

RESOLUTION NO. 05-196 N.C.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO
APPROVING CERTAIN PROPOSED BUSINESS TERMS FOR AN
AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF VALLEJO AND
TRIAD COMMUNITIES, LP, REGARDING THE I-80 INTERCHANGE AT
AMERICAN CANYON ROAD**

BE IT RESOLVED by the Council of the City of Vallejo as follows:

WHEREAS, on September 22, 1987, the City of Vallejo, the County of Napa and Sky Valley Company, a California limited partnership, entered into a Memorandum of Understanding (the "1987 MOU") in connection with the proposed development in the City of Vallejo, now commonly known as Hiddenbrooke; and

WHEREAS, the 1987 MOU recognized that, among other things, the development of Hiddenbrooke would require certain improvements be made by Sky Vallejo Company to the Interstate-80 interchange at American Canyon Road/Hiddenbrooke Parkway (the "Interchange") to mitigate the traffic impacts caused by such development; and

WHEREAS, the 1987 MOU and City approvals regarding Hiddenbrooke acknowledged that the California Department of Transportation ("Caltrans") must approve any proposed improvements made to the Interchange; and

WHEREAS, on September 7th, 1989, the City of Vallejo and Sky Valley Limited Partnership, an Illinois limited partnership, ("Sky Valley"), the successor-interest to Sky Valley Company, entered into an Agreement Regarding I-80 Interchange at American Canyon Road (the "1989 Agreement"); and

WHEREAS, pursuant to the 1989 Agreement, the City agreed to assume the obligations of Sky Valley under the 1987 MOU, in exchange for certain agreements regarding the funding for the anticipated Interchange improvements; and

WHEREAS, among other things, the 1989 Agreement required that Sky Valley provide the City with a letter of credit in the amount of \$1.62 million (the "Letter of Credit"); and

WHEREAS, Sky Valley also agreed in the 1989 Agreement that each residential unit in Hiddenbrooke would be subject to a one-time surcharge (the "Surcharge") collected at the time of building permit issuance, which surcharge would be applied towards the cost of the anticipated Interchange improvements; and

WHEREAS, pursuant to the 1989 Agreement, the City agreed to apply a portion of the Excise Taxes (the "Excise Taxes") collected within the Hiddenbrooke development towards the cost of the Interchange improvements, if required; and

WHEREAS, the 1989 Agreement provided that if the cost of the Interchange improvements was less than the parties anticipated, the City and Sky Valley would share equally in any cost savings, and that Sky Valley would be entitled to a partial release of its Letter of Credit in the amount of its share of such savings; and

WHEREAS, Triad Communities L.P., a California limited partnership ("Triad"), is the successor in interest to Sky Valley; and

WHEREAS, based on a 2002 traffic study regarding the traffic impacts of the Hiddenbrooke development at full build-out and the consultant's analysis of the improvements that would be required at the Interchange to mitigate such impacts, the anticipated cost of the Interchange improvements is expected to be less than the parties originally had anticipated; and

WHEREAS, based on such anticipated savings, Triad and the City wish to negotiate an amendment to the 1989 Agreement; and

WHEREAS, City staff has prepared a proposed allocation for the use of all of the funds collected for the Interchange improvements, which is attached hereto as Exhibit A; and

WHEREAS, the proposed allocation would potentially benefit the City of Vallejo by providing loans from the Interchange fund for the proposed Downtown Project with Triad, as well as additional funds for the renovation of the Empress Theater; and

WHEREAS, the proposed allocation also could provide additional amenities that would directly benefit the Hiddenbrooke community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF VALLEJO DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds and determines that the proposed allocation of funds described in Exhibit A, attached hereto and incorporated herein by reference, may be of benefit to the City and therefore preliminarily approves such proposed allocation.

Section 2. The City Council hereby authorizes and directs the City Manager to negotiate and execute an amendment to the 1989 Agreement with Triad consistent with such proposed allocation and the draft Amendment attached hereto as Exhibit B and incorporated herein by reference.

Section 3. The City Council further authorizes and directs City staff to conduct such further traffic studies and analyses to determine what improvements are required at the Interchange to address the traffic impacts caused by the full build-out of the Hiddenbrooke development and to initiate the appropriate procedures and reports with Caltrans for the approval of any such improvements.

ADOPTED by the Council of the City of Vallejo at a regular meeting held on June 14, 2005 with the following vote:

AYES:	Mayor Intintoli, Vice Mayor Schivley, Councilmembers Bartee, Cloutier, Davis, and Pitts
NOES:	None
ABSENT:	None
ABSTENTIONS:	Councilmember Pearsall


ANTHONY J. INTINTOLI, JR., Mayor

ATTEST:


ALLISON VILLARANTE, City Clerk

PROPOSED DISTRIBUTION OF FUNDS COLLECTED WITHIN THE HIDDENBROOKE DEVELOPMENT

	DEVELOPER (TRIAD LOC)	SURCHARGE FROM BUILDERS	CITY EXCISE TAX	INTEREST EARNED TO DATE	TOTAL	COMMENTS / ASSUMPTIONS
PROJECTED CONTRIBUTION AT BUILD OUT	\$1,620,000	\$2,701,273	\$2,952,606	\$539,607	\$7,813,486	Current cash estimated at approximately \$5,000,000. Estimated build out (final issuance of building permit) in 12/07.
COST TO SIGNALIZE INTERCHANGE		\$1,821,273			\$1,821,273	If costs to signalize interchange exceed this amount additional funding will come out of the reserve identified below for future bridge widening. If costs to signalize are less than this amount excess funds will go to the Fire Station fund.
EMPRESS CONTRIBUTION	\$500,000				\$500,000	New \$500,000 LOC from Triad to City with contribution structured as follows: 1) Reduction of existing Triad I-80 LOC by \$500,000, within 10 days of receiving new LOC; 2) Triad to convert approximately \$300,000 of new LOC into cash, within 30 days of City's written notice that the \$300,000 will be needed to cover the construction costs for the Empress; 3) With a City-Agency loan agreement City releases to Agency \$300,000 funds as part of Empress budget draw down; 4) \$200,000 of the new LOC will be used for Empress Contingency; 5) To the extent that these funds are not used for the Empress, the balance shall be allocated to the Downtown contingency fund and if not used will be returned to the Interchange Reserve Fund.
DOWNTOWN CONTRIBUTION	\$500,000				\$500,000	New \$500,000 LOC from Triad to City with contribution for RDA Downtown property acquisition costs structured as follows: 1) Reduction of existing Triad I-80 LOC by \$500,000, within 10 days of receiving new LOC; 2) With a City-Agency loan agreement, City assigns LOC to RDA; 3) Upon completion of RDA property acquisition any remaining funds would be returned to Interchange Reserve Fund.
HIDDENBROOKE FIRE STATION CONTRIBUTION	\$120,000	\$880,000			\$1,000,000	New \$120,000 LOC from Triad to City with contribution structured as follows: 1) Reduction of existing Triad I-80 LOC by \$120,000, within 10 days of receiving new LOC; 2) The new \$120,000 of Triad LOC to be made available for construction of a Hiddenbrooke Fire Station after completion of Interchange Improvements Obligation and funding mechanism in place for operation of Fire Station. This LOC shall be converted to cash 12 months after initiation of the Caltrans Interchange Improvement approval process. If not used for Fire Station will go to Interchange Reserve Fund.
PARTIAL RELEASE OF TRIAD LOC	\$500,000				\$500,000	Surcharge contribution (\$880,000) structured as follows: 1) Retained in Hiddenbrooke Interchange Fund until after completion of interchange Signalization and funding mechanism in place for operation of Hiddenbrooke Fire Station. If not used for Fire Station will be used for some other improvement within the Hiddenbrooke Development.
INTERCHANGE RESERVE FOR FUTURE BRIDGE WIDENING, IF REQUIRED		\$0	\$2,952,606	\$539,607	\$3,492,213	Triad LOC for \$500,000 released within 30 days of execution of amended Agreement with Triad which releases City from any sharing with Triad of future interchange cost savings. Time is of the essence in drafting and executing said amendment. Interchange Reserve Funds (excise tax and all interest earned) retained until it is determined that Vallejo has no further obligation for any additional interchange improvements. At that time all remaining Reserve Funds will be transferred to the City's General Fund.

Exhibit B to Resolution No. ____

**FIRST AMENDMENT TO AGREEMENT
REGARDING I-80 INTERCHANGE AT AMERICAN CANYON ROAD**

This First Amendment (the "Amendment") is made and entered into this ____ day of ____, 2005, by and between the City of Vallejo, a municipal corporation (the "City") and Triad Communities, L.P., a California limited partnership ("Triad").

Recitals

A. On September 27, 1987, the City, County of Napa, and Sky Valley Company, an Illinois limited partnership ("Sky Valley") entered into a Memorandum of Understanding (the "MOU") with respect to the proposed development of what was then known as the Sky Valley Project, now commonly referred to as Hiddenbrooke, which is located within the City of Vallejo.

B. Pursuant to the MOU, the Sky Valley agreed to make certain improvements to the Interstate-80/American Canyon Road interchange (the "Interchange") to mitigate traffic impacts caused by its project, in exchange for the County agreeing to consider applications for permits to construct an access road across certain property within the County.

C. On September 7, 1989, the City and Sky Valley entered into an "Agreement Regarding I-80 Interchange at American Canyon Road" (the "Original Agreement").

D. Pursuant to the Original Agreement, the City agreed to assume the obligations of Sky Valley under the MOU. In addition, the parties agreed to establish a method for financing the cost of the contemplated improvements at the Interchange.

E. Sky Valley has assigned to Triad, and Triad has assumed, all of its rights and obligations under the Original Agreement.

F. Based on current facts and circumstances, the City and Triad desire to amend the Original Agreement as set forth herein.

Agreements

Section 1. Section 1 of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"1. Developer has issued in favor of City an unconditional irrevocable letter of credit from a financial institution acceptable to City in the amount of One Million Six Hundred Twenty Thousand Dollars (\$1,620,000.00) (the "Original

Letter of Credit") which has been pledged to the City to secure Developer's obligation to contribute towards the cost of construction of certain improvements at the Interstate-80/American Canyon Road interchange (the "Interchange"), which specific improvements include, at a minimum, signalization and ramp widening, and may include widening the overpass at such Interchange (the "Interchange Improvements"). The specific improvements to be constructed at the Interchange shall be determined by City, which shall cause to be prepared all necessary and appropriate studies and reports, including, but not limited to, those required by the California Department of Transportation ("Caltrans") and the provisions of the California Environmental Quality Act. City shall be responsible for obtaining all necessary approvals required for such improvements. Triad agrees that it shall cooperate and provide any assistance and information as may reasonably be requested by City in connection with the preparation of such reports and obtaining such approvals.

As of the date of the Amendment to this Agreement, the parties believe that the cost of the Interchange Improvements required to mitigate the traffic impacts of the Project shall be less than originally anticipated. Therefore, City hereby agrees that it shall release the Original Letter of Credit upon the occurrence of all of the following:

- a. Issuance by Triad of a new, unconditional, irrevocable letter of credit in favor of City, in a form and from a financial institution acceptable to City in the amount of Five Hundred Thousand Dollars (\$500,000.00), which City intends to loan to the Redevelopment Agency of the City of Vallejo (the "Agency") for purposes related to the renovation of the Empress Theater in downtown Vallejo (the "Empress LOC"), pursuant to an Owner Participation Agreement between the Agency and Empress Theater Associates, LLC, dated March 22, 2004. The parties understand that the City will draw down at least \$300,000 of the Empress LOC for the work to be done on the Empress Theater. Any portion of the Empress LOC not expended for the Empress Theater may, if necessary be loaned to the Agency the purposes set forth in paragraph b., below; otherwise such remaining funds shall be retained by City in a special fund to pay for the Interchange Improvements, as well as the Agency's repayment to the City of such loan, until such time as City determines, in its sole discretion, that such funds are not needed for the Interchange Improvements.
- b. Issuance by Triad of a new, unconditional, irrevocable letter of credit in favor of City, in a form and from a financial institution acceptable to City in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Downtown Project LOC"), which City intends to loan to the Agency for purposes related to the proposed Triad project that is the subject of a Memorandum of

Understanding between the Agency, City and Triad, dated October 21, 2003, and amended on December 9, 2004 (the "Downtown MOU"). The City's loan of funds from the Downtown Project LOC shall only be used by the Agency for the purpose of acquiring certain interests in real property on Parcels B and C, as defined in the Downtown MOU. Any portion of the Downtown Project LOC not expended by the Agency for such purposes shall be retained by City in a special fund to pay for the Interchange Improvements, as well the Agency's repayment of such loan, until such time as City determines, in its sole discretion, that such funds are not needed for the Interchange Improvements.

- c. Issuance by Triad of a new, unconditional, irrevocable letter of credit in favor of City, in a form and from a financial institution acceptable to City in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the "Reserve LOC"). The Agency shall convert the Reserve LOC into cash twelve (12) months after the date of this First Amendment, and shall be retained by City until such time as City determines in its sole discretion that these monies are not required to pay for the cost of the Interchange Improvements. Any interest earned on these monies shall be applied for the purposes set forth in this paragraph c. City shall use any monies subject to this section, including interest earned thereon, not used for the Interchange Improvements shall be used for the construction of a City fire station to benefit the residents of the Project; provided, however, that City has first determined that a funding mechanism is in place as a means of financing the ongoing costs of operating such fire station.

Within ten (10) days after the satisfaction of all of the above conditions, City shall release to Triad the Original Letter of Credit in its entirety" and release Triad from any further obligations for the I-80 Interchange improvement project.

Section 2. The last sentence of Section 6 of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"In the event the final cost of the Interchange Improvements shall, for whatever reason, be less than the total of all funds collected by the City pursuant to Sections 1, 2 and 3 hereof, Developer shall not be entitled to any reduction of the Empress LOC, Downtown Project LOC and/or Reserve LOC, nor shall it be entitled to any other payment or reimbursement. City shall be entitled to draw down upon all of the aforementioned letters of credit in their entirety for the purposes set forth in this Agreement."

Section 3. Section 7 of the Original Agreement is hereby deleted and replaced in its entirety with the following:

"7. City shall maintain a special fund to pay for the Interchange Improvements (the "Interchange Fund") and shall use the sources of funds to pay for the cost of the Interchange Improvements in the following priority:

- a. First, from the Surcharge Fee;
- b. Second, from the Empress LOC, Downtown Project LOC and/or Reserve LOC; and
- c. Third, from the Excise Tax collected from the Project.

If and when the City determines, in its sole discretion, that all required Interchange Improvements have been completed, the City may transfer any remaining monies in the Interchange Fund to the General Fund. Notwithstanding the foregoing, however, City agrees that any remaining funds from the Reserve LOC and from the Surcharge Fee shall be used for the direct benefit of the residents of the Project. In the event that there are sufficient monies remaining in the Reserve LOC and the Surcharge Fee and further provided that City has determined to its satisfaction that the residents of the Project have approved a method to assure a means of financing the ongoing costs of operating such fire station, such funds shall be used for the purpose of constructing a fire station for the benefit of the residents of the Project."

Section 4. The terms "Intersection" and "Interchange" as used in the Original Agreement and this Amendment shall have the same meaning.

Section 5. Except as amended by this Amendment, the terms of the Original Agreement shall remain in full force and effect.

Section 6. This Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the City and Triad have executed this Amendment as of the date set forth above.

CITY OF VALLEJO,
a municipal corporation

By: _____
Roger L. Kemp
City Manager

Attest:

By: _____
Allison Villarante
City Clerk

Approved as to Form:

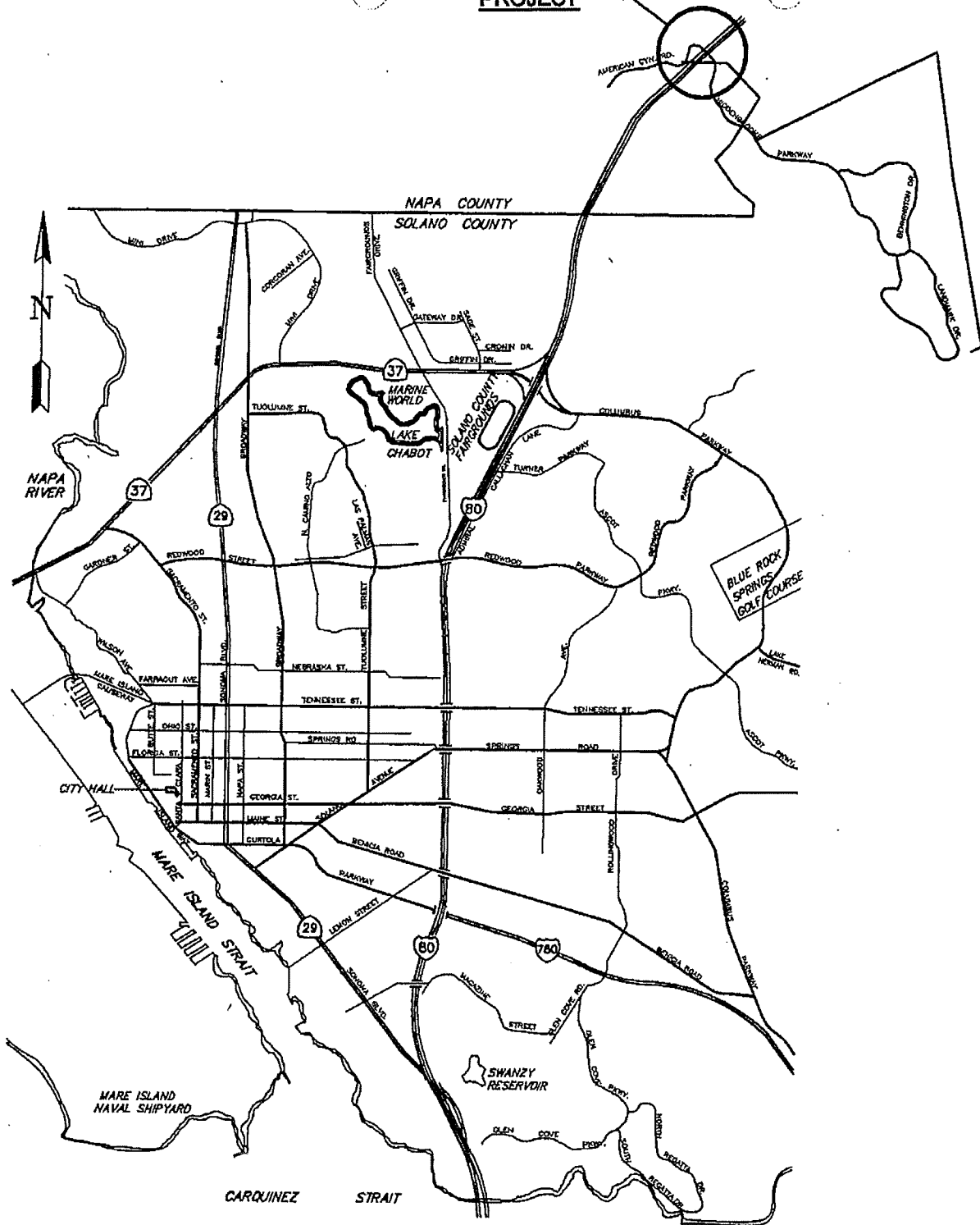
By: _____
Frederick G. Soley
City Attorney

"CITY"

TRIAD COMMUNITIES, L.P.
a California limited partnership

By: _____
General Partner

"TRIAD"

PROJECT**CITY OF VALLEJO, CALIFORNIA****PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

DWG. NO. —
 DRAWN BY **AAP**
 DATE **06/08/05**
 CHECKED **GAL**

SHEET **1** OF **1**
 FILE NO. —
 REF. —
 SCALE **HORIZ: 1"=5000'**

LOCATION MAP**I 80 INTERCHANGE AT HIDDENBROOKE PARKWAY**