

Tuesday, November 19, 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 – Sports Hall of Fame Plaque

1. CONSENT CALENDAR
 - A. Approval of Minutes
 - B. Rescind Resolution 2012-247 Approving Utility Agreements with Pacific Gas & Electric (PG&E) and the West Side Irrigation District for Relocation and Modification of Their Facilities for the Eleventh Street East Tracy Overhead Bridge Replacement Project CIP 73063 and Federal Project Number BHLS-5192(020) and Approve New Agreements to Include Buy American Requirements as Required by the Federal Highway Authority on Federally Funded Projects and Authorize the Mayor to Execute the Agreements
 - C. Authorize the Mayor to Sign a Memorandum of Understanding Between the City of Tracy and the Women's Center Youth and Family Services in Order to Enhance Community Education, Prevention and Recovery for Victims of Domestic Violence and Sexual Assault
 - D. Authorize the City Manager and Chief of Police to Execute a Memorandum of Understanding (MOU) Between the Regional Auto Theft Team (RATT) Task Force to Jointly Combat Vehicle Theft Crimes July 1, 2013, through June 30, 2015
 - E. Authorize the City Manager and Chief of Police to Execute a Memorandum of Understanding (MOU) Between the County of San Joaquin Metropolitan Narcotics Task Force (METRO) from July 1, 2013, to June 30, 2016
 - F. Approve a Resolution Exercising the Option to Extend a Lease Agreement with Mizuno Farms, Inc., for One Additional Two-Year Period, for Farming Operations at Property Located at the Corner of Eleventh Street and Chrisman Road and Amending Certain Language Regarding Termination in the Event of a Third Party Sale, and Authorize the Mayor to Execute Amendment No. 1
2. ITEMS FROM THE AUDIENCE
3. PUBLIC HEARING TO ADOPT AMENDMENTS TO THE CITYWIDE ROADWAY AND TRANSPORTATION, AND STORM DRAINAGE MASTER PLANS, THE ESTABLISHMENT OF ROADWAY AND TRAFFIC, WATER, RECYCLED WATER, WASTEWATER, STORM DRAINAGE, PUBLIC SAFETY, PUBLIC FACILITIES, AND PARK DEVELOPMENT IMPACT FEES AND THE ASSOCIATED AB1600 FEE STUDIES FOR ALL NEW DEVELOPMENTS WITHIN THE CITY
4. APPROVE AGREEMENTS RELATED TO RECONSTRUCTION AND WIDENING OF THE ELEVENTH STREET OVERPASS BRIDGE CIP 73063, FEDERAL PROJECT NUMBER BHLS-5192(020) AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS
5. AUTHORIZE A FY2013-14 SUPPLEMENTAL APPROPRIATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND GENERAL PROJECTS FUND 301 MONIES

6. ITEMS FROM THE AUDIENCE

7. STAFF ITEMS

A. Receive and Accept the City Manager Informational Update

8. COUNCIL ITEMS

A. Appointment of City Council Subcommittee to Interview Applicants for Vacancies on the Tracy Arts Commission

9. ADJOURNMENT

September 17, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was offered by Pastor Tim Heinrich, Crossroads Baptist Church.

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

Mayor Pro Tem Maciel recognized Linda Jimenez for being inducted into the Stockton Mexican American Hall of Fame.

Mayor Pro Tem Maciel presented a proclamation to Shannon Ding, AT&T External Affairs Consultant, on behalf of DRIVE 4 PLEDGES DAY.

1. CONSENT CALENDAR - Following the removal of item 1-D by Council Member Young, it was moved by Council Member Rickman and seconded by Council Member Manne to adopt the consent calendar. Roll call vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.
 - A. Approval of Minutes – Regular meeting minutes of July 16, 2013, and Special meeting minutes of August 6, 2013, were approved.
 - B. Acceptance of the Water and Wastewater Improvements (Walnut Avenue, King Alley and Larsen Alley) – CIPs 74092 and 75114, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-146 accepted the improvements.
 - C. Authorize Amendment of the City's Classification Plan by Approving Revisions to the Classification Specifications of Firefighter and Firefighter Trainee in the Tracy Fire Department – Resolution 2013-147 authorized the amendment.
 - D. Approval of a One Year (With Options to Extend for Five Additional One-Year Periods) General Services Agreement, Not to Exceed \$200,000, with Advanced Building Cleaners, Inc. for Services Required for Street, Alley, and Parking Lot Sweeping; Authorize the City Manager to Execute Extensions and Any Minor Amendments Associated with this Agreement for Administrative Efficiency; and Authorize the Mayor to Execute the Agreement – Leon Churchill, Jr., City Manager, noted that the agreement had been changed to reflect an increase in the required deposit, as outlined in the Request for Bids.

David Ferguson, Public Works Director, stated street sweeping services are performed throughout the City to maintain clean streets, alleys, and parking lots, and reduce debris entering the City's storm drain system. Sweeping is completed every two weeks on all City streets, with the exception of the downtown business

district which is swept twice a week. Selected City paved alleys and parking lots are swept on a monthly basis.

A "Notice Inviting Bids" for street sweeping was published on July 19, 2013 and August 2, 2013. Bid packages were sent to eight street sweeping contractors. One of the bids was automatically disqualified because it did not contain the required bond. The low bid was submitted by Advanced Building Cleaners, Inc. Upon approval, the initial term of the Agreement will be from October 1, 2013 through September 30, 2014. In the event that the City determines the Contractor has satisfactorily performed all requirements in this Agreement, the City may extend the Agreement for five additional one year terms. The Agreement shall be automatically extended for each additional term if the Contractor does not receive a 90 day written termination notice from the City.

Funding is available in the Fiscal Year 2013/2014 Operational Budget for street sweeping services. This Agreement has a Not to Exceed amount of \$200,000.

Staff recommended that City Council approve a one year (with options to extend for five additional one-year periods) General Services Agreement with Advanced Building Cleaners, Inc. for services required for street, alley, and parking lot sweeping; authorize the City Manager to execute extensions and any minor amendments associated with this agreement for administrative efficiencies; and authorize the Mayor to execute the agreement.

Council Member Young asked what constituted an emergency for street sweeping. Mr. Ferguson stated it was complaint based and usually involved spills of rock or glass, and was not part of the routine sweeping schedule. Council Member Young stated the "not to exceed" clause was a good addition to the contract. Mr. Ferguson indicated he believed the contract would not be exceeded.

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

It was moved by Council Member Rickman and seconded by Council Member Manne to adopt Resolution 2013-148 approving a one year (with options to extend for five additional one-year periods) General Services Agreement with Advanced Building Cleaners, Inc. for services required for street, alley, and parking lot sweeping; authorizing the City Manager to execute extensions and any minor amendments associated with this agreement for administrative efficiencies; and authorizing the Mayor to execute the agreement. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

2. ITEMS FROM THE AUDIENCE – Robert Tanner asked for a status report on the Chrisman Road property.

Steve Stumer, Tracy Air Center, provided Council with a brief update on activity at the Tracy Airport and handed out newspapers from the Merced area highlighting the grand opening of a restaurant at the Merced airport. Mr. Stumer indicated he was looking forward to similar events in Tracy.

Marsha McCray congratulated Council and staff for their efforts on attracting new businesses to the City of Tracy stating Channel 13 mentioned the City and Amazon in one of their reports.

John Favors stated he appreciated Council's rehabilitation efforts at the Tracy Airport stating they were ready to receive aircraft to support businesses locating in Tracy.

- 3 ACCEPT PRESENTATION ON TRILINK (STATE ROUTE 239) PROJECT FROM THE TRILINK TEAM – Kuldeep Sharma, City Engineer, provided the staff report. For two years the TriLink Project Team has been working on Phase 1 Planning of the State Route 239 project. Prior to publically releasing the Draft Feasibility Study, the TriLink Team asked for an opportunity to provide a presentation to City Council.

In 2011, Contra Costa County received authorization to receive Federal funding to complete Phase 1 Planning of the proposed TriLink (State Route 239) project connecting State Route 4 in the City of Brentwood area with Interstate 205 (I-205) and Interstate 580 (I-580) in the City of Tracy area. Contra Costa Transportation Authority is taking the lead role with active participation from other agencies in completing this project.

There is no impact to the City's General Fund.

Mr. Sharma introduced Steve Martin of Parsons Group, who provided a presentation regarding the TriLink project.

Staff recommended that Council accept the presentation on the TriLink Project (State Route 239) from the TriLink Team.

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

Mayor Pro Tem Maciel asked for confirmation that funding sources have not specifically been identified. Mr. Martin stated that was correct.

Council Member Young asked if all of the various elements and routes were going to be included. Mr. Martin stated all five links are included in the total program with one alternative for each link. Mr. Martin stated the project would be done in phases as funding allows and that priority phasing had not been identified.

Council Member Young asked if some type of legislation has gotten the project to this point. Mr. Martin indicated it was because of a Federal earmark started by former Congressman Pombo in 2005.

Council Member Manne asked if TriLink was in communication with the San Joaquin Council of Governments regarding this project. Mr. Martin stated yes, and that half of the project was in San Joaquin County.

Robert Tanner asked for the website address. Mr. Martin provided the website address as: www.trilink239.org.

Council accepted the presentation on the TriLink Project (State Route 239).

4. AUTHORIZATION FOR CITY STAFF TO PREPARE A MEMORANDUM OF UNDERSTANDING (MOU) WITH WILD RIVERS IRVINE LLC FOR THE POTENTIAL DEVELOPMENT AND OPERATION OF AN AQUATICS CENTER IN THE CITY OF TRACY – Leon Churchill, Jr., City Manager, stated agenda items four and five were related and that a delay in some of Ellis' development deliverables were warranted because they are dependent on a swim center solution. Agenda item four is a request to the City Council to authorize discussions on a Memorandum of Understanding (MOU) with Wild Rivers that can be narrowly described as a response to a question posed one year ago. The question was "is there private interest in the development of a swim center". The narrow answer is yes. The variables that need to be examined include what methodology will generate the most predictable outcome, deliver the desired community amenities in a timely fashion, deliver the most complete project and does not undermine other City priorities, among others.

Andrew Malik, Development Services Director, provided the staff report. On October 1 and 2, 2012, Council directed staff to acquire information on the potential of a privately developed and operated aquatic waterpark project. Staff conducted outreach to three separate waterpark owner/operators in California: Palace Entertainment; Golfland Sunsplash; and Wild Rivers Waterpark.

Palace Entertainment - Palace operates multiple waterparks and family entertainment centers throughout the United States. Within Northern California, Palace currently operates the 'Raging Waters' parks in Sacramento and San Jose, as well as the 'Waterworld California' waterpark in Concord. Upon contacting representatives at the Palace Entertainment office in Newport Beach it was discovered that they are not in the waterpark development industry. They indicated that they would not be interested in the development of a waterpark in Tracy at this time.

Golfland Sunsplash Entertainment Centers - The City, local retail developers, and Golfland Entertainment representatives have had preliminary discussions regarding the potential of developing entertainment type uses in the City. While conversations with Golfland Sunsplash continue, they are very preliminary and currently do not include any aquatics type facilities.

Wild Rivers Waterpark - Wild Rivers Waterpark of Irvine, was forced to close last year when their land lease expired after 27 years (to make way for a housing development). The owners have recently received approval from the Orange County Board of Supervisors to rebuild a waterpark on public land off of I-5 in Irvine. The supervisors approved a 25-year lease with Wild Rivers Irvine LLC for 17-acres of county owned property. Mike Riedel, one of the partners of Wild Rivers Waterpark LLC, was contacted to discuss any potential interest they may have in the development of a waterpark in Tracy. Mr. Riedel, being unfamiliar with the Tracy area, requested additional demographic data for the City of Tracy and surrounding area in order to determine the general feasibility of a waterpark in the region. He was specifically interested in the population density within a 10/15/30/50 mile radius of Tracy. After reviewing demographic and other Tracy market reports, Mr. Riedel has expressed interest in moving forward with a MOU with the City to explore the aquatic center concept further.

Mr. Riedel has submitted a Letter of Interest to the City to pursue and explore the possibility of developing an Aquatics Center in the City of Tracy. In order to move

forward with this request, staff is asking Council for authorization to prepare a MOU with Wild Rivers Irvine, LLC to further explore the public-private development of an Aquatics Center in the community. Should Council direct staff to negotiate a MOU with Wild Rivers Irvine 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 aquatic facilities that need to be addressed, such as: location; refinement of amenities; and operations. Staff proposes a MOU with a six month duration in order to work through these issues with the private entity and the Council.

There is no impact to the General Fund as a result of preparing this MOU, aside from staff time. The City currently has \$3 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.

Staff recommended that City Council authorize staff to prepare a Memorandum of Understanding (MOU) with Wild Rivers Irvine LLC for the potential development and operation of an aquatics center in the City of Tracy.

Mr. Riedel provided a brief background on Wild Rivers. Mr. Riedel stated that during negotiations, Wild Rivers would seek community input and that they were looking at providing a project that is energy neutral. Mr. Riedel added that they are known as the safest water park operator in the United States.

Council Member Manne asked Mr. Riedel if Wild Rivers has ever operated a swim center before that included competitive swimming pools. Mr. Riedel stated they have built activity pools, but not competitive pools.

Council Member Manne asked if swimming lessons are offered at the pools Wild Rivers currently operates. Mr. Riedel stated yes.

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

Les Serpa, Surland Companies, indicated they understand the City of Tracy has concerns about building, owning and running a swim facility. Mr. Serpa indicated they would like to be involved in the process. Mr. Serpa added that Surland Companies has a long history of partnering with the City for designing and building projects. Mr. Serpa asked Council to allow Surland, in a parallel track, the opportunity to discuss with the City a proposal for a private entity to own, build and operate this project.

Mayor Pro Tem Maciel asked for clarification regarding an alternative proposal. Dan Sodergren, City Attorney, stated Council can discuss the MOU with Wild River, but if further information was needed, Council should direct staff to bring back Surland's request for further discussion.

Molly Lowe, President of Tracy Tritons, indicated her son sent an e-mail to Council on the subject. Ms. Lowe expressed concerns with Wild Rivers developing an aquatic park. Ms. Lowes concerns included: 1) the project being too expensive, 2) no swim lessons would be offered; and 3) swim clubs inability to host practices or swim meets at the site.

Dave Helm asked what the insurances and operating costs were for another facility owned by Wild Rivers, and if it included an Olympic-sized pool. Mr. Helm stated if the

kids want a pool, the City should build it. Mr. Helm further stated he did not believe that having a wish list without funding should be considered.

Mr. Riedel indicated insurance costs depend on the market and range between \$97,000 and \$330,000. Mr. Riedel stated operating costs depend on the park, and the cost for two or three security personnel are built into the total cost.

Steve Nicolaou applauded Mr. Churchill and staff for looking at having the private sector own, build, and operate a swim center. Mr. Nicolaou stated any impact on the general fund should be minimal if done by the private sector. Mr. Nicolaou urged Council to direct staff to negotiate a MOU with Wild Rivers.

Nicole Howard asked how a disabled person would get to the top of one of the water slides and what type of amenities would be offered for disabled individuals and their families.

Marsha McCray stated the community never asked for a water park, but instead, asked for a swim center that included fun elements and a community pool that could accommodate multiple users. Ms. McCray stated Surland had come up with a good suggestion and have demonstrated a commitment to this community. Ms. McCray suggested Council ensure that Wild Rivers has the funding necessary to build a swim center.

Sandi Taylor addressed Council expressing her support for Surland Companies' offer to partner with the City to build and operate a swim center. Ms. Taylor stated her concerns with Wild Rivers included: 1) their knowledge and experience running a swim center, 2) an amusement park on the Ellis site could trigger the need for a new Environmental Impact Report (EIR) which could further delay the project; and 3) if a swim center was not built at the Ellis site, it could take years to locate, purchase and go through the various processes for another site.

Mr. Riedel stated ADA access is required on several rides. Mr. Riedel suggested that if Council could get a private entity to build a swim facility and cover the operating costs, then that would be the way to go. Mr. Riedel discussed environmental reports, entitlements, funding, and corresponding timelines.

Evelyn Chavarria stated the proposal from Wild Rivers did not seem to include all groups in the community while the proposal from Surland provides more amenities.

Michelle Loomis stated there are a few city-run swim centers that do make money and asked Council to look into those facilities.

Mayor Pro Tem Maciel closed the public comment portion of the meeting.

Council Member Rickman asked Mr. Churchill what he specifically wanted to see from Council. Mr. Churchill indicated he was looking for Council authorization to develop a MOU with Wild Rivers.

Council Member Rickman stated the City has lacked recreational activities for families and kids which needed to be remedied. Council Member Rickman stated a swimming pool should be considered in the negotiations. Council Member Rickman asked if a

competition pool could be built or not, and if not, were there other options. Council Member Rickman added that although Wild Rivers is a private entity it did not mean the City did not have input.

Council Member Rickman asked if the proposal from Surland could go forward separate from Wild Rivers. Mr. Sodergren stated yes, if directed by Council. Council Member Rickman stated he wanted to see two separate MOUs and neither one should be dependent on the other.

Council Member Young thanked staff for their due diligence in exploring alternative options. Council Member Young stated Council needed to look at what the community wanted. Council Member Young thanked Mr. Riedel for coming to Tracy and for considering the possibility of an aquatic center. Council Member Young further stated she was in support of beginning discussions with Wild Rivers for a MOU and also in support of hearing what Mr. Serpa had to offer. Council Member Young stated a swim center needed to include amenities that the community can afford and that accommodate swim teams.

Council Member Manne stated discussions should not exclude Surland's proposal. Council Member Manne further stated he was in favor of negotiating a MOU with Wild Rivers as long as it was not exclusive. Council Member Manne added that unless the proposals include features from the original Surland aquatic center, he would not be approving the proposal.

Mayor Pro Tem Maciel stated he was in favor of directing staff to proceed on a parallel path with both entities. Mr. Churchill suggested the same opportunity be provided to the Surland proposal for a swim center and that staff could return to Council for direction. Mr. Churchill stated staff could then pursue both MOUs and obtain approval to move forward. Mr. Churchill stated he believed the City can achieve the desired outcome the community has been articulating for a very long time.

Mayor Pro Tem Maciel stated he would like to see an Olympic-sized pool as part of any proposal. Mayor Pro Tem Maciel further stated the moral obligation is to have an aquatic center operate with little or no general fund subsidy.

Council Member Young stated any plans should fit into the original Ellis site to avoid the need for any additional environmental studies.

It was moved by Council Member Rickman and seconded by Council Member Manne to direct staff to begin preparation of a Memorandum of Understanding with Wild Rivers Irvine, LLC for the potential development and operation of an Aquatics Center in the City of Tracy; it was further moved to direct staff to bring back an agenda item for Council consideration regarding a Memorandum of Understanding with Surland Companies. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

Mayor Pro Tem Maciel called for a recess at 9:13 p.m., reconvening at 9:23 p.m.

5. AUTHORIZATION FOR STAFF TO NEGOTIATE AN AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, LLC FOR THE ELLIS DEVELOPMENT WHICH IS LOCATED ON

APPROXIMATELY 321 ACRES OF LAND ON THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD. Bill Dean, Assistant Development Services Director, provided the staff report. Surland Communities, LLC, submitted an application request to process the first amendment to the existing Development Agreement (DA), which was approved by City Council on January 22, 2013. In accordance with City Council Resolution 2004-368, there are procedures and requirements for consideration of DAs, which include first receiving City Council authorization to negotiate.

While amendments to DAs are not specifically identified in these procedures, staff is requesting direction from Council on this request. The request by Surland is narrow in scope and applies to the date when the swim center contribution is due to the City. The existing DA requires Surland to pay the City a \$2 million swim center payment by September 15, 2013, and an \$8 million swim center payment by July 17, 2016. Under the existing DA, Surland has submitted an offer to dedicate land for a swim center site. The City has until July 17, 2014, to accept this offer.

The request by Surland would change the date when the first \$2 million swim center payment is due from September 15, 2013, to July 17, 2015.

Approval authorizing staff to negotiate the DA amendment will have no fiscal impact; actual costs are tracked by staff and paid by Surland through a Cost Recovery Agreement.

Staff recommended that the Council discuss the request submitted by Surland Communities, LLC and provide direction to staff. If Council directs staff to negotiate an amendment allowing the extension of the first swim center payment, staff requests the authority to negotiate an extension of time that fits with other City needs, which may result in an extension of time earlier than July 17, 2015. Also, such direction should include direction to negotiate adequate consideration for such amendment (e.g., an extension of the time the City has to accept the offer of land for a swim center site and/or other City benefit).

Mayor Pro Tem Maciel pointed out that the request was authorization for staff to negotiate an amendment to the agreement.

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

Les Serpa, Surland Companies, indicated Ellis has a long history of entitling projects and getting to a point of development which include public amenities for the community. Mr. Serpa stated they were not asking to reduce the amount to be paid, just asking that the payment date be moved out. Mr. Serpa provided examples of financial commitments Surland had been faced with which has resulted in their request to delay the required payment.

Robert Tanner stated the City might consider extending the date for accepting the 16 acres of property from Surland.

Steve Nicolaou voiced concern regarding the date of the letter from Surland of July 16, 2013, which was not received by the City for two months. Mr. Nicolaou stated the City

was setting a precedent for other developers to ask for changes to their Development Agreements. Mr. Nicolaou stated everyone should honor their commitment.

Michele Basinet stated the swim community and swim advocates have no concern with pushing the payment date out to 2015.

Steve Nicolaou reminded Council that they represent not only a few hundred swimmers, but a community of 84,000.

Council Member Manne asked what would happen if Council did not approve the extension. Dan Sodergren, City Attorney, indicated the terms of the existing Development Agreement require Surland to deposit the first \$2 million swim center payment by September 15, 2013, which was not done. Mr. Sodergren further stated that in accordance with the terms of the Agreement, a notice was sent to Surland which provides them with a 60-day cure period, during which they are not considered in default. Mr. Sodergren stated if Council chose not to pursue that option, the 60-day cure period continues.

Council Member Manne stated the request is for two years, but that the time period could be shortened. Mr. Sodergren stated staff's recommendation is that if Council chooses to pursue this type of amendment, that staff also negotiate the benefit to the City.

Council Member Rickman asked what the City's chances are of doing something with the Ellis property by July 2014. Mr. Dean stated the City could acquire the site by 2014.

Council Member Rickman asked what happens if the City accepts the land and decides to build a swim center elsewhere. Mr. Dean stated if Council accepts the Ellis property and after accepting the property decides to not develop it, options would have to be evaluated at that time.

Council Member Rickman asked if the \$2 million was earmarked for a swim center. Mr. Dean stated yes.

Council Member Rickman asked what if Wild Rivers could begin construction within two years and the \$2 million was needed. Mr. Dean stated that was why staff was asking for latitude to negotiate.

Council Member Rickman asked if staff wanted the date for acceptance of the land to be pushed out. Mr. Dean stated there could be a potential benefit, but staff would have to commence discussions with the other party.

Council Member Young asked if the City was looking at the \$10 million as a factor in the Wild River negotiation. Andrew Malik, Development Services Director, stated that point would have to be negotiated.

Council Member Young asked if the City decided to go with Wild Rivers, could the \$10 million be used for something else. Mr. Dean stated according to the Development Agreement, the \$10 million has to be used on a swim center.

Council Member Young asked if the City did re-negotiate the public benefit, would it significantly affect the agreement itself. Mr. Dean stated he did not believe it would have a significant effect on the agreement, but does add additional criteria when staff negotiates with Wild River.

Mayor Pro Tem Maciel asked if deferring the \$2 million payment compromises the City's ability to move forward with the aquatic center. Mr. Dean stated no; what it does is place an additional burden on what the City has to seek during its negotiation with Wild River.

Mayor Pro Tem Maciel clarified that the Council was talking about two parallel paths and asked if this was something the City has ever done. Mr. Dean stated Development Agreements have been renegotiated in the past.

Mayor Pro Tem Maciel indicated he had no problem authorizing staff to negotiate an amendment with a developer to make their project more viable, as long as it was not to the detriment of the City.

Council Member Rickman stated he does not have a problem amending the agreement as long as there is no negative effect for either party and the negotiations do not negatively affect the swim center. Council Member Rickman further stated that if during negotiations something comes up that will negatively affect the swim center, he would be opposed to it. Mr. Dean stated staff was clear that it was the desire of the Council to get a swim center as quickly as possible.

Council Member Rickman stated the priority between agenda items four and five, is item four. Mr. Dean stated it was clearly understood.

Council Member Manne asked if Council gave direction to negotiate an amendment, would the amendment return to Planning Commission and City Council for consideration. Mr. Dean stated yes.

Council Member Manne stated if Council finds that the amendment negatively affects the swim center, then Council could reject the amendment.

Council Member Young asked how the \$2 million would affect the project or negotiations. Mr. Malik stated there could be an impact if an MOU with Wild Rivers was pursued and they moved forward in an expedited fashion.

It was moved by Council Member Young and seconded by Council Member Rickman to direct staff to negotiate an amendment to the Amended and Restated Development Agreement with Surland Communities, LLC for the Ellis Development; it was further moved to direct staff to return to Council with an agenda item 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. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

6. SECOND READING AND ADOPTION OF ORDINANCE 1187 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTION 10.08.980, NAMES OF ZONES, AND ADDING SECTION 10.08.3021, CORDES RANCH SPECIFIC PLAN ZONE (CRSP) TO THE TRACY MUNICIPAL CODE, AND PREZONING THE CORDES RANCH SPECIFIC PLAN AREA AS CRSP - The Clerk read the title of proposed Ordinance 1187. Mayor

Pro Tem Maciel invited public comment. There was no one wishing to comment on the item.

It was moved by Council Member Rickman and seconded by Council Member Manne to waive the reading of the text. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

It was moved by Council Member Rickman and seconded by Council Member Manne to adopt Ordinance 1187. Roll call vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

7. SECOND READING AND ADOPTION OF ORDINANCE 1188 AN ORDINANCE OF THE CITY OF TRACY APPROVING A DEVELOPMENT AGREEMENT WITH PROLOGIS, LP APPLICATION DA11-0001 - The Clerk read the title of proposed Ordinance 1188. Mayor Pro Tem Maciel invited public comment. There was no one wishing to comment on the item.

It was moved by Council Member Manne and seconded by Council Member Rickman to waive the reading of the text. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

It was moved by Council Member Manne and seconded by Council Member Rickman to adopt Ordinance 1188. Roll call vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

8. ITEMS FROM THE AUDIENCE – Nicole Howard asked if there was a committee that represented the disabled community. Mayor Pro Tem Maciel indicated there was no such committee, but a member of staff would contact her.

9. STAFF ITEMS

- A. RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE – Leon Churchill, Jr., City Manager, provided the report. Council accepted the City Manager informational update.

10. COUNCIL ITEMS

- A. APPOINTMENT OF A CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS FOR VACANCIES ON THE TRACY SENIOR STEERING COMMITTEE – Maria Hurtado, Assistant City Manager, provided the staff report. 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: Parks and Community Services Commission, Planning Commission, Tracy Arts Commission, and Transportation Commission. Additionally, three residents from the Tracy community will be appointed by City Council.

The City Clerk's office will utilize the recruitment process for boards and commissions as outlined in Resolution 2004-152, to conduct the recruitment for the Tracy Senior Steering Committee. The three positions on the Senior Steering Committee have been advertised and the recruitment is scheduled to close on September 18, 2013. As stated in Resolution 2004-152, in the event there are not two or more applicants than vacancies, the filing deadline will be extended.

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

Staff recommended that Council appoint a two-member subcommittee to interview applicants to fill three vacancies on the Tracy Senior Steering Committee.

Council Member Young and Council Member Manne were appointed to interview applicants to fill vacancies on the Tracy Senior Steering Committee.

Council Member Young invited residents to the Wine Stroll being held September 28, 2013, in Downtown Tracy.

Council Member Rickman invited residents to the upcoming cross-town football games being held Friday, September 20, 2013, between Kimball and Tracy High Schools and Friday, September 27, 2013, between West and Tracy High Schools. Council Member Rickman offered a challenge to Council Members Manne and Young regarding the outcome of the West and Tracy High School game. The challenge was accepted.

Council Member Rickman requested an agenda item to discuss policies or procedures on the timeliness of Council requested discussion items.

Council Member Young requested information on recreational opportunities for disabled residents.

11. ADJOURNMENT – It was moved by Council Member Manne and seconded by Council Member Rickman to adjourn. Voice vote found Council Members Manne, Rickman, Young and Mayor Pro Tem Maciel in favor; Mayor Ives absent. Time: 10:21 p.m.

The above agenda was posted at the Tracy City Hall on September 12, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

RESCIND RESOLUTION 2012-247 APPROVING UTILITY AGREEMENTS WITH PACIFIC GAS & ELECTRIC (PG&E) AND THE WEST SIDE IRRIGATION DISTRICT FOR RELOCATION AND MODIFICATION OF THEIR FACILITIES FOR THE ELEVENTH STREET EAST TRACY OVERHEAD BRIDGE REPLACEMENT PROJECT CIP 73063 AND FEDERAL PROJECT NUMBER BHLS-5192(020) AND APPROVE NEW AGREEMENTS TO INCLUDE BUY AMERICAN REQUIREMENTS AS REQUIRED BY THE FEDERAL HIGHWAY AUTHORITY ON FEDERALLY FUNDED PROJECTS AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS

EXECUTIVE SUMMARY

Due to the implementation of new regulations related to the Buy America on all federally funded projects, it is necessary to modify previously approved agreements to include the Buy America required languages to be in compliance with the funding conditions.

DISCUSSION

On December 18, 2012 City Council by resolution 2012-247 approved three agreements between the City of Tracy, Pacific Gas and Electric Company and West Side Irrigation District (WSID) for relocation of their facilities related to Replacement of the Eleventh Street East Tracy Overhead Bridge CIP 73063, and both parties executed those agreements.

Recently, the Federal Highway Administration (FHWA) has issued new regulations regarding Buy America requirements to be implemented for all federally funded projects.

Since the Eleventh Street Bridge Replacement project is Federally Funded and the required work has not been done by those agencies, it is necessary to modify their agreements and include Buy America required regulations.

The cost of relocating agency facilities will remain unchanged and are as follows:

PG&E (electric)	\$ 185,350
PG&E (gas)	\$ 461,787
WSID facility	<u>\$ 353,000</u>
Total Costs:	\$1,000,137

STRATEGIC PLAN

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

FISCAL IMPACT

The cost of relocating the above facilities will be paid from the total cost of the Bridge Replacement Project; there is no impact to the General Fund.

RECOMMENDATION

That the City Council, by resolution, rescind previous Resolution 2012-247, approving utility agreements with PG&E and the West Side Irrigation District and by resolution approve new utility agreements 73063.01 and 73063.02 with PG&E and agreement 73063.06 with the West Side Irrigation District to include Buy America requirements as required by the Federal Highway Authority for relocation and modification of their facilities for the Eleventh Street East Tracy Overhead Bridge replacement project, CIP 73063, and Federal Project Number 5192(020), and authorize the Mayor to execute the Agreements.

Prepared by: Zabih Zaca, Senior Civil Engineer

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

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

RESOLUTION 2013-_____

RESCINDING RESOLUTION 2012-247, APPROVING UTILITY AGREEMENTS WITH PACIFIC GAS & ELECTRIC (PG&E) AND THE WEST SIDE IRRIGATION DISTRICT FOR RELOCATION AND MODIFICATION OF THEIR FACILITIES FOR THE ELEVENTH STREET EAST TRACY OVERHEAD BRIDGE REPLACEMENT PROJECT CIP 73063, FEDERAL PROJECT NUMBER BHLS-5192(020) AND APPROVING NEW AGREEMENTS TO INCLUDE BUY AMERICAN REQUIREMENTS AS REQUIRED BY THE FEDERAL HIGHWAY AUTHORITY ON FEDERALLY FUNDED PROJECTS, AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENTS

WHEREAS, On December 18, 2012, City Council approved utility agreements (73063-01 and 73063-02) with PG&E, and (73063-06) with WSID to relocate and modify their facilities within the limit of the Eleventh Street East Tracy Overhead Bridge #29C0126, and

WHEREAS, After execution of said agreements, the Federal Highway Administration (FHWA) issued a new regulation and requirement regarding Buy America to be considered on all federally funded projects, and

WHEREAS, The project is funded from federal grants and must be in compliance with the Buy America requirements, and

WHEREAS, The original Agreements must be modified to include the Buy America requirements, and

WHEREAS, The reimbursement costs of replacement and modifications of said utilities to owners do not change and will stay the same as originally agreed and are included in the total amount of cost of the bridge replacement, as follows:

PG & E (Electric)	\$185,350
PG & E (Gas)	\$461,787
WSID Facility	\$353,000

NOW, THEREFORE, BE IT RESOLVED, That City Council rescinds Resolution 2012-247, approving utility agreements with PG&E and West Side Irrigation District and approves new utility agreements 73063.01 and 73063.02 with PG&E and agreement 73063.06 with the West Side Irrigation District to include Buy America requirements as required by the Federal Highway Authority for relocation and modification of their facilities for the Eleventh Street East Tracy Overhead Bridge replacement project, CIP 73063, Federal Project No. 5192(020), and authorizes the Mayor to execute the Agreements.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of November, 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

AUTHORIZE THE MAYOR TO SIGN A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE WOMEN'S CENTER YOUTH AND FAMILY SERVICES IN ORDER TO ENHANCE COMMUNITY EDUCATION, PREVENTION AND RECOVERY FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

EXECUTIVE SUMMARY

The City of Tracy Police Department and the Women's Center Youth and Family Services, a nonprofit Domestic Violence, Sexual Assault and Homeless Youth advocacy organization, are collaborating to bring direct services to the community of Tracy. Placing a South County Advocate within the walls of the Police Department Annex provides immediate and expanded services to the victims and survivors of Domestic Violence, Sexual Assault and Youth who are Homeless. This agreement represents an extensive expansion of services to our community and immediate assistance for those in need.

DISCUSSION

Ramifications of Domestic Violence and Sexual Assault are staggering and continual exposure to the same puts young men and women in danger of long-term physical, psychological and emotional harm. Children who witness such violence are at a higher risk for failure in school, emotional disorders, substance abuse and are more likely to perpetuate the cycle of violence within their own lives.

According to the Center for Disease Control and Prevention (CDC), one in four women and one in seven men will be the victim of severe domestic violence by an intimate partner in their lifetime resulting in an estimated 16,800 homicides annually. One in six women and one in thirty-three men have experienced an attempted or completed rape.

One of the more alarming statistics comes from the National Coalition Against Domestic Violence (NCADV). According to NCADV, boys who witness domestic violence are twice as likely to abuse their own partners and children as adults. An important step toward breaking the cycle of violence is through community awareness, intervention and support.

The Tracy Police Department, by law, policy and ethical organizational imperatives, takes an aggressive posture in investigating and bringing to prosecution those who prey on others using Domestic Violence or Sexual Assault as their means. One of our long standing partners in this endeavor has been the Women's Center Youth and Family Services, the sole resource for education, intervention and aftercare within this region.

The men and women of this police department take great care and pride in dealing decisively with the suspects in these crimes, from the first ring of the 9-1-1 call to the drop of the judge's gavel. However, an area in which we, law enforcement in general

and Tracy Police Department specifically, may improve is the immediate aftercare offered to the victims of Domestic Violence and Sexual Assault.

All too often law enforcement assumes that victim aftercare is the responsibility of someone else; and while that is often the case, our profession can enhance the process and recovery of those victimized by facilitating the contact between that victim and the after care service provider. This component is missing from the daily operation of this police department and represents an opportunity for us to improve our customer service. In short, we should play an active role in facilitating the metamorphosis from victim to survivor.

The components of this proposal are as follows:

- That we continue with the cooperative relationship we enjoy with the Women's Center Youth and Family Services and use it as a baseline.
- The Women's Center South County Advocate will be housed at an office within the Police Annex.
- An Investigator will be assigned as liaison with the Advocate; to be the initial and ongoing point of contact for all police department cooperative efforts.
- On a regular basis, weekly for example, the liaison will ensure that the Advocate receives all copies of Domestic Violence and Sexual Assault cases that we have taken within that period of time. The purpose of this is for the Advocate to understand what is happening within the community and better assess which preventative and aftercare resources are appropriate for the specific victims. Those services will be provided by the Advocate after consulting with the case agent so as to balance victim aftercare with the completion of the criminal investigation.
- The Advocate, being resident on our premises, is well positioned to develop a working relationship with a variety of employees and thereby create/offer ongoing training updates as appropriate.
- The Advocate and Liaison maintain records (non-client files) of the cases reviewed and action taken so as to regularly assess the effectiveness of this cooperative effort.
- When available and the circumstances warrant, the Advocate may respond to a direct request (real time) for services from patrol relative to an active Domestic Violence or Sexual Assault investigation.

This proposal is modeled after a program that has been and is currently running within the Stockton Police Department. The program is quite successful and offers Stockton victims of Domestic Violence and Sexual Assault an enhanced service level that the Tracy Police Department does not.

The Women's Center Youth and Family Services would be required to provide a telephone, computer and phone line for their phone and internet connectivity (as does

the Probation Department). The Center has its own computer, furniture and file cabinets for the office.

Relative to the matter of confidentiality, the Advocate already is bound by legal, ethical and policy restrictions that govern the release of victim information. It is a relatively simple conversion to include Law Enforcement provided case information to the current parameters of the established restrictions.

This proposal is the new baseline program upon which we may build a stronger public/private partnership and elevate customer service within our community. Clearly, having a South County Advocate within our walls brings those services even closer, expanding our capacity and resource pool.

FISCAL IMPACT

There is no fiscal impact related to this item.

RECOMMENDATION

Staff recommends the City Council authorize the Mayor to sign a Memorandum of Understanding between the City of Tracy and the Women's Center Youth and Family Services.

Prepared by: David Sant, Lieutenant

Reviewed by: Gary R. Hampton, Chief of Police
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A – Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE WOMEN'S CENTER YOUTH AND FAMILY SERVICES AGENCY
AND
THE CITY OF TRACY
CONCERNING COMMUNITY EDUCATION, PREVENTION
AND
RECOVERY FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

This Memorandum of Understanding (hereinafter referred to as the "MOU") for _____, 2013 through December 31, 2017, is made and entered this _____ day of _____ 2013, by and between the Women's Center Youth and Family Services ("AGENCY") and the City of Tracy, as administered by its Police Department, (hereinafter referred to as "CITY") for the purpose of providing community education, prevention and recovery activities for the victims of Domestic Violence and Sexual Assault.

RECITALS:

WHEREAS, CITY recognizes that the terms "Domestic Violence" and "Sexual Assault" embody a host of hostile and criminal acts that create collateral damage within the victims' and perpetrators' sphere of influence, and

WHEREAS, CITY, by law, policy and ethical organizational imperatives, takes an aggressive posture in investigating and bringing to prosecution those who prey on others using Domestic Violence or Sexual Assault as their means, and

WHEREAS, CITY has an opportunity to improve the immediate aftercare offered to the victims of Domestic Violence and Sexual Assault, beyond the criminal investigation by facilitating the contact between a victim and the aftercare service provider.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the sufficiency of which is acknowledged, the parties agree to the below:

A. AGENCY OBLIGATIONS

1. AGENCY shall provide one contact person who will be responsible for coordinating any and all communication and /or services associated with the MOU. This person shall be designated and identified to CITY.
2. AGENCY shall provide and place an employee, identified as the South County Victim's Advocate, in an office at the Police Annex building.
3. AGENCY shall provide a telephone, computer and phone line for their phone and internet connectivity as well as its own computer, furniture and file cabinets for the office.
4. AGENCY will receive all copies of Domestic Violence and Sexual Assault cases that have been have taken within a specified period of time. The purpose of this is for the South County Advocate to understand what is happening within the community and better assess which preventative and aftercare resources are appropriate for the specific victims. Those services will be provided by the Advocate after consulting with the police department liaison so as to balance victim aftercare with the completion of the criminal investigation.
5. AGENCY will, as the circumstances warrant, cause the South County Advocate to respond to a direct request (real time) for services from patrol relative to an active Domestic Violence or Sexual Assault investigation.
6. AGENCY will maintain records (non-client files) of the cases reviewed and actions taken so as to regularly assess the effectiveness of this cooperative effort.
7. AGENCY agrees to furnish signage on the front door of the Annex and place brochures and supportive material, in the lobby and conference room as appropriate.
8. AGENCY shall procure and maintain, for the duration of the MOU, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the AGENCY operation and use of the office and conference room space and all other operations referenced in the MOU. The cost of such insurance shall be borne by the AGENCY.

Coverage shall be at least as broad as:

General Liability insurance coverage on a per occurrence basis which insures against all liability of CITY and its agents arising out of and in connection with AGENCY use of the property.

Property insurance against all risks of loss to any AGENCY improvement or betterment.

AGENCY shall maintain limits no less than:

General Liability: \$100,000,000 per occurrence for bodily injury or property damage.

Property Insurance: Full replacement cost with no coinsurance penalty provision.

Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY. Its officers, officials, employees and volunteers; or AGENCY shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officials, employees or volunteers.

Each insurance policy required under this MOU shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage, scope or in limits except after thirty days' prior written notice by certified mail, return receipt requested, has been given to CITY.

Each insurance policy required under this Lease Agreement shall name the CITY and its officers, officials, employees or volunteers as additional named insureds.

Insurance is to be placed with insurers authorized to do business in the state of California with a current A. M. Best rating of no less than A:VII.

9. AGENCY shall defend, indemnify, and hold the CITY, its officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorneys' fees, arising out of or in connection with AGENCY use of the office and conference room space, and operations referred to in this MOU, including but not limited to, those claims, injuries, damages, losses, or suits and attorneys' fees based upon nuisance or inverse condemnation, excepting however, those claims, injuries, damages, losses or

suits, including attorneys' fees, for injuries, and damages caused by the willful misfeasance or sole active negligence of CITY.

B. CITY OBLIGATIONS

1. CITY will provide an office in the Police Annex for the exclusive use of the AGENCY.
2. CITY will, additionally, make accessible the front lobby and front conference room as appropriate for the AGENCY use while meeting with clients.
3. CITY will assign a criminal investigator, on a part-time basis, to liaison with the AGENCY representative for the purpose of sharing criminal investigation information as well as checking recordation so as to regularly assess the effectiveness of this cooperative effort.
4. CITY and AGENCY shall prominently portray the partnership and close working relationship between the parties in media and print articles as well as work to inform and educate the community on the policy and procedures to obtain assistance through this MOU.

MISCELLANEOUS TERMS:

1. Waiver:

The waiver by either party of any provision or condition of this MOU shall not be construed to be a waiver of any other provision or condition of this MOU and shall not preclude the other party from demanding performance in accord with the other terms thereof nor shall any such waiver be construed to be permanent unless such waiver is in writing and signed by both CITY and AGENCY.

2. Force Majeure:

Except for damages chargeable to the responsible party, neither CITY nor AGENCY shall be chargeable with, liable for, or responsible to the other for anything or in any amount for any delay caused by fire, earthquake, explosion,

acts of God, riots, strikes, lockouts and any delay due to said causes for any of them shall not be deemed a breach of or default in the performance of this MOU.

3. Relationship of Parties:

The relationship between CITY and AGENCY shall always and only be that of a lessor and lessee. AGENCY shall never at any time during the term of this MOU become an agent of CITY, and CITY shall not be responsible for the actions or omission of AGENCY or its agents.

4. Severability:

The unenforceability, invalidity, or illegality of any provision herein shall not render the other provisions unenforceable, invalid or illegal.

5. Notices:

All notices to the parties shall be in writing and shall be addressed and mailed to their representatives as follows:

CITY

AGENCY

Chief of Police

Joelle Gomez, CEO

City of Tracy

Womens' Center Youth & Family Svcs

1000 Civic Center Dr.

620 N. San Joaquin Street

Tracy, CA 95376

Stockton, CA 95202

With a copy to:

City Attorney

333 Civic Center Plaza

Tracy, CA 95376

6. Signatures:

The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU on behalf of the respective legal entities of AGENCY and CITY. This MOU shall

insure the benefit of and be binding upon the parties thereto and respective successors and assigns.

Brent H. Ives

Women's Center Youth and Family Services

Mayor

Joelle Gomez

Chief Executive Officer

Date: _____

Date: _____

Attest:

APPROVED AS TO LEGAL FORM:

By: _____

RESOLUTION _____

AUTHORIZING THE MAYOR TO SIGN A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE WOMENS CENTER YOUTH AND FAMILY SERVICES TO ENHANCE COMMUNITY EDUCATION, PREVENTION AND RECOVERY FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

WHEREAS, The Tracy Police Department recognizes that “Domestic Violence” and “Sexual Assault” embody a host of hostile and criminal acts that create collateral damage within the victims’ and perpetrators’ sphere of influence, and

WHEREAS, The Police Department, by law, policy and ethical organizational imperatives, takes an aggressive posture in investigating and bringing to prosecution those who prey on others using Domestic Violence or Sexual Assault as their means, and

WHEREAS, An area in which law enforcement service may improve is the immediate aftercare offered to the victims of Domestic Violence and Sexual Assault, and

WHEREAS, The Police Department has an opportunity to improve the immediate aftercare offered to these victims by facilitating the contact between a victim and the aftercare service provider, and

WHEREAS, The Women’s Center Youth and Family Services is the premier victims advocacy and recovery organization in San Joaquin County, and

WHEREAS, By co-locating the Women’s Center South County Advocate within the Police Annex, we will create an environment where investigators may interface with the Advocate to accelerate the secondary contact and service offerings to victims of Domestic Violence and Sexual Assault, and

WHEREAS, The direct and indirect benefits that our community will realize as a result of this collaborative effort will help maintain the highest quality of life possible for those who choose to live, work and play in the community;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes the Mayor to sign a Memorandum of Understanding between the City of Tracy and the Women’s Center Youth and Family Services.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 19th day of November, 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

AUTHORIZE THE CITY MANAGER AND CHIEF OF POLICE TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE REGIONAL AUTO THEFT TEAM (RATT) TASK FORCE TO JOINTLY COMBAT VEHICLE THEFT CRIMES JULY 1, 2013, THROUGH JUNE 30, 2015

EXECUTIVE SUMMARY

In an effort to suppress vehicle theft crimes and address mounting public concern, the California Legislature passed into law Senate Bill 2139 (Vehicle Code Section 9250.14). The bill authorizes the Board of Supervisors to impose a one dollar fee on all passenger vehicles and a two dollar fee on all commercial vehicles registered in the County to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute vehicle theft crimes.

DISCUSSION

The Memorandum of Understanding (MOU) has been a long standing agreement since 1996 when it was entered into between the San Joaquin County Police Chiefs, Sheriff's Department, District Attorney, and the California Highway Patrol to establish the San Joaquin County Auto Theft Task Force. The task force was later named the Delta Regional Auto Theft Team (Delta RATT). The MOU is being updated to reflect current administrative and operational practices.

This Agreement is in the form of a Memorandum of Understanding (MOU) and establishes the effort to suppress vehicle theft crimes and address mounting public concern. The Mission of the task force is to reduce the incidence of vehicle theft through vehicle theft education, interagency cooperation, maximized apprehensions and enforcement, and enhanced prosecution of the active vehicle thief.

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 Tracy Police Department currently has no full time staff deployed to the task force, but is being considered in the near future.

The California Highway Patrol (CHP) will provide a lieutenant from its Valley Division to serve as the Commander of the Task Force. 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 Task Force investigative positions shall be staffed by sworn detectives from local law enforcement agencies within San Joaquin County. As allocated by the Executive Board, a portion of the salary and benefits of other detectives assigned to the team may be reimbursed by the Task Force fund. 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 the City Manager and Chief of Police by resolution, to enter into the Memorandum of Understanding (MOU) between the City of Tracy and the Regional Auto Theft Team (RATT) Task Force to jointly combat vehicle theft crimes July 1, 2013, through June 30, 2015.

Prepared by: Lani Smith, Support Operations Manager

Reviewed by: Gary Hampton, Chief of Police

Reviewed by: Jenny Haruyama, Administrative Services Director
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A: Regional Auto Theft Team (RATT)



MEMORANDUM OF UNDERSTANDING
2013 - 2015

MEMORANDUM OF UNDERSTANDING

DELTA REGIONAL AUTO THEFT TEAM

I. OVERVIEW

In an effort to suppress vehicle theft crimes and address mounting public concern, the California Legislature passed into law Senate Bill 2139 (Vehicle Code Section 9250.14). This bill authorizes the Board of Supervisors to impose a one dollar fee on all passenger vehicles and a two dollar fee on all commercial vehicles registered in the County to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute vehicle theft crimes.

On February 4, 1992, the San Joaquin County Board of Supervisors passed and adopted a resolution pursuant to Vehicle Code Section 9250.14 to specifically fund local agency programs which combat vehicle theft. On July 1, 1996, a memorandum of understanding was entered into between the San Joaquin County Chiefs' of Police, Sheriff's Office, District Attorney's Office and the California Highway Patrol to establish the San Joaquin County Auto Theft Task Force. The task force was later renamed the Delta Regional Auto Theft Team (Delta RATT).

II. MISSION

To reduce the incidence of vehicle theft through vehicle theft education, interagency cooperation, maximized apprehensions and enforcement, and enhanced prosecution of the active vehicle thief.

A. Objectives

1. Increase the number of arrests and convictions of vehicle theft suspects.
2. Gather and disseminate vehicle theft and/or criminal intelligence information to affected agencies in a timely manner.
3. Identify locations which are used in connection with vehicle theft offenses, and take appropriate enforcement action.
4. Identify local trends and patterns of vehicle theft activity to be targeted by the Task Force and patrol personnel.
5. Increase the recovery rate of stolen vehicles within San Joaquin County.

6. Provide assistance to individual agencies, upon an approved request, on specific vehicle theft problems within their respective jurisdiction.
7. Provide training in the area of vehicle theft to law enforcement personnel within San Joaquin County.
8. Increase public awareness and provide prevention education to curb vehicle theft in San Joaquin County.
9. Prosecute auto theft and auto theft related cases more vigorously with the goal of increasing the punishment for these crimes.

III. TASK FORCE ORGANIZATION

A. Executive Board

The Executive Board of Delta RATT (Task Force) should consist of the Chiefs of Police, Sheriff, California Highway Patrol Commander of the Valley Division Special Services Unit, Chief Probation Officer and District Attorney.

B. Advisory Committee

A designee of the department head from each participating agency should serve on the Task Force Advisory Committee, which should be responsible for monitoring the operations and progress of the Task Force operations and procedures, and to provide guidance and input to the Task Force Commander. Members of the Committee should meet twice yearly, or as requested by committee members to review Task Force operations and to provide directions, review long range goals and objectives and discuss other issues identified relevant to the Task Force. The Task Force Commander shall serve as the chairperson of the Advisory Committee. Quorum voting of the Committee shall be by majority vote. A quorum shall be defined as no less than five members and shall be by Advisory Committee members only. Committee vacancies should be filled by the participating agency head.

C. Task Force Commander

Commensurate with its role as the statewide coordinator for auto theft enforcement, the California Highway Patrol (CHP) will provide a lieutenant from its Valley Division Investigative Services Unit to serve as Commander of the Task Force. The Commander will be responsible for overall management of the Task Force and will provide regular reports to the Executive Board. The Commander will dedicate that amount of time necessary to efficiently manage the Task Force.

The Commander's salary and benefits will not be reimbursed by the Task Force fund.

D. Supervision

The California Highway Patrol will provide a Sergeant as a full-time supervisor of the Task Force. The CHP Sergeant will report directly to the Task Force Commander, and will have the primary responsibility for supervision of all Task Force unit members.

The Supervisor's salary and benefits will not be reimbursed by the Task Force fund.

E. Prosecution Staff

The San Joaquin County District Attorney's Office will assign a Deputy District Attorney to vertically prosecute auto theft cases. The assigned prosecutor will be considered a unit member and will also provides guidance during the preparation of cases for trial.

A portion of the vertical prosecutor's salary and benefits will be reimbursed by the Task Force fund as allocated by the Executive Board.

F. Administrative Support Staff

The San Joaquin County Sheriff's Office will provide one full time clerical position to support Task Force office operations and other duties as assigned by the task force supervisor. Other activities needing administrative staff support will include, but not be limited to, general accounting activities such as quarterly and annual activity reports for review by the Advisory Committee. These administrative functions will be accomplished by the Task Force Commander through delegation as necessary.

The clerical position salary and benefits will be reimbursed by the task force fund.

G. Detectives/Investigators

Task Force investigative positions shall be staffed by sworn detectives/investigators from law enforcement agencies within San Joaquin County. Investigative personnel shall perform the enforcement functions of the Task Force, and conduct auto theft investigations on a full time basis. These tasks include, but shall not be limited to; suspect apprehension, case development, investigative follow-up, parole and probation sweeps, pro-active auto theft and other related operations, Delta RATT liaison to allied agencies and public and allied agency education and training on auto theft.

The salary and benefits of CHP investigators assigned to the Task Force will not be reimbursed by the Task Force fund.

As allocated by the Executive Board, a portion of the salary and benefits of other detectives assigned to the team may be reimbursed by the Task Force fund.

H. Probation Officer

A San Joaquin County Probation Officer shall be assigned to the Task Force to maintain, analyze, and disseminate case information on probationers with auto theft related violations. Working with the team full time, the probation officer shall also be key in preparing and performing pro-active sweeps, contacts and searches. As needed, the probation officer will prepare necessary documentation connected to probation violation arrests or warrants.

A portion of the probation officer's salary and benefits will be reimbursed by the Task Force fund as allocated by the Executive Board.

I. Evidence Technician

The San Joaquin County Sheriff's Office will provide one part-time evidence technician to support task force operations. The technician salary will be reimbursed by the Task Force fund.

J. Personnel

Personnel assignments to the Task Force shall generally be for a minimum of two years, but may be extended by mutual agreement of the Task Force Commander and the Task Force member's parent agency. Personnel not meeting acceptable standards of performance or refusing to comply with Task Force policies and procedures, may be removed from the Task Force and transferred back to his/her department. If the Task Force Commander has cause to remove a member, he/she shall discuss the issue with the participating agency. It is agreed, however, that the resolution of operational problems will be accomplished at the lowest level and in the best interest of Delta RATT.

Scheduling of Task Force personnel shall be the responsibility of the Task Force Supervisor in accordance with the overtime policies or guidelines of the members' respective parent agencies. Whenever practical, the supervisor shall discuss overtime scheduling with the parent agency prior to the time such hours are worked.

Personnel assigned to the Task Force shall be deemed to be continuing under the employment of their respective jurisdictions, and shall have the same powers, duties, privileges, responsibilities, and immunities as are conferred upon them as peace officers in their own jurisdictions.

All terms and conditions of an employee's labor contract shall be in full effect, and shall be abided by, even though the employee is assigned to the Task Force.

Whenever a Task Force funded position remains vacant for more than sixty (60) consecutive calendar days due to illness or injury, the position should be filled by the participating agency consistent with its provisions for the selection of personnel for the Task Force. The involved agency should attempt to replace personnel without delay.

IV. FISCAL PROCEDURES

Task Force funding will come from the amounts provided to San Joaquin County pursuant to Vehicle Code section 9250.14 and will be used to pay for the purposes specified in that section. The Task Force supervisor will present an annual budget to the Executive Board for approval and will report expenses to the Executive Board on a regular basis. The annual budget will reflect salary and benefit allocations for each of the reimbursable Task Force positions. Any unused funds received under this section in excess of those budgeted for task force expenses shall be retained in the trust fund or distributed to the participating departments as determined by the Executive Board.

V. LIABILITY

Each agency participating in this Task Force shall be responsible for the acts of its respective participating agents, as well as for any losses, damages, claims, demands, or other liabilities arising out of that agent's services and activities while participating in the Task Force. Each participating agency shall also be liable for any and all worker's compensation benefits for personnel who are employed by them and injured in the course and scope of their duties while assigned to this Task Force.

Each participating agency, insofar as it may legally do so, agrees to hold harmless all other participating agencies, their officers, agents, and employees from and against any and all claims and demands whatsoever resulting from their negligence or omissions in connection with the acts related to this agreement.

VI. OPERATIONAL LOCATION

The task force will be based in its own facility. Appropriate space will be leased and paid for by the California Highway Patrol to house task force participants, operations and equipment. The Task Force office will be located within San Joaquin County.

VII. EQUIPMENT

The Task Force Commander will be accountable for equipment assigned to the Task Force and will provide for the accounting of, and safeguarding of fixed assets. The CHP shall provide the Task Force with office space, office furniture and equipment, and office telephone. The contributions of other participating agencies will be negotiated, and will be based on what items and funding each agency has available. It is anticipated that participating agencies will provide

personal safety equipment, and miscellaneous surveillance items in support of their assigned personnel. All equipment provided by an individual agency shall remain the property of that agency, and shall be returned upon termination of that agency's participation in the Task Force.

A. Vehicles

Each participating agency is required to supply a vehicle for each employee assigned to an investigative, probation, or evidence technician position within the Task Force. When available, agencies may procure vehicles for use in the Task Force through a purchase program coordinated by the National Insurance Crime Bureau. The host agency is responsible for outfitting its vehicle with basic emergency lighting, safety and communications equipment as normally equipped for unmarked use. In addition low-band vehicle radios, as available, will be provided and installed by the California Highway Patrol. Antennas/cables to support State radios will be paid for with Task Force Funds.

B. Communication Equipment

Hand held radios will be provided by the California Highway Patrol. Other Task Force communication equipment, including cellular telephones, "air cards" and monthly cellular telephone bills will be paid for with Task Force funds. The Task Force members will be provided this equipment. Procedures will be developed to ensure proper use and accountability for the equipment.

C. Additional Equipment

The Task Force may provide surveillance equipment, binoculars, cameras, etc. to members from Task Force inventory. Additional or replacement equipment may be purchased by the Task Force fund.

The San Joaquin County Sheriff's Office shall be responsible for obtaining and maintaining a San Joaquin County Criminal Justice Information System (CJIS) computer link to the Task Force Office. Additional computers and replacements may be purchased by the Task Force fund.

D. Confidential funds

Confidential funds will be established yearly by the Advisory Committee and maintained by the Task Force for investigative resources and evidence purchases. This money will be established from the San Joaquin County Vehicle Theft Funds and replenished as necessary. The confidential funds will be maintained at the Task Force office. A safe has been acquired to maintain the funds, and at the same time, provide access and control measures to ensure security of the funds. CHP policy, as contained in HPM 81.1 (Vehicle Theft Control) Chapter 7, will be the overriding policy relative to confidential fund disbursements.

E. Task Force Operation Funds

The Task Force will be provided funds, as determined by the Advisory Committee, for expenses necessary to conduct auto theft investigations. These funds will be used for equipment, training, cellular telephones, pagers, confidential funds, informant funds, and petty cash. The Task Force Supervisor will prepare an annual budget for approval and report expenses to the Advisory Committee on a regular basis.

VIII. UNDERCOVER DOCUMENTS

The use of covert identities to support or enhance undercover operations is essential. This may require detective/investigators to possess undercover driver's licenses, and/or other sources of identification. The procurement, utilization, and control of these documents will rest with each participating agency.

IX. ASSET SHARING

Any funds resulting from forfeiture actions or other lawful sources initiated by the Task Force shall be maintained in a trust fund. The trust fund shall be administered by the Advisory Committee. Funds shall be used to further achieve the purpose of the Task Force and may be used to buy equipment, training, and/or other lawful expenditures consistent with the purposes of the Task Force.

X. STANDARD OPERATING PROCEDURES

All Task Force members shall abide by a Standard Operating Procedures (SOP) manual which shall be prepared by the Task Force supervisor and approved by the Advisory Committee. The following items shall be considered SOP of the Task Force, and may be addressed in greater detail in the Delta RATT SOP:

A. In any case where the policies or procedures of the Task Force conflict with those of a member's parent agency, the member shall abide by the directives of his or her own agency.

B. The investigation of officer-involved shootings and vehicle accidents with fatalities will be handled by the San Joaquin County Officer-Involved Critical Incident Protocol Team. A parallel investigation may be conducted by any agency when the critical incident involves one of its employees or is an investigative responsibility within its jurisdiction.

C. Task Force member evaluations and disciplinary actions shall be handled jointly between the Task Force Supervisor and the parent agency.

D. The release of media information regarding Task Force operations will be coordinated through the Task Force supervisor. All affected participating agencies will be notified, as practical, prior to the release of information to the media.

E. Prior to any special operations (i.e., store front, large-scale sweeps, long term covert operations) the Task Force Supervisor or case agent will apprise the head of each participating agency of the target and the strategies for the execution of the operation. An after action report will be prepared and distributed to each participating agency within 30 days of the completion of each operation.
(sentence eliminated)

F. Should a member or members of the Advisory Committee wish to amend a procedure or policy as expressed in the agreement or the Task Force SOP, those changes shall be presented jointly to the entire Advisory Committee and the Task Force Commander, and shall be adopted upon a majority vote of the Advisory Committee. All members of the Task Force shall be notified prior to the effective date of any change in policy or procedure.

XI. REPORTING

A. The Task Force Commander will be responsible for implementing a reporting system which tracks team activities, statistics, and accomplishments of Task Force operation. This reporting system will serve as the basis for reports to the Advisory Committee and Executive Board and will ensure accountability for resources, personnel and equipment.

B. The Commander will submit an operational report to the Advisory Committee annually.

XII. AMENDMENTS TO THE MOU

The Executive Board may amend any portion of this MOU by a majority vote of the quorum.

XIII. TERM OF AGREEMENT

This agreement shall remain in effect for two years, commencing on July 1, 2013 and terminating on June 30, 2015. Any participating agency desiring to terminate its participation in this agreement shall indicate such intent, in writing, to the Executive Board. The termination shall be deemed to take effect not less than thirty (30) days after receipt of the written communication, or upon a date established by mutual agreement.

XIV. SIGNATURES

The undersigned represent that they have the authority to execute this agreement on behalf of their respective agencies; and, in signing this formal agreement, represent concurrence with and support of the Delta Regional Auto Theft Team as set forth in this agreement and for the period and purposes as stated herein.

R. ELLISON, Lieutenant
California Highway Patrol
Acting Commander, Special Services Unit
Date _____

MILT MEDEIROS, Interim Chief
Escalon Police Department
Date _____

MARK HELMS, Chief
Lodi Police Department
Date _____

Konradt Bartlam, City Manager
Lodi Police Department
Date _____

NICK OBLIGACION, Chief
Manteca Police Department
Date _____

EDWARD ORMONDE, Chief
Ripon Police Department
Date _____

JAMES P. WILLETT, District Attorney
San Joaquin County District Attorney's Office
Date _____

STEPHANIE L. JAMES, Chief Probation Officer
San Joaquin County Probation Department
Date _____

XIV. SIGNATURES - Continued

The undersigned represent that they have the authority to execute this agreement on behalf of their respective agencies; and, in signing this formal agreement, represent concurrence with and support of the Delta Regional Auto Theft Team as set forth in this agreement and for the period and purposes as stated herein.

STEVE MOORE, Sheriff
San Joaquin County Sheriff's Office

Date

ERIC JONES, Chief
Stockton Police Department

Date

Bob Deis, City Manager
Stockton Police Department

Date

GARY R. HAMPTON, Chief
Tracy Police Department

Date

Leon Churchill, City Manager
Tracy Police Department

Date

RESOLUTION _____

AUTHORIZING THE CITY MANAGER AND CHIEF OF POLICE TO EXECUTE A
MEMORANDUM OF UNDERSTANDING BETWEEN THE REGIONAL AUTO THEFT TEAM
TASK FORCE TO JOINTLY COMBAT VEHICLE THEFT CRIMES
FROM JULY 1, 2013 TO JUNE 30, 2015

WHEREAS, Law enforcement agencies of San Joaquin County desire to work cooperatively to suppress vehicle theft crimes and address mounting public concern, the California State Legislature passed into law Senate Bill 2139, and

WHEREAS, The Bill authorizes the Board of Supervisors to impose a one dollar fee on all passenger vehicles and a two dollar fee on all commercial vehicles registered in the County to enhance the capacity of local law enforcement and prosecutors to deter, investigate, and prosecute vehicle theft crimes, and

WHEREAS, On July 1, 1996, a Memorandum of Understanding was entered into between the San Joaquin County Police Chief's, Sheriff's Department, District Attorney, and the California Highway Patrol to establish the San Joaquin County Auto Theft Task Force. The task force was later named the Delta Regional Auto Theft Team (Delta RATT), 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, 2015;

NOW, THEREFORE, BE IT RESOLVED, that the City Council does hereby authorize the City Manager and Chief of Police to execute a Memorandum of Understanding (MOU) with the Regional Auto Theft Team (RATT) Task Force to jointly combat vehicle theft crimes from July 1, 2013, through June 30, 2015.

* * * * *

The foregoing Resolution _____ is hereby passed and adopted by the Tracy City Council this 19th day of November, 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

AUTHORIZE THE CITY MANAGER AND CHIEF OF POLICE TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE COUNTY OF SAN JOAQUIN METROPOLITAN NARCOTICS TASK FORCE (METRO) FROM JULY 1, 2013, TO JUNE 30, 2016

EXECUTIVE SUMMARY

The mission of the Task Force is to increase efforts to reduce the production of methamphetamine and enforce the controlled substance laws with a specific emphasis on methamphetamine production and distribution within San Joaquin County. Agencies participating in METRO will be targeting their investigations toward the apprehension of mid to major level violators and to narcotic problems identified by the participating agencies. Use of this task force concept is intended to ensure well-coordinated narcotic enforcement regionally and to increase the flow of narcotic related intelligence information between the various law enforcement agencies participating in the METRO Task Force Program.

DISCUSSION

The Task Force has had a long standing Memorandum of Understanding that is being updated to reflect current administrative and operational practices.

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 Tracy Police Department has previously assigned full time staff to the Task Force. Currently, no staff is assigned but is deployed on a case by case basis to supplement the team as necessary and can be supported by staffing availability.

A San Joaquin County Sheriff's Department Captain (or designee of the Sheriff) shall be responsible for management of the METRO Task Force. The Task Force will include personnel from local, state, and federal agencies who have expressed a desire to participate as members of the unit.

STRATEGIC PLAN

This item is a routine operational item and does not relate to 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. Each participating agency is responsible for providing its respective personnel with salaries, benefits and overtime in accordance with FLSA.

RECOMMENDATION

Staff recommends that the City Council, authorize by resolution, entering into the Memorandum of Understanding (MOU) between the City of Tracy and County of San Joaquin Metropolitan Narcotics Task Force (METRO) to diminish the availability and use of illegal drugs in San Joaquin County July 1, 2013, through June 30, 2016.

Prepared by: Lani Smith, Support Operations Manager

Reviewed by: Gary Hampton, Chief of Police

Reviewed by: Jenny Haruyama, Administrative Services Director
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A: County off San Joaquin Metropolitan Narcotics Task Force (METRO) MOU

COUNTY OF SAN JOAQUIN

METROPOLITAN NARCOTICS TASK FORCE

(METRO)

MEMORANDUM OF UNDERSTANDING

Table of Contents

MEMORANDUM OF UNDERSTANDING	1
I. PURPOSE.....	2
II. MISSION	2
III. TASK FORCE COUNCIL.....	2
IV. MANAGEMENT.....	2
V. TASK FORCE COMMANDER.....	3
VI. COMPENSATION	3
VII. BUDGET	3
VIII. TRAINING	3
IX. ANNUAL REPORT	3
X. RESOURCES	4
XI. FACILITIES, EQUIPMENT & PROPERTY	6
XII. ASSET FORFEITURE	7
XIII. ADMINISTRATION AND AUDIT	7
XIV. INSPECTION PROCESS.....	8
XV. NON-DISCRIMINATION CLAUSE	8
XVI. RESPECTIVE RESPONSIBILITIES	8
XVII. POLICY AND PROCEDURE MANUAL	9
XVIII. MODIFICATION AND AMENDMENTS	9
XIX. TERM OF AGREEMENT	10
XX. AUTHORIZATION.....	10
ASSET FORFEITURE FORMULA.....	ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by the following agencies in order to establish the San Joaquin County Metropolitan Narcotics Task Force (METRO).

The METRO Narcotics Task Force consists of the San Joaquin County Sheriff's Department California Multi-Jurisdictional Methamphetamine Enforcement Team (SJCAL-MMET) and the existing Combined Rural and City Narcotic Enforcement Team (CRACNET).

SAN JOAQUIN COUNTY SHERIFF'S DEPARTMENT

SAN JOAQUIN COUNTY DISTRICT ATTORNEY'S OFFICE

SAN JOAQUIN COUNTY PROBATION DEPARTMENT

STOCKTON POLICE DEPARTMENT

LODI POLICE DEPARTMENT

MANTECA POLICE DEPARTMENT

TRACY POLICE DEPARTMENT

ESCALON POLICE DEPARTMENT

RIPON POLICE DEPARTMENT

CALIFORNIA HIGHWAY PATROL

HOMELAND SECURITY INVESTIGATION U.S. IMMIGRATION CUSTOMS ENFORCEMENT

DRUG ENFORCEMENT ADMINISTRATION

I. PURPOSE

The purpose of this memorandum is to set forth the responsibilities of the participating agencies as they relate to the San Joaquin County Metropolitan Narcotics Task Force (hereafter referred to as METRO). Working in conjunction, the participating agencies will endeavor to effectively reduce the production of methamphetamine and enforce the controlled substance laws with a specific emphasis on methamphetamine production and distribution within San Joaquin County and the State of California as expressed in the Health and Safety Code, and applicable federal laws relating to the trafficking of controlled substances. Agencies participating in METRO will be targeting their investigations toward the apprehension of mid to major level violators - and to narcotic problems identified by the participating agencies. Use of this task force concept is intended to ensure well-coordinated narcotic enforcement regionally and increase the flow of narcotic-related intelligence information between the various law enforcement agencies participating in the METRO task force program.

II. MISSION

The mission of METRO will be to significantly diminish the availability and use of illegal drugs in San Joaquin County and apprehend the responsible offenders, thereby increasing public safety.

III. TASK FORCE COUNCIL

METRO will be governed by a "Task Force Council."

- Task Force Council Chairperson – The Chairperson of the Task Force Council shall be the Sheriff of San Joaquin County or Council Member appointed by the Task Force Council.
- Participating Agency - A "Participating Agency" is an allied federal, state or local law enforcement agency that has made a commitment of resources and manpower for an agreed upon time period.
- Structure - The Task Force Council will consist of the department heads of each participating agency or their designee and a Captain of the Sheriff's Department (or the Sheriff's designee).
- Role - The Task Force Council shall meet on a monthly basis for the purpose of reviewing the activities of METRO. Also, the members shall have general responsibility for the oversight of METRO operations.
- Policy Authority - The Task Force Council shall be responsible for METRO policies and operating procedures. The Council shall periodically review and evaluate METRO operations, goals, objectives, policies and procedures.

IV. MANAGEMENT

The management and supervision of METRO's resources will be the responsibility of the Task Force Commander. The Task Force Commander shall retain supervisory control of the personnel assigned to METRO. Federal law enforcement personnel assigned to METRO shall work under the immediate supervision and direction of the Task Force Commander and shall adhere to the published policies and procedures of METRO where they do not violate or conflict with established federal regulations or guidelines.

V. TASK FORCE COMMANDER

A San Joaquin County Sheriff's Department Captain (or designee of the Sheriff) shall be responsible for management of the METRO Task Force and will report to the Task Force Council through the Chairperson of the Council. The Task Force Commander takes direction from the Task Force Council. The Task Force Commander will provide the Task Force Council with monthly and annual reports of METRO activities. Any personnel assigned to METRO shall work under the immediate supervision and direction of the METRO Task Force Commander and should adhere to the policies of METRO and their parent agency (in the case of DEA personnel, DEA policy; or HSI/ICE policy for HSI/ICE personnel). Any conflict between METRO policies and those of the parent agency should be resolved by the Commander of METRO and the head of the participating agency (in regard to DEA or HSI/ICE, by the respective Special Agent in Charge) or his/her designee.

VI. COMPENSATION

Each participating agency is responsible for providing its respective personnel with salaries, benefits and overtime in accordance with FLSA regulations.

VII. BUDGET

The Task Force Commander will prepare a proposed budget each year (date to be determined by the Task Force Council) for the ensuing fiscal/calendar year for approval by the Task Force Council. A monthly report of expenditures shall accompany the monthly statistics report submitted to the Task Force Council as outlined in the Policy and Procedure Manual.

VIII. TRAINING

Training is handled by participating agencies according to their individual budgets as well as through the Task Force Asset Forfeiture accounts and through specific funding available through grant funding. A yearly training plan for all task force personnel, sworn and non-sworn, shall be prepared upon their assignment to the task force. In addition, a yearly group-training plan shall be prepared and submitted with the task force yearly budget proposal.

IX. ANNUAL REPORT

The Task Force Commander will provide the Task Force Council with an annual report of activity no later than March 15 of each year. This report will summarize the preceding calendar year's operation and shall include a section for statistical data broken down in a similar fashion to that of the monthly reports. The report shall contain sufficient information regarding controlled substance abuse and trafficking trends to enable the Council to reassess task force goals and objectives.

X. RESOURCES

Each of the below listed agencies have agreed, by virtue of the signature of the department head affixed to this MOU, to contribute the following personnel and/or resources to METRO in each year of this agreement.

SAN JOAQUIN COUNTY SHERIFF'S DEPARTMENT

The Sheriff of San Joaquin County has agreed to contribute to METRO the following manpower and/or equipment:

* Denotes: Position partially grant and agency funded.

CAL-MMET grant

One (1) Captain

One (1) Deputy

CRACNET ADA grant

*One (1) Senior Office Assistant

*One (1) Deputy

AGENCY budget

One (1) Lieutenant

One (1) Sergeant

Four (4) Deputies

One (1) Deputy Pilot

STOCKTON POLICE DEPARTMENT

The Chief of Police of the City of Stockton has agreed to contribute to METRO the following manpower and/or equipment:

CAL-MMET grant

CRACNET ADA grant

*One (1) Sergeant

AGENCY budget

Two (2) Officers

MANTECA POLICE DEPARTMENT

The Chief of Police of the City of Manteca has agreed to contribute to METRO the following manpower and/or equipment:

Upon agreement

SAN JOAQUIN COUNTY DISTRICT ATTORNEY'S DEPARTMENT

The District Attorney of the County of San Joaquin agrees to contribute to METRO the following manpower and/or equipment:

CRACNET ADA Grant

*One (1) Deputy District Attorney IV

SAN JOAQUIN COUNTY PROBATION DEPARTMENT

The Chief of Probation of the County of San Joaquin has agreed to contribute to METRO the following manpower and/or equipment:

AGENCY budget
One (1) Probation Officer

CALIFORNIA HIGHWAY PATROL

The California Highway Patrol has agreed to contribute to METRO the following manpower and/or equipment:

Upon agreement

US DRUG ENFORCEMENT ADMINISTRATION

The US Drug Enforcement Administration has agreed to contribute to METRO the following manpower and/or equipment:

Upon agreement

HOMELAND SECURITY INVESTIGATION U.S. IMMIGRATION and CUSTOMS ENFORCEMENT

Homeland Security Investigations has agreed to contribute to METRO the following manpower and/or equipment:

AGENCY budget
One (1) HSI/ICE Special Agent

DEPUTY/OFFICERS/AGENTS STANDARD COMPLEMENT OF EQUIPMENT

Each person assigned to METRO will be expected to have the following standard issued equipment provided by the indicated agency:

<u>Item</u>	<u>Provided By</u>
Duty Weapon/Leather Gear	Parent Agency
Handcuffs and case	Parent Agency
Badge with holder	Parent Agency
Credentials	Parent Agency
Flashlight	Parent Agency
Camera	METRO
Shooting glasses	Parent Agency
Manuals (METRO)	METRO
Raid jacket	METRO
Raid cap	METRO
Mesh Jersey	METRO
Portable radio and charger	METRO
Protective ballistics body vest	Parent Agency
Cellular Phone	METRO
Binoculars	METRO
Ear Protectors	Parent Agency

The METRO Task Force Commander may issue additional investigative and/or safety equipment to deputies and or officers.

GRANT PERSONNEL

The personnel assigned to METRO whose positions are paid pursuant to grants received by the task force shall not supplant the positions described above.

XI. FACILITIES, EQUIPMENT & PROPERTY

Any equipment purchased with task force or seized funds which are damaged, broken, misplaced, lost or stolen, through gross negligence, wrongful act, or omission of a deputy, officer or agent assigned to METRO, shall be repaired or replaced by the parent agency of the responsible employee at the determination of the Task Force Commander as permitted by applicable agency regulations and policies.

With respect to facilities, payment of the following items will be made by the indicated agency:

1. Lease of office space:
Sheriff's Department CAL-MMET funding 100%
2. Installation of telephone/communication lines including long distance and local charges:
Sheriff's Department CAL-MMET funding 100%.

3. Telephone equipment:
Sheriff's Department CAL-MMET funding 100%.
4. Utilities:
Sheriff's Department CAL-MMET funding 100%.
5. Alarm equipment including maintenance and monitoring:
Task Force - 100%.
6. Evidence storage and alarm security:
Task Force - 100%.

XII. ASSET FORFEITURE STATE/LOCAL EQUITABLE SHARING

Based on the asset forfeiture agreement, proceeds derived from asset forfeiture, under state or federal law, initiated in the course of investigations conducted by METRO, will be shared equitably among member agencies. The equitable sharing will be based on the attached (Attachment A) formula developed by the Task Force Council, which does not in any way alter the asset sharing policies and procedures of DEA or HSI/ICE. *All forfeiture procedures and sharing will be based upon the appropriate provisions of state or federal law and policy.* Modification to the asset forfeiture agreement requires approval in writing by the members of the Task Force Council.

Any assets seized by METRO during an investigation that led to federal criminal charges should be processed federally.

DEA EQUITABLE SHARING

If an asset seized by METRO were forfeited by the State of California, DEA would be entitled to an equitable share. The Drug Enforcement Administration will process asset seizures handled federally in accordance with federal law and policy. Federal asset forfeiture disbursement and disposal should comply with the provisions of A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies.

HSI EQUITABLE SHARING

If an asset seized by METRO were forfeited by the State of California, HSI/ICE would be entitled to an equitable share. Any asset seizures processed by HSI/ICE and related equitable sharing, will be handled in accordance with federal law and policy; HSI/ICE and Treasury Executive Office for Asset Forfeiture (TEOAF) policies; as well as the TEOAF Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (April 2004).

XIII. ADMINISTRATION AND AUDIT

Any and all records pertaining to METRO expenditures shall be readily available for examination and audit by any participating agency shall be readily available for examination and audit by any participating agency "at the Sheriff's Department" or "at METRO." In addition, all such records and reports shall be maintained until audits and examinations are completed and resolved, or for a period of three (3) years after termination of the agreement, whichever is sooner.

XIV. INSPECTION PROCESS

At change of command, an audit of the controlled substance evidence, all monies (including petty cash, all recovered funds, seized funds as evidence and asset forfeiture funds) in holding, weapons and specialized equipment shall be performed.

XV. NON-DISCRIMINATION CLAUSE

All participating agencies will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed or pursuant to the regulations of the U.S. Department of Justice (28 C.F.R., Part 42, Subparts C and D) issued pursuant to Title VI relating to discrimination on the grounds of race, color, creed, sex, age or national origin and equal employment opportunities.

XVI. RESPECTIVE RESPONSIBILITIES

For the purpose of indemnification, each participating agency of METRO shall be responsible for the acts of its participating deputy(s), officer(s), or agent(s) and shall incur any liabilities arising out of the services and activities of their respective officers while participating in METRO, to extent applicable under the law. Personnel assigned to METRO shall be deemed to be continuing under the employment of their jurisdictions and shall have the same powers, duties, privileges, responsibilities and immunities as are conferred upon them as peace officers or federal law enforcement officers in their own jurisdictions.

The California Highway Patrol agrees to abide by the terms and conditions of the existing Memorandum of Understanding (MOU) relating to the operation of the METRO Task Force, with the following additions and exceptions:

CHP officers assigned to the Task Force are responsible for the adherence to the METRO Policy and Procedure Manual. In instances where CHP policies differ from the Task Force policy, CHP policy shall be adhered to.

Any on-duty vehicle collision, officer involved shooting, or accidental discharge involving CHP members assigned to the Task Force shall be investigated and reported in compliance with departmental policy.

The CHP commander shall be notified of all citizens' complaints against a CHP officer assigned to a Task Force and ensure an investigation is completed.

Job related injuries or illnesses which occur while the officer is assigned to the Task Force shall be documented by a departmental supervisor regardless of any other documentation by the Task Force.

Per Highway Patrol Manual 81.5, CHP employees, including those assigned to the Task Force shall not enter "confined spaces" (as defined in Title 8, Section 5156, General Industry Safety Orders) unless a Task Force supervisor trains, equips, and operates under the guidelines of Title 8 Section 5157, et seq.

CHP officers assigned to the Task Force shall attend all mandatory training required by the California Highway Patrol.

DEA personnel assigned to METRO will adhere to the standards of conduct and rules and regulations concerning ethical conduct of employees promulgated by DEA and the Department of Justice. Allegations and/or violations of the standards of conduct or rules and regulations pertaining to the conduct of DEA employees assigned to METRO must be reported to and will be investigated by DEA's Office of Professional Responsibility.

HSI/ICE agrees to abide by the terms and conditions of the existing Memorandum of Understanding (MOU) related to the operation of the METRO TASK FORCE, with the following additions and exceptions:

HSI/ICE Agents assigned to the Task Force should adhere to the Metro Policy and Procedure Manual to the extent it does not conflict with HSI/ICE policy. In instances where HSI/ICE policies differ from the Task Force policy, HSI/ICE personnel shall adhere to HSI/ICE policy.

Any on-duty vehicle collision, officer involved shooting, or accidental discharge involving HSI/ICE members assigned to the Task Force shall be investigated and reported in compliance with METRO policy to the extent it does not conflict with HSI/ICE policies, procedures or federal law.

The HSI/ICE Resident Agent in Charge (RAC) Stockton shall be notified of all citizen complaints made against any HSI/ICE Agent assigned to the METRO and will comply with HSI/ICE policy as to any related investigation.

Job related injuries or illnesses which occur while an agent is assigned to the METRO shall be documented by an HSI/ICE supervisor regardless of any documentation made by the METRO.

XVII. POLICY AND PROCEDURE MANUAL

It is agreed that all members of the task force shall abide by the applicable policies and procedures as expressed in the METRO manual, which is specific in content to the needs, objectives and goals of METRO. It is agreed that all Federal Agency members assigned to METRO shall abide by the applicable policies and procedures as expressed in the METRO manual, which is specific in content to the needs, objectives, and goals of METRO, where they do not violate or conflict with their respectful federal regulations, policies, procedures or federal law.

XVIII. MODIFICATIONS AND AMENDMENTS

No alteration, modification, amendment, or termination of this Memorandum of Understanding shall be valid unless made in writing and signed by the authorized parties.

XIX. TERM OF AGREEMENT

The term of this agreement shall be from July 1, 2013 through June 30, 2016. This MOU MAY BE TERMINATED by notice in writing to the Task Force Council Chairperson with thirty (30) days notice. An extension of this MOU will be granted pursuant to the signed agreement of the Task Force Council. METRO will only be responsible for financial obligations incurred by task force participating agencies during the term of this agreement.

XX. AUTHORIZATION

The participating agencies, by their duly authorized officials, have executed this MOU on the respective dates indicated below. This MOU will become effective upon receipt by the Sheriff of San Joaquin County of the original executed MOU with all its attachments by all participating agencies and will then replace all prior METRO MOU's and Addenda.

San Joaquin County
Sheriff's Department _____ Sheriff-Coroner _____
Steve Moore _____ Date _____

San Joaquin County
District Attorney _____ District Attorney _____
James P. Willett _____ Date _____

San Joaquin County
Probation Department _____ Chief of Probation _____
Stephanie James _____ Date _____

Stockton Police
Department _____ City Manager _____
Bob Deis _____ Date _____

Stockton Police
Department _____ Chief of Police _____
Eric Jones _____ Date _____

Lodi Police
Department _____ City Manager _____
Konradt "Rad" Bartlam _____ Date _____

Lodi Police
Department _____ Chief of Police _____
Mark Helms _____ Date _____

XX. AUTHORIZATION-Continued

Manteca Police Department	_____	Chief of Police	_____
	Nick Obligacion		Date
Tracy Police Department	_____	City Manager	_____
	Leon Churchill		Date
Tracy Police Department	_____	Chief of Police	_____
	Gary Hampton		Date
Escalon Police Department	_____	Chief of Police	_____
	Milt Medeiros		Date
Ripon Police Department	_____	Chief of Police	_____
	Ed Ormonde		Date
California Highway Patrol	_____	Captain Stockton CHP	_____
	Rob Patrick		Date
U.S. Drug Enforcement Administration	_____	Special Agent in Charge DEA San Francisco	_____
	Anthony D. Williams		Date
Homeland Security Investigations, U.S. Immigration and Customs Enforcement	_____	Special Agent in Charge HSI/ICE San Francisco	_____
	Clark E. Settles		Date

ATTACHMENT A

ASSET FORFEITURE FORMULA

Any assets seized and forfeitures accomplished through the efforts of the task force shall be utilized for the purposes of enhancement of the task force capacities. METRO will keep all assets seized pursuant to its investigations (subject to sharing and pass-through rules) and use those assets to pay for costs of the task force's operations. The task force will deposit them in interest bearing accounts. Funds will be distributed to the participating agencies in the event the amount reaches \$750,000.00.

When this amount is reached \$250,000.00 will then be disbursed to the participating agencies, as described below. All agencies will be receiving assets based on a formula derived from the man hours worked by their employees assigned to METRO.

Example: The following agencies accumulated the following man hours between the inception of METRO and the disbursement date with the amount to be disbursed set at \$250,000.00:

Agency #1 -	4000 man hours
Agency #2 -	5000 man hours
Agency #3 -	1000 man hours
Agency #4 -	1000 man hours
Agency #5 -	<u>500 man hours</u>
TOTAL	11500 man hours

Agency #1 -	$4000/11500 \times 100 = 34.78\%$	of \$250,000 =	\$ 86,950
Agency #2 -	$5000/11500 \times 100 = 43.47\%$	of \$250,000 =	\$108,675
Agency #3 -	$1000/11500 \times 100 = 8.70\%$	of \$250,000 =	\$ 21,750
Agency #4 -	$1000/11500 \times 100 = 8.70\%$	of \$250,000 =	\$ 21,750
Agency #5 -	$500/11500 \times 100 = 4.35\%$	of \$250,000 =	\$ 10,875

If an agency contributes a clerical position, those hours will be calculated at a rate of 1/2 the time of a sworn officer.

Example: One clerical position = $1000 \text{ hours} / 2 = 500 \text{ man hours}$

RESOLUTION _____

AUTHORIZING THE CITY MANAGER AND CHIEF OF POLICE TO EXECUTE
A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE COUNTY OF
SAN JOAQUIN METROPOLITAN NARCOTICS TASK FORCE (METRO)
FROM JULY 1, 2013, THROUGH JUNE 30, 2016

WHEREAS, Law enforcement agencies of San Joaquin County desire to work cooperatively to effectively reduce the production of methamphetamine and enforce the controlled substance laws with a specific emphasis on production and distribution within San Joaquin County, and

WHEREAS, The use of this task force concept is intended to ensure well-coordinated narcotic enforcement regionally and to increase the flow of narcotic related intelligence information between the various law enforcement agencies participating in the METRO Task Force, 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 July 1, 2013, through June 30, 2016;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby authorizes the City Manager and Chief of Police, to enter into a Memorandum of Understanding (MOU) with the County of San Joaquin Metropolitan Narcotics Task Force (METRO) and San Joaquin County Law Enforcement Agencies to diminish the availability and use of illegal drugs in San Joaquin County July 1, 2013 through June 30, 2016.

* * * * *

The foregoing Resolution _____ is hereby passed and adopted by the Tracy City Council this 19th day of November, 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 RESOLUTION EXERCISING THE OPTION TO EXTEND A LEASE AGREEMENT WITH MIZUNO FARMS, INC., FOR ONE ADDITIONAL TWO-YEAR PERIOD, FOR FARMING OPERATIONS AT PROPERTY LOCATED AT THE CORNER OF ELEVENTH STREET AND CHRISMAN ROAD AND AMENDING CERTAIN LANGUAGE REGARDING TERMINATION IN THE EVENT OF A THIRD PARTY SALE, AND AUTHORIZE THE MAYOR TO EXECUTE AMENDMENT NO. 1

EXECUTIVE SUMMARY

In 2009, City Council approved a four-year lease agreement with Mizuno Farms, Inc. for City owned property located at the corner of Eleventh Street and Chrisman Road (approximately 113 acres). The City of Tracy and Mizuno Farms, Inc., both wish to exercise the option to extend the Agreement for one additional two-year period, from January 1, 2014, to December 31, 2015, as outlined in Section 19 of the Agreement.

DISCUSSION

In 2009, staff issued a Request for Proposals (RFP) to seek out competitive bids to farm the City owned property located at the corner of Eleventh Street and Chrisman Road, commonly referred to as the Chrisman Property (approximately 113 acres). Mizuno Farms, Inc., (Lessee) was the highest successful bidder and a four year lease was executed on December 15, 2009. The term of the agreement is scheduled to end on December 31, 2013. The lease includes a provision allowing an extension of the agreement for two additional two-year periods from January 1, 2014 to December 31, 2015, and from January 1, 2016, to December 31, 2017.

Council has previously directed staff to proceed with selling the Chrisman Property. It is estimated that it may take up to two years to go through the process of selling the property. The current language in the lease does allow for early termination in the event of a third party purchase. However, staff would like to change the language to be consistent with other termination clauses in the Agreement. The current Agreement states that in the event of a third party sale of the property, the lease will terminate on December 31 of the year that escrow closes. Staff would like to amend the agreement to state that in the event of a third party sale, the lease will terminate at the end of the growing season for the year that escrow closes.

Per the terms of the current lease, the Lessee has submitted a written request that the lease be extended for one additional period from January 1, 2014, to December 31, 2015. Staff feels that due to the timeframe needed to sell the property, an extension for an additional two-year period would be viable. The lease rates will follow the same format as the previous four years of the agreement, with the lease rate receiving an increase each year of the Agreement by the annual percentage increase in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, CA, All Items, with a minimum increase of 3%.

Below is a schedule for selling the property.

CHRISMAN ROAD PROPERTY DISPOSITION Project Schedule

1. Identify and compile developer contact list (Industrial, retail, commercial/office)
Feb. 28, 2013 (Complete)
2. Develop and distribute market material for property sale
March 26, 2013 (Complete – Marketing material has been used at retail, office and industrial tradeshows as well as direct mail piece)
3. Follow up on recent light industrial interests and select developer to proceed (ENRA)
January 2014
4. Complete entitlement steps necessary to sell the property for Light Industrial use
October 2014
The property entitlement includes:
 - General Plan Amendment / Rezone / Likely annex property into NEI Specific Plan
 - Infrastructure Analyses based on GPA/Rezone (wastewater, water, storm drainage, roadways, etc.)
 - Environmental Review (level of Environmental review to be determined).
 - Adopt Finance and Implementation Plan (FIP) and Impact Fees for site.
5. Execute Sales Agreement with Developer
December 2014 (Environmental Review must be completed before sale)

STRATEGIC PLAN

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

FISCAL IMPACT

The General Fund will realize additional revenue over the next two years as a result of the lease amendment as outlined below:

FY 2013/2014:	\$25,440
FY 2014/2015:	<u>\$26,203</u>
TOTAL:	\$51,643

RECOMMENDATION

Approve resolution exercising the option to extend a Lease Agreement with Mizuno Farms, Inc., for one additional two-year period, for farming operations at property located at the corner of Eleventh Street and Chrisman Road and amending certain language regarding termination in the event of a third party sale, and authorize the Mayor to execute the Amendment.

Agenda Item 1.F
November 19, 2013
Page 3

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: David Ferguson, Director of Public Works
Maria A. Hurtado, Assistant City Manager

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

ATTACHMENT

Exhibit "A" – Amendment No. 1 to the Lease Agreement

RESOLUTION _____

AMENDING THE LEASE AGREEMENT WITH MIZUNO FARMS, INC. TO EXTEND THE AGREEMENT FOR TWO YEARS FOR FARMING OPERATIONS AT PROPERTY LOCATED AT THE CORNER OF ELEVENTH STREET AND CHRISMAN ROAD, TO FURTHER AMEND THE TERMINATION CLAUSE TO ALLOW THE LEASE TO BE TERMINATED AT THE END OF A GROWING SEASON AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, In 2009, City Council approved a four-year Lease Agreement with Mizuno Farms, Inc. for farming operations at property located at the corner of Eleventh Street and Chrisman Road, and the current lease expires on December 31, 2013, and

WHEREAS, The Agreement includes a provision allowing an extension of the Agreement for two additional two-year periods from January 1, 2014, to December 31, 2015, and from January 1, 2016 to December 31, 2016, and

WHEREAS, The parties desire to amend the Agreement to allow for a single two-year extension from January 1, 2014, to December 31, 2015, and

WHEREAS, The parties desire to amend language in the agreement regarding termination in the event of a third party sale of the property;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves amending the Lease Agreement with Mizuno Farms, Inc., to extend same for an additional two-year period for farming operation at property located at the corner of Eleventh Street and Chrisman Road and further amending the termination clause to allow the Lease to be terminated at the end of a growing season in the event of a third party sale, and authorizes the Mayor to execute the amendment.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy on the 19th day of November, 2013, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

**AMENDMENT NO. 1
TO THE LEASE AGREEMENT
BETWEEN THE CITY OF TRACY AND MIZUNO FARMS, INC.**

This Amendment No. 1 (hereafter "Amendment") amends the Lease Agreement that the **CITY OF TRACY** ("CITY") and **MIZUNO FARMS, INC.**, ("LESSEE") entered into effective January 1, 2010.

RECITALS

- A.** On December 15, 2009, CITY executed a Lease Agreement ("Agreement") with LESSEE for City owned property located at the corner of Eleventh Street and Chrisman Road (approximately 113 acres).
- B.** Section 19 of the Agreement states that under mutual consent, the LESSEE may be granted an option to renew provided that the LESSEE is not in default and provides the CITY written notice of the intent to renew at least 90 days prior to the expiration of the Agreement. LESSEE is not in default and had provided proper written notice.
- C.** CITY and LESSEE both wish to exercise its option to extend the Agreement for one additional period of two years, from January 1, 2014 to December 31, 2015, as outlined in Section 19 of the Agreement.
- D.** CITY desires to amend certain language in the agreement pertaining to the sale of the property to a third party.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. RECITALS TRUE AND CORRECT.** CITY and LESSEE hereby agree that the recitals set forth above are true and correct.
- 2. INCORPORATION OF AGREEMENT.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically deleted or modified hereby. Such deletions or modifications shall not be deemed to extinguish any monetary obligation that LESSEE assumed there under.
- 3. TERMS OF AMENDMENT.** The Agreement is modified as stated herein, effective upon all parties executing this Amendment.

Section 1 of the Agreement, **TERM**, is hereby amended to read as follows: "The term of this Lease will commence on January 1, 2010 and will continue for a period ending December 31, 2013. In the event of a third party purchase of the property, this lease shall terminate at the end of the growing season of the same year that escrow closes on the property sale. In the event CITY determines a non-agricultural non-public use is in the best interest of CITY, the Lease shall terminate at the end of the growing season for the year that a non-agricultural Lease is executed between the CITY and a third party. In the event that CITY determines that a public use of the property is in the best interest of

**CITY OF TRACY AMENDMENT NO. 1
TO LEASE AGREEMENT WITH MIZUNO FARMS
Page 2 of 2**

CITY, this Lease shall terminate at the end of the growing season for the year that the property is put to a public use.”

4. **SIGNATURES**. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this amendment on behalf or the respective legal entities of the LESSEE and the CITY. This amendment 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

MIZUNO FARMS, INC.

By: _____

Brent H. Ives

Title: Mayor

Date: _____

By: _____

Gordon M. Mizuno

Title: Vice President

Date: _____

Attest:

By: _____

Sandra Edwards

Title: Clerk

Date: _____

By: _____

Clark Mizuno

Title: CFO

Date: _____

Approved As To Form:

By: _____

Bill Sartor

Title: Assistant City Attorney

Date: _____

AGENDA ITEM 3

REQUEST

PUBLIC HEARING TO ADOPT AMENDMENTS TO THE CITYWIDE ROADWAY AND TRANSPORTATION, AND STORM DRAINAGE MASTER PLANS, THE ESTABLISHMENT OF ROADWAY AND TRAFFIC, WATER, RECYCLED WATER, WASTEWATER, STORM DRAINAGE, PUBLIC SAFETY, PUBLIC FACILITIES, AND PARK DEVELOPMENT IMPACT FEES AND THE ASSOCIATED AB1600 FEE STUDIES FOR ALL NEW DEVELOPMENTS WITHIN THE CITY

EXECUTIVE SUMMARY

As of the writing of this agenda item, staff is in the process of reviewing comments received from the development community late in the week ending November 14, 2013, related to the proposed development fees.

DISCUSSION

In order to properly address the comments received from the development community, staff will bring completed agenda items for Council consideration at the December 3, 2013, meeting.

STRATEGIC PLAN

This agenda item supports Objective 1.c of the Economic Development Strategic Plan which ensures quality infrastructure to meet future development needs.

FISCAL IMPACT

There is no fiscal impact on the General Fund. Development Impact Fees are paid by the developers to fund the infrastructure improvements required to serve their developments. Administration and updates to these fees are funded through the soft costs included in all the infrastructure cost estimates.

RECOMMENDATION

As this item requires a public hearing, staff recommends City Council open the public hearing and continue this item to the December 3, 2013, City Council meeting.

Prepared By: Kuldeep Sharma, City Engineer
Reviewed By: Andrew Malik, Development Services Director
Maria A. Hurtado, Assistant City Manager
Approved By: R. Leon Churchill, Jr., City Manager

November 19, 2013

AGENDA ITEM 4

REQUEST

APPROVE AGREEMENTS RELATED TO RECONSTRUCTION AND WIDENING OF THE ELEVENTH STREET OVERPASS BRIDGE CIP 73063, FEDERAL PROJECT NUMBER BHLS-5192(020) AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS

EXECUTIVE SUMMARY

An agreement to acquire highway easements, temporary construction easements and inspections during construction is needed with Union Pacific Railroad (UPRR). Similarly two other agreements are needed with adjoining property owners to acquire right-of-ways and temporary construction easements for the construction and widening of the Eleventh Street overpass bridge. Approval of these agreements will expedite the construction process.

DISCUSSION

The existing 1,441-foot long Eleventh Street Bridge, constructed by Caltrans in 1936, was widened from two lanes to four lanes in 1960 and crosses three UPRR tracks. Pacific Gas and Electric Company overhead electric facility and underground gas pipe line run along the bridge and the West Side Irrigation District has an open irrigation channel along the north side of the bridge. Since the proposed bridge will be wider than the existing bridge, it is necessary to acquire additional right-of-ways from affected adjacent properties, including a temporary construction easement from UPRR. In addition UPRR has to grant a "Highway Easement" to allow construction of this bridge.

Necessary right-of-ways from the West Side Irrigation District have already been acquired. Approval of the subject agreements will conclude the remaining required right-of-ways and temporary construction easements from adjoining properties for the reconstruction and widening of said bridge.

On February 5, 2013, City Council directed staff to negotiate the terms and conditions of the agreement with UPRR. Staff, in coordination with Interwest Consulting Group, the City's consultant for the right-of-ways services, and the City Attorney's office, concluded negotiations of the terms and conditions of the UPRR agreement. This agreement grants the City a "Highway Easement" for the cost of \$139,629.

Also, under condition of this agreement, the City of Tracy will secure a temporary construction easement from UPRR for 24 months from award of the construction contract at a total cost of \$242,758.

During construction of the bridge UPRR personnel will coordinate train movement, provide inspection of the construction activities within their right-of-way boundary. The estimated cost of this item is \$205,000 and the City of Tracy will receive invoices for such work from UPRR during construction.

Total cost of UPRR granting the City of Tracy "Highway Easement", temporary construction easement, and providing construction inspection is estimated to be \$587,387.

With regard to the other agreements with MAGJJ Overpass Properties, LLC and Joe Alvarez Revocable Survivor's Trust, the City will acquire (right of land in real and temporary construction easements) for the reconstruction and widening of the bridge. The total cost of the right-of-ways and temporary construction easements with MAGJJ Overpass Properties, LLC (0.38 acres in fee acquisition and 2.65 acres in temporary construction easement) is \$84,000. The cost for 0.05 acres in fee acquisition and 0.45 acres of temporary construction easements including relocation of utility for Joe Alvarez, Trustee will be \$79,000.

The costs of the above items are included in the total costs of the bridge replacement.

STRATEGIC PLAN

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

FISCAL IMPACT

The cost of "Highway Easement", temporary construction easements and operational cost of UPRR, land acquisition for right-of-ways and construction easements from MAGJJ Overpass Properties, LLC and Joe Alvarez Trustee will be paid from the approved CIP 73063, for the Eleventh Street Bridge reconstruction and replacement. There will be no impact to the General Fund.

RECOMMENDATION

That City Council, by separate resolutions, approve the following agreements for reconstruction and widening of the Eleventh Street Overpass Bridge CIP 73063, and Federal project BHLS-5192(020) and authorize the Mayor to execute the agreements:

1. The new Public Highway Overpass Crossing Agreement between Union Pacific Railroad Company and the City of Tracy covering the reconstruction and widening of the Eleventh Street Overpass Grade Separated Public Road Crossing at Railroad Mile Post 83.27 – DOT.NO. 753069A and authorize the payment of \$587,387 to UPRR; and
2. Acquisition agreement of fee interest and temporary construction easement between the City of Tracy and MAGJJ Overpass Properties, LLC, for an amount of \$84,000; and
3. Acquisition Agreement of fee interest and temporary construction Easement between the City of Tracy and Joe Alvarez, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Trust dated October 12, 1989, in the amount of \$79,000.

Agenda Item 4
November 19, 2013
Page 3

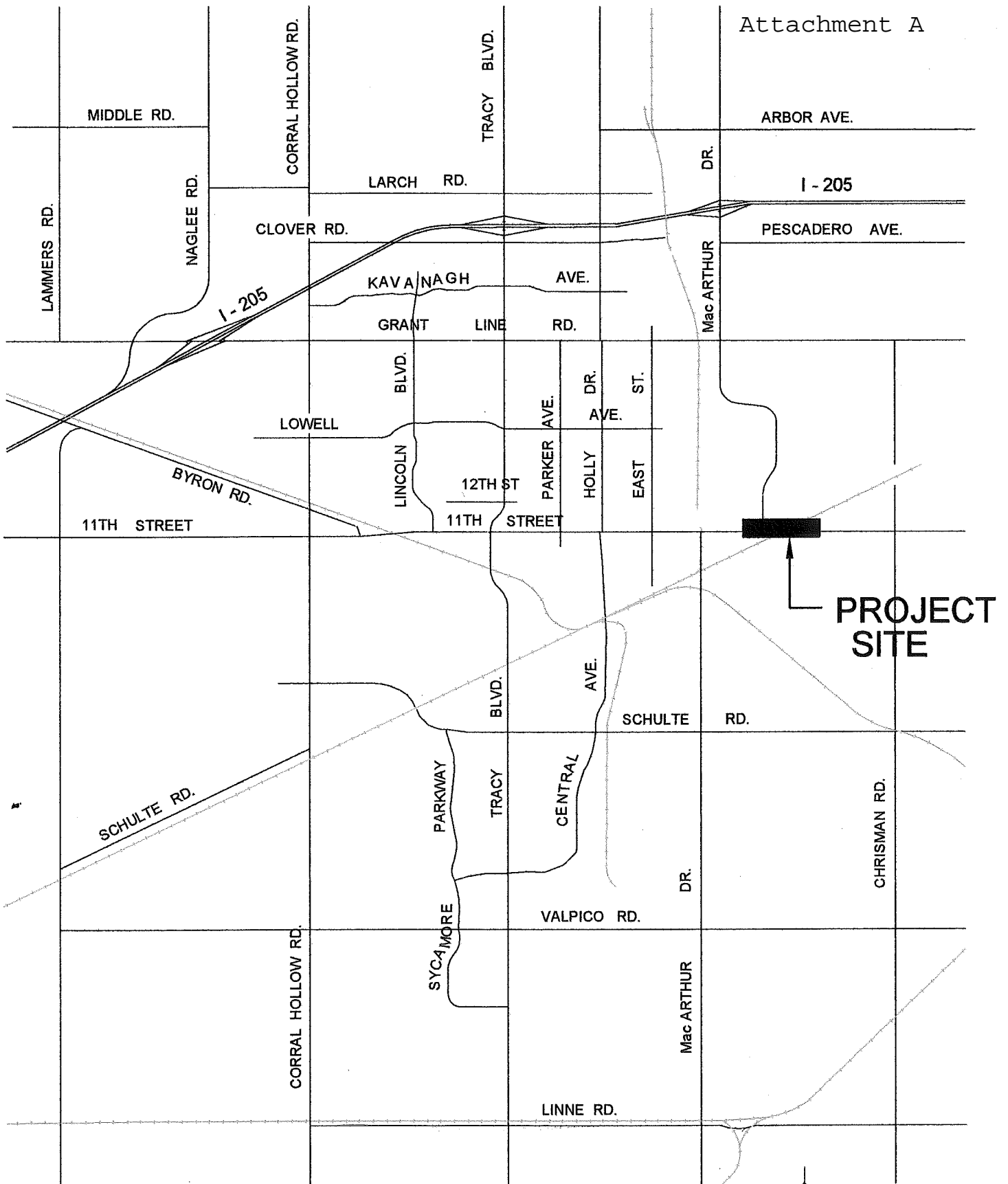
Prepared by: Zabih Zaca, Senior Civil Engineer

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

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

ATTACHMENTS

Attachment A: Vicinity Map
Attachment B: UPRR Overpass Crossing Agreement
Attachment C: Alvarez Agreement
Attachment D: MAGJJ Agreement



LOCATION MAP

(11th Street Overhead Bridge - Tracy, Ca.)

NEW PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF TRACY

COVERING THE

RECONSTRUCTION AND WIDENING OF THE 11TH STREET
OVERPASS GRADE SEPARATED PUBLIC ROAD CROSSING

AT

RAILROAD MILE POST 83.27 – TRACY SUBDIVISION
DOT NO.: 753069A

IN OR NEAR

TRACY,
SAN JOAQUIN COUNTY,
CALIFORNIA

RECEIVED

SEP 23 2013

CITY OF TRACY
D.E.S.

UPRR Folder No.: 2688-20

UPRR Audit No.: _____

PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

11th STREET – DOT No. 753069A
RAILROAD MILE POST 83.36 - TRACY SUBDIVISION
TRACY, SAN JOAQUIN COUNTY, CALIFORNIA

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF TRACY**, a municipal corporation or political subdivision of the State of California to be addressed at Department of Development and Engineering Services, 333 Civic Center Plaza, Tracy, California, 95376 ("City").

RECITALS:

By instrument dated October 26, 1935, the Southern Pacific Company and the State of California entered into an agreement, as amended and supplemented, including but not limited to, by instrument dated September 3, 1958 (collectively the "Original Agreement"), identified in the records of the Railroad as Agreement Number 40300 and Audit No. S039160 respectively, covering the construction, maintenance, use and repair of the US Highway 50/11th Street grade separated public road crossing, (DOT No. 753069A), at Railroad's Mile Post 83.27 on the Railroad's Tracy Subdivision at or near Tracy, San Joaquin County, California.

The Railroad named herein is successor in interest to the Southern Pacific Company and the City is successor in interest to the State of California.

The City desires to undertake as its project (the "Project") the construction of a new grade-separated public road crossing for 11th Street (DOT No. 753069A), at Railroad's Mile Post 83.36 on the Railroad's Tracy Subdivision at or near Tracy, San Joaquin County, California (the "Roadway" or the "Structure"). The Roadway is shown on the Railroad Location Print marked **Exhibit A** and specified in the Detailed Print marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof. The portion of the Roadway located within the Railroad's right of way is the "Crossing Area".

The right of way granted by Southern Pacific Company under the terms of the Original Agreement or a separate document is not sufficient to allow for the construction of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the City to facilitate the construction of the Roadway. The portion of Railroad's property that City needs to use in connection with the Roadway (including the right of way area covered under the Original

Agreement or in a separate document) is described in the Legal Descriptions marked **Exhibit A-2** and also shown on the Survey Prints marked **Exhibit A-3**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area"). The area to be relinquished pursuant to termination of the Original Agreement as set forth herein is also reflected on Exhibit A-2.

The Railroad and the City are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

ARTICLE 2. GRANT OF HIGHWAY GRANT

- A. Upon completion of the execution of this Agreement and Railroad's receipt from City of **One Hundred Thirty Nine Thousand Six Hundred Twenty Nine Dollars (\$139,629.00)**, the Railroad shall execute and deliver to the City a Highway Grant in the form marked **Exhibit F**, attached hereto and hereby made a part hereof, for the property described on Exhibit A-2 as "UPRR Right of Way Easement".
- B. For and in consideration of **Two Hundred Forty Two Thousand Seven Hundred Fifty Eight Dollars (\$242,758.00)**, the Railroad hereby grants to the Political Body temporary construction rights to use the portion of Railroad's property shown and described on Exhibit A-2 as "Temporary Construction Easement 'N', 'S', and 'E'". The City's use of such property shall be subject to the terms and conditions of this Agreement and the obligation of City and its contractors to comply with such provisions. The temporary rights granted herein shall commence upon Award of the Construction Contract and continue for twenty four (24) months, or until the Project has been completed, whichever occurs earlier.

ARTICLE 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

ARTICLE 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
 - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
 - provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
- Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UPRR Folder No. 2688-20*
- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 5. FEDERAL AID POLICY GUIDE

If the City will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

ARTICLE 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The City agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

ARTICLE 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad Flagging & Engineering/Inspection Estimate dated July 12, 2013, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **Two Hundred and Five Thousand DOLLARS (\$205,000.00)**.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate includes an estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

- D. The Railroad shall send progressive billing to the City during the Project and final billing to the City within one hundred eighty (180) days after receiving written notice from the City that all Project work affecting the Railroad's property has been completed.
- E. The City agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

ARTICLE 8. PLANS

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. Ninety percent (90%) plans have been reviewed and approved by the Railroad. Once completed, the final one hundred percent (100%) plans shall be submitted to the Railroad for review and approval. The final one hundred percent (100%) signed and stamped plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans shall not include any changes from the ninety percent (90%) plans relevant to Railroad requirements, and shall be the plans used to construction the Project. The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

ARTICLE 9. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply

additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and City mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

ARTICLE 10. RAILROAD'S COORDINATION REQUIREMENTS & DEMOLITION GUIDELINES

The City, at its expense, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements that are described in Exhibit D, and the Guidelines for Preparation of a Bridge Demolition and Removal Plan for Structures over Railroad that are described in Exhibit G, each attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the City for this Project.

ARTICLE 11. EFFECTIVE DATE; TERM; TERMINATION

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Structure remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
- C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

ARTICLE 12. CONDITIONS TO BE MET BEFORE PUBLIC BODY CAN COMMENCE WORK

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and the City have executed this Agreement.
- (ii) The Railroad has provided to the City the Railroad's written approval of the Plans.



- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

ARTICLE 13. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Structure shall not commence until Railroad and City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

ARTICLE 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS

- A. City shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.

ARTICLE 15. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad, and (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad. The City also confirms and acknowledges that (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents. The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Exhibit B of this Agreement.

ARTICLE 16. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Structure, the Original Agreement and any agreement relating to the Roadway shall terminate, and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Structure.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DANIEL A. LEIS
General Director – Real Estate

ATTEST:

CITY OF TRACY

By _____

By _____

(SEAL)

Printed Name: _____

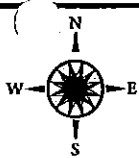
Title: _____

Pursuant to Resolution/Order No. _____
dated: _____, 20____
hereto attached.

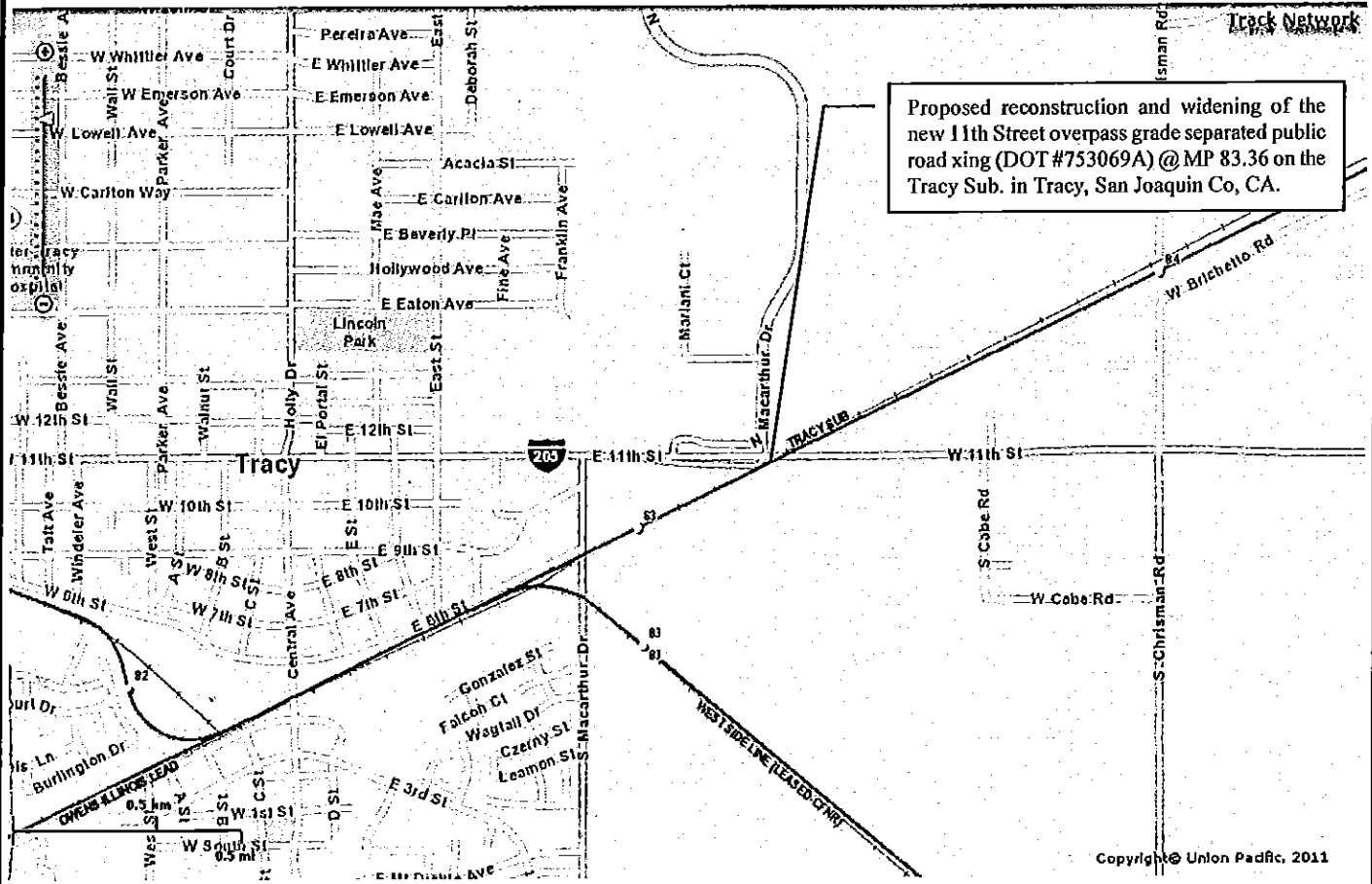
EXHIBIT A

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Railroad Location Print



RAILROAD LOCATION PRINT OF A PUBLIC ROAD CROSSING CONSTRUCTION PROJECT



Copyright © Union Pacific, 2011

RAILROAD WORK TO BE PERFORMED:

1. Flagging.
2. Engineering Review and Inspection.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

TRACY SUBDIVISION
RAILROAD MILE POST 83.36
GPS: 037.73959353, -121.41032530
TRACY, SAN JOAQUIN CO., CA.

To accompany an agreement with the
CITY OF TRACY
covering a grade separated overpass project.

Folder No. 2688-20

Date: January 28, 2013

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

STA. PT. 3262+46.8
 TRACY
 MILE 71.5



11.75 Highway King M.L. Deck
 71.75 High 82 over Conc. P.U.C.
 Overhead "Piles"
 Deck Girders on "Piles"
 Conc. Clear.
 Vert. Clear.

324109 30" Storm Drain

324070 (Sealed)

324109 30" Storm Drain

P.U.C. # D-71.00A

PERMANENT EASEMENT AREA: 3.26 ACRES+-
 TEMPORARY EASEMENT AREA: 4.24 ACRES+-
 EASEMENT RELINQUISHMENT AREA: 0.562 ACRES+-

FIBER OPTIC CABLE
 CALL BEFORE YOU DIG
 1-800-336-9193

SCALE 1" = 400'

LEGEND

U.P.R.R. RIGHT OF WAY

PERMANENT EASEMENT AREA

TEMPORARY EASEMENT AREA

EASEMENT TO BE RELINQUISHED

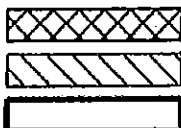


EXHIBIT "A"

UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH

TRACY, SAN JOAQUIN COUNTY, CA.

M.P. 83.25+- TRACY SUB.

SP CA V 109 / 1

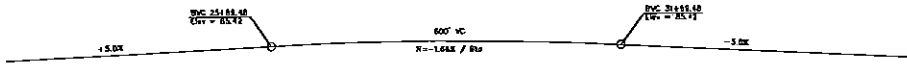
REAL ESTATE DEPARTMENT OMAHA NE.

FILE #2718-82 DATE: 6-8-2012 T.D.A.

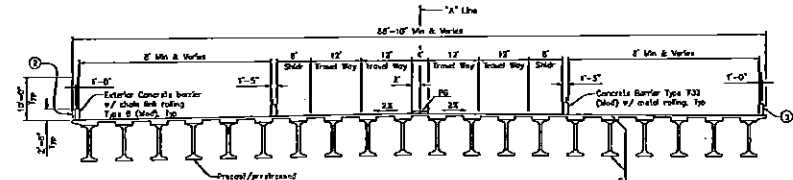
EXHIBIT A-1

To Public Highway Overpass Crossing
Agreement

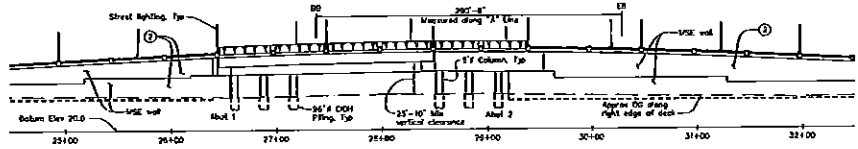
Cover Sheet for the
Detailed Print



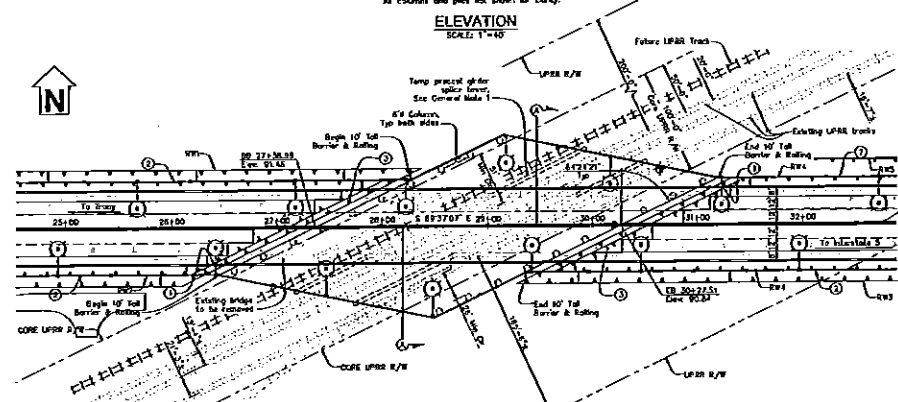
PROFILE
NO SCALE



TYPICAL SECTION
NO SCALE



ELEVATION
SCALE: 1"=40'



PLAN
SCALE: 1"=40'

GENERAL NOTES:

1. Temporary splice beams to be placed in line with existing beams as long as they do not protrude beyond the width of the existing beams. Existing beams will also be allowed to be used as splice beams.
2. Erection over Railroad's tracks shall be planned such that it enables the tracks to remain open to traffic per Railroad requirements.
3. The structure of the existing top-of-rail shall be verified before beginning construction. All discrepancies shall be brought to the attention of the Railroad prior to construction.
4. The proposed grade separation project shall not change the quantity and/or characteristics of the flow in the Railroad ditches and/or drainage structures.
5. The contractor shall submit a proposed method of erection and in-ground control and have the method approved by the Railroad prior to beginning any grading on the project site.
6. For Railroad coordination please refer to the Railroad's Coordination Requirements as part of the Project Specifications.
7. All shoring systems that impact the Railroad's operations and/or support the Railroad's substructure shall be designed and constructed per current Railroad Guidelines for Temporary Shoring.
8. All demolition within the Railroad's right of way and/or demolition that may impact the Railroad's tracks or operations shall be in compliance with the Railroad's Demolition Guidelines.
9. Railroad requirements do not allow work within 20 feet of track centerline when a train passes the work site and all personnel must clear the area within 25 feet of the track centerline and secure all equipment.
10. All proposed clearances shall be verified before project closure.
11. Railroad Mile Post: 83.36. Substation: Tracy. Latitude: 37°44'21". Longitude: 121°24'36".
12. Temporary Construction Closures, including network clearances, shall comply with the values shown below:

Temporary Vertical Clearance	Temporary Horizontal Clearance
11'-0"	8'-0"

(To existing beams used as temporary splices)

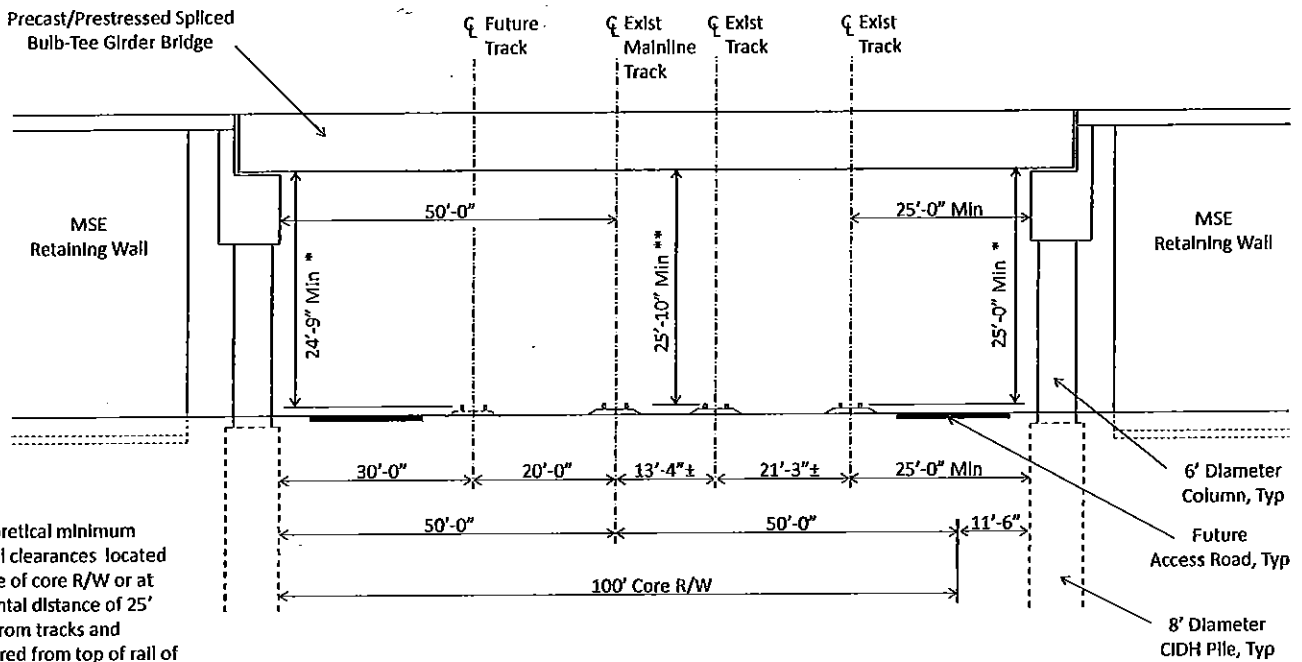
LEGEND:

- ① Field bridge number, year completed, and "111A Street End, Tracy Overhead"
- ② Architectural treatment and shows, see "Architectural Details" sheets
- ③ Approach Sub Type M305 (Mod)
- Indicates existing structure
- Indicates new structure
- Indicates retaining wall
- Indicates point of minimum vertical clearance
- Decorative street lighting, see "Street Lighting Plan" sheets

90% PRELIMINARY, NOT FOR CONSTRUCTION

dh drake hagian
 CIVIL ENGINEERING
 1110 ST EAST TRACY OVERHEAD
 GENERAL PLAN
 S-1
 SHEET 140
 OF 178 SHEETS

11th Street Bridge Replacement Project In City of Tracy



* Theoretical minimum vertical clearances located at edge of core R/W or at horizontal distance of 25' away from tracks and measured from top of rail of the nearest track.

** Actual minimum vertical clearance above existing tracks.

PERMANENT CLEARANCES ELEVATION - Perpendicular To Tracks No Scale

EXHIBIT A-2

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Legal Descriptions

EXHIBIT "A" -2
UPRR RIGHT-OF-WAY EASEMENT

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SOUTHWEST ¼ OF SECTION 22 AND THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 11, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED FOR RECORD OCTOBER 30, 1991 IN BOOK 18 OF PARCEL MAPS AT PAGE 20, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 89 DEGREES 34 MINUTES 34 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 11 AND IT'S EASTERLY EXTENSION, 126.70 FEET TO A POINT; THENCE SOUTH 78 DEGREES 05 MINUTES 11 SECONDS EAST, 145.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 07 SECONDS EAST, 444.14 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE SOUTH 64 DEGREES 47 MINUTES 15 SECONDS WEST ALONG SAID SOUTHEASTERLY RIGHT OF WAY, 353.79 FEET TO A POINT; THENCE NORTH 89 DEGREES 37 MINUTES 07 SECONDS WEST, 246.49 FEET TO A POINT; THENCE SOUTH 64 DEGREES 47 MINUTES 14 SECONDS WEST, 13.55 FEET TO A POINT; THENCE NORTH 78 DEGREES 05 MINUTES 11 SECONDS WEST, 146.38 FEET TO A POINT; THENCE NORTH 89 DEGREES 37 MINUTES 07 SECONDS WEST, 260.44 FEET TO A POINT; THENCE NORTH 89 DEGREES 36 MINUTES 38 SECONDS WEST, 68.63 FEET TO A POINT; THENCE NORTH 89 DEGREES 35 MINUTES 33 SECONDS WEST, 68.00 FEET TO A POINT; THENCE SOUTH 87 DEGREES 29 MINUTES 39 SECONDS WEST, 86.98 FEET TO A

POINT ON THE NORTHWESTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST ALONG SAID NORTHWESTERLY RIGHT OF WAY, 479.68 FEET TO A POINT ON THE WEST LINE OF THAT CERTAIN STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF TRACY FOR STORM DRAIN RIGHT OF WAY PURPOSES, RECORDED OCTOBER 10, 1990 AS INSTRUMENT NO. 90100828, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 01 DEGREES 51 MINUTES 47 SECONDS WEST ALONG SAID WEST LINE, 0.75 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST LINE ALONG A CURVE TO THE SOUTH, HAVING A RADIUS OF 949.00 FEET, A CENTRAL ANGLE OF 00 DEGREES 53 MINUTES 50 SECONDS, AN ARC LENGTH OF 14.86 FEET AND A CHORD BEARING SOUTH 01 DEGREES 51 MINUTES 47 SECONDS WEST, 14.86 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST LINE SOUTH 00 DEGREES 20 MINUTES 06 SECONDS WEST, 28.72 FEET TO A POINT; THENCE SOUTH 89 DEGREES 34 MINUTES 34 SECONDS EAST ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 11, 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.26 ACRES, MORE OR LESS.

EXHIBIT "A" -2
TEMPORARY CONSTRUCTION EASEMENT
"N"

AN EASEMENT FOR TEMPORARY CONSTRUCTION STAGING PURPOSES,
OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE SOUTHWEST ¼ OF SECTION 22, TOWNSHIP 2
SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 11, AS SHOWN ON THAT
CERTAIN PARCEL MAP, FILED FOR RECORD OCTOBER 30, 1991 IN BOOK 18 OF
PARCEL MAPS AT PAGE 20, SAN JOAQUIN COUNTY RECORDS; THENCE
SOUTH 89 DEGREES 34 MINUTES 34 SECONDS EAST ALONG THE SOUTH LINE
OF SAID LOT 11 AND IT'S EASTERLY EXTENSION, 126.70 FEET TO A POINT;
THENCE SOUTH 78 DEGREES 05 MINUTES 11 SECONDS EAST, 48.70 FEET TO A
POINT; THENCE NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST, 33.14
FEET TO A POINT; THENCE NORTH 25 DEGREES 12 MINUTES 23 SECONDS
WEST, 39.89 FEET TO A POINT; THENCE NORTH 64 DEGREES 47 MINUTES 37
SECONDS EAST, 238.19 FEET TO A POINT; THENCE NORTH 01 DEGREES 13
MINUTES 58 SECONDS EAST, 122.99 FEET TO A POINT ON THE
NORTHWESTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT RIGHT OF
WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE SOUTH 64
DEGREES 47 MINUTES 15 SECONDS WEST ALONG SAID NORTHWESTERLY
RIGHT OF WAY, 513.76 FEET TO A POINT ON THE WEST LINE OF THAT
CERTAIN STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF TRACY FOR
STORM DRAIN RIGHT OF WAY PURPOSES, RECORDED OCTOBER 10, 1990 AS

INSTRUMENT NO. 90100828, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 01 DEGREES 51 MINUTES 47 SECONDS WEST ALONG SAID WEST LINE, 0.75 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST LINE ALONG A CURVE TO THE SOUTH, HAVING A RADIUS OF 949.00 FEET, A CENTRAL ANGLE OF 00 DEGREES 53 MINUTES 50 SECONDS, AN ARC LENGTH OF 14.86 FEET AND A CHORD BEARING SOUTH 01 DEGREES 51 MINUTES 47 SECONDS WEST, 14.86 FEET TO A POINT; THENCE CONTINUING ALONG SAID WEST LINE SOUTH 00 DEGREES 20 MINUTES 06 SECONDS WEST, 28.72 FEET TO A POINT; THENCE SOUTH 89 DEGREES 34 MINUTES 34 SECONDS EAST ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 11, 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.21 ACRES, MORE OR LESS.

EXHIBIT "A" -2
TEMPORARY CONSTRUCTION EASEMENT
"S"

AN EASEMENT FOR TEMPORARY CONSTRUCTION STAGING PURPOSES,
OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 2
SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 11, AS SHOWN ON
THAT CERTAIN PARCEL MAP, FILED FOR RECORD OCTOBER 30, 1991 IN
BOOK 18 OF PARCEL MAPS AT PAGE 20, SAN JOAQUIN COUNTY RECORDS;
THENCE NORTH 89 DEGREES 34 MINUTES 34 SECONDS WEST, ALONG THE
WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 11, 60.00 FEET TO
A POINT ON THE WEST LINE OF THAT CERTAIN STRIP OF LAND DESCRIBED
IN DEED TO THE CITY OF TRACY FOR STROM DRAIN RIGHT OF WAY
PURPOSES, RECORDED OCTOBER 10, 1990 AS INSTRUMENT NO. 90100828,
SAN JOAQUIN COUNTY RECORDS; THENCE ALONG SAID WEST LINE,
NORTH 00 DEGREES 20 MINUTES 06 SECONDS EAST, 28.72 FEET TO A POINT;
THENCE CONTINUING ALONG SAID WEST LINE, ALONG A CURVE TO THE
NORTH HAVING A RADIUS OF 949.00 FEET, A CENTRAL ANGLE OF 00
DEGREES 53 MINUTES 50 SECONDS, AN ARC LENGTH OF 14.86 FEET AND A
CHORD BEARING NORTH CONTINUING ALONG SAID WEST LINE, 01 ^{NORTH}
DEGREES 51 MINUTES 47 SECONDS EAST, 14.86 FEET TO A POINT; THENCE
NORTH 01 DEGREES 51 MINUTES 47 SECONDS EAST, 0.75 FEET TO A POINT
ON THE NORTHWESTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT

RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE SOUTH 64 DEGREES 47 MINUTES 15 SECONDS WEST ALONG SAID NORTHWESTERLY LINE , 479.68 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 87 DEGREES 29 MINUTES 39 SECONDS EAST, 86.98 FEET TO A POINT; THENCE SOUTH 89 DEGREES 35 MINUTES 33 SECONDS EAST, 68.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 36 MINUTES 38 SECONDS EAST, 68.63 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 07 SECONDS EAST, 260.44 FEET TO A POINT; THENCE SOUTH 78 DEGREES 05 MINUTES 11 SECONDS EAST, 146.38 FEET TO A POINT; THENCE NORTH 64 DEGREES 47 MINUTES 14 SECONDS EAST, 13.55 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 07 SECONDS EAST, 246.49 FEET TO A POINT ON A POINT ON THE SOUTHEASTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE SOUTH 64 DEGREES 47 MINUTES 15 SECONDS WEST ALONG SAID SOUTHEASTERLY LINE, 232.70 FEET TO A POINT; THENCE NORTH 84 DEGREES 34 MINUTES 54 SECONDS WEST, 490.64 FEET TO A POINT; THENCE SOUTH 64 DEGREES 47 MINUTES 15 SECONDS WEST, 445.76 FEET TO A POINT; THENCE NORTH 25 DEGREES 12 MINUTES 45 SECONDS WEST, 149.99 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST, ALONG SAID NORTHWESTERLY RIGHT OF WAY, 309.76 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.80 ACRES, MORE OR LESS.

EXHIBIT "A" -2
TEMPORARY CONSTRUCTION EASEMENT
"E"

AN EASEMENT FOR TEMPORARY CONSTRUCTION STAGING PURPOSES,
OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE SOUTHWEST ¼ OF SECTION 22, TOWNSHIP 2
SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 11, AS SHOWN ON
THAT CERTAIN PARCEL MAP, FILED FOR RECORD OCTOBER 30, 1991 IN
BOOK 18 OF PARCEL MAPS AT PAGE 20, SAN JOAQUIN COUNTY RECORDS;
THENCE SOUTH 89 DEGREES 34 MINUTES 34 SECONDS EAST ALONG THE
SOUTH LINE OF SAID LOT 11 AND ITS EASTERLY EXTENSION, 126.70 FEET
TO A POINT; THENCE SOUTH 78 DEGREES 05 MINUTES 11 SECONDS EAST,
145.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 07
SECONDS EAST, 96.94 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE
NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST, 66.59 FEET TO A POINT;
THENCE SOUTH 89 DEGREES 34 MINUTES 34 SECONDS EAST, 346.66 FEET TO
A POINT ON THE SOUTHEASTERLY LINE OF THE 400 FOOT CONGRESSIONAL
GRANT RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY;
THENCE SOUTH 64 DEGREES 47 MINUTES 15 SECONDS WEST ALONG SAID
SOUTHEASTERLY RIGHT OF WAY, 65.99 FEET TO A POINT; THENCE NORTH
89 DEGREES 37 MINUTES 07 SECONDS WEST, 347.20 FEET TO THE POINT OF
BEGINNING.

CONTAINING 0.23 ACRES, MORE OR LESS.

EXHIBIT "A" -2
ROADWAY RIGHT OF WAY AND SLOPE EASEMENT
RELINQUISHMENT

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH,
RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A (ROADWAY RIGHT OF WAY)

**BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY
LINE OF ELEVENTH STREET, AS DESCRIBED IN THE DEED TO THE CITY OF
TRACY RECORDED APRIL 27, 1989, SERIES 89-036875, SAN JOAQUIN COUNTY
RECORDS, WITH THE NORTHWESTERLY RIGHT OF WAY LINE OF THE
SOUTHERN PACIFIC RAILROAD (400' WIDE); THENCE ALONG SAID
NORTHWESTERLY RIGHT OF WAY LINE, SOUTH 64 DEGREES 47 MINUTES 57
SECONDS WEST, 2.16 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE,
SOUTH 87 DEGREES 38 MINUTES 19 SECONDS EAST, 376.64 FEET; THENCE
NORTHEASTERLY ALONG THE ARC OF A 111.00 FOOT RADIUS CURVE TO
THE LEFT, THE CENTER OF WHICH CURVE BEARS NORTH 02 DEGREES 54
MINUTES 37 SECONDS WEST, THROUGH A CENTRAL ANGLE OF 64 DEGREES
41 MINUTES 02 SECONDS, AN ARC DISTANCE OF 125.31 FEET TO THE
SOUTHERLY RIGHT OF WAY LINE OF ELEVENTH STREET AS SHOWN ON
STATE OF CALIFORNIA DIVISION OF HIGHWAYS, DISTRICT X PROPERTY
MAP, DRAWING NUMBER B-239, DATED SEPTEMBER 1958; THENCE ALONG
SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FOUR COURSES:**

1) NORTH 89 DEGREES 34 MINUTES 14 SECONDS WEST, 270.60 FEET; 2) SOUTH 00 DEGREES 19 MINUTES 34 SECONDS WEST, 26.75 FEET; 3) NORTH 89 DEGREES 40 MINUTES 26 SECONDS WEST, 68.00 FEET; AND 4) SOUTH 87 DEGREES 24 MINUTES 46 SECONDS WEST, 81.48 FEET TO THE AFOREMENTIONED SOUTHERLY LINE OF ELEVENTH STREET PER THE DEED TO THE CITY OF TRACY (89-036875); THENCE ALONG SAID SOUTHERLY LINE, SOUTH 64 DEGREES 47 MINUTES 57 SECONDS WEST, 56.60 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.503 ACRES, MORE OR LESS.

PARCEL B (SLOPE EASEMENT)

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF ELEVENTH STREET, AS DESCRIBED IN THE DEED TO THE CITY OF TRACY RECORDED, APRIL 27, 1989, SERIES 89-036875, SAN JOAQUIN COUNTY RECORDS, WITH THE NORTHWESTERLY RIGHT OF WAY LINE OF SOUTHERN PACIFIC RAILROAD (400' WIDE); THENCE ALONG SAID NORTHWESTERLY RIGHT OF WAY LINE, SOUTH 64 DEGREES 47MINUTES 57 SECONDS WEST, 2.16 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE LEAVING SAID RIGHT OF WAY LINE, SOUTH 87 DEGREES 38 MINUTES 19 SECONDS EAST, 376.64 FEET; THENCE NORTHEASTERLY, ALONG THE ARC OF A 111.00 FOOT RADIUS CURVE TO THE LEFT, THE CENTER OF WHICH CURVE BEARS NORTH 02 DEGREES 54 MINUTES 37 SECONDS WEST, THROUGH A CENTRAL ANGLE OF 64 DEGREES 41 MINUTES 02 SECONDS, AN ARC DISTANCE OF 125.31 FEET, TO THE SOUTHERLY RIGHT OF WAY LINE OF ELEVENTH STREET, AS SHOWN ON STATE OF CALIFORNIA DIVISION OF HIGHWAYS, DISTRICT X PROPERTY MAP, DRAWING NUMBER B-239, DATED SEPTEMBER 1958; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 89 DEGREES 34 MINUTES 14 SECONDS EAST, 5.37 FEET; THENCE LEAVING SAID SOUTHERLY RIGHT OF WAY LINE,

SOUTHWESTERLY ALONG THE ARC OF A 116.00 FOOT RADIUS CURVE TO THE RIGHT, THE CENTER OF WHICH CURVE BEARS NORTH 68 DEGREES 35 MINUTES 15 SECONDS WEST, THROUGH A CENTRAL ANGLE OF 65 DEGREES 47 MINUTES 31 SECONDS, AN ARC DISTANCE OF 133.20 FEET; THENCE NORTH 87 DEGREES 38 MINUTES 19 SECONDS WEST, 386.45 FEET TO THE AFOREMENTIONED NORTHWESTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD; THENCE ALONG SAID NORTHWESTERLY RIGHT OF WAY LINE, NORTH 64 DEGREES 47 MINUTES 57 SECONDS EAST, 10.81 FEET TO THE ACTUAL POINT OF BEGINNING.

CONTAINING 0.059 ACRES, MORE OR LESS.

EXHIBIT A-3

To Public Highway Overpass Crossing
Agreement

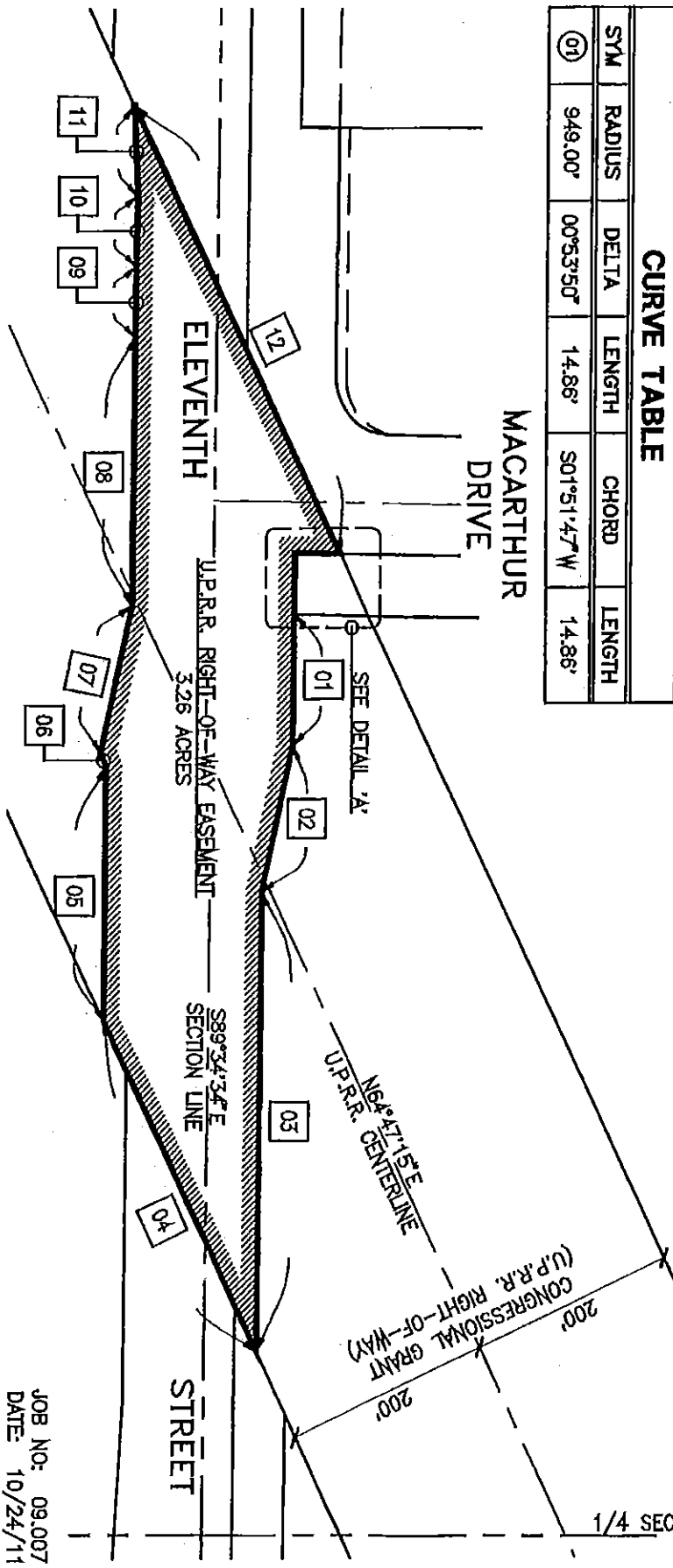
Cover Sheet for the
Survey Prints

LINE TABLE

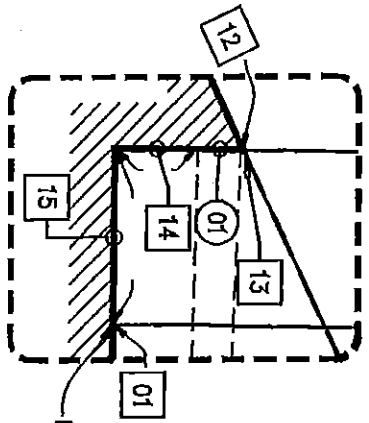
SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	S89°34'34"E	126.70'	09	N89°36'38"W	68.63'
02	S78°05'11"E	145.00'	10	N89°35'33"W	68.00'
03	S89°37'07"E	444.14'	11	S87°29'39"W	86.98'
04	S64°47'15"W	353.79'	12	N64°47'15"E	479.68'
05	N89°37'07"W	246.49'	13	S01°51'47"W	0.76'
06	S64°47'14"W	13.55'	14	S00°20'06"W	28.72'
07	N78°05'11"W	146.38'	15	S89°34'34"E	60.00'
08	N89°37'07"W	260.44'	-		

CURVE TABLE

SYM	RADIUS	DELTA	LENGTH	CHORD	LENGTH
01	949.00'	00°53'50"	14.86'	S01°51'47"W	14.86'



DETAIL 'A'



SCALE: 1"=150'

JOB NO: 09.007
DATE: 10/24/11

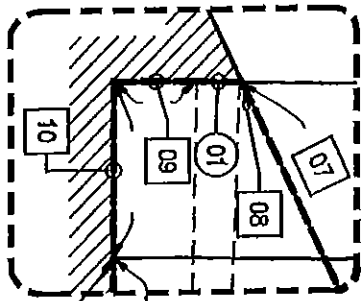
LINE TABLE

SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	S89°34'34"E	126.70'	06	N01°13'58"E	122.99'
02	S78°05'11"E	48.70'	07	S64°47'15"W	513.76'
03	N64°47'15"E	33.14'	08	S01°51'47"W	0.75'
04	N25°12'23"W	39.89'	09	S00°20'06"W	28.72'
05	N64°47'37"E	238.19'	10	S89°34'34"E	60.00'

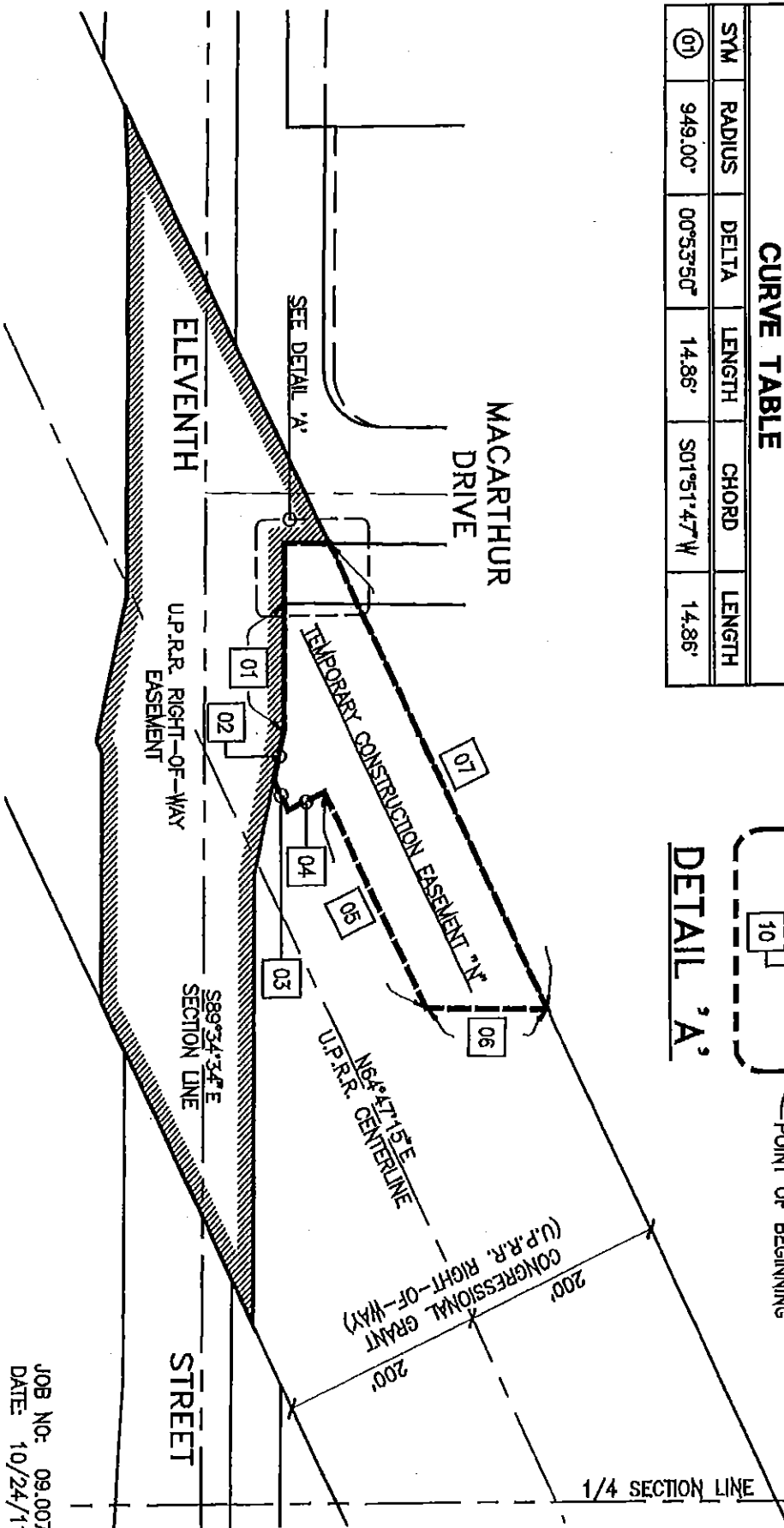
CURVE TABLE

SYM	RADIUS	DELTA	LENGTH	CHORD	LENGTH
01	949.00'	00°53'50"	14.86'	S01°51'47"W	14.86'

DETAIL 'A'



SCALE: 1"=150'

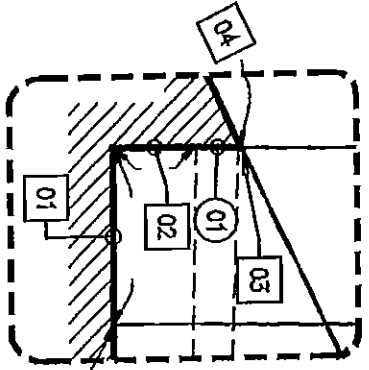


JOB NO: 09.007
DATE: 10/24/11

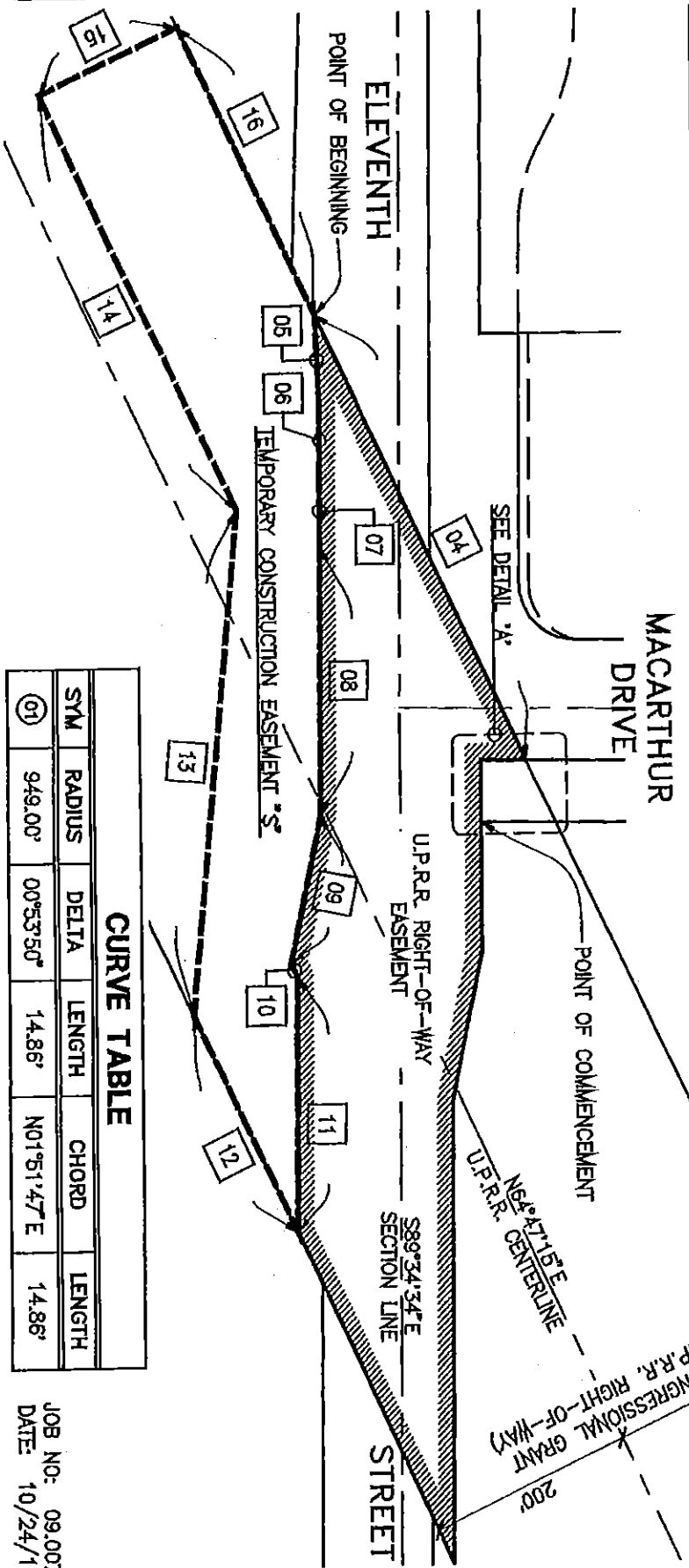
LINE TABLE

SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	N89°34'34" W	60.00'	09	S78°05'11" E	146.38'
02	N00°20'06" E	28.72'	10	N64°47'14" E	13.55'
03	N01°51'47" E	0.75'	11	S89°37'07" E	246.49'
04	S64°47'15" W	479.68'	12	S64°47'15" W	232.70'
05	N87°29'39" E	86.98'	13	N84°34'54" W	490.64'
06	S89°35'33" E	68.00'	14	S64°47'15" W	445.76'
07	S89°36'38" E	68.63'	15	N25°12'45" W	149.99'
08	S89°37'07" E	260.44'	16	N64°47'15" E	309.76'

DETAIL 'A'



SCALE: 1"=150'

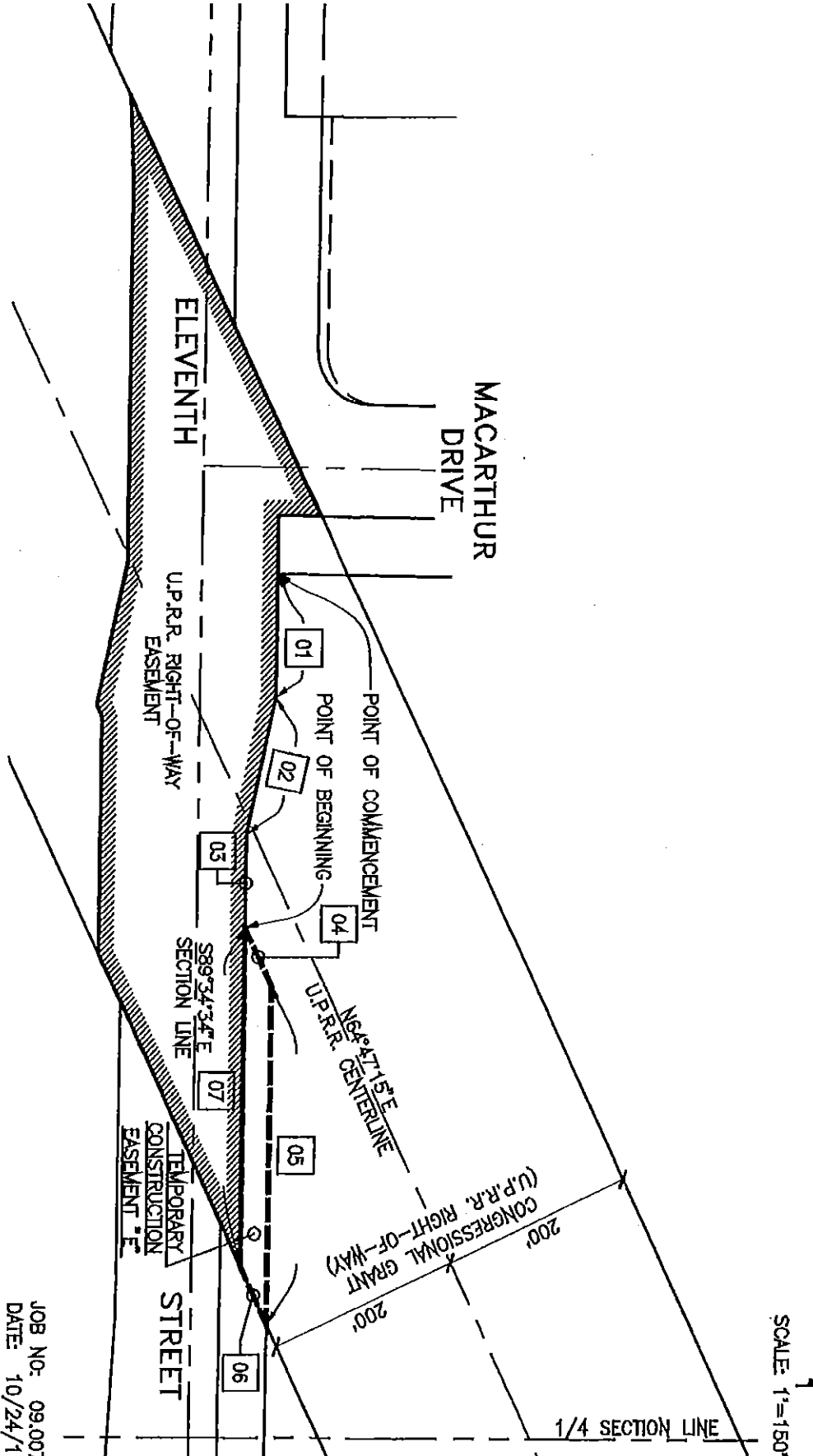


CURVE TABLE

SYM	RADIUS	DELTA	LENGTH	CHORD	LENGTH
01	949.00'	00°53'50"	14.86'	N01°51'47" E	14.86'

JOB NO: 09.007
DATE: 10/24/11

LINE TABLE					
SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	S89°34'34"E	126.70'	06	S89°34'34"E	346.66'
02	S78°05'11"E	145.00'	06	S64°47'15"W	65.99'
03	S89°37'07"E	96.94'	07	N89°37'07"W	347.20'
04	N64°47'15"E	66.59'	-		



JOB NO: 09.007
 DATE: 10/24/11

EXHIBIT B

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1 - CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to the Structure, provided that such attachments shall comply with City's specifications and will not interfere with the City's use of the Crossing Area.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2 - CONSTRUCTION OF STRUCTURE

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, the Railroad's Coordination Requirements set forth in Exhibit D and other guidelines furnished by the Railroad.

- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the City and/or the Contractor.

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

SECTION 5 - MAINTENANCE AND REPAIRS

- A. The City, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure, including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or overpainting involving the Structure.
- B. The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure.

SECTION 6 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, the City shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. **Flagging.**
- (i) If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any

track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

- (ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
- (iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

- D. **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse and, to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- E. **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering-Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the City shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 7 - INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the Structure has been completed.

SECTION 8 - OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 9 - BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

SECTION 10 - REMEDIES FOR BREACH OR NONUSE

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Structure and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Structure upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 11 - MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

To Public Highway Overpass Crossing
Agreement

Railroad's Material and Force Account Estimate

EXHIBIT C

RAILROAD FLAGGING & ENGINEERING/INSPECTION ESTIMATE

TO PUBLIC ROAD CROSSING GRADE SEPARATION AGREEMENT

DESCRIPTION OF WORK: Perform flagging and inspection services for the City of Tracy for the reconstruction of the 11th Street Overpass at Railroad Mile Post 83.27 on the Tracy Subdivision in Tracy, San Joaquin County, California.

LOCATION: Tracy, San Joaquin County, California

DATE: July 12, 2013

DESCRIPTION	LABOR	MATERIAL	AUTHORITY TOTAL
FLAGGING (at \$1,300/day) 150 days	\$180,000		\$195,000
ENGINEERING/ INSPECTION	\$10,000		<u>\$10,000</u>
TOTAL PROJECT			<u>\$205,000</u>

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OF AMOUNT OF MATERIAL OR LABOR REQUIRED, THE AUTHORITY WILL BE BILLED FOR ACTUAL COST AT THE CURRENT RATES EFFECTIVE THEREOF.

EXHIBIT D

To Public Highway Overpass Crossing
Agreement

Railroad's Coordination Requirements

EXHIBIT D

TO PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

RAILROAD COORDINATION REQUIREMENTS

1.01 DEFINITIONS

Agreement:	Agreement that has been signed, or will be signed, between Railroad and Agency covering the construction and maintenance of the Project.
Agency:	City of Tracy
AREMA:	American Railway Engineering and Maintenance-of-way Association
Contractor:	The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.
MUTCD:	Manual on Uniform Traffic Control Devices
Project:	11 th Street Overpass
Railroad:	Union Pacific Railroad Company
Railroad Project Representative:	Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)
Railroad MTM Representative:	Railroad's Manager of Track Maintenance for this Project (see Section 1.03)
Requirements:	The Railroad Coordination Requirements set forth in this Exhibit.

1.02 DESCRIPTION

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

PEGGY YGBUHAY, MIPP
Union Pacific Railroad
9451 Atkinson St
Roseville, CA 95747
916- 789-5152
pjlyda@up.com

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

DENNIS W. MAGURES, MTM
Union Pacific Railroad
833 East 8th St.
Stockton, CA 95206
209-546-7333 (o) / 916-508-1034 (m)
dwmagure@up.com

1.04 PLANS / SPECIFICATIONS

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until

final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

1.05 UTILITIES AND FIBER OPTICS

- A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.
- B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.
- C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.
- D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

1.06 GENERAL

- A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.
- B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.
- C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

1.07 RAILROAD OPERATIONS

- A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C
- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.
- C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

1. **Conditional Work Window:** A period of time in which Railroad's operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.
2. **Absolute Work Window:** A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.

1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as Exhibit E, or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.
- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
 1. Description of work to be done.
 2. The days and hours that work will be performed.
 3. The exact location of the work and proximity to the tracks.
 4. The type of window and amount of time requested.
 5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within 25 feet of any track center line. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative, the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

1.09 INSURANCE

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Agency that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

1.10 RAILROAD SAFETY ORIENTATION

All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on Railroad property. This orientation is available at www.contractororientation.com. This course is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.

1.11 COOPERATION

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

1.12 CONSTRUCTION CLEARANCES

The Contractor shall abide by the twenty-one (21) foot temporary vertical construction clearance defined in section 4.4.1.1 and twelve (12) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

1.13 SUBMITTALS

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3.5 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.5 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.
- C. As Built Submittals shall be submitted per Section 3.6 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.
- B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the



Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

**1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE,
RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR**

- A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Agency for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

1.16 RAILROAD REPRESENTATIVES

- A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad at the expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:
 - 1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25 feet, measured horizontally from centerline, of any track on which trains may operate.
 - 2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
 - 3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
 - 4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.
- B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

1.17 WALKWAYS REQUIRED

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' - 6" horizontal from curved track.

1.18 COMMUNICATIONS AND SIGNAL LINES

If required, the Railroad, at Agency's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

1.19 TRAFFIC CONTROL

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

1.20 CONSTRUCTION EXCAVATIONS;CALL BEFORE YOU DIG NUMBER

- A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.
- C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

1.21 RAILROAD FLAGGING

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of Railroad's operations, employees and equipment. Contractor shall comply with all other requirements regarding flagging services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

The estimated pay rate for each flag person is \$1,200.00 per day for a(n) 8-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).

1.22 CLEANING OF RIGHT-OF-WAY

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.

EXHIBIT E

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement

Folder No.: 2688-20

UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2013, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the City of Tracy ("City") to perform work relating to the reconstruction and widening of the 11th Street Overpass grade-separated public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 83.36 on the Railroad's Tracy Subdivision, (DOT No. 753069A), in or near Tracy, San Joaquin County, California, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Prints marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between the Railroad and the City of Tracy. (*Date of Contract*)

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is



limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in Exhibit B, the Insurance Requirements contained in Exhibit C, and the Minimum Safety Requirements contained in Exhibit D, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

DENNIS W. MAGURES MGR TRACK MNTCE 833 EAST 8 TH ST STOCKTON, CA 95206 209-546-7333

BRIAN W. QUALLS MGR SIGNAL MNTCE 833 EAST 8 TH ST. STOCKTON, CA 95206 209-642-1032

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of Exhibit B. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2688-20*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such

noncompliance.

ARTICLE 11 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____

Contracts

(Name of Contractor)

By _____

Printed Name: _____

Title: _____

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **COMMERCIAL GENERAL LIABILITY INSURANCE**: Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **BUSINESS AUTOMOBILE COVERAGE INSURANCE**: Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**: Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **RAILROAD PROTECTIVE LIABILITY INSURANCE**: Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. **UMBRELLA OR EXCESS INSURANCE**: If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. **POLLUTION LIABILITY INSURANCE**: Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. CLOTHING

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
- ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

- i. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
 - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
 - v. Before stepping over or crossing tracks, look in both directions first.
 - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT F

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Form of Highway Grant

After Recording, Return To:

Space Above This Line for County Recorder's Use

UPRR Folder No.: _____

HIGHWAY GRANT

THIS INSTRUMENT is made this ____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, formerly known as Southern Pacific Company, a Delaware corporation (the "Grantor"), and the **NAME OF POLITICAL BODY**, a municipal corporation of the State of Name of State (the "Grantee"):

1. Grantor, for and in consideration of the sum of **CONVEYANCE FEE DOLLARS (\$Fee)** and in consideration of the mutual covenants contained herein, hereby grants to Grantee, its successors and assigns, subject to the conditions herein contained, the right to construct, use, maintain, repair, reconstruct and renew a public highway bridge over the portion of Grantor's property and trackage described in **Exhibit A**, attached hereto and hereby made a part hereof, with such property hereinafter referred to as the "Property" and being located near Grantor's Mile Post Mile Post, DOT No. DOT Number, on its Name of Subdivision, in or near City, County & State.

2. This grant is subject to (i) the terms and conditions of a separate agreement between the Grantor and Grantee dated _____, covering
(Date of C&M Agreement)
Grantee's Construction Project Number Project Number and (ii) all prior and outstanding licenses, leases, easements, restrictions, conditions, covenants, liens and claims of title which may affect the Property, whether recorded or unrecorded, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. This grant is made subject to the prior and continuing right and obligation of Grantor, its successors and assigns, to use all the Property in the performance of its duty as a common carrier, and there is reserved unto Grantor, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain, repair, use and operate existing and future transportation, communication and pipeline facilities

and appurtenances in, upon, over, under, across and along the Property. Grantor may move equipment of all types on, along and over the grant area.

4. If the Property, or any portion thereof, shall cease to be needed for public highway purposes, then and in that event, the rights herein granted shall, as to such portion(s), thereupon cease and terminate and Grantor, its successors and assigns, shall resume possession thereof of such portion(s) of the Property. In such circumstances, the Grantee, if so requested by Grantor, shall execute and deliver to Grantor a quitclaim and release document in recordable form that releases the grant of rights contained herein.

IN WITNESS WHEREOF, the Grantor and Grantee have each duly executed this instrument as of the date first herein written.

ATTEST:

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

BEVERLY J. KUBAT
Assistant Secretary

(Seal)

By _____
DANIEL A. LEIS
General Director – Real Estate

Accepted: _____
NAME OF GRANTEE

By _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for said County and State, personally appeared **Daniel A. Leis** and **Beverly J. Kubat** who are the *General Director – Real Estate* and the *Assistant Secretary*, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

{(Affix Seal Here)}

(Signature of Notary of the Public)
Notary Public for and in said State

My commission expires: _____

ACKNOWLEDGMENT

STATE OF STATE)
) ss:
COUNTY OF NAME OF COUNTY)

On this ____ day of _____, 200 ____, before me, a Notary Public in and for said County and State, personally appeared

(Name of Individual Executing Agreement for the Political Body)

who is the _____
(Title of Individual Executing Agreement for the Political Body)

of the Name of Political Body, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Signature of Notary of the Public)
Notary Public for and in said State

†(Affix Seal Here)†

My commission expires: _____

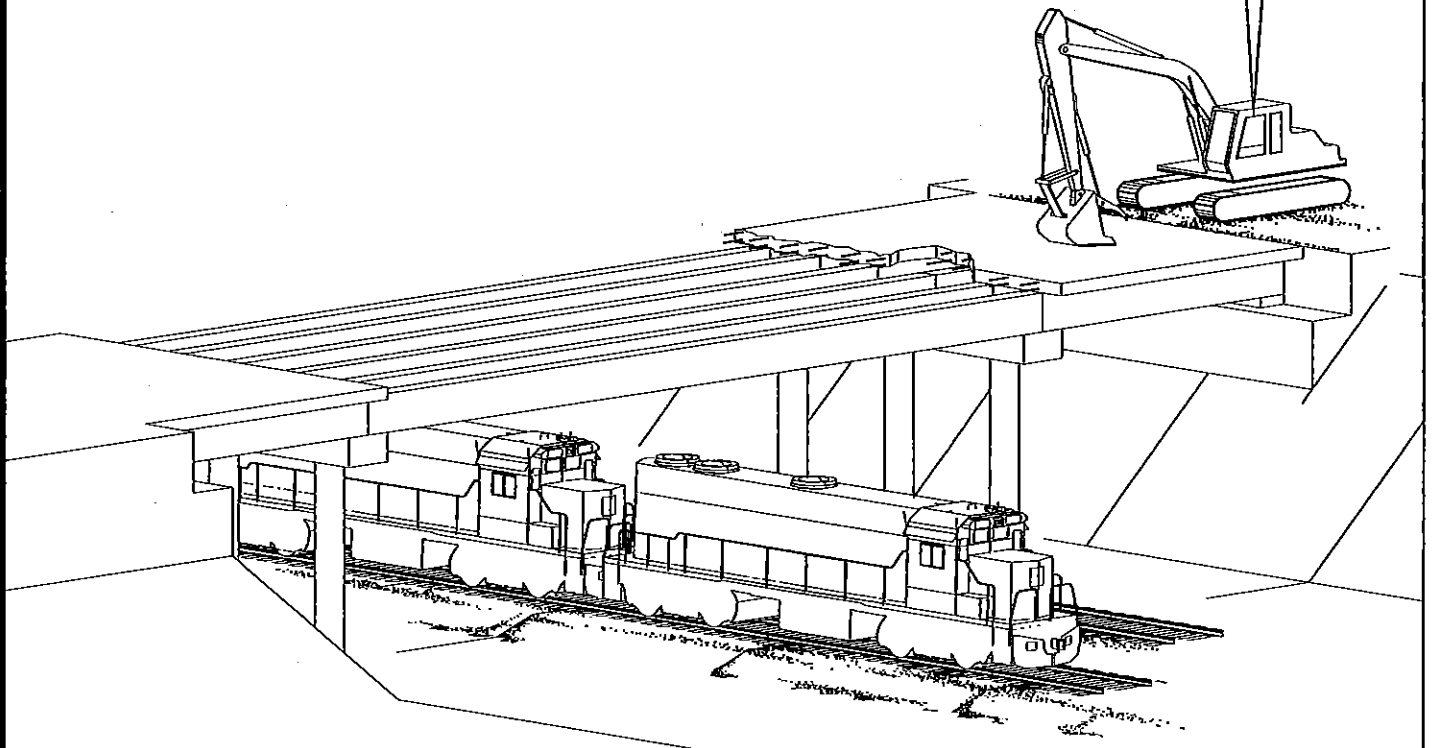
EXHIBIT G

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Guidelines for Preparation of a Bridge
Demolition and Removal Plan for Structures
over Railroad

GUIDELINES FOR PREPARATION OF A BRIDGE DEMOLITION AND REMOVAL PLAN FOR STRUCTURES OVER RAILROAD

STOP ALL WORK
DURING RAIL OPERATIONS



UNION PACIFIC RAILROAD

OFFICE OF CHIEF ENGINEER DESIGN
1416 DODGE ST.
OMAHA, NE 68179

INDEX

ITEM	PAGE
I. General	1
II. Bridge Removal Plan	1
III. Procedure	3
IV. Track Protection	4
V. Cranes	5
VI. Cutting Torches	6
VII. Utilities	6
VIII. Hazardous Material	6
Appendix	7

I. GENERAL

- A. The Contractor's work shall in no way impede the train operations of the Union Pacific Railroad.
- B. The Contractor shall develop a work plan assuming that minimal track windows will be available.
- C. The Contractor shall be responsible for planning and executing all procedures necessary to remove the overhead bridge in a safe and controlled manner.
- D. The Railroad's tracks and property shall be protected at all times.
- E. The contractor shall ensure the area immediately adjacent to operational tracks shall remain free from stumble or like hazards to the ground Railroad personnel to prevent injuries. Open excavations shall be in accordance with current CE Drawing 106613 and shall be protected by appropriate fencing.
- F. The words "demolition" and "removal" will be used interchangeably.
- G. All removed materials shall be disposed of outside the Railroad right-of-way at no expense to the Railroad.
- H. No work is allowed within 50 feet of the nearest rail when trains pass the work site.
- I. Staged demolition of the portions of structure immediately adjacent to operational tracks will not jeopardize the integrity of the structure over said tracks until actual removal of the portion of the structure over the tracks is being done.
- J. A flagman is required when any work is performed within 25 feet of the nearest rail.
- K. No blasting will be permitted on Railroad's right-of-way.

II. BRIDGE REMOVAL PLAN

- A. The Contractor shall submit a complete Bridge Removal Plan to the Railroad. The Bridge Removal Plan shall include details, procedures and the sequence of staged removal of the bridge, including all steps necessary to remove the bridge in a safe and controlled manner.

- B. The Contractor shall submit to the Railroad; three (3) complete sets of the Bridge Removal Plan for review and comments. The Plan shall be sealed by a Civil or Structural Engineer registered in the state where the proposed demolition will take place. A minimum of three (3) weeks shall be allowed for the Railroad's review after the complete submittal is received. No removal operations will be permitted over the Railroad right of way until the submitted material has been reviewed and comments provided.
- C. Review and comment of the Removal Plan by the Railroad will not relieve the Contractor of the ultimate responsibility and liability for the demolition of the structure.
- D. The Removal Plan shall include the following:
- 1) Plan, elevation and location of the bridge, and the locations of any access roads needed for movement of the equipment. The as-built drawings may be used for the submittal provided the removal steps are clearly marked and legible.
 - 2) Indicate the position of all railroad tracks below the bridge and identify each track as mainline, siding, spur, etc.
 - 3) Bridge removal sequence and procedures for entire bridge including the staging for the removal of the superstructure and substructure.
 - 4) List type and number of equipment required and their locations during demolition operations.
 - 5) Locations and types of temporary supports, shoring or bracing required.
These members shall be designed to meet Union Pacific Railroad current standard drawing 106613 "General Shoring Requirements", "Guidelines for Design and Construction of Falsework for Structures Over Union Pacific Railroad", "Guidelines for Design and Construction of Shoring Adjacent to Active Railroad Tracks", and the appropriate local and national building and design code requirements.
 - 6) The proposed vertical and horizontal clearance from all tracks to the temporary and permanent supports. The minimum vertical and horizontal clearances shall be as per attached frame protection details.
 - 7) If any temporary supports interfere with the natural drainage along the Railroad right-of-way, a temporary drainage plan shall be submitted for review and comment prior to constructing temporary supports. The proposed drainage plan shall route all drainage away from the railroad tracks.

- 8) Details, limits, and locations of protective covers or other measures proposed to be used to protect the tracks. This includes any shields or other measures that will protect the tracks from falling debris during removal of the overhead bridge and from any debris rolling down the side slopes or otherwise coming into the area around the tracks which could affect train operations. Design loads, including impact loads, shall be noted. In addition equipment should be on site capable of removing debris and track shield from operational tracks.
- 9) All procedures necessary to remove the bridge in a safe and controlled manner. The estimated time for complete removal over the tracks shall be noted.
- 10) All overhead and underground utilities in the area affected by removal of the bridge shall be located on the drawings, including any fiber optic, railroad signal, and communication lines.
- 11) The location and details of track crossings required for moving of the equipment across the railroad tracks.
- 12) Limits of demolition of substructures.
- 13) Details of on-site fire suppression.

III. PROCEDURE

- A. During removal operations the remaining structure shall be stable during all stages of the removal operations.
- B. Prior to proceeding with bridge removal the sealing Civil or Structural Engineer, or his authorized representative working for the Contractor, shall inspect the temporary support shoring, including temporary bracing and protective coverings, for conformity with the working drawings. The Engineer shall certify in writing to the Railroad that the work is in conformance with the drawings and that the materials and workmanship are satisfactory. A copy of this certification shall be available at the site of work at all times.
- C. Coordinate the removal schedule with the Railroad. All the removal work within the track area shall be performed during the time windows when the trains are not passing the work site.
- D. All substructures shall be removed to at least 3 feet below the final finished grade or at least 2 feet below base of rail whichever is lower, unless otherwise specified by the Railroad.

- E. All debris and refuse resulting from the work shall be removed from the right of way by the contractor and the premises left in a neat and presentable condition.
- F. The work progress shall be reviewed and logged by the Contractor's Engineer. Should an unplanned event occur, the Contractor shall inform the Railroad and submit procedure to correct or remedy the occurrence.
- G. Preferably all demolition and beam removal shall be from above. In the case that the beams require removal from below, the beams may temporarily straddle the tracks. The following steps shall be taken:
 - 1) The work shall be scheduled with the Railroad's Service Unit Superintendent subject to the Railroad's operational requirements for continuous train operations. The beams removed in sufficient time for train passage.
 - 2) The tracks shall be protected and no equipment placed on the tracks.
 - 3) The beams shall be blocked and not come in contact with the tracks. Blocking shall not be placed on the tracks.
 - 4) The beams and all equipment will be moved a minimum of 15 feet from the nearest rail of the tracks when a train is passing.

IV. TRACK PROTECTION

- A. The track protective cover shall be constructed before beginning bridge removal work and may be supported by falsework or members of the existing structure. See the attached Track Shield Detail and Frame Protection Detail for additional requirements. Types of protective covers that may be acceptable methods for protecting the tracks are:
 - 1) A decking supported by the bridge or a suspended cover from the bridge above the track clearance envelope.
 - 2) A track shield cover over the tracks per the attached detail.
 - 3) A framed cover outside the track clearance envelope.
 - 4) A catcher box or loader bucket under decking and parapets overhanging the exterior girders.
- B. Construction equipment shall not be placed on the tracks unless tracks are protected.

- C. Temporary haul road crossings shall be either Section Timbers or Precast Concrete Panels. The type of crossing shall be determined by the Manager of Industry and Public Projects. Solid timbers or ballast with timber headers shall be used between multiple tracks. If temporary crossing is accessible to public crossing shall be protected with barricades or locked gates when contractor is not actively working at the site or weekends.
- D. Track protection is required for all equipment including rubber tired equipment operating within 25 ft. or over the tracks.

V. CRANES

- A. When cranes are operated near the tracks the following is required:
 - 1) Only cranes with the capacity to handle the loads may be used. Front end loaders and backhoes cannot be used to lift over the tracks.
 - 2) The Contractor shall verify that the foundations under the crane can support the loads.
 - 3) The size and material type of crane mats shall be submitted to the Railroad for review and comment. No mat substitution will be allowed. The mats shall be rigid and of sufficient capacity to distribute the crane loads and prevent tipping of the crane.
 - 4) Installation of temporary track crossings for equipment shall be scheduled with the Manager of Industry and Public Projects .
 - 5) Additional track protection is required when crossing with a crane. The protection methods shall be submitted to the Railroad for review and comment.
 - 6) Equipment shall not place outriggers on the tracks or ballast.
 - 7) Cranes shall not be placed within the track clearance envelope without flagman protection.

VI. CUTTING TORCHES

A. When a cutting torch is used near the tracks or any timber, the following steps shall be taken:

- 1) Fire suppression equipment is required on-site.
- 2) Do not use a torch over, between, or adjacent to the tracks unless a steel plate protective cover is used. Care shall be taken to make certain the use of a steel plate does not come in contact with the rails. See "Track Shield Details" for other requirements. Details of the shield shall be submitted to the Railroad for approval.
- 3) Wet the ties and other timber below the cutting area.
- 4) Monitor the work site for at least three hours after cutting for a smoldering fire.

B. Extensive overhead cutting will not be performed over the track area without the proper fire suppression equipment on-site and proper protection.

VII. UTILITIES

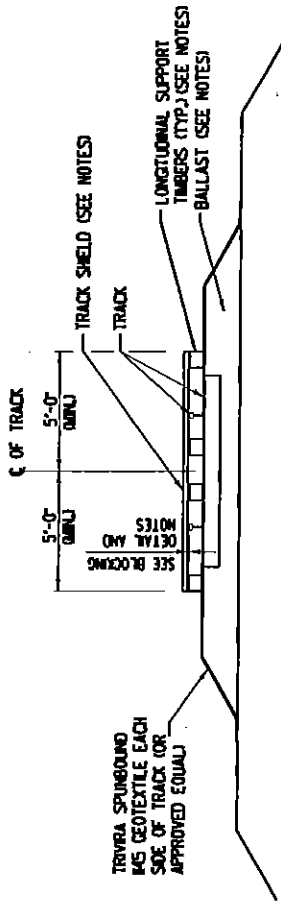
A. The demolition operations shall be planned such that the utility lines are operating safely at all times. The utility lines shall be protected if affected by demolition operations. All the work associated with utility lines should be coordinated by the contractor with the respective utility companies.

VIII. HAZARDOUS MATERIAL

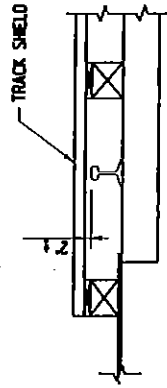
A. If any hazardous materials are found, provide material protection as specified in local hazardous material codes and immediately contact the Railroad.

APPENDIX

- GENERAL SHORING REQUIREMENTS
- LIVE LOAD PRESSURE DUE TO COOPER E80
- TRACK SHIELD DETAIL
- FRAME PROTECTION DETAILS, sheet 1 of 2
- FRAME PROTECTION DETAILS, sheet 2 of 2



**TRACK SHIELD DETAIL
FOR DEBRIS FALLING FROM BRIDGE DECK REMOVAL
(WHEN TRACK TIME WINDOW IS AVAILABLE)**



BLOCKING DETAIL

NOTES:

1. A FLAGMAN IS REQUIRED AT ALL TIMES DURING THE USE OF A TRACK SHIELD.
2. THE TRACK SHIELD SHALL BE DESIGNED BY THE CONTRACTOR AND SHALL BE OF SUFFICIENT STRENGTH TO SUPPORT THE ANTICIPATED LOADS, INCLUDING IMPACT. THE SHIELD SHALL PREVENT ANY MATERIALS, EQUIPMENT OR DEBRIS FROM FALLING ONTO THE RAILROAD TRACK. ADDITIONAL LAYERS OF MATERIALS SHALL BE FURNISHED AS NECESSARY TO PREVENT FINE MATERIALS OR DEBRIS FROM SIFTING DOWN UPON THE TRACK.
3. THE SHIELD SHOULD PREFERABLY BE PREFABRICATED AND FURNISHED WITH LIFTING HOOKS TO SIMPLY REMOVAL.
4. THE SHIELD SHALL BE OF SUFFICIENT STRENGTH TO SPAN BETWEEN ITS SUPPORTS WITHOUT BEARING UPON THE RAILS AND TO WITHSTAND DROPPING RUBBLE.
5. BEFORE REMOVAL, THE SHIELD SHALL BE CLEANED OF ALL DEBRIS AND FINE MATERIAL.
6. THE TRACK SHIELD SHALL EXTEND AT LEAST 20 FEET BEYOND THE LIMITS OF DEMOLITION TRANSVERSE TO THE EDGE OF THE BRIDGE.

7. LONGITUDINAL SUPPORT TIMBERS FOR THE SHIELD SHALL NOT EXTEND ABOVE THE TOP OF RAIL WHEN THE SHIELD IS REMOVED. BLOCKING FROM THE TOP OF RAIL TO THE BOTTOM OF THE SHIELD MAY BE ATTACHED TO THE SHIELD. REMAINING TIMBERS SHALL BE ANCHORED.
8. FOR TRAIN PASSAGE, THE RUBBLE SHALL BE REMOVED TO A MINIMUM OF 8' 6" FROM THE NEAREST RAIL AND TO AN ELEVATION NO HIGHER THAN THE TOP OF RAIL.
9. AT THE END OF THE DAY, THE RUBBLE SHALL BE REMOVED COMPLETELY TO A MINIMUM OF 10' 0" FROM THE NEAREST RAIL AND DOWN TO ORIGINAL GRADE.
10. CARE SHALL BE TAKEN TO NOT PLACE METAL ACROSS THE TRACK RAILS. RAILROAD COMMUNICATIONS ARE SENT THROUGH THE RAILS AND WILL BE DISRUPTED BY A SHORT BETWEEN RAILS.
11. DETAILS SHOWN APPLY FOR TIMBER TIES. SPECIAL DETAILS ARE REQUIRED FOR CONCRETE TIES.



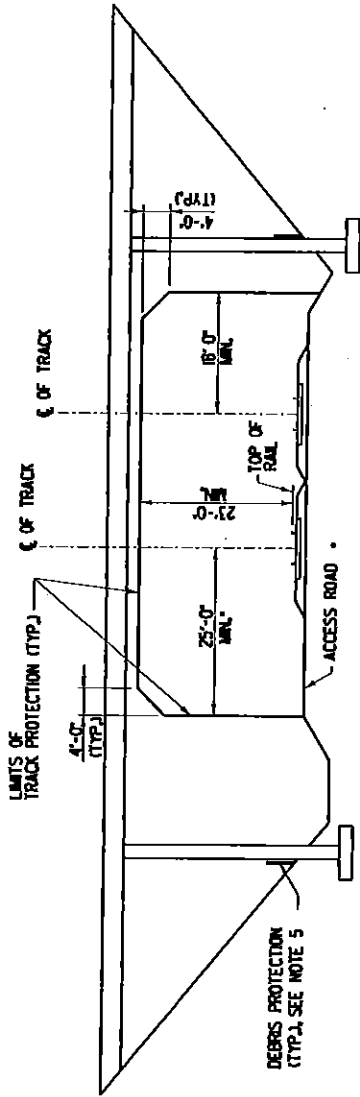
UNION PACIFIC RAILROAD

TRACK SHIELD DETAIL

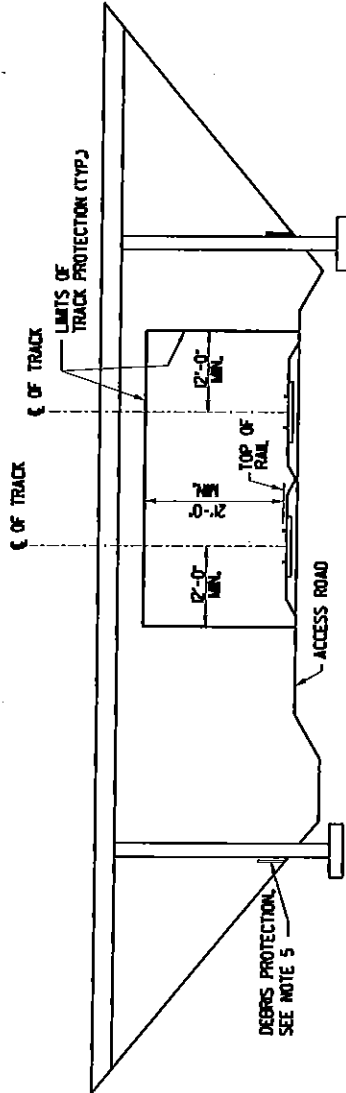
OFFICE OF CHIEF ENGINEER DESIGN

DATE: 3-31-98

SHEET 1 OF 1



BRIDGE ELEVATION
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION



BRIDGE ELEVATION
MINIMUM LIMITS OF PROTECTION FOR FRAME PROTECTION
(SPECIAL PERMISSION REQUIRED, SEE NOTE D)

NOTES:

1. THE STANDARD LIMITS OF PROTECTION NOTED ARE THE MIN. CLEARANCES ALLOWED WITHOUT SPECIAL PERMISSION FROM THE RAILROAD. THE REDUCED CLEARANCES NOTED MAY BE ALLOWED BY THE RAILROAD. SPECIAL PERMISSION FOR THE REDUCED CLEARANCES IS REQUIRED FROM THE RAILROAD SERVICE UNIT SUPERINTENDENT.
2. THE PROTECTION FRAME SHALL AS A MINIMUM MATCH THE DEMOLITION LIMITS SHOWN AND EXTEND PAST THE BRIDGE WIDTH AS SHOWN ON THE ATTACHED DEMOLITION PLAN SHEET.
3. FOR ADDITIONAL CLEARANCE AND PROTECTION INFORMATION, SEE UNION PACIFIC RAILROAD STANDARD DRAWING NO. 0035
4. THE PROTECTION FRAME SHALL PREVENT DEMOLITION DEBRIS, DUST AND FINE MATERIAL FROM FALLING ONTO THE RAILROAD TRACKS, ACCESS ROAD OR TRAILS. THE FRAME SHALL BE DESIGNED BY THE CONTRACTOR TO SUPPORT THE ANTICIPATED DEMOLITION LOADS, AND IN ACCORDANCE WITH UNION PACIFIC GUIDELINES FOR DESIGN OF FALSEWORK FOR STRUCTURES OVER THE RAILROAD.
5. DEBRIS PROTECTION IS REQUIRED NEAR THE BASE OF THE SIDE SLOPES AND ADJACENT TO ROADS USED BY DEMOLITION EQUIPMENT TO PREVENT DEBRIS FROM ROLLING ONTO THE TRACK. ACCESS ROAD OR DITCH USE TIMBERS AS REQUIRED TO STOP LARGE PIECES OF ROLLING DEBRIS.
6. ANY ACTIVITY WITHIN 25 FEET OF THE NEAREST RAIL OF A TRACK REQUIRES A FLAGMAN.

* IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE OF DETAIL.



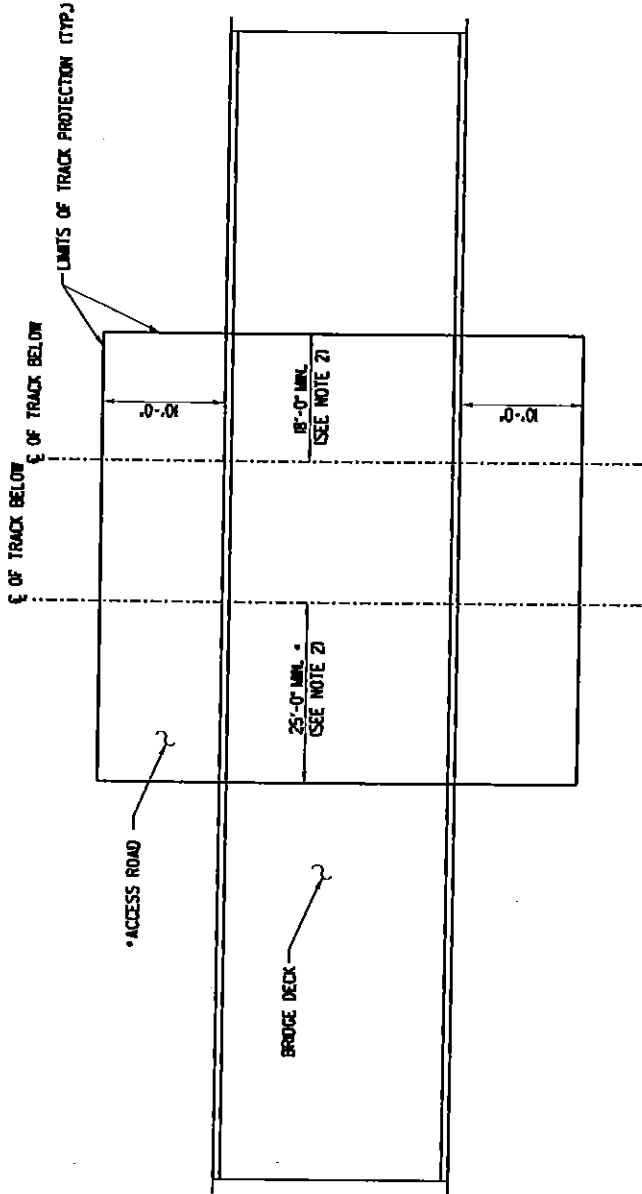
UNION PACIFIC RAILROAD

FRAME PROTECTION DETAILS

OFFICE OF CHIEF ENGINEER DESIGN

DATE: 3-31-98

SHEET 1 OF 2

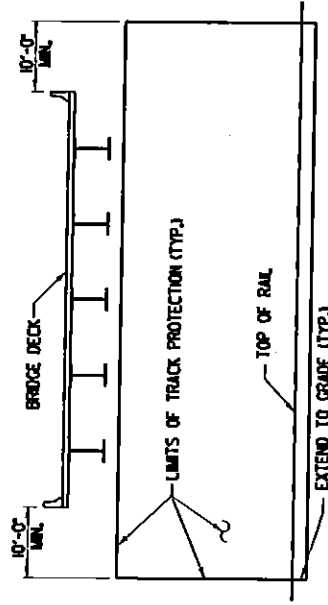


BRIDGE PLAN
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE

NOTES:

1. SEE GENERAL NOTES ON BRIDGE ELEVATION SHEET
2. STANDARD LIMITS OF PROTECTION ARE SHOWN FOR MIN. LIMITS OF PROTECTION DIMENSIONS, SEE BRIDGE ELEVATION, MINIMUM LIMITS OF PROTECTION.



BRIDGE DECK CROSS SECTION
STANDARD LIMITS OF PROTECTION

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE



UNION PACIFIC RAILROAD

FRAME PROTECTION DETAILS

OFFICE OF CHIEF ENGINEER DESIGN

DATE: 3-31-98

SHEET 2 OF 2

File No.: 11-05-06
Project: 11th Street - East Tracy Overhead Bridge
Replacement Project
Parcel No's.: 250-160-06
Escrow #: 1213012882-CS
Title Company: Old Republic Title Company
Date of Preliminary Title Report: September 20, 2013

GRANTOR: JOE ALVAREZ, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest;

JOE ALVAREZ, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest;

NICK TROIANI and MARIJANE TROIANI, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest;

CHARLES S. SELNA AND MERIELENA SELNA, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest;

JACK ALVAREZ AND SABRA L. ALVAREZ, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; and

NICKOLAS TROIANI and MARIJANE TROIANI, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest.

GRANTEE: CITY OF TRACY, a municipal corporation of the State of California

**AGREEMENT FOR ACQUISITION OF FEE INTERESTS AND TEMPORARY
CONSTRUCTION EASEMENT**

This Agreement is made this ____ day of _____, 2013, by and between the City of Tracy ("City") and **JOE ALVAREZ**, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest; **JOE ALVAREZ**, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest; **NICK TROIANI AND MARIJANE TROIANI**, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest; **CHARLES S. SELNA AND MERIELENA SELNA**, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest; **JACK ALVAREZ AND SABRA L. ALVAREZ**, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; **NICKOLAS TROIANI AND MARIJANE TROIANI**, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest ("Grantor").

WHEREAS, Grantor is the owner of certain real property located at 8188 West 11th Street in Tracy, California, identified as San Joaquin County Assessor Parcel Number 250-160-06; and

WHEREAS, Grantor intends to convey to the City and the City intends to acquire from Grantor a portion of such property in fee simple interest (“Fee”) described in the attached legal description marked Exhibit “A-1” and depicted on the attached plat map marked Exhibit “A-2”, which is attached hereto and incorporated herein by reference, for the purpose of constructing the 11th Street – East Tracy Overhead Bridge Replacement Project (“Project”); and

WHEREAS, in order to facilitate the construction of the Project, Grantor intends to convey to the City and the City intends to accept a Temporary Construction Easement (Easement) from Grantor on, over, and under a portion of Grantor’s property described in the attached legal description marked Exhibit “B-1” and depicted on the attached plat map marked Exhibit “B-2”, which is attached hereto and incorporated herein by reference;

WHEREAS, Grantor acknowledges and agrees to perform necessary curative contract work within the temporary construction easement area involving the temporary relocation of irrigation standpipes and structures owned by West Side Irrigation District, in lieu of City performing said work; said curative contract work is described on the attached Exhibit E; and

WHEREAS, Grantor and City prefer to reach a mutually acceptable agreement for the acquisition of the Fee and Easement (collectively, “the Subject Property”) in lieu of City acquiring the Subject Property through the exercise of City’s power of eminent domain; and

WHEREAS, Grantor agrees to sell and City agrees to buy the Subject Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. Execution and Delivery to Escrow

City shall open an escrow with the title company identified above (“Escrow Holder”) by delivery of a fully executed copy of this Agreement. Upon full execution of this Agreement by the parties (“Effective Date”), Grantor shall execute, notarize, and deliver to Escrow Holder the Grant Deed and Temporary Construction Easement Deed (collectively “Deeds”) in the form of Exhibits “A” and “B”, respectively, attached hereto and made a part hereof.

2. Payment

A. Purchase Price

City shall tender payment to the Escrow Holder in the amount of Seventy Nine Thousand (\$79,000.00) Dollars (“Purchase Price”), which is specifically agreed by the parties to be the full amount of just compensation due and owing to Grantor for conveyance of the Subject Property to the City.

B. Property Interest Free of Encumbrances

The Close of Escrow, defined below, is conditioned on the Subject Property being conveyed to City free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items specifically identified as Title Exceptions and shown on Exhibit “C,” attached hereto and made a part hereof, if any. For deeds of trust or similar security interests, in lieu of

removal, Grantor may, if approved by City, obtain from each party holding the security interest, by a recordable written instrument, its consent to the terms hereof, and its agreement that its security interest is and shall be subordinate to the terms hereof, and that it is and shall be bound by the covenants and agreements made by Grantor herein.

C. Taxes

Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 5086 of the Revenue and Taxation Code. As a deduction from the amount shown in Section 2A, above, the City shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon; and

D. Grantor Curative Construction Work Within Temporary Construction Easement Area

Grantor shall perform curative construction work within the temporary construction easement area as specified under Exhibit E for a total lump sum amount of \$64,300.00. This amount is inclusive of the total compensation amount shown in Clause 2(A) above. It is further understood and agreed that Escrow Holder shall withhold the amount in escrow until said construction work has been completed within the time limit set forth in this Agreement and to the satisfaction of West Side Irrigation District and City, at which time payment will be made.

Additionally, in the event said construction work has not been performed by Grantor by said date, the City, or its authorized contractor, is hereby granted the right to enter upon the Grantor's property for the purpose of completing said construction work without incurring any liability or responsibility for the condition of said improvements, and Grantor hereby agrees that the City shall retain the said sum of \$64,300 as liquidated damages and costs to the City of performing said construction work within the Subject Property.

Further, Grantor agrees to indemnify and hold the City harmless for damages, liabilities, and losses which may be incurred during, or after, said construction work is complete.

3. Just Compensation

Grantor agrees that performance of this Agreement by City, including the payment recited in Section 2A, above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession, use and/or occupancy of the Subject Property, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Subject Property or the location, establishment, construction, or operation of the above-named Project on the Subject Property.

4. Waiver under Section 1542

The parties intend that this Agreement will result in a full, complete, and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the Subject Property by the City, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of any rights, damages, compensation, or benefits to which a party is, or may be, entitled is intended to be full and complete. Accordingly:

- A. Grantor hereby waives any and all rights or benefits arising from and/or related to the City's acquisition possession and/or use of the Subject Property that it may have under Section 1542 of the

Civil Code of the State of California, which provides:

“a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

- B. Grantor represents and warrants that it understands the effect of this waiver of Section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of its choice.

5. Title Insurance

City may obtain a CLTA extended coverage Grantor’s policy of title insurance insuring that clear title to the Subject Property is vested in City upon recording of the Deeds.

6. Escrow

Unless extended by the City, the escrow shall close within ninety (90) days after the Effective Date of this Agreement and shall be the date the Deeds are recorded in the Recorder’s Office for San Joaquin County (“Close of Escrow”); provided that if a Resolution or Resolution of Necessity are required in order to condemn any property required for the above-named Project, the escrow shall not close prior to the adoption of the Resolution(s) of Necessity by the City Council. Nothing stated in this Agreement is intended to dictate, preclude, or limit, in any way, the City’s exercise of its discretion in determining whether or not to adopt a Resolution of Necessity. If a Resolution or Resolution of Necessity are required and the City Council does not adopt the Resolution(s), this Agreement may, at City’s election, be deemed cancelled and of no force and effect, in which event both parties shall be released from any and all liability to each other of any sort or nature relating to this acquisition or the Project, and all amounts deposited in escrow by City shall be returned forthwith to City by the Escrow Holder.

The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Subject Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured by deeds of trust or mortgages, and/or to defray any other incidental costs other than those specified in Section 7 hereof to be borne by the City. The Escrow Holder shall release payment to Grantor, return any credited amounts to City, and record the Deeds in the Recorder’s Office for San Joaquin County upon the Close of Escrow. Title to the Subject Property shall pass to City immediately upon Close of Escrow.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of City. The Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

Additionally, the amount of funds specified under Grantor Curative Construction Work Within Temporary Construction Easement Area will be held by Escrow Holder until the performance of the work is complete.

7. Fees

The City shall pay all escrow, recording, and title insurance fees incurred in this transaction.

8. Option to Extend Temporary Construction Easement

Grantor agrees that upon the expiration of the Easement, which City's right to use this Temporary Construction Easement shall become effective on the date the City issues notice to proceed to the contractor for construction of the 11th Street – East Tracy Overhead Bridge Replacement Project and shall terminate two years from the date the City issues notice to proceed to the contractor for construction the Project, City has the option to extend the term of the Easement area, or any portion thereof, for up to twelve (12) months. The rate for the extended use of the Easement shall be \$165.00 per month. It is further agreed and understood that City shall provide Grantor with the written notice of its intent to extend the term of the Easement at least thirty (30) days prior to the expiration of the Easement.

9. Possession and Use of the Property

The City shall have the right of possession and use of the Subject Property including the right to remove and dispose of improvements and construct the above-named Project commencing on the date that this Agreement is executed by both parties; provided that City makes no representation that the Project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the Project for any reason. If the Subject Property subsequently is not acquired by City for any reason, City shall restore the Subject Property to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

10. Eminent Domain

- A.** It is mutually understood that the acquisition of the Subject Property by City is for a public purpose, and therefore, the Subject Property is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.
- B.** If any eminent domain action that includes the Subject Property, or any portion thereof, has been filed by the City, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in any Court or with the State Treasurer in any such action and waives any and all claims for damages costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

11. Amendment

This Agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

12. No Leases

Grantor warrants that there are no leases, except as disclosed on Exhibit "D" attached hereto, on all or any portion of the Subject Property, and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or a portion of the Subject Property, other than disclosed on Exhibit "D". Grantor agrees not to assign, transfer or sell to any third party any right, title or interest Grantor has in the Subject Property. The parties acknowledge that, upon acquisition by City, any lease, tenancy or occupancy disclosed on Exhibit "D" shall terminate as to that part of the lease, tenancy or occupancy being acquired by City pursuant to this Agreement. Further, if there exist either recorded or unrecorded leases, the parties agree that at City's sole discretion, escrow shall not

close and this Agreement shall become all or in part null and void if Escrow Holder fails to receive adequate documentation (such as a quitclaim deed and/or Tenant Consent) establishing that lessee has agreed to claim no interest in the Subject Property or in any compensation for the Subject Property and further enables City to obtain sufficient title insurance.

13. Grantor's Representations

A. Grantor makes the following representations and warranties:

- i.** Grantor warrants that it owns full legal title to the Subject Property, and has full power and authority to convey all property rights described herein to City.
- ii.** This Agreement constitutes a legal, valid, and binding obligation of Grantor enforceable in accordance with its terms.
- iii.** Grantor warrants that to the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the Subject Property, or any portion thereof, or pending or threatened against Grantor which could (a) affect Grantor's title to the Subject Property, or any portion thereof, (b) affect the value of the Subject Property, or any portion thereof, or (c) subject any Grantor of the Subject Property, or any portion thereof, to liability.
- iv.** There are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule, or regulation which would affect the Subject Property or any portion thereof.
- v.** There are no Hazardous Substances, (as defined below), or storage tanks containing Hazardous Substances, in, on, under, or about the Subject Property.
- vi.** To the best of Grantor's knowledge, there has been no production, storage, disposal, presence, observance, or release of any Hazardous Substances in, on, under, or about the Subject Property.
- vii.** The Grantor and the Subject Property, are not in violation of any federal, state, or local law, ordinance, regulation, order, decree, or judgment relating to Hazardous Substances and/or environmental conditions in, on, under, or about the Subject Property.
- viii.** There are no notices or other information giving Grantor reason to believe that any conditions existing on the Subject Property or in the vicinity of the Subject Property subject or could subject any Grantor of the Subject Property to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety and/or the environment, including, but not limited to the ambient air, soil, soil vapor, groundwater, surface water, or land use.
- ix.** To the best of Grantor's knowledge, there are no violations of any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Subject Property and relating to Hazardous Substances and/or environmental compliance.

- x. There is no license, permit, option, right of first refusal, or other agreement, written or oral, which affects the Subject Property or any portion thereof.
 - xi. Conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the Subject Property are subject.
- B. Each of the above warranties and representations is material and is relied upon by City separately and collectively. Each of the above representations shall be deemed to have been made as of the date that the Deeds are recorded, and shall survive the recording of the Deeds by a period of two (2) years following the date that the Deeds are recorded. If, before the recording of the Deeds, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice in writing to City of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Deeds, the City may, at its unfettered discretion, either cancel and terminate this Agreement or give the Grantor the option to remedy the problem before the recording of the Deeds or deduct from the payments required by Section 2A, above, as a credit to City, in an amount as determined by the City reasonably required to remedy the problem.

14. Hazardous Substances

The parties acknowledge, understand, and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or adjacent to any portion of the Subject Property shall be governed by the provisions of Section 15 below, regardless of whether any inspection, examination, sampling, testing, assessment, or other investigation is conducted by City.

"Hazardous Substance(s)" includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:

- (i) regulated by any local governmental agency, the State of California or the United States Government; (ii) defined as such in any federal, State, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25330-25395), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25); (iii) listed in the United States Department of Transportation Table (49 CFR § 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor agency (40 CFR Part 302), (iv) asbestos, or asbestos containing material; (v) radon gas; (vi) petroleum or petroleum fractions; (vii) any explosive substances; (viii) polychlorinated biphenyl; (ix) a radioactive material, and (x) per chlorate.

15. Indemnification

- A. Each party (hereafter the "Indemnifying Party") agrees and covenants to indemnify, defend (with counsel acceptable to the other party, (hereinafter "Indemnified Party"), which consent shall not be unreasonably withheld), and hold the Indemnified Party, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air,

soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with: (i) any acts or omissions related to the performance of this Agreement, (ii) any breach of this Agreement, or (iii) the occupancy or use of the Subject Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Subject Property), by the Indemnifying Party, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf.

- B.** The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. The provisions of this Section shall survive the recording of any deeds, easements or other documents hereunder."

16. Attorney Fees

Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

17. Notices

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City:
City of Tracy
Attn: Development and Services
Department Director
333 Civic Center Plaza
Tracy, CA 95376

To Grantors:
Alvarez Family Trust
Attn: Joe Alvarez, Trustee Et Al.
8606 W. Schulte Road
Tracy, CA 95304

18. Recording

Either party may record this Agreement in the Recorder's Office for San Joaquin County.

19. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

20. Brokers

Grantor and City each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the party through

which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

21. Time of Essence

Time is of the essence for each condition, term, and provision in this Agreement.

22. Waivers

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

23. Severability

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

24. Construction

Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement.

25. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the San Joaquin County Superior Court.

26. Authority

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

27. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Grantor and City.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

GRANTOR(S): JOE ALVAREZ, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest;

**GRANTEE:
CITY OF TRACY, a municipal corporation of the State of California**

JOE ALVAREZ, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest;

NICK TROIANI and MARIJANE TROIANI, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest;

CHARLES S. SELNA AND MERIELENA SELNA, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest;

JACK ALVAREZ AND SABRA L. ALVAREZ, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; and

NICKOLAS TROIANI and MARIJANE TROIANI, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest.

Date: _____

Date: _____

By: _____

By: _____
Leon Churchill, City Manager

Print Name: _____

APPROVED AS TO FORM:

Date: 11/1/13

Date: _____

By: Nick Troiani Trustee

By: _____
Dan Sodergren, City Attorney

Print Name: Nick TROIANI Trustee

ATTEST:

Date: Marijane Troiani, trustee

Date: _____

By: 11-1-13

By: _____

Print Name: MARIJANE TROIANI, TRUSTEE

Sandra Edwards, City Clerk

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: 11/1/13

By: Nickolas Troiani Trustee

Print Name: Nickolas TROIANI Trustee

Date: 11-1-13

By: Marijane Troiani, trustee

Print Name: MARIJANE TROIANI, TRUSTEE

EXHIBIT "A"
Grant Deed

NO FEE DOCUMENT
Government Code §8103 & §27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street -- East Tracy Overhead Bridge Replacement
Project

Address: 8188 West 11th Street

APN: 250-160-06

Project No.: 11-05-06

Title Order No. 1213012882-CS

Escrow No. 1213012882-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **JOE ALVAREZ**, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest; **JOE ALVAREZ**, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest; **NICK TROIANI AND MARIJANE TROIANI**, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest; **CHARLES S. SELNA AND MERIELENA SELNA**, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest; **JACK ALVAREZ AND SABRA L. ALVAREZ**, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; and **NICKOLAS TROIANI AND MARIJANE TROIANI**, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest ("GRANTORS"), hereby grants to the **CITY OF TRACY**, a municipal corporation of the State of California, all that real property situated in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit "A", legal description, and Exhibit "B", plat to accompany legal
description, attached hereto and made a part hereof.

The property is for Public Street and Highway purposes to be known as West 11th Street.

Executed this _____ day of _____, 20_____

EXHIBIT "A"
Grant Deed
Page 2 of 2

GRANTORS: JOE ALVAREZ, NICK TROIANI and MARIJANE TROIANI, CHARLES S. SELNA and MERIELENA SELNA, JACK ALVAREZ and SABRA L. ALVAREZ, and NICKOLAS TROIANI and MARIJANE TROIANI

JOE ALVAREZ REVOCABLE SURVIVOR'S TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

BRIJIDA ALVAREZ IRREVOCABLE MARITAL TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

NICK AND MARIJANE TROIANI 2010 TRUST dated June 18, 2010

By: Jack Troiani Trustee

Printed: Nick Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

CHARLES S. AND MERIELENA SELNA FAMILY REVOCABLE TRUST dated March 14, 2004

By: _____

Printed: Charles S. Selna, Trustee

By: _____

Printed: Merielena Selna, Trustee

ALVAREZ REVOCABLE TRUST dated February 22, 2001

By: _____

Printed: Jack Alvarez, Trustee

By: _____

Printed: Sabra L. Alvarez, Trustee

NICKOLAS AND MARIJANE TROIANI 2010 TRUST established June 18, 2010

By: Nickolas Troiani Trustee

Printed: Nickolas Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

EXHIBIT "A-1"
Legal Description

ALVAREZ
RIGHT OF WAY

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH,
RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN
UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN
BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS;
THENCE SOUTH 86 DEGREES 36 MINUTES 21 SECONDS EAST, ALONG THE
NORTH LINE OF SAID PARCEL "D", SAID NORTH LINE ALSO BEING THE
SOUTH LINE OF ELEVENTH STREET AS SHOWN ON SAID PARCEL MAP,
266.28 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 53
SECONDS WEST, 265.90 FEET TO A POINT; THENCE NORTH 00 DEGREES 15
MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID PARCEL "D",
17.40 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 0.05 ACRES, MORE OR LESS.

EXHIBIT "A-2"
Plat Map

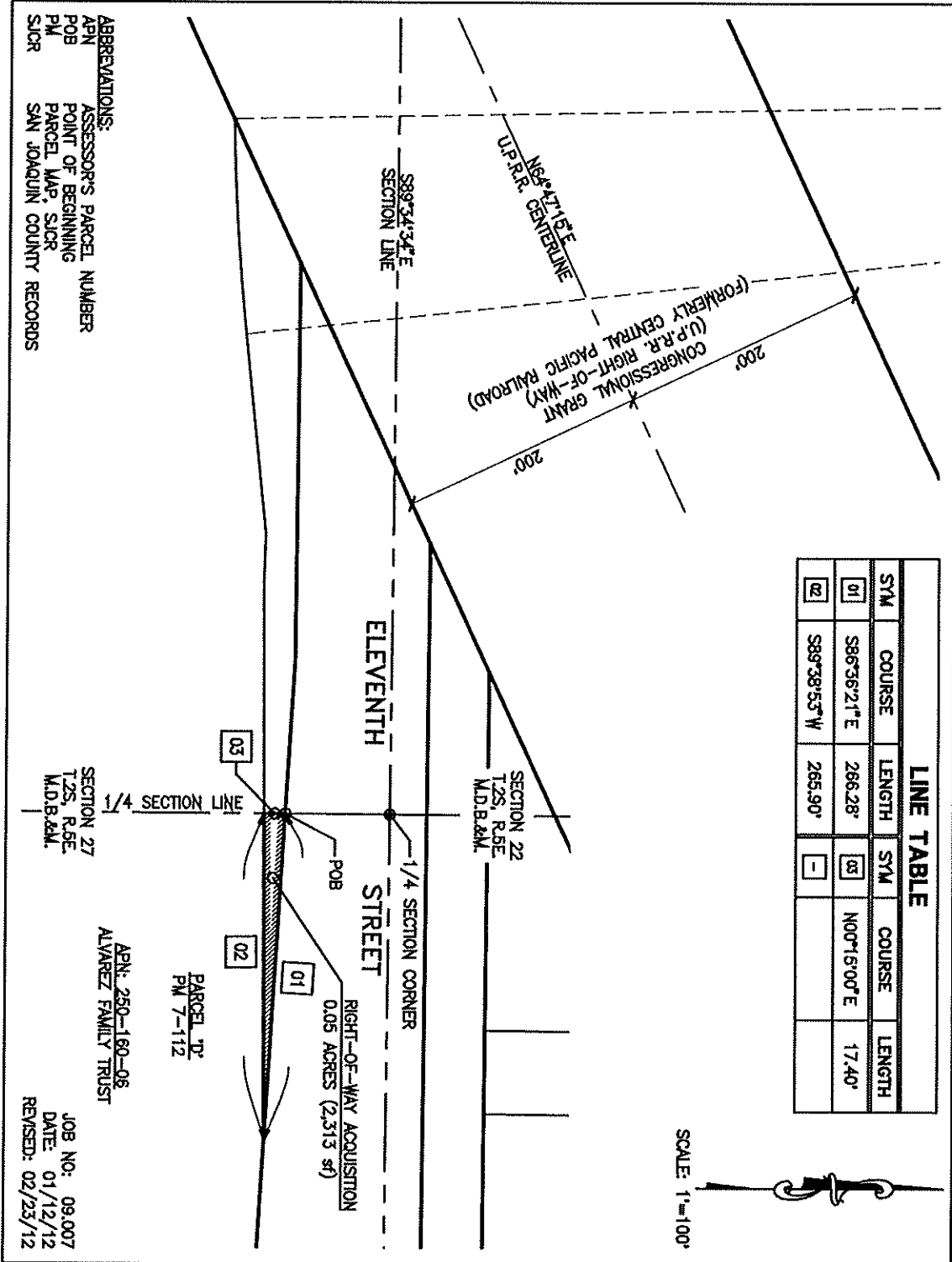


EXHIBIT "B"
Temporary Construction Easement

NO FEE DOCUMENT
Government Code §6103 & §27383

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____
Date: _____

Project Name: 11th Street – East Tracy Overhead Bridge
Replacement Project
Address: 8188 West 11th Street
APNs: 250-160-06
Project No.: 11-05-06
Title Order No. 1213012882-CS
Escrow No. 1213012882-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

TEMPORARY CONSTRUCTION EASEMENT

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **JOE ALVAREZ**, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest; **JOE ALVAREZ**, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest; **NICK TROIANI AND MARIJANE TROIANI**, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest; **CHARLES S. SELNA AND MERIELENA SELNA**, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest; **JACK ALVAREZ AND SABRA L. ALVAREZ**, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; and **NICKOLAS TROIANI AND MARIJANE TROIANI**, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest ("GRANTORS"), hereby Grant(s) to the **CITY OF TRACY**, a municipal corporation ("GRANTEE"), a **TEMPORARY CONSTRUCTION EASEMENT ("EASEMENT")**, for the purpose of public use, inclusive of ingress and egress, including construction, reconstruction, installation, improvement, repair, inspection, expansion, and maintenance of public right-of-ways, highways, roadways, services, utilities, landscape improvements, and necessary appurtenances thereto, on, over, and under Grantor's Property, (including the right to re-grade the underlying property to conform to the grade of the adjacent street) located in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit A, legal description, and Exhibit B, plat to accompany legal description, attached hereto and made a part hereof.

Easement shall become effective on the date the Grantee issues notice to proceed to the contractor for construction of the 11th Street – East Tracy Overhead Bridge Replacement Project

EXHIBIT "B"
Temporary Construction Easement
Page 2 of 2

("PROJECT") and shall terminate two years from the date the Grantee issues notice to proceed to the contractor for construction of the Project.

Upon the termination of this Easement, Grantee shall record a Notice of Termination of Temporary Construction Easement releasing all Grantee's right, title and interest in and to this Easement, no later than 60 days following completion of construction of the Project.

Executed this ____ day of _____, 20____

GRANTORS: JOE ALVAREZ, NICK TROIANI and MARIJANE TROIANI, CHARLES S. SELNA and MERIELENA SELNA, JACK ALVAREZ and SABRA L. ALVAREZ, and NICKOLAS TROIANI and MARIJANE TROIANI

JOE ALVAREZ REVOCABLE SURVIVOR'S TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

BRIJIDA ALVAREZ IRREVOCABLE MARITAL TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

NICK AND MARIJANE TROIANI 2010 TRUST dated June 18, 2010

By: Nick Troiani Trustee

Printed: Nick Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

CHARLES S. AND MERIELENA SELNA FAMILY REVOCABLE TRUST dated March 14, 2004

By: _____

Printed: Charles S. Selna, Trustee

By: _____

Printed: Merielena Selna, Trustee

ALVAREZ REVOCABLE TRUST dated February 22, 2001

By: _____

Printed: Jack Alvarez, Trustee

By: _____

Printed: Sabra L. Alvarez, Trustee

NICKOLAS AND MARIJANE TROIANI 2010 TRUST established June 18, 2010

By: Nickolas Troiani Trustee

Printed: Nickolas Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

EXHIBIT "B-1"
Legal Description

ALVAREZ
TEMPORARY CONSTRUCTION EASEMENT

AN EASEMENT FOR TEMPORARY CONSTRUCTION PURPOSES, OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 86 DEGREES 36 MINUTES 21 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL "D", SAID NORTH LINE ALSO BEING THE SOUTH LINE OF ELEVENTH STREET AS SHOWN ON SAID PARCEL MAP, 266.28 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 53 SECONDS WEST, 54.47 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT; THENCE SOUTH, 78.32 FEET TO A POINT; THENCE SOUTH 81 DEGREES 49 MINUTES 35 SECONDS WEST, 214.07 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL "D"; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE OF PARCEL "D", 107.45 FEET TO A POINT; THENCE NORTH 89 DEGREES 38 MINUTES 53 SECONDS EAST, 211.43 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 0.45 ACRES, MORE OR LESS.

EXHIBIT "B-2"
Plat Map

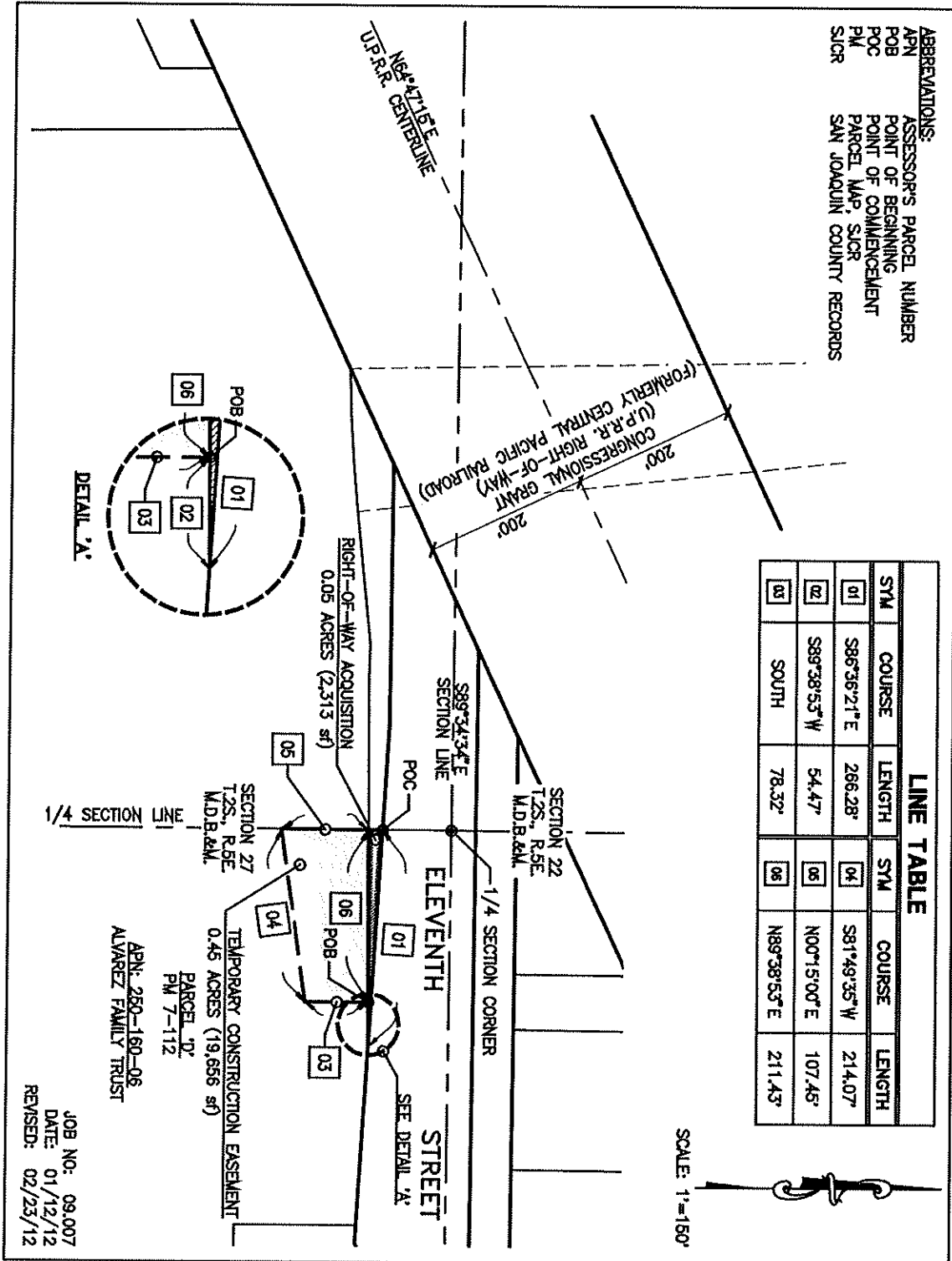


EXHIBIT "C"

Title exceptions that will not be removed from the Preliminary Title Report dated September 20, 2013:

7. Rights, easements, interests or claims that might be disclosed by an examination of various private maps of the area in the possession of the Union Pacific Railroad Company, successor to Central Pacific Railway Company and Southern Pacific Railroad Company.
8. Rights of way for all existing canals.
9. Reservation of 400 foot strip as contained in Deed executed by Central Pacific Railroad Company, to J.C. Froge, dated July 24, 1870, recorded October 21, 1870, in Vol. 22 of Book "A" of Deeds, Page 204, in so far as it may affect premises.
10. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following
 - Granted To : Tuolumne Water Power Company
 - For : Right of way for electric transmission line over the Northeast quarter
 - Recorded : May 7, 1908 in Volume 58 of Book "A" of Deeds, Page 502
 - Affects : A portion as described therein
11. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following
 - Instrument : Grant of Right of Way for Electric Transmission Line
 - Granted To : The Sierra and San Francisco Power Company
 - For : Right of way for electronic transmission line over the Northeast quarter of Section 27
 - Dated : June 20, 1910
 - Recorded : June 21, 1910 in Volume 187 of Book "A" of Deeds, Page 541
 - Affects : A portion as described therein
12. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following
 - Granted To : Pacific Gas and Electric Company, a corporation and Pacific Telephone and Telegraph Company, a corporation
 - For : Right of way not to exceed 6 feet in width with right to construct one assembly of anchors, guys and fixtures, etc.
 - Recorded : January 29, 1936 in Volume 523 of Official Records, Page 392
 - Affects : The exact location and extent of said easement is not disclosed of record

EXHIBIT "C"

Page 2 of 2

13. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Not shown
Reserved By : Adolph H. Linne, et al
For : Right of way and easement for irrigation ditches, together with the right to enter premises to clean, repair or alter said irrigation ditches
Recorded : September 15, 1936 in Volume 540 of Official Records, Page 484
Affects : the exact location and extent of said easement is not disclosed of record

15. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Grant of Easement for Right of Way
Granted To : The West Side Irrigation District, a corporation
For : Right of way for pipe line 25 feet wide
Dated : November 5, 1942
Recorded : December 11, 1942 in Volume 806 of Official Records, Page 131
Affects : Westerly 25 feet

16. Matters as contained or referred to in an instrument,

Entitled : Grant of Easement
Executed By : Gabriel Alvarez, et al
Dated : May 7, 1974
Recorded : May 21, 1974 in Book 3875 of Official Records, Page 447 under Recorder's Serial Number 24047

17. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Grant of Easement
Granted To : West Side Water District, a public water
For : Water drainage pipelines
Dated : May 7, 1974
Recorded : May 21, 1974 in Book 3875 of Official Records, Page 447 under Recorder's Serial Number 24047
Affects : Southerly 30 feet

EXHIBIT "D"
Leases, if any

NO LEASES

EXHIBIT "E"
Grantor Curative Construction Work Within Temporary Construction Easement Area

File: 11-05-06
Owner: Alvarez Family Trust
APN: 250-150-06

It is mutually agreed and understood that the Grantor will be responsible for the curative construction work within the temporary construction easement area described below. Additionally, the funds will be set aside in escrow until the performance of the following work is complete:

1. Access Road
 - a. Construct a temporary access road for the sole purpose of maintaining access for Grantor's residential and farming operations by April 15, 2014.

2. Drainage Work
 - a. Construct a new irrigation/drainage ditch on the north side of Grantor's property just south of the Temporary Construction Easement. Work shall be completed prior to PG&E and AT&T installing their facilities in an underground trench which is expected to start on February 1, 2014.

Perform any other necessary drainage modifications on Grantor's property that lie outside the temporary construction easement.

- b. Grantor shall perform curative contract work on facilities owned by West Side Irrigation District (WSID) as follows:

Temporarily relocate two of the four irrigation standpipes/structures (the two located farthest to the east) about 40' south prior to construction so that they will not be in conflict with the proposed temporary detour roadway. The existing standpipes that will be temporarily abandoned need to be capped 2' below the ground line. This work will need to be completed prior to PG&E and AT&T installing their facilities which is expected to start on February 1, 2014. At the end of the project construction, Grantor will restore the two abandoned standpipes within the property owner's right of way or continue to use the standpipes that have been relocated 40' to the south.

It is mutually agreed and understood that the reimbursement price identified in 1.(a) above in the amount of \$6,000, is to be divided between Joe Alvarez, Nick and Marijane Troiani, Charles S. and Merielena Selna, Jack and Sabra L. Alvarez, and Nickolas and Marijane Troiani as to their respective undivided interests.

It is also mutually agreed and understood that the reimbursement price includes compensation directly to Jack Alvarez, in the amount of \$58,300, to perform and be responsible for the work, identified in 2.(a) and 2.(b) above by February 1, 2014.

NO FEE DOCUMENT
Government Code §6103 & §27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street – East Tracy Overhead Bridge Replacement
Project
Address: 8188 West 11th Street
APN: 250-160-06
Project No.: 11-05-06
Title Order No. 1213012882-CS
Escrow No. 1213012882-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **JOE ALVAREZ**, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest; **JOE ALVAREZ**, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest; **NICK TROIANI AND MARIJANE TROIANI**, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest; **CHARLES S. SELNA AND MERIELENA SELNA**, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest; **JACK ALVAREZ AND SABRA L. ALVAREZ**, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; and **NICKOLAS TROIANI AND MARIJANE TROIANI**, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest (“GRANTORS”), hereby grants to the **CITY OF TRACY**, a municipal corporation of the State of California, all that real property situated in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit “A”, legal description, and Exhibit “B”, plat to accompany legal description, attached hereto and made a part hereof.

The property is for Public Street and Highway purposes to be known as West 11th Street.

Executed this _____ day of _____, 20_____

GRANTORS: JOE ALVAREZ, NICK TROIANI and MARIJANE TROIANI, CHARLES S. SELNA and MERIELENA SELNA, JACK ALVAREZ and SABRA L. ALVAREZ, and NICKOLAS TROIANI and MARIJANE TROIANI

JOE ALVAREZ REVOCABLE SURVIVOR'S TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

BRIJIDA ALVAREZ IRREVOCABLE MARITAL TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

NICK AND MARIJANE TROIANI 2010 TRUST dated June 18, 2010

By: Nick Troiani, Trustee

Printed: Nick Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

CHARLES S. AND MERIELENA SELNA FAMILY REVOCABLE TRUST dated March 14, 2004

By: _____

Printed: Charles S. Selna, Trustee

By: _____

Printed: Merielena Selna, Trustee

ALVAREZ REVOCABLE TRUST dated February 22, 2001

By: _____

Printed: Jack Alvarez, Trustee

By: _____

Printed: Sabra L. Alvarez, Trustee

NICKOLAS AND MARIJANE TROIANI 2010 TRUST established June 18, 2010

By: Nickolas Troiani, Trustee

Printed: Nickolas Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

Exhibit "A"
Legal Description

ALVAREZ
RIGHT OF WAY

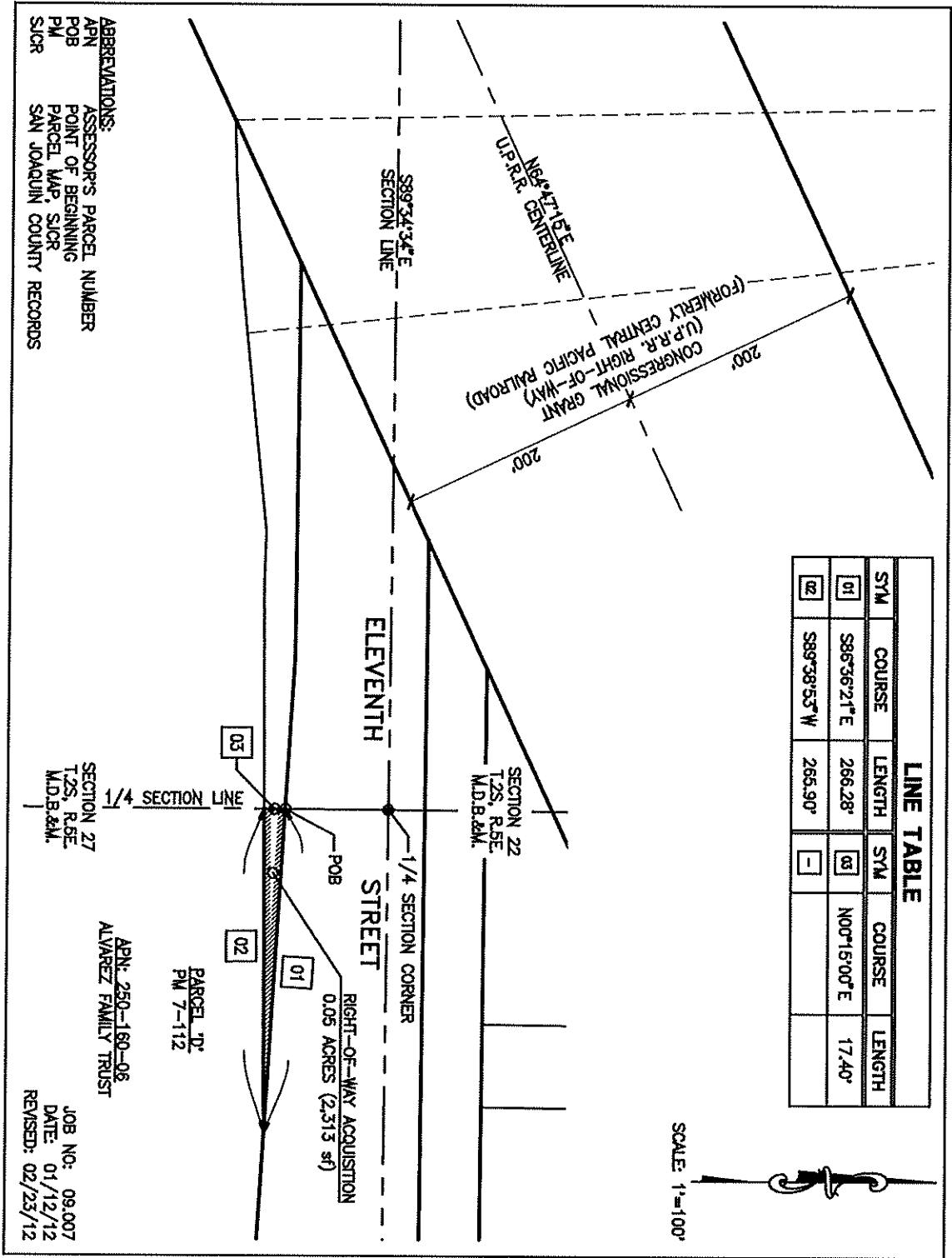
THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH,
RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

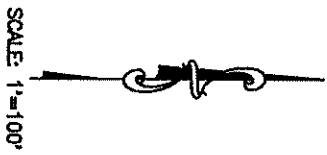
BEGINNING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN
UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN
BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS;
THENCE SOUTH 86 DEGREES 36 MINUTES 21 SECONDS EAST, ALONG THE
NORTH LINE OF SAID PARCEL "D", SAID NORTH LINE ALSO BEING THE
SOUTH LINE OF ELEVENTH STREET AS SHOWN ON SAID PARCEL MAP,
266.28 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 53
SECONDS WEST, 265.90 FEET TO A POINT; THENCE NORTH 00 DEGREES 15
MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID PARCEL "D",
17.40 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 0.05 ACRES, MORE OR LESS.

Exhibit "B"
Plat Map



LINE TABLE					
SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	S86°36'21"E	266.28'	03	N00°15'00"E	17.40'
02	S89°38'53"W	265.90'	-		



ABBREVIATIONS:
 APN ASSESSOR'S PARCEL NUMBER
 POB POINT OF BEGINNING
 PM PARCEL MAP SJCR
 SJCR SAN JOAQUIN COUNTY RECORDS

SECTION 27
 T.2S, R.5E
 M.D.B.&M.

APN: 250-160-06
 ALVAREZ FAMILY TRUST

JOB NO: 09.007
 DATE: 01/12/12
 REVISED: 02/23/12

PARCEL 10'
 PM 7-112

RIGHT-OF-WAY ACQUISITION
 0.05 ACRES (2,313 sq')

ELEVENTH STREET

S89°34'34"E
 SECTION LINE

SECTION 22
 T.2S, R.5E
 M.D.B.&M.

N63°47'12"E
 U.P.R.R. CENTERLINE

CONGRESSIONAL GRANT
 (U.P.R.R. RIGHT-OF-WAY)
 (FORMERLY CENTRAL PACIFIC RAILROAD)

03

02

01

POB

1/4 SECTION CORNER

1/4 SECTION LINE

SCALE: 1"=100'

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Tulare

On Nov 15 2013 before me, Kelly Vieira Notary, personally appeared Manijane Troiani Trustee who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Kelly Vieira
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	NUMBER OF PAGES
<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	DATE OF DOCUMENT
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/> OTHER _____	_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Tulare

On Nov 15th 2013 before me, Kelly Vieira, Notary, personally appeared Marijane Trojan, trustee who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Kelly Vieira
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	NUMBER OF PAGES
<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	DATE OF DOCUMENT
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/> OTHER _____	_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Tulare

On Nov 1st 2013
Date

before me,

Kelly Vieira Notary Public
Here Insert Name and Title of the Officer

personally appeared

Nick Troiani Trustee
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Kelly Vieira

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Tulare

On Nov 1st 2013
Date

before me,

Kelly Vieira Notary Public
Here Insert Name and Title of the Officer

personally appeared

Nickolas Troiani trustee
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Kelly Vieira
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Corporate Officer — Title(s): _____

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

Guardian or Conservator

Other: _____

Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

NO FEE DOCUMENT
Government Code §6103 & §27383

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street – East Tracy Overhead Bridge

Replacement Project

Address: 8188 West 11th Street

APNs: 250-160-06

Project No.: 11-05-06

Title Order No. 1213012882-CS

Escrow No. 1213012882-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

TEMPORARY CONSTRUCTION EASEMENT

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **JOE ALVAREZ**, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 8.34% interest; **JOE ALVAREZ**, Trustee of the Brijida Alvarez Irrevocable Marital Trust as set forth in the Alvarez Family Trust dated October 12, 1989 as to an undivided 25% interest; **NICK TROIANI AND MARIJANE TROIANI**, as Trustees of the Nick and Marijane Troiani 2010 trust dated June 18, 2010, as to an undivided 24.99% interest; **CHARLES S. SELNA AND MERIELENA SELNA**, Trustees of the Charles S. and Merielena Selna Family Revocable Trust dated March 14, 2004, as to an undivided 8.33% interest; **JACK ALVAREZ AND SABRA L. ALVAREZ**, Trustees of the Alvarez Revocable Trust dated February 22, 2001, as to an undivided 16.66% interest; and **NICKOLAS TROIANI AND MARIJANE TROIANI**, as trustees of the Nick and Marijane Troiani 2010 Trust established June 18, 2010, as to an undivided 16.68% interest ("GRANTORS"), hereby Grant(s) to the **CITY OF TRACY**, a municipal corporation ("GRANTEE"), a TEMPORARY CONSTRUCTION EASEMENT ("EASEMENT"), for the purpose of public use, inclusive of ingress and egress, including construction, reconstruction, installation, improvement, repair, inspection, expansion, and maintenance of public right-of-ways, highways, roadways, services, utilities, landscape improvements, and necessary appurtenances thereto, on, over, and under Grantor's Property, (including the right to re-grade the underlying property to conform to the grade of the adjacent street) located in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit A, legal description, and Exhibit B, plat to accompany legal description, attached hereto and made a part hereof.

Easement shall become effective on the date the Grantee issues notice to proceed to the contractor for construction of the 11th Street – East Tracy Overhead Bridge Replacement Project

("PROJECT") and shall terminate two years from the date the Grantee issues notice to proceed to the contractor for construction of the Project.

Upon the termination of this Easement, Grantee shall record a Notice of Termination of Temporary Construction Easement releasing all Grantee's right, title and interest in and to this Easement, no later than 60 days following completion of construction of the Project.

Executed this _____ day of _____, 20_____

GRANTORS: JOE ALVAREZ, NICK TROIANI and MARIJANE TROIANI, CHARLES S. SELNA and MERIELENA SELNA, JACK ALVAREZ and SABRA L. ALVAREZ, and NICKOLAS TROIANI and MARIJANE TROIANI

JOE ALVAREZ REVOCABLE SURVIVOR'S TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

BRIJIDA ALVAREZ IRREVOCABLE MARITAL TRUST as set forth in the Alvarez Family Trust dated October 12, 1989

By: _____

Printed: Joe Alvarez, Trustee

NICK AND MARIJANE TROIANI 2010 TRUST dated June 18, 2010

By: Nick Troiani Trustee

Printed: Nick Troiani, Trustee

By: Marijane Troiani, Trustee

Printed: Marijane Troiani, Trustee

CHARLES S. AND MERIELENA SELNA FAMILY REVOCABLE TRUST dated March 14, 2004

By: _____

Printed: Charles S. Selna, Trustee

By: _____

Printed: Merielena Selna, Trustee

ALVAREZ REVOCABLE TRUST dated February 22, 2001

By: _____

Printed: Jack Alvarez, Trustee

By: _____

Printed: Sabra L. Alvarez, Trustee

NICKOLAS AND MARIJANE TROIANI 2010 TRUST established June 18, 2010

By: Nickolas Troiani Trustee

Printed: Nickolas Troiani, Trustee

By: Marijane Troiani

Printed: Marijane Troiani, Trustee

Exhibit "A"
Legal Description

ALVAREZ
TEMPORARY CONSTRUCTION EASEMENT

AN EASEMENT FOR TEMPORARY CONSTRUCTION PURPOSES, OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 86 DEGREES 36 MINUTES 21 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL "D", SAID NORTH LINE ALSO BEING THE SOUTH LINE OF ELEVENTH STREET AS SHOWN ON SAID PARCEL MAP, 266.28 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 53 SECONDS WEST, 54.47 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT; THENCE SOUTH, 78.32 FEET TO A POINT; THENCE SOUTH 81 DEGREES 49 MINUTES 35 SECONDS WEST, 214.07 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL "D"; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE OF PARCEL "D", 107.45 FEET TO A POINT; THENCE NORTH 89 DEGREES 38 MINUTES 53 SECONDS EAST, 211.43 FEET TO THE TRUE POINT OF BEGINNING.

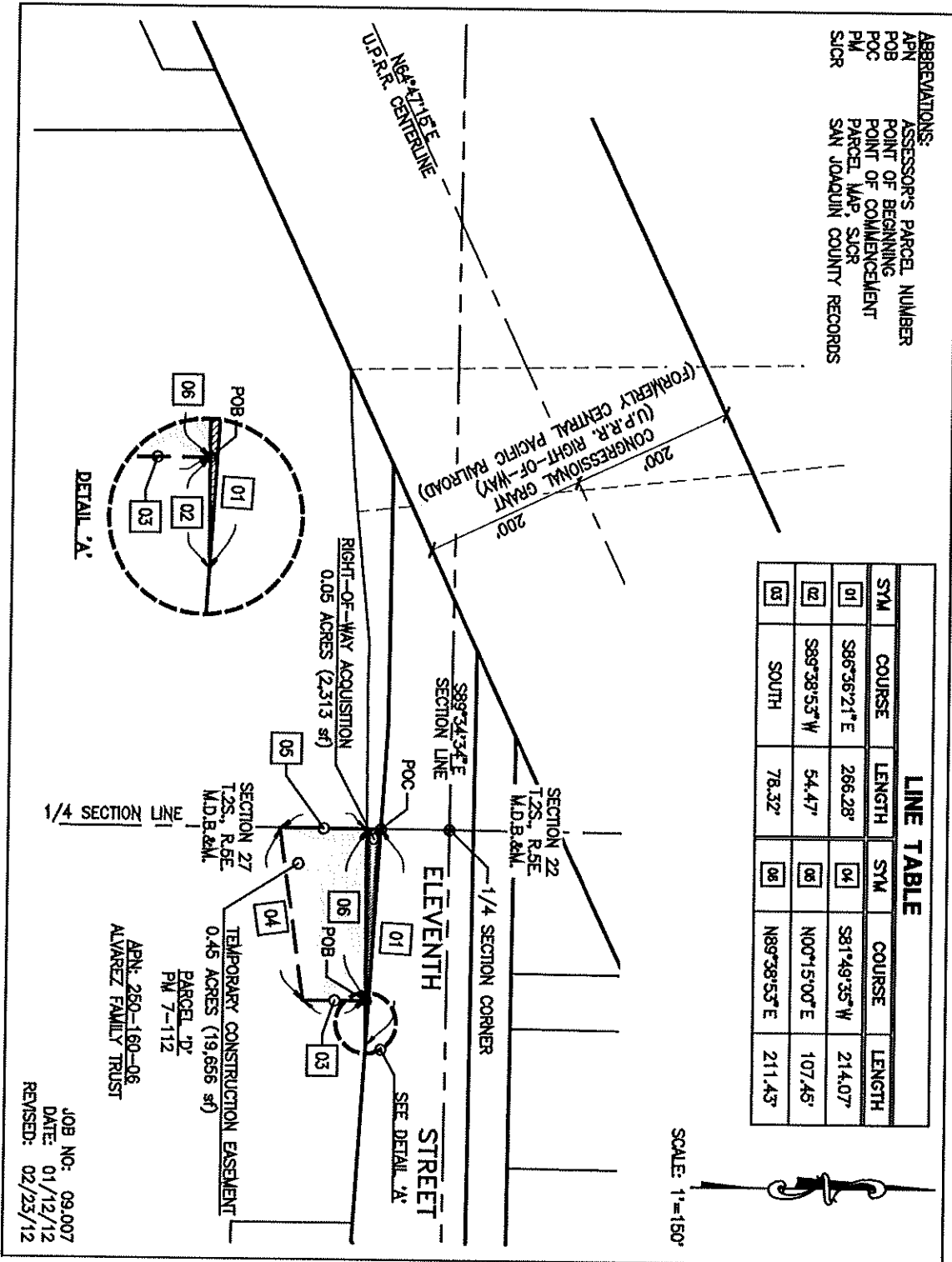
CONTAINING 0.45 ACRES, MORE OR LESS.

Exhibit "B" Plat Map

ABBREVIATIONS:
 APN ASSESSOR'S PARCEL NUMBER
 POB POINT OF BEGINNING
 POC POINT OF COMMENCEMENT
 PM PARCEL MAP, SLCR
 SAN JOAQUIN COUNTY RECORDS

LINE TABLE					
SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	S86°36'21"E	266.28'	04	S81°48'35"W	214.07'
02	S89°38'53"W	54.47'	05	N00°15'00"E	107.45'
03	SOUTH	78.32'	06	N89°38'53"E	211.43'

SCALE: 1"=150'



APN: 250-180-06
 ALVAREZ FAMILY TRUST

JOB NO: 09.007
 DATE: 01/12/12
 REVISED: 02/23/12

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Tulare

On Nov 15th 2013 before me, Kelly Vieira Notary personally appeared Nick Troiani Trustee who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Kelly Vieira
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> TITLE(S) <input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	_____
_____	SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

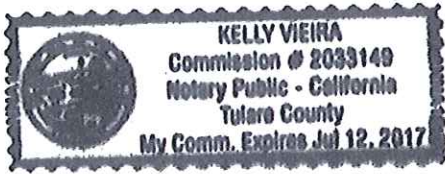
STATE OF CALIFORNIA

COUNTY OF Tulare

On Nov 15th 2013 before me, Kelly Vieira Notary, personally appeared Marijane Troiani Trustee who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s)-is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Kelly Vieira
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
TITLE(S)	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	NUMBER OF PAGES
<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	DATE OF DOCUMENT
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/> OTHER _____	_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Tulare

On Nov 1st 2013 before me, Kelly Vieira Notary personally appeared Marijane Troiani, trustee who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.



Kelly Vieira
(SIGNATURE OF NOTARY)

OPTIONAL

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<input type="checkbox"/> CAPACITY CLAIMED BY SIGNER INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER _____ TITLE(S) <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	DESCRIPTION OF ATTACHED DOCUMENT _____ TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____ SIGNER(S) OTHER THAN NAMED ABOVE
--	---

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Tulare

On Nov 15th 2013 before me, Kelly Vieira Notary, personally appeared Nickolas Troiani trustee who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Kelly Vieira
(SIGNATURE OF NOTARY)

OPTIONAL

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<input type="checkbox"/>	CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
	_____	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	_____
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

File No.: 11-05-02
Project: 11th Street - East Tracy Overhead Bridge
Replacement Project
Parcel No's.: 250-240-03 and 250-240-07
Escrow #: 1213012888-CS
Title Company: Old Republic Title Company
Date of Preliminary Title Report: November 9, 2011

GRANTOR: MAGJJ OVERPASS PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

GRANTEE: CITY OF TRACY, a municipal corporation of the State of California

AGREEMENT FOR ACQUISITION OF FEE INTERESTS AND TEMPORARY CONSTRUCTION EASEMENT

This Agreement is made this ____ day of _____, 2013, by and between the City of Tracy ("City") and MAGJJ Overpass Properties, LLC ("Grantor").

WHEREAS, Grantor is the owner of certain real property located at 8300 and 8454 West 11th Street in Tracy, California, identified as San Joaquin County Assessor Parcel Numbers 250-240-03 and 250-240-07; and

WHEREAS, Grantor intends to convey to the City and the City intends to acquire from Grantor a portion of such property in fee simple interest ("Fee") described in the attached legal description marked Exhibit "A-1" and depicted on the attached plat map marked Exhibit "A-2", which is attached hereto and incorporated herein by reference, for the purpose of constructing the 11th Street – East Tracy Overhead Bridge Replacement Project ("Project"); and

WHEREAS, in order to facilitate the construction of the Project, Grantor intends to convey to the City and the City intends to accept a Temporary Construction Easement (Easement) from Grantor on, over, and under a portion of Grantor's property described in the attached legal description marked Exhibit "B-1" and depicted on the attached plat map marked Exhibit "B-2", which is attached hereto and incorporated herein by reference; and

WHEREAS, Grantor acknowledges and agrees to perform necessary curative contract work within the temporary construction easement area, in lieu of City performing said work, involving the construction of a temporary access road, a new irrigation ditch, and other miscellaneous work; said contract work is described on the attached Exhibit E; and

WHEREAS, Grantor and City prefer to reach a mutually acceptable agreement for the acquisition of the Fee and Easement (collectively, "the Subject Property") in lieu of City acquiring the Subject Property through the exercise of City's power of eminent domain; and

WHEREAS, Grantor agrees to sell and City agrees to buy the Subject Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. Execution and Delivery to Escrow

City shall open an escrow with the title company identified above ("Escrow Holder") by delivery of a fully executed copy of this Agreement. Upon full execution of this Agreement by the parties ("Effective Date"), Grantor shall execute, notarize, and deliver to Escrow Holder the Grant Deed and Temporary Construction Easement Deed (collectively "Deeds") in the form of Exhibits "A" and "B", respectively, attached hereto and made a part hereof.

2. Payment

A. Purchase Price

City shall tender payment to the Escrow Holder in the amount of Eighty Four Thousand (\$84,000.00) Dollars ("Purchase Price"), which is specifically agreed by the parties to be the full amount of just compensation due and owing to Grantor for conveyance of the Subject Property to the City.

B. Property Interest Free of Encumbrances

The Close of Escrow, defined below, is conditioned on the Subject Property being conveyed to City free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items specifically identified as Title Exceptions and shown on Exhibit "C," attached hereto and made a part hereof, if any. For deeds of trust or similar security interests, in lieu of removal, Grantor may, if approved by City, obtain from each party holding the security interest, by a recordable written instrument, its consent to the terms hereof, and its agreement that its security interest is and shall be subordinate to the terms hereof, and that it is and shall be bound by the covenants and agreements made by Grantor herein.

C. Taxes

Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 5086 of the Revenue and Taxation Code. As a deduction from the amount shown in Section 2A, above, the City shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon; and

D. Grantor Curative Construction Work Within Temporary Construction Easement Area

Grantor shall perform necessary curative construction work within the temporary construction easement area, as specified under Exhibit E for a total lump sum amount of \$13,600.00. This amount is inclusive of the total compensation amount shown in Clause 2(A) above. It is further understood and agreed that Escrow Holder shall withhold the amount in escrow until said construction work has been completed within the time limit set forth in this Agreement and to the satisfaction of West Side Irrigation District and City, at which time payment will be made.

Further, Grantor agrees to indemnify and hold the City harmless for damages, liabilities, and losses which may be incurred during, or after, said construction work is complete.

3. Just Compensation

Grantor agrees that performance of this Agreement by City, including the payment recited in Section 2A,

above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession, use and/or occupancy of the Subject Property, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Subject Property or the location, establishment, construction, or operation of the above-named Project on the Subject Property.

4. Waiver under Section 1542

The parties intend that this Agreement will result in a full, complete, and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the Subject Property by the City, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of any rights, damages, compensation, or benefits to which a party is, or may be, entitled is intended to be full and complete. Accordingly:

- A. Grantor hereby waives any and all rights or benefits arising from and/or related to the City's acquisition possession and/or use of the Subject Property that it may have under Section 1542 of the Civil Code of the State of California, which provides:

“a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

- B. Grantor represents and warrants that it understands the effect of this waiver of Section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of its choice.

5. Title Insurance

City may obtain a CLTA extended coverage Grantor's policy of title insurance insuring that clear title to the Subject Property is vested in City upon recording of the Deeds.

6. Escrow

Unless extended by the City, the escrow shall close within ninety (90) days after the Effective Date of this Agreement and shall be the date the Deeds are recorded in the Recorder's Office for San Joaquin County ("Close of Escrow"); provided that if a Resolution or Resolution of Necessity are required in order to condemn any property required for the above-named Project, the escrow shall not close prior to the adoption of the Resolution(s) of Necessity by the City Council. Nothing stated in this Agreement is intended to dictate, preclude, or limit, in any way, the City's exercise of its discretion in determining whether or not to adopt a Resolution of Necessity. If a Resolution or Resolution of Necessity are required and the City Council does not adopt the Resolution(s), this Agreement may, at City's election, be deemed cancelled and of no force and effect, in which event both parties shall be released from any and all liability to each other of any sort or nature relating to this acquisition or the Project, and all amounts deposited in escrow by City shall be returned forthwith to City by the Escrow Holder.

The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Subject Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured by deeds of trust or mortgages, and/or to defray any other incidental costs other than those specified in Section 7 hereof to be borne by the City. The Escrow Holder shall release payment to Grantor, return any credited amounts to City, and record the Deeds in the Recorder's Office for

San Joaquin County upon the Close of Escrow. Title to the Subject Property shall pass to City immediately upon Close of Escrow.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of City. The Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

7. Fees

The City shall pay all escrow, recording, and title insurance fees incurred in this transaction.

8. Option to Extend Temporary Construction Easement

Grantor agrees that upon the expiration of the Easement, which City's right to use this Temporary Construction Easement shall become effective on the date the City issues notice to proceed to the contractor for construction of the 11th Street – East Tracy Overhead Bridge Replacement Project and shall terminate two years from the date the City issues notice to proceed to the contractor for construction the Project, City has the option to extend the term of the Easement area, or any portion thereof, for up to twelve (12) months. The rate for the extended use of the Easement shall be \$972.00 per month. It is further agreed and understood that City shall provide Grantor with the written notice of its intent to extend the term of the Easement at least thirty (30) days prior to the expiration of the Easement.

9. Possession and Use of the Property

The City shall have the right of possession and use of the Subject Property including the right to remove and dispose of improvements and construct the above-named Project commencing on the date that this Agreement is executed by both parties; provided that City makes no representation that the Project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the Project for any reason. If the Subject Property subsequently is not acquired by City for any reason, City shall restore the Subject Property to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

10. Eminent Domain

- A. It is mutually understood that the acquisition of the Subject Property by City is for a public purpose, and therefore, the Subject Property is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.
- B. If any eminent domain action that includes the Subject Property, or any portion thereof, has been filed by the City, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in any Court or with the State Treasurer in any such action and waives any and all claims for damages costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

11. Amendment

This Agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

12. No Leases

Grantor warrants that there are no leases, except as disclosed on Exhibit "D" attached hereto, on all or any portion of the Subject Property, and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or a portion of the Subject Property, other than disclosed on Exhibit "D". Grantor agrees not to assign, transfer or sell to any third party any right, title or interest Grantor has in the Subject Property. The parties acknowledge that, upon acquisition by City, any lease, tenancy or occupancy disclosed on Exhibit "D" shall terminate as to that part of the lease, tenancy or occupancy being acquired by City pursuant to this Agreement. Further, if there exist either recorded or unrecorded leases, the parties agree that at City's sole discretion, escrow shall not close and this Agreement shall become all or in part null and void if Escrow Holder fails to receive adequate documentation (such as a quitclaim deed and/or Tenant Consent) establishing that lessee has agreed to claim no interest in the Subject Property or in any compensation for the Subject Property and further enables City to obtain sufficient title insurance.

13. Grantor's Representations

A. Grantor makes the following representations and warranties:

- i. Grantor warrants that it owns full legal title to the Subject Property, and has full power and authority to convey all property rights described herein to City.
- ii. This Agreement constitutes a legal, valid, and binding obligation of Grantor enforceable in accordance with its terms.
- iii. Grantor warrants that to the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the Subject Property, or any portion thereof, or pending or threatened against Grantor which could (a) affect Grantor's title to the Subject Property, or any portion thereof, (b) affect the value of the Subject Property, or any portion thereof, or (c) subject any Grantor of the Subject Property, or any portion thereof, to liability.
- iv. There are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule, or regulation which would affect the Subject Property or any portion thereof.
- v. There are no Hazardous Substances, (as defined below), or storage tanks containing Hazardous Substances, in, on, under, or about the Subject Property.
- vi. To the best of Grantor's knowledge, there has been no production, storage, disposal, presence, observance, or release of any Hazardous Substances in, on, under, or about the Subject Property.
- vii. The Grantor and the Subject Property, are not in violation of any federal, state, or local law, ordinance, regulation, order, decree, or judgment relating to Hazardous Substances and/or environmental conditions in, on, under, or about the Subject Property.
- viii. There are no notices or other information giving Grantor reason to believe that any conditions existing on the Subject Property or in the vicinity of the Subject Property subject or could subject any Grantor of the Subject Property to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains

to the regulation of Hazardous Substances and/or the protection of public health and safety and/or the environment, including, but not limited to the ambient air, soil, soil vapor, groundwater, surface water, or land use.

- ix. To the best of Grantor's knowledge, there are no violations of any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Subject Property and relating to Hazardous Substances and/or environmental compliance.
 - x. There is no license, permit, option, right of first refusal, or other agreement, written or oral, which affects the Subject Property or any portion thereof.
 - xi. Conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the Subject Property are subject.
- B. Each of the above warranties and representations is material and is relied upon by City separately and collectively. Each of the above representations shall be deemed to have been made as of the date that the Deeds are recorded, and shall survive the recording of the Deeds by a period of two (2) years following the date that the Deeds are recorded. If, before the recording of the Deeds, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice in writing to City of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Deeds, the City may, at its unfettered discretion, either cancel and terminate this Agreement or give the Grantor the option to remedy the problem before the recording of the Deeds or deduct from the payments required by Section 2A, above, as a credit to City, in an amount as determined by the City reasonably required to remedy the problem.

14. Hazardous Substances

The parties acknowledge, understand, and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or adjacent to any portion of the Subject Property shall be governed by the provisions of Section 15 below, regardless of whether any inspection, examination, sampling, testing, assessment, or other investigation is conducted by City.

"Hazardous Substance(s)" includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:

- (i) regulated by any local governmental agency, the State of California or the United States Government; (ii) defined as such in any federal, State, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25330-25395), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25); (iii) listed in the United States Department of Transportation Table (49 CFR § 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor

agency (40 CFR Part 302), (iv) asbestos, or asbestos containing material; (v) radon gas; (vi) petroleum or petroleum fractions; (vii) any explosive substances; (viii) polychlorinated biphenyl; (ix) a radioactive material, and (x) per chlorate.

15. Indemnification

- A. Each party (hereafter the "Indemnifying Party") agrees and covenants to indemnify, defend (with counsel acceptable to the other party, (hereinafter "Indemnified Party"), which consent shall not be unreasonably withheld), and hold the Indemnified Party, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with: (i) any acts or omissions related to the performance of this Agreement, (ii) any breach of this Agreement, or (iii) the occupancy or use of the Subject Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Subject Property), by the Indemnifying Party, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf.
- B. The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. The provisions of this Section shall survive the recording of any deeds, easements or other documents hereunder."

16. Attorney Fees

Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

17. Notices

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City:
City of Tracy
Attn: Development and Services
Department Director
333 Civic Center Plaza
Tracy, CA 95376

To Grantors:
MAGJJ Overpass Properties, LLC
Attn: Jack Alvarez
8606 W. Schulte Road
Tracy, CA 95304

18. Recording

Either party may record this Agreement in the Recorder's Office for San Joaquin County.

19. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

20. Brokers

Grantor and City each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

21. Time of Essence

Time is of the essence for each condition, term, and provision in this Agreement.

22. Waivers

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

23. Severability

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

24. Construction

Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement.

25. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the San Joaquin County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

GRANTOR(S):
MAGJJ OVERPASS PROPERTIES, LLC, a
California Limited Liability Company

GRANTEE:
CITY OF TRACY, a municipal corporation
of the State of California

Date: 11/4/13

Date: _____

By: Grace Alvarez Robinson

By: _____
Leon Churchill, City Manager

Print Name: Grace Alvarez Robinson

APPROVED AS TO FORM:

Date: _____

Date: _____

By: _____

By: _____
Dan Sodergren, City Attorney

Print Name: _____

ATTEST:

Date: _____

Date: _____

By: _____

By: _____
Sandra Edwards, City Clerk

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

EXHIBIT "A"
Grant Deed

NO FEE DOCUMENT
Government Code §6103 & §27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street - East Tracy Overhead Bridge Replacement
Project
Address: 8300 and 8154 West 11th Street
APN: 250-240-03
Project No.: 11-05-02
Title Order No. 1213012833-CS
Escrow No. 1213012833-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, MAGJJ OVERPASS PROPERTIES, LLC, a California Limited Liability Company ("GRANTOR"), hereby grants to the CITY OF TRACY, a municipal corporation of the State of California, all that real property situated in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit "A", legal description, and Exhibit "B", plat to accompany legal description, attached hereto and made a part hereof.

The property is for Public Street and Highway purposes to be known as West 11th Street.

Executed this 4th day of November, 2013

GRANTOR: MAGJJ Overpass Properties, LLC, a California Limited Liability Company
ALVAREZ REVOCABLE TRUST under instrument dated February 22, 2001

By: _____

Printed: Jack Alvarez, Trustee

By: _____

Printed: Sabra L. Alvarez, Trustee

GUIDI REVOCABLE TRUST under instrument dated May 4, 2000

By: _____

Printed: Robert J. Guidi, Trustee

By: _____

Printed: Margaret G. Guidi, Trustee

By: Grace Alvarez Robinson

Printed: Grace Alvarez Robinson

By: _____

Printed: Janet M. Alvarez

By: _____

Printed: Annette Alvarez Ormonde

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

GRANTOR(S):
MAGJJ OVERPASS PROPERTIES, LLC, a
California Limited Liability Company

GRANTEE:
CITY OF TRACY, a municipal corporation
of the State of California

Date: 11-4-2013

Date: _____

By: Annette Alvarez Ormonde

By: _____
Leon Churchill, City Manager

Print Name: Annette Alvarez Ormonde

APPROVED AS TO FORM:

Date: _____

Date: _____

By: _____

By: _____
Dan Sodergren, City Attorney

Print Name: _____

ATTEST:

Date: _____

Date: _____

By: _____

By: _____
Sandra Edwards, City Clerk

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

EXHIBIT "A"
Grant Deed

NO FEE DOCUMENT
Government Code §6103 & §27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street - East Tracy Overhead Bridge Replacement Project
Address: 8300 and 8154 West 11th Street
APN: 250-240-03
Project No.: 11-05-02
Title Order No. 1213012883-CS
Escrow No. 1213012883-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **MAGJJ OVERPASS PROPERTIES, LLC**, a California Limited Liability Company ("GRANTOR"), hereby grants to the **CITY OF TRACY**, a municipal corporation of the State of California, all that real property situated in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit "A", legal description, and Exhibit "B", plat to accompany legal description, attached hereto and made a part hereof.

The property is for Public Street and Highway purposes to be known as West 11th Street.

Executed this 4th day of November, 2013

GRANTOR: MAGJJ Overpass Properties, LLC, a California Limited Liability Company
ALVAREZ REVOCABLE TRUST under instrument dated February 22, 2001

By: _____

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By: _____

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By: _____

Printed: Robert J. Guidi, Trustee

By: _____

Printed: Margaret G. Guidi, Trustee

By: _____

Printed: Grace Alvarez Robinson

By: _____

Printed: Janet M. Alvarez

By: Annette Alvarez Ormonde

Printed: Annette Alvarez Ormonde

EXHIBIT "A-1"
Legal Description

MAGJJ
RIGHT OF WAY

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH,
RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

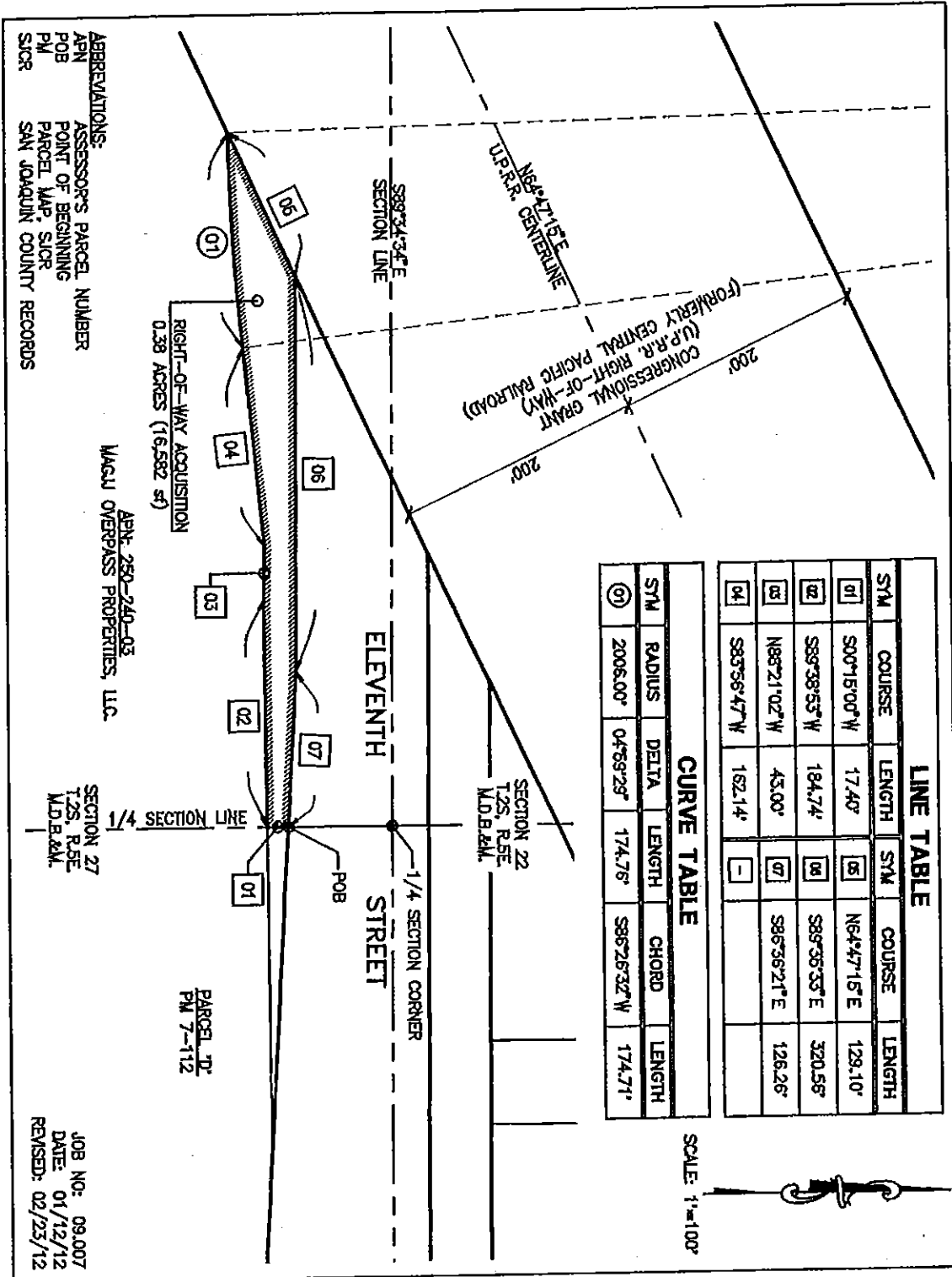
BEGINNING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN
UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN
BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS;
THENCE SOUTH 00 DEGREES 15 MINUTES 00 SECONDS WEST, ALONG THE
WEST LINE OF SAID PARCEL "D", 17.40 FEET TO A POINT; THENCE SOUTH 89
DEGREES 38 MINUTES 53 SECONDS WEST, 184.74 FEET TO A POINT; THENCE
NORTH 88 DEGREES 21 MINUTES 02 SECONDS WEST, 43.00 FEET TO A POINT;
THENCE SOUTH 83 DEGREES 56 MINUTES 47 SECONDS WEST, 162.14 FEET TO
A POINT; THENCE ALONG A CURVE TO THE SOUTHWEST, HAVING A
RADIUS OF 2006.00 FEET, A CENTRAL ANGLE OF 04 DEGREES 59 MINUTES 29
SECONDS, AN ARC LENGTH OF 174.76 FEET AND A CHORD BEARING SOUTH
86 DEGREES 26 MINUTES 32 SECONDS WEST, 174.71 FEET TO A POINT ON
THE SOUTHEASTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT
RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE
NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST ALONG SAID RAILROAD
SOUTHEASTERLY LINE, 129.10 FEET TO A POINT, SAID POINT BEING AT THE
INTERSECTION OF SAID RAILROAD SOUTHEASTERLY LINE AND THE
SOUTH LINE OF ELEVENTH STREET; THENCE SOUTH 89 DEGREES 35
MINUTES 33 SECONDS EAST ALONG SAID SOUTH LINE OF ELEVENTH
STREET, 320.56 FEET TO A POINT; THENCE SOUTH 86 DEGREES 36 MINUTES

EXHIBIT "A-1"
Legal Description
Page 2 of 2

21 SECONDS EAST ALONG SAID SOUTH LINE OF ELEVENTH STREET, 126.26
FEET TO THE POINT OF BEGINNING.

CONTAINING 0.38 ACRES, MORE OR LESS.

EXHIBIT "A-2"
Plat Map



ABBREVIATIONS:
 APN ASSESSOR'S PARCEL NUMBER
 POB POINT OF BEGINNING
 PM PARCEL MAP, S/C/R
 S/C/R SAN JOAQUIN COUNTY RECORDS

APN: 280-240-05
 MAGUI OVERPASS PROPERTIES, LLC

SECTION 27
 1/4 SECTION LINE
 M.D.B.A.M.

JOB NO: 09.007
 DATE: 01/12/12
 REVISED: 02/23/12

LINE TABLE			
STM	COURSE	LENGTH	LENGTH
01	S00°15'00"W	17.40'	129.10'
02	S89°38'53"W	184.74'	320.58'
03	N88°21'02"W	43.00'	126.26'
04	S83°56'47"W	182.14'	-

CURVE TABLE				
STM	RADIUS	DELTA	LENGTH	CHORD
01	2006.00'	04°59'29"	174.76'	S86°26'32"W
				174.71'

SCALE: 1"=100'

EXHIBIT "B"
Temporary Construction Easement

NO FEE DOCUMENT
Government Code §6103 & §27383

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street – East Tracy Overhead Bridge

Replacement Project

Address: 8300 & 8454 West 11th Street

APNs: 250-240-03 and 250-240-07

Project No.: 11-05-02

Title Order No. 1213012888-CS

Escrow No. 1213012888-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

TEMPORARY CONSTRUCTION EASEMENT

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **MAGJJ OVERPASS PROPERTIES, LLC**, a California Limited Liability Company, ("GRANTOR"), hereby Grant(s) to the **CITY OF TRACY**, a municipal corporation ("GRANTEE"), a **TEMPORARY CONSTRUCTION EASEMENT ("EASEMENT")**, for the purpose of public use, inclusive of ingress and egress, including construction, reconstruction, installation, improvement, repair, inspection, expansion, and maintenance of public right-of-ways, highways, roadways, services, utilities, landscape improvements, and necessary appurtenances thereto, on, over, and under Grantor's Property, (including the right to re-grade the underlying property to conform to the grade of the adjacent street) located in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit A, legal description, and Exhibit B, plat to accompany legal description, attached hereto and made a part hereof.

Easement shall become effective on the date the Grantee issues notice to proceed to the contractor for construction of the 11th Street – East Tracy Overhead Bridge Replacement Project ("PROJECT") and shall terminate two years from the date the Grantee issues notice to proceed to the contractor for construction the Project.

Upon the termination of this Easement, Grantee shall record a Notice of Termination of Temporary Construction Easement releasing all Grantee's right, title and interest in and to this Easement, no later than 60 days following completion of construction of the Project.

Executed this 4th day of November, 2013

EXHIBIT "B"
Temporary Construction Easement
Page 2 of 2

GRANTOR: MAGJJ Overpass Properties, LLC, a California Limited Liability Company
ALVAREZ REVOCABLE TRUST under Instrument dated February 22, 2001

By: _____
Printed: Jack Alvarez, Trustee

By: _____
Printed: Sabra L. Alvarez, Trustee

GUIDI REVOCABLE TRUST under Instrument dated May 4, 2000

By: _____
Printed: Robert J. Guidi, Trustee

By: _____
Printed: Margaret G. Guidi, Trustee

By: _____
Printed: Grace Alvarez Robinson

By: _____
Printed: Janet M. Alvarez

By: Annette Alvarez Ormonde
Printed: Annette Alvarez Ormonde

EXHIBIT "B-1"
Legal Description

MAGJJ
TEMPORARY CONSTRUCTION EASEMENT

AN EASEMENT FOR TEMPORARY CONSTRUCTION PURPOSES, OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

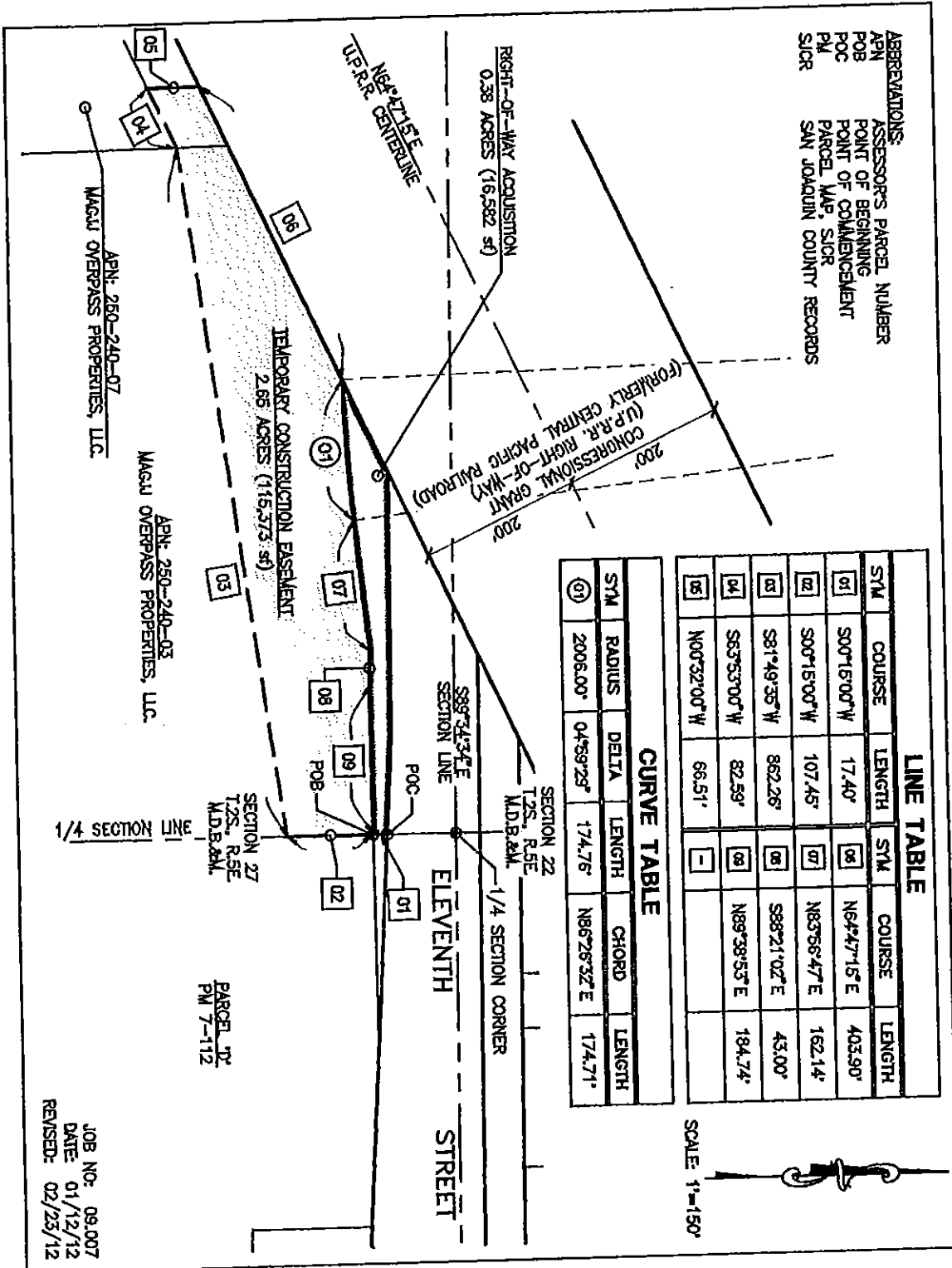
COMMENCING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 00 DEGREES 15 MINUTES 00 SECONDS WEST, ALONG THE WEST LINE OF SAID PARCEL "D", 17.40 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT; THENCE CONTINUING SOUTH 00 DEGREES 15 MINUTES 00 SECONDS WEST ALONG SAID WEST LINE OF PARCEL "D", 107.45 FEET TO A POINT; THENCE SOUTH 81 DEGREES 49 MINUTES 35 SECONDS WEST, 862.26 FEET TO A POINT; THENCE SOUTH 63 DEGREES 53 MINUTES 00 SECONDS WEST, 82.59 FEET TO A POINT; THENCE NORTH 00 DEGREES 32 MINUTES 00 SECONDS WEST, 66.51 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT RIGHT OF WAY LINE OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST ALONG SAID RAILROAD SOUTHEASTERLY LINE, 403.90 FEET TO A POINT; THENCE ALONG A CURVE TO THE NORTHEAST HAVING A RADIUS OF 2006.00 FEET, A CENTRAL ANGLE OF 04 DEGREES 59 MINUTES 29 SECONDS, AN ARC LENGTH OF 174.76 FEET AND A CHORD BEARING NORTH 86 DEGREES 26 MINUTES 32 SECONDS EAST, 174.71 FEET TO A POINT; THENCE NORTH 83 DEGREES 56 MINUTES 47 SECONDS EAST, 162.14 FEET TO A POINT; THENCE

EXHIBIT "B-1"
Legal Description
Page 2 of 2

SOUTH 88 DEGREES 21 MINUTES 02 SECONDS EAST, 43.00 FEET TO A POINT;
THENCE NORTH 89 DEGREES 38 MINUTES 53 SECONDS EAST, 184.74 FEET TO
THE POINT OF BEGINNING.

CONTAINING 2.65 ACRES, MORE OR LESS.

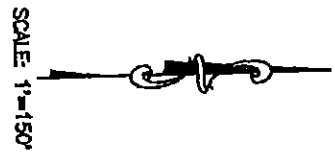
EXHIBIT "B-2"
Plat Map



ABBREVIATIONS:
 APN: ASSESSOR'S PARCEL NUMBER
 POB: POINT OF BEGINNING
 POC: POINT OF COMMENCEMENT
 PM: PARCEL MAP S.I.C.R.
 S.I.C.R.: SAN JOAQUIN COUNTY RECORDS

SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
01	S00°15'00"W	17.40'	06	N64°47'15"E	403.90'
02	S00°15'00"W	107.45'	07	N83°56'47"E	162.14'
03	S81°49'35"W	862.26'	08	S88°21'02"E	43.00'
04	S63°53'00"W	82.59'	09	N89°38'53"E	184.74'
05	N00°32'00"W	66.51'	-		

SYM	RADIUS	DELTA	LENGTH	CHORD	LENGTH
01	2006.00'	04°59'29"	174.76'	N86°28'32"E	174.71'



JOB NO: 09.007
 DATE: 01/12/12
 REVISED: 02/23/12

EXHIBIT "C"

Title exceptions that will not be removed from the Preliminary Title Report dated November 9, 2011:

6. Any right, title interest or adverse claim arising out of an assertion or determination the subject property or any part thereof lies within the limits of the lands granted the Central Pacific Railroad Company by Act of Congress, dated July 1, 1862 (12 Stats. 489, Sec. 9), as amended.

Note: The exact location and extent of the lands granted under the above reference Congressional Act cannot be determined from the record.

Further Note: The present ownership of such right, title, interest or adverse claim and other matters, if any, affecting same are not shown herein.

7. Rights, easement, interests or claims that might be disclosed by an examination of various private maps of the area in the possession of the Union Pacific Railroad Company, successor to Central Pacific Railway Company and Southern Pacific Railroad Company.

8. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Easement Deed
Granted To : Tuolumne Water & Power Company
For : Right of way for electric transmission lines
Dated : June 18, 1908
Recorded : July 21, 1908 in Volume 58 of Book "A" of Deeds, Page 566
Affects : portion of said land

NOTE: The present ownership of said easement and other matters affecting the interests thereto, if any, are not shown herein

9. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Easement Deed
Granted To : Sierra and San Francisco Power Company, a corporation
For : Right of way for electric transmission line, etc.
Recorded : May 19, 1910 in Volume 187 of Book "A" of Deeds, Page 563
Affects : portion of said land

NOTE: The present ownership of said easement and other matters affecting the interests thereto, if any, are not shown herein

10. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Easement Deed
Granted To : Sierra and San Francisco Power Company, a corporation
For : Right of way for pole lines
Recorded : June 27, 1910 in Volume 187 of Book "A" of Deeds, Page 566
Affects : portion of said land

NOTE: The present ownership of said easement and other matters affecting the interests thereto, if any, are not shown herein

EXHIBIT "C"

Page 2 of 2

11. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Easement Deed
Granted To : West Side Irrigation District
For : Pipelines & Ditch
Recorded : November 13, 1973 In Volume 3818 of Official Records, Page 125
Affects : portion of said land

NOTE: The present ownership of said easement and other matters affecting the interests thereto, if any, are not shown herein

12. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Easement Deed
Granted To : West Side Irrigation District
For : Pipelines & Ditch
Recorded : May 21, 1974 In Volume 3875 of Official Records, Page 449
Affects : portion of said land

NOTE: The present ownership of said easement and other matters affecting the interests thereto, if any, are not shown herein

13. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Utility Easements
Granted To : City of Tracy, a municipal corporation
For : Underground Utilities
Recorded : September 26, 1995 In Official Records under Recorder's Serial Number 95089175
Affects : A portion as described therein

NOTE: The present ownership of said easement and other matters affecting the interests thereto, if any, are not shown herein

EXHIBIT "D"
Leases, if any

NO LEASES

EXHIBIT "E"

Grantor Curative Construction Work Within Temporary Construction Easement Area

File: 11-05-02

Owner: MAGJJ Overpass Properties

APNs: 250-240-03, 250-240-07

It is mutually agreed and understood that the Grantor will be responsible for the curative construction work within the temporary construction easement area described below. Additionally, the funds will be set aside in escrow until the performance of the work is complete:

1. Access Road

- a. Construct a temporary access road for the sole purpose of maintaining access for Grantor's residential and farming operations by April 15, 2014.

2. Drainage Work

- a. Construct a new irrigation/drainage ditch on the north side of Grantor's property just south of the Temporary Construction Easement. Work shall be completed prior to PG&E and AT&T installing their facilities in an underground trench which is expected to start on February 1, 2014.

Perform any other necessary drainage modifications on Grantor's property that lie outside the temporary construction easement.

3. Miscellaneous Work

- a. At the completion of the project construction, Jack Alvarez will spread gypsum over the portion of the property that lies within the temporary construction easement. The gypsum will be provided by the Project Contactor as required in the Project Specifications.

It is mutually agreed and understood that the reimbursement price identified in 1.(a) above in the amount of \$12,000, is to be divided equally between Jack Alvarez and Sabra L. Alvarez, Robert J. Guidi and Margaret G. Guidi, Grace Alvarez Robinson, Janet M. Alvarez, and Annette Alvarez Ormonde.

It is also mutually agreed and understood that the reimbursement price includes compensation directly to Jack Alvarez, in the amount of \$1,600, to perform and be responsible for the work, identified in 2.(a) and 3.(a) above.

NO FEE DOCUMENT
Government Code §6103 & §27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street -- East Tracy Overhead Bridge Replacement
Project
Address: 8300 and 8454 West 11th Street
APN: 250-240-03
Project No.: 11-05-02
Title Order No. 1213012888-CS
Escrow No. 1213012888-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **MAGJJ OVERPASS PROPERTIES, LLC**, a California Limited Liability Company ("GRANTOR"), hereby grants to the **CITY OF TRACY**, a municipal corporation of the State of California, all that real property situated in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit "A", legal description, and Exhibit "B", plat to accompany legal description, attached hereto and made a part hereof.

The property is for Public Street and Highway purposes to be known as West 11th Street.

Executed this _____ day of _____, 20____

**GRANTOR: MAGJJ Overpass Properties, LLC, a California Limited Liability Company
ALVAREZ REVOCABLE TRUST** under instrument dated February 22, 2001

By: _____
Printed: Jack Alvarez, Trustee

By: _____
Printed: Sabra L. Alvarez, Trustee

GUIDI REVOCABLE TRUST under instrument dated May 4, 2000

By: _____
Printed: Robert J. Guidi, Trustee

By: _____
Printed: Margaret G. Guidi, Trustee

By: _____
Printed: Grace Alvarez Robinson

By: _____
Printed: Janet M. Alvarez

By: Annette Alvarez Ormonde
Printed: Annette Alvarez Ormonde

Exhibit "A"
Legal Description

EXHIBIT "A"
MAGJJ
RIGHT OF WAY

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY,
COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH,
RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

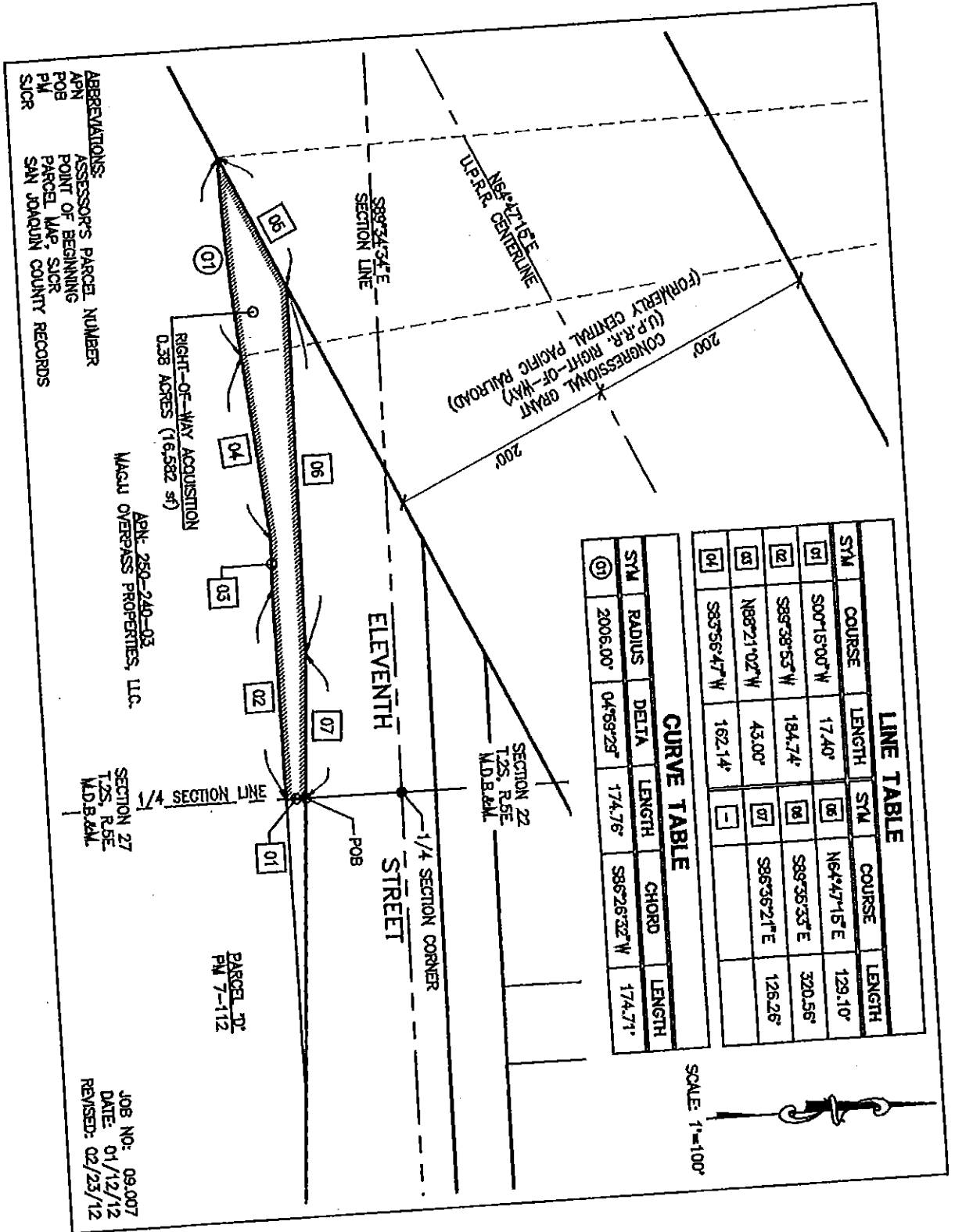
BEGINNING AT THE NORTHWEST CORNER OF PARCEL "D", AS SHOWN
UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD APRIL 20, 1979 IN
BOOK 7 OF PARCEL MAPS, AT PAGE 112, SAN JOAQUIN COUNTY RECORDS;
THENCE SOUTH 00 DEGREES 15 MINUTES 00 SECONDS WEST, ALONG THE
WEST LINE OF SAID PARCEL "D", 17.40 FEET TO A POINT; THENCE SOUTH 89
DEGREES 38 MINUTES 53 SECONDS WEST, 184.74 FEET TO A POINT; THENCE
NORTH 88 DEGREES 21 MINUTES 02 SECONDS WEST, 43.00 FEET TO A POINT;
THENCE SOUTH 83 DEGREES 56 MINUTES 47 SECONDS WEST, 162.14 FEET TO
A POINT; THENCE ALONG A CURVE TO THE SOUTHWEST, HAVING A
RADIUS OF 2006.00 FEET, A CENTRAL ANGLE OF 04 DEGREES 59 MINUTES 29
SECONDS, AN ARC LENGTH OF 174.76 FEET AND A CHORD BEARING SOUTH
86 DEGREES 26 MINUTES 32 SECONDS WEST, 174.71 FEET TO A POINT ON
THE SOUTHEASTERLY LINE OF THE 400 FOOT CONGRESSIONAL GRANT
RIGHT OF WAY OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE
NORTH 64 DEGREES 47 MINUTES 15 SECONDS EAST ALONG SAID RAILROAD
SOUTHEASTERLY LINE, 129.10 FEET TO A POINT, SAID POINT BEING AT THE
INTERSECTION OF SAID RAILROAD SOUTHEASTERLY LINE AND THE
SOUTH LINE OF ELEVENTH STREET; THENCE SOUTH 89 DEGREES 35
MINUTES 33 SECONDS EAST ALONG SAID SOUTH LINE OF ELEVENTH
STREET, 320.56 FEET TO A POINT; THENCE SOUTH 86 DEGREES 36 MINUTES

Exhibit "A"
Legal Description
Page 2 of 2

21 SECONDS EAST ALONG SAID SOUTH LINE OF ELEVENTH STREET, 126.26
FEET TO THE POINT OF BEGINNING.

CONTAINING 0.38 ACRES, MORE OR LESS.

Exhibit "B" Plat Map



ABBREVIATIONS:
 APN ASSESSOR'S PARCEL NUMBER
 POB POINT OF BEGINNING
 PM PARCEL MAP SICR
 SICR SAN JOAQUIN COUNTY RECORDS

APN: 250-240-03
 MAGU OVERPASS PROPERTIES, LLC.

SECTION 27
 T.2S, R.5E
 M.D.B.M.

PARCEL ID:
 PM 7-112

JOB NO: 09.007
 DATE: 01/12/12
 REVISED: 02/23/12

LINE TABLE			
SYM	COURSE	LENGTH	LENGTH
01	S00°15'00"W	17.40'	129.10'
02	S89°38'53"W	184.74'	320.56'
03	N88°21'02"W	43.00'	126.26'
04	S83°56'47"W	162.14'	-

CURVE TABLE			
SYM	RADIUS	DELTA	LENGTH
01	2006.00'	04°59'29"	174.76'

SCALE 1"=100'

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF San Joaquin

On 11/4, 2013 before me, Maria T. Huerta, personally appeared Annette Alvarez Omonde who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

- CAPACITY CLAIMED BY SIGNER
- INDIVIDUAL
- CORPORATE OFFICER

- PARTNER(S) TITLE(S) LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

NO FEE DOCUMENT
Government Code §6103 & §27383

City Clerk
CITY OF TRACY
333 Civic Center Plaza
Tracy, CA 95376

The Above Space For Recorder's Use Only

OK to Accept: _____

Date: _____

Project Name: 11th Street – East Tracy Overhead Bridge

Replacement Project

Address: 8300 & 8454 West 11th Street

APNs: 250-240-03 and 250-240-07

Project No.: 11-05-02

Title Order No. 1213012888-CS

Escrow No. 1213012888-CS

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

TEMPORARY CONSTRUCTION EASEMENT

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, **MAGJJ OVERPASS PROPERTIES, LLC**, a California Limited Liability Company, ("GRANTOR"), hereby Grant(s) to the CITY OF TRACY, a municipal corporation ("GRANTEE"), a TEMPORARY CONSTRUCTION EASEMENT ("EASEMENT"), for the purpose of public use, inclusive of ingress and egress, including construction, reconstruction, installation, improvement, repair, inspection, expansion, and maintenance of public right-of-ways, highways, roadways, services, utilities, landscape improvements, and necessary appurtenances thereto, on, over, and under Grantor's Property, (including the right to re-grade the underlying property to conform to the grade of the adjacent street) located in the City of Tracy, County of San Joaquin, State of California, described as follows:

See Exhibit A, legal description, and Exhibit B, plat to accompany legal description, attached hereto and made a part hereof.

Easement shall become effective on the date the Grantee issues notice to proceed to the contractor for construction of the 11th Street – East Tracy Overhead Bridge Replacement Project ("PROJECT") and shall terminate two years from the date the Grantee issues notice to proceed to the contractor for construction the Project.

Upon the termination of this Easement, Grantee shall record a Notice of Termination of Temporary Construction Easement releasing all Grantee's right, title and interest in and to this Easement, no later than 60 days following completion of construction of the Project.

Executed this 4th day of November, 2013

GRANTOR: MAGJJ Overpass Properties, LLC, a California Limited Liability Company
ALVAREZ REVOCABLE TRUST under instrument dated February 22, 2001

By: _____
Printed: Jack Alvarez, Trustee

By: _____
Printed: Sabra L. Alvarez, Trustee

GUIDI REVOCABLE TRUST under instrument dated May 4, 2000

By: _____
Printed: Robert J. Guidi, Trustee

By: _____
Printed: Margaret G. Guidi, Trustee

By: _____
Printed: Grace Alvarez Robinson

By: _____
Printed: Janet M. Alvarez

By: Annette Alvarez Ormonde
Printed: Annette Alvarez Ormonde

Exhibit "A"
Legal Description

MAGJJ
TEMPORARY CONSTRUCTION EASEMENT

AN EASEMENT FOR TEMPORARY CONSTRUCTION PURPOSES, OVER THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTH ½ OF SECTION 27, TOWNSHIP 2 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

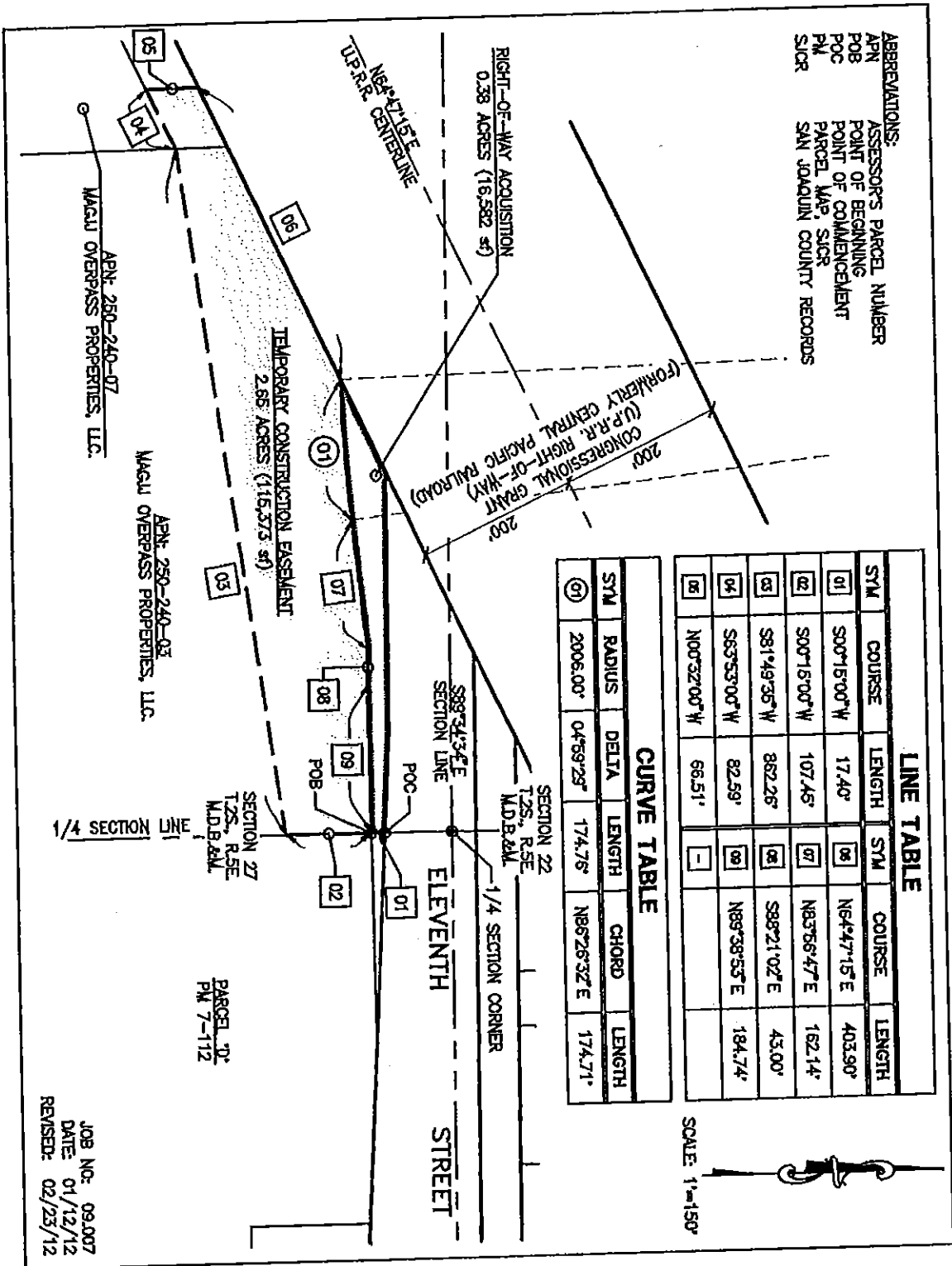
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Exhibit "A"
Legal Description
Page 2 of 2

SOUTH 88 DEGREES 21 MINUTES 02 SECONDS EAST, 43.00 FEET TO A POINT;
THENCE NORTH 89 DEGREES 38 MINUTES 53 SECONDS EAST, 184.74 FEET TO
THE POINT OF BEGINNING.

CONTAINING 2.65 ACRES, MORE OR LESS.

Exhibit "B" Plat Map



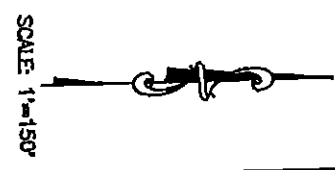
ABBREVIATIONS:
 APN: ASSESSOR'S PARCEL NUMBER
 POB: POINT OF BEGINNING
 POC: POINT OF COMMENCEMENT
 PM: PARCEL MAP, SICR
 SICR: SAN JOAQUIN COUNTY RECORDS

LINE TABLE

SYM	COURSE	LENGTH	SYM	COURSE	LENGTH
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04	S63°53'00"W	82.59'	09	N89°38'53"E	184.74'
05	N00°32'00"W	66.51'	-		

CURVE TABLE

SYM	RADIUS	DELTA	LENGTH	CHORD	LENGTH
01	2006.00'	04°59'29"	174.76'	N86°26'32"E	174.71'



JOB NO: 09.007
 DATE: 01/12/12
 REVISED: 02/23/12

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF San Joaquin

On 11/14, 2013 before me, Maria T. Huerta, personally appeared Annette Alvarez Ormonde, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
(SIGNATURE OF NOTARY)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

<input type="checkbox"/> CAPACITY CLAIMED BY SIGNER INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <div style="text-align: center;">TITLE(S)</div> <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	DESCRIPTION OF ATTACHED DOCUMENT _____ TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____ SIGNER(S) OTHER THAN NAMED ABOVE
---	---

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

RESOLUTION 2013- _____

APPROVING A NEW PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT BETWEEN UNION PACIFIC RAILROAD COMPANY (UPRR) AND THE CITY OF TRACY COVERING THE RECONSTRUCTION AND WIDENING OF THE ELEVENTH STREET OVERPASS GRADE SEPARATED PUBLIC ROAD CROSSING AT RAILROAD MILE POST 83.27 – TRACY SUBDIVISION, DOT NUMBER 753069A IN CITY OF TRACY, SAN JOAQUIN COUNTY, STATE OF CALIFORNIA, CITY CIP 73063, AND FEDERAL NUMBER BHLS-5192(020) AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The City of Tracy CIP 73063, Federal Project Number BHLS-5192(020) promotes reconstruction and widening of the East Eleventh Street Overpass Bridge, and

WHEREAS, The new bridge will be wider than its existing width and requires acquisition of right of ways from adjoining properties, and

WHEREAS, The new bridge requires additional right of way and temporary construction easements from UPRR, and

WHEREAS, On February 5, 2013, Council directed staff to negotiate and secure right of way from UPRR, and

WHEREAS, Staff, in coordination with the City right-of-way services consultant and the City Attorney's office, concluded terms and conditions of these agreements securing the grant of "Highway Easement", including temporary construction easements, and

WHEREAS, During construction of said bridge, UPRR will coordinate train movement and provide construction inspection within their jurisdiction, and

WHEREAS, The total negotiated price for UPRR granting "Highway Easement", temporary construction easement, and providing construction inspection is \$587,387, and

WHEREAS, There will be no fiscal impact to the General Fund. Funds for this Agreement will be paid from Proposition 1-B for bridge replacement;

NOW, THEREFORE, BE IT RESOLVED That City Council approves a New Public Highway Overpass Crossing Agreement between the Union Pacific Railroad Company (UPRR) and the City of Tracy covering the reconstruction and widening of the Eleventh Street Overpass Grade separated public road crossing at Railroad Mile Post 83.27 – Tracy Subdivision, DOT NO. 753069A in the City of Tracy, San Joaquin County, State of California, City CIP 73063, Federal Number BHLS-5192(020), authorizes payment of \$587,387 to UPRR and authorizes the Mayor to execute the agreement for the reconstruction and widening of the Eleventh Street Overpass Bridge, CIP 73063, Federal Number BHLS-5192(020).

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of November, 2013 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

RESOLUTION 2013- _____

APPROVING REAL PROPERTY ACQUISITION AGREEMENT OF FEE INTEREST AND TEMPORARY CONSTRUCTION EASEMENT BETWEEN THE CITY OF TRACY AND JOE ALVAREZ, TRUSTEE OF THE JOE ALVAREZ REVOCABLE SURVIVOR'S TRUST AS SET FORTH IN THE ALVAREZ TRUST FOR THE RECONSTRUCTION AND WIDENING OF THE ELEVENTH STREET OVERPASS GRADE PUBLIC ROAD CROSSING AT RAILROAD MILE POST 83.27, CITY CIP 73063, FEDERAL NUMBER BHLS-5192(020), AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The City CIP 73063 and Federal Number BHLS-5192(020) provides reconstruction and widening of the East Eleventh Street Overpass Bridge, and

WHEREAS, The new bridge will be constructed wider than the existing width and needs more right-of-ways from adjacent properties, which includes private lands, West Side Irrigation District (WSID) and UPRR, and

WHEREAS, The new bridge requires additional right of way and temporary construction easements from Joe Alvarez, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez trust dated October 12, 1989, and

WHEREAS, Staff, in coordination with the City right-of-way services consultant and the City Attorney Office, concluded terms and conditions of these agreements and secured granting right to replace and reconstruct existing overhead bridge, including temporary construction easements, and

WHEREAS, The negotiated prices for real property acquisition in fee interest for right of way and temporary construction easements from Joe Alvarez, Revocable Survivor's Trust is \$79,000, and

WHEREAS, There will be no fiscal impact to the General Fund. Funds for this Agreement will be paid from Proposition 1-B for bridge replacement;

NOW, THEREFORE, BE IT RESOLVED That City Council approves the real property acquisition agreement in fee interest and Temporary Construction Easement between the City of Tracy and Joe Alvarez, Trustee of the Joe Alvarez Revocable Survivor's Trust as set forth in the Alvarez Trust dated October 12, 1989, authorizes the Mayor to execute the agreement for the reconstruction and widening of the Eleventh Street Overpass Bridge, CIP 73063, Federal Number BHLS-5192(020), and authorizes payment of \$79,000 to the Joe Alvarez Trust.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of November, 2013 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

RESOLUTION 2013- _____

APPROVING REAL PROPERTY ACQUISITION AGREEMENT OF FEE INTEREST AND TEMPORARY CONSTRUCTION EASEMENT BETWEEN THE CITY OF TRACY AND MAGJJ OVERPASS PROPERTIES, LLC, FOR RECONSTRUCTION AND WIDENING OF THE ELEVENTH STREET OVERPASS GRADE SEPARATED PUBLIC ROAD CROSSING AT RAILROAD MILE POST 83.27 CITY CIP 73063, FEDERAL NUMBER BHLS-5192 (020), AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The City CIP 73063 and Federal Project Number BHLS-5192(020) provides reconstruction and widening of the East Eleventh Street Overpass Bridge, and

WHEREAS, The new bridge will be constructed wider than the existing width and needs more right-of-ways from and temporary construction easements from MAGJJ, and

WHEREAS, The new bridge requires additional right of way and temporary construction easements from MAGJJ Overpass Properties, and

WHEREAS, Staff, in coordination with the City's right-of-way services consultant and the City Attorney's Office, concluded terms and conditions of the agreement for acquisition of real property in fee interest and temporary construction easements, and

WHEREAS, The negotiated prices and the cost of right-of-way acquisition with Fee Interest and Temporary Construction Easements from MAGJJ Overpass Properties, will be \$84,000, and

WHEREAS, There will be no fiscal impact to the General Fund. Funds for this Agreement will be paid from Proposition 1-B for bridge replacement;

NOW, THEREFORE, BE IT RESOLVED That City Council approves the real property acquisition agreement in fee interest and Temporary Construction Easement between the City of Tracy and MAGJJ Overpass Properties, LLC, authorizes the Mayor to execute the agreement for the reconstruction and widening of the Eleventh Street Overpass Bridge, CIP 73063, Federal Number BHLS-5192(020), and authorizes payment of \$84,000.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 19th day of November, 2013 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 5

REQUEST

AUTHORIZE A FY2013-14 SUPPLEMENTAL APPROPRIATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND GENERAL PROJECTS FUND 301 MONIES

EXECUTIVE SUMMARY

The City of Tracy has received an additional allocation of \$39,985 of Community Development Block Grant (CDBG) monies for FY2013-14. City Council is being asked to appropriate \$14,450 of these CDBG funds and \$5,000 of General Projects Fund 301 monies to the Lolly Hansen Senior Center Outdoor Recreation Area Project, CIP 78136, and appropriate the remaining \$25,535 of CDBG funds to the City's Sidewalk ADA Improvements Project.

DISCUSSION

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

For FY2013-14, San Joaquin County's CDBG program allocations increased slightly from the estimated allocations used in the 2013 Notice of Funding Availability. Due to this, the City of Tracy will receive an additional allocation of \$39,985 of CDBG program funds for FY2013-14. These additional funds have not been appropriated by City Council.

Staff is recommending that a portion of the available funds be used to add additional amenities to the Lolly Hansen Senior Center Outdoor Recreation Area Project, CIP 78136.

The following is a proposed budget for the additional amenities:

Bike Rack	\$ 1,000
Security Camera	\$ 8,000
Fountain	\$ 2,000
Electrical Work	\$ 3,000
Construction Mgmt. / Inspection	\$ 3,000
Labor Compliance Officer	\$ 450
Contingency	<u>\$ 2,000</u>
 Total Costs	 \$19,450

These amenities have been requested by seniors who use the facility. These amenities were also part of the original vision for the Senior Center Recreation Area Project but,

due to funding limitations, were not included in the scope of work that was recently completed by the contractor, American Asphalt.

Staff is recommending that City Council appropriate \$14,450 of CDBG funds for FY 2013-14 to the Senior Center project and that \$5,000 be appropriated to the project from General Projects Fund 301 monies, in order to cover overhead expenses, staff time, and contingency, all of which are not readily reimbursed with CDBG funds.

For the remaining \$25,535 of CDBG funds for FY2013-14, staff is recommending that City Council appropriate these funds to the City's Sidewalk ADA Improvements Project. On February 19, 2013, City Council allocated \$75,000 of CDBG funds for FY2013-14 to the City's Sidewalk ADA Improvements Project. If City Council appropriates these additional CDBG funds to this project, the total allocation for FY2013-14 would be increased to \$100,535. The project includes construction of missing sidewalks, reconstruction of broken sidewalks, curbs and gutters, installation of new wheelchair ramps, and relocation of storm drainage facilities to accommodate wheelchair ramps within the greater downtown area.

STRATEGIC PLAN

This agenda item supports the City Council's Strategic Plan for Quality of Life through implementation of the local priorities for CDBG funds, which include senior services.

FISCAL IMPACT

The City has received an additional allocation of \$39,985 of CDBG funds for FY2013-14. Approval of this agenda item would result in the appropriation of \$14,450 of CDBG funds for FY2013-14 and \$5,000 of General Projects Fund 301 monies to the Lolly Hansen Senior Center Outdoor Recreation Area Project, CIP 78136, and the appropriation of \$25,535 of CDBG funds for FY2013-14 to the City's Sidewalk ADA Improvements Project.

RECOMMENDATION

Staff recommends that City Council, by resolution, appropriate \$14,450 of CDBG funds for FY2013-14 and \$5,000 of General Projects Fund 301 monies to the Lolly Hansen Senior Center Outdoor Recreation Area Project, CIP 78136, and appropriate \$25,535 of CDBG funds for FY2013-14 to the City's Sidewalk ADA Improvements Project.

Prepared by: Scott Claar, Associate Planner

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

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

RESOLUTION 2013- _____

APPROPRIATING \$14,450 OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR FY2013-14 AND \$5,000 OF GENERAL PROJECTS FUND 301 MONIES TO THE LOLLY HANSEN SENIOR CENTER OUTDOOR RECREATION AREA PROJECT, CIP 78136, AND APPROPRIATING \$25,535 OF CDBG FUNDS FOR FY2013-14 TO THE CITY'S SIDEWALK ADA IMPROVEMENTS PROJECT

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

WHEREAS, For FY2013-14, San Joaquin County's CDBG program allocations increased slightly from the estimated allocations used in the 2013 Notice of Funding Availability, and

WHEREAS, The City of Tracy will receive an additional allocation of \$39,985 of CDBG program funds for FY2013-14, and these additional funds have not been appropriated by City Council, and

WHEREAS, City Council conducted a public meeting on November 5, 2013 to consider appropriating the additional CDBG funds for FY2013-14,

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby appropriate \$14,450 of CDBG funds and \$5,000 of General Projects Fund 301 monies to the Lolly Hansen Senior Center Outdoor Recreation Area Project, CIP 78136, and appropriates \$25,535 of CDBG funds for FY2013-14 to the City's Sidewalk ADA Improvements Project.

The foregoing Resolution 2013-_____ was adopted by the Tracy City Council on the 19th day of November 2013 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 7.A

REQUEST

RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE

EXECUTIVE SUMMARY

This agenda item will update the Council on newsworthy events.

DISCUSSION

The City Manager will provide Council with an informational report on various items, including upcoming special events, status on key projects, or other items of interest in an effort to keep Council, staff, and residents abreast of newsworthy events.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact with this informational item.

RECOMMENDATION

That Council receive and accept the City Manager's informational update.

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

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

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

AGENDA ITEM 8.A

REQUEST

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

EXECUTIVE SUMMARY

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

DISCUSSION

On December 31, 2013, terms will expire for three of the Tracy Arts Commissioners. The upcoming vacancies have been advertised and the recruitment is scheduled to close on November 19, 2013. As of November 14, 2013, one application has been received by the City Clerk's office. As stated in Resolution 2004-152, in the event there are not two or more applicants than vacancies, the filing deadline will be extended. An eligibility list was established during the previous recruitment, but has since expired.

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

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoint a two-member subcommittee to interview applicants for vacancies on the Tracy Arts Commission.

Prepared by: Sandra Edwards, City Clerk

Reviewed by: Maria Hurtado, Assistant City Manager

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