

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

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was offered by Reverend Vijn, Sant Nirankari Mission.

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

Officer Mike Reyna, Tracy Police Officer Association (TPOA) President, presented TPOA Scholarships to Ghoncheh Azadeh, Brianna Warner, Arashpreet Gill, Paul Gleason, Aloukika Shah, and Anamarie Mendez.

Sean Butler, Fire Engineer, provided a presentation regarding Drowning Prevention.

Mayor Ives presented a Certificate of Appointment to new Parks and Community Services Commissioner, Faith Ettinger.

Mayor Ives presented a proclamation to Mary Nicholson, founder and Director of Healings in Motion, in recognition of Stroke Awareness Day.

Mayor Ives presented a proclamation to Pastor Tim Heinrich, Samantha Heinrich and Keli Goble in recognition of Lyme Disease Awareness Month.

Mayor Ives presented a proclamation to Mayor Pro Tem Maciel in recognition of Water Awareness Month.

Mayor Ives recognized students from New Jerusalem, Traina and West Valley Elementary Schools in celebration of their D.A.R.E. graduation.

1. CONSENT CALENDAR - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of March 19, 2013, and Special meeting minutes of April 2, 2013, were approved.
 - 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 – Resolution 2013-073 authorized submittal of 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 – Resolution 2013-074 authorized the City Manager to execute the contracts.

2. ITEMS FROM THE AUDIENCE - Paul Miles, 1397 Mansfield Street, addressed Council responding to Mayor Pro Maciel's comments made at the last Council meeting.
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 – Maria Hurtado, Assistant City Manager, provided the staff report. 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 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.

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 29 documents in response to Council's request for additional information. Of the 29 documents, 10 are of a governmental agency which can be independently verified. No financial information was received.

"Official" information received from Mr. Rogers:

- Three articles of incorporation;

- One Form 200 (List of Officers) for one Corporation;
- Three documents showing the suspended status of three corporations

Additional Information Requested:

- Any "Official" documents filed with the Secretary of State 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.

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) 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.

"Official" information received from Mr. Rogers:

- Official Court Order;
- US Bankruptcy Court Voluntary Petition;
- US Bankruptcy Court Statement of Financial Affairs.

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.

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.

Mr. Rogers was 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.

Staff recommended that Council cease negotiating a new 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 was 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.

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 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.

Ms. Hurtado introduced Scott Rodde, National Development Council. Mr. Rodde indicated he has been providing financial capacity reviews for over 20 years, and named many of his former clients. Mr. Rodde indicated he had reviewed several financial documents from Mr. Rogers and the Spirit of California, describing limited earnings and limited equity capital of Mr. Rogers. Regarding Spirit of California (SOC) financial documents, Mr. Rodde indicated many documents did not comply with generally accepted accounting principles and therefore raise questions to the liquidity and capital of the SOC entity. Mr. Rodde concluded that it would be inappropriate to rely on Mr. Rogers or the SOC for financial assurances with respect to their role in the SOC as developers for the project. Mr. Rodde summarized that it was his professional opinion, based on the financial capacity provided, that the project has a 10% probability of success.

Council Member Manne asked for a description of the financial information provided. Mr. Rodde stated he received a personal financial statement dated May 15, 2013, personal tax returns for 2011 and 2012, and a quick books balance sheet for the SOC dated May 15, 2013.

Council Member Manne asked if there were other documents Mr. Rodde would have preferred to review. Mr. Rodde outlined those preferred documents.

Council Member Manne asked Mr. Rodde to explain his comment regarding documents received not complying with general accounting principles. Mr. Rodde explained the differences in the information provided and industry standards.

Mayor Ives invited the applicant to address Council.

Mr. Jim Rogers addressed Council indicating the information he supplied was overwhelmingly supportive that there has been no fraudulent activity in his past, and that the information was adequate. Mr. Rogers indicated the documents he supplied staff overwhelmingly attest to his credibility, and confirm that they have the assets to move forward. Mr. Rogers further indicated he needed to complete a competence study and asked that Council bear with him and his possible 10% success rate.

Council Member Manne indicated Council received a copy of a resolution from the Spirit of California regarding a buy-back protection for investors. Mr. Rogers indicated there was a rumor that they were looking for investors to give \$5,100. Mr. Rogers stated the SOC offered the buy-back protection this in case any investor was insecure about the project and wanted to get their money back.

Council Member Manne asked who the directors of SOC were. Mr. Rogers indicated just himself. Council Member Manne stated the resolution did not indicate the stock

would be refunded at the original purchase price. Mr. Rogers stated it would be at the purchase price.

Council Member Manne asked if the SOC has the ability to purchase the stock. Mr. Rodgers stated yes.

Mayor Pro Tem Maciel asked for the source of the \$2 million income. Mr. Rodgers indicated the income was from shares of stock purchased from a company called Adomani, which has been in operation for two years. A short discussion ensued regarding shares, stock information regarding the company, and its potential income for the SOC.

Mayor Pro Tem Maciel asked for clarification regarding correspondence which refers to a company that will acquire the first \$300 million in loans. Mr. Rogers stated he has been involved with a gentleman who is considered number one in the country for obtaining investment funds. Mr. Rogers indicated this gentleman has made the SOC project his number one project and has provided correspondence to Mr. Rodde regarding the probability of gaining EB500 funding through that program.

Mayor Pro Tem Maciel asked Mr. Rogers to explain what an EB500 program was and how he could obtain \$300 million in funding. Mr. Rogers explained EB500 was a statute in the Immigration Act of 1990, which allows immigrants to obtain a green card by investing in the United States.

Mayor Pro Tem Maciel asked Mr. Rogers if he was aware of any other project that has qualified for this type of funding. Mr. Rogers indicated the projects were disclosed in a letter to Mr. Rodde.

Council Member Young referred to the offer to buy back stock from Tracy investors asking if there was a 30-day deadline. Mr. Rogers indicated it was an oversight on his part and there was no time limit for the investors to request a refund.

Council Member Manne asked Mr. Rodde if the SOC had the liquidity to repay the stock. Mr. Rodde stated no, based on the balance sheet of May 15, 2013. Mr. Rodde provided a brief discussion regarding probability, liquidity, and financial capacity.

Council Member Rickman referred to EB500, asking Mr. Rodde if there was any evidence that Mr. Rogers could obtain that financing. Mr. Rodde indicated it has been his experience that EB500 has never been a primary funding source, but acts in a financing role, providing up to 20% of the financing.

Mr. Rogers indicated he did not plan on building the project all at once; his job was to get the team and finances together. Mr. Rogers stated the project and phasing would be laid out once the feasibility study was complete.

Council Member Rickman asked Mr. Rogers how much time he needed. Mr. Rogers stated in order to approach investors he needed an ENRA which would show investors the City wants the project. Mr. Rogers indicated he was not opposed to benchmarks and wanted an ENRA with a term of three years.

Mayor Pro Tem Maciel asked Mr. Rogers if it was his impression that granting an ENRA was an endorsement by the City. Mr. Rogers stated no, but it does let the investment community know there is a level of commitment.

Mayor Pro Tem Maciel asked Mr. Rogers if he would be at a disadvantage if he did not have an ENRA. Mr. Rogers stated a developer needs to have control over the property in order to invest money in the project.

A north side resident addressed Council concerning impacts to the City of Tracy from the project including noise, traffic, and airborne dirt. The resident urged Council to accept staff's recommendation.

Ron Forte, entrepreneur in the Central Valley, voiced his support indicating he was asked to speak about the project by Bob Crosario and Mr. Rogers. Mr. Forte stated Mr. Rogers would not be able to attract investors until he had an ENRA with the City.

Ron Fields addressed Council regarding Mr. Rogers and the entertainment aspect of the proposed project. Mr. Fields stated the project would be very good for the community.

Cheryl Madison Lancaster and Dennis Lancaster provided Council with three binders filled with petitions signed by individuals who would like to see the project in Tracy.

Mercedes Silveira, a resident since 1963, and an individual who invested \$5,100 in the project, asked Council to support the project.

A resident of Tracy stated he and many of his friends were excited about the project.

Ed Emery addressed Council in support of the project, indicating the project would bring more jobs to Tracy and suggested Council look at this as an investment in the community.

A Tracy High School student stated if the proposed project was built in Tracy, many people would stay in Tracy instead of moving away.

Mr. Martinez addressed Council in favor of the proposal, urging Council to move the project forward.

Mayor Ives called for a recess at 9:08 p.m., reconvening at 9:15 p.m.

Mayor Pro Tem Maciel asked Mr. Rodde if the comment Mr. Rogers made regarding his financial worth was consistent with the information provided. Mr. Rodde stated the information was consistent with what was provided, but stated he had a high uncertainty with the figures Mr. Rogers provided Council.

Council Member Rickman asked if anyone else has shown interest in that property. Andrew Malik, Development Services Director, stated there has been no other interest received.

Council Member Rickman asked if staff could establish benchmarks in the ENRA. Ms. Hurtado indicated benchmarks could be put in place.

Council Member Rickman asked if Mr. Rogers owed any money to the City. Ms. Hurtado stated Mr. Rogers was current.

Council Member Young asked if granting an ENRA would place the City in any type of liability. Dan Sodergren, City Attorney, stated depending on the terms of the ENRA, he was doubtful there would be any monetary liability.

Council Member Young asked for clarification regarding Mr. Roger's comment about issuing shares to local investors. Mr. Rogers indicated that was done to alleviate any concerns about the SOC taking money from local residents.

Council Member Young suggested it would be good for Council to give this project a chance to happen, especially since Mr. Rogers was willing to return funds to any resident that requested a refund. Council Member Young stated it may be appropriate to include benchmarks in the ENRA.

Mayor Pro Tem Maciel stated Council has never said this project was a bad idea; however he has not seen anything that provides him with confidence that the project can come to fruition. Mayor Pro Tem Maciel further stated he was in support of terminating the current ENRA and not initiating a new one.

Council Member Manne stated he was a proponent of the project, but the question was does the City want to continue to negotiate an ENRA with the SOC. Council Member Manne stated many questions were still unanswered and that he and the consultant did not have confidence that the applicant can bring the project forward.

Mayor Ives stated the project was worth negotiating. Mayor Ives further stated the risks that have to be mitigated are how much staff time is going to be spent and reimbursed. Mayor Ives indicated costs to this point have been partially mitigated through the existing ENRA. Mayor Ives indicated he did not mind asking staff to generate the basis for an ENRA with the SOC that has specific benchmarks that will logically require performance similar to other projects and that require the entity to defray staff costs during the negotiation process.

Council Member Rickman agreed that benchmarks were needed and the applicant needed to be held accountable for those benchmarks. Council Member Rickman added that communication needed to be improved.

Council Member Manne stated in order to be comfortable moving forward he would like to see a very conservative ENRA presented for approval.

Mr. Rogers commented that a considerable amount of money was being spent every day on the project. Mr. Rogers asked for an ENRA that allows him the leeway to set up a team and move forward. Mr. Rogers stated it was important to keep the existing ENRA with Tracy Blast until the new ENRA is signed.

Council Member Young stated she appreciated the work staff has invested in the item and the thoroughness of the information presented.

It was moved by Council Member Rickman and seconded by Council Member Manne to direct staff to continue negotiating an ENRA between the Spirit of California

Entertainment Group and the City of Tracy. Voice vote found Council Members Manne, Rickman, Young and Mayor Ives in favor; Mayor Pro Tem Maciel opposed.

Mayor Ives asked staff if the items Council discussed regarding the ENRA such as timing, cost, terms, would all come back to Council. Dan Sodergren, City Attorney, indicated staff would meet with Council and prepare options for negotiation which could be ready within 60 to 90 days.

Mr. Sodergren provided a brief recap on the next steps.

Ms. Hurtado clarified what was being proposed by the City Attorney and staff was that staff is to provide very conservative terms and timelines to Council to see if that was the course Council wanted staff to pursue. Once Council provided direction to staff on the negotiating parameters, staff could meet with the applicant.

Mayor Ives asked staff to bring back options to Council in an appropriate format which Council would turn around quickly at a Council meeting and develop the final ENRA.

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 - Scott Claar, Associate Planner, provided the staff report. 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, 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 (Resolution 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.

These HOME funds have been previously allocated by 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 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.

Since being informed of this deadline by the County, staff has done additional outreach to seek eligible projects. The Women's Center project presents a timely opportunity for use of these HOME funds. 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 new shelter in Tracy that meets their needs, and they would be able to accomplish this by the deadline of September 30, 2013.

If 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.

There will be no impact to the General Fund. The project was previously allocated \$50,000 of HOME funds for FY 2013-2014. With Council's approval funding for the project would be increased by an additional \$368,204 of HOME funds.

Staff recommended 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.

Mayor Pro Tem Maciel asked if this was a one-time allocation. Mr. Claar stated yes.

Mayor Ives asked if the amount was above the \$50,000 which has already been allocated. Mr. Claar stated yes.

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

Joelle Gomez, CEO for Women's Health Center, indicated the additional funds would expedite the process allowing them to double their bed capacity in Tracy. Ms. Gomez indicated the Women's Health Center did operate a shelter for battered women and children in Tracy for nine years which they had to close.

Council Member Young asked how long the other facility had been closed. Ms. Gomez stated since January 2013. Council Member Young asked if they were affiliated with the shelter in Stockton. Ms. Gomez stated these funds would allow them to purchase the home outright and would also help with their on-going budget.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-075 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. Voice vote found all in favor; passed and so ordered.

5. PROVIDE DIRECTION ON THE DISPOSITION OF THE CITY-OWNED SCHULTE ROAD PROPERTY – Rod Buchanan, Interim Public Works Director, provided the staff report. The Schulte Road property is approximately 200-acres in total and is located on the south side of Schulte Road, west of Lammers Road.

On September 18, 2012, Council considered appropriating \$1,115,250 from the Residential Area Specific Plan (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, Council approved the appropriation of \$50,000 from the 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 (RFP) and evaluation of submitted proposals. An RFP was issued for consulting services and in December 2012 URS was the consultant chosen to assist the City.

URS 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.

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 Council for final approval. Additionally, this analysis completes the scope of work by URS.

The primary basis of comparison for the two prospective developers is a project 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, by means of a 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 \$9 million to \$2 million 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.

The City has received two additional and separate unsolicited proposals.

Surland Communities has submitted a proposal 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 Council 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 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. 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.

Staff requested that City Council provide direction relative to proceeding and outlined the options for consideration:

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.

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.

Staff recommended that Council provide direction on the Schulte Road Solar Project as stated in Option 1.

Leon Churchill, Jr., City Manager, stated there is a time limits test needed to be met with the Federal Government as well as a financial objective of the City to shed assets. For those reasons, Mr. Churchill recommended Council accept Surland Communities proposal and direct staff to conduct negotiations. In addition, the City shall conduct discussions with Sun Power and Energy Financial Consulting if the proposal with Surland Communities is not consummated within 90 days.

Council Member Rickman asked if this property has a big pipeline running through it. Mr. Buchanan stated yes, there is an easement running through the property.

Mayor Ives asked for clarification regarding the "non-working assets" of 50 acres Mr. Churchill referred to. Mr. Churchill indicated the City owns the entire 200 acres, but 150 acres of the site contain restrictions.

Dan Sodergren, City Attorney, indicated the Federal Government has a revisionary interest in the property and the goal of the City has been to buy off that revisionary interest from the government.

Mayor Ives asked if the appraisal was being done in an effort to buy the revisionary acreage. Mr. Sodergren stated yes.

A discussion ensued regarding appraisals, acreage, and property ownership.

Mayor Ives referred to the 20 years of projected revenue totaling \$9 million. Mr. Buchanan invited a representative from Sun Power to address the question.

Bill Kelley, Sun Power Corporation, indicated the lease revenue would total approximately \$1.6 million over 20 years, but most of the savings would come from having an energy contract.

Mayor Ives asked if the Surland Communities proposal was a simple cash transaction. Mr. Buchanan stated yes, but did include an interest in some type of a solar project with the City.

Mayor Pro Tem Maciel asked if the projections were based on current technology. Mr. Buchanan stated yes.

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

Mr. Sodergren indicated the proposal from Surland Communities would be a straight land sale, at which time Surland Communities could work with a solar company on a project.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to direct staff to negotiate with Surland Communities. Voice vote found all in favor; passed and so ordered.

6. ITEMS FROM THE AUDIENCE - Robert Tanner asked if the ENRA with Spirit of California would conflict with the ENRA with Combined Solar Technologies for the solar project at the Holly Sugar site. Mr. Sodergren stated the solar project was not within the Spirit of California project boundaries.

7. STAFF ITEMS

- A. Receive and Accept the City Manager Informational Update – Leon Churchill, Jr., City Manager, provided the staff report.

Council accepted the City Manager's informational update.

8. COUNCIL ITEMS - Council Member Rickman asked for the status of the Sports Hall of Fame request. Mr. Churchill indicated staff was diligently working with the beneficiary, but no specific date was available.

Council Member Young invited everyone to a Memorial Day event honoring Veterans on Monday, May 27, 2013 at 10:00 a.m. at the Tracy Cemetery. Council Member Young congratulated all 2013 graduates.

Mayor Pro Tem Maciel stated there would be a follow-up ceremony honoring Veterans on Memorial Day, Monday, May 27, 2013, at 11:30 a.m. at the Tracy War Memorial.

8. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 10:37 p.m.

The above agenda was posted at the Tracy City Hall on May 16, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk