor and/or the subcontractor shall state that all qualified applicants will receive consideration for employment without regard to their race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status.
4. Each labor union or representative of workers with which the County and/or subcontractor has a collective bargaining agreement or other contract or understanding must post a notice provided by the County officer responsible for contracts, advertising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The County and any subcontractor will furnish all information and reports required by the Department of Health and will permit access to books, records, and accounts for purposes of investigation to ascertain compliance with paragraphs (1) through (3).
6. In the event of non-compliance with the discrimination clause of this contract or as otherwise provided by State and Federal law, this contract may be canceled, terminated, or suspended in whole or in part and the contractor and/or the subcontractor may be declared ineligible for further State contracts in accordance with procedures authorized in the Department of Health's Affirmative Action Complaint Process.

7. All provisions of paragraphs (1) through (5) will be included in every subcontract unless exempted by rules, regulations, or orders of the Director of the Department of Mental Health so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any subcontractor as the State may direct as a means of enforcing such provisions including sanctions for non-compliance provided, however, that in the event contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of such direction by the State, the contractor may request in writing to the State, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and the United States.

### **Provision of Services**

Services, benefits and facilities shall be provided to patients, or clients without regard to their race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status and no one will be refused services because of inability to pay for such service.

1. Nondiscrimination in Services, Benefits and Facilities: There shall be no discrimination in the provision of services because of their race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status in accordance with Title VI or the Civil Rights Act of 1964, 42 U.S.C., Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by State and Federal law. For the purpose of this contract, distinctions on the grounds of race color, creed or national origin include but are not limited to the following: denying a participant any service or benefit to a participant which is different, or is provided in a different manner or at a different time from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter related to his receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he satisfied any admission, enrollment quota, eligibility, membership or the requirement or condition which individuals must meet in order to be provided any service or benefits; the assignment of times or places for the provision of services on the basis of the race, color, creed or national origin or the participant to be served. The County and all subcontractors will take affirmative action to ensure that intended beneficiaries are provided services without regard to their race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status.
2. Procedure for Complaint Process: All complaints alleging discrimination in the delivery of services by the County and/or the subcontractor because of their race, age, color, gender, national origin, religion, sexual orientation, disability status, pregnancy, or military and/or veteran status, may be resolved by the State through the Department of Mental Health's Affirmative Action Complaint Process.
3. Notice of Complaint Process: The County and all subcontractors shall, subject to the approval of the Department of Mental Health, establish procedures under which recipients of service are informed of their rights to file a complaint alleging discrimination or a violation of their civil rights with the Department of Mental Health.

**Exhibit C**  
**City of Tracy**  
**Mental Health Services Act: Prevention & Early Intervention**  
**Mayor's Community Youth Support Network**  
**July 1, 2013 - June 30, 2014**

<u>Salaries</u>	Annual Salary	FTE	12-month Budget
Administrative Support	\$52,580	0.5	\$ 26,290
<b>Total Staff Salaries</b>			<u>26,290</u>
Benefits @ 63.12%	33,187		<u>16,594</u>
<b>Total Salaries &amp; Benefits</b>			<u>\$ 42,884</u>
 <b><u>Operating Expenses</u></b>			
Printing & Copying			\$ 7,116
Community Service Providers			150,000
<b>Total Operating Expenses</b>			<u>\$ 157,116</u>
<b>Total Budget</b>			<u><u>\$ 200,000</u></u>

**Exhibit D**  
**Health Insurance Portability and Accountability Act (HIPAA)**  
**BUSINESS ASSOCIATE AGREEMENT**

WHEREAS, Business Associate performs services on behalf of Covered Entity pursuant to the attached agreement, which Services involve the use and/or disclosure of Protected Health Information (defined below); and

WHEREAS, the parties desire to enter into this BAA in order to comply with the business associate agreement requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations.

NOW, THEREFORE, the parties do hereby agree as follows:

1. **Definitions.** All terms of this BAA shall have the meanings set forth in the HIPAA Privacy and Security Rules, and California Civil Code, unless otherwise defined herein.
  - a) **“Breach”** when capitalized, “Breach” shall have the meaning set forth in 45 CFR § 164.402 (including all of its subsections); with respect to all other uses of the word “breach” in this BAA, the word shall have its ordinary contract meaning.
  - b) **“Business Associate”** shall have the same meaning as the term “business associate” at 45 CFR 160.103.
  - c) **“Covered Entity”** shall have the same meaning as the term “covered entity” at 45 CFR 160.103.
  - d) **“DHCS”** shall mean the California Department of Health Care Services.
  - e) **“Electronic Health Records”** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. § 17921 and implementing regulations.
  - f) **“Electronic Protected Health Information”** or **“ePHI”** shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, limited to information that Business Associate creates, accesses or receives on behalf of Covered Entity
  - g) **“HITECH Act”** shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, effective February 17, 2009.
  - h) **“Individually Identifiable Health Information”** means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 C.F.R. § 160.103
  - i) **“Protected Health Information”** or **“PHI”** shall have the meaning set forth in the Privacy Rule, limited to information that Business Associate creates accesses or receives on behalf of Covered Entity. PHI includes EPHI.
  - j) **“Privacy Rule”** means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 CFR parts 160 and 164, Subparts A, D, and E, as currently in effect.
  - k) **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Covered Entity PHI, or confidential data utilized by Business Associate

to perform the services, functions and activities on behalf of Covered Entity or interference with system operations in an information system that processes, maintains or stores Covered Entity's PHI.

- l) **"Security Rule"** means the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 CFR parts 160 and 164, Subpart C.
- m) **"Unsecured Protected Health Information"** shall have the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

## 2. **Terms of Agreement**

- a) **Permitted Uses and Disclosures of Covered Entity PHI by Business Associate.** Except as otherwise indicated in this BAA, Business Associate may use or disclose Covered Entity PHI only to perform functions, activities or services specified in this BAA, or on behalf of the Covered Entity, provided that such use or disclosure would not violate the HIPAA regulations, if done by the Covered Entity. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 C.F.R. § 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.
- b) **Specific Use and Disclosure Provisions. Except as otherwise indicated in this BAA, Business Associate may:**
  - i) **Use and disclose for management and administration.** Use and disclose Covered Entity PHI for the proper management and administration of the Business Associate's business, provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
  - ii) **Provision of Data Aggregation Services.** Use Covered Entity PHI to provide data aggregation services to the Covered Entity to the extent requested by the Covered Entity and agreed to by Business Associate. Data aggregation means the combining of PHI created or received by the Business Associate, as the Business Associate, on behalf of the Covered Entity with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Covered Entity.
- c) **Prohibited Uses and Disclosures**
  - i) Business Associate shall not disclose Covered Entity PHI about an individual to a health plan for payment or health care operations purposes if the Covered Entity PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. §§ 17935(a) and 45 C.F.R. § 164.522(a).
  - ii) Business Associate shall not directly or indirectly receive remuneration in exchange for Covered Entity PHI, except with the prior written consent of the Covered Entity and as permitted by 42 U.S.C. § 17935(d)(2).

- 3. **Business Associate Obligations.** Business Associate acknowledges and agrees that it is considered a **"Business Associate"** as defined by HIPAA. As a Business Associate of Covered Entity, Business Associate shall, in addition to complying with the terms of this BAA, comply with the following and any state provisions that are more restrictive:

- a) **Disclosure.** Business Associate shall not Use or further Disclose PHI other than as permitted or required by this BAA, to perform Services under the Underlying Agreement or as Required By Law.
- b) **Safeguards.** Business Associate shall use safeguards that are appropriate and sufficient to prevent use or disclosure of PHI other than disclosures permitted or required by this BAA. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of EPHI.
- c) **Reporting.** Business Associate shall report to Covered Entity any Use or Disclosure of PHI not permitted or required by this BAA and any Security Incident of which it becomes aware.
- d) **Agents and Subcontractors.** Business Associate shall ensure that any and all agents and subcontractor to whom it provides PHI as permitted or required under this BAA agree, in writing, prior to the disclosure of such PHI, to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including without limitation the provisions of this Section.
- e) **Patient Rights.**
  - i. Patient Right to Review. If any Individual requests access to his or her own PHI from Business Associate, Business Associate shall, within two (2) calendar days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle the request; provided that if Covered Entity so requests and Business Associate maintains a Designated Record Set, Business Associate shall make such PHI available directly to that Individual, as directed by Covered Entity, and shall promptly provide Covered Entity with a written report detailing its handling of such request.
  - ii. Patient Right to Amend. If Business Associate maintains PHI in a Designated Record Set, then within ten (10) calendar days of receipt of Covered Entity's request, Business Associate shall incorporate amendments into the PHI as directed by Covered Entity. If any Individual submits to Business Associate a request to amend his or her own PHI, Business Associate shall, within two (2) calendar days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle such request; provided, however, that, if Covered Entity so requests and Business Associate maintains a Designated Record Set, Business Associate shall respond to the Individual for purposes of incorporating the amendment, as directed by Covered Entity, and shall promptly provide Covered Entity with a written report detailing its handling of such request.
  - iii. Patient Right to Request Accounting of Disclosures. If Business Associate maintains PHI in a Designated Record Set, then within ten (10) calendar days of Covered Entity's notice to Business Associate of a request from an Individual for an accounting of disclosures of his or her PHI, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. §164.528. If an Individual submits to Business Associate a request for an accounting, Business Associate shall, within two (2) calendar days, notify Covered Entity of the details of such request. Following receipt of such notice, Covered Entity shall handle such request; provided, however, that (1) if Covered Entity requests, Business Associate shall respond directly to the Individual for purposes of providing the accounting, as directed by Covered Entity, and shall promptly provide Covered Entity with a written report of the details of its handling of such requests, and (2) Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section. In addition, in accordance with the HITECH Act, Business Associate acknowledges that if disclosures are made by Business Associate through the use of an electronic health record, Individuals have the right to receive an accounting of disclosures made for treatment, payment, and health care operations during the previous three (3) years, thus Business Associate agrees that:
    - 1. If Covered Entity acquired an electronic health record before January 1, 2009, then effective January 1, 2011, Business Associate must maintain a list of

disclosures made for treatment, payment or operations purposes for a minimum of three (3) years from the date of such disclosure; or

2. If Covered Entity acquired an electronic health record after January 1, 2009, then effective January 1, 2014, Business Associate must maintain a list of disclosures made for treatment, payment or operations purposes for a minimum of three (3) years from the date of such disclosure.
- iv. **Accounting to Covered Entity.** To assist Covered Entity in complying with the patient rights provisions of HIPAA, Business Associate shall, at any time during this BAA, make PHI in its possession available to Covered Entity within ten (10) business days of Covered Entity's request.
- v. **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.
- f) **Audit.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of Health and Human Services and Covered Entity upon request, for purposes of determining and facilitating Covered Entity's compliance with HIPAA Privacy and Security Rules.
- g) **Mitigation.** Business Associate shall mitigate promptly, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this BAA, the Privacy Rule, the Security Rule, or other applicable federal or state law.
- h) **Uses Permitted By Law.** As permitted by the Privacy Rule, Business Associate may use or disclose PHI: (a) as is necessary for the proper management and administration of Business Associate's organization, (b) to provide data aggregation services relating to the health care services of the Covered Entity; and (c) to carry out the legal responsibilities of Business Associate; provided, however, that any permitted Disclosure of PHI to a third party must be either Required By Law or subject to reasonable assurances obtained by Business Associate from the third party that the PHI will be held confidentially, and securely, and used or disclosed only as Required By Law or for the purposes for which it was disclosed to such third party, and that any breaches of confidentiality of the PHI which become known to such third party will be immediately reported to Business Associate. Business Associate shall follow the procedures set forth herein for Disclosures of PHI Required By Law.
- i) **Breach.** Business Associate agrees to:
  - i. Report to the Privacy Officer of Covered Entity by telephone and e-mail or fax immediately an oral or written Breach or Breach of the Security of the System maintained by Business Associate or subcontractor is known, or by exercising reasonable diligence, should have been known by Business Associate; or within 24 hours by e-mail or fax of any suspected Security Incident, intrusion or unauthorized access, use or disclosure, or potential loss of confidential data affecting this Professional Services Agreement. If the Breach or Incident occurs after business hours and involves electronic Covered Entity PHI, notification shall be provided by calling the Covered Entity.

San Joaquin County Behavioral Health Services  
HIPAA Privacy Officer, c/o Administration  
1212 North California Street, Stockton, CA 95202  
Telephone: (209) 468-8859  
[cpo@sjcbhs.org](mailto:cpo@sjcbhs.org)
  - ii. Immediately investigate an oral or written Breach or Breach of the Security of the System or Security Incident. Within 72 hours of the discovery, Business Associate shall submit the updated incident report to Covered Entity Privacy Officer with the following:
    1. What data elements were involved and the extent of the data involved in the breach;
    2. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed Covered Entity PHI or confidential data;

3. A description of where Covered Entity PHI or confidential data is believed to have been improperly transmitted, sent or utilized;
  4. A description of the probable causes of the improper use or disclosure; and
  5. Whether the HITECH Act, CA Civil Code or any other federal or California state laws requiring Individual notifications or Breaches are triggered.
- iii. Provide a complete report of the investigation to Covered Entity and the Covered Entity HIPAA Privacy Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, and the HIPAA regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Covered Entity requests information in addition to that listed on the "Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide the Covered Entity with such information. If, because of the circumstances of the incident, Business Associate needs more than ten (10) working days from the discovery to submit a complete report, the Covered Entity may grant a reasonable extension of time, in which case Business Associate shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Covered Entity will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.
  - iv. Be Responsible for Reporting of Breaches, if the cause of a breach of Covered Entity PHI is attributable to Business Associate or its agents, subcontractors or vendors. Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. § 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured Covered Entity PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach.
  - j) **Remuneration in Exchange for PHI.** Except as permitted by the HITECH Act or regulations issued by the Covered Entity of Health and Human Services ("HHS") in accordance with the HITECH Act, and as of the effective date of such regulations, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.
  - k) **Minimum Necessary.** Business Associate agrees to follow any guidance issued by HHS regarding what constitutes "minimum necessary" with respect to the use or disclosure of PHI. Until the time that any such guidance is issued, Business Associate shall limit its use or disclosure of PHI, to the extent practicable, to the limited data set (as defined in section 45 CFR § 164.514(e)(2)) or, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.
  - l) **Marketing.** Unless otherwise permitted in the Underlying Agreement, Business Associate must obtain or confirm that Covered Entity has obtained an authorization for any use or disclosure of PHI for marketing, unless the marketing communication is made without any form of remuneration (i) to describe medical services or products provided by Covered Entity or Business Associate; (ii) for treatment of the Individual; or (iii) for case management or care coordination for the Individual or to direct or recommend alternative treatments, therapies, providers or settings.
  - m) **Personnel Controls**
    - i. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the Covered Entity, or access or disclose Covered Entity PHI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training



was completed. These certifications must be retained for a period of six (6) years following termination of this BAA.

- ii. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
  - iii. **Confidentiality Statement.** All persons that will be working with Covered Entity PHI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Covered Entity PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for Covered Entity inspection for a period of six (6) years following termination of this BAA.
  - iv. **Background Check.** Before a member of the workforce may access Covered Entity PHI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years.
- n) **Technical Security Controls**
- i. **Workstation/Laptop encryption.** All workstations and laptops that store Covered Entity PHI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Covered Entity Information Security Office.
  - ii. **Server Security.** Servers containing unencrypted Covered Entity PHI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
  - iii. **Minimum Necessary.** Only the minimum necessary amount of Covered Entity PHI required to perform necessary business functions may be copied, downloaded, or exported.
  - iv. **Removable media devices.** All electronic files that contain Covered Entity PHI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
  - v. **Antivirus software.** All workstations, laptops and other systems that process and/or store Covered Entity PHI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
  - vi. **Patch Management.** All workstations, laptops and other systems that process and/or store Covered Entity PHI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
  - vii. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Covered Entity PHI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
    - 1) Upper case letters (A-Z)
    - 2) Lower case letters (a-z)
    - 3) Arabic numerals (0-9)
    - 4) Non-alphanumeric characters (punctuation symbols)

- viii. **Data Destruction.** When no longer needed, all Covered Entity PHI must be wiped using the Gutmann or US Covered Entity of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Covered Entity Information Security Office.
  - ix. **System Timeout.** The system providing access to Covered Entity PHI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
  - x. **Warning Banners.** All systems providing access to Covered Entity PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
  - xi. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Covered Entity PHI, or which alters Covered Entity PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Covered Entity PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
  - xii. **Access Controls.** The system providing access to Covered Entity PHI must use role based access controls for all user authentications, enforcing the principle of least privilege.
  - xiii. **Transmission encryption.** All data transmissions of Covered Entity PHI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing Covered Entity PHI can be encrypted. This requirement pertains to any type of Covered Entity PHI in motion such as website access, file transfer, and E-Mail.
  - xiv. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Covered Entity PHI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.
- o) Audit Controls**
- i. **System Security Review.** Business Associate must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Covered Entity PHI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
  - ii. **Log Reviews.** All systems processing and/or storing Covered Entity PHI must have a routine procedure in place to review system logs for unauthorized access.
  - iii. **Change Control.** All systems processing and/or storing Covered Entity PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.
- p) Business Continuity / Disaster Recovery Controls**
- i. **Emergency Mode Operation Plan.** Business Associate must establish a documented plan to enable continuation of critical business processes and protection of the security of Covered Entity PHI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this BAA for more than 24 hours.
  - ii. **Data Backup Plan.** Business Associate must have established documented procedures to backup Covered Entity PHI to maintain retrievable exact copies of Covered Entity PHI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Covered Entity PHI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Covered Entity data.
- q) Paper Document Controls**
- i. **Supervision of Data.** Covered Entity PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information.

- Covered Entity PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- ii. **Escorting Visitors.** Visitors to areas where Covered Entity PHI is contained shall be escorted and Covered Entity PHI shall be kept out of sight while visitors are in the area.
  - iii. **Confidential Destruction.** Covered Entity PHI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
  - iv. **Removal of Data.** Only the minimum necessary Covered Entity PHI may be removed from the premises of the Business Associate except with express written permission of the Covered Entity. Covered Entity PHI shall not be considered "removed from the premises" if it is only being transported from one of Business Associate's locations to another of Business Associates locations.
  - v. **Faxing.** Faxes containing Covered Entity PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
  - vi. **Mailing.** Mailings containing Covered Entity PHI shall be sealed and secured Mailings which include 500 or more individually identifiable records of Covered Entity PHI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Covered Entity to use another method is obtained.
- r) **Judicial or Administrative Proceedings**
- i. Business Associate will notify the Covered Entity if it is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy law. The Covered Entity may terminate this BAA if Business Associate is found guilty of a criminal violation of HIPAA. The Covered Entity may terminate this BAA if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined. Covered Entity will consider the nature and seriousness of the violation in deciding whether or not to terminate the BAA.
- s) **Assistance in Litigation or Administrative Proceedings**
- Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this BAA, available to the Covered Entity at no cost to the Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- t) **Conflict**
- In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply within a reasonable period of time with changes to these standards that occur after the effective date of this BAA.
- u) **Audits, Inspection and Enforcement**
- From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Covered Entity may conduct a reasonable inspection of the facilities, systems, books and records of Business Associate to monitor compliance with this BAA. Business Associate shall promptly remedy any violation of any provision of this BAA. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this BAA. The Covered Entity's failure to detect a non-compliant practice, or a failure to report a detected non-compliant practice to Business Associate does not constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this BAA, including this BAA.
- v) **Due Diligence**

Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this BAA and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this BAA.

#### **4. Covered Entity Obligations**

- a) **Notice of Privacy Practices.** Covered Entity shall notify Business Associate of limitation(s) in its notice of privacy practices, to the extent such limitation affects Business Associate's permitted Uses or Disclosures.
- b) **Individual Permission.** Covered Entity shall notify Business Associate of changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted Uses or Disclosures.
- c) **Restrictions.** To the extent such restriction affects Business Associate's permitted Uses or Disclosures, Covered Entity shall notify Business Associate of restriction(s) in the Use or Disclosure of PHI to which Covered Entity has agreed.

#### **5. Term & Termination**

- a) **Term.** The Term of this BAA shall begin on the Effective Date, and shall terminate when all of the PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy all of the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- b) **Termination.**
  - i. **By Covered Entity.** Upon Covered Entity's knowledge of a material breach by Business Associate of this BAA, Covered Entity shall:
    - 1. Terminate this BAA and the Underlying Agreement upon thirty (30) days notice if Covered Entity determines that Business Associate has violated a material term of this BAA if, following Covered Entity's notification to Business Associate of the material breach, Business Associate is unable or unwilling to take steps to cure the breach within such thirty (30) day period. In the event of such a cure, this BAA shall remain in full force and effect;
    - 2. Immediately terminate this BAA and the Underlying Agreement if Business Associate has breached a material term of this BAA and cure is not possible; or
    - 3. Immediately terminate this BAA if (i) Business Associate is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Business Associate has violated a privacy or security standard or requirement of HIPAA, or (iii) a finding of other security or privacy law violation is made in an administrative or civil proceeding in which the Business Associate is a party.
    - 4. If neither termination nor cure is feasible, report the violation to the Secretary.
  - ii. **By Business Associate.** Upon Business Associate's knowledge of a material breach by Covered Entity of this BAA, Business Associate shall:
    - 1. Terminate this BAA and the Underlying Agreement upon thirty (30) days notice if Business Associate determines that Covered Entity has violated a material term of this BAA if, following Business Associate's notification to Covered Entity of the material breach, Covered Entity is unable or unwilling to take steps to cure the breach within such thirty (30) day period. In the event of such a cure, this BAA shall remain in full force and effect;
    - 2. Immediately terminate this BAA and the Underlying Agreement if Covered Entity has breached a material term of this BAA and cure is not possible; or
    - 3. If neither termination nor cure is feasible, report the violation to the Secretary.
- c) **Return on Termination.** At termination of the Agreement, to the extent feasible, Business Associate shall return or destroy all PHI that Business Associate still maintains in any form and retain no copies of the PHI. If the return or destruction of such PHI is not feasible, Business Associate shall extend the protections of this BAA to the remaining information and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible.
- d) **Survival.** The terms of this Section shall survive the termination or expiration of this BAA.

6. **Required Disclosure.** If Business Associate is confronted with legal action to disclose any PHI, Business Associate shall promptly notify and assist Covered Entity (at Business Associate's expense) in obtaining a protective order or other similar order, and shall thereafter disclose only the minimum amount of PHI that is required to be disclosed in order to comply with the legal action, whether or not a protective order or other order has been obtained.
7. **Indemnification.** Business Associate agrees to indemnify, defend, and hold harmless Covered Entity and its directors, officers, affiliates, employees, agents, and permitted successors from and against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or related to Business Associate's breach of its obligations under this BAA, including, but not limited to Business Associate's failure to notify Covered Entity of a Breach of Unsecured Protected Health Information or of a possible Breach of Unsecured Protected Health Information within the time frames specified herein.
8. **Compliance with Laws.** Business Associate shall comply with all applicable federal, state and local laws, rules and regulations, including, without limitation, the requirements of HIPAA (CFR 45) and CFR 42.
9. **Interpretation.** The terms and conditions in these Provisions shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable Federal, State and local laws. The parties agree that any ambiguity in the terms and conditions of these Provisions shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
10. **Underlying Agreement.** Except as specifically required to implement the purposes of this BAA, and except to the extent inconsistent with this BAA, all terms of the Underlying Agreement shall remain in full force and effect. In the event of a conflict between the terms of the Underlying Agreement and this BAA, this BAA shall control.
11. **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
12. **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with these Provisions, HIPAA or the HIPAA regulations will be adequate or satisfactory for the Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
13. **Ownership.** Covered Entity shall be and remain the sole and exclusive owner of its PHI.
14. **Amendment.** The parties acknowledge that the HITECH Act requires the Secretary to promulgate additional regulations and interpretative guidance that is not available at the time of executing this BAA. In the event Covered Entity determines in good faith that any such regulation or guidance adopted or amended after the execution of this BAA is required by law to be implemented and made a part hereof, this BAA shall be renegotiated in good faith so as to amend the applicable provision(s) in a manner that would eliminate any such substantial risk.
15. **Counterparts.** This BAA may be executed in two or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.
16. **Regulatory References.** A reference in the terms and conditions of these Provisions to a section in the HIPAA regulations means the section as in effect or as amended.
18. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

San Joaquin County Behavioral Health Services  
**Exhibit E**  
**Third Edition**  
Program Integrity Requirements for Medi-Cal Organizational Providers

CONTRACTORS who provide services to San Joaquin County (SJC) Medi-Cal beneficiaries shall comply with the following Program Integrity requirements. The term CONTRACTOR includes the agency and the staff of the agency that enters into contract with San Joaquin County Behavioral Health Services (SJCBS) to provide services to SJC Medi-Cal beneficiaries.

**1. Standards Of Conduct**

SJCBS is committed to compliance, by letter and spirit, with all federal, state, and local laws and regulations.

CONTRACTOR and its employees shall not engage in any activities that violate any laws, regulations, or rules, and shall adhere to the highest ethical standards of conduct in all business activities, including integrity, honesty, courtesy, respect and fairness.

CONTRACTOR and its employees are expected to promptly report any activities that may be in violation of any SJCBS policies, standards of conduct or any federal, state or local laws, regulations, rules or guidelines. Any violations or alleged violations may be disclosed anonymously.

CONTRACTOR and its employees are responsible for reading, understanding, and adhering to SJCBS policies regarding Program Integrity by signing SJCBS Standards Of Conduct for Organizational Providers that will be provided by SJCBS.

**2. Compliance Program**

*2.1 Federal Requirements:*

San Joaquin County Behavioral Health Services (SJCBS) has implemented a Compliance Program in accordance with Title 42, Code of Federal Regulations (CFR), Section 438.608, to guard against fraud, waste or abuse. CONTRACTOR and its employees are required to comply with applicable state and federal regulations, and with SJCBS policies, procedures and standards, that are designed to detect, respond, prevent, and correct violations of those requirements. SJCBS shall review CONTRACTOR's continued compliance through Compliance Sanction Check (see 2.2) and site certification reviews conducted at least every three years, in addition to periodic and/or ad-hoc auditing and monitoring of CONTRACTOR's activities.

*2.2 Compliance Sanction Check and Medi-Cal Certification:*

SJCBS shall check both the Office of Inspector General (OIG) Exclusion List and the Medi-Cal List of Suspended or Ineligible Providers List to ensure CONTRACTOR's eligibility. Any inappropriate payment made with Medi-Cal or Medicaid funds to CONTRACTOR, if CONTRACTOR is listed on either of these two lists, shall be subject to recovery and/or the basis for other sanctions by the appropriate authority (CFR Title 42, Sections 1128 and 1128A, Social Security Act; CFR, Title 42, Sections 438.214 and 438.610; and DMH Letter No. 10-05).

*2.3 Mandatory Trainings:*

CONTRACTOR shall participate in mandatory trainings provided by SJCBS.

San Joaquin County Behavioral Health Services

**Exhibit E**  
**Third Edition**

Program Integrity Requirements for Medi-Cal Organizational Providers

*2.4 Documentation:*

CONTRACTOR shall comply with SJCBS policies, procedures and standards regarding proper documentation of services and billing, including third-party verification of documentation before claiming. CONTRACTOR shall follow the rules of proper documentation to satisfy Medi-Cal audit requirements for reimbursement of Federal Financial Participation (FFP) and Early Periodic Screening Diagnosis and Treatment (EPSDT). Failure to provide required documentation in a timely manner may result in delayed or withheld payment to CONTRACTOR.

CONTRACTOR shall reimburse SJCBS for any and all internal and external audit disallowances that are the CONTRACTOR's responsibility.

CONTRACTOR shall provide services in compliance with authorization requirements, and shall reimburse SJCBS for unauthorized services, i.e., services that cannot be billed to Medi-Cal because of the lack of a current Client Plan that authorizes those services.

*2.5 False Claims:*

CONTRACTOR shall be liable for knowingly presenting or causing to be presented, submitting or causing to be presented, a false or fraudulent claim, record or statement for payment (Federal False Claims Act - 31 United States Code, Chapter 37, Sections 3729-3733), and California False Claims Act - Government Code, Sections 12650-12656).

2.5.1 The federal civil penalty for each claim (or service billed) is \$5,000 to \$10,000 for each false claim, plus 3 times the amount of damages.

2.5.2 The state civil penalty for each claim (or service billed) is up to \$10,000 for each false claim, plus 3 times the amount of damages, and the costs of a civil action brought to recover any of those penalties or damages.

2.5.3 The criminal penalty for willfully making or causing to be made any false statement or representation of a material fact or any benefit or payment under a federal health care program, is a felony, and upon conviction, a fine of no more than \$25,000 or imprisonment of no more than 5 years, or both (42 USC, Section 1128B).

*2.6 Whistleblower Protections*

CONTRACTOR shall not discharge, demote, suspend, threaten, harass, or discriminate against an employee, because of lawful acts done by the employee in cooperating with the False Claims Acts, including investigation for, initiation of, testimony for, or assistance in an action filed or one in the process of being filed (31 USC, Section 3730-h).

*2.7 Indemnification*

CONTRACTOR shall indemnify, defend and hold SJCBS, its officers and employees harmless from and against any and all claims, losses, liabilities, damages, demands, and actions arising out of CONTRACTOR's performance of this agreement.

**3 Availability And Accessibility Of Services**

CONTRACTOR who also serves enrollees of commercial health plans (e.g. Health Plan of San Joaquin, Kaiser, Blue Shield, Blue Cross, etc.) is required to offer Medi-Cal beneficiaries at least the same hours of operation and access to services as he/she offers to commercial health plan enrollees.

**4 Practice Guidelines**

CONTRACTOR agrees to follow the clinical practice guidelines developed and/or adopted by SJCBS. SJCBS follows the guidelines developed by the American Psychiatric Association (APA) and customized practice guidelines development by SJCBS.

If a conflict exists between the guidelines, the SJCBS customized guideline prevails. The APA guidelines are summarized in the 2004 "Quick Reference" of the APA Practice Guidelines.

The customized guidelines are available in the organization policy and procedures under Administration, the Practice Guideline series (120 administrative category) is available upon request.

(To order individual Practice Guidelines or the 2004 Compendium of APA Practice Guidelines, visit [www.appi.org](http://www.appi.org) or call 800-368-5777).

SJCBS Children and Youth Services have adopted the practice guidelines developed by the American Academy of Child And Adolescent Psychiatry (AACAP). If a conflict exists between these and our customized guidelines, the customized guideline prevails. AACAP guidelines are summarized in Practice Parameter and Guidelines and can be obtained at [www.aacap.org](http://www.aacap.org), or call (1-800-638-3030).

**5 Advance Directives**

CONTRACTOR is required to comply with SJCBS policies, procedures and requirements regarding Advance Directives, as set forth in Title 42, CFR (please refer to the training and materials that will be provided by SJCBS).

**6 Beneficiary Problem Resolution Process**

CONTRACTOR shall comply with SJCBS policies and procedures regarding Beneficiary Problem Resolution Process in accordance with Title 42, CFR, Part 438, Subpart F, and Title 9, California Code of Regulations (CCR), Sections 1850.205 and 1850.305.

The Beneficiary Problem Resolution Process includes processes for grievances, appeals and expedited appeals that enable beneficiaries to resolve concerns or grievances about any specialty mental health service-related issue. SJCBS requires CONTRACTOR to resolve concerns as quickly and simply as possible (please refer to the Beneficiary Problem Resolution Process training and materials that will be provided by SJCBS).



AGENDA ITEM 3

REQUEST

**REVIEW AND DISCUSS INFORMATION SUBMITTED BY MR. ROGERS RELATED TO SEVEN CORPORATIONS, PENDING JUDGMENTS, LIENS AND BANKRUPTCY, AND PERSONAL FINANCIALS; DIRECT STAFF TO CEASE NEGOTIATIONS FOR A NEW EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN THE SPIRIT OF CALIFORNIA ENTERTAINMENT GROUP, INC. AND THE CITY OF TRACY; AND ADOPT A RESOLUTION TERMINATING THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST LLC AND FIRST AMENDMENT WITH TRACY BLAST DEVELOPMENT, LLC**

EXECUTIVE SUMMARY

On March 19, 2013, staff requested that Council cease negotiations with the Spirit of California due to a lack of information and clarity related to various pending lawsuits, bankruptcy proceedings, and judgment liens, against Mr. James Rogers, Chief Executive Officer of the Spirit of California, previously outlined in a letter from the City of Tracy to Mr. Rogers dated February 7, 2013 (Attachment 26). At that March 19 Council meeting, Council provided Mr. Rogers with a 30 day extension to provide more detailed information relative to each of the (1) seven corporations, (2) pending judgments, liens, and bankruptcy, and (3) personal financial information. This staff report summarizes the information submitted by Mr. Rogers to date for Council's review and discussion.

Mr. Rogers submitted a total of twenty nine attachments in response to Council's request for additional information. Of the twenty nine attachments, ten attachments are documents of a governmental agency which can be independently verified. Staff has not received any financial information from Mr. Rogers as of the posting of this staff report.

Attachment 32 summarizes how each document submitted by Mr. Rogers corresponds to items requiring additional information. These documents (illustrated in the attachments) were discussed during the five check-in meetings.

DISCUSSION

On April 29, 2011, the City entered into an Exclusive Negotiating Rights Agreement (ENRA) with Tracy's California Blast, LLC regarding City-owned properties outside of the City limits on the west side of Tracy Boulevard adjacent to Legacy Fields and on the east side of Tracy Boulevard north of Arbor Road and north of the City's Wastewater Treatment Plant ("Holly Sugar Property"). On September 18, 2012, the City entered into the First Amendment to the ENRA with Tracy Blast Development, LLC (Tracy's California Blast, LLC and Tracy Blast Development, LLC are collectively referred to as "Tracy Blast").

On November 7, 2012, the City Council directed staff to enter into negotiations with the Spirit of California Entertainment Group, Inc. ("Spirit of California") for a new ENRA regarding the Holly Sugar Property. At that time, the City Council also directed that the ENRA with Tracy Blast should remain in place until a new ENRA with Spirit of California was approved.

After the November 7, 2012 Council meeting, it came to staff's attention that James B. Rogers may be or may have been associated with a number of other companies, lawsuits, bankruptcy proceedings, and judgment liens. On February 7, 2013, staff sent Mr. Rogers a letter requesting additional information on these matters, specifically requesting that all responses be of sufficient detail to allow staff to independently verify the information. On February 20, 2013, Mr. Rogers sent a letter to staff in response to staff's request. The responses in Mr. Roger's letter were general in nature and not supported by official documentation that staff could rely on to independently verify the information.

Consequently, on March 19, 2013, staff requested that Council cease negotiations with the Spirit of California for a new ENRA and adopt a resolution terminating the existing ENRA with Tracy Blast. At that meeting, Council provided Mr. Rogers with a 30 day extension to provide more detailed information relative to (1) seven corporations, (2) pending judgments, liens, and bankruptcy, and (3) personal financial information before determining whether or not to cease negotiations with the Spirit of California or terminating the existing ENRA with Tracy Blast.

Mr. Rogers submitted a total of twenty nine attachments in response to Council's request for additional information. Of the twenty nine attachments, ten are documents of a governmental agency which can be independently verified. No financial information was received as of the posting of this staff report. Below is a summary of the information submitted as of May 15, 2013.

#### **SECTION 1: INFORMATION REGARDING SEVEN CORPORATIONS**

For each of the seven corporations listed on the February 7, 2013 letter from the City of Tracy to Mr. Rogers, additional information was requested relative to the (1) Status of the Corporation, (2) Officers of the Corporation, (3) Purpose of the Corporation, and (4) Personal involvement in the corporation. Throughout the five Check-In meetings held with Mr. Rogers between March 19, 2013 and May 21, 2013 (attached), staff clarified that to the best of his ability, submittal of documents of a governmental agency, such as articles of incorporation and list of officers filed with the Secretary of State is preferred (Attachments 27, 28, 29, 30, 31, and 32).

##### **Status:**

"Official" information received from Mr. Rogers:

- Three articles of incorporation (*Attachments 20, 22, & 23*);
- One Form 200 (List of Officers) for 1 Corporation (*Attachment 21*);
- Three Documents showing the suspended status of 3 corporations (*Attachments 34, 35, and 36*).

Additional Information Requested:

- Any "Official" documents filed with the Secretary of State (*For example: Articles of Incorporation, Form 200 List of Officers, etc.*) for each of the seven corporations.

Mr. Rogers also submitted a number of letters from Mr. Rogers, his attorney, and from other parties related to the various corporations (*Attachments 1, 2, 3, 5, 16, 17, 19, and 24*).

## **SECTION 2: JUDGEMENT LIENS, FEDERAL AND STATE LIENS, LAWSUITS AND BANKRUPTCY FILING**

For each of the 16 pending judgment liens, federal and state liens, lawsuits and bankruptcy filing, staff requested that Mr. Rogers provide (1) a detailed description of the matter, (2) the status of the matter, (3) personal involvement in the matter, and (4) attach any legal document that relates to the matter that can be independently verified. Throughout the five Check-In meetings held with Mr. Rogers between March 19, 2013 and May 21, 2013, staff clarified that for any lawsuits, Mr. Rogers should provide any "official" court approved "final judgment". For any judgment liens, Mr. Rogers should provide court approved judgments on liens (i.e. "releases") showing that the lien had been paid, or any official court document that can be independently verified.

### **Status:**

"Official" information received from Mr. Rogers:

- Official Court Order (*Attachment 18*);
- US Bankruptcy Court Voluntary Petition (*Attachment 10*);
- US Bankruptcy Court Statement of Financial Affairs (*Attachment 11*).

Additional Information Requested:

- For any lawsuits: Provide any "Official" court approved "Final Judgments"
- For any judgment liens: provide Court approved judgments on liens; i.e. "Releases" showing that liens have been paid;
- Any "official" court documentation that can be independently verified.

Mr. Rogers also submitted a number of letters from Mr. Rogers, his attorney, and from other parties related to the various lawsuits, judgment liens and bankruptcy (*Attachments 4, 5, 9, 12, 13, 14, 15, 16, 17, 19, 24, 25, and 33*).

## **SECTION III: FINANCIAL INFORMATION**

The financial information requested from Mr. Rogers by the City includes: (1) Personal Financial Statements, (2) Federal Tax Returns for the current year and for the prior three years, and (3) a Signed credit release form. This information is important and relevant as Mr. Rogers is listed as the Chief Executive Officer, Secretary, and sole Director of the Spirit of California Entertainment Group, Inc. with documents filed with the Secretary of State (see Attachment 21).

Mr. Rogers is also required to provide this information to the City under the existing ENRA with Tracy's California Blast, LLC. His failure to do so is one of the primary reasons staff has been recommending, since November 7, 2012, that this ENRA be terminated.

As of the printing of this staff report, no personal financial information had been submitted to City staff or the City's consultant (NDC) for review.

### STRATEGIC PLAN

This agenda item does not relate to any of the City's strategic plans.

### FISCAL IMPACT

There is no impact to the General Fund with this agenda item.

### RECOMMENDATION

Staff recommends that Council cease negotiating a new Exclusive Negotiating Rights Agreement (ENRA) between the Spirit of California Entertainment Group, Inc. and the City of Tracy and terminate the existing ENRA with Tracy's California Blast LLC.

This recommendation is based on the fact that the majority of the information submitted by Mr. Rogers is not documentation of a governmental agency that can be independently verified and because no financial information was submitted as requested by Council.

**Option 2:** Council can direct staff to continue negotiating a new Exclusive Negotiating Rights Agreement (ENRA) between the Spirit of California Entertainment Group, Inc. and the City of Tracy (if Council determines that the information submitted by Mr. Rogers is sufficient), and terminate the existing ENRA with Tracy's California Blast LLC. for non-compliance with submitting (1) Personal Financial Statements, (2) Federal Tax Returns for the current year and for the prior three years, and (3) a Signed credit release form, as recommended to Council on November 7, 2012 and March 19, 2013.

Prepared by: Maria A. Hurtado, Assistant City Manager  
Reviewed by: R. Leon Churchill, Jr., City Manager  
Approved by: R. Leon Churchill, Jr., City Manager

### ATTACHMENTS

- Attachment 1: April 1, 2013 Letter from James Rogers to City of Tracy;
- Attachment 2: February 21, 2013 Letter from James Nichols to City of Tracy;
- Attachment 3: February 20, 2013 Letter from Phillip L. McKitterick from Artisan Company;
- Attachment 4: April 1, 2013 Letter from James Rogers to City of Tracy re: Judgment recorded in 2009 in favor of Richard Strock for \$78k;
- Attachment 5: March 25, 2013 Letter from Richard Strock re: Jim Rogers: Background for Judgment Obligation;
- Attachment 6: April 1, 2013 Letter from James Rogers to City of Tracy Re: Jim Roger's relationship / association to the Riverside Motorsports Park project);
- Attachment 7: March 27, 2013 Statement from John Noland, Former VP RMP;
- Attachment 8: April 1, 2013 Letter from James Rogers to City of Tracy re: Jim Roger's – items remaining (*Received 4/1/13 via email*);
- Attachment 9: April 1, 2013 Letter from James Rogers to City of Tracy re: Lexington Consulting, Inc. bankruptcy;
- Attachment 10: United States Bankruptcy Court Voluntary Petition re: Lexington Consulting, Inc. (*Received 4/1/13 via email*);
- Attachment 11: United States Bankruptcy Court Statement of Financial Affairs – Amended re: Case 12-53153 (*Received 4/1/13 via email*);

- Attachment 12: February 20, 2013 Letter from Sheryl Madison Lancaster to City of Tracy re: James Rogers/Lexington Consulting;
- Attachment 13: Agreement for property located at 19660 Santa Cruz Hwy, Los Gatos between John Simonse and James Rogers dated 4/25/10  
(Received 4/1/13 via email);
- Attachment 14: April 2, 2013 Letter from James Rogers to City of Tracy re: Rogers' Barnes Lawsuit;
- Attachment 15: Docket for Case #: 1-04-CV-021575 re: J. Barnes vs. J. Rogers  
(Received 4/3/13 via email);
- Attachment 16: April 2, 2013 Letter from James Rogers to City of Tracy re: Security Pacific Bank vs. Preferred Financial Group Inc.;
- Attachment 17: Docket for Case # 5:91-cv-20344-WAI re: Security Pacific vs. Preferred Financial Group, Inc. (Received 4/3/13 via email);
- Attachment 18: Official Court Order in the case James Rogers vs. FBI Civ. No. 94-20446 SW(Received 4/10/13 via email);
- Attachment 19: May 1, 2013 Letter from James Rogers to City of Tracy re: Inquiries Regarding James Rogers, past and current corporations;
- Attachment 20: Articles of Incorporation of Spirit of California Entertainment Group Inc.  
(Received 5/12/13 via email);
- Attachment 21: Form 200 listing Officers of the Spirit of California Entertainment Group Inc. filed with Secretary of State (Received 5/12/13 via email);
- Attachment 22: Articles of Incorporation of Lexington Consulting, Inc. filed with Secretary of State (Received 5/12/13 via email);
- Attachment 23: Certificate of Incorporation of Tracy's California Blast Inc. filed with Secretary of State (Received 5/12/13 via email);
- Attachment 24: May 1, 2013 Letter from James Rogers to City of Tracy re: Lexington Consulting Inc., Bennett case;
- Attachment 25: April 23, 2013 Letter from James P. Nichols to the City of Tracy re: Gary Bennett v. James Rogers et al, Santa Clara County Case No. 110CV171320;
- Attachment 26: February 7, 2013 Letter from the City of Tracy to Mr. James Rogers re: Spirit of California, Inc.
- Attachment 27: Check-In Meeting notes #1 (03/26/13): Spirit of CA & City of Tracy Representatives;
- Attachment 28: Check-In Meeting notes #2 (04/09/13): Spirit of CA & City of Tracy Representatives;
- Attachment 29: Check-In Meeting notes #3 (04/23/13): Spirit of CA & City of Tracy Representatives;
- Attachment 30: Check-In Meeting notes #4 (05/07/13): Spirit of CA & City of Tracy Representatives;
- Attachment 31: Check-In Meeting notes #5 (05/14/13): Spirit of CA & City of Tracy Representatives;
- Attachment 32: Responses Reviewed with Mr. James Rogers To Date (5/14/13);
- Attachment 33: May 1, 2013 Letter from Clayton Patterson, Tax Consultant;
- Attachment 34: Document showing Suspended status of Preferred Financial Group, Inc.  
(Received on 5/15/13 via email);
- Attachment 35: Document showing Suspended status of Chase Builders, Inc.  
(Received on 5/15/13 via email);
- Attachment 36: Document showing Suspended status of West Valley Financial Group  
(Received on 5/15/13 via email);



4-1-13

City of Tracy  
City Council  
333 Civic Center Plaza  
Tracy Ca. 95376

Re: Your inquiries regarding James Rogers past and current corporations; affiliation's and current status.

Dear Council,

This letter is to describe the various corporations you have inquired of with an explanation of their intended use, the partners and officers involved and the status of the corporation as of today.

**Spirit of California Entertainment Group, Inc.** is organized and incorporated to develop the new Entertainment Park in Tracy. I was the incorporator and the following are the parties appointed as officers; James Rogers and Phillip McKitterick. The corporation has produced a private placement memorandum which is registered with the Securities Exchange Commission. This is an active corporation.

**Tracy Blast Solar, Inc.** was previously incorporated for the expressed purpose to build a solar power plant in Tracy. It was incorporated by myself and was never funded. No other parties were involved and the corporation is inactive.

**Lexington Consulting, Inc.** was incorporated by myself and was used for building multiple custom residential homes. It constructed homes in Los Gatos and Palo Alto. The corporation officers consisted of my self only. The corporation is currently active and has three residential properties in Los Gatos totaling \$9m in value. It is currently a guarantor on a loan from an investor, Sheryl Madison Lancaster. It has filed bankruptcy to protect the rights of this valued investor.

**Chase Builders, Inc.** was formed for the expressed purpose to build two mini warehouse facilities in San Jose and Sunnyvale. I formed the corporation and held all the officers positions. We financially partnered with an investor named Richard Strock. The mini storage facilities were built, operated and sold. (See attached letter from Strock). The corporation completed its intended business and is now inactive.

**Stone Valley Properties, Inc.** was a corporation that was formed for the expressed purpose of developing residential properties in Santa Clara County. The corporation was formed by myself and was not actively used for the intended purpose. A partnership was to be formed to develop a specific property and the project wasn't consummated. In that the project was not consummated the decision was taken to dissolve the corporation and it is inactive.

**West Hills Investment, Inc.** was formed for the expressed purpose to develop and subdivide a residential property into 4 lots. The project was completed and the developed lots were sold. I was the only officer of the corporation. The corporation served its intended use and is now inactive.

**Preferred Financial Group Inc.** Steve Fontaine formed this corporation for the expressed purpose of establishing a clearing account to trade securities. The corporation was to trade and / or purchase on account corporate banking bonds. I was a founding shareholder and the corporation utilized my financial statement to secure the account with Security Pacific Bank.

There was a lawsuit with the bank after a transaction involving the purchase of a set of Mid Atlantic banking bonds. After extensive discovery in the case, it was found that our corporation committed no wrongful acts and the case was dismissed. This corporation is inactive.

A case file docket has being retrieved by my attorney that reflects this information.

If these explanations are in any way insufficient in answering the status of the corporations pursuant to your inquiries, please advise me of any other pertinent questions you may have concerning the entities.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

*James P. Nichols*  
*Attorney at Law*  
411 Borel Avenue, Suite 500  
San Mateo, Ca. 94402-3520  
Phone (650) 345-0600  
Fax (650) 345-9875

February 21, 2013

Andrew Malik  
Development Services Director  
City of Tracy  
333 Civic Center Plaza  
Tracy Ca. 95376

Dear Mr. Malik,

I write this letter at James B. Rogers' request to outline my professional relationship with him and my knowledge of his various projects.

First of all, I have provided legal representation to him and his related business entities for over 25 years. In that time, my participation included representation for various business matters, including legal representation in litigation, advice regarding transactional matters and negotiations with third parties relation to his various projects.

His primary business is in real estate development and promotion, including creation of subdivisions, custom residential construction, planning development of business parks and commercial construction.

In several cases involving his construction activities, there have been issues relating to work of contractors and subcontractors. As he knows, there is a very short time period for a contractor to protect his rights relating to liens, including the filing of a mechanics lien, and a subsequent short time for filing of a legal actions to preserve the right to enforce the lien.

In almost every instance of my involvement regarding lien claims, these have all been resolved by way of agreed settlement of the parties.

As to the various projects he have been involved in, I have worked with him regarding the Orchard Meadow subdivision and custom home development in Saratoga, some involvement in the eight building office complex in Roseville, development and sale of the Lincoln Avenue Self Storage in San Jose, racetrack development project in Merced, any many custom home projects in Santa Clara County.

I have also worked with him regarding the formation of business entities including partnerships, corporations and limited liability companies.



Throughout my representation, I have not been involved in any litigation with him regarding any material dispute between him and his associates in any matter involving disputes as to direction of the projects, disputes among partners nor at any time any claim of any breach of fiduciary duty in the operation of his entities. In fact, many of his ventures have been very successful and valuable to his investors and partners.

In addition, there has never been raised any issue as to his integrity or honesty in his business ventures.

In many cases, litigation has been brought in order to force resolution of issues, usually by some form of mediation or arbitration with ultimate resolution of a satisfied settlement of the parties to the issue at hand.

I am more that willing to discuss, with his consent, any legal issues he have been involved in that I also participated, but I clearly need his consent to do so.

Please let me know if any further information is requested or required.

Sincerely yours,

James P  
Nichols

James P. Nichols

JPN/jp

# Artisan Company

2/20/13

Mr. Andrew Malik  
Development Services Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Dear Andrew,

Ref: James Rogers

I have worked on development and construction projects with Jim Rogers since June, 2006. During that time we successfully built and completed several projects in Palo Alto and Los Gatos, California. We also evaluated development projects in Los Gatos, San Jose and Fresno.

I have found working with Jim that he is a creative visionary developer and fair to his employees and subcontractors. He is an ardent negotiator contractually and expects everyone to adhere to the contract provisions for performance and quality. He has an incredible eye for design and expects the highest quality standards and workmanship.

He has an educated and inherent understanding of the development process from raw land through entitlements and construction of the projects. He again is a visionary and resolution / problem solver with the development process and desires to meet the goals of all parties involved in the process; owners, architects, engineers, contractors and governing agencies.

In my experiences he has always stood by the subcontractors that perform the work in a project, protecting their rights and payments for services. He has defended them to the financial lenders, often paying for their services personally while awaiting construction loan draws procedures to reimburse him for these services. He has made it a point to subcontractors to file their lien rights with pre-lien notices to perfect their position when working on projects in order to protect themselves with the lending institutions.

I am again working with Jim Rogers on the Spirit of California project in Tracy, CA. I respect his vision for the development and his concern for the proper legal position he has taken for its multiple shareholders. Jim has hired / contracted the services of land development attorneys, accountants, an SEC attorney for the Private Placement Memorandum and a Certified Public Accounting Firm for auditing all financial reporting. He is respectful of all investors input and questions often deferring to his advisors for the proper procedures to be taken to the benefit of the shareholders and the corporation.

Mr. Andrew Malik  
City of Tracy  
Page 2

I believe that Jim Rogers has the unique experience and capabilities to create and develop the Spirit of California Mega Entertainment Park in its entirety. His vision and design expertise, business acumen, development background and financial investment understanding position him to fulfill the dream that will forever redefine the meaning of amusement park!

Respectfully,

Phillip L. McKitterick  
skeetermckitterick@sbcglobal.net  
831-251-9061

130 Dunes Place, Aptos, CA 95003 • phone 831-251-9061

The Securities and Exchange Commission has not necessarily reviewed the information in this filing and has not determined if it is accurate and complete. The reader should not assume that the information is accurate and complete.

**UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION**  
Washington, D.C. 20549  
**FORM D**

OMB APPROVAL	
OMB Number: 3235-0076	
Expires: August 31, 2015	
Estimated average burden hours per response: 4.00	

**Notice of Exempt Offering of Securities**

**1. Issuer's Identity**

CIK (Filer ID Number)

0001564302

Name of Issuer

Spirit of California Entertainment Group, Inc.

Jurisdiction of Incorporation/Organization

CALIFORNIA

Year of Incorporation/Organization

Over Five Years Ago

Within Last Five Years (Specify Year) 2012

Yet to Be Formed

Previous Names

None

Entity Type

Corporation

Limited Partnership

Limited Liability Company

General Partnership

Business Trust

Other (Specify)

**2. Principal Place of Business and Contact Information**

Name of Issuer

Spirit of California Entertainment Group, Inc.

Street Address 1

180 LA MONTAGNE CT.

Street Address 2

City

LOS GATOS

State/Province/Country

CALIFORNIA

ZIP/PostalCode

95032

Phone Number of Issuer

(209) 627-0190

**3. Related Persons**

Last Name

Rogers

First Name

James

Middle Name

B

Street Address 1

180 LA MONTAGNE CT.

Street Address 2

City

Los Gatos

State/Province/Country

CALIFORNIA

ZIP/PostalCode

95032

Relationship:  Executive Officer  Director  Promoter

Clarification of Response (if Necessary):

Last Name	First Name	Middle Name
DiRicco	Dennis	R
Street Address 1	Street Address 2	
704 Vera Cruz Avenue		
City	State/Province/Country	ZIP/PostalCode
Los Altos	CALIFORNIA	94002
Relationship: <input checked="" type="checkbox"/> Executive Officer <input checked="" type="checkbox"/> Director <input checked="" type="checkbox"/> Promoter		

Clarification of Response (if Necessary):

Last Name	First Name	Middle Name
McKitterick	Phillip	L
Street Address 1	Street Address 2	
130 Dunes Place		
City	State/Province/Country	ZIP/PostalCode
Aptos	CALIFORNIA	95003
Relationship: <input checked="" type="checkbox"/> Executive Officer <input checked="" type="checkbox"/> Director <input checked="" type="checkbox"/> Promoter		

Clarification of Response (if Necessary):

**4. Industry Group**

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Agriculture  | <input type="checkbox"/> Health Care             | <input type="checkbox"/> Retailing                 |
| <input type="checkbox"/> Banking & Financial Services                                       | <input type="checkbox"/> Biotechnology           | <input type="checkbox"/> Restaurants               |
| <input type="checkbox"/> Commercial Banking   | <input type="checkbox"/> Health Insurance        | <input type="checkbox"/> Technology                |
| <input type="checkbox"/> Insurance  | <input type="checkbox"/> Hospitals & Physicians  | <input type="checkbox"/> Computers                 |
| <input type="checkbox"/> Investing  | <input type="checkbox"/> Pharmaceuticals         | <input type="checkbox"/> Telecommunications        |
| <input type="checkbox"/> Investment Banking   | <input type="checkbox"/> Other Health Care       | <input type="checkbox"/> Other Technology          |
| <input type="checkbox"/> Pooled Investment Fund   | <input type="checkbox"/> Manufacturing           | <input type="checkbox"/> Travel                    |
| Is the issuer registered as an investment company under the Investment Company Act of 1940? | <input type="checkbox"/> Real Estate             | <input type="checkbox"/> Airlines & Airports       |
| <input type="checkbox"/> Yes <input type="checkbox"/> No                                    | <input type="checkbox"/> Commercial              | <input type="checkbox"/> Lodging & Conventions     |
| <input type="checkbox"/> Other Banking & Financial Services                                 | <input checked="" type="checkbox"/> Construction | <input type="checkbox"/> Tourism & Travel Services |
| <input type="checkbox"/> Business Services  | <input type="checkbox"/> REITS & Finance         | <input type="checkbox"/> Other Travel              |
| <input type="checkbox"/> Energy   | <input type="checkbox"/> Residential             | <input type="checkbox"/> Other                     |
| <input type="checkbox"/> Coal Mining  | <input type="checkbox"/> Other Real Estate       |  |
| <input type="checkbox"/> Electric Utilities   |  |  |
| <input type="checkbox"/>  |  |  |

- Energy Conservation
- Environmental Services
- Oil & Gas
- Other Energy

**5. Issuer Size**

Revenue Range	OR	Aggregate Net Asset Value Range
<input checked="" type="checkbox"/> No Revenues		<input type="checkbox"/> No Aggregate Net Asset Value
<input type="checkbox"/> \$1 - \$1,000,000		<input type="checkbox"/> \$1 - \$5,000,000
<input type="checkbox"/> \$1,000,001 - \$5,000,000		<input type="checkbox"/> \$5,000,001 - \$25,000,000
<input type="checkbox"/> \$5,000,001 - \$25,000,000		<input type="checkbox"/> \$25,000,001 - \$50,000,000
<input type="checkbox"/> \$25,000,001 - \$100,000,000		<input type="checkbox"/> \$50,000,001 - \$100,000,000
<input type="checkbox"/> Over \$100,000,000		<input type="checkbox"/> Over \$100,000,000
<input type="checkbox"/> Decline to Disclose		<input type="checkbox"/> Decline to Disclose
<input type="checkbox"/> Not Applicable		<input type="checkbox"/> Not Applicable

**6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)**

- |  |  |
|--|--|
| <input type="checkbox"/> Rule 504(b)(1) (not (i), (ii) or (iii)) | <input type="checkbox"/> Rule 505  |
| <input type="checkbox"/> Rule 504 (b)(1)(i)                      | <input checked="" type="checkbox"/> Rule 506                                       |
| <input type="checkbox"/> Rule 504 (b)(1)(ii)                     | <input type="checkbox"/> Securities Act Section 4(6)                               |
| <input type="checkbox"/> Rule 504 (b)(1)(iii)                    | <input type="checkbox"/> Investment Company Act Section 3(c)                       |
|  | <input type="checkbox"/> Section 3(c)(1) <input type="checkbox"/> Section 3(c)(9)  |
|  | <input type="checkbox"/> Section 3(c)(2) <input type="checkbox"/> Section 3(c)(10) |
|  | <input type="checkbox"/> Section 3(c)(3) <input type="checkbox"/> Section 3(c)(11) |
|  | <input type="checkbox"/> Section 3(c)(4) <input type="checkbox"/> Section 3(c)(12) |
|  | <input type="checkbox"/> Section 3(c)(5) <input type="checkbox"/> Section 3(c)(13) |
|  | <input type="checkbox"/> Section 3(c)(6) <input type="checkbox"/> Section 3(c)(14) |
|  | <input type="checkbox"/> Section 3(c)(7)   |

**7. Type of Filing**

- New Notice    Date of First Sale     First Sale Yet to Occur
- Amendment

**8. Duration of Offering**

Does the Issuer intend this offering to last more than one year?  Yes  No

**9. Type(s) of Securities Offered (select all that apply)**

- Equity
- Debt
- Option, Warrant or Other Right to Acquire Another Security
- Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security
- Pooled Investment Fund Interests
- Tenant-in-Common Securities
- Mineral Property Securities
- Other (describe)

No minimum, 5,000,000 shares of our common stock maximum at \$0.30 per share

**10. Business Combination Transaction**

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  Yes  No

Clarification of Response (if Necessary):

**11. Minimum Investment**

Minimum investment accepted from any outside investor \$5,000 USD

**12. Sales Compensation**

Recipient (Associated) Broker or Dealer  None

Recipient CRD Number  None

(Associated) Broker or Dealer CRD Number  None

Street Address 1 Street Address 2

City State/Province/Country ZIP/Postal Code

State(s) of Solicitation (select all that apply)  
 Check "All States" or check individual States  All States  Foreign/non-US

**13. Offering and Sales Amounts**

Total Offering Amount \$1,500,000 USD or  Indefinite

Total Amount Sold \$0 USD

Total Remaining to be Sold \$1,500,000 USD or  Indefinite

Clarification of Response (if Necessary):

**14. Investors**

Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, and enter the number of such non-accredited investors who already have invested in the offering.

\_\_\_\_\_

\_\_\_\_\_

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

0

### 15. Sales Commissions & Finder's Fees Expenses

Provide separately the amounts of sales commissions and finders fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$0 USD  Estimate

Finders' Fees \$0 USD  Estimate

Clarification of Response (if Necessary):

### 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$0 USD  Estimate

Clarification of Response (if Necessary):

### Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

#### Terms of Submission

In submitting this notice, each issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, in the accordance with applicable law, the information furnished to offerees."
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Rule 505 exemption, the issuer is not disqualified from relying on Rule 505 for one of the reasons stated in Rule 505(b)(2)(iii).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.



For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Spirit of California Entertainment Group, Inc.	PHILLIP L. MCKITTERICK	Phillip L. McKitterick	Vice President & Secretary	2012-12-10

*Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.*

\* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.



4-1-13

City of Tracy  
City Council  
333 Civic Center Plaza.  
Tracy Ca. 95376

Re: Judgment recorded in 2009 in favor of Richard Strock for \$78k

Dear Council,

I asked Richard Strock to provide a letter describing the lien recorded in his favor and the circumstances related to this issue. In addition he explained our previous seven year relationship; please refer to the accompanying letter from Strock Realty & Financial.

He also mentions his association as a partner with Chase Builders, Inc. and the construction and operating of two mini storage facilities in Sunnyvale and San Jose.

The Chase Builders corporate information also is referred to in the letter addressing council on the various corporations in which I was an owner, officer or shareholder.

If this explanation is in any way insufficient in information you require, please advise and I will provide any other details you feel necessary for your review.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564



March 25, 2013

Re: Jim Rogers: Background for Judgment Obligation

To Whom It May Concern:

Jim has asked me to write a letter to provide context to the \$78,000 judgment filed in 2008. Unfortunately, this obligation arose from an unsuccessful transaction that in which Jim was not an original party (land subdivision in Gilroy); I was a private money lender who transferred unpaid debt to another property owner by the borrower in a short sale; the second property struggled as well, and another partial pay down was made. Jim was doing business with the obligor; and he assumed the obligation to pay me as a part of a business transaction with the other party.

I was pleased to have him become liable for the debt as we had had 20 or 25 successful lending transactions together over the prior five to seven years. Payments had always been made, as agreed. All were successful transactions for both of us.

In fact, I entered into two joint ventures with Jim's company, Chase Builders, to build two mini-storage companies—one was a remodel of a Kaiser Medical Office in Sunnyvale, and the other one was a ground-up build on Lincoln Ave. in San Jose. We jointly ran the completed businesses. And we profitably sold the businesses after rent-up and stabilization over several years. We never had any business problems during the ownership and/or sale.

We have today come to terms about a settlement price to remove the judgment from the public record if and only if paid as agreed by June 30, 2013. I am hopeful that this resolution will take place in the immediate future.

If you wish to inquire more thoroughly, feel free to contact me at (650) 938-1955.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Richard Strock', written over a horizontal line.

Richard Strock



4-1-13

City of Tracy  
City Council  
333 Civic Center Plaza.  
Tracy Ca. 95376

Re: Jim Roger's relationship / association to the Riverside Motorsports Park project

Dear Council,

As previously mentioned in the city council meeting of March 19, 2013; I was not involved in management, control or direction in the development and / or operations of the Riverside Motorsports Park. I was hired as an independent consultant to help procure the property and arrange initial funding. I did offer further assistance, but my services were not retained.

Attached is a letter from John Noland the former Vice President of Riverside Motorsports park wherein he describes the extent of my relationship with Riverside Motorsports Park.

If this explanation and the letter from John Noland are in any way insufficient or lacking in information you require, please advise me of same.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

CITY OF TRACY  
CITY COUNCIL  
333 CIVIC CENTER DRIVE  
TRACY CA. 95376

RE RIVERSIDE MOTORSPORTS PARK

CITY COUNCIL

I WAS ASKED TO WRITE THIS LETTER TO EXPLAIN THE RELATIONSHIP OF MR. ROGERS AND RMP. I AM JOHN NOLIND, FORMER VICE PRESIDENT OF RMP.

SOME YEARS AGO, A MAN NAMED JOHN CONDREN AND MYSELF DECIDED TO FIND AN APPROPRIATE LOCATION TO BUILD A NEW MOTOR SPORTS PARK SOMEWHERE IN NORTHERN CALIFORNIA.

WE CAME UPON A PROPERTY IN MERCED COUNTY THAT LOOKED PROMISING, AFTER COUNTLESS MONTHS OF NEGOTIATING AND MANEUVERING WITH THE CURRENT OWNER AND LENDER, WE WERE UNABLE TO SECURE THE PROPERTY. THE PROPERTY WAS IN RECEIVERSHIP AND THERE WERE MULTIPLE WILD TRUST DEEDS ENCUMBERING THE TITLE.

JOHN CONDEREN AND MYSELF WERE FAMILIAR WITH JAMES ROGERS THROUGH A RACE CAR SERIES WE BOTH PARTICIPATED IN CALLED GTA. IT WAS KNOWN TO JOHN AND MYSELF THAT HE HAD SOME EXPERTISE IN REAL ESTATE CONSTRUCTION AND DEVELOPMENT. JOHN APPROACHED MR. ROGERS TO HELP WITH THE ACQUISITION AND POSSIBLE DEVELOPMENT OF THE PROPERTY. MR. ROGERS LOOKED OVER THE PROBLEMS AND SAID HE COULD SOLVE THE MANY ISSUES RELATED TO THE TRANSACTION. HE ALSO SAID HE COULD RAISE THE APPROXIMATE 6.5 MILLION NEEDED TO PURCHASE THE SUBJECT PROPERTY.


THE ARRANGEMENT WAS MADE FOR MR. ROGERS TO OBTAIN THE PROPERTY AND FUND THE PURCHASE. HE THEN WOULD TURN OVER THE PROPERTY TO RMP. MR. ROGERS WAS TO RECEIVE COMPENSATION PARTIALLY IN CASH AND STOCK IN RMP. MR. ROGERS NEGOTIATED AND RAISED THE FUNDS NEEDED TO CLOSE THE TRANSACTION. MR. ROGERS WAS NEVER INVOLVED IN THE ENTITLEMENTS FROM THAT POINT FORWARD.

MR. ROGERS OFFERED HIS ASSISTANCE IF NEEDED BUT MR. CONDREN HAD THE IDEA OF DOING EVERYTHING HIMSELF. MR. CONDREN HAD TURNED OUT TO BE AN EGOCENTRIC DISHONEST INDIVIDUAL WITH A MOTIVE OF TAKING THE ENTIRE PROJECT FOR HIMSELF. LATER THE PROJECT WAS APPROVED, BUT DUE TO 2008 ECONOMIC CONDITIONS THE PROJECT FUNDING WAS NO LONGER AVAILABLE. HE VOTED OTHERS AND MYSELF OFF THE BOARD OF DIRECTORS TO DO HIS DISHONEST WORK. IT LATER CAME TO OUR ATTENTION THAT HE HAD ALTERED DOCUMENTS AND WAS UNDERHANDED IN HIS DEALINGS WITH THE COUNTY AND HIS SHAREHOLDERS INCLUDING JAMES ROGERS AND MYSELF. HE WAS ATTEMPTING TO TAKE AWAY EVERYONE'S STOCK FOR HIMSELF.

THE PROJECT COULD HAVE BEEN SALVAGED AND IN THE END, MR. ROGERS TRIED TO COME TO THE ASSISTANCE OF MYSELF AND OTHER SHAREHOLDERS, BUT IT WAS TOO LATE. JOHN CONDREN HAD WITHDRAWN THE APPLICATION FOR THE DEVELOPMENT AND SOILED THE PROJECTS REPUTATION BEYOND REPAIR WITH THE COUNTY.

I WANT TO MAKE THE COMMENT THAT MR. ROGERS HAS ALWAYS ACTED IN AN HONEST AND PROFESSIONAL MANNER AND CAME THROUGH ON EVERY PROMISE HE MADE. I WOULD LIKE TO MAKE THE RECOMMENDATION TO COUNCIL AS TO HIS HONESTY AND CHARACTER.  
IF YOU HAVE ANY QUESTIONS, PLEASE DON'T HESITATE TO CALL.

SINCERELY,

  
\_\_\_\_\_  
JOHN NOLING  
FORMER VP, RMP  
530 519-6020

3-27-13  
DATE



4-1-13

City of Tracy  
City Council  
333 Civic Center Plaza  
Tracy Ca. 95376

Re: Jim Rogers's – items remaining

Dear Council,

As previously mentioned in the city council meeting of March 19, 2013. I was involved in a list of liens, judgments and lawsuits over a 19-year period. I have recently sent e-mails to council answering to all these issues except the following:

**Security Pacific Bank and IRS**

I would like to again address the issue concerning the lawsuit. You currently have a copy of the dismissal provided by Andrew Malik in the meeting of the 19<sup>th</sup>. I filed a complaint against an IRS agent for misconduct. The court later informed me that I had to take legal action against the entire agency, not a single agent. Because the Security Pacific Bank lawsuit was dismissed I decided to not re-file my complaint against the FBI. My attorney is retrieving the files from the court archives to reflect the dismissals on both cases and will write a "Brief" describing them.

**Bennett case**

As mentioned before, Bennett is a private lender that filed a claim against LHJS another private lender. I was included in the case because I was a principal in the project. The case file will show that Mr. Bennett has already settled part of the case for \$5k. He has no recoverable damages against myself and this will be reflected in the case file. My attorney is retrieving the court case and writing a brief to explain the issues.

**Barns Law suit**

This started as a lien lawsuit and then it turned into a theft by Barns. Barns stole \$40k worth of lumber from my job site. I subsequently prevailed and retrieved a fraction of what he stole.

**Tax liens**

I have an appointment with my tax accountant on April 5<sup>th</sup> to examine any tax liabilities and or any late fees that might be owed to obtain lien releases.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564



4-1-13

City of Tracy  
City Council  
333 Civic Center Plaza.  
Tracy Ca. 95376

**Re: Lexington Consulting, Inc. bankruptcy**

Dear Council

This may seem to you like an odd way of dealing with this situation, but I will assure you in my councils opinion this was one of the least expensive methods given the circumstances. Whether you agree with the methods or not, this was done to protect the investors.

One of the investors; Sheryl Madison Lancaster had obtained some death benefits from her late husband. She wanted to invest in the Tracy project but, I told her I could not take in her investment funds unless it was in the form of a loan in a separate entity. This was due to the Tracy's California blast not having a private Placement Memorandum drafted or registered by the Securities and Exchange Commission. It is at her option, that she can exchange her loan funds to purchase stock in the project.

Some months later I became aware of the issue concerning Sheryl Madison's previous bankruptcy and the attempt of the trustee to ultimately retrieve some of these loan funds.

After consultation with legal council we determined that the best course of action was to file the bankruptcy of Lexington Consulting, Inc., (the loan guarantor to Sheryl Madison's note) and negotiate an agreement between the two courts appointed trustees. This may seem odd, but if not handled in this manner the attorney's fees would eventually total more than the loan amount.

The concept has worked very well and we are currently in the middle of negotiating an amicable solution. The trustee has indicated they will agree to a minimal pay down on the Lexington loan and a full dismissal for Mrs. Madison's bankruptcy without further recourse.

Upon filing the BK there was no unsecured debt in the corporation other than Sheryl Madison. There is though, contingent assets owed to Lexington Consulting, Inc. by LHJS a previous investor/ lender. This is pursuant to the subcontractor payment agreement attached.

I am utilizing the assistance of the bankruptcy court to compel LHJS to provide funds owed to Lexington's subcontractors that have not been paid. The assistance of the trustee will help reduce collection costs rather than lengthy and protracted litigation.



The end result is that Sheryl Madison's assets will be not depleted with lengthy legal maneuvering. Lexington Consulting, Inc. will utilize the trustee to assure that LHJS will pay the subcontractors their due compensation as agreed.  
(See attached agreement). Four existing judgments of concern are included for payment in this agreement.

Lexington Consulting, Inc. has paid all the legal fees to date to file the bankruptcy and litigate the issues. My investors and subcontractors have not expended any funds and will not be required to do so at any time. A complete copy of the BK filing is attached.

If this explanation is in any way insufficient in answering your inquiry, please advise me of your questions.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

BL (Official Form 1)(12/11)

<b>United States Bankruptcy Court Northern District of California</b>		<b>Voluntary Petition</b>
Name of Debtor (if individual, enter Last, First, Middle): <b>Lexington Consulting, Inc.</b>		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) <b>26-0673239</b>		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): <b>180 La Montagne Ct. Los Gatos, CA</b>		Street Address of Joint Debtor (No. and Street, City, and State):
ZIP Code <b>95032</b>		ZIP Code
County of Residence or of the Principal Place of Business: <b>Santa Clara</b>		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
ZIP Code		ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):		
<b>Type of Debtor</b> (Form of Organization) (Check one box) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<b>Nature of Business</b> (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:	<b>Tax-Exempt Entity</b> (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	<b>Nature of Debts</b> (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
<b>Filing Fee</b> (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,000 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
<b>Statistical/Administrative Information</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
<b>Estimated Number of Creditors</b> <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000		
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): <b>Lexington Consulting, Inc.</b>	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)</b>			
Location Where Filed: <b>Northern California San Jose Division</b>	Case Number: <b>08-54532</b>	Date Filed: <b>8/19/08</b>	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)</b>			
Name of Debtor: <b>- None -</b>	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<p style="text-align:center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p style="text-align:center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).</p> <p><b>X</b> _____ Signature of Attorney for Debtor(s) (Date)</p>		
<b>Exhibit C</b>			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
<b>Exhibit D</b>			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)  _____ (Name of landlord that obtained judgment)   _____ (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and <input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

**Voluntary Petition**

(This page must be completed and filed in every case).

Name of Debtor(s):  
**Lexington Consulting, Inc.**

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.  
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.  
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).  
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Debtor

X \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

\_\_\_\_\_  
Date

**Signature of Attorney\***

X /s/ Charles B. Greene  
Signature of Attorney for Debtor(s)

Charles B. Greene 56275  
Printed Name of Attorney for Debtor(s)

Law Office of Charles B. Greene  
Firm Name  
84 W. Santa Clara St. Ste. 770  
San Jose, CA 95113

\_\_\_\_\_  
Address

408-279-3518 Fax: 408-279-4264  
Telephone Number

April 26, 2012  
Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ James Rogers  
Signature of Authorized Individual

James Rogers  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual  
April 26, 2012  
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

- I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.
- Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X \_\_\_\_\_  
Signature of Foreign Representative

\_\_\_\_\_  
Printed Name of Foreign Representative

\_\_\_\_\_  
Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.*

**United States Bankruptcy Court  
Northern District of California**

In re Lexington Consulting, Inc.

Debtor(s)

Case No. \_\_\_\_\_

Chapter 11

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
Gary Farrar c/o David F. Anderson, Esq. 2150 River Plaza Dr. #450 Sacramento, CA 95833	Gary Farrar c/o David F. Anderson, Esq. 2150 River Plaza Dr. #450 Sacramento, CA 95833	Adversary Proceeding	Disputed	Unknown
Sheryl Madison 250 W. 20th St. Tracy, CA 95376	Sheryl Madison 250 W. 20th St. Tracy, CA 95376	Money lent		200,000.00

Debtor(s)

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**  
 (Continuation Sheet)

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	<i>Amount of claim [if secured, also state value of security]</i>

**DECLARATION UNDER PENALTY OF PERJURY  
 ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, the \_\_\_\_\_ of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date April 26, 2012

Signature /s/ James Rogers  
James Rogers

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.*

**United States Bankruptcy Court  
Northern District of California**

In re Lexington Consulting, Inc.

Debtor

Case No. \_\_\_\_\_

Chapter 11

**SUMMARY OF SCHEDULES**

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	8,700,000.00		
B - Personal Property	Yes	3	200,225.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	2		8,000,500.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	2		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	1		200,000.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		11			
Total Assets			8,900,225.00		
			Total Liabilities	8,200,500.00	

**United States Bankruptcy Court  
Northern District of California**

In re Lexington Consulting, Inc.  
Debtor

Case No. \_\_\_\_\_

Chapter 11

**STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)**

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule E)	
<b>TOTAL</b>	

State the following:

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		



In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
20115 Orchard Meadow Dr. Saratoga, CA Single family residence XX	Fee simple	-	4,500,000.00	4,150,000.00
145 Bella Vista Ave. Los Gatos, CA Single Family Residence XX	Fee simple	-	1,900,000.00	1,773,000.00
180 La Montagne Ct Los Gatos, CA Single family residence XX		-	2,300,000.00	2,077,500.00
XX		-	0.00	0.00

All properties are title in the name of Debtor, however, the secured loans are in the name of the Debtor's principal, James Rogers

Sub-Total > 8,700,000.00 (Total of this page)

Total > 8,700,000.00

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Wells Fargo Bank checking	-	200.00
		Wells Fargo Bank savings	-	25.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
Sub-Total >				225.00
(Total of this page)				

2 continuation sheets attached to the Schedule of Personal Property

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.		Promissory note amount owed to Debtor	-	200,000.00
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > **200,000.00**  
(Total of this page)

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > 0.00  
(Total of this page)  
Total > 200,225.00

Sheet 2 of 2 continuation sheets attached  
to the Schedule of Personal Property

(Report also on Summary of Schedules)

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. Sec. 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R H W J C	Husband, Wife, Joint, or Community		C O N T I N G E N T	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
		DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN					
Account No. xx8237 Bank of America P.O. Box 5170 Simi Valley, CA 93062	X	-				1,340,000.00	0.00
			First Deed of Trust 145 Bella Vista Ave. Los Gatos, CA Single Family Residence XX Value \$ 1,900,000.00				
Account No. xx1051 Bank of America P.O. Box 5170 Simi Valley, CA 93062	X	-				1,665,000.00	0.00
			First Deed of Trust 180 La Montagne Ct. Los Gatos, CA Single family residence XX Value \$ 2,300,000.00				
Account No. xx2012 Bank of America P.O. Box 5170 Simi Valley, CA 93062	X	-				3,200,000.00	0.00
			First Deed of Trust 20115 Orchard Meadow Dr. Saratoga, CA Single family residence XX Value \$ 4,500,000.00				
Account No. Bank of America P.O. Box 5170 Simi Valley, CA 93062	-					433,000.00	0.00
			Second Deed of Trust 145 Bella Vista Ave. Los Gatos, CA Single Family Residence XX Value \$ 1,900,000.00				
Subtotal (Total of this page)						6,638,000.00	0.00

1 continuation sheets attached

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I T A B L E	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. Bank of America P.O. Box 5170 Simi Valley, CA 93062		Second Deed of Trust 180 La Montagne Ct. Los Gatos, CA Single family residence - XX Value \$ 2,300,000.00				412,500.00	0.00
Account No. Bank of America P.O. Box 5170 Simi Valley, CA 93062		Second Deed of Trust 20115 Orchard Meadow Dr. Saratoga, CA Single family residence - XX Value \$ 4,500,000.00				950,000.00	0.00
Account No. Santa Clara County Tax Collector 70 W. Hedding St. San Jose, CA 95110		Real Property Taxes 20115 Orchard Meadow Dr. Saratoga, CA Single family residence - Notice only Value \$ 4,500,000.00				0.00	0.00
Account No. Santa Clara County Tax Collector 70 W. Hedding St. San Jose, CA 95110		Real Property Taxes 145 Bella Vista Ave. Los Gatos, CA Single Family Residence - Notice only Value \$ 1,900,000.00				0.00	0.00
Account No. Santa Clara County Tax Collector 70 W. Hedding St. San Jose, CA 95110		Real Property Taxes 180 La Montagne Ct. Los Gatos, CA Single family residence - Notice only Value \$ 2,300,000.00				0.00	0.00
Subtotal (Total of this page)						1,362,500.00	0.00
Total (Report on Summary of Schedules)						8,000,500.00	0.00

Sheet 1 of 1 continuation sheets attached to Schedule of Creditors Holding Secured Claims

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

**Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

**Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

**Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

**Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

**Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

**Deposits by individuals**

Claims of individuals up to \$2,600\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

**Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

**Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

**Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**  
(Continuation Sheet)

Taxes and Certain Other Debts  
Owed to Governmental Units

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M	TYPE OF PRIORITY		A M O U N T O F C L A I M	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
				U N S E C U R E D	D I S C R I M I N A T E D		AMOUNT ENTITLED TO PRIORITY
Account No.  Employment Development Department P.O. Box 944203 Sacramento, CA 94244			Notice only			0.00	0.00
Account No.  Franchise Tax Board Special Procedures P.O. Box 2952 Sacramento, CA 95812			Notice only			0.00	0.00
Account No.  Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101			Notice only			0.00	0.00
Account No.							
Account No.							
Subtotal (Total of this page)						0.00	0.00
Total (Report on Summary of Schedules)						0.00	0.00

Sheet 1 of 1 continuation sheets attached to  
Schedule of Creditors Holding Unsecured Priority Claims



In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community			C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H	W	J				
Account No.  Gary Farrar c/o David F. Anderson, Esq. 2150 River Plaza Dr. #450 Sacramento, CA 95833	X						X	Unknown
Account No.  Sheryl Madison 250 W. 20th St. Tracy, CA 95376								200,000.00
Account No.  								
Account No.  								
Subtotal (Total of this page)								200,000.00
Total (Report on Summary of Schedules)								200,000.00

0 continuation sheets attached

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

### SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe; guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,  
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.  
State whether lease is for nonresidential real property.  
State contract number of any government contract.

In re Lexington Consulting, Inc.

Case No. \_\_\_\_\_

Debtor

**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
James Rogers 180 La Montagne Ct. Los Gatos, CA 95032	Bank of America P.O. Box 5170 Simi Valley, CA 93062
James Rogers 180 La Montagne Ct. Los Gatos, CA 95032	Bank of America P.O. Box 5170 Simi Valley, CA 93062
James Rogers 180 La Montagne Ct. Los Gatos, CA 95032	Bank of America P.O. Box 5170 Simi Valley, CA 93062
James Rogers 180 La Montagne Ct. Los Gatos, CA 95032	Gary Farrar c/o David F. Anderson, Esq. 2150 River Plaza Dr. #450 Sacramento, CA 95833

United States Bankruptcy Court  
Northern District of California

In re Lexington Consulting, Inc.

Debtor(s)

Case No. \_\_\_\_\_

Chapter 11

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 13 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date April 26, 2012

Signature /s/ James Rogers  
James Rogers

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court  
Northern District of California**

In re Lexington Consulting, Inc.

Debtor(s)

Case No. \_\_\_\_\_

Chapter 11

**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

**1. Income from employment or operation of business**

None  State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$0.00	2012 Income ytd
\$0.00	2011 Income
\$0.00	2010 Income

**2. Income other than from employment or operation of business**

None  State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
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3. Payments to creditors

None  Complete a. or b., as appropriate, and c.

a. Individual or joint debtor(s) with primarily consumer debts. List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None  b. Debtor whose debts are not primarily consumer debts: List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850\*. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
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None  c. All debtors: List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None  a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Gary Farrar v. Debtor #12-02118-D	Adversary Proceeding	U.S. Bankruptcy Court - Eastern District of California	Pending

None  b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

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**5. Repossessions, foreclosures and returns**

- None  List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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**6. Assignments and receiverships**

- None  a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None  b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**

- None  List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**

- None  List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**

- None  List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Law Office of Charles B. Greene 84 W. Santa Clara St. Ste. 770 San Jose, CA 95113	4/2012	See 2016(b)

10. Other transfers

None  a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR DATE DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

None  b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE DATE(S) OF TRANSFER(S) AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY

11. Closed financial accounts

None  List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None  List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY DESCRIPTION OF CONTENTS DATE OF TRANSFER OR SURRENDER, IF ANY

13. Setoffs

None  List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR DATE OF SETOFF AMOUNT OF SETOFF

14. Property held for another person

None  List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER DESCRIPTION AND VALUE OF PROPERTY LOCATION OF PROPERTY

15. Prior address of debtor

None  If the debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS NAME USED DATES OF OCCUPANCY



16. Spouses and Former Spouses

None  If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None  a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

None  a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-ID. NO.			
NAME	(ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Lexington Consulting, Inc.	26-0673239	180 La Montagne Ct. Los Gatos, CA 95032	Real estate marketing	2007-Present

None  b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

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#### 19. Books, records and financial statements

None  a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
Clay Patterson 1091 Industrial Rd. #250 San Carlos, CA 94070	

None  b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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None  c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
James Rogers	180 La Montagne Ct. Los Gatos, CA 95032

None  d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within two years immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED
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#### 20. Inventories

None  a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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None  b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

None  a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS NATURE OF INTEREST PERCENTAGE OF INTEREST

None  b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS TITLE NATURE AND PERCENTAGE OF STOCK OWNERSHIP

22. Former partners, officers, directors and shareholders

None  a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME ADDRESS DATE OF WITHDRAWAL

None  b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS TITLE DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

None  If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other prerequisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR DATE AND PURPOSE OF WITHDRAWAL AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None  If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within six years immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None  If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER (EIN)

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date April 26, 2012

Signature /s/ James Rogers  
James Rogers

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571*

**United States Bankruptcy Court  
Northern District of California**

In re Lexington Consulting, Inc.

Debtor(s)

Case No.  
Chapter

11

**STATEMENT PURSUANT TO RULE 2016(B)**

The undersigned, pursuant to Rule 2016(b), Bankruptcy Rules, states that:

1. The undersigned is the attorney for the debtor(s) in this case.
2. The compensation paid or agreed to be paid by the debtor(s), to the undersigned is:
 

a) For legal services rendered or to be rendered in contemplation of and in connection with this case	\$ <u>\$425.00.Hr</u>
b) Prior to the filing of this statement, debtor(s) have paid	\$ <u>\$0.00</u>
c) The unpaid balance due and payable is	\$ <u>To be Determined</u>
3. \$ 0.00 of the filing fee in this case has been paid.
4. The Services rendered or to be rendered include the following:
  - a. Analysis of the financial situation, and rendering advice and assistance to the debtor(s) in determining whether to file a petition under title 11 of the United States Code.
  - b. Preparation and filing of the petition, schedules, statement of affairs and other documents required by the court.
  - c. Representation of the debtor(s) at the meeting of creditors.
5. The source of payments made by the debtor(s) to the undersigned was from earnings, wages and compensation for services performed, and
6. The source of payments to be made by the debtor(s) to the undersigned for the unpaid balance remaining, if any, will be from earnings, wages and compensation for services performed, and
7. The undersigned has received no transfer, assignment or pledge of property from debtor(s) except the following for the value stated:
8. The undersigned has not shared or agreed to share with any other entity, other than with members of undersigned's law firm, any compensation paid or to be paid except as follows:

Dated: April 20, 2012

Respectfully submitted,

/s/ Charles B. Greene

Attorney for Debtor: Charles B. Greene 56275  
Law Office of Charles B. Greene  
84 W. Santa Clara St. Ste. 770  
San Jose, CA 95113  
408-279-3518 Fax: 408-279-4264

United States Bankruptcy Court  
Northern District of California

In re Lexington Consulting, Inc.  
Debtor

Case No. \_\_\_\_\_

Chapter 11

**LIST OF EQUITY SECURITY HOLDERS**

Following is the list of the Debtor's equity security holders which is prepared in accordance with Rule 1007(a)(3) for filing in this chapter 11 case.

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
James Rogers 180 La Montagne Ct. Los Gatos, CA 95032	Common Stock	100%	

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date April 26, 2012

Signature /s/ James Rogers  
James Rogers

*Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C §§ 152 and 3571.*

United States Bankruptcy Court  
Northern District of California

In re Lexington Consulting, Inc.

Debtor(s)

Case No. \_\_\_\_\_

Chapter 11

**CREDITOR MATRIX COVER SHEET**

I declare that the attached Creditor Mailing Matrix, consisting of 1 sheets, contains the correct, complete and current names and addresses of all priority, secured and unsecured creditors listed in debtor's filing and that this matrix conforms with the Clerk's promulgated requirements.

Date: April 26, 2012

/s/ Charles B. Greene

Signature of Attorney  
Charles B. Greene 56275  
Law Office of Charles B. Greene  
84 W. Santa Clara St. Ste. 770  
San Jose, CA 95113  
408-279-3518 Fax: 408-279-4264

Bank of America  
P.O. Box 5170  
Simi Valley, CA 93062

Employment Development Department  
P.O. Box 944203  
Sacramento, CA 94244

Franchise Tax Board  
Special Procedures  
P.O. Box 2952  
Sacramento, CA 95812

Gary Farrar  
c/o David F. Anderson, Esq.  
2150 River Plaza Dr. #450  
Sacramento, CA 95833

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101

James Rogers  
180 La Montagne Ct.  
Los Gatos, CA 95032

Santa Clara County Tax Collector  
70 W. Hedding St.  
San Jose, CA 95110

Sheryl Madison  
250 W. 20th St.  
Tracy, CA 95376



United States Bankruptcy Court  
Northern District of California

In re Lexington Consulting, Inc.

Debtor(s)

Case No. \_\_\_\_\_

Chapter 11

**CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)**

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for Lexington Consulting, Inc. in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

**James Rogers**  
**180 La Montagne Ct.**  
**Los Gatos, CA 95032**

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None [*Check if applicable*]

April 26, 2012

Date

/s/ Charles B. Greene

Charles B. Greene 56275

Signature of Attorney or Litigant

Counsel for Lexington Consulting, Inc.

Law Office of Charles B. Greene

84 W. Santa Clara St. Ste. 770

San Jose, CA 95113

408-279-3518 Fax:408-279-4264

**United States Bankruptcy Court  
Northern District of California**

In re Lexington Consulting, Inc.

Debtor(s)

Case No. 12-53153

Chapter 11

**STATEMENT OF FINANCIAL AFFAIRS - AMENDED**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

**1. Income from employment or operation of business**

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$0.00	2012 Income ytd
\$0.00	2011 Income
\$0.00	2010 Income

**2. Income other than from employment or operation of business**

None

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
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### 3. Payments to creditors

None  Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None  b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850\*. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
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None  c. *All debtors:* List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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### 4. Suits and administrative proceedings, executions, garnishments and attachments

None  a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Gary Farrar v. Debtor #12-02118-D	Adversary Proceeding	U.S. Bankruptcy Court - Eastern District of California	Pending

None  b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

**5. Repossessions, foreclosures and returns**

- None  List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed; unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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**6. Assignments and receiverships**

- None  a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None  b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**

- None  List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**

- None  List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**

- None  List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Law Office of Charles B. Greene 84 W. Santa Clara St. Ste. 770 San Jose, CA 95113	4/2012	See 2016(b)

**10. Other transfers**

None  a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Tracy's California Blast, LLC 180 La Montagne Ct. Los Gatos, CA	6/2011	Debtor's shareholder is managing member of transferee; \$200,000.00 lent to Tracy's California Blast, LLC by the Debtor; Debtor received promissory note from the transferee

None  b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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**11. Closed financial accounts**

None  List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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**12. Safe deposit boxes**

None  List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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**13. Setoffs**

None  List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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**14. Property held for another person**

None  List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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**15. Prior address of debtor**

None  If the debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS NAME USED DATES OF OCCUPANCY

**16. Spouses and Former Spouses**

None  If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None  a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

None  a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Lexington Consulting, Inc.	26-0673239	180 La Montagne Ct. Los Gatos, CA 95032	Real estate marketing	2007-Present

None  b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None  a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
Clay Patterson 1091 Industrial Rd. #250 San Carlos, CA 94070	

None  b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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None  c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
James Rogers	180 La Montagne Ct. Los Gatos, CA 95032

None  d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within two years immediately preceding the commencement of this case.

NAME AND ADDRESS DATE ISSUED

20. Inventories

None  a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY INVENTORY SUPERVISOR DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None  b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

None  a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS NATURE OF INTEREST PERCENTAGE OF INTEREST

None  b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS TITLE NATURE AND PERCENTAGE OF STOCK OWNERSHIP  
James Rogers President 100%  
180 La Montagne Ct.  
Los Gatos, CA 95032

22. Former partners, officers, directors and shareholders

None  a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME ADDRESS DATE OF WITHDRAWAL

None  b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS TITLE DATE OF TERMINATION



**23. Withdrawals from a partnership or distributions by a corporation**

- None  If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Tracy's California Blast, LLC 180 La Montagne Ct. Los Gatos, CA 95032	6/2011	Debtor's shareholder is managing member of transferee; \$200,000.00 let to Tracy's California Blast, LLC by the Debtor; Debtor received promissory note from the transferee.

**24. Tax Consolidation Group.**

- None  If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within six years immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)

**25. Pension Funds.**

- None  If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date June 6, 2012

Signature /s/ James Rogers  
James Rogers

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571*

Sheryl Madison Lancaster  
250 West 20<sup>th</sup> St.  
Tracy, CA 95376  
Mobile: 209 814-1994

To: City of Tracy  
Dan Sondergren  
333 Civic Center Plaza  
Tracy, CA 95032

February 20, 2013

Re: James Rogers/ Lexington Consulting Inc.

Dear Mr. Sondergren,

Mr. Rogers has brought it to my attention that the City is looking at his past and present dealings.

As to the Lexington bankruptcy, Mr. Rogers was gracious enough to take on my problem as his own. He has done an outstanding job of dealing with the situation in a very professional manner.

His extensive knowledge and ability to work through any situation is why I trust him with my money.

I have invested with him, thousands of dollars with absolutely no reservations.

I have always been treated with respect and honesty.

Mr. Rogers has worked on this situation for some months free of charge and has developed a solid proposal that will probably be settled in a matter of weeks.

He sacrificed his corporation, Lexington Consulting, Inc. and his own money to help me solve a very horrific problem of mine. This is his character.

If you have any further questions, please do not hesitate to call.

Sincerely,

Sheryl Madison Lancaster

*Sheryl Madison*



Agreement for property located at 19660 Santa Cruz Hwy, Los Gatos, CA 95033 ("Property").  
Between Property Owner, LHJS Investments LLC, ("Owner") and builder James Rogers  
("Rogers") dated April 24, 2010.

1 Owners will pay Rogers 25% of the net profit after the close of escrow from the sale of the Property after deducting the cost of the loans on the property and what would have been made on the loan #9120 in favor of Magnate Fund #2 LLC ("Loan") on the Property if it was not foreclosed on. For example, once escrow is closed there may be \$4.8MM paid to the Owner from escrow. From that amount would be deducted what the Owner's investor Magnate Fund #2 LLC would be owed as per the Loan's note and deed they foreclosed on, as if they didn't foreclose and the Note for Loan # 9120 was still in effect. The amount owed on Loan # 9120 at the time of close of escrow for example could equal \$4.0MM. The \$4MM would be deducted from the net paid to the Owner of \$4.8MM which would leave a balance of \$800k. Rogers would be paid 25% of \$800k or \$200,000. There is however no guarantee of any profit or payment from the sale to Rogers.

2 Owner will put into an escrow, to be chosen by Owner, a maximum amount of \$105,000 to pay debts owed by Rogers. Once an acceptable settlement is reached by Rogers based on the spreadsheet attached "Exhibit A" and approved by the Owner, the money for that debt will be put in escrow no later than 30 days from the approval of the amount by Owner and the signing of this agreement. Once the final on the Property of all permits & certificate of occupancy has been attained, all the work finished as per #3 below and unconditional release and guaranty of work is submitted, then escrow will pay Roger's debt.

3 Owner will pay up to 45k to finish anything left over from the punch list, to get the final & certificate of occupancy and the remaining work to finish home in a manner needed to sell the home as per the attached schedule B. Contractor needs to submit an estimate to be approved by Owner prior to commencing work. In 60 days all work is to be completed and a final approval of all permits & certificate of occupancy to be issued by the county.

4 The night watchman Ron is given notice to vacate the premises and understands he is on notice to leave the property immediately within the next 60 days. Until he finds a place to move his motor home he is to give his cell number and be respectful and helpful to the Realtor and Owner representative. He is not to interfere in any way with the showing of the home and is to be out of sight at that time. If there are any other people on or around the property they are to be given notice to leave the property as well. Only contractors doing work on the property can be on the property.



5 Rogers is to give a set of keys for the home, garage and solar cabinet immediately to Realtor and Owner representative. After 60 days once work in #3 above is complete all locks to be changed and Realtor to have new keys made.

6 When the home sells Rogers can negotiate with the Owner what the charge for a builder warranty for new buyers will be. The warranty will be for construction defects, not incomplete items such as the back yard landscaping.

7 Rogers to be available for consulting with the prospective buyer(s) if they have questions on construction, backyard landscaping, solar system etc. Rogers is not to be involved in any purchase negotiations with buyers or interfere in any way. Rogers is not to be involved with any other Realtors, agents or buyers in any way, nor to be present when home is shown except when asked by Owner's Realtor.

8 Rogers is to provide full size copies of all plans or surveys for the home, backyard and entry gates to Owner's representative upon signing of agreement. Rogers to provide detailed bid with line item costs for building of entry gates and backyard with and without pool within 60 days of signing agreement. Rogers may meet with Owner's Realtor and prospective buyers if buyers want to get bids on future work on the home after purchase. There is no guarantee that Rogers will get any future work from buyer of home.

9 Owners understand that solar system power should be increased prior to buyer of home occupying the home. Owners will review bids for the increase of solar system power and will decide on their own how much to increase the solar system power. Rogers will not be responsible for the cost or installation of any further Solar power increase.

10 The home will be able to be shown by the Realtor at any time. When work is started as per #3 above then 24hr notice will be given to contractor doing the work to give time to clean up. There will be a complete property inspection done by Owner's representative on either April 27<sup>th</sup>, 28<sup>th</sup> or 29<sup>th</sup>. Inspection to include home, property lines, garage, and solar system. There will be no work scheduled and the property shall be in "ready to show condition" every Sunday starting May 2, 2010.

11 If any part of this agreement is broken or not adhered to in its entirety at any time then the whole agreement shall be null, void, and unenforceable.

LHIS Investments LLC

Builder

John Simonse 4-25-10  
John Simonse, Manager Date

James Rogers  
James Rogers Date 4-25-10



**Exhibit A**

Name		Rogers Debt	Proposed Settlement
Arturo Ramirez	Tile	5,222	3,000
Buckley Engineering	Soil Engineer	3,338	1,000
California Construction	Framing	52,684	10,000
Ciancurulo Construction	General	14,160	5,000
Maxicon Engineering	Driveway	90,000	50,000
MS Engineering	Structural	800	800
Robert Ruelas Hauling	Hauling	2,500	2,000
Roemke Electric	Electrician	32,767	10,000
Silicon Valley Land Survey	Civil Engineer	21,567	10,000
Skylonda	Driveway	27,224	19,000
Venice tile & marble	Counter tops	9,400	5,000

**Exhibit B**

Work for final, C of O, and Realtor approved to sell home:

- Complete install of copper gutters and downspouts
- Complete install of HVAC Condensers
- Troubleshoot and correct HVAC zoning & recirculation
- Plumbing finish, hot and cold water line problem
- Mirrored closet doors in guest bedroom
- Towel bars & toilet paper holders
- Heated towel rack & floors
- Speakers, stereo, alarm system & front door bell
- Gas lines & Leak in log lighter
- Tile work and cracks
- Hubbard door handle
- Electrical issues
- Plaster repairs & touch up
- Painting touch up, caulking & weather stripping
- Solar finalized & permit signed off
- Vacuum system finish install
- Co2 & carbon monoxide sensors
- Stone sealing
- TV, cable and phone hookups
- Jacuzzi tub switch fixed
- Replace outside light fixtures
- Broken hinge on dish washer

*[Handwritten signature]*



4-2-13

City of Tracy  
City Council  
333 Civic Center Plaza  
Tracy Ca. 95376

Re: Rogers's Barnes lawsuit

Dear Council,

**Barns Law suit**

This started as a lien lawsuit compounded by a theft by Barns. Barns stole \$40k worth of lumber from my job site in Los Gatos. I subsequently negotiated a settlement through mediation and retrieved a fraction of what he stole. A copy of the court docket is attached.

This will reflect a settlement of the case. It does not show the small award I received. My award was only around 10k.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

**THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Public Access Civil Case  
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Apr. 3, 2013

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**Register of Actions/Docket**

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**Case Information**

Number: 1-04-CV-021575  
 Title: J. Barnes Vs J. Rogers  
 Category: Breach Of Contract/Warranty - Unlimited  
 Filed: 6/15/2004 Disposed: 6/26/2006 Status: Post

**Associated Cases**

Lead Case: 1-04-CV-021575  
 Associated cases Relationship  
 1-04-CV-022599 Consolidated

**Calendared Events**

**Involved Parties**

**Documents**

Type	Name	Disposition
Plaintiff	Granite Rock Company None Attorney: Thomas H. Squeri Granite Rock Company , Post Office Box 50001, Watsonville, Ca 95077-5001 Attorney: Thelen Reid Brown Raysman, Et Al None225 W. Santa Clara Street, Suite 1200, San Jose, Ca 95113-1723	CV-BT EntryReqDism-No ADR
Plaintiff/X-Defendant	Jude Barnes None Attorney: Christopher J. Olson Sweeney Mason Wilson Et Al , 983 University Avenue, Suite 104-C, Los Gatos, Ca 95032-7637	CV-BT EntryReqDism-No ADR
Doing Business As	J. Barnes Construction None	None
Defendant	E&F Financial Services None Attorney: James P. Nichols None411 Borel Avenue, Suite 500, San Mateo, Ca 94402	CV-BT EntryReqDism-No ADR
Defendant/X-Complainant	James B. Rogers None Attorney: James P. Nichols None411 Borel Avenue, Suite 500, San Mateo, Ca 94402	CV-BT EntryReqDism-No ADR

**Involved Parties**

**Calendared Events**

**Documents**

Settled

Date	Time	Dept.	Event Description	Result			Notice Printed	Raset	
				Description	By	Date		To	From
6/15/2006	10:00AM	S008	CV Dism aft Settle;Reset R225	Dismissed	C	06/26/06	04/11/06	None	None
4/6/2006	10:00AM	S008	CV Dism aft Settle;225/45da	Continued by Court	C	04/06/06	02/17/06	None	None
2/14/2006	08:45AM	S008	CV Jury Trial - Long Cause	Vacated; settled	C	02/07/06	None	None	None
2/8/2006	01:30PM	S008	CV Settlement Conf - Jury	Vacated; settled	C	02/07/06	11/14/05	None	None
11/8/2005	11:00AM	S004	CV Trial Setting Conference	Set for S/C & Trial	C	11/08/05	10/06/05	None	None
10/31/2005	08:45AM	S004	CV Jury Trial - Long Cause	Vacated	C	10/04/05	None	None	None
10/26/2005	09:00AM	S004	CV Settlement Conf - Jury	Vacated	C	10/04/05	08/01/05	None	None
10/4/2005	09:00AM	S007	Mtn: Leave to File	Granted	C	10/04/05	None	None	None
9/30/2005	10:00AM	S014	Mtn:Admissions Deemed Admitted	Granted	C	10/03/05	None	None	None
9/30/2005	10:00AM	S014	CV Mtn: Compel	Granted	C	10/03/05	None	None	None
9/30/2005	10:00AM	S014	CV Mtn: Compel	Granted	C	10/03/05	None	None	None
7/26/2005	11:00AM	S004	CV Trial Setting Conference	Set for S/C & Trial	C	07/26/05	07/11/05	None	None
6/30/2005	10:30AM	S004	CV Mediation Status Review	Mediated; Not Settled	C	06/30/05	04/29/05	None	None
4/28/2005	10:30AM	S004	CV Mediation Status Review	Heard; Reset to future month	C	04/28/05	01/25/05	None	None
1/25/2005	10:00AM	S004	CV Further CMC	Ref. to Mediation/MSR set	C	01/25/05	12/01/04	None	None
11/30/2004	10:00AM	S007	CV Further CMC	Set For:	C	11/30/04	10/14/04	None	None
10/12/2004	01:30PM	S007	CV CMC-Case Management Conf	Set For:	C	10/12/04	None	None	None

Involved Parties

Documents

Calendared Events

For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#).

Number-Sequence	Document Description	Document Text	Filed	Ruling	Date
0049-000	Cv-Ntc:Dismissal Of Action		06/26/2006	None	06/26/2006
0048-000	Cv Req:Dismissal, Partial For: James B. Rogers / DXC For: Jude Barnes / PLX		06/19/2006	None	06/21/2006
0047-000	Cv Req:Dismissal, Partial For: Granite Rock Company / PLT For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC		06/07/2006	None	06/14/2006
0046-000	Cv Case Mgmt Statement For: Jude Barnes / PLX		04/04/2006	None	04/04/2006
0045-000	Cv Req:Dismissal, Entire W/Prej For: Granite Rock Company / PLT		02/17/2006	None	02/17/2006
0044-000	Cv Ntc:Settlement For: Jude Barnes / PLX		01/20/2006	None	01/24/2006
0043-000	Cv Association Of Attys For: Granite Rock Company / PLT		11/07/2005	None	11/07/2005



For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#).

Number-Sequence	Document Description	Document Text	Filed	Ruling	Date
0043-001	Cv Proof Of Svc For: Granite Rock Company / PLT		11/07/2005	None	11/07/2005
0042-000	Cv Case Mgmt Statement For: Jude Barnes / PLX		10/25/2005	None	10/25/2005
0041-000	Cv Ntc:Entry Of Order For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC		10/13/2005	None	10/13/2005
0040-000	Cv 1st Amended Complaint For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC		10/06/2005	None	10/06/2005
0039-000	Cv Stlp & Order/Fees For: E&F Financial Services / DEF For: James B. Rogers / DXC For: Jude Barnes / PLX		10/06/2005	Granted	10/06/2005
0038-000	Cv Reply For: Jude Barnes / PLX		09/28/2005	None	09/28/2005
0037-000	Cv Ntc:Entry Of Order For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC		09/22/2005	None	09/22/2005
0037-001	Cv Proof Of Svc For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC		09/22/2005	None	09/22/2005
0036-000	Cv Declaration For: Jude Barnes / PLX Against: E&F Financial Services / DEF		09/22/2005	None	09/22/2005
0035-000	Cv Memo:Ps & As/Suppt Of Mtn For: Jude Barnes / PLX Against: E&F Financial Services / DEF		09/22/2005	None	09/22/2005
0034-000	Cv Ntc:Mtn To Compel For: Jude Barnes / PLX Against: E&F Financial Services / DEF		09/22/2005	None	09/22/2005
0034-001	Cv Proof Of Svc For: Jude Barnes / PLX Against: E&F Financial Services / DEF		09/22/2005	None	09/22/2005
0033-000	Cv Declaration For: Jude Barnes / PLX Against: James B. Rogers / DXC		09/22/2005	None	09/22/2005
0032-000	Cv Memo:Ps & As/Suppt Of Mtn For: Jude Barnes / PLX Against: James B. Rogers / DXC		09/22/2005	None	09/22/2005
0031-000	Cv Ntc:Mtn To Compel For: Jude Barnes / PLX Against: James B. Rogers / DXC		09/22/2005	None	10/04/2005
0031-001	Cv Proof Of Svc		09/22/2005	None	09/22/2005

For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#).

Number-Sequence	Document Description	Document Text	Filed	Ruling	Date
0030-000	For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC Cv Declaration		09/22/2005	None	09/22/2005
0029-000	For: Jude Barnes / PLX Against: James B. Rogers / DXC Cv Memo:Ps & As/Suppt Of Mtn		09/22/2005	None	09/22/2005
0028-000	For: Jude Barnes / PLX Against: James B. Rogers / DXC Cv Mtn For Order		09/22/2005	None	09/22/2005
0028-001	For: Jude Barnes / PLX Against: James B. Rogers / DXC Cv Proof Of Svc		09/22/2005	None	09/22/2005
0027-000	For: Jude Barnes / PLX Against: James B. Rogers / DXC Cv Memo:Ps & As/Oppositi To Mtn		09/21/2005	None	09/22/2005
0026-000	For: E&F Financial Services / DEF For: James B. Rogers / DXC Cv Declaration		09/21/2005	None	09/22/2005
0025-000	For: E&F Financial Services / DEF For: James B. Rogers / DXC Cv Ex Parte Order		09/21/2005	Granted	09/21/2005
0024-000	For: Jude Barnes / PLX Cv Decl In Support		09/21/2005	None	09/21/2005
0023-000	For: Jude Barnes / PLX Cv Ex Parte Appl		09/21/2005	None	09/21/2005
0022-000	For: Jude Barnes / PLX Cv Jury Fee Deposit		09/15/2005	None	09/15/2005
0021-000	For: Jude Barnes / PLX Cv Decl In Support		09/02/2005	None	09/02/2005
0020-000	For: Jude Barnes / PLX Cv Memo:Ps & As/Suppt Of Mtn		09/02/2005	None	09/02/2005
0019-000	For: Jude Barnes / PLX Cv Ntc:Motion W/Fee		09/02/2005	None	09/02/2005
0018-000	For: Jude Barnes / PLX Cv Ntc:Entry Of Order		09/02/2005	None	09/02/2005
0017-000	For: Jude Barnes / PLX Cv Decl In Support		09/02/2005	None	09/02/2005
0016-000	For: Jude Barnes / PLX Cv Ex Parte Order		09/02/2005	None	09/02/2005
0015-000	For: Jude Barnes / PLX Cv Ex Parte Appl		09/02/2005	None	09/02/2005
0015-001	For: Jude Barnes / PLX Cv Proof Of Svc		09/06/2005	None	09/06/2005
0014-000	For: Jude Barnes / PLX Cv Case Mgmt Statement		07/20/2005	None	07/21/2005

For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#).

Number-Sequence	Document Description	Document Text	Filed	Ruling	Date
0013-000	For: Granite Rock Company / PLT Cv Case Mgmt Statement		07/20/2005	None	07/21/2005
0012-000	For: Jude Barnes / PLX Cv Case Mgmt Statement		06/28/2005	None	07/12/2005
0011-000	For: Granite Rock Company / PLT Cv Substitution Of Attorney		06/24/2005	None	06/24/2005
0010-000	For: Jude Barnes / PLX Cv Case Mgmt Statement		04/22/2005	None	05/03/2005
0009-000	For: Granite Rock Company / PLT Arb-Ntc Of Mediation Status Conf		04/29/2005	None	04/29/2005
0008-000	Arb-Ntc Of Mediation Status Conf		01/25/2005	None	01/25/2005
0007-000	Cv Case Mgmt Statement		11/23/2004	None	11/24/2004
0006-000	For: James B. Rogers / DXC Cv Case Mgmt Statement		11/23/2004	None	11/24/2004
0005-000	For: E&F Financial Services / DEF Cv Case Mgmt Statement		11/23/2004	None	11/24/2004
0004-000	For: Jude Barnes / PLX Cv Cross-Complaint		11/23/2004	None	11/23/2004
0004-001	For: James B. Rogers / DXC Against: Jude Barnes / PLX Cv General Denial W/Out Fees		12/22/2004	None	12/22/2004
0004-002	For: Jude Barnes / PLX Against: James B. Rogers / DXC Cv Answer - No Fees Duel		09/20/2005	None	09/20/2005
0003-000	For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC Cv Proof Of Svc Compl/Pet/Summons		10/08/2004	None	10/08/2004
0002-000	For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC Cv Complaint Filed/Summs Issued		06/15/2004	None	06/15/2004
0002-001	For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC Cv Answer, Unltd, W/Fees		11/23/2004	None	11/23/2004
0002-002	For: James B. Rogers / DXC Against: Jude Barnes / PLX Cv Answer, Unltd, W/Fees		11/23/2004	None	11/23/2004
0001-000	For: Jude Barnes / PLX Against: E&F Financial Services / DEF Against: James B. Rogers / DXC Cv Case Cover Sheet		06/15/2004	None	06/15/2004

For an explanation of the abbreviations used in the Document Description/Text columns, click [here](#).

**RETURN**

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4-2-13

City of Tracy  
City Council  
333 Civic Center Plaza  
Tracy Ca. 95376

Re: Security Pacific bank vs. Preferred Financial Group Inc.

Dear Council,

**Security Pacific Bank and FBI**

I would like to address the issue concerning both lawsuits. I have attached a copy of the dismissal of the FBI suit provided also by Andrew Malik for the council meeting of 3-19-13. I was the Plaintiff and the FBI was the Defendant.

I filed the complaint against two FBI agents for misconduct. The court later informed me that I had to take legal action against the entire agency and serve the agency director, not an individual agent. I filed the lawsuit without an attorney in federal court. This case was dismissed.

Because the Security Pacific Bank lawsuit was dismissed, I decided to not re-file my complaint against the FBI. I have attached the docket from this case. I have attached the court docket that reflects the SEC PAC banks lawsuit dismissal. I was not found guilty of any wrong doing of any kind.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

CLOSED,REFDIS

**U.S. District Court  
California Northern District (San Jose)  
CIVIL DOCKET FOR CASE #: 5:91-cv-20344-WAI**

Sec Pacific Natl v. Preferred Financial, et al  
Assigned to: Hon. William Ingram  
Referred to: Magistrate Judge Patricia V. Trumbull  
Demand: \$450,000  
Cause: 28:1332 Diversity-Securities & Exchange  
Commission Act

Date Filed: 06/11/1991  
Date Terminated: 07/18/1994  
Jury Demand: Defendant  
Nature of Suit: 370 Fraud or Truth-In-  
Lending  
Jurisdiction: Diversity

**Plaintiff**

**Security Pacific National Trust  
Company**  
*(New York) a national banking  
association*

represented by **Geraldine A. Freeman**  
Sheppard Mullin Richter & Hampton  
Four Embarcadero Ctr  
17th Flr  
San Francisco, CA 94111  
(415) 434-9100  
Email: gfreeman@sheppardmullin.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Preferred Financial Group, Inc.**  
*a California corporation*

**Defendant**

**Preferred Financial Group**  
*a general partnership*

represented by **James Patrick Nichols**  
Martinez & Parsley  
411 Borel Ave Ste 512  
San Mateo, CA 94402  
(415) 571-5480  
**TERMINATED: 11/18/1991**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Landtech Development**

represented by **James Patrick Nichols**  
(See above for address)  
**TERMINATED: 11/18/1991**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Steven J. Fontaine**

represented by **James Patrick Nichols**  
 (See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**James B. Rogers**

represented by **James Patrick Nichols**  
 (See above for address)  
*TERMINATED: 11/05/1991*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Steven L. Lombardo**

represented by **James Patrick Nichols**  
 (See above for address)  
*TERMINATED: 11/05/1991*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Steven Lombardo**  
 Preferred Financial Group, Inc.  
 2570 El Camino Real  
 Suite 105  
 Mountain View, CA 94040  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Counter-claimant**

**Preferred Financial Group**

represented by **James Patrick Nichols**  
 (See above for address)  
*TERMINATED: 11/18/1991*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Counter-defendant**

**Security Pacific National Trust  
 Company**

represented by **Geraldine A. Freeman**  
 (See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
06/11/1991	1	COMPLAINT (Summons(es) issued) (scottd, COURT STAFF) (Entered: 06/19/1991)
06/11/1991		FILING FEE PAID: on 6/11/91 in the amount of \$ 120.00, receipt # 81866. (scottd, COURT STAFF) (Entered: 06/19/1991)

06/11/1991	2	ORDER by Magistrate Patricia V. Trumbull setting status conference for 2:00 9/10/91 (cc: all counsel) (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	3	EX PARTE APPLICATION by plaintiff Sec Pacific Natl for an order permitting discovery (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	3	MEMORANDUM by plaintiff Sec Pacific Natl in support of application [3-1] for an order permitting discovery (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	3	DECLARATION by D. Ronald Ryland on behalf of plaintiff Sec Pacific Natl re memorandum [3-1], re application [3-1] for an order permitting discovery (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	4	ORDER by Judge James Ware granting declaration [3-1], granting memorandum [3-1], granting application [3-1] (cc: all counsel) () (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	5	RIGHT TO ATTACH by plaintiff Sec Pacific Natl (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	5	ORDER by Judge James Ware granting application [5-1] (cc: all counsel) () for right to attach (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	6	MEMORANDUM by plaintiff Sec Pacific Natl in support of application [5-1] for right to attach. (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	7	BOND for Writ of Attachment in amount of \$ 7500.00 filed by plaintiff Sec Pacific Natl (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	8	MOTION by plaintiff Sec Pacific Natl for temporary protective order and for attachment (scott, COURT STAFF) (Entered: 06/19/1991)
06/12/1991	9	PROTECTIVE ORDER by Judge James Ware : granting motion for temporary protective order. [8-1] (cc: all counsel) (scott, COURT STAFF) (Entered: 06/19/1991)
06/13/1991	10	NOTICE by plaintiff Sec Pacific Natl of taking deposition of Bank of America NT & SA on 6/14/91 at 2pm (scott, COURT STAFF) (Entered: 06/19/1991)
06/17/1991	11	APPLICATION right to attach order, order for issuance of writ of attachment; ex parte by plaintiff Security Pacific National Trust Company (New York) (btf, COURT STAFF) (Entered: 06/20/1991)
06/17/1991	12	ORDER: right to attach order after hearing and order for issuance of writ of attachment by Judge James Ware (cc: all counsel) () (btf, COURT STAFF) (Entered: 06/20/1991)
06/17/1991		WRIT of attachment issued (btf, COURT STAFF) (Entered: 06/20/1991)
06/17/1991	13	TEMPORARY RESTRAINING ORDER by Judge James Ware (cc: all counsel) (btf, COURT STAFF) (Entered: 06/20/1991)
06/17/1991	14	BOND for plaintiff in amount of \$ 7,500.00 filed by plaintiff Security Pacific National Trust Company (New York); Bond No. 30319764 (btf, COURT



		STAFF) (Entered: 06/20/1991)
06/17/1991	15	DECLARATION by D. Ronald Ryland on behalf of plaintiff Security Pacific National in support of ex parte application for right to attach order and temporary protective order [11-1] (btf, COURT STAFF) (Entered: 06/20/1991)
06/17/1991	16	DECLARATION by Mark K. Slater on behalf of plaintiff Security Pacific National Trust Company (New York) in support of application for right to attach order and order for issuance of writ of attachment [11-1] (btf, COURT STAFF) (Entered: 06/20/1991)
06/17/1991	17	MEMORANDUM by plaintiff Security Pacific National in support of application for ex parte writ of attachment and for temporary protective order [11-1] (btf, COURT STAFF) (Entered: 06/20/1991)
06/19/1991	18	AMENDED NOTICE by plaintiff Sec Pacific Natl of taking deposition of Custodian of Records of Bank of America, N.T. & S.A on 6/14/91 at 2:00 p.m. (btf, COURT STAFF) (Entered: 06/26/1991)
06/19/1991	19	APPLICATION for additional writ of attachment by plaintiff Sec Pacific Natl (btf, COURT STAFF) (Entered: 06/26/1991)
06/19/1991	20	ORDER by Judge William A. Ingram for issuance of writ of attachment after hearing ; plaintiff has a right attach property of defendant Steven James Fontaine, James Brent Rogers and Steven Louis Lombardo in the amount of \$313,330.00 (cc: all counsel) () (btf, COURT STAFF) (Entered: 06/26/1991)
06/19/1991	21	DECLARATION by Mark K. Slater on behalf of plaintiff Sec Pacific Natl in support of application for right to attach order [19-1], [20-1] and order for issuance of writ of attachment. (btf, COURT STAFF) (Entered: 06/26/1991)
06/19/1991	22	TEMPORARY PROTECTIVE ORDER by Judge William A. Ingram : (cc: all counsel) (btf, COURT STAFF) (Entered: 06/26/1991)
06/19/1991	23	PROOF OF SERVICE by plaintiff Sec Pacific Natl of documents filed 4/19/91 by telecopy to all interested parties (btf, COURT STAFF) (Entered: 06/26/1991)
06/27/1991	24	NOTICE by plaintiff Security Pacific National Trust Company of taking deposition of William Seminerio and notice to produce documents and things at deposition on 7/10/91 at 10:00 a.m. (btf, COURT STAFF) (Entered: 07/08/1991)
06/27/1991	25	PROOF OF SERVICE by plaintiff Sec Pacific Natl of ntc of depo. of William Seminerio and of Cowles, Sabol & Co. executed 6/27/91. (btf, COURT STAFF) (Entered: 07/08/1991)
06/28/1991	26	NOTICE by plaintiff Sec Pacific Natl of taking deposition of Cowles, Sabol & Co. on 7/12/91 at 10:00 a.m. (btf, COURT STAFF) (Entered: 07/08/1991)
06/28/1991	27	AMENDED NOTICE by plaintiff Security Pacific National Trust Company of taking depositions of Cowles, Sabol & Co. on 7/15/91 at 4:30 p.m. and William Seminerio on 7/10/91 at 10:00 a.m. and notice to produce documents and things at deposition (btf, COURT STAFF) (Entered: 07/08/1991)

06/28/1991	28	PROOF OF SERVICE by plaintiff Security Pacific National Trust Company by personal service to Ronald Fontaine executed 6/20/91. (btf, COURT STAFF) (Entered: 07/08/1991)
06/28/1991	29	PROOF OF SERVICE by plaintiff Security Pacific National Trust Company of (see document) by personal service to James Brent Rogers executed 6/20/91. (btf, COURT STAFF) (Entered: 07/08/1991)
06/28/1991	30	PROOF OF SERVICE by plaintiff Security Pacific National Trust Company of (See Exhibit A) to Mr. Steven James Fontaine executed 6/21/91. (btf, COURT STAFF) (Entered: 07/08/1991)
07/03/1991	31	PROOF OF SERVICE by plaintiff Sec Pacific Natl of summons and complaint and various attachment papers to Landtech Development Corp., and Steven Louis Lombardo (See attached Exhibit "A") executed 7/2/91. (btf, COURT STAFF) (Entered: 07/09/1991)
07/09/1991	32	NOTICE by plaintiff Sec Pacific Natl of taking deposition of Carol Pommier on 7/26/91 at 9:30 a.m., issued summons (btf, COURT STAFF) (Entered: 07/15/1991)
07/09/1991	33	PROOF OF SERVICE by plaintiff Sec Pacific Natl Trust Company of documents by personal service to Carol Pommier executed 6/20/91. (Preferred Financial Corp. Inc.) (btf, COURT STAFF) (Entered: 07/15/1991)
07/09/1991	34	PROOF OF SERVICE by plaintiff Sec Pacific Natl of certain documents by personal service to Carol Pommier by 6/20/91 executed 6/20/91. (Landtech Co.) (btf, COURT STAFF) (Entered: 07/15/1991)
07/09/1991	35	PROOF OF SERVICE by plaintiff Sec Pacific Natl of various documents by personal service to Carol Pommier executed 6/20/91. (Preferred Financial Grp., Inc.) (btf, COURT STAFF) (Entered: 07/15/1991)
07/09/1991	36	PROOF OF SERVICE by plaintiff Sec Pacific Natl of certain documents by personal service to Carol Pommier executed 6/20/91. (Landtech Corp.) (btf, COURT STAFF) (Entered: 07/15/1991)
07/11/1991	37	NOTICE by plaintiff Sec Pacific Natl of taking deposition of James Brent Rogers on 8/12/91 at 9:30 a.m. (btf, COURT STAFF) (Entered: 07/16/1991)
07/11/1991	38	NOTICE by plaintiff Sec Pacific Natl of taking deposition of Steven Louis Lombardo on 8/14/91 at 9:30 a.m. (btf, COURT STAFF) (Entered: 07/16/1991)
07/11/1991	39	NOTICE by plaintiff Sec Pacific Natl of taking deposition of Steven James Fontaine on 8/16/91 at 9:30 a.m. (btf, COURT STAFF) (Entered: 07/16/1991)
07/11/1991	40	STIPULATION between both parties, defendant's time to answer or respond to the complaint is extended to 7/19/91. (btf, COURT STAFF) (Entered: 07/16/1991)
07/12/1991	41	ORDER granting plaintiff expedited discovery of Cowles, Sabol & Co. and William Seminerio by Magistrate Patricia V. Trumbull (See order) (cc: all counsel) (kk, COURT STAFF) (Entered: 07/17/1991)
07/31/1991		RECEIVED Order on exparte application for extension (kk, COURT STAFF)

		(Entered: 08/01/1991)
07/31/1991	45	DECLARATION by James P. Nichols on behalf of defendants in support of ex parte application to extend time. (rg, COURT STAFF) (Entered: 08/15/1991)
07/31/1991	46	APPLICATION by defendants (ex parte) to extend time to respond to complaint to 8/16/91. (rg, COURT STAFF) (Entered: 08/15/1991)
08/01/1991	42	RETURN OF SERVICE executed upon defendant James B Rogers on 6/21/91 re: writ of attachment on deposit accounts and property. Also served on County Recorder San Mateo County on 6/21/91 (kk, COURT STAFF) (Entered: 08/06/1991)
08/01/1991	47	OPPOSITION by Sec Pacific Natl to ex parte application for extension of time. (rg, COURT STAFF) (Entered: 08/15/1991)
08/06/1991	43	RETURN OF SERVICE executed upon defendant Preferred Financial on 6/14/91 re: writ of attachment. Bank of America on 6/21/91; Wells Fargo on 6/21/91 (kk, COURT STAFF) (Entered: 08/06/1991)
08/06/1991	44	PROOF OF SERVICE by plaintiff of opposition to ex parte application for extension of time (kk, COURT STAFF) (Entered: 08/07/1991)
08/13/1991	48	ORDER that defendants have to 9/16/91 to answer complaint. by Judge William A. Ingram ( Date Entered: 8/15/91) (cc: all counsel) (rg, COURT STAFF) (Entered: 08/15/1991)
08/22/1991	49	ANSWER by defendant Preferred Fin. Group to complaint [1-1] (kk, COURT STAFF) (Entered: 08/27/1991)
08/22/1991	50	ANSWER by defendant Steven J Fontaine, defendant James B Rogers, defendant Steven L Lombardo to complaint [1-1] (kk, COURT STAFF) (Entered: 08/27/1991)
08/22/1991	51	ANSWER by defendant Landtech Development to complaint [1-1] (kk, COURT STAFF) (Entered: 08/27/1991)
08/22/1991	52	COUNTERCLAIM by defendant Preferred Fin Group against plaintiff Security Pacific Natl. Trust (kk, COURT STAFF) (Entered: 08/27/1991)
08/22/1991	53	DEMAND for jury trial by defendants (kk, COURT STAFF) (Entered: 08/27/1991)
09/05/1991	54	STATUS CONFERENCE STATEMENT by plaintiff (kk, COURT STAFF) (Entered: 09/10/1991)
09/10/1991	55	MINUTES: ( C/R Jeanne Le Roy ) ; Status conference set 10/25/91 at 2pm ; Motion filing ddl 4/16/92 ; Pretrial conference set 5/26/92 at 2pm ; Jury trial set 6/22/92 at 2pm ; Settlement conf (mag) set 3/11/92 at 10am (kk, COURT STAFF) (Entered: 09/11/1991)
09/11/1991	56	SCHEDULING ORDER by Magistrate Judge Patricia V. Trumbull : Trial 6/22/92 at 2pm;discovery cutoff 3/6/92;pretrial motions before 4/16/92;pretrial 5/26/92 at 2pm before PVT; Settlement conference before PVT 3/11/92 at 10am(cc: all counsel) (kk, COURT STAFF) (Entered: 09/13/1991)

09/12/1991	57	NOTICE by plaintiff of settlement conference procedures (kk, COURT STAFF) (Entered: 09/13/1991)
09/13/1991	58	NOTICE by plaintiff of taking deposition of David Muscara on 9/27/91 at 10am (kk, COURT STAFF) (Entered: 09/19/1991)
09/17/1991	59	NOTICE of entry of scheduling order by plaintiff (kk, COURT STAFF) (Entered: 09/19/1991)
09/17/1991	60	PROOF OF SERVICE by defendant of #58 (kk, COURT STAFF) (Entered: 09/19/1991)
10/01/1991	61	CLERK'S NOTICE ; Settlement conf (mag) (PVT)3/11/92 at 10am (kk, COURT STAFF) (Entered: 10/08/1991)
10/25/1991	62	MINUTES: 0 ; Status conference 1/10/92 at 1:30 by phone (lst, COURT STAFF) (Entered: 11/18/1991)
11/05/1991	63	ATTORNEY SUBSTITUTION: terminating attorney James P. Nichols for Steven L. Lombardo and substituting Steven Lombardo (lst, COURT STAFF) (Entered: 11/18/1991)
11/05/1991	64	ATTORNEY SUBSTITUTION: terminating attorney James P. Nichols for James B Rogers and substituting James B. Rogers in pro per. (lst, COURT STAFF) (Entered: 11/18/1991)
11/18/1991		Text not available. (Entered: 11/25/1991)
11/18/1991	65	ATTORNEY SUBSTITUTION: terminating attorney James P. Nichols for Preferred Fin Group and substituting itself, in Pro Per. (lst, COURT STAFF) (Entered: 11/25/1991)
11/18/1991	66	ATTORNEY SUBSTITUTION: terminating attorney James P. Nichols for Landtech Development as counsel and substituting itself as attorney of record. (lst, COURT STAFF) (Entered: 12/07/1991)
12/17/1991	67	Discharge of attorney for Preferred Financial Group, Inc. in re: James P. Nichols and Haesloop & Kent (kk, COURT STAFF) (Entered: 12/19/1991)
01/13/1992	68	MINUTES: 0 ; Status conference cont. 2/7/92 at 11:30 a.m., for further status telephone (bfv, COURT STAFF) (Entered: 01/21/1992)
01/14/1992	69	NOTICE of telephone status conference by plaintiff Sec Pacific Natl (bfv, COURT STAFF) (Entered: 01/21/1992)
01/29/1992	70	NOTICE of motion to withdraw as attorney of record for defenant Fontaine by defendant Steven J Fontaine; 3/10/92 at 10:00 a.m., before Mag. Judge Trumbull (bfv, COURT STAFF) (Entered: 02/03/1992)
01/29/1992	71	MEMORANDUM by defendant Steven J Fontaine in support of notice [70-1] (bfv, COURT STAFF) (Entered: 02/03/1992)
01/29/1992	72	DECLARATION by Adam C. Kent on behalf of defendant Steven J Fontaine in support of notice [70-1] (bfv, COURT STAFF) (Entered: 02/03/1992)
01/31/1992	73	STATEMENT of nonopposition by plaintiff Sec Pacific Natl (bfv, COURT

		STAFF) (Entered: 02/04/1992)
02/10/1992	74	MINUTES: ( ) ; Status conference continued to 4/3/92 at 11:45 a.m., Vacated all dates including settlement. (bfv, COURT STAFF) (Entered: 02/11/1992)
03/11/1992	75	MINUTES: ( C/R ERO: J. Le Roy) defendant's motion to withdraw is granted; Order to be prepared by Court. (bfv, COURT STAFF) (Entered: 03/12/1992)
03/12/1992	76	ORDER by Mag. Judge Patricia V. Trumbull Adam Kent's and James Nichols' motions to withdraw as counsel is granted ( Date Entered: 3/16/92) (cc: all counsel) (bfv, COURT STAFF) (Entered: 03/16/1992)
04/03/1992	77	MINUTES: ( C/R none) ; Status conference to be rescheduled (kk, COURT STAFF) (Entered: 04/09/1992)
06/02/1992	78	MINUTES: ( )before Magistrate Judge Trumbull ; Status conference continued to 9/22/92 at 3:45 p (cgb, COURT STAFF) (Entered: 06/04/1992)
09/28/1992	79	MINUTES: ( C/R No. ERO/CR) ;Status conference set for 3:30 1/26/93 ; Status conference continued to 1/26/93 (cgb, COURT STAFF) (Entered: 10/02/1992)
09/29/1992	80	CLERK'S NOTICE ;Status conference set for 3:30 1/25/93 before Magistrate Judge Trumbull (cgb, COURT STAFF) (Entered: 10/06/1992)
11/18/1992	81	ORDER by Mag. Judge Patricia V. Trumbull granting plaintiff's expedited discovery of Cowles, Sabol & Co. and William Seminerio ( Date Entered: 12/2/92) (cc: all counsel) (cgb, COURT STAFF) (Entered: 12/02/1992)
02/02/1993	82	CLERK'S NOTICE Status conference continued to 2:00 on 4/27/93 ; (dhm, COURT STAFF) (Entered: 02/03/1993)
02/03/1993	83	PROOF OF SERVICE by counter-defendant, plaintiff of request for special notice and for plan and disclosure statement (dhm, COURT STAFF) (Entered: 02/10/1993)
02/08/1993	84	MAIL [82-2] addressed to Adam Clay Kent returned from Post Office (dhm, COURT STAFF) (Entered: 02/10/1993)
02/08/1993	85	NOTICE by plaintiff Sec Pacific Natl of continued status conference (dhm, COURT STAFF) (Entered: 02/10/1993)
02/23/1993	86	PROOF OF SERVICE by plaintiff Sec Pacific Natl of notice of continued status conference (dhm, COURT STAFF) (Entered: 03/01/1993)
04/16/1993	87	STATUS CONFERENCE STATEMENT by plaintiff Sec Pacific Natl (dhm, COURT STAFF) (Entered: 04/19/1993)
04/27/1993	88	MINUTES: ( Tape #063-93) Status conference held and continued for 1:45 10/5/93 ; (dhm, COURT STAFF) (Entered: 04/28/1993)
10/05/1993	89	MINUTES: status hearing held (dhm, COURT STAFF) (Entered: 10/13/1993)
10/06/1993	90	MINUTES: ( C/R unrecorded) (dhm, COURT STAFF) (Entered: 10/13/1993)
06/07/1994	91	ORDER by Judge William A. Ingram The Writ of Attachment Bonds shall be exonerated upon their expiration on June 14, 1994 ( Date Entered: 06/09/94)

		(cc: all counsel) [5:91-cv-20344] (dhm, COURT STAFF) (Entered: 06/09/1994)
07/18/1994	92	ORDER by Judge William A. Ingram for statistical closing. terminating case ( Date Entered: 07/20/94) (cc: all counsel) [5:91-cv-20344] (dhm, COURT STAFF) (Entered: 07/20/1994)
08/01/1994	93	ORDER by Judge William A. Ingram Case # C91-20344 WAI and C94-20446 SW ARE NOT RELATED ( Date Entered: 08/02/94) (cc: all counsel) [5:91-cv-20344] (dhm, COURT STAFF) (Entered: 08/02/1994)
11/28/1994	94	STIPULATION and ORDER by Judge William A. Ingram : dismissal with prejudice of entire matter (cc: all counsel) [5:91-cv-20344] (dhm, COURT STAFF) (Entered: 12/15/1994)

PACER Service Center			
Transaction Receipt			
04/03/2013 10:03:11			
PACER Login:	jn0042	Client Code:	
Description:	Docket Report	Search Criteria:	5:91-cv-20344-WAI
Billable Pages:	6	Cost:	0.60

Not Reported in F.Supp., 1994 WL 715652 (N.D.Cal.)

Motions, Pleadings and Filings

Judges and Attorneys

Only the Westlaw citation is currently available.

United States District Court, N.D. California.  
**James B. ROGERS** and Steven L. Lombardo, Plaintiffs,  
 v.  
 FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.

Civ. No. 94-20446 SW.  
 Dec. 15, 1994.

ORDER DENYING PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT; GRANTING THE FEDERAL DEFENDANTS' CROSS-MOTION TO DISMISS; REQUIRING PLAINTIFFS TO SHOW CAUSE WHY THEIR CLAIMS AGAINST FIDELITY & DEPOSIT COMPANY SHOULD NOT BE DISMISSED; STRIKING PLAINTIFFS' MOTION TO BIFURCATE ISSUES OF LIABILITY AND DAMAGES

SPENCER WILLIAMS, District Judge.

\*1 Plaintiffs **James B. Rogers** and Steven L. Lombardo, proceeding *pro se*, filed this complaint against the Federal Bureau of Investigation, the Internal Revenue Service, various employees of these agencies (collectively referred to as "the Federal Defendants") and several financial institutions, alleging causes of action under the Civil Rights Act, 42 U.S.C. § 1983, the Racketeer Influenced and Corrupt Organizations Act, ("RICO"), 18 U.S.C. §§ 1961, et seq., and the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq. Before the Court are Plaintiffs' Application for a default judgment against the Federal Defendants and Fidelity & Deposit Company, the Federal Defendants' cross-motion to dismiss and Plaintiffs' motion to bifurcate issues of liability and damages. For the reasons expressed below, Plaintiffs' application for a default judgment is DENIED; the Federal Defendants' motion to dismiss is GRANTED; and Plaintiffs' motion to bifurcate issues of liability and damages is STRICKEN.

**BACKGROUND**

The following background information is taken from Plaintiffs' complaint as well as other documents in the file and documents in a related case, *Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc., et al.*, Civil No. 91-20344 WAI. Plaintiffs, along with a third person, Steve Fontaine, operate Preferred Financial Group, Inc. They also operate a partnership under the same name. Both organizations purport to provide securities brokerage services and cater to European clients. In 1991, Preferred entered into a "Clearing Custody and Financing Agreement" with Security Pacific National Trust Company (SPNTC), under which SPNTC agreed to act as clearing agent for Preferred. Specifically, SPNTC agreed to purchase securities for Preferred's account and to sell such securities to Preferred's customers, at Preferred's direction, and to extend credit to Preferred.

Several weeks after executing the agreement, SPNTC, acting on instructions from Preferred, purchased bonds from Jefferies & Co. and delivered them to National Financial Services (NFS). Based on these transactions, SPNTC loaned Preferred \$4.3 million and paid it \$253,338 of the profit it expected Preferred would earn when the trade was finalized. The next trading day, NFS returned the bonds contending that it had no instructions from any client to accept and pay for the bonds. After SPNTC telephoned Preferred about the returned bonds, Preferred instructed SPNTC to redeliver them. The next day, Preferred instructed SPNTC to deliver additional bonds to NFS for the account of Cowles, Sabol & Co. Within a few days of each transaction, Cowles cancelled the trades and returned the bonds to SPNTC. It is unclear why Cowles cancelled the transaction. However, the documents in the file suggest that Preferred was also a customer of Cowles and was buying the bonds. If that is the case, Preferred was both the buyer and seller of the securities.

Subsequently, SPNTC brought an action against Preferred, Fontaine, Rogers and Lombardo,

alleging that their scheme violated section 10b of the Securities and Exchange Act of 1934 and that they were liable for fraud and breach of contract. *Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc., et al.*, Civil No. 91-20344 WAI. While that action was pending, Fontaine disappeared, Rogers and Lombardo filed for protection under Chapter 7 of the Bankruptcy Code and the FBI began a criminal investigation. Given the stay imposed by the bankruptcy proceeding, Judge Ingram statistically closed that case on July 18, 1994.

\*2 Plaintiffs filed this action on June 29, 1994, alleging, among other things, that the FBI and IRS have violated their civil rights during the course of the criminal investigation. Specifically, Plaintiffs claim that the FBI and IRS agents unlawfully searched and seized their business records, are questioning others about the Plaintiffs and their business activities and are engaging in intimidating investigative activities without there being a criminal charge or indictment. According to Plaintiffs, government agents involved in the investigation have been harassing and stalking Plaintiffs' friends and associates and slandering Plaintiffs. Plaintiffs further allege that the defendant financial institutions breached contracts Plaintiffs entered with them.

#### DISCUSSION

##### I. PLAINTIFFS' APPLICATION FOR A DEFAULT JUDGMENT AGAINST THE FEDERAL DEFENDANTS

Plaintiffs' application for a default judgment is based on their claim that Defendants have not made an appearance. In response, the Federal Defendants argue that the Court should dismiss Plaintiffs' claims against them for lack of subject matter and personal jurisdiction, insufficiency of process and insufficiency of service of process.

Plaintiffs' claims under the Federal Tort Claims Act ("FTCA") must be dismissed because the proper defendant is not named in the complaint. The proper defendant for a claim under the FTCA is the United States. 28 U.S.C. § 2679. Rather than bringing their claims against the United States, Plaintiffs' claims are against federal agencies. However, naming federal agencies is not sufficient to establish subject matter jurisdiction over Plaintiffs' FTCA claim. See *Galvin v. Occupational Safety & Health Admin.*, 860 F.2d 181, 183 (5th Cir.1988) (United States, rather than Occupational Safety and Health Administration, is proper party for FTCA claim); *Valluzzi v. United States Postal Service*, 775 F.Supp. 1124, 1125 (N.D.Ill.1991) (United States, not United States Postal Service, is proper party for FTCA claim).

Plaintiffs' constitutional claims must also be dismissed. A damage action lies against federal officers in their individual capacities for violations of a plaintiff's constitutional rights. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). However, *Bivens*-type actions may not be brought against federal agencies. *FDIC v. Meyer*, 114 S.Ct. 996, 1005, 127 L.Ed.2d 308 (1994). Thus, the Court lacks subject matter jurisdiction over Plaintiffs' constitutional claims against the FBI and IRS.

The individual Federal Defendants argue that they have not been properly served. After reviewing the record, the Court concludes that they are correct.

When service of process is challenged, the party on whose behalf service was made has the burden to establish its validity. *Aetna Business Credit, Inc. v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th Cir.1981). To bring an action against a federal official in his or her individual capacity, the plaintiff must satisfy the normal rules for establishing personal jurisdiction. *Gilbert v. DaGrossa*, 756 F.2d 1455, 1459 (9th Cir.1985). Thus, service must be made in accordance with Rule 4 of the Federal Rules of Civil Procedure. *Hutchinson v. United States*, 677 F.2d 1322, 1328 (9th Cir.1982). In particular, the officer must be personally served in accordance with Rule 4(e)(1) or 4(e)(2). The plaintiff must also comply with Rule 4(l), which requires that a copy of the summons and complaint be (1) served on the United States attorney for the district in which the action is brought and (2) sent by certified mail to the Attorney General of the United States in Washington, D.C. *Ecclesiastical Order of the Ism of Am, Inc. v. Chasin*, 845 F.2d 113, 116 (6th Cir.1988).

\*3 The Federal Defendants do not dispute that Plaintiffs satisfied Rule 4(e). However, they contend that Plaintiffs failed to comply with Rule 4(l). Nothing in the record demonstrates that Plaintiffs satisfied Rule 4(l). Therefore, their claims against the individual Federal Defendants must be



dismissed.<sup>FN1</sup>

## II. PLAINTIFFS' APPLICATION FOR A DEFAULT JUDGMENT AGAINST FIDELITY & DEPOSIT COMPANY

Plaintiffs have also requested that the Court enter a default judgment against Fidelity & Deposit Company. Fidelity & Deposit Company filed no opposition to Plaintiffs' application.

Since there is no evidence in the record that Plaintiffs perfected service on Fidelity & Deposit Company, Plaintiffs are not entitled to a default judgment against that defendant. In fact, Plaintiffs' failure to serve Fidelity & Deposit Company within 120 days of filing the complaint subjects their claims against that defendant to dismissal under Rule 4(m) of the Federal Rules of Civil Procedure. Thus, Plaintiffs will be ordered to show cause why their claims against Fidelity & Deposit Company should not be dismissed.

## III. PLAINTIFFS' MOTION TO BIFURCATE ISSUES OF LIABILITY AND DAMAGES

Plaintiff also filed a motion to bifurcate issues of liability and damages. However, the motion was not noticed for a hearing date in accordance with Local Rule 220-2. Furthermore, there is no certificate of service, *see* Rule 5(d), or other indication that Plaintiffs served the motion on the remaining parties. Therefore, the motion is STRICKEN.

### CONCLUSION

In light of the foregoing, the Court ORDERS as follows:

1. Plaintiffs' *Bivens* and FTCA claims against the FBI and IRS are DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction.
2. Plaintiffs' *Bivens* claims against Special Agent Lee Stark, Special Agent Richard W. Held, Supervisory Special Agent William E. Smith, Special Agent Kevin S. Williamson and Special Agent Jeff Novitsky are DISMISSED WITHOUT PREJUDICE for lack of personal jurisdiction. Should Plaintiffs wish to pursue their claims against these defendants, they must perfect service in accordance with Rules 4(e) and 4(l) of the Federal Rules of Civil Procedure by January 27, 1994.
3. Plaintiffs' application for a default judgment against the Federal Defendants and Fidelity & Deposit Company is DENIED.
4. Plaintiffs shall, by December 30, 1994, show cause why their claims against Fidelity & Deposit Company should not be dismissed under Rule 4(m).
5. Plaintiffs' motion to bifurcate issues of liability and damages is STRICKEN.

IT IS SO ORDERED.

<sup>FN1</sup>. The Federal Defendants suggest that Plaintiffs are pursuing claims against United States Attorney Michael J. Yamaguchi and Assistant United States Attorney Leo Cunningham. However, neither of these individuals is listed in the caption of the complaint and nothing in the record suggests that they have been served with a summons and a copy of the complaint.

N.D. Cal., 1994.  
Rogers v. F.B.I.  
Not Reported in F.Supp., 1994 WL 715652 (N.D. Cal.)

Motions, Pleadings and Filings ([Back to top](#))

• [5:94cv20446](#) (Docket) (Jun. 29, 1994)

Judges and Attorneys ([Back to top](#))

[Judges](#)

Judges

• **Williams, Hon. Spencer M.**

United States District Court, Northern California  
San Jose, California 95113

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Profiler](#)

END OF DOCUMENT

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5-1-13

City of Tracy  
City Council  
333 Civic Center Plaza.  
Tracy Ca. 95376

**Re: Inquiries regarding James Rogers, past and current corporations.**

Dear Council,

This letter is to supply additional information requested by staff in connection to 7 corporations I have been identified with.

I have attached article of Incorporation in regards to the Spirit of California Entertainment Group Inc., Tracy's California Blast Inc. and Lexington Consulting Inc.

The other 4 corporations noted in Andrew Malik's letter are to old and the information is no longer accessible from the Secretary of State.

If these explanations are in any way insufficient in answering the status of the corporations pursuant to your inquiries, please advise me of any other pertinent questions you may have concerning the entities.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

**ARTICLES OF INCORPORATION  
OF  
Spirit of California Entertainment Group Inc.**

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**SEP 27 2012**

**Article I**

The name of this corporation is Spirit of California Entertainment Group Inc.

**Article II**

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**Article III**

The name and address of this corporation's initial agent for service of process in the State of California is:

James B. Rogers  
180 La Montagne Ct  
Los Gatos, CA 95032

**Article IV**


The corporation is authorized to issue only one class of shares of stock; and the total number of shares of stock which this corporation is authorized to issue is 300,000,000.

**Article V**

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

The Corporation is authorized to indemnify the "Agents" (as defined in Section 317 of the California Corporations Code) of the Corporation to the fullest extent permissible under California law.

Any repeal or amendment of this Article shall not adversely affect any right of or protection afforded any agent of the Corporation in effect at the time of the repeal or amendment.

  
\_\_\_\_\_  
Meghan Record, Incorporator



I hereby certify that the foregoing transcript of 1 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

SEP 28 2012<sup>H</sup>

Date: \_\_\_\_\_

*Debra Bowen*  
DEBRA BOWEN, Secretary of State



# State of California Secretary of State

S

## Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

**IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

**1. CORPORATE NAME**

Spirit of California Entertainment Group Inc.

**2. CALIFORNIA CORPORATE NUMBER**

3507729

This Space for Filing Use Only

**No Change Statement** (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3 If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 17

**Complete Addresses for the Following** (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4	STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
	180 La Montagne Ct	Los Gatos	CA	95032
5	STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
			CA	
6	MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4	CITY	STATE	ZIP CODE

**Names and Complete Addresses of the Following Officers** (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7	CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
	James B. Rogers	180 La Montagne Ct.	Los Gatos	CA	95032
8	SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
	James B. Rogers	180 La Montagne Ct.	Los Gatos	Ca	95032
9	CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE

**Names and Complete Addresses of All Directors, including Directors Who are Also Officers** (The corporation must have at least one director. Attach additional pages, if necessary.)

10	NAME	ADDRESS	CITY	STATE	ZIP CODE
	James B. Rogers	180 La Montagne Ct.	Los Gatos	CA	95032
11	NAME	ADDRESS	CITY	STATE	ZIP CODE
12	NAME	ADDRESS	CITY	STATE	ZIP CODE

13 NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY

**Agent for Service of Process** If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.

14 NAME OF AGENT FOR SERVICE OF PROCESS

James B. Rogers

15	STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
	180 La Montagne Ct		CA	95032

**Type of Business**

16 DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION  
Investments and Developments

17 BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT

5-10-13

James B. Rogers

CEO

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

APPROVED BY SECRETARY OF STATE

2949574

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

AUG 02 2007

ARTICLES OF INCORPORATION OF  
LEXINGTON CONSULTING, INC.

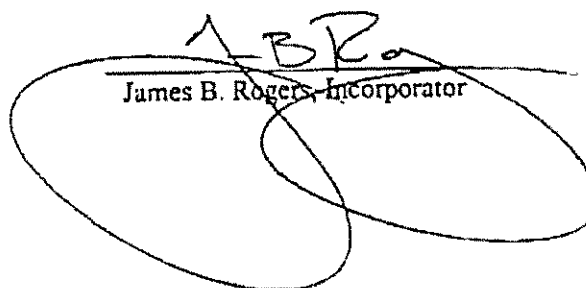
Article One: The name of the corporation is LEXINGTON CONSULTING, INC.

Article Two: The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporation Code.

Article Three: The name and address in the State of California of this Corporation's initial agent for service of process is James P. Nichols, 411 Borel Avenue, Suite 500, San Mateo, CA 94402.

Article Four: This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is Ten Thousand (10,000) Shares.

Dated: 8-2-07

  
James B. Rogers, Incorporator



State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 07:06 PM 07/08/2011  
FILED 07:06 PM 07/08/2011  
SRV 110805895 - 5008363 FILE

**Certificate of Incorporation**  
of  
**Tracy's California Blast Inc.**  
A Delaware Stock Corporation

- First:** The name of the Corporation is Tracy's California Blast Inc.
- Second:** The name and address information of the Registered Agent and Registered Office of the Corporation in the State of Delaware is:
- National Registered Agents, Inc.  
160 Greentree Drive Suite 101  
Dover, DE 19904  
in the county of Kent
- Third:** The purpose of the Corporation is a Real Estate and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
- Fourth:** The total number of shares of stock which the Corporation shall have authority to issue is 100,000,000 shares of common stock with \$.0001 par value per share.
- Fifth:** The name and mailing address of the incorporator of the Corporation are as follows:
- Meghan Record - 23586 Calabasas Rd Suite 102, Calabasas, CA 91302
- Sixth:** The name(s) and mailing address(es) of the person(s) who are to serve as director(s) until the first annual meeting of stockholders or until their successors are elected and qualify are as follows:
- James Rogers - 180 La Montagne Ct, Los Gatos, CA 95032

**I, The Undersigned,** for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 8<sup>th</sup> day of July, A.D. 2011.

  
\_\_\_\_\_  
Meghan Record, Incorporator





5-1-13

City of Tracy  
City Council  
333 Civic Center Plaza.  
Tracy Ca. 95376

**Re: Lexington Consulting Inc., Bennett case**

Dear Council

I have instructed my attorney to write a letter about the pending Bennet lawsuit.

My attorney, Mr. James P. Nichols explained to me that the case file was very large and would be very difficult for even an attorney unfamiliar with the case to follow.

He did summarize the lawsuit as it pertains to me in the attached letter.

If this explanation is in any way insufficient in answering your inquiry, please advise me of your questions.

Sincerely,

James B. Rogers  
President and CEO  
Spirit of California Entertainment Group, Inc.  
[jrogers@spiritofcalifornia.com](mailto:jrogers@spiritofcalifornia.com)  
408-335-9564

*James P. Nichols*  
*Attorney at Law*  
411 Borel Avenue, Suite 500  
San Mateo, Ca. 94402-3520  
Phone (650) 345-0600  
Fax (650) 345-9875

April 23, 2013

Andrew Malik  
Development Services Director  
City of Tracy  
333 Civic Center Plaza  
Tracy Ca. 95376

Re: Gary Bennett v. James Rogers et al  
Santa Clara County Case No. 110CV171320

Dear Mr. Malik,

This letter is written on behalf of James B. Rogers in connection with information regarding the above case.

Mr. Rogers was constructing a large luxury home located at 19660 Santa Cruz Highway in Los Gatos, California. In connection with the construction of the property, Mr. Bennett was a lender for the property, and provided a loan on the property secured by a deed of trust. He was also secured by an adjoining property at 19670 Santa Cruz Highway. Mr. Bennett's deed of trust was in the fourth position, meaning that there were three loans already on the property recorded ahead of his and had priority.

His loan was made in August 2007.

In April 2008, Mr. Rogers negotiated with the lender on the second deed of trust, LHJS Investments to provide an additional advance on the construction loan. However, it would be necessary for Mr. Bennett to consent to removing his note from the 19670 Santa Cruz Property, so that the LHJS Investments advance protected its priority for the loan advance.

Apparently, the title company handling the transaction prepared a substitution of trustee and reconveyance of the note and deed of trust on both properties. Mr. Bennett subsequently learned to this situation in connection with the legal proceedings involving Lexington Consulting, Inc., Mr. Rogers corporation.

Mr. Bennett then contacted LHJS Investments, holder of the second deed of trust. He claims that they told him that there would be no problem since they had no intention of foreclosing on the property, and that once the property was completed that all of the lenders, including himself, would be paid in full.

Mr. Rogers even agreed to provide a new deed of trust to place Mr. Bennett back on title to the property in his previous position as a fourth deed of trust.

Satisfied of the representation made by LHJS Investments, Mr. Bennett took no further legal action, nor did he follow up on the offer to reinstate the deed of trust on the property.

In March 2010, LHJS Investments, without any notice to Mr. Bennett, foreclosed on the property.

Mr. Bennett brought this action, seeking to have his deed of trust reinstated, and also claiming that LHJS Investment and Mr. Rogers conspired to eliminate Mr. Bennett interest in the property.

Since LHJS Investments loan was senior to Mr. Bennett's in the event of their foreclosure, it would eliminate the security of Mr. Bennett as a junior lien holder. However, LHJS Investments offered to simply sell the property at their cost to Mr. Bennett, but he declined the offer.

This matter is still pending in Santa Clara County. Mr. Bennett has settled all of this claims against LHJS Investment for an amount of \$ 5,000. The matter is still pending against Mr. Rogers, although Mr. Rogers had absolutely no control over the foreclosure actions of LHJS Investments, and receive no benefit from their actions.

There is also a cross complaint pending against Mr. Rogers by LHJS Investments regarding its cost incurred in defense of Mr. Bennett's actions.

However, from a liability standpoint, Mr. Bennett's claims of taking no action on his deed of trust once he had been removed from title, but instead simply relied on the senior lender not to foreclose are questionable as best, and his loss, if any, would be attributed to his own lack of action after his alleged discovery.

The matter is not set for trial, and the next activity is a Case Management Conference in this matter on June 25, 2013.

Please let me know if any further information is requested or required.

Sincerely yours,

**James P. Nichols**  
Digitally signed by James P. Nichols  
DN: cn=James P. Nichols, o=Attorney at Law,  
email=jnicholslaw@aol.com, c=US  
Date: 2013.04.23 10:10:13 -07'00'

James P. Nichols

JPN/jp



City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

DEVELOPMENT SERVICES  
DEPARTMENT

MAIN 209.831.6400  
FAX 209.831.6439  
www.ci.tracy.ca.us

February 7, 2013

Mr. James B. Rogers  
180 La Montagne  
Los Gatos, California 95032

Re: Spirit of California, Inc.

Dear Mr. Rogers:

As staff was preparing a draft Reimbursement and Cost Recovery Agreement ("Agreement") for this project, it came to our attention that you may be or may have been associated with a number of companies, lawsuits, bankruptcy proceeding, and judgment liens.

Therefore, in order for staff to complete the due diligence needed to recommend the Agreement to the City Council, please provide the following in writing no later than Thursday, February 21, 2013. All responses should be of sufficient detail to allow staff to independently verify the information.

For each corporation listed below, please provide: (1) the status of the corporation; (2) the officers of the corporation; (3) the purpose of the corporation; and (4) your involvement in the corporation:

- Spirit of California Entertainment Group, Inc.
- California Blast Solar, LLC
- Lexington Consulting, Inc.
- Chase Builders, Inc, San Jose
- Stone Valley Property, Inc.
- West Hills Investment, Inc.
- Preferred Financial Group, Inc.

For each of the following matters, please provide: (1) a more detailed description of the matter; (2) the status of the matter; and (3) your involvement in the matter.

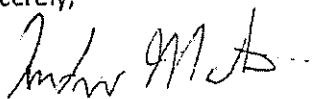
- Judgment lien 5/12/2009  
\$78,721 owed to Richard Strock as Trustee

- State tax lien 3/9/2010  
\$23,295 owed to State of California
- Judgment Lien 1/6/2009  
\$8,920 owed to Cianciarolo Construction
- Judgment Lien 9/15/2008  
\$1,090 owed to Matt Edwards
- Judgment Lien 10/30/2008  
\$58,890 owed to Lydia Tai
- Judgment Lien 2/15/2008  
owed to Brutlag Trust, San Mateo
- Federal Tax Lien 2/26/07  
\$6,955 owed to IRS
- State Tax Lien 7/18/2011  
\$11,902 owed to State of California
- Judgment Lien 10/26/2009  
owed to Hayden Sarji, San Jose
- Judgment Lien 3/2/09  
\$22,581 owed to Art Correa
- Lawsuit 3/6/07  
James B. Rogers and Lexington Builders  
\$2,285 Plaintiff: Northern California Collection Service, Inc. of Sacramento
- Lawsuit 6/15/04  
James B. Rogers and E&F Financial Services, San Mateo  
\$258,945 Plaintiff: Jude Barnes, J. Barnes Construction
- Lawsuit (*Bennett v. Superior Court* (Dec. 1, 2011, HO36470))
- Lawsuit (*Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc.*) (United States District Court Case No. 91-20344 WAI)
- Lawsuit (*James B. Rogers, et al. v. Federal Bureau of Investigation* (United States District Court Case No. 94-20446 SW))

- Bankruptcy filing 4/26/12  
Lexington Consulting, Inc., Santa Clara.  
James Rogers, Debtor

Finally, please provide information on any other lawsuits or bankruptcy proceedings you may have been involved in within the last five years.

Sincerely,



Andrew Malik  
Development Services Director

cc: Mayor and City Council  
R. Leon Churchill, City Manager  
Maria Hurtado, Assistant City Manager  
Dan Sodergren, City Attorney  
Rod Buchanan, Public Works Director



## Check-In Meeting #1 (Spirit of CA & City of Tracy Representatives)

**Date:** March 26, 2013  
**Time:** 1:00 p.m. to 2:30 p.m.  
**Location:** City Hall  
 Conference Room #216

**Meeting called By:** Maria A. Hurtado, City of Tracy      **Type of meeting:** Check-In Meeting

**Attendees:** James Rogers, Spirit of California, Bob Corsaro  
 Maria A. Hurtado, City of Tracy, Rod Buchanan, City of Tracy

### Discussion / Action Items

The following are Discussion and/or Action Items resulting from the Check-In Meeting between the Spirit of California and the City of Tracy representatives.

Discussion and/or Action items	Lead Person	Comments
<p>1. Maria H. reviewed the letter from the City of Tracy to James Rogers dated March 25, 2013, which provided the list of the final check-in meetings and memorialized the Council's direction relative to the additional information requested.</p> <p><b>Action:</b> Attendees agreed that the focus of the upcoming check-in meetings is to collect information requested by the Council. Attendees also agreed that discussion/action items discussed during the meetings would be tracked and provided to attendees and Council, in order to keep Council abreast of meeting topics.</p>	Maria H.	
<p>2. Maria H. reviewed the financial information required, which was outlined in the 1<sup>st</sup> amendment to the Tracy Blast ENRA and reiterated in the March 26, 2013 letter.</p> <p><b>Action:</b> Jim R. stated he would not directly provide the City with personal financial information but rather would send the information directly to the NDC consultant due to privacy concerns.</p>		
<p>3. Jim R. requested feedback on the format to submit the information in order to adequately meet the City's request. Staff reiterated that the documentation with regard to the 7 Corporations listed on the Feb. 7<sup>th</sup> letter should include (1) the status of the corporation, (2) the officers of the corporation, (3) the purpose of the corporation, &amp; (4) Jim Rogers involvement in the corporation. With regard to documentation related to the 16 matters related to judgment liens, lawsuits, and bankruptcy filings legal settlement records or final court documents should be included. Staff offered to work with him on his initial submittal to ensure it followed a clear responsive format.</p> <p><b>Action:</b> Jim R. stated he would submit an initial draft of the information he is collecting for staff's review.</p>	Jim R.	Jim submitted a hard copy of a letter from Richard Strock, from SR & F dated March 25, 2013 and stated he would email an e-copy as part of his informational submittal related to a pending judgment lien.

Discussion and/or Action items	Lead Person	Comments
<p>4. Jim R. reviewed and explained several of the judgment liens and lawsuits. He also stated he had several investors ready to commit, including the commitment of 10 local investors of which each had invested \$5,000 to \$10,000 each.</p> <p><b>Action:</b> Jim R. stated he would work directly with his lawyer to compile legal documents and submit them to the City via email (and in some cases hard copies) as they become available, rather than waiting until the bi-monthly meetings to allow for quicker review of information.</p>	Jim R.	Jim requested that any questions on legal documents he submits should go through him, rather than through his attorney in order to adequately monitor his attorney's fees.
<p>5. Jim R. informed the City he plans to coordinate a Concert to raise money for the youth sports leagues at Legacy Fields. Although he has spoken to only 1 league representative, Jim stated his goal is to raise over \$400,000, \$100,000 per League so they can apply the funds towards their project and minimally build 1 field each. Jim inquired about the City's special events permitting process. Jim R. stated 2 promoters (Live Nation and Insomniac) are on board for the weekend of Sept. 27<sup>th</sup> &amp; 28<sup>th</sup>, 2013, and need 12 acres for the concert. This concern could be an overnight event, bringing over 45,000 people into Tracy over the 2-day weekend. Vendors, including food and alcohol sales, as well as 20 booths for non-profits affiliated with United Way would be available.</p> <p><b>Action:</b> Staff recommended Jim R. determine who (Promoter, Spirit of CA, or Leagues) would be the Special Event Applicant and have that entity submit an application. The application submission would start the process and the right City representatives (i.e. PD, Public Works, etc.) to the table to discuss additional questions about the event.</p>	Jim R.	
<p>6. Jim R. inquired about the status of the CST ENRA and asked what the proper procedure to submit his co-generation and water purification proposal to the City. Staff explained that the City could not discuss any similar projects on the Holly Sugar site, particularly because the City is in an ENRA with CST. Jim stated the location was not yet determined and he did not want to wait until the City finished discussions with CST, staff informed him his option could be to submit an application through Development Services, if he so chose, but the project site would be required to meet the terms of both ENRA's (SOC &amp; CST). Staff suggested he may want to wait until the Council received a report back in May re: the information they've requested on the Spirit of California project before submitting another project idea. Jim R. stated he preferred to move forward with the submittal of his project idea now and asked that staff inform him about CST ENRA status and when it was going to Council.</p> <p><b>Action:</b> City staff agreed to review CST's ENRA and inform Jim R. when this item would be scheduled for an upcoming Council agenda. When Jim expressed his concerns relative to the timeliness of this action, staff suggested that alternatively, he could submit a permit application directly to Development Services if he was on a timeline.</p>	Jim R.	



Discussion and/or Action items	Lead Person	Comments
<p>7. Jim R. provided Maria H. with a copy of a letter to City Council from him and requested that she review it and provide him with any comments.</p> <p><b><u>Action:</u></b> Maria H. agreed to review the letter and get back to him within a day.</p>	Jim R.	
<p>8. Jim R. provided a flyer regarding a luncheon meeting with Peter Alexander, consultant for the feasibility studies and design for the Amusement Park, Gaming Casino and Hotel. Jim R. listed the Mayor, Council and City Manager’s Office staff as invitees on the flyer and asked for feedback. Maria H. informed him, given the recent sensitivities re: communication with the public, he may want to invite the Council but not list them as Invitees on the flyer.</p> <p><b><u>Action:</u></b> Jim R. will modify flyer, eliminate the listed attendees, and re-send directly to Council via the web Council email address.</p>	Jim R.	



## Check-In Meeting #2 (Spirit of CA & City of Tracy Representatives)

**Date:** April 9, 2013  
**Time:** 1:00 p.m. to 3:00 p.m.  
**Location:** City Hall  
 Conference Room #216

**Meeting called By:** Maria A. Hurtado, City of Tracy      **Type of meeting:** Check-In Meeting

**Attendees:** James Rogers, Spirit of California, Bob Corsaro  
 Maria A. Hurtado, City of Tracy, Andrew Malik, City of Tracy

### *Discussion / Action Items*

The following are Discussion and/or Action Items resulting from the Check-In Meeting between the Spirit of California and the City of Tracy representatives.

Discussion and/or Action items	Lead	Comments
<p>1. In order to provide further clarity on the purpose of the Check-In Meetings, Maria H. reviewed the role of staff, Mr. Rogers and Council in preparation for taking the Information Council requested to Council on May 21<sup>st</sup>. Mr. Rogers role is to be as responsive as he can to Council's request for information, staff's role is to review information submitted by Mr. Rogers, make suggestions on what additional information may be helpful to Council to better understand his responses (i.e. Official documentation that can be independently verified to support statements of facts as represented by Mr. Rogers in letters to Council). Council's role is to discuss the information they receive, determine whether it sufficiently explains their questions or concerns, and determine next steps.</p> <p><b><u>Action:</u></b> No action needed. Agreement on roles between all parties.</p>	<p>Maria H</p>	<p><b><u>Note:</u></b> This clarification assisted with concerns Mr. Rogers raised about the need to have Council, not staff, determine whether or not information submitted by Mr. Rogers is sufficient and whether or not to "Cease" or "Continue" negotiations with Mr. Rogers.</p>

<p>2. Mr. Rogers re-iterated that all the information he submits to staff in-between check-in meetings be forwarded to Council within 48 hours rather than waiting for 2 months for the May 21<sup>st</sup> Council meeting. Maria H. re-iterated that Council typically does not receive information "Piece meal" but would accommodate his request.</p> <p>Mr. Rogers request is based on his concern that Council has not, in the past, received an accurate representation on his responsiveness to staff and prefers Council receives redundant information if it means they understand that he is being responsive &amp; prompt with his submittal of information.</p> <p><b>Action:</b> Maria H. will forward any information received by Mr. Rogers to Council, as well as, retain copies for the Council packet on May 21<sup>st</sup>.</p>	<p>Mr. Rogers</p>	
<p>3. Mr. Rogers stated he does not want the information he submits to Council or staff to be included as attachments to the Staff Report. Maria H. informed Mr. Rogers that the information submitted to date via email is public information and can be provided to the public if requested. Mr. Rogers understood that, but still prefers that Council discuss the attachments in close session and that staff not include any attachments to the staff report. Maria H. informed Mr. Rogers that these are public meetings and all information needs to be disclosed to the public, along with the staff report and would be difficult for council to review and discuss the information if the specific information is not attached to the staff report. Mr. Rogers requests stands.</p>	<p>Mr. Rogers</p>	
<p>4. Maria H. reviewed the information submitted by Mr. Rogers related to the Corporations, judgment Liens, lawsuits and bankruptcy.</p> <p><b>Corporations:</b> For each of the 7 corporations, Maria H. suggested that Mr. Rogers provide "official documents" that could be independently verified (i.e. articles of incorporation, registered officers of the corporation). Mr. Rogers agreed to provide where feasible.</p> <p><b>Judgment Liens, lawsuits &amp; bankruptcy:</b> Maria H. reviewed the information submitted by Mr. Rogers related to the 16 judgment liens, federal and state liens, lawsuits, and bankruptcy filing. Maria H. suggested that Mr. Rogers provide any official court approved final settlement judgments for the lawsuits and any court approved judgments on liens (i.e. Releases showing that Liens have been paid or settled). Mr. Rogers agreed to provide where feasible.</p> <p><b>Financial Information:</b> Maria H. confirmed the agreement between Mr. Rogers and Maria H. that the financial information requested on the 3/25/13 letter to Mr. Rogers, discussed at the 3/26/13 check-in meeting and at the 4/9/13 check-in meeting would be submitted by Mr. Rogers directly to the City's consultant (NDC). Maria H. stated that the consultant would be presenting the results of his financial verification directly to Council at the May 21<sup>st</sup> Council meeting. Mr. Rogers agreed to follow-up with NDC.</p>	<p>Maria H.</p>	<p><b>Note:</b> For further detail on the status of the information submitted &amp; reviewed to date and the status of information still pending submittal &amp; review, see Exhibit attached. (This Exhibit was used during the 4/9/13 Check-in meeting to track what information has or has not been submitted, as well as, what additional information is requested for submittal).</p>

<p>5. Seven (7) Corporations:</p> <p>A: <b><u>Spirit of CA:</u></b> Mr. Rogers Submitted Attachments 1, and resubmitted Attachment 2 and 3 (<i>Listed on page 7 of Exhibit</i>) in response: Attachment 1 is a letter from Mr. Rogers to Council with responses to 4 questions. Attachment 2 is a letter from Mr. James Nichols to Andrew Malik explaining his relationship with Mr. Rogers Attachment 3 is a letter from Phillip McKitterick – previously submitted by Mr. Rogers in his 2/20/13 response to 2/7/13 letter from the City.</p> <p>B: <b><u>California Blast Solar, Lexington Consulting, Inc., Chase Builders, Inc., Stone Valley Property, West Hills Investment, Preferred Financial Group:</u></b> Mr. Rogers submitted Attachment 1, which is a letter from Mr. Rogers to Council with answers to 4 questions for each corporation (<i>Listed on page 7 of Exhibit</i>).</p> <p><b><u>Action:</u></b> Maria H. requested Mr. Rogers provide Articles of incorporation and a list of Board of Directors/Officers filed with the State. Mr. Rogers agreed for those Corporations that were feasible.</p>	<p>Mr. Rogers</p>	<p>Mr. Rogers response to Information for 7 Corporations</p>
<p>6. <b><u>Judgment Lien 5/12/2009: Richard Strock as Trustee (Rogers/Strock Lien)</u></b></p> <p>Mr. Rogers submitted Attachment 4 &amp; 5 (<i>Listed on page 7 of Exhibit</i>) in response. Attachment 4 is a letter from Mr. Rogers to Council providing further detail related to the circumstances of this lien. Attachment 5 is a letter from Mr. Strock providing background for the judgment obligation.</p> <p><b><u>Action:</u></b> Maria H. requested Mr. Rogers submit any court approved judgment on liens or Releases showing that the liens have been paid to substantiate his statement. Mr. Rogers agreed to submit if feasible.</p>	<p>Mr. Rogers</p>	<p>Mr. Rogers responses to Rogers/Strock Lien</p>
<p>7. <b><u>Lawsuit 6/15/04: James B. Rogers and E&amp;F Financial:</u></b></p> <p>Mr. Rogers submitted Attachments 14 &amp; 15 (<i>Listed on page 7 of Exhibit</i>) in response. Attachment 14 is a letter from Mr. Rogers to Council explaining the circumstances of the lawsuit. Attachment 15 is a Docket for the Case J. Barnes vs. J. Rogers. A docket is a schedule of proceedings or meetings in lawsuits pending in a court of law.</p> <p><b><u>Action:</u></b> Maria H. requested Mr. Rogers submit any “official” court approved final Settlement judgment related to this lawsuit.</p>		<p>Mr. Rogers’s responses to Barnes. Vs. Rogers lawsuit.</p>

<p><b>8. <u>Lawsuit (Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc.) (United States District Court Case No. 91-20344 WAI) (Security Pacific bank. Vs. Preferred Financial Group)</u></b></p> <p>Mr. Rogers submitted Attachments 16, 17, &amp; 18 (Listed on page 7 of Exhibit) in response. Attachment 16 is a letter from Mr. Rogers to Council explaining the circumstances of the lawsuit. Attachment 17 is a docket for the case. A docket is a schedule of proceedings or meetings in lawsuits pending in a court of law. Attachment 18 is a Docket for the case. A docket is a schedule of proceedings or meetings in lawsuits pending in a court of law.</p> <p><b>Action:</b> Maria H. requested Mr. Rogers submit any “official” court approved final Settlement judgment related to this lawsuit (i.e. Final Stipulation and Order)</p>		<p>Mr. Rogers responses to Security Pacific v. Preferred Financial Group</p>
<p><b>9. <u>Bankruptcy filing 4/26/12: Lexington Consulting, Inc., Santa Clara: James Rogers Debtor:</u></b></p> <p>Mr. Rogers submitted Attachments 9, 10, 11 &amp; resubmitted Attachments 12, and 13 previously submitted. Attachment 9 is a letter from Mr. Rogers explaining the circumstances of the lawsuit. Attachment 10 is a Voluntary Petition filed 4/26/12 with the US Bankruptcy Court. Attachment 11, is a Statement of Financial Affairs – Amended filed on 6/7/12 with the US Bankruptcy Court. Attachment 11 is letter from Ms. Sheryl Madison Lancaster addressed to Dan Sodergren – previously submitted by Mr. Rogers in his 2/20/13 response to 2/7/13 letter from the City. Attachment 13 is copy of an agreement for property between LHJS Investments and Mr. Rogers.</p>		<p>Mr. Rogers’s response to Bankruptcy filing for Lexington Consulting.</p>
<p><b>10. <u>Judgment Lien 1/6/2009: \$8,920 owed to Cianciarolo Construction:</u></b></p> <p>Mr. Rogers submitted Attachment 9, which is a letter from Mr. Rogers to the City Council explaining the circumstances of the lien.</p> <p><b>Action:</b> Maria H. requested Mr. Rogers submit any court approved judgment on liens or Releases showing that the liens have been paid to substantiate his statement. Mr. Rogers agreed to submit if feasible.</p>		<p>Mr. Rogers’s response to Judgment Lien owed to Cianciarolo Construction.</p>
<p><b>11. <u>Judgment Lien 9/15/2008: \$1,090 owed to Matt Edwards:</u></b></p> <p>Mr. Rogers submitted Attachment 9, which is a letter from Mr. Rogers to the City Council explaining the circumstances of the lien.</p> <p><b>Action:</b> Maria H. requested Mr. Rogers submit any court approved judgment on liens or Releases showing that the liens have been paid to substantiate his statement. Mr. Rogers agreed to submit if feasible.</p>		<p>Mr. Rogers’s response to</p>

<p><b>12. Judgment Lien 10/30/2008: \$58,890 owed to Lydia Tai</b></p> <p>Mr. Rogers submitted Attachment 9, which is a letter from Mr. Rogers to the City Council explaining the circumstances of the lien.</p> <p><b>Action:</b> Maria H. requested Mr. Rogers submit any court approved judgment on liens or Releases showing that the liens have been paid to substantiate his statement. Mr. Rogers agreed to submit if feasible.</p>		<p>Mr. Rogers's response to Judgment Lien owed to Lydia Tai</p>
<p><b>13. Judgment Lien 10/26/2009: owed to Hayden Sarji, San Jose:</b></p> <p>Mr. Rogers submitted Attachment 9, which is a letter from Mr. Rogers to the City Council explaining the circumstances of the lien.</p> <p><b>Action:</b> Maria H. requested Mr. Rogers submit any court approved judgment on liens or Releases showing that the liens have been paid to substantiate his statement. Mr. Rogers agreed to submit if feasible.</p>		<p>Mr. Rogers's response to Judgment Lien owed to Hayden Sarji, San Jose</p>
<p><b>14. Judgment Lien 3/2/09: \$22,581 owed to Art Correa:</b></p> <p>Mr. Rogers submitted Attachment 9, which is a letter from Mr. Rogers to the City Council explaining the circumstances of the lien.</p> <p><b>Action:</b> Maria H. requested Mr. Rogers submit any court approved judgment on liens or Releases showing that the liens have been paid to substantiate his statement. Mr. Rogers agreed to submit if feasible.</p>		<p>Mr. Rogers's response to Judgment Lien owed to Art Correa.</p>
<p><b>15. Lawsuit (James B. Rogers, et al. vs. Federal Bureau of Investigation (United States District Court Case No. 94-20446 SW):</b></p> <p>Mr. Rogers submitted Attachments 19 (<i>Listed on page 7 of Exhibit</i>) in response. Attachment 19 is an official Court Order denying plaintiffs' Application for Default judgment; granting the Federal Defendants' cross-motion to dismiss; requiring plaintiffs to show cause why their claims against fidelity &amp; deposit company should not be dismissed; striking plaintiffs' motion to bifurcate issues of liability and damages.</p>		<p>Mr. Rogers's response to lawsuit against FBI</p>

Exhibit: Responses Reviewed w/James Rogers on 4/9/13 Check-In Meeting

**Spirit of California, Inc.**  
**Responses Reviewed with James Rogers on 4/9/13 Check-In Meeting**

**I. FOR EACH OF THE SEVEN CORPORATIONS, PROVIDE:** (1) Status of the Corporation, (2) Officers of the Corporation, (3) Purpose of the Corporation, and (4) Personal Involvement in the Corporation:

- 1. Spirit of California Entertainment Group, Inc.: (Attachment 1 2, 3)**
  - A. Status of the Corporation: **Currently an Active Corporation. Corporation has produced a private placement memorandum which is registered with the Securities Exchange Commission.**
  - B. Officers of the Corporation: **James Rogers and Phillip McKitterick.**
  - C. Purpose of the Corporation: **To Develop the new Entertainment Park in Tracy.**
  - D. Mr. Rogers' Involvement in the Corporation: **Incorporator.**
  
- 2. California Blast Solar, LLC: (Attachment 1 & 2)**
  - A. Status of the Corporation: **Inactive.**
  - B. Officers of the Corporation: **James Rogers.**
  - C. Purpose of the Corporation: **To build a solar power plant in Tracy.**
  - D. Mr. Rogers' Involvement in the Corporation:
  
- 3. Lexington Consulting, Inc. (Attachment 1 & 2)**
  - A. Status of the Corporation: **Currently Active. Filed Bankruptcy.**
  - B. Officers of the Corporation: **James Rogers.**
  - C. Purpose of the Corporation: **For building multiple custom residential homes.**
  - D. Mr. Rogers' Involvement in the Corporation:
  
- 4. Chase Builders, Inc., San Jose: (Attachment 1 & 2)**
  - A. Status of the Corporation: **Inactive.**
  - B. Officers of the Corporation: **James Rogers held all the officers positions.**
  - C. Purpose of the Corporation: **To build two mini warehouse facilities in San Jose and Sunnyvale. Mini Storages were built, operated and sold.**
  - D. Mr. Rogers' Involvement in the Corporation:
  
- 5. Stone Valley Property, Inc.: (Attachment 1 & 2)**
  - A. Status of the Corporation: **Inactive. Never used for its intended purpose.**
  - B. Officers of the Corporation: **James Rogers.**
  - C. Purpose of the Corporation: **To develop residential properties in Santa Clara County.**
  - D. Mr. Rogers' Involvement in the Corporation:
  
- 6. West Hills Investment, Inc.: (Attachment 1 & 2)**
  - A. Status of the Corporation: **Inactive.**
  - B. Officers of the Corporation: **James Rogers.**
  - C. Purpose of the Corporation: **To develop and subdivide a residential property into 4 lots. Project was completed and developed lots were sold.**
  - D. Mr. Rogers' Involvement in the Corporation:

**7. Preferred Financial Group: (Attachment 1 & 2)**

- A. Status of the Corporation: **Inactive.**
- B. Officers of the Corporation:
- C. Purpose of the Corporation: **Formed by Steve Fontaine to establish a clearing account to trade securities.**
- D. Mr. Rogers' Involvement in the Corporation: **Founding Shareholder.**

**Additional Information Requested (4/9/13):**

**Official documents filed with the Securities & Exchange Commission (i.e. memorandum registered with the Securities Exchange Commission.**



- II. **FOR EACH OF THE 16 JUDGEMENTS LIENS, FEDERAL AND STATE LIENS, LAWSUITS AND BANKRUPTCY FILING, PROVIDE:** (1) A Detailed description of the matter, (2) the status of the matter, (3) personal involvement in the matter, and (4) attach any legal document that relates to the matter that can be verified.
1. **Judgment lien 5/12/2009: \$78,721 owed to Richard Strock as Trustee: (Attachment 4 & 5)**
    - A. A Detailed description of the matter:
    - B. Status of the matter:
    - C. Personal involvement in the matter, and
    - D. Attach any legal document that relates to the matter that can be verified.
  
  2. **State tax Lien 3/9/2010: \$23,295 owed to State of California:**
    - A. A Detailed description of the matter:
    - B. Status of the matter:
    - C. Personal involvement in the matter, and
    - D. Attach any legal document that relates to the matter that can be verified
  
  3. **Judgment Lien 1/6/2009: \$8,920 owed to Cianciarolo Construction: (Attachment 9)**
    - A. A Detailed description of the matter:
    - B. Status of the matter:
    - C. Personal involvement in the matter, and
    - D. Attach any legal document that relates to the matter that can be verified.
  
  4. **Judgment Lien 9/15/2008: \$1,090 owed to Matt Edwards: (Attachment 9)**
    - A. A Detailed description of the matter:
    - B. Status of the matter:
    - C. Personal involvement in the matter, and
    - D. Attach any legal document that relates to the matter that can be verified
  
  5. **Judgment Lien 10/30/2008: \$58,890 owed to Lydia Tai (Attachment 9)**
    - A. A Detailed description of the matter:
    - B. Status of the matter:
    - C. Personal involvement in the matter, and
    - D. Attach any legal document that relates to the matter that can be verified.
  
  6. **Judgment Lien 2/15/2008: owed to Brutlag Trust, San Mateo**
    - A. A Detailed description of the matter:
    - B. Status of the matter:
    - C. Personal involvement in the matter, and
    - D. Attach any legal document that relates to the matter that can be verified.

7. **Federal Tax Lien 2/26/07: \$6,955 owed to IRS**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified
  
8. **State Tax Lien 7/18/2011: \$11,902 owed to State of California:**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.
  
9. **Judgment Lien 10/26/2009: owed to Hayden Sarji, San Jose: (Attachment 9)**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.
  
10. **Judgment Lien 3/2/09: \$22,581 owed to Art Correa: (Attachment 9)**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified
  
11. **Lawsuit 3/6/07: James B. Rogers and Lexington Builders: \$2,285 Plaintiff: Northern California Collection Service, Inc. of Sacramento. (Attachment 9)**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified
  
12. **Lawsuit 6/15/04: James B. Rogers and E&F Financial Services, San Mateo: \$258,945 Plaintiff: Jude Barnes, J. Barnes Construction: (Attachment 14 & 15)**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.
  
13. **Lawsuit (*Bennett v. Superior Court (Dec. 1, 2011, HO36470)*):**
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

14. Lawsuit (*Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc.*) (United States District Court Case No. 91-20344 WA); (Attachment 16, 17, 18)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.
  
15. Lawsuit (*James B. Rogers, et al. vs. Federal Bureau of Investigation (United States District Court Case No. 94-20446 SW)*). (Attachment 19)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified
  
16. Bankruptcy filing 4/26/12: Lexington Consulting, Inc., Santa Clara: James Rogers Debtor: (Attachment 9, 10, 11) (12, 13 previously submitted)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified

**Additional Information Requested (4/9/13):**

**For any Lawsuits:** Provide any official court approved Final Judgments;

**For any Judgment Liens:** Provide Court Approved Judgments on liens; i.e. Releases showing that Liens have been paid;

Any "official" Court Documents that can be independently verified.

### **III. FINANCIAL INFORMATION:**

**Information Requested on 3/25/13 letter, discussed at 3/26/13 meeting and at 4/9/13 Check-In Meeting):**

1. Personal Financial Statement;
2. Federal Tax Returns for the current year and for the prior three years;
3. A Signed credit release form.

**Agreement on 3/26/13 and 4/9/13 Check-In Meeting:**

**Mr. Rogers will submit his financial information directly to the City's consultant NDC. The City's NDC Consultant will provide Council with his evaluation of the financial information at the May 21, 2013 Council meeting, when this item returns to Council.**

**List of Information Received from Mr. Rogers to date (Between 3/26/13 and 4/9/13):**

- Attachment 1: April 1, 2013 Letter from James Rogers to City of Tracy *(Received 4/1/13 via email)*;
- Attachment 2: February 21, 2013 Letter from James Nichols addressed to Andrew Malik *(Received 4/1/13 via email: Information previously submitted by Mr. Rogers on 2/21/2013)*
- Attachment 3: February 20, 2013 Letter from Phillip L. McKitterick from Artisan Company *(Received 4/1/13 via email: Information previously submitted by Mr. Rogers on 2/20/2013)*;
- Attachment 4: April 1, 2013 Letter from James Rogers to City of Tracy re: Judgment recorded in 2009 in favor of Richard Strock for \$78k *(Received 4/1/13 via email)*;
- Attachment 5: March 25, 2013 Letter from Richard Strock re: Jim Rogers: Background for Judgment Obligation *(Received 4/1/13 via email; Information previously submitted by Mr. Rogers on 3/25/13)*;
- Attachment 6: April 1, 2013 Letter from James Rogers to City of Tracy Re: Jim Roger's relationship / association to the Riverside Motorsports Park project *(Received 4/1/13 via email)*;
- Attachment 7: Statement from John Noland, Former VP RMP dated 3/27/13 *(Received 4/1/13 via email)*;
- Attachment 8: April 1, 2013 Letter from James Rogers to City of Tracy re: Jim Roger's – items remaining *(Received 4/1/13 via email)*;
- Attachment 9: April 1, 2013 Letter from James Rogers to City of Tracy re: Lexington Consulting, Inc. bankruptcy;
- Attachment 10: United States Bankruptcy Court Voluntary Petition re: Lexington Consulting, Inc. *(Received 4/1/13 via email)*;
- Attachment 11: United States Bankruptcy Court Statement of Financial Affairs – Amended re: Case 12-53153 *(Received 4/1/13 via email)*;
- Attachment 12: 2/20/13 Letter from Sheryl Madison Lancaster to City of Tracy re: James Rogers/Lexington Consulting *(Received 4/1/13 via email: Information previously submitted by Mr. Rogers on 2/20/13)*;
- Attachment 13: Agreement for property located at 19660 Santa Cruz Hwy, Los Gatos between John Simonse and James Rogers dated 4/25/10 *(Received 4/1/13 via email)*;
- Attachment 14: April 2, 2013 Letter from James Rogers to City of Tracy re: Rogers's Barnes Lawsuit *(Received 4/3/13 via email)*;
- Attachment 15: Docket for Case #: 1-04-CV-021575 re: J. Barnes vs. J. Rogers *(Received 4/3/13 via email)*;
- Attachment 16: April 2, 2013 Letter from James Rogers to City of Tracy re: Security Pacific bank vs. Preferred Financial Group Inc. *(Received 4/3/13 via email)*;
- Attachment 17: Docket for Case #5:91-cv-20344-WAI *(Received 4/3/13 via email)*;
- Attachment 18: Docket for Case # 5:91-cv-20344-WAI re: Security Pacific vs. Preferred Financial Group, Inc.;
- Attachment 19: Official Court Order in the case James Rogers vs. FBI Civ. No. 94-20446 SW;



**Check-In Meeting #3 (Spirit of CA & City of Tracy Representatives)**

**Date:** April 23, 2013  
**Time:** 1:00 p.m. to 2:00 p.m.  
**Location:** City Hall  
 Conference Room #216

**Meeting called By:** Maria A. Hurtado, City of Tracy      **Type of meeting:** Check-In Meeting

**Attendees:** James Rogers, Spirit of California, Bob Corsaro  
 Maria A. Hurtado, City of Tracy, Andrew Malik, City of Tracy

*Discussion / Action Items*

The following are Discussion and/or Action Items resulting from the Check-In Meeting between the Spirit of California and the City of Tracy representatives.

Discussion and/or Action items	Lead	Comments
<p>1. <b><u>Financial Information:</u></b> Mr. Rogers informed staff that he plans to submit both his personal and the Spirit of California’s financial statements directly to Scott Rodde, from the National Development Council (NDC), the consultant the City utilizes to complete separate independent financial reviews for various projects. He also stated that he will speak to Mr. Rodde about contracting him directly to complete the financial verification, rather than utilizing the retainer he has on file with the City. Staff informed Mr. Rogers that NDC rep. would still be asked to present his findings on Mr. Roger’s and the Spirit of CA’s financial statements directly to the Council at the May 21<sup>st</sup> Council meeting. Mr. Rogers agreed and will follow-up with NDC before the next May 7<sup>th</sup> check-in meeting with City staff.</p>	<p>Mr. Rogers</p>	
<p>2. Mr. Rogers re-iterated that he does not want the information he submits to Council or staff to be included as attachments to the Staff Report but rather prefers that Council discuss the attachments in close session.</p> <p>Maria H. re-iterated to Mr. Rogers that the information submitted to date via email is public information and can be provided to the public if requested. Additionally, Council requested that the additional information be brought back to Council for discussion and it would be difficult for Council to review and discuss the information if the specific information they requested is not attached to the staff report. Mr. Rogers requests stands.</p>	<p>Mr. Rogers</p>	

Discussion and/or Action items	Lead Person	Comments
<p>3. Mr. Rogers re-iterated that all the information he submits to staff in between check-in meetings be forwarded to Council within 48 hours rather than waiting for the May 21<sup>st</sup> Council meeting.</p> <p>Mr. Rogers stated he had no additional information to submit or review at today's Check-in meeting, but that he has been working on compiling his financials and other information. Mr. Rogers will submit his financials to NDC directly and will send other information to staff this week.</p> <p><b><u>Corporations:</u></b> Maria H. re-iterated that, in addition to what he has submitted to date, it would be helpful to Council if for each of the 7 corporations, Mr. Rogers provide "<b><i>official documents</i></b>" that could be independently verified (i.e. articles of incorporation, registered officers of the corporation). Mr. Rogers agreed to provide where feasible.</p> <p><b><u>Judgment Liens, lawsuits &amp; bankruptcy:</u></b> Maria H. re-iterated that, in addition to what he has submitted to date, it would be helpful to Council to provide any "<b><i>official court approved final settlement judgments</i></b>" for the lawsuits and any "<b><i>court approved judgments</i></b>" on liens (i.e. Releases showing that Liens have been paid or settled). Mr. Rogers agreed to provide where feasible.</p> <p><b><u>Action:</u></b> Maria H. will continue to forward any information received by Mr. Rogers to Council when he submits it, as well as, retain copies for the Council packet on May 21<sup>st</sup>.</p>	Mr. Rogers	



**Check-In Meeting #4 (Spirit of CA & City of Tracy Representatives)**

**Date:** May 7, 2013  
**Time:** 1:00 p.m. to 2:00 p.m.  
**Location:** City Hall  
 Conference Room #216

**Meeting called By:** Maria A. Hurtado, City of Tracy      **Type of meeting:** Check-In Meeting

**Attendees:** James Rogers, Spirit of California, Bob Corsaro  
 Maria A. Hurtado, City of Tracy,

***Discussion / Action Items***

The following are Discussion and/or Action Items resulting from the Check-In Meeting between the Spirit of California and the City of Tracy representatives.

Discussion and/or Action items	Lead	Comments
<p>1. <b><u>Corporations:</u></b> Mr. Rogers stated that he would email me 3 of the 7 Articles of Incorporations he has obtained to date. He stated he could not obtain a copy of the other 4 corporations. He also stated he would email me the list of Officers he obtained for the Spirit of California Entertainment Group.</p> <p><b><u>Action:</u></b> No information was submitted or discussed during this Check-In Meeting.</p>	Mr. Rogers	
<p>2. <b><u>Financial Information:</u></b> Mr. Rogers informed staff that he plans to submit both his personal and the Spirit of California’s financial statements directly to a local accountant, Bill Pollard, so he could independently do a 3<sup>rd</sup> party verification of Mr. Rogers financial information. Staff advised Mr. Rogers that that was not the protocol that the City typically follows. The City uses Scott Rodde, from the National Development Council (NDC) consulting firm to verify financial information on behalf of the City Scott Rodde, from the National Development Council (NDC), to do separate independent financial reviews for various projects. Mr. Rogers stated he would think about whether or not to use Mr. Rodde and would let staff know by the end of the week.</p> <p><b><u>Action:</u></b> No information was submitted or discussed during this Check-In Meeting.</p>	Mr. Rogers	
<p>3. Mr. Rogers requested that if the City Attorney had any comments or request should let him know immediately. Staff stated that, as discussed previously, the City staff position (including the City Manager’s office and the City Attorney’s office) is that the information submitted by Mr. Rogers should be “Official” or “Legal” documentation that can be independently verified. Staff, nonetheless, relayed Mr. Rogers request to Dan Sodergren.</p>	Mr. Rogers	





**Check-In Meeting #5 (Spirit of CA & City of Tracy Representatives)**

**Date:** May 14, 2013  
**Time:** 1:00 p.m. to 2:30 p.m.  
**Location:** City Hall  
 Conference Room #216

**Meeting called By:** Maria A. Hurtado, City of Tracy      **Type of meeting:** Final Check-In Meeting

**Attendees:** James Rogers, Spirit of California, Bob Corsaro  
 Maria A. Hurtado, City of Tracy,

***Discussion / Action Items***

The following are Discussion and/or Action Items resulting from the Check-In Meeting between the Spirit of California and the City of Tracy representatives.

Discussion and/or Action items	Lead Person	Comments
<p>1. Mr. Rogers and Ms. Hurtado reviewed the final documents submitted by Mr. Rogers prior to finalizing the staff report in preparation for the May 21, 2013 Council meeting. Staff informed Mr. Rogers that, given the limited "official" documentation from a governmental agency received to date, staff plans on recommending that Council cease negotiations for an ENRA with the Spirit of California.</p> <p>Mr. Rogers expressed his concern that staff would make a recommendation to Council, particularly when at the onset of the Check-in Meetings, staff stated she would only collect the information and forward to Council for their determination on whether the information submitted by Mr. Rogers sufficiently addressed their concerns.</p> <p>Staff explained that at the onset of the Check-in meetings, Mr. Rogers had committed to provide articles of incorporation and list of officers for the various corporations; to the best of his ability, he would submit "official" documents related to the 16 pending judgment liens, state liens, and bankruptcy, and to provide personal financial information to NDC so they could complete an independent review of his personal financials.</p>	<p>Mr. Rogers/ Ms. Hurtado</p>	
<p>2. <b>Corporations:</b> To date, with regard to the 7 Corporations: "Official" information received from Mr. Rogers included</p> <ul style="list-style-type: none"> <li>• 3 of the 7 articles of incorporation;</li> <li>• 1 of the 7 Form 200 (List of Officers) for 1 Corporation;</li> </ul> <p>Other information submitted by Mr. Rogers included letters from Mr. Rogers, his attorney, or others involved and not considered by staff "official" documents from a governmental agency that could be independently verified.</p> <p>Mr. Rogers disagreed and stated that over 90% of the information was, in fact, submitted and that Council would determine that.</p>	<p>Mr. Rogers / Ms. Hurtado</p>	

<p><b>3. <u>Regarding 16 Pending Judgment Liens, Federal and State Liens, Lawsuits and Bankruptcy Filings:</u></b></p> <p>To date, "Official" information received from Mr. Rogers included:</p> <ul style="list-style-type: none"> <li>• (1) Official Court Order (<b><u>Attachment #18</u></b>);</li> <li>• (1) US Bankruptcy Court Voluntary Petition (<b><u>Attachment #10</u></b>);</li> <li>• (1) US Bankruptcy Court Statement of Financial Affairs (<b><u>Attachment #11</u></b>)</li> </ul> <p>Other information submitted by Mr. Rogers included letters from Mr. Rogers, his attorney, or others involved in the various lawsuits, judgment liens or bankruptcy and not considered by staff "official" documents from a governmental agency that could be independently verified.</p> <p>Mr. Rogers disagreed and stated that over 90% of the information was, in fact, submitted and that Council would determine that.</p>	<p>Mr. Rogers / Ms. Hurtado</p>	
<p><b>4. <u>Financial Information:</u></b></p> <p>With regard to the Financial Information, no personal financial information has been received by City staff or NDC to date.</p> <p>Mr. Rogers did state at the 5/14/13 Check-in Meeting that he would contact NDC and submit his financial information no later than 5/15/13.</p>	<p>Mr. Rogers</p>	

**Spirit of California, Inc.**  
**Responses Reviewed with James Rogers To Date**  
**5/14/13**

**I. FOR EACH OF THE SEVEN CORPORATIONS, PROVIDE:** (1) Status of the Corporation, (2) Officers of the Corporation, (3) Purpose of the Corporation, and (4) Personal Involvement in the Corporation:

- 1. Spirit of California Entertainment Group, Inc.: (Attachment 1, 2, 3, 19, 20, and 21)**
  - A. Status of the Corporation:** Currently an Active Corporation. Corporation has produced a private placement memorandum which is registered with the Securities Exchange Commission.
  - B. Officers of the Corporation:** James Rogers
  - C. Purpose of the Corporation:** To Develop the new Entertainment Park in Tracy.
  - D. Mr. Rogers' Involvement in the Corporation:** Incorporator.

**Note:** "Official" Documentation Submitted for Item #1: **Attachments 20 and 21.**

- 2. Tracy Blast Solar, LLC: (Attachment 1, 2, 19, and 23)**
  - A. Status of the Corporation:** Inactive.
  - B. Officers of the Corporation:** James Rogers.
  - C. Purpose of the Corporation:** To build a solar power plant in Tracy.
  - D. Mr. Rogers' Involvement in the Corporation:**

**Note:** "Official" Documentation Submitted for Item #2: **Attachment 23.**

- 3. Lexington Consulting, Inc. (Attachment 1, 2, 19, 22, and 24)**
  - A. Status of the Corporation:** Currently Active. Filed Bankruptcy.
  - B. Officers of the Corporation:** James Rogers.
  - C. Purpose of the Corporation:** For building multiple custom residential homes.
  - D. Mr. Rogers' Involvement in the Corporation:**

**Note:** "Official" Documentation Submitted for Item #3: **Attachments 22.**

- 4. Chase Builders, Inc., San Jose: (Attachment 1, 2, 5, 19 and 35)**
  - A. Status of the Corporation:** Inactive.
  - B. Officers of the Corporation:** James Rogers held all the officers positions.
  - C. Purpose of the Corporation:** To build two mini warehouse facilities in San Jose and Sunnyvale. Mini Storages were built, operated and sold.
  - D. Mr. Rogers' Involvement in the Corporation:**

**Note:** "Official" Documentation Submitted for Item #4: **Attachment 35.**

5. **Stone Valley Property, Inc.:** (Attachment 1, 2, and 19)
- A. **Status of the Corporation:** Inactive. Never used for its intended purpose.
  - B. **Officers of the Corporation:** James Rogers.
  - C. **Purpose of the Corporation:** To develop residential properties in Santa Clara County.
  - D. **Mr. Rogers' Involvement in the Corporation:**

**Note:** "Official" Documentation Submitted for Item #5: None.

6. **West Hills Investment, Inc.:** (Attachment 1, 2, 19, and 36)
- A. **Status of the Corporation:** Inactive.
  - B. **Officers of the Corporation:** James Rogers.
  - C. **Purpose of the Corporation:** To develop and subdivide a residential property into 4 lots. Project was completed and developed lots were sold.
  - D. **Mr. Rogers' Involvement in the Corporation:**

**Note:** "Official" Documentation Submitted for Item #6: Attachment 36.

7. **Preferred Financial Group:** (Attachment 1, 2, 16, 17, 19 and 34)
- A. **Status of the Corporation:** Inactive.
  - B. **Officers of the Corporation:**
  - C. **Purpose of the Corporation:** Formed by Steve Fontaine to establish a clearing account to trade securities.
  - D. **Mr. Rogers' Involvement in the Corporation:** Founding Shareholder.

**Note:** "Official" Documentation Submitted for Item #7: Attachment 34.

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**SUMMARY:**

**"Official" Information Received:**

- 3 Articles of Incorporation (Attachments 20, 22, and 23);
- 1 Form 200 List of Officer for 1 corporation (Attachment 21).
- Three Documents showing the suspended status of 3 corporations (Attachments 34, 35, and 36).

**Additional Information Requested:**

- Any "Official" documents filed with the Secretary of State (For example: Articles of Incorporation, Form 200 List of Officers, etc.) for each of the seven corporations;

II. **FOR EACH OF THE 16 JUDGEMENTS LIENS, FEDERAL AND STATE LIENS, LAWSUITS AND BANKRUPTCY FILING, PROVIDE:** (1) A Detailed description of the matter, (2) the status of the matter, (3) personal involvement in the matter, and (4) attach any legal document that relates to the matter that can be verified.

1. Judgment lien 5/12/2009: \$78,721 owed to Richard Strock as Trustee: (Attachment 4 and 5)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #1: None.

2. State tax Lien 3/9/2010: \$23,295 owed to State of California: (Attachment 33)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #2: None.

3. Judgment Lien 1/6/2009: \$8,920 owed to Cianciarolo Construction: (Attachment 9 and 13)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #3: None.

4. Judgment Lien 9/15/2008: \$1,090 owed to Matt Edwards: (Attachment 9 and 13)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #4: None.

5. Judgment Lien 10/30/2008: \$58,890 owed to Lydia Tai (Attachment 9 and 13)
  - A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #5: None.

**6. Judgment Lien 2/15/2008: owed to Brutlag Trust, San Mateo**

- A. A Detailed description of the matter:
- B. Status of the matter:
- C. Personal involvement in the matter, and
- D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #6: **None.**

**7. Federal Tax Lien 2/26/07: \$6,955 owed to IRS (Attachment 33)**

- A. A Detailed description of the matter:
- B. Status of the matter:
- C. Personal involvement in the matter, and
- D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #7: **None.**

**8. State Tax Lien 7/18/2011: \$11,902 owed to State of California: (Attachment 33)**

- A. A Detailed description of the matter:
- B. Status of the matter:
- C. Personal involvement in the matter, and
- D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #8: **None.**

**9. Judgment Lien 10/26/2009: owed to Hayden Sarji, San Jose: (Attachment 9 and 13)**

- A. A Detailed description of the matter:
- B. Status of the matter:
- C. Personal involvement in the matter, and
- D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #9: **None.**

**10. Judgment Lien 3/2/09: \$22,581 owed to Art Correa: (Attachment 9 and 13)**

- A. A Detailed description of the matter:
- B. Status of the matter:
- C. Personal involvement in the matter, and
- D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #10: **None.**

11. **Lawsuit 3/6/07: James B. Rogers and Lexington Builders: \$2,285 Plaintiff: Northern California Collection Service, Inc. of Sacramento. (Attachment 9 and 13)**
- A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #11: **None.**

12. **Lawsuit 6/15/04: James B. Rogers and E&F Financial Services, San Mateo: \$258,945 Plaintiff: Jude Barnes, J. Barnes Construction: (Attachment 14 and 15)**
- A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #12: **None.**

13. **Lawsuit (*Bennett v. Superior Court (Dec. 1, 2011, HO36470)*): (Attachment 24 and 25)**
- A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #13: **None.**

14. **Lawsuit (*Security Pacific National Trust Company (New York) v. Preferred Financial Group, Inc.*) (United States District Court Case No. 91-20344 WAI); (Attachment 16, 17 and 18)**
- A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified.

**Note:** "Official" Documentation Submitted for Item #14: **Attachment 18.**

15. **Lawsuit (*James B. Rogers, et al. vs. Federal Bureau of Investigation (United States District Court Case No. 94-20446 SW)*). (Attachment 18 and 19)**
- A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #15: **Attachment 18.**

16. **Bankruptcy filing 4/26/12: Lexington Consulting, Inc., Santa Clara: James Rogers Debtor: (Attachment 9, 10, 11, 12, and 13)**
- A. A Detailed description of the matter:
  - B. Status of the matter:
  - C. Personal involvement in the matter, and
  - D. Attach any legal document that relates to the matter that can be verified

**Note:** "Official" Documentation Submitted for Item #16: **Attachments 10 and 11.**

**SUMMARY:**

**"Official" Information Received:**

- Official Court Order (Attachments 18);
- US Bankruptcy Court Voluntary Petition (Attachment 10);
- US Bankruptcy Court Statement of Financial Affairs (Attachment 11).

**Additional Information Requested:**

- For any Lawsuits: Provide any "official" court approved "Final Judgments";
- For any Judgment Liens: Provide Court Approved Judgments on liens; i.e. "Releases" showing that Liens have been paid;

Any "official" Court Documents that can be independently verified.

Mr. Rogers also submitted a number of letters from Mr. Rogers, his attorney, and from other parties related to the various lawsuits, judgment liens and bankruptcy (Attachments 4, 5, 9, 12, 13, 14, 15, 16, 17, 19, 24, 25, and 33).

**III. FINANCIAL INFORMATION:**

**Information Requested on 3/25/13 letter and discussed at 3/26/13, 4/9/13, 4/23/13, and 5/7/13, and 5/14/13 Check-In Meetings):**

1. Personal Financial Statement; (Attachment 33)
2. Federal Tax Returns for the current year and for the prior three years;
3. A Signed credit release form.

**Agreement on 3/26/13 and 4/9/13 and 4/23/13 Check-In Meeting:**

Mr. Rogers will submit his financial information directly to the City's consultant NDC.



The City's NDC Consultant will provide Council with his evaluation of the financial information at the May 21, 2013 Council meeting, when this item returns to Council.

On 4/23/13 Mr. Rogers also stated he would contact Scott Rodde to contract with him directly.

**Agreement on 5/7/13 Check-In Meeting:**

Mr. Rogers informed staff that he plans to submit both his personal and the Spirit of California's financial statements directly to a local accountant, Bill Pollard, so he can independently complete a 3<sup>rd</sup> party verification of Mr. Rogers financial information.

Staff advised Mr. Rogers that that the City's protocol is to contract with Scott Rodde, from the National Development Council (NDC) consulting firm to verify financial information on behalf of the City.

**Agreement on 5/14/13 Check-In Meeting:**

On 5/14/13: Mr. Rogers stated that he would submit his financial information to Scott Rodde, from National Development Council (NDC).

**SUMMARY**

No Financial Information was received by City staff or by NDC as of the final 5/14/13 Check-In Meeting.

Mr. Rogers did state he would submit his personal financial information directly to NDC.

**List of Information Received from Mr. Rogers (Between 3/26/13 and 5/14/13):**

- Attachment 1: April 1, 2013 Letter from James Rogers to City of Tracy;
- Attachment 2: February 21, 2013 Letter from James Nichols to City of Tracy;
- Attachment 3: February 20, 2013 Letter from Phillip L. McKitterick from Artisan Company;
- Attachment 4: April 1, 2013 Letter from James Rogers to City of Tracy re: Judgment recorded in 2009 in favor of Richard Strock for \$78k;
- Attachment 5: March 25, 2013 Letter from Richard Strock re: Jim Rogers: Background for Judgment Obligation;
- Attachment 6: April 1, 2013 Letter from James Rogers to City of Tracy Re: Jim Roger's relationship / association to the Riverside Motorsports Park project);
- Attachment 7: March 27, 2013 Statement from John Noland, Former VP RMP;
- Attachment 8: April 1, 2013 Letter from James Rogers to City of Tracy re: Jim Roger's – items remaining (Received 4/1/13 via email);
- Attachment 9: April 1, 2013 Letter from James Rogers to City of Tracy re: Lexington Consulting, Inc. bankruptcy;

- Attachment 10: United States Bankruptcy Court Voluntary Petition re: Lexington Consulting, Inc. *(Received 4/1/13 via email)*;
- Attachment 11: United States Bankruptcy Court Statement of Financial Affairs – Amended re: Case 12-53153 *(Received 4/1/13 via email)*;
- Attachment 12: February 20, 2013 Letter from Sheryl Madison Lancaster to City of Tracy re: James Rogers/Lexington Consulting;
- Attachment 13: Agreement for property located at 19660 Santa Cruz Hwy, Los Gatos between John Simonse and James Rogers dated 4/25/10 *(Received 4/1/13 via email)*;
- Attachment 14: April 2, 2013 Letter from James Rogers to City of Tracy re: Rogers’s Barnes Lawsuit;
- Attachment 15: Docket for Case #: 1-04-CV-02157S re: J. Barnes vs. J. Rogers *(Received 4/3/13 via email)*;
- Attachment 16: April 2, 2013 Letter from James Rogers to City of Tracy re: Security Pacific bank vs. Preferred Financial Group Inc.;
- Attachment 17: *Docket for Case # 5:91-cv-20344-WAI re: Security Pacific vs. Preferred Financial Group, Inc. (Received 4/3/13 via email)*;
- Attachment 18: *Official Court Order in the case James Rogers vs. FBI Civ. No. 94-20446 SW (Received 4/10/13 via email)*;
- Attachment 19: May 1, 2013 Letter from James Rogers to City of Tracy re: Inquiries regarding James Rogers, past and current corporations;
- Attachment 20: Articles of Incorporation of Spirit of California Entertainment Group Inc. *(Received 5/12/13 via email)*;
- Attachment 21: Form 200 listing Officers of the Spirit of California Entertainment Group Inc. filed with Secretary of State *(Received 5/12/13 via email)*;
- Attachment 22: Articles of Incorporation of Lexington Consulting, Inc. filed with Secretary of State *(Received 5/12/13 via email)*;
- Attachment 23: Certificate of Incorporation of Tracy’s California Blast Inc. filed with Secretary of State *(Received 5/12/13 via email)*;
- Attachment 24: May 1, 2013 Letter from James Rogers to City of Tracy re: Lexington Consulting Inc., Bennett case;
- Attachment 25: April 23, 2013 Letter from James P. Nichols to the City of Tracy re: Gary Bennett v. James Rogers et al, Santa Clara County Case No. 110CV171320;
- Attachment 33: May 1, 2013 Letter from Clayton Patterson, Tax Consultant;
- Attachment 34: Document showing Suspended status of Preferred Financial Group, Inc. *(Received on 5/15/13 via email)*;
- Attachment 35: Document showing Suspended status of Chase Builders, Inc. *(Received on 5/15/13 via email)*;
- Attachment 36: Document showing Suspended status of West Valley Financial Group *(Received on 5/15/13 via email)*;

**Note:** Items in **Red** represent how each attachment submitted by Mr. Rogers corresponds to items requiring additional information.

CLAYTON PATTERSON, EA  
TAX CONSULTANT

1091 Industrial Road, Suite 250  
San Carlos, CA 94070

(650) 591-6797 Office  
(650) 591-6942 Fax

May 1, 2013

To Whom It May Concern:

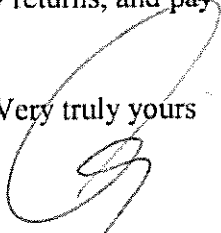
Re: James Rogers

Dear Sir or Madam:

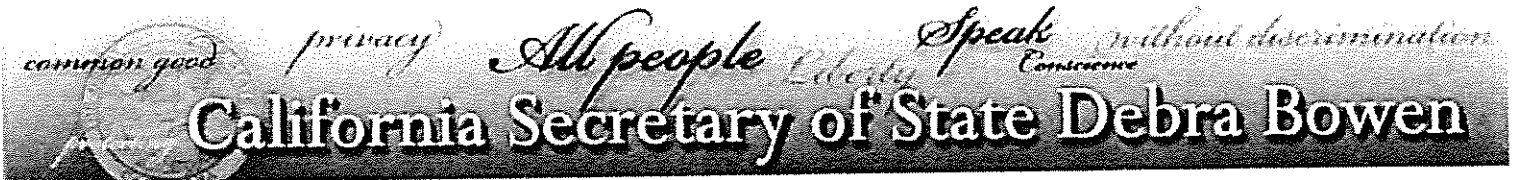
I have been retained by Mr. Rogers to prepare his 2012 personal taxes. Additionally he has requested that I interface with the State of California on his behalf, regarding two tax liens on file which we anticipate have been imputed upon prior years income.

It is Mr. Roger's intention to file all necessary returns, and pay any and all tax liabilities by June 1, 2013.

Very truly yours



Clayton Patterson



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## Business Entity Detail

### Business Entities (BE)

#### Online Services

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- [Business Identity Theft](#)
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Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, May 14, 2013. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name	PREFERRED FINANCIAL GROUP, INC.
Entity Number	C1517576
Date of Birth	02/27/1991
Status	SUSPENDED
County	CALIFORNIA
Address	2570 EL CAMINO REAL #105
County, State, Zip	MOUNTAIN VIEW CA 94040
Agent for Service of Process	JAMES NICHOLS
Agent Address	411 BOREL AVENUE #512
County, State, Zip	SAN MATEO CA 94402

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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Entity Name	CHASE BUILDERS, INC.
Entity Number	C2038649
Date of Birth	04/20/1998
Status	SUSPENDED
Jurisdiction	CALIFORNIA
Principal Address	3707 WILLIAMS RD SUITE 202
County	SAN JOSE CA 95117
Registered Agent Name	JAMES NICHOLS
Agent Address	700 S CLAREMONT ST SUITE 101
Agent City	SAN MATEO CA 94402

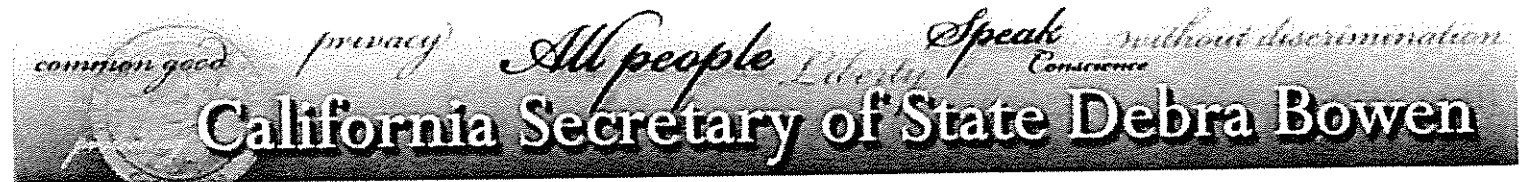
\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
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## Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, May 14, 2013. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name	WEST VALLEY FINANCIAL GROUP, INC.
Filing Number	C2437295
Date Filed	11/20/2003
Status	SUSPENDED
Jurisdiction	CALIFORNIA
Entity Address	20115 ORCHARD MEADOW DR
Entity City, State, Zip	SARATOGA CA 95070
Agent for Service of Process	JAMES ROGER
Agent Address	20115 ORCHARD MEADOW DR
Agent City, State, Zip	SARATOGA CA 95070

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
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RESOLUTION \_\_\_\_\_

TERMINATING BOTH THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC AND THE FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY BLAST DEVELOPMENT, LLC REGARDING CITY-OWNED PROPERTIES OUTSIDE OF THE CITY LIMITS ON THE WEST SIDE OF TRACY BOULEVARD ADJACENT TO LEGACY FIELDS AND ON THE EAST SIDE OF TRACY BOULEVARD NORTH OF ARBOR ROAD AND NORTH OF THE CITY'S WASTEWATER TREATMENT PLANT ("HOLLY SUGAR PROPERTY") AND AUTHORIZING THE CITY MANAGER TO SEND A NOTICE OF TERMINATION

WHEREAS, on April 29, 2011, the City entered into an Exclusive Negotiating Rights Agreement ("ENRA") with Tracy's California Blast, LLC regarding City-owned properties outside of the City limits on the west side of Tracy Boulevard adjacent to Legacy Fields and on the east side of Tracy Boulevard north of Arbor Road and north of the City's Wastewater Treatment Plant ("Holly Sugar Property");

WHEREAS, on September 18, 2012, the City entered into the First Amendment to the ENRA with Tracy Blast Development, LLC (Tracy's California Blast, LLC and Tracy Blast Development, LLC are collectively referred to as "Tracy Blast"); and

WHEREAS, Tracy Blast is in default of sections 4 and 6 of the ENRA relating to submittal of development applications and financial verification;

WHEREAS, Tracy Blast has failed to cure these defaults after written notice from the City;

WHEREAS, Section 12 of the ENRA provides in relevant part that "[I]f a default remains uncured 60 days after receipt by the defaulting party of such notice, the non-defaulting party may terminate this ENRA."; and

WHEREAS, the City desires to terminate the ENRA.

NOW, THEREFORE, the Tracy City Council resolves that the ENRA with Tracy Blast is hereby terminated and authorizes the City Manager to send Tracy Blast notice of such termination.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 21st day of May, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



AGENDA ITEM 4

REQUEST

**REALLOCATION OF \$368,204 OF FEDERAL HOME INVESTMENT PARTNERSHIP ACT (HOME) FUNDS FROM THE BOUNCE BACK PROGRAM TO THE WOMEN'S CENTER TO ESTABLISH A SHELTER FOR BATTERED WOMEN AND CHILDREN IN TRACY**

EXECUTIVE SUMMARY

Request that City Council reallocate \$368,204 of HOME funds from the Bounce Back Program to the Women's Center to establish a shelter for battered women and children in Tracy. The U.S. Department of Housing and Urban Development (HUD) has a five year expenditure deadline on HOME funds. Due to this deadline, the City must spend \$368,204 of HOME funds by September 30, 2013. With City Council's approval, the Women's Center should be able to spend these funds by the deadline, while expenditure of funds in the Bounce Back Program is unlikely.

DISCUSSION

HOME Funds

HOME Investment Partnership Act Program (HOME) is the largest Federal block grant to State and local governments designed exclusively to create affordable housing for low-income households. HOME funds are allocated annually on a formula basis to states and local jurisdictions by the United States Department of Housing and Urban Development (HUD).

HOME funds may be used by local jurisdictions for a broad range of eligible activities including, but not limited to: (1) provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers, (2) build or rehabilitate housing for rent or ownership, or (3) other related affordable housing programs.

The City typically allocates HOME funds at the same time as the Community Development Block Grant (CDBG) process, in February/ March of each year. Allocations are made by City Council after evaluating applications for these funds. Over the past several years, the City has received very few applications for HOME funds. As a result, the City has allocated the majority of each year's HOME funds to the Down Payment Assistance Program and Rehab Program, both of which are administered by San Joaquin County. However, the balance of funds in these programs has remained high, and mostly unused, due to market conditions. This scenario is similar with other cities in the County.

The U.S. Department of Housing and Urban Development (HUD) has a five year expenditure deadline on HOME funds. On September 6, 2011, City Council reallocated

\$590,857 of HOME funds from the County's First Time Homebuyer and Rehabilitation Program to the Bounce Back to Homeownership-Option to Own Program, which is managed by Visionary Home Builders, a local non-profit agency (City Council Resolution Number 2011-173). This reallocation to the Bounce Back Program was done in order to meet a federal deadline regarding the use of these funds. However, Visionary has not been able to spend any of the funds in the Bounce Back Program due to market conditions and difficulty finding eligible applicants.

The following is a breakdown of the City's available HOME funds by fiscal year:

2006-07	\$ 75,974
2007-08	\$148,614
2008-09	\$143,616
2009-10	\$148,609
2010-11	\$152,145
2011-12	\$134,203
2012-13	\$ 62,144
<hr/>	
Total	\$865,305

These HOME funds have been previously allocated by City Council as follows: Down Payment Assistance Program \$253,684, Rehab Program \$20,764 and Bounce Back Program \$590,857.

On March 29, 2013, San Joaquin County informed City staff that it had reviewed the balance of HOME funds available for the City. Due to the five year expenditure deadline, the County is asking that fiscal years 2006 thru 2008, totaling \$368,204 (all of which are currently allocated to the Bounce Back Program), be spent by September 30, 2013. Failure to spend this funding by September 30, 2013, will subject the unspent funds to be reclaimed by HUD.

#### Women's Center Project

Since being informed of this deadline by the County, City staff has done additional outreach to seek eligible projects. The Women's Center project presents a timely opportunity for use of these HOME funds. The Women's Center is seeking to establish a new shelter in Tracy for battered women and children. City Council allocated \$50,000 of HOME funds to this project for FY 2013-14. Sutter Tracy Hospital has contributed \$100,000 to the project. The Women's Center has a need for additional funds in order to acquire a suitable property in Tracy. Joelle Gomez, Chief Executive Officer of the Women's Center, has stated that \$368,204 in additional HOME funds would greatly assist the Women's Center in acquiring a house that meets their needs, and they would be able to accomplish this by the deadline of September 30, 2013.

If City Council approves this reallocation to the Women's Center project, the City would still have a remaining HOME funds balance of \$222,653 in the Bounce Back Program, \$253,684 in the Down Payment Assistance Program, and \$20,764 in the Rehab Program.

### STRATEGIC PLAN

This agenda item supports the City Council's Strategic Plan for Livability through implementation of the local priorities for CDBG and HOME funds, which include emergency food and shelter, and domestic violence services.

### FISCAL IMPACT

There will be no impact to the General Fund. The project was previously allocated \$50,000 of HOME funds for FY 2013-2014. With City Council's approval of this agenda item, funding for the project would be increased by an additional \$368,204 of HOME funds.

### RECOMMENDATION

Staff recommends that City Council, by resolution, reallocate \$368,204 of HOME funds from the Bounce Back Program to the Women's Center to establish a shelter for battered women and children in Tracy.

Prepared by: Scott Claar, Associate Planner  
Amie Mendes, Economic Development Analyst

Reviewed by: Bill Dean, Assistant Development Services Director

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

RESOLUTION 2013- \_\_\_\_\_

REALLOCATING \$368,204 OF FEDERAL HOME INVESTMENT PARTNERSHIP ACT (HOME) FUNDS FROM THE BOUNCE BACK PROGRAM TO THE WOMEN'S CENTER TO ESTABLISH A SHELTER FOR BATTERED WOMEN AND CHILDREN IN TRACY

WHEREAS, HOME funds are allocated annually on a formula basis to states and local jurisdictions by the United States Department of Housing and Urban Development (HUD) to create affordable housing for low-income households; and

WHEREAS, Over the past several years, the City has allocated the majority of each year's HOME funds to the Down Payment Assistance Program and the Rehab Program, both of which are administered by San Joaquin County; and

WHEREAS, On September 6, 2011, City Council reallocated \$590,857 of HOME funds (in order to meet a federal deadline for use of these funds) from the County's First Time Homebuyer and Rehabilitation Program to the Bounce Back to Homeownership-Option to Own Program, which is managed by Visionary Home Builders, a local non-profit agency (City Council Resolution Number 2011-173); and

WHEREAS, Visionary has not been able to spend any of the funds in the Bounce Back Program due to market conditions and difficulty finding eligible applicants; and

WHEREAS, HUD has a five year expenditure deadline on HOME funds; and

WHEREAS, The City must spend \$368,204 of HOME funds by September 30, 2013, due to this federal deadline; and

WHEREAS, The Women's Center is seeking to establish a new shelter for battered women and children in Tracy, which is an eligible project for HOME funds; and

WHEREAS, City Council allocated \$50,000 of HOME funds for FY 2013-14 to the Women's Center to establish a shelter for battered women and children in Tracy; and

WHEREAS, An additional \$368,204 of HOME funds would greatly assist the Women's Center in acquiring a property that meets their needs; and

WHEREAS, The Women's Center should be able to spend these funds by the deadline, while expenditure of funds in the Bounce Back Program is unlikely; and

WHEREAS, The City Council conducted a public meeting on May 21, 2013 to consider reallocation of \$368,204 of HOME funds from the Bounce Back Program to the Women's Center project;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby reallocate \$368,204 of HOME funds from the Bounce Back Program to the Women's Center to establish a shelter for battered women and children in Tracy.

\*\*\*\*\*

The foregoing Resolution 2013-\_\_\_\_\_ was adopted by the Tracy City Council on the 21<sup>st</sup> day of May, 2013 by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 5

REQUEST

**PROVIDE DIRECTION ON THE DISPOSITION OF THE CITY-OWNED SCHULTE ROAD PROPERTY**

EXECUTIVE SUMMARY

City staff, with assistance from a consultant, has analyzed two solar proposals the City received for the Schulte Road property and has found that both are viable proposals. The City has also received two additional and separate unsolicited proposals regarding the property. An update on the analysis of the two solar proposals from the City's consultant is included in this report. GSA has requested that the City complete the Schulte Road transaction by August 1, 2013. Staff is seeking direction from City Council relative to proceeding.

DISCUSSION

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

On September 18, 2012, the City Council considered appropriating \$1,115,250 from the RSP Fund for costs associated with the removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel. Council directed staff to request an extension from GSA while the City performed due diligence on the viability of a renewable energy project on the site. GSA did grant a six month extension to the City if the City agreed to pay a \$50,000 deposit by November 14, 2012.

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

URS did finalize the Schulte Road Renewable Energy Development Options report in February, 2013. The report stated that several development pathways could be pursued to implement a viable renewable energy project on the Schulte site. An RFP was subsequently issued for project proposals and two proposals were received.

**Proposals**

Two proposals were received from reputable companies. A complete analysis was performed by URS as to the viability of the proposals. It was found that both proposals would be viable to yield an alternative energy project and financial return for the City. It is important to note that negotiations with a firm have not yet been initiated and therefore a final agreement, including revenue projections, could contain different terms when

presented to City Council for final approval. Additionally, this analysis completes the scope of work by URS.

As a brief summary, the primary basis of comparison for the two prospective developers is a project (both have proposed) on the 50-acres already owned by the City and where the City enters into a Power Purchase Agreement (PPA) with the developer to offset a portion of the City's energy consumption via PG&E's RES-BCT program. The City would receive lease revenue from the developer on a \$/acre-year basis on the amount of property needed to execute the project. The City would also benefit from energy savings over time by paying a known electricity rate via the PPA to the developer, which also in theory will hedge against the projected rise in retail electricity costs. The total revenue to the City from a PPA (reduction in current and projected future electricity costs) and ground lease payments from this comparison project alone ranges from \$450,000 to \$600,000 annually over a 20 year period, which would total 9mil to 12mil respectively. Both bidders' proposals contain indications of interest in making option payments to the City for the opportunity to develop additional projects on the remaining acreage of the site and with additional project stakeholders and off-takers.

#### **Unsolicited Proposals**

The City has received two additional and separate unsolicited proposals which are briefly outlined below.

#### **Surland:**

Surland Communities has submitted a proposal (Attachment B) to purchase 150-acres of the Schulte Property for \$1,100,000 for a potential solar project. The proposal also requests first right of refusal to purchase additional 50 City owned acres at a price of \$900,000. It should be noted that the Tracy Municipal Code provides that the disposition of real property shall be by competitive proposals unless the City Council, by resolution, determines other procedures are in the best interest of the City. If the City chooses to sell the property to Surland, the City Council would first have to make such findings.

#### **Energy and Financial Consulting (Excerpts from proposal):**

Energy and Financial Consulting has submitted a non-solicited tentative private offering that proposes a turnkey project using a COP (Certificate of Participation) to secure long term, zero down, low cost funding for a 20 MW solar PV "FIT" (Feed In Tariff) project, on 100-acres. When secured, the rate should be approximately 3.55% for 20 years (final cost is set at offering time). The proposal states that the City's margin would be guaranteed from the utility, by means of a FIT agreement, for up to 25 years.

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

agreement. It was noted, that substantially more revenue might be realized under a potential Power Purchase Agreement structure, which would have to be further explored.

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

**Next Steps**

Following is the current schedule which may change based upon Council direction:

Update GSA on Council direction	<b>5-28-13</b>
Proceed with negotiations and development of an agreement	5-28-13
City Council considers purchase of property and approval of an agreement	7-2-13
Update GSA on City Council action of 7-2-13	7-8-13
Property transaction completed	8-1-13

Staff requests that the City Council provide direction relative to proceeding. Three options are listed below for Council consideration and other options may be presented by City Council as well:

Option 1:

Direct staff to bring back a staff report authorizing the City to pay for costs associated with the removal of use restrictions and Federal reversionary rights on the 150-acre Schulte Road parcel. Given the viability projections of a successful solar project, coupled with the proposal from Surland Communities that would essentially guarantee full reimbursement for the 150-acres at a minimum, staff believes this is the best option at this time. This option would allow the City to further define the highest and best use for the property. If City Council chooses this option, staff will request that GSA immediately perform the appraisal on the 150-acres and bring back the appropriate staff report.

Option 2:

Direct staff to begin negotiations with Surland Communities for sale of the property. This option will allow for further vetting of the deal points and may allow staff to potentially present a purchase agreement on July 2, 2013 concurrently with request to authorize purchase of the 150-acres from GSA. This option will limit the City's option for further development of the 150-acre site however, the funds necessary to remove the restrictions on the property could be utilized for other City purposes.

Option 3:

Direct staff to begin negotiations with one or more of the solar companies. This option will allow for a solar project on the property. Developing a solar project on the property would limit the City's ability for an alternate project on the site. Since there are multiple proposals for the site it is possible for the City to negotiate with more than one potential developer. This option would require a solar consultant in order to assist the negotiations



and final agreements. If City Council chooses this option, staff will bring back a request for additional consultant services and begin negotiations.

### STRATEGIC PLAN

This agenda item supports the City Council approved Organizational Efficiency Strategy;

Goal 1: Advance City Council's Fiscal Policies

1. To change the City's organizational and fiscal structure, and
2. To take advantage of funding and revenue generation opportunities

### FISCAL IMPACT

There is no fiscal impact for this report. \$50,000 has been previously paid to fulfill the request from GSA for a deposit. This amount is refundable in the event the City does not move forward with completing the acquisition of the Schulte Road property. \$9,500 has been paid as a deposit for costs associated with previous and future appraisals. An appraisal is scheduled to be completed by GSA and the final acquisition price will be determined at that time.

### RECOMMENDATION

Staff recommends that City Council provide direction on the Schulte Road Solar Project as stated in Option 1.

Prepared by: Rod Buchanan, Interim Director of Public Works

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

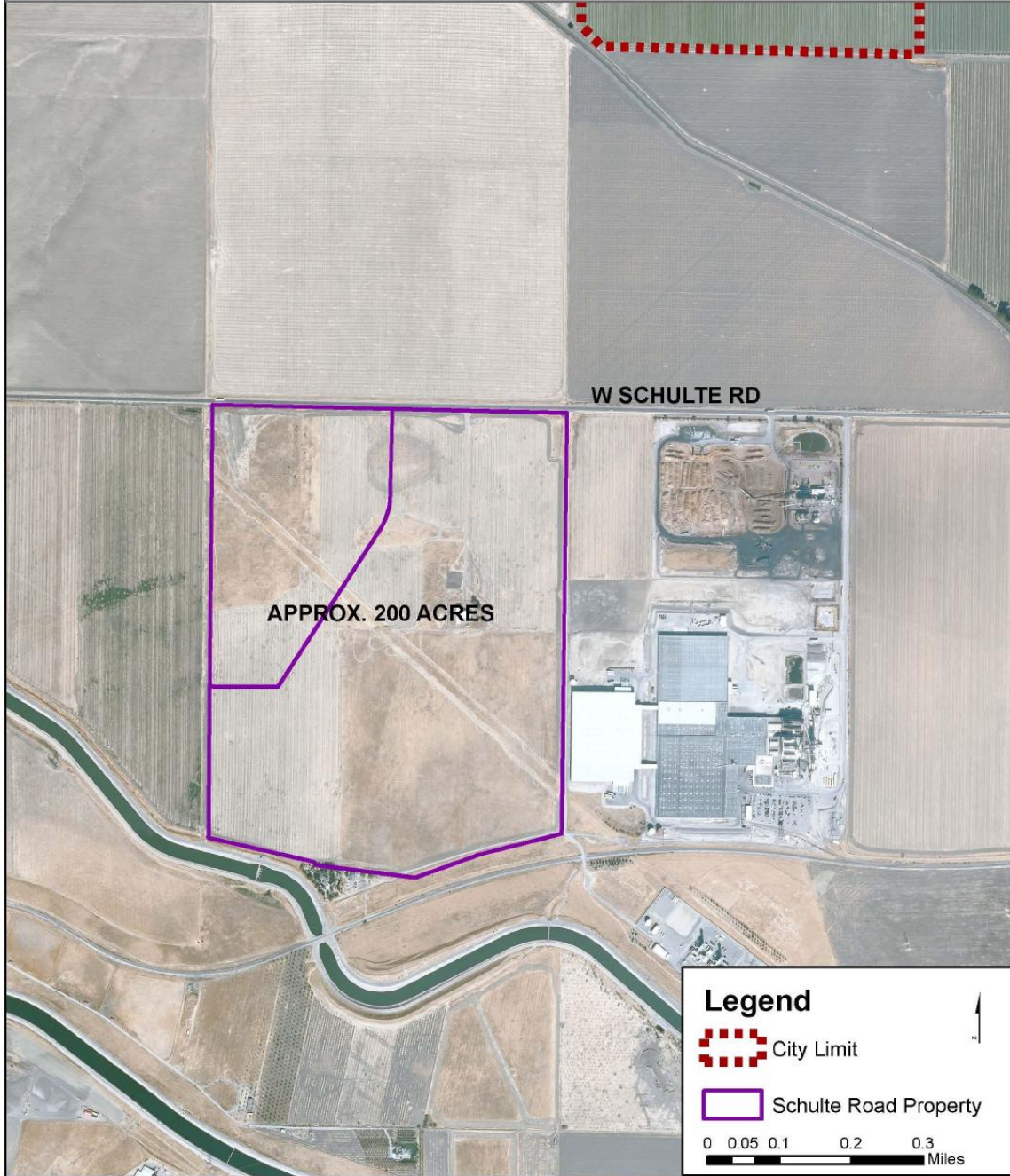
Approved by: R. Leon Churchill, Jr., City Manager

### Attachments:

Attachment A: Map of Schulte Road Property

Attachment B: Surland Proposal

# Schulte Road Property Location Map - Attachment A



# THE SURLAND COMPANIES

May 8, 2013

Mr. Leon Churchill  
City Manager  
City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

*Residential*

*Commercial*

Re: Letter of Intent Regarding 200 Acres Located near Tracy, California, Assessor's Parcels Numbered 209-230-29 (50 acres) and 209-230-30 (150.18 acres)

Dear Mr. Churchill:

This letter ("**Letter**") states the intent by which Surland Communities ("**Buyer**") would propose to negotiate an agreement ("**Purchase Agreement**") granting Buyer the right to purchase the real property described above ("**Property**") from the City of Tracy ("**Seller**"). This letter is a statement of proposal of Buyer and is intended to be used to allow City to determine its interest and authorize entering into a formal Purchase Agreement.

Buyer intends to pursue the approval, development, and operation of a Solar Farm on the Properties.

The following are the basic terms and conditions under which the Buyer proposes to Seller to negotiate a Purchase Agreement for the Properties.

**Section 1. Parties and Properties.** This Letter assumes the Seller is or will be the fee owner of the Properties and has the legal authority to enter into the Purchase Agreement for the sale, or other agreement(s) regarding the Properties. The Properties consist of two parcels located in the County of San Joaquin, near the City of Tracy, Property I described as Assessor's parcel no. 209-230-29 consisting of approximately 50 acres, and Property II described as Assessor's parcel no. 209-230-30 consisting of approximately 150.18 acres. The properties presently consist of bare land.

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Section 2. **Purchase Price.** The Purchase price of the Property II shall be \$1,100,000.

Section 3. **Close of Escrow.** The Close of Escrow ("Escrow") shall occur within 90 days of restrictions being removed, annexation of both Properties I and II to the City with acceptable pre-zoning, subject to, among other factors, an insurable title report including only exceptions to title acceptable to Buyer.

Section 4. **Payment of Purchase Price.** The Purchase Price of Property II shall be paid through escrow at the Close of Escrow.

Section 5. **Purchase Price.** Buyer shall have the right to Purchase Property I for \$900,000.

Section 6. **Close of Escrow.** The Close of Escrow ("Escrow") shall occur within 90 days of Buyer notice to Seller. Subject to among other factors, an insurable title report including only exceptions to title acceptable to Buyer.

Section 7. **Payment of Purchase Price.** The Purchase Price of Property I shall be paid through escrow at the Close of Escrow.

Section 8. **Development.** Buyer will have the right to construct, operate, and maintain a Solar Farm on Property I, with the primary intent to serve power to the City of Tracy.

I appreciate your consideration and look forward to your response.

Sincerely,

Les Serpa  
CEO  
Surland Communities

AGENDA ITEM 7.A

REQUEST

**RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE**

EXECUTIVE SUMMARY

This agenda item will update the Council on newsworthy events.

DISCUSSION

The City Manager will provide Council with an informational report on various items, including upcoming special events, status on key projects, or other items of interest in an effort to keep Council, staff, and residents abreast of newsworthy events.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact with this informational item.

RECOMMENDATION

That Council receive and accept the City Manager's informational update.

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