

City Council Staff Report

October 13, 2020



9D

From: Maryn Pitt, Assistant to the City Manager for Economic Development and Housing

Prepared by: Maryn Pitt, Assistant to the City Manager for Economic Development and Housing

Katie Quintero, Deputy Director Development Services

Agendized by: Toby Wells, P.E., City Manager

1. ACTION RECOMMENDED:

- Motion: Terminating the Easement/Quitclaim ("Easement Termination") as entered into at Turlock, California by and between the City of Turlock, acting as the Successor Agency to the Turlock Redevelopment Agency, a California municipal corporation, hereinafter referred to as the "City", and Clementine Properties, LLC, a California limited liability company, as the successor owner of 5202 North Golden State Boulevard, (Stanislaus County APN 045-053-038) as described in Attachment A, and authorizing the City Manager to sign all necessary documents in a form approved by the City Attorney
- Resolution: Approving the Memorandum of Understanding with the County of Stanislaus as more fully described in Attachment B and authorizing the City Manager to execute all necessary documents
- Resolution: Determining City Project No. 20-013 "Water and Sewer Main Extensions-Golden State Boulevard" and providing water and sewer connection to the existing properties located at 5202 and 5200 North Golden State Boulevard, (Stanislaus County APNs 045-053-038 and 045-053-039), located outside the jurisdictional boundary of the City of Turlock is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines
- Motion: Approving an Out of Boundary Service Agreement for Water and Sanitary Sewer Connection in a form approved by the City Attorney, Affecting Real Property located at 5202 and 5200 North Golden State

Boulevard, (Stanislaus County Assessor's Parcel Numbers 045-053-038 and 045-053-039) and establishing the conditions under which the City would provide water and sanitary sewer services to the property and authorizing the City Manager to sign an Out of Boundary Service Agreement for Water and Sanitary Sewer Connection Affecting Real Properties upon approval of the Out of Boundary Service Application by the Stanislaus LAFCO, and to execute all documents, applications, assurances, agreements, and statements that may be required to implement the agreement

Motion: Authorizing the City Manager to certify a Stanislaus LAFCO Out of Boundary Service Application, in a form approved by the City Attorney, requesting LAFCO approval for the out of boundary service connection to the properties located at 5202 and 5200 North Golden State Boulevard, (Stanislaus County APN 045-053-038 and 045-053-039), located outside the City of Turlock jurisdictional boundary, to connect to the City of Turlock water and sanitary sewer system

Motion: Authorizing the City Manager to issue a "Can and Will Serve Letter", in a form approved by the City Attorney, for water and sewer services for 5202 & 5200 North Golden State Boulevard, (Stanislaus County APN 045-053-038 and 045-053-039)

2. SYNOPSIS:

This action releases the recorded deed restrictions for the development of an automobile dealership on the parcel located at 5202 North Golden State Boulevard, adjacent to the Price Ford dealership and approves the terms and conditions for a tax sharing arrangement in the form of a Memorandum of Understanding (MOU) with Stanislaus County in exchange for the extension of municipal services and authorizes the City Manager to execute an out-of-boundary service agreement and apply to LAFCO to extend water and sewer services outside the jurisdictional boundary of the City of Turlock.

3. DISCUSSION OF ISSUE:

At the August 22, 2018 regular City Council meeting, the Council acted to provide notice to terminate a long-standing agreement, called the Third Restated Mutual Support Agreement, with Stanislaus County. This agreement, dated July 19, 1994, focused on land use policies, the collection of County-wide Public Facilities Fees by the City, and the collection of the City's Public facilities Fees within the City's sphere of influence. Further, it served as a legal settlement of the lawsuit entitled City of Turlock v. County of Stanislaus, et al., Patchett's Motor, Inc., and C. Kenneth Sanders, Stanislaus County Superior Court Case No. 301599, and other potential development projects between Taylor and Keyes Road. The agreement

required the City to make Taylor Road the northern most boundary of the City unless the County consents to additional expansion beyond that point. The amendment also required the County not to oppose the City's request(s) before LAFCO for the expansion of the City's sphere of influence to the west of Highway 99 for the "Northwest Triangle Specific Plan area".

To ensure the provisions of the agreement, the Turlock Redevelopment Agency recorded deed restrictions on the parcel at 5202 North Golden State Boulevard, to ensure that the development of an automobile dealership would be prohibited for the thirty-five-year restriction and would remain in force (until 2033). The deed restriction served its purpose in the aftermath of the legal settlement between the City of Turlock and the County of Stanislaus.

The proposed Memorandum of Understanding, included as Attachment B, sets forth the terms and conditions of a sales tax sharing agreement and is patterned largely from the current agreement the County of Stanislaus has executed with the City of Modesto for the North McHenry area that was developed with a large number of automobile dealerships adjacent to but outside the Modesto City limits. The proposed agreement is parcel specific and only applies to 5202 and 5200 North Golden State Boulevard. Any other connections for municipal services will require additional written agreements with the County and will be brought back to Council for ratification.

To extend water and sewer lines to the existing Price Ford Dealership and to the adjacent vacant lot, the City will have to apply to LAFCO for approval of an out-of-boundary service connection because the parcels are outside the jurisdictional boundary of the City of Turlock.

4. BASIS FOR RECOMMENDATION:

- A. Price Ford has been awarded an additional franchise for a second automobile dealership that they would like to locate on the adjacent parcel, 5202 North Golden State, that has the lien restriction recorded on. In addition, the existing dealership located at 5200 North Golden State has health and safety issues relative to their potable water supply that is produced from their onsite well. In order for the dealership to move forward in the planning entitlement process as well as development and construction, the easement (lien) must be released. City Engineering staff have completed the design and bid package for the extension of water and sewer services from the City limit line at Golden State Boulevard and Taylor Road out to the parcels and must obtain approval from LAFCO to extend utilities and provide services outside the City limits.
- B. The rescission of this easement (lien) and approval of the Memorandum of Understanding are the initial steps necessary for the development of this

additional local car dealership. The "Can and Will Serve" letter from the City is required for the land use entitlement to be able to move forward with Stanislaus County. The City must also apply to the Stanislaus County Local Agency Formation Commission (LAFCO) for the out of boundary municipal services request.

5. FISCAL IMPACT / BUDGET AMENDMENT:

Fiscal Impact:

All parcels which connect to the newly extended water and sewer lines outside the city limits will be subject to the standard connection charges. In addition, through the MOU, the City will also realize additional sales tax revenue from the new dealership based on a 50/50 split. The sales tax will be apportioned to each jurisdiction as part of the regular sales tax process. It is estimated that Turlock will realize in the range of \$100,000 to \$200,000 of additional sales tax annually.

6. CITY MANAGER'S COMMENTS:

Recommend Approval.

7. ENVIRONMENTAL DETERMINATION:

The project consists of the extension of a water and sewer main and allowing the properties located at 5202 and 5200 North Golden State Boulevard to connect to the extended services. The project involves a minor expansion of the utility and is therefore exempt from CEQA under Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines.

8. ALTERNATIVES:

A. The Council could choose to not approve the lien release and the utility extension. Staff does not recommend this option as there are adequate assurances in the Memorandum of Understanding that the tax sharing agreement is outlined to ensure the terms of the agreement are met.

B. The Council could defer acting on this item until a later date. This option is also not recommended by staff. Staff began work on this effort in 2018 by rescinding the previous agreement. Price Ford needs to move forward with their entitlement process and meet performance benchmarks as part of the new franchise dealership contract.

WHEN RECORDED MAIL TO:

City of Turlock
156 South Broadway, Suite 230
Turlock, California 95380

**TERMINATION OF EASEMENT/QUITCLAIM
(Development Restriction Easement)**

This Termination of Easement/Quitclaim ("Easement Termination") is entered into at Turlock, California by and between City of Turlock, acting as the Successor Agency for the Turlock Redevelopment Agency, a California municipal corporation, hereinafter referred to as the "City"; and Clementine Properties, LLC, a California limited liability company, located at 1800 Hammond Dr., Turlock, California 95382, as the successor owner of 5202 N. Golden State Boulevard, Stanislaus County APN 045-053-038, hereinafter referred to as the "Owner" (Collectively, the "Parties").

RECITALS:

WHEREAS, Owner is the current owner of real property located in the County of Stanislaus, State of California, commonly known by its Stanislaus County Assessor Parcel Number 045-053-038, as more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Owner is the successor in interest to the former owner of the Property, Sanders Oldsmobile-Cadillac, Inc., a California corporation, located at 5202 Golden State Boulevard, Turlock, California; and

WHEREAS, the City holds an easement for the purposes of restricting the use of the Property for automotive uses, as described in an Easement Deed recorded on December 18, 1996, Stanislaus County Official Records 96-0108723-00 (the "Easement Deed"), which was entered into by the Turlock Redevelopment Agency, a California municipal corporation, and Sanders Oldsmobile-Cadillac, Inc., a California corporation; and

WHEREAS, the term of the Easement Deed expires on November 23, 2033. However, the terms and conditions of the Easement Deed are no longer in the best interest of either the Owner or the City; and

WHEREAS, the City and Owner intend by this Easement Termination to terminate the Easement Deed.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The recitals above ("Recitals") are true and correct and are hereby incorporated into and made part of this Easement Termination. In the event of any inconsistency between the Recitals and Sections 1 through 9 of this Easement Termination, Sections 1 through 16 shall prevail.

2. Termination of Easement Deed. The Easement Deed is hereby terminated. Owner and any successor owners in interest of the Property are released from any and all obligations with respect to the development or operation of an automotive business.

3. Counterparts. This Easement Termination may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same document.

4. Governing Law and Venue. This Easement Termination shall be construed in accordance with and governed by the laws of the State of California. Venue for all legal proceedings shall be in the Superior Court of California for the County of Stanislaus.

5. Binding Upon Successors. This Easement Termination and the obligations and other provisions hereof shall run with the land and be binding upon and inure to the benefit of the Parties, and their respective successors or assigns.

6. Severability. If any term of this Easement Termination or any application thereof shall be invalid or unenforceable, the remainder of this Easement Termination and any other application of such term shall not be affected thereby.

7. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Easement Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

8. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Easement Termination.

9. Headings Not Controlling. Headings used in this Easement Termination are for reference purposes only and shall not be considered in construing this Easement Termination.

Signatures on the following page.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement Termination on the dates specified below their respective signatures.

OWNER:
Clementine Properties, LLC, a California limited liability company

By: _____ Date: _____

Name: _____ Title: _____

By: _____ Date: _____

Name: _____ Title: _____

CITY OF TURLOCK, a municipal corporation,
acting as the Successor Agency for the Turlock Redevelopment Agency, a California municipal corporation

By: _____ Date: _____
Toby Wells, P.E., City Manager

Attest: _____ Date: _____
Jennifer Land, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The land situated in the City of Turlock, County of Stanislaus, State of California, described as follows:

PARCEL A AS PER PARCEL MAP THEREOF RECORDED MAY, 18 1994 IN BOOK 46 OF PARCEL MAPS, PAGE 57, STANISLAUS COUNTY RECORDS.

APN: 045-053-038-000

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF APPROVING THE }
MEMORDANDUM OF UNDERSTANDING WITH }
THE COUNTY OF STANISLAUS AS MORE }
FULLY DESCRIBED IN ATTACHMENT B AND }
AUTHORIZING THE CITY MANAGER TO }
EXECUTE ALL NECESSARY DOCUMENTS }

RESOLUTION NO. 2020-

WHEREAS, the City of Turlock and the County of Stanislaus entered into a Mutual Support Agreement dated November 24, 1987 for the purpose of which was to deal with impacts of growth for both the City and the County; and

WHEREAS, the City and the County entered into three (3) subsequent amended versions of the Mutual Support Agreement, dated June 27, 1989, July 11, 1989, and the Third Amended Mutual Support Agreement, dated July 19, 1994; and

WHEREAS, the City provided the County notice of termination of the Mutual Support Agreement on August 29, 2018; and

WHEREAS, the City and County desire to create a model of cooperation and revenue sharing in the North Golden State Boulevard area north of Taylor Road, Turlock; and

WHEREAS, this agreement specifically pertains to 5202 N. Golden State Boulevard, Stanislaus County APN 045-053-038 (herein referred to as "Price Honda"), a 5.94-acre parcel and 5200 N. Golden State Boulevard, Stanislaus County APN 045-053-039 (herein referred to as "Price Ford"), a 6.79-acre parcel, and as more particularly shown on Assessor Parcel Map Book 45 page 53, attached hereto as Attachment A; and

WHEREAS, the City and County desire to remove impediments to business so that businesses may capitalize on opportunities for development and expansion without being concerned by jurisdictional financial concerns; and

WHEREAS, businesses should not become entangled in disputes between City and County over revenue allocations, jurisdictional boundaries and development standards; and

WHEREAS, article 13, section 29(b) of the California constitution and Government Code sections 55700-55707 authorizes cities and counties to share between them the revenue derived from any sales or use tax imposed by them and collected for them by the State under the Bradley-Burns Uniform Local Sales and Use Tax Law, when the resolution or ordinance proposing such contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby approve the Memorandum of Understanding with the County of Stanislaus in a form acceptable to the City Attorney and substantially similar to the agreement set forth in Attachment B and authorizes the City Manager to execute all necessary documents to effectuate the same.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 13th day of October, 2020, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

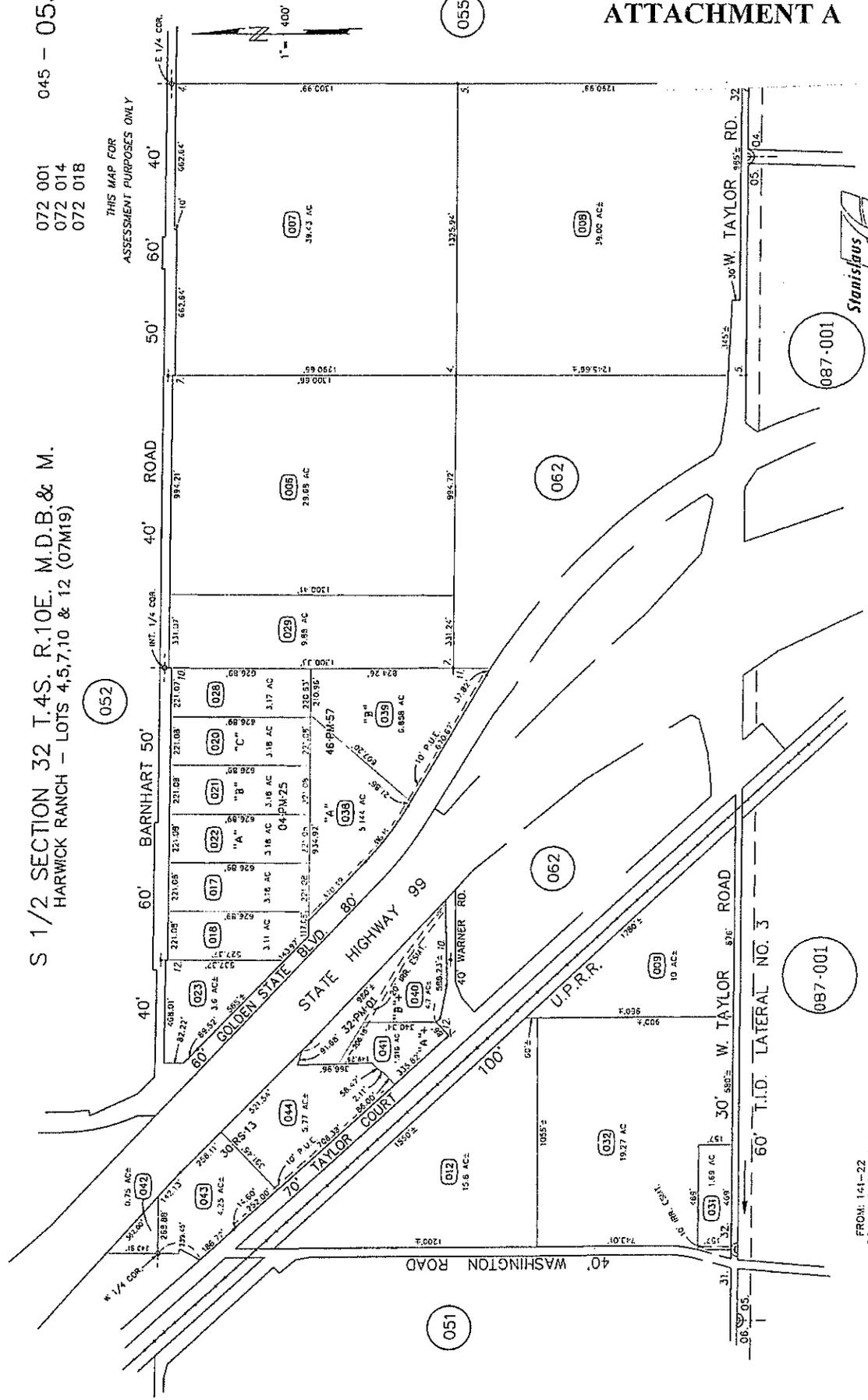
ATTEST:

Jennifer Land, City Clerk,
City of Turlock, County of Stanislaus,
State of California

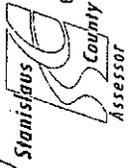
045 - 053

072 001
072 014
072 018

S 1/2 SECTION 32 T.4S. R.10E. M.D.B. & M.
HARWICK RANCH - LOTS 4,5,7,10 & 12 (07M19)



ATTACHMENT A



66,72,98,99,11

045 - 053

FROM: 141-22
 DRAWN: 3-29-65, 10-8-74
 REVISED: 8-13-91, 11-2-94, 3-12-98, 6-13-98, 2-17-99, 10-10-07 MB, 6-25-10 (V)MF

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TAX SHARING AGREEMENT

BETWEEN

THE COUNTY OF STANISLAUS

AND

THE CITY OF TURLOCK

DATED: OCTOBER , 2020

TAX SHARING AGREEMENT

THIS TAX SHARING AGREEMENT ("Agreement") is entered into by and between the **COUNTY OF STANISLAUS**, a subdivision of the State of California ("County") and the **CITY OF TURLOCK**, a California municipal corporation ("Turlock "). The City is referred to herein as "City", or "Cities", and the City and County may sometimes be referred to herein individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

The Parties enter into this Agreement based on the following facts, understandings and intentions:

WHEREAS, the City of Turlock and the County of Stanislaus entered a Mutual Support Agreement dated November 24, 1987, the purpose of which was to deal with impacts of growth for both the City and the County; and

WHEREAS, the City and the County entered into three subsequent amended versions of the Mutual Support Agreement, dated June 27, 1989, July 11, 1989, and the Third Amended Mutual Support Agreement, dated July 19, 1994; and

WHEREAS, the City provided the County notice of termination of the Mutual Support Agreement on August 29, 2018; and

WHEREAS, City and County desire to create a model of cooperation and revenue sharing in the North Golden State Boulevard area north of Taylor Road area in City; and

WHEREAS, this Agreement specifically pertains to Assessor Parcel no. 045-053-038 (referred to hereinafter as "Price Honda") a 5.94-acre parcel and Assessor Parcel no. 045-053-039 (referred to hereinafter as "Price Ford") a 6.79-acre parcel, and as more particularly shown on Assessor Parcel Map Book 45 page 53, attached hereto as **Exhibit A**.

WHEREAS, City and County desire to remove impediments so that businesses may capitalize on opportunities for development and expansion without being concerned by jurisdictional financial concerns; and

WHEREAS, businesses should not become entangled in disputes between City and County over revenue allocations, jurisdictional boundaries and development standards; and

WHEREAS, article VIII, section 29(b) of the California Constitution and Government Code sections 55700-55707 authorizes cities and counties to share between them the revenue derived from any sales or use tax imposed by them and collected for them by the State of California under the Bradley-Burns Uniform Local Sales and Use Tax Law, when the resolution or ordinance proposing such contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract; and

WHEREAS, the goals of the Parties in entering this Agreement are as follows:

- A. Agree upon a revenue sharing formula for all existing and future uses at the Price Honda property;
- B. Establish the City as the provider of water and waste water services for Price Ford and Price Honda; and

- C. Dedicate sales tax revenue for the planning, design and construction of the Taylor Road Interchange at Highway 99.

The Parties hereby agree as follows:

1. *Definitions*

A. "CDTFA" means the California Department of Tax and Fee Administration and any successor agency.

B. "Sales Tax Revenues" means that portion of the Sales Tax, if any, attributable to Taxable Sales, paid by Price Ford and Price Honda and which is allocated and received by County pursuant to the Sales Tax Law. Local Sales Tax Revenues will not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local law, rule or regulation, (v) any Sales Tax attributable to any transaction not consummated prior to the effective date of this agreement, (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside or pledged to a specific use other than for deposit into or payment from a Party's general fund, or (vii) any Sale Tax paid in error or which is subject to correction, adjustment or offset pursuant to an amended return or otherwise where the effect of the error, adjustment or amendment is to change the amount of Sales Tax attributable to Taxable Sales.

C. "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law attributable to Taxable Sales, excluding Sales Tax which is to be refunded to Price Ford or Price Honda because of an overpayment of Sales Tax.

D. "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code § 7200 et seq.), and any successor law thereto, (ii) any legislation allowing other public agency with jurisdiction in the City to levy any form of Sales Tax on the operations of Fisher Scientific and/or the Distribution Center, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

E. "Taxable Sales" means the commercially reasonable business practices and activities of the Price Ford and Price Honda associated with the sale or lease of Material.

F. "Material" means any and all tangible personal property which is offered for sale or lease and which is subject to the Sales Tax Law.

G. "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected.

2. *Term*

This Agreement shall take effect upon being fully executed by all Parties and be effective for a period of twenty (20) years, unless sooner terminated as provided herein. This Agreement will be automatically extended four (4) times ("Extension"), with each Extension extending the Term of

the Agreement an additional five (5) years, unless otherwise terminated sooner or the Parties mutually agree to modify the Agreement pursuant to the provisions herein.

3. *Sales Tax Revenue Collection and Share*

A. The Parties agree that each shall receive fifty percent (50%) of the Sales Tax Revenues generated from Price Honda beginning the first day of the month immediately following full execution of this Agreement by all Parties.

B. This Agreement shall not apply to any general or special sales and use tax which might be adopted by the County at any time and the County shall retain one hundred percent (100%) of any such special sales or use tax.

C. The Parties agree that there may be changes in the facts and/or amendments to the current law after the effective date of this Agreement that may change the distribution of sales tax to the County or City under this Agreement. The Parties recognize that legislation may be enacted or a court may issue an order that affects or changes the revenues from the subject properties which may impact the type of revenues, the percentage of taxes or fees, the person or entity subject to the taxes and fees, or the manner in which the revenues are distributed to entities. Therefore, if either Party believes that any change in law, whether by legislation or Court decision has occurred that is inconsistent with a Parties' intent, that Party may request and negotiate in good faith a revision of the Agreement to conform with the intent of this Agreement.

4. *Reconciliation of Sales Tax Revenue and Payments*

A. As soon as possible following the end of each Fiscal Year ("Fiscal Year," means any year commencing on July 1 of any calendar year and ending on June 30 of the subsequent year), the County's Auditor Controller's Office and City's Director of Finance, shall reconcile the amount of the sales tax payments made to the county based on (1) the actual amount received by the County from the CDTFA attributable to the Price Honda; and (2) the allocation percentages enumerated in this Agreement between the Parties. If at any time this reconciliation shows an overpayment was made to the City, the County shall notify the City of the overpayment. The County and the City shall work together to determine the true overpayment. The County shall make an adjustment for the overpayment from the next payment due to the City. If the County makes an underpayment to the City, the County and the City shall work together to ascertain the true amount of the underpayment, and the County shall include the under paid amount in the next payment due to City.

B. If at any time during or after the term of this Agreement, the CDTFA discovers that any portion of Sales Tax Revenue attributed to the Price Honda property was inaccurately allocated and paid to the County, and CDTFA requires repayment or offsets against future distribution of County Sales Tax Revenues, the County shall make a written request for repayment from the City of any amount that was improperly paid to the City. If the City fails to make such repayment within ninety (90) calendar days after the County's written demand, the repayment obligation of the City shall accrue simple interest of two percent (2%) per annum as of the 91st day from the County's written request.

C. The County Auditor Controller shall work with a designee of the City Manager to make a final reconciliation of the Sales Tax Revenues received by County attributable to Price Honda for the payments made to City pursuant to this Agreement. The Parties shall notify each other of any over or under payment amounts. The Parties agree to reimburse each other for all underpayments

or overpayments identified in the final reconciliation within three months of the date of the notification to the other Party. Should either Party fail to make a required reimbursement within three (3) months, the reimbursement obligation shall accrue interest commencing on the 91st day after the notification to City or County at a two percent (2%) interest rate on the outstanding obligation, compounded monthly, until paid.

5. *Taylor Road Interchange at Highway 99*

A. The City and County will each set aside Five Hundred Thousand Dollars (\$500,000) over a 10-year period from their respective shares of the Sales Tax Revenues generated by the Price Honda property for a cumulative amount of One Million Dollars (\$1,000,000) (the "Sales Tax Reserve"). This Sales Tax Reserve is to be used as seed funding for the planning and development of improvements that may be required for the Taylor Road Interchange project at Highway 99.

B. The Parties will establish an interest-bearing fiduciary fund to hold the Sales Tax Reserve from Price Honda. Each party is responsible to ensure that at the end of the 10-year period the amount set aside in their respective fiduciary fund equals Five Hundred Thousand Dollars (\$500,000). Each Party will on an annual basis deliver a report to the other party of the balance set aside in their fiduciary fund.

C. The City will act as the lead agency for development, design and construction of the Taylor Road Interchange project at Highway 99 and will work cooperatively with the County in project development.

6. *Collection of County Public Facilities Fees*

A. The County has adopted appropriate "Public Facility" fees pursuant to California Government Code section 66000 *et seq.*, for the purpose of deferring all or a portion of the cost of "Public Facilities" which are related to "development projects" as defined in California Government Code section 66000.

B. City agrees to adopt by resolution the county-wide Public Facility Fees that have been adopted by County and impose a condition on all maps associated with Price Honda that requires the payment of the county-wide Public Facility Fee that is in place at the time of building permit issuance by the City and City agrees to collect the County's Public Facility Fee at the time of issuance of building permit(s) and to forward the fee proceeds to the County on a fiscal year quarterly basis.

C. County agrees to adopt and impose as a condition on all maps requiring the payment of the City Sphere fee in effect at the time of building permit issuance and collect the City's Public Facilities Fees that have been or may be adopted by the City that can be attributed to "development projects" occurring outside the City's boundary within the City's LAFCO approved Sphere of Influence; and to forward the fee proceeds to the City on a fiscal year quarterly basis.

D. That the collecting Party will be allowed to retain one percent (1%) of the total amount of the Public Facilities Fees collected on behalf of the other Party in order to cover the cost of administration and collection. This amount shall be periodically reviewed and may be adjusted to ensure that it is adequate to cover the cost of the service provided.

7. *Water and Wastewater Service*

The City shall extend water and wastewater services to the frontage of both Price Ford and Price Honda. The extension of City services is conditioned upon the property owner for Price Ford and Price Honda executing an out of boundary service agreement with City and that the out of boundary service extension is approved by LAFCO. The County agrees not to oppose the extension.

8. *Conditions.* The obligations and duties arising under this Agreement are contingent upon the following:

A. The Price Ford and Price Honda properties remaining within the unincorporated area. If the City annexes either, notwithstanding paragraph 9 below, this Agreement terminates on the first day of the next sales quarter following the effective date of the annexation as established by LAFCO.

B. The Price Ford and Price Honda properties are developed and continuously operated as vehicle dealerships and that the vehicle dealerships are operated in a commercially reasonable fashion and that together generate average annual Sales Tax Revenues of not less than \$100,000 for a period of ten (10) years commencing from the effective date of issuance of the certificate of occupancy for Price Honda.

C. The City extends water and wastewater services to the Price Ford and Price Honda as provided herein.

9. *Termination of Agreement.* This Agreement shall automatically terminate as to any property of Price Ford or Price Honda that is annexed, in whole or part, into the City. This Agreement may only otherwise be terminated by mutual agreement of the Parties.

10. *Indemnification.* Each Party shall indemnify, hold harmless, save and defend the other Party, their officials, agents and employees from and against any and all claims, demands, damages, causes of action, liens, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of or in connection with this Agreement. The foregoing shall not apply to the sole negligence of one of the Parties or its officers or employees.

11. *Mutual Defense of Agreement.* If the validity of this Agreement is challenged by a non-party, the Parties shall defend jointly against the legal challenge and shall share equally, damages awarded and any costs and fees awarded against a Party. Each Party shall promptly notify the other Parties of the pendency of any action initiated by a non-party that challenges the validity of this Agreement. The choice of counsel for defending such non-party action shall be made by the County, with the concurrence of the City Manager for City.

12. *Costs of Suit as Between the Parties.* If any Party determines to bring legal action related to the obligations and duties arising under this Agreement, each Party shall bear their own costs, expenses, and fees incurred.

13. *Assignment.* No Party may assign its rights, obligations or interests under this Agreement, directly or indirectly, voluntarily or by operation of law, without the prior written approval of each non-transferring Party. Such consent shall not be unreasonably withheld.

14. *Entire Agreement.* This Agreement constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and

oral negotiations. This Agreement may be modified only in writing, and signed by the Parties in interest at the time of such modification.

15. *Amendments.* This Agreement may be amended only by a writing executed by the Parties hereto.

16. *Notices:* Any notices, documents, correspondence or other communications concerning this Agreement or the obligations or duties hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

City of Turlock Attn: City Manager 156 S. Broadway, Ste. 230 Turlock, CA 95380	County of Stanislaus Attn: Chief Executive Officer 1010 10 th Street, Suite 6400 Modesto, CA 95354
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17. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

18. *No Third-Party Beneficiary Rights.* This Agreement is entered into for the sole benefit of the Parties hereto and no other person or entity is intended to be direct or incidental beneficiaries of this Agreement and no third-party shall have any right in, under or to this Agreement.

19. *Severability.* If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, all parties shall substitute such provision(s) through good faith negotiations.

20. *Construction.* The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Signatures on the following page.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

<p>CITY OF TURLOCK</p> <p>By: _____ Toby Wells, P.E. City Manager</p> <p>ATTEST: Jennifer Land Turlock City Clerk</p> <p>By: _____ Turlock City Clerk</p> <p>Dated: _____, 2020</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Douglas L. White City Attorney</p>	<p>COUNTY OF STANISLAUS</p> <p>By: _____ Supervisor Kristin Olsen, Chairman Stanislaus County Board of Supervisors</p> <p>ATTEST: Elizabeth King Clerk of the Board of Supervisors of the County of Stanislaus, State of California</p> <p>By: _____ Deputy Clerk</p> <p>Dated: _____, 2020</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ Thomas E. Boze County Counsel</p>
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Exhibit A
(Assessor Parcel Map)

DRAFT

S 1/2 SECTION 32 T.4S, R.10E, M.D.B. & M.
 HARWICK RANCH - LOTS 4,5,7,10 & 12 (07M19)

072 001
 072 014
 072 018

045 - 053

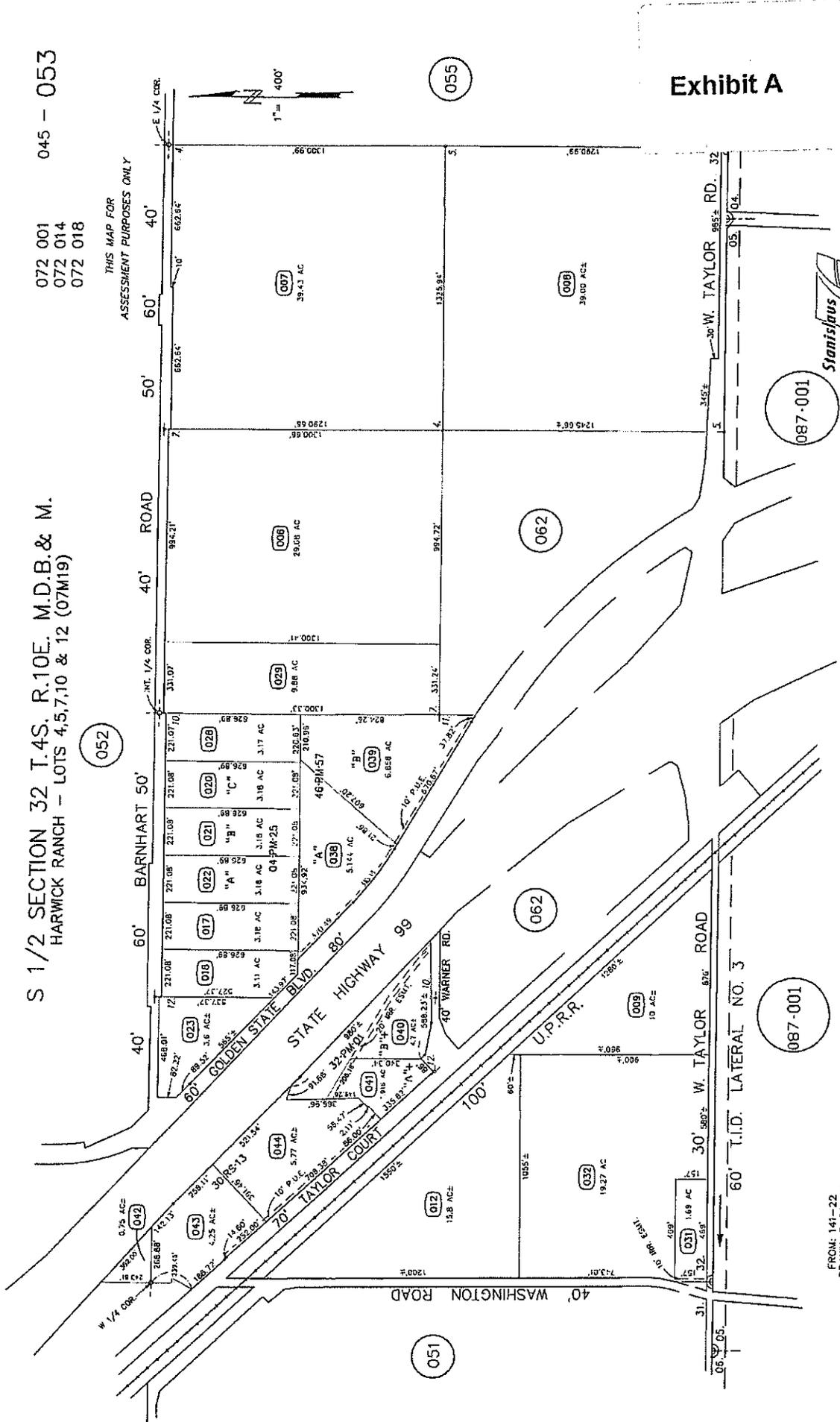
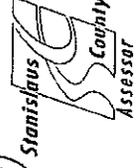


Exhibit A



66,72,98,99,11

045 - 053

FROM: 141-22
 DE: 11-29-65, 10-8-74
 REVISED: 9-13-91, 11-2-94, 3-12-98, 8-13-98, 2-17-99, 10-10-07 MB, 6-25-10 (V)MF

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BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF DETERMINING CITY } RESOLUTION NO. 2020-
PROJECT NO. 20-013 "WATER AND SEWER }
MAIN EXTENSIONS–GOLDEN STATE }
BOULEVARD" AND PROVIDING WATER AND }
SEWER CONNECTION TO THE EXISTING }
PROPERTIES LOCATED AT 5202 AND 5200 }
NORTH GOLDEN STATE BOULEVARD, }
(STANISLAUS COUNTY APNS 045-053-038 AND }
045-053-039), LOCATED OUTSIDE THE }
JURISDICTIONAL BOUNDARY OF THE CITY OF }
TURLOCK, IS EXEMPT FROM THE PROVISIONS }
OF THE CALIFORNIA ENVIRONMENTAL }
QUALITY ACT (CEQA) IN ACCORDANCE WITH }
SECTION 15303 (NEW CONSTRUCTION OR }
CONVERSION OF SMALL STRUCTURES) OF }
THE CEQA GUIDELINES }
_____ }

WHEREAS, the California Environmental Quality Act (CEQA) requires that the lead agency for the project make a determination as to whether an activity is subject to CEQA; and

WHEREAS, Title 14, section 15303, of the California Code of Regulations ("Section 15303"), New construction or conversion of small structures, within the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000, et seq.), categorically exempts projects that consist of construction of limited numbers of new, small facilities when minor modifications are made to the exterior; and

WHEREAS, Section 15303 of the CEQA Guidelines permits utility extension of water and sewer; and

WHEREAS, City of Turlock City Project 20-013 "Water and Sewer Main Extensions–Golden State Boulevard" extend both water and sewer mains on Golden State Boulevard; and

WHEREAS, the properties identified as Stanislaus County APNs 045-053-038 and 045-053-039 have requested to connect to the City of Turlock water and sewer services; and

WHEREAS, the water and sewer utility extension will result in negligible increase of utility usage.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby determine City Project No. 20-013 "Water and Sewer Main Extensions-Golden State Boulevard" and providing water and sewer connection to the existing properties located at 5202 and 5200 North Golden State Boulevard, (Stanislaus County APNs 045-053-038 and 045-053-039), located outside the jurisdictional boundary of the

City of Turlock, is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 13th day of October, 2020, by the following vote:

AYES:
NOES:
NOT PARTICIPATING:
ABSENT:

ATTEST:

Jennifer Land, City Clerk,
City of Turlock, County of Stanislaus,
State of California