

Tuesday, October 1, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

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

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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS - Employee of the Month
Proclamation – Domestic Violence Awareness Month
Proclamation – Make A Difference Day
Proclamation – Anti-Bullying Month
Proclamation – Fire Prevention Week
Certificates of Appointment – Youth Advisory Commission
Presentation of Jersey(s)

1. CONSENT CALENDAR

- A. Approval of Minutes
- B. Authorize the Appointment of Three Adult Commissioners to the Youth Advisory Commission
- C. Authorization of Contract Laboratory Services for Fiscal Year 2013 – 2014
- D. Acceptance of the East Paradise Road Extension Project - CIP 73128 & 75046, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion
- E. Acceptance of the Corral Hollow Road Widening Between Grant Line Road and the West Valley Mall Entry - CIP 73014, Federal Project Number STPL 5192(030), Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion
- F. Approve a Professional Services Agreement with 4 Leaf, Inc., to Provide Temporary Staffing of Construction Inspectors and Plan Checking Engineers for Capital Improvement and Development Projects on an as-needed Basis for Fiscal Years 2013-2014 and 2014-2015, Authorization for an Option to Extend Inspection Services for Fiscal Years 2015-2016 and 2016-2017, Authorization for the City Manager to Execute the Extensions and Any Minor Amendments, and Authorization for the Mayor to Execute the Agreement
- G. Approve Amendment 1 to the Offsite Improvement Agreement with McDonald's USA, LLC, for the Construction of Street and Utility Improvements on Eleventh Street and "F" Street, and Authorize the Mayor to Execute the Agreement
- H. Rescind Resolution 2011-077 Authorizing a Cooperative Agreement Between the City of Tracy and Various Agencies, Authorization to Enter Into a New Cooperative Agreement Between the City of Tracy, Contra Costa Transportation Authority, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Community Services District for the Partial Reimbursement of City of Tracy Staff Expenses Related to Phase I Planning of Future State Route 239, and Authorization for the City Manager to Execute the Agreement
- I. Approve a Real Property Purchase Agreement with Earl R. Breitstein and Carole Breitstein, Trustees of the Breitstein Family Living Trust for Acquisition of Right-Of-Way for the Roadway Widening of Eleventh Street West of MacArthur Drive, and Authorize the Mayor to Execute the Agreement

- J. Authorize the City Manager and Public Works Director to Approve Amendments to the Landscape, Parks, and Channelways Maintenance Agreement with Sycamore Landscaping Corporation
 - K. Authorization for the Chief of Police to Execute a Memorandum of Understanding (MOU) with the Sacramento Valley Hi-Tech Crimes Task Force and Sacramento Internet Crimes Against Children Task Force to Jointly Combat Financial Crimes, Computer Crimes and Crimes Against Children
 - L. Approve an Agreement to Extend the 60-Day Cure Period Under the Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities, LLC and Authorize the Mayor to Execute the Agreement
- 2. ITEMS FROM THE AUDIENCE
 - 3. THAT COUNCIL CONDUCT A PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND ADOPT A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES
 - 4. AUTHORIZATION FOR CITY STAFF TO NEGOTIATE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SURLAND COMMUNITIES LLC FOR THE POTENTIAL DEVELOPMENT AND OPERATION OF AN AQUATICS CENTER IN THE CITY OF TRACY
 - 5. ITEMS FROM THE AUDIENCE
 - 6. COUNCIL ITEMS
 - A. Appoint Applicants to the Tracy Senior Steering Committee
 - B. Consider Whether an Item to Discuss the Timeliness of Staff Responses to Council Requests Should be Placed on a Future City Council Agenda
 - 7. ADJOURNMENT

August 20, 2013, 6:15 p.m.

City Council Chamber, 333 Civic Center Plaza

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

1. CALL TO ORDER - Mayor Ives called the meeting to order at 6:15 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL - Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION -
 - I. Real Property Negotiations (Gov. Code, § 54956.8)
 - Property Location: City-owned Schulte Road Property (Two adjoining parcels located on the south side of West Schulte Road, approximately 1 mile west of Lammers Road; comprised of: APN #209-230-03; and APN #209-230-29)
 - Negotiator(s) for City: Leon Churchill, Jr., City Manager; Maria Hurtado, Assistant City Manager; and Andrew Malik, Development Services Director
 - Negotiating Parties: Representatives of Surland Communities, LLC
 - Under negotiation: Price and terms of payment for sale or lease.
 - Property Location: Property on the north side of Eleventh Street west of MacArthur Drive (APN#s: 233-070-03, 233-070-04, 233-070-05, and 233-070-06)
 - Negotiators for City: Kul Sharma, Assistant Director of Development Services; Criseldo Mina, Senior Civil Engineer
 - Negotiating Parties: Earl and Carole Breitstein, Trustees of the Breitstein Family Living Trust
 - Under Negotiation: Price and terms of payment for the purchase of the property or a part of the property

- II. Pending Litigation (Gov. Code, § 54956.9(d)(1))
 - *Perez v. City of Tracy*
(Workers' Compensation Case No. FR130301)
- III. Initiation of Litigation (Gov. Code, § 54956.9(d)(4))
 - One case
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 6:16 p.m. It was seconded by Council Member Manne. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 7:04 p.m.
7. REPORT OF FINAL ACTION – It was motioned by Council Member Rickman and seconded by Council Member Manne to authorize initiation of litigation. Voice vote found all in favor; passed and so ordered.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 7:05 p.m.

The above agenda was posted at City Hall on August 15, 2013. The above are action minutes.

Mayor

ATTEST:

City Clerk

September 3, 2013, 6:15 p.m.

City Council Chamber, 333 Civic Center Plaza

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

1. CALL TO ORDER - Mayor Ives called the meeting to order at 6:15 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL - Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION -

I. Real Property Negotiations (Gov. Code, § 54956.8)

- Property Location: City-owned Schulte Road Property (Two adjoining parcels located on the south side of West Schulte Road, approximately 1 mile west of Lammers Road; comprised of: APN #209-230-03; and APN #209-230-29)
 - Negotiator(s) for City: Leon Churchill, Jr., City Manager; Maria Hurtado, Assistant City Manager; and Andrew Malik, Development Services Director
 - Negotiating Parties: Representatives of Surland Communities, LLC
 - Under negotiation: Price and terms of payment for sale or lease.
- Property Location: Property along W. Eleventh Street needed for the Eleventh Street – East Tracy Overhead Bridge Project (APN#s: 250-020-12, and 250-260-16)
 - Negotiators for City: Kul Sharma, Assistant Director of Development Services; Zabih Zaca, Senior Civil Engineer
 - Negotiating Parties: Representatives of the Westside Irrigation District
 - Under Negotiation: Price and terms of payment for the purchase of the property or a part of the property

II. Pending Litigation (Gov. Code, § 54956.9(d)(1))

- *Allred & McFarland v. City of Tracy, et al.*
(San Joaquin County Superior Court Case No. 39-2009-00215510-CU-WT-STK)
 - *Hemmingson vs. City of Tracy*
(Workers' Compensation Case No. FR130366)
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 6:16 p.m. It was seconded by Council Member Rickman. Voice vote found all in favor; passed and so ordered.
 6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:44 p.m.
 7. REPORT OF FINAL ACTION – In the matter of real property owned by the Westside Irrigation District (APN#s 250-020-12 and 250-260-16) it was motioned by Council Member Manne and seconded by Mayor Pro Tem Maciel to authorize staff to make a purchase offer in an amount disclosed in closed session. Voice vote found all in favor; passed and so ordered.
 8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 6:46 p.m.

The above agenda was posted at City Hall on August 29, 2013. The above are action minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

AUTHORIZE THE APPOINTMENT OF THREE ADULT COMMISSIONERS TO THE YOUTH ADVISORY COMMISSION

EXECUTIVE SUMMARY

The bylaws of the Youth Advisory Commission set the maximum number of adult Commissioners to three. A selection panel was established and has made recommendations for three adults to be appointed for a two year term to fill the existing adult vacancies on the Youth Advisory Commission.

DISCUSSION

The bylaws of the Youth Advisory Commission call for a maximum of three adult Commissioners that may sit on the Commission. The bylaws are crafted to include adult Commissioners that reside within the jurisdiction of any Tracy school district and include one member of the School District and two members of the community who desire to work with youth. Currently the Commission has three adult vacancies.

The City recruits new Commissioners on an ongoing basis to fill any vacancies created by outgoing Commissioners. The bylaws of the Youth Advisory Commission call for a selection panel to review new applications and make recommendations for appointment to the City Council. This year's panel consisted of Recreation Coordinators Jolene Jauregui and Laura Johnston. Parks Commissioner Alex Holguin provided staff his recommendation.

The selection panel conducted interviews on August 14, 2013. The following three adults, Wes Huffman, Lori Souza and Laura Hall-Tsirelas, are being recommended to serve two year terms, from October 1, 2013 to July 31, 2015.

STRATEGIC PRIORITY

This item does not specifically relate to the Council's Strategic Priorities.

FISCAL IMPACT

There is no impact on the General Fund.

RECOMMENDATION

Staff recommends that the City Council approve, by resolution, the appointment of three adult Commissioners to the Youth Advisory Commission based upon the interview and selection panel's recommendations.

Prepared by: Laura Johnston, Recreation Coordinator
Reviewed by: Kim Scarlata, Recreation Services Program Manager
Approved by: R. Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING THE APPOINTMENT OF THREE ADULT COMMISSIONERS TO THE YOUTH ADVISORY COMMISSION

WHEREAS, The bylaws of the Youth Advisory Commission call for a maximum of three adult Commissioners that may sit on the Commission; and

WHEREAS, The eligibility criteria and selection process of YAC Commissioners are established; and

WHEREAS, The City recruits new Commissioners on an ongoing basis to replace the outgoing Commissioners and existing vacancies, and has established a recommendation selection panel to recommend appointees to City Council; and

WHEREAS, The recommendation selection panel recommended the following three adults; Wes Huffman, Lori Souza and Laura Hall-Tsirelas for two year terms, from October 1, 2013 to July 31, 2015;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the appointment of the three new adult Commissioners recommended by the selection panel as identified above, and for the recommended terms, to the Youth Advisory Commission.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 1st day of October, 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

**AUTHORIZATION OF CONTRACT LABORATORY SERVICES FOR FISCAL YEAR
2013 - 2014**

EXECUTIVE SUMMARY

The City contracts for laboratory services for testing not performed by the Public Works laboratory. This testing is the more complex, specialized analysis and is needed for compliance with State and Federal regulatory mandates for water and wastewater systems.

DISCUSSION

The City contracts for laboratory services for testing not performed by the Public Works laboratory. This testing consists of the more complex, specialized analyses that are needed for compliance with State and Federal regulatory mandates for water and wastewater systems. The services provided by the contract laboratories include testing for metals, inorganic compounds and organic chemicals. The City contracts for Three-Species Bioassay testing using algae, daphnia, and rainbow trout to ensure there is no chronic toxicity in the treated wastewater. Contract laboratory services are used to determine the amount of virus and pathogen reduction in the City's wastewater sludge.

A Request for Proposals was sent to various laboratories. The following laboratories are recommended based on cost, response time, and detection levels.

<u>LABORATORY NAME</u>	<u>AMOUNT</u>	<u>METHODOLOGY</u>
Caltest	\$ 40,000	Inorganics/Organics
Eurofins Eaton Analytical	\$130,000	Inorganics/Organics
Alpha Analytical Laboratory	\$ 22,000	Inorganics/Organics
Sierra Foothill Laboratory	\$ 12,000	Chronic Bioassay
BioVir Laboratories, Inc.	\$ 6,000	Viruses/Pathogens Giardia/Cryptosporidium

STRATEGIC PRIORITY

This item does not specifically relate to the Council's Strategic Priorities.

FISCAL IMPACT

There is no impact to the General Fund. Funding is available in the approved Utilities Laboratory budget. The anticipated amount to be spent on laboratory services is \$210,000.

RECOMMENDATION

That the City Council, by resolution, authorize Contract Laboratory Services for Fiscal Year 2013 - 2014 to the recommended laboratories.

Prepared by: Erich Delmas, Laboratory Supervisor

Reviewed by: David Ferguson, Director of Public Works

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

RESOLUTION _____

AUTHORIZING CONTRACT LABORATORY SERVICES FOR FISCAL YEAR 2013 - 2014

WHEREAS, The City contracts for laboratory services for testing not performed by the Public Works laboratory and this testing consists of the more complex, specialized analyses that are needed for compliance with State and Federal regulatory mandates for water and wastewater systems, and

WHEREAS, Eurofins Eaton Analytical Laboratories was the low bid for the majority of testing services, and

WHEREAS, Other laboratories are being utilized for specific testing that is only provided by the laboratory, and

<u>LABORATORY NAME</u>	<u>AMOUNT</u>	<u>METHODOLOGY</u>	<u>MATRIX</u>
Eurofins Eaton Analytical	\$130,000	Inorganics/Organics	Water/Wastewater
Caltest	\$ 40,000	Inorganics/Organics	Wastewater
Alpha Analytical Laboratory	\$ 22,000	Inorganics/Organics	Wastewater/Soil
Sierra Foothill Laboratory	\$ 12,000	Chronic Bioassay	Wastewater
BioVir Laboratories, Inc.	\$ 6,000	Viruses/Pathogens Giardia/Cryptosporidium	Wastewater/Soil

WHEREAS, The term of these laboratory services is for one year, and

WHEREAS, There is no impact to the General Fund; funding is available in the approved Utilities Laboratory budget;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes Contract Laboratory Services for Fiscal Year 2013 – 2014 to the recommended laboratories.

* * * * *

RESOLUTION _____
Page 2

The foregoing Resolution _____ was passed and 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.D

REQUEST

ACCEPTANCE OF THE EAST PARADISE ROAD EXTENSION PROJECT - CIP 73128 & 75046, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the East Paradise Extension Project - CIPs 73128 & 75046, in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

On September 18, 2012, City Council awarded a construction contract for the East Paradise Extension Project - CIPs 73128 & 75046, to Knife River Construction of Stockton, California, in the amount of \$610,275.25.

The scope of work for this project included extension of the northern terminus point of East Paradise Road to the intersection of Grant Line Road. The scope of work also included installation of a 4-way red flashing stop light to control this intersection. The length of the proposed extension is approximately 500 feet. The road extension included extending the underground utilities (i.e. water, storm drain, sewer, street lighting) and provides utility stub-outs on parcel APN 250-030-02 for future development.

One change order was issued in the amount of \$6,321.04 for this project which consisted of additional manholes to locate the existing utilities, adjust water valves to grade and stabilize unsuitable subgrade prior to paving of the street.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities are less than the contract quantities in the amount of \$6,668.05. These quantities were deducted in accordance with the bid unit prices of the contract and are listed as under run of contract quantities.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 610,276.25
B. Change orders	\$ 6,321.04
C. Under run of contract Quintiles	(\$ 6,668.05)
D. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 176,809.00

E. Project Management Charges (Estimated)	\$ 111,676.00
Total Project Costs	\$ 898,414.24
Budgeted Amount	\$ 898,414.00

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

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 73128 & 75046 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution accept construction of the East Paradise Extension Project - CIPs 73128 & 75046, completed by Knife River Construction of Stockton, California and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

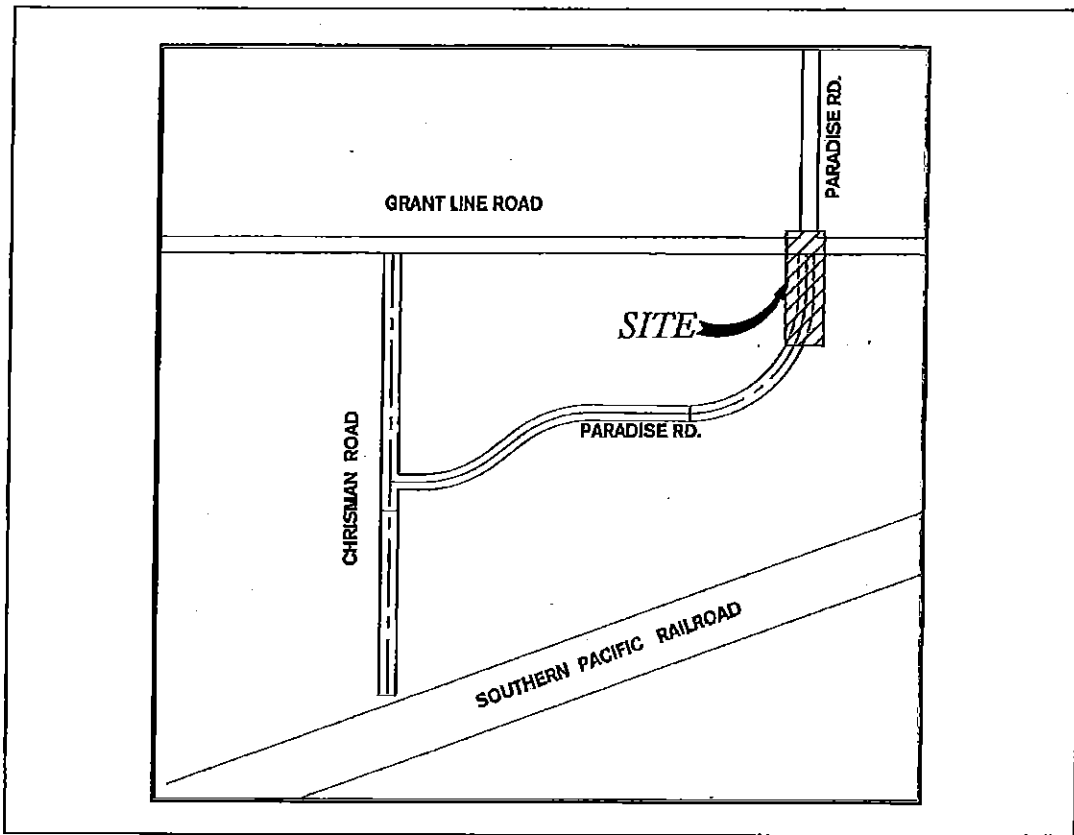
Reviewed by: Kuldeep Sharma, City Engineer

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

ATTACHMENTS

Attachment A: Location Map

ATTACHMENT A



LOCATION MAP City of Tracy

RESOLUTION 2013- _____

ACCEPTING THE EAST PARADISE ROAD EXTENSION PROJECT - CIPs 73128 & 75046,
COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND
AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On September 18, 2012, City Council awarded a construction contract for the East Paradise Extension Project - CIPs 73128 & 75046, to Knife River Construction of Stockton, California, in the amount of \$610,275.25; and

WHEREAS, The contractor has completed construction of the East Paradise Extension Project - CIPs 73128 & 75046, in accordance with project plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention; and

WHEREAS, One change order was received in the net amount of \$6,321.04; and

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

A. Construction Contract Amount	\$ 610,276.25
B. Change orders	\$ 6,321.04
C. Under run of contract Quintiles	(\$ 6,668.05)
D. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 176,809.00
E. Project Management Charges (Estimated)	\$ 111,676.00
 Total Project Costs	 \$ 898,414.24
 Budgeted Amount	 \$ 898,414.00

WHEREAS, CIPS 73128 & 75046 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED That City Council accepts construction of the East Paradise Extension Project - CIPs 73128 & 75046, completed by Knife River Construction of Stockton, California and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

The foregoing Resolution 2013-____ was adopted by the Tracy City Council on the 1st day of October, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.E

REQUEST

ACCEPTANCE OF THE CORRAL HOLLOW ROAD WIDENING BETWEEN GRANT LINE ROAD AND THE WEST VALLEY MALL ENTRY - CIP 73014, FEDERAL PROJECT NUMBER STPL 5192(030), COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the Corral Hollow Road Widening Project between Grant Line Road and the West Valley Mall entry, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

The primary scope of this project was widening Corral Hollow Road from a two lane street to a four-lane arterial with bike lanes in both directions of traffic. The project was partially State-funded from Measure 1B.

DISCUSSION

On June 5, 2012, City Council awarded a construction contract to Knife River Construction of Stockton, California, in the amount of \$4,535,485.10, involving the widening and reconstruction of the Corral Hollow Road between Grant Line Road and the West Valley Mall entry.

The scope of work included reconstruction and widening of Corral Hollow Road from a two lane street to a four-lane arterial with bike lanes in both directions of traffic. The Scope of Work included installation of curb and gutter, sidewalk, pavement section, sewer main, sewer manholes, storm drain lines and drainage inlets, non-potable water lines, new traffic signal and traffic signal modifications, decorative street lighting system, improvement of open drainage channel, landscaping and irrigation, and signing and striping. The project plans and specifications were prepared by Schack and Company of Tracy.

Three change orders totaling an amount of \$286,681.86 were issued for the project. One change order in the amount of \$200,153 was executed to replace 1,973 lineal feet of an existing 12-inch water line between Grant Line Road and the West Valley Mall entry. This water line replacement was not part of the original contract. However, during construction it was discovered that the existing 12-inch water line was deteriorated and had the potential of failing and leaking. To avoid cutting the newly paved street in the near future, staff in conjunction with City's consultant, evaluated the existing water line conditions and negotiated a change order in the amount of \$200,153 to replace the existing 12-inch water line.

The two additional change orders in the amount of \$86,538.86 were for the extra work needed to resolve the conflicts with numerous old existing utilities at various locations. Due to the lack of as built records, the old utilities were not shown on the contract drawings. These were unforeseen conditions and were not part of the original plans and specifications.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$59,134.81. These quantities were generally in the asphalt concrete tonnage needed to strengthen weak spots in the sub-grade found during construction. There were also additions in concrete and sidewalk work quantities. These quantities were paid in accordance with the bid unit prices of the contract and are listed as over run quantities.

Status of budget and project costs is as follows:

A.	Construction Contract Amount	\$ 4,535,485.10
B.	Approved Change orders	\$ 286,681.86
C.	Over run of Quantities	\$ 59,134.81
D.	Design, construction management, inspection, Testing, permits, ROW & miscellaneous expenses	\$ 333,259.00
E.	Project Management Charges	<u>\$ 449,380.00</u>
	Total Project Costs	\$ 5,663,940.77
	Budgeted Amount	\$ 5,834,860.00

The project has been completed within the available budget, within the time frame of the original contract plus the time extension given to the contractor for extra work including rain delays, per plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 73014, 72050, 74096 and 75112 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the Gas Tax Fund 242.

RECOMMENDATION

That City Council, by resolution, accept the Corral Hollow Widening project between Grant Line Road and the West Valley Mall Entry - CIP 73014, Federal Project Number STPL 5192(030), as completed by Knife River Construction of Stockton, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County

Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

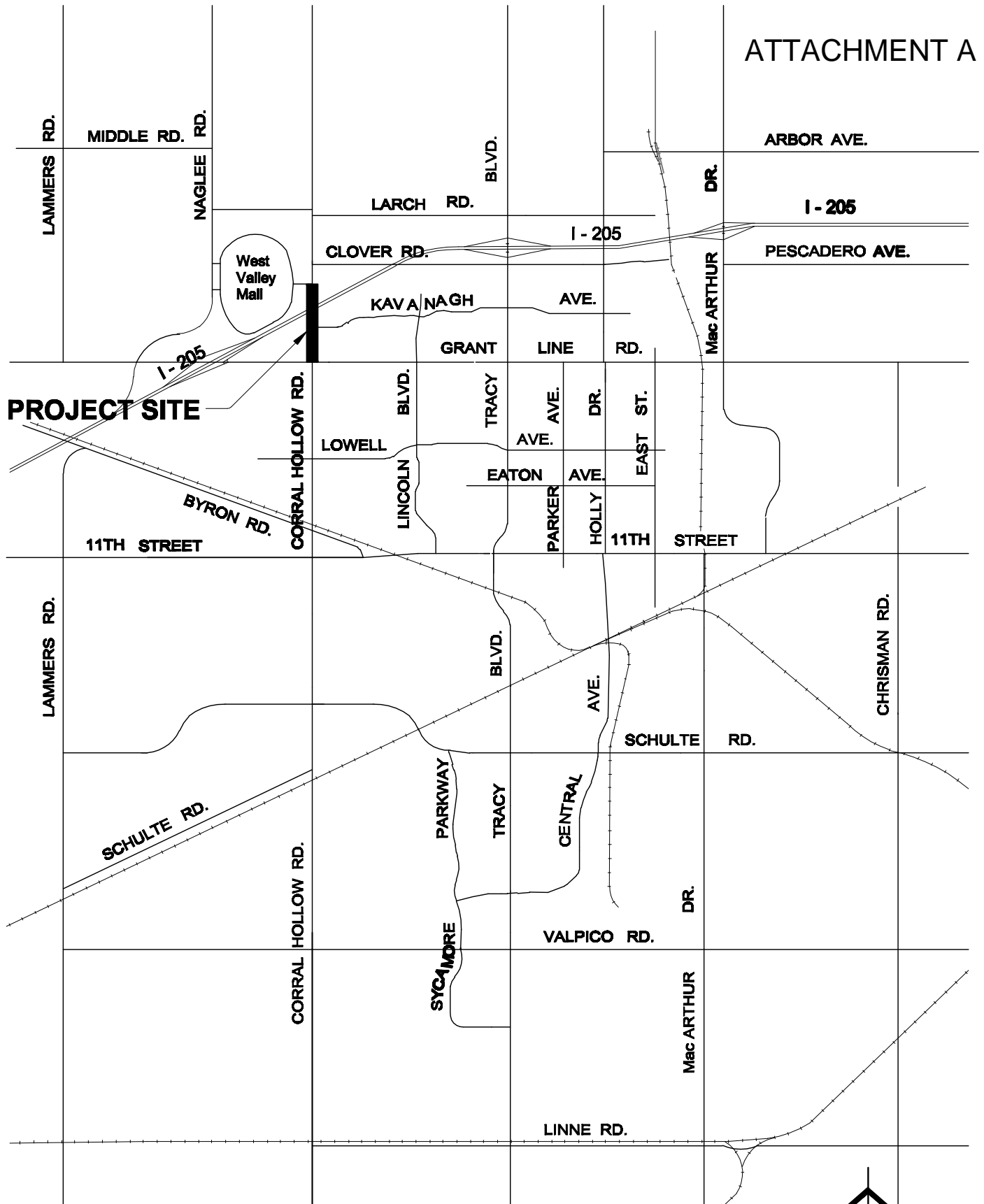
Reviewed by: Kuldeep Sharma, City Engineer
Andrew Malik, Development Services Director

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

ATTACHMENTS

Attachment A: Location Map

ATTACHMENT A



PROJECT SITE

West Valley Mall



NOT TO SCALE

RESOLUTION 2013- _____

ACCEPTING THE CORRAL HOLLOW ROAD WIDENING BETWEEN GRANT LINE ROAD AND THE WEST VALLEY MALL ENTRY - CIP 73014, FEDERAL PROJECT NUMBER STPL 5192(030), COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On June 5, 2012, City Council awarded a construction contract to Knife River Construction of Stockton, California, in the amount of \$4,535,485.10, involving the widening and reconstruction of the Corral Hollow Road between Grant Line Road and the West Valley Mall entry; and

WHEREAS, The contractor has completed construction of the Corral Hollow Road Widening Project between Grant Line Road and the West Valley Mall entry, in accordance with plans, specifications, and contract documents. Project costs are within the available budget to enable the City to release the contractor's bonds and retention; and

WHEREAS, Three change orders were received in the net amount of \$286,681.86; and

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

A.	Construction Contract Amount	\$ 4,535,485.10
B.	Approved Change orders	\$ 286,681.86
C.	Over run of Quantities	\$ 59,134.81
D.	Design, construction management, inspection, Testing, permits, ROW & miscellaneous expenses	\$ 333,259.00
E.	Project Management Charges	<u>\$ 449,380.00</u>
	Total Project Costs	\$ 5,663,940.77
	Budgeted Amount	\$ 5,834,860.00

WHEREAS, CIPs 73014, 72050, 74096 and 75112 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the gas tax fund 242;

NOW, THEREFORE BE IT RESOLVED That City Council accepts the Corral Hollow Road Widening Project (Grant Line Road to Mall Entry) - CIPs 73014, Federal Project Number STPL 5192(030), as completed Knife River Construction of Stockton, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

The foregoing Resolution 2013-_____ was adopted by City Council on the 1st day of October, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.F

REQUEST

APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH 4 LEAF, INC., TO PROVIDE TEMPORARY STAFFING OF CONSTRUCTION INSPECTORS AND PLAN CHECKING ENGINEERS FOR CAPITAL IMPROVEMENT AND DEVELOPMENT PROJECTS ON AN AS-NEEDED BASIS FOR FISCAL YEARS 2013-2014 AND 2014-2015, AUTHORIZATION FOR AN OPTION TO EXTEND INSPECTION SERVICES FOR FISCAL YEARS 2015-2016 AND 2016-2017, AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE THE EXTENSIONS AND ANY MINOR AMENDMENTS, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Due to the increased work load of upcoming Capital Improvement Projects (CIP) and Development Projects, additional staff will be required to provide plan checking and perform construction inspections to ensure compliance in accordance with City standard plans and specifications. Due to fluctuations of work load and uncertainty of the economic environment, the City relies on temporary services from consultants on an as-needed basis. This is the most cost effective method for the City and the development community. The costs of these services are charged to CIP's and developers.

DISCUSSION

The Development Services Department (DS) uses the temporary services of consultants to perform inspections and plan checking on various Capital Improvement Projects (CIP's) and Development Projects on an as-needed basis. The services of consultants are acquired through Professional Services Agreements. The costs of these services are charged to CIP's and developers. This is the most cost effective method for the City and the development community to meet the fluctuating work load needs of DS.

The City's existing professional services agreement to acquire such services expired on June 30, 2009. Since then the City has not used temporary staffing. However due to the increased work load of upcoming Capital Improvement Projects and Development Projects, temporary services will be required to ensure compliance of new construction in accordance with City standard plans and specifications.

In order to continue providing inspection and plan checking services in a cost effective, on an as needed basis, a new agreement needs to be executed with a consultant. The City requested proposals from various consultants to provide inspection services. A total of three proposals were received from the following consultants:

Consultant	Proposed fee Multiplier to Inspector/Plan Checking Engineer Salaries
4LEAF	1.33
MTA Moore Twinning	1.35
Bureau Veritas North America Inc	Non Responsive

The proposals were reviewed based on their experience, ability to provide services, and proposed multiplier to the salaries. 4 Leaf, Inc. of Pleasanton is the most qualified consultant to provide the required services. Staff negotiated a Professional Services Agreement (PSA) with 4 LEAF, Inc. with the proposed multiplier of 1.33 of the inspector and Plan Check Engineer salaries, for a not to exceed amount of \$600,000 per year. 4LEAF, Inc. had provided such services in the past and has the experience and ability to continue providing these services. The proposed hourly rates include the latest amended prevailing rates by the State of California for inspection and engineering services to Public Works projects.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no impact to the General Fund. The contract cost of the inspection and plan checking services are not-to-exceed \$600,000 and are charged to approved Capital Improvement Projects (CIP) and Development Projects.

RECOMMENDATION

That City Council, by resolution, approve a Professional Services Agreement with 4LEAF Inc., of Pleasanton, California, for two years with provisions for extensions for another two years to provide temporary staffing of construction inspectors and Plan Checking engineers on Capital Improvement and development projects on an as-needed basis, with a fee multiplier of 1.33 to the inspector's and plan checking engineer's salaries, for a not to exceed amount of \$600,000 per year, authorize the City manager to execute the extensions and minor amendments and authorize the Mayor to execute the Agreement.

Prepared by: S. Paul Verma, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer
Andrew Malik, Development Services Director

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

ATTACHMENTS

Attachment A: Professional Services Agreement with 4LEAF, Inc.

ATTACHMENT A

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
CONSTRUCTION INSPECTION AND PLAN CHECKING SERVICES
OCTOBER 1, 2013 TO JUNE 30, 2015**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and 4LEAF, Inc. (hereinafter "CONSULTANT").

RECITALS

- A. CONSULTANT services are needed to provide construction inspection and plan checking services for subdivision construction and Capital Improvement Projects.
- B. On July 31, 2013, CITY issued a Request for Proposals for the Professional Services Agreement. The CITY received three (3) proposals including a proposal submitted by the CONSULTANT.
- C. After negotiations between the CITY and CONSULTANT, the parties have reached an agreement for the services in accordance with the terms set forth in this Agreement. On October 1, 2013, the City Council authorized the execution of this Professional Services Agreement pursuant to Resolution No. 2013-____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Craig Tole. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel assigned for City of Tracy projects, without the prior written consent of the CITY.
- 2. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance by October 1, 2013, and perform such service through June 30, 2015. The CITY may extend the Agreement with CONSULTANT for a second two (2) year term, through June 30, 2017, provided that CONSULTANT makes a written request for extension (no later than 60 days prior to the expiration of the first two year term of this Agreement), and the CITY determines that CONSULTANT has satisfactorily performed all obligations under the Agreement. Payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services to be provided under this Agreement. In the event the City of Tracy City Council does not appropriate funds for payment for the services to be performed under this Agreement, or any extension thereto, this Agreement shall terminate. Any such termination of this Agreement, or any extension thereto, due to failure of the City of Tracy City Council to appropriate funds for payment for services to be provided under this Agreement shall not constitute a breach of this Agreement.

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

4. **CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.

5. **COMPENSATION.**
 - 5.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B" and incorporated herein by reference. CONSULTANT fee for this Agreement is not to exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000) per year. For inspection of public works projects CONSULTANT shall pay prevailing wage to the construction inspectors to comply with General Prevailing Wage determination made by the Director of Industrial Relations Pursuant to California Labor Code Part 7, Chapter 1, Article 2, section 1770, 1773 and 1773.1 (Building Construction Inspector and Field Soils and material tester, Senior Engineering Tech I) . Construction inspection services for private work (subdivision inspections) are not covered by the prevailing wage laws.
 - 5.2. The CONSULTANT's employees shall not be provided with City vehicles. The CONSULTANT shall ensure that its employees have adequate transportation. The CONSULTANT shall be reimbursed for mileage of its employees, based upon the amounts set forth in Exhibit "B."
 - 5.3. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, project name and number, and names of persons performing the service.
 - 5.4. Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on invoice and approved by the City.
 - 5.5. In the event that CONSULTANT's negligence or misconduct results in damages to the CITY, CONSULTANT shall, upon receipt reimburse the CITY (and CONSULTANT's payment may be offset) for the damages incurred.

6. **TERMINATION.** The CITY may terminate this Agreement by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the CITY all original documents, including preliminary drafts and supporting documents, prepared by CONSULTANT for this Agreement. The CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by CONSULTANT for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONSULTANT to any third party without the prior written consent of the City.
8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of CONSULTANT's performance of services under this Agreement.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE.**
 - 11.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 11.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 11.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.

- 11.5. **Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONSULTANT in an amount not less than \$1,000,000 per claim.
- 11.6. **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 11.6.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 11.6.2 For any claims related to this Agreement, CONSULTANT’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT’s insurance and shall not contribute with it.
- 11.7. **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 11.8. **Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 11.9. **Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five (5) days after the execution of this Agreement.
- 11.10. **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11. **CONSULTANT’s Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
12. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT’s duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

13. NOTICES.

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

To CITY:
City Engineer
Development Services
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To CONSULTANT:
4LEAF, Inc.
2110 Rheem Drive
Suite A
Pleasanton, CA 94588

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

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

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

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

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

18. ENTIRE AGREEMENT. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.

19. COMPLIANCE WITH THE LAW. CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

20. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
21. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

CONSULTANT
4LEAF, Inc.

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

By: Kevin J. Duggan
Title: President
Date: 8/30/13
Fed. Employer ID No. 94-339
3574

Attest:

By: Sandra Edwards
Title: City Clerk
Date: _____

By: KEVIN DUGGAN
Title: Secretary
Date: 8/30/13

Approved As To Form:

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

EXHIBIT "A"

SCOPE OF SERVICES

The scope of services set forth in this exhibit represents an outline of the services which the CITY anticipates the consultant to perform.

A. Project Objectives.

The CITY's primary objective for this Consultant Agreement is to obtain professional assistance in the timely performance of construction inspection and plan checking services, when deemed necessary by the CITY, and upon a minimum of two weeks written or telephonic notice from the CITY, between October 1, 2013 and June 30, 2015.

B. Background Information Regarding Existing Inspection Agreement.

1. The CITY had a consultant for construction inspection services, and the agreement expired on June 30, 2009. Due to the economic Downturn City did not use the consultant construction inspection services. Although the CITY cannot predict with certainty the amount of work, which will be required for the 2013/2015 consultant construction inspection and plan checking services agreement, the CITY anticipates the services of one plan checking engineer and one construction inspector services.

C. Responsibilities.

The Consultant will provide temporary construction inspection services and plan checking services to the City, for certain civil engineering projects, upon a minimum of two weeks written or telephonic notice from the City, between October 1, 2013 and June 30, 2015. The Consultant shall provide these temporary construction inspection and plan checking services to the City with qualified employees of the Consultant. Upon receipt of a request from the City, the Consultant shall review the qualifications of its employees, and select a minimum of three qualified candidates. The Consultant shall ensure that the qualified candidates have the experience and training necessary to perform the services required by this Agreement. The Consultant shall provide to the City a concise resume of each individual employee's qualifications, a proposed hourly rate for each employee based upon the employee's experience (not to exceed \$60.00 per hour without the multiplier) for construction inspector and (not to exceed \$90.00 per hour without the multiplier) for the plan checking engineer, and the Consultant shall schedule interviews of the qualified candidates with the City's Senior Civil Engineer. Depending upon the needs of the City, the City may select one or more of the candidates provided by the Consultant. If the City selects one or more of the Consultant's employees, the City and the Consultant shall negotiate the hourly rate to be paid to the employee based

EXHIBIT A – SCOPE OF SERVICES
CONSTRUCTION INSPECTION AND PLAN CHECKING SERVICES 2013/2015

upon the employee's experience, in an amount not to exceed per hour, without the multiplier.

The Consultant shall, through its qualified employees, (hereinafter, "Plan Checking Engineer"), perform services for the City's Capital Improvement projects, Subdivision Developments. Duties for "Plan Checking Engineer" include reviewing the plans and specifications of Capital Improvement Projects and Development projects for conformance with all relevant Standards, plans, specifications, contract documents, laws, codes, ordinances, resolutions, and regulations.

The duties for construction inspectors include inspecting various Public Works infrastructure, buildings, sewer and water treatment plants, airports, parks, including landscaping and irrigation for conformance with all relevant Standards, plans, specifications, contract documents, laws, codes, ordinances, resolutions, and regulations. Responsibilities of the inspectors include but are not limited to the following:

1. For each project assigned to the Inspector, the Inspector shall review and be thoroughly familiar with all laws, regulations, standards, and contracts relevant to the construction, including, but not limited to: the contract between the City and the Contractor or the Developer, the plans and specifications incorporated into the Contract; all laws, regulations, and standards set forth in the Contract; the City Design Standards; the City Standard Specifications; the City Standard Plans, the Contractor's construction schedule; the Contractor's submittal schedule; and all applicable City ordinances, resolutions, and City Council policies related to the construction activities.
2. For each project assigned, the Inspector shall attend the daily morning Construction meetings and weekly progress meetings as directed by the Engineer. The Inspector shall conduct all inspection services, for each project assigned, in accordance with this Agreement, as refined by the Engineer.
3. The Inspector shall visit the site of construction for each assigned project as directed by the Engineer. During each site visit, the Inspector shall observe and make a written report (in the Inspector's Daily Report) of: all items included on the standard form, including: the date and time of the visit (arrival and departure); the weather conditions at the site; a list of all persons present at the site including employees, subcontractors, and others; a description of the site conditions regarding status of construction and other relevant conditions; a description of all materials stored on site; a description of all major equipment on site; a description of activity at the site including work being performed, materials being installed, equipment active versus idle, laborers active versus idle; monitor traffic control and safety operations, etc. The Inspector's Daily Report for each project shall be submitted to the Engineer no later than 24 hours following the date and time of the Inspector's site visit. The Inspector shall not forward the

EXHIBIT A – SCOPE OF SERVICES
CONSTRUCTION INSPECTION AND PLAN CHECKING SERVICES 2013/2015

Inspector's Daily Reports to the Contractor without the prior written approval from the Engineer.

4. For each assigned project, the Inspector shall compare the Contractor's progress to the Contractor's schedule. The Inspector shall compare the material quality of the Contractor's work to the requirements of the Contract (including all relevant plans/specifications and submittals). The Inspector's comparisons shall include checking grades, sizes, elevations and locations of structures, field measurements, and traffic control. The Inspector shall note, in the Inspector's Daily Report, any deficiencies or deviations in the Contractor's work (including: Contractor behind schedule, areas of work which could be performed but are not staffed, areas of work which do not conform with the Contract, materials which do not conform with the Contract, and areas of work which were performed without obtaining an inspection required by the Contract).
5. For each assigned project, the Inspector shall perform all special inspections within the time frames set forth in the Contract regarding prior notice from the Contractor.
6. To the extent that the Inspector notes any deficiencies or deviations in the Contractor's work, the Inspector shall notify the Engineer and provide a draft report of deficient work. The Engineer will then review and notify the Contractor of deficiencies in a timely manner. The resolution of the deficiency may be verbal instructions by the Engineer to the Inspector and/or Contractor.
7. In the event that the Inspector observes, or otherwise learns of, an issue at the construction site which involves a risk of imminent harm to person or property, the Inspector shall immediately notify the authorized representative of the Contractor, and the Engineer, and shall take such action which, under the circumstances and the professional opinion of the Inspector, will lead to a timely resolution of the risk of harm. The Inspector shall follow-up with a written report to the Engineer.
8. The Inspector shall take photographs of the site on a daily basis, sufficient in number to depict the scope of major activities being performed by the Contractor, and in order to document any issues identified by the inspector in Sections 6 and 7 above. Each photograph shall be labeled with the date and time taken, and shall be indexed with a number, and a brief factual description of the events shown in the photograph. The Inspector shall take a videotape of the site if directed by the Engineer. The videotape shall indicate the date and time taken; however, no audio shall be added by the Inspector. The Inspector shall index the videotape to a brief factual description of the events shown in the videotape.
9. For each project assigned, the Inspector shall review pay requests submitted by the Contractor, and shall compare the Contractor's requests to the terms of the

EXHIBIT A – SCOPE OF SERVICES
CONSTRUCTION INSPECTION AND PLAN CHECKING SERVICES 2013/2015

Contract, and to the actual work performed by the Contractor as of the date of the request. Within 5 days of receipt of the request from the Contractor, the Inspector shall submit a written statement to the Engineer regarding the percentage of work performed by the Contractor.

10. As directed by the Engineer, Inspector shall prepare project Punch List listing the items not completed by the Contractor based on the project plans, specifications and contract documents.
11. The Inspector shall not order, tell, or suggest to the Contractor any method of performance of the work required by the Contract. The method of performance is within the discretion of the Contractor.
12. If the Contractor requests clarification regarding the intent of the Contract (including the plans or specifications), the Inspector shall direct the Contractor to the Contract clause that requires all such requests for clarification to be submitted to the City in writing. The Inspector shall then follow up the conversation in writing to the Engineer.
13. If the Inspector has any question regarding the intent or interpretation of the Contract (including the plans and specifications), the Inspector shall obtain a clarification from the Engineer.
14. For each assigned project, the Inspector shall review and perform plan checking of improvement drawings under direction of Engineer as required.

EXHIBIT "B"

1. For the inspection of Public Works projects, CONSULTANT shall receive compensation at a multiplier of 1.33 times the hourly prevailing wage rate established by the Department of Industrial Relations Pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1 for BUILDING CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER, SENIOR ENGINEERING TECH I. The hourly prevailing wage rate shall include basic hourly rate, health and welfare, pension, vacation, holiday, training and other payments as specified by the State of California, Department of Industrial Relations.
2. For the inspection of private work (subdivision inspection), CONSULTANT shall receive compensation at a multiplier of 1.33 times the hourly rate of the Inspector. The hourly rate of the Inspector shall be based upon the experience of the employee as determined by CITY, in an amount not to exceed \$60.00 per hour.
3. For the Plan Check Engineer, CONSULTANT shall receive compensation at a multiplier of 1.33 times the hourly rate of the approved plan check engineer hourly rate. The hourly rate of the plan check engineer shall be based upon the experience of the employee as determined by CITY, in an amount not to exceed \$90.00 per hour.
4. CONSULTANT's employees shall not be provided with CITY vehicles. CONSULTANT shall ensure that its employees have adequate transportation. CONSULTANT shall be reimbursed for the mileage at a multiplier amount of 1.33 time. 56.5 cents per mile. The mileage shall be the actual mileage traveled between the projects and the City of Tracy Development Services Department. No mileage shall be paid for commuting between employee's residence to workplace or vice versa.

RESOLUTION 2013 - _____

APPROVING PROFESSIONAL SERVICES AGREEMENT WITH 4 LEAF, INC., TO PROVIDE TEMPORARY STAFFING OF CONSTRUCTION INSPECTORS AND PLAN CHECKING ENGINEERS FOR CAPITAL IMPROVEMENT AND DEVELOPMENT PROJECTS ON AN AS-NEEDED BASIS FOR FISCAL YEARS 2013-2014 AND 2014-2015, AUTHORIZING AN OPTION TO EXTEND INSPECTION SERVICES FOR FISCAL YEARS 2015-2016 AND 2016-2017, AUTHORIZING THE CITY MANGER TO EXECUTE THE EXTENSIONS AND ANY MINOR AMMENDMENTS, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The Development Services Department (DS) uses the services of the consultants to provide temporary construction inspectors and plan checking engineers to perform inspections and plan checking on various Capital Improvement Projects (CIP's) and Development Projects on an as-needed basis, and

WHEREAS, The City requested proposals from various consultants to provide inspection services. A total of three Proposals were received from the following consultants:, and

WHEREAS, Proposals were reviewed based on their experience, ability to provide services, and proposed multiplier to the inspector salaries, and

WHEREAS, Staff recommends 4 LEAF, Inc., of Pleasanton, California, to provide temporary staffing of construction inspectors at a proposed fee multiplier of 1.33 of the inspector and Plan Check Engineer salaries, for a not to exceed amount of \$600,000 per year, and

WHEREAS, There will be no impact to the General Fund. The contract cost of the inspection and plan checking services are not-to-exceed \$600,000 and are charged to approved Capital Improvement Projects (CIP) and Development Projects;

NOW, THEREFORE, BE IT RESOLVED, That City Council, by resolution, approves a Professional Services Agreement with 4LEAF Inc., of Pleasanton, California, for two years with provisions for extensions for another two years to provide temporary staffing of construction inspectors and Plan Checking engineers on Capital Improvement and development projects on an as-needed basis, with a fee multiplier of 1.33 to the inspector's and plan checking engineer's salaries, for a not-to-exceed amount of \$600,000 per year, authorizes the City manager to execute the extensions and minor amendments. and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 1st day of October, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

October 1, 2013

AGENDA ITEM 1.G

REQUEST

APPROVE AMENDMENT 1 TO THE OFFSITE IMPROVEMENT AGREEMENT WITH MCDONALD'S USA, LLC, FOR THE CONSTRUCTION OF STREET AND UTILITY IMPROVEMENTS ON ELEVENTH STREET AND "F" STREET, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

McDonald's USA, LLC, a Delaware limited liability company (Developer) entered into an Offsite Improvement Agreement (OIA) with the City, for the construction of street and utility improvements on Eleventh Street and "F" Street (Offsite Improvements). The OIA required City Council's acceptance of the Offsite Improvements before occupancy of the building. The Developer has expressed desire to occupy the building immediately after the Offsite Improvements are completed.

In order to meet the desired business operation opening date of October 4, 2013, for the McDonald's Restaurant, the Developer requested that the City approve an amendment to the OIA, to allow building occupancy with substantial completion of the Offsite Improvements.

DISCUSSION

On January 2, 2013, City Council approved an OIA with McDonald's USA, LLC, a Delaware limited liability company, for the construction of the Offsite Improvements. The offsite improvements include the frontage improvements on Eleventh Street and "F" Street involving the removal and replacement of asphalt concrete pavement, asphalt concrete overlay, concrete curb, gutter, sidewalk, signing and striping, installation of domestic, irrigation and fire services, fire hydrant, sanitary sewer lateral with sewer cleanout, sewer manhole, storm drain, landscaping incorporating an automatic irrigation system, and other improvements as shown on the Improvement Plans and Specifications. The OIA required completion and acceptance of those improvements by the City prior to allowing occupancy of the building.

The developer has completed partial improvements and will be able to complete construction of all improvements required under OIA prior to a tentative occupancy date of October 4, 2013. However, due to a tight construction schedule, the developer may not be able to complete all punch list items after final inspection. The developer has requested that the existing OIA be amended to allow occupancy of the building as long as improvements are substantially completed and no health and safety items exist.

At the Developer's request, the proposed OIA amendment will allow occupancy of the building with substantial completion of the Offsite Improvements as determined by the City Engineer. The amendment to the OIA (Amendment 1 to the Offsite Improvement Agreement) has been prepared, reviewed by the City as to form, executed by the Developer, and is on file with the office of the City Engineer.

It is anticipated that Offsite Improvements including all on-site safety related improvements that are required by the City's Building Division will be completed on or before September 30, 2013. The Developer plans to occupy the building on October 1, 2013, and start business operation on October 4, 2013.

STRATEGIC PLAN

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

FISCAL IMPACT

The cost of processing the amendment is \$6,444 and it will be paid by the Developer. There will be no impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, approve Amendment 1 to the Offsite Improvement Agreement with McDonald's USA, LLC, a Delaware limited liability company, to allow occupancy of the building with substantial completion of the Offsite Improvements, and authorize the Mayor to execute the Agreement.

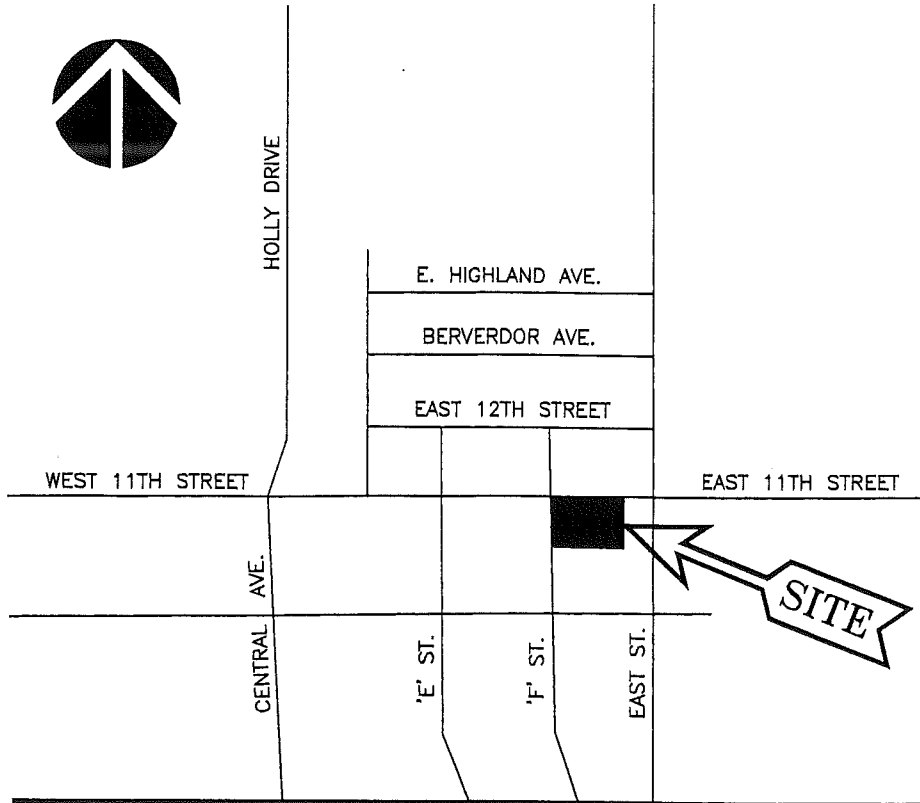
Prepared by: Cris Mina, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

ATTACHMENT

Attachment A - Vicinity Map



VICINITY MAP N.T.S.

RESOLUTION 2013-_____

APPROVING AMENDMENT 1 TO THE OFFSITE IMPROVEMENT AGREEMENT (AMENDMENT) WITH MCDONALD'S USA, LLC (DEVELOPER), TO ALLOW OCCUPANCY OF THE MCDONALD'S RESTAURANT BUILDING WITH SUBSTANTIAL COMPLETION OF STREET AND UTILITY IMPROVEMENTS ON ELEVENTH STREET AND "F" STREET, AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, On January 14, 2013, the Director of Development Services approved the development review application for the construction of McDonald's Restaurant and associated on-site improvements; and

WHEREAS, The City Council approved the Offsite Improvement Agreement for the McDonald's Restaurant on July 2, 2013, for the construction of the Offsite Improvements, pursuant to Resolution 2013-096; and

WHEREAS, The OIA requires completion and acceptance of these improvements by the City prior to allowing occupancy of the building; and

WHEREAS, The Developer has completed partial improvements and is anticipated to complete construction of all improvements prior to the scheduled opening date of October 4, 2013; and

WHEREAS, The Developer has requested that the OIA be amended to allow the Developer to occupy the building upon substantial completion of the Offsite Improvements, with no health and safety items, as determined by the City Engineer; and

WHEREAS, The Amendment has been prepared, reviewed by the City Attorney as to form, executed by the Developer and is on file with the Office of the City Engineer; and

WHEREAS, There will be no impact to the General Fund. The Developer will pay the cost of processing the amendment;

NOW, THEREFORE, BE IT RESOLVED, that City Council approves the Offsite Improvement Agreement with McDonald's USA, LLC, a Delaware limited liability company, for construction of street and utility improvements on Eleventh Street and "F" Street, and authorizes the Mayor to execute the Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 1st day of October, 2013 by the following vote:

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

MAYOR

ATTEST

CITY CLERK

October 1, 2013

AGENDA ITEM 1.H

REQUEST

RESCIND RESOLUTION 2011-077 AUTHORIZING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF TRACY AND VARIOUS AGENCIES, AUTHORIZATION TO ENTER INTO A NEW COOPERATIVE AGREEMENT BETWEEN THE CITY OF TRACY, CONTRA COSTA TRANSPORTATION AUTHORITY, CONTRA COSTA COUNTY, SAN JOAQUIN COUNTY, THE CITY OF BRENTWOOD, AND THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT FOR THE PARTIAL REIMBURSEMENT OF CITY OF TRACY STAFF EXPENSES RELATED TO PHASE I PLANNING OF FUTURE STATE ROUTE 239, AND AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Contra Costa County received authorization to expend \$14 million in federal funding for Phase I Planning of the State Route 239, a highway that will connect State Route 4 in the Brentwood area with Interstate 205 (I-205) or Interstate 580 (I-580) in the Tracy area. On April 19, 2011, City Council authorized a Cooperative Agreement between the City of Tracy, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Community Services District. This agreement would allow the City of Tracy and other partner agencies to recover 80% of all staff costs associated with the project over a two year period with a not to exceed amount of \$50,000.

Since then, Contra Costa County had entered into a Memorandum of Understanding (MOU) with Contra Costa Transportation Authority (CCTA) to take the lead role in this project and the inter-agency agreement was not executed. The new agreement includes CCTA as an additional agency and execution of this agreement will make the City eligible for reimbursement for staff time spent on this project.

DISCUSSION

In 2010, Contra Costa County received authorization to expend \$14 million in federal funds for studies and construction of State Route 239, which connects State Route 4 with I- 205 and I-580. The federal funds were authorized by the United States Congress in the Federal Transportation Act of 2005 known as the Safe Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU).

The California Department of Transportation (CALTRANS), the public agency administering the federal grant funds, authorized Contra Costa County to begin to expend \$2.9 million of the federal funds for Phase I (Planning) work. The planning work will require each jurisdiction to provide: 1) data on adopted or pending development plans in the area; 2) technical input and review on potential traffic forecasting models and related analysis for use in the project; 3) technical input and review on potential route alignments; 4) assistance in developing the method of analysis of the routes; 5) input on potential strategies to fund the construction of the project; 6) assistance in

developing public opinion poll and other methods of public outreach; 7) stakeholder contacts for inclusion in the public outreach; 8) assistance in the technical and policy development of potential institutional structures such as Joint Powers Agency (JPA); 9) assistance in advising partner jurisdictions elected officials on matters related to the project; and 10) assistance to Contra Costa County on other technical aspects of the project as needed.

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

On April 19, 2011, City Council authorized execution of a Cooperative Agreement between the City of Tracy and other agencies. However, this agreement was not executed since Contra Costa County authorized CCTA to take the lead on this project through a separate MOU. The new cooperative agreement includes minor changes to the agreement and includes CCTA as one of the signatories. Execution of this agreement will allow the City to receive reimbursement for staff time spent on this project.

STRATEGIC PLAN

The agenda item relates to the City's Economic Development Strategic Plan by providing future roadway infrastructure connecting the Brentwood / Antioch areas to I-205 and I-580.

FISCAL IMPACT

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

RECOMMENDATION

That City Council, by resolution,

- 1) Rescind Resolution 2011-077; and
- 2) Authorize the City Manager of the City of Tracy to execute the Cooperative Agreement between the City of Tracy, Contra Costa County, Contra Costa Transportation Authority, San Joaquin County, the City of Brentwood, and the

Mountain House Services District for the reimbursement of staff expenses related to development of technical studies and reports regarding the Phase I planning analysis of future State Route 239.

Prepared by: Kul Sharma, City Engineer

Reviewed by: Andrew Malik, Development Services Director

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

ATTACHMENTS

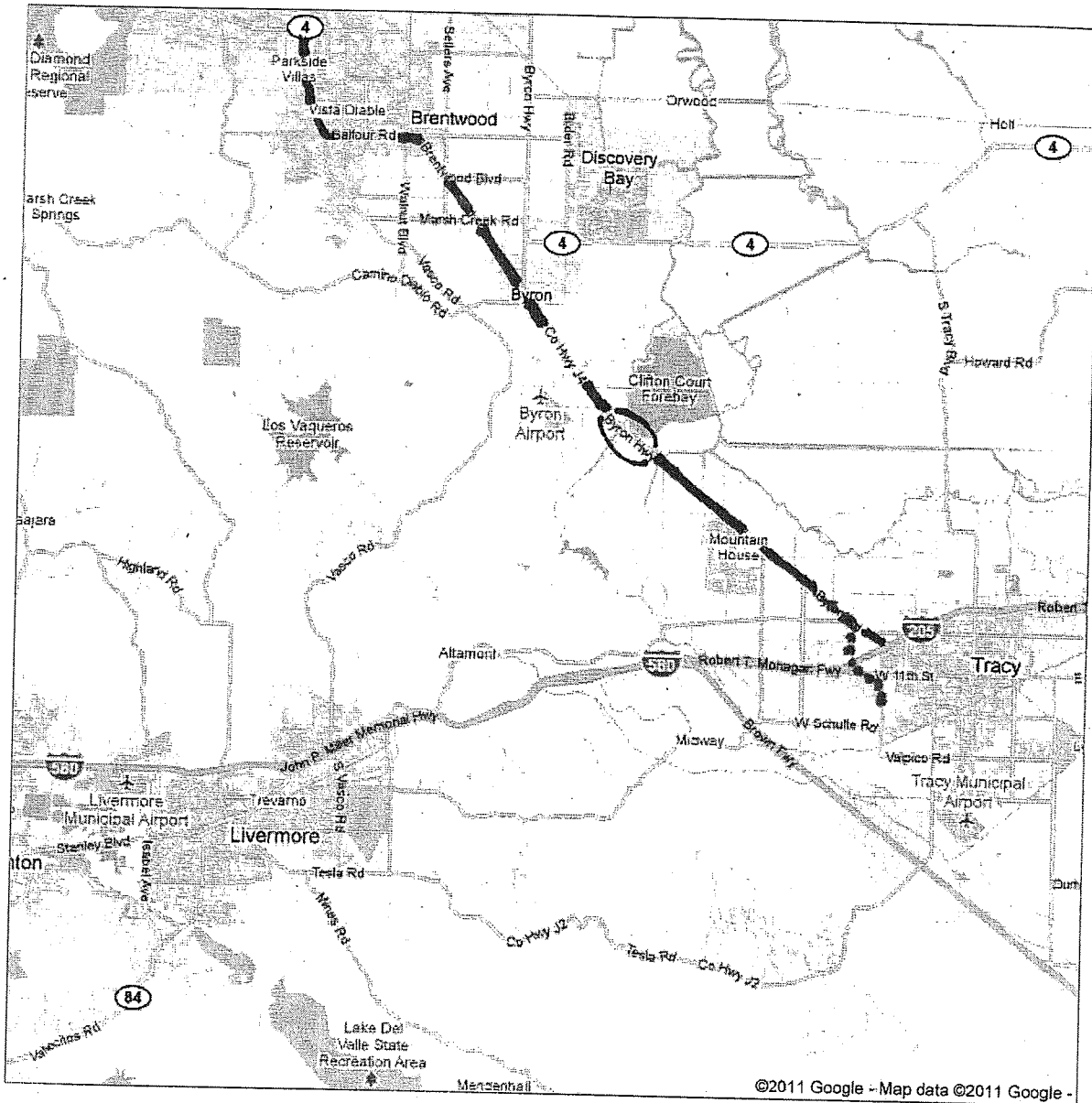
Attachment A – Location Map

Attachment B – Cooperative Agreement

ATTACHMENT A

Google maps

Exhibit A - SR239



©2011 Google - Map data ©2011 Google -

Save to My Map

- EXISTING ROUTE
- - - RECOMMENDED ROUTE

COOPERATIVE FUNDING AGREEMENT STATE
ROUTE 239 PROJECT—PHASE 1 (PLANNING)

This COOPERATIVE FUNDING AGREEMENT (this “AGREEMENT”) is effective this 1st day of February 2012 (the “EFFECTIVE DATE”), among CONTRA COSTA TRANSPORTATION AUTHORITY, a local transportation authority (“CCTA”), CONTRA COSTA COUNTY, a political subdivision of the State of California (“CONTRA COSTA”), SAN JOAQUIN COUNTY, a political subdivision of the State of California (“SAN JOAQUIN”), the CITY OF BRENTWOOD, a municipal corporation of the State of California (“BRENTWOOD”), the CITY OF TRACY, a municipal corporation of the State of California (“TRACY”), and MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT, a California special district (“MOUNTAIN HOUSE”), and together with CCTA, CONTRA COSTA, SAN JOAQUIN, BRENTWOOD and TRACY, the “PARTIES” and each separately, a “PARTY”).

RECITALS

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

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

B. CONTRA COSTA has received authorization to expend \$14 million in federal funding for studies and construction of STATE ROUTE 239 (the “FEDERAL GRANT FUNDS”). The FEDERAL GRANT FUNDS were authorized by the United States Congress in the Federal Transportation Act of 2005 (Public Law No. 109-59) known as the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU).

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

D. The PROJECT is divided into three phases: 1) Planning; 2) Project Approval/Environmental document; and 3) Project Development. The planning phase includes stakeholder identification and outreach, developing an interagency structure for the process, extensive background research, technical analysis, production of a feasibility study that will examine a broad range of alternatives and result in consensus on a preferred alignment for STATE ROUTE 239, and the development of a project study report based on the preferred alignment identified in the feasibility study (the foregoing items and related planning tasks being referred to herein, as "PHASE 1").

E. CONTRA COSTA is taking separate action to transfer its obligation to oversee the PROJECT to CCTA, including assigning its rights and obligations under a contract (the "CONTRACT") with Parsons Transportation Group Inc. (the "CONSULTANT"), pursuant to which the CONSULTANT will conduct a study to determine the ultimate concept and alignment for State Route 239.

F. CCTA is taking separate actions to assume rights and obligations for current PROJECT development activities including entering into a Memorandum of Understanding, and assuming the CONTRACT.

G. CCTA and CONTRA COSTA are entering into or have entered into a Memorandum of Understanding for the PROJECT (the "SR239 MOU"), pursuant to which, among other things, CONTRA COSTA will provide CCTA access to FEDERAL GRANT FUNDS for current and future PROJECT activities, including without limitation, payment for amounts due under the CONSULTANT CONTRACT, and reimbursement to PARTNER JURISDICTIONS for performance of tasks pursuant to this AGREEMENT.

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

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

J. CCTA desires to provide a portion of the FEDERAL GRANT FUNDS to the PARTNER JURISDICTIONS to ensure that the PARTNER JURISDICTIONS' staff are available to work on PHASE 1 of the PROJECT and are reimbursed for their staff time, in accordance with all applicable state and federal regulations.

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

1. Term. The term of this AGREEMENT shall commence on February 1, 2012, and shall terminate when the CONSULTANT has delivered its final report regarding PHASE 1 of the PROJECT to CCTA. PHASE 1 is anticipated to take approximately two years from start to finish, with an anticipated completion date of June 30, 2015.

2. Reimbursable Expenses. To support PHASE 1 of the PROJECT, each PARTNER JURISDICTION'S staff will work cooperatively with the other PARTIES to perform planning-related tasks including, but not necessarily limited to, the following work: 1) provide data on adopted or pending development plans and policy documents including general plans, specific plans, transportation improvement plans, other infrastructure plans and projects, major development plans, property ownership, and other background data that pertain to the respective PARTNER JURISDICTION; 2) provide technical input and review on potential traffic forecasting models and related analysis for use in the PROJECT, including both land use data and roadway data that are input into the forecasting models; 3) provide technical input and review of potential route alignments (specific paths) that STATE ROUTE 239 could take; 4) assist in developing the method of analysis of the routes; 5) provide input on potential innovative strategies to fund the construction of STATE ROUTE 239, including review of a traffic and revenue study that will estimate the viability of public-private partnerships; 6) assist in the development of a public opinion poll and other methods of public outreach that will be used in the PROJECT; 7) identify potential stakeholders within their jurisdiction for inclusion in the public outreach element of the PROJECT; 8) assist in the technical and policy development of potential institutional structures such as the creation of a Joint Exercise of Powers Agency; 9) advise PARTNER JURISDICTIONS' elected officials on the foregoing items and related matters; 10) attend meetings; and 11) advise the other PARTIES on other technical aspects of the PROJECT as needed (the foregoing items and other related tasks being referred to herein, as "PROJECT SUPPORT").

3. Compensation.

a) Exhibit A attached hereto and incorporated herein by reference sets forth the position description and hourly pay range for each PARTNER JURISDICTION staff person that may be charged for such staff person's time to perform PROJECT SUPPORT for work on the

PROJECT. In compliance with federal funding regulations and pursuant to the requirements of this Section 3, CCTA will reimburse each PARTNER JURISDICTION for eighty percent (80%) of its staff time worked on the PROJECT. Federal regulations require that local jurisdictions match the FEDERAL GRANT FUNDS on a twenty-percent (20%) basis and CCTA and each of the PARTNER JURISDICTIONS agree that twenty percent (20%) of its respective staff time spent on the PROJECT will not be reimbursed from FEDERAL GRANT FUNDS and that such staff time is the responsibility of the respective PARTNER JURISDICTION.

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

c) Each PARTNER JURISDICTION will provide quarterly invoices to CCTA's project manager, which will include: (i) a summary of work performed; (ii) the identity of personnel who performed the work; (iii) the specific tasks for which the work was performed; (iv) the number of staff hours involved in performing the work for each specified task and the date on which such hours were worked; (v) the hourly rate of pay for each staff person; (vi) the total amount for which reimbursement is being requested; (vii) a Budget Status Summary Report; and (viii) certification that invoices include a request for reimbursement for no more than eighty percent (80%) of direct salary costs and no overhead costs have been requested for reimbursement. Exhibit B attached hereto and incorporated herein by reference sets forth the procedure for invoice submittal.

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

e) Once CCTA's project manager has approved the invoice, CCTA will then seek reimbursement from CALTRANS for such payments to the PARTNER JURISDICTIONS.

f) CCTA's reimbursements to each PARTNER JURISDICTION shall not exceed \$50,000 per PARTNER JURISDICTION and reimbursement will not exceed a cumulative total of \$250,000 to all PARTNER JURISDICTIONS, in the aggregate, as indicated on Exhibit A attached hereto.

4. Changes to Compensation.

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

b) No earlier than thirty (30) days prior to each anniversary of the EFFECTIVE DATE, a PARTNER JURISDICTION may propose an amendment to any of the information in Exhibit A except for the maximum total reimbursement for the PROJECT, to reflect changes in the staff persons working on PROJECT, including position description, title and hourly pay range. If CCTA agrees to amend the Exhibit A information of a PARTNER JURISDICTION, such amendment will become effective once the PARTNER JURISDICTION has received written approval from CCTA, pursuant to Section 9 of this AGREEMENT.

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

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

Martin Engelmann
Deputy Executive Director, Planning
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597
mre@ccta.net

And CCTA shall send all such communications to the following addresses:

Stephen Kowalewski
Deputy Director
Contra Costa County Public Works Department
255 Glacier Drive Martinez, CA
94553 (925) 313-2225 phone (925)
313-2333 fax
email address: skowa@pw.cccounty.us

Bailey Grewal
Director of Public Works
City of Brentwood
150 City Park Way
Brentwood, CA 94513
e-mail address: bgrewal@brentwoodca.gov

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

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

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

7. Records and Audit.

a) *Financial Records.* Each PARTNER JURISDICTION shall maintain true and complete records in connection with the PROJECT, and shall retain all such

records pursuant to Federal Highway Administration requirements for at least thirty-six (36) months following expenditure of all federal funds, execution of a final voucher by Caltrans headquarters in Sacramento, and final federal project acceptance.

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

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

9. Entire Agreement. This AGREEMENT is the entire agreement among CCTA and the PARTNER JURISDICTIONS relating to the subject matter of this AGREEMENT. All PARTIES acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this AGREEMENT in executing this AGREEMENT. If any provision of this AGREEMENT is void or otherwise unenforceable, the remainder of the AGREEMENT shall continue in full force and effect. Any changes to the terms and provisions of this AGREEMENT or affecting the obligations of the PARTIES set forth in this AGREEMENT shall be by written amendment signed by all PARTIES, except for amendments to Exhibit A, which can be made separately in writing between CCTA and a PARTY.

10. Severability. Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of a PARTY to enter into or carry out, such decision shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect; provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.

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

of any provision under this AGREEMENT shall be effective unless in writing and signed by the waiving PARTY.

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

13. Controlling Law and Venue. This AGREEMENT and all matters relating to it shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

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

15. Indemnification.

a) CCTA hereby agrees to indemnify, defend, assume all liability for and hold harmless each PARTNER JURISDICTION, its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to CCTA, its officers, agents or employees in connection with or arising from any of its activities pursuant to this AGREEMENT. This indemnity shall apply except as to the sole negligence or willful misconduct of the PARTNER JURISDICTION.

b) Each PARTNER JURISDICTION hereby agrees to indemnify, defend, assume all liability for and hold harmless CCTA and its member agencies, officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to the PARTNER JURISDICTION, its officers, agents or employees in connection with or arising from any of its activities pursuant to this AGREEMENT. This indemnity shall apply except as to the sole negligence or willful misconduct of CCTA.

16. The parties hereto recognize and agree that separate counterpart signature pages may be used to execute this AGREEMENT, but that all such pages constitute one and the same AGREEMENT.

CONTRA COSTA TRANSPORTATION AUTHORITY	
By: _____ David E. Durant Chair	Attest: By: _____ Randell H. Iwasaki Executive Director
APPROVED AS TO FORM: Best Best & Krieger LLP By: _____ Malathy Subramanian Authority Counsel	
CONTRA COSTA COUNTY	
_____ By: (Name, Title) Date: _____, 2013	APPROVED AS TO FORM: Sharon L. Anderson, County Counsel By: _____ Deputy County Counsel Date _____, 2013
CITY OF BRENTWOOD	
_____ By: (Name, Title) Date _____, 2013	APPROVED AS TO FORM: _____ By: _____, City Attorney Date _____, 2013

SAN JOAQUIN COUNTY

_____ By: (Name, Title) Date _____, 2013	APPROVED AS TO FORM: _____ By: _____, City Attorney Date _____, 2012
--	---

CITY OF TRACY

_____ By: (Name, Title) Date _____, 2013	APPROVED AS TO FORM: _____ By: _____, City Attorney Date _____, 2013
--	---

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT

_____ By: (Name, Title) Date _____, 2013	APPROVED AS TO FORM: _____ By: _____, City Attorney Date _____, 2013
--	---

Exhibit A: Payment rates for reimbursement to PARTNER JURISDICTIONS

Position Description	Hourly Pay Range (Direct Salary Only, No Overhead or Other Costs)	80% of Hourly Pay Range*	Maximum Total Reimbursement for Project
County of Contra Costa staff persons:			
1.			
2.			
3.			
Contra Costa County Total			\$50,000.00
City of Brentwood staff persons:			
Brentwood Total			\$50,000.00
City of Tracy staff persons:			
1.			
2.			
3.			
Tracy Total			\$50,000.00
San Joaquin County staff persons:			
1.			
2.			
3.			
San Joaquin County Total			\$50,000.00
Mountain House Community Services District staff persons:			
1.			
2.			
3.			
Mountain House Total			\$50,000.00
		Combined Total	\$250,000.00

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

EXHIBIT B

PROCEDURE FOR INVOICES PREPARED BY PARTNER JURISDICTIONS FOR SUBMITTAL TO AUTHORITY

1. PARTNER JURISDICTION shall prepare and submit invoices to CCTA on a quarterly basis (January-March, April-June, etc.) within sixty (60) calendar days of the close of each quarter;
2. Each invoice shall include a cover letter signed by the PARTNER JURISDICTION'S authorized representative that includes the following:
 - reference to this AGREEMENT, including Cooperative Agreement number;
 - a sequential billing number (1, 2, 3, etc.);
 - the quarterly period for which the invoice applies;
 - a summary of work performed;
 - certification that invoices include a reimbursement for no more than eighty percent (80%) of direct salary costs and no overhead costs have been requested for reimbursement.
3. Attached to the cover letter shall be a table indicating the identity of personnel who performed the work, the direct hourly rate of pay for each staff person (excluding all overhead), the number of hours worked, and the total cost of staff time, and the 80% of cost for which reimbursement is being requested
4. The invoice shall include an Expenditure Summary Report, including the following:
 - 4.1 Total Budget
 - 4.3 Previous Expenditures
 - 4.4 Expenditures This Period
 - 4.5 Reimbursement Requested
 - 4.6 Expenditures to Date (including this Invoice)
 - 4.7 Budget Remaining

RESOLUTION 2013- _____

RESCINDING RESOLUTION 2011-077 AUTHORIZING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF TRACY AND VARIOUS AGENCIES, AUTHORIZING ENTERING INTO A NEW COOPERATIVE AGREEMENT BETWEEN THE CITY OF TRACY, CONTRA COSTA TRANSPORTATION AUTHORITY, CONTRA COSTA COUNTY, SAN JOAQUIN COUNTY, THE CITY OF BRENTWOOD, AND THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT FOR THE PARTIAL REIMBURSEMENT OF CITY OF TRACY STAFF EXPENSES RELATED TO PHASE I PLANNING OF FUTURE STATE ROUTE 239, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, Contra Costa County received authorization to expend \$14 million in federal funding for State Route 239, a state highway connecting the Brentwood area with Interstate 205 (I-205) and Interstate 580 (I-580) in the Tracy area; and

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

WHEREAS, This planning work requires various jurisdictions to coordinate, provide technical data, and assist in completion of the Phase I work; and

WHEREAS, Each jurisdiction was allowed to recover 80% of the designated expenses with a not-to-exceed amount of \$50,000; and

WHEREAS, On April 19, 2011, City Council authorized execution of a cooperative agreement between the City of Tracy and these agencies; and

WHEREAS, This agreement was not executed since Contra Costa County authorized Contra Costa Transportation Authority to take the lead on this project; and

WHEREAS, The new agreement includes Contra Costa Transportation Authority as an additional agency and execution of this new agreement will make the City eligible for reimbursement of staff time on this project;

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

- 1) That City Council rescinds Resolution 2011-17 authorizing the previous agreement; and
- 2) That City Council authorizes the City Manager to execute the cooperative agreement between the City of Tracy, Contra Costa County, Contra Costa Transportation Authority, San Joaquin County, The City of Brentwood, and the Mountain House Services District for the reimbursement of staff expenses related to development of technical studies and reports regarding the Phase I Planning analysis of future State Route 239.

The foregoing Resolution 2013-_____ was adopted by City Council on the 1st day of October, 2013, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.I

REQUEST

APPROVE A REAL PROPERTY PURCHASE AGREEMENT WITH EARL R. BREITSTEIN AND CAROLE BREITSTEIN, TRUSTEES OF THE BREITSTEIN FAMILY LIVING TRUST FOR ACQUISITION OF RIGHT-OF-WAY FOR THE ROADWAY WIDENING OF ELEVENTH STREET WEST OF MACARTHUR DRIVE, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Completion of the acquisition of right-of-way is necessary for the construction of the widening of Eleventh Street west of MacArthur Drive. Approval of this agreement will facilitate conveyance of title and ownership of the land, payment of final compensation to the seller, and start of construction.

DISCUSSION

The modification of the intersection of Eleventh Street and MacArthur Drive will require the widening of Eleventh Street west of MacArthur Drive and the installation of an exclusive right-turn lane at the southwest corner of Eleventh Street and MacArthur Drive. To provide for the widening of the street, the existing sidewalk on the both sides of Eleventh Street west of MacArthur Drive will be reconstructed by relocating the concrete curb and gutter approximately 3 feet towards the property.

In order to construct the new sidewalk, curb, and gutter, it is necessary to acquire right of way from certain properties along Eleventh Street, including the four parcels that are owned by Earl Breitstein and Carole Breitstein, Trustees of the Breitstein Family Living Trust. A total 2,782 square feet of right-of-way and 560 square feet of temporary construction easement are needed from the real property owned by Earl Breitstein and Carole Breitstein.

During the City Council closed session meeting of July 23, 2013, City Council considered this matter and directed staff regarding the negotiations with the property owner.

Earl Breitstein and Carole Breitstein have agreed to sell the real property in fee to the City in the amount \$23,391. The final compensation includes payment of fee simple interest, temporary construction easement, pro-rated prior-year property taxes, and the cost of removing and replacing affected business signage.

STRATEGIC PLAN

The agenda item relates to the City's Economic Development Strategic Plan by ensuring quality infrastructure to meet future development needs.

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost of acquiring the right-of-way in the amount of \$23,391 will be paid from project funds, which are available from CIP 245-72069.

RECOMMENDATION

That City Council approve, by resolution, a real property purchase agreement with Earl Breitstein and Carole Breitstein, Trustees of the Breitstein Family Living Trust for acquisition of right-of-way along the north side of Eleventh Street west of MacArthur Drive with a final compensation in the amount \$23,391, and authorize the Mayor to execute the agreement.

Prepared by: Criseldo S. Mina, P.E., Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer
Andrew Malik, Development Services Director

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

RESOLUTION 2013-_____

APPROVING A REAL PROPERTY PURCHASE AGREEMENT WITH EARL R. BREITSTEIN AND CAROLE BREITSTEIN, TRUSTEES OF THE BREITSTEIN LIVING TRUST FOR ACQUISITION OF RIGHT-OF-WAY FOR THE ROADWAY WIDENING OF ELEVENTH STREET WEST OF MACARTHUR DRIVE, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The modification of the intersection of Eleventh Street and MacArthur Drive will require the widening of Eleventh Street west of MacArthur Drive and the installation of an exclusive right-turn lane at the southwest corner of Eleventh Street and MacArthur Drive; and

WHEREAS, To provide for the widening of the street, the existing sidewalk on both sides of Eleventh Street west of MacArthur Drive will be reconstructed by relocating the concrete curb and gutter approximately three feet towards the property; and

WHEREAS, In order to construct the new sidewalk, curb, and gutter, it is necessary to acquire right-of-way from certain properties along Eleventh Street including the four parcels owned by Earl Breitstein and Carole Breitstein, Trustees of the Breitstein Family Living Trust; and

WHEREAS, A total 2,782 square feet of right-of-way and 560 square feet of temporary construction easement are needed from the real property owned by Earl Breitstein and Carole Breitstein; and

WHEREAS, During the City Council closed session meeting of July 23, 2013, City Council considered this matter and directed staff regarding the negotiations with the property owner; and

WHEREAS, Earl Breitstein and Carole Breitstein have agreed to sell the real property in fee to the City in the amount \$23,391; and

WHEREAS, The final compensation includes payment of fee simple interest, temporary construction easement, pro-rated prior-year property taxes, and the cost of removing and replacing affected business signage; and

WHEREAS, There will be no impact to the General Fund. The cost of acquiring the right-of-way in the amount of \$23,391 will be paid from funds available from CIP 245-72069;

NOW, THEREFORE, BE IT RESOLVED, that City Council approves the Real Property Purchase Agreement with Earl Breitstein and Carole Breitstein, Trustees of the Breitstein Family Living Trust for acquisition of right-of-way along the north side of Eleventh Street west of MacArthur Drive with a final compensation in the amount \$23,391, and authorizes the Mayor to execute the agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 1st day of October, 2013 by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.J

REQUEST

AUTHORIZE THE CITY MANAGER AND PUBLIC WORKS DIRECTOR TO APPROVE AMENDMENTS TO THE LANDSCAPE, PARKS, AND CHANNELWAYS MAINTENANCE AGREEMENT WITH SYCAMORE LANDSCAPING CORPORATION

EXECUTIVE SUMMARY

The City has entered into an agreement with Sycamore Landscaping Corporation for Landscape, Parks, and Channelways Maintenance within the Landscape Maintenance District (LMD). Due to the frequency of minor changes to agreements, it is recommended that the City Manager be authorized to approve minor modifications to the Sycamore Landscaping Corporation Agreement where each amendment does not exceed \$50,000 annually, and the Public Works Director be authorized to approve amendments where each amendment does not exceed \$25,000 annually.

DISCUSSION

The City of Tracy entered into an Agreement with Sycamore Landscaping Corporation to provide landscape maintenance of the LMD areas.

As new areas are added or removed from a particular LMD Zone within the Agreement or areas are transferred from one service level to another, the Agreement must be amended to reflect the increase or decrease in the specified maintenance area.

Due to the frequency of minor changes to agreements, staff recommends that the City Manager be authorized to approve minor modifications to the Sycamore Agreement where each amendment does not exceed \$50,000 on an annual basis, and the Public Works Director be authorized to approve amendments where each amendment does not exceed \$25,000 on an annual basis. Such delegation would also be subject to Council appropriating, through the budget process, sufficient funds available to pay the increased contract amounts.

By delegating authority for minor modifications, timing efficiencies will be realized in administering the Agreement and servicing customers. Those amendments that are greater than \$50,000 will still be brought to City Council for approval. Contract amendments without sufficient funds will require a supplemental appropriation. There were three amendments to the landscape maintenance agreement over the last year in 2012. These amendments create an unnecessary administrative burden and create time delays during the growing season.

STRATEGIC PRIORITY

This agenda item does not relate to the Council's four Strategic Plans

FISCAL IMPACT

There is no fiscal impact relating from this item. This action only delegates, from the City Council, signature authority to the City Manager and Public Works Director.

RECOMMENDATION

That the City Council, by resolution, delegates authority to the City Manager and Public Works Director to approve amendments to the Landscape, Parks and Channelways Maintenance Agreement with Sycamore Landscaping Corporation when such amendments are each no greater than \$50,000 annually (City Manager authorization) or \$25,000 annually (Public Works Director authorization) and subject to Council appropriating, through the budget process, sufficient funds to pay the increased contract amounts.

Prepared by: Connie Vieira, Management Analyst I

Reviewed by: Mike Contreras, Public Works Superintendent
David Ferguson, Public Works Director

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

RESOLUTION _____

AUTHORIZING THE CITY MANAGER AND PUBLIC WORKS DIRECTOR TO APPROVE AMENDMENTS TO THE LANDSCAPE, PARKS, AND CHANNELWAYS MAINTENANCE AGREEMENT WITH SYCAMORE LANDSCAPING CORPORATION

WHEREAS, The City Council, through a previous resolution, has awarded a Landscape, Parks, and Channelways Maintenance Agreement with Sycamore Landscaping Corporation, and

WHEREAS, Due to the frequency of minor changes to this type of agreement, including increasing or decreasing specified areas within the Landscape Maintenance District, and for time efficiency, the City Council desires to delegate Agreement amendment authority and signature authority to the City Manager where each amendment does not exceed \$50,000 annually; and to the Public Works Director where each amendment does not exceed \$25,000 annually;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby delegates authority to the City Manager and Public Works Director to approve amendments to the Landscape, Parks and Channelways Maintenance Agreement with Sycamore Landscaping Corporation when such amendments are each no greater than \$50,000 annually (City Manager authorization) or \$25,000 annually (Public Works Director authorization) subject to Council appropriating, through the budget process, sufficient funds to pay the increased contract amounts.

* * * * *

The foregoing Resolution _____ was adopted by the City Council of the City of Tracy on the 1st day of October 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.K

REQUEST

AUTHORIZATION FOR THE CHIEF OF POLICE TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SACRAMENTO VALLEY HI-TECH CRIMES TASK FORCE AND SACRAMENTO INTERNET CRIMES AGAINST CHILDREN TASK FORCE TO JOINTLY COMBAT FINANCIAL CRIMES, COMPUTER CRIMES AND CRIMES AGAINST CHILDREN

EXECUTIVE SUMMARY

In exchange for access to statistics from The City of Tracy Police Department on crimes against children, financial crimes, identity theft and computer based fraud the Sacramento Valley Hi-Tech Crimes Task Force provides to the City of Tracy Police Department, at no cost, the forensic training and equipment necessary to investigate those crimes.

DISCUSSION

This Agreement is in the form of a Memorandum of Understanding (MOU) and establishes the High Technology Theft Apprehension and Prosecution Program (Attachment 1) and the Sacramento Internet Crimes Against Children (ICAC) (Attachment 2), a joint cooperative and equal effort between the City of Tracy Police Department and the Sacramento County Sheriff's Department. On September 12, 2012, the County of Sacramento Board of Supervisors authorized the Sacramento Sheriff to execute MOU's with various California law enforcement agencies participating in the Sacramento Valley Hi-Tech Crimes Task Force (Attachment 3).

The High Technology Crime Program is designed to remove high technology, intellectual property and identity theft criminals from our community. The mission of the Task Force will be to arrest and successfully prosecute individuals engaged in these criminal pursuits to create a safer community for the overall Sacramento region. To that end, the participating agencies agree on this MOU and execute this document concerning the formation of the Task Force. The participating agencies jointly and separately agree to abide by the same terms and provisions of this MOU throughout the duration of the joint operation.

The Task Force will initially consist of sworn law enforcement personnel or prosecutors from each participating agency. Each agency agrees to provide at least one officer to represent their agency on the Task Force. It is understood that other agencies who subsequently join the Task Force may participate on a full-time or part-time basis.

The Sacramento County Sheriff's Department will assign a captain and a lieutenant to administer the program, and assign sergeants to provide immediate supervision. The Task Force will include personnel from local, state, and federal agencies who have expressed a desire to participate as members of the unit. The manpower of the Task Force will fluctuate according to the number of persons each agency is able to provide.

STRATEGIC PLAN

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

FISCAL IMPACT

None. Each agency agrees to make available its resources in support of this program by providing their personnel with agency radios, cellular phones, safety equipment and vehicles, if available.

RECOMMENDATION

Staff recommends that the City Council, authorize by resolution, entering into the Memorandum of Understanding (MOU) between the City of Tracy and the Sacramento Valley Hi-Tech Crimes Task Force and Sacramento Internet Crimes Against Children Task Force and authorizes the Police Chief to execute the MOU.

Prepared by: Lani Smith, Support Operations Manager

Reviewed by: Gary Hampton, Chief of Police

Reviewed by: Jenny Haruyama, Administrative Services Manager

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

Attachment 1- High Technology Theft Apprehension and Prosecution Program
Sacramento Valley Hi-Tech Crimes Task Force Memorandum of
Understanding

Attachment 2- Sacramento Internet Crimes Against Children Task Force (ICAC)

Attachment 3- County of Sacramento Board of Supervisors Resolution #2012-0672,
authorizing the Sheriff, or his designee to execute MOU's with various
California Law Enforcement agencies, as well as authorizing the addition
and deletion of allied agencies as necessary, and make any necessary
modifications, extensions, or augmentations.

ATTACHMENT 1

High Technology Theft Apprehension and Prosecution Program Sacramento Valley Hi-Tech Crimes Task Force MEMORANDUM OF UNDERSTANDING

Parties

The Sacramento Valley Hi-Tech Crimes Task Force is a partially funded through the High Technology Theft Apprehension and Prosecution Program.

This Memorandum of Understanding is entered into by and between the following agencies:

City of Tracy- Police Department and the Sacramento County Sheriff's Department.

Nothing in this Memorandum of Understanding should be construed as limiting or impeding the basic spirit of cooperation that exists between the participating parties.

Purpose

The purpose of this Memorandum of Understanding (MOU) is

- 1) to outline the mission and procedures of the Sacramento Valley Hi-Tech Crimes Task Force (hereinafter referred to as "Task Force"); and
- 2) to formalize relationships between the participating agencies.

Mission

The High Technology Crime Program is designed to remove high technology, intellectual property, and identity theft criminals from our community. The program is created on the premise that the ability of law enforcement to properly investigate and prosecute high technology-related and identity theft crimes will have far reaching effects on a wide variety of criminal activities, including computer component theft, gray marketing of technology, narcotic trafficking, gambling, Internet-related crimes, telecommunication fraud, intellectual property theft, and identity theft. The mission of the Task Force will be to arrest and successfully prosecute individuals engaged in these criminal pursuits to create a safer community for the overall Sacramento region. To that end, the participating agencies agree on this MOU and execute this document concerning the formation of the Task Force. The participating agencies jointly and separately agree to abide by the terms and provisions of this MOU throughout the duration of the joint operation.

Goals

The High Technology Crime Program will:

- 1) identify, investigate, arrest, and assist in the prosecution of individuals who commit various forms of high technology, intellectual property, and identity theft crimes;

- 2) similarly target those individuals who are suspected of being currently engaged in high technology, intellectual property, and identity theft criminal activity or who demonstrate (i.e., gang or organized crime association) a propensity to do so;
- 3) surveil those suspected of having committed a high technology, intellectual property, or identity theft crime or series of crimes to establish probable cause to arrest them;
- 4) maintain communications with the participating agencies and other divisions of the Sacramento County Sheriff's Department to realize maximum effective use of the Task Force's resources and minimize the chances of damage or interference with any other program;
- 5) coordinate these efforts with allied agencies who request assistance while working toward similar targets or goals;
- 6) provide education to the public, business representatives, and law enforcement officers relative to current criminal trends and prevention techniques; and
- 7) provide additional education to law enforcement officers relative to investigative techniques.

Procedures

The Sacramento County Sheriff's Department will assign a captain and a lieutenant to administer the program, and assign sergeants to provide immediate supervision. The Task Force will include personnel from local, state, and federal agencies who have expressed a desire to participate as members of the unit. The manpower of the Task Force will fluctuate according to the number of persons each agency is able to provide. The Task Force will work closely with prosecutors representing the participating agencies.

Targets of the program will include those individuals who are candidates for vertical prosecution at either the state or federal level.

Targets will be selected by:

- 1) screening and identifying leaders of organized groups,
- 2) screening of wanted subjects,
- 3) identification of individuals by law enforcement agencies, the high technology industry, the insurance industry, and financial businesses, and
- 4) analysis and other methodology.

Composition of the Task Force

The Task Force will initially consist of sworn law enforcement officers/agents or prosecutors from each participating agency. Each agency agrees to provide at least one officer/agent or prosecutor to represent their agency on the Task Force. It is understood that other agencies who subsequently join the Task Force may participate on a full-time or

part-time basis. Names and contact information for allied agencies participating on the Task Force will be kept on file at the Task Force office.

Policy and Direction

The policy and direction of the Task Force will be consistent with and governed by the Mission, Goals, and Procedures statements of this document. Direction of field investigative personnel will be administered by the Sacramento County Sheriff's Department and shall not be outside the scope of the policies and procedures of the participating agencies.

Confidential Information

It is understood that any confidential information relating to investigations or proprietary business systems, processes, or information will only be shared with participating Task Force members or other law enforcement agencies having a "need to know."

Location

The Task Force will operate from physical space leased by the Sacramento County Sheriff's Department. The Sacramento County Sheriff's Department agrees to provide office space, equipment and supplies necessary to carry out the administrative operation of the Task Force.

Program Coordinator

Program coordination will be administered by a captain or lieutenant assigned to the Hi-Tech Crimes Division of the Sacramento County Sheriff's Department.

Supervision

Supervision of the sworn personnel assigned to the Task Force will be the responsibility of sergeants assigned to the Hi-Tech Crimes Division of the Sacramento County Sheriff's Department. The sergeants will determine the assignment of activities, will review all reports, and will reserve the authority to approve or deny requests for overtime.

Resources

- **Support**
Each participating agency agrees to make available its resources in support of this program.
- **Vehicles**
Each agency will supply vehicles for its participating personnel. The Sacramento Sheriff's Department will provide parking space.

- **Communication Equipment**

The Sacramento Police Department and Sacramento County Sheriff's Department agree to provide the Task Force with radios with both SSD and SPD frequencies. Each participating agency will supply their personnel with their agency's radios, pagers and cellular phones, if available.

- **Safety Equipment**

Each participating agency will ensure that any representative assigned to the Task Force has all necessary safety equipment including, but not limited to, a ballistic protective vest, a handgun, handcuffs, etc.

Evidence/Seizure Forfeiture

All seized evidence will be handled in a manner consistent with the Sacramento Sheriff's Department policy. Any evidence seized by the Sacramento Valley Hi-Tech Crimes Task Force which is not returned to an identified victim will be directed back to the High Technology Theft Apprehension and Prosecution Program Task Force. Once the evidence has cleared all judicial and administrative forfeiture proceedings, they are considered "Project Revenue" and must be used in support of the goals and objectives of the grant.

Personnel and Administrative Matters

- **Shooting Investigations**

In the event of a shooting incident, it is agreed that the department in whose jurisdiction the shooting occurred will conduct the primary shooting investigation. The affected agencies may also conduct their own parallel investigations regarding the shooting according to their own policies and guidelines.

- **Statistical Reporting**

All agencies operating under this MOU agree to submit statistical information on cases investigated, forensic examinations completed, technical assistance provided, training attended, training provided, and case convictions to the Task Force on a monthly basis. All statistical reports for the month will be due to the Task Force no later than five days after the following month. For example, statistical reports for the month of January will be due to the Task Force no later than February 5th.

- **Records and Reports**

All Task Force investigative records will be maintained at the Sacramento County Sheriff's Department. Agency representatives are expected to forward copies of their reports to their agencies. All investigative information will be available to each of the participating law enforcement agencies.

- **Prosecution**

When necessary, case-by-case analysis will be performed on each potential prosecution (with conferral with the U.S. Attorney's office and the applicable District Attorney's Office) to determine whether the case will be prosecuted at the state or federal level. The criteria for the decision will be based upon which court system would be of greatest benefit to the overall objective of the Task Force and upon the guidelines and policies of the prosecutorial agencies.

- **Media Relations**

In cases of significant public interest, joint press releases may be made. Information regarding routine apprehensions may be furnished to the press by the lead agency and each agency's Press Information Officer will be notified. An annual report summarizing Task Force activities will be provided to each participating agency. All participating federal agencies will coordinate all press releases with the U.S. Attorney's Office.

- **Liability**

Each agency shall assume the responsibility and liability for the acts and omissions of its own officers, agents, employees, or volunteers in connection with the performance of their official duties under this MOU. For tort liability purposes, no participating agency shall be considered the agent of the other participating agencies. Each participating agency shall be liable (if at all) only for the torts of its own personnel that occur within the scope of their official duties.

The provisions contained herein include any violation of applicable law, ordinance, regulation, or rule, including where the claim, loss, damage, charge or expense was caused by deliberate or willful acts of any agency, or any of its agents, officers, or employees in its, or their performance hereunder.

It is the intent of the parties hereto that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that party's negligence.

The agencies shall establish procedures to notify the other agencies where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The agencies shall cooperate in the defense of such actions brought by others with respect to the matters covered in this MOU. Nothing set forth in this memorandum of understanding shall establish a standard of care for, or create any legal rights in, any person not a party to this MOU.

Each party, at its sole cost and expense, shall carry insurance or self-insure its activities in connection with this MOU, and obtain and keep in force insurance or equivalent programs of self-insurance, for general liability, professional liability, workers' compensation, and business automobile liability adequate to cover its potential liabilities hereunder.

- **Non-waiver**

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU.

- **Modification**

No waiver, alteration, modification, or termination of this MOU shall be valid unless made in writing and signed by the authorized parties hereof.

- **Counterparts**

This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

- **Captions**

The headings or captions to the Articles of this MOU are not a part of the MOU and shall have no effect upon the construction or interpretation of any part thereof.

- **Severability**

If any term, covenant, or condition of this MOU is held by a court of competent jurisdiction to be invalid, the remainder of this MOU shall remain in full force and effect.

- **Ambiguities**

The parties have each carefully reviewed this MOU and have agreed to each term of this MOU. No ambiguity shall be presumed to be construed against any other party.

- **Governing Law**

The interpretation and enforcement of the MOU shall be governed by the laws of the State of California, and where applicable, by federal law. The parties agree to submit any disputes arising under the MOU to a court of competent jurisdiction located in Sacramento, California.

- **Terms of Agreement**

It is agreed that this Memorandum of Understanding will be in force from July 1, 2013, through June 30, 2016.

- **Integration**

This MOU embodies the entire agreement of the parties in relation to the scope of services herein described, and no other agreement or understanding, verbal or otherwise, exists between the parties with the exception of contracts assigned pursuant to the issuance of high technology grant funds.

COUNTY OF SACRAMENTO	
By: _____ SCOTT R. JONES SHERIFF	Date: _____
CITY OF TRACY	
By: _____ GARY R. HAMPTON CHIEF OF POLICE	Date: _____
APPROVED AS TO FORM	Date: _____
By: _____ BILL SARTOR ASSISTANT CITY ATTORNEY	Date: _____
Contact Information	Contact Information
Contact Person: Lieutenant Mike McKeel	Contact Person: Lani Smith, Support Operations Manager
Mailing Address: P.O. Box 214327 Sacramento, CA 95821	Mailing Address: 1000 Civic Center Drive Tracy, CA 95376
Phone: (916) 874-3007	Phone: (209) 831-6594
FAX: (916) 874-3006	FAX:
Email: mmckeel@sacsheriff.com	Email: Lani.smith@ci.tracy.ca.us

ATTACHMENT 2

Sacramento Internet Crimes Against Children Task Force Memorandum of Understanding

I. Parties

The Sacramento Internet Crimes Against Children (Sacramento ICAC) Task Force is a partially grant-funded, multi-agency endeavor. Grant funding comes from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

This Memorandum of Understanding (MOU) is entered into by and between the following agencies:

CITY OF TRACY POLICE and the Sacramento County Sheriff's Department

Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation that exists between the participating agencies.

II. Mission

The mission of the Sacramento ICAC Task Force is to apprehend and prosecute Internet sexual predators who exploit children through the use of computers. The Task Force will investigate crimes involving Internet sexual predators. The Task Force will produce high-quality investigations leading to successful prosecutions of Internet sexual predators. The Task Force shall participate in community education efforts regarding the prevention of Internet Crimes Against Children. The Task Force will provide funding for investigative training and equipment to employees of member-agencies outside Sacramento County within annual budget capabilities. Within Sacramento County, Task Force members are prepared to respond on short notice to assist law enforcement agencies, subject to availability.

III. Purpose

The purpose of this MOU is to delineate the responsibilities of the Sacramento ICAC Task Force, maximize inter-agency cooperation, and formalize relationships between member-agencies. The Task Force will investigate suspects who utilize the Internet to seek children as sexual partners and/or who traffic in child pornography. Specific ICAC crimes include Internet sexual exploitation of a minor and luring a minor for sexual exploitation as described in, but not limited to, the following statutes: California Penal Code Sections 266j, 269(a), 664/288, 288.2(a), 288.2(b), 288(a), 288(b), 288(c), 664/288, 290, 311.10, 311.11(a), 311.1(a), 311.2(b), 311.2(d), 311.3(a), 311.4(a), 311.4(b), 311.4(c), 647.6(a), 647(k)(2), 653f(c), 1203.2, and 3056; Federal statutes 2252(a)(4), 2252(a)(5), 2252(a)(1), 2252(a)(2), 2252A(a)(3), 2252A(a)(4), 2251(a), 2251(b), 2251(c), 2421, 2422(a), 2422(b), 2423(a), 2423(b), 2425, 2241, and 1201(a)(1) and under Federal law, sexual exploitation of children is described in Title 18, Chapter 110. This MOU does not prohibit the investigation of other Internet crimes against children.

Sacramento Internet Crimes Against Children Task Force
Memorandum of Understanding

IV. Organizational Structure/Direction

The Sacramento ICAC Task Force includes investigators, supervisors, or prosecutors from various local, state, and federal law enforcement agencies who provide assistance subject to availability.

All participants acknowledge that the Task Force is a joint operation in which all agencies act as partners. The chain of command and supervision of the Sacramento Sheriff's Department and Sacramento Valley High Technology Crimes Task Force (SVHTCTF) is responsible for the policy and general direction of the Task Force. The Task Force supervisor will periodically contact supervisors, investigators, and prosecutors from other participating agencies to keep them informed of training opportunities, unusual circumstances, problems and successes of the Task Force.

Activities of the ICAC Task Force are further governed by the Operational and Investigative standards of the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The document describing the Operational and Investigative Standards contains confidential information not for public release. Member agencies must understand and comply with the standards. The standards are proprietary to the ICAC Board. Release of the standards is protected because release will likely jeopardize ongoing investigations.

V. Supervision

The day-to-day operational supervision of sworn personnel and administrative control of the Task Force is the responsibility of the ICAC Task Force Sergeant, assigned to the SVHTCTF. The supervisor will work cooperatively with other supervisors and investigators from the participating agencies to keep them informed of Task Force issues and progress. Responsibility for the personal and professional conduct of Task Force members remains with the respective agencies, in keeping with each agencies' rules regarding conduct.

VI. Investigations

All Sacramento ICAC Task Force investigations will be conducted in a spirit of cooperation. Investigations will follow guidelines established by each agency's respective policy manual or guidelines. This MOU is not intended to infringe on the ongoing investigations of any other agency. It is agreed that unilateral acts on the part of employees involved in task force investigations are not in the best interest of the Task Force. All ICAC investigations must follow the guidelines laid out in the "*ICAC Program Operational and Investigative Standards*," a copy of which will be provided to each participating agency.

VII. Prosecution

The criteria for determining whether to prosecute a particular violation in county, state or federal court will focus on achieving the greatest overall benefit to the public. Any question arising pertaining to jurisdiction will be resolved through discussions among the investigative and prosecutorial agencies having jurisdiction in the matter. When joint

Sacramento Internet Crimes Against Children Task Force Memorandum of Understanding

jurisdiction exists, this MOU does not preclude additional prosecution(s) in other jurisdictions.

VIII. Media Relations and Releases

Media release information regarding joint Task Force operations will be coordinated and made jointly by all participant agencies. No unilateral press releases will be made by any participating agency without the prior notification and approval of the Sacramento ICAC. No information pertaining to the Task Force will be released to the media without the approval of participant agencies. Media releases shall not include information regarding specific investigative techniques.

All efforts will be made to protect undercover on-line identities. Member agencies will refrain from releasing the undercover on-line identity, age, or sex of investigators. Release of such information could jeopardize ongoing investigations where the same undercover name, age and sex are currently in use.

Here is an example of an information release involving an undercover on-line luring case:

Internet Sexual Predator Arrest – Sacramento ICAC Task Force
Tuesday, July 1, 2003, 1040 hours.
Arrested person: John Doe, w/m, 01/01/60 (booked)
Offense: Luring a minor for sexual exploitation

On Tuesday, July 01, 2003, unemployed suspect John Doe used the Internet on a computer at his home to arrange to meet a minor child for sex. He then traveled to a pre-arranged meeting location in North Phoenix where he was arrested at 1040 hours. A search warrant was served at Doe's home and evidence was seized.

IX. Funding for Equipment

Dedicated grant funds may be provided for equipment to be used in the course of investigations involving Internet crimes against children. The funds shall be distributed in a manner permitting agencies outside Sacramento Sheriff to equip law enforcement with tools that will improve the investigative process. Member agencies utilizing ICAC funds for equipment agree to conduct investigations of crimes against children as required within their jurisdictions. Specific crimes include but are not limited to, Internet sexual exploitation of a minor and luring a minor for sexual exploitation as described in, but not limited to, the following statutes: California Penal Code Sections 266j, 269(a), 664/288, 288.2(a), 288.2(b), 288(a), 288(b), 288(c), 664/288, 290, 311.10, 311.11(a), 311.1(a), 311.2(b), 311.2(d), 311.3(a), 311.4(a), 311.4(b), 311.4(c), 647.6(a), 647(k)(2), 653f(c), 1203.2, and 3056; Federal statutes 2252(a)(4), 2252(a)(5), 2252(a)(1), 2252(a)(2), 2252A(a)(3), 2252A(a)(4), 2251(a), 2251(b), 2251(c), 2421, 2422(a), 2422(b), 2423(a), 2423(b), 2425, 2241, and 1201(a)(1) and under Federal law, sexual exploitation of children is described in Title 18, Chapter 110. All equipment purchased under the ICAC grant remains the property of Sacramento ICAC and must be returned to Sacramento ICAC at either the conclusion of the grant or withdrawal of the participating agency from Sacramento ICAC.

Sacramento Internet Crimes Against Children Task Force
Memorandum of Understanding

X. Funding for Training

Dedicated ICAC grant funds may be provided to finance training that would be useful in the investigation of Internet crimes against children. The funds shall be distributed in a manner that will permit various agencies outside Sacramento Sheriff to gain the knowledge and skills needed to investigate Internet crimes against children. Member agencies utilizing ICAC funds for training agree to conduct investigations of crimes against children as required within their jurisdictions. Specific ICAC crimes include Internet sexual exploitation of a minor and luring a minor for sexual exploitation as described in, but not limited to, the following statutes: California Penal Code Sections 266j, 269(a), 664/288, 288.2(a), 288.2(b), 288(a), 288(b), 288(c), 664/288, 290, 311.10, 311.11(a), 311.1(a), 311.2(b), 311.2(d), 311.3(a), 311.4(a), 311.4(b), 311.4(c), 647.6(a), 647(k)(2), 653f(c), 1203.2, and 3056; Federal statutes 2252(a)(4), 2252(a)(5), 2252(a)(1), 2252(a)(2), 2252A(a)(3), 2252A(a)(4), 2251(a), 2251(b), 2251(c), 2421, 2422(a), 2422(b), 2423(a), 2423(b), 2425, 2241, and 1201(a)(1) and under Federal law, sexual exploitation of children is described in Title 18, Chapter 110.

XI. Liability

Each agency shall assume the responsibility and liability for the acts and omissions of its own officers, agents, or employees in connection with the performance of their official duties under this MOU. For tort liability purposes, no participating agency shall be considered the agent of the other participating agencies. Each participating agency shall be liable (if at all) only for the torts of its own personnel that occur within the scope of their official duties.

The provisions contained herein include any violation of applicable law, ordinance, regulation, or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of any agency, or any of its agents, officers, or employees in its, or their performance hereunder.

It is the intent of the parties hereto that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that party's negligence.

The agencies shall establish procedures to notify the other agencies where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The agencies shall cooperate in the defense of such actions brought by others with respect to the matters covered in this MOU. Nothing set forth in this memorandum of understanding shall establish a standard of care for, or create any legal rights in, any person not a party to this MOU.

Each party, at its sole cost and expense, shall carry insurance or self-insure its activities in connection with this MOU, and obtain and keep in force insurance or equivalent programs of self-insurance, for general liability, professional liability, workers' compensation, and business automobile liability adequate to cover its potential liabilities hereunder.

Sacramento Internet Crimes Against Children Task Force
 Memorandum of Understanding

XII. Duration and Termination

This MOU will remain in effect for a minimum eighteen-month period beginning on the last date of signing listed below. Renewal of the agreement will be automatic unless the agreement is terminated in writing by either party. Task Force member agencies may voluntarily withdraw participation at any time by providing written notice. Membership may be terminated by written notice of violation of ICAC operational and investigative standards.

COUNTY OF SACRAMENTO	
By: _____ SCOTT R. JONES SHERIFF	Date: _____
CITY OF TRACY	
By: _____ GARY R. HAMPTON CHIEF OF POLICE	Date: _____
APPROVED AS TO FORM	Date: _____
By: _____ BILL SARTOR ASSISTANT CITY ATTORNEY	Date: _____
Contact Information	Contact Information
Contact Person: Lieutenant Mike McKeel	Contact Person: Lani Smith, Support Operations Manager
Mailing Address: P.O. Box 214327 Sacramento, CA 95821	Mailing Address: 1000 Civic Center Drive Tracy, CA 95376
Phone: (916) 874-3007	Phone: (209) 831-6594
FAX: (916) 874-3006	FAX:

COUNTY OF SACRAMENTO
CALIFORNIA

APPROVED
BY RESOLUTION# 2012-0672
BOARD OF SUPERVISORS

For the Agenda of:
September 25, 2012

SEP 25 2012

By *Cyndi Lee*
Clerk of the Board

To: Board of Supervisors

From: Sheriff's Department

Subject: Memorandums Of Understanding Between The Sacramento Sheriff's Department
And Various California Law Enforcement And Prosecutorial Agencies For The
High Technology Theft Apprehension And Prosecution Program

Supervisorial:

District(s) All

Contact: Sandy Adams, Administrative Services Officer II, 874-8441

Overview

The Sheriff's Department (SSD) receives funding from the state's High Technology Theft Apprehension and Prosecution Program (HTTAP). The purpose of the HTTAP is to investigate and prosecute high technology, intellectual property, and identity theft crimes. The HTTAP funds the Sacramento Valley Hi-Tech Crimes Task Force which is overseen by the SSD. Agencies participating on the Task Force are required to sign a Memorandum of Understanding (MOU). The current MOUs will expire on June 30, 2013. These new MOUs will be effective from July 1, 2013 – June 30, 2016.

Recommendation

Approve the attached Resolution authorizing the Sheriff, or his designee to execute MOUs with various California law enforcement and prosecutorial agencies, as well as authorizing the addition or deletion of allied agencies as necessary, and make any necessary modifications, extension, or augmentations.

Measures/Evaluation

The Task Force submits quarterly progress reports to the various grantors that fund the Task Force. These reports detail the number of cases investigated, the number of cases filed for prosecution, the number of victims in the cases filed, and the monetary loss to those victims. These statistics will be used to evaluate the Task Force's effectiveness in combating high technology, intellectual property, and identity theft crimes.

Fiscal Impact

The HTTAP grant funding is generated by sales tax revenue and distributed in allocations to the counties from the California State Controller's Office. SSD received \$1,854,336 for Fiscal Year 2011-12 and has budgeted \$1,996,440 for Fiscal Year 2012-13. The funding is used to partially reimburse some agencies for participating personnel. Any costs not included in the grant are covered by the individual agency incurring the cost. There is no local in-kind match requirement and no cost to the County.

Memorandums Of Understanding Between The Sacramento Sheriff's Department And Various California Law Enforcement And Prosecutorial Agencies For The High Technology Theft Apprehension And Prosecution Program

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BACKGROUND

The Sacramento Valley Hi-Tech Crimes Task Force was created on December 12, 1995. It is a multi-jurisdictional task force that investigates and prosecutes suspects engaged in white-collar crime, organized crime, fraud against the government, intellectual property rights violations, identity theft, on-line crimes against children, and various crimes in which a computer was used as a weapon for perpetrating a crime, cases where a computer was the target of a crime, and cases where the computer was corollary to an offense as a storage medium.

On May 11, 1999, the Board authorized the Sheriff to accept HTTAP funding. This funding, ~~administered through the SSD, provided for personnel assigned from various Task Force agencies and for equipment and training necessary to conduct investigations and forensic examinations of cell phones and computers.~~ Since that time, the SSD has continued to receive HTTAP funding. The Task Force requires signed MOUs with all participating agencies. Our current MOUs will expire on June 30, 2013. These new MOUs will be effective from July 1, 2013 – June 30, 2016. Due to the amount of time that some agencies require for review of MOUs, we are requesting Board approval well in advance of the expiration date of our current MOUs.

DISCUSSION

The Task Force was instituted to address the proliferation of high technology and computer-based crimes as well as identity theft and financial crimes. At its inception, the Task Force was comprised of ten law enforcement and prosecutorial agencies, with the SSD serving as the lead agency. Today the Task Force has expanded to over 60 agencies.

The Task Force anticipates entering into agreements for the HTTAP with the agencies listed below. The Task Force anticipates additional agencies signing the MOU at a later date.

Amador District Attorney
Amador Sheriff's Department
Benicia Police Department
Calaveras District Attorney
Calaveras Sheriff's Department
California Department of Insurance
California Department of Justice
California Highway Patrol (Valley Division)
California State Controller's Office
Ceres Police Department
Citrus Heights Police Department
Crescent City Police Department
Davis Police Department
El Dorado Sheriff's Department
Elk Grove Police Department
Escalon Police Department
Fairfield Police Department

Memorandums Of Understanding Between The Sacramento Sheriff's Department And Various
California Law Enforcement And Prosecutorial Agencies For The High Technology Theft
Apprehension And Prosecution Program

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Federal Bureau of Investigation
Folsom Police Department
Galt Police Department
Grass Valley Police Department
Gustine Police Department
Ione Police Department
Jackson Police Department
Livingston Police Department
Lodi Police Department
Los Rios Police Department
Manteca Police Department
~~Mariposa Sheriff's Department~~
Marysville Police Department
Merced Police Department
Merced Sheriff's Department
Modesto Police Department
Nevada County Sheriff's Department
Placer County District Attorney's Office
Placer Sheriff's Department
Plumas Sheriff's Department
Rancho Cordova Police Department
Ripon Police Department
Rocklin Police Department
Roseville Police Department
Sacramento County Dept of Human Assistance
Sacramento Police Department
San Joaquin Sheriff's Department
Solano County Sheriff's Department
Stanislaus County District Attorney
Stanislaus Sheriff's Department
Stockton Police Department
Stockton Unified School District Police Department
Sutter Sheriff's Department
Tracy Police Department
Truckee Police Department
U.S. Air Force
U.S. Attorney's Office
U.S. Postal Inspection Services
U.S. Secret Service
University of California, Davis, Police Department
USDA Forest Service
Vacaville Police Department
Woodland Police Department
Yolo County Sheriff's Department
Yolo District Attorney's Office
Yuba City Police Department
Yuba County Sheriff's Department

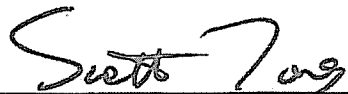
MEASURES/EVALUATION

The Task Force submits quarterly progress reports to the various grantors that fund the Task Force. These reports detail the number of cases investigated, the number of cases filed for prosecution, the number of victims in the cases filed, and the monetary loss to those victims. These statistics will be used to evaluate the Task Force's effectiveness in combating high technology, intellectual property, and identity theft crimes.

FINANCIAL ANALYSIS

The HTTAP grant funding is generated by sales tax revenue and distributed in allocations to the counties from the California State Controller's Office. SSD received \$1,854,336 for Fiscal Year 2011-12 and has budgeted \$1,996,440 for Fiscal Year 2012-13. The funding is used to partially reimburse some agencies for participating personnel. Any costs not included in the grant are covered by the individual agency incurring the cost. There is no local in-kind match requirement and no cost to the County.

Respectfully submitted,



SCOTT R. JONES, Sheriff
Sacramento County Sheriff's Department

CONCUR:
BRADLEY J. HUDSON
County Executive

By: _____
NAVDEEP S. GILL
Assistant County Executive

Attachments: Resolution
Attachment A – MOU Task Force Agencies
Attachment B – MOU Task Force Agencies with Funding

**MEMORANDUMS OF UNDERSTANDING BETWEEN THE SACRAMENTO
SHERIFF'S DEPARTMENT AND VARIOUS CALIFORNIA LAW ENFORCEMENT
AND PROSECUTORIAL AGENCIES FOR THE HIGH TECHNOLOGY THEFT
APPREHENSION AND PROSECUTION PROGRAM**

~~BE IT RESOLVED AND ORDERED~~ that the Sacramento County Sheriff, or his designee, is hereby authorized and directed on behalf of the COUNTY OF SACRAMENTO, a political subdivision of the State of California, to enter into a Memorandum of Understanding with various California law enforcement and prosecutorial agencies as part of the High Technology Theft Apprehension and Prosecution Program, as well as authorized the addition or deletion of allied agencies as necessary, and to do and perform everything necessary to carry out the purpose of this Resolution including any modifications, amendments, or augmentations.

On a motion by Supervisor Yee, seconded by Supervisor MacGlashan, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this 25th day of September, 2012, by the following vote, to wit:

AYES: Supervisors, MacGlashan, Peters, Serna, Yee, Nottoli
NOES: Supervisors, none
ABSENT: Supervisors, none
ABSTAIN: Supervisors, none

Don Nottoli

Chair of the Board of Supervisors
of Sacramento County, California



ATTEST:

Cyndi Lee
Clerk, Board of Supervisors

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County Of Sacramento on: September 25, 2012

By *Gueryne Dewlenig*
Deputy Clerk, Board of Supervisors

FILED
BOARD OF SUPERVISORS

SEP 25 2012
BY *Cyndi Lee*
CLERK OF THE BOARD

RESOLUTION _____

AUTHORIZING THE CHIEF OF POLICE TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SACRAMENTO VALLEY HI-TECH CRIMES TASK FORCE AND SACRAMENTO INTERNET CRIMES AGAINST CHILDREN TASK FORCE TO JOINTLY COMBAT FINANCIAL CRIMES, COMPUTER CRIMES AND CRIMES AGAINST CHILDREN

WHEREAS, The proliferation of computer based crimes has become a significant concern to law enforcement, and

WHEREAS, The Sacramento Valley Hi-Tech Task Force can provide training and equipment needed to successfully investigate and prosecute computer based crime, and

WHEREAS, The Memorandum of Understanding articulating the details of the agreement is agreeable to the Tracy Police Department, and

WHEREAS, The term of the agreement will be through June 30, 2016;

NOW, THEREFORE, BE IT RESOLVED, That City Council does hereby authorize the entry into a Memorandum of Understanding (MOU) with the Sacramento Valley Hi-Tech Task Force and Sacramento Internet Crimes Against Children Task Force and authorizes the Chief of Police to sign the MOU.

The foregoing Resolution _____ is hereby passed and 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.L

REQUEST

APPROVE AN AGREEMENT TO EXTEND THE 60-DAY CURE PERIOD UNDER THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

On September 17, 2013, the City Council directed staff to bring back for City Council consideration an agreement to extend the 60-day cure period under the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC.

DISCUSSION

On April 18, 2013, the City and Surland entered into an Amended and Restated Development Agreement ("Development Agreement"). Section 1.01 of the Development Agreement provides that, not later than 60 days after the Annexation Effective Date (which was September 15, 2013), Surland shall deposit into the Swim Center Funds Account \$2,000,000 for use by the City in the development, construction, operation and maintenance of a swim center.

Because Surland has failed to make this deposit, on September 17, 2013, the City gave Surland written notice to cure this failure. Under the Development Agreement, Surland has 60 days from the date of the written notice to cure this failure by making the deposit.

Surland has also submitted an application for an amendment to the Development Agreement to extend the time to make this deposit. On September 17, 2013, the City Council directed staff to process this application. Realizing that it may take longer than 60 days to process this application, the City Council also directed staff to bring back for City Council consideration an extension of this 60-day period to allow processing of the application.

Section 2.02 of the Development Agreement provides that the 60-day cure period may be extended by written mutual agreement.

Under the proposed agreement (attached), the 60-day cure period contained in section 2.02 of the Development Agreement is extended until 30 days after the City Council takes final action on Surland's application for an amendment to the Development Agreement as referenced above.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

Approve an agreement to extend the 60-day cure period under the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC and authorize the Mayor to execute the agreement.

Prepared by: Daniel G. Sodergren, City Attorney
Approved by: R. Leon Churchill, Jr., City Manager

Attachment A: Proposed Agreement

ATTACHMENT A

**AGREEMENT TO EXTEND 60-DAY CURE PERIOD UNDER
AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC**

This Agreement is entered into by and between the City of Tracy, a municipal corporation ("City") and Surland Communities, LLC, a California limited liability company ("Surland").

RECITALS

A. On April 18, 2013, the City and Surland entered into an Amended and Restated Development Agreement ("Development Agreement").

B. Section 1.01 of the Development Agreement provides that, not later than 60 days after the Annexation Effective Date (which is September 15, 2013), Surland shall deposit into the Swim Center Funds Account \$2,000,000 for use by the City in the development, construction, operation and maintenance of a swim center.

C. Because Surland has failed to make this deposit, on September 17, 2013, the City gave Surland written notice to cure this failure. Under the Development Agreement, Surland has 60 days from the date of the written notice to cure this failure.

D. Surland has also submitted an application for an amendment to the Development Agreement to extend the time to make this deposit. The City Council has directed staff to process this application. It may take longer than 60 days to process this application.

E. Section 2.02 of the Development Agreement provides that the 60 day cure period may be extended by written mutual consent.

NOW, THEREFORE, the parties agree that the 60 day cure period contained in section 2.02 of the Development Agreement is extended until 30 days after the City Council takes final action on Surland's application for an amendment to the Development Agreement as referenced above.

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

CITY OF TRACY

SURLAND COMMUNITIES, LLC

Mayor

Date: _____



By: Les J. Serpa

Date: September 24, 2013

Attest:

City Clerk
Date: _____

Approved as to Form:

City Attorney
Date: _____

RESOLUTION _____

APPROVING AN AGREEMENT TO EXTEND THE 60-DAY CURE PERIOD UNDER THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On April 18, 2013, the City and Surland entered into an Amended and Restated Development Agreement (“Development Agreement”); and

WHEREAS, Section 1.01 of the Development Agreement provides that, not later than 60 days after the Annexation Effective Date (which was September 15, 2013), Surland shall deposit into the Swim Center Funds Account \$2,000,000 for use by the City in the development, construction, operation and maintenance of a swim center; and

WHEREAS, Surland has failed to make this deposit; and

WHEREAS, On September 17, 2013, the City gave Surland written notice to cure this failure; and

WHEREAS, Under the Development Agreement, Surland has 60 days from the date of the written notice to cure this failure by making the deposit; and

WHEREAS, Surland has also submitted an application for an amendment to the Development Agreement to extend the time to make this deposit; and

WHEREAS, On September 17, 2013, the City Council directed staff to process this application; and

WHEREAS, The City realizes that it may take longer than 60 days to process this application; and

WHEREAS, The City Council also directed staff to bring back for City Council consideration an extension of this 60-day period to allow processing of the application; and

WHEREAS, Section 2.02 of the Development Agreement provides that the 60-day cure period may be extended by written mutual agreement.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves an agreement to extend the 60-day cure period under the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC and authorizes the Mayor to execute the agreement.

* * * * *

Resolution _____
Page 2

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 1st day of October, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3

REQUEST

THAT COUNCIL CONDUCT A PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND ADOPT A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES

EXECUTIVE SUMMARY

The Fire Department performs inspections on its own and after complaints are received from citizens regarding the existence of weeds, rubbish, refuse and flammable material on residential and commercial parcels. Abatement notices are sent to parcel owners within the City deemed by Fire Department staff to be a public nuisance and dangerous to the public health and safety.

The notice states the time and date of the Public Hearing to be conducted by the City Council to address any and all objections to the proposed abatement and, as necessary, authorize Fire Department staff to direct the City's contractor to abate parcels Council finds to be a nuisance.

DISCUSSION

Pursuant to Tracy Municipal Code, a Public Hearing is required prior to the abatement of any parcels. Sections 4.12.250 through 4.12.340 of the Tracy Municipal Code set forth the procedure for the City to abate weeds, rubbish, refuse and flammable material on private property.

On September 5, 2013, pursuant to Tracy Municipal Code, Section 4.12.280, the Fire Department sent a notice to the property owner(s) listed in Exhibit "A" to this staff report. That notice required the said owner to abate weeds, rubbish, refuse and flammable material on his/her parcel within twenty days, and informed the property owner(s) that a Public Hearing would be conducted on October 1, 2013, where any protests regarding the notice to abate would be heard. The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property.

Under the provisions of Tracy Municipal Code, Section 4.12.290, the Fire Department will proceed at Council's direction with instructing the City's contractor to perform weed, rubbish, refuse and flammable material abatement on the parcels listed in Exhibit "A". Per the Tracy Municipal Code, property owners are liable for the cost of abatement and will be billed for the actual cost of the City contractor's services, plus a twenty-five percent administrative charge. After the abatement is complete, Staff will return with an agenda item to have Council authorize all unpaid assessments to be filed with the San Joaquin County Auditor Controller's office to establish a lien on the property.

STRATEGIC PLAN

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

FISCAL IMPACT

There is an available budget remaining of \$8,096 for Fiscal Year 2013-2014, in the Grounds and Maintenance account 211-52110-252-00000, that is used for contracting the abatement of weeds, rubbish, refuse and flammable material. There are sufficient funds to accomplish abatement services.

RECOMMENDATION

That City Council conduct a Public Hearing to hear and consider any and all objections to the proposed abatement, and by resolution, declare the weeds, rubbish, refuse, and flammable material located at the parcels listed within Exhibit "A" to be a nuisance, and authorize the Fire Department to direct the City's contractor to abate such nuisance.

Prepared by: Gina Rodriguez, Administrative Assistant II

Reviewed by: Steve Hanlon, Fire Division Chief

Approved by: Alford Nero, Fire Chief

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

Attachment: Exhibit A - 2013 Weed Abatement Parcel List

TRACY FIRE - WEED ABATEMENT LIST**PUBLIC HEARING 10/01/13**

APN	SITUS ADDRESS	NAME/BUSINESS	MAILING ADDRESS	CITY	STATE	ZIP
242-040-49	Vacant lot Dove & Mits Way	Meritage Homes	1671 E. Monte Vista Avenue, #214	Vacaville	CA	95687
235-200-23	230 S. Central Avenue	Philip Yick	230 S. Central Avenue	Tracy	CA	95376
235-200-20	187 S. Central Avenue	Jefferey Wojcik	187 S. Central Avenue	Tracy	CA	95376
233-074-04	485 W. Carlton Way	Felipe Zuniga	485 W. Carlton Way	Tracy	CA	95376
246-280-29	17 Regina Drive	Marissa Bercasio	1470 Rue Avati	San Jose	CA	95131
214-170-26	2805 Ponte Mira Way	Randall Lee	4571 Grover Court	Fremont	CA	94536
235-040-12	430 W. 11th Street	Harman Management Corp	P.O. Box 572530	Salt Lake City	UT	84157
233-061-02	560 W. Emerson Avenue	Emil & Melissa Villaroman	27907 S. Traina Court	Tracy	CA	95304
238-600-04	Vacant lot Grant Line Road/ behind Les Schwab	LaMoringa Dev & Investment Corp	1501 Mt. Diablo Blvd #260	Walnut Creek	CA	94596
232-030-28	1601 Duncan Drive	Maria Salgado	1601 Duncan Drive	Tracy	CA	95376
233-064-16	1665 Wall Street	Lakmin & Michele Abeygoonesekera	P.O. Box 11606	Oakland	CA	94611
235-370-20	2310 Versailles Court	Jacqueline Davenport	2310 Versailles Court	Tracy	CA	95376
232-350-14	1211 Fruitwood Way	Joe Nguyen	1226 Oak Creek Way	Sunnyvale	CA	94089
242-230-40	1299 Dove Drive	Gary & Tanja Nichols	1299 Dove Drive	Tracy	CA	95376
233-063-22	1719 Wall Street	Elisabeth Berg	2861 E. Quincy Avenue	Fresno	CA	93720
233-063-09	1725 Wall Street	Elisabeth Berg	2861 E. Quincy Avenue	Fresno	CA	93720
213-340-06	445 Royal Court	Clark Richardson	120 W. Willow Creek Drive	Tracy	CA	95376
232-100-62	2200 Martin Road	Ronald Mullins	1377 Lillian Street	Livermore	CA	94550
242-080-28	1751 Parkside Drive	Parnian Pouladdej	1751 Parkside Drive	Tracy	CA	95376

RESOLUTION _____

DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON THE PARCELS LISTED IN EXHIBIT "A", A NUISANCE AND AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE

WHEREAS, On September 5, 2013 pursuant to Tracy Municipal Code, Section 4.12.280, Fire Department staff mailed, via certified mail, a notice to the owners of record listed within Exhibit "A" that the existence of weeds, rubbish, refuse and flammable material on said parcel in the City of Tracy constitutes a nuisance and is dangerous to public health and safety of the inhabitants of the City pursuant to Section 4.12.260 of the Tracy Municipal Code, and

WHEREAS, The notices included an order to abate said nuisance within 20 days and informed the property owner(s) of their opportunity to appear and object to the abatement of such nuisance at a public hearing before the City Council on October 1, 2013, and

WHEREAS, The County Assessor's Office shows the mailing address for the owner(s) of record of the subject parcels as listed within Exhibit "A", and a notice to abate and the notice of the public hearing was sent in a timely manner to that address by certified mail, and

WHEREAS, Objections, if any, to said abatement have been heard and considered, and

WHEREAS, The Fire Department has \$8,095.50 available in the FY 2013-2014 budget for weed, rubbish, refuse and flammable material abatement;

NOW, THEREFORE, BE IT RESOLVED, That the City Council declares the weeds, rubbish, refuses and flammable material on the parcels listed within Exhibit "A" to be a nuisance and further authorizes Fire Department staff to order the City's contractor to abate the accumulation of weeds, rubbish, refuse and flammable materials on the listed parcels.

The foregoing Resolution _____ was passed and 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 4

REQUEST

AUTHORIZATION FOR CITY STAFF TO NEGOTIATE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SURLAND COMMUNITIES LLC FOR THE POTENTIAL DEVELOPMENT AND OPERATION OF AN AQUATICS CENTER IN THE CITY OF TRACY

EXECUTIVE SUMMARY

On September 17, 2013, Council directed staff to explore the possibility of developing the Aquatic Center through a public-private partnership with Wild Rivers Irvine, LLC. During public discussion for the Wild Rivers agenda item, Surland Communities presented Council with an alternative proposal to construct, develop, and operate the Aquatic Center. Council directed staff to bring back an agenda item to further discuss and provide direction on the Surland Proposal, which could allow staff to review and negotiate both proposals concurrently.

BACKGROUND

On October 1 and 2, 2012, City Council directed staff to acquire information on the potential of a privately developed and operated aquatic center project. Staff conducted outreach to three separate waterpark owner/operators in California: Palace Entertainment; Golfland Sunsplash; and Wild Rivers Waterpark. Of the three, Wild Rivers Irvine, LLC submitted a letter of interest to explore a public-private partnership with the City of Tracy for the development of an Aquatic Center.

On September 17, 2013, Council directed staff to begin negotiations with Wild Rivers Irvine, LLC for the potential development and operation of an Aquatics Center in the City of Tracy. During the public comment period for the Wild Rivers agenda item, Surland Communities presented Council with an alternative proposal to construct, develop, and operate the Aquatic Center for the community. A copy of the Surland proposal is included as Attachment A.

DISCUSSION

Surland Communities Proposal

The Surland Proposal states that Surland would alleviate the construction, ownership and operational risk for the City to construct, own, and operate a Swim Center. Surland requests that an agreement be negotiated with the City to include the following points:

- The Swim Center would be built on the Swim Center Site identified in the Ellis Development Agreement.

- Surland would form a separate entity, which would utilize the approximately \$4 million of funding, which the City currently has available and the \$10 million obligation from Surland along with any other funds that could be raised from grants, local developers, or other sources to construct the Swim Center.
- The Swim Center would include as many of the features as discussed in the conceptual design as possible and would be designed in a way which would address the long term needs of the Tracy Community and provide as many of the desired services as possible given financial constraints.
- Surland would enlist the help of community groups and entities, such as USA Swim, to assist in operating and maintaining the Swim Center once it is constructed. The intent of the agreement would be to provide the same level of services to the community as envisioned through the many years of conceptual design discussion and consensus approval. The operations and ownership of the Swim Center would be undertaken by the entity established by agreement between Surland and the City.
- The City would be able to program swim lessons and other related activities through the agreement between Surland and the City.

Should Council direct staff to negotiate an MOU with Surland Communities, LLC, staff will come back to Council with details of the MOU at a subsequent Council meeting. Staff understands that there are a number of outstanding issues related to aquatics facilities that need to be addressed, such as: location; refinement of amenities; and operations. Staff would work with both Wild Rivers, LLC and Surland Communities concurrently to negotiate these deal points. Staff proposes an MOU with a six-month duration in order to work through these issues with the Surland Communities, Wild Rivers, and Council.

STRATEGIC PLAN

This agenda item supports the Economic Development Strategic Plan goal of attracting retail and entertainment uses that offer resident's quality dining, shopping, and entertainment experiences, and specifically implements the following Action/ Task:

Action/Task 2.b.2: Outreach to developers and/or operators to determine if a market exists for the private development and operation of a regional waterpark in Tracy.

FISCAL IMPACT

There is no impact to the General Fund as a result of preparing this MOU, aside from staff time. The City currently has \$4 million budgeted for the Aquatics Center CIP, with

additional funding (\$10 million) coming from Surland Communities as part of their Development Agreement with the City.

RECOMMENDATION

That City Council authorize City staff to prepare a Memorandum of Understanding (MOU) with Surland Communities, LLC for the potential development and operation of an Aquatics Center in the City of Tracy.

Prepared by: Andrew Malik, Development Services Director

Reviewed by: Maria Hurtado, Assistant City Manager

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

ATTACHMENT

Attachment A: September 17, 2013 letter from Surland Communities LLC

201 Sadegri
Hurtado

THE SURLAND COMPANIES



September 17, 2013

Residential

Commercial

Leon Churchill
City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: Surland Communities LLC; Request for Authorization to Negotiate An Agreement to Construct, Develop and Operate a Community Swim Center

1024 CENTRAL AVE.

Dear Mr. Churchill:

TRACY

CALIFORNIA

95376

TELEPHONE

(209)832-7000

FACSIMILE

(209)833-9700

WEBSITE

www.surlandcompanies.com

An enormously important part of the Development Agreement for Surland Communities Ellis Project is the obligation incurred in that agreement for Surland to offer to dedicate 16 acres of real property as a Swim Center Site and contribute \$10,000,000 towards the construction of the Swim Center. The Swim Center for the Citizens of the Tracy Community has long been an important goal. We understand that the City currently has approximately \$5,000,000 in funds earmarked for the construction of the Swim Center and its conceptual design has been vetted by several Citizens Groups and the Councils for many years, and its conceptual design has since been approved by Council. The purpose of this letter is to propose to the City that Surland Communities and the City enter into an agreement in some form pursuant to which Surland will alleviate the construction, ownership and operational risk for the City to construct, own, and operate a Swim Center. Such proposal would utilize the funds Surland is obligated to commit under the Ellis Development Agreement and utilize the Swim Center Site identified in that agreement, together with the funds pursuant to Swim Center development that the City currently has, along with any other funds that Surland or the City can raise, and develop the type of community swim center that was envisioned by the community. That agreement would be negotiated between Surland and the City but would include the following points:

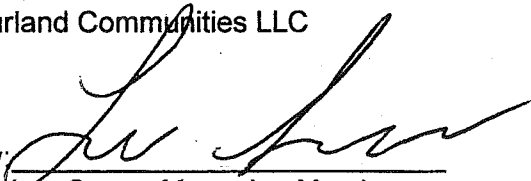
1. The Swim Center would be built on the Swim Center Site identified in the Ellis Development Agreement.

2. Surland would form a separate entity, which would utilize the approximately \$5,000,000 of funding which the City currently has available and the \$10,000,000 obligated from Surland along with any other funds that could be raised from grants, local developers or other sources to construct the Swim Center.
3. The Swim Center would include as many of the features as discussed in the conceptual design as possible and would be designed in a way which would address the long term needs of the Tracy Community and provide as many of the desired services as possible given financial constraints.
4. Surland would enlist the help of community groups and entities such as USA Swim to assist in operating and maintaining the Swim Center once it was constructed. The intent of the agreement would be to provide the same level of services to the community as envisioned through the many years of conceptual design discussion and consensus approval. The operation and ownership of the Swim Center would be undertaken by the entity established by agreement between Surland and the City.
5. The City would be able to program swim lessons and other related activities through the agreement between Surland and the City.

We believe that this proposal presents a superior alternative for the City and the community that alleviates the construction and operational risk for the City while still providing the family swim center that was envisioned by the community. We respectfully request that you seek authorization from the Council to begin negotiations for this project.

Sincerely,

Surland Communities LLC

By: 
Les Serpa, Managing Member

AGENDA ITEM 6.A

REQUEST

APPOINT APPLICANTS TO THE TRACY SENIOR STEERING COMMITTEE

EXECUTIVE SUMMARY

There are currently three vacancies on the Tracy Senior Steering Committee. A recruitment was conducted and appointments need to be made.

DISCUSSION

On August 20, 2013, City Council approved the formation of a Senior Steering Committee to facilitate two community conversations that would provide the local senior population a forum to identify and discuss current and future service needs, and provide feedback to City Council and the Parks and Community Services Commission. The Senior Steering Committee will consist of seven members including one appointed Commissioner from each of the following City of Tracy commissions: Walter Gouveia (Parks and Community Services Commission), Jass Sangha (Planning Commission), Mercedes Silveira (Tracy Arts Commission), and Daniel Ramey (Transportation Commission). Additionally, three residents from the Tracy community will be appointed to the Senior Steering Committee by City Council.

A recruitment to fill the three vacancies on the Senior Steering Committee was opened on August 28, 2013, and ended at 6:00 p.m. on September 18, 2013.

On September 24, 2013, a Council subcommittee consisting of Council Member Young and Council Member Manne interviewed six applicants. In accordance with Resolution 2004-152, the Council subcommittee will recommend applicants for appointment to the Tracy Senior Steering Committee.

EXECUTIVE SUMMARY

This item is not related to any specific Council Strategic Priority.

FISCAL IMPACT

None.

RECOMMENDATION

That Council approves the subcommittee's recommendations and appoints three applicants to the Tracy Senior Steering Committee.

Prepared by: Adrienne Richardson, Deputy City Clerk
Reviewed by: Sandra Edwards, City Clerk
Approved by: R. Leon Churchill, Jr., City Manager

AGENDA ITEM 6.B

REQUEST

**CONSIDER WHETHER AN ITEM TO DISCUSS THE TIMELINESS OF STAFF
RESPONSES TO COUNCIL REQUESTS SHOULD BE PLACED ON A FUTURE CITY
COUNCIL AGENDA**

EXECUTIVE SUMMARY

Determine whether an item to discuss the timeliness of staff responses to Council requests should be placed on a future Council agenda.

DISCUSSION

At the City Council meeting held on September 17, 2013, Council Member Rickman requested Council consider a discussion item regarding the timeliness of staff responses to Council requests.

The purpose of this agenda item is to provide an opportunity for Council to discuss whether staff time and city resources should be devoted to research, and to determine whether a discussion item related to the timeliness of staff responses to Council requests should be placed on a future agenda. Approval of Council Member Rickman's request would enable an agenda item to be brought back for discussion on a future Council agenda.

STRATEGIC PLAN

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

RECOMMENDATION

It is recommended that City Council discuss Council Member Rickman's suggestion and determine whether an item related to the timeliness of staff responses to Council requests should be included on a future agenda.

Prepared by: Sandra Edwards, City Clerk

Reviewed by: Maria A. Hurtado, Assistant City Manager

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