

**JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE EAST CONTRA COSTA COUNTY  
HABITAT CONSERVANCY**

**January 18, 2007**

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY  
JOINT EXERCISE OF POWERS AGREEMENT**

This Joint Exercise of Powers Agreement ("Agreement"), dated April 16, 2007 ("Effective Date"), is entered into by and among the **County of Contra Costa**, a political subdivision of the State of California (the "County"), the **City of Pittsburg**, a municipal corporation duly organized and existing under the laws of the State of California ("Pittsburg"), the **City of Clayton**, a municipal corporation duly organized and existing under the laws of the State of California ("Clayton"), the **City of Oakley**, a municipal corporation duly organized and existing under the laws of the State of California ("Oakley"), and the **City of Brentwood**, a municipal corporation duly organized and existing under the laws of the State of California ("Brentwood"). Each Party is a public agency as defined in Section 6500 of the Government Code of the State of California. The parties hereto may be referred to collectively herein as the "Parties" and individually as a "Party."

**RECITALS**

A. Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes the Parties to create a joint exercise of powers entity that has the power to exercise jointly the powers common to the Parties.

B. The Parties are each empowered by law to undertake certain projects and programs.

C. The Parties intend to implement the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan ("Conservation Plan"). The Parties expect the Conservation Plan to provide an effective framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for impacts on rare and sensitive species and their habitat. The Parties expect that the Conservation Plan will also enable them to achieve certain land use planning goals and, at the same time, to provide comprehensive species, wetlands, and ecosystem conservation and to contribute to the recovery of endangered species in Northern California.

D. The Parties have a common interest in creating an entity capable of implementing the Conservation Plan in accordance with the Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("Implementing Agreement"). The Conservation Plan and Implementing Agreement identify certain duties and obligations that must be fulfilled by an "Implementing Entity" in order to support the issuance of permits to the Parties under the Federal Endangered Species Act and the California Natural Community Conservation Planning Act that cover urban development and other development projects in eastern Contra Costa County.

**NOW, THEREFORE**, the Parties, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

## **1.0 DEFINITIONS**

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings specified herein.

“Agency” means the East Contra Costa County Habitat Conservancy created by this Agreement.

“Board” means the governing board of the Agency.

“Conservation Plan” means the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan, dated October 2006.

“EBRPD” means the East Bay Regional Park District, a special district duly organized and existing under the laws of the State of California.

“Flood Control District” means the Contra Costa County Flood Control and Water Conservation District, a special district duly organized and existing under the laws of the State of California.

“Implementing Agreement” means the “Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan,” dated December 19, 2006.

“Implementing Entity” means the agency responsible for the implementation, oversight and policy direction of the Conservation Plan pursuant to the Implementing Agreement.

“Law” means the Joint Exercise of Powers Act, Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title I of the Government Code of the State of California (Sections 6500-6599).

“Preserve System” means the Preserve System set forth in the Conservation Plan.

## **2.0 PURPOSE**

This Agreement is made pursuant to the Law for the purposes set forth below:

A. To establish an agency to fulfill the duties and obligations of the “Implementing Entity” in accordance with the Implementing Agreement and the Conservation Plan, including, but not limited to, the management and expenditure of fee revenues collected by the Parties for the purpose of implementing the Conservation Plan.

B. To oversee, monitor, and report on implementation of the Conservation Plan.

C. To create and manage a Preserve System in accordance with the Conservation Plan and to secure funding for those purposes.

- D. To provide public information and outreach regarding the Conservation Plan.
- E. To exercise all the powers described in Section 6 herein.

### **3.0 TERM, TERMINATION, AND WITHDRAWAL**

A. This Agreement shall become effective as of the Effective Date and shall continue in full force until terminated. The Agreement may be terminated by a majority of the Parties after ninety-day advance written notice thereof to the other Parties. The Agreement may be terminated immediately by a written supplemental mutual agreement of all Parties.

B. Any Party may withdraw from this Agreement upon 90 days written notice to the other Parties. Notwithstanding such withdrawal, the withdrawing party shall remain obligated, to the same extent, if any, that the remaining Parties are obligated, to contribute amounts necessary to pay any debts, liabilities and obligations of the Agency arising from or related to actions taken by the Agency while the withdrawing party was a party to the Agreement.

C. Upon withdrawal, the withdrawing party shall no longer be a Party, and the term "Parties" as used in this Agreement shall thereafter mean the remaining Parties to the Agreement.

### **4.0 AGENCY**

A. Creation of Agency. There is hereby created pursuant to the Law an agency and public entity to be known as the "East Contra Costa County Habitat Conservancy." As provided in the Law, the Agency shall be a public entity separate from its Parties. The debts, liabilities and obligations of the Agency shall not constitute the debts, liabilities or obligations of the Parties.

Within thirty days after the effective date of this Agreement or any amendment hereto, the Agency will cause a notice of this Agreement and any amendment hereof to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Law.

B. Governing Board. A five-member Board shall administer this Agreement and govern the Agency. The Board shall consist of one elected representative each from the city councils of Pittsburg, Clayton, Oakley, and Brentwood, and one elected representative from the County Board of Supervisors. Each Party's governing city council or board shall appoint that Party's representative and may also appoint one alternate representative, both of whom shall serve at the governing city council's or board's pleasure. The term of office of any Board member and any alternate shall terminate when such member or alternate is replaced by the governing city council or board that appointed the member or when such member or alternate ceases to be an elected official of the governing city council or board of the public entity represented by the member or alternate. Each Party's governing city council or board shall appoint a new representative to the Board whenever the Party's seat on the Board has for any reason become vacant.

Each member of the Board shall have one vote. The Board shall make decisions relating to the governance and administration of the Agency, except with regard to matters delegated by the Board to Agency staff. Duties of the Board include, but are not limited to, annual approval of the Agency budget.

Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board shall determine that such expense shall be reimbursed and there are unencumbered funds available for such purpose.

The County shall provide staff to support the activities of the Agency until such time as the Board elects to secure other staff support or the County elects to discontinue the service. The Agency shall reimburse the County for the actual direct and indirect costs of providing staff support according to an annual budget approved by the Board. Each such annual budget shall include a spending cap beyond which the Agency shall not be required to reimburse the County.

C. Meetings of Board.

(1) Regular Meetings. The Board shall hold a regular meeting at least twice each year at dates and times the Board determines, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. If the Chair determines that there will be no business to transact at any meeting or that a scheduling conflict exists, such meeting may be canceled or rescheduled. The hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.

(2) Legal Notice. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted.

(3) Minutes. The Secretary of the Agency shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each Party.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

D. Officers: Duties; Bonding.

(1) The Board shall select from its members a Chair who shall serve as Chair of the Agency and a Vice Chair who shall serve as Vice Chair of the Agency. The Chair and the Vice Chair shall have the duties assigned by the Board or set forth in by-laws adopted by the Board.

(2) The Secretary of the Agency shall be the County Community Development Director until such time as the Board may appoint a replacement. The Secretary or his or her designee shall keep the records of the Agency, shall act as Secretary at the meetings of the Agency and record all votes, and shall keep a record of the proceedings of the Agency in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

(3) The Treasurer of the Agency shall be the County Treasurer until such time as the Board may appoint a replacement. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Agency to have custody of all the money of the Agency, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law.

(4) The Auditor Controller for the County shall be the Controller of the Agency until such time as the Board may appoint a replacement. The Controller shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law. The Controller shall draw checks to pay demands against the Agency when the Board has approved the demands.

(5) The Agency shall reimburse the County for its actual direct and indirect costs of providing the services of the Secretary, Treasurer, and Controller, as applicable, according to an annual budget approved by the Board. Each such annual budget shall include a spending cap beyond which the Agency shall not be required to reimburse the County.

(6) The Treasurer and Controller of the Agency are designated as the public officers or persons who have charge of, handle, or have access to any property of the Agency, and each such officer shall file an official bond in the amount each such officer determines is necessary as required by Section 6505.1 of the Law, provided, that such bond shall not be required if the Agency does not possess or own property or funds with an aggregate value of greater than \$1,500.00.

(7) The Treasurer and Controller of the Agency are hereby authorized and directed to prepare or cause to be prepared: (a) a special audit as required pursuant to Section 6505 of the Law every year during the term of this Agreement; and (b) a report in writing on the first day of February, May, August and November of each year to the Board and the Parties, which report shall describe the amount of money held by the Treasurer and Controller of the Agency, the amount of receipts since the last such report, and the amount paid out since the last such report.

(8) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

## **5.0 COMMITTEES**

A. Habitat and Regional Parks Partnership Liaison Committee. The Agency shall

establish a Habitat and Regional Parks Partnership Liaison Committee consisting of up to three Agency representatives and up to three representatives of the EBRPD to promote coordination with EBRPD. The Board shall appoint Agency representatives to the Liaison Committee; EBRPD may appoint its representatives. Liaison Committee representatives may be elected officials or may be staff of the Agency or EBRPD.

The Habitat and Regional Parks Partnership Liaison Committee shall make recommendations to the Board regarding ways to coordinate implementation of the Conservation Plan with EBRPD's activities in the Conservation Plan area and regarding the preparation and submittal of grant applications in conjunction with EBRPD.

B. Flood Control and Water Conservation Committee. The Agency shall establish a Flood Control and Water Conservation Committee consisting of up to three Agency representatives and up to three representatives of the Flood Control District to promote coordination with the Flood Control District. The Board shall appoint Agency representatives to the Committee; the Flood Control District may appoint its representatives. Committee representatives may be elected officials or may be staff of the Agency or the Flood Control District.

The Flood Control and Water Conservation Committee shall make recommendations to the Board regarding ways to coordinate implementation of the Conservation Plan with the Flood Control District's activities in the Conservation Plan area.

C. Public Advisory Committee. The Agency shall establish a Public Advisory Committee to advise the Agency regarding various aspects of Conservation Plan implementation, including, but not limited to (1) expenditure of funds for Conservation Plan implementation, (2) general permitting procedures for projects covered by the Conservation Plan, (3) management of the Preserve System, and (4) adherence to Conservation Plan requirements. The Public Advisory Committee shall make recommendations to the Board regarding creation and management of the Preserve System and make other recommendations consistent with the Conservation Plan. Members of the Public Advisory Committee shall be appointed by the Board based on relevant expertise or ability to represent interested or affected segments of the public in accordance with guidelines to be established by the Board and consistent with Section 8.2.6 of the Conservation Plan.

D. Legal Notice. All meetings of committees shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted.

E. Other Advisory Committees. The Board may establish other advisory committees as contemplated in the Conservation Plan or as the Board otherwise deems appropriate to advise the Agency on matters related to this Agreement, the Conservation Plan or the Implementing Agreement, provided that the Board shall specify the purpose and function of any such committees.

## **6.0 POWERS**

The Agency shall have all of the powers granted to joint powers authorities in Articles 2 and 4 of the Law. Additionally, the Agency is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to employ agents and employees; to receive, collect, and disburse funds; to receive grants, contributions and donations of property, funds, and services; to sue and be sued in its own name including, without limitation, to file or intervene in lawsuits that pertain to the implementation of the Conservation Plan; to acquire real property and improvements thereon by any lawful means other than eminent domain; to sell and to lease real and personal property; and to buy and hire real and personal property.

Except as otherwise provided herein, such power shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon the County in the exercise of similar powers, as provided in Section 6509 of the Law.

Notwithstanding the foregoing, the Agency shall have any additional powers conferred under the Law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

## **7.0 TERMINATION OF POWERS**

The Agency shall continue to exercise the powers herein conferred upon it until the termination of this Agreement.

## **8.0 DISBURSEMENTS AND DEPOSITS OF FEES**

The Implementing Agreement requires Pittsburg, Clayton, Oakley, Brentwood (collectively the “Cities”) and the County to consider the adoption of various mitigation fees, including a “Development Fee” and a “Wetland Mitigation Fee” (collectively “Fees”) to raise funding for the purposes outlined in the Implementing Agreement.

To the extent the County and the Cities impose such Fees and collect any revenue from such Fees, County and Cities shall disburse to the Agency any and all such revenues semi-annually, on or about December 31 and June 30. The Agency shall hold revenues from the Development Fee in one separate, interest-bearing account, and the Agency shall hold revenues from the Wetland Mitigation Fee in a second separate, interest-bearing account, pursuant to the requirements of the Mitigation Fee Act (Gov. Code, § 66000 et seq.) (“the Act”) until disbursement or expenditure in accordance with this Agreement.

## **9.0 USE OF FEE REVENUES**

The Agency shall use any and all revenues from the Fees only for the purposes for which they were imposed, and for no other purpose, pursuant to the requirements of the Act.

## **10.0 ACCOUNTABILITY**

The Agency is strictly accountable for all revenue from the Fees that is disbursed to the Agency and must report all receipts and disbursements. No later than October 31 of each year of this Agreement, the Agency, County and Cities shall prepare and furnish to each other an annual report of their respective collection, disbursement and expenditures of, and any interest earned on, revenue from the Fees. The Agency shall, on behalf of the Parties, be solely responsible for full compliance with all applicable requirements of the Act as they pertain to revenue from the Fees that have been disbursed to the Agency, including but limited to requirements with respect to its expenditure, management and accounting.

## **11.0 FISCAL YEAR**

Unless and until changed by resolution of the Board, the fiscal year of the Agency shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

## **12.0 SURPLUS MONEY**

After the completion of the purpose of this Agreement, any surplus money on hand shall be returned to the Parties in proportion to their contributions.

## **13.0 DISPOSITION OF ASSETS AND REAL PROPERTY**

Upon the termination of this Agreement as set forth in Section 7, and after the repayment of advances and contributions in accordance with Section 14, any assets acquired as the result of the joint exercise of powers under this Agreement, other than real property and funding for the restoration or management of real property, shall be distributed to the Parties in proportion to each Member's overall unreimbursed contribution of assets to the Agency. The Agency shall transfer any real property, and any funding for the restoration or management of real property, acquired by the Agency as the result of the joint exercise of powers under this Agreement to one or more public agencies or nonprofit conservation organizations in accordance with applicable law.

## **14.0 CONTRIBUTIONS AND ADVANCES**

With the Board's approval, any Party may contribute or advance public funds, personnel, equipment or property to the Agency for any of the purposes of this Agreement. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by the Agency and the Party making the advance at the time of making such advance. Except as otherwise expressly provided in this Agreement, no Party has any obligation to make advances or contributions to the Agency to provide for the costs and expenses of administration of the Agency, even though any Party may choose to do so.

## **15.0 ACCOUNTS AND REPORTS**

The Agency shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Agency shall be open to inspection at all reasonable times by the Parties and their representatives. The Agency shall give an audited written report of all financial activities for each fiscal year to the Parties within six months after the close of each fiscal year.

To the extent required by Section 6505.6 of the Law, the Controller of the Agency shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Agency in compliance with Section 6505.6 of the Law. In each case 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 such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the Parties and, if required by Section 6505.6 of the Law, with the Auditor Controller of the County. Such report shall be filed within twelve months of the end of the fiscal year or years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for the purpose.

In any year the Agency may, by unanimous request of the Board, replace the annual special audit with an audit covering a two-year period.

## **16.0 CONFLICT OF INTEREST CODE**

The Agency shall adopt a conflict of interest code as required by law.

## **17.0 LIABILITY AND INDEMNIFICATION**

Each Party shall defend, hold harmless and indemnify the other Parties and their officers, agents, and employees against any and all claims, demands, damages, costs, expenses or liability arising out of, or in connection with, any acts performed under this Agreement to the extent liability arises from the acts of the indemnitor, its officers, agents, or employees in the performance of this Agreement.

## **18.0 BREACH**

If a Party shall default in any covenant contained in this Agreement, such default shall not excuse any other Party from fulfilling its respective obligations under this Agreement and the Parties shall continue to be liable for the performance of all conditions herein contained. Each Party shall be entitled to seek any and all legal and equitable remedies against any other Party in

response to any alleged default under this Agreement. Each and all of the remedies given to the Parties 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 Parties to any or all other remedies.

#### **19.0 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.

#### **20.0 SUCCESSORS; ASSIGNMENT**

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

#### **21.0 AMENDMENT OF AGREEMENT**

This Agreement may be amended only by supplemental written agreement executed by all of the Parties at any time.

#### **22.0 FORM OF APPROVALS**

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of the County, by resolution duly and regularly adopted by the members of the Board of Supervisors; in the case of the City of Pittsburg, the City of Brentwood, the City of Oakley, and the City of Clayton, by resolution duly and regularly adopted by the members of the city's city council; and, in the case of the Agency, by resolution duly and regularly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

#### **23.0 NOTICES**

Notices to the Parties shall be sufficient if delivered as follows:

Mr. John Cullen, County Administrator  
Contra Costa County  
651 Pine Street, 11th Floor  
Martinez, CA 94553

Ms. Donna Landeros, City Manager  
City of Brentwood  
708 Third Street  
Brentwood, CA 94513

Mr. Gary Napper, City Manager  
City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517

Mr. Bryan Montgomery, City Manager  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

Mr. Marc Grisham, City Manager  
City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565

With a copy to:

Mr. Silvano Marchesi, County Counsel  
Contra Costa County  
651 Pine Street, 9<sup>th</sup> Floor  
Martinez, CA 94553

Mr. Damien Brower, City Attorney  
City of Brentwood  
708 Third Street  
Brentwood, CA 94513

Mr. Dan Adams, City Attorney  
City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517

Mr. Sky Woodruff, City Attorney  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

Ms. Ruthann Ziegler, City Attorney  
City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565

## **24.0 SECTION HEADINGS**

All section headings contained herein are for convenience of reference only and are not

intended to define or limit the scope of any provision of this Agreement.

**25.0 COUNTERPARTS**

This Agreement may be executed in counterparts and so executed shall constitute an Agreement which shall be binding upon all Parties. A photocopy of the fully executed Agreement shall have the same force and effect as the original.

**26.0 SIGNATURES**

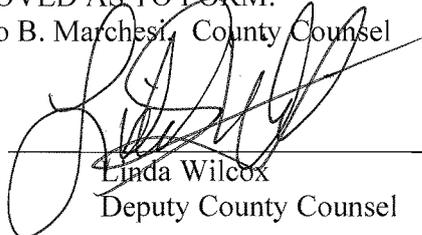
By affixing his/her signature below, each of the persons signing this Agreement warrants and represents that he/she has read and understands the Agreement, that he/she is authorized to sign this Agreement, and that the Party on behalf of whom he/she signs agrees to be bound by its terms.

Dated: May 4, 2007

COUNTY OF CONTRA COSTA

By:   
John Cullen, County Administrator

APPROVED AS TO FORM:  
Silvano B. Marchesi, County Counsel

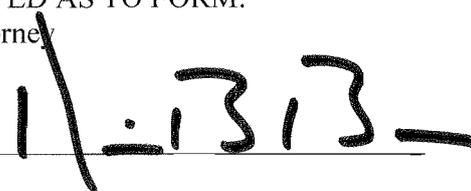
By:   
Linda Wilcox  
Deputy County Counsel

Dated: April 26, 2007

CITY OF BRENTWOOD

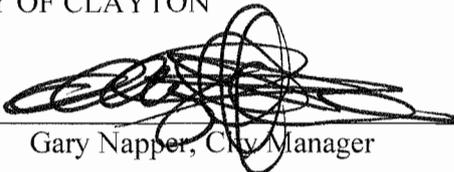
By:   
Donna Landeros, City Manager

APPROVED AS TO FORM:  
City Attorney

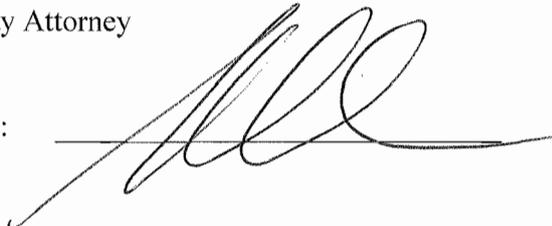
By: 

Dated: 02 MAY, 2007

CITY OF CLAYTON

By:   
Gary Napper, City Manager

APPROVED AS TO FORM  
City Attorney

By: 

Dated: April 25, 2007

CITY OF OAKLEY

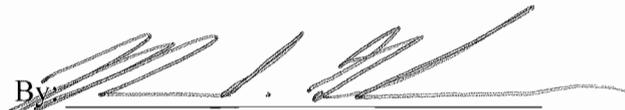
By:   
Bryan Montgomery, City Manager

APPROVED AS TO FORM  
City Attorney

By: 

Dated: APRIL 19, 2007

CITY OF PITTSBURG

By:   
Marc Grisham, City Manager

APPROVED AS TO FORM  
City Attorney

By: 