

**Tuesday, August 3, 2010, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

**Americans with Disabilities Act** - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6000) 24 hours prior to the meeting.

**Addressing the Council on Items on the Agenda** - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

**Consent Calendar** - All items listed on the Consent Calendar are considered routine and/or consistent with previous Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

**Addressing the Council on Items not on the Agenda** – The Brown Act prohibits discussion or action on items not on the posted agenda. Individuals addressing the Council should state their names and addresses for the record, and for contact information. "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. The five minute maximum time limit for each speaker applies to all "Items from the Audience." Any item not on the agenda, brought up by the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When citizens address the Council, speakers should be as specific as possible about their concerns. If several speakers comment on the same issue, an effort should be made to avoid repetition of views already expressed.

**Presentations to Council** - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

**Notice** - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

**Full copies of the agenda are available at City Hall, 333 Civic Center Plaza, the Tracy Public Library, 20 East Eaton Avenue, and on the City's website [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)**

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION  
ROLL CALL

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Approval of a Union Pacific Railroad (UPRR) Company Supplemental Agreement to Reconstruct the Corral Hollow Road at Grade Railroad Crossing Near Old Schulte Road at Mile Post 69.20, on the Owens Illinois Lead and Authorization for the Mayor to Sign the Agreement
- C. Authorize Amendment of the City's Classification and Compensation Plan and Position Control Roster by Approving the Establishment of a New Class Specification and Salary Range for Crime Prevention Specialist, Reallocation of Two Community Service Officer Positions to Crime Prevention Specialist, and Reclassification of One Employee to Crime Prevention Specialist
- D. Authorization to Enter into a 5 Year Agreement with Microsoft for Automatic Updates to Computer and Selected Server Software and Authorization for the Mayor to Execute the Agreement

2. ITEMS FROM THE AUDIENCE

3. PUBLIC HEARING TO CONSIDER THE RE-ALLOCATION OF OUTSTANDING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS; AND APPROVAL OF A RE-ALLOCATION OF UNUSED COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING TO FUND IMPROVEMENTS TO THE MCHENRY HOUSE; A PROFESSIONAL SERVICES AGREEMENT WITH NEW CITY AMERICA AND THE ADA UPGRADE PROJECT DOWNTOWN; AND AUTHORIZE THE MAYOR TO SIGN THE PROFESSIONAL SERVICES AGREEMENT

4. APPROVE ACTIONS RELATED TO THE PLACEMENT OF A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX MEASURE ON THE NOVEMBER 2, 2010 BALLOT, INCLUDING (1) CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX, WITH A FIVE-YEAR SUNSET CLAUSE, TO FUND TRACY CITY SERVICES, REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY TO CONSOLIDATE A MUNICIPAL ELECTION ON THE LOCAL MEASURE WITH OTHER ELECTIONS TO BE HELD ON THE NOVEMBER 2, 2010 REGULAR ELECTION DATE; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING THE DATES FOR ARGUMENTS ON THE MEASURE; (2) INTRODUCTION OF AN ORDINANCE ENACTING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION UPON APPROVAL BY THE VOTERS AT THE NOVEMBER 2, 2010 ELECTION; (3) AUTHORIZATION FOR THE CITY COUNCIL, AS A LEGISLATIVE BODY, OR A COUNCIL MEMBER OR MEMBERS, TO AUTHOR THE ARGUMENT IN SUPPORT OF, AND/OR AGAINST, THE MEASURE AND SETTING THE DATES FOR ARGUMENTS REGARDING THE MEASURE

5. RECEIVE AND DISCUSS THE END OF YEAR REPORT ON THE GRAND THEATRE CENTER FOR THE ARTS
6. COUNCIL ITEMS
  - A. Designation of Voting Delegate and Up to Two Voting Alternates for the 2010 League of California Cities Annual Conference
  - B. Adopt a Resolution Approving the Argument in Favor of the Measure Regarding Whether the Office of the City Clerk Should be Appointed and Requesting the Board of Supervisors of San Joaquin to County Consolidate the Local Measure with the State General Election to be Held on November 2, 2010
7. ITEMS FROM THE AUDIENCE
8. ADJOURNMENT

**May 4, 2010, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

Mayor Ives called the meeting to order at 7:08 p.m. and led the Pledge of Allegiance.

The invocation was given by Deacon Jack Ryan, St. Bernard's Catholic Church.

Roll call found Council Members Abercrombie, Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives present.

Assistant City Manager, Maria Hurtado, presented the Employee of the Month award for May 2010, to Thomas Baldocchi, Fire Department.

Mayor Ives and Council Member Abercrombie presented Certificates of Recognition to D.A.R.E. students.

Mayor Ives presented a proclamation to Alex Castillejos, Senior Center Volunteer in support of Older Americans Month.

Mayor Ives presented a proclamation to Kevin Jorgensen, Chief Building Official, in support of Building Safety Month.

Mayor Ives presented a proclamation to David Charlesworth, Board Member, Central Valley Wheelers, and Ed Lovell, Parks & Community Services Management Analyst, in support of Bike to Work Day.

1. CONSENT CALENDAR - It was moved by Council Member Abercrombie and seconded by Council Member Tolbert to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
  - A. Minutes Approval – Closed session minutes of April 20, 2010, were approved
  - B. Authorization for the Chief of Police to Execute a Memorandum of Understanding with the Sacramento Valley Hi-Tech Task Force to Jointly Combat Crimes Against Children, Financial Crimes and Computer Crimes – Resolution 2010-054 authorized execution of the Memorandum of Understanding.
  - C. Adopt Resolution Authorizing the City Manager to Execute any Documents Necessary for the Purpose of Obtaining Proposition 63 Funds in the Amount of \$250,000 for the Mayor's Community Youth Support Network – Resolution 2010-055 authorized the City Manager to execute the necessary documents.
2. Brian Van Lehn, 540 Winston Court, addressed Council regarding Leprino Foods, their Conditional Use Permit, and the Tracy Noise Ordinance. Mr. Van Lehn asked Council to enforce the Noise Ordinance. Mr. Van Lehn provided copies of various documents for Council's review.

Carrie Burnell, 1455 Cornucopia Place, addressed Council regarding an idea on how to bring businesses to Tracy.

3. ADOPTION OF RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; INTRODUCE AN ORDINANCE AUTHORIZING THE AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN FOR '3% AT 55 FULL FORMULA' BENEFIT FOR SAFETY PLAN (POLICE MEMBERS ONLY) HIRED ON OR AFTER JULY 1, 2010 - Midiori Dearborn, Human Resource Analyst, presented the staff report. Ms. Dearborn stated that on February 2, 2010, the Council adopted Resolution 2010-014, a side letter to the Memorandums of Understanding between the City of Tracy and the Tracy Police Officers Association, and the City of Tracy and the Tracy Police Officers Association Police Management Unit which stipulated that the City will amend the Public Employees' Retirement System contract between the City of Tracy and the California Public Employees' Retirement System to provide a second tier of retirement, '3% at 55 Full Formula' benefit (Section 21363.1 of the Public Employees Retirement Law) for sworn Police personnel hired on or after July 1, 2010.

There is no fiscal impact for adoption of the new benefit formula. For FY 2010-11 there will be minimal if any savings from the implementation of this second tier (3% at 55) because all Police officers hired prior to June 30, 2010, will continue to receive the prior retirement formula (3% at 50). The City will begin to see savings as new officers will be hired at the less costly second tier formula. The current 3% at 50 formula results in an employer rate for the City of 24% paid for all wages applicable to PERS. The 3% at 55 formula is estimated to have a current employer rate of 21.9%. One million dollars in PERS wages paid under the existing formula (approximately the equivalent to 10 officers), costs the City \$240,000. One million dollars in PERS wages paid under the new formula will cost \$219,000.

Staff recommended that City Council: 1) Adopt a Resolution of Intention to approve a contract amendment between the City of Tracy and the Board of Administration of the Public Employees' Retirement System to include the '3% at 55 Full Formula' benefit (Section 21363.1 of the Public Employees Retirement Law) for sworn Police personnel hired on or after July 1, 2010; and 2) Introduce an ordinance authorizing the amendment to the contract between the City of Tracy and the Board of Administration of the California Public Employees' Retirement System to implement this benefit effective July 1, 2010.

Mayor Ives invited members of the audience to address Council on the item. There was no one wishing to address Council.

Mayor Ives asked if this item had been addressed with the TPOA. Ms. Dearborn stated it was discussed during negotiations.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-056 approving an amendment to the contract between the City and the Board of Administration of the Public Employees' Retirement System. Voice vote found all in favor; passed and so ordered.

The Clerk read the title of proposed Ordinance 1147.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to introduce Ordinance 1147. Voice vote found all in favor; passed and so ordered.

4. APPROVE AMENDMENTS TO THE CITY'S RETAIL INCENTIVE PROGRAM, WHICH INCLUDE THE ESTABLISHMENT OF A WEST VALLEY MALL REVITALIZATION PROGRAM; AUTHORIZE STAFF TO NEGOTIATE AND DRAFT FINANCIAL INCENTIVE AGREEMENT(S); AND APPROPRIATE UP TO \$75,000 FROM THE RSP FUND FOR COSTS ASSOCIATED WITH NEGOTIATING AND DRAFTING THE AGREEMENT(S) - Ursula Luna-Reynosa, Economic Development Director, presented the staff report. Ms. Luna-Reynosa stated that on July 15, 2008, the City Council approved a Retail Incentive Program (Resolution No. 2008-138). The purpose of the original Retail Incentive Program is to attract "unique businesses" to the existing I-205 area to leverage the area's strengths with public sector support in the form of sales tax rebates.

Since the adoption of the Retail Incentive Program, Gottschalks closed its store at the West Valley Mall. Losing an anchor tenant such as Gottschalks has the potential to significantly affect the Mall and the stores located in it. Given that the Mall is a vital part of the City's economic base and a significant source of sales tax revenue to the City, loss of one of the Mall's anchor tenants, could also significantly affect the City. In general, anchor tenants are those retailers that draw a majority of customers to retail projects. Typically, smaller, in-line tenants feed off of the anchor's additional pedestrian traffic and collectively they create a retail relationship that works for the whole retail center. In some cases, mall anchors are even more important in that they support a large number of smaller tenants (sometimes 100 or more) that rely on the additional traffic to survive. Once an anchor tenant is lost, a community may begin to see in-line space vacancies rise, and the chances that a mall might fail increase dramatically. This scenario has played out numerous times over the past year with the current, depressed economy.

Because of the importance of attracting a new anchor tenant to the Mall, staff is proposing a West Valley Mall Revitalization Program. The Program will further the following goals of the Tracy General Plan, Economic Development Element:

- ED-2 Support for and promotion of existing businesses
- ED-3 A supportive business environment
- ED-6 Healthy, key economic activity centers
- ED-8 Responsiveness to change and opportunities
- ED-9 A financially sound and viable City

Pursuant to the Program, the Council may approve a financial incentive to the owners of the West Valley Mall and/or to a prospective Mall tenant. The financial incentive must be used only for tenant improvements to an anchor tenant space of 50,000 square feet or more. The financial incentive may be either a sales tax rebate, or direct financial assistance with security, tied to future sales tax generation. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney. All financial incentive agreements must be approved by the Council only after making findings that:

1. The net financial benefit to the public is larger than the financial incentive;
2. The agreement represents a direct public benefit (as defined);
3. There are identified City or other funds that are available to make the financial incentive; and
4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

Staff also requested authorization to negotiate financial incentive agreement(s) with the owners of the West Valley Mall and/or a prospective Mall tenant pursuant to the terms of the West Valley Mall Revitalization Program. Any financial incentive agreement that is negotiated will be presented to the City Council for consideration.

Staff recommended other non-substantive, organizational and minor amendments to the Retail Incentive Program. The West Valley Mall Revitalization Program will require an initial appropriation of up to \$75,000 from the RSP Fund to cover the costs of negotiating and drafting the financial incentive agreement(s). Direct financial incentive agreements approved under the Program will require additional appropriations at the time, and if, they are approved by the City Council.

Staff recommended that City Council approve a resolution:

1. Approving amendments to the City's Retail Incentive Program, which include the establishment of a West Valley Mall Revitalization Program;
2. Authorizing the staff to negotiate and draft financial incentive agreement(s) with the owners of the West Valley Mall and/or a prospective tenant of the West Valley Mall for City Council Consideration pursuant to the terms of the West Valley Mall Revitalization Program; and
3. Appropriating an amount not to exceed \$75,000 from the RSP Fund for legal, consultant and staff time associated with negotiating and drafting financial incentive agreement(s) pursuant to the West Valley Mall Revitalization Program.

Council Member Abercrombie asked Ms. Luna-Reynosa to further explain the need for a consultant. Ms. Luna-Reynosa explained the expertise needed for the project included financial, legal, and staff time.

Mayor Pro Tem Tucker indicated the \$75,000 could be exhausted before any incentives were paid out. Ms. Luna-Reynosa indicated that was correct. The \$75,000 did not cover any incentives, only the expenses to set up the program.

Council Member Maciel asked for clarification regarding RSP funds. Ms. Luna-Reynosa indicated the RSP could be used at the discretion of the Council.

Mayor Ives invited members of the public to address Council on the item.

Larry Gamino, 21 W. First Street, commented on an article that appeared in the Tracy Press that spoke to business incentives. Mr. Gamino cautioned Council against using RSP funds in the mall. Mr. Gamino suggested reserving the money for other needs.

Gabriella Machuga, 1494 Olivia Court, stated she supported the staff report. Ms. Machuga indicated she was an independent business woman with a business in the mall.

Robert Tanner, 1371 Rusher Street, commented on General Growth's financial standing and suggested spending money on a mall that is going through bankruptcy might not be a good investment.

Council Member Abercrombie asked for clarification regarding the approval being requested.

Don Sader, 16214 Redondo Drive., addressed Council and suggested a tax rebate be offered instead of offering money up front.

Council Member Maciel asked how many jobs were lost when Gottschalks closed. Ms. Luna-Reynosa indicated she did not know that number, but could provide it to Council via a memo. Mayor Ives indicated he believed the number was between 100 and 150.

Mayor Pro Tem Tucker asked if there were incentives for small businesses. Ms. Luna-Reynosa outlined the incentive programs that were available for small businesses.

Council Member Tolbert outlined some of the impacts that could occur to the City and its residents if the mall failed. Council Member Tolbert indicated any help the City can provide to keep the mall vital will benefit all residents.

Mayor Ives stated the Council has been proactive in getting out in front of the recovery effort and tries to be in a position to be able to attract and retain the business the City has currently.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-057 amending the City's Retail Incentives Program, including the establishment of a West Valley Mall Revitalization Program; authorizing staff to negotiate and draft financial incentives agreement(s); and appropriating up to \$75,000 from the RSP Fund for costs associated with negotiating and drafting the agreement(s). Voice vote found all in favor; passed and so ordered.

5. **ADOPT A RESOLUTION OF INTENTION TO DISESTABLISH THE DOWNTOWN TRACY BUSINESS IMPROVEMENT DISTRICT (DTBIA) AND SET A PUBLIC HEARING FOR MAY 18, 2010** - Ursula Luna-Reynosa, Economic Development Director, presented the staff report. Ms. Luna-Reynosa stated that the Tracy Business Improvement Area (the "DTBIA") was created pursuant to the "Parking and Business Improvement Area Law of 1989." Merchants located within the boundaries of the DTBIA essentially assess themselves on an annual basis and collectively use the money to augment City services. Historically, DTBIA has focused the majority of its resources on marketing and special events to entice more people into downtown.

A new improvement business area was established in the downtown under more recent legislation called the "Property and Business Improvement Area Law of 1994" on December 15, 2009. This new property and business area is known as the Downtown Tracy Community Benefit District (the "CBD"). The CBD will be operational July 1, 2010. The CBD and the DTBIA share a common mission to revitalize downtown Tracy; therefore, the DTBIA is no longer needed as the CBD will pursue the same goals and objectives of the DTBIA.

Streets and Highways Code Section 36550 authorizes the Council to disestablish a parking and improvement district by ordinance after adopting a Resolution of Intention prior to conducting a public hearing on the ordinance. The Resolution of Intention must



fix a time and place for a public hearing to be held by City Council for the purpose of disestablishing the DTBIA. This hearing has been scheduled for 7:00 p.m., May 18, 2010. The public hearing notice must be published one time in the Tri-Valley Herald newspaper and a copy of the Resolution of Intention must be mailed to each business in the DTBIA. The publication and notice shall be completed at least seven (7) days prior to the time of the public hearing.

Any revenues derived from the levy of assessments by the DTBIA will be spent completing the improvements and activities contained in the most recent annual report, as may be amended from time to time. Any remaining revenues not spent will be returned to the owners of the businesses located and operating within the DTBIA by applying the same method and basis that was used to calculate the assessments levied in the most recent fiscal year such levies were collected.

There is no impact on the General Fund to disestablish the DTBIA. The City will no longer levy an assessment on the merchants within the DTBIA.

Staff recommended the Council adopt a Resolution of Intention to Disestablish the Parking and Improvement Business Area known as the Downtown Tracy Community Benefit District and set a public hearing for 7:00 p.m., May 18, 2010.

Mayor Ives invited members of the public to address Council on the item. There was no one wishing to address Council.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-058 authorizing Council to declare its intent to disestablish the parking and improvement business area known as the Downtown Tracy Business Improvement Area. Voice vote found all in favor; passed and so ordered.

6. **CONSIDERATION AND ADOPTION OF STANDARD PROCEDURES FOR ISSUING CEREMONIAL DOCUMENTS** - Maria Hurtado, Assistant City Manager, presented the staff report. Currently, the City does not have standard procedures for issuing ceremonial documents or other forms of public recognition. Decisions are made based on past precedent, and whether the request has local and/or regional appeal.

While many smaller cities in California do not have formal written policies for issuing ceremonial documents, the trend among mid to larger cities is towards creating guidelines to ensure the event and/or individual being recognized has some connection to the local community.

In some cities, for example, the Mayor and City Manager may approve requests for recognition if the request is consistent with a city's guidelines, while requests that are inconsistent with policies must be approved by the City Council. Other cities have decided to issue different levels of recognition and classified them accordingly. In some cities include Letters of Welcome are issued to new residents, for sporting events, and to dignitaries and prominent individuals. These forms of recognition have not typically been of high demand in Tracy.

Based on a review of other cities' policies and guidelines, as well as, taking into consideration the types of requests for recognition received in Tracy, staff has developed standard procedures (attached to the staff report) for issuing ceremonial documents for Council discussion and consideration.

Staff recommended that the Council discuss and consider adoption of the draft policy entitled "Standard Procedures for Issuing Ceremonial Documents."

Mayor Ives invited members of the public to address Council on the item. There was no one wishing to address Council.

It was moved by Council Member Abercrombie and seconded by Council Member Tolbert to adopt Resolution 2010-059 approving standard procedures for issuing ceremonial documents. Voice vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.

8. STAFF ITEMS

A. Receive Status Report on the Economic Development Strategy and Provide Input on Strategic Goals and Objectives - Ursula Luna-Reynosa, Economic Development Director, provided the staff report. Ms. Luna-Reynosa stated that on March 23, 2009, the City Council held a 2-3 Year Planning Workshop and identified seven strategy priority areas. These are:

1. Public Safety
2. Environmental Sustainability
3. Communication/Marketing
4. Economic Development
5. Organizational Effectiveness
6. Amenities
7. Traffic Mobility and Connectivity.

The purpose of the Economic Development strategy is to proactively engage the business community to strategically position Tracy for emerging opportunities. A complete business plan has been developed for each of the seven strategies.

The four goals identified in the Economic Development Strategy include the following:

1. Increase the employment opportunities and sales tax base in Tracy;
2. Invest in knowledge infrastructure to enable a knowledge based workforce;
3. Ensure the physical infrastructure and systems necessary for development are in place;
4. Establish relationships with the public, private and non-profit sectors to leverage resources.

Overall, staff is on track with implementation of the objectives identified in the business plan for the past nine-month period. This staff report provides a status update on the four goals outlined in this strategy and highlights the objectives completed over the past nine months.

Understanding the economic conditions and prevalent trends in Tracy is critical to implementing a successful economic development program. Conducting an economic base analysis will help staff determine which business clusters and industry sectors to target based on size, growth potential or other criteria indicating that they are drivers of Tracy's local economy. Indicators of industrial strength and vitality include; size of payroll, employment growth, regional

competitiveness (regional growth versus state growth), regional concentration, growth in regional concentration and prosperity index (payroll growth versus job growth). The results of an economic base analysis are the blue print for a quality economic development strategy. Conducting an economic base analysis is one of the critical components of the economic development business plan and many subsequent actions and tasks are based on the results of this analysis.

### **GOAL 1: INCREASE THE EMPLOYMENT OPPORTUNITIES AND SALES TAX BASE IN TRACY**

This goal consists of four objectives designed to increase the quantity and quality of jobs in Tracy. These objectives are: diversify Tracy's economic base; attract distributors and manufacturers that will locate their point of sale in Tracy, and evaluate the sign ordinance and identify opportunities and constraints as it relates to retail development. The following actions related to implementing the above-referenced goals have been completed: adopted the I-205 Incentive Program, implemented the \$500 Gift Card Get More Campaign, hosted Taste of Tracy events, established the Tracy Downtown Community Benefit District, performed 15 business retention visits, attended 3 trade shows (Solar Power International, MDM (Medical Device Manufacturing), WestPak, and BIO 2010), conducted initial outreach to I-205 stakeholders regarding signage and issued 126 Enterprise Zone vouchers.

### **GOAL 2: INVEST IN KNOWLEDGE INFRASTRUCTURE TO ENABLE A KNOWLEDGE BASED WORKFORCE**

This goal consists of three objectives: engage the Tracy Unified School District in dialogue regarding the workforce of tomorrow; support higher education opportunities in Tracy; and assist targeted industries to organize a collaborative skills alliance to train workers in skills where there is a shortage of labor. Actions and tasks related to the goals have long-term due dates. While work has commenced, no activities have been sufficiently completed yet to report.

### **GOAL 3: ENSURE THE PHYSICAL INFRASTRUCTURE AND SYSTEMS NECESSARY FOR DEVELOPMENT**

This goal consists of two objectives: entitle key properties and finance infrastructure that will be a catalyst for future private sector development; and continue to improve and streamline the development review process. Actions and tasks related to the goals have long-term due dates. While work has commenced, no activities have been sufficiently completed yet to report.

### **GOAL 4: ESTABLISH RELATIONSHIPS WITH THE PUBLIC, PRIVATE, AND NONPROFIT SECTORS TO LEVERAGE RESOURCES**

This goal consists of two objectives: create collaborative business networks that identify, craft, and implement solutions to problems; and ensure the flow of capital into the Tracy market. The following actions related to implementing the goals have been completed: established and capitalized the Grow Tracy Fund and hosted the Small Business Workshop.

### **PERFORMANCE MEASURES**

Staff has identified eight performance measures to ensure goals are being met. These include:

1. Increase by 5% the number of jobs in Tracy by July 1, 2014
2. Raise by 5% average per capita incomes by July 1, 2014
3. Increase the amount of Workforce Investment Act funds benefitting Tracy businesses by 5%
4. A 5% decrease among business owners that indicate finding qualified workers is their number one concern when surveyed
5. To complete 90% of all plan reviews and permit inspections within the Development and Engineering Services Department's (DES) time standards
6. To receive a rating of good or better on 90 % of our DES customer satisfaction surveys
7. A 5% increase among business owners that indicate that the City actively engages in collaborative partnerships to the benefit of the business community
8. A 5% increase in the amount of funds being lent to Tracy businesses

General Fund impacts vary on a case-by-case basis. Any actions outside of the approved budgeting process will be presented to City Council as realized.

Staff recommended that Council receive the status report on the economic development strategy and provides input and confirmation on strategy goals and objectives.

Mayor Ives invited members of the public to address Council on the item. There was no one wishing to address Council.

Council Member Tolbert indicated Economic Development staff has done an excellent job.

Council accepted the report on the economic development strategy

9. COUNCIL ITEMS - Council Member Abercrombie congratulated everyone involved with Relay for Life event and reported that over \$3 million has been raised in the City of Tracy.
10. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adjourn. Voice vote found all in favor; passed, and so ordered. Time: 8:45 p.m.

The above agenda was posted at the Tracy City Hall on April 29, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

**June 1, 2010, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

Mayor Ives called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

The invocation was provided by Reverend Willie Rolland, People of Christ Missionary Baptist Church.

Roll call found Council Member Abercrombie, Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives present.

Mayor Ives and Council Member Abercrombie presented Certificates of Recognition to D.A.R.E. Students.

1. **CONSENT CALENDAR** - It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
  - A. Minutes Approval – Special meeting minutes of March 16, 2010, and closed session minutes of May 18, 2010, were approved
  - B. Acceptance of the Storm Drain Improvements at Various Locations, 2009 Project - CIP 76051, Completed by Sposeto Engineering, Inc., of Union City, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-068 accepted the project.
  - C. Acceptance of the Traffic Signal Coordination – Tracy Boulevard Project - CIP 72064, Completed by May-Han-Electric Inc. (dba M & M Electric) of Sacramento, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-069 accepted the project.
  - D. Approve Annual Ground Lease Rate Increase by 4.8 Percent for Privately-Owned Hangars at Tracy Municipal Airport Effective July 1, 2010 – Resolution 2010-070 approved the rate increase.
  - E. Authorize Amendment of the City's Position Control Roster by Reallocating One Maintenance Worker I Position to a Maintenance Worker II Position – Resolution 2010-071 authorized amendment of the City's position control roster.
  - F. Accept Travel Report from City Attorney Regarding Attendance at League of California Cities City Attorney Conference – Report accepted.
  - G. Appropriation of \$40,000 from Community Development Agency Project Fund 381 to the Tracy Municipal Airport Main Entrance Improvement Project - CIP 77032 – Resolution 2010-072 approved the appropriation.

- H. Approve Professional Services Agreements with Various Consultants to Prepare Technical Studies and Development Impact Fee Studies for Water, Wastewater, Roadways, Storm Drainage, Parks And Public Buildings, and to Prepare the Finance and Implementation Plan for the Ellis Program Project Area – Resolution 2010-073 approved the Professional Services Agreements.
2. ITEMS FROM THE AUDIENCE - Dave Helm addressed Council requesting that funding to the D.A.R.E. program not be decreased, and fees for paramedic services not be assessed. Mr. Helm indicated he would have appreciated being able to provide input and vote on the appropriation of funds for the Municipal Airport Main Entrance Improvement project item.

Amit Pal, Field Representative for Senator Lois Wolk, invited Council and Tracy residents to attend a seminar regarding scams focused toward seniors. The seminar will be held on Thursday, June 10, 2010, at the Lolly Hansen Senior Center between 1:15 p.m. and 3:00 p.m.

A resident at 41407 West Valpico Road urged Council not to cancel the D.A.R.E. program.

Miguel Flores, a teacher from McKinley Elementary School, encouraged Council to continue funding the D.A.R.E. program.

Kayla Tabaldi, 777 Forecast Lane, a former D.A.R.E. student and volunteer addressed Council regarding the reduction of funding for the D.A.R.E. program.

Terri Donaldson addressed Council regarding the possibility of having a fund raiser to assist with the continuation of the D.A.R.E. program.

Ms. Walther, 215 La Monte Lane, addressed Council regarding the benefits of the D.A.R.E. program, and requested the program be continued.

Lisa Thompson, Youth Advisor for the D.A.R.E. program, addressed Council regarding the potential negative effects of cancelling the D.A.R.E. program.

Pastor Mark Buenafe, First United Methodist Church, stated he was leaving the area and thanked Council for the partnership he has enjoyed with the Council and the community. Pastor Buenafe introduced Anthony Jenkins Sr., as the new Pastor at First United Methodist Church.

Larry Hite addressed Council regarding the D.A.R.E. program and its emphasis on volunteerism.

Kelsey Bernal addressed Council regarding the D.A.R.E. program and the positive influence the program has on students.

Tammy Thompson addressed Council regarding the benefits of the D.A.R.E. program.

William Hanson, 952 Center Court Drive, addressed Council regarding drug prevention across the nation, and the importance of the D.A.R.E. program.

3. PUBLIC HEARING TO ADOPT A PER LANE FEE UNDER CERTAIN PARAMETERS FOR NON-PROFIT USE OF THE PINKIE PHILLIPS AQUATIC CENTER POOL AT WEST HIGH SCHOOL - Rod Buchanan, Parks and Community Services Director, presented the staff report. Mr. Buchanan stated that during the Council meeting of March 16, 2010, Council was provided with a list of new or adjusted fees pertaining to Parks and Community Services Department recreational programs, admissions and facility rentals for consideration and adoption. One of the fees presented was for the rental of one-half of the Pinkie Phillips Aquatic Center Pool for non-profit organizations that provide their own lifeguards. The proposed fee was \$57.75 per hour, which was based on City Council's action in July of 2009, which temporarily approved this same fee for the use of this pool for the summer of 2009. Prior to Council action on March 16, 2010, the approved fee for such use was \$95.00 per hour. The newly-adopted fee represented a \$37.25 per hour reduction. Although Council approved the proposed fees at their March 16, 2010 meeting, Council also directed staff to evaluate the impact of a per-lane fee and/or a non-peak hour rental fee in response to requests to establish a per-lane fee from Tracy Tritons and the Eels (a newly-formed Masters Swim Club). As per Council's direction, staff evaluated the operational impacts and direct costs associated with establishing a per-lane fee and reviewed the option of establishing a non-peak hour rental fee.

In evaluating the operational and financial impacts of implementing a per-lane fee, it is necessary to project the days, times and number of hours of use. For example, based on the 2010 application submitted by the Tritons for use of the West High pool for practices, and in discussions on the possible number of lanes estimated to meet these needs, the Tritons' rental days would be Monday through Friday, with a two hour session in the morning (7:00 AM to 9:00 AM) and a two hour session during the evening (5:00 to 7:00 PM), for a total of four hours per day (20 hours per week and approximately 160 hours for the summer). Although it has been represented to staff that the Tritons will remain on the half-pool rental arrangement, the Tritons have indicated the need for an average of five lanes per session. The Eels have expressed an interest in lane use on Monday, Wednesday and Fridays from 5:00 AM to 7:00 AM. The Eels have also indicated that they would be willing to pay \$10.00 per lane per hour with a three lane minimum.

Currently, the City incurs one hour of staff time to open and check the facility for the Tritons as their rental begins in the morning before City programs start. The City would incur two hours of staff time during the proposed lane rentals for the Eels in order to open and check the facility and to monitor number of lanes used to calculate the use fee for each session. This additional two hours of staff time per day would cost the City approximately \$725 in staff time for the 2010 season (\$12.50 per hour). Other operational costs, such as chemical use and heating costs, would cost the City an estimated \$18.00 per hour. The total direct costs for the 2010 season, not including other fees charged by Tracy Unified School District to the City or City overhead, is approximately \$1,805. The projected use of a minimum of three lanes for the two hour practice sessions would gross the City \$1,740 over the 2010 season. This would create a small impact of \$65.00 for the season to the General Fund.

Renting the pool by the lane during normal operational hours could impact the City's ability to maximize use of the West High swimming pool. Under current rental policies, the City rents either the entire West High pool or half of it for these types of uses. In

doing so, the City is committing the entire or half of the pool for that use, and does not schedule programming during the hours of these rentals. If a group were to rent four or fewer lanes, the result would be one quarter or more of the pool not being used for programming or available for other rentals, due in part to uncertainty of the number of lanes that may be rented each day. Such programming and rental opportunities must be known far enough in advance to permit adequate marketing of programs. Staff recommended that a per-lane fee be allowed only during off-peak hours.

Staff contacted eight other public agencies to obtain information on the fees they charged to non-profit/swim team organizations for per-lane fees. These agencies include the cities of Turlock, Folsom, Pleasanton, Roseville and San Ramon, as well as the Tracy, Lodi, and Manteca Unified School Districts. Only one of the eight contacted by staff charged a per-lane fee. However, if certain conditions are met as outlined in the recommendations below, staff believes the Eels' per-lane fee request can be accommodated with minimal fiscal impact.

**NON-PEAK HOUR RENTAL FEE:** The City begins programming at the Pinkie Phillips Aquatic Center Pool at West High each weekday at 8:30 a.m. with programs or general recreation swimming running until 8:05 p.m. Lap swim is available from 8:00 p.m. to 9:00 p.m. Monday through Thursday. Recreation swim and rentals are scheduled on the weekends. Non-peak hours are those hours outside of these times (any time prior to 8:30 a.m. or after 8:05 p.m. on weekdays). Staff recently accommodated a request from the Tritons to use West High pool for practices during prime time from 5:00 p.m. to 7:00 p.m., and developed the 2010 season programming schedule to accommodate the requested hours. It is doubtful that the Tritons would use off-peak hours in the evening as they have not expressed an interest to do so. Staff will be required to open and close the facility anytime non-peak hours are used, which would increase staffing costs.

There is no impact to the General Fund if Council does not change the currently approved fees. There will be an impact to the General Fund if City Council desires to adopt a per-lane fee or a non-peak hourly rental fee.

Staff recommended that Council adopt a per-lane fee under the following conditions:

1. A per-lane fee of \$10.00 is only available during non-peak hours;
2. A minimum of 3 lanes must be used during any period;
3. The lanes are 25 yards in length;
4. If any part of a rental overlaps established peak hours times, the per-lane fee is not available; and
5. The per-lane fee is available only for California Non-Profit Corporations with principle offices located within the City of Tracy that provide their own lifeguards.

Mayor Ives opened the public hearing.

Chad Wood, 1047 S. Tracy Boulevard, Vice President of the Electric Eels, addressed Council regarding the per lane fee. Mr. Woods indicated visiting members from other cities would have access to the pool and would spend money while in town. Mr. Wood recommended the city open up this opportunity to non-profit members who live within the city limits.



Michelle Loomis, 1221 Claremont Court, thanked staff for working with the Electric Eels in establishing a per lane fee.

As there was no one further wishing to address Council, the public hearing was closed.

It was moved by Council Member Abercrombie, and seconded by Council Member Maciel to adopt Resolution 2010-074 approving a per lane fee under certain parameters for non-profit use of the Pinkie Phillips Aquatic Center Pool at West High School. Voice vote found all in favor; passed and so ordered.

4. PUBLIC HEARING TO CONSIDER THE PROPOSED ANNEXATION (2010-1) OF THE ISLAMIC SOCIETY OF TRACY PROJECT INTO THE TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT AS ZONE NO. 41; DECLARE RESULTS OF THE PROPERTY OWNER PROTEST BALLOT AND APPROVE CERTAIN RELATED ACTIONS; CONFIRM THE ANNEXATION OF THE PROJECT INTO THE DISTRICT AS ZONE 41 AND ORDER THE LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2010/2011 - Anne Bell, Management Analyst, presented the staff report. The Islamic Society of Tracy, as property owner (Owner), previously petitioned that the City annex their project, located at 350 N. Corral Hollow Road, Tracy (on the east side of Corral Hollow, between Cypress Drive and Tennis Lane), into the Tracy Consolidated Landscape Maintenance District (TCLMD) pursuant to the "Landscaping and Lighting Act of 1972" being Part 2 of Division 15, of the Streets and Highway Code of the State of California.

The City Council, on May 18, 2010, initiated proceedings for the annexation of territory and for the levy and collection of annual assessments, provided preliminary approval of the Engineer's Report, declared its intention to annex territory to the TCLMD, to levy and collect an annual assessment, and to conduct a public hearing regarding the annexation to TCLMD and the levy of assessments. Subsequently, the owner protest ballot was mailed to the Owner for completion and was returned to the City Clerk by the close of the public hearing on June 1, 2010.

There will be no impact to the General Fund. The property owner will bear the costs of annexation proceedings and future assessments. The maximum assessment rate per equivalent dwelling unit (EDU) will be \$323.46 per year (the parcel has 4.16 EDUs).

Staff recommended that at the conclusion of the Public Hearing, City Council, by resolution, (1) declare the results of the property owner protest ballot proceeding conducted for the levy of assessments for the annexation of the Islamic Society of Tracy Project into the TCLMD as Zone No. 41, commencing in Fiscal Year 2010/2011 and approve certain related actions; and (2) confirm the annexation of the Project into the TCLMD as Zone 41, and order the levy and collection of assessments for Fiscal Year 2010/2011.

Mayor Ives opened the public hearing. As there was no one wishing to address Council on the item, the public hearing was closed.

The City Clerk opened the ballot and announced that one ballot was received in favor of levying of assessments.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-075 declaring the results of the property owner protest ballot proceeding conducted for the levy of assessments for the annexation of the Islamic Society of Tracy Project into the Tracy Consolidated Landscape Maintenance District as Zone No. 41 commencing in fiscal year 2010/2011, and approving certain related actions. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-076 confirming the annexation of the Islamic Society of Tracy project into the Tracy Consolidated Landscape Maintenance District as Zone No. 41 and ordering the levy and collection of assessments for fiscal year 2010/2011. Voice vote found all in favor; passed and so ordered.

5. PUBLIC HEARING TO AMEND THE RESIDENTIAL AREAS SPECIFIC PLAN TO ADD COMMUNITY GARDEN AS A CONDITIONALLY PERMITTED LAND USE ON COMMERCIAL PROPERTIES – APPLICATION NUMBER SPA10-0001 - Kimberly Matlock, Assistant Planner, presented the staff report. The RSP is a land use policy and zoning document that was adopted by the City Council in 1987. It covers approximately 1,481 acres and includes residential and commercial land uses. The RSP allows a variety of land uses, including residential of low and medium densities, neighborhood-oriented commercial, and automobile-oriented commercial. Property land use designations have been amended from time to time. Such amendments are normally initiated in response to market changes or to accommodate new land use types that did not exist at the time the RSP was adopted.

A majority of the properties in the RSP area are developed and occupied. A few properties, including the northwest corner of MacArthur Drive and Mount Diablo Avenue, designated NS, and south of Grant Line Road, between Orchard Parkway and Corral Hollow Road, designated GHC, have not yet been developed.

The proposal is a City-initiated request to amend the RSP to define community garden and add it as a conditionally permitted land use. Staff recommended amending Sections 4.1.2.1 and 4.1.2.2 to conditionally permit community gardens on sites within the RSP area designated NS and GHC and to consider parking requirements on a case-by-case basis through each Conditional Use Permit. Community gardens are currently not permitted within the RSP.

Community gardens are generally made up of individual garden plots that may be leased by members of the community. Gardens can include edible and inedible plants. Other common features include hose bibs and garden hoses, pathways between plots, perimeter or individual plot fencing, designated compost collection areas, enclosed equipment storage areas, and bulletin boards for posting messages to gardeners.

Applications for community gardens will be reviewed for compliance with City standards through the Conditional Use Permit process. Also, the City will have the ability to evaluate the appropriateness of the proposed community garden in relation to operational plan, site context, and comments or concerns made by neighboring property owners and residents. Through a Conditional Use Permit, the Planning Commission has the ability to require conditions of approval that will help the project meet applicable Codes and standards and address site-specific land use compatibility.

The Tracy Municipal Code and RSP do not establish minimum parking requirements for community gardens. Staff recommended amending RSP Sections 4.2.4.2 and 4.2.4.3 regarding commercial off-street parking and on-street parking. Specifically, the location of parking (either on-site or off-site), number of spaces, and the degree of parking improvements (i.e. paving, lighting, and landscaping), shall be considered on a case-by-case basis through the Conditional Use Permit process.

On January 12, 2010, the First Presbyterian Church approached the City regarding their property on the northwest corner of MacArthur Drive and Mount Diablo Avenue. The property owners have long term plans to build a church on this property. In the meantime, the property owners would like to develop a community garden open to the residents in and surrounding Tracy. The First Presbyterian Church has applied for a conditional use permit (CUP10-0002) to establish a community garden on their property in anticipation of City Council approval of the proposed RSP amendment. The Planning Commission approved the conditional use permit on May 12, 2010, contingent upon City Council amendment of the RSP.

Public Resources Code section 21083.3 and its parallel Guidelines provision, section 15183, provide for streamlined environmental review for projects consistent with the development densities established by existing zoning, general plan, or community plan policies for which an environmental impact report ("EIR") was certified. Such projects require no further environmental review except as might be necessary to examine whether there are project-specific significant effects that are peculiar to the project or its site.

On May 19, 1987, the City certified the Master Environmental Impact Report for the Residential Areas Specific Plan, and on July 20, 2006, the City adopted a new General Plan (the "2006 General Plan") and certified the associated General Plan EIR (SCH# 1992 122 069) (the "2006 General Plan EIR"). Staff examined the environmental effects of the project and determined that no further review is necessary. Finally, the 2006 General Plan EIR specified a number of feasible mitigation measures to address significant effects on the environment that would result in implementing the Plan.

The Planning Commission conducted a public hearing to consider this proposal on May 12, 2010, and voted unanimously to recommend that the Council approve the proposed amendment and define "community garden." One Commissioner commented that a mechanism should be in place to prevent commercial farming from occurring on the site.

Staff recommended that the City Council approve an amendment to the Residential Areas Specific Plan to add community garden as a conditionally permitted land use on properties designated NS and GHC and that parking be considered on a case-by-case basis through a Conditional Use Permit process.

Mayor Ives opened the Public Hearing.

David Weisenberger, 306 Coronado Way, a member of the Presbyterian Church, addressed Council in favor of the request.

As there was no one further wishing to address Council on the item, the public hearing was closed.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-077 amending the Residential Areas Specific Plan to add community garden as conditionally permitted land use on commercial properties. Voice vote found all in favor; passed and so ordered.

6. PUBLIC HEARING TO INTRODUCE ORDINANCE ADOPTING AN AMENDMENT TO THE CITY OF TRACY COMMUNITY DEVELOPMENT PROJECT AREA PLAN PURSUANT TO HEALTH AND SAFETY CODE SECTION 33333.6 (e)(2), AMENDING RELATED ORDINANCES AND ADOPTION OF A RESOLUTION ELECTING STATUTORY PASS-THROUGH PAYMENTS PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 33607.5 AND 33607.7 - Ursula Luna-Reynosa, Economic Development Director, presented the staff report. A major redevelopment reform bill, Assembly Bill 1290 (AB 1290), was enacted in 1994 by the State Legislature, which among other things imposed a time limit for the incurrence of debt on all existing redevelopment plans. Pursuant to the requirements of AB 1290 (codified as Health and Safety code Section 33333.6), the Council adopted Ordinance 508 on November 15, 1994, amending the Plan so as to establish a deadline on incurring debt of July 17, 2010.

In 2002, the State Legislature passed Senate Bill 211 (codified in part as Health and Safety Code Section 33333.6 (e)(2)). This section now permits the City Council to amend the Plan to delete the debt incurrence time limit from the Plan.

Adoption of the ordinance will trigger a requirement to make statutory pass-through payments pursuant to Health and Safety Code Section 33607.7 to each affected taxing entity with which the Community Development Agency (the "Agency") does not already have a pre-1994 pass-through agreement.

The Agency currently has pass-through agreements with most affected taxing agencies, including the County of San Joaquin, the San Joaquin County Library, the County of San Joaquin Service Area No. 11, the County of San Joaquin Flood Control District, the Tracy Joint Union High School District, the Tracy Elementary School District, the Jefferson Elementary School District, the San Joaquin Delta Community College District, and the San Joaquin County Superintendent of Schools. These existing agreements constitute more than 75 per cent of the property tax dollar and generally provide for greater pass-through payments to these taxing entities than they would receive under Section 33607.7. Taxing entities including the City of Tracy, the Banta Elementary School District, the Tracy Cemetery, the San Joaquin Mosquito Abatement District, the Banta Carbona Irrigation District, the Naglee-Burke Irrigation District, and the Westside Irrigation District are eligible for statutory pass-throughs pursuant to Health and Safety Code Section 33607.7. Thus, statutory pass-through payments will be required in the amounts described in Attachment B to the staff report only with respect to taxing agencies representing about 25 per cent of the property tax dollar, including the City of Tracy, whose property tax share represents most of that percentage. Attachment B, prepared by the Agency's fiscal consultant, quantifies the projected statutory pass-through payments required as a result of the amendment.

The statutory pass-through payments will begin with the 2010-2011 fiscal year and will be equal to 20 per cent of the relevant taxing agency's share of tax increment growth generated after 2009-2010. The City can elect to receive the first-tier pass-through

payments that consist upwards of most of the pass-through payments triggered as a result of the amendment.

Beginning in 2020-2021, the agencies entitled to statutory pass-through payments will be entitled to receive additional payments equal to 16.8 per cent of each agency's share of the tax increment growth occurring after 2019-2020. The City will not be eligible for this second-tier pass-through payment.

In 2003, the Agency issued tax allocation bonds secured by tax increment allocated to the Agency attributable to property tax growth in the Project Area. Pursuant to Section 5.09 of the Bond Indenture for the \$35,095,000 Series A Tax Allocation Bonds and the \$20,625,000 Series B Subordinate Tax Allocation Bonds (the 2003 Bond Indenture), the Agency has obtained a written opinion of an independent redevelopment consultant confirming that such payments will not adversely impair the Agency's ability to pay debt service payments on the 2003 Bonds.

Section 33333.6(e)(2) permits the Council to bypass most of the procedures normally required for redevelopment plan amendments. The Council may adopt the proposed Ordinance in accordance with the normal procedures for the enactment of ordinances. A duly noticed public hearing has been scheduled for the Ordinance. Pursuant to CEQA Guidelines Section 15378(b)(2), (4) ad (5), adoption of the Amendment is not a "project," and is exempt from CEQA review. Staff recommended the Council approve a CEQA Notice of Exemption for the Ordinance and the Amendment.

Staff recommended that City Council introduce the proposed ordinance amending the City of Tracy Community Development Project Area Plan, Ordinance 482, adopted on July 17, 1990, Ordinance 508, adopted on November 15, 1994 and Ordinance 1123, adopted on September 16, 2008, and adopt a resolution electing statutory pass-through payments pursuant to Health and Safety Code Sections 33607.5 and 33607.7 and that the Council adopts the proposed Notice of Exemption for the Ordinance.

Mayor Ives opened the public hearing. Since there was no one wishing to address Council on the item the public hearing was closed.

The Clerk read the title of proposed Ordinance 1149.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to waive reading of text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to Introduce Ordinance 1149. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-078 electing statutory pass-through payments pursuant to Health and Safety Code Sections 33607.5 and 33607.7 in connection with the amendment to the City of Tracy Community Development Project Area Plan. Voice vote found all in favor; passed and so ordered.

7. APPROVAL OF WAYFINDING SIGN SYSTEM CONCEPTUAL DESIGN - Ursula Luna-Reynosa, Economic Development Director, presented the staff report. Ms. Luna-Reynosa stated that the City Council appropriated \$75,000 for design of a wayfinding sign system in the Fiscal Year 09-10 adopted budget. On January 19, 2010, a professional services agreement with Frazier Associates was approved by the Council. The goal of the project is to provide both vehicular and pedestrian signage to direct the public to regional serving public and private facilities including regional serving retail centers.

On February 24, 2010, the Consultant met with the internal task force which includes Council Member Tucker, City staff and Cal-Trans representatives to ensure all signs meet safety, code and readability requirements; discuss goals and objectives of the system; and discuss general design parameters that best represent the community. On February 25, 2010, the Consultant met with external stakeholders including auto dealers, the manager of West Valley Mall, the manager of the Tracy Outlets, the president of the Tracy Chamber of Commerce, long time Tracy residents, and a group of Downtown merchants/ property owners. The Consultant spent four days in Tracy touring the City, evaluating existing signage, conducting field work and identifying colors, icons, and images that convey the feel and goals of the community.

On April 28, 2010, the Consultant presented key findings and schematic design options to the internal task group. Three schematic design options were also presented; option 1 is inspired by more traditional design elements ("Design Option 1"), option 2 is inspired by more contemporary design elements ("Design Option 2"), and option 3 a hybrid of elements from both Design Option 1 and Design Option 2 ("Design Option 3"). The Consultant prepared Design Option 3 after receiving feedback from the internal task force at the April 28, 2010 meeting.

Once a design option is approved by the City Council, the next step will be to finalize the locations of the various signs (e.g. gateway signage, trailblazer signs, downtown signs, etc.) and begin construction documents.

There is no fiscal impact associated with approving a design option. The cost of design services was approved in the Fiscal Year 09-10 adopted budget.

Ms. Luna-Reynosa Introduced representatives from Frasier Associates who provided a power point presentation illustrating way finding sign samples.

Staff recommended that the City Council, by resolution, approve Design Option 3.

Council Member Maciel suggested the logo not be tampered with since it is so new to many people. Council Member Maciel suggested hospitals be included in the way finding. The representatives indicated emergency locaters were not usually included.

Council Member Abercrombie asked if the \$450,000 included the complete process. Ms. Luna-Reynosa indicated she believed it was \$425,000, and that it did include the complete process.

Council Member Abercrombie asked for clarification regarding freeway signs and if Caltrans was resistant to the idea. Ms. Luna-Reynosa stated cities can't advertise

specific businesses, but can point to primary destinations such as the mall, outlet malls, etc.

Council Member Abercrombie stated he was struggling with the cost of the program and the economic benefits. Ms. Luna-Reynosa indicated she did not have any economic data to back up the program, but explained further how the signage becomes important to those visiting the community.

Council Member Abercrombie asked for clarification regarding CIP funds. Mr. Churchill indicated this was a one time revenue and did come from the general fund.

Council Member Maciel asked if there is evidence to indicate wayfinding signs are beneficial to local businesses. Ms. Luna-Reynosa stated the business community has been very supportive of the wayfinding system.

Mayor Ives invited members of the public to address Council on the item.

Craig Saalwaechter, 4083 Payton Lane, addressed Council suggesting that other groups would prefer the funds being spent on their projects. Mr. Saalwaechter indicated the most important thing was to get visitors off the freeway and into town.

Tim Smith, a resident of Tracy, stated he did not understand how the city could discuss cutting police, the D.A.R.E. program, and other important projects and spend \$450,000 on signs.

Melody Potter, 31 W. Tenth Street, addressed Council in favor of the wayfinding sign program.

Dale Cose, P.O. Box 326, addressed Council in favor of the wayfinding signs. Mr. Cose stated he was concerned about budget issues and wondered if there were ways to phase in this program and not spend the entire amount in one lump sum.

Robert Tanner, 1371 Rusher Street, asked Council to defer the expense of this program until the budget could accommodate the expense.

Winston Chen indicated if the benefits could not be quantified then the City should not proceed with the program.

Mayor Pro Tem Tucker indicated she was impressed with the conceptual design and the fact that the City received a lot of community input. Mayor Pro Tem Tucker indicated she was concerned with the cost of the primary signs but would accept the report and attempt to obtain a better understanding of the cost to put these signs in place.

Council Member Maciel stated he believed this type of program could lead to enhanced revenue in the long-term and suggested scaling back the program and offering options for Council consideration.

Council Member Tolbert agreed to accept the report, approve option 3, and move ahead so that Tracy is positioned to be the place where economic development will make a turn-a-round.

Council Member Abercrombie thanked the representatives from Frazer for their input, time and efforts. Council Member Abercrombie indicated accepting the report does not mean Council has authorized spending funds on the signs.

Mayor Ives indicated he has never spoken with a business owner who doesn't agree that signage was huge and helps to determine where businesses locate. Mayor Ives indicated he was in favor of approving the conceptual design of the wayfinding signs.

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-079 approving the Wayfinding Sign System Conceptual Design. Voice vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie opposed.

Mayor Ives called for a recess at 8:58. The meeting was reconvened at 9:05 p.m.

7. RECEIVE REPORT ON THE LANDSCAPE MAINTENANCE DISTRICT FINANCING MEASURE AND RELATED INFORMATION - Mayor Ives opened discussion on items 8, 9 and 10.

Maria Hurtado, Assistant City Manager, presented a summary of the cost saving efforts the city has taken to address the deficit.

Kevin Tobeck, Public Works Director, presented the staff report regarding the landscape maintenance district financing measure. Mr. Tobeck stated that the City's first Landscape Maintenance District (LMD) was established in 1985. Two additional LMDs were formed in 1988 and 1998. The purpose of the LMDs was to provide funding for enhanced landscaping along City streets, and additional parks in newly developed areas. These newly developed areas were assessed on an annual basis to pay for the maintenance of the enhanced street landscaping and new parks. In 2003, the three LMDs were consolidated into one district in 2003 to reduce administrative costs.

The current consolidated LMD includes 40 zones and is comprised of approximately 63 per cent of the parcels in the City. The 40 zones in the LMD vary in size and in the amounts of their respective assessments. The remaining 37 per cent of parcels are not in the LMD and, therefore, are not assessed for landscape maintenance. As such, landscape maintenance in those areas of the City is paid for out of the General Fund. These areas are typically in the older sections of the City.

The total assessment revenue anticipated for the LMD for Fiscal Year 2010-11 is \$2,309,049. These assessment revenues will be provided by the 15,334 parcels in LMD zones. Each single family residential parcel equals one Equivalent Benefit Unit (EBU). An EBU is the methodology used to assign a proportionately weighted value to each parcel. The existing average assessment per EBU is approximately \$96.00 (there are 24,014 EBUs in the existing LMD). If all parcels within the City were assessed for landscape maintenance to provide additional funding of \$800,000, the assessment would be approximately \$73.00 per EBU (there are 42,694 EBUs for the entire City).

Under this scenario, approximately 13,240 parcels (54 per cent) would pay less than their current assessment amount. Another 718 parcels (3 per cent) would be assessed at approximately the same amount. The remaining 10,460 parcels (43 per cent) would pay a higher assessment (9,084 parcels currently pay no assessment because they are



not in the LMD). The additional \$800,000 in funding would be used to further enhance landscape maintenance throughout the City, including park improvements, tree trimming, and graffiti abatement.

In 2011, Assessment District (AD) 87-3 will be closed. This will reduce the annual assessment for 6,340 parcels in the LMD by approximately \$150. Consequently, the impact of any increase from a maintenance parcel tax is offset by the elimination of the AD 87-3 assessment.

Preliminary polling efforts are underway via the Godbe Research firm to assess the viability and timing of a public safety parcel tax, LMD parcel tax or a general tax measure. A critical consideration of introducing a general tax measure option is that a parcel tax (for Public Safety or LMD) requires two-thirds majority vote and a general tax measure (e.g. one-half cent sales tax, utility tax, etc.) requires a simple majority vote (i.e. any amount more than 50 per cent).

Assessing public opinion about preferred measures is a critical step in determining how to meet the City's revenue generating goals. Staff will present polling results to Council at the July 6, 2010, Council meeting for consideration.

Staff recommended that Council receive the report on the Landscape Maintenance District Financing measure and related information.

Council Member Abercrombie asked how voting was done for the LMD. Mr. Tobeck stated it required a two-thirds approval by the voters.

Mayor Pro Tem Tucker asked if it was possible to have a two-tiered tax structure for this type of program since some of the newer developments have more intense landscaping. Mr. Tobeck indicated it was possible.

Council Member Maciel asked if there was any break down regarding the cost of tree maintenance. Mr. Tobeck indicated there was a breakdown on tree maintenance available.

Council Member Maciel asked if any of the districts carry a surplus. Mr. Tobeck stated most areas were under-funded.

8. RECEIVE STATUS UPDATE ON AND DISCUSS TAX MEASURE OPTIONS - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that in the November 3, 2009 elections, voters in many areas of California decided on over 100 local measures, including 57 concerning taxes, fees or bonds for cities, counties, special districts and schools.

The overall passage rate of non-school local tax measures in this election was similar to that of prior elections over the last decade. Of the 36 majority-vote tax measures, two out of three (a total of 24) passed. Since 2001, 65 per cent of majority vote local tax measures have passed. General tax measures that require 51 per cent majority vote have historically had a favorable passage rate.

Additionally, five city parcel tax measures were on the ballot. Three of the five extended existing taxes. These three passed. The two proposals for new parcel taxes failed,

including a measure in Pacific Grove which garnered a 62.2% yes vote, but fell short of the two-thirds approval needed.

The City's revenue generating strategies to date have specifically concentrated on two parcel tax options; the Public Safety Parcel Tax and the LMD Parcel tax, both of which require a two-thirds majority vote. Given staff's most recent conversations with polling experts, it is prudent to expand the parcel tax revenue options to include consideration of a general tax measure, which would require a 51 per cent majority versus a two-thirds majority vote.

Preliminary polling efforts are underway via the Godbe Research firm to assess the viability and timing of a public safety parcel tax, an LMD parcel tax or a general tax measure. A critical consideration of whether to introduce a parcel tax or general tax measure is that a parcel tax, like a Public Safety Parcel Tax or an LMD Parcel Tax requires a two-thirds majority vote whereas a general tax measure, such as a sales tax or utility tax, requires a 51 per cent majority vote. For example, if a ½ cent sales tax was approved by voters (which is considered a general tax and requires only 51 per cent majority vote), it could produce a \$4.6 million dollar revenue stream for the City. If the voters were to approve a \$200 per parcel Public Safety Parcel Tax, which requires a two-thirds majority vote, it would generate approximately \$4.8 million per year. If the voters were to approve a \$150 per parcel across the board for a citywide Landscape Maintenance Parcel Tax, it would generate an additional \$900K per year.

Assessing public opinion about preferred measures is a critical step in determining how best to accomplish the City's revenue generating goals. As mentioned in the previous staff reports, staff will present polling results to Council at the July 6, 2010 Council meeting for consideration and direction. Additionally, a successful ballot measure may depend on the City's ability to: (1) evaluate the feasibility of the particular revenue measure passing; (2) align the City's needs with voter expectations; (3) evaluate the specific timing of placing a measure on the ballot, and (4) develop and implement a strategic education and outreach plan.

Enhancing these abilities will increase the likelihood of success on Election Day. The development of a strategy and communication plan is critical to identify key messages, themes and information important to Tracy's constituents. The polling results and a recommendation on whether to pursue a general tax or parcel tax will be presented to Council at the July 6, 2010 Council meeting for consideration.

Staff recommended that the Council receive and discuss the status update on the tax measure options.

9. DISCUSS THE EMERGENCY MEDICAL SERVICE COST RECOVERY AND MEMBERSHIP PROGRAM IMPLEMENTATION PLAN AND PROVIDE STAFF WITH DIRECTION ON DESIRED ALTERNATIVE(S) - Dave Bramell, Acting Fire Chief, provided the staff report. Mr. Bramell stated that on June 16, 2009, Council adopted Resolution 2009-117 which set Emergency Medical Service (EMS) user fees for medical and vehicle accident responses. This resolution also established a fee-funded EMS Membership Program. On September 1, 2009, Council adopted Resolution 2009-161 which established an EMS Cost Recovery Program Policy and Procedure which details the internal policy for fire department personnel to follow in their administration of the cost recovery program.

On February 16, 2010, Council approved Resolution 2010-109 allowing the City to enter into a professional services agreement with ADPI-Intermedix to provide third party billing services. ADPI-Intermedix and staff have developed the necessary infrastructure to bill customers and continue to work out the details of transferring necessary data between the fire department and the billing company.

Staff anticipates a billing implementation date of July 1, 2010, allowing marketing of the program to occur during June. Membership program enrollment forms will be placed in key areas throughout the City. The marketing strategy includes advertising the program in utility bills, on the City's website, in print media and on Channel 26. Informational presentations will be provided to target groups, such as seniors.

Staff has also inquired of various insurance carriers to assess their coverage of the EMS Fee and discovered that insurance coverage varies between insurance providers and individual insurance policies.

On December 16, 2008, Management Partners presented Council with a number of budget solution strategies to address the structural budget deficit. Among the revenue generating strategies was a recommendation to implement an EMS Cost Recovery fee and Membership Program which was projected to generate \$800,000 in new revenue.

This estimated revenue projection was based on the fee being implemented within the South County Fire Authority jurisdictional area, which includes the Mountain House and the Tracy Rural areas. However, both the Tracy Rural Fire District and the Mountain House Community Services District have decided not to implement the fee.

EMS Cost Recovery Fee and Membership Program Options:

**Option 1** – Move forward with the implementation of the EMS Cost Recovery Fee and Membership Program as adopted by Council with the July 1, 2010 implementation date.

**Option 2** – Rescind the fee and eliminate the program. The fiscal year 2010/2011 Budget includes the \$455K revenue projection generated by the EMS fee and membership program. If this option is considered, staff recommends that Council identify an alternative revenue option in the amount of \$455K or identify an expense reduction in the amount of \$455k to offset the loss of revenue.

**Option 3** – Proceed with implementation of the EMS fee on July 1, 2010, and pursue a public safety parcel tax or a general tax measure. If a tax measure is approved, consider eliminating the EMS Cost Recovery Fee and Membership Program at that time.

Preliminary polling efforts are underway to assess the viability and timing of a public safety parcel tax, LMD parcel tax or a general tax measure. Staff will present results to Council at the July 6, 2010 Council meeting for discussion.

Staff recommended that Council move forward with implementation of the EMS fee and membership program as approved by Council as described in Option 1. If Council chooses to rescind the fee, staff recommends Council identify an expenditure reduction of \$455K as described in Option 2, or other viable revenue alternatives.

Council Member Abercrombie asked if it was possible to postpone implementation of the EMS fee to see if a tax would be approved by the voters. Mr. Bramell indicated Council would need to identify approximately half of those fees due to timing.

Council Member Tolbert asked if the public safety parcel tax, LMD tax and EMS fee were deductible from state and federal income taxes. Mr. Churchill indicated a parcel tax is tax deductible, sales tax is not, and the EMS is a fee and is not tax deductible.

Council Member Abercrombie asked if there was a tax difference for residential and commercial properties. Mr. Tobeck indicated for the LMD it was a weighted average; equal in average based on the size of the parcel.

Council Member Abercrombie asked if it was possible to add a sunset clause on a general sales tax or parcel tax. Daniel Sodergren, City Attorney, indicated a sunset date could be placed on either.

Mayor Pro Tem Tucker indicated the main hang-up with the EMS fee was for residents to pay the fee vs. non-residents. Mayor Pro Tem Tucker suggested modifying the fee for EMS fees; first call no bill, second or subsequent calls would trigger the fee.

Council Member Tolbert reiterated that the EMS fee would be covered by a number of major health plans.

Council Member Maciel indicated the real issue is budget deficit and revenue generation. The upside of a user fee is that it is charged only to those who use it. The long term solution was to come up with some sort of revenue stream and find out from the public what is more palatable. Council Member Maciel stated he was in favor of holding off implementing the EMS fee until November.

Craig Saalwaechter, 4083 Payton Lane, asked for clarification regarding repeat EMS calls. Mr. Bramell stated some users call two or three times for services. Mr. Saalwaechter suggested the City may find that at polling residents are in favor, but do not vote in favor at election time. Mr. Saalwaechter added the public does not understand the sunset clause and suggested Council pursue option 1 on the EMS fee.

Council Member Maciel asked if it was a voter-approved initiative that includes a sunset clause. Mr. Sodergren stated if it was in the initiative, it would be locked in.

Juana Dement, 1525 Franklin Avenue, addressed Council regarding projected revenue and foreclosure rates. Ms. Dement asked if the fact that these fees that would not be collected have been figured into the forecast. Mr. Churchill provided clarification indicating the City does receive property taxes through the TETA program. Mr. Churchill further indicated that Council will discuss polling efforts at the July 6, 2010 meeting.

Robert Tanner, 1371 Rusher Street, addressed Council and suggested an end date be established for any possible sales tax as well. Mr. Tanner asked if this additional sales tax would cause people to seek out other cities to make their purchases. Mr. Churchill indicated only the cities of Modesto and Turlock have lower tax rates than the City of Tracy. Mr. Tanner suggested Council pursue Option 2 regarding the EMS fee.

Winston Chen, a real estate agent, stated a parcel tax will lower the price of a home and there would be no net income to the City. Mr. Chen stated that 75 per cent of homeowners have no equity in their home and adding a parcel tax will burden the homeowners. Mr. Chen indicated a sales tax will be perceived as anti consumer.

Joe Murphy, a senior citizen, stated people would be reluctant to dial 911 in an emergency.

Gabriella Machica, 1494 Olivia Court, suggested putting the EMS fee on hold.

Brian Van Lehn, 540 Winston Court, addressed Council regarding the LMD fee. Mr. Van Lehn stated there were no landscape needs in his subdivision. Mr. Van Lehn further stated he was concerned with the EMS fee and its potential impact to those who need emergency services.

Council Member Abercrombie stated that individuals were under the assumption that the EMS fee goes into the general fund and not necessarily for the service rendered. Council Member Abercrombie added residents are already telling the Fire Department not to enter their house for fear of the fee being imposed.

Council Member Maciel stated the City has to increase revenue; that the City has to put something to the voters that they can live with, or the City will have to continue to make cuts. Council Member Maciel advocated putting the EMS fee on hold until November to see if they come up with something better.

Mayor Pro Tem Tucker indicated she supported putting the EMS fee on hold.

Council Member Tolbert indicated she was concerned that the community has not been told exactly where the City is fiscally. Council Member Tolbert stated the City made cuts first and now has to figure out how to generate revenue to meet the deficit. Council Member Tolbert added it was irresponsible for a city to run with a fiscal deficit.

Mayor Ives indicated that since the City is spending \$5 million more than it is taking in the options are clear: 1) make the case we have cut everything possible; 2) raise revenue through some method or cut services. Mayor Ives stated if a tax is to be considered, it would be up to the residents.

Council received the report regarding the Landscape Maintenance District financing measure and related information.

Council received the status update regarding tax measure options.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to postpone implementation of the EMS fee until January 2011. Voice vote found Council Members Abercrombie, Maciel, Tolbert, and Mayor Pro Tem Tucker in favor; Mayor Ives opposed. Motion carried 4:1.

Mayor Ives asked for an analysis of what postponing the EMS fee would mean.

10. SECOND READING AND ADOPTION OF ORDINANCE 1147 AN ORDINANCE OF THE CITY OF TRACY AUTHORIZING AN AMENDMENT TO THE CONTRACT

BETWEEN THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM - The Clerk read the title of proposed Ordinance 1147.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Ordinance 1147. Roll call vote found all in favor; passed and so ordered.

11. SECOND READING AND ADOPTION OF ORDINANCE 1148 AN ORDINANCE OF THE CITY OF TRACY DISESTABLISHING A PARKING AND BUSINESS IMPROVEMENT AREA KNOWN AS THE DOWNTOWN TRACY BUSINESS IMPROVEMENT AREA AND REPEALING TRACY MUNICIPAL CODE CHAPTER 6.12 ESTABLISHING AND PERTAINING TO THE DOWNTOWN TRACY IMPROVEMENT AREA - The Clerk read the title of proposed Ordinance 1148.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to waive the reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Ordinance 1148. Roll call vote found all in favor; passed and so ordered.

12. ITEMS FROM THE AUDIENCE - Brian Van Lehn, 540 Winston Court, addressed Council regarding the affects of sleep deprivation. Mr. Van Lehn indicated he was disappointed with Council's recent decision regarding Leprino. Mr. Van Lehn asked Council to review a news release previously aired in May. Mr. Van Lehn suggested the previous readings taken by staff and the consultant were flawed.
13. COUNCIL ITEMS - Mayor Pro Tem Tucker stated the City and the D.T.B.I.A. did a good job on the wine stroll.
14. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time: 10:32 p.m.

The above agenda was posted at the Tracy City Hall on May 27, 2010. The above are summary minutes. A tape recording is available at the office of the City Clerk.

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Mayor

ATTEST:

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City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

July 20, 2010, 6:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives present; Council Member Abercrombie absent.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –
  - A. Personnel Matter (Government Code section 54957)
    - Public Employee Appointment, Employment, Evaluation of Performance, Discipline or Dismissal  
  
Position Title: City Manager
  - B. Labor Negotiations (Government Code section 54957.6)
    - Employee Organization:  
  
Tracy Firefighters' Association
    - City's designated representative: Maria Olvera, Director of Human Resources; Zane Johnston, Director of Finance and Administrative Service; and David Bramell, Division Chief
  - C. Pending Litigation (Government Code section 54956.9(a) and (b))
    - *George Hernandez v. City of Tracy*  
Workers' Compensation Case Nos.: (1) ADJ190759 (SFO); (2) ADJ2601932 (SFO); (3) ADJ3806398 (SFO); and (4) Unassigned, FR070494
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Maciel motioned to recess the meeting to closed session at 6:01 p.m. Council Member Tolbert seconded the motion. Voice vote found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:50 p.m.

7. REPORT OF FINAL ACTION – In the matter of George Hernandez v. City of Tracy Workers' Compensation Case Nos.: (1) ADJ190759 (SFO); (2) ADJ2601932 (SFO); (3) ADJ3806398 (SFO); and (4) Unassigned, FR070494, Mayor Pro Tem Tucker moved to authorize the City to make a settlement offer in an amount disclosed in closed session. Council Member Maciel seconded the motion. Voice vote found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.
8. ADJOURNMENT – It was moved by Council Member Maciel and seconded by Council Member Tolbert to adjourn. Voice vote found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1. Time: 6:51 p.m.

The agenda was posted at City Hall on July 15, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



AGENDA ITEM 1.B

REQUEST

**APPROVAL OF A UNION PACIFIC RAILROAD (UPRR) COMPANY SUPPLEMENTAL AGREEMENT TO RECONSTRUCT THE CORRAL HOLLOW ROAD AT GRADE RAILROAD CROSSING NEAR OLD SCHULTE ROAD AT MILE POST 69.20, ON THE OWENS ILLINOIS LEAD AND AUTHORIZATION FOR THE MAYOR TO SIGN THE AGREEMENT**

EXECUTIVE SUMMARY

The widening of Corral Hollow Road between Old Schulte Road and Eleventh Street is an approved Capital Improvement Project – CIP 73103. The existing Union Pacific Railroad (UPRR) spur track leading to the Owens Illinois glass plant, located just south of Old Schulte requires an upgrade to accommodate widening of Corral Hollow Road from four lanes to a six-lanes. The Corral Hollow Road Widening Project is under design and the UPRR crossing needs to be reconstructed. UPRR has agreed to reconstruct the railroad crossing using concrete panels which will provide a hard and durable crossing surface across six lanes of travel to withstand repeated high loading from heavy trucks and also maintain an even crossing surface for a smooth ride. The UPRR has requested that the City of Tracy execute a supplemental agreement and pay for the cost of upgrading this crossing.

DISCUSSION

On March 22, 1991, the Southern Pacific Transportation Company (currently Union Pacific Railroad Company) and the City of Tracy entered into an agreement granting the City the rights for the construction, use, maintenance, and repair of the Corral Hollow Road at-grade public road crossing. The Engineering Division is currently in the process of preparing plans and specifications for the widening of Corral Hollow Road between Old Schulte Road and Eleventh Street. The existing Union Pacific Railroad (UPRR) at-grade crossing on the Owens Illinois Lead located just south of Old Schulte Road requires modification and reconstruction to accommodate the widening of Corral Hollow Road from four lanes to six lanes, including bike lanes and a 16-foot median. The City is also installing a ten-foot sidewalk on both sides of the street within the UPRR right-of-way. The UPRR constructs all widening or improvement work at their railroad crossings and the cost is borne by the local agencies. At the City's request, UPRR has agreed to reconstruct the at-grade crossing and provided a proposal to perform all the necessary work within their right of way at the Corral Hollow Road crossing just south of Old Schulte Road for the estimated cost of \$554,186.

The UPRR scope of work includes re-laying 320 feet of track, installation of approximately 136 feet of concrete road crossing panels, 124 cross ties, 2 carloads of ballast and other track and surface materials, installation of automatic flashing light crossing signals with gates, cantilevers, and other signal materials, and engineering at the existing UPRR Owens Illinois Lead. This work will be performed in conjunction with the Corral Hollow Road Reconstruction between Old Schulte Road and Eleventh Street, CIP 73103.

Reconstruction of this crossing will provide a hard and durable surface to maintain an even crossing surface for smooth ride across all travel lanes.

UPRR's preliminary cost estimate to furnish all labor, materials, equipment and supervision for the railroad crossing reconstruction is \$554,186. The cost does not include flagging or other protective services provided by the Railroad. The final project cost will be billed to the City after the completion of the project.

To initiate design work by UPRR on their facilities, it is necessary to execute this supplemental agreement and pay UPRR an initial payment of \$79,891, which is due and payable upon execution of the Agreement.

#### FISCAL IMPACT

There will be no fiscal impact to the General Fund. Adequate funding is available from Corral Hollow Road Widening Project - CIP 73103, to pay for this work.

#### RECOMMENDATION

That City Council, by resolution, approve the Supplemental Agreement with Union Pacific Railroad Company for the reconstruction of the Corral Hollow Road Railroad crossing on the Owens Illinois Lead located just south of Old Schulte Road to be performed as part of the Corral Hollow Road Widening from Old Schulte Road to Eleventh Street - CIP 73103, authorize the payment of \$554,186 for the Agreement and authorize the Mayor to execute the Agreement.

Prepared by: Khoder Baydoun, Associate Engineer

Reviewed by: Kuldeep Sharma, City Engineer

Approved by: Andrew Malik, Development and Engineering Services Director  
Leon Churchill, Jr., City Manager



UPRR Folder No.: 2567-89

UPRR Audit No. \_\_\_\_\_

**SUPPLEMENTAL AGREEMENT**  
(EXISTING PUBLIC ROAD CROSSING IMPROVEMENT)

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**THIS SUPPLEMENTAL AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, or its predecessor in interest, ("Railroad") and the **CITY OF TRACY**, a California municipal corporation ("City").

**RECITALS:**

By instrument dated March 2, 1991, the Southern Pacific Transportation Company and the City entered into an agreement (the "Original Agreement"), identified in the records of the Railroad as Folder No. 2567-89, Deed Audit No. 68132, covering the construction, maintenance and use of an at grade public road crossing over Coral Hollow Road, (DOT No. 753-062C), at Railroad's Mile Post 69.20 on it's Owens-Illinois Industrial Lead, in Tracy, San Joaquin County, California (hereinafter "Roadway").

The Railroad named herein is successor in interest to the Southern Pacific Transportation Company.

The City now desires to undertake as its project (the "Project") the reconstruction and widening of the Roadway to include a center median and sidewalks alongside the existing Roadway that was constructed under the Original Agreement. Where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way granted by Southern Pacific Transportation Company to the City under the terms of the Original Agreement is not sufficient to allow for the construction of the aforementioned sidewalks alongside the road crossing. Therefore, under this Agreement, the Railroad will be granting an additional right of way right to the City to facilitate the sidewalk construction. The portion of Railroad's property that the City needs a right to use in connection with the sidewalk construction (including the right of way area covered under the Original Agreement) is shown on the Railroad Location Print marked **Exhibit A**, specified on the Detailed Print marked **Exhibit A-1**, described on the Legal Descriptions collectively marked **Exhibit A-2**, and illustrated on the Illustrative Print of the Legal Descriptions marked **Exhibit A-3**, each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

**AGREEMENT:**

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

**SECTION 1.**

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Print
Exhibit A-2	Legal Descriptions
Exhibit A-3	Illustrative Print of the Legal Descriptions
Exhibit B	Railroad's Track & Surface Material Estimate
Exhibit B-1	Railroad's Signal Material Estimate
Exhibit C	Railroad Form of Contractor's Right of Entry Agreement

**SECTION 2.**

The Railroad, at City's expense, shall furnish all labor, material, equipment and supervision for the Roadway improvements:

- Re-lay 320-feet of rail; Install 136-feet of concrete crossing panels; Install 124 cross ties; Install 2 carloads of ballast; and other track & surface materials;
- Install automatic flashing light crossing signals with gates and cantilevers; and other signal materials;
- Engineering, and
- Flagging.

**SECTION 3.**

A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's following Material and Force Account Estimates:

- Railroad's Track & Surface Material Estimate dated February 18, 2010, in the amount of \$148,623.00, marked **Exhibit B**, and the
- Railroad's Signal Material Estimate dated February 11, 2010, in the amount of \$405,563.00, marked **Exhibit B-1**,

each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's combined estimated cost for the Railroad's work associated with the Project is (\$554,186.00).

- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The City agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials,



equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

#### SECTION 4.

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering–Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Roadway.

#### SECTION 5.

The Railroad, at the City's expense, shall maintain the crossing between the track tie ends. If, in the future, the City elects to have the surfacing material between the track tie ends replaced with paving or some surfacing material other than timber planking, the Railroad, at City's expense, shall install such replacement surfacing.

#### SECTION 6.

- A. The City, at its sole cost and expense, shall provide traffic control, barricades, and all detour signing for the crossing work, provide all labor, material and equipment to install concrete or asphalt street approaches, and if required, will install advanced warning signs, and pavement markings in compliance and conformance with the Manual on Uniform Traffic Control Devices.
- B. The City, at its expense, shall maintain and repair all portions of the Roadway approaches that are not within the track tie ends.

#### SECTION 7.

If City's contractor(s) is/are performing any work described in Section 4 above, then the City shall require its contractor(s) to execute the Railroad's standard and current form of Contractor's Right of Entry Agreement attached hereto as **Exhibit C**. City acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to execute the Agreement. Under no circumstances will the City's contractor(s) be allowed onto the Railroad's premises without first executing the Contractor's Right of Entry Agreement.



## SECTION 8.

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City or its contractor(s) shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City or its contractor(s). If it is, City or its contractor(s) will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

## SECTION 9.

The City, for itself and for its successors and assigns, hereby waives any right of assessment against the Railroad, as an adjacent property owner, for any and all improvements made under this agreement.

## SECTION 10.

Covenants herein shall inure to or bind each party's successors and assigns; provided, no right of the City shall be transferred or assigned, either voluntarily or involuntarily, except by express prior written consent of the Railroad.

## SECTION 11.

The City shall, when returning this agreement to the Railroad (signed), cause same to be accompanied by such Order, Resolution, or Ordinance of the governing body of the City, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this agreement on behalf of the City with the power so to do, and which also will certify that funds have been appropriated and are available for the payment of any sums herein agreed to be paid by City.

## SECTION 12.

The City and the Railroad agree to split equally the cost of maintenance of the automatic grade-crossing protection as provided for in California Public Utilities Code Section 1202.2 and as allocated by the Public Utilities Commission.

## SECTION 13.

For and in consideration **SEVENTY NINE THOUSAND EIGHT HUNDRED NINETY-ONE DOLLARS (\$79,891.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the City the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area.

**SECTION 14.**

This agreement is supplemental to the Original Agreement, as herein amended, and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

**IN WITNESS WHEREOF**, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
JAMES P. GADE  
Director Contracts

WITNESS:

**CITY OF TRACY**

\_\_\_\_\_

X \_\_\_\_\_

Title: \_\_\_\_\_

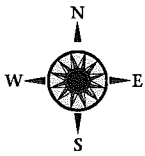


**EXHIBIT A**

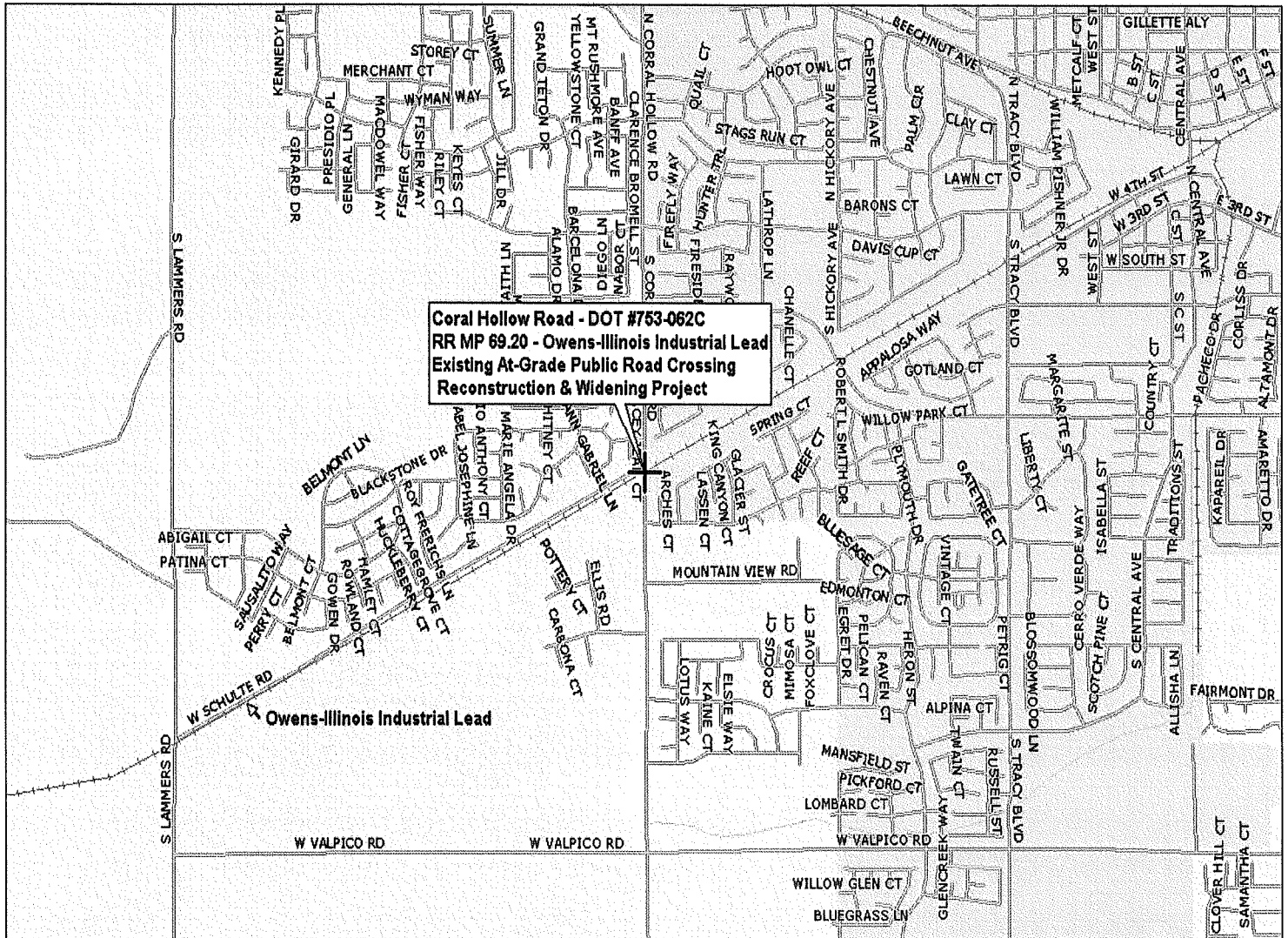
To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Railroad Location Print





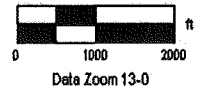
# RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING IMPROVEMENT PROJECT



**Coral Hollow Road - DOT #753-062C**  
**RR MP 69.20 - Owens-Illinois Industrial Lead**  
**Existing At-Grade Public Road Crossing**  
**Reconstruction & Widening Project**



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**RAILROAD WORK TO BE PERFORMED:**

1. Re-lay 320-feet of track; Install 136-feet of concrete crossing panels; Install 124 cross ties; Install 2 carloads of ballast and other track and surface materials.
2. Install automatic flashing light crossing signals with gates and cantilevers and other signal materials.
3. Engineering Design Review & Flagging.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

OWENS-ILLINOIS INDUSTRIAL LEAD  
MILE POST 69.20

GPS: N 37° 43.3997', W 121° 27.1825'  
TRACY, SAN JOAQUIN CO., CA.

Railroad Location Print of an existing at-grade public  
road crossing reconstruction and widening project with the  
**CITY OF TRACY.**

Folder No. 2567-89

Date: August 6, 2009

**WARNING**

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193



**EXHIBIT A-1**

**UNION**  
**PACIFIC**  
To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Detailed Print

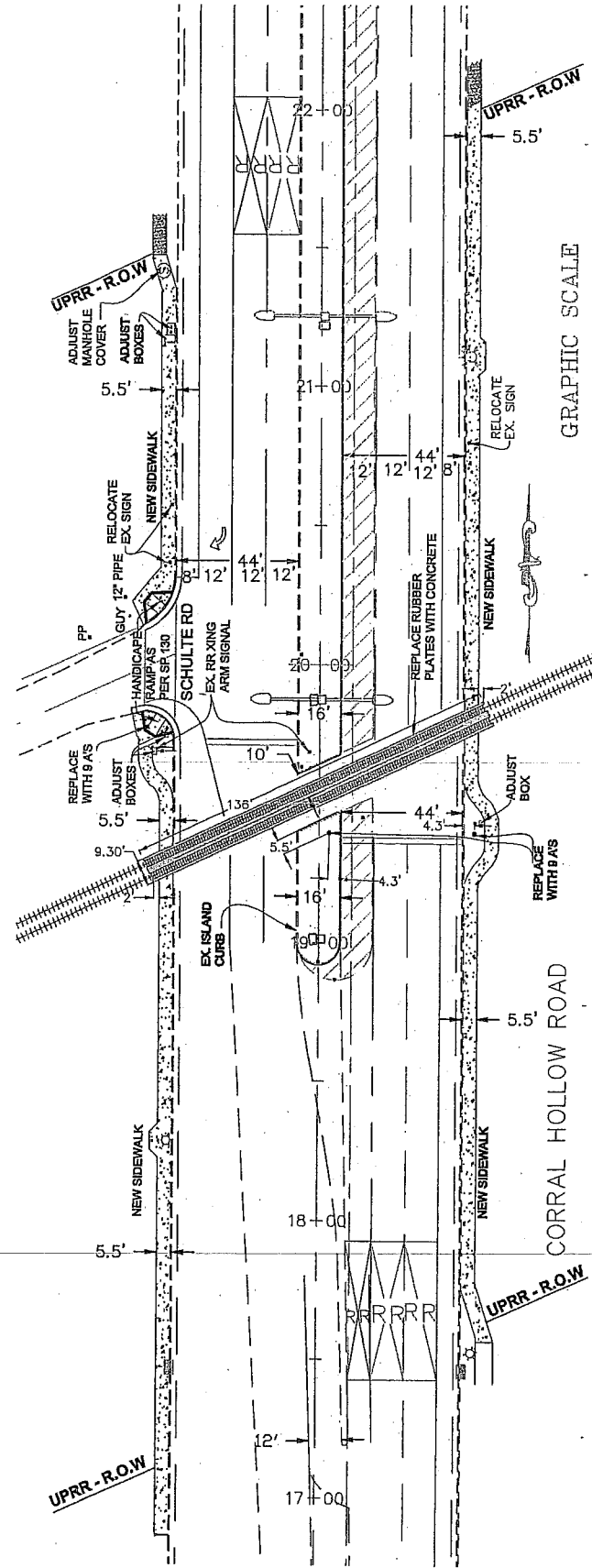
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UNION PACIFIC RAIL ROAD  
 CROSSING CORRAL HOLLOW ROAD  
 NEAR SCHULTE ROAD  
 DOT 753062C/Mile Post 69.20  
 OWENS ILLINOS LEAD

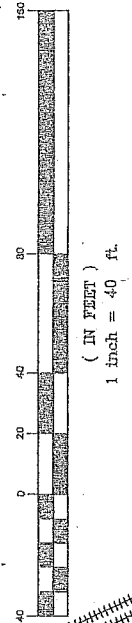
UPRR - SCOPE OF WORK

1. REPLACE EXISTING RUBBER CROSSING WITH 136' OF INSULATED CONCRETE CROSSING PANELS.
2. REPLACE EXISTING SIGNAL WITH 9 A'S IN BOTH DIRECTION OF TRAFFIC.
3. ADD SIDE LIGHTS FOR SCHULTE ROAD

- LEGEND**
- CENTERLINE
  - EX. CURB
  - NEW CURB
  - NEW ASPHALT CONCRETE
  - NEW SIDEWALK
  - EX. STREET LIGHT



GRAPHIC SCALE



CONSTRUCTION NOTE

1. CONTRACTOR MUST SUBMIT THE TRAFFIC CONTROL PLAN TO THE CITY TO BE REVIEWED AND APPROVED BY THE CITY ENGINEER PRIOR TO START CONSTRUCTION.

Sup. Mr. Fred 2/27/09



**EXHIBIT A-2**

**UNION  
PACIFIC**  
To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Legal Descriptions

RBF Consulting  
2101 Arena Boulevard, Suite 250  
Sacramento, California 95834-2303

December 23, 2009  
JN 60-100427

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1

A parcel of land situated in the northwest quarter of Section 32, Township 2 South, Range 5 East, Mount Diablo Base and Meridian, in the City of Tracy, County of San Joaquin, State of California, described as follows:

**Commencing** at the intersection of the northerly line of a parcel of land 400.00 feet wide, acquired by virtue of the Act of Congress dated July 1, 1862 from the United States Government to the Central Pacific Railroad Company (name changed to Southern Pacific Transportation Company and now under the jurisdiction of the Union Pacific Railroad Company), with the centerline of Corral Hollow Road, said centerline also being the Section line common to Sections 31 and 32, said intersection being located South  $00^{\circ}11'56''$  West, along said centerline of Corral Hollow Road 465.66 feet more or less from the corner common to Sections 29, 30, 31, and 32;

Thence North  $64^{\circ}46'30''$  East, along said northerly line, 55.36 feet to a line that is parallel with and distant 50.00 feet easterly measured at right angles to said centerline of Corral Hollow Road and the **True Point of Beginning**;

Thence continuing North  $64^{\circ}46'30''$  East, along said northerly line, 11.07 feet to a line that is parallel with and distant 60.00 feet easterly measured at right angles to said centerline of Corral Hollow Road;

Thence South  $00^{\circ}11'56''$  West, along said parallel line distant 60.00 feet easterly measured at right angles to said centerline of Corral Hollow Road, 442.89 feet to the southerly line of said parcel of land 400.00 feet wide;

Thence South  $64^{\circ}46'30''$  West, along said southerly line, 11.07 feet to a line that is parallel with and distant 50.00 feet easterly measured at right angles to said centerline of Corral Hollow Road;

Thence North  $00^{\circ}11'56''$  East, along said parallel line distant 50.00 feet easterly measured at right angles to said centerline of Corral Hollow Road, 442.89 feet to the northerly line of said parcel of land 400.00 feet wide and the **True Point of Beginning**.

**CONTAINING:** 4,429 Square feet, more or less.

Parcel 2

A parcel of land situated in the northeast quarter of Section 31, Township 2 South, Range 5 East, Mount Diablo Base and Meridian, in the City of Tracy, County of San Joaquin, State of California, described as follows:

**Commencing** at the intersection of the northerly line of a parcel of land 400.00 feet wide, acquired by virtue of the Act of Congress dated July 1, 1862 from the United States Government to the Central Pacific Railroad Company (name changed to Southern Pacific Transportation Company and now under the jurisdiction of the Union Pacific Railroad Company), with the centerline of Corral Hollow Road, said centerline also being the Section line common to Sections 31 and 32, said intersection being located South 00°11'56" West, along said centerline of Corral Hollow Road 465.66 feet more or less from the corner common to Sections 29, 30, 31, and 32:

Thence South 64°46'30" West, along said northerly line, 81.94 feet to a line that is parallel with and distant 74.00 feet westerly measured at right angles to said centerline of Corral Hollow Road and the **True Point of Beginning**;

Thence continuing South 64°46'30" West, along said northerly line, 11.07 feet to a line that is parallel with and distant 84.00 feet westerly measured at right angles to said centerline of Corral Hollow Road;

Thence South 00°11'56" West, along said parallel line distant 84.00 feet westerly measured at right angles to said centerline of Corral Hollow Road, 121.80 feet to a point on the northwesterly line of Schulte Road as described in the document recorded November 25, 1925 in Volume 117 of Official Records, Page 58, said northwesterly line is parallel with and distant 90.00 feet northwesterly of the centerline of the main line between Oakland and Tracy of the said Central Pacific Railroad Company (name changed to Southern Pacific Transportation Company and now under the jurisdiction of the Union Pacific Railroad Company);

Thence North 64°46'30" East, along said northwesterly line of Schulte Road, 11.07 feet to a line that is parallel with and distant 74.00 feet westerly measured at right angles to said centerline of Corral Hollow Road;

Thence North 00°11'56" East, along said parallel line distant 74.00 feet westerly measured at right angles to said centerline of Corral Hollow Road, 121.80 feet to the northerly line of said parcel of land 400.00 feet wide and the **True Point of Beginning**.

**CONTAINING:** 1,218 Square feet, more or less.

### Parcel 3

A parcel of land situated in the northeast quarter of Section 31, Township 2 South, Range 5 East, Mount Diablo Base and Meridian, in the City of Tracy, County of San Joaquin, State of California, described as follows:

**Commencing** at the intersection of the northerly line of a parcel of land 400.00 feet wide, acquired by virtue of the Act of Congress dated July 1, 1862 from the United States Government to the Central Pacific Railroad Company (name changed to Southern Pacific Transportation Company and now under the jurisdiction of the Union Pacific Railroad Company), with the centerline of Corral Hollow Road, said centerline also being the Section line common to Sections 31 and 32, said intersection being located South 00°11'56" West, along said centerline of Corral Hollow Road 465.66 feet more or less from the corner common to Sections 29, 30, 31, and 32:

Thence South 64°46'30" West, along said northerly line, 81.94 feet to a line that is parallel with and distant 74.00 feet westerly measured at right angles to said centerline;

Thence South 00°11'56" West, along said parallel line distant 74.00 feet westerly measured at right angles to said centerline of Corral Hollow Road, 166.08 feet to a point on the southeasterly line of Schulte Road as described in the document recorded November 25, 1925 in Volume 117 of Official Records, Page 58, said southeasterly line is parallel with and distant 50.00 feet northwesterly of the centerline of the main line between Oakland and Tracy of the said Central Pacific Railroad Company (name changed to Southern Pacific Transportation Company and now under the jurisdiction of the Union Pacific Railroad Company) and herein said point being the **True Point of Beginning**;

Thence continuing South 00°11'56" West, along said parallel line distant 74.00 feet westerly measured at right angles to said centerline of Corral Hollow Road, 276.81 feet to the southerly line of said parcel of land 400.00 feet wide;

Thence South 64°46'30" West, along said southerly line, 11.07 feet to a line that is parallel with and distant 84.00 feet westerly measured at right angles to said centerline of Corral Hollow Road;

Thence North 00°11'56" East, along said parallel line distant 84.00 feet westerly measured at right angles to said centerline of Corral Hollow Road, 276.81 feet to the said southeasterly line of Schulte Road;

Thence North 64°46'30" East, along said southeasterly line of Schulte Road, 11.07 feet to a line that is parallel with and distant 74.00 feet westerly measured at right angles to said centerline of Corral Hollow Road and the **True Point of Beginning**;

**CONTAINING:** 2768 Square feet, more or less.

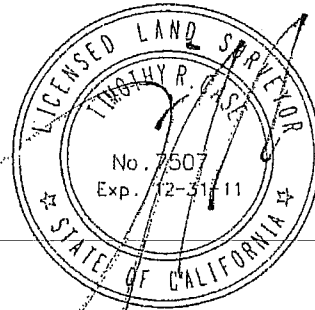
**SUBJECT TO:** All covenants, Rights, Rights-of-Way and Easements of record.

**EXHIBIT "B":** Attached and by this reference made a part hereof.

Date: 12/23/2009

Prepared By: \_\_\_\_\_

Timothy R. Case  
LS 7507  
License Exp. 12/31/2011



The background of the page is a large, semi-transparent shield logo for Union Pacific. The shield has a curved top and a pointed bottom. It features the words "UNION" and "PACIFIC" in a large, bold, serif font, with "UNION" above "PACIFIC". The shield is filled with a pattern of vertical stripes, alternating between a dark grey and a lighter grey. The text "EXHIBIT A-3" is centered over the top portion of the shield.

EXHIBIT A-3

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Illustrative Print of the Legal Descriptions



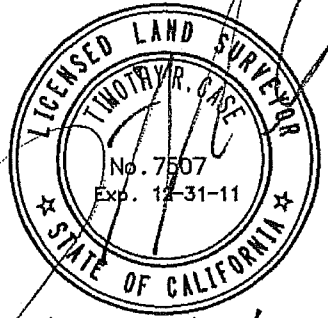
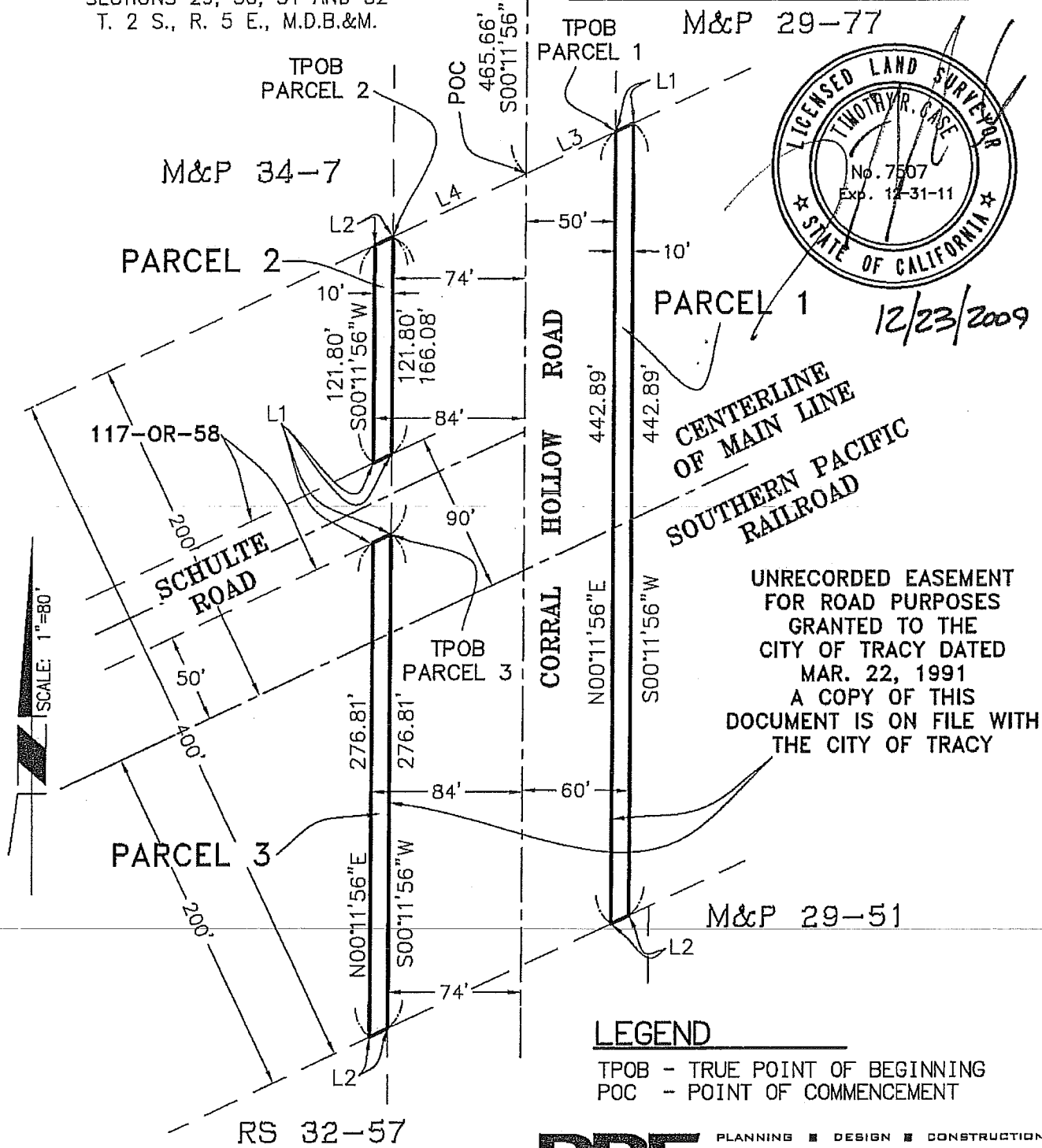
# EXHIBIT "B"

## SKETCH TO ACCOMPANY LEGAL DESCRIPTION

CORNER COMMON TO SECTIONS 29, 30, 31 AND 32  
T. 2 S., R. 5 E., M.D.B.&M.

LINE TABLE

LINE	BEARING	DISTANCE
L1	N64°46'30"E	11.07'
L2	S64°46'30"W	11.07'
L3	N64°46'30"E	55.36'
L4	S64°46'30"W	81.94'



CENTERLINE OF MAIN LINE SOUTHERN PACIFIC RAILROAD

UNRECORDED EASEMENT FOR ROAD PURPOSES GRANTED TO THE CITY OF TRACY DATED MAR. 22, 1991  
A COPY OF THIS DOCUMENT IS ON FILE WITH THE CITY OF TRACY

### LEGEND

TPOB - TRUE POINT OF BEGINNING  
POC - POINT OF COMMENCEMENT

**RBF** PLANNING ■ DESIGN ■ CONSTRUCTION  
2101 ARENA BOULEVARD, SUITE 250  
SACRAMENTO, CALIFORNIA 95834-2303  
916.928.1113 • FAX 916.928.1117 • www.RBF.com  
DECEMBER 23, 2009 JN: 60-100427.002

CITY OF TRACY  
COUNTY OF SAN JOAQUIN

The background of the page is a large, semi-transparent shield logo for Union Pacific. The shield is filled with a grey stippled pattern and features the words "UNION PACIFIC" in large, white, bold, sans-serif capital letters. The shield has a pointed top and a pointed bottom.

EXHIBIT B

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Railroad's Track & Surface Material Estimate

---

DATE: 2010-02-18

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2010-08-19

DESCRIPTION OF WORK:  
2009 RECOLLECTIBLE PROJECT  
M.P. 69.20 OWENS-ILLINOIS LEAD  
CORRALL HOLLOW ROAD, TRACY, CA. DOT #753062C  
INSTALL 136 T.F. OF CONCRETE CROSSING SURFACE  
COST: 100% CITY OF TRACY - PROJECT ESTIMATED USING  
FEDERAL ADDITIVES WITH INDIRECT AND OVERHEAD - 205%

FID: 64748 AWO: 00812 MP,SUBDIV: 69.20, TRACYSPUR  
SERVICE UNIT: 19 CITY: TRACY STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			1000		1000		1000
LABOR ADDITIVE 205%			2050		2050		2050
TOTAL ENGINEERING			3050		3050		3050
SIGNAL WORK							
LABOR ADDITIVE 205%			2777		2777		2777
SALES TAX				7	7		7
SIGNAL			1368	175	1543		1543
TOTAL SIGNAL			4145	182	4327		4327
TRACK & SURFACE WORK							
TIES-RENEW/			10489		10489		10489
BALAST	2.00	CL	990	1533	2523		2523
BILL PREP				900	900		900
CONTRACT - SAW CUT				6000	6000		6000
ENVIRONMENTAL - PERMITS				1	1		1
FIELD WELD			291		291		291
FOREIGN LINE FREIGHT				1068	1068		1068
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE 205%			44019		44019		44019
MATL STORE EXPENSE				616	616		616
OTM			2289	5138	7427		7427
RAIL	320.00	LF	1759	6268	8027		8027
RDXING	136.00	TF	7673	27952	35625		35625
SALES TAX				2126	2126		2126
TRK-SURF,LIN			4371		4371		4371
WELD			3874	891	4765		4765
XTIE	124.00	EA	545	11553	12098		12098
TOTAL TRACK & SURFACE			76300	64946	141246		141246

LABOR/MATERIAL EXPENSE	83495	65128		
RECOLLECTIBLE/UPRR EXPENSE			148623	0
ESTIMATED PROJECT COST				148623
EXISTING REUSEABLE MATERIAL CREDIT			0	
SALVAGE NONUSEABLE MATERIAL CREDIT			0	

RECOLLECTIBLE LESS CREDITS

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

□

The background of the page is a large, semi-transparent shield logo for Union Pacific. The shield has a dark, textured background with the words "UNION PACIFIC" in large, white, bold, sans-serif capital letters. The shield is divided into vertical stripes by thin white lines. The top of the shield is pointed, and the bottom is also pointed.

**EXHIBIT B-1**

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Railroad's Signal Material Estimate

DATE: 2010-02-11

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
 BY THE  
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2010-08-12

DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
 WITH GATES AND CANTILEVERS AT TRACY, CA DOT 753062C  
 CORRAL HOLLOW RD. MP. 69.20 ON OWENS-ILLINOIS LD.  
 WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:  
 SIGNAL - CITY OF TRACY - 100%  
 ESTIMATED USING FEDERAL ADDITIVES WITH OVERHEAD  
 AND INDIRECT CONSTRUCTION COST'S - 167.76%

PID: 64557 AWO: 00543 MP, SUBDIV: 69.20, TRACYSPUR  
 SERVICE UNIT: 19 CITY: TRACY STATE: CA

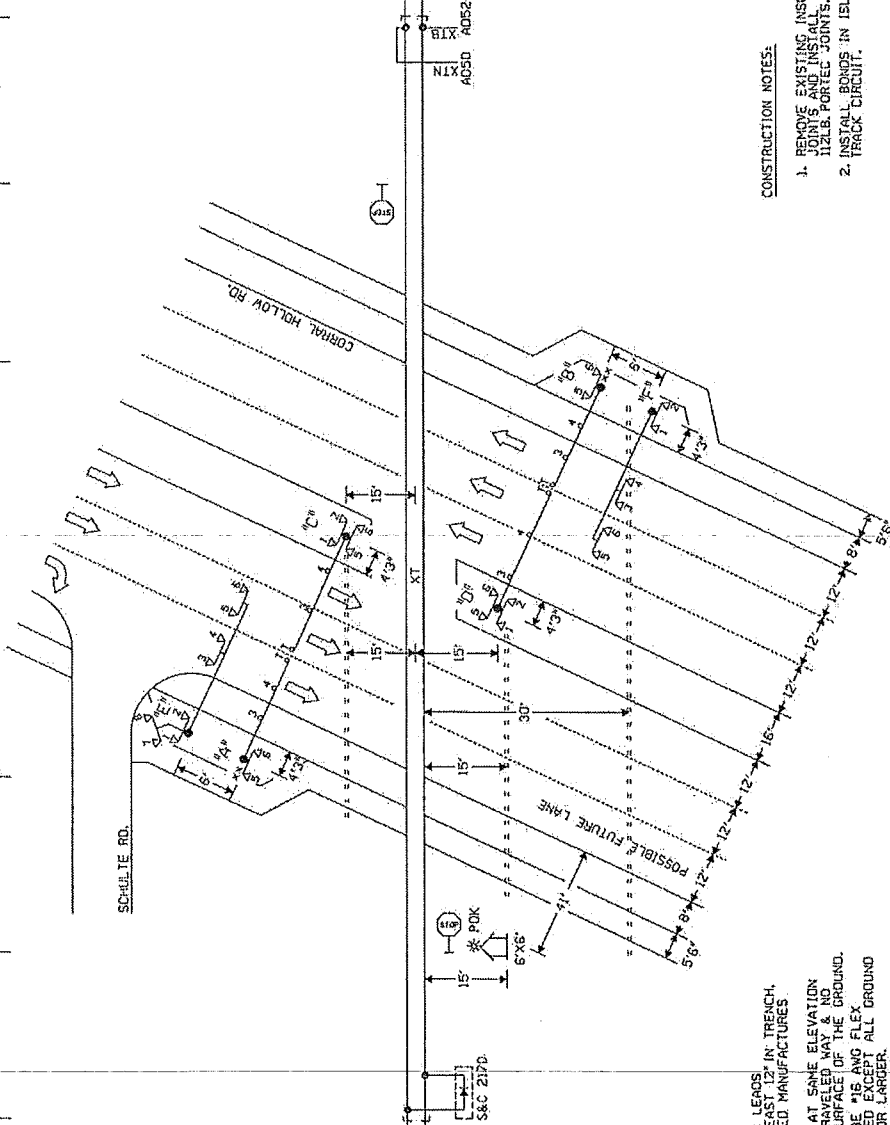
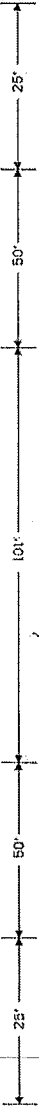
DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			5846		5846		5846
LABOR ADDITIVE 167.76%			17894		17894		17894
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>28561</b>		<b>28561</b>		<b>28561</b>
<b>SIGNAL WORK</b>							
BILL PREP			900		900		900
CANTILEVERS				30780	30780		30780
CONTRACT				6449	6449		6449
LABOR ADDITIVE 167.76%			122157		122157		122157
MATL STORE EXPENSE				12	12		12
METER LOOP				12000	12000		12000
PERSONAL EXPENSES				40920	40920		40920
ROCK/GRAVEL/FILL				7000	7000		7000
SALES TAX				2583	2583		2583
SIGNAL			71916	64588	136504		136504
TRANSP/IB/OB/RCLW CONTR				11501	11501		11501
<b>TOTAL SIGNAL</b>			<b>194973</b>	<b>175833</b>	<b>370806</b>		<b>370806</b>
<b>TRACK &amp; SURFACE WORK</b>							
ENVIRONMENTAL PERMITTING				1	1		1
LABOR ADDITIVE 204.59%			2878		2878		2878
MATL STORE EXPENSE				45	45		45
OTM			2334	902	3236		3236
SALES TAX				36	36		36
<b>TOTAL TRACK &amp; SURFACE</b>			<b>5212</b>	<b>984</b>	<b>6196</b>		<b>6196</b>

LABOR/MATERIAL EXPENSE 228746 176817  
 RECOLLECTIBLE/UPRR EXPENSE 405563 0  
 ESTIMATED PROJECT COST 405563

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO PLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

TO DWENS-ILLINOIS PLANT

TO TRACY



CONSTRUCTION NOTES:  
1. REMOVE EXISTING INSULATED JOINTS AND INSTALL 4 EACH 1/2LB PORTED JOINTS.  
2. INSTALL BONDS IN ISLAND TRACK CIRCUIT.

NOTES:

- ⊗ = TWISTED WIRES INSULATED 1" MIN PER FT. ALL TRACK WIRES 2C \* 6
- TRANSMITTER AND RECEIVER LEADS TO BE SEPARATED BY AT LEAST 12" IN TRENCH LENGTHS SHOULD NOT EXCEED MANUFACTURER'S RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION AS THE SURFACE OF THE TRAVELED WAY & NO MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE #16 AWG FLEX WIRES OPERATED AT 250V AND ALL GROUND WIRE TO BE #6 AWG FLEX OR LARGER.
- ALL WIRING IN DATE MECHANISM TO BE #10 "AWG FLEX". REFER TO UP STANDARD DWG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORDS TO BE #12 AWG FLEX WIRE PROVIDED AS WELL AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUNDELS.
- ===== 4" X 250' CONDUIT

LIGHTS: LED LIGHTS

- GATE A: 24'
- GATE B: 24'
- GATE C: 28'
- GATE D: 30'
- GATE E: 30'
- CANT F: 30'
- \*\* = BELL



CONNECTS TO DD67901X

CONNECTS TO DD69761X

NEW SHEET

UNION PACIFIC RAILROAD		Sheet 1	
TRACY, CALIFORNIA		DOT 750062C	
CORRAL HOLLOW ROAD		DPI 6920	
OWENS-ILLINOIS ID OFF TRACY SUB		ID: DD69201X	
OFFICE OF S. SW. Engineering - Signal Dept		UNION PACIFIC	
Date: 04/20/09	Drawn: ISIS	MODIFICATION LEVEL	
City:	City:	0. A. LAST LEVEL CHECKED	
Appr: 00543	Appr: 00543	LAST LEVEL MODIFIED TYPICAL	
SIGNAL DESIGN		LAST LEVEL BY DESIGNER	
Y		CHANGED FROM TYPICAL Y	
INSTALL DATES AND REVISIONS		REVISIONS	
DATE: 04/20/09		BY: ISIS	
DRAWN: ISIS		CHECKED: ISIS	
APP'D: 00543		DESIGNED: ISIS	





August 6, 2009

UPRR Folder No.: 2567-89

**To the Contractor:**

Before Union Pacific Railroad Company can permit you to perform work on its property for the construction of sidewalks alongside the existing Corral Hollow Road at-grade public road crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Execute and return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B, in the attached, self-addressed envelope.
5. Include a check made payable to the Union Pacific Railroad Company in the amount of **\$500.00**. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

Under Exhibit B of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. If you decide that acquiring this coverage from the Railroad is of benefit to you, please contact Mr. Mike McGrade of Marsh USA @ 800-729-7001, e-mail: [william.j.smith@marsh.com](mailto:william.j.smith@marsh.com).

This agreement will not be accepted by the Railroad Company until you have returned all of the following to the undersigned at Union Pacific Railroad Company:

1. Executed, unaltered duplicate original counterparts of the Contractor's Right of Entry Agreement;
2. Your check in the amount of \$500.00 to pay the required balance due of the required Contractor's Right of Entry fee. (The Folder Number and the name "Paul G. Farrell" should be written on the check to insure proper credit). If you require formal billing, you may consider this letter as a formal bill;
3. Copies of all of your up-to-date General Liability, Auto Liability & Workman's Compensation Insurance Certificates (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured;

Real Estate Department  
UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
fax: 402.501.0340





4. Copy of your **up-to-date** Railroad Protective Liability Insurance Certificate (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured.

**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.  
DO NOT MAIL ANY ITEM SEPARATELY.**

If you have any questions concerning this agreement, please contact me as noted below. Have a safe day!

*Paul G. Farrell*

Senior Manager Contracts

Phone: (402) 544-8620

e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)

UPRR Folder No.: 2567-89

UPRR Audit No.: \_\_\_\_\_

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
(NAME OF CONTRACTOR)  
a \_\_\_\_\_ corporation ("Contractor").  
(State of Corporation)

### RECITALS:

Contractor has been hired by the *City of Tracy* ("City") to perform work relating to the construction of sidewalks alongside the existing Corral Hollow Road at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 69.20 on the Railroad's Owens-Illinois Industrial Lead in Tracy, San Joaquin County, California, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Print marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and the City.  
(Date of Contract)

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### AGREEMENT:

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

#### ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

#### ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing

the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.**

The General Terms and Conditions contained in **Exhibit B**, the Contractor's Insurance Requirements in **Exhibit C** and the Minimum Safety Requirements in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

*Dennis Magures  
Manager Track Maintenance  
Union Pacific Railroad Company  
833 East 8<sup>th</sup> Street  
Stockton, CA 95206  
Phone: 209-546-7333  
Fax: 209-942-5276  
Cell: 916-508-1034*

*Eric Roe  
Manager Signal Maintenance  
Union Pacific Railroad Company  
9451 Atkinson Street, Suite 200  
Roseville, CA 95747  
Phone: 916-789-5315  
Fax: 916-789-5316*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and

continue until \_\_\_\_\_, unless sooner terminated as herein provided, or  
(Expiration Date)

at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.



**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2567-89*

**ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 8 - ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 9 - CROSSINGS.**

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

**ARTICLE 10 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

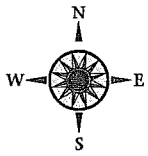
**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager Contracts

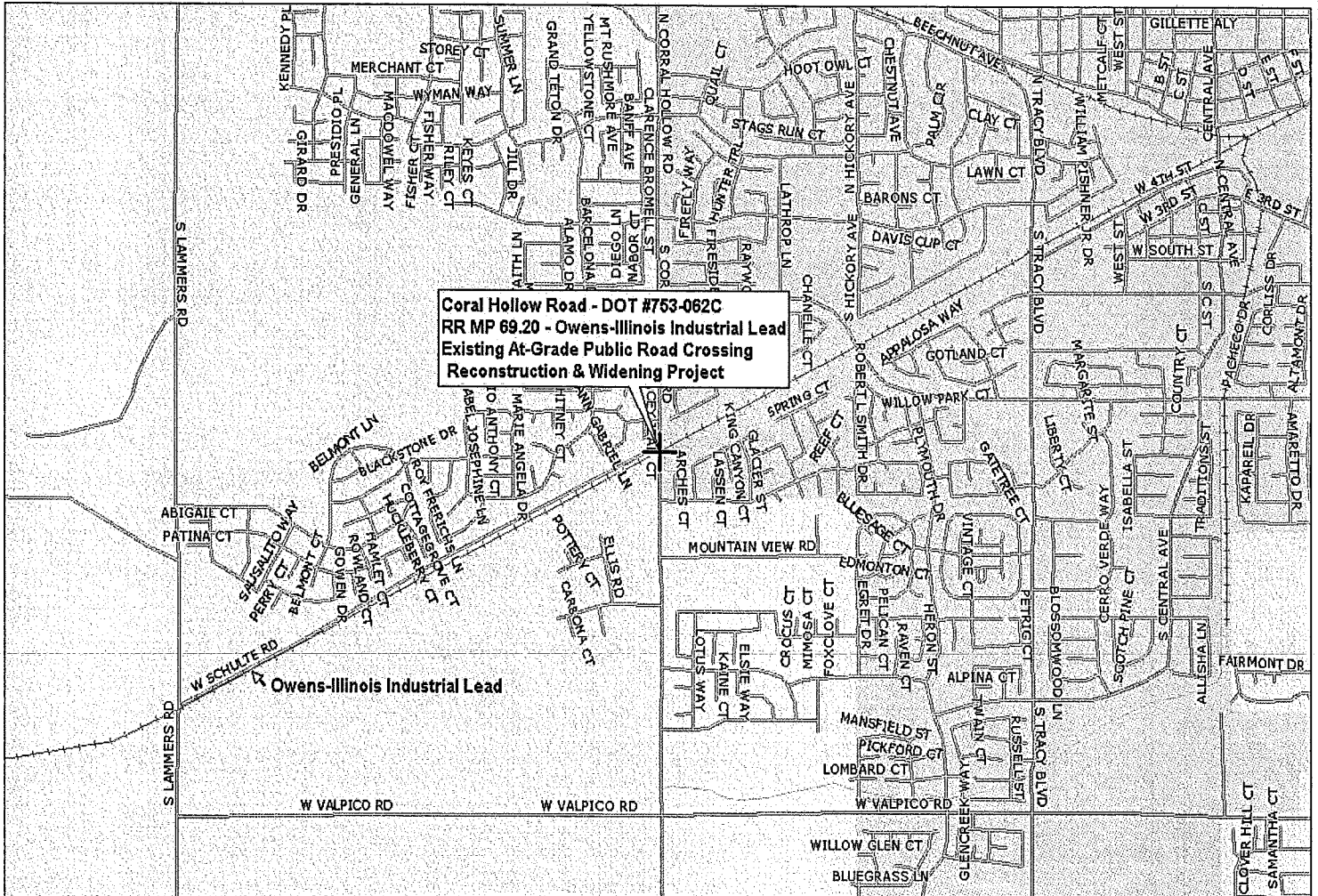
\_\_\_\_\_  
*(Name of Contractor)*

By \_\_\_\_\_

Title: \_\_\_\_\_



# RAILROAD LOCATION PRINT ACCOMPANYING A CONTRACTOR'S RIGHT OF ENTRY AGREEMENT



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www.delorme.com



Data Zoom 13-0

### RAILROAD WORK TO BE PERFORMED:

1. Re-lay 320-feet of track; Install 136-feet of concrete crossing panels; Install 124 cross ties; Install 2 carloads of ballast and other track and surface materials.
2. Install automatic flashing light crossing signals with gates and cantilevers and other signal materials.
3. Engineering Design Review & Flagging.

### EXHIBIT "A"

#### UNION PACIFIC RAILROAD COMPANY

OWENS-ILLINOIS INDUSTRIAL LEAD

MILE POST 69.20

GPS: N 37° 43.3997', W 121° 27.1825'  
TRACY, SAN JOAQUIN CO., CA.

To accompany Contractor's Right of Entry Agreement with

(Name of Contractor)

for existing at-grade public  
road crossing reconstruction and widening project.

Folder No. 2567-89

Date: August 6, 2009

#### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

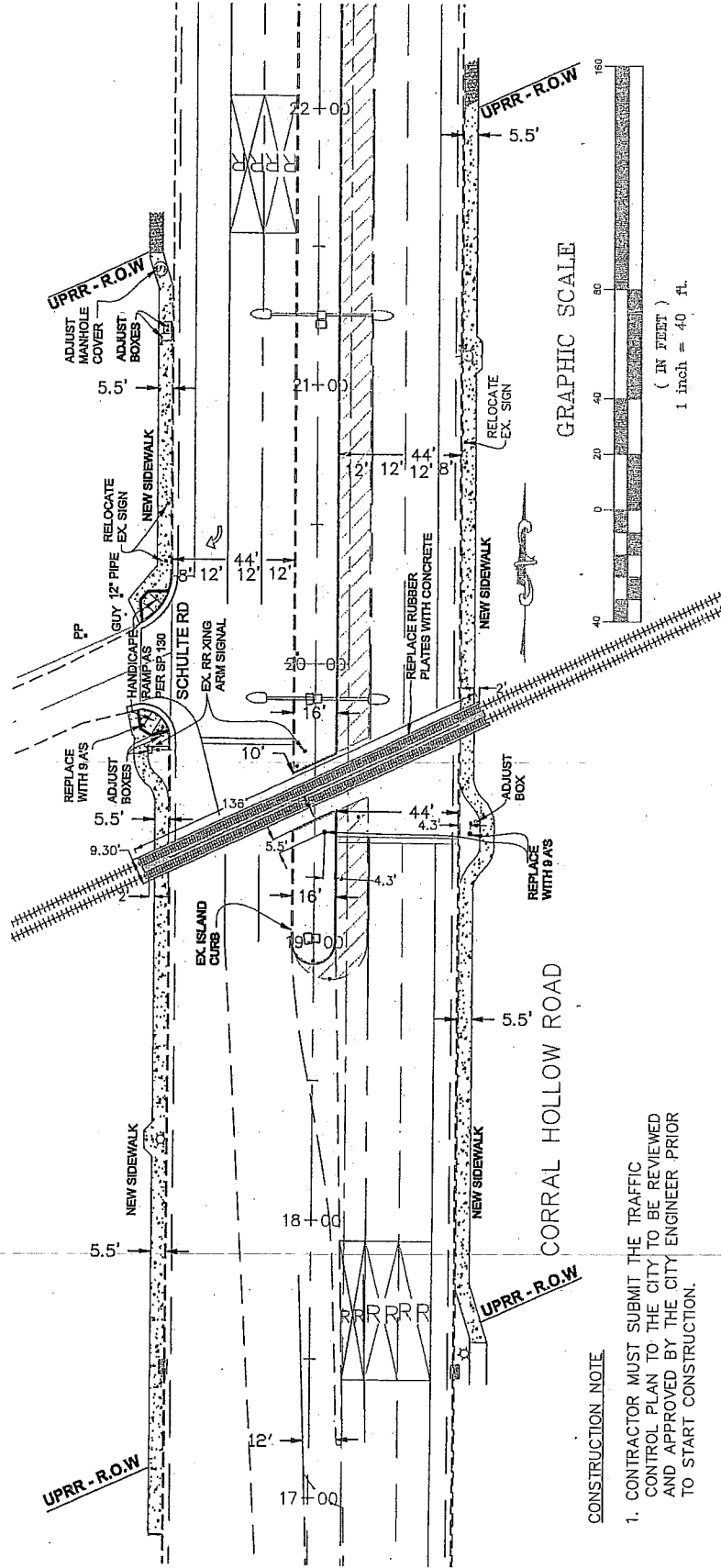
UNION PACIFIC RAIL ROAD  
 CROSSING CORRAL HOLLOW ROAD  
 NEAR SCHULTE ROAD  
 DOT 753062C/Mile Post 69.20  
 OWENS ILLINOS LEAD

UPRR SCOPE OF WORK

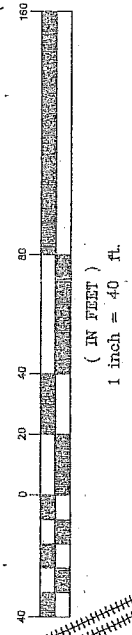
1. REPLACE EXISTING RUBBER CROSSING WITH 136' OF INSULATED CONCRETE CROSSING PANELS.
2. REPLACE EXISTING SIGNAL WITH 9 A'S IN BOTH DIRECTION OF TRAFFIC.
3. ADD SIDE LIGHTS FOR SCHULTE ROAD

**LEGEND**

	CENTERLINE
	EX. CURB
	NEW CURB
	NEW ASPHALT CONCRETE
	NEW SIDEWALK
	EX. SIDEWALK
	EX. STREET LIGHT



GRAPHIC SCALE



CONSTRUCTION NOTE

1. CONTRACTOR MUST SUBMIT THE TRAFFIC CONTROL PLAN TO THE CITY TO BE REVIEWED AND APPROVED BY THE CITY ENGINEER PRIOR TO START CONSTRUCTION.

*Stg m. Head 2/27/09*

## EXHIBIT B

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### GENERAL TERMS AND CONDITIONS

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

##### **Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery



and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

#### **Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

#### **Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

#### **Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

#### **Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "loss") incurred by any person (including, without limitation, any indemnified party, contractor, or any employee of contractor or of any indemnified party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the loss, and shall apply regardless of any negligence or strict liability of any indemnified party, except where the loss is caused by the sole active negligence of an indemnified party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any indemnified party shall not bar the recovery of any other indemnified party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the federal employers' liability act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any indemnified party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less than \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability Insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. Umbrella or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. Pollution Liability Insurance.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### **I. Clothing**

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### **II. Personal Protective Equipment**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### **III. On Track Safety**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. Equipment**

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's

property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
    - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

RESOLUTION \_\_\_\_\_

APPROVING A UNION PACIFIC RAILROAD (UPRR) COMPANY SUPPLEMENTAL AGREEMENT TO RECONSTRUCT THE CORRAL HOLLOW ROAD AT GRADE RAILROAD CROSSING NEAR OLD SCHULTE ROAD AT MILE POST 69.20, ON THE OWENS ILLINOIS LEAD AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT

WHEREAS, On March 22, 1991, the Southern Pacific Transportation Company (currently Union Pacific Railroad Company) and the City of Tracy entered into an agreement granting the City the rights for the construction, use, maintenance, and repair of the Corral Hollow Road at-grade public road crossing, and

WHEREAS, The Engineering Division is currently in the process of preparing plans and specifications for the widening of Corral Hollow Road between Old Schulte Road and Eleventh Street, and

WHEREAS, The existing Union Pacific Railroad (UPRR) at-grade crossing on the Owens Illinois Lead located just south of Old Schulte Road requires modification and reconstruction to accommodate the widening of Corral Hollow Road, and

WHEREAS, The UPRR constructs all widening or improvement work at their railroad crossings and the cost is borne by the local agencies, and

WHEREAS, UPRR has agreed to reconstruct the at-grade crossing and provided a proposal to perform all the necessary work within their right of way at the Corral Hollow Road crossing just south of Old Schulte Road for the estimated cost of \$554,186, and

WHEREAS, To initiate design work by UPRR on their facilities, it is necessary to execute this supplemental agreement and pay UPRR an initial payment of \$79,891, which is due and payable upon execution of the Agreement, and

WHEREAS, There will be no fiscal impact to the General Fund. Adequate funding is available from Corral Hollow Road Widening Project - CIP 73103, to pay for this work;

NOW, THEREFORE BE IT RESOLVED, That City Council approves the Supplemental Agreement with Union Pacific Railroad Company for the reconstruction of the Corral Hollow Road Railroad crossing on the Owens Illinois Lead located just south of Old Schulte Road to be performed as part of the Corral Hollow Road Widening from Old Schulte Road to Eleventh Street - CIP 73103, authorize the payment of \$554,186 for the Agreement and authorize the Mayor to execute the Agreement.

\* \* \* \* \*

Resolution \_\_\_\_\_

Page 2

The foregoing Resolution \_\_\_\_\_ was adopted by the City Council on the 3<sup>rd</sup> day of August 2010, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



AGENDA ITEM 1.C

REQUEST

**AUTHORIZE AMENDMENT OF THE CITY'S CLASSIFICATION AND COMPENSATION PLAN AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF A NEW CLASS SPECIFICATION AND SALARY RANGE FOR CRIME PREVENTION SPECIALIST, REALLOCATION OF TWO COMMUNITY SERVICE OFFICER POSITIONS TO CRIME PREVENTION SPECIALIST, AND RECLASSIFICATION OF ONE EMPLOYEE TO CRIME PREVENTION SPECIALIST**

EXECUTIVE SUMMARY

This report recommends establishment of a new classification of Crime Prevention Specialist in the Police Department, as part of achieving Public Safety goals and objectives in the City; reallocation of two Community Service Officer positions to Crime Prevention Specialist, and reclassification of one Community Service Officer incumbent to Crime Prevention Specialist.

DISCUSSION

Periodically, the Human Resources Department receives requests for classification studies and conducts classification reviews as necessary, to allow for changes that have occurred in areas such as job responsibilities, organizational structure, and/or service needs.

The Human Resources Department recommends approval of a new classification of Crime Prevention Specialist, based on the results of a classification study initiated at the request of the Police Department.

The non-sworn Crime Prevention Specialist classification will be an integral part of the Police Department's plan to achieve crime prevention goals and objectives linked to the City's Public Safety Strategic Priority. The new classification allows the department to further increase its focus on crime prevention strategies such as use of Police service volunteers, development of crime prevention programs and materials to educate and empower residents and businesses; and the provision of specialized crime prevention services such as security inspections for homes and businesses; and building and landscape blueprint design review to identify and correct potential security problems prior to construction.

The new Crime Prevention Specialist classification represents another facet of the Police Department's reorganization efforts to focus more fully on public safety and crime prevention priorities. Recently the Police Department added a Crime Analyst to support crime prevention activities by mapping crime trends and patterns. The Crime Prevention Specialist will use this type of information, for example, in developing specific and targeted programs and presentations for residents and businesses.

Two of seven Community Service Officer positions are recommended for reallocation to the new classification, with reclassification of one of the incumbents to the new class.

### *Classification Study Findings*

#### *Review of Classifications*

The existing Community Service Officer classification was established eleven years ago for the purpose of performing a variety of non-sworn field and office law enforcement work, including traffic control, parking enforcement, cold report taking, crime scene assistance as well as crime prevention education. The Community Service Officer classification does not provide training or direction to volunteers.

In the last few years, due to the City's focus on public safety, the crime prevention duty area of the Community Service Officer classification increased significantly over time to include such duties as training and directing a large (25+) volunteer program; developing and presenting multiple specialized programs and materials; and tracking and managing a variety of crime prevention programs, activities and assignments simultaneously. These increased duties and specialized focus on crime prevention are currently performed by one Community Service Officer incumbent.

At the request of the Police Department, a classification review was conducted that included job questionnaires, interviews, and a review of other related documents. Based on review and analysis of duties for both the Community Service Officer classification and the specialized crime prevention function; the Community Service Officer classification was determined to still be appropriate and useful for many areas in the Police Department such as traffic control, parking enforcement, taking cold reports, providing assistance to Crime Scene Technicians, as well as assisting in some crime prevention activities if needed.

The Community Service Officer classification is not appropriate or adequate, however, for the different and higher level of knowledge, skill and ability necessary to perform the types of duties required of the specialized crime prevention function, such as training, scheduling and monitoring the work of a large group of volunteers on an on-going basis, and developing multiple programs, materials and presentations for different audiences; tracking and managing a variety of concurrent assignments.

A new classification of Crime Prevention Specialist will best provide the necessary level of knowledge, skills and abilities required for performing the types of crime prevention duties that have evolved in the Police Department. Additionally, the department plans to further increase the crime prevention focus in the City with the addition of duties not currently performed, and plans to do so with the reallocation of two Community Service Officer positions to Crime Prevention Specialist, instead of just one.

#### *Reclassification of One Incumbent*

The study also found that for several years one of the incumbents in the Community Service Officer class has increasingly performed more extensive and responsible crime prevention duties over time as the needs of the department required. This employee meets all qualifications for the Crime Prevention Specialist class, and meets the requirements for reclassification to the new Crime Prevention Specialist class in

accordance with the City of Tracy Personnel Rules Sections 3.4 (Classification Review) and 8.10 (Reclassification of an Employee's Position). Therefore, it is appropriate for this incumbent to be reclassified. The second Crime Prevention Specialist position will be filled through examination.

### *Classification Study Recommendations*

Based on the results of the classification study, the Human Resources Department recommends that the City's Classification and Compensation Plan and the Position Control Roster be amended to incorporate the following adjustments:

Establish Class Specification and Salary Range: Crime Prevention Specialist; Reallocate two Community Service Officer positions to Crime Prevention Specialist and reclassify one incumbent to Crime Prevention Specialist-Police Department

Staff recommends that the monthly salary range for Crime Prevention Specialist be \$4,055 - \$4,928.88 per month. This range is 10% above the salary range for Community Service Officer. This recommendation is based primarily on internal pay structures in the City related to advanced journey level classes in relation to journey level classes in the same series. Although the Community Service Officer and Crime Prevention Specialist classes are not designed to be a "series" in the sense of a "Senior/Lead-worker" classification, they are similar in that the Crime Prevention Specialist provides lead direction more than 50% of the time to a large volunteer force, and the duties of the Crime Prevention Specialist represent a higher level (advanced journey) of one of the duty areas the Community Service Officer performs at a lower level.

There were few comparable classes among Tracy's "survey cities". The City of Stockton's classification supervises Community Service Officers, so is not comparable. The City of Livermore has a comparable class and the salary differential is 7.5% above the Community Service Officer.

### STRATEGIC PLAN

This agenda item supports both the Public Safety Strategic Plan and Organizational Effectiveness Strategic Plan and specifically implements the following goals and objectives:

#### Public Safety Strategic Plan

- Goal 1:** Strengthen and Unify Neighborhood enforcement efforts
- Goal 2:** Educate residents on City services, programs and codes.
- Goal 3:** Empower residents with the tools needed to maintain a safe quality of life.

#### Organizational Effectiveness Plan

- Goal 3:** Ensure systems are in place to meet the City's service delivery strategies

**Objective 3c:** Evaluate organization structure and operational efficiencies

FISCAL IMPACT

Funding for the two Crime Prevention Specialist positions is primarily covered in the FY 2010-11 Budget by the reallocation of the two existing budgeted Community Service Officer positions. The additional funding required to accommodate these positions will be absorbed within the authorized FY 2010-11 Police Department budget through a combination of salary savings, Budget Adjustments and other normal and customary monetary management principals.

RECOMMENDATION

That the City Council, by resolution authorize the Human Resources Director to amend the City's Classification and Compensation Plan and the Budget Officer to amend the Position Control Roster by approving the establishment of a class specification and salary range for Crime Prevention Specialist; reallocation of two Community Service Officer positions to Crime Prevention Specialist, and reclassification of one incumbent to Crime Prevention Specialist.

Prepared by Frances Rae, Human Resources Consultant  
David Sant, Police Lieutenant

Approved by Maria Olvera, Human Resources Director  
Janet Thiessen, Chief of Police

Attachment: Crime Prevention Specialist job description

**City of Tracy**

**CRIME PREVENTION SPECIALIST**

Class Title: Crime Prevention Specialist  
Department: Police  
EEO Code: 78  
FLSA Status: Non-Exempt

Class Code: XXXXX  
Bargaining Unit: Teamsters  
Effective Date: 07/20/2010

**DESCRIPTION**

Under general supervision, the Crime Prevention Specialist performs a variety of non-sworn office and field duties to support the Police Department's Crime Prevention Programs and strategies; areas include the Volunteers in Police Service (VIPS) program; crime prevention programs; business and residential security inspections and building and landscape design review; performs other job related duties as assigned.

**DISTINGUISHING CHARACTERISTICS**

The Crime Prevention Specialist is a non-sworn classification in the Police Department with a focus on proactive crime prevention, and is responsible for the Volunteers in Police Service Program including recruiting, training, and scheduling volunteers in the performance of duties in areas such as fleet management-maintenance and evidence transportation.

The Crime Prevention Specialist also develops and implements a variety of crime prevention programs, presentations and materials for businesses and the community, and performs services such as security inspections and reviewing building and landscape designs. Duties require the ability to schedule and monitor the work of others, excellent organizational skills, independent initiative, good judgment, and the ability to manage simultaneous programs and assignments with close attention to deadlines.

The Crime Prevention Specialist is distinguished from the Community Services Officer in that the latter carries out assigned field and office law enforcement related duties in the areas of traffic control, parking enforcement, preparing and processing reports and complaints, assisting with property and evidence, and may also assist in crime prevention activities. In contrast, the Crime Prevention Specialist is responsible for developing and implementing Crime Prevention programs and educational materials for businesses and the public; recruiting, training and scheduling police service volunteers; and tracking and managing a variety of concurrent assignments.

Supervision is received from a Police Lieutenant. The Crime Prevention Specialist provides lead/technical/functional supervision in recruiting, training, scheduling and overseeing the work of police service volunteers, but is not responsible for hiring, discipline, grievances or formal performance evaluations.

### **EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES**

*Duties may include, but are not limited to, the following:*

Recruit, train, schedule and supervise Police Service Volunteers, including conducting background investigations; develop, maintain and present the Volunteers In Police Service Training Academy

Develop, implement and oversee a variety of crime and violence prevention programs and activities for businesses, children, the public, schools, organizations and interested individuals such as Neighborhood Watch, Business Watch, Child Safety, Citizens Academy, and Women's Safety.

Prepare, maintain, and distribute crime prevention literature and materials for programs including flyers, brochures, visual displays, literature and bulletin boards

Develop and make educational speeches and presentations on a variety of crime prevention topics for a variety of community and business audiences

Conduct residential and commercial security inspections; review blueprints for building and landscape designs to determine crime prevention concerns and make recommendations

Oversee the fleet management-maintenance in the department including scheduling and tracking vehicles and appointments, and supervising volunteer staff transporting vehicles

Oversee the transportation of evidence from the police department to other cities; assign and oversee volunteer staff transporting evidence

Develop or assist with special community events; may provide traffic control assistance

Perform departmental administrative duties as required

Perform other duties as assigned

### **MINIMUM QUALIFICATIONS**

Knowledge of:

Crime prevention practices methods and techniques

Public outreach, marketing and educational program development methods

Principles and techniques of public speaking and audience appropriate presentation design

Methods and techniques of design for informational materials such as flyers, brochures, visual displays

Techniques for effectively organizing and managing multiple schedules and projects

Methods and practices for effective supervision and employee training

Computer software programs required to perform job duties

Ability to:

Apply crime related statistics, information and crime prevention measures in the development of crime prevention and safety awareness informational and educational programs, seminars, meetings and special events

Prepare and deliver effective audience appropriate oral presentations and programs using data, charts and graphs

Prepare written informational materials including brochures, flyers and other educational literature and materials

Recruit, train, schedule and oversee the work of police service volunteers

Communicate clearly and effectively both orally and in writing

Plan and organize work to meet schedules and deadlines, assure efficient and timely completion of reports, projects, programs and activities, and manage multiple projects simultaneously; maintain accurate records and files

Read and interpret blueprints and permit applications for crime prevention purposes

Establish and maintain effective working relationships within the department and the community with individuals from diverse backgrounds

Represent the City and the Department in a variety of situations

## **EDUCATION AND EXPERIENCE**

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

### **Education:**

High School Diploma or G.E.D.; college coursework in police science, administration of justice, criminal justice or a related field is desirable.

**NOTE:** Training in Crime Prevention is highly desirable

### **Experience:**

One year of experience in the job classification of Community Service Officer with the City of Tracy

**OR**

Two years of experience in a law enforcement related position equivalent to the Community Service Officer job classification

**OR**

Two years experience in any field which included extensive interaction with the public, developing informational materials, making presentations and managing multiple programs or projects

**NOTE:** Experience providing staff training and supervision in any field is highly desirable

## **SPECIAL REQUIREMENTS**

This job may require occasionally working evenings or weekends.

This job requires a Criminal Background check and fingerprinting.

Successful completion of the Basic Crime Prevention Officer Training (CCPOA) within twelve (12) months of appointment.

## **LICENSES AND CERTIFICATES**

Possession of, or ability to obtain, an appropriate, valid California driver license by date of hire.

## **TOOLS AND EQUIPMENT USED**

Requires frequent use of personal computer and related software programs; telephone, copy machine and fax machine.



## **PHYSICAL DEMANDS**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Position requires sitting and computer work part of the time, and travelling to and from locations in the community at other times.

## **WORK ENVIRONMENT**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The employee performs duties both in an office environment as well as in the community at locations such as homes, businesses, schools.

*The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.*

*This job description does not constitute an employment agreement between the City of Tracy and employee and is subject to change by the City as the needs of the City and requirements of the job change.*

RESOLUTION \_\_\_\_\_

AUTHORIZE AMENDMENT OF THE CITY'S CLASSIFICATION AND COMPENSATION PLANS AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF A CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR CRIME PREVENTION SPECIALIST; REALLOCATION OF TWO COMMUNITY SERVICE OFFICER POSITIONS TO CRIME PREVENTION SPECIALIST; AND RECLASSIFICATION OF ONE INCUMBENT

WHEREAS, The City has Classification and Compensation Plans, and a Position Control Roster, and

WHEREAS, The City has completed a classification review and determined it is in the best interest and efficiency of the Police Department to establish a new classification specification of Crime Prevention Specialist to further the crime prevention and public safety goals of the City.

NOW, THEREFORE, BE IT RESOLVED, As follows:

1. The City Council authorizes the Human Resources Director to amend the City's Classification and Compensation Plans and the Budget Officer to amend the Position Control Roster as follows:

- a. Establish Classification: Crime Prevention Specialist as described in Exhibit A Salary Range: \$4,055 - \$4,928.88 monthly
- b. Reallocate two Positions/Reclassify one incumbent: Two (2) Community Service Officers to Two (2) Crime Prevention Specialists; reclassify the Community Services Officer identified as currently performing Crime Prevention duties to Crime Prevention Specialist

2. The Budget Officer is authorized to amend the Position Control Roster to reflect the amendments set forth above.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 3rd day of August, 2010 by the following votes:

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

\_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.D

REQUEST

**AUTHORIZATION TO ENTER INTO A 5 YEAR AGREEMENT WITH MICROSOFT FOR AUTOMATIC UPDATES TO COMPUTER AND SELECTED SERVER SOFTWARE AND AUTHORIZATION FOR THE MAYOR TO EXECUTE AGREEMENT**

DISCUSSION

The City must obtain operating system software licenses for all computers and servers. This software is a Microsoft product and the City has been using Microsoft products for many years. The City's current agreement with Microsoft is set to expire and now must be renewed. The City has budgeted for these licenses as part of the operating budget. Microsoft offers a program to municipalities by where an annual fee can be paid and Microsoft will always provide the most recent version of operating system software to the City. In this way, the City will be assured it always has the most recent and up to date software for computers and selected servers.

The County of Riverside has negotiated a competitive price for this annual software licensing program and this agreement may be used by any city wishing to procure the Microsoft licensing program. The Tracy Municipal code section 2.20.220 permits the City to use a competitive program already negotiated or bid by another public agency. In other words, the County of Riverside has already negotiated the terms of the contract, which terms authorized other governmental agencies to contract under the same terms, and the City of Tracy is authorized under its purchasing ordinance to enter into this contract as well. The City would not be able to negotiate any better terms with Microsoft than what is already included in the County of Riverside contract.

The annual cost of the Microsoft licensing program for the City of Tracy is \$49,215 each year of the five year program. The City will use the operating budget for these licenses.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's seven strategic plans.

FISCAL IMPACT

Software licensing is expensed to Fund 602 (Central Services). This is an internal services fund and as such, is re-expensed out to all funds making use of the services. As such, the General Fund is responsible for approximately 80% of Central Services charges.

RECOMMENDATION

It is recommended that the City Council by resolution authorize a five year agreement with Microsoft to supply software for City computers and servers and authorize the Mayor to execute the agreement.

Prepared by: Matt Engen, Information Systems Administrator

Approved by: Zane H. Johnston, Finance & Administrative Services Director

RESOLUTION \_\_\_\_\_

AUTHORIZATION TO ENTER INTO A 5 YEAR AGREEMENT WITH MICROSOFT FOR  
AUTOMATIC UPDATES TO COMPUTER AND SELECTED SERVER SOFTWARE AND  
AUTHORIZATION FOR THE MAYOR TO EXECUTE AGREEMENT

WHEREAS, The City budgeted \$50,000 to purchase software licenses and update all computer operating systems and server software, and

WHEREAS, Microsoft offers a program to municipalities by where an annual fee can be paid and Microsoft will always provide the most recent version of operating system software to the City, and

WHEREAS, The County of Riverside has negotiated a competitive price for this annual software licensing program and this agreement may be used by any city wishing to procure the Microsoft licensing program, and

WHEREAS, The Tracy Municipal Code section 2.20.220 permits the City to use a competitive program already negotiated or bid by another public agency, and

WHEREAS, The annual cost of the Microsoft licensing program for the City of Tracy is \$49,215 each year of the five year program, and

WHEREAS, The City will use the operating budget for this program, and

WHEREAS, Software licensing is expensed to Fund 602 (Central Services), an internal services fund and as such, is re-expensed out to all funds making use of the services;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorize a five year agreement with Microsoft to supply software for City computers and servers and authorize the Mayor to execute the agreement.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 3

REQUEST

**PUBLIC HEARING TO CONSIDER THE RE-ALLOCATION OF OUTSTANDING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS; AND APPROVAL OF A RE-ALLOCATION OF UNUSED COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING TO FUND IMPROVEMENTS TO THE MCHENRY HOUSE ; A PROFESSIONAL SERVICES AGREEMENT WITH NEW CITY AMERICA AND THE ADA UPGRADE PROJECT DOWNTOWN; AND AUTHORIZE THE MAYOR TO SIGN TH PROFESSIONAL SERVICES AGREEMENT**

EXECUTIVE SUMMARY

This request is to approve the re-allocation of \$96,294 in unused Community Development Block Grant (CDBG) funds; approve a project to enclose a back porch at the McHenry House shelter and plumbing and stucco repairs at the low-income units and approve a Professional Services Agreement (PSA) with New City America.

DISCUSSION

In fiscal year 2009-2010 McHenry House Homeless Shelter received a CDBG allocation of \$60,500 to re-roof the shelter house and carport. This work has recently begun. The outside porch, at the rear of the house, contains the washer and dryer and is used by the shelter residents not only as a place to do laundry but also as access to and from the back of the house. Currently the porch is a partially open structure exposed to the weather. If the porch could be enclosed, it would provide a dry and safe place for residents to do laundry, leave and enter the house, provide coverage for basement access and, besides providing shelter; it would connect the house to the carport.

In fiscal year 2007-2008, McHenry House Homeless Shelter received an allocation of \$85,000 in CDBG HOME funds to perform work on behalf of the low-income units. Only part of that money was used and there is currently a balance of \$26,294.00 remaining. McHenry House would like to request the re-allocation of the fund balance for the purpose of enclosing the porch at the back of McHenry House Shelter to make it weatherproof and connect it to the carport and to perform needed plumbing and stucco repairs to the low-income units.

Currently, the exterior kitchen pipes at the low-income units are cast iron that are rotting and scaling. Six of the eight units need to have these pipes replaced with ABS pipes. In addition, the exterior stucco on the building is crumbling and there are leaks throughout the structure as well as wooden window frames that are rotting and in need of replacement.

The estimate to enclose the porch is \$13,400 which leaves a balance of \$12,894 (\$26,294 - \$13,400) for plumbing and stucco repairs. The final bill for the re-roof project has not yet been submitted but it is expected that there will be an excess balance of approximately \$4,300 left from the original allocation of \$60,500. McHenry House would like to use any excess from the roofing project to add to the \$12,894 balance for a total

of approximately \$17,254 to be used for needed plumbing and stucco repairs on the low-income units. This amount is in line with the estimates that have been received to perform the plumbing and stucco work.

In fiscal year 2009-2010 the City received a CDBG allocation of \$70,000 for the Lolly Hansen Senior Center Community Garden project. This project is not moving forward.

The Tracy City Center Association (Association) has recently been incorporated as a non-profit corporation to manage the Downtown Tracy Community Benefit District (CBD). The City retained the services of New City America (Consultant) to establish the CBD and assist with the formation of the Association. The Association Board of Directors has requested that the City fund an additional year of support by the Consultant. The Consultant has provided a scope of work which results in a proposed Professional Services Agreement (PSA) for an amount not to exceed \$48,000.

The CBD was formed for the purpose of assisting downtown businesses that are economically disadvantaged, are underutilized and are unable to attract customers due to inadequate facilities, services and activities. The CBD is located in the downtown area, which is located in low-mod census tract 54.4 in Tracy. The Consultant will provide expert technical assistance and support for a specified time of one year to help the CBD realize its goals of bringing economic revitalization to the downtown business core which provides goods and services to low and moderate income residents living in and near the downtown. CDBG funding is an eligible source of funds to pay for the Consultant's PSA under the eligible activity of economic development.

Staff recommends that the City Council reallocate \$48,000 of the \$70,000 that was allocated for the Lolly Hansen Senior Center Community Garden project which will leave a remaining \$22,000. Staff further recommends that the remaining \$22,000 be reallocated to the current City ADA upgrade project in the downtown. The reallocation of the \$70,000 is contingent upon the County's approval of the City's application for the \$48,000.

The proposed reallocation of CDBG funds has been duly noticed as required by all applicable laws.

### STRATEGIC PLAN

This agenda item relates to the Economic Development strategic plan to establish a relationship with the non-profit sector to leverage resources.

### FISCAL IMPACT

There is no fiscal impact to the City's General Fund nor to the CDBG fund as the proposed action reallocates money that was previously allocated.

### RECOMMENDATION

Staff recommends that the City Council approve the attached Resolution to:

- Reallocate \$96,294 of CDBG funds;
  - \$26,294 to complete an enclosure to McHenry House Family Shelter that will cover a back porch, and make needed plumbing and stucco repairs to the low-income units and re-allocate any excess from fund 09-05 to the plumbing and stucco repair project at the McHenry House low-income units
  - \$48,000 to fund the PSA with the Consultant
  - \$22,000 toward current City ADA upgrade project in the downtown
- Approve the PSA by and between the City of Tracy and Consultant; and
- Authorize and direct the Mayor to sign the Agreement on behalf of the City.

Prepared by: Sharon Marr, Community Development Analyst  
Reviewed by: Ursula Luna-Reynosa, Economic Development Director  
Approved by: R. Leon Churchill, Jr., City Manager

Attachments: Resolution  
Professional Services Agreement

**CITY OF TRACY  
PROFESSIONAL SERVICES AGREEMENT  
ADMINISTRATIVE SERVICES - DOWNTOWN TRACY CBD**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and NEW CITY AMERICA, INC (hereinafter "CONSULTANT").

**RECITALS**

- A. CITY desires to retain the services of a firm that specializes in setting up and managing special assessment districts such as the Downtown Tracy Community Benefit District; and
- B. CITY determined that CONSULTANT has the appropriate qualifications and experience to provide the desired services; and
- C. The purpose of this Agreement is to outline the terms for performance and payment associated with said services.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Marco Li Mandri. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.
3. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. CONSULTANT is not



## **CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**

### **ADMINISTRATIVE SERVICES –DOWNTOWN TRACY CBD**

Page 2 of 6

CITY's employee and CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT. Contractors and CONSULTANTS are free to work for other entities while under contract with the CITY. Contractors and CONSULTANTS are not entitled to CITY benefits.

4. **CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
5. **COMPENSATION.**
  - 5.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Agreement is Not To Exceed \$48,000. CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY.
  - 5.2. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3. Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.
6. **TERMINATION.** The CITY may terminate this Agreement by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the CITY all original documents, including preliminary drafts and supporting documents, prepared by CONSULTANT for this Agreement. The CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by CONSULTANT for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONSULTANT to any third party without the prior written consent of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**

**ADMINISTRATIVE SERVICES –DOWNTOWN TRACY CBD**

Page 3 of 6

8. **ATTORNEY’S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney’s fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney’s fees) resulting from or arising out of CONSULTANT’s performance of services under this Agreement.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE.**
  - 11.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
  - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - 11.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - 11.4. **Workers’ Compensation** coverage shall be maintained as required by the State of California.
  - 11.5. **Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONSULTANT in an amount not less than \$1,000,000 per claim.
  - 11.6. **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - 11.6.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
    - 11.6.2 For any claims related to this Agreement, CONSULTANT’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT’s insurance and shall not contribute with it.
  - 11.7. **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**

**ADMINISTRATIVE SERVICES –DOWNTOWN TRACY CBD**

Page 4 of 6

change in the policy prior to the expiration shall be considered a cancellation.

- 11.8. **Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 11.9. **Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five (5) days after the execution of this Agreement.
- 11.10. **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11. **CONSULTANT's Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

12. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

13. **NOTICES.**

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

To CITY:

City of Tracy  
333 Civic Center Drive  
Tracy, CA 95376

Attn: Ursula Luna-Reynosa  
Economic Development Director

To CONSULTANT:

New City America, Inc.  
2130 Columbia Street  
Little Italy  
San Diego, CA 92101  
Attn: Marco Li Mandri  
President

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**

**ADMINISTRATIVE SERVICES –DOWNTOWN TRACY CBD**

Page 5 of 6

14. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
15. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
16. **SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
17. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
18. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
19. **COMPLIANCE WITH THE LAW.** CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
20. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
21. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
ADMINISTRATIVE SERVICES –DOWNTOWN TRACY CBD  
Page 6 of 6**

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

CITY OF TRACY

CONSULTANT  
NEW CITY AMERICA, INC.

\_\_\_\_\_  
By: **Brent Ives**  
Title: **Mayor**  
Date: \_\_\_\_\_

\_\_\_\_\_  
By:  **Marco Li Mandri**  
Title: **President**  
Date: \_\_\_\_\_  
Fed. Employer ID No. \_\_\_\_\_  
27-0473275

Attest:

\_\_\_\_\_  
By: Sandra Edwards  
Title: CITY CLERK  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_

## EXHIBIT A

### Proposed Scope of Services for Consulting Services for the Tracy City Center Association, the new Downtown Tracy Community Benefit District Management Corporation

July 2010

***For its part, New City America Staff shall provide the following services to the Tracy City Center Association and the City of Tracy:***

Board Development:

- a. Work with Interim Board to create a functional budget for service providers to the Board;
- b. Monitor the budget to ensure that the Board is adhering to its budget categories and the Management District Plan;
- c. Advise the Board, the Organization Committee and its Committees on creating a results oriented strategy to expedite the Downtown revitalization programs and activities;
- d. Help clarify, on an ongoing basis, the function of the newly formed CBD, using its revenue source to expedite revitalization and economic development in Downtown Tracy;
- e. Use various models from other Downtowns in the state and country on how to achieve rapid economic development tools to increase commerce and reduce vacancies;
- f. Work with the local Chamber of Commerce and other Economic Development entities to coordinate a program of entrepreneurial development and business attraction;
- g. Make recommendations on public space development and enhancement of the public rights of way to promote district identity;
- h. Propose linkages to foster pedestrian and vehicular traffic, once visitors and shoppers have arrived into Downtown;
- i. Advise the Board on the use of CBD and non-CBD funds for the CBD programs and activities;
- j. Serve as a go-between for the City and the CBD Management Corporation;
- k. Advise the new District manager on best practices for district administration;
- l. Aid in the opening of the first office;
- m. Aid in the acquisition of equipment for the new office;
- n. Advise on the adherence to the Management District Plan adopted by the property owners in December 2009;
- o. Aid in possible expansion of the District, if instructed by the Board;
- p. Help conduct first election for the Board of Directors in the Spring of 2011;
- q. Advise staff on the most efficient ways to produce decision making in the organization;
- r. Advise the TCCA and City on new ordinances;
- s. Advise the TCCA on business attraction strategies;
- t. Other tasks as assigned by the City or Board

Term of Agreement: August 2010 through July 31<sup>st</sup>, 2011

## EXHIBIT B

### BILLING RATES:

New City America Personnel and Sub-Contractors	Hourly Rate
Marco Li Mandri, President, Project Manager	\$300.00 per hour
Shirley Zawadzki, Assistant Project Manager	\$100.00 per hour
Monica Mones, Database, Mapping and Survey Work	\$60.00 per hour
Chris Gomez, Design and Research	\$70.00 per hour
Laura Li Mandri, Administration	\$70.00 per hour
John Li Mandri, Mapping	\$40.00 per hour
Joey Li Mandri, Clerical Support	\$30.00 per hour

RESOLUTION \_\_\_\_\_

APPROVING RE-ALLOCATION OF UNUSED COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND HOME FUNDS TO FUND IMPROVEMENTS AT THE MCHENRY HOUSE ; A PROFESSIONAL SERVICES AGREEMENT WITH NEW CITY AMERICA AND THE ADA UPGRADE PROJECT DOWNTOWN; AND AUTHORIZING THE MAYOR TO SIGN THE PROFESSIONAL SERVICES AGREEMENT

WHEREAS, the City Council approved allocation of \$60,500 in Community Development Block Grant ("CDBG") funds in fiscal year 2009-2010 to re-roof the McHenry House Shelter and carport, and

WHEREAS, in fiscal year 2007-2008, Council approved an allocation of \$85,000.00 in CDBG HOME funds on behalf of the McHenry House low-income units, and

WHEREAS, the re-roofing project is nearly complete and it is expected that there will be approximately \$4,300 in excess funds from the original allocation of \$60,500, and

WHEREAS, to enclose and weatherproof the porch and connect it to the carport will benefit the residents of McHenry House Shelter and plumbing and stucco repairs to the low-cost units will benefit the residents of those units and lengthen the life of the units, and

WHEREAS, the City Council approved a CDBG allocation of \$70,000 for a community garden project that is no longer viable, and

WHEREAS, the newly formed Downtown Tracy Community Benefit District (the "CBD") was established to bring economic vitality and growth to the downtown, which is in the low-mod income census tract 54.4 and is an area that provides goods and services to low-mod income residents, and

WHEREAS, it will benefit both residents and businesses of the downtown to have the expert technical support and services of New City America, Inc. (the "Consultant") to help the CBD realize its goals of creating a healthy and vibrant downtown, and

WHEREAS, the City and Consultant desire to enter into a Professional Services Agreement (the "Agreement") for a one-year period with a cost not to exceed \$48,000, and

WHEREAS, the unused remaining CDBG allocation of \$22,000 can appropriately be used on a project that involves installing wheel chair ramps and other ADA upgrades to sidewalks in the downtown.

NOW THEREFORE, BE IT RESOLVED that:

1. The City Council finds and determines that the above recitals are true and correct and incorporated herein by this reference;
2. The City Council reallocates the unused CDBG HOME funds in the amount of \$26,294 and the re-allocation of any unused funds from Fund 09-05 for the purpose of enclosing and weatherproofing a porch at the rear of the McHenry House Shelter and to make needed plumbing and stucco repairs to the low-cost units;



3. The City Council reallocates the \$70,000 of previously allocated CDBG funds for the following two purposes; (1) enter into the Agreement with the Consultant in an amount not to exceed \$48,000 to provide the CBD with expert technical support in its efforts to help economically revitalize the downtown and (2) use the remaining \$22,000 toward the downtown ADA upgrade project; and

4. The City Council approves the Agreement and authorizes the Mayor to sign the Agreement on behalf of the City; and

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the City Council on the 3rd day of August 2010, by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
DES 120203 - 07 - NG

AGENDA ITEM 4

REQUEST

**APPROVE ACTIONS RELATED TO THE PLACEMENT OF A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX MEASURE ON THE NOVEMBER 2, 2010 BALLOT, INCLUDING**

- (1) CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX, WITH A FIVE-YEAR SUNSET CLAUSE, TO FUND TRACY CITY SERVICES, REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY TO CONSOLIDATE A MUNICIPAL ELECTION ON THE LOCAL MEASURE WITH OTHER ELECTIONS TO BE HELD ON THE NOVEMBER 2, 2010 REGULAR ELECTION DATE; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING THE DATES FOR ARGUMENTS ON THE MEASURE**
- (2) INTRODUCTION OF AN ORDINANCE ENACTING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION UPON APPROVAL BY THE VOTERS AT THE NOVEMBER 2, 2010 ELECTION**
- (3) AUTHORIZATION FOR THE CITY COUNCIL, AS A LEGISLATIVE BODY, OR A COUNCIL MEMBER OR MEMBERS, TO AUTHOR THE ARGUMENT IN SUPPORT OF, AND/OR AGAINST, THE MEASURE AND SETTING THE DATES FOR ARGUMENTS REGARDING THE MEASURE**

EXECUTIVE SUMMARY

At the June 1, 2010, Council meeting, Council requested that staff return with the results of the revenue measure community survey for Council discussion. On July 6, 2010, Staff presented the results of the community survey to Council and Council directed staff to return to Council on August 3<sup>rd</sup> with a recommended local revenue measure.

The survey results indicated strong community support (sixty-four-percent) for a half-cent sales tax measure to maintain city services. The survey also found that a shorter duration would garner stronger support, with sixty-seven-percent of the respondents indicating support for a measure lasting five years.

DISCUSSION

Over the course of the last couple of years, the City of Tracy has taken several actions to address the City's structural budget deficit. These actions include cost containment measures, service delivery model changes, and process improvement efforts. However, State Budget actions and the current economy compound the challenge to the City in addressing its structural budget deficit.

At the October 6<sup>th</sup> budget workshop, staff acknowledged that attrition had slowed significantly and achieving sufficient personnel savings solely through attrition was no

longer a viable option. As such, staff began the right-sizing effort to sustain operations, maintain fiscal health, improve productivity, and ensure that quality customer service for core services continues.

On November 3, 2009, Staff presented Council with the City Manager's right-sizing plan to reduce expenses. Five workforce reduction principles were used in the development of the City's right-size plan, including (1) reducing complexity and consolidating similar services where possible; (2) de-layering management and supervision levels; (3) increasing span of control for all levels in the organization; (4) automating routine and back office functions where viable, and (5) contracting out where feasible. Attachment "A" summarizes examples of the types of actions City Administration took in an effort to right-size the organization and reduce expenses.

Since then, a number of labor negotiations have been completed and several labor units and groups have worked with the City to address the City's fiscal situation.

Over the course of this past year, the City of Tracy has cut spending by \$5 million a year and eliminated 16% of the workforce, including police officers, firefighters, parks, recreation, and maintenance staff. Unfortunately, the recession and state takeaways continue to reduce the City's funding and revenue. In today's tough economy and state budget crisis, the City has been working diligently on a strategy of maintaining current levels of police, fire and emergency medical services including neighborhood patrols, crime prevention and investigation programs, and 9-1-1 response times, as well as other City services, such as recreation and afterschool programs. At the same time, the City must address a \$4.8 million budget deficit projected for fiscal year 2010/2011. Without additional revenue the City will have to cut \$4.8 million to close its current budget gap which will significantly affect its ability to continue providing services at the level that resident's desire.

At the November 17, 2009, Council meeting, Council discussed potential placement of a public safety parcel tax or a Landscape Maintenance District (LMD) revenue measure on the ballot and requested that staff return with additional information.

At the June 1, 2010, Council meeting, Council discussed a number of revenue options, which including a LMD financing measure, parcel tax and the implementation of the EMS fee. Staff informed Council that preliminary community survey efforts were underway via the Godbe Research firm to assess the community's perspectives on a variety of issues, including its potential support of a local revenue measure to maintain local services. At that meeting, Council determined that staff should return with the results of the revenue measure community survey and postpone the implementation of the EMS fee until January, 2011.

On June 15, 2010, Council Approved Resolution 2010-088 calling a municipal general election for Council, and Resolution 2010-089 requesting the City's election for Council be consolidated with the State General Election on November 2, 2010.

At the July 6, 2010, Council meeting, staff presented the results of the community survey and informed Council that the survey results indicated strong community support (sixty-four-percent) for a half-cent sales tax measure to maintain City services. The survey also found that a shorter duration would garner stronger support, with sixty-seven-percent of

the respondents indicating support for a measure that had a five-year sunset clause. Additionally, the community survey found that having a resident oversight committee would be preferred to ensure transparency about how the funds were spent.

Polling results show that a majority of Tracy residents have identified public safety and economic development as top priorities. The survey also found that the priorities of the community align with the funding needs of the City of Tracy, including maintenance of public safety and emergency medical services, economic development, and programs for seniors and youth.

Given the results of the survey, staff recommends that Council, by resolution, place a one-half cent transactions and use (sales) tax measure on the November 2, 2010, ballot with a five year sunset clause. Revenue from this type of measure assists the City to achieve the objective of maintaining current levels of service, such as maintaining firefighters, police officers, 9-1-1 emergency response services, neighborhood police patrols and fire protection, and other essential City services. Money from this measure is legally required to be spent only on City of Tracy needs and none of the money can be taken or borrowed by the State.

Attachment "B" is a proposed resolution that submits to the voters a measure to approve a one-half cent transactions and use (sales) tax measure to fund Tracy city services on the November 2, 2010 ballot and sets the dates for arguments on the measure.

Attachment "C" is a proposed ordinance imposing a transactions and use tax to be administered by the state board of equalization if a majority of the electors voting on the measure vote to approve the imposition of the tax at the November, 2010 election. This ordinance makes all the necessary adjustments to the Municipal Code to clarify how the tax would be imposed, collection procedures, and use of tax proceeds. The ordinance also clarifies that the authority to levy the tax expires five years from the date the tax starts being collected. Additionally, the ordinance specifies that the Residents' Oversight Committee will be established no later than March 1, 2011, so that it may review the expenditures of the revenue from the proposed transactions and use (sales) tax. Staff from the California State Board of Equalization have reviewed and approved the form of the proposed ordinance.

As mentioned in the July 20<sup>th</sup> staff report related to the City Clerk ballot measure, if the City Council wants to file an argument in support of or against the measure it may, by resolution, authorize the argument to be authored by the entire legislative body (i.e., the signature would read, "City of Tracy City Council," with individual members not being identified). In the past, when using this method to submit an argument related to a measure, City Council has, by motion, created an ad hoc subcommittee to draft and file the argument on its behalf.

Alternatively, City Council may, by motion, authorize one or more of its members to author and file a written argument in support of and/or against the measure (i.e., each signing with their title as a City Council member).

Should Council choose neither of the above options, under California Elections Code section 9287, a bona fide citizens group or a registered voter may file arguments in favor of, or against, the measure.

Only one argument filed in support of, or against, a measure may be selected to appear with the measure. If multiple arguments in favor of, or against, the measure are timely filed with the City Clerk's Office, then the City Clerk must grant preference first to any argument authored by the legislative body (per Attachment "D"), then to an authorized Council member or members, then to a bona fide citizens group, and finally to an individual voter registered and eligible to vote on the measure.

Attachment "D" is a resolution authorizing City Council, as a legislative body, or individual Council member or members, to author the argument in support of, or against, the measure. Staff will conform the resolution to Council's motion.

STRATEGIC PLAN:

This agenda item supports the organizational effectiveness strategic plan and specifically implements the following goal and objectives:

**Goal 1:** Assure fiscal health

**Objective 1c:** Place citywide Parcel Tax on ballot to replace LMD, and  
**Objective 1d:** Place Parcel Tax Measure on ballot to support Public Safety services

As mentioned in previous staff reports, the community survey of residents indicated that a two-thirds majority voter requirement parcel tax measure for public safety services is not supported by the community. Survey respondents preferred a local one-half cent sales tax measure that would apply to visitors, as well as residents.

FISCAL IMPACT:

Funds to cover the cost of the City's General Municipal Election have been allocated in the budget for Fiscal Year 2010-2011.

RECOMMENDATION:

Staff recommends that Council:

- (1) adopt a resolution calling for a municipal election to submit to the voters a local ballot measure adopting a one-half cent transactions and use (sales) tax, with a five-year sunset clause, to fund Tracy city services, requesting the Board of Supervisors of San Joaquin County to consolidate a municipal election on the local measure with other elections to be held on the November 2, 2010, regular election date; directing the City Attorney to prepare an impartial analysis of the measure; and setting the dates for arguments on the measure;

- (2) introduce an ordinance enacting a transactions and use (sales) tax to be administered by the State Board of Equalization upon approval by the voters at the November 2, 2010 election, and
- (3) adopt a resolution authorizing City Council, as a legislative body, to author the argument in support of, and/or against, the measure

Prepared by: Maria A. Hurtado, Assistant City Manager

Approved by: R. Leon Churchill, Jr., City Manager

ATTACHMENTS:

Attachment "A": Five Workforce Reduction Principles (Examples of Actions Taken to Reduce Expenses);

Attachment "B": Resolution calling for a municipal election to submit to the voters a local ballot measure adopting a one-half cent transactions and use (sales) tax, with a five year sunset clause, to fund Tracy city services, requesting the Board of Supervisors of San Joaquin County to consolidate a municipal election on the local measure with other elections to be held on the November 2, 2010 regular election date, directing the City Attorney to prepare an impartial analysis of the measure; and setting the dates for arguments on the measure;

Attachment "C": Introduction of an ordinance of the City of Tracy enacting a transactions and use (sales) tax to be administered by the State Board of Equalization if a majority of the electors approve the imposition of the tax at the November 2, 2010 election;

Attachment "D": Resolution authorizing City Council, as a legislative body, to author the argument in support of, and/or against, the measure (staff will conform resolution to Council's motion).

**City of Tracy**  
**Five workforce reduction principles**  
**Examples of Actions Taken to Reduce Expenses**  
**(Presented to Council on November 3, 2009)**

**PRINCIPAL #1: REDUCING COMPLEXITY AND CONSOLIDATING SIMILAR SERVICES:**

Consolidation and Streamlining of Building and Fire Inspection Services: The Fire and DES Departments worked collaboratively to create a streamlined plan and inspection review process allowing for a centralized plan check function for complete code (Building and Fire Codes) compliance in one customer-focused permit assistance center location. This will result in improved customer service, a one-stop permit center, and faster permitting processing.

Consolidation of aquatics programming from Joe Wilson to West High Pool: The City provided swim lessons, open recreational swim, and other aquatics programming at both the West High pool and the Joe Wilson pool. The West High pool had additional programming capacity and approximately 85% of the Joe Wilson pool programming was transferred to, consolidated, and accommodated at the West High Pool for the 2010 aquatics season.

Consolidation of contracted arts and recreation classes: The Grand Theatre Center for the Arts and the Parks and Community Services Department both operated like-functions related to the arts education and recreation enrichment classes. These like-functions include researching class topics, development and oversight of instructor contracts, scheduling of classes and development of the arts and recreation class guides. Consolidation of these functions created greater efficiencies, one point of contact for instructors and the ability to systematize procedures and guidelines.

**PRINCIPLE #2: DE-LAYERING MANAGEMENT AND SUPERVISION LEVELS:**

Re-organization of the Police Department into five (5) divisions: The police department eliminated the Deputy Chief position and reorganized into five divisions, each headed by a lieutenant who reports directly to the Chief of Police. The five divisions include the Support Division, Investigations, Patrol Division "A" shift, Patrol Division "B" shift, and the Community Services Division. These division commanders took on a higher level of responsibility and accountability for planning, organizing and decision-making, requiring lieutenants to demonstrate a high level of competency in a variety of management and leadership domains.

Elimination of the Assistant City Engineer positions: The elimination of the Assistant City Engineer allowed the department to re-organize with a focus of increasing efficiency and responsiveness to customers. This was achieved by having an emphasis on the development of more cohesive teams at all levels within the department that focuses on empowering line staff to make decisions previously made at the management level.

Elimination of a Maintenance and Operations Supervisor position and an Executive Assistant position: The Public Works Maintenance and Operations supervisor position was eliminated, as well as the executive assistant position. These functions were absorbed by other administrative and management staff.

Shifting from Centralized to Decentralized Public Relations/Media Functions: The Public Affairs position was added two years ago in an effort to have a centralized contact to handle media relations, review publications, market City programs and develop the City's branding effort. The elimination of this position required distribution of duties among the Economic Development staff, the marketing team, and decentralization of media functions back to individual departments. A clear guideline and protocol was necessary to ensure communication between the department media leads, the City Manager's Office, the Council, and the public was synchronized.

Elimination of the Information Services Manager Position: The deletion of this management position was recommended to ensure sufficient technicians remained available to fix computer and systems related issues. The loss of the IS Manager placed more responsibility on the IS administrator, who was second in command of the division. This plan works in the short-term (two to three years) with minimal impact. The longer term impact will be less time available for planning and implementation of future significant projects in the information systems arena.

**PRINCIPAL #3: INCREASING SPAN OF CONTROL FOR ALL LEVELS IN THE ORGANIZATION:**

Transferred responsibilities from a Teen Recreation Coordinator to the Senior Recreation Coordinator: The senior Recreation Coordinator had additional capacity and had operated the teen programming in the past which ensured a seamless transition.

Transferred aquatics/athletics responsibilities from a Recreation Coordinator to a Recreation Supervisor: The Recreation Supervisor had capacity to take on additional responsibilities and was familiar with aquatics and athletics operations. With the assistance of part-time Recreation Leader support, the Recreation Supervisor's increased span of control was a seamless transition.

**PRINCIPLE #4: AUTOMATED ROUTINE AND BACK OFFICE FUNCTIONS:**

Continued implementation of new technology: Public works continues to implement new technology to maximize efficiency of operations, such as Geographic Information Systems (GIS), Computerized Maintenance Management Systems (CMMS), and FASTER software for fleet management.

Implementation of Financial Software program: The City's focus on the implementation of, and staff training on, new financial software ensures a continued focus on efficiencies. Prior to this change, separate databases were maintained for employee records by Payroll and Human resources.

Website Development and Revamping: The City continues to focus on the revamping of the City's website with the website contractor. This new website will allow for more interactive services to be completed online.

**PRINCIPLE #5: CONTRACTING OUT WHERE FEASIBLE:**

Contracted the Alphabet Stew Children's program: The Alphabet Stew Children's program was contracted out via an RFP process to an outside provider.

Contract out Grand Theatre Presenting Season programming: The Grand Theatre's 2010/2011 presenting season will be contracted out to a promoter or experienced contractor



so that they may schedule and implement a successful fiscal year 2010/2011 presenting season. Contracting out the presenting season required that the governance structure be defined to ensure City and community input is included in the selection of the performers and genres. A recommended governance model will be presented to council on August 17, 2010.

*Convert Grand Theatre Gallery into a Co-op:* One of the three galleries in the Grand Theatre Center for the Arts be was converted into a co-op, increasing community, regional and local artist involvement, buy-in and support of the gallery. The co-op concept encourages artists to display their work, increases artist collaboration and reduces impact on staff while potentially generating some revenue from art sales.

## RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY CALLING FOR A MUNICIPAL ELECTION TO SUBMIT TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX TO FUND TRACY CITY SERVICES, REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY TO CONSOLIDATE A MUNICIPAL ELECTION ON THE LOCAL MEASURE WITH OTHER ELECTIONS TO BE HELD ON THE NOVEMBER 2, 2010 REGULAR ELECTION DATE; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; AND SETTING DATES FOR ARGUMENTS ON THE MEASURE

WHEREAS, Pursuant to Resolution No. 2010-089, the City Council ordered a Municipal Election to be held on Tuesday, November 2, 2010 to fill municipal offices and to consolidate this election with other elections that may be held in whole or in part within the City, and

WHEREAS, The recession and state takeaways have reduced the City's funding and revenue, and

WHEREAS, The City has cut spending by \$5 million, eliminating 16% of the workforce, including police officers, firefighters, parks, recreation, and maintenance staff, and

WHEREAS, Money from this measure is legally required to be spend for Tracy on City of Tracy needs and none of the money can be taken or borrowed by the State, and

WHEREAS, Without additional revenue the City will have to cut another \$4.8 million to close its current budget gap which will significantly affect its ability to continue proving services at the level that residents desire, and

WHEREAS, Police and fire protection comprise over 80% of the City's General Fund tax revenue including Police patrol, 9-1-1, police command, gang/narcotics enforcement, crime investigations, fire protection and emergency services some of these and other general services may need to be cut to balance the budget, and

WHEREAS, Polling results show that a majority of Tracy residents have identified public safety and economic development as top priorities, and

WHEREAS, A five-year, temporary revenue measure would assist the City in maintaining current levels of services, and

WHEREAS, The measure includes the establishment of a Resident Oversight Committee by March 1, 2011, and

WHEREAS, the City Council deems it advisable to submit to the voters a ballot measure to approve a one-half cent transactions and use (sales) tax to fund all Tracy city services, including police; fire and emergency services; parks and sports field maintenance; youth, teen and senior services; support services; art programs and other general services, and

WHEREAS, the City Council is authorized to request an order that the ballot measure election be consolidated with other elections to be held on the same day and in the same territory (California Elections Code 10400 *et seq.*), and

WHEREAS, Section 9282 of the Elections Code of the State of California authorizes the City Council by majority vote to adopt provisions to provide for the filing of arguments for city measures submitted at municipal elections;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TRACY:

1. Call for Election. The City Council hereby calls a municipal election on Tuesday, November 2, 2010 for the purpose of submitting to the voters a ballot measure to approve a one-half cent transactions and use (sales) tax to fund all Tracy city services, including police; fire and emergency services; parks and sports field maintenance; youth, teen and senior services; support services; art programs and other general services. A majority vote is required for the passage of the ballot measure.

2. Form of Measure. The full text of the proposed ordinance / measure to be submitted to the voters is attached as Exhibit "A" to this resolution. The exact form of the ballot label to be voted on is as follows:

To help prevent additional budget cuts and maintain City services, including: police (patrol, 911, command, gang/narcotics enforcement, crime investigations, other police services); fire protection, emergency services, and other fire services; park/sports field maintenance; support services; senior, teen, and youth services; art programs; and other general services, shall the City of Tracy enact a ½ cent sales tax, expiring in five years, with resident oversight, annual independent audits, and all funds used for City of Tracy services only?	YES
	NO

The measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code section 13116.

3. Transmission to the City Attorney. The City Clerk is directed, pursuant to Elections Code section 9280, to transmit a copy of the measure to the City Attorney for the purpose of preparing an impartial analysis of the measure.

4. Full Text of the Measure. The full text of the "Ordinance of the City of Tracy Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization," which would add Chapter 6.28 to Title 6 of the Tracy Municipal Code enacting a one-half cent Transactions and Use (Sales) Tax for five years to fund Tracy city services is available at no cost from the City Clerk's Office at 333 Civic Center Plaza, Tracy, California or on the City's website: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us). A statement about how to obtain the full text of the Ordinance will be included in the Voter Information Pamphlet below the Impartial Analysis.

5. Consolidation of Election. The City Council requests that the Board of Supervisors of the County of San Joaquin, State of California, order the consolidation of the election in the City of Tracy to be held on November 2, 2010, with any other election(s) to be held on the same regular election date, under California Election Code sections 10400 *et seq.*

6. Deadline for Submittal of Arguments. Pursuant to Section 9282 of the Elections Code of the State of California the deadline for submitting arguments not to exceed 300 words for and against the measure to the City Clerk for transmittal to the Registrar of Voters is hereby

set for August 12, 2010 at 5:00 pm. The provisions of this Section shall apply only to the election to be held on November 2, 2010 and shall then be repealed.

7. Conduct of the Election. The consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the election shall be regulated and done by the County Clerk in accordance with the provisions of law regulating a regularly scheduled election. The Board of Supervisors is hereby requested to issue all officers of the County charged with duties pertaining to the November 2010 election instructions to take any and all steps necessary for the holding of such consolidated election. (California Elections Code 10418.)

8. Costs. The City will reimburse the County for the actual cost incurred in conducting the City's municipal election upon receipt of a bill stating the amount due as determined by the Election Official as indicated in Resolution 2010-089.

9. Filing with County. The City Clerk is directed to file with the Board of Supervisors and the County Clerk of San Joaquin County certified copies of this resolution.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of August, 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE CITY OF TRACY  
IMPOSING A TRANSACTIONS AND USE TAX TO BE  
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

The City Council of the City of Tracy does ordain as follows:

SECTION 1. ADDITION TO THE MUNICIPAL CODE. Chapter 6.28 is added to Title 6 (Businesses, Professions and Trades) of the Tracy Municipal Code to read as follows:

**"CHAPTER 6.28: TRANSACTIONS AND USE TAX**

Section 6.28.010. TITLE. This chapter shall be known as the "Tracy Transactions and Use Tax Ordinance." The city of Tracy hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

Section 6.28.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance and approval by the voters.

Section 6.28.030. PURPOSE. This chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

Section 6.28.040. CONTRACT WITH STATE. Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax chapter; provided, that if the City shall not have contracted with the State Board of Equalization prior to the

operative date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 6.28.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the Operative Date of this chapter.

Section 6.28.060. PLACE OF SALE. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 6.28.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this chapter for storage, use or other consumption in said territory at the rate of one-half of one percent (.5%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 6.28.080. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein.

Section 6.28.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 6.28.100. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

Section 6.28.110. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a

declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City



or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 6.28.120. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

Section 6.28.130. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 6.28.140. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6.28.150. USE OF TAX PROCEEDS. All proceeds of the tax levied and imposed under this chapter shall be paid into the General Fund for use by the City of Tracy.

Section 6.28.160. TERMINATION DATE. The authority to levy the tax imposed by this chapter shall expire five (5) years from the date the tax starts being collected.

Section 6.28.170. ANNUAL AUDIT. By no later than December 31<sup>st</sup> of each year, the City's independent auditors shall complete a financial audit report to include the revenue raised and expended by this tax.

Section 6.28.180. RESIDENTS' OVERSIGHT COMMITTEE. Although not otherwise required by law, the City Council shall, no later than March 1, 2011, establish a

Residents' Oversight Committee to review the expenditure of the revenue from this transactions and use tax. The Committee shall consist of five members to be appointed by the Mayor and approved by the City Council. The terms of the Committee members and their specific duties shall be established by resolution of the City Council."

SECTION 2. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall not take effect until approved by the majority of the voters voting at the general municipal election to be held on November 2, 2010.

SECTION 3. CERTIFICATION; PUBLICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this ordinance and shall cause it to be published according to law and transmitted to the Board of Equalization.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 3rd day of August, 2010, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY, CALIFORNIA AUTHORIZING THE CITY COUNCIL, AS A LEGISLATIVE BODY, TO AUTHOR WRITTEN ARGUMENTS [FOR] [AGAINST] A CITY MEASURE ADOPTING A ONE-HALF CENT TRANSACTIONS AND USE (SALES) TAX TO FUND TRACY CITY SERVICES

WHEREAS, A General Municipal Election is to be held in the City of Tracy, California, on Tuesday, November 2, 2010, at which there will be submitted to the voters the following ballot question and measure:

To help prevent additional budget cuts and maintain City services, including: police (patrol, 911, command, gang/narcotics enforcement, crime investigations, other police services); fire protection, emergency services, and other fire services; park/sports field maintenance; support services; senior, teen, and youth services; art programs; and other general services, shall the City of Tracy enact a ½ cent sales tax, expiring in five years, with resident oversight, annual independent audits, and all funds used for City of Tracy services only?	YES
	NO

NOW, THEREFORE, BE IT RESOLVED, That the Tracy City Council authorizes the submittal of an argument [for] [against] the measure. The argument shall be submitted on behalf of the City Council as a legislative body.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 3<sup>rd</sup> day of August 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 5

REQUEST

**RECEIVE AND DISCUSS THE END OF YEAR REPORT ON THE GRAND THEATRE CENTER FOR THE ARTS**

EXECUTIVE SUMMARY

Staff is presenting an overview of the third year of operations and the upcoming fourth year of operations as part of the Grand Theatre Center for the Arts operational plan.

DISCUSSION

**PRESENTING SEASON**

The Grand Theatre Center for the Arts' Presenting Season scheduled performances from September through May. During the third year of operations, five categories were offered in various styles of presentation: three Off-Broadway; two World Entertainment; three Family Treasures; and we introduced the Classic Movie Series showing three classics on the big screen and three Hitchcock classics in the studio theatre. Also introduced for the first time to fill our Studio Theatre Series was our new Resident Theatre Program.

The Tracy Performing Arts Foundation applied and was accepted as The Grand Theatre's first resident company, a program that offers mutual support in bringing quality programming to our patrons from a Tracy community organization. They supplied the season programming with 5 successful shows.

Family Treasures, the most successful Series, originally offered three performances in the morning that were geared toward school assemblies and were so well attended by the schools that a fourth had to be added. The response from the Classic Cinema Series was so great it inspired the purchase of a projector and expansion of such a series next year. The total attendance for the presenting season was 4,838 a 24% increase from last year.

**COMMUNITY AND COMMERCIAL PRESENTATIONS**

The community has continued to respond positively to the Grand Theatre Center for the Arts, evidenced by the continuing high demand for the use of the facility. The Grand Theatre Center for the Arts' rentals totaled 157 in the third year. The majority of the rentals are non-profit community-based organizations, but there have been several commercial rentals that continue to return to the Grand Theatre Center for the Arts. The rental operations remain active six to seven days a week depending on the demand, and staff continues to work with community groups to showcase their performances to their families and friends. The overall attendance for the community and commercial presentations was 15,814 patrons during the 2009-2010 Season at the Grand Theatre.

## **GRAND GALLERIES**

The Grand Galleries exhibition schedule operated five days a week from July 2009 through June of 2010 presenting six exhibits in the galleries. The most notable exhibition of this season was *Socio-technic Evolution* by artist Adam Reeder of San Ramon, CA an emerging celebrated sculptor and arts educator. Not only was this the first large scale sculpture exhibit in the galleries but one of Mr. Reeder pieces, Atlas, was lent and put on display as part of the Macworld Conference & Expo in San Francisco this last February.

Across the 2008-09 Season, the overall attendance of the Grand Galleries was 8,965. Visitors and patrons interacted with exhibitions programming, including a multitude of diverse special events such as receptions, gallery talks by the artists, demonstrations and workshops.

Introduced at the start of the holiday season in December of 2009 a new program called Art Co-opted was placed in the Matthews Gallery and served as a modern, cooperative exhibition space. The Co-Op will exhibited original artwork, limited editions and artist-designed products at low prices. During its first year 100 items were sold grossing \$4,415.50.

## **ARTS EDUCATION**

The Arts Education Program operates 12 months of the year, six days a week, 12 hours a day. The Arts Education Program presented a variety of classes and workshops in visual and performing arts for children, teens, and adults. Some classes included tap, ballet, hip-hop, ballroom dance, oil and acrylic painting, drawing, ceramics wheel throwing, photography and private and group music instruction.

There were 12 new and 34 returning contract instructors hired to facilitate this programming. Staff will continue to assess the interests and demands of arts education within our community by listening to public feedback, appraising student evaluations, and speaking with faculty members. The program held 999 classes for 2,825 total participants.

## **UPCOMING FISCAL YEAR 2009-2010 PROGRAMMING**

This year for the anniversary weekend, the Season will kick off with Comedian John Heffron, winner of NBC's Last Comic Standing, on Saturday evening, September 11, 2009. That Sunday we will continue the festivities with "Sound of Music" on the big screen for .25¢ per person, a price that harkens back to the old days. The Arts Leadership Alliance will underwrite the weekend performances. The Grand Galleries season will also kickoff anniversary weekend with a historical exhibition, a nod to the 100 year anniversary of the incorporation of Tracy.

The remaining of the 2010-2011 Season will consist of two musicals, eight plays, seven concerts, six Family events, a jazz night club series and 22 cinematic treasures. In addition, five performances will be scheduled during the day for school-aged children to attend and will be marketed directly to the schools for assembly attendance. The Galleries will feature 6 exhibitions and a special holiday event in the Co-Op and the Arts Education program will continue its regular programming and explore new classes to offer.

FISCAL IMPACT

There is no fiscal impact for accepting this report.

The 2009-10 fiscal year actual operating budget expenditures for the Cultural Arts Division were \$1,247,079. Actual funding sources for the Cultural Arts Division budget included \$ 830,681 from the General Fund, \$ 416,398 from fee revenues.

RECOMMENDATION

Receive and discuss the end of year report on the Grand Theatre Center for the Arts.

ATTACHMENT

- A. 2009/2010 Grand Theatre Center for the Arts End of Year Stats.
- B. Grand Theatre Center for the Arts 2010/2011 Season Announcement.

Prepared by: Jeffrey Haskett, Theatre Supervisor  
Reviewed by: Maria Hurtado, Assistant City Manager  
Approved by: Leon Churchill, Jr., City Manager

## 2009/2010 Grand Theatre Center for the Arts End of Year Stats

Approved Amended Budget: \$1,564,380  
Actual Expenditures: \$1,247,079  
Total Revenue: \$416,398.03

2009/10 total attendance: \$32,488

### **Presenting Season**

Events offered: 36  
Total Attendance: 4,838  
Gross revenue: \$64,332

Most successful events: *Charlie and the Chocolate Factory* (741), *Glenn Miller Orchestra* (403) and *Soweto Gospel Choir* (314)

### **Rentals**

Events: 157  
Total attendance: 15,814  
Gross Revenue \$110,398

Most successful commercial events: *Academy of Performing Arts Recital* (1,683) and *East County Performing Arts Recital* (1,257).

Most successful non-profit events: *Children's Dance Theatre The Nutcracker* (1,247), *Poet Dance: Dancing to a Standstill* (690) and *Millennium High Graduation* (547).

### **Exhibitions Program**

Featured Exhibitions: 6  
Total Exhibitions Attendance: 8,965  
Average Daily Attendance: 48.7  
Average Weekly Attendance: 249  
Works/Items Sold: 32  
Gross Revenue: \$1,042

Art Co-Opted in the Matthews Gallery  
December 2009 - June 2010  
Works/Items Sold: 100  
Gross Revenue: \$4,415

## **Arts Education**

Total Classes Offered: 1479

Total Classes Held: 999

- Dance: 168

- Drama: 23

- Music: 576

- Visual Arts: 229

- Other (camps, workshops, etc.): 3

Total Number of Instructors: 46

Total Number of Students: 2825

Total Number of Financial Aid Recipients: 254

Total Gross Revenue: \$192,513

- Financial Aid \$18,074 (9% of all Registrations)

- Customer Payments \$174,439



# Grand Theatre Center for the Arts

## 2010/11 Presenting Season

The Grand Theatre Center for the Arts, an inter-disciplinary art center owned and operated by the City of Tracy and located in Historic downtown, is proud to announce its 2010/11 presenting season. During the first three years of operation the theatre's season has continually brought a growing number of patrons, not only local but from far and wide, to experience first rate entertainment locally without the hassle of the big city environment. As the Grand Center for the Arts turns four it will kick off the largest season yet; full of old favorites and brand new options never offered before.

On September 11, 2010 the Center will present Anniversary Weekend, featuring comedian John Heffron direct from Comedy Central, The Tonight Show and winner of Last Comic Standing, Arts Education Activities & Demonstrations, A Centennial Celebration Historical Exhibition, and Open House & Tours. That Sunday the festivities will continue with "Sound of Music" on the big screen for .25¢ per person, a prince that harkens back to the old days. The Arts Leadership Alliance (the Grand's non-profit fundraiser) will underwrite the weekend performances.

The 2010-11 presenting season will provide theatre goers with two musicals, eight plays, and seven concerts. New this season the Center will offer a Jazz Series that will turn the Grand Lobbies into a Jazz nightclub on a Friday night every two months and will feature different styles of jazz music. Also for the first time the Center will host its own Haunted House. The spooky 1923 theatre and mysterious old jail will be transformed for thrills and chills.

We have significantly expanded our Cinematic Treasures Series to over 20 of those favorite movies brought back to life on our big screen. The highly praised Family Series will double to now offer 6 events geared for families of all ages. We are happy to offer a Family Four-Pack ,two adults and two students for one low price.

We are also proud to announce the new Season Discount Card. With the purchase of this card you can show your dedication to the arts in Tracy and receive 10% (15% for seniors) of all season events, free exchanges of season tickets, two passes to our Cinematic Treasures Series, and advance notice of additional season events and deals.

Tickets for the 2010/11 Season will go on sale Saturday July 31, 2010. Online at [www.atthegrand.org](http://www.atthegrand.org) by phone or in person at the Box Office, open Monday through Friday 10 am – 6 pm and Saturdays 10 am – 2 p and 1 hour prior to ticketed performances. The Grand Theatre Box Office is located at 715 Central Avenue, Tracy, CA. (209) 831-6TKT (6858)

# Grand Theatre Center for the Arts

## 2010/11 Season

### Musicals

#### **Grease**

October 15 – 17, 2010

Come join the students of Rydell High as they deal with love, gangs, and friendship in the 1950s. You'll hear those favorite hits that have kept folks of all ages coming back for years.

#### **RENT**

April 14 – 18, 2011

Five hundred twenty-five thousand six hundred minutes in a year. How do you measure a year in a life? The Rock Musical Rent comes to the Grand Theatre's EKT stage in April to show you how. Rent and its demonstration of Love will forever leave an impression on your life.

### Plays

#### **A Streetcar Named Desire**

September 30 – October 3, 2010

Blanche DuBois, an aging Southern debutante, arrives at her sister Stella's home in New Orleans hoping to start a new life after losing her ancestral mansion, her job, and her reputation. Blanche lives in a world where surviving means "fantasy and denial" are the tools used to overcome reality.

#### **Odd Couple**

January 14 – 16, 2011

Can two divorced men share an apartment without driving each other crazy? The Odd Couple, a play by Neil Simon, follows two mismatched roommates, one neat and uptight, the other more easygoing and slovenly.

#### **At the Playground**

February 3 – 6, 2011

Two women meet when they take their children to the playground. One woman is Chinese, pulled out of the world she knows and plopped into suburban America. The other woman is Caucasian, she never dreamed that she know someone from such a faraway place.

#### **Barefoot In The Park**

February 11 – 13, 2011

A conservative young lawyer and his irrepressible bride struggle with marital discord after the ecstasy of the honeymoon gives way to the reality of setting up housekeeping in a five-flight walk-up.

#### **Doubt**

March 3 – 6, 2011

The fictional play is set in the St. Nicholas Church School, in the Bronx, during the fall of 1964. Father Flynn, a beloved and progressive parish priest, tells his congregation that "Doubt can be a bond as powerful and sustaining as certainty."

### **Sunshine Boys**

March 11 – 13, 2011

Lewis and Clark were famous comedians during the vaudeville era; off-stage, though, they couldn't stand each other and haven't spoken in over 20 years. Ben, Willy Clark's nephew, is the producer of a variety show that wants to feature a reunion of the classic duo. How will Ben convince the crotchety old comedians to put aside their differences before the big show?

### **Brothers Grimm**

April 8 – 10, 2011

The fairy tales of the Brothers Grimm are turned on their heads in this fast-paced, rollicking ride as two narrators and several actors attempt to combine all 209 stories ranging from classics like Snow White, Cinderella, and Hansel and Gretel to more bizarre, obscure stories. It's a wild, free-form comedy with lots of audience participation and madcap fun.

## Concerts

### **Come Together: The Beatles Concert Experience**

October 9, 2010

'Come Together' recreates the look, sound and history of the Beatles, taking you back into time to witness the Beatles phenomenal rise to pop stardom. Over thirty-five Beatles hits are included in this multi-media touring stage show.

### **Pink Floyd Laser Extravaganza**

November 6, 2010

Experience the ultimate Pink Floyd Tribute Show in this live musical performance starring House of Floyd and their incredible laser light show. This is a live recreation of an actual Pink Floyd concert and highlights the greatest and most popular music of their career.

### **Swing Dolls: The Ultimate USO Tour**

February 27, 2011

Featuring music by The Andrews Sisters, The McGuire Sisters, and more! The Swing Dolls are a dynamic female vocal trio who captivate and entertain with stunning close harmonies, show-stopping costumes and stylish choreography.

### **Rolling Stones Unauthorized**

March 19, 2011

West Coast's most celebrated Rolling Stones Tribute Group and their newest concert experience stage show. The colors, costumes and sonic accuracy of this performing ensemble will amaze and astound even the most discriminating Rolling Stones fan.

### **La Honda Camp Concert Band**

April 10, 2011

The Hayward La-Honda Music Camp is organized to challenge students in a variety of creative pursuits and is devoted to the development of musicianship for students grades 6-12. This is accomplished through a program of study, concentrated rehearsal, performance, recreation and general camp life. Their all-star band visits the Grand.

### **Ol' Blue Eyes**

April 10, 2011

Nobody delivered a song like Frank Sinatra, and Las Vegas-style entertainer Jonathan Poretz delivers them all with pizzazz and style backed by a smokin' Jazz Ensemble. This show features the greatest hits of Frank Sinatra and a salute to the legendary singers of Las Vegas.

### **Endless Summer: The Beach Boys Story**

May 7, 2011

The musical history of the Beach Boys is presented in this exciting multi-part live concert featuring the career and the incredible hits of America's most beloved and successful sixties supergroup!

## Family Series

### **Valley Concert Band (with instrument petting zoo)**

November 18, 2010

Providing music entertainment and education to the Central Valley, these local professional musicians are coming to the Grand bringing us the "classical pops" that inspire and delight. They will also provide an instrument petting zoo open before the concert for families to touch feel and experience various types of musical instruments.

### **Andrew and Jeff Save Christmas**

November 26 – 28, 2010

This exciting musical holiday production is a family event jumpstarting the Holiday season at the Grand. With Halloween forgotten Count Wolfbane is determined to stop Christmas from happening. He plots to kidnap Rudolph! It's up to the audience, Andy, Jeff, and the bungling elves to save the day.

### **La Pasada Mexicana**

December 3 – 5, 2010

The Ballet Folklórico Costa de Oro is dedicated to the preservation of Mexican traditions and culture. Dance and music are the tools used to educate the youth and community about Mexico's rich and beautiful history. Join them as they celebrate the season.

### **Dangerous Dinos**

February 11 – 13, 2011

These daring super heroes will bounce right into your hearts . . . guaranteed! Dangerous only to those who would harm our planet, the three dinosaurs have a mission, be earth friendly, resist violence, and follow the 4 D's, "Dinos Don't Do Drugs!" A live show that will thrill all ages. Adventurously teeny Ty Rex, Rocko Gecko, and spunky Bubby are on a quest to wipe out drugs and teach everyone to be good to themselves and others.

### **Steppin' Out: CDT Fashion Show**

March 26, 2011

Tracy's First Fashion/Dance Show featuring Spring Fashions from local merchants and dancers from the Children's Dance Theatre

### **Magician Bart Rockett**

April 2 – 3, 2011

Bart Rockett's show is a unique blend of music, magic, comedy and grand illusion, delivered in this fun and dazzling presentation that will amaze, astonish and entertain the entire family.

### **Easter EGGtravaganza**

April 22 – 23, 2011

Never before have such personalities grabbed the hearts of all ages at Easter time as Zeek and Petunia Bunny. Come share the magic and learn that surprisingly, Peter Cottontail has living grandparents! This high energy musical show included lots of audience participation and an Easter egg hunt.

## Dance

### **Children's Dance Showcase**

September 18, 2010

Students from the Children's Dance Theatre showcase favorite works from years past.

### **The Nutcracker**

December 18 – 19, 2010

Children's Dance Theatre brings us this classic holiday experience.

## Special Events

### **Main Street Friday Night Jazz**

September 24, 2010, November 12, 2010, January 7, 2011, & March 18, 2011

In this new series Main Street Jazz Café will turn the Grand Lobbies into a Jazz nightclub on select Friday nights every other month, featuring different styles of jazz music. The Don Cosé Arts Café will be open to offer Hors d'œuvres and beverages.

### **Haunted House at the Grand Theatre**

October 27 – 31, 2010

The spooky 1923 theatre and mysterious old jail are transformed for thrills and chills. Experience the Grand like never before.

## Cinematic Treasures

We have expanded our Cinematic Treasures Series to over 20 favorite movies brought back to life on our big screen. Here are some of them. Please check our website for more details.

On The Town

War of the Worlds

Abbott & Costello Meet Frankenstein

Pink Panther

Singing in the Rain

A Christmas Carol

West Side Story

Some Like It Hot

The Maltese Falcon

Viva Las Vegas

North by Northwest

Rebel Without A Cause

Casablanca

An American in Paris

August 3, 2010

AGENDA ITEM 6.A

REQUEST

**DESIGNATION OF VOTING DELEGATE AND UP TO TWO VOTING ALTERNATES FOR THE 2010 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**

EXECUTIVE SUMMARY

The League of California Cities is holding its annual conference in San Diego from September 15-17, 2010. Designation of a voting delegate and up to two voting alternates is being requested.

DISCUSSION

The League of California Cities Annual Conference is scheduled for Wednesday, September 15, 2010, through Friday, September 17, 2010, in San Diego. An important part of the Annual Conference is the Annual Business Meeting. At this meeting, the League membership considers and takes action on resolutions that establish League policy. In order to expedite the conduct of business at this policy-making meeting, each City Council should designate a voting delegate and up to two alternates who will be registered at the conference and present at the Annual Business Meeting. A voting card will be given to the City official who is designated on the Voting Delegate Form.

STRATEGIC PLAN:

This agenda item is a routine operational item and does not relate to the Council's seven strategic plans.

FISCAL IMPACT:

None.

RECOMMENDATION:

That Council designates a voting delegate and up to two voting alternates for the League of California Cities Annual Conference Business Meeting.

Prepared and Reviewed by: Maria Hurtado, Assistant City Manager  
Approved by: Leon Churchill, Jr., City Manager

August 3, 2010

AGENDA ITEM 6.B

REQUEST

**ADOPT A RESOLUTION APPROVING THE ARGUMENT IN FAVOR OF THE MEASURE REGARDING WHETHER THE OFFICE OF THE CITY CLERK SHOULD BE APPOINTED AND REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY TO CONSOLIDATE THE LOCAL MEASURE WITH THE STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2010**

EXECUTIVE SUMMARY

On July 6, 2010, Council adopted a resolution authorizing a measure be placed on the November 2, 2010 ballot requesting Tracy voters determine whether the office of the City Clerk should be appointed. At the July 20, 2010 meeting the Council created an ad hoc subcommittee to draft an argument in favor of the measure and requested it be brought back to the August 3, 2010 meeting for Council review.

DISCUSSION

During the past two months the Council has taken a number of actions related to the City's General Municipal Election to be held on November 2, 2010. On June 15, 2010, the Council adopted Resolution 2010-088 calling for the election of the Mayor and two Council Members, and Resolution 2010-089 requesting the County consolidate the City's General Municipal Election with the State's General Election.

On July 6, 2010, the Council adopted Resolution 2010-111 authorizing a measure to be placed on the November 2, 2010 ballot to allow Tracy voters to determine if the office of the City Clerk should be appointed.

On July 20, 2010, the Council adopted three resolutions related to the ballot measure. Resolution 2010-122 sets the deadline for submitting arguments for and against the measure for August 13, 2010 at 5:00 p.m. and directs the City Attorney to prepare an impartial analysis; Resolution 2010-123, amends Resolution 2008-101, and sets the deadline for submitting rebuttal arguments for August 23, 2010 at 6:00 p.m. and, Resolution 2010-124 authorizes the Council, as a legislative body, to author the argument in support of the measure. The Council also created an ad hoc subcommittee consisting of Council Member Maciel and Council Member Abercrombie to draft an argument in favor of the measure and bring it back to Council for review at the August 3, 2010 meeting. The argument in favor of the ballot measure will be distributed at the August 3, 2010 Council meeting.

The Registrar of Voters Office has requested the City Council adopt a resolution requesting the Board of Supervisors of San Joaquin County to consolidate the local measure with the state general election to be held on November 2, 2010.

STRATEGIC PLAN

This agenda item supports the Organizational Effectiveness Strategy, and specifically implements the following goal:

Goal 4: Ensure a quality workforce.

FISCAL IMPACT

All costs associated with the City's consolidated election have been included in the FY 10-11 budget.

RECOMMENDATION

That the City Council adopts a resolution approving the argument in favor of the measure regarding whether the office of the city clerk should be appointed, and requesting the Board of Supervisors of San Joaquin County to consolidate the local measure with the state general election to be held on November 2, 2010.

Prepared by: Carole Fleischmann, Assistant City Clerk  
Reviewed by: Maria Hurtado, Assistant City Manager  
Approved by: Leon Churchill, Jr., City Manager



RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY, CALIFORNIA, APPROVING THE ARGUMENT IN FAVOR OF THE MEASURE REGARDING WHETHER THE OFFICE OF THE CITY CLERK SHOULD BE APPOINTED AND REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY TO CONSOLIDATE THE LOCAL MEASURE WITH THE STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2010

WHEREAS, A General Municipal Election on Tuesday, November 2, 2010, has been called by Resolution 2010-088, adopted on June 15, 2010; and

WHEREAS, On July 6, 2010, the Council adopted Resolution 2010-111 authorizing a measure to be placed on the November 2, 2010 ballot to allow Tracy voters to determine if the office of the City Clerk should be appointed; and

WHEREAS, On July 20, 2010, the Council adopted Resolution 2010-124 authorizing the Council, as a legislative body, to author the argument in support of the measure; and

WHEREAS, The Registrar of Voters Office has requested the local measure regarding whether the Office of the City Clerk should be appointed be consolidated with the state general election to be held on November 2, 2010.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Tracy, California, does declare, determine, and order as follows:

Section 1: That the Council approves the argument attached as "Exhibit A" in favor of the measure regarding whether the Office of the City Clerk should be appointed.

Section 2: That the Board of Supervisors of San Joaquin County consolidates the local measure with the State General Election.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 3rd day of August 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk