

Tuesday, October 20, 2015, 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, including those distributed within 72 hours of a regular City Council meeting, 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.

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL

1. CONSENT CALENDAR

- A. Adopt Council Minutes – Regular meeting minutes of October 6, 2015, closed session minutes of October 6, 2015, and special meeting minutes of October 9, 2015
- B. Award a Construction Contract to the Lowest Responsive Responsible Bidder for Installation of a Traffic Signal at Valpico Road and Sycamore Parkway - CIP 72082, Federal Project No. CML 5192 (040), Authorize an Appropriation of \$30,000 from Fund 354 to this Project, and Authorize the Mayor to Execute the Contract
- C. Acceptance of the 2014-2015 Overlay Project – CIP 73138A, Completed by DSS Company, DBA Knife River Construction of Stockton, California, Authorization for the City Clerk to File the Notice of Completion, and Authorization for the City to Release the Bonds and Retention Payment
- D. Adoption of Resolutions of the City of Tracy, California Consenting to Inclusion of Properties Within the City's Jurisdiction in Property Assessed Clean Energy Programs Including AllianceNRG, CaliforniaFIRST, Figtree, and Ygrene, to Finance Renewable Energy Distributed Generation Sources, Energy and Water Efficiency Improvements and Electric Vehicle Charging Infrastructure, and Approving Amendments to Certain, Related Joint Powers Agreements
- E. Acceptance of the Corral Hollow/Kavanagh Storm Drain Lift Station Rehabilitation - CIP 76065, Completed by Howk Systems of Modesto, California, Authorization for the City Clerk to File the Notice of Completion, and Authorization for the City to Release the Bonds and Retention Payment
- F. Acceptance of the Sewer and Storm Drain Replacement Project (FY/13/14) - CIP 74098, 74104, 74111, 76062, and 76063, Completed By Tracy Grading & Paving, Inc., of Tracy, California, Authorization for the City Clerk to File the Notice of Completion, and Authorization for the City to Release the Bonds and Retention Payment
- G. Approve Memorandum of Understanding (MOU) With Delta Charter School for Use of City Facilities at the Grand Theatre Center for the Arts to Administer its Arts, Media and Entertainment Program; and Authorize the Mayor to Execute the MOU
- H. Authorize an Agreement With Denali Water Solutions, LLC, for the Purposes of Loading, Hauling and Disposing of Wastewater Treatment Bio Solids and Authorize the Mayor to Execute the Agreement

2. ITEMS FROM THE AUDIENCE
3. APPROVAL OF AN AMENDMENT TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP) DEVELOPMENT FEE, RESULTING IN AN INCREASE IN FEES FOR 2016
4. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTION 10.12.065(c) RELATING TO COMPLIANCE WITH STATE HOUSING AND COMMUNITY DEVELOPMENT REGIONAL HOUSING NEEDS ALLOCATIONS – THE APPLICATION IS INITIATED BY THE CITY OF TRACY – APPLICATION NUMBER ZA15-0001
5. RECEIVE PUBLIC TESTIMONY FROM PUBLIC HEARING FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2015-16
6. RECEIVE STATUS REPORT, APPROVE AN AGREEMENT FOR LAND EXCHANGE WITH SAN JOAQUIN COUNTY, AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT, AND PROVIDE DIRECTION ON POTENTIAL CITY/SAN JOAQUIN COUNTY COLLABORATION FOR DEVELOPMENT OF A SOUTH COUNTY REGIONAL PARK SOUTH OF LEGACY FIELDS AND NORTH OF I-205
7. ITEMS FROM THE AUDIENCE
8. COUNCIL ITEMS
 - A. Appoint an Applicant to the Measure E Residents' Oversight Committee From the Committee's Eligibility List
8. ADJOURNMENT

October 6, 2015, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Mayor Maciel called the City Council meeting to order at 7:28 p.m. and led the Pledge of Allegiance.

Invocation was led by Pastor Tim Heinrich, Crossroads Baptist Church.

Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.

Troy Brown, City Manager, presented Grace Segura with the Employee of the Month award for October 2015.

Mayor Maciel administered the oath of office to new Police Officers Matt Ford and Jacob Evanoff.

Acting Police Chief Watney conducted the pinning ceremony for new Police Officers Matt Ford and Jacob Evanoff.

Mayor Maciel presented Fire Prevention Week Proclamation to Acting Fire Chief Bramell.

Mayor Maciel presented Domestic Violence Awareness Month Proclamation to Liliana Castillo-Perez, Parenting Coordinator and Dave Sant, Women's Center, Youth & Family Services Board member.

Mayor Maciel presented Anti-Bullying Month Proclamation to Dr. Brian Stephens, Superintendent of Tracy Unified School District.

Mayor Maciel presented Make a Difference Day Proclamation to Brian Pekari, Director of "Tracy United to Make a Difference."

David Early, Principal at PlaceWorks, on behalf of the Contra Costa Transportation Authority provided the City Council with a presentation on the TRILINK State Route 239 project.

1. CONSENT CALENDAR

ACTION Following the removal of item 1.F it was moved by Mayor Pro Tem Rickman and seconded by Council Member Young to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered. Motion carried 5:0

- A. Adopt Council Minutes – Regular meeting minutes of September 1, 2015, Revised September 15, 2015 and closed session minutes of September 8, 2015 and September 15, 2015, were adopted.
 - B. Adoption of Ordinance 1199 an Ordinance of the City of Tracy, California, Amending Title 9, Chapter 9.52, Entitled “Floodplain Regulations” – Ordinance 1199 was adopted
 - C. Adoption of Ordinance 1200 an Ordinance of the City of Tracy Adopting a New Chapter 9.66 of the Tracy Municipal Code Entitled “Small Residential Rooftop Solar Systems” – Ordinance 1200 was adopted
 - D. Approve Amendment Number 3 to the Master Professional Services Agreement With SNG & Associates, Inc. for Staff Support and Plan/Map Review Services – Resolution 2015-166 approved Amendment Number 3 to MPSA with SNG & Associates
 - E. Approve Amendment Number 1 to the Master Professional Services Agreement With West Yost Associates, Inc., for Various Water Pressure and Capacity Analyses – Resolution 2015-167 approved Amendment Number 1 to MPSA with West Yost Associates, Inc.
 - F. Approval of a Reduction of the Central Business District Zone Parking In-Lieu Fee to \$0 as a Five Year Pilot Program With a Check-In Point With City Council at Three Years – Resolution 2015-168 approved the reduction of the Central Business District Zone Parking in-lieu fee to \$0 as a five year pilot program with amendment to the resolution.
2. ITEMS FROM THE AUDIENCE-Resident and Event Coordinator for Tracy Rampage Football and Cheer Organization spoke about the need of practice fields and how difficult it has been to find a field for practice. Resident urged the Council to help find the 170 children who participate in cheer and football a field to practice, without practice they can't play.

Gail Reiger, Board Member of Trivalley Cares invited the Council and community to attend an upcoming meeting called Bomb Tests, Polluted Water & Our Future on October 22, 2015 at 7:00 p.m. at the Tracy Transit Station. To learn more about what goes on at Site 300 and what to do to protect your family's health and the community of tomorrow visit www.trivalleycares.org.

Anne Marie Fuller, Mrs. All American Beauties of the Nation invited the Council and the community to a new event called Community for Care Packages taking place on November 21, 2015, at Fire Administration at 11:00 a.m., where volunteers put together care packages for the troops. Ms. Fuller announced a new campaign being launched called ISOS which stands for “I support our service members.” More details to come soon.

Craig Saalwaechter informed the Council about a small community project commemorating the ministry of Arnold Barton. Dee shared her personal story of how Mr. Barton impacted her life and how she will continue his ministry.

3. AWARD A CONSTRUCTION CONTRACT TO MCGUIRE AND HESTER OF OAKLAND CALIFORNIA, FOR CONSTRUCTION OF SPORT FIELDS WITHIN THE PHASE I AREA OF THE LEGACY FIELDS SPORTS COMPLEX – CIP 78153, AUTHORIZE A TRANSFER OF \$141,893 FROM GENERAL FUND 301 TO CIP 78153, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

Paul Verma, Senior Civil engineer, Development Services, presented the staff report.

Council comments and questions followed.

ACTION Motion was made by Mayor Pro Tem Rickman and seconded by Council Member Mitracos to adopt Resolution 2015-169 awarding construction contract to McGuire and Hester of Oakland, California for construction of sport fields within the Phase I area of the Legacy Fields Sports complex, authorizing transfer of \$141,893 from General Fund 301 to CIP 78153 with the addition of alternatives A and B and to draw associated cost from General Fund 301. Voice vote found Council Members Mitracos, Vargas and Mayor Pro Tem Rickman in favor. Council Member Young and Mayor Maciel were opposed; passed and so ordered.

Mayor Maciel called a recess at 9:30 p.m.

Mayor Maciel reconvened the meeting at 9:39 p.m.

4. DISCUSS AND PROVIDE DIRECTION ON POSSIBLE AMENDMENTS TO TRACY MUNICIPAL CODE CHAPTER 3.04 REGARDING PARTICIPATION REQUIREMENTS FOR LOCAL NON-PROFIT ORGANIZATIONS SELLING “SAFE AND SANE” FIREWORKS

Dave Bramell, Acting Fire Chief, presented the staff report.

Dennis Revell referenced his letter to Council and made a few suggestions regarding participation requirements for local non-profit organizations selling “Safe and Sane Fireworks.”

Council Member Vargas made a few comments and suggestions prior to excusing herself from the dais at 9:53 p.m. for the evening.

Bill Hunt spoke on behalf of the Masonic families in Tracy and expressed concern regarding possible amendment requiring that the principal meeting place of an organization have a Tracy address on file with the State of California Department of Justice Office of the Attorney General as a charitable organization that matches the address provided on the city application. This was a concern for international non-profit organizations.

Pastor Bravo, Life Center, stated that his organization has applied in the past and has been denied because the organization is outside of the Tracy City limits serving 100% of citizens of Tracy.

Tom Simpson spoke about the lottery system and suggested that if the City considers international organizations it should be into what percentage of those funds are used locally.

Steve Nicolaou spoke about his experience with non-profits and offered some suggestions for participation requirements.

Council comments and questions followed.

Action Upon Council consensus staff was directed to return with criteria for verification that direct community benefit is being met. Identify a radius for those organizations that provide regular services in Tracy but are beyond Tracy limits and outline penalties for violations of the policy or process.

5. ITEMS FROM THE AUDIENCE- Robert Tanner referenced the severe drought the state is facing and suggested that a clause be added to the Safe and Sane Ordinance that if the Governor continues to declare a drought that no fireworks be sold during that timeframe whether they are safe and sane.

6. COUNCIL ITEMS

Mayor Pro Tem Rickman announced that October is Breast Cancer Awareness month.

Mayor Maciel announced that he will be out of state and will not be at the October 20, 2015 Council meeting.

7. ADJOURNMENT- Time 10:25 p.m.

ACTION Motion made by Mayor Pro Tem Rickman and seconded by Council Member Mitracos to adjourn the meeting. Voice vote found Council Members Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel in favor. Council Member Vargas was absent; passed and so ordered.

The above agenda was posted at the Tracy City Hall on September 29, 2015. The above are action minutes. A recording is available at the Office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 6, 2015, 6:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.
3. ITEMS FROM THE AUDIENCE –Emmitt acknowledged and thanked staff for the cleanup that was done at Sycamore Avenue.
4. CLOSED SESSION

Labor Negotiations (Gov. Code, § 54957.6)

Employee Organizations:

Tracy Police Managers Association
Tracy Police Officers Association
Tracy Firefighters' Association
Teamsters Local 439, IBT
Tracy Mid-Managers' Bargaining Unit

City's designated representatives:

Troy Brown, City Manager
Stephanie Garrabrant-Sierra, Assistant City Manager
Rachelle McQuiston, Administrative Services Director
Midori Lichtwardt, Human Resources Manager
Dania Torres Wong, Esq.

5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Rickman motioned to recess the meeting to closed session at 6:33 p.m. Council Member Young seconded the motion. Voice vote found all in favor; passed and so ordered.
7. RECONVENE TO OPEN SESSION – Mayor Maciel reconvened the meeting into open session at 7:23 p.m.
8. REPORT OF FINAL ACTION – There was no report of final action.
9. ADJOURNMENT - Mayor Pro Tem Rickman motioned to adjourn. Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 7:23 p.m.

The agenda was posted at City Hall on September 29, 2015. The above are action minutes.

ATTEST:

Mayor

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

October 9, 2015, 3:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 3:00 p.m.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Mayor Pro Tem Rickman and Mayor Maciel present. Council Member Young arrived at 3:03 p.m.
3. ITEMS FROM THE AUDIENCE – There were no speakers.
4. CITY COUNCIL DISCUSSION AND DIRECTION REGARDING LAND USE, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES ALONG INTERSTATE 205 (I-205) FROM TRACY BOULEVARD TO THE EAST CITY LIMIT, AND AN APPROPRIATION OF \$100,000 FROM THE GENERAL FUND TO COVER THE INITIAL COSTS OF THE STUDY

Bill Dean, Assistant Development Services Director, presented the staff report.

Public comment followed:

Dan Ball inquired what the I-205 corridor encompassed and far how south and north on I-205 is the corridor. Mr. Ball stated that about two years ago the building heights were 47 ft. the new trend in height standards are much higher.

Steve Nicolaou stated that when the City starts to look at the I-205 corridor around the water treatment plant be aware that outside the City limits there is a lot of ground in the Williamson Act and is crisscrossed with conservation easements. Mr. Nicolaou expressed concern about the appropriation of \$100,000 for a consultant and suggested the Council hold off on this for about five and six months until labor negotiations are completed.

Dale McLaughlin asked if the specific plan is currently being followed.

Council comments and questions followed.

- ACTION** Motion was made by Council Member Mitracos and seconded by Council Member Young to appropriate \$100,000 to conduct an economic study. Voice vote found all in favor; passed and so ordered.

Bill Dean, Assistant Development Services Director stated that staff will return with the results of the Economic Study and design standards within 4-6 months (Feb-April).

5. ADJOURNMENT - Mayor Pro Tem Rickman motioned to adjourn. Council Member Young seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 4:41 p.m.

The agenda was posted at City Hall on October 8, 2015.

ATTEST:

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

AWARD A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE RESPONSIBLE BIDDER FOR INSTALLATION OF A TRAFFIC SIGNAL AT VALPICO ROAD AND SYCAMORE PARKWAY, CIP 72082, FEDERAL PROJECT NO. CML 5192 (040), AUTHORIZE APPROPRIATION OF \$29,960 FROM FUND 354 TO THIS PROJECT, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

Award of a construction contract for the installation of a Traffic Signal at Valpico Road and Sycamore Parkway will provide fully actuated pedestrian and traffic controls at this intersection.

DISCUSSION

Valpico Road is a four lane major arterial and Sycamore Parkway is four lane minor arterial. The intersection of Valpico Road and Sycamore Parkway is currently controlled with a four way stop sign. This project provides for a traffic signal at this intersection. The new traffic signal will be a fully actuated pedestrian and vehicular traffic signal.

Staff applied for Congestion Management and Air Quality (CMAQ) grant funding for this project and the State of California has approved an allocation of \$250,000 towards construction of this project.

Project design, improvement plans, specifications, and contract documents were prepared by City staff and were reviewed by Traffic Engineering Services of Stockton, California. The project was advertised for competitive bids on August 21, and August 28, 2015. The City received four bids on September 23, 2015 as follows:

	Bidder	Location	Total Bid
1	St. Francis Electric, LLC	San Leandro, CA	\$366,960
2	Pacific Excavation Inc.	Elk Grove, CA	\$372,411
3	WBE	Novato, CA	\$400,689
4	Tennyson Electric	Livermore, CA	\$433,870

The lowest monetary bid is from St. Francis Electric, LLC of San Leandro, California, in the amount of \$366,960. The preliminary bid analysis indicates that the bid is about 12% above engineers estimate. With the improvement in the local economy and increase in construction activity, the market conditions have improved reflecting higher bid prices. However bids are responsive and bidder is responsible. The contractor has good references and has completed similar projects for other Cities and public agencies.

The anticipated cost for construction of this project, if awarded to St. Francis Electric, LLC is estimated as follows:

Construction Bid Amount (Base Bid + Additive Bid)	\$366,960
Contingency (~10%)	\$ 36,000
Construction Management & Inspection (~3%)	\$ 12,000
Design (~5%)	\$ 20,000
City Wide Management	\$ 15,000
Total Project Cost	\$449,960
Available Budget	\$420,000

A total of \$420,000 is budgeted for this project. An additional appropriation of \$29,960,000 will be required from South ISP Fund 354, as this intersection is an identified improvement for the South ISP program.

If the project is awarded to St. Francis Electric, LLC of San Leandro, California, it is anticipated that construction will commence by November 15, 2015, with completion expected by the end of February 2016.

With regards to the construction contingency amount, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the amount approved by Council. The recommended contingency amount for this project is \$36,000.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no impact to the General Fund. This is an approved Capital Improvement Program project in FY 2014/15. Funds are available from CMAQ Federal Grant and ISP South Fund F354. An additional appropriation of \$29,960 will be required from Fund 354 for completion of this project.

RECOMMENDATION

Staff recommends that City Council, by resolution, award a construction contract to St. Francis Electric, LLC of San Leandro, California, in the amount of \$366,700 for installation of a Traffic Signal at Valpico Road and Sycamore Parkway - CIP 72082, Federal Project No. CML 5192 (040), authorize an appropriation of \$29,960 from Fund 354, and authorize the Mayor to execute the construction contract.

Prepared by: Ripon Bhatia, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2015-_____

AWARDING A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE RESPONSIBLE BIDDER FOR INSTALLATION OF A TRAFFIC SIGNAL AT VALPICO ROAD AND SYCAMORE PARKWAY - CIP 72082, FEDERAL PROJECT NO. CML 5192 (040) AUTHORIZING AN APPROPRIATION OF \$29,960 FROM FUND 354 TO THIS PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, The intersection of Valpico Road and Sycamore Parkway is currently controlled with a four way stop sign, and

WHEREAS, This project provides for a traffic signal at the intersection of Valpico Road and Sycamore Parkway and that new traffic signal will be a fully actuated pedestrian and vehicular traffic signal, and

WHEREAS, The State of California has approved an allocation of \$250,000 toward construction of this project, and

WHEREAS, Project design, improvement plans, specifications, and contract documents were prepared by City staff and were reviewed by Traffic Engineering Services of Stockton, California, and

WHEREAS, The project was advertised for competitive bids on August 21, and August 28, 2015, and

WHEREAS, The lowest monetary bid is from St. Francis Electric, LLC of San Leandro, California, in the amount of \$366,960, and

WHEREAS, The bid is responsive and the bidder is responsible, has good references and has completed similar projects for other Cities and public agencies, and

WHEREAS, The anticipated cost for construction of this project, if awarded to St. Francis Electric, LLC is estimated as follows:

Construction Bid Amount (Base Bid + Additive Bid)	\$366,960
Contingency (~10%)	\$ 36,000
Construction Management & Inspection (~3%)	\$ 12,000
Design (~5%)	\$ 20,000
City Wide Management	\$ 15,000
Total Project Cost	\$449,960
Available Budget	\$420,000

WHEREAS, An additional appropriation of \$29,960 will be required from South ISP Fund 354, and

WHEREAS, With regards to the construction contingency amount, Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the amount approved by Council. The recommended contingency amount for this project is \$36,000;

NOW, THEREFORE, BE IT RESOLVED, That City Council awards a construction contract to St. Francis Electric, LLC of San Leandro, California, in the amount of \$366,700 for installation of a Traffic Signal at Valpico Road and Sycamore Parkway - CIP 72082, Federal Project No. CML 5192 (040), authorizes an appropriation of \$29,960 from Fund 354, and authorizes the Mayor to execute the construction contract

* * * * *

The foregoing Resolution 2015-_____ was passed and adopted by the Tracy City Council on the 20^h day of October, 2015, 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

**ACCEPTANCE OF THE 2014-2015 OVERLAY PROJECT – CIP 73138A,
COMPLETED BY DSS COMPANY, DBA KNIFE RIVER CONSTRUCTION OF
STOCKTON, CALIFORNIA, AUTHORIZATION FOR THE CITY CLERK TO FILE THE
NOTICE OF COMPLETION, AND AUTHORIZATION FOR THE CITY TO RELEASE
THE BONDS AND RETENTION PAYMENT**

EXECUTIVE SUMMARY

The scope of work for this project involved the overlay of rubberized asphalt concrete on Tracy Boulevard between Clover Road and Larch Road, and on MacArthur Drive between Grant Line Road and I-205.

DSS Company, dba Knife River Construction of Stockton, California, has completed construction of the 2014-2015 Overlay Project - CIP 73138A, and the project's costs are within the available budget. Staff recommends Council accept the project to enable the City Engineer to release the contractor's bonds and retention.

DISCUSSION

On April 7, 2015, City Council awarded a construction contract to DSS, dba Knife River Construction, of Stockton, California, for construction of the 2014-2015 Overlay Project - CIP 73138A, in the amount of \$573,034.

The scope of work for this project consisted of the application of rubberized asphalt concrete (RAC) overlay on Tracy Boulevard between Clover Road and Larch Road, and on MacArthur Drive between Grant Line Road and I-205, grinding, removal and replacement of existing striping and pavement markings, patch paving and repair of distressed pavement sections, adjustment of existing manholes, water valves, and survey monuments to grade, and replacement of the traffic signal loop detectors.

One change order was issued in the amount of \$25,035, for changing the asphalt concrete mix design from $\frac{3}{4}$ " to $\frac{1}{2}$ " and working the night shift.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities were less than the contract quantities in the amount of \$1,139. These quantities were deducted in accordance with the bid unit prices of the contract and are listed as under run of quantities.

Estimated budget and project costs are as follows:

A. Construction Contract Amount	\$ 573,034
B. Change Order No. 1	\$ 25,035
C. Under Run of Quantities	(\$ 1,139)
D. Design, Construction Management, Inspection, Testing & Miscellaneous Expenses	\$ 76,910
E. Project Management Charges	<u>\$ 89,670</u>
Total Project Costs	\$ 763,510
Budgeted Amount	\$1,166,050

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

STRATEGIC PLAN

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

FISCAL IMPACT

This is an approved CIP project and there will be no impact to the General Fund. The Regional Service Transportation Program (Federal grant) is contributing \$506,045 toward this project and Measure K Funds make up the remaining balance. This federal grant is administered as a reimbursement program, and the grant administrators will repay the City of Tracy based on the actual construction costs that are invoiced.

It's worth mentioning that the budgeted amount is higher than the total project costs. This is because this project was supposed to include slurry sealing several streets. However, the slurry seal portion of the project was deleted from this project and will be bid separately. The cost of the slurry seal project, which is estimated to cost between \$300,000 and \$350,000, is not reimbursable under the Regional Service Transportation Program. The unspent money from Measure K will be returned to fund the balance and will be spent for Slurry Seal Project (CIP 73138 B) which is currently under design. These Measure K funds can also be used for future appropriation of other street projects.

Additional cost saving were realized due to fact that the price of oil has dropped dramatically over the last year which governs the price of asphalt concrete. Therefore, the bid we received for this project was very competitive. In previous years the price of rubberized asphalt concrete was \$100 to \$120 per ton, but for this project the contractor bid \$84 per ton.

RECOMMENDATION

That City Council, by resolution, accept the 2014-2015 Overlay Project, CIP 73138A, completed by DSS, dba Knife River Construction, of Stockton, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Moheb Argand, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2015-_____

ACCEPTING THE 2014-2015 OVERLAY PROJECT – CIP 73138A, COMPLETED BY DSS COMPANY, DBA KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY TO RELEASE THE BONDS AND RETENTION PAYMENT

WHEREAS, The scope of work for this project involved the overlay of rubberized asphalt concrete on Tracy Boulevard between Clover Road and Larch Road, and on MacArthur Drive between Grant Line Road and Interstate 205, and

WHEREAS, On April 7, 2015, City Council awarded a construction contract to DSS, dba Knife River Construction, of Stockton, California, for construction of the 2014-2015 Overlay Project -CIP 73138A, in the amount of \$573,034, and

WHEREAS, One change order was issued in the amount of \$25,035, for changing the asphalt concrete mix design from ¾” to ½” and working the night shift, and

WHEREAS, The project has been completed within the available budget, on schedule, per plans, specifications, and City of Tracy standards, and the status of budget and project costs are as follows:

A. Construction Contract Amount	\$ 573,034
B. Change Order No. 1	\$ 25,035
C. Under Run of Quantities	(\$ 1,139)
D. Design, Construction Management, Inspection, Testing & Miscellaneous Expenses	\$ 76,910
E. Project Management Charges	<u>\$ 89,670</u>
Total Project Costs	\$ 763,510
Budgeted Amount	\$1,166,050

WHEREAS, CIP 73138A, is an approved Capital Improvement Project with sufficient funding; there will be no fiscal impact to the General Fund; The Regional Service Transportation Program (Federal grant) is contributing \$506,045 toward this project and Measure K Funds make up the remaining balance;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the 2014-2015 Overlay Project - CIP 73138A, completed by DSS, dba Knife River Construction, of Stockton, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

Resolution _____
Page 2

The foregoing Resolution 2015-_____ was passed and adopted by the Tracy City Council on the 20^h day of October, 2015, 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

**ADOPTION OF RESOLUTIONS OF THE CITY OF TRACY, CALIFORNIA
CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S
JURISDICTION IN PROPERTY ASSESSED CLEAN ENERGY PROGRAMS
INCLUDING ALLIANCENRG, CALIFORNIAFIRST, FIGTREE, AND YGRENE, TO
FINANCE RENEWABLE ENERGY DISTRIBUTED GENERATION SOURCES,
ENERGY AND WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE
CHARGING INFRASTRUCTURE, AND APPROVING AMENDMENTS TO CERTAIN,
RELATED JOINT POWERS AGREEMENTS**

EXECUTIVE SUMMARY

Property Assessed Clean Energy (PACE) programs are voluntary financing tools for interested property owners to finance energy-efficiency and water conservation upgrades to their properties. On January 21, 2014, the City Council adopted a resolution consenting to inclusion of properties within the City's jurisdiction in the California HERO (Home Energy Renovation Opportunity) Program and subsequently approved an Agreement to add the City of Tracy as an associate member of the Western Riverside Council of Governments to permit the provision of PACE program services within the City. The California HERO Program has been successful in the City of Tracy with over 265 projects completed with a funded amount of \$5.25 million in energy, solar and water efficiency property improvements. Currently, California HERO is the only eligible administrator of PACE program financing services in the City.

Staff has been contacted by additional PACE program administrators requesting to provide financing services within the City of Tracy. The inclusion of these PACE financing program administrators will create a competitive financing and contracting marketplace for residents and businesses seeking to voluntarily contract to perform renewable energy, energy efficiency and water efficiency improvements. The PACE program administrators proposed to be considered eligible to provide services within the City limits include AllianceNRG and CaliforniaFIRST through the California Statewide Communities Development Authority (CSCDA) using an Open PACE Program, Figtree through the California Enterprise Development Authority (CEDA) and Ygrene through the California Home Finance Authority (CHF).

DISCUSSION

Background

Assembly Bill (AB) 811, July 21, 2008, and AB 474, effective as of January 1, 2010, amended Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") and authorize a legislative body to designate an area within which allowed willing property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, and/or water conservation improvements that are permanently fixed to real property, as specified. Under AB 811, a special assessment district is created and

property owners choose to voluntarily contract for improvements. Bonds are issued to cover the initial cost of the upgrades. Loan payments are determined through the special assessment and are included in the total property taxes for each enrolled property owner.

Senate Bill (SB) 555 amended the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code and particularly in accordance with sections 53313.5(l) and 53328.1(a) ("Mello-Roos Act"), to allow for the creation of Community Facilities Districts ("CFDs") for similar property improvements. Under SB 555, property owners can choose to voluntarily contract for improvements. The agreement constitutes a vote to annex the property to the district and the property owner receives a special tax levy. Private capital and bond financing are used to fund the improvements. The levy is recorded as a lien on each parcel that chooses to participate in the program. The tax lien is paid as an additional cost to the property owner's property tax bill. A primary difference of SB 555 is that it allows for publicly owned buildings to be included as property owner program participants.

In 2011, the City Council adopted a Citywide Sustainability Action Plan (Attachment A) to address greenhouse gas emission reduction requirements and position the City to be a desirable place for emerging environmentally-sustainable residents, businesses, and industries. An action item contained in the Sustainability Action Plan committed the City to adopt a PACE program for the benefit of interested residential and non-residential property owners. This action item will be further enhanced with today's action to allow additional PACE program administrators to provide services in the City limits.

Analysis

Both AB 811 and SB 555 authorize public agencies, typically Joint Powers Authorities (JPA's), to establish these special districts, enter into voluntary agreements with the property owner, use available funding from any source including existing bond issuing statutes, and attachment of the assessment/special tax for repayment of the loan through the property tax bill. The bonds are secured by a voluntary contractual assessment levied on the owner's property, with no recourse to the local government or other participating jurisdictions. This financing is available for eligible improvements for both residential and non-residential properties. Fundamentally, both statutes accomplish the same purpose, allowing for capital to be provided to property owners for energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property.

PACE Programs

Today's action includes City Council consideration and approval of PACE program administrators to provide services within the City limits including:

- AllianceNRG and CaliforniaFIRST through the California Statewide Communities Development Authority (CSCDA) Open PACE Program.
- Figtree through the California Enterprise Development Authority (CEDA).
- Ygrene through the California Home Finance Authority (CHF).

All of the above PACE program administrators are providing services in cities and counties throughout Northern California and are now seeking to provide PACE program services to Tracy residents and businesses.

The benefits to the property owner include:

- Eligibility: In today's economic environment, alternatives for property owners to finance renewable energy, energy efficiency, water efficiency improvements, or electric vehicle charging infrastructure may not be available. As such, many property owners do not have financing options available that would provide funding for improvements that lower their utility bills.
- Savings: Energy prices continue to rise and investing in energy efficient, water efficient and renewable energy improvements reduces utility bills.
- Entirely voluntary. Property owners can choose to participate in the program at their discretion. Improvements and properties must meet eligibility criteria in order to qualify for financing.
- Payment obligation stays with the property. Under Chapter 29, a voluntary contractual assessment stays with the property upon transfer of ownership. Certain residential conforming mortgage providers will, however, require the assessment be paid off at the time the property is refinanced or sold.
- Prepayment option. The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- Customer oriented program. Part of the success of the program is prompt customer service. Committed funding partners provide funding promptly upon project completion resulting in both property owner and contactor satisfaction.

The benefits to the City include:

- No fiscal impact to the City's General Fund.
- No City staff time is needed to participate in the PACE programs, unless the City decides to partner with PACE program administrators in marketing efforts.
- Increase local jobs for program administration and construction industry.
- Increased property values (energy efficient homes and buildings retain higher value and generate better returns on investment).
- Increased sales, payroll and property tax revenue.
- As in conventional assessment financing, the City is not obligated to repay the bonds or to pay any delinquent assessments levied on the participating properties.
- By leveraging the already successful PACE programs, the City can offer independent financing to property owners more quickly, easily and much less expensively than establishment of a new local program.

California Statewide Communities Development Authority

California Statewide Communities Development Authority (CSCDA) was created in 1988, under California's Joint Exercise of Powers Act, to provide California's local governments with an effective tool for the timely financing of community-based public benefit projects. CSCDA has over 500 member agencies and is the Joint Powers Authority and conduit bond issuer sponsored by the League of California Cities and the

California State Association of Counties. The City of Tracy is already a member of the CSCDA.

CSCDA's Commissioners pre-qualified and appointed two PACE program administrators to manage the CSCDA Open PACE program in order to offer members turn-key PACE solutions that provide residential and commercial property owners the choice among prequalified PACE financing providers, creating competition on terms, service and interest rates. The prequalified program administrators operating the programs are AllianceNRG and Renewable Funding LLC (administering CaliforniaFIRST). Both of these PACE program administrators are recommended to be allowed to provide PACE program services in the City of Tracy. Both CSCDA PACE program administrators, Alliance NRG and CaliforniaFIRST, will perform services under AB 811.

California Economic Development Authority

Founded in 2011, the Figtree PACE Financing Program is sponsored by the California Enterprise Development Authority (CEDA), a statewide public Joint Powers Authority. Although the Figtree PACE Financing Program currently concentrates on commercial, industrial, retail, and multi-family properties, it plans to launch a statewide residential program in the near future. To date, Figtree has provided millions of dollars in PACE financing to California businesses.

The City will need to establish a no cost membership with CEDA by becoming an Associate Member in the CEDA Joint Powers Authority in order for Figtree to provide PACE program services in the city. Figtree will perform services under AB 811.

California Home Finance Authority

The California Home Finance Authority (CHF) has established two Property Assessed Clean Energy (PACE) financing programs for residential, commercial, industrial and agricultural properties. CHF contracts with Ygrene Energy Fund CA LLC (Ygrene) to serve as the program administrator and to operate the Ygrene Works for California PACE financing program. Ygrene is the only PACE program administrator seeking to operate under both AB 811 and SB 555.

To participate in the Ygrene PACE programs, the City must become an Associate Member of CHF. Associate membership requires no dues or other costs to the City while permitting participation in all CHF programs including the PACE program.

Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac

Residential PACE financing in California has been generally delayed in implementation since a July 2010, letter by the Federal Housing Finance Agency (FHFA) that advised Fannie Mae and Freddie Mac mortgage lenders that PACE financing violated the mortgage contract through its first priority-lien status as a property tax assessment. The FHFA presented concerns that PACE financing contracts would not transfer at time of sale of a property. The advice letter by FHFA stopped most residential PACE program development. This restriction has two potential implications for residential mortgage borrowers:

- Homeowners with a first-lien PACE loan recipient cannot refinance their existing mortgage with a Fannie Mae or Freddie Mac backed mortgage.

- Anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac backed loan for the property purchase.

In 2013, Senate Bill (SB) 96 directed the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to develop the PACE Loss Reserve Program to mitigate the potential risk to mortgage lenders associated with residential PACE financing. In a response letter, the FHFA in December, 2014 confirmed acknowledgement of California SB 96, but ultimately required the Fannie Mae or Freddie Mac mortgage to be in first position.

PACE residential programs allow residential property owners to make voluntary opt-in financing decisions based upon private party needs and preferences. Interested residential property owners should evaluate and compare the various PACE financing program requirements prior to voluntarily entering into contract for PACE financing services and discuss any impacts of refinance or sale of their property with the PACE program administrator and mortgage lenders. Since January 2014, there are no reported issues related to the HERO residential program implementation in the City of Tracy. Application of the FHFA requirements only applies to the residential market and does not affect the administration of PACE financed commercial and industrial projects. Upon approval by the City Council, it is anticipated that the proposed PACE program administrators will join the previously approved HERO program in the administration of residential and commercial financing programs within the City of Tracy.

The PACE program administrators provide a number of procedures and safeguards to ensure that consumers receive accurate, complete and consistent information regarding the financing program. Staff requested all current and proposed PACE program administrators provide a letter outlining their consumer protections procedures and contractual disclosures (Attachment A).

STRATEGIC PLAN

This agenda item is not related to the Council's Strategic Plans; however, this item furthers the Environmental Sustainability Strategic Plan that was in place in fiscal years 2009-2011, by implementing an action item from the City's Sustainability Action Plan (Attachment B).

FISCAL IMPACT

This agenda item will not require any expenditure of funds other than staff time to prepare the report. It is anticipated that property tax increases, job creation, and additional sales tax revenues associated with projects funded by the PACE programs will provide an indirect benefit to the General Fund. The City has no fiscal obligation under the PACE programs unless the City desires to partner with the various PACE program administrators on program marketing efforts.

RECOMMENDATION

Staff recommends that City Council adopt resolutions consenting to inclusion of properties within the City's jurisdiction in property assessed clean energy programs including AllianceNRG, CaliforniaFIRST, Figtree and Ygrene to finance renewable energy distributed generation sources, energy and water efficiency improvements and electric vehicle charging infrastructure, and approving amendments to certain, related joint powers agreements including:

Adopt a resolution consenting to the inclusion of properties within the territory of the city in the CSCDA Open PACE programs; authorizing the California Statewide Communities Development Authority to accept applications from property owners, conduct contractual assessment proceedings and levy contractual assessments within the territory of the city; and authorizing related actions;

Adopt a resolution joining the California Enterprise Development Authority (CEDA) as an Associate Member and authorizing CEDA, through Figtree Financing, to offer their program and levy assessments within the City of Tracy;

Adopt a resolution consenting to inclusion of properties within the city's incorporated area in CHF Community Facilities District No. 2014-1 (Clean Energy) to finance renewable energy generation, energy efficiency, water conservation and electric vehicle charging infrastructure improvements and approving associate membership in CHF; and,

Adopt a resolution consenting to Inclusion of Properties within the City's Incorporated Area in the CHF PACE Program to finance renewable energy generation, energy efficiency, water conservation and electric vehicle charging infrastructure improvements and approving associate membership in CHF.

Prepared by: Joshua Ewen, Management Analyst

Reviewed by: Bill Dean, Assistant Development Services Director
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

- Attachment A: PACE Program Administrator Consumer Protection Disclosure
- Attachment B: Letters Excerpt from the Sustainability Action Plan Adopted February 2, 2011
- Attachment C: CSCDA Open PACE Program Resolution
- Attachment D: CEDA Program Resolution and Associate Membership Agreement
- Attachment E: CHF PACE Program Resolutions and Associate Membership Agreement



September 30, 2015

City Council
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

TRANSMITTED VIA ELECTRONIC MAIL

Honorable Mayor Maciel and Members of the City Council,

Thank you for your consideration of adding Ygrene Energy Fund to the City's available options for property owners to finance their water- and energy-related projects. As part of staff's review Ygrene has been asked to provide our current, and comprehensive, set of policies regarding consumer protections, disclosures and notifications of important terms and conditions. Below are the data that has been requested, and attached is supporting information that you may find useful as well.

Procedure for Providing Contractual Disclosures

Ygrene has put in place a number of procedures and safeguards to ensure that consumers receive accurate, complete and consistent information regarding the financing program, including important issues raised by third parties regarding PACE financing. Our process for delivering this information includes:

- Consistent, fair and accurate representation of the relevant facts on our website and printed materials,
- Standards and rules, along with consequences for non-compliance, for certified contractors (who introduce the financing to consumers),
- Extensive internal training for Ygrene's sales force and customer service representatives,
- Written and verbal disclosure of critical information consumers use to make decisions, and
- Implementation and regular review of all information that is required by law or regulation to be disclosed to consumers.

List of Disclosures and Agreements

Ygrene has established policies and procedures to ensure property owners are fully informed and educated as to the nature of the financial transaction they are entering into. The following special notices help educate property owners of their legal rights and protections, every step of the way.

- Notice to Lender of Proposed Special Tax Lien
- Property Owner's Acknowledgment of Sole Responsibility to Deal with Lenders
- Financing Agreement / Unanimous Approval Agreement
- Notice of Special Tax Lien
- Closing Statement (includes all fees, APR/APY, capitalized interest and amortization table)
- Assignment of Rights to Receive Proceeds

Additional Information

Ygrene is committed to ensuring the highest level of consumer protections and lending practices in the industry. Our Consumer Protection Policy includes the following elements:

- Contractor Registration, Training, Certification and Annual Re-certification
- Payment Protection for Property Owners
- Safer, More Flexible Financing Platform
- Consumer Disclosures
- Three-day Right to Cancel
- Energy-efficient Product Verification
- Pricing Controls
- Permit Verification
- Consumer Identity Confirmation
- Protections for Seniors and ESL
- Privacy
- Dispute Resolution

Ygrene works directly with our robust network of certified contractors in our network, one on one with our in house call center customer service representatives and other standard channels to explain the program benefits and risks. All applications are taken online or over the phone; we aim to serve both web savvy and those customers more comfortable with non-web based means of application processing and correspondence. Commercial project applications can also be completed remotely or via hard copy if needed. Ygrene offers in language teams for ESL customers to ensure we are accessible to traditionally hard to reach communities.

Please see the attached documents which cover standard customer disclosures upon application into the program. In addition, the online and call center application process discloses the same information. If, upon review, you have any questions or concerns please do not hesitate to contact me at 415.816.4966 or mike.lemyre@ygrene.us to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Lemyre', with a long horizontal flourish extending to the right.

Mike Lemyre
Vice President, District Development & Government Affairs
Ygrene Energy Fund

t: 707.236-6608
f: 707.579.4617
e: mike.lemyre@ygrene.us
w: www.ygreneworks.com



October 7, 2015

City Council of the City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Dear Council:

The HERO Program is the leader in residential Property Assessed Clean Energy (PACE) program administrator in the United States having funded more than \$920 million in residential PACE projects on more than 39,000 homes. In 2009, we established our mission: to provide the best residential PACE program administration and financing services in the country. In order to achieve our mission, we have invested heavily on developing resources to serve the needs of local governments, homeowners and contractors.

HERO strives to ensure both homeowners and contractors were aware of the program and that they understand the consumer protection mechanisms are an essential component of the HERO Program. To raise awareness, the HERO Program has trained more than 10,000 contractors who operate throughout California, including the city of Tracy. We have developed a training curriculum for contractors which enabled the program to track and measure performance for each individual contractor. In addition to enabling contractors to provide better customer service, the program also focuses on the following consumer protections which are solely offered by the Program:

- Senior protections
- Pricing protections
- Product verification
- HERO Property Advisors (HPA) - trained real estate professionals on staff
- Subordination of first lien position (during a sale or refinance transaction)

The HERO Program's consumer protection policy sets the industry standard for PACE financing, and offers more consumer protections than any kind of lending for home improvements, such as credit cards, Home Equity Lines of Credit (HELOCs) or other consumer loans.

Your firm's procedure for providing contractual disclosures to potential customers in the City of Tracy

The disclosures are found in the HERO Program Application [the first document that a property owner(s) must review and sign in order to be eligible to participate in the HERO Program], the Estimated Financing Summary and the Assessment Contract. The HERO Program application and Assessment Contract contains the following prominent disclosure statement:

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY.

Your energy efficient future, today.

15073 Avenue of Science, Suite 200, San Diego, CA 92128 | 855-HERO-411 | heroprogram.com



ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENT(S) OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, ON AUGUST 31, 2010, FANNIE MAE AND FREDDIE MAC STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY ISSUER. THIS MAY MEAN THAT THE PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

The HERO application further advises property owners:

If you have any questions about any agreements or security instruments which affect the Property or to which you are a party, or about your authority to execute the Program Application or enter into an Assessment Contract with "Issuer" without the prior consent of your existing lender(s), the Program strongly encourages you to consult with your own legal counsel and your lender(s). Program staff cannot provide you with advice about existing agreements or security instruments.

Finally, immediately above the property owner signature block, the Program application contains the following statement:

I declare that (i) I have received, read and understand the risks and characteristics of the Program described in the Property Owner Acknowledgments and Disclosures set forth in this Application and (ii) I have been informed that I must take the sole responsibility to satisfy myself that executing the Assessment Contract, receiving financing for Eligible Products, and consenting to the assessment levied against the Property will not constitute a default under any other agreement or security instrument (specifically the terms of any mortgage on the Property) which affects the Property or to which I am a party.

Your firm's list of standard disclosures, contracts and agreements. Additionally, explain how loan terms, rates, payments and defaults are explained to the customer.

Please see above (and attached) for the disclosure language and statement, contract and agreement. Loan terms are established by identifying the useful life of the eligible products being installed (i.e. an HVAC replacement will not qualify for a 15 or 20 year term). In order for a project to be eligible for HERO, the products must be included on the Eligible Product List and meet the required minimum specifications (as set by the Department of Energy and the Environmental Protection Agency). Before beginning work, a contractor/property owner is required to identify the products they would like to finance. The program administrators maintain a propriety software system that includes a database of over one million exact products (e.g., make/model combinations) that meet eligibility specifications.

Your energy efficient future, today.

15073 Avenue of Science, Suite 200, San Diego, CA 92128 | 855-HERO-411 | heroprogram.com



HERO provides fixed rate financing based in the term selected (5, 10, 15 or 20 years) and all HERO eligible homeowners are subject to the same interest rates. It should be noted that since HERO's initial launch in 2011, interest rates have been reduced on two occasions.

The payment process is explained throughout the application and financing documents and the Program provides a payment schedule to the property owner which identifies the principal and interest due by tax year. Additionally, after the project has been completed, HERO sends out a welcome packet that includes all the details of the project, the payment schedule as well as additional resources for the property owner. The property owner can prepay the financing at any time without a pre-payment penalty (unlike other forms of financing products in the market).

Anything your firm would like to add regarding working with customers in Tracy to ensure our citizens are fully aware of the terms, conditions and requirements of the program prior to entering into contract.

In addition to the disclosures and consumer protections discussed above, such as enhanced protections for seniors, should a situation arise where a customer becomes dissatisfied with the work performed, HERO staffs a hotline (800-720-HERO) seven days a week for customers to submit inquiries and receive prompt resolution to their concerns. HERO has a compliance team to receive, manage and resolve all customer complaints it receives. Customer satisfaction is measured through surveys which are sent to property owners and contractors for every application. To date, over 96% of survey respondents said that they are likely or extremely likely to recommend HERO to a friend or relative. The Program responds to any negative responses to address issues and ensure customer satisfaction.

Best Regards,

Robert Bendorf

Robert Bendorf

Community Development Manager - Central Valley & Sacramento Area
Renovate America (HERO Program)

Enclosures (5):

- 1- HERO Program Application
- 2- Estimated Financing Summary
- 3- Assessment Contract
- 4- HERO Homeowner Welcome Kit
- 5- City of Tracy HERO Program Snapshot

Your energy efficient future, today.

15073 Avenue of Science, Suite 200, San Diego, CA 92128 | 855-HERO-411 | heroprogram.com



CounterPointe Energy Solutions LLC
6150 Metrowest Blvd., Suite 208
Orlando, FL 32835

Sent via email to Joshua Ewen

October 9, 2015

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attention: City Council

Dear City Council Members,

CounterPointe Energy Solutions LLC is the program administrator for the AllianceNRG Program™ (the “Program”). The Program was selected by the California Statewide Communities Development Authority as an administrator for its Open PACE Platform. We are very enthusiastic about the prospect of working with the City of Tracy to help build a greener and safer community. We are writing this letter in response to your request for a description of the steps we take to inform property owners about the features of the Program.

We strive to ensure that property owners interested in the Program are making a fully informed decision before they commit to finance their projects through the Program. We do this by using plain language as much as possible to describe the terms, conditions, fees, and disclosures of the Program and by providing this information in several documents and at several points during the application process to increase the likelihood that property owners will read and understand them. If at any time property owners are unsure or need clarification, we encourage them to contact the Program so that we may answer their questions. This message, together with the contact information (telephone number and email address), is repeated frequently throughout our documents and marketing materials.

Below, we have provided a brief overview of the policies and procedures for providing the terms and conditions of our Program and highlighted where and how the property owner can find the terms, conditions, fees and disclosures of the Program. Exhibit A sets forth the Program’s standard documentation and in which documents property owners can find the terms, conditions, fees and disclosures of the Program.

General Descriptions and Disclosures

The Program’s website provides a general description of the Program. The website contains links to the terms of use of the website and the Program’s privacy policy. From the website, a property can review or download a guidebook which (1) describes property owner, property, contractor and project eligibility, (2) describes the term the terms, conditions and fees of an assessment and (3) includes legal disclosures and disclaimers, including consequences of default.

There is a separate guidebook for each property type (e.g., residential and commercial). Copies of the guidebooks also can be obtained by contacting the Program. Current interest rates, which vary by maturity and property type, can be obtained by contacting the Program.

Application Process

Property owners generally begin the application process either through a contractor engaged by the property owner or by contacting the Program directly. Either way, most property owners will begin the application process by completing an online application. Property owners may also download an application or obtain a copy from the Program and submit the application by email, fax and standard mail. Like the guidebooks, the form of application, (1) describes property owner, property, contractor and project eligibility, (2) describes the terms, conditions and fees of an assessment and (3) includes legal disclosures and disclaimers, including consequences of default. As compared to the guidebooks, some of the information in the application is abbreviated.

The Program provides a calculation tool that enables the property owner to review the annual and total cost of the financing, taking into account fees, interest rate and maturity of the assessment, before the property owner completes its application. The property owner also has the option to take into account the savings from energy or water conservation and renewable energy using information provided by their contractor for inclusion in the tool. In addition, the calculation tool can incorporate tax benefits or rebates. The property owner must obtain that information from third parties.

Assessment Contract Package

If the property owner, the property and the project meet the eligibility criteria, then the application is approved. The property owner will receive an approval letter that includes the Assessment Contract Package. There are four documents included in the Assessment Contract Package, namely: (1) a completed copy of the application; (2) the assessment contract; (3) the estimated financing summary; and (4) the notice of the right to cancel.

- As noted above, the application contains comprehensive descriptions and disclosure.
- The assessment contract details the specific terms and conditions of the property owner's assessment, including a schedule of actual fees, interest rate, annual percentage rate, maturity, annual payments and prepayment information.
- The estimated financing summary is a simple two page document that summaries the entire financing information one page and highlights certain disclosures on the second page.
- The notice of the right to cancel informs the property owner that they have the right to cancel their assessment within three days of signing the assessment contract.

To proceed with the financing, the property owner must sign and return each of these four documents. Once the Program has received these documents and the rescission period has expired, the Program sends the property owner a notice that the property owner may proceed with making the agreed-upon improvements to its property.

Project Completion, Closing and Funding

The notice to proceed includes copies of a completion certificate and a notice of assessment and payment of contractual assessment required. The completion certificate describes the improvements being financed (the same description that is contained in the assessment contract and the estimated financing summary) and sets out the direction to the Program to pay upon completion. The notice of assessment and payment of contractual assessment required is the document that is filed in the county recorder's office perfecting the lien on the property owner's property.

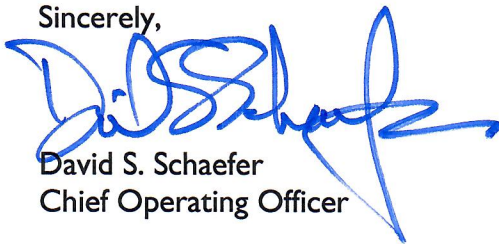
In the notice to proceed, the property owner is instructed to make sure that the completion certificate is accurate, that all of its arrangements with its contractor(s) have been reduced to writing and that the property owner or its contractor(s) secure all required permits, approvals or notices for the project.

If the property owner desires to change the project in any way after the notice to proceed is issued, then property owner is instructed to obtain prior approval from the Program so as not to jeopardize the financing. If the project changes and is approved, a new completion certificate is issued.

After the project is completed to the property owner's satisfaction, the property owner and the AllianceNRG Program Registered Professional must sign and return the completion certificate, together with any required documentation. Following the Program's receipt and acceptance of the completion certificate, the Program will file the notice of assessment and payment of contractual assessment required with the county recorder's office, make the payments as set forth in the completion certificate, usually within 8 to 13 business days and send the property owner a copy of the notice of assessment and payment of contractual assessment required, which will include a copy of the signed assessment contract.

We trust this letter sufficiently describes our policies and procedures for providing terms and conditions of our Program. If you have any further questions, please do not hesitate to contact me at david@counterpointeep.com.

Sincerely,



David S. Schaefer
Chief Operating Officer

CC: Eric J. Alini
Jeanne M. Dering
C.J. DeSantis
Brandon Alini
Ryan Donovan
James Vergara
Griselda Blackburn
Lindsay Smith

Exhibit A

A. Standard Documentation

1. Website

- a. Descriptions of Eligibility Criteria for Property Owners, Properties, Contractors and Projects
- b. Privacy Policy*
- c. Terms of Use*
- d. FAQs*
- e. Program Guidebooks*

2. Documentation the Property Owner is Required to Sign or Acknowledge Receiving¹

- a. Application
- b. Assessment Contract²
- c. Notice of Right to Cancel
- d. Estimated Financing Statement
- e. Completion Certificate

*Available for download and to be sent upon request.

¹ Available in advance by download from the Website, the property owner's portal or from the Program.

² In the assessment contract, the property owner is required to acknowledge that it has read and understands the applicable guidebook, the information on the website, including the terms of use and the privacy policy, and the notice of assessment and payment of contractual assessment required.

B. Location of (1) property owner, property, contractor and project eligibility, (2) the terms, conditions and fees of the Program and (3) legal disclosures and disclaimers.

<u>Topic</u>	<u>Web-site</u>	<u>FAQs</u>	<u>Guidebooks</u>	<u>Application</u>	<u>Assessment Contract</u>	<u>Est Fin Sum</u>	<u>Call Ctr</u>
Eligibility Criteria	√	√	√	√			√
Repayment Schedule					√	√	
Interest Rate					√	√	√ ³
APR					√	√	
Closing Costs		√	√	√	√	√	√
Annual Costs		√	√	√	√	√	√
Prepayment		√	√	√	√	√	√
Lien on Property	√	√	√	√	√	√	√
Default & Foreclosure		√	√	√	√		√
Valuation of Property		√	√	√			√
FHFA Disclosure ⁴		√	√	√	√	√	√
Lender Consent		√	√	√	√		√
Credit Check		√	√	√			√
Right to Inspect		√	√	√	√		√
Right to Record Calls			√	√	√		
ECOA ⁵			√	√			
FCRA ⁶			√	√			
HFDA ⁷			√	√			
Patriot Act			√	√			

³ Current rates at the time of the call.

⁴ Relating to the policy that Fannie Mae and Freddie Mac will not buy mortgages if there is a PACE lien.

⁵ Equal Credit Opportunity Act

⁶ Fair Credit Reporting Act

⁷ The Housing Financial Discrimination Act of 1977

Figtree Financing
9915 Mira Mesa Blvd
Suite 130
San Diego, CA 92131

October 12, 2015

City Council of the City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

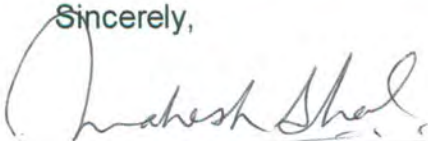
Dear Honorable Council Members:

In connection with your consideration of the California Enterprise Development Authority (CEDA) Property Assessed Clean Energy (PACE) financing program, the enclosed description of the program's quality assurance and consumer protection measures are provided for your further information.

The quality assurance and consumer protection measures implemented in our financing program are intended to provide homeowner and business-owner participants an honest, transparent and user-friendly experience with obtaining financing for energy- or water-efficient and renewable energy property improvements.

We look forward to coming alongside the residents and business owners of the City of Tracy to ensure a more sustainable future.

Sincerely,



Mahesh Shah
Chief Executive Officer

Figtree Homeowner PACE Quality Assurance and Consumer Protection Measures

The Figtree Homeowner PACE Program (the “Program”) was designed with transparent, reliable financing practices in mind. The Program operates on a consumer-friendly online platform, which places qualification criteria and disclosures at homeowners’ fingertips. By giving property owners control of the financing process from application through funding, Figtree has created a PACE product that operates at the speed of each individual.

The Program delivers detailed information about the financing terms and process through its online platform. The qualifications and disclosures are also available in print. Notably, the Program’s application for financing includes a list of qualifications and disclosures. This application must be completed and signed by the legal homeowner(s) of record to ensure the recipient of financing is legally authorized to encumber the property. The online application features identification verification steps to prevent fraud.

Homeowners can independently evaluate the Program using resources and tools published on the Program website. The tools include calculators for estimating financing costs and projecting cash flows, which provide visibility into terms, rates and fees well in advance of a homeowner’s submitting an application or entering into an assessment contract.

The Program’s disclosures, application and contract comply with and exceed the minimum standards set by the California State PACE Loss Reserve Program (the “Reserve”), which offers financial protection to mortgage holders, including Fannie Mae and Freddie Mac, in the event of delinquency.

The minimum requirements of the Reserve include:

- All property taxes for the subject property are current for the previous three years, or since the current owner acquired the property.
- The property is not subject to any involuntary lien in excess of \$1,000.
- The property is not subject to any notices of default.
- The property owner is not in bankruptcy proceedings.
- The property owner is current on all mortgage debt.
- The Assessment is for less than ten percent (10%) of the property value.

Additionally, Figtree imposes the following underwriting requirements:

- Property owners must be current on all debt secured by the subject property.
- No bankruptcies (business or personal) in the past 7 years.
- The property must not be an asset in a bankruptcy proceeding
- Property title cannot be subject to power of attorney or other agreements restricting authority of the property owner(s) to a PACE lien
- Financing term cannot exceed the useful life of the improvements
- Total property secured debt must not exceed 85% of the property's market value

Disclosures

The online and print forms of application disclose important information about the financing terms and nature of assessment financing. The disclosures are made in plain language to promote ease of understanding and provide details about the following subjects:

- Lien Position
- Assessment Term
- Interest Rate
- Administration Fee
- Capitalized Interest
- Annual Payment Amount
- Foreclosure
- Prepayments
- Potential Payoff Requirement
 - (In bold, capitalized text the application discloses the lien position and potential payoff requirement for conforming mortgages with respect to the current view of Fannie Mae and Freddie Mac towards PACE financing.)

In addition to the Fannie Mae/Freddie Mac disclosure and underwriting qualifications, the Program application makes the following disclosures above and beyond the current statutory requirements for PACE financing.

- Equal Credit Opportunity Act (ECOA) Notice
- Fair Credit Reporting Act Notice
- Housing Financial Discrimination Act of 1977 Fair Lending Notice

Additional Consumer Protections

The Program provides additional consumer protections in the form of Figtree's Registered Contractor Program, which screens contractors and proposed property improvements against the criteria below:

- Only products deemed eligible by the Program qualify for financing. Eligible products must meet minimum efficiency and performance standards, such as those set by Energy Star.
- All Eligible Products must be installed by a Figtree Registered Contractor.
- Figtree Registered Contractors meet the following criteria:
 - Active license status with the California Contractors State Licensing Board (CSLB)
 - Bonding and workers' compensation insurance coverages consistent with current CSLB requirements
 - Liability insurance (policy coverage at least of \$1 million)
- Checks and balances for reasonable costs of improvements
- Proof of permits required (if project requires municipal permit)
- Homeowner must sign a completion certificate indicating project was completed satisfactorily.

Attachment B

CITY OF TRACY
SUSTAINABILITY ACTION PLAN
SUSTAINABILITY MEASURES

Excerpt from Sustainability Action Plan Adopted February 1, 2011

e. Encourage the installation of energy efficient boilers.

1. Primary Benefits

This measure would reduce GHG emissions in Tracy by 36,768 metric tons CO₂e.

2. Secondary Benefits

This measure would provide the following secondary benefits:

- ◆ Conserve energy
- ◆ Increase renewable energy
- ◆ Reduce VMT
- ◆ Reduce waste
- ◆ Increase jobs
- ◆ Foster public awareness of sustainability

E-5: Weatherization Assistance

Continue to fund weatherization projects for households that meet the income eligibility criteria by utilizing the Community Development Agency's Downtown Rehabilitation Loan and Grant programs.

1. Primary Benefits

This measure would reduce GHG emissions in Tracy by 473 metric tons CO₂e.

2. Secondary Benefits

This measure would provide the following secondary benefits:

- ◆ Conserve energy
- ◆ Foster public awareness of sustainability
- ◆ Retain and increase amount of affordable housing

E-6: Financing for Energy Efficiency and Renewable Energy Projects

Develop a program under AB 811 to offer innovative, low-interest financing for energy efficiency and renewable energy projects for existing and new development, including heating, ventilation, air conditioning, lighting, water heating equipment, insulation, weatherization, and solar.

1. Primary Benefits

This measure would reduce GHG emissions in Tracy by 8,789 metric tons CO₂e.

2. Secondary Benefits

This measure would provide the following secondary benefits:

- ◆ Conserve energy
- ◆ Increase renewable energy

RESOLUTION 2015- _____

CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY OF THE CITY IN THE CSCDA OPEN PACE PROGRAMS; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY; AND AUTHORIZING RELATED ACTIONS

WHEREAS, The California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Tracy (the City"), and

WHEREAS, The Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CSCDA Open PACE, consisting of CSCDA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time, and

WHEREAS, The program administrators currently active in administering Programs are the AllianceNRG Program (presently consisting of Deutsche Bank Securities Inc., CounterPointe Energy Solutions LLC and Leidos Engineering, LLC) and Renewable Funding LLC, and the Authority will notify the City in advance of any additions or changes, and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied, and

WHEREAS, The City desires to allow the owners of property ("Participating Property Owners") within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance Improvements, and

WHEREAS, The territory within which assessments may be levied for the Programs shall include all of the territory within the City's official boundaries, and

WHEREAS, The Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs, and

WHEREAS, The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tracy as follows:

Section 1. This City Council hereby finds and declares that properties in the territory of the City will benefit from the availability of the Programs within the territory of the [County/City] and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 2. In connection with the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(2) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs.

Section 3. The appropriate officials and staff of the [County/City] are hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City Manager of the City from time to time, are hereby designated as the contact persons for the Authority in connection with the Programs: Development Services Department Director [specify name of position].

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

Section 5. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Section 6. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.

PASSED AND ADOPTED this ___ day of _____, 2015 by the following
vote, to wit:

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

MAYOR

ATTEST:

CITY CLERK

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY CALIFORNIA, APPROVING ASSOCIATE MEMBERSHIP BY THE CITY IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY; AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY IN THE AUTHORITY; AUTHORIZING THE CITY TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF TRACY; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the City of Tracy, California (the "City"), a municipal corporation, duly organized and existing under the Constitution and the laws of the State of California; and

WHEREAS, the City, upon authorization of the City Council, may pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "JPA Law") enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them; and

WHEREAS, the City and other public agencies wish to jointly participate in economic development financing programs for the benefit of businesses and nonprofit entities within their jurisdictions offered by membership in the California Enterprise Development Authority (the "CEDA") pursuant to an associate membership agreement and Joint Exercise of Powers Agreement Relating to the California Enterprise Development Authority (the "Agreement"); and

WHEREAS, under the JPA Law and the Agreement, CEDA is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of CEDA will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

WHEREAS, the form of Associate Membership Agreement (the "Associate Membership Agreement") between the City and CEDA is attached; and

WHEREAS, the City is willing to become an Associate Member of CEDA subject to the provisions of the Associate Membership Agreement.

WHEREAS, CEDA has adopted the Figtree Property Assessed Clean Energy (PACE) and Job Creation Program (the "Program" or "Figtree PACE"), to allow the financing of certain renewable energy, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

WHEREAS, CEDA will conduct assessment proceedings under Chapter 29 to establish an assessment district (the "District") and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, said ROI sets forth the territory within which assessments may be levied for Figtree PACE which territory shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to conduct assessment proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue bonds or other forms of indebtedness to finance the Improvements in connection with Figtree PACE; and

WHEREAS, to protect the City in connection with operation of the Figtree PACE program, Figtree Energy Financing, the program administrator, has agreed to defend and indemnify the City; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued in connection with Figtree PACE.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy, hereby finds, determines and declares as follows:

Section 1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute public affairs of the City. The City Council further finds that the statements, findings and determinations of the City set forth in the preambles above are true and correct.

Section 2. The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The Mayor of the City, the City Manager, the City Clerk and other officials of the City are each hereby authorized and directed, for and on behalf of the City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The officers and officials of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this resolution and the Associate Membership Agreement. All such actions heretofore taken by such officers and officials are hereby confirmed, ratified and approved.

Section 4. Good Standing. The City is a municipal corporation and in good standing.

Section 5. Public Benefits. On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

Section 6. Appointment of CEDA. The City hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

Section 7. Assessment Proceedings. In connection with Figtree PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;
- (2) The Participating Property Owners, who shall be the legal owners of such property, voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and
- (3) The City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in

such assessment payments, or the issuance, sale or administration of the Bonds in connection with Figtree PACE.

Section 8. Program Report. The City Council hereby acknowledges that pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report" for Figtree PACE (the "Program Report") and associated documents, and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 9. Foreclosure. The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

Section 10. Indemnification. The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in Exhibit B, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

Section 11. City Contact Designation. The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Andrew Malik, Development Services Department Director, 209-831-6423, Andrew.Malik@ci.tracy.ca.us.

Section 12. CEQA. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Section 13. Effective Date. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

Section 14. Costs. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

PASSED AND ADOPTED this _____ day of _____, 201_ by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

City Attorney

**CERTIFICATE OF CLERK OF THE CITY COUNCIL
CITY OF TRACY**

I, _____, Clerk of the City of Tracy, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted at the meeting of the City Council of the City of Tracy duly and regularly held in the Council Chambers, _____, on _____, 201_, of which meeting all of the members of said City Council had due notice.

I further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, rescinded or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

IN WITNESS WHEREOF, I have executed this certificate this ___ day of _____, 201_.

City Clerk
City of Tracy

RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY, SEISMIC RETROFITS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF TRACY

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority authorized and existing pursuant to Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, by and among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the City of Tracy (the “City”) to enter into contractual assessments for the financing of the installation of Authorized Improvements in the City; and

WHEREAS, CEDA desires to declare its intention to establish a Figtree PACE program (“Figtree PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth herein, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the County pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City including unincorporated territory within City Boundaries. A property owner located within a City within the City may enter into contractual assessments with CEDA only after such City has adopted a resolution to authorize participation in the PACE Program.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Figtree Energy Financing (the "Program Administrator") upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that are payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date) and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by the Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of the Board of Directors to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at _____ A., for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- (a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- (b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner.
- (c) A statement of CEDA's policies concerning contractual assessments including all of the following:
 - (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.

- (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
 - (3) A maximum aggregate dollar amount of contractual assessments.
 - (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- (d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.

A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the City, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the City on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 201_.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Michelle Stephens, Assistant Secretary

APPROVED AS TO FORM:

City Attorney

City of Tracy

By _____

Name:

Title:

Date: _____

Figtree Company, Inc., a California corp.

By _____

Name: Mahesh Shah

Title: CEO

Date: _____

Section 1. Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

ASSOCIATE MEMBERSHIP AGREEMENT
BY AND BETWEEN THE
CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY
AND THE
CITY OF TRACY, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of _____, 2015 by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the CITY OF TRACY, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the "City");

WITNESSETH:

WHEREAS, the Cities of Selma, Lancaster and Eureka (individually, a "Member" and collectively, the "Members"), have entered into a Joint Powers Agreement, dated as of June 1, 2006 (the "Agreement"), establishing the Authority and prescribing its purposes and powers; and

WHEREAS, the Agreement designates the Executive Committee of the Board of Directors and the President of the California Association for Local Economic Development as the initial Board of Directors of the Authority; and

WHEREAS, the Authority has been formed for the purpose, among others, to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest; and

WHEREAS, the Agreement permits any other local agency in the State of California to join the Authority as an associate member (an "Associate Member"); and

WHEREAS, the City desires to become an Associate Member of the Authority;

WHEREAS, City Council of the City has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof;

WHEREAS, the Board of Directors of the Authority has determined that the City should become an Associate Member of the Authority;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Authority and the City do hereby agree as follows:

Section 1. Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair
Board of Directors

Attest:

Michelle Stephens, Asst. Secretary

CITY OF TRACY, CALIFORNIA

By: _____
_____, Mayor
City Council

Attest:

City Clerk

RESOLUTION 2015-_____

CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE CALIFORNIA HOME FINANCE AUTHORITY COMMUNITY FACILITIES DISTRICT NO. 2014-1 (CLEAN ENERGY) TO FINANCE RENEWABLE ENERGY IMPROVEMENTS, ENERGY EFFICIENCY AND WATER CONSERVATION IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY RELATED THERETO

Recitals

WHEREAS, the California Home Finance Authority, a California joint powers authority, (the "Authority") has established the Community Facilities District No. 2014-1(Clean Energy) in accordance with the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code (the "Act") and particularly in accordance with sections 53313.5(l) and 53328.1(a) (the "District"); and

WHEREAS, the purpose of the District is to finance or refinance (including the payment of interest) the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property (the "Authorized Improvements"); and

WHEREAS, the Authority is in the process of amending the Authority Joint Powers Agreement (the "Authority JPA") to formally change its name to the Golden State Finance Authority; and

WHEREAS, the City of Tracy is committed to development of renewable energy generation and energy efficiency improvements, reduction of greenhouse gases, and protection of the environment; and

WHEREAS, in the Act, the Legislature has authorized a parcel within the territory of the District to annex to the District and be subject to the special tax levy of the District only (i) if the city or county within which the parcel is located has consented, by the adoption of a resolution by the applicable city council or county board of supervisors, to the inclusion of parcels within its boundaries in the District and (ii) with the unanimous written approval of the owner or owners of the parcel when it is annexed (the "Unanimous Approval Agreement"), which, as provided in section 53329.6 of the Act, shall constitute the election required by the California Constitution; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy efficiency and water conservation and in doing so cooperate with Authority in order to efficiently and economically assist property owners the City in financing such Authorized Improvements; and

WHEREAS, the Authority has established the District, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the City, desires to become an Associate Member of the JPA by execution of the JPA Agreement, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and, to

assist property owners within the incorporated area of the City in financing the cost of installing Authorized Improvements; and

WHEREAS, the City will not be responsible for the conduct of any special tax proceedings; the levy and collection of special taxes or any required remedial action in the case of delinquencies in the payment of any special taxes in connection with the District.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority CFD No. 2014-1 (Clean Energy) to finance the installation of the Authorized Improvements.

2. This City Council consents to inclusion in the Authority CFD No. 2014-1 (Clean Energy) of all of the properties in the incorporated area within the City and to the Authorized Improvements, upon the request of and execution of the Unanimous Approval Agreement by the owners of such properties when such properties are annexed, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority CFD No. 2014-1 (Clean Energy) and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Authorized Improvements.

4. This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate City officials of any necessary documents to effectuate such membership.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority CFD No. 2014-1 (Clean Energy) within the City, and report back periodically to this City Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority.

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

CALIFORNIA HOME FINANCE AUTHORITY**AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT**

(Original date July 1, 1993 and as last amended and restated December 10, 2014)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. The most recent amendment to the Joint Exercise of Powers Agreement was on January 28, 2004.

B. WHEREAS, the Members of CRHMFA Homebuyers Fund desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the nine-member Executive Committee.

"Authority" means California Home Finance Authority ("CHF"), formerly known as CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the nine-member Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, , improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting

in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act..

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water

conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the

rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish such committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except

that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint nine (9) members of its Board to serve on an Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change

in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal

proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

20. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to

be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993
Amended and restated December 10, 1998
Amended and restated February 18, 1999
Amended and restated September 18, 2002
Amended and restated January 28, 2004
Amended and restated December 10, 2014

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

Dated: _____

By: _____

Name: _____

Title: _____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]

AFTER EXECUTION, PLEASE SEND TO:

Golden State Finance Authority
(formerly California Home Finance Authority)
1215 K Street, Suite 1650
Sacramento, CA 95814

ATTACHMENT 1
CALIFORNIA HOME FINANCE AUTHORITY MEMBERS

As of December 10, 2014

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

RESOLUTION 2015-_____

CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE CALIFORNIA HOME FINANCE AUTHORITY, PROGRAM TO FINANCE RENEWABLE ENERGY GENERATION, ENERGY AND WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND APPROVING ASSOCIATE MEMBERSHIP IN THE JOINT EXERCISE OF POWERS AUTHORITY RELATED THERETO

WHEREAS, The California Home Finance Authority ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time (the "Authority JPA"), and

WHEREAS, the Authority is in the process of amending the Authority JPA to formally change its name to the Golden State Finance Authority, and

WHEREAS, Authority has established a property-assessed clean energy ("PACE") Program (the "Authority PACE Program") to provide for the financing of renewable energy generation, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program, and

WHEREAS, City of Tracy (the "City") is committed to development of renewable energy generation and energy and water efficiency improvements, reduction of greenhouse gases, and protection of the environment, and

WHEREAS, In Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program, and

WHEREAS, Installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the Authority PACE Program would promote the purposes cited above, and

WHEREAS, The City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency, and in doing so cooperate with Authority in order to efficiently and economically assist property owners within the City in financing such Improvements, and

WHEREAS, Authority has established the Authority PACE Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into July 1, 1993, as amended to date, and the City, desires to become an Associate Member of the JPA by execution of the JPA Agreement, a copy of which is attached as Exhibit "A" hereto, to participate in the programs of the JPA and to assist property owners within the jurisdiction of the City in financing the cost of installing Improvements, and

WHEREAS, The City will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the Authority PACE Program.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the Authority PACE Program to finance the installation of the Improvements.

2. This City Council consents to inclusion in the Authority PACE Program of all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the Authority PACE Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

4. This City Council hereby approves joining the JPA as an Associate Member and authorizes the execution by appropriate City officials of any necessary documents to effectuate such membership.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the Authority PACE Program within the City, and report back periodically to this City Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority.

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

CALIFORNIA HOME FINANCE AUTHORITY**AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT**

(Original date July 1, 1993 and as last amended and restated December 10, 2014)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. The most recent amendment to the Joint Exercise of Powers Agreement was on January 28, 2004.

B. WHEREAS, the Members of CRHMFA Homebuyers Fund desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the nine-member Executive Committee.

"Authority" means California Home Finance Authority ("CHF"), formerly known as CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the nine-member Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, , improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting

in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act..

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims,
- (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
- (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water

conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the

rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish such committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except

that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint nine (9) members of its Board to serve on an Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change

in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal

proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. Withdrawal of Member or Associate Member

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

20. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to

be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993
Amended and restated December 10, 1998
Amended and restated February 18, 1999
Amended and restated September 18, 2002
Amended and restated January 28, 2004
Amended and restated December 10, 2014

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE FOR NEW ASSOCIATE MEMBERS

NAME OF COUNTY OR CITY:

Dated: _____

By: _____

Name: _____

Title: _____

Attest:

By _____
[Clerk of the Board Supervisors or City Clerk]

AFTER EXECUTION, PLEASE SEND TO:

Golden State Finance Authority
(formerly California Home Finance Authority)
1215 K Street, Suite 1650
Sacramento, CA 95814

ATTACHMENT 1
CALIFORNIA HOME FINANCE AUTHORITY MEMBERS

As of December 10, 2014

Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Del Norte County
El Dorado County
Glenn County
Humboldt County
Imperial County
Inyo County
Lake County
Lassen County
Madera County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Napa County
Nevada County
Placer County
Plumas County
San Benito County
Shasta County
Sierra County
Siskiyou County
Sutter County
Tehama County
Trinity County
Tuolumne County
Yolo County
Yuba County

AGENDA ITEM 1.E

REQUEST

ACCEPTANCE OF THE CORRAL HOLLOW/KAVANAGH STORM DRAIN LIFT STATION REHABILITATION - CIP 76065, COMPLETED BY HOWK SYSTEMS OF MODESTO, CALIFORNIA, AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AND AUTHORIZATION FOR THE CITY TO RELEASE THE BONDS AND RETENTION PAYMENT

EXECUTIVE SUMMARY

The scope of this project consisted of replacing the pumps and check valves which have exceeded their 20-year service life at a lift station located at Corral Hollow Road and Kavanagh Avenue.

The contractor has completed construction of the Corral Hollow/Kavanagh Storm Drain Lift Station Rehabilitation - CIP 76065, project and project's costs are within the available budget. Staff recommends Council accept the project to enable the City Engineer to release the contractor's bonds and retention.

DISCUSSION

On March 17, 2015, City Council awarded a construction contract to Howk Systems of Modesto, California, for construction of the Corral Hollow/Kavanagh Storm Water Pump Station Rehabilitation, CIP 76065 project in the amount of \$84,800.

The work involved the removal and replacement of two high flow pumps, one low flow pump, and one eight-inch check valve at the storm drain lift station located at Corral Hollow Road and Kavanagh Avenue.

No change orders were issued and the estimated budget and project costs are as follows:

A. Construction Contract Amount	\$ 84,800
B. Change Order	\$0
C. Over Run of Quantities	\$0
D. Design, Construction Management, Inspection, Testing & Miscellaneous Expenses	\$ 2,975
E. Project Management Charges	<u>\$ 3,459</u>
Total Project Costs	\$ 91,234
Budgeted Amount	\$100,000

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

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 76065 is an approved Capital Improvement Project with sufficient funding. There is no fiscal impact to the General Fund. All remaining funds will be transferred back into the Drainage Enterprise Fund 541 for future storm drain improvements.

RECOMMENDATION

That City Council, by resolution, accept the Corral Hollow/Kavanagh Storm Drain Lift Station Rehabilitation - CIP 76065 project, completed by Howk System of Modesto, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Moheb Argand, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2015-_____

ACCEPTING THE CORRAL HOLLOW/KAVANAGH STORM DRAIN LIFT STATION REHABILITATION - CIP 76065, COMPLETED BY HOWK SYSTEMS OF MODESTO, CALIFORNIA, AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY TO RELEASE THE BONDS AND RETENTION PAYMENT

WHEREAS, On March 17, 2015, City Council awarded a construction contract to Howk Systems of Modesto, California, for construction of the Corral Hollow/Kavanagh Storm Water Lift Station Rehabilitation - CIP 76065, project in the amount of \$84,800, and

WHEREAS, The work involved the removal and replacement of two high flow pumps, one low flow pump, and one eight-inch check valve at the storm drain lift station located at Corral Hollow Road and Kavanagh Avenue, and

WHEREAS, Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 84,800
B. Change Orders	\$0
C. Over Run of Quantities	\$0
D. Design, Construction Management, Inspection, Testing & Miscellaneous Expenses	\$ 2,975
E. Project Management Charges	<u>\$ 3,459</u>
Total Project Costs	\$ 91,234
Budgeted Amount	\$100,000

WHEREAS, The contractor has completed construction of the Corral Hollow/Kavanagh Storm Drain Lift Station Rehabilitation - CIP 76065, project, and project's costs are within the available budget, and

WHEREAS, CIP 76065 is an approved Capital Improvement Project with sufficient funding. There is no fiscal impact to the General Fund. All remaining funds will be transferred back into the Drainage enterprise fund 541 for future storm drain improvements;

NOW, THEREFORE, BE IT RESOLVED, That City Council, accepts the Corral Hollow/Kavanagh Storm Drain Lift Station Rehabilitation - CIP 76065, project, completed by Howk System of Modesto, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City, in accordance with the terms of the construction contract, will release the bonds and retention payment.

The foregoing Resolution 2015-_____ was adopted by the Tracy City Council on the 20th day of October, 2015, 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

ACCEPTANCE OF THE SEWER AND STORM DRAIN REPLACEMENT PROJECT (FY/13/14) - CIP 74098, 74104, 74111, 76062, AND 76063, COMPLETED BY TRACY GRADING & PAVING, INC., OF TRACY, CALIFORNIA, AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION , AND AUTHORIZATION FOR THE CITY TO RELEASE THE BONDS AND RETENTION PAYMENT

EXECUTIVE SUMMARY

The scope of this project consisted of the replacement or repair of deteriorated sewer and storm drain facilities at various locations within the City, mainly at Ninth Street, Evan Street, Eastlake Circle, Lincoln Boulevard, Lowell Avenue, Sequoia Boulevard, Ray Harvey Drive, Corporate Court, Auto Plaza Drive, Highland Street, Adam Street, Beverdor Street and Twelfth Street.

The contractor has completed construction of the Sewer and Storm Drain Replacement Project and project's costs are within the available budget. Staff recommends Council accept the project to enable the City Engineer to release the contractor's bonds and retention.

DISCUSSION

On January 6, 2015, City Council awarded a construction contract to Tracy Grading & Paving Inc. of Tracy, California, for construction of the Sewer and Storm Drain Replacement Project at different locations within the City in the amount of \$185,000.

The work involved installation of approximately 500 linear feet of sewer lines, 550 linear feet of storm drain line, and 22 manholes and storm drain inlet structures.

One change order was issued in the amount of \$15,885.95, for installation of two additional connections at the sewer main, removal of a tree, and repair of a sinkhole at Ninth Street.

The project construction contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities were more than the contract quantities in the amount of \$3,220. These quantities were added in accordance with the bid unit prices of the contract and are listed as over run of quantities.

Estimated budget and project costs are as follows:

A. Construction Contract Amount	\$ 185,000
B. Change Order No. 1	\$ 15,885
C. Over Run of Quantities	\$ 3,220
D. Design, Construction Management, Inspection, Testing & Miscellaneous Expenses	\$ 156,215
E. Project Management Charges	<u>\$ 61,708</u>
Total Project Costs	\$ 422,028
Budgeted Amount	\$ 871,000

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

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 74098, 74104, 74111, 76062, and 76063, are approved Capital Improvement Projects with sufficient funding. There is no fiscal impact to the General Fund. All remaining funds will be transferred back into the same CIPs for future sewer and storm drain improvements as follows:

CIP Number	Transferable Amount
74098	\$81,330
74104	\$133,267
74111	\$185,258
76062	\$2,218
76036	\$11,898
Total Transferable Funds	\$413,971

RECOMMENDATION

That City Council, by resolution, accept the Sewer and Storm Drain Replacement Project (FY/13/14) - CIP 74098, 74104, 74111, 76062, and 76063, completed by Tracy Paving & Grading, Inc., of Tracy, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City in accordance with the terms of the construction contract, will release the bonds and retention payment.

Agenda Item 1.F
October 20, 2015
Page 3

Prepared by: Moheb Argand, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2015-_____

ACCEPTING THE SEWER AND STORM DRAIN REPLACEMENT PROJECT (FY/13/14) - CIPS 74098, 74104, 74111, 76062, AND 76063, COMPLETED BY TRACY GRADING & PAVING, INC., OF TRACY, CALIFORNIA, AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY TO RELEASE THE BONDS AND RETENTION PAYMENT

WHEREAS, The scope of this project consisted of replacement or repair of deteriorated sewer and storm drain facilities at various locations within the City, and

WHEREAS, On January 6, 2015, City Council awarded a construction contract to Tracy Grading & Paving Inc. of Tracy, California, for construction of the Sewer and Storm Drain Replacement Project in the amount of \$185,000, and

WHEREAS, One change order was issued in the amount of \$15,885.95, for the installation of two additional connections at the sewer main, removal of a tree, and repair of a sinkhole at Ninth Street.

WHEREAS, The project has been completed within the available budget, on schedule, per plans, specifications, and City of Tracy standards, and the status of budget and project costs are as follows:

A. Construction Contract Amount	\$185,000.00
B. Change Order No. 1	\$ 15,885.95
C. Over Run of Quantities	\$ 3,220.00
D. Design, Construction Management, Inspection, Testing & Miscellaneous Expenses	\$156,215.00
E. Project Management Charges	<u>\$ 61,708.00</u>
Total Project Costs	\$ 422,028.95
Budgeted Amount	\$ 871,000.00

WHEREAS, CIPs 74098, 74104, 74111, 76062, and 76063, are approved Capital Improvement Projects with sufficient funding. There is no fiscal impact to the General Fund. All remaining funds will be transferred back into the same CIPs for future sewer and storm drain improvements;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the Sewer and Storm Drain Replacement Project (FY/13/14) - CIPs 74098, 74104, 74111, 76062, and 76063, completed by Tracy Paving & Grading, Inc., of Tracy, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City, in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

The foregoing Resolution 2015-_____ was passed and adopted by the Tracy City Council on the 20th day of October, 2015, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.G

REQUEST

APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH DELTA CHARTER SCHOOL FOR USE OF CITY FACILITIES AT THE GRAND THEATRE CENTER FOR THE ARTS TO ADMINISTER ITS ARTS, MEDIA AND ENTERTAINMENT PROGRAM; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

EXECUTIVE SUMMARY

In 2013, the City of Tracy entered into an MOU with Delta Charter School to carry out a Media Internship Program in collaboration with the City's community access station, Channel 26. The Media Internship Program has provided over 50 students with the opportunity to grow and foster their video production skills by assisting Channel 26 staff with various filming projects.

In response to the success of the Media Internship Program, Delta Charter School recently approached the City of Tracy with an interest in developing an Arts, Media and Entertainment (AME) program for its high school students at the Grand Theatre Center for the Arts. The AME program would serve as a specialized academic track for Delta Charter students interested in an advanced degree or career in the arts.

A proposed MOU (Attachment "A") is recommended between the City and Delta Charter for the use of City facilities at the Grand Theatre to administer the AME program. The non-profit rental fee associated with the proposed facility rental is \$2,000. In lieu of the facility rental fee, students within the AME program will volunteer in various capacities at the Grand Theatre Grand Theatre Center for the Arts; volunteer program internships are estimated to provide 840 in-kind service hours, valued at \$8,400, supporting programming and operations at the Center.

Given the benefits of the Delta Charter AME program to the City of Tracy, staff recommends that the facility rental fee be waived. Staff is requesting City Council's approval of the MOU.

DISCUSSION

In 2013, the City of Tracy entered into an MOU with Delta Charter School to carry out a Media Internship Program in collaboration with the City's community access station, Channel 26. The Media Internship Program has provided over 50 students with the opportunity to grow and foster their video production skills by assisting Channel 26 staff with various filming projects, such as: community ribbon cuttings, downtown special events and the annual State of the City event.

In response to the success of the Media Internship Program, Delta Charter School recently approached the City of Tracy with an interest in developing an Arts, Media and Entertainment (AME) program for its high school students at the Grand Theatre Center for the Arts. The AME program would serve as a specialized academic track for Delta

Charter students interested in an advanced degree or career in the arts. Delta Charter will also model the State of California's curriculum standards for Arts, Media and Entertainment as part of the AME program.

Delta Charter's vision for the AME program is to fully immerse its students in an arts environment where they can develop technical knowledge and expertise within a visual or performing arts field, as well as gain leadership, problem solving and teamwork skills that will prepare them for the workforce.

Staff is recommending entering into an MOU (Exhibit "A") between the City and Delta Charter for the use of City facilities to administer the AME program. Delta Charter is requesting the use of the Grand Theatre Center for the Arts, Studio Theatre on Wednesday afternoons, beginning Wednesday, October 28, 2015 through Wednesday, May 18, 2016 from 1:30-4:30 p.m.

In addition, Delta Charter desires to rent the Eleni Tsakopoulos-Kounalakis (ETK) Theatre at the non-profit rate on the following dates to showcase performances within its AME program at the Grand:

- October 15, 2015
- November 5, 2015
- November 19, 2015
- December 9, 2015
- January 21, 2016
- February 18, 2016
- March 22-14, 2016

The benefits of the Delta Charter AME program include: (1) Partnership between the academic community and the City of Tracy to enhance arts education opportunities for local youth (2) Enhanced community awareness of the Grand Theatre and its programming (3) Student ownership and pride of the Grand Theatre (4) Broader audience traffic via student performances (5) Internship support in various operational capacities within the Cultural Arts Division (6) Commitment from Superintendent of Delta Charter to serve on Grand Foundation Board.

The non-profit rental fee associated with the proposed facility rental is \$2,000. In lieu of the facility rental fee, students within the AME program will volunteer in various capacities at the Grand Theatre, such as: technical theatre, box office, concessions, gallery, arts education and special events. This internship assistance will equate to roughly 840 volunteer hours, or an estimated savings of \$8,400 in personnel costs.

STRATEGIC PRIORITY

This agenda item supports the City's Quality of Life Strategic Plan and specifically implements the following goal:

Quality of Life Strategy

Goal 2: Address City amenities and facility usage with an emphasis on accessibility and streamlined services.

FISCAL IMPACT

The MOU will have a minimal fiscal impact to the General Fund for staff time and resources to support the use of City facilities at the Grand Theatre. Staff time may vary based on actual needs and demands of each event and use. Personnel costs can currently be absorbed within existing budgets.

RECOMMENDATION

That City Council adopt a Resolution approving an MOU with Delta Charter School for use of City facilities at the Grand Theatre Center for the Arts to administer its Arts, Media and Entertainment program; and authorize the Mayor to execute the MOU.

Prepared by: Vanessa Carrera, Management Analyst II

Reviewed by: Kim Scarlata, Division Manager II
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment "A" – MOU between the City of Tracy and Delta Charter School

ATTACHMENT "A"
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND
DELTA CHARTER SCHOOL

- I. **PARTIES:** This Memorandum of Understanding (hereinafter "MOU") is made by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and DELTA CHARTER SCHOOL a California Public Charter School, (hereinafter "DELTA").
- II. **RECITALS:**
- A. Delta Charter School, accredited by the Western Association of Schools and Colleges (WASC), is an innovative, personalized, full-time learning program for grades K-12 providing students with the resources needed to achieve educational goals and graduate with a high school diploma. Delta Charter School is part of the New Jerusalem Elementary School District located in Tracy, CA.
- B. DELTA CHARTER SCHOOL and the CITY will engage in a collaborative relationship in Fiscal Year 15/16 to implement an Arts, Media and Entertainment (hereinafter "AME") academic program at the Grand Theatre Center for the Arts. The CITY acknowledges and recognizes DELTA's valuable contributions in implementing the AME program, including:
- immersing students in an interdisciplinary arts environment to enhance academic performance and outcomes;
 - providing opportunities for students to experience a work environment by means of an internship program;
 - providing exposure to the public sector for students, and encouraging them to pursue public service;
 - to facilitate the educational objective of providing an internship program for Delta Charter High School; and
 - to develop student skillsets that will help them compete in the local job market.
- III. **RESPONSIBILITIES:** It is agreed by and between the parties hereto that each party have the following responsibilities:
- A. **CITY shall:**
1. Provide use of the Grand Theatre Center for the Arts, Studio Theatre (or comparable classrooms within the Grand Theatre should a scheduling conflict exist), for 25 dates, from Wednesday, October 28, 2015 – Wednesday, May 18, 2016, from 1:30-4:30 p.m.
 2. As space and staffing are available, and with a minimum 2-week notice, Delta Charter School may reserve the Studio Theatre at no cost for activities related to the AME program, for up to 8 additional uses during the duration of the MOU.

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 2 of 6

3. Provide a maximum of 6 tables and 40 chairs in Studio Theatre (based on a cohort of 40 students).
4. Provide rental of the ETK Theatre at the non-profit rate for program related performances on the following dates:

October 15, 2015
November 5, 2015
November 19, 2015
December 9, 2015
January 21, 2016
February 18, 2016
March 22-24, 2016
5. Provide access to restrooms and free parking for AME program participants.
6. Provide clean facilities in good repair.
7. Ensure that the classroom is unlocked prior to the start of the day and locked at the end of the day for each program day.
8. Provide student volunteer opportunities in technical theatre, gallery exhibitions, box office administration, concessions, arts education and special events.
9. Instruct student volunteers as to the City's rules and regulations to be adhered to while performing internship activities.
10. Provide a work environment that will not endanger the health, safety, or welfare of student volunteers.
11. Provide a written performance evaluation for each student volunteer at the end of the school year; the performance evaluation format will be furnished by DELTA.
12. Contact the DELTA Executive Director and/or Designee regarding any problems or concerns pertaining to the student volunteer's behavior and/or job performance.
13. Permit the Executive Director and/or Designee to observe the student volunteer while performing his/her internship activities when needed.

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 3 of 6

14. Sign off on the student volunteer's attendance records according to dates and times worked.
15. Provide Worker's Compensation coverage with statutory limits required by the State of California, as it does with other CITY volunteers (standard).

B. DELTA shall:

1. Provide the necessary staff, volunteers, equipment, and transportation to successfully conduct the AME program at the Grand Theatre Center for the Arts.
2. Adequately clean any City facilities to acceptable condition after permitted use. This includes ensuring all perishable food and trash is removed.
3. Facilitate and pay for any repairs to damages caused by such use, other than normal wear and tear.
4. Adhere to the City's established facility rental process and requirements.
5. To the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of DELTA's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "DELTA" means its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".
6. Assign student volunteers that are motivated and performing to standard at school, and will demonstrate respect and professionalism in the workplace to assist in such operational areas as: technical theatre, gallery exhibitions, box office administration, concessions, arts education and special events.
7. Assign student volunteers to the internship program based on an interview selection process whereby the CITY will conduct interviews in the area in which the student expresses an interest.
8. Work with student volunteers to ensure that they have appropriate work attire.

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 4 of 6

9. Instruct student volunteers as to the rules and regulations to be adhered to while performing internship activities.
10. Have participating student volunteers provide and maintain their own health insurance.
11. Provide a DELTA liaison to act as collaborator and assistant within the AME program at the Grand Theatre. The collaborator will be responsible for overseeing and monitoring all student activities within the AME program at the Grand Theatre.
12. Market and promote AME student events and performances at the Grand Theatre Center for the Arts utilizing DELTA resources.
13. Assign the Executive Director to serve as a volunteer on the Grand Foundation Board with approval from the Grand Foundation Board of Directors.

C. Student Volunteer shall:

1. Participate in an internship interview in the area of interest at the Grand Theatre Center for the Arts.
2. If selected, arrive at location each day at agreed upon time.
3. Wear appropriate work attire.
4. Demonstrate respect and professionalism in the workplace.
5. Work alone or on project teams to complete assignments in a timely manner.
6. Maintain confidentiality concerning any information gathered during the course of the internship assignment.
7. Maintain a record of attendance: dates, time in, time out.
8. Complete a daily assignment worksheet where required.
9. Be 14 years of age or older. The student volunteer must provide acceptable proof of birth which includes but is not limited to, an original birth certificate, a valid California State ID, a valid California State Driver License, or a valid Passport.
10. Perform duties herein incorporated in Exhibit "A".

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 5 of 6

11. Agree to conform to any and all policies, regulations, and ordinances of the CITY.

IV. INSURANCE.

1. **General.** DELTA shall, throughout the duration of this Agreement, maintain insurance to cover DELTA, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
4. **Workers’ Compensation** coverage shall be maintained as required by the State of California.
5. **Endorsements.** DELTA shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - a. The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
 - b. For any claims related to this Agreement, DELTA’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the DELTA’s insurance and shall not contribute with it.
6. **Notice of Cancellation.** DELTA shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
7. **Authorized Insurers.** All insurance companies providing coverage to DELTA shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
8. **Insurance Certificate.** DELTA shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
9. **Substitute Certificates.** No later than thirty days prior to the policy expiration date of any insurance policy required by this Agreement, DELTA shall provide a substitute certificate of insurance.
10. **DELTA’s Obligation.** Maintenance of insurance by the DELTA as specified in this Agreement shall in no way be interpreted as relieving the DELTA of

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 6 of 6

any responsibility whatsoever (including indemnity obligations under this Agreement), and the DELTA may carry, at its own expense, such additional insurance as it deems necessary.

- V. **INDEMNIFY, DEFEND, AND HOLD HARMLESS AGREEMENT:** DELTA shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of DELTA's acts or omissions of DELTA, its officers, agents, employees, and students with respect to the program except to the extent caused by the sole, active negligence or willful misconduct of CITY.
- VI. **TERM:** This MOU shall be in effect from Tuesday, October 20, 2015 through Friday, May 20, 2016, unless terminated by either party as set forth herein.
- VII. **AMENDMENTS:** This MOU may be amended only in writing and the amendment must be approved by both CITY and DELTA.
- VIII. **DESIGNATED REPRESENTATIVES:** For the purposes of administering the MOU, the Executive Director and/or Designee of DELTA and the Assistant City Manager of the City of Tracy, shall act as representatives for their respective organizations.
- IX. **COMPENSATION:** The CITY shall not provide compensation in the form of money or insurance benefits to DELTA or referred student interns for any work performed during the approved internship period. Moreover, the student interns shall not be considered employees of the CITY except for the purposes of Workers Compensation coverage as provided herein.
- X. **DISCHARGE:** The CITY may discharge the student from his/her internship assignment if student fails to adhere to the CITY's rules and regulations and/or is excessively tardy or absent.
- XI. **NOTICES:**

City of Tracy
Stephanie Garrabrant-Sierra
Assistant City Manager
333 Civic Center Plaza,
Tracy, CA 95376

Delta Charter School
Dr. Jeff Tilton
Executive Director
31400 S. Koster Road,
Tracy, CA 95304

With a copy to: City Attorney
333 Civic Center Plaza,
Tracy, CA 95376

MEMORANDUM OF UNDERSTANDING
City of Tracy and Delta Charter School – Arts, Media & Entertainment Program
Page 7 of 6

- XII. **ENTIRE AGREEMENT.** This MOU constitutes the entire agreement between the CITY and DELTA.

- XIII. This MOU shall be subject to any and all policies, regulations, and ordinances of the CITY.

- XIV. **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 the DELTA and the CITY. This MOU shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

CITY OF TRACY

Michael Maciel
Mayor

Date: _____

Approved as to Form:

Bill Sartor
Assistant City Attorney

Date: _____

DELTA CHARTER SCHOOL

Dr. Jeff Tilton
Executive Director

Date: 10/9/15

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 8 of 6

EXHIBIT "A"

DELTA CHARTER ARTS, MEDIA & ENTERTAINMENT PROGRAM INTERNSHIP DUTIES

Internships

Internship opportunities are available and areas of training include operations, community inreach/outreach, public relations, promotions, research, and events. Internships are managed by the Human Resources Department in collaboration with the Cultural Arts Division.

Ushers

Ushers support our front of house operations in Patron Services and are responsible for providing a high level of customer service. Duties include greeting patrons, taking tickets, seating direction, and distributing programs during performances of all kinds.

Docents

Docents support the Exhibitions Program working in the art galleries during public hours and special events including opening receptions, gallery talks and workshops. Candidates should be seeking practical experience in gallery operations with a strong interest in contemporary visual art.

Tour Guides

Tour Guides lead tours and educate the public about the Center's vibrant history, professional amenities and programming in order to facilitate specialized requests. Tour groups include classes, reunions, business professionals and arts patrons.

Arts Education Program

Skills – Good communication and organizational skills. Ability to learn and apply current arts education teaching models. Ability to interact with students of all ages, from children to adults, as well as the general public. Ability to work independently. Ability to perform limited physical tasks including but not limited to moving studio furniture and art making materials used in classroom environments. General knowledge of Windows/MS Office based workstations.

Time commitment is based upon the Arts Education Program schedule. There will be three to six hour shifts on weekdays as assigned. Special events as assigned.

Interns will be trained and scheduled by the Arts Education Coordinator. Interns will operate under the guidance of the Cultural Arts Manager, Arts Education Coordinator and/or the Arts Education Program Assistant to complete assigned tasks.

Typical Internship experience in the Arts Education Program include general program operations, marketing, public relations, studio equipment and supplies, database and research projects.

MEMORANDUM OF UNDERSTANDING

City of Tracy and Delta Charter School – Arts, Media & Entertainment Program

Page 9 of 6

EXHIBIT “A” (Cont.) DELTA CHARTER ARTS, MEDIA & ENTERTAINMENT PROGRAM INTERNSHIP DUTIES

Exhibitions Program/Grand Galleries

Skills – Good communication and organizational skills, ability to learn art history, contemporary art, and general gallery practices. Interest in visual art, community outreach, promotions, and research & development. Ability to perform physical tasks including but not limited to moving packages, crates, pedestals, and handling works of art. Operate hand tools and other gallery equipment. Desire to work in a professional non-profit or visual arts space with students of all ages and the general public.

Time commitment is based on intern availability and Exhibition Program schedule and projects. Variable shifts include weekdays and Saturdays, up to 10 hours weekly on average. Exhibition installation/de-installation and special events as scheduled.

Interns will be trained and scheduled by the Cultural Arts Manager. Once trained the Intern can work independently or paired with another Staff member, Intern and/or Volunteer under the guidance of the Cultural Arts Manager to attend the galleries and/or complete assigned tasks. Trained Interns may be asked to assist in the training of other Interns and/or Volunteers.

Typical Internship experiences in the Exhibitions Program include general gallery operations, marketing, public relations, programming development, exhibition design, database and research projects.

Other duties assigned to interns within the AME Program may include:

- Assist with operational activities including set-up, run, and/or strike of shows and events.
- Assist with checking the stage and production areas for safety hazards and maintain health and safety standards in these areas.
- Assist with the maintenance of theater equipment, including follow spots, microphones and light control board.
- Cashiering and concessions.
- Video Production, filming and editing of performances.
- Box Office assistance – answering phones, tickets sales, customer service.
- Marketing and social media for events and arts education.
- Assist with hospitality of performers.

RESOLUTION _____

APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH DELTA CHARTER SCHOOL FOR USE OF CITY FACILITIES AT THE GRAND THEATRE CENTER FOR THE ARTS TO ADMINISTER ITS ARTS, MEDIA AND ENTERTAINMENT PROGRAM; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

WHEREAS, Delta Charter School recently approached the City of Tracy with an interest in developing an Arts, Media and Entertainment (AME) program for its high school students at the Grand Theatre Center for the Arts; and

WHEREAS, Delta Charter's vision for the AME program is to fully immerse its students in an arts environment where they can develop technical knowledge and expertise within a visual or performing arts field, as well as gain leadership, problem solving and teamwork skills that will prepare them for the workforce; and

WHEREAS, An MOU (Attachment "A" to the staff report accompanying this agenda item) has been drafted between the City and Delta Charter for the use of City facilities to administer the AME program; and

WHEREAS, The non-profit rental fee associated with the proposed facility rental is \$2,000 and in lieu of the facility rental fee, students within the AME program will volunteer in various capacities at the Grand Theatre, such as: technical theatre, box office, concessions, gallery, arts education and special events.

WHEREAS, This internship assistance will equate to roughly 840 volunteer hours, or an estimated savings of \$8,400 in personnel costs.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy does hereby approve the Memorandum of Understanding with Delta Charter School for the use of City facilities at the Grand Theatre as listed above, and authorizes the Mayor to execute the agreement.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the ____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.H

REQUEST

AUTHORIZE AN AGREEMENT WITH DENALI WATER SOLUTIONS, LLC, FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIO SOLIDS AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

The City of Tracy generates municipal sludge, a nutrient rich organic material, at the Wastewater Treatment Plant as a by-product of its operation. The City engages the services of responsible haulers (vendors) to remove and dispose of this material out of San Joaquin County annually in accordance with all applicable Federal, State and local regulations. The work includes removing the sludge from drying beds and stockpiles, loading, hauling, and disposing of the existing bio solids. This agenda item requests authorization to enter into an agreement with Denali Water Solutions, LLC for providing such services.

DISCUSSION

To remove the bio solids from the drying beds, load the materials, haul, and dispose of approximately 1,500 tons of sludge that is currently in the drying beds and stockpiled at the Wastewater Treatment Plant at 3900 Holly Drive services of a vendor are acquired every year by the City. The vendor is also required to provide certified mobile scales to weigh the trucks before leaving the plant site to determine the tonnage of bio solids hauled, or the contractor may have each truck weighed at a certified scale. The contractor shall conform to all applicable laws, rules, and regulations in performing this work.

The vendor is to complete the specified work within sixty days of the Notice to Proceed unless the vendor receives an extension in writing from the City.

On August 13, 2015, Requests for Proposals were sent to three vendors and posted on the City website. A total of three proposals were received and opened at 2:00 p.m. on August 27, 2015 as follows:

<u>Vendor Name</u>	<u>Price / Ton</u>	<u>Total Price</u>
Liberty Composting, Inc.	\$67.50	\$101,250
Jim Brisco Enterprises Inc.	\$38.48	\$ 57,720
Denali Water Solutions, LLC	\$33.75	\$ 50,625

Denali Water Solutions, LLC has submitted the lowest monetary proposal. The reference checks indicate that Denali has previously provided such services to other agencies in a satisfactory manner. Denali has supplied the required insurance for this work as part of the attachment agreement.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. Funding for the disposal of the wastewater treatment bio solids (sludge) is available in the approved Utilities Wastewater budget for fiscal year 2015-16.

RECOMMENDATION

That the City Council, by resolution, authorize the award of a contract for bio solids loading, hauling, and disposal to Denali Water Solutions, LLC and authorize the Mayor to execute the agreement.

Prepared by: Dale Klever

Reviewed by: Kuldeep Sharma, Utilities Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Maintenance Agreement

AGREEMENT

This MAINTENANCE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "City"), and DENALI WATER SOLUTIONS, LLC, a Delaware LLC (hereinafter "Contractor") for the purpose of loading, hauling and disposing of Wastewater Treatment Plant Biosolids.

RECITALS

- A. In accordance with the applicable provisions of State law, including the Public Agreement Code, and local law, including the Tracy Municipal Code, the City issued an informal invitation for proposal for the work defined in the agreement.
- B. In response to the invitation the Contractor submitted the proposals, which are incorporated herein by reference, which were found by the City to be responsive to the invitation.
- C. After reviewing all proposals submitted in response to the invitation the City found the Contractor to have the Lowest Responsible Proposal, and the City Council awarded this Agreement to the Contractor pursuant to Resolution No. _____
- D. The Project is more specifically described in the Agreement Documents, but generally includes the following items loading, hauling and disposing of Wastewater Treatment Plant Biosolids in accordance with Federal, State and local ordinances.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF WORK. The Contractor shall perform, or cause to be performed, the Work described in the Agreement Documents (hereinafter "Work"), to the satisfaction of the City Representative. Contractor shall perform additional work arising from changes ordered by the City in accordance with section 2.3 of this Agreement.
2. AGREEMENT DOCUMENTS.
 - 2.1. List of Agreement Documents. The Agreement Documents consist of this executed Agreement; all Proposal Documents including the Invitation for Proposals, Supplementary Instructions, Bid Forms; Notice of Award; Notice to Proceed; and Exhibits.
 - 2.2. Agreement Modifications. The Agreement Documents may not be modified orally or in any manner other than in writing in accordance with the Agreement Documents.
3. AGREEMENT AMOUNT. City shall pay to Contractor, for the performance of the Work, the Agreement Amount pursuant to section 11, subject to adjustment for unit price items, and as modified pursuant to the terms of the Agreement Documents. The Contractor's compensation shall include all costs incurred by the Contractor in the performance of the Work, including: furnishing all labor (including supervision), materials, equipment, tools, transportation, and services necessary (including the costs of any and all applicable taxes, patent rights, royalties, licenses, and permits) to complete the Work (including costs to protect the Work, and all damages to the Work prior to acceptance of the Work by the City, unless otherwise specifically provided in the Agreement Documents). The Agreement

AGREEMENT

Amount, which includes loading, hauling and disposing of Wastewater Treatment Plant Biosolids as specified in the scope of work. Actual payment to Contractor will be based upon \$33.75 per ton of material disposed.

4. AGREEMENT TIME. Time of completion of the work will be in accordance with as listed in the specifications.
5. LIQUIDATED DAMAGES. Liquidated damages will be as listed in the specifications
6. CONTRACTOR REPRESENTATIVE. At all times during the progress of the Work, Contractor shall have a competent foreman or superintendent (hereinafter "Contractor Representative") on site with authority to act on behalf of the Contractor. The Contractor shall, at all times, keep the City Representative informed in writing of the name and telephone number of the Contractor Representative. The Contractor shall, at all times, keep the City Representative informed in writing of the names and telephone numbers of all subcontractors performing the Work.
7. INSURANCE. Concurrently with the execution of this Agreement by the Contractor, and prior to the commencement of any Work, the Contractor shall furnish evidence to the City that all of the following insurance requirements have been satisfied.
 - 7.1. General. The Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 7.2. Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$1,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 7.3. Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 7.4. Workers' Compensation coverage shall be maintained as required by the State of California.
 - 7.5. Endorsements. Contractor shall obtain endorsements to the commercial general liability, automobile liability, and workers' compensation policies in a form satisfactory to the City which is substantially the same as the forms set forth in the Exhibits.
 - 7.6. Authorized Insurers. All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
 - 7.7. Insurance Certificate. Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City which is substantially the same as the form set forth

AGREEMENT

in the Exhibits.

- 7.8 Contractor's Obligation. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary.

8. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Contractor shall obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, the Contractor shall obtain a City of Tracy Business License. The Contractor shall comply with all applicable legal requirements including all local, state, and federal laws, including City Regulations, whether or not said laws are expressly stated in this Agreement.

9. **ACCESS TO THE SITE.** In order to permit the City to inspect the Work, the Contractor shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

10. **AUDIT BY THE CITY.** The City, and entities and agencies designated by the City, shall have access to and the right to audit all of Contractor's books, records, agreements, change orders, correspondence, instructions, drawings, receipts, vouchers, purchase orders, notes, daily logs, and memoranda relating to the Work. Contractor shall preserve all such records for a period of at least three years after final completion and shall provide copies of same at City's request.

11. **DEFAULT.**

11.1. The Contractor shall be in default of this Agreement if the City Representative determines that any one of the following conditions exist:

11.1.1. Contractor is insolvent, files for bankruptcy, makes a general assignment for the benefit of its creditors, or fails to pay its debts as they become due.

11.1.2. The Contractor fails to perform any portion of the Work within the timing requirements of the Agreement Documents.

11.1.3. The Contractor abandons the Project site.

11.1.4. The Contractor fails to perform one or more requirements of this Agreement.

11.1.5. The Contractor fails to replace or repair any damage caused by Contractor or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

11.1.6. The Contractor violates any legal requirement related to the Work.

11.2. In the event that the Contractor fails to promptly commence, diligently and continuously prosecute, and cure the default within ten (10) days, or provide adequate written assurance to the satisfaction of the City Representative that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Representative, take any or all of the following actions:

AGREEMENT

- 11.2.1. Issue a Notice of Suspension of Work, by which the Contractor shall suspend all Work except for those portions of the Work authorized by the Notice, and for which the Contractor shall not be entitled to any adjustment of the Agreement Amount or Agreement Time.
 - 11.2.2. Cure the default and charge the Contractor for the costs therefor, including administrative costs and interest in an amount equal to seven percent (7 %) per annum from the date of default, which charge may be deducted by the City from amounts otherwise payable to the Contractor.
 - 11.2.3. Demand the Contractor to complete performance of the Work.
 - 11.2.4. Remove the Contractor from the site and demand the Contractor's surety (if any) to complete performance of the Work.
 - 11.2.5. Terminate the Agreement and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Contractor; accept the assignment of any or all of the sub agreements; and then complete the Work by any method the City may deem expedient. If requested by the City, Contractor shall remove any part or all of Contractor's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within seven (7) days of such request; and if Contractor fails to do so, the City may remove or store, and after ninety (90) days sell, any of the same at Contractor's expense.
- 11.4 In the event that the Agreement is terminated by the City in accordance with this section:
- 11.4.1. Contractor shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of all Work by the City
12. ACCEPTANCE OF WORK. Prior to acceptance of the Work by the City Council, if applicable, the Contractor shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. The Contractor's obligation to perform the Work shall not be satisfied until after the City Representative has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
13. WARRANTY OF QUALITY OF WORK. Contractor warrants to the City that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Agreement Documents. If required by the City Representative, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

AGREEMENT

14. INDEPENDENT CONTRACTOR STATUS. Contractor is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Contractor.
15. CONFLICTS OF INTEREST. Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that Contractor maintains or acquires such a conflicting interest, any agreement (including this Agreement) involving Contractor's conflicting interest may be terminated by the CITY.
16. ATTORNEY'S FEES. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
17. INDEMNIFICATION. Contractor shall indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses) resulting from or arising out of the performance of the Work by Contractor (including Contractor's agents, representatives, contractors, subcontractors, and employees), except only for those claims arising from the established willful misconduct or active negligence of the City. Contractor's indemnification shall specifically include, but not be limited to, all claims arising out of: agreement claims, property damage, personal injury, and any infringement of patent rights or copyrights incidental to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Agreement Documents. Contractor's indemnification shall include any and all costs, expenses, court costs, attorneys' fees and liability incurred by the City in enforcing the provisions of this section, and in defending against such claims, whether the same proceed to judgment or not. Contractor shall reimburse City for any expenditures City incurs by reason of such matters.
18. ASSIGNMENT AND DELEGATION.
 - 18.1. Assignment of This Agreement. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

AGREEMENT

- 19.2 Assignment pursuant to Government Code. Pursuant to Government Code Section 4552, the Contractor shall assign to the City, all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works agreement or the subagreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties. The Contractor further warrants that all goods, services, and materials provided to the City in accordance with this Agreement are free and clear of all liens and encumbrances.

20. NOTICES.

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

TO THE CITY

1. Dale Klever
2. Wastewater Treatment Plant Superintendent
3900 Holly Drive
Tracy, CA 95304

TO CONTRACTOR

Chris Marks
Managing Member
12812 Valley View St, #9
Garden Grove, CA 92845

COPIES OF ALL NOTICES ARE TO BE SENT TO:

Daniel Sodergren
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

AGREEMENT

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

- 21. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 22. SEVERABILITY. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
- 23. JURISDICTION AND VENUE. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 25. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Contractor and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

By: _____
Michael Maciel

Title: Mayor

Date:

Attest: _____

By: Nora Pimentel

Title: City Clerk

Date:

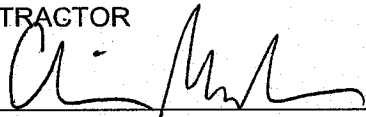
Approve As To Form:

By: Daniel G. Sodergren

Title: City Attorney

Date:

CONTRACTOR

By: 
Chris Marks

Title: Managing Member

26-1757145
Fed. Employer ID No.

990041
Contractor's License No.

CITY OF TRACY**SPECIFICATIONS FOR THE PURPOSE OF LOADING,
HAULING AND DISPOSING OF WASTEWATER TREATMENT
PLANT BIOSOLIDS AT 3900 HOLLY DRIVE, TRACY, CA 95304**The Scope of Work:

The Scope of Work generally includes loading, hauling and disposing of Wastewater Treatment Plant Biosolids outside the San Joaquin County, in accordance with all applicable Federal, State and local regulations.

The Contractor shall provide certified mobile scales to weigh the truck before leaving the plant site to determine the tonnage of biosolids loaded for disposal. The Contractor may have each truck weighed at a certified scale to provide the proof.

Labor Requirements:

1. Prevailing Wage. The California general prevailing wage rates determined by the Director of Industrial Relations are made a part of this Agreement. Nothing in the specification documents shall be interpreted in a manner conflicting with these rates. See General Provisions Section 9.05 (d), "Prevailing Wage".
2. Apprentices. Labor Code Sections 1777.5, 1777.6 and 1777.7 govern the employment of apprentices by Contractor or any Subcontractor. Contractor and any of his Subcontractors shall comply with these Labor Code requirements. Contractor shall have full responsibility for compliance regardless of any other contractual or employment relations alleged to exist. See General Provisions Section 9.05 (f), "Apprentice Program".
3. Wage Information. A copy of the general prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Agreement, as determined by the Director of the State Department of Industrial Relations, are available at the office of the City's Director of Development and Engineering Services, located at Tracy City Hall, 333 Civic Center Plaza. These will be made available to any interested party upon request.
4. Hours of Labor. The Contractor shall forfeit, as a penalty, to the City \$50 for each worker employed in the execution of the Agreement by him or by any Subcontractor for each calendar day during which any worker is required or permitted to labor more than 8 hours, in violation of Labor Code sections 1810- 1815. See General Provisions Section 9.05 (c), "Hours of Labor".
5. Nondiscrimination. Contractor shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, or physical or mental disability.

Time of completion:

All work shall be completed by the Contractor within 60 days of the Notice to Proceed unless the Contractor receives an extension from the City of Tracy. The Contractor can request an extension of the time of completion due to inclement weather.

Cost of Work:

- The payment for the scope of services completed shall be based upon \$33.75/ton of biosolids loaded, hauled and disposed of in accordance with the prevailing Federal, State and local laws.

Progress Payments:

The Contractor may submit progress payment request to the City every two weeks. The City will review the payment request and evaluate with the percentage of work completed and approve the payment for that portion of work. City will make payment to the Contractor within 21 days of the receipt of the payment request from the Contractor. Ten percent of the progress payment will be retained by the City and paid to the Contractor after completion of the work. The Contractor may choose to take one final payment after completion of the work.

TABLE OF CONTENTS

- A. MAINTENANCE AGREEMENT
- B. SPECIFICATIONS
- C. EXHIBITS
 - #1 General Liability Endorsement
 - #2 Automobile Liability Endorsement
 - #3 Workers' Compensation Endorsement



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/17/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hoffman-Henry Insurance Corp. Affiliate of Stephens Insurance, LLC P. O. Box 3507 Little Rock AR 72203-3507		CONTACT NAME: Cindy Burns PHONE (A/C, No. Ext): (501) 377-8454 FAX (A/C, No): (501) 537-6093 E-MAIL ADDRESS: cindy.burns@stephens.com																						
INSURED Denali Water Solutions, LLC 3308 Bernice Avenue Russellville AR 72802		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A:</td> <td>Endurance American Specialty</td> <td>41718</td> </tr> <tr> <td>INSURER B:</td> <td>Insurance Company of the State of</td> <td>19429</td> </tr> <tr> <td>INSURER C:</td> <td>Travelers Property Casualty Co AM</td> <td>36161</td> </tr> <tr> <td>INSURER D:</td> <td>Charter Oak Fire Insurance Company</td> <td>25615</td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Endurance American Specialty	41718	INSURER B:	Insurance Company of the State of	19429	INSURER C:	Travelers Property Casualty Co AM	36161	INSURER D:	Charter Oak Fire Insurance Company	25615	INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																						
INSURER A:	Endurance American Specialty	41718																						
INSURER B:	Insurance Company of the State of	19429																						
INSURER C:	Travelers Property Casualty Co AM	36161																						
INSURER D:	Charter Oak Fire Insurance Company	25615																						
INSURER E:																								
INSURER F:																								

COVERAGES

CERTIFICATE NUMBER: CL1561009768

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

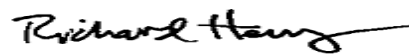
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			ECC20000017000 All Occurrence Except Prof Professional Claims Made Retro Date 1/1/2013 XCU Included; Ded. \$10,000	3/20/2015	4/1/2016	EACH OCCURRENCE \$ 10,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input checked="" type="checkbox"/> Environmental Liability						MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> Professional Liability						PERSONAL & ADV INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE \$ 10,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 10,000,000
	OTHER:						Environmental Liability \$ 10,000,000
B	AUTOMOBILE LIABILITY			7196172 Comp Ded. \$2,000 Collision Ded. \$2,000	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							PIP-Basic \$ 100,000
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			ZUP-81M28997-15-NF	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 10,000,000
	DED	RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC051780551 Other States WC051780552 California	4/1/2015	4/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Rented / Leased Equipment			QT-660-4862N397-TIL-15	4/17/2015	4/1/2016	Per Item Limit \$500,000 Deductible \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Tracy, its officers, agents and employees are named as additional insureds in regards to General and Auto Liability as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Tracy 3900 Holly Drive Tracy, CA 95304	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Richard Henry/BUBR 

© 1988-2014 ACORD CORPORATION. All rights reserved.

ENDORSEMENT

Named Insured: Denali Water Solutions LLC

Policy Number: ECC20000017000

Endorsement

Effective Date: 06/09/2015

(12:01 AM Standard Time at the address of the
Named Insured as shown in the Declarations)

Endorsement

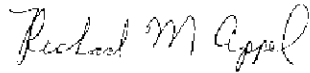
Number: 04

GENERAL AMENDATORY ENDORSEMENT

This Endorsement changes the Policy. Please read it carefully.

It is agreed that:

ALT ECC 0373 0814 Additional Insured - Owners, Lessees or Contractors - Completed Operations is hereby added to the policy per the attached.



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

ENDORSEMENT

Named Insured: Denali Water Solutions LLC

Policy Number: ECC20000017000

Endorsement

Effective Date: 03/20/2015

(12:01 AM Standard Time at the address of the
Named Insured as shown in the Declarations)

Endorsement

Number:

AUTOMATIC ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS

This Endorsement changes the Policy. Please read it carefully.

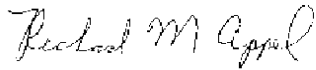
It is agreed that:

This endorsement modifies insurance provided under the following:

- X COMMERCIAL GENERAL LIABILITY COVERAGE PART
- X CONTRACTORS POLLUTION LIABILITY COVERAGE PART

Any person(s) or organization(s) whom the *Named Insured* agrees, in a written contract, to name as an additional insured is included as an insured, but only as respects the project specified in that contract and only with respect to that person's or organization's vicarious liability arising out of your ongoing operations performed for that insured. The limit of the additional insured coverage shall be the lesser of:

1. those limits required by written contract; or
2. the applicable per claim limit per the Declarations.



Authorized Representative

This endorsement does not change any other provision of the Policy. The title and any headings in this endorsement are solely for convenience and do not affect its meaning.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

CONTRACTOR'S POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Any person(s) or organizations(s) whom the Named Insured agrees, in a written contract, to name as additional insured. However, this status exists only for the project specified in that contract.	Those project locations where this endorsement is required by contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Definitions is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

Includes copyrighted material of Insurance Services Office, Inc. with its permission

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2015 forms a part of

policy No. CA 719-61-72 issued to DENALI WATER SOLUTIONS, LLC

by THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

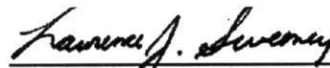
ADDITIONAL INSURED:

Any person or organization for whom you are contractually bound to provide Additional Insured status but only to the extent of such person's or organization's liability arising out of the use of a covered "auto".

I. **SECTION II - LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured,** is amended to add:

d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

- (1) The coverage and/or limits of this policy, or
- (2) The coverage and/or limits required by said contract or agreement.



Authorized Representative or
Countersignature (in States Where
Applicable)

RESOLUTION 2015- _____

AUTHORIZING A CONTRACT FOR BIO SOLIDS LOADING, HAULING, AND DISPOSAL WITH DENALI WATER SOLUTIONS, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Bio solids are processed sludge from the Wastewater Treatment Plant that is dried at the Wastewater Treatment Plant on solar drying beds, and

WHEREAS, The City engages the services of responsible haulers (vendors) annually to remove and dispose of this material out of the San Joaquin County in accordance with all applicable Federal, State and local regulators, and

WHEREAS, The work to be done consists of removing approximately 1,500 tons of bio solids from the drying beds, and

WHEREAS, A Request for Proposals (RFP) was sent to these potential vendors on August 13, 2015 and was posted on the City's website, and

WHEREAS, Bid packages were mailed to three bidders specializing in this work and three bids were received and are summarized as follows:

<u>Vendor Name</u>	<u>Price /</u>	
	<u>Ton</u>	<u>Total Price</u>
Liberty Composting, Inc.	\$67.50	\$101,250
Jim Brisco Enterprises Inc.	\$38.48	\$ 57,720
Denali Water Solutions, LLC	\$33.75	\$ 50,625

WHEREAS, Denali Water Solutions LLC submitted the lowest responsive monetary proposal, and

WHEREAS, Denali Water Solutions LLC has completed similar tasks with other agencies in a satisfactory manner, and

WHEREAS, Funding for this work is available in the approved Fiscal Year 2015 – 16 budget;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes the award of a contract for bio solids loading, hauling, and disposal to Denali Water Solutions LLC and authorizes the Mayor to execute the agreement.

* * * * *

The foregoing Resolution 2015- _____ was adopted by the Tracy City Council on the 20th day of October, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3

REQUEST

APPROVAL OF AN AMENDMENT TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP) DEVELOPMENT FEE, RESULTING IN AN INCREASE IN FEES FOR 2016

EXECUTIVE SUMMARY

In 2001 the City began participating in the newly established San Joaquin County Multi Species Habitat Conservation and Open Space Plan (SJMSCP). The fees for participation in the plan were established in 2001, and updated in 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015. Pursuant to the land sales comparables and the Consumer Price Index, the fees are proposed to be updated for collection starting January 1, 2016. The revised fees represent an overall 7.2 percent increase from the fees collected in 2015.

DISCUSSION

Background

In 2001, City Council approved a resolution to establish the authority to collect a development fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). That fee was established in 2001, and subsequently updated in 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015.

The formula for updating the fee was categorized into three distinct components to better calculate an accurate fee per acre [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)]. The final mitigation fees (Table 1) reflect true costs in each category and other real costs associated to fulfill the goals of the plan.

Category A (acquisition) - Comparables

This category is directly related to land valuation based on comparables which occur in specific zones of the plan. This category is evaluated on a yearly basis by taking all qualified comparables in each zone, including SJCOG, Inc. easements, to set a weighted cost per acre using the same methodology as in the Financial Analysis Update in 2006 as amended in mid-2012 by the Habitat Technical Advisory Financial Sub-Committee and SJCOG Inc. The SJCOG, Inc. easements are evaluated using the appraised value of the property in the before condition included with the fee title sales of other property occurring in San Joaquin County. The final weighted cost per acre of each zone is calculated into a blended rate under Category A (acquisition) figure for each habitat type.

The criteria to determine valid comparables used in the weighted calculation are:

1. All SJCOG, Inc. transactions (fee title and appraised value of unencumbered property)
2. Sales not less than 40 acres

3. Sales not greater than 500 acres
4. No parcels with vineyard or orchard (except SJCOG, Inc. transactions for special needs)
5. Must be land which would fulfill mitigation under the plan
6. Comparable sales reviewed by the Habitat Technical Advisory Financial Sub-committee
7. Not greater than 2 years old from the date of June 30th of each year with all acceptable comparables included (criteria 1-5). A minimum of 10 acceptable comparables are required for analysis. If the minimum of 10 transactions are not available, the time period will extend at 3 month intervals prior to the beginning date until 10 comparables are gathered.

The calculation results in an increase to the Agricultural/Natural Habitat type of Category A component from \$9,427.21 to \$10,413.67.

Category B (assessment & enhancement) - Consumer Price Index

This category is an average of the California Consumer Price Index (CPI), as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed appropriate regarding the cost of inflation for this category. The California CPI calculation increased 1.3%.

The calculation results in an increase of the Category B component to be \$3,302.13, up from last year's \$3,259.76.

Category C (management & administration) - Consumer Price Index

This category is an average of the California Consumer Price Index (CPI), as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed an appropriate regarding the cost of inflation for this category. The California CPI calculation increased 1.3%.

The calculation results in an increase of the Category C component to be \$1,880.37, up from \$1,856.24 in 2015.

SJCOG, Inc. staff calculated the fees using the SJMSCP Financial Analysis formula model [FEE= Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & Admin)] which is shown in Table 1 below. The overall result in the calculations was an increase in the fees from 2015 to 2016.

Table 1 – Mitigation Fees to Be Adopted for 2016

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee*
Open Space	\$5,206.81	\$1,651.07	\$949.55	\$7,807.42	\$7,807
AG/Natural	\$10,413.61	\$3,302.13	\$1,880.37	\$15,596.11	\$15,596
Vernal Pool (grasslands)	\$39,415.32	\$621.84	\$6,831.53	\$46,868.70	\$46,869
Vernal Pool (wetted)	\$39,415.32	\$44,025.87	\$6,831.53	\$90,272.73	\$90,273

*rounded to the nearest dollar to be adopted and in place by January 1, 2016

All of the land within and adjacent to the current City limits are classified as Open Space or AG/Natural, as there are no vernal pools near the City of Tracy. The current (2014) per-acre fees in the relevant categories are \$7,281 per acre for Open Space, and \$14,543 for AG/Natural.

Monitoring Plan Funding:

Along with the annual index adjustment, the SJMSCP is required to monitor the plan to address funding shortfalls as stated in Section 7.5.2.1 of the plan. SJCOG, Inc. shall undertake an internal review of the SJMSCP funding plan every three years to evaluate the adequacy of each funding source identified in the plan, identify existing or potential funding problems, and identify corrective measures, should they be needed in the event of actual or potential funding shortfalls. This will be reported to the permitting agencies for review in Annual Reports. A review of the Financial Analysis Plan, similar to the process undertaken in the 2006 review, will occur every five years to ensure the adopted methodology is fulfilling the goals of the plan.

FISCAL IMPACT

This agenda item will not require any specific expenditure of funds. All of the fees collected with each project will be applied toward the SJMSCP.

STRATEGIC PLAN

This agenda item does not relate to any of the Council's Strategic Plans.

RECOMMENDATION

Staff recommends that the City Council approve, by adoption of a resolution, the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, as shown in the City Council resolution dated October 20, 2015.

ATTACHMENTS

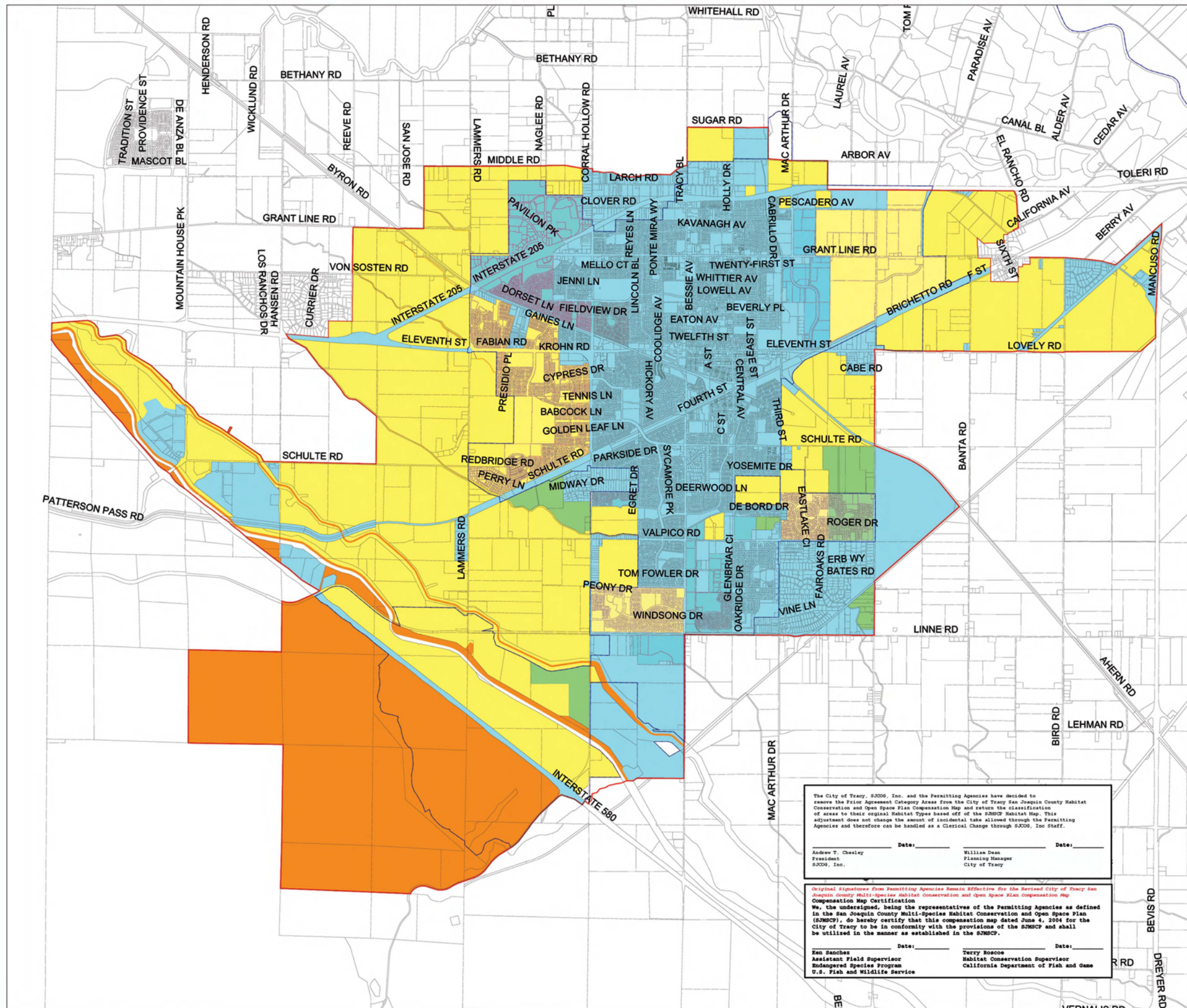
Attachment A—City of Tracy Land Category / Pay Zones Map

Agenda Item 3
October 20, 2015
Page 4

Prepared by: Victoria Lombardo, Senior Planner, City of Tracy
Steve Mayo, Senior Regional Planner, SJCOG

Reviewed by: Bill Dean, Assistant DS Director
Andrew Malik, Development Services Director
Stephanie Garranbrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager



- LAND CATEGORY / PAY ZONES**
- CATEGORY A
EXEMPT
NO PAY ZONE
 - CATEGORY B
OTHER OPEN SPACES
PAY ZONE A
 - CATEGORY C
AG. HABITAT OPEN SPACES
PAY ZONE B (Agricultural)
 - CATEGORY D
NATURAL LANDS HABITAT
PAY ZONE B (Natural)
 - CATEGORY E
VERNAL POOLS
PAY ZONE C
- PLANNING AREA BOUNDARY**
- URBAN EXPANSION AREA
 - CITY LIMITS
 - PARCEL LINE

San Joaquin County Multi-Species Habitat Conservation and Open Space Plan

The City of Tracy, 2006, Inc. and the Permitting Agencies have decided to remove the Prior Agreement Category Areas from the City of Tracy San Joaquin County Habitat Conservation and Open Space Plan Compensation Map and return the classification of areas to their original Habitat Types based off of the SJMSCP Habitat Map. This adjustment does not change the amount of incidental take allowed through the Permitting Agencies and therefore can be handled as a Clerical Change through SJ006, Inc Staff.

Date: _____
Andrew T. Chesley
President
SJ006, Inc.

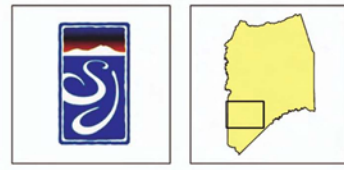
Date: _____
William Dean
Planning Manager
City of Tracy

Original Signatures from Permitting Agencies Remain Effective for the Revised City of Tracy San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Compensation Map

We, the undersigned, being the representatives of the Permitting Agencies as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), do hereby certify that this compensation map dated June 4, 2004 for the City of Tracy to be in conformity with the provisions of the SJMSCP and shall be utilized in the manner as established in the SJMSCP.

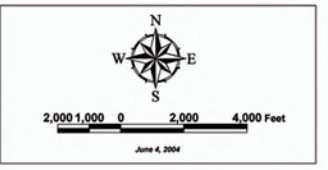
Date: _____
Ken Sanchez
Assistant Field Supervisor
Endangered Species Program
U.S. Fish and Wildlife Service

Date: _____
Terry Roscoe
Habitat Conservation Supervisor
California Department of Fish and Game



CITY OF TRACY COMPENSATION MAP (REVISED MARCH 2006)

San Joaquin Council of Governments
555 East Weber Avenue
Stockton, CA 95202



RESOLUTION 2015-_____

ADOPTING AMENDED DEVELOPMENT FEES FOR THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP)

WHEREAS, The City Council of the City of Tracy adopted an (Ordinance / Resolution) establishing the authority for collection of a Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for all new developments pursuant to the SJMSCP within the City of Tracy, and

WHEREAS, A "Fee Study" dated July 16, 2001, was prepared which analyzed and identified the costs, funding, and cost-benefit of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, and

WHEREAS, The purpose of the SJMSCP Development Fee is to finance the goals and objectives of the SJMSCP that include, but are not limited to preserve land acquisition, preserve enhancement, land management, and administration that compensate for such lands lost as a result of future development in the City of Tracy and in San Joaquin County, and

WHEREAS, After considering the Fee Study and the testimony received at the public hearing, the Tracy City Council approved said report; and further found that the future development in the City of Tracy will need to compensate cumulative impacts to threatened, endangered, rare and unlisted SJMSCP Covered Species and other wildlife and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values and other beneficial Open Space uses, and

WHEREAS, An "Updated Fee Study" dated November 2, 2006, was prepared which analyzed and identified the costs and funding of the SJMSCP, and the Tracy City Council approved updated SJMSCP Development Fees on January 16, 2007, and subsequently approved the annual update to those fees on October 16, 2007, October 21, 2008, October 20, 2009, October 19, 2010, October 19, 2011, October 2, 2012, October 1, 2013, and October 21, 2014, and

WHEREAS, The current SJMSCP Development Fee for open space lands is \$7,281 an acre for the year 2015 due to annual adjustments consistent with the California Construction Cost Index (CCCI), and

WHEREAS, The current SJMSCP Development Fee for natural lands and agricultural lands is \$14,543 an acre for the year 2015 due to annual adjustments consistent with the California Construction Cost Index (CCCI), and

WHEREAS, The updated fee per acre for open space lands as adjusted pursuant to land sale comparables and the Consumer Price Index for the year 2016 is \$7,807, and

WHEREAS, The updated fee per acre for natural lands and agricultural lands as adjusted pursuant to land sale comparables and the Consumer Price Index for the year 2016 is \$15,596, and

WHEREAS, To ensure that the SJMSCP development fees keep pace with inflation, annual adjustments, based on the method set forth in this resolution, shall be made to the fees annually, and

WHEREAS, The Assessment and Enhancements and Management and Administration components shall be adjusted annually based on the Consumer Price Index (CPI). The Acquisition Cost component shall be adjusted annually based on a minimum of ten comparable agricultural sales within the previous two years. If ten acceptable comparables are not found, then the two year window will increase in three month intervals until ten acceptable comparable agricultural sales are found. The comparable agricultural sales shall meet the following criteria: over forty acres in size, but under 500 acres in size, no orchard or vineyard properties shall be included, and all comparable sales must be on land that is consistent as mitigation land under the SJMSCP. In addition, all SJCOG, Inc. transactions regardless of size or sale type will be included in the comparables, and

WHEREAS, The Updated Fee Study with the SJMSCP and the fee amendment were available for public inspection and review in the office of the City Clerk for more than 10 days prior to the date of this Public Hearing;

NOW, THEREFORE, The City Council finds as follows:

1. The City Council finds and declares that the purposes and uses of the Development Fee, and the determination of the reasonable relationship between the fees' uses and the type of development project on which the fees are imposed, are all established in Resolutions 2001-050 and 2007-021, and remain valid, and the City Council therefore adopts such determinations.
2. The City Council finds and declares that since adoption of Resolutions 2001-050 and 2007-021, the cost of land has changed in San Joaquin County, and that in order to maintain the reasonable relationship established by Resolutions 2001-050 and 2007-021, it is necessary to adjust the Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.
3. The Development Fee for open space shall be \$7,807 an acre, as adjusted pursuant to land sale comparables and the Consumer Price Index, as shown in Exhibit A attached hereto.
4. The Development Fee for natural lands and agricultural land shall be \$15,596 an acre as adjusted pursuant to land sale comparables and the Consumer Price Index, as shown in Exhibit A attached hereto.
5. The Development Fee for vernal pool habitat and multi-purpose open space conversion shall be consistent with the table identified in Exhibit "A" and attached hereto.
6. The Fee provided in this resolution shall be effective on January 1, 2016, which is at least sixty days after the adoption of this resolution.

* * * * *

The foregoing Resolution 2015-_____ was adopted by the City Council on the 20th day of October 2015, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

Exhibit A

2016 Updated Habitat Fees

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$ 7,807
Natural	\$ 15,596
Agriculture	\$ 15,596
Vernal Pool - uplands	\$ 46,869
Vernal Pool - wetted	\$ 90,273

AGENDA ITEM 4

REQUEST

PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING TRACY MUNICIPAL CODE SECTION 10.12.065(c) RELATING TO COMPLIANCE WITH STATE HOUSING AND COMMUNITY DEVELOPMENT REGIONAL HOUSING NEEDS ALLOCATIONS – THE APPLICATION IS INITIATED BY THE CITY OF TRACY – APPLICATION NUMBER ZA15-0001

EXECUTIVE SUMMARY

This agenda item introduces an ordinance to amend the text of the Tracy Municipal Code to allow for the City to issue building permits in excess of those allowed through the City's Residential Growth Management Ordinance (GMO) in order to meet the City's Regional Housing Needs Allocation, as required by the State Department of Housing and Community Development (HCD).

DISCUSSION

The City's Housing Element for the 2009-2014 (extended through 2015) planning period was adopted by City Council on May 15, 2012, and certified by HCD on July 26, 2012, upon the condition that the City remove governmental constraints of the annual limitations on Residential Growth Allotments (RGAs).

On March 19, 2013, City Council approved an amendment to the GMO allowing building permits in excess of the annual GMO and Measure A limitations to be issued in order to meet the Regional Housing Needs Allocation (RHNA) number to achieve its obligation in each income category.

The language that was adopted with the amendment (Section 10.12.065(c)) states that "...in any calendar year, once building permits have been issued for the number of residential units permitted by this chapter, the City shall issue additional building permits for residential dwelling units if they are necessary to achieve the RHNA goals in a particular income category." After having this language in place for the past two years, it has become apparent that it is possible that there is still an obstacle, or governmental constraint, in the ability to utilize building permits that could be issued to satisfy the RHNA.

The current language allows additional building permits to be issued only after all of the building permits available under the GMO have been issued in that calendar year. If an applicant is allocated RGAs but is not issued the corresponding building permits that year, such inaction would cause the City to be unable to issue additional building permits to other applicants that year in order to reach the RHNA. This situation was an unintended consequence of the language that was chosen for the amendment to the GMO language adopted in 2013. Staff is proposing to correct this language by re-wording the sentence in the GMO to remedy this issue by changing it to the following:

“...in any calendar year, once RGAs have been allocated or building permits have been issued for the number of residential units permitted by this chapter, the City shall continue to issue ~~additional~~ building permits for residential dwelling units if they are necessary to achieve the RHNA goals in a particular income category.”

The revised language will allow RHNA-related building permits to be issued once either the maximum number of RGAs or building permits are allocated/issued under the regulations of the GMO each year. This should more completely satisfy HCD’s requirement for the City to remove any governmental constraints that prevent the City from reaching the RHNA by both ensuring the RHNA-related permits will be available, and by making them available sooner each year.

An additional change proposed to the ordinance at this time is a simple correction of an incorrect code section reference within the Development Agreement section of the ordinance (see proposed ordinance).

CEQA Compliance

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

Implementing a regulation to allow for the issuance of permits up to the RHNA does not have any environmental effects that were not already analyzed in the General Plan and in the Initial Study and Negative Declaration for the Housing Element. This amendment does not change any policies or regulations that have not already been analyzed in the existing environmental documentation.

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

Planning Commission Discussion

The Planning Commission held a public hearing to discuss the proposed amendments on September 23, 2015, and unanimously voted to recommend City Council introduce the Ordinance.

STRATEGIC PLANS

This agenda item is not related to any of the Council’s Strategic Plans.

FISCAL IMPACT

This agenda item does not have any impact to the General Fund.

RECOMMENDATION

Staff and the Planning Commission recommend that the City Council introduce an Ordinance amending Tracy Municipal Code Section 10.12.065, and amending Tracy Municipal Code Sections 10.12.090(b), regarding building permit issuance for housing units to facilitate meeting the RHNA for the Housing Element cycle and correcting a code section reference in the Development Agreements section of the ordinance.

Prepared by: Victoria Lombardo, Senior Planner

Reviewed by: Bill Dean, Assistant Development Services Director
Andrew Malik, Development Services Director
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY AMENDING TRACY MUNICIPAL CODE SECTIONS 10.12.065 RELATING TO COMPLIANCE WITH REGIONAL HOUSING NEEDS ALLOCATIONS WITHIN THE RESIDENTIAL GROWTH MANAGEMENT PLAN

WHEREAS, The City Council adopted the Housing Element for the 2009-2014 cycle on May 15, 2012 and the state Department of Housing and Community Development accepted that Housing Element on the condition that the City amend the Growth Management Ordinance to allow for compliance with the Regional Housing Needs Assessment, and

WHEREAS, The City Council adopted an ordinance on March 19, 2013, adding provisions for the issuance of building permits in excess of the numeric provisions of the Growth Management Ordinance for the purpose of achieving the City's Regional Housing Needs Allocation, and

WHEREAS, The City Council held a public hearing to consider the proposed ordinance amendments to further clarify the ability to issue building permits to satisfy the Regional Housing Needs Allocation on October 20, 2015, and

The City Council of the City of Tracy does ordain as follows:

SECTION 1: Section 10.12.065, Compliance with the regional housing needs assessment, of Chapter 10.12 (Residential Growth Management Plan) of the Tracy Municipal Code, is amended to read as follows:

Chapter 10.12 - RESIDENTIAL GROWTH MANAGEMENT PLAN

10.12.065 - Compliance with the regional housing needs assessment.

- (a) Authority. This section is enacted under the authority of and is intended to comply with and implement Government Code section 65584.
- (b) RHNA. The State Department of Housing and Community Development requires that each city adopt a housing element as part of its general plan. That Department also establishes a "Regional Housing Needs Allocation" (RHNA) for all cities, setting forth the target number of dwelling units to be constructed during any planning period. (The "planning period" is defined in each housing element. The planning period in effect at the time this code amendment was adopted is July 1, 2009 through June 30, 2014.) The RHNA housing unit allocations are established by income categories: very low-, low-, moderate, and above-moderate-income.
- (c) Requirement. Notwithstanding other provisions of this chapter, in any calendar year, once RGAs have been allocated or building permits have been issued for the number of residential units permitted by this chapter, the City shall issue ~~additional~~ building permits for residential dwelling units if they are necessary to achieve the RHNA goals in a particular income category (during each planning period). The number of building permits may not exceed the RHNA goals in each income category. Any building permits issued in accordance with this provision shall not require an RGA.
- (d) [Purpose of calculating averages.]For the sole purpose of calculating the RGA and building permit averages contained in sections 10.12.100 and 10.12.110, any building permits issued under the authority of this section shall be treated as if an RGA and a building permit were issued under the GMO.

SECTION 2: Section 10.12.090, Allocations; development agreements, of Chapter 10.12 (Residential Growth Management Plan) of the Tracy Municipal Code is amended to read as follows:

Article 3. - Allocations; Development Agreements

10.12.090 - Allocations; development agreements.

- (a) RGAs shall be allocated in accordance with this chapter and the GMO guidelines. Notice shall be given to each applicant of the availability of the annual report.
- (b) At a minimum, the terms of any development agreement providing for an allocation of RGAs, shall identify: (1) the timing of the applicant's obligation to comply with the requirements set forth in GMO; (2) the timing and amount of RGA allocations (not to exceed a maximum of 225 RGAs per calendar year, as set forth in GMO subsection ~~10.12.090(b)~~10.12.100(c)); and (3) remedies for default, including the time after which RGAs shall be invalid as described in the GMO guidelines.
- (c) Unless specifically modified by a development agreement identified in subsection 10.12.090(b), above, each applicant shall comply with all requirements set forth in the GMO and the GMO guidelines. A development agreement may only modify the requirements of the GMO related to: (1) the timing requirements for applications for RGAs; and (2) the time after which RGAs will be deemed invalid (as identified in the GMO guidelines).
- (d) The number of RGA allocations per application shall not exceed: (1) the number requested in the application; and (2) the number which can be reasonably anticipated to be used by the applicant based on development project approvals (such as general plan, specific plan, tentative map, final map or development plan). The Board has the discretion to award all of the RGAs that are available in that allocation cycle, or fewer, based on the applications received and the criteria as established in the GMO guidelines.

SECTION 3. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 4. This Ordinance shall be published once in the Tri Valley Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 20th day of October, 2015, and finally adopted on the _____ day of _____, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 5

REQUEST

RECEIVE PUBLIC TESTIMONY FROM PUBLIC HEARING FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2015-16

EXECUTIVE SUMMARY

The City of Tracy (City) annually receives funds from the Transportation Development Act (TDA). Under provisions of the TDA, a local public hearing must be held annually to review any unmet transportation needs prior to allocation of TDA funds. Staff recommends that City Council receive public testimony concerning any unmet transportation needs. Comments will be forwarded to the San Joaquin Council of Governments to substantiate the validity of proposed unmet transit needs.

DISCUSSION

Under provisions of the State of California Transportation Development Act (TDA), local public hearings must be held annually to review any unmet transit needs prior to the allocation of TDA funds. The hearings will be held on October 20, 2015, at 10:30 a.m. in the Tracy Transit Station Conference Room 105, and again at 7:00 p.m. in City Hall Council Chambers during the regularly-scheduled City Council meeting.

The City of Tracy requested TDA funds for Fiscal Year 2014-15 for the following purposes:

1. Public Transportation Operating Costs	\$ 1,004,964
2. Public Transportation Capital Costs	\$ 80,000
3. Roads and Streets Projects	\$ 2,933,822
4. Pedestrian and Bicycle Projects	\$ 58,908
5. TDA Administration	\$ <u>89,028</u>

TOTAL 2014-15 CLAIM: \$4,166,722

The TRACER Public Transit System provides Fixed Route and Paratransit Bus services Monday through Friday from 7:00 a.m. until 8:00 p.m., and Saturdays from 9:00 a.m. to 6:00 p.m. The Paratransit Subsidized Taxi service operates during the days and hours that the Paratransit Bus service is not in operation.

The purpose of the public hearing is for the City Council to receive public testimony concerning any unmet transportation needs which may exist for the Tracy community. No decision as to the sufficiency of local transit services is requested from the Council.

The minutes of the public hearing on October 20, 2015, shall be forwarded to the San Joaquin County Council of Governments (SJCOG) which has the responsibility of determining whether transit needs remain unmet and would be reasonable to meet by the applicable jurisdiction. In addition, any comments received by phone, email, or walk-

in prior to this public hearing will also be forwarded on to SCJOG for analysis. Staff members from SJCOG will attend the Tracy public hearings to witness the community responses and to answer specific questions concerning the TDA process.

Attached are copies of the Notice of Public Hearing relative to the Unmet Transit Needs Hearings (Exhibit "A") published in the TriValley Herald newspaper, as well as the circular (Exhibit "B") that was delivered to various social services/activity agencies within the Tracy community.

STRATEGIC PLAN

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

FISCAL IMPACT

The public hearing does not require any direct expenditure of City funds and will not impact the General Fund.

RECOMMENDATION

There is no action required other than the public hearing.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: David Ferguson, Director of Public Works

Approved by: Troy Brown, City Manager

ATTACHMENTS:

Exhibit A – Public Hearing Notice
Exhibit B – Circular

NOTICE OF PUBLIC HEARING
CITY OF TRACY

A public hearing will be held on Tuesday, October 20, 2015, at 10:30 a.m. at the Tracy Transit Station, 50 East Sixth Street, Conference Room 105, for the purpose of inviting discussion and statements relative to unmet public transportation needs. Additionally, at 7:00 p.m., or as soon thereafter as possible, the Tracy City Council will hold a public hearing in the Council Chambers, at Tracy City Hall, 333 Civic Center Plaza, to hear statements relative to unmet public transportation needs which can reasonably be met (required by Section 6656, California Administrative Code), prior to allocation of Transportation Development Act (TDA) funds for roads and street purposes.

All interested persons are invited to be present and to submit statements orally or in writing, before or during the meeting.

Information concerning this matter may be obtained at the Tracy Transit Station, 50 E. Sixth Street, Tracy, CA 95376.

Nora Pimentel
City Clerk
Publish: 9/19, 10/8, 10/15 2015



Think Inside the Triangle™

UNMET TRANSIT NEEDS HEARING

PUBLIC HEARING

TRACER Fixed Route
SJRTD Bus Service
Park-N-Ride
Car Pooling

TRACER Paratransit
Taxi Service
Ride Sharing
Rail Service / ACE



TUESDAY, OCTOBER 20, 2015

HEARING 1: 10:30 a.m. - 11:30 a.m.
Room # 105
Tracy Transit Station
50 E. Sixth Street

HEARING 2: 7:00 p.m.
City Council Chamber
City Hall, Tracy

The City of Tracy & The San Joaquin Council of Governments
would like to know if

you have any Unmet Transit Needs.

If you (or others in your community) believe that you would benefit from having public transportation, you are invited to comment on at the City of Tracy Unmet Public Hearing.

Your concerns are important to us.

UNMET TRANSIT NEEDS SUGGESTIONS

If unable to attend the public hearing, written comments and statements may be submitted to: Jayne Pramod, Transportation Coordinator, Tracy Transit Station, 50 E. Sixth Street, Tracy, CA-95376 or emailed to Jayne.pramod@ci.tracy.ca.us

For Information contact: City of Tracy Transit Station at (209) 831 4287

AGENDA ITEM 6

REQUEST

RECEIVE STATUS REPORT, APPROVE AN AGREEMENT FOR LAND EXCHANGE WITH SAN JOAQUIN COUNTY, AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT, AND PROVIDE DIRECTION ON POTENTIAL CITY/SAN JOAQUIN COUNTY COLLABORATION FOR DEVELOPMENT OF A SOUTH COUNTY REGIONAL PARK SOUTH OF LEGACY FIELDS AND NORTH OF I-205

EXECUTIVE SUMMARY

On January 20, 2015, staff provided an update to City Council on the potential City/San Joaquin County Partnership for the development of a South County Regional Park north of I-205 and south of the City's Legacy Fields. The report provided an update to the ongoing negotiations and requested City Council to accept the report. The City Council accepted the report and directed staff to continue negotiations with the County, and return to Council with updates as negotiations progress.

DISCUSSION

Staff presented a report to City Council on January 20, 2015 that provided an update to the negotiations regarding a potential City/San Joaquin County land exchange and collaboration for development of a South County Regional Park in the northern part of town, south of Legacy Fields.

The proposed collaboration includes the exchange of a City-owned, approximately 103 acre parcel south of Legacy Fields located between Corral Hollow Road and Tracy Boulevard, with the County-owned 100 acre parcel farther north, east of Tracy Boulevard, as shown in Exhibit A. San Joaquin County intends to develop the property as a South County Park after receiving State and Federal approval for the land exchange. Because the property is located near the City, south of Legacy Fields, it would be readily accessible and usable by residents of the City and San Joaquin County.

After receiving direction from Council, City and County staff negotiated a proposed land exchange and has prepared a draft agreement (Attachment A) to memorialize the terms of the land exchange for the development of a County Regional Park.

The City is in support of the County's desire to construct a park that will be dedicated in perpetuity for outdoor recreational purposes for San Joaquin County residents. The City and County will share appraisal costs of both properties. The County will conduct a public process and prepare a conceptual site plan to satisfy State Parks and National Park Service standards. The County is required to complete a substantial phase of construction of a regional park that creates a useable recreational opportunity within ten years from execution of the agreement, or the City may exercise its sole option to require the County to execute and record a grant deed transferring title of the property

back to the City. The details of the land exchange are outlined in the attached draft agreement.

At the May 7, 2015 Parks and Community Services Commission meeting, staff provided an update on the progress of negotiations, including details related to the land appraisal and state and federal requirements for the land exchange. The commissioners were informed that staff would provide updates throughout the process.

Upon approval of the agreement and completion of the land exchange, City staff will collaborate with the County on park development, master planning, construction, operations and maintenance. Staff will then return to Council with a draft agreement that defines the roles and responsibilities of each agency.

STRATEGIC PLAN

This agenda item supports the City Council approve Quality of Life Strategy;

Goal 1: Improve current recreation and entertainment programming and services to reflect the community and match trending demands

Goal 2: Address City amenities and facility usage with an emphasis on accessibility and streamlined services.

FISCAL IMPACT

As part of the City 2015/16 fiscal year budget process funds have been requested to cover the appraisal costs which are estimated at \$30,000.

RECOMMENDATION

That City Council accept the status report, approve the agreement, and direct staff to proceed with property appraisals and continue negotiations on the potential City/San Joaquin County collaboration for development of a South County Regional Park, south of Legacy Fields and north of I-205.

Prepared by: David Ferguson, Public Works Director
Kuldeep Sharma, Utilities Director/Interim City Engineer
Don Scholl, Public Works Superintendent

Reviewed by: Andrew Malik, Acting Assistant City Manager
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Agreement for Real Property Exchange for a South County Area Regional Park
Exhibit A – Map of City-County Parcel

A-15-_____

**AGREEMENT FOR REAL PROPERTY EXCHANGE
FOR A SOUTH COUNTY AREA REGIONAL PARK**

This AGREEMENT is made and entered into by and between the County of San Joaquin, a political subdivision of the State of California, hereinafter designated "COUNTY," and the CITY OF TRACY, a municipal corporation of the State of California, hereinafter designated "CITY."

WITNESSETH

WHEREAS, CITY is the owner of certain real property commonly known as the Holly Sugar Sports Park or Legacy Fields Property, in San Joaquin County, California, an approximately 100 acre portion of which property is shown generally as "Area A" in Exhibit "A" attached hereto and incorporated by reference herein, and more fully described therein [the "Legacy Property"], and the County is the owner of certain real property commonly known as the Sugar Cut Property, an approximately 100 acre portion of which property is shown generally as "Area A" in Exhibit "B" attached hereto and incorporated by reference herein, and more fully described therein [the "Sugar Cut Property"], and

WHEREAS, the Legacy Property is presently open space and is not being leased out for farming or any other purposes, and

WHEREAS, the Sugar Cut Property is presently open space and is being leased out for farming purposes on a month-to-month basis, and

WHEREAS, COUNTY desires to construct a park for San Joaquin County residents in the South County area, and

WHEREAS, CITY desires to support the construction of a park in the South County area, and

WHEREAS, CITY is willing to convey fee title to the Legacy Property to COUNTY to allow for future development of a park in exchange for the Sugar Cut Property on an acre-for-acre basis, and

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between COUNTY and CITY as follows:

1. CITY agrees to convey fee title to the Legacy Property to COUNTY, together with all rights, title and interest therein, and COUNTY agrees to convey fee title to the Sugar Cut Property to CITY, together with all rights, title and interest therein, upon the terms and conditions set forth in this AGREEMENT, both properties to be free and clear of and from all liens, encumbrances, conditions, restrictions, easements, and rights of possession excepting only such other matters affecting title to, or use of, the properties which are stated herein or otherwise approved in writing by the parties.

Agreement for Real Property Exchange
for a South County Area Regional Park

2. COUNTY and CITY shall share the costs of this AGREEMENT as follows:
 - a. CITY shall prepare appraisals of both properties, using an appraiser acceptable to COUNTY and qualified to prepare appraisals that meet State Parks, National Park Service and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) standards.
 - b. CITY shall prepare parcel maps and legal descriptions, including any necessary surveying, for both properties.
 - c. CITY shall prepare title work and pay for recording of title documents, transfer taxes and title insurance. In so doing, CITY shall provide a current preliminary title report ("Report") to COUNTY, regarding the condition of title to the properties. The parties shall have ten (10) business days after receiving the Report to object to matters shown in the Report. If a party so objects to any matter (each, a "Disapproved Matter") shown in the Report, the other party will have thirty (30) days after receiving the written objection in which to remove the Disapproved Matter from record title or to obtain an appropriate endorsement to the title policy. If a party is unable or unwilling to remove the Disapproved Matter from record title or to obtain an appropriate endorsement to the title policy, the other party may terminate this AGREEMENT by giving written notice of same. If this AGREEMENT is so terminated, neither party will have any further obligation to the other under this AGREEMENT. If neither party objects to the Report within ten (10) business days after COUNTY's receipt of same, the parties will be considered to have approved the condition of title as shown in the Report.
 - d. COUNTY shall prepare 6(f)(3) maps that meet State Parks and National Park Service standards according to the Land and Water Conservation Fund guidelines.
 - e. COUNTY shall prepare environmental screening documents that meet State Parks and National Park Service standards, according to the Land and Water Conservation Fund guidelines, utilizing the CITY's Holly Sugar Sports Park Project environmental documents to the extent possible.
 - f. COUNTY shall conduct a public process and prepare a conceptual site plan to the extent required to satisfy State Parks and National Park Service standards for approval of the property exchange, utilizing the CITY's Holly Sugar Sports Park Project process and documents to the extent possible.
 - g. COUNTY shall obtain State Parks and National Park Service approval for the real property exchange contemplated by this AGREEMENT prior to the CITY recording any title documents or Grant Deeds. If such approval is not or cannot be obtained, COUNTY may terminate this AGREEMENT by giving written notice of same.
3. CITY will be responsible for any and all existing assessment bonds and possessory interest tax for the Legacy Property.

Agreement for Real Property Exchange
for a South County Area Regional Park

4. COUNTY and CITY agree that the Legacy Property shall be dedicated in perpetuity for outdoor recreational purposes subject to the guidelines for the Land and Water Conservation Fund. COUNTY agrees to consult with CITY in the development of the Legacy Property for any such outdoor recreational purposes, including the development, construction and/or maintenance of a South County area regional park. The Grant Deed conveying the Legacy Property to COUNTY shall contain language evidencing and providing public record notice of such dedication.
5. CITY and COUNTY acknowledge the existence of Lease Agreement A-15-261 between the COUNTY and Arnaudo Bros., L.P., a partnership (“Arnaudo Bros.”), for possession of the Sugar Cut Property. Concurrent with the recording of title documents and/or Grant Deeds pursuant to this AGREEMENT, COUNTY shall assign to CITY said lease agreement with Arnaudo Bros. Upon this assignment to CITY of the lease agreement with Arnaudo Bros., Arnaudo Bros.’ annual rental payment shall be paid to CITY; provided, however, that COUNTY shall not be responsible for payment to CITY of any monies not received from Arnaudo Bros. under said lease agreement. In assigning its lease with Arnaudo Bros. pursuant to this paragraph, and for the duration of Arnaudo Bros.’ tenancy with either COUNTY or CITY, neither CITY nor COUNTY shall require Arnaudo Bros., other than as needed to comply with State or Federal laws or regulations or new development, to remove or cause to be removed any water supply, pumping, drainage or conveyance facilities to or from the Property, including, but not limited to, above-ground or underground pipelines.
6. COUNTY shall indemnify, defend, and hold harmless CITY, its officials, officers, agents, and employees against all suits or claims that may arise from this AGREEMENT or any injury to persons or property related thereto as a result of an error, omission, or negligent act of COUNTY, or any person employed by COUNTY.
7. CITY shall indemnify, defend, and hold harmless COUNTY, its officials, officers, agents, and employees against all suits or claims that may arise from this AGREEMENT or any injury to persons or property related thereto as a result of an error, omission, or negligent act of CITY, or any person employed by CITY.

CITY shall further defend, indemnify and hold COUNTY harmless from any and all past, present, liabilities, obligations, or causes of action from any person or source arising out of or connected with the CITY’s disposal, CITY’s storage, or CITY’s release, and/or CITY’s knowledge of present or past disposal, storage, or release, or existence of hazardous substances or materials, in, on, or under the Legacy Property, including, but not limited to, any costs of corrective or remedial work occasioned by the discovery of hazardous substances or materials after the close of escrow.

The term “hazardous substances or materials” when used in this AGREEMENT shall mean any hazardous waste or hazardous substance or hazardous material as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and

Agreement for Real Property Exchange
for a South County Area Regional Park

Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25, and any state and federal underground tank laws, rules and regulations. "Hazardous substances or materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

If COUNTY has not substantially completed construction of a phase of a regional park at the Legacy Property that creates a useable recreational opportunity within ten years from execution of this AGREEMENT by all parties thereto, then CITY may exercise its sole option to require COUNTY to execute and record a grant deed transferring fee title to the Legacy Property back to CITY in exchange for the CITY executing and recording a grand deed transferring title to the Sugar Cut Property back to COUNTY.

The representations and promises made in this Section 7 of this AGREEMENT are intended to, and shall survive the close of escrow and the execution, delivery and recordation of the Grant Deed conveying the Legacy Property from CITY to COUNTY.

8. Any and all loss or damage to the respective properties or any existing improvements occurring prior to the recording of the Grant Deed shall be at the risk of the respective parties in ownership.
9. CITY and COUNTY acknowledge that they have not used any real estate broker in this transaction and that no real estate brokerage fees or commissions are required for such services related to this transaction.
10. The parties represent, warrant and covenant to each other as of the date of this AGREEMENT and as of the recordation of the Grant Deeds for the Legacy Property and the Sugar Cut Property, as follows:
 - a. No Condemnation. To the best of their knowledge, there are no pending or threatened condemnations or similar proceedings affecting the properties, or any portion thereof, nor do they have any knowledge that any such action is contemplated.
 - b. No Proceedings. To the best of the parties' knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the properties. The parties have not received and are not aware of any notice from any public entity with respect to any current or future proceeding against or basis for any future proceeding against or affecting the properties or any part thereof, or concerning any existing or potential, past, present or future hazardous materials at the properties.
 - c. No Violation of Laws. To the best of the parties' knowledge, the properties are not in violation of any law, ordinance or regulation of any governmental authority relating to

Agreement for Real Property Exchange
for a South County Area Regional Park

the environmental conditions on, under or about the properties, including, but not limited to, soil and groundwater conditions.

- d. Clear Title. The parties are owners of the properties and have marketable and insurable fee simple title thereto, free of restrictions, leases, liens and other encumbrances, except for the exceptions permitted pursuant to paragraphs 2 and above. The parties have not conveyed or accepted, and shall not convey or accept, any offer for the properties or any portion thereof. The parties have not encumbered or permitted encumbrance, and shall not encumber or permit encumbrance, of the properties in any way. Other than those rights set forth in paragraphs 2 and 5 above, the parties have not granted, and shall not grant, any property, contract or occupancy right relating to the properties or any portion thereof without the prior written consent of the other party.
- e. Contracts. There are and will be no contracts, licenses, commitments, or undertakings concerning maintenance, operation, or repair of the property or equipment on the properties, or the performance of services on the properties, including payment for such services performed prior to recordation of the Grant Deeds pursuant to this AGREEMENT, or the use of the properties or any part of it, by which the other party would become obligated or liable to any person.
- f. No Default. To the best of the parties' knowledge and belief, they have received no notice of any default under any contract, transaction, agreement, encumbrance, or instrument pertaining to the properties, which have remained uncured as of the date of this AGREEMENT. The obligation to notify the other party of notices of default shall extend to the recordation of the Grant Deeds.

11. COUNTY and CITY shall, upon request by the other, execute, acknowledge and deliver such documents or take such action as may be necessary or convenient to carry out the spirit and intent of this AGREEMENT.

12. Time is of the essence in this AGREEMENT.

13. Any notice which either party may or is required to give shall be in writing and given by personal delivery or by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time. Any notice given by personal delivery shall be deemed received on the day it is delivered. Any notice given by certified mail, return receipt requested, postage prepaid, shall be deemed received on the third day after mailing. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

CITY's address: City of Tracy
 333 Civic Center Plaza
 Tracy, CA 95376
 Attn: City Manager

Agreement for Real Property Exchange
for a South County Area Regional Park

With copy to: City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA, 95376

COUNTY's address: County of San Joaquin
44 N. San Joaquin Street, Suite 640
Stockton, CA 95202
Attn: County Administrative Officer

With copy to: Department of Parks and Recreation
11793 N. Micke Grove Road
Lodi, CA 95240
ATTN: Director

14. This AGREEMENT represents the entire and integrated agreement between COUNTY and CITY for the exchange of the properties and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by COUNTY and CITY.
15. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this AGREEMENT and that it has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this AGREEMENT shall not be construed or interpreted for or against any party hereto based upon authorship.
16. This AGREEMENT is subject to formal approval of the City Council of the City of Tracy and the San Joaquin County Board of Supervisors and shall be governed, construed and interpreted by, through and under the laws of the State of California.
17. SIGNATURES: The individuals executing this AGREEMENT represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this AGREEMENT on behalf of the respective legal entities of CITY and COUNTY. This AGREEMENT shall bind and inure to the benefit of the parties and their respective successors, heirs, executors, administrators, and assigns.

[This space intentionally left blank – signature page to follow]

Agreement for Real Property Exchange
for a South County Area Regional Park

IN WITNESS WHEREOF, this AGREEMENT has been executed by the respective parties hereto through their respective authorized officers, on the dates below indicated:

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

By _____
Deputy Clerk

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

By _____
Katherine M. Miller, Chair
Board of Supervisors

Date: _____

APPROVED AS TO FORM:
J. MARK MYLES, County Counsel

By _____
Jason R. Morrish
Deputy County Counsel

Approved as to Administration:

By _____
Christian Cervantes
County Property Manager

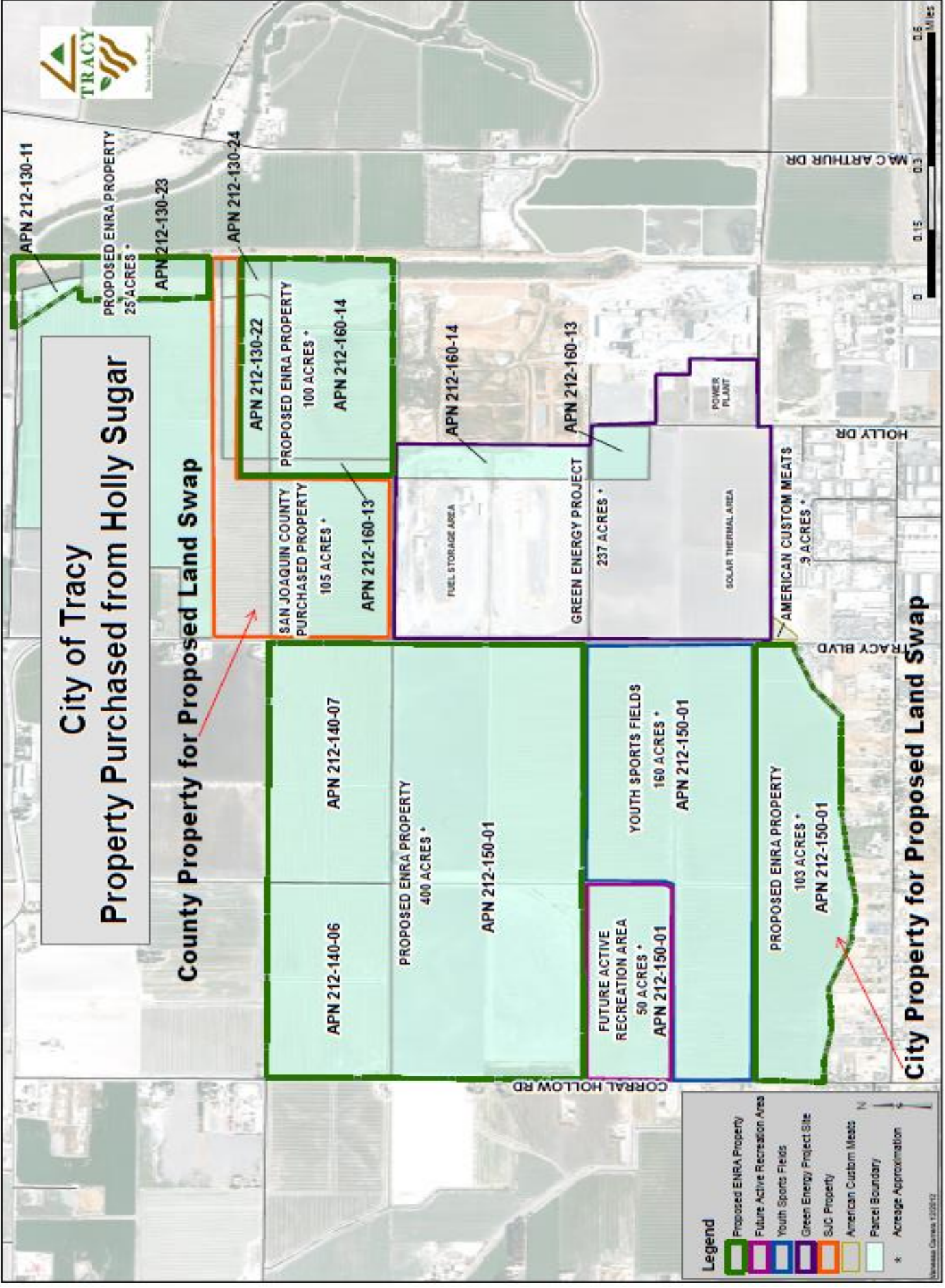
CITY OF TRACY, a municipal
corporation of the State of California

By _____
Michael Maciel, Mayor

Date: _____

APPROVED AS TO FORM:
ASSISTANT CITY ATTORNEY

By _____
Bill Sartor



RESOLUTION _____

AUTHORIZING A LAND EXCHANGE WITH SAN JOAQUIN COUNTY FOR POTENTIAL DEVELOPMENT OF A SOUTH COUNTY REGIONAL PARK SOUTH OF LEGACY FIELDS AND NORTH OF I-205

WHEREAS, Staff presented a report to City Council on January 20, 2015 with an update on the negotiations of a potential City/San Joaquin County land exchange and collaboration for the development of a South County Regional Park in the northern part of town, south of Legacy Fields, and

WHEREAS, The collaboration includes the exchange of a City-owned, approximately 103 acre parcel south of Legacy Fields located between Corral Hollow Road and Tracy Boulevard with the County-owned 100 acre parcel farther north, east of Tracy Boulevard as shown in Exhibit A to the staff report accompanying this agenda item, and

WHEREAS, San Joaquin County intends to develop the property as a South County Park after receiving State and Federal approval for the land exchange, and

WHEREAS, After receiving direction from Council, City and County staff negotiated the land exchange terms and prepared an agreement to memorialize the terms of the land exchange for the development of a County Regional Park;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes the above-described land exchange agreement with San Joaquin County and authorizes the Mayor to execute the Agreement.

The foregoing Resolution _____ was adopted by City Council on the 20th day of October, 2015, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 8.A

REQUEST

APPOINT AN APPLICANT TO THE MEASURE E RESIDENTS' OVERSIGHT COMMITTEE FROM THE COMMITTEE'S ELIGIBILITY LIST

EXECUTIVE SUMMARY

There is a vacancy on the Measure E Residents' Oversight Committee due to a Committee Member's resignation. An eligibility list was created during the last Measure E Residents' Oversight Committee recruitment. Council confirmation of the appointment from the eligibility list to the Measure E Residents' Oversight Committee is requested.

DISCUSSION

There is one vacancy on the Measure E Residents' Oversight Committee due to a Committee Member submitting their resignation from the Committee effective September 25, 2015. The last time appointments were made to the Measure E Residents' Oversight Committee was March 3, 2015. At that time the subcommittee consisting of Mayor Pro Tem Rickman and Council Member Mitracos nominated one applicant to fill a vacancy on the Measure E Residents' Oversight Committee and recommended one applicant be placed on an eligibility list. Resolution 2004-152 (Attachment A), includes direction on the "Selections Process for Appointee Bodies," and also states if there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that might occur in the following 12 months. Council confirmed the subcommittee's nomination and the creation of an eligibility list.

At this time, Council can either appoint the only applicant on the eligibility list to fill the vacancy on the Measure E Residents' Oversight Committee for a term commencing on October 21, 2015, and expiring on March 1, 2017, or direct staff to open a new recruitment. If a new recruitment is opened, Council would need to determine how to proceed with regard to the applicant on the eligibility list.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council approves the subcommittee's recommendation to appoint Bryan Thompson to the Measure E Residents' Oversight Committee to serve the remainder of a term, which will commence on October 21, 2015, and expire on March 1, 2017.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Nora Pimentel, City Clerk
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Resolution 2004-152

RESOLUTION 2004-152

REVISING RESOLUTION NO. 2004-089 ESTABLISHING THE COUNCIL SELECTION PROCESS, AND DEFINING RESIDENCY REQUIREMENTS, FOR APPOINTEE BODIES (GOVERNMENT CODE §54970 ET SEQ. LOCAL APPOINTEE OFFICERS)

WHEREAS, Council Policy D-5 was adopted by Resolution 2002-434 on October 15, 2002, which established a selection process for appointee bodies, and

WHEREAS, A variety of terms are used to define residency for the purposes of eligibility for appointment to various Appointee bodies and a method to verify residency has not been established, and

WHEREAS, Council wishes to define the terms and identify methods by which to verify residency and to incorporate those definitions into the selection process, and

WHEREAS, The definitions established herein shall apply to all boards and commissions to which the City Council appoints members unless the Bylaws of the board or commission specifically define otherwise, and

WHEREAS, Revisions to Resolution No. 2004-089 were considered and approved by the City Council on May 18, 2004 as set forth below.

NOW, THEREFORE, the Tracy City Council hereby resolves as follows:

A. SELECTION PROCESS FOR APPOINTEE BODIES:

1. On or before December 31st of each year, the clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
 - a. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
 - b. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
 - c. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
2. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final

appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.

3. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
 - a. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
 - b. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 3.
4. The council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:
 - a. Mayor (or designee) and a selected Council member will review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
 - b. If the interview subcommittee determines there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that occur in the following twelve (12) months.
 - c. At the interview subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
5. In the event there are not two or more applicants than vacancies on any board, commission or committee, the filing deadline may be extended by staff.
6. An individual already serving on a City of Tracy board, committee or commission may not be appointed to serve on an additional City of Tracy board, committee, or commission concurrently.

B. DEFINITION OF RESIDENCY REQUIREMENTS:

1. The following definitions shall be used to determine whether residency requirements are met for boards and commissions to which the Tracy City Council appoints members:
 - a. Tracy Planning Area means the geographical area defined in the City of Tracy General Plan and any amendments thereto.
 - b. City of Tracy means within the city limits of the City of Tracy.

- c. Citizen means a resident of the City of Tracy.
 - d. Tracy School District means the geographical area served by the Tracy Unified School District.
 - e. Sphere of Influence shall be the geographical area approved by the Local Agency Formation Commission (LAFCo) of San Joaquin County and any amendments thereto.
2. Residency, as defined above and as set forth in the applicable bylaws for each board or commission, shall be verified annually by the City Clerk. The residency must be verifiable by any of the following means:
- a. Voter registration,
 - b. Current California Driver's License or Identification,
 - c. Utility bill information (phone, water, cable, etc.),
 - d. Federal or State tax returns.
3. Members of boards or commissions shall notify the City Clerk in writing within thirty (30) days of any change in residency. If the change in residency results in the board member or commissioner no longer meeting the residency requirements, the member shall tender their resignation to the City Clerk who shall forward it to the City Council.


The foregoing Resolution 2004-152 was passed and adopted by the Tracy City Council on the 18th day of May, 2004, by the following vote:

AYES: COUNCIL MEMBERS: HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk