

RESOLUTION NUMBER 3382

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS APPROVING AND ORDERING THE EXECUTION OF THAT CERTAIN DEPOSIT AND REIMBURSEMENT AGREEMENT WITH TRACHMAN INDEVCO LLC; AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH

WHEREAS, there has been filed with the City Clerk that certain “Deposit and Reimbursement Agreement,” (the “Deposit and Reimbursement Agreement”) by and between the CITY OF PERRIS (the “City”) and TRACHMAN INDEVCO LLC, a California limited liability company (the “Developer”), the developer of a portion of the real property (the “Property”) described on Exhibit “A” hereto and by this reference incorporated herein; and

WHEREAS, the Deposit and Reimbursement Agreement, the form of which is attached hereto as Exhibit “B” and by this reference incorporated herein (the “Deposit and Reimbursement Agreement”), provides for the deposit with City of certain funds to cover City expenses in connection with the formation of a community facilities district comprising said Property or change proceedings relating to Community Facilities District No. 92-3 (Perris Plaza) of the City of Perris, and providing the means by which such deposit may be reimbursed to the Developer, such reimbursement to come from the proceeds from, and only from, the sale of special tax revenue refunding bonds to be issued pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Mello-Roos Act”); and

WHEREAS, the City Council finds that the approval and execution of the Deposit and Reimbursement Agreement is in the best interest of the City and does not put the general funds of the City at risk; and

WHEREAS, City Council desires that Wells Fargo Bank, National Association (“Wells Fargo”) hold and disburse such funds as agent for the City pursuant to the Deposit and Reimbursement Agreement;

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

Section 1. That the recitals set forth hereinabove are true and correct in all respects.

Section 2. That the Deposit and Reimbursement Agreement attached hereto as Exhibit “B” is hereby approved.

Section 3. That the City Manager or Finance Director of the City is hereby authorized and directed to execute the Deposit and Reimbursement Agreement in substantially the form attached hereto for and on behalf of the City, with such changes as may be agreed to by the City Attorney.

Section 4. That Wells Fargo is hereby designated as agent for the City and shall hold and disburse the funds pursuant to the Deposit and Reimbursement Agreement.

ADOPTED, SIGNED and **APPROVED** this 29th day of March, 2005.

Mayor, Daryl R. Busch

ATTEST:

City Clerk, Margaret Rey

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Margaret Rey, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Resolution Number 3382 was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held the 29th day of March, 2005, and that it was so adopted by the following called vote:

AYES: Motte, Rogers, Yarbrough, Landers, Busch
NOES:
ABSENT:
ABSTAIN:

City Clerk, Margaret Rey

EXHIBIT "A"
(RESOLUTION NUMBER 3382)

The Property consists of the property located in the City of Perris and shown on the boundary map of Community Facilities District 93-2 (Perris Plaza), recorded as Instrument No. 393034 at page number 49 of book number 37 in the Book of Maps of Assessment and Community Facilities Districts of the Official Records of the County of Riverside.

EXHIBIT “B”
(RESOLUTION NUMBER 3382)

DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (this “Deposit Agreement”), dated as of March 29, 2005, for identification purposes only, is by and between the City of Perris, California (the “City”), on the one hand, and Trachman Indevco, LLC on the other hand (the “Developer”).

RECITALS

WHEREAS, the City has determined to initiate proceedings to form a new community facilities district designated “Community Facilities District No. 2005-3 (Perris Plaza) of the City of Perris” (the “Property” and the “Community Facilities District”) or in the alternative, to institute change proceedings to the existing Community Facilities District No. 93-2 (Perris Plaza) of the City of Perris under the Mello-Roos Community Facilities Act of 1982 (the “Act”); and

WHEREAS, the members of the Coudures Family Management Company and others are collectively the owners of the Property (“Owner”), and the Property is within the proposed Community Facilities District; and

WHEREAS, Developer has the contractual right to purchase forty (40) acres of the Property (“Developer’s Property”);

WHEREAS, in accordance with City’s policy regarding use of the Act, the Owner is required to compensate the City for all costs incurred in the formation of the Community Facilities District, and issuance of bonds for the Community Facilities District;

WHEREAS, in order to facilitate the refinance of the existing bonds, Developer has agreed to advance the costs for formation of the Community Facilities District No. 2005-3 (Perris Plaza) of the City of Perris.

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district and including the issuance of bonds thereof; and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest under all of the following conditions: (a) the proposal to repay the funds is included in the resolution of intention (including the issuance of bonds thereof), (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, the City and the Developer desire to enter into this Deposit Agreement in accordance with Section 53314.9 of the Act in order to provide for the advancement of funds by the Developer to be used to pay costs incurred in connection with the formation of the Community Facilities District and issuance of special tax bonds for the Community Facilities District (the “Bonds”), and to provide for the reimbursement to the Developer of such funds advanced, without interest, from the proceeds of any Bonds; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. The Deposits and Application Thereof.

(a) The Developer will advance, upon execution of a Notice to Proceed by the Developer indicating its intention to proceed with the formation of or changes to the Community Facilities District, the amount of \$60,350 (the “Initial Deposit”). Developer acknowledges that neither City nor any consultants shall proceed with any work related to the formation of or changes to the Community Facilities District until the City receives the Initial Deposit and the Notice to Proceed from the Developer. Upon receipt of said items, the City’s consultants shall proceed with the formation or change proceedings. This Agreement shall become effective upon receipt of the Initial Deposit and the Notice to Proceed.

(b) City hereby agrees and Developer hereby acknowledges that Wells Fargo Bank National Association (“Wells Fargo”) shall hold the Initial Deposit and any subsequent advances pursuant to (c) hereof as agent for the City. City shall, concurrently with the execution hereof or upon receipt of the Initial Deposit, deposit the Initial Deposit in Account Number _____ (“Deposit Account”) at Wells Fargo, 707 Wilshire Boulevard, 17th Floor, Los Angeles, California 90017. Upon its receipt of the Initial Deposit, Wells Fargo shall be entitled to deduct therefrom its fee in the amount of \$350 for holding and disbursing the Initial Deposit and any subsequent advances pursuant to the terms of the Deposit Agreement.

(c) The Initial Deposit, together with any subsequent advance(s) required to be made by the Developer pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any costs incurred for any authorized purpose in connection with the formation of the Community Facilities District and the issuance of the Bonds (other than costs, fees and expenses to be paid out of the proceeds of the Bonds), including, without limitation, (i) the fees and expenses of any consultants to the City employed in connection therewith and the issuance of the Bonds, including any engineer, special tax consultant, financial advisor, bond counsel and any other consultant deemed necessary or advisable by the City, (ii) the costs of appraisals, market absorption and feasibility studies and other reports deemed necessary or advisable by the City in connection therewith and issuance of the Bonds, (iii) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other action or proceeding undertaken in connection therewith and issuance of the Bonds, (iv) reasonable charges for City staff time incurred in connection therewith and the issuance of the Bonds by the Community Facilities District, including a reasonable allocation of City overhead expense related thereto, and (v) any and all other actual costs and expenses incurred by the City in connection therewith and the issuance of the Bonds (collectively, the “Costs”). The City may as provided in subsection (f) hereof draw upon the Deposits from time to time to pay the Costs. Wells Fargo shall have no duty or responsibility to confirm that amounts withdrawn at the direction of the City have been or will be spent on Costs.

(d) If, at any time, the unexpended and unencumbered balance of the Deposits is less than \$5,000, the City may request, in writing that the Developer make an additional advance in an amount estimated by the City to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Costs. The Developer shall make such additional advance with the City within two weeks of the receipt by the Developer of the City’s written request therefor. If the Developer fails to make any such additional advance within such two week period, the City may cease all work related to the formation and the issuance of the Bonds.

(e) The Deposits shall be kept separately at Wells Fargo and shall be invested in Wells Fargo 100% Treasury Money Market Fund and the City shall at all times maintain records as to the expenditure of the Deposits.

(f) The City shall draw upon the Deposits to pay the Costs by presentation of a disbursement request (the “Request”) to Wells Fargo in the form attached hereto as Exhibit “A” and by this reference incorporated herein. The City shall cause Wells Fargo to pay such Costs pursuant to the Request.

(g) The City shall provide the Developer with a written monthly summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten business days of receipt of the City of a written request therefor submitted by the Developer. The cost of providing any such summary shall be charged to the Deposits.

Section 2. Return of Deposits; Reimbursement.

(a) As provided in Section 53314.9 of the Act, the approval by the qualified electors of the Community Facilities District of the proposed special tax to be levied therein is a condition to the repayment to the Developer of the funds advanced by the Developer pursuant hereto. Therefore, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied thereon, the City shall have no obligation to repay the Developer any portion of the Deposits expended or encumbered to pay Costs. In accordance with Section 53314.9 of the Act, if the qualified electors within the Property do not approve the proposed special tax to be levied therein, the City shall cause Wells Fargo to return to the Developer any portion of the Deposits which have not been expended or encumbered to pay Costs by the time of the election on said proposed special tax.

(b) If proceedings for the issuance of the Bonds are terminated, the City shall, within ten business days after official action by the City or the Community Facilities District to terminate said proceedings, cause Wells Fargo to return the then unexpended and unencumbered portion of the Deposits to the Developer, including interest.

(c) If the Bonds are issued by the Community Facilities District, the City shall return to Developer, without interest, for the portion of the Deposits that has been advanced by Developer and expended or encumbered, said reimbursement to be made within ten business days after the issuance of such Bonds, solely from the proceeds of such Bonds and only to the extent otherwise permitted under the Act. The City shall, within ten business days after the issuance of such Bonds, return the then unexpended and unencumbered portion of the Deposits to the Developer, including interest from the Deposit Account.

Section 3. Abandonment of Proceedings. The Developer acknowledges and agrees that the issuance of the Bonds shall be in the sole discretion of the Community Facilities District. No provision of this Deposit Agreement shall be construed as an agreement, promise or warranty of the City to issue the Bonds.

Section 4. Deposit Agreement Not Debt or Liability of City. As provided in Section 53314.9(b) of the Act, this Deposit Agreement does not constitute a debt or liability of the City, but shall constitute a debt and liability of the Community Facilities District. The City shall not be obligated to advance any of its own funds to pay Costs or any other costs incurred in connection with the issuance of the Bonds. No member of the City Council of the City and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. Notices. Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Deposit Agreement from one Party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile (FAX) transmission, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section. Notices shall be sent as follows:

<p>If to City:</p> <p style="text-align: center;">City of Perris Attn: City Manager 101 N. "D" Street Perris, California 92570 Telephone: (909) 223-1170 Fax No. (909) 943-1087</p>	<p>If to Developer:</p> <p style="text-align: center;">Trachman Indevco, LLC 1801 Century Park East, Suite 1040 Los Angeles, CA 90067 Attn: Andrew Trachman</p>
<p>With copies to:</p> <p>Aleshire & Wynder, LLP Attn: Eric L. Dunn, City Attorney 18881 Von Karman Avenue, Ste. 400 Irvine, California 92612 Telephone: (949) 223-1170 Fax No. (949) 223-1180</p> <p>If to Wells Fargo:</p> <p>Wells Fargo Bank, N.A. Attn: Corporate Trust Services 707 Wilshire Blvd. 17th Floor MAC: E2818-176 Los Angeles, CA 90017 Telephone: (213) 614-3350 Fax No. (213) 614-3355</p>	<p>With copies to:</p> <p>Voss, Cook & Thel, LLP 895 Dove Street, Suite 450 Newport Beach, CA 92660 Attn: David A. Lurker, Esq.</p> <p>With additional copies to:</p> <p>Gresham Savage Nolan & Tilden, PC Attn: Mark A. Ostoich, Esq. 550 East Hospitality Lane, Suite 300 San Bernardino, CA 92408 Telephone: (909) 884-2171 Fax No. (909) 888-2120</p>

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 6. California Law. This Deposit Agreement shall be governed and construed in accordance with the laws of the State of California. The Parties shall be entitled to seek any remedy available at law and in equity. All legal actions must be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in Riverside County, or in the United States District Court for the Central District of California.

Section 7. Successors and Assigns. This Deposit Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 8. Counterparts. This Deposit Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 9. Other Agreements. The obligations of the Developer hereunder shall be that of a party hereto. Nothing herein shall be construed as affecting the City's or Developer's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development. This Deposit Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 10. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Deposit Agreement or of any of its terms. Reference to section numbers are to sections in this Deposit Agreement, unless expressly stated otherwise.

Section 11. Interpretation. As used in this Deposit Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Deposit Agreement shall be interpreted as though prepared jointly by both Parties.

Section 12. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Deposit Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Deposit Agreement.

Section 13. Modifications. Any alteration, change or modification of or to this Deposit Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

Section 14. Severability. If any term, provision, condition or covenant of this Deposit Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Deposit Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

Section 15. Computation of Time. The time in which any act is to be done under this Deposit Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

Section 16. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Deposit Agreement, and in signing this Deposit Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Deposit Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Deposit Agreement; and, they have freely signed this Deposit Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Deposit Agreement, and without duress or coercion, whether economic or otherwise.

Section 17. Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Deposit Agreement including, but not limited to, releases or additional agreements.

Section 18. Conflicts of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Deposit Agreement, nor shall any such member, official or employee participate in any decision relating to the Deposit Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Deposit Agreement as of the respective dates set forth below.

“CITY”

CITY OF PERRIS, a municipal corporation

Dated: _____

By: _____
Hector Apodaca, City Manager

ATTEST:

MARGARET REY, CITY CLERK

By: _____
Margaret Rey, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP
City Attorney

By: _____
Eric L. Dunn

“DEVELOPER”

By: _____
Name: _____
Title: _____

Dated: _____

Dated: _____

Accepted By

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Authorized Officer

EXHIBIT "A"

**Community Facilities District No. 2005-3 (Perris Plaza)
of The City of Perris**

**WRITTEN REQUEST NO. __ FOR
DISBURSEMENTS PURSUANT TO THE
DEPOSIT AND REIMBURSEMENT AGREEMENT**

The undersigned hereby states and certifies:

(i) That he is the duly qualified City Manager of the City of Perris, a municipal corporation duly organized and existing under the laws of the State of California (the "City") and as such, is familiar with the facts herein certified and is authorized and qualified to execute and deliver this certificate;

(ii) That he is authorized pursuant to the Deposit and Reimbursement Agreement, dated as of _____, 2005 (the "Agreement"), by and between the City of Perris, on the one hand, and _____, on the other hand, relating to the formation of Community Facilities District No. 2005-__ (_____) of the City of Perris (the "CFD");

(iii) That pursuant to Section 1 (f) of the Agreement, Wells Fargo is hereby directed to disburse this date from Account No. ____ (the "Account") to the payees, designated on Exhibit "A" attached hereto and by this reference incorporated herein, the respective sums set forth opposite such payees, in payment of certain expenses related to the CFD;

(iv) That each obligation shown on Exhibit "A" has been properly incurred and is a proper charge against the Account;

(v) That no item to be paid pursuant to this Written Request has been previously paid or reimbursed from the Account; and

(vi) That capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Agreement.

Dated: _____

CITY OF PERRIS

Hector Apodaca, City Manager