

Tuesday, August 17, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: 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

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Award of Gasoline and Diesel Fuel Supply Services to Falcon Fuels, Inc. of Paramount, California
- C. To Find that it is in the Best Interest of the City of Tracy to Dispense with the Formal Bidding Process Pursuant to Tracy Municipal Code Section 2.20.180(B)(4) and Authorize the Purchase of Sensus Water Meters and Related Parts and Equipment from Golden State Flow Measurement
- D. Approve Amendment 1 to the Professional Services Agreement with Odyssey Design Group, Inc., of Stockton, California, For a Not to Exceed Amount of \$90,000 to Provide Professional Support Services Assisting in the Review and Plan Checking of Landscaping and Irrigation for New Development and Capital Improvement Projects and Authorize the Mayor to Execute the Amendment
- E. Approval of Permit for the Consumption of Alcoholic Beverages on City Streets for the Tracy Chamber of Commerce "2010 Dry Bean Festival" on September 11 and 12, 2010
- F. Approving an Amendment to the San Joaquin Council of Governments (SJCOG) Joint Powers Agreement (JPA) in Order to Replace the San Joaquin County Auditor-Controller and Treasurer with the SJCOG Chief Financial Officer
- G. Approve Declaration of the City's Official Intent to Reimburse Itself for Certain Expenditures from Proceeds of Indebtedness

2. ITEMS FROM THE AUDIENCE

3. ADOPT THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND GENERAL TEAMSTERS LOCAL NO. 439, IBT

4. ACCEPT THE ATTACHED GRAND PARTNERSHIP REPORT AND AFFIRM ITS FINDINGS THROUGH A RESOLUTION IN PREPARATION FOR A NEW MEMORANDUM OF UNDERSTANDING (MOU) AND LEASE AGREEMENT WITH A NON-PROFIT ARTS ORGANIZATION TO BE NAMED

5. SECOND READING AND ADOPTION OF ORDINANCE 1151 AN ORDINANCE OF THE CITY OF TRACY IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

6. ITEMS FROM THE AUDIENCE

7. COUNCIL ITEMS

8. ADJOURNMENT

June 15, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 7:03 p.m. and led the Pledge of Allegiance.

The invocation was given by Pastor Tim Heinrich, Crossroads Baptist Church.

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

1. CONSENT CALENDAR - Following the removal of item 1-G from the calendar by Leon Churchill Jr., City Manager, and item 1-L by Mayor Pro Tem Tucker, 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 – Regular meeting minutes of April 20, 2010, and closed session minutes of June 1, 2010, were approved
 - B. Award a Construction Contract to Gowan Construction Co. Inc., of Tracy, California, for Construction of the Community Center Rehabilitation (Wall Coverings) Project - CIP 78108, and Authorize the Mayor to Execute the Construction Contract – Resolution 2010-080 awarded the construction contract.
 - C. Acceptance of Production Well # 8 Project - CIP 75092, Completed by Howk Systems, Inc., of Modesto, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-081 accepted the project.
 - D. Approve Amendment 1 to the Professional Services Agreement with Kleinfelder, Inc., to Provide Materials Testing Services for Fiscal Years 2010-2011 and 2011-2012, and Authorization for the Mayor to Execute the Amendment – Resolution 2010-082 approved the amendment.
 - E. Approve the Submittal of an Application for Grant Funds for the Urban Greening Grant Program to Construct the Downtown Park Plaza – Resolution 2010-083 approved submittal of the application for grant funds.
 - F. Authorization to Award Chemical Bids for Water and Wastewater Treatment for Fiscal Year 2010-11 – Resolution 2010-084 awarded the bid.
 - G. Approve an Amendment to the Downtown Tracy Community Benefit District Management District Plan and Approve a Disbursement Agreement by and Between the City of Tracy and the Tracy City Center Association, Authorizing the City Manager to Execute the Agreement on Behalf of the City – Item to be rescheduled for a future meeting.

- H. Approve the Amendments to the Downtown Parking District Property Lease Agreements, Declare the Intent of the City Council to Assign its Interest in the Property Lease Agreements to the Tracy City Center Association, Authorize and Direct the City Attorney to Draft an Assignment Agreement Transferring the City's Interest in the Lease to the Tracy City Center Association, Authorize and Direct the City Manager to Sign the Lease Amendment Agreements and the Assignment Agreements on Behalf of the City – Resolution 2010-085 approved the amendments, declared the intent of the City Council, authorized the City Attorney to draft the assignment agreement.
- I. Approval of the Downtown Tracy Business Improvement Area (DTBIA) Fiscal Year 2010-2011 Annual Report – Resolution 2010-086 approved the DTBIA's annual report.
- J. Authorization to Enter into a Professional Services Agreement with Delta Wireless, Inc. for Police Communications Equipment Maintenance and Authorizing the City Manager to Sign the Agreement – Resolution 2010-087 authorized entering into the Professional Services Agreement.
- K. Adopt Resolutions Regarding the Election Process, General Municipal Election on November 2, 2010 – Resolution 2010-088 gives notice of the holding of a General Municipal Election to be held on November 2, 2010. Resolution 2010-089 requests the Board of Supervisors of San Joaquin County provide for the consolidation of the General Municipal Election to be held with the State General Election to be held on November 2, 2010.
- M. Adoption of the Appropriations Limit for Fiscal Year 2010-2011 for the City of Tracy – Resolution 2010- 090 adopted the appropriation limits.
- N. Approving Consent of an Assignment and Assumption Agreement for the Existing Deferred Improvement Agreement and Offsite Improvement Agreement for Chabot Commerce Center - Tract 3019, with the New Buyer, Authorizing the Mayor to Execute the Agreement, and Authorizing the City Clerk to File the Agreement at the Office of the San Joaquin County Recorder – Resolution 2010-091 approved consent of the agreement.
- L. Approval of the San Joaquin County Council of Governments' (SJCOG) Annual Financial Plan for Fiscal Year (FY) 2010-2011 - Leon Churchill, Jr., City Manager, presented the staff report. Mr. Churchill stated that the Joint Powers Agreement between member agencies and the Council of Governments requires that the Annual Financial Plan be ratified by each governing body. SJCOG requested the City ratify the Plan prior to June 30, 2010.

There will be no impact on the General Fund. Staff recommended that City Council ratify the SJCOG Annual Financial Plan for FY 2010-2011.

Mayor Pro Tem Tucker asked for clarification regarding federal pass-through funds; where the money comes from and where it goes. Dana Cowell, on behalf of the San Joaquin County Council of Governments, stated the fund encompasses all of the federal transportation funds including roadway rehabilitation, highway improvements and transportation systems. SJCOG's

responsibility is to work with the State to program those funds for individual communities and to account for those projects.

Mayor Pro Tem Tucker asked where, from within the federal budget, do funds come from. Mr. Cowell stated the funds primarily come from the Federal Highway Administration and the Federal Transit Administration.

Mayor Pro Tem Tucker asked if \$651 million is available each year. Mr. Cowell stated it reflects the overall capital improvement program for the next 3-4 years.

Council Member Maciel asked if there were any specific projects earmarked for Tracy. Mr. Cowell stated they hoped to have bids open for operational improvements on I-205, extending on and off ramps, and auxiliary ramps.

Council Member Tolbert stated she noticed that all revenues have decreased and asked why there have not been any decreases in expenditures for SJCOG's budget. Mr. Cowell stated there have been reductions in the operating budget. Council Member Tolbert stated it was not reflected in the budget. Mr. Cowell stated they have a relatively small staff, and that consultants and service providers represent the major line item.

Council Member Tolbert rephrased the question asking why there has not been any decrease in supplies, memberships or periodicals, etc. Mr. Cowell stated those expenses have stayed relatively level.

Mayor Ives outlined some of the services SJCOG delivers to cities in the County. Council Member Tolbert asked that the next budget show a decrease.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-092 approving the San Joaquin County Council of Governments' (SJCOG) Annual Financial Plan for Fiscal Year (FY) 2010-2011. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Paul Miles, 1395 Mansfield Drive, addressed Council regarding an alleged Police misconduct complaint, and Chief Thiessen's non-response to the complaint. Mr. Miles indicated there was a crisis of integrity among Police and City staff. Mr. Miles indicated he would be filling out the necessary papers to pursue civil litigation. Mayor Ives asked Mr. Sodergren to provide Council with direction and background on the complaint.

Brian Van Lehn, 541 Winston Court, addressed Council regarding continuous noise issues with Leprino Foods.

3. JOINT PUBLIC HEARING OF THE CITY COUNCIL AND THE COMMUNITY DEVELOPMENT AGENCY TO CONSIDER ADOPTION OF THE ANNUAL BUDGET FOR THE CITY OF TRACY AND THE TRACY COMMUNITY DEVELOPMENT AGENCY FOR FISCAL YEAR 2010-2011 AND APPROPRIATE FUNDS

Mayor Ives called the Community Development Agency to order at 7:31 p.m. Roll call found Agency Members Abercrombie, Maciel, Tolbert, Tucker and Chair Ives present.

Council Member Maciel abstained from voting only as it pertained to the CBDG (Fund 56840). Council Member Abercrombie abstained from voting only as it pertained to the Mayor's Youth Community Support Program (Fund 55460).

Zane Johnston, Finance Director, presented the staff report. Mr. Johnston stated the joint public hearing was being held to discuss the City and Agency budgets for Fiscal Year (FY) 2010-2011.

The proposed operating budget for FY2010-2011 was presented to the Council at a budget workshop on May 18, 2010. The focus of the operating budget is the General Fund. As presented at the budget workshop the proposed General Fund expenditure budget was \$47,238,040. However, revenues are not sufficient to cover expenses thereby resulting in a draw on reserves (budget deficit) of \$4,833,000.

The following was included in the original numbers of the proposed operating budget as presented at the workshop:

- \$455,000 in revenue for a full year of EMS fees
- 3% unpaid furlough for City employees who participated in an unpaid furlough in FY 09-10

Although the City Council did not request any changes to the proposed budget at the May 18, 2010 workshop, the following changes are necessary to reflect the most up to date information:

- Deletion of 50% of the EMS fee revenue (\$227,500) as the Council voted on June 1, 2010, to delay implementation of these fees until January 2011. This will increase the General Fund contribution to the South County Fire Authority Fund. An additional 1.5% in unpaid furloughs, (on top of the 3%) for certain employee groups. These groups are Department Head, Confidential Management, Tracy Mid-Management Bargaining Unit, and Technical and Support. Department Heads will also forgo another .5% making their contribution 5% for FY 10-11. Total General Fund Savings of \$200,000.
- Deletion of \$60,000 from the General Fund for the D.A.R.E. program. This program is being evaluated and will be presented to City Council at a later date (tentatively July 20, 2010) at which time Council can appropriate funds if desired.
- Due to an oversight in preparation of the proposed budget (FY 09-10 expense items that were inadvertently not brought forward as part of the base budget) \$72,000 has been added to Community Promotion program. This is comprised of \$26,000 for City lobbying (\$50,000 total for FY 10-11), \$36,000 for a Grant Writer, and \$10,000 for public outreach tax education. These are all General Fund expenses.

With the above referenced changes, the General Fund expenditure budget will be \$46,104,540 and revenues will be \$42,465,470 resulting in a deficit/draw on reserves of \$4,813,000.

Labor negotiations with the Fire Union and the Teamsters Union have not been formally concluded. Possible outcome from these negotiations may lessen the budget deficit.

The proposed capital budget for FY 2010-2011 was presented to the Council at a workshop on March 16, 2010. At the workshop no changes were requested to the proposed CIP. However, the Council did request a summary of projects from Fund 301 (General Projects Fund).

Fund 301 is the City's only discretionary capital fund. Money has been accumulated in this fund over the years from two major sources. Prior to FY 07-08 the City had General Fund operating surpluses (revenue over expenses) and some of these surpluses went into Fund 301. Secondly, the City was able to take advantage of lower interest rates to refinance a large amount of bonds, the savings of which were deposited into Fund 301. As the City expects to be facing significant operating budget challenges in the years to come, as well as no further opportunity to refinance bonds, it is expected that Fund 301 will not have any source of additional revenue.

Prior Council action has allocated Fund 301 monies to these projects. The projects are in varying states of progress toward ultimate construction or completion. The proposed CIP budget does not make any changes to any project that previously received an appropriation from Fund 301. An additional \$498,200 is proposed for appropriation from Fund 301 in FY 10-11. The projects receiving this funding are noted on the summary attached to the staff report. This together with previous appropriations allocates substantially all of Fund 301.

To reflect the most current information since the March 16, 2010 workshop, the following changes have been made in the proposed capital budget for FY 10-11.

CIP 72041 – Traffic signal - Lammers and Bryon Phase 2

Proposed for \$310,000 in FY 10-11 \$150,000 from the Gas Tax Fund 245 and \$160,000 from Grant Funding

CIP 72076 – Signal interconnect - Grant Line Road, Pombo to MacArthur

Proposed for \$180,000 in FY 10-11 \$30,000 from the Gas Tax Fund 245 and \$150,000 from Grant Funding

CIP 73121 – Street Patch and Overlay FY 10-11

Funding Change: \$90,000 increase in Transportation Sales Tax Fund 242 \$90,000 decrease in the Gas Tax Fund 245

CIP 73123 – Overlay – Court Drive

Proposed for \$200,000 in FY 10-11, instead of in FY 11-12 \$150,000 from the Transportation Sales Tax Fund 242 \$50,000 from the Tax Fund 245

CIP 73124 – 22nd Street

Proposed for \$200,000 in FY 10-11, instead of in FY 11-12 \$150,000 from Fund 242 and \$50,000 from the Gas Tax Fund 245

CIP 73125 – Reconstruction – Larch Road, Holly Drive to East of Tracy Blvd

Instead of \$927,000 proposed for FY 10-11, \$402,000 now proposed for FY 10-11 \$525,000 deferred to FY 11-12

Project funding from the Transportation Sales Tax Fund 242

CIP 73126 – Widening – MacArthur Drive – Shulte to Valpico, Phase II
Preliminary planning proposed to start in FY 10-11
\$642,900 with \$100,000 from the Infill Arterial Fund 313
\$542,900 from Grant Funding

CIP 77540 – Regional Rail Planning Study
Proposed \$350,000 for FY 10-11
\$50,000 from the City's Transit Fund 573
\$300,000 from the Federal Rail Grant

CIP 79604 – Affordable Housing Site Assembly
Proposed for \$1,859,000 in FY 10-11
Project funding would come from the CDA Housing Fund 281

These changes add \$3,216,900 to the proposed Capital Budget for FY 10-11, resulting in proposed appropriations of \$37,783,040 for FY 10-11.

The text of the proposed resolution, similar to previous years' budget resolutions, authorizes the appropriations and interfund transfers for FY 10-11 in Sections 1 and 2. Section 3 of the resolution provides for all investment earnings and gains in FY 09-10 and FY 10-11 for funds with General Fund derived cash balances and the City's internal services funds will be allocated to the General Fund 101.

Section 4 of the budget resolution appropriates any un-appropriated proceeds of taxes to contingency reserves although none are anticipated. This section provides for a formal statement of the practice as policy for purposes of Gann Limit compliance. Also, it sets a targeted fund balance of \$17,924,000 for the City's General Fund 101. It authorized staff to maintain this targeted fund balance at fiscal year-end, by transferring monies in or out of the General Fund 101 with the Economic Uncertainty Fund 299.

Section 5 specifies there is no uncommitted development impact fee monies held by the City from prior fiscal years. All fees collected to date have either been spent on capital projects or are committed to projects scheduled in the City's capital improvement plan. Section 6 provides that any over expenditures in the current FY 09-10 operating budget as amended at the fund and department level will be offset by an equal reduction for the same fund and department in the new adopted budget for FY 10-11. It is not anticipated that any department will exceed their FY 09-10 amended budget.

Section 7 deals with fee revenues that are projected to cover program costs. If actual revenues are less than projected, actual program expenses should also decrease by an equal amount. This section provides that any expenditure of unrealized revenues will also be offset by an equal amount if over by 5%.

As projected, there will be sufficient resources to cover all proposed expenditures. Most funds have sufficient reserves and/or revenues to cover their expenditures. In a few cases, short-term loans will be required for these funds.

Staff recommended that the Council adopt the City of Tracy Budget and Appropriations Resolution for Fiscal Year 2010-2011, and that the Agency Board of Directors adopt the Community Development Agency Budget and Appropriations Resolutions for FY 2010-

2011. These actions will make the proposed budget, as modified, the adopted /approved budgets for the City and for the Agency for FY 2010-2011.

Mayor Ives opened the public hearing.

Robert Tanner, 1371 Rusher Street, addressed Council regarding Fund 301 and the possibility of moving some of those funds back to the General Fund. Mr. Tanner suggested the City may have not really "cut into the bone" and suggested further cuts.

Archie Bakerink, 1030 Central Avenue, stated the projector for the Grand Theatre would generate revenue and bring people downtown. Mr. Bakerink stated he was in favor of keeping the item.

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

Mayor Pro Tem Tucker indicated she did not believe funds from Fund 301 should be moved to the General Fund at this time, but if any project comes in under budget, the remaining funds should be moved into the animal shelter fund.

Council Member Tolbert indicated she disagreed with earmarking funds for a particular project. Council Member Tolbert added it was a discretionary budget and should remain discretionary.

Council Member Maciel asked for clarification of Council's action on the wayfinding sign project. Mr. Churchill indicated Council will have two opportunities to approve the project and appropriate funding.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-093 approving the annual budget and appropriations for the City of Tracy for FY 2010-2011. Voice vote found all in favor; passed and so ordered.

Mayor Ives called for the Council to recess at 7:52 p.m.

It was moved by Agency Member Abercrombie and seconded by Agency Member Maciel to adopt Resolution 247 approving the annual budget and appropriations resolution for the Community Development Agency for the City of Tracy for FY 2010-2011. Voice vote found all in favor; passed and so ordered.

Chairperson Ives called for the Agency to adjourn at 7:53 p.m. Voice vote found all in favor; passed and so ordered.

Mayor Ives reconvened the City Council at 7:53 p.m.

4. AUTHORIZATION FOR THE CITY MANAGER TO SIGN THE "CITY AUTHORIZATION TO RECORD DEVELOPMENT AGREEMENT" RELATED TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND SURLAND COMMUNITIES, LLC ("SURLAND") - Bill Dean, Assistant Director, Development and Engineering Services, presented the staff report. Mr. Dean stated that on December 16, 2008, the Council introduced Ordinance 1131, which was adopted on January 6, 2009, approving a Development Agreement (DA) with Surland. The DA provides, in part, that Surland has

rights to 2,250 Residential Growth Allotments (RGAs) and Building Permits that would be issued in accordance with a yearly schedule ("ramping" schedule). The DA does not require that these RGAs and permits be used solely on the Ellis Specific Plan site. Rather, the DA allows the City and Surland to apply the DA to other residential sites that Surland intends to develop. Actual development would be required, of course, to first be evaluated and receive City approvals, including environmental review.

The Ellis Specific Plan is a "Development Project" as defined in the Growth Management Ordinance, Section 10.12.030, which means that RGAs and building permits for the entirety of the Ellis Specific Plan shall be secured through procedures outlined in the DA.

Upon approval of the DA, Surland recorded the DA on one parcel within the Ellis site, which the DA refers to as the "Immediate Property". On March 3, 2010, Surland submitted an application to record the DA against new property beyond the Ellis Specific Plan site (Application Number DA10-0002) and has requested to record the DA on the balance of the properties within the Ellis Specific Plan site. The DA anticipated that requests would be forthcoming from Surland to allow the DA to be used on sites in addition to the Ellis Specific Plan and, accordingly, the DA establishes criteria and procedures, as follows:

Pursuant to Section 1.12 of the DA, the DA may only be recorded against property beyond the Ellis site when all of the following has occurred:

- 1) The property is known and its legal description prepared (called "Subject Property"). Surland satisfied this requirement with the submittal of their application.
- 2) Owner has acquired a legal or equitable interest in such "Subject Property". Surland satisfied this requirement with the submittal of their application, which included a signed Memorandum of Agreement with property owners of the "Subject Property". Similar documentation from property owners for properties within the Ellis Specific Plan site is still being compiled and will be the subject of a future staff report.
- 3) Such "Subject Property" is included within the City's Sphere of Influence. The "Subject Property" is currently within the City's approved Sphere of Influence (SOI), which was approved by the Local Agency Formation Commission (LAFCo) in 1994. The City is in the process of preparing a General Plan Amendment, in part to reduce the SOI. The acreage proposed to be removed from the SOI to date has included the "Subject Property". A separate City Council agenda item addresses the land use policy direction related to the boundaries of the SOI.
- 4) The City Council has determined that such "Subject Property" has satisfied the requirements of subdivisions (1), (2) and (3) above and has authorized its designated agent to sign the "City Authorization to Record Development Agreement". This agenda item identifies this fourth requirement and upon the Council's approval would authorize the City Manager to sign the City Authorization to Record Development Agreement.

An Environmental Impact Report (sch # 2006102092) for the Development Agreement was certified by the Council on December 16, 2008 (Resolution 2008-260).

This agenda item relates to the Surland Companies DA. A Reimbursement Agreement with Surland Companies is in place to cover staff costs.

Staff recommended that the Council authorize the City Manager to sign the City Authorization to Record Development Agreement on properties adjacent to the Ellis Specific Plan site.

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

Chris Long, 1024 Central Avenue, on behalf of Surland Companies, stated they were in support of staff's recommendation.

Tim Tarron, on behalf of Tracy Hills, addressed Council stating that they have worked with staff and the Surland Companies and were in support of the recommendation.

Gary Reeve, 37 1/5 W. Tenth Street, addressed Council on behalf of the Harrington property and read a letter into the record in support of the recommendation.

Craig Saalwaechter, 4083 Payton Lane, complimented staff for their efforts in getting both sides working together for the City.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-094 authorizing the City Manager to sign the "City Authorization to Record Development Agreement" related to the Development Agreement between the City and Surland Communities, LLC. Voice vote found all in favor; passed and so ordered.

5. UPDATE AND DIRECTION REGARDING THE STATUS OF THE GENERAL PLAN AMENDMENT, PROPOSED SPHERE OF INFLUENCE BOUNDARY CHANGES, SUSTAINABILITY ACTION PLAN, AND RELATED ENVIRONMENTAL DOCUMENTATION - Bill Dean, Assistant Director, Development and Engineering Services Department, introduced Victoria Lombardo, Senior Planner; Kimberly Matlock, Assistant Planner; and David Early, Design Community Environment. Mr. Dean stated that the Council adopted a General Plan and certified an Environmental Impact Report (EIR) for the General Plan on July 20, 2006. This document updated the previous General Plan, adopted in 1993. The General Plan included a proposed Sphere of Influence (SOI).

Following approval of the General Plan, new policies regarding SOIs were adopted by the San Joaquin County Local Agency Formation Commission (LAFCo), necessitating a revision of the SOI to reflect the new policies.

Between December 2007 and July 2008, the Council held six workshops in order to discuss the SOI (which includes 10 and 30-year development horizons), as well as other potential policy changes to be incorporated into the revised General Plan, as summarized in the following sections.

At the same time, the Governor signed SB 97 into law, which requires the Governor's Office of Planning and Research (OPR) to prepare California Environmental Quality Act (CEQA) guidelines for the mitigation of greenhouse gas (GHG) emissions, including, but not limited to, effects associated with transportation or energy consumption. OPR prepared and submitted these guidelines to the state's Natural Resources Agency in April 2009. These guidelines are related to the goals of AB 32 and SB 375, which target

GHG emission reductions to 1990 levels by 2020, and reduce transportation related GHGs through land use planning, respectively.

SOI Changes: 10-year and 30-year Horizons - A LAFCo policy now requires cities to show their projected growth within 10 and 30-year timeframes. Any project or area that a city does not anticipate will begin development within that timeframe cannot be included in the SOI. In order to comply with this LAFCo policy, the City held several workshops to determine the properties that would be within those 10 and 30-year horizons (January 15, February 5, 2008, April 1, 2008, June 3, 2008, and July 15, 2008). This resulted in a reduction in acreage as compared to the General Plan approved by the Council in 2006. The majority of the properties that are proposed to be removed from the SOI were planned for residential development, and likely could not all have begun development within the 30-year timeline, due to the regulations of the City's Growth Management Ordinance (GMO).

New Requests for SOI Changes - Staff is suggesting that the SOI boundaries be modified in five areas so that appropriate infrastructure and annexation planning can occur in accordance with LAFCo requirements.

Area 1: Adjacent to UR9 (Saddlebrook/Homewood) where existing developed properties along Valpico Road and Corral Hollow Road should be included in the SOI to evaluate appropriate annexation boundaries for UR9. This was mentioned during the November 17, 2009 Council meeting during approval of the Cost Recovery Agreement with Keenan Land Company for the UR9 project.

Area 2: Includes the St. Bernard's Catholic Church parcel (Assessor's Parcel Number (APN) 240-140-24) and the Latter Day Saints Church parcel (APN 240-140-28) that have existing infrastructure agreements in place regarding development of the parcels.

Area 3: This third area stems from written requests from both Surland Companies and property owners of the property located on the south side of Valpico Road, west of Corral Hollow. Together, they request that their parcels (APNs 240-140-05 and 06) be included in the 10-year horizon. Surland's letter indicates that they wish to record their recently approved Development Agreement on this property as set forth in Section 1.12 (Memorandum of Assignment) of the Surland Development Agreement. The specifics of authorizing the recordation of the Development Agreement on new property is the subject of a separate staff report.

The addition of this acreage would require amending the proposed SOI boundaries. This request indicates that the Surland Development Agreement would be recorded against this property, thereby enabling it to use a portion of the 2,250 residential growth allotments and building permits set aside for Surland Companies' projects. Upon recordation, the acreage would be limited to receive RGA's and building permits in accordance with the DA and not in competition with other builders under the systems recently put in place with the GMO Guidelines update.

Should this request be granted to include these properties within the proposed SOI, staff recommends adding adjacent acreage abutting Corral Hollow Road so as to avoid leaving an island of property within the SOI, which could complicate future annexation

requests. These additional adjacent parcels are not proposed to be added to the Secondary Residential Growth Area, and thereby would not offset the GMO Guidelines.

Area 4: Located both east and west of Corral Hollow Road, at the Midway and Mountain View Road intersections. The area consists of 103 residentially developed lots that are approximately one to two acres in size.

Area 5: Located at both the northeast and southeast corners of Eleventh Street and Chrisman Road. The existing development in the area is a mix of commercial, industrial, and residential (at the southern end, adjacent to Cabe Road). Staff recommended that these properties remain in the SOI to ensure that they can be provided services (water, sewer, storm drain) if the need arises in the future, in accordance with LAFCo policies.

Sustainability - An action item resulting from the General Plan approval in 2006 was the pursuit of a Citywide Sustainability Strategy. Funded by a grant from the Energy Efficiency and Conservation Block Grant and \$40,000 from the General Fund, the City hired Design, Community & Environment (DC&E) and Town-Green to begin the development of the sustainable strategy. The strategy includes the design of a comprehensive Sustainability Action Plan (SAP) regarding land use and urban form, water, sewer treatment and storm drainage, transportation, solid waste and recycling, economics, agriculture and food access, and public health. A major reason for this focus is to address new state requirements related to greenhouse gas emissions (GHGs), stemming from Assembly Bill 32. CEQA now requires GHG analysis and provides some streamlining when GHG reductions are planned on a community-wide level.

The Sustainability Action Plan is in draft form and has resulted in proposed additions and changes to goals, objectives and policies in several elements of the General Plan. The Draft Sustainability Action Plan has been developed with community and property owner input. In addition to the presentation to the Council on December 15, 2009, City staff and consultants held a community meeting on February 17, 2010 that focused on the draft measures.

One proposed change to the General Plan will adjust several statistical profiles to reflect existing conditions (such as the true acreage of Kimball High School within UR 13) and to include flexibility for creativity within each UR. For example, a UR may allow for future residential development at densities ranging from very low (0.1-2.0 du/acre) to high (12.1-25 du/acre). The statistical profiles will be clarified in order to ensure allowance for such development, and to address refinements as the City-wide Infrastructure Master Planning process continues.

There is additional information regarding newly released FEMA maps showing a 200-year floodplain (previously only 100 and 500-year floodplains had been mapped), that will be included. Typographical errors will be corrected and land use designations will be reviewed for accuracy. A full list of proposed revisions will be identified for public review and for future public hearings.

A Supplemental Environmental Impact Report (SEIR) was prepared in 2009 for the proposed revisions to the General Plan. It included relevant sections that required analysis due to the proposed changes to the General Plan. These included Land Use, Population, Employment and Housing, Traffic and Circulation, Noise, and Air Quality. A Notice of Preparation for the SEIR was distributed on September 2, 2008, and a scoping

meeting to receive comments for the preparation of the SEIR was held at a Planning Commission meeting on September 24, 2008.

The Draft SEIR was completed and published for public comment on April 20, 2009. The comment period closed on June 8, 2009, and within that timeframe, numerous comments were received. The lengthiest comment came from the Center for Biological Diversity, asserting that a Climate Action Plan must be developed for the City's proposed General Plan. The amendments regarding sustainability within the General Plan and the development of the SAP will address that comment letter. Staff will prepare appropriate amendments and revisions to the SEIR and re-publish the document for public review in June, 2010. The SEIR will address environmental impacts of the proposed changes to the SOI, the Sustainability Action Plan, various General Plan amendments outlined in the report, as well as any Council direction.

The Planning Commission met on November 18, 2009, and was presented with a similar update for the General Plan Amendment. Their discussion was limited to general questions and clarifications regarding the proposed SOI boundaries and land use designations. However, requests by property owners to include acreage on Valpico Road in the City's 10-year horizon had not yet been submitted prior to that meeting. Based on Council direction on this agenda item, the formal review process would begin, including Planning Commission review and recommendations of the General Plan Amendment following a discussion of the potential environmental impacts (SEIR review).

The General Plan Amendment, SOI and SAP projects require significant staff time. Additionally, the General Plan Amendment project has a consultant budget of \$243,160. Of that budget, \$190,000 was obtained from the General Fund in March 2008, with the approval of the original PSA for the contract with Design, Community and Environment (DC&E) to complete the SEIR and the General Plan Amendment, and an additional \$53,160 was obtained from the remaining Workforce Affordable Housing project budget after its completion.

The creation of the SAP is funded by \$40,000 allocated from the General Fund in 2008 and \$150,000 received from the Federal Energy Efficiency and Conservation Block Grant program. There are no additional General Fund impacts other than staff time and City resources associated with administrative tasks. The measures ultimately adopted in the SAP will relate to future development and City operations. Some of these measures may require staff time and/or other funds to implement. The City's work on the SAP is also related to the General Plan Amendment, as some of the resulting actions and policies derived from the SAP have been incorporated into the Draft General Plan Amendment.

Staff recommended that the Council receive the staff report, discuss any questions or comments and provide direction to staff regarding the General Plan Amendment, Sustainability Action Plan, and the proposed Sphere of Influence boundary changes. This direction will enable staff to incorporate any changes and publish the documents for public review in June.

Based on City Council direction, staff will compile a revised General Plan, inclusive of any SOI changes and other changes mentioned in this report, as well as a revised SAP. Additional meetings with the Planning Commission will be held to enable additional public input in the process. Following any necessary revisions to the General Plan and

the Sustainability Action Plan, staff will publish a Revised Draft Supplemental EIR and begin the public hearing process to adopt the General Plan Amendment. Once that is complete, staff will work with LAFCo and hold any necessary workshops or hearings on the City's proposed Municipal Service Review and the SOI to complete the General Plan process. If the SEIR is certified in the fall of 2010, LAFCo's review can begin in 2010.

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

Mike Souza, 105 E. Tenth Street, stated the Sustainability Action Plan was another set of regulations he was not looking forward to, but the City has to be proactive and remain competitive in reducing green house gases while reducing costs. Mr. Souza stated staff had done a good job of presenting the item and suggesting how it could be done, but he still had concerns with the targets/goals. Mr. Souza added he wanted the protection the plan afforded, but didn't want it to cost more to develop in Tracy than it did in other communities. Mr. Souza encouraged Council to move forward with the Plan.

Mayor Ives stated the challenge will be implementing the Action Plan. Mayor Ives further stated the City would do the best it could upfront.

Council Member Maciel stated AB32 was not a good idea since it impacts how the City does business. Council Member Maciel added he felt better after discussing staff's realistic approach to this issue and indicated the City should move forward with the Plan.

Council Member Tolbert stated she appreciated the comprehensiveness of the document and the balance that has been struck. Council Member Tolbert stated the City has shown that it is willing to be proactive.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to direct staff to move forward with the General Plan Amendment, Sustainability Action Plan, and proposed Sphere of Influence boundary changes. Voice vote found all in favor; passed and so ordered.

6. SECOND READING AND ADOPTION OF ORDINANCE 1149 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRACY ADOPTING AN AMENDMENT TO THE CITY OF TRACY COMMUNITY DEVELOPMENT PROJECT AREA PLAN PURSUANT TO HEALTH AND SAFETY CODE SECTION 33333.6(e)(2), AND AMENDING RELATED ORDINANCES IN CONNECTION THEREWITH

The Clerk read the title of Proposed Ordinance 1149.

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 1149. Roll call vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE - Bob Elliott, 3168 Hutton Place, addressed Council regarding proposed tax increases to support public safety. Mr. Elliott indicated he was opposed to raising any taxes, but suggested if Council was set on raising taxes, to vote

for the one that is fair to all, and proposed an increase in sales tax with a sunset clause. Mr. Elliott urged Council to take every measure possible to continue funding D.A.R.E. education.

8. COUNCIL ITEMS - Mayor Ives discussed the auxiliary lanes proposed for I-205. Mayor Ives stated there would be more construction on I-205 and the project will connect on-ramps to off-ramps without impacting freeway traffic.
9. 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: 8:35 p.m.

The above agenda was posted at the Tracy City Hall on June 10, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

AWARD OF GASOLINE AND DIESEL FUEL SUPPLY SERVICES TO FALCON FUELS, INC. OF PARAMOUNT, CALIFORNIA

EXECUTIVE SUMMARY

Award of gasoline and diesel fuel supply services.

DISCUSSION

The City of Tracy requires gasoline and diesel fuel for the daily operation of vehicles and equipment. The majority of fuel is delivered to the City's fuel dispensing system at Boyd Service Center. Fuel is also provided for backup generators at various City facilities.

Bid packages were sent to eight fuel suppliers. The City received five bid proposals. Bids were on July 22, 2010.

Bids were received and are summarized as follows:

<u>SUPPLIER</u>	<u>MARKUP OVER DAILY RACK AVERAGE (CENTS)</u>	
Falcon Fuels	Unleaded	-\$0.0211
	Diesel	\$0.0084
General Petroleum	Unleaded	-\$0.015
	Diesel	\$0.018
Golden Gate Fuels	Unleaded	\$0.0095
	Diesel	\$0.0095
W. H. Breshears	Unleaded	\$0.038
	Diesel	\$0.038
Ramos Oil Co.	Unleaded	\$0.04
	Diesel	\$0.04

The low responsive bid, based on markup over daily rack average and City fuel consumption, was submitted by Falcon Fuels, Inc. of Paramount, California. Falcon Fuels, Inc. has met the bid requirements and staff recommends the fuel contract for Fiscal Years 2010-11 through 2012-13 be awarded to Falcon Fuels, Inc. The bid also allows the City the option to extend the contract for one additional year (Fiscal Year 2013-14).

STRATEGIC PLAN

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

FISCAL IMPACT

Funding in the amount of \$410,000 is available in the Fiscal Year 2010-11 operational budget for fuel and lubricants.

RECOMMENDATION

That the City Council, by resolution, award gasoline and diesel fuel supply services for Fiscal Years 2010-13 to Falcon Fuels, Inc. of Paramount, California, with the option to extend the contract for one additional year.

Prepared by: Bob Gravelle, Public Works Superintendent

Reviewed by: Kevin Tobeck, Director of Public Works

Approved by: Leon Churchill, Jr., City Manager

**CITY OF TRACY
GENERAL SERVICES AGREEMENT
FOR GASOLINE AND DIESEL FUEL**

THIS GENERAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and FALCON FUELS, INC. (hereinafter "PROVIDER").

RECITALS

- A. On June 25th, 2010 the City issued a Request for Proposals for Gasoline and Diesel Fuel (hereafter "Project");
- B. On July 22nd, 2010 Contractor submitted its proposal for the Project to the City.
- C. After negotiations between the City and the Contractor, the parties have reached an Agreement for the performance of services in accordance with the terms set forth in this Agreement. On August 17th, 2010, City Council authorized the execution of this Agreement pursuant to Resolution No. _____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** PROVIDER 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, PROVIDER's Authorized Representative: Carol Chavez. PROVIDER shall not replace its Authorized Representative, nor shall PROVIDER replace any of the personnel listed in Exhibit "A," nor shall PROVIDER use any subcontractors, 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. PROVIDER 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 PROVIDER in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the PROVIDER. PROVIDER 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.** PROVIDER is an independent contractor and is solely responsible for all acts of its employees or agents, including

CITY OF TRACY -- GENERAL SERVICES AGREEMENT

Gasoline and Diesel Fuel

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any negligent acts or omissions. PROVIDER is not CITY's employee and PROVIDER 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 PROVIDER. PROVIDER is free to work for other entities while under contract with the CITY. PROVIDER, and its agents or employees are not entitled to CITY benefits.

4. **CONFLICTS OF INTEREST.** PROVIDER (including its employees or agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that PROVIDER maintains or acquires such a conflicting interest, any contract (including this Agreement) involving PROVIDER's conflicting interest may be terminated by the CITY.

5. **COMPENSATION.**

5.1. For services performed by PROVIDER in accordance with this Agreement, CITY shall pay PROVIDER on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. PROVIDER's billing rates shall cover all costs and expenses of every kind and nature for PROVIDER's performance of this Agreement.

5.2. PROVIDER 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 PROVIDER based upon the services described on the invoice and approved by the CITY.

6. **TERMINATION.** The CITY may terminate the balance of the contract without prior notice if the Contractor fails to deliver the product within the time specified herewith; or by giving ten (10) days written notice to PROVIDER. The CITY shall pay PROVIDER for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. **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.

8. **INDEMNIFICATION.** PROVIDER 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

CITY OF TRACY -- GENERAL SERVICES AGREEMENT

Gasoline and Diesel Fuel

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PROVIDER's or PROVIDER'S subcontractors' performance of services under this Agreement.

9. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, PROVIDER shall obtain a City of Tracy Business License.

10. **INSURANCE.**

10.1. **General.** PROVIDER shall, throughout the duration of this Agreement, maintain insurance to cover PROVIDER, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

10.2. **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 \$5,000,000 general aggregate and \$5,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

10.3. **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.

10.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.

10.5. **General Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of PROVIDER in an amount not less than \$5,000,000 per claim.

10.6. **Endorsements.** PROVIDER 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, PROVIDER's coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the PROVIDER's insurance and shall not contribute with it.

10.7. **Notice of Cancellation.** PROVIDER 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 change in the policy prior to the expiration shall be considered a cancellation.

CITY OF TRACY -- GENERAL SERVICES AGREEMENT

Gasoline and Diesel Fuel

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10.8. Authorized Insurers. All insurance companies providing coverage to PROVIDER 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.

10.9. Insurance Certificate. PROVIDER 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.

10.10. Substitute Certificates. No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, PROVIDER shall provide a substitute certificate of insurance.

10.11. PROVIDER's Obligation. Maintenance of insurance by the PROVIDER as specified in this Agreement shall in no way be interpreted as relieving the PROVIDER of any responsibility whatsoever (including indemnity obligations under this Agreement), and the PROVIDER may carry, at its own expense, such additional insurance as it deems necessary.

11. ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the PROVIDER'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. Consent by the CITY to one assignment shall not be deemed to be consent to any subsequent assignment.

12. NOTICES.

12.1 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:

To PROVIDER:

CITY OF TRACY -- GENERAL SERVICES AGREEMENT

Gasoline and Diesel Fuel

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Robert Gravelle _____
Public Works Superintendent _____
City of Tracy _____
520 N. Tracy Boulevard _____
Tracy, California 95376 _____

With a Copy to:
Deputy City Attorney _____
333 Civic Center Plaza _____
Tracy, California, 95376 _____

- 12.2** 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.
- 13. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 14. 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.
- 15. 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.
- 16. 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.
- 17. 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.
- 18. COMPLIANCE WITH THE LAW.** PROVIDER shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 19. STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to PROVIDER's services will be the degree of skill and

CITY OF TRACY -- GENERAL SERVICES AGREEMENT

Gasoline and Diesel Fuel

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diligence ordinarily used by reputable providers performing in the same or similar time and locality, and under the same or similar circumstances.

20. 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 PROVIDER and the CITY. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

PROVIDER:

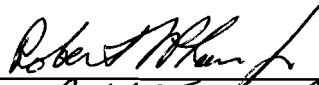
By: Brent Ives
Title: Mayor
Date: _____

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

By: Daniel G. Sodergren
Title: CITY ATTORNEY
Date: _____



By: ROBERT C. PHAIR JR.
Title: PRESIDENT
Date: 7/27/2010
Fed. Employer ID No. 33-0442858

RESOLUTION _____

AWARDING GASOLINE AND DIESEL FUEL SUPPLY SERVICES
TO FALCON FUELS, INC. OF PARAMOUNT, CALIFORNIA

WHEREAS, The City of Tracy requires gasoline and diesel fuel for the daily operation of vehicles and equipment, and

WHEREAS, The majority of fuel is delivered to the City's fuel dispensing system at Boyd Service Center and also provided for backup generators at various City facilities, and

WHEREAS, The low bid, based on markup over daily rack average and city fuel consumption, was submitted by Falcon Fuels, Inc. of Paramount, California, and

MARKUP OVER DAILY
RACK AVERAGE (CENTS)

Unleaded	-\$.0211
Diesel	\$.0084

WHEREAS, Falcon Fuels, Inc. has met the bid requirements and staff recommends the fuel contract for Fiscal Years 2010-13 be awarded to Falcon Fuels, Inc. with the option to extend the contract for one additional year (Fiscal Year 2013-14), and

WHEREAS, Funding in the amount of \$410,000 is available in the Fiscal Year 2010-11 operational budget for fuel and lubricants;

NOW, THEREFORE, BE IT RESOLVED That the City Council awards Gasoline and Diesel Fuel Supply Services for Fiscal years 2010-13 to Falcon Fuels, Inc. of Paramount, California, with the option to extend the contract for one additional year.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 17th 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

TO FIND THAT IT IS IN THE BEST INTEREST OF THE CITY OF TRACY TO DISPENSE WITH THE FORMAL BIDDING PROCESS PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(b)(4) AND AUTHORIZE THE PURCHASE OF SENSUS WATER METERS AND RELATED PARTS AND EQUIPMENT FROM GOLDEN STATE FLOW MEASUREMENT

EXECUTIVE SUMMARY

The City of Tracy specifies in its Standard Plans that Sensus water meters must be used for all City water meter installations. This item seeks a City Council finding that it is in the best interest of the City of Tracy to waive the formal request for bid process to purchase Sensus water meters and related parts and equipment from the exclusive distributor of same in the Tracy area, Golden State Flow Measurement.

DISCUSSION

All City water users are required to have their water metered for billing and data collection purposes. The City's Standard Plans require that only Sensus water meters be installed. Sensus has been utilized by the City for over 16 years due to overall quality and accuracy, vendor responsiveness, competitive pricing, and for standardization purposes. The City has periodically evaluated other water meter brands, but has consistently determined that Sensus best meets the needs of the City. The City also periodically conducts cost comparisons with other water meter brands and cities to ensure Golden State's pricing is competitive and reasonable.

Tracy Municipal Code section 2.20.180(b)(4) provides that the City may dispense with the formal bidding process for purchases in excess of \$50,000 when the City Council finds it is in the best interest of the City to do so. Staff believes it is in the best interest of the City to do so here because Golden State Flow Measurement is the exclusive distributor of Sensus automated meter read water meters in Northern California and Sensus water meters best meet the needs of the City.

This request is to provide City staff the authority to acquire Sensus water meters and related parts and equipment from Golden State Flow Measurement on an annual basis. This is primarily for replacing and repairing old or non-functioning meters. This is a function of the City Water Meter Division's daily operational program. This request is for Fiscal Year 2010-11 through 2012-13.

STRATEGIC PLAN

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

FISCAL IMPACT

This request has no impact on the General Fund. Funding is appropriated (approximately \$250,000-\$300,000) in the Public Works operating budget on an annual basis for the acquisition of water meters and supplies (Water Fund 511).

RECOMMENDATION

That the City Council, by resolution, finds, under Tracy Municipal Code section 2.20.180(b)(4), that it is in the best interest of the City to dispense with the formal bidding process and authorize staff to purchase Sensus water meters and related parts and equipment from Golden State Flow Measurement for Fiscal Year 2010-11 through 2012-13.

Prepared by Kevin Tobeck, Director of Public Works
Approved by Leon Churchill, Jr., City Manager

RESOLUTION _____

FINDING THAT IT IS IN THE BEST INTEREST OF THE CITY OF TRACY
TO DISPENSE WITH THE FORMAL BIDDING PROCESS PURSUANT TO TRACY
MUNICIPAL CODE SECTION 2.20.180(b)(4) AND AUTHORIZING PURCHASE
OF SENSUS WATER METERS AND RELATED PARTS AND
EQUIPMENT FROM GOLDEN STATE FLOW MEASUREMENT

WHEREAS, All City water users are required to have their water metered for billing and data collection purposes, and

WHEREAS, The City's Standard Plans require that only Sensus water meters be installed, and

WHEREAS, Sensus has been utilized by the City for over 16 years due to overall quality and accuracy, vendor responsiveness, competitive pricing, and for standardization purposes, and

WHEREAS, The City has periodically evaluated other water meter brands, but has consistently determined that Sensus best meets the needs of the City, and

WHEREAS, Tracy Municipal Code section 2.20.180(b)(4) provides that the City may dispense with the formal bidding process for purchases in excess of \$50,000 when the City Council finds it is in the best interest of the City to do so, and

WHEREAS, It has been determined that it is in the best interest of the City to do so here because Golden State Flow Measurement is the exclusive distributor of Sensus automated meter read water meters in Northern California and Sensus water meters best meet the needs of the City, and

WHEREAS, City staff has the authority to acquire Sensus water meters and related parts and equipment from Golden State Flow Measurement on an annual basis. This is primarily for replacing and repairing old or non-functioning meters for Fiscal Year 2010-11 through 2012-13, and

WHEREAS, This request has no impact on the General Fund and funding is appropriated (approximately \$250,000-\$300,000) in the Public Works operating budget on an annual basis for the acquisition of water meters and supplies (Water Fund 511);

NOW, THEREFORE, BE IT RESOLVED That the City Council finds under Tracy Municipal Code section 2.20.180(b)(4) that it is in the best interest of the City to dispense with the formal bidding process and authorizes staff to purchase Sensus water meters and related parts and equipment from Golden State Flow Measurement for Fiscal Year 2010-11 through 2012-13.

* * * * *

The foregoing Resolution _____ was adopted by the City Council of the City of Tracy on the 17th 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.D

REQUEST

APPROVE AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH ODYSSEY DESIGN GROUP, INC., OF STOCKTON, CALIFORNIA, FOR A NOT TO EXCEED AMOUNT OF \$90,000 TO PROVIDE PROFESSIONAL SUPPORT SERVICES ASSISTING IN THE REVIEW AND PLAN CHECKING OF LANDSCAPING AND IRRIGATION FOR NEW DEVELOPMENT AND CAPITAL IMPROVEMENT PROJECTS AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT

EXECUTIVE SUMMARY

Due to the specialized nature and fluctuation in work load, the City uses the services of consultants to provide plan checking for landscaping and irrigation related work for new developments and Capital Improvement Projects. In 2008, the City, after completing the consultant selection process, entered in an agreement with the Odyssey Design Group to provide the required services for two years with the possibility of a one year extension. The consultant has provided professional services for the last two years in a satisfactory manner and the existing Professional Services Agreement is expiring. The services of a consultant are needed to continue the plan check work.

DISCUSSION

The City uses the services of outside consultants to provide plan review and checking of landscaping and irrigation improvements for new development and Capital Improvement Projects within the City. Due to the specialized nature of the work, this is the most cost effective way to provide the required services on an as needed basis since the extent of the work load varies and the City does not have a full time employee to provide such services.

The existing Professional Services Agreement with the consultant was for two years with an extension for another year to provide such services. In order to allow continuity in services and cut down the time for consultant selection process, staff negotiated Amendment 1 to the existing PSA with Odyssey Design Group to provide the needed services for another year.

The services will be provided at an hourly rate on an as needed basis and the cost will be charged to the appropriate Capital Improvement Project or new development.

STRATEGIC PLAN

This agenda item is consistent with the City's Economic Development Strategic Plan to provide efficient and effective services to new developments, current and future CIPs. Approval of this agenda item will eliminate the need for acquisition of services of consultants every time new development occurs, or a Capital Improvement Project is designed that involves landscaping improvements.

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost of these services will be paid from Capital Improvement Projects and new development.

RECOMMENDATION

Staff recommends that City Council approve Amendment 1 to the Professional Services Agreement with Odyssey Design Group, Inc., of Stockton, California, for a not to exceed amount of \$90,000, to provide professional support services assisting in the review and plan checking of landscaping and irrigation for new development and capital improvement Projects and authorize the Mayor to execute the Amendment.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Kul Sharma, City Engineer

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

**CITY OF TRACY
AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT ODYSSEY 08-01
PROVIDING PROFESSIONAL STAFF SUPPORT SERVICES
FOR ENGINEERING DIVISION OF DEVELOPMENT AND ENGINEERING SERVICES
DEPARTMENT**

This Amendment No. 1 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and **ODYSSEY DESIGN GROUP, INC.** (hereinafter "CONSULTANT")

RECITALS

- A. CONSULTANT represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of this Agreement
- B. CONSULTANT services are needed to provide the services of a qualified landscape plan checker for the duration of ONE (1) year to the Engineering Division of Development and Engineering Services Department to work on a number of Capital Improvement Projects as described in Exhibit "A", attached and incorporated herein by reference
- C. As approved by the City Council on February 19, 2008, CITY entered into a Professional Services Agreement with the CONSULTANT for Professional Consulting Services for two years with the possibility of third year extension.
- D. At the request of CITY, on July 13, 2010, CONSULTANT submitted a proposal to perform services described in this Amendment. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services with the terms set forth in this Amendment

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation by Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect
- 2. **Terms of Amendment:**
 - A. The following language shall be added to Section 5 1 of paragraph 5 of the Agreement

In addition, for services performed by CONSULTANT in accordance with Amendment No. 1, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," of the Agreement incorporated herein by reference. CONSULTANT's fee for the duration of one (1) year (minimum 2 days a week), this Amendment No. 1 is Not to Exceed NINETY THOUSAND DOLLARS (\$90,000). 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. Compensation for the extra services

CITY OF TRACY

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Capital Improvement Projects

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to be done by the CONSULTANT under this Amendment No. 1 shall be as described in Exhibit "A".

3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect

INTENTIONALLY LEFT BLANK

CITY OF TRACY
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5. Signatures. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the Subdivider and the City. This Amendment shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

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

CITY OF TRACY

CONSULTANT

Odyssey Design Group

By: Brent H. Ives

Title: Mayor

Date: _____

By: Martin Gates

Title: President

Date: 8/11/10

Fed Employer ID No. 68-0360679

Attest:

By: Sandra Edwards

Title: City Clerk

Date: _____

By: Diane Gates

Title: Secretary

Date: 8-11-2010

Approved as to form

By: Daniel G. Sodergren

Title: City Attorney

Date: _____

CITY OF TRACY

Amendment 1 to Professional Services Agreement Odyssey 08-01 Providing Professional Staff Support Services for various Capital Improvement Projects Page 4 of 5

EXHIBIT "A"

SCOPE OF SERVICES

Project Plan Checker is working directly for the Senior Civil Engineer (Capital Improvement Program) and shall take all direction from the Senior Civil Engineer

The Scope of Services of the Project Landscape/Irrigation and Site improvement Plan Checking for the Capital Improvement program/New Subdivisions, shall consist of but is not limited to the following:

1. Review project specific design requirements and plan check against them
2. Review of drawings for the following elements: Landscape plan (including trees, shrubs, lawn, ground cover, etc), Irrigation plan (including all aspects and types of irrigation methods and plans), Grading & Drainage plan (including checking of grades necessary for compliance with all city and state requirements, review of drainage plans including drainage structures and pipes as it relates to landscape issues), Site amenities/Layout (including benches, tables, trash receptacles, signs, arbors, walls, etc), and Details/Notes (including completeness of all necessary notes and details necessary for construction).
3. Review and comment based upon Health, Safety and Welfare concerns which may affect project outcomes
4. Attend meetings with City Staffs, project designers/landscape architect to coordinate improvements
5. Attend Parks Commission meetings on an as needed basis to confer Cities standard level of acceptance
6. Make necessary site visits to verify existing conditions and proposed improvements
7. Make necessary site inspections on an as needed basis for construction review.
8. Review all necessary submittals, shop drawings and specifications for conformance to City standards and project guidelines
9. Prepare construction documents (plans, specifications, and cost estimates) for in house design projects.
10. Review and or updates for landscape/irrigation to City Design Standards/Guidelines
11. Perform other duties for landscape/irrigation related work as required
12. Consultant shall perform his/her duty within the City of Tracy designated work place, which is equip with telephone and computer
13. Provide in house design for CIP's projects

The City reserves the right to add or delete any of the services listed above from the proposed scope of work at any time during the tenure of this Professional Services Agreement

DURATION OF SERVICES. It is intended that the agreement when signed with the qualified consultant will be good for a period of one (1) years However, CITY reserves the right to terminate the agreement any time during the period of the agreement Consultant may also terminate the agreement any time with 60-days written notice.

CITY OF TRACY
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EXHIBIT "B"

Fee Schedule for Design Team

RBF CONSULTING

Plan checker	\$88 per hour (for 2010-2011 calendar year)
Vehicle/Gas	\$0 55/Mile
Overnight deliveries/Mailings	\$40/Fedex tube (up to 5 lbs)
	\$5 00/Letter (or utilize City account)

KEY PROJECT TEAM STAFF MEMBERS

Odyssey Design Group, Inc

Project Manager/Plan Checker Janet Baniewich

RESOLUTION _____

APPROVING AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH ODYSSEY DESIGN GROUP, INC., OF STOCKTON, CALIFORNIA, FOR A NOT TO EXCEED AMOUNT OF \$90,000 TO PROVIDE PROFESSIONAL SUPPORT SERVICES ASSISTING IN THE REVIEW AND PLAN CHECKING OF LANDSCAPING AND IRRIGATION FOR NEW DEVELOPMENT AND CAPITAL IMPROVEMENT PROJECTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, The City uses the services of outside consultants to provide plan review and checking of landscaping and irrigation improvements for new development and Capital Improvement Projects within the City, and

WHEREAS, Due to the specialized nature of the work, this is the most cost effective way to provide the required services on an as needed basis, and

WHEREAS, The existing Professional Services Agreement with the consultant was for two years with an extension for another year, and

WHEREAS, Staff negotiated Amendment 1 to the existing PSA with Odyssey Design Group to provide the needed services for another year, and

WHEREAS, There is no fiscal impact to the General Fund. The cost of these services will be paid for from Capital Improvement Projects and new development;

NOW, THEREFORE BE IT RESOLVED, That City Council approves Amendment 1 to the Professional Services Agreement with Odyssey Design Group, Inc., of Stockton, California, for a not to exceed amount of \$90,000, to provide professional support services assisting in the review and plan checking of landscaping and irrigation for new development and capital improvement projects and authorizes the Mayor to execute the Amendment.

* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 17th 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.E

REQUEST

APPROVAL OF PERMIT FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE TRACY CHAMBER OF COMMERCE “2010 DRY BEAN FESTIVAL” ON SEPTEMBER 11 AND 12, 2010

EXECUTIVE SUMMARY

Tracy Municipal Code states Council may, by resolution, issue a permit allowing the consumption of alcohol on public streets and the like at an organized event of community-wide interest. The Parks and Community Services Department is coordinating a request for an alcohol permit in conjunction with a community event and is seeking Council approval.

DISCUSSION

Tracy Municipal Code Section 4.12.190(d) states, “The Council, by resolution, may issue a permit allowing the consumption of alcohol on public streets and the like at an organized event of community-wide interest. The consumption of intoxicating beverages shall be restricted to the perimeters of the community event as described in the permit.” Additionally, Tracy Municipal Code Chapter 4.40 governs Special Event permits occurring on or within the public right-of-way.

For many years, the City of Tracy has successfully coordinated special community events that have community-wide interest with various community and non-profit organizations, including the Chamber of Commerce and the Downtown Tracy Business Improvement Association (DTBIA). Some of these events have received City approval for the consumption of alcoholic beverages within the boundary of the events. All of these functions were conducted within the Downtown Tracy Business District.

At the present time, the Parks and Community Services Department is coordinating a request for an alcohol permit in conjunction with the community event, the “2009 Dry Bean Festival” being conducted by the Tracy Chamber of Commerce. In conjunction with this event, a request for an alcohol permit, to allow alcoholic beverages to be served as a component of the event, is being presented for approval.

The Tracy Chamber of Commerce is requesting a permit to serve alcoholic beverages at its annual Dry Bean Festival event on September 11, 2010, from 10:00 a.m. to 7:00 p.m., and on September 12, 2010, from 10:00 a.m. to 6:00 p.m., along Central Avenue between 6th and 11th Streets, along 10th Street between A Street to East Street, and along 9th Street between C Street and D Street. Four locations within this event’s footprint will serve alcoholic beverages in the public right-of-way.

STRATEGIC PLAN

This agenda item supports the Communication and Marketing strategic plan and specifically implements the following goal and objectives:

Goal 2: Provide the community of Tracy with basic and extended services that offer opportunities for individuals, families and businesses to prosper as they live, work and play in Tracy

Objective 2e: Promote the high "quality of life" attributes and recreation opportunities of the City

FISCAL IMPACT

There is no impact on the General Fund.

RECOMMENDATION

It is recommended that City Council, by resolution, authorize and approve the permit described above for consumption of alcoholic beverages within the above-described designated areas for the Tracy Chamber of Commerce "2010 Dry Bean Festival" on September 11 and 12, 2010.

Prepared by: Mark Honberger, Recreation Services Supervisor

Reviewed by: Rod Buchanan, Director of Parks and Community Services

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

APPROVING PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR A SPECIAL EVENT IN THE CITY OF TRACY ON SEPTEMBER 11 AND 12, 2010 (TRACY CHAMBER OF COMMERCE "2009 DRY BEAN FESTIVAL)

WHEREAS, The Tracy Chamber of Commerce has requested a permit to conduct a special event in the City of Tracy on September 11 and 12, 2010, that requires the authorization of the City Council for a permit for the consumption of alcoholic beverages in public places; and

WHEREAS, This event will have community-wide interest and will enhance the property of the downtown Tracy business area; and

WHEREAS, Subject to City Council approval, the Tracy Municipal Code allows such activities and permits under Section 4.12.190(d) and Chapter 4.40.

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby authorize the issuance of a permit for the possession and consumption of alcoholic beverages within the boundary of the above described Special Event, as further described in the staff report accompanying this resolution, to be conducted in the Downtown Business District of Tracy to: The Tracy Chamber of Commerce on September 11, 2010, between 10:00 a.m. and 7:00 p.m., and on September 12, 2010, between 10:00 a.m. and 6:00 p.m.

The foregoing Resolution _____ was 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 1.F

REQUEST

APPROVING AN AMENDMENT TO THE SAN JOAQUIN COUNCIL OF GOVERNMENTS (SJCOG) JOINT POWERS AGREEMENT (JPA) IN ORDER TO REPLACE THE SAN JOAQUIN COUNTY AUDITOR-CONTROLLER AND TREASURER WITH THE SJCOG CHIEF FINANCIAL OFFICER

EXECUTIVE SUMMARY

Staff requests that Council consider approving an amendment to the SJCOG JPA .

DISCUSSION

On June 24, 2010, the SJCOG Board of Directors adopted Resolution No. R-10-41 approving an amendment to the SJCOG Joint Powers Agreement.

This amendment will replace the San Joaquin County Auditor-Controller and Treasurer with the SJCOG Chief Financial Officer. The SJCOG Chief Financial Officer will undertake all the activities of the Auditor-Controller and Treasurer except those related to the Transportation Development Act, which, by California statute, must remain with the San Joaquin County Auditor-Controller and Treasurer.

Prior to the Board's action, the proposed amendment was reviewed by the Management & Finance, Citizen's Advisory and Executive Committees with all supporting the proposal. This change in the Joint Powers Agreement also has the concurrence of both the San Joaquin County Auditor-Controller and the County Treasurer.

The next step to finalizing the JPA amendment process is for the SJCOG member agencies to approve the amendments. Attached is the proposed Amended and Restated SJCOG JPA reflecting the proposed changes.

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 the City Council, by resolution, hereby approves the amendment to the SJCOG JPA and authorizes the Mayor to sign the Amended and Restated Joint Powers Agreement Establishing the San Joaquin Council of Governments on behalf of the City of Tracy.

Prepared by: Sharon Davis, Executive Assistant to the City Manager
Reviewed by: Maria Hurtado, Assistant City Manager
Approved by: Leon Churchill, Jr., City Manager

**AMENDED AND RESTATED
JOINT POWERS AGREEMENT
ESTABLISHING THE SAN JOAQUIN COUNCIL
OF GOVERNMENTS**

THIS AGREEMENT is entered into as of June 24, 2010, by and between the incorporated cities of Escalon, Manteca, Lathrop, Lodi, Ripon, Stockton, and Tracy, all municipal corporations and the County of San Joaquin, a political subdivision of the State of California. The municipal corporations are sometimes referred to individually as "City" and collectively as "Cities." The County of San Joaquin is sometimes referred to as "County." The Cities and County are sometimes referred to individually as a "Party" and collectively as "Parties."

WITNESSETH:

1. RECITALS.

1.1. Common Power. Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code authorizes two (2) or more public agencies to jointly exercise any power common to them.

1.2. Common Authority. The City of Stockton, by virtue of its charter and the Cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Tracy, and the County of San Joaquin, by virtue of California Government Code Section 65600 through 65604, inclusive, possess in common the authority:

1.2.1. To study, discuss, and develop solutions to area-wide problems of direct concern to the performance of their constitutional and statutory functions and to establish an area planning organization and expend public funds for these purposes.

1.2.2. To do all acts necessary to participate in federal programs and receive federal funds for health, education, welfare, public works, and community improvement activities, including contracting and cooperating with other agencies.

1.3. Orderly Development. The people residing within the incorporated and unincorporated areas of San Joaquin County have an interest in the orderly development of their communities.

1.4. Independent Agency. The continued growth and extensive development within the incorporated and unincorporated areas of San Joaquin County evidenced a need to create a wholly independent regional agency capable of dealing with area-wide issues and problems.

1.5. Predecessor. The foregoing need led to the creation and establishment of the SAN JOAQUIN COUNCIL OF GOVERNMENTS on July 1, 1970.

1.6. Effects. The establishment of SAN JOAQUIN COUNCIL OF GOVERNMENTS (hereinafter referred to as "SJCOG") has:

1.6.1. Provided a forum to study and develop solutions to area-wide problems of mutual concern to the various governmental entities in San Joaquin County.

1.6.2. Provided efficiency and economy in governmental operations through the cooperation of member governments and the pooling of common resources.

1.6.3. Provided for the establishment of an agency responsible for identifying, planning, and developing solutions to regional problems requiring multijurisdictional cooperation.

1.6.4. Provided for the establishment of an agency capable of developing regional plans and policies and performing area-wide planning duties.

1.6.5. Facilitated cooperation among and agreement between local governmental bodies for specific purposes, interrelated developmental actions, and for the adoption of common policies with respect to issues and problems which are common to its members.

1.7. Amendment. The Cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy and the County of San Joaquin, at this time, desire to amend that certain joint powers agreement of March 1, 1991, as subsequently amended on December 7, 2000, and December 8, 2005, and enter into this Amended and Restated Agreement in order to establish the duties and powers of the SAN JOAQUIN COUNCIL OF GOVERNMENTS.

1.8. Transportation Authority. The County designated the SAN JOAQUIN COUNCIL OF GOVERNMENTS as the San Joaquin County Transportation Authority.

NOW, THEREFORE, it is mutually agreed as follows:

2. STATEMENT OF PURPOSE

The member Cities and the County have joined together to establish SJCOG for the following reasons:

2.1. Area-Wide Opportunities. A number of opportunities and issues within the area are either area-wide in nature or have area-wide aspects or implications, including, but not limited to transportation, air quality, land use, economic development, job creation, and the reduction of unemployment, the protection of agricultural productivity, and multi-species habitat management issues.

2.2. Need. There is a demonstrated need for the establishment of an organization of the Cities and the County within the area to provide a forum for study and development of recommendations to area-wide problems of mutual interest and concern to the Cities and the County and to facilitate the development of policies and action recommendations for the solution of problems.

2.3. Independent Review. The Cities and the County wish to create an area-wide organization which will independently review and make comments to the member Cities and the County regarding projects which receive federal or state funding.

2.4. Elected Officials. The Cities and the County believe that an area-wide planning organization, governed solely by elected officials from the Cities and the County, with a staff independent of any City or the County, is best suited for area-wide planning and review.

2.5. Area-Wide Problems. The Cities and the County, working together through this organization, can exercise initiative, leadership, and responsibility for solving area-wide problems.

2.6. Allocation of Resources. The Cities and the County share common area-wide problems and issues, and at the same time, have different needs and priorities and are affected in different ways by these common area-wide problems and issues. The resources of SJCOG should be allocated in a manner so that the needs of any portion of the area are not ignored, recognizing, however, that resources are limited and that not all needs can be met, nor all portions of the area assisted equally at any one time.

3. ESTABLISHMENT OF SJCOG

3.1. Continued Public Entity. Upon the effective date of this Agreement, the Parties hereto hereby continue the SAN JOAQUIN COUNCIL OF GOVERNMENTS, as a public entity separate and distinct from the Parties, as the agent to exercise the common powers provided for in this Agreement and to administer or otherwise execute this Agreement.

3.2. Functions. SJCOG is the successor entity to the Council Of Governments established in 1970, insofar as its predecessor entity has been designated, and insofar as legally authorized, it shall continue to function as:

3.2.1. The Area-wide Planning Organization (APO) as designated by the U.S. Department of Housing and Urban Development (HUD).

3.2.2. The Metropolitan Planning Organization (MPO) as designated by the U.S. Department of Transportation; pursuant to Title 23 of United States Code, Section 134 (23 USC 134) and Title 49 of the United States Code, Section 5303(b)(2).

3.2.3. The Regional Transportation Planning Agency (RTPA) as designated by the Secretary of Business and Transportation Agency of the State of California; pursuant to California Government Code Sections 65080, et seq.

3.2.4. The Airport Land Use Commission (ALUC) as designated by the Board of Supervisors of the County of San Joaquin and recognized by the State of California; pursuant to California Public Utilities Code, Section 21670(b).

3.2.5. The regional planning representative, as designated by the Parties hereto, for the purpose of acting upon any appropriate proposals which may be presented to the SJCOG Board of Directors for consideration, or which the SJCOG Board of Directors may elect to take up, and for transmission of proposed recommendations to Federal, State, and local agencies, including, but not limited to the member entities of SJCOG.

3.2.6. The San Joaquin County Transportation Authority as designated by the Board of Supervisors of San Joaquin County pursuant to Section 180000 of the California Public Utilities Code.

3.2.7. The Census Data Center as designated by the Bureau of the Census.

3.2.8. The Congestion Management Agency for San Joaquin County pursuant to California Government Code Sections 65088 and 65089 and Title 23 of the United States Code Section 134.

3.2.9. The Federal Clearinghouse to review federal grant applications under Section 6506 of Title 23 of the United States Code Annotated.

4. COOPERATION

The Parties to this Agreement pledge full cooperation and agree to assign representatives to serve as official members of the SJCOG Board or any committee or subcommittee thereof, which members shall act for and on behalf of their Cities or the County in any and all matters which shall come before SJCOG, subject to any necessary and legal approvals of their acts by the legislative bodies of the Cities and the County.

5. MEMBERSHIP

5.1. Board. SJCOG shall be governed by a Board of Directors, herein referred to as the SJCOG Board, which shall be comprised of:

5.1.1. One (1) member from each of the City Councils of Escalon, Lathrop, Lodi, Manteca, Ripon, and Tracy (with the Mayor an eligible member).

5.1.2. Three (3) members from the Stockton City Council (with the Mayor an eligible member).

5.1.3. Three (3) members of the Board of Supervisors of the County of San Joaquin.

5.1.4. Ex-officio non-voting members acting in an advisory capacity shall be:

5.1.4.1. The District Director from the State Department of Transportation, District X.

5.1.4.2. A member of the San Joaquin Regional Transit District Board of Directors.

5.1.4.3. A member of the Stockton Port District Board of Commissioners.

5.2. Appointment. Members shall be appointed by the governing body of each Party and shall serve at the pleasure of their appointing body or until their respective successors are appointed. Termination of a Party's mayor, councilperson, or supervisor status shall constitute automatic termination of that person's membership on the SJCOG Board. The appointing body of a Party may appoint a new member or alternate immediately upon any vacancy in the Party's representation.

5.3. Alternates. The governing body of each Party shall appoint alternate members to the SJCOG Board. During the absence of a regular member from any meeting of the SJCOG Board, the alternate shall be entitled to participate in all respects as a regular member of the SJCOG Board. All members and alternates shall be duly elected representatives of their respective City Councils or Board of Supervisors.

5.4. Quorum. A quorum for conducting all matters of business shall be seven (7) members. The affirmative vote of a least a majority of the quorum present shall be required for the approval of any matter.

5.5. Rules. The SJCOG Board shall adopt rules of procedure and shall establish a time and place for regular SJCOG meetings. At any meeting the SJCOG Board may consider matters it deems proper for carrying out the purposes of this

Agreement, subject to the provisions of California Government Code Section 54950 et seq.

5.6. Executive Committee. An Executive Committee shall be constituted from among the representatives of the Parties. The Executive Committee shall consist of five (5) members of the SJCOG Board elected by the SJCOG Board. One (1) member of the SJCOG Board shall be elected by the SJCOG Board to serve as the alternate member of the Executive Committee. During the absence of a regular member from any meeting of the Executive Committee, the alternate shall be entitled to participate in all respects as a regular member of the Executive Committee. The Chairperson of SJCOG shall be the Chairperson of the Executive Committee and shall serve on it as the representative of his/her jurisdiction. The Executive Committee shall have powers as are not inconsistent with this Agreement and as delegated to it by the SJCOG By-laws or the SJCOG Board.

5.7. Bylaws. The Bylaws of the SJCOG shall be those adopted following the adoption of this Amended and Restated Agreement by the SJCOG Board, and may thereafter be amended from time to time by the SJCOG Board.

6. POWERS AND FUNCTIONS

6.1. Specific Functions. SJCOG shall have the common power of the Parties hereto to establish, administer and operate area-wide programs, and in the exercise of that power, SJCOG is authorized in its own name to:

6.1.1. Employ an executive director as the chief administrative officer of the agency.

6.1.2. Employ agencies and employees and contract for professional services.

6.1.3. Make and enter into contracts.

6.1.4. Operate transportation and other services and facilities.

6.1.5. Undertake the planning, design and environmental clearance of transportation and other projects.

6.1.6. Cooperate with other agencies, counties and other local public agencies and participate in joint projects as necessary.

6.1.7. Acquire, hold, and convey real and personal property.

6.1.8. Incur debts, obligations, and liabilities.

6.1.9. Accept contributions, grants, or loans from any public or private agency or individual, or the United States or any department, instrumentality, or agency thereof, for the purpose of financing its activities.

6.1.10. Invest money that is not needed for immediate necessities, as the Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the California Government Code.

6.1.11. Have appointed board members and ex-officio board members serve with or without compensation from the SJCOG.

6.1.12. Sue and be sued, in its own name only, but not in the name or stead of any member entity.

6.1.13. Make loans to Parties for projects approved by the SJCOG Board on terms, and interest rates, and with security, as may be established by the SJCOG Board.

6.1.14. To operate, either directly by SJCOG employees, or by independent contractors, programs approved by the SJCOG Board, such as, but not limited to, ridesharing programs, freeway service patrol programs, and habitat conservation programs, including the maintenance and operation of habitat conservation lands.

6.1.15. To provide services, including operational services, outside San Joaquin County, if fully compensated for the services, or in cooperative projects involving other public agencies.

6.1.16. To do all other acts reasonable and necessary to carry out the purpose of this Agreement.

6.2. Limitation. The powers to be exercised by SJCOG are subject to the restrictions upon the manner of exercising the powers as are imposed upon the County of San Joaquin in the exercise of similar powers.

6.3. Funds. SJCOG shall be held strictly accountable for all funds received, held and disbursed by it.

7. EXECUTIVE DIRECTOR

7.1. Powers and Duties. The executive director shall be selected by, and shall serve at the pleasure of and upon the terms prescribed by the SJCOG Board. The powers and duties of the executive director are:

7.1.1. To serve as the chief administrative officer of SJCOG and to be responsible to the SJCOG Board for the proper administration of all SJCOG affairs.

7.1.2. To appoint, supervise, suspend, discipline or remove SJCOG employees subject to those policies and procedures, from time to time, adopted by the SJCOG Board.

7.1.3. To supervise and direct the preparation of annual budget for the SJCOG and be responsible for its administration after adoption by the SJCOG Board.

7.1.4. To formulate and present to the SJCOG Board plans for SJCOG's activities and the means to finance them.

7.1.5. To supervise the planning and implementation of all SJCOG's activities.

7.1.6. To attend all meetings of the SJCOG Board and act as the secretary to the SJCOG Board.

7.1.7. To prepare and submit to the SJCOG Board periodic financial reports and, as soon as practicable after the end of each fiscal year, an annual report of the activities of SJCOG for the preceding year.

7.1.8. To have custody and charge of all SJCOG property other than money and securities.

7.1.9. To perform other duties as the SJCOG Board may require in carrying out the policies and directives of the SJCOG Board.

8. FINANCING

8.1. Fiscal Year. The SJCOG fiscal year shall be July 1 through June 30.

8.2. Annual Budget. On or before April 1st, the SJCOG shall adopt a budget for the ensuing fiscal year to commence on July 1, and shall submit the same for ratification to the governing body of each Party. Upon ratification of the proposed budget of the legislative bodies of the Parties, and representing at least 55% of the population within the County, the budget shall serve as the approved budget for the fiscal year in carrying out the tasks within the approved work program for the year. Any amendments to the budget shall be approved by the SJCOG Board.

8.3. Support by Parties. Any Party to this Agreement, in the exercise of the reasonable discretion of its governing body, may, upon mutual consent of the Parties, provide support for the SJCOG, its staff, and its professional consultants, including providing the quarters, janitorial services and maintenance, supplies, printing and duplication, postage, telephone services, transportation services, and professional and technical assistance as may be necessary to enable SJCOG to perform its responsibilities. All assistance shall be provided on an at-cost basis.

8.4. Eminent Domain and Taxes. Under no circumstances shall the SJCOG be empowered to exercise the right of eminent domain nor to levy taxes except as provided in Section 8.5 below. SJCOG shall apply for available State or Federal support funds, and shall make new and additional applications from time to time as appropriate. If deemed necessary, the SJCOG Board may also establish and collect filing and processing fees in connection with matters to be considered by it.

8.5. Measure K. In its role as the San Joaquin County Transportation Authority, SJCOG shall be empowered to levy and expend tax revenues authorized in San Joaquin County Transportation Authority Ordinance #91-01 and approved as Measure K on November 6, 1990 by the voters of San Joaquin County. This empowerment shall exist so long as San Joaquin County Transportation Authority Ordinance #91-01 is in effect and shall terminate when all San Joaquin County Transportation Authority Ordinance #91-01 taxes have been levied and expended.

9. TREASURER

9.1. Treasurer. The SJCOG Chief Financial Officer shall be the Treasurer of SJCOG.

9.2. Duties. The Treasurer shall:

9.2.1. Receive and receipt all money of SJCOG and place it in a designated financial institution approved by the SJCOG Board of Directors to the credit of SJCOG.

9.2.2. Be responsible upon his/her official bond for the safekeeping and disbursement of all SJCOG money held by the Treasurer.

9.2.3. Pay, when due, out of money of SJCOG, all sums payable on outstanding bonds and coupons of SJCOG.

9.2.4. Pay any sums due from SJCOG, from SJCOG's funds or any portion thereof, upon warrants of the SJCOG Auditor - Controller designated herein.

9.2.5. Verify and report in writing as soon as possible after the first day of July, October, January, and April of each year to SJCOG the amounts of monies the Treasurer holds for SJCOG, the amount of receipts since the Treasurer's last report, and any interest accrued to those funds.

10. AUDITOR - CONTROLLER

10.1. Auditor - Controller. The SJCOG Chief Financial Officer shall be the Auditor - Controller for the SJCOG.

10.2. Warrants. The Auditor - Controller shall draw warrants to pay demands against SJCOG when the demands have been approved by the SJCOG Board and/or the SJCOG Executive Director. The Auditor - Controller shall be responsible on his/her official bond for the Auditor - Controller's approval of disbursement of SJCOG money.

10.3. Records. The Auditor - Controller shall keep and maintain records and books of account on the basis of generally accepted accounting practices. The books of account shall include records of assets, liabilities, and contributions made by each Party to this Agreement.

10.4. Audit. The Auditor - Controller shall make available all financial records of SJCOG to a certified public accountant or public accountant contracted by SJCOG to make an annual audit of the accounts and records of SJCOG. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing standards.

11. BOND REQUIREMENTS

The executive director and other employees of SJCOG as may be designated by the SJCOG Board, shall file with SJCOG an official fidelity bond in a penal sum determined by the Board as security for the safekeeping of SJCOG property entrusted to the employee. Premiums for the bonds shall be paid by SJCOG.

12. PARTIES' LIABILITY

The debts, liabilities, and obligations of SJCOG shall not be debts, liabilities or obligations of the Parties to this Agreement either singly or collectively.

13. ASSIGNABILITY

With the approval of, and upon the terms agreed upon by, the governing body of each Party to this Agreement, all or any of the rights and property subject to this Agreement may be assigned to further the purpose of this Agreement. Provided, however, no right or property of SJCOG shall be assigned without compliance with all conditions imposed by any state or federal entity from which SJCOG has received financial assistance.

14. WITHDRAWAL OF A PARTY

14.1. Withdrawal Procedure. A Party to this Agreement may, at any time, withdraw from SJCOG, following 90 days notice to SJCOG and all other Parties of SJCOG, by resolution of intent to withdraw adopted by the governing board of the withdrawing Party.

14.2. Obligations. Upon the effective date of the withdrawal the Party shall cease to be bound by this Agreement, but shall continue to provide financial support through the approved percentage of planning funds provided COG, as Transportation Planning Agency under the provisions of Section 99233.2 of the Transportation Development Act. SJCOG assets representing any accumulated capital contribution of the withdrawing Party shall remain subject to SJCOG control, depreciation and use without compensation to the withdrawing Party until termination of this Agreement and distribution of SJCOG assets.

15. TERMINATION AND DISSOLUTION

15.1. No Specific Term. This Agreement shall continue in force without specific term.

15.2. Disestablishment. If, at any time, those Cities and County which are members of SJCOG contain less than 55% of the population residing within the area of San Joaquin County, based upon the latest available population estimates by the California Department of Finance, and there are less than a majority of local governments remaining as Parties of SJCOG, SJCOG shall be deemed disestablished and this Agreement shall cease to be operative except for the purpose of payment of any existing obligations.

15.3. Distribution. If this Agreement is terminated, all real and personal property owned by SJCOG shall be distributed to the Federal, State, or local funding agency or Party to this Agreement that supplied the property or whose funding provided for the acquisition of the property unless other distribution is provided by law. Should the origin of any real or personal property be undeterminable, that property shall be disbursed to the Parties to this Agreement in proportion to the size of the jurisdiction as delineated in the latest California Department of Finance estimate of population. This Agreement shall not terminate until all property has been distributed in accordance with this provision.

16. RETURN OF SURPLUS FUNDS

Upon termination of this Agreement, any surplus money on hand shall be returned to the Federal, State, or local agency or the Party to this Agreement that provided the funds.

17. ADDITIONAL MEMBERS

In addition to the Cities identified in this Agreement, any city within San Joaquin County which may hereafter be incorporated and which desires to participate in the activities of SJCOG may do so by executing this Agreement without the prior approval or ratification of the named Parties to this Agreement and shall thereafter be a Party to this Agreement and be bound by all terms and conditions of this Agreement as of the date it executes this Agreement.

18. SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the Parties.

19. SEVERABILITY

Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided the remaining portions or provisions can be construed in substance to constitute the Agreement which the Parties intended to enter into in the first instance.

20. AMENDMENTS

This Agreement may be amended only after Parties who represent both a majority of the Parties and at least 55% of the population of San Joaquin County, based upon the latest population estimates of the California Department of Finance, approve the amendments.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

22. TITLES AND HEADING.

The Section titles and the heading of this Agreement are for convenience only and shall not be used in interpreting this Agreement.

23. EFFECTIVE DATE OF AGREEMENT

This Amended and Restated Agreement shall become effective when the majority of the Cities and County representing more than 55% of the population of the County based upon the latest population estimates of the California Department of Finance, sign this Agreement. The population of the County for this purpose is the population of the unincorporated area.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective offices as of:

APPROVED AS TO FORM

By: _____

Title: _____

MAYOR Walt Murken

ATTEST: _____

CITY OF ESCALON

City Clerk

APPROVED AS TO FORM:

By: _____

Title: _____

MAYOR Kristy Sayles

ATTEST: _____

CITY OF LATHROP

City Clerk

APPROVED AS TO FORM:

By: _____

Title: _____

MAYOR Paul Katzakian

ATTEST: _____

CITY OF LODI

City Clerk

*** Signatures Continued on Next Page ***

APPROVED AS TO FORM:

By: _____

Title: _____

MAYOR Willie W. Weatherford

ATTEST: _____
City Clerk

CITY OF MANTECA

APPROVED AS TO FORM:

By: _____

Title: _____

MAYOR Chuck Winn

ATTEST: _____
City Clerk

CITY OF RIPON

APPROVED AS TO FORM:

By: _____

Title: _____

MAYOR Ann Johnston

ATTEST: _____
City Clerk

CITY OF STOCKTON

APPROVED AS TO FORM:

By: _____

Title: _____

MAYOR Brent H. Ives

ATTEST: _____
City Clerk

CITY OF TRACY

APPROVED AS TO FORM:

By: _____

Title: _____

CHAIRMAN Carlos Villapudia

ATTEST: _____
County Clerk

SAN JOAQUIN COUNTY

Amended March 1, 1991
Amended December 7, 2000
Amended December 8, 2005
Amended June 24, 2010



RESOLUTION
SAN JOAQUIN COUNCIL OF GOVERNMENTS

RESOLUTION NO. R-10-41
SAN JOAQUIN COUNCIL OF GOVERNMENTS
RESOLUTION AMENDING THE JOINT POWERS AGREEMENT OF THE
SAN JOAQUIN COUNCIL OF GOVERNMENTS

WHEREAS, pursuant to Sections 9 and 10 of the San Joaquin Council of Governments Joint Powers Agreement dated December 8, 2005 (JPA), the County of San Joaquin Auditor-Controller and Treasurer acts as the Auditor/Controller/Treasurer of the San Joaquin Council of Governments (SJCOG);

WHEREAS, in May SJCOG staff presented to the Board the rationale for substituting the San Joaquin County Auditor/Controller and Treasurer for the SJCOG Chief Financial Officer in those capacities;

WHEREAS, with the exception of Transportation Development Act funds, San Joaquin County is not required to be the Auditor/Controller/Treasurer for SJCOG;

WHEREAS, pursuant to the Joint Powers Authority law, set forth at Government Code §§ 6500 *et seq.*, SJCOG has three options: (1) maintain the relationship with the San Joaquin County Auditor-Controller and Treasurer; (2) designate a certified public accountant to serve as Treasurer and San Joaquin County as Auditor-Controller; or (3) designate an employee or officer of SJCOG to serve as Auditor-Controller and Treasurer and hire an independent auditor to perform annual audits;

WHEREAS, SJCOG desires to designate the Chief Financial Officer as the Auditor-Controller and Treasurer of SJCOG and to hire an independent auditor to perform annual audits;

WHEREAS, Sections 9 and 10 of the JPA require amendment to reflect the changes discussed herein as shown in Attachment A;

WHEREAS, Section 20 of the JPA requires that any amendment to the JPA be approved by a majority of the parties to the JPA representing at least 55 percent of the population of San Joaquin County.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. SJCOG hereby designates the Chief Financial Officer as the Auditor-Controller and Treasurer of SJCOG.
2. SJCOG hereby approves the amendment to Sections 9 and 10 of the JPA as shown in Attachment A, effective upon approval by the parties to the JPA who represent both a

majority of the parties to the JPA and at least 55 percent of the population of San Joaquin County, based upon the latest population estimates of the California Department of Finance.

PASSED, APPROVED AND ADOPTED this 24th day of June, 2010 at a regular meeting of the San Joaquin Council of Governments by the following vote:

AYES: Councilman DeBrum, City of Manteca; Councilman Fritchman, City of Stockton; Councilman Haskin, City of Escalon; Mayor Johnston, City of Stockton; Vice Mayor Miller, City of Stockton; Mayor Sayles City of Lathrop; Supervisor Vogel, San Joaquin County; Mayor Winn, City of Ripon.

NOES: None.

ABSENT: Supervisor Bestolarides, San Joaquin County; Councilman Hansen, City of Lodi; Mayor Ives, City of Tracy; Supervisor Ornellas, San Joaquin County.


ANN JOHNSTON
Vice Chair

STAFF REPORT

SUBJECT: Amendment to San Joaquin Council of Governments Joint Powers Agreement Substituting the San Joaquin County Auditor-Controller and Treasurer with the San Joaquin Council of Governments' Chief Financial Officer in Those Capacities

RECOMMENDED ACTION: By Motion, the Board Adopts R-10-41 Adopting Amendment

BACKGROUND:

In May, SJCOG staff presented to the Board the rationale for substituting the San Joaquin County Auditor-Controller and Treasurer with the San Joaquin Council of Governments' Chief Financial Officer in those capacities. In summary, all parties agree this change is in the best interests of both San Joaquin County officers and SJCOG.

SJCOG staff, working with general counsel from Neumiller & Beardslee determined:

- With the exception of Transportation Development Act funds, the County is not required to be SJCOG's Treasurer/Auditor/Controller. SJCOG is responsible for administering TDA funds, but the Auditor-Controller and Treasurer have statutory responsibilities for accounting and depositing those funds.
- Pursuant to Joint Powers Authority law, there are three options available to SJCOG:
 1. Maintain the status quo
 2. Designate a certified public accountant to serve as Treasurer and San Joaquin County as Auditor-Controller
 3. Designate an employee or officer of SJCOG to serve as Auditor-Controller and Treasurer and hire an independent auditor to perform annual audits.

Options 1 and 2 do not resolve the issue. Option 1 is the status quo and Option 2 continues the relationship with the County Auditor-Controller.

Option 3 addresses the issue and is achievable. The SJCOG Deputy Executive Director is also the Chief Financial Officer and currently performs the internal role of Auditor-Controller. Additionally, he acts as Treasurer for all non-TDA funds receiving funds and directing expenditure and investments of funds. An independent auditor is retained annually to perform audits not only on SJCOG financial statements but TDA compliance.

The analysis by Neumiller & Beardslee is attached.

After presenting this proposal to both the Management and Finance Committee and the Executive Committee, receiving support from both committees, staff requested the Board direct staff to bring forward an amendment to the Joint Powers Agreement facilitating this change.

Attachment A shows the changes to sections 9 and 10 of the Joint Powers Agreement substituting the SJCOG Chief Financial Officer for the County Treasurer and Auditor-Controller. This amendment will also provide for the movement of funds from the County Treasury to a financial institution approved by the Board.

Following adoption by the Board, the amendment must be approved by a majority of the parties to the JPA representing at least 55% of the population of San Joaquin County.

FISCAL IMPACT

SJCOG currently reimburses the county through the county's cost allocation plan. As noted in amendment sections 9.3 and 10.5, this reimburse would cease thus saving SJCOG approximately \$5,000 annually. No additional staff will be required. The statutorily required independent audit is already undertaken annually therefore there will be no additional costs associated with that requirement.

RECOMMENDATION

That the Board adopt Resolution 10-41 adopting an amendment to the SJCOG Joint Powers Agreement making changes to sections 9 and 10 as identified in Attachment A.

*Prepared by: Steve Dial, Deputy Executive Director/Chief Financial Officer
M:\STAFFRPT\2010\June\Board\SJCOG JPA Amendment.docx*

RESOLUTION _____

APPROVAL OF AN AMENDMENT TO THE SAN JOAQUIN COUNCIL OF GOVERNMENTS (SJCOG) JOINT POWERS AGREEMENT (JPA) IN ORDER TO REPLACE THE SAN JOAQUIN COUNTY AUDITOR-CONTROLLER AND TREASURER WITH THE SJCOG CHIEF FINANCIAL OFFICER

WHEREAS, On June 24, 2010, the SJCOG Board of Directors adopted Resolution No. R-10-41 approving an amendment to the SJCOG Joint Powers Agreement, and

WHEREAS, This amendment will replace the San Joaquin County Auditor-Controller and Treasurer with the SJCOG Chief Financial Officer, and

WHEREAS, The next step to finalizing the JPA amendment process is for the SJCOG member agencies to approve the amendments;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves an amendment to the SJCOG JPA and authorizes the Mayor to sign the Amended and Restated Joint Powers Agreement Establishing the San Joaquin Council of Governments on behalf of the City of Tracy.

The foregoing Resolution _____ was 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 1.G

REQUEST

APPROVE DECLARATION OF THE CITY OF TRACY'S OFFICIAL INTENT TO REIMBURSE ITSELF FOR CERTAIN EXPENDITURES FROM PROCEEDS OF INDEBTEDNESS

EXECUTIVE SUMMARY

On January 2, 2007, City Council received a Staff Report on Airport Improvement Implementation Options and directed staff to proceed an option entitled "Begin T-Hangar Installation Process." Staff has confirmed the economic feasibility of constructing 42 additional aircraft hangars at Tracy Municipal Airport and is seeking financing for this project through the issuance of bonds. The California Statewide Communities Development Authority (CSCDA), a joint powers authority sponsored by the California State Association of Counties and the League of California Cities is assisting the City to gain access to low-cost, tax-exempt financing for this project. The CSCDA has advised staff that the bond financing process can be expedited if the City has made the requested declaration.

DISCUSSION

In contrast to many organizations seeking bond financing, the City will not be expending City funds for project expenses prior to the issuance of any bonds. However, because it is assumed by the financial industry that "Reimbursement Expenditures" will have been made with the expectation of reimbursement from the proceeds of debt obligations, they require that the requested declaration be pre-approved by Council Resolution.

The purpose of this resolution is to establish compliance with the requirements of section 1.150-2 of the United States Treasury Regulations. This resolution does not bind the City to make any expenditure, incur any indebtedness, or proceed with the project.

STRATEGIC PLAN

This agenda item supports the Community Amenities strategic priority and specifically implements the following goal and objectives:

- Goal 3: Preserve and maintain existing community assets
 - Objective 3a: To fund maintenance and replacement of community amenities,
 - and
 - Objective 3b: Support Airport operation

This agenda item supports the Organizational Effectiveness strategic priority and specifically contributes to the following goal:

- Goal 1: Assure fiscal health

FISCAL IMPACT

The General Fund is not fiscally impacted by this action.

RECOMMENDATION

The City Council approve by resolution the declaration of the City's official intent to reimburse certain expenditures from proceeds of indebtedness.

Prepared by: Bruce Ludeman, Airport Coordinator
Ed Lovell, Management Analyst II

Approved by: Rod Buchanan, Director of Parks and Community Services
Leon Churchill, Jr., City Manager

RESOLUTION _____

APPROVING THE DECLARATION OF THE CITY OF TRACY'S OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM PROCEEDS OF INDEBTEDNESS

WHEREAS, the City of Tracy expects to pay certain expenditures (the "Reimbursement Expenditures") in connection with projects prior to the issuance of indebtedness for the purpose of financing costs associated with the projects on a long-term basis; and

WHEREAS, the City of Tracy reasonably expects that debt obligations in an amount not expected to exceed \$2,112,000 will be issued and that certain of the proceeds of such debt obligations will be used to reimburse the Reimbursement Expenditures; and

WHEREAS, if the City of Tracy does reimburse the Reimbursement Expenditures from the proceeds of debt obligations, interest on which is taxable under the United States Internal Revenue Code, then Section 1.150-2 of the United States Treasury Regulations requires the City of Tracy to declare its reasonable official intent to reimburse prior expenditures for the projects with proceeds of a subsequent borrowing;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Tracy as follows:

1. The City Council finds and determines that the foregoing recitals are true and correct.
2. The City Council states that this resolution is made for purpose of establishing compliance with the requirements of Section 1.150-2 of the United States Treasury Regulations. This resolution does not bind the City of Tracy to make any expenditure, incur any indebtedness, or proceed with the projects.
3. The City Council declares the City of Tracy's official intent to use proceeds of indebtedness to reimburse itself for Reimbursement Expenditures.
4. The City Council declares that this resolution shall take effect from and after its adoption.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 17th 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 3

REQUEST

ADOPT THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND GENERAL TEAMSTERS LOCAL NO. 439, IBT

EXECUTIVE SUMMARY

The Memorandum of Understanding between the City of Tracy and Teamsters Bargaining Unit expired on June 30, 2010. Staff recommends approval of a new MOU, effective July 1, 2010 to June 30, 2011.

DISCUSSION

The Memorandum of Understanding between the City of Tracy and Teamsters Bargaining Unit expired on June 30, 2010. Representatives from the City and the Bargaining Unit have met and conferred in good faith to negotiate a new Memorandum of Understanding.

The new MOU accomplishes several objectives. First, it assures that affected employees represented by Teamsters Local No. 439 reduce City costs by taking twelve (12) unpaid furlough days, or one per month during 2010-11 fiscal year. Eight (8) of these days will be scheduled to coincide with all other non-public safety employee groups, and City offices will be closed. The other four (4) days will occur during the months of November 2010 through February 2011 and will be scheduled by supervisors similar to the scheduling of vacation. Employees will request the day off per month they wish to take as an unpaid furlough day. Supervisors will be required to schedule such requests in a manner that ensures City offices remain open and service delivery to City residents is maintained.

The new agreement also provides for a second tier in employee retirement benefits. As soon as can be implemented through the California Public Employees Retirement System (CalPERS), new employee hires in the Teamsters unit will receive the reduced retirement benefit of 2% at 55, average of three consecutive highest years. While the City is not anticipating any hiring in the near future, over time this reduced benefit level will decrease benefit costs paid by the City. In addition, the new agreement does not provide any Cost of Living Adjustments (COLAs) or other increases in salary for affected employees.

In exchange for these concessions, the City agreed not to lay off additional Teamster employees for the duration of FY 2010-11. The City already eliminated a total of 23.5 positions represented by Teamsters in July 2010. The City also agreed that no additional outsourcing would take place during the current fiscal year and agreed to increase its healthcare contribution by no more than \$75 per month per employee.

The Unit has ratified the new agreement and will sign the document once the City Council adopts the Memorandum of Understanding.

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 1a: Develop a 5 Year Plan that leads to a Balanced Budget and elimination of the City structural budget deficit

Objective 1b: Explore Early Retirement Options & 2-Tier Retirement System

FISCAL IMPACT

There are no wage increases for the duration of the MOU. The new MOU is estimated to save over \$432,000 in FY 2010-11.

RECOMMENDATION

That the City Council, by resolution, adopt the Memorandum of Understanding between the City of Tracy and General Teamsters Local No. 439, IBT.

Prepared by Maria Olvera, Human Resources Director

Approved by Leon Churchill, City Manager

Attachments: MOU between the City of Tracy and General Teamsters Local No. 439, IBT

MEMORANDUM OF UNDERSTANDING

between

CITY OF TRACY

and

GENERAL TEAMSTERS LOCAL NO. 439, IBT

July 1, 2010 - June 30, 2011

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MEMORANDUM OF UNDERSTANDING (MOU)

between

CITY OF TRACY

and

GENERAL TEAMSTERS LOCAL NO. 439, IBT

July 1, 2010 - June 30, 2011

General Teamsters Local No. 439, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America and representatives of the City of Tracy have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of employees in the Public Employees Bargaining Unit, have exchanged freely information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding (MOU) is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500, et. seq.) and has been jointly prepared by the parties.

This MOU shall be presented to the City Council as the joint recommendations of the undersigned for salary and employee benefit adjustments for the period commencing July 1, 2010 and ending June 30, 2011.

Section 1. Recognition

1.1 Union Recognition

The General Teamsters Local No. 439 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, hereinafter referred to as the "Union", is recognized as the employee organization as provided in the City's Employer-Employee Relations Resolution for all employees assigned to the classifications listed in Section 5.1 and Exhibit A.

1.2 City Recognition

The City Manager, or where the authority has been delegated by the City Manager, the City Manager's representative is the representative of the City of Tracy, hereinafter referred to as the "City."

Section 2. No Discrimination

The City agrees not to discriminate against any employee because of membership in the Union or because of any activities on behalf of the Union. Union activities shall not interfere with the normal operation of the City. Neither the City nor the Union shall discriminate for or against any employee or applicant for employment on account of race, color, creed, national origin, age, sex, sexual orientation, physical disability, or mental disability which does not prevent an employee from meeting the minimum standards established.

Section 3. Union Security

3.1 Agency Shop

Except as provided otherwise in this Section, employees shall, as a condition of continuing employment, become and remain members of the Union or shall pay to the Union a service fee in-lieu thereof.

3.2 Implementation

Any employee hired by the City, subject to this MOU shall be provided, through the employee's department, with a notice advising that the City has entered into an Agency Shop agreement with the Union. All employees subject to the MOU must either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of the Union dues or a service fee.

Said employee shall have five (5) working days following the initial date of employment to fully execute the authorization form of his/her choice and return said form to Department Payroll. If the form is not completed properly and returned within five (5) working days, the City shall commence and continue a payroll deduction of service fees from the first pay warrant of the month for such employee

The effective date of Union dues, service fee deductions or charitable contribution for such employees shall be the beginning of the first pay period of employment; except that initiation fees shall be deducted in two installments, in successive pay periods, beginning with the first pay period. The employee's earnings must be sufficient, after other legal and required deductions are made, to cover the amount of the dues or service fees authorized.

When an employee is in a non pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings.

In the case of an employee who is in a non pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions, including health care deductions, have priority over Union dues and service fees.

3.3 Religious Exemption

Any employee of the City, subject to this MOU who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee organization and which is recognized as such by the National Labor Relations Board, shall, be permitted upon presentation of verification of active membership in such religion, body or sect to make a charitable contribution equal to the service fee in-lieu of Union Membership or service fee payment.

Declarations of, or applications for religious exemption, and any supporting documentation, shall be forwarded to the Union within fifteen (15) days of receipt by the City. The Union shall have fifteen days (15) after receipt of a request for religious exemption to challenge any exemption granted by the City Manager or the City Manager's designee. If challenged, the deduction to the charity of the employee's choice shall commence but shall be held in escrow pending resolution of the challenge.

Charitable deduction shall only be by regular payroll deduction. For purposes of this Section, charitable deduction means a contribution to the McHenry House, United Way, or the California Nature Conservancy.

3.4 Financial Reports

The Union shall annually submit copies of the financial report, required by the Labor-Management Disclosure Act of 1959, to the City Personnel Officer. Copies of such reports shall be available to employees, subject to the Agency Shop requirements of this Section, at the offices of the Union.

Failure to file such a report within one hundred (100) days of the close of the Union's fiscal year shall result in the termination of all agency fee deductions, without jeopardy to any employee, until said report is filed.

3.5 Payroll Deductions

The City shall deduct Union dues or service fees from employee's pay in conformity with State and City regulations. The City shall promptly pay to the designated payee all sums so deducted. The City shall periodically provide a list of all persons making charitable deductions pursuant to a religious exemption as described herein.

3.6 Hold Harmless

Unions shall indemnify and hold harmless the City, its officers and employees harmless from any and all claims, demands, suits, or any other action arising from the Agency Shop provisions herein. In no event shall the City be required to pay from its own funds the Union dues, service fees or charitable contributions, which the employee was obligated to pay, but failed to pay, regardless of the reasons.

3.7 Suspension of Agency Fees

For the duration of any strike, sanctioned, called or supported by the Union, the City may suspend collection of Agency service fees without jeopardy to the employee.

3.8 Waiver of Election for Newly-Represented Employees

The accretion of classifications and/or employees to the unit set forth in Section 1 of this MOU shall not require an election for the application of this Agency Shop provision to such classifications and/or employees.

3.9 Use of City Facilities and Bulletin Boards

The Union may, with the prior approval of the City Manager or the City Manager's designee, use the City facilities during non work hours for meetings of City employees, provided space is available.

The use of City equipment normally used in the conduct of business meetings, such as desks, chairs and blackboards, will be made available to the Union.

The Union may use portions of City bulletin boards under the following conditions:

Copies of materials must be sent to the department or division head in charge of the department bulletin board.

All materials must be dated and must identify the organization that published them.

The City reserves the right to determine where bulletin boards shall be placed.

Section 4. Union Representatives

4.1 Attendance at Meetings by Employees

Any bargaining unit member, who is directed to attend a meeting at which one of the issues is the proposed discipline of said employee, shall be entitled to Union representation at such meeting; provided, however, such representation shall include no more than one City employee in addition to the employee being disciplined. The limitation of this Section shall apply to employees on paid release time and not to Union staff or witnesses who may be necessary to the meeting.

4.2 Shop Stewards

The Union may appoint a reasonable number of shop stewards. Grievances which may arise and which cannot be adjusted on the job shall be reported to the Union by the steward; provided, however, in no event shall the steward or the Union order any changes, and no changes shall be made except with the consent of the City.

If an aggrieved employee desires the assistance of a steward as provided in the grievance procedure, the City shall afford said steward reasonable time off during work hours without loss of compensation or other benefits to investigate and take up said grievance. The steward shall obtain the approval of the Department Head, or the Department Head's designee, before leaving his/her duties or work assignment for the purpose of investigating and/or processing a grievance. Such approval shall not be unreasonably denied.

4.3 Access to Work Locations

Reasonable access to employee work locations shall be granted officers of the Union and officially designated representatives, for the purpose of contacting members of the bargaining unit concerning business within the scope of representation. Such officers or representatives shall not enter any work location without the consent of the Department Director or the Personnel Officer. Such consent shall not be unreasonably denied. Access shall be restricted so as not to interfere with the normal operations of the department or with established or security requirements.

Solicitation of membership and activities concerned with the internal management of an employee organization, such as collecting dues, holding membership meetings, campaigning for office, conducting elections or distributing literature, shall not be conducted during on-duty hours.

The Union shall designate, in writing to Human Resources Director, the names of the representatives listed above.

4.4 Access to Personnel Files

An employee or, upon presentation of written authorization from the employee, an employee's representative shall have access to the employee's personnel file upon request. No written reprimand or performance evaluation shall be placed in an employee's personnel file until that employee has seen and had opportunity to review the document.

4.5 List of Employees

Twice a year, the City shall furnish the Union with the names, classifications and date of hire of employees assigned to classifications in the bargaining unit; provided, however, the City shall not be required to provide such information in any format other than one already used by the City.

4.6 Advance Notice

Except in cases of emergency, Union shall be given reasonable advance written notice of any ordinance, resolution, rule or regulation proposed to be adopted by the City and directly relating to matters within the scope of representation and shall be given the opportunity to meet with management representatives prior to adoption.

Section 5. Salary Plan

5.1 Salary

The rates of pay set forth in this Section represent the standard rate of pay for each classification. Employees occupying a position in a classification covered by this MOU shall be paid at a base salary within the range established for that position's classification. The semi-monthly salary ranges for each classification on July 1, 2010 is detailed in Exhibit A.

5.1.1 Cost of Living Increases

Effective July 1, 2010 through June 30, 2011, there shall be no Cost of Living Increases provided.

5.1.2 Additional Market Pay Increases

Effective July 1, 2010 through June 30, 2011, there shall be no Market Pay Increases provided.

5.1.3 Custodian Pay

The base pay for employees in the Custodian classification shall not increase during the term of this Agreement.

5.2 Pay Days

Employees shall be paid twice monthly. Routine paychecks shall be for the purpose of compensating for regular and overtime hours. Other compensation or reimbursement shall be separately identified and shall not include withholding for tax purposes, except as required by law.

All exceptions to pay, such as overtime, vacation, and sick leave usage, shall be processed and paid or reported on the subsequent paycheck.

During the term of this agreement, the City may change the pay dates to 26 pay periods a year after meeting with the Union regarding the impact of the decision and the implementation dates for such change.

5.3 Salary for New Employees

The salary for a new employee entering City employment shall be the minimum salary step for the classification to which the employee is appointed, unless the City determines that appointment to another step is in the best interest of the City.

5.4 Salary Range

Each employee shall have a salary range with pre-established advancement steps within the range.

Salary range adjustments for a classification will not set a new salary anniversary date for employees serving in the classification.

If the compensation for a classification is revised, employees shall be placed on the same pay step in the new pay range.

5.5 Salary Upon Promotion

When an employee is promoted, s/he shall normally receive the first step in the salary range for the new position. However, if such step results in a salary increase of less than five percent (5%), the employee shall be placed at a salary step that provides a minimum of a five percent (5%) increase, provided that in no event the new salary is above Step E of the promoted class.

5.6 Salary Upon Demotion

When an employee is demoted, his/her compensation shall be adjusted to the salary that most closely approximates the employee's salary in the higher classification. In no event shall the new salary be higher than the fifth step of the lower classification.

If a vacancy exists in a position in a lower classification, an employee who has previously held that vacant position may voluntarily choose to demote to fill the vacancy.

5.7 Work in a Higher Classification

An employee who is assigned to perform the duties of a higher classification shall receive the pay of the higher classification for all hours so assigned when the employee has worked his/her entire regular shift. After making such assignments, the City shall not reassign for sole purpose of avoiding payments of such higher amounts. Employees temporarily assigned to a higher classification shall be covered by this MOU and shall receive the benefits afforded by it.

Employees who are appointed to a higher classification, in a acting capacity, will receive a minimum six percent (6%) increase but no less than Step A and no more than Step E of the higher classification. If the six percent (6%) increase causes the salary to fall between two steps, the appointment will be made at the higher step. Further details relating to the payment of out-of-class pay are contained in the City's Administrative Procedure on Out-of-Class Pay.

5.8 Minimum Wage

All City employees shall receive a salary equal or greater than the minimum wage as specified by State or Federal Law.

5.9 Entry Salary

Each new employee shall be paid at the first step of the range for the classification in which s/he is hired. If the employee possesses exceptional training or experience, the employee may, with the approval of the Personnel Officer, start at a step above the first step.

5.10 Advancement (Step Increases)

Upon completion of the probationary period of employment, an employee appointed at Step A is eligible for a step increase. Additional step increases will be on an annual basis until the attainment of Step E. All step increases shall be based upon satisfactory performance as shown from the evaluation by the employee's Supervisor. Denial of step increases shall be based upon documented performance evaluations. In the event the employee does not receive a written performance evaluation within thirty (30) days of the employee's anniversary date, the step increase shall be approved and paid retroactive to the anniversary date.

Increases of more than one step, for superior performance, may be granted upon recommendation by the Department Director and approval by the Personnel Officer.

5.11 Bilingual Pay

Employees shall be entitled to receive, in addition to their regular compensation, an additional two percent (2%) of base pay if they meet the following criteria:

- a. Certification from the City that the employee possesses the needed language skills; and
- b. Certification from the employee's Department Head that a particular assignment involves the need for the required skills on a regular basis.

Qualifying languages are Spanish, American Sign Language, and any other language designated by the City Manager as beneficial to the City.

Section 6. Hours of Work

6.1 Workweek

The workweek shall be from Sunday through the following Saturday, unless otherwise designated by the Department Director. For employees permitted to work on the 9/80 schedule, the workweek shall be mid-way through the Friday the employee works to the following Friday noon. The designated workweek shall remain permanent and may be changed only as a result of major changes in operations, payroll procedures, or as otherwise necessary in order to deliver services as efficiently and economically as possible.

6.2 Shift Trades

An employee may be allowed a voluntary shift trade with prior approval of the Department Director. Primary consideration shall be given to the needs of the City, with as much regard as possible for the wishes of the employee.

Section 7. Overtime, Call-Back

7.1 Definition

Overtime is work in excess of the employee's regular work shift and which has the prior approval of the Department Director or designated representative. Overtime shall also be paid for work performed on the employee's scheduled days off. Employees who are called in prior to their normal work schedule but continuous with their normal work schedule shall receive overtime for hours worked before their normal work schedule begins.

Leave time, whether paid or unpaid, is not included in computing the daily work period for overtime purposes. The City shall not change the workweek to avoid paying overtime consistent with FLSA.

7.2 Scheduled and Emergency Overtime

Unless excused by the Department Director, an employee, upon request, shall not fail or refuse to perform emergency or scheduled overtime. Scheduled means at least twenty-four (24) hours prior notice. Failure or refusal of the employee to work overtime, in accordance with this provision, shall be grounds for discipline.

When overtime work of a Communication Operator II is needed, the overtime shall be offered first to the Communication Operator II class, provided that the Department has more than two (2) hours notice of the need for overtime. If less than two (2) hours notice is given, the Department may assign overtime to best meet operational needs.

7.3 Overtime Compensation

Overtime shall be compensated at the rate of one and one-half (1-1/2) times the hourly rate of pay; except for holiday overtime, which shall be computed at the rate of two and one-half (2-1/2) times the hourly rate of pay.

Overtime shall be computed at the following formula: Hourly rate equals monthly salary times twelve (12) months divided by 2080 hours. [Hourly rate multiplied by total number of hours worked equals straight-time pay]. Hourly rate multiplied by number of hours worked in excess of forty (40) hours and times one and one-half (1-1/2) equals overtime pay plus straight hourly pay equals total compensation for a workweek.

7.4 Compensatory Time

An employee may request, through the Department Director, compensatory time off or overtime pay for overtime worked. Use and accrual of compensatory time shall be at the discretion of the Department Director to assure assignment of adequate personnel to provide and maintain the City services. No employee may accrue more than one hundred (100) hours of compensatory time. An employee shall receive paid overtime for all hours worked in excess of the one hundred (100) hours.

Compensatory time shall be paid to an employee only in emergencies as determined and approved by the Department Director, and at termination.

7.5 Call-Back Pay

Call Back Pay is paid for when an employee is called for unscheduled or emergency work after the employee has returned home or on the employee's day off. Call Back is not paid when the work is scheduled or when the work is continuous with, regularly scheduled hours. When an employee is called back to work, s/he shall be paid a minimum of two (2) hours at the rate of one and one-half (1-1/2) times the employee's hourly pay rate. The minimum of two (2) hours shall apply to the first call-back and to any subsequent call-back after two (2) hours has expired from the original call. Employees shall be given first

refusal of call-back or emergency work consistent with and subservient to Sections 7.2 and 23.

Employees called back on a City holiday shall be paid a minimum of three (3) hours at time and one-half the employee's hourly rate of pay.

All work (other than employee's regularly scheduled work hours) performed under the call-back provision shall be compensated at one and one-half (1 1/2) times the hourly rate of pay. Approved and appropriate leave time taken during the employee's regular work schedule prior to or after call-back shall not preclude payment of overtime during call-back.

7.6 Court Appearance

Employees who are required to testify in court in their official capacity as a police department employee and are scheduled to appear within one (1) hour after the regularly scheduled work shift, or conclude the court appearance within one (1) hour before the regularly scheduled work shift, that is, as an extension of his/her work shift, shall be compensated at the overtime rate for actual time worked and up to one (1) hour waiting time.

Employees who are off duty for more than one (1) hour, or on vacation, compensatory time off, or their regularly scheduled shift off, who are called back to testify in court in their official capacity as a police department employee shall be compensated for a minimum of four (4) hours (each call back providing that the call back periods do not overlap) or actual hours worked in excess of four (4) hours, computed at the overtime rate of pay.

7.7 Stand-by Pay

The employee who is on stand-by duty shall receive sixteen (16) hours of regular pay for each workweek of standby duty which includes Saturday, Sunday and Holidays. Sixteen (16) hours of regular pay is provided as an incentive for standby and emergency work hours.

All work performed during a standby tour of duty shall be compensated at one and one-half (1-1/2) times the hourly rate of pay. Standby employees shall be entitled to a minimum of two (2) hours at one and one-half (1-1/2) times for their first two call-outs per twenty-four (24) hour period. Subsequent call-outs (more than two) during a twenty-four (24) hour period shall be charged at the actual hours worked and paid at one and one-half (1-1/2) times the hourly rate of pay.

Employees shall not be entitled to additional standby pay for workweeks during which a holiday occurs; however, a standby employee shall be entitled to a minimum of four (4) hours pay at one and one-half (1-1/2) times for their first two call-backs on a holiday.

Subsequent call-backs during a twenty-four (24) hour period shall be charged at the actual hours worked and paid at one and one-half (1-1/2) times the hourly rate of pay.

Section 8. Differentials

8.1 Shift Differential

The City shall pay shift differential to employees as follows:

(a) **Qualifications**

To qualify for shift differential, an employee must have a regularly assigned daily work schedule that requires the employee to work either an evening shift or a night shift. Evening and night shifts are determined by each department as the hours vary.

(b) **Shift Premiums**

Effective July 1, 2007, shift differential for the evening shift shall be Eighty-five Cents (\$.85) per hour worked and shift differential for the night shift shall be One Dollar and Seventy-five Cents (\$1.75) per hour worked. Such shift differential shall be paid for the regularly assigned straight-time work schedule; provided however, that the shift differential will be considered in the employee's base rate of pay for the purposes of calculating overtime payments.

(c) **Paid Leaves**

Whenever an employee who regularly works a shift qualifying for shift differential, is on vacation, sick leave, disability or other paid or unpaid leave, will not have shift differential included in computing the pay for such leave. Such shift differential shall be paid to that employee's replacement.

(d) **Shift differential shall not be paid for accrued time paid at the time of termination.**

8.2 Wastewater Certification Pay

Senior Wastewater Plant Operators shall receive additional compensation in the amount of two and one-half percent (2 1/2%) above their current salary step for possession of a valid Grade IV Wastewater Treatment Plant Operator Certificate from the State of California Water Resources Control Board.

Senior Water Treatment Plant Operators shall receive additional compensation in the amount of two and one-half percent (2.5%) above their current salary step for possession of a valid Grade IV Water Plant Operator Certificate from the State of California Department of Health Services.

The City shall pay State Department of Public Health certification renewal fees for Water Plant Operators and State Water Resources Control Board certification and renewal fees for Wastewater Plant Operators, as well as certification renewal fees for Laboratory Technicians.

Details regarding the timing and payment of incentives are covered in the administrative Procedure on Education and Incentive Pay.

8.3 Pesticide Applicator's Certificate Pay

The City will pay an additional two and one half percent of pay (2.5%) for employees who hold a Qualified Pesticide Applicator's Certificate (QAC) and are assigned pesticide application duties.

8.4 Training Pay – Police Department

Individuals within the classifications of Communication Operator, Community Service Officer and Crime Scene Technician who are assigned by the Department to provide in-house training to employees in their assigned discipline shall receive 5% above their base salary as specified below.

Each discipline will have a minimum of one (1) designated training position; however, the Department may designate as many additional positions as deemed necessary. Persons appointed to these positions will be provided with additional training necessary to qualify as an in-house trainer in their assigned discipline. The five percent (5%) training pay will only be paid to those employees appointed as in-house trainers and only during the time the employee is providing training at the direction of the Department.

8.5 Building Inspector and Plans Examiners Certifications

Building Inspector

Effective July 1, 2007, Building Inspectors shall be entitled to receive an additional one and one-half percent (1.5%) above base pay for receiving and maintaining each of the following ICC Certificates:

- Electrical Inspector – California Electrical Code
- Mechanical Inspector – California Mechanical Code OR
Mechanical Inspector UMC
- Plumbing Inspector – California Plumbing Code OR
Plumbing Inspector UPC

- Building Inspector – California Building Code OR Commercial Building Inspector

In addition, once a Building Inspector receives the four (4) ICC certificates specified above, he or she shall be entitled to an additional one percent (1 %) above base pay for each additional ICC certificate received and maintained from those approved by the Department, up to an additional three percent (3%) total.

Department approved ICC certificates:

- Accessibility Inspector/Plans Examiner
- Building Plans Examiner OR Building Plans Examiner-California Building Code
- Electrical Plans Examiner
- Plumbing Plans Examiner
- Mechanical Plans Examiner

Plans Examiner

Effective July 1, 2007, Plans Examiners shall be entitled to receive an additional one and one-half percent (1.5%) above base pay for receiving and maintaining each of the following ICC Certificates:

- Electrical Inspector – California Electrical Code
- Mechanical Inspector – California Mechanical Code OR Mechanical Inspector UMC
- Plumbing Inspector – California Plumbing Code OR Plumbing Inspector UPC
- Building Plans Examiner OR Building Plans Examiner-California Building Code

In addition, once a Plans Examiner receives the four (4) ICC certificates specified above, he or she shall be entitled to an additional one percent (1 %) above base pay for each additional ICC certificate received and maintained from those approved by the Department, up to an additional three percent (3%) total.

Department approved ICC certificates:

- Accessibility Inspector/Plans Examiner Building Plans Examiner
- Electrical Plans Examiner
- Plumbing Plans Examiner
- Mechanical Plans Examiner
- Building Inspector – California Building Code OR Commercial Building Inspector

No employee may be entitled to receive more than nine percent (9%) total above base pay.

8.6 Crane Assignment Pay

Effective July 1, 2007, employees who are assigned Crane Operations duties and who are required to obtain and maintain the required Crane Operator certification shall receive an additional one and one-half percent (1.5%) above base pay.

Section 9. Allowances

9.1 Uniforms - Parks and Public Works

The City will provide and maintain uniforms for all employees designated to wear mandatory uniforms in the Parks and Recreation and Public Works Departments. Uniforms so provided shall be determined for each designated classification in accordance with the Administrative Procedure on Uniforms and shall remain the property of the City and shall be returned by the employee upon separation or movement to another classification of employment.

Wearing of uniforms is mandatory. Exceptions will not be allowed without a written doctor's excuse. The quality of uniforms should ensure comfort and good fit and should be adequate for weather conditions. Uniforms will be maintained by the City in accordance with the provisions of the Administrative Procedure on Uniforms.

9.2 Uniforms – Crime Scene Technician and Community Service Officer, Animal Control Officer and Animal Control Assistant

Effective July 1, 2007, Crime Scene Technician, Animal Control Assistant, Animal Control Officer and Community Service Officer shall be paid an annual uniform allowance of Five Hundred and Thirty Dollars (\$530).

Effective July 1, 2008, Crime Scene Technician, Animal Control Assistant, Animal Control Officer and Community Service Officer shall be paid an annual uniform allowance of Five Hundred and Fifty Dollars (\$550).

The allowance shall be paid during the pay period that includes June 30 of each year. Therefore, the July 1, 2008 uniform allowance will be paid during the June 30, 2008 payroll.

9.3 Uniforms - Fire Inspectors

Effective July 1, 2007, Fire Inspectors shall be provided uniform shirts. In addition, Fire Inspectors will be provided a uniform jacket as needed.

9.4 Safety Boots

The City will reimburse up to \$165.00 per employee per fiscal year for those employees required to wear safety boots in accordance with the provisions of the Safety Boot Administrative Procedure.

The City will establish accounts with a sufficient number of local vendors. Eligible employees will be issued a purchase order by their respective departments to purchase safety boots or may choose to be reimbursed upon submittal of a receipt. An employee may utilize these monies to purchase more than one pair of boots within the same fiscal year with the understanding the employee shall be reimbursed no more than \$165 total for that fiscal year.

Safety boots that are a hazard due to wear or damage, through no fault of the employee, shall be replaced by the City.

Employees shall be responsible for purchasing boots that meet or exceed the standards and specifications provided by the City.

Any employee who loses or intentionally damages boots, so the boots are no longer safe, will be responsible for the full cost of replacing the boots.

9.5 Tool Replacement

When the Department Director approves the use of personal tools for the performance of City work, the employee shall receive an allowance of Two Hundred Fifty Dollars (\$250.00) each calendar year for the replacement of such tools by reason of regular usage. The allowance shall be paid the first payroll in December.

Employee-owned tools that are used to work on City equipment shall be replaced, at no cost to the employee, if they are broken or lost through theft:

- (1) The broken tool shall be given to the supervisor and
- (2) A police report shall be required as proof of theft.

The City shall continue to provide any required specialty tools and tools greater than 1" in diameter.

9.6 Equipment and Clothing Return

All City-furnished equipment and clothing remains in the ownership of the City and must be returned when an employee leaves employment.

9.7 Meal Allowance

The City shall pay a meal allowance of Seven Dollars (\$7.00) for employees who perform a minimum of two (2) hours "unanticipated" overtime or callback work that extends through a regular meal time. The two (2) hours minimum may be continuous to a regular shift, prior to a regular shift, or a call-back, but must occur during the employee's regular meal time. For the purposes of this section, "unanticipated" means that the affected employee did not receive notice until the same day as the overtime assignment occurred.

A meal allowance shall also be paid for standby employees who are called out to work when such call out lasts four or more hours and extends through a regular meal period.

9.8 Mileage Reimbursement

An employee who is required to provide transportation for the performance of his/her job or to attend required training shall be compensated at a rate established by the Internal Revenue Service. It is understood that such reimbursement does not apply to commuting by employees to or from their residences.

9.9 Education Reimbursement

Upon Department Director approval, an employee who completes a course of study and receives a grade of C or better may be reimbursed for books, supplies and tuition up to a maximum of \$2,500.00 per fiscal year, for courses taken at public colleges or universities in California or for the California tuition equivalent for courses that must be taken at colleges or universities outside of California public education system.

9.10 Credit for Training

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be submitted, by the participating employee, to the Department Director and the Human Resources Director for inclusion in the employee's personnel file.

Section 10. Holidays

10.1 Paid Holidays

Regular full-time employees, except as otherwise provided herein, shall be entitled to observe all authorized holidays at full pay, not to exceed eight (8) hours for any one day.

The following are authorized holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving Day	4th Friday in November
Christmas Eve	December 24
Christmas Day	December 25
Floating Holidays (2)	

Two (2) Floating Holidays (16 hours of leave) will be credited to vacation balances on an annual basis each January. New employees shall be granted two (2) holidays or sixteen (16) hours, if hired between January and June; twelve (12) hours if hired between July and September and eight (8) hours if hired between October and December.

10.2 Paid Holidays on 9/80 Work Schedule

The 9/80 work schedule is a work schedule in which an employee works 80 hours in a pay period. Typically, the employee works four nine (9) hour days and one (1) eight hour day in the first week and then work four nine-hour days and have a day off in the other week.

(a) If a holiday falls on a nine hour workday, the number and hours of paid City holidays will not change. A holiday is eight (8) hours. If a holiday occurs during the work period on a normal nine (9) hour day, employees will receive eight (8) hours for the holiday and will need to use one (1) hours of vacation, comp time, or available floating holiday time to make up the additional hour.

10.3 Saturday and Sunday Holidays

Except for employees working in a seven (7) day operation, if a holiday falls on a Sunday, the employee shall be granted Monday as a holiday. If a holiday falls on a Saturday, the employee shall be granted Friday as a holiday. However, if a Holiday falls on a Friday City Hall is closed, eight (8) hours of leave shall be credited to vacation for each regular full time employee.

10.4 Proclaimed Holidays

All holidays proclaimed by the Governor of the State of California or the President of the United States shall be granted as holidays.

10.5 Pay Rate for Holiday Work (Monday -Friday Operations)

Any regular full-time employee who is required to work on any of the holidays specified in subsection 10.1 above, shall be paid one and one-half (1.5) times the employee's hourly rate of pay for all hours actually worked on such holiday in addition to the eight (8) hours of holiday pay received.

10.6 Pay Rate for Holiday Work (Seven Day Operations)

Any regular full-time employee who is required to work on any of the holidays specified in subsection 10.1 above, shall be paid one and one-half (1.5) times the employee's hourly rate of pay for all hours actually worked on such holiday in addition to the eight (8) hours of holiday pay received.

Employees who do not work on the specified holiday, and whose regular day off falls on that holiday, shall receive eight (8) hours pay, regardless of the normal length of their regular shift.

10.7 Paid Holidays for Communication Operators and Animal Control

Employees in the classifications of Communication Operator, Animal Control Officer and Assistant Animal Control Officer shall be credited with four (4) holidays from January 1 to June 30 and seven (7) holidays from July 1 to December 31. Employees shall be compensated for holidays not used during a given six (6) month period at the holiday pay rate. Request for use of holidays shall be subject to Department Director's approval. The holiday pay rate shall be calculated as follows:

Annual Salary divided by 2,080 hours = hourly rate x 8 = holiday pay.

Holiday pay will be paid on separate checks on the regular payday for the pay period that includes June 30 and December 15. Holidays will be paid at the pay rate during the period in which the holidays were earned.

Employees in the above listed classifications, who are assigned work on any holiday listed in 10.1, excluding floating holidays, shall be paid time and one-half the straight time hourly rate for each hour worked on a holiday. Holiday hours begin and end at midnight on each holiday observed.

Employees within their first six months of employment will receive holiday pay for the actual holidays that occur after their hire date.

Any employee who is assigned to work on a holiday shall receive time and one-half pay for all hours worked.

Section 11. Vacations

11.1 Vacation Benefits

Employees shall be entitled to annual vacation leave based upon length of continuous service.

From date of employment through completion of the 5th continuous year - 96 hours per year.

From beginning of 6th year of continuous employment through completion of the 10th year - 136 hours per year.

11-15 years of continuous employment - 176 hours per year.

16 years or more continuous employment - 192 hours per year.

11.2 Vacation Accumulation

Employees shall not be allowed to accrue more than four hundred (400) hours of vacation leave without prior approval of the City Manager.

11.3 Vacation Scheduling

Annual vacations shall be scheduled by employees with the approval of the division head. Preference in scheduling shall be based upon seniority. Any vacation use other than regular yearly scheduled vacation shall require a minimum of twenty-four (24) hours notice and supervisor approval.

11.4 Vacation

All employees shall be entitled to vacation leave with pay upon completion of six months of employment. The vacation schedule shall be established with primary consideration for the needs of the City, but with as much regard as possible for the wishes of the employee. Leave may be taken only after it has been accrued and is subject to the above restrictions. No employee may take vacation during the first six months of employment.

11.5 Vacation Pay Upon Termination

Upon termination, employees will be paid for all accrued vacation.

11.6 Vacation Sell-Back

Employees covered by this agreement are allowed an optional sell-back of accumulated vacation or floating holiday leave. Once per calendar year, an employee may sell back

accumulated leave, but not more than the equivalent of fifty (50%) of one year's accrual rate for vacation and floating holiday leave. Any vacation sell-back permissible under this section requires that a minimum of forty (40) hours of accrued vacation leave remain in employee's leave bank.

Section 12. Sick Leave

12.1 Accrual

All regular employees shall be eligible to accrue sick leave at the following rates:
Four (4) hours for each pay period.

For purposes of this Section, month of service shall mean thirty (30) consecutive days.

12.2 Approval

Sick leave may be requested and used as approved by the Department Director or the Personnel Officer. Pay for approved sick leave shall be authorized until the employee's accumulated total of sick leave hours has been exhausted. At that time the employee shall receive no further pay for sick leave. An employee requesting sick leave should exercise reasonable diligence in notifying his/her supervisor or the Police Department prior to the time set for reporting to work.

12.3 Use

Sick leave should be requested only in cases of actual personal sickness or disability, medical or dental treatments, or for absences due to serious illness or injury of a member of the employee's immediate family.

Employees may be granted leave with pay when the absence is required because of illness or injury of a member of the immediate family where attendance at the employee's residence is required or for emergency medical care. Each day used for this leave shall be subtracted from the accrued sick leave balance.

The City may require a justification for the need for this leave before approving the leave. Employees may use a maximum of six (6) days per year of sick leave accrual for the purpose of family sick leave. In unusual instances, the Department Director may extend family sick leave provisions beyond six (6) days per year. For the purpose of this subsection, "immediate family" shall mean the employee's parent, spouse or domestic partner and dependent children.

Sick leave shall not be granted for disability arising from any sickness or injury purposely self-inflicted or caused by the employee's willfully shown misconduct.

12.4 Doctor's Certificate

It is understood that the City has a legitimate concern in preventing abuse of sick leave claims. If the City has a reason to believe that sick leave is being abused, it may request that any absence be verified. The City's right to verify an absence includes the right to require a doctor's excuse at any time. The City may prescribe forms to be used for this verification.

The Department Director or City Manager may require a written statement from an attending physician or dentist that an employee is capable and released to return to the performance of all duties of his/her position.

12.5 Sick Leave at Death/Termination

Upon death, the employee's estate shall receive straight-time pay for all accrued sick leave in excess of one hundred twenty (120) days (nine hundred sixty hours).

If an employee terminates or is terminated for any reason, all accumulated sick leave shall be canceled.

However, accumulated sick leave up to 120 days shall be credited, to an employee if the employee returns to City employment within two (2) years of termination.

12.6 Sick Leave Conversion at Retirement

Employees who retire with at least ten (10) years of service may elect to convert all accrued sick leave to a medical insurance bank. The value of the medical insurance bank shall be determined by multiplying the number of accrued sick leave hours by the employee's hourly rate of pay as defined in Subsection 7.3.

The retired employee and the employee's dependents shall be entitled to continued group health insurance coverage currently in effect. The premium for such coverage will be deducted from the medical insurance bank until the bank is exhausted. At that time, the coverage may be converted to an individual policy at the discretion of the employee pursuant to the terms and conditions set by the Teamsters Managed Trust.

Subject to approval by the City and Teamsters Managed Trust, retirees may elect to utilize funds in their medical insurance bank to purchase alternate medical coverage.

12.7 Catastrophic Sick Leave Program

An employee may be eligible to receive donations of paid leave to be included in the employee's sick leave balance if she/he has suffered a catastrophic illness or injury which

prevents the employee from being able to work. Catastrophic illness or injury is defined as a critical medical condition considered to be terminal, a long-term major physical impairment or disability.

ELIGIBILITY:

1. The recipient employee or any other employee may submit a written request to the Human Resources Division to initiate the process.
2. The recipient employee is not eligible so long as she/he has paid leaves available; however, the request may be initiated prior to the anticipated date leave balances will be exhausted.
3. A medical verification must be provided by the recipient employee.
4. A recipient employee is eligible to receive 90 working days of donated time per employment.
5. Donations of vacation and/or compensatory time shall be made in increments of full hours. Donations are irrevocable. Unused hours remaining when the recipient returns to work or terminates employment with the City shall be retained by the recipient.
6. The donor's hourly value will be converted to the recipient's hourly value, and then added to the recipient's sick leave balance on a dollar-for-dollar basis.
7. The donor employee may donate vacation, compensatory time, or in lieu of holiday time, which shall be converted to recipient employee's sick leave balance and all sick leave provisions will apply. Time donated in any pay period may be used in the following pay periods. No retroactive donations will be permitted.
8. The recipient employee's entitlement to personal disability leave will be reduced by the number of hours added to the recipient's sick leave balance.
9. In the event of the death of the recipient while still employed by the City, any donated unused leave time remaining at the time of death will be paid to the recipient's estate at 100% of the value at the employee's final hourly rate.
10. The determination of the employee's eligibility for Catastrophic Sick Leave donation shall be at the City's sole discretion, and shall be final and non-grievable.

Section 13. Workers' Compensation

An employee receiving disability payments under Workers' Compensation Laws shall be entitled to industrial accident leave in accordance with state laws and employment status.

Three (3) consecutive calendar days following the last day worked constitutes a waiting period before Workers' Compensation starts. The time the employee is scheduled to work during this waiting period will not be charged to the employee's sick leave and/or vacation accruals. In order to qualify for Workers' Compensation, the employee must be under the care of a physician. Temporary compensation is payable on the first three (3) days of disability when the injury necessitates hospitalization, or when the disability exceeds twenty-one (21) days.

Temporary disability payments under Workers' Compensation laws will be integrated with the employee's accumulated sick leave and vacation leave. In such circumstances, the employee shall be paid the difference between the disability payments and his/her full salary. Payments from the insurance carrier for disability arising out of and in the course of employment shall be paid to the employee and forwarded to the City. The amount of such payment or payments shall be deducted from the monies which the employee would otherwise receive from the City.

Payments from the insurance carrier plus the monies paid to the employee by the City shall be equivalent to the employee's regular full pay.

In no case may an employee receive more income than the amount of his/her normal pay.

Employees must turn in checks received from insurance carrier to the City.

Section 14. State Disability and Paid Family Leave

State Disability Insurance payments are available to employees who cannot work because of sickness or injury not job related. SDI payments shall be integrated with accumulated sick and vacation leave balances unless the employee elects in writing, at the time of disability, to retain payments from SDI and receive no supplemental income (paid leave) from the City.

To the extent accumulated sick leave or vacation leave is available, the employee will continue to receive normal paychecks. Payments received from the state shall be turned in to the City. When such checks are received by the City, a portion of the employee's next paycheck, equal to the amount turned in, shall be recorded as nontaxable pay and sick leave shall be charged only for the amount of the City's share of the paycheck.

In no case may an employee receive more income than the amount of his/her normal pay. Employees must turn in checks received from the insurance carrier for the City, unless the employee elected in writing, at the time of disability, of the employee's choice not to receive paid leave.

Additionally, employees may be eligible to receive Paid Family Leave in accordance with State Law and City Policy. In such cases, the PFL will be integrated with pay in the same fashion as State Disability Insurance.

Section 15. Leaves of Absence

15.1 Approved Absence Without Pay

Upon written request, the City Manager may grant an employee a leave of absence without pay for a definite period, not to exceed one (1) year. Failure on the part of the employee, absent without pay, to return to duty within twenty-four (24) hours after the last date of the approved leave shall be cause for discharge.

For leaves of absence without pay for reasons which qualify as leave under the Family and Medical Leave Act, the City will pay health benefits in accordance with the provisions of the Family and Medical Leave Act.

15.2 Bereavement Leave

- (a) In the event of a death in the immediate family, employees shall be granted leave up to a maximum of five (5) working days. The employee may, with the Department Director's permission, use vacation, sick leave, or compensatory time, if additional leave is required. Such permission shall not be unreasonably refused. In the event of the death of a relative, not a member of the immediate family, absence from duty shall be allowed not to exceed one (1) day. Such absences shall not be charged to sick leave. Upon request, the employee shall provide appropriate verification of attendance and/or relationship.

The immediate family of an employee is defined as: parents, step-parents, parents in-law, spouse, domestic partner, child, step-child, brother, sister, grandparents, grandchildren, brother/sister in-law, son/daughter in-law, or legal guardian or a person who is at least fifty percent (50%) dependent on an employee.

- (b) In special cases, with the approval of the Department Director, and the Personnel Officer may grant a death leave in other circumstances.

15.3 Military Leave

- (a) Military leave shall be granted in accordance with provisions of state and federal laws. An employee entitled to military leave shall give the Department Director an opportunity, within the limits of military regulations, to determine when such leave shall be granted. An employee on military leave of absence who has been an employee of the City for not less than one year shall be entitled to receive City salary for the first 30 calendar days of such absence. Pay for such purposes shall not exceed 30 days in any one fiscal year.

- (b) An employee returning from military duty shall be entitled to appointment to the same or a corresponding position with full salary and benefits, including within-class-pay step increases as would have been received had the employee remained for that period of time in active service with the City. Application must be made within six months of discharge. An employee returning to employment following military leave shall not be discharged without cause within one year after restoration.
- (c) A person employed by the City to fill a position made vacant by an employee on military leave of absence shall hold such position subject to being laid off upon any of the said employees being restored to their former positions. An employee promoted to fill a position made vacant by an employee on military leave shall hold that position subject to being restored to his/her former position upon return of the employee.

15.4 Maternity Leave

Maternity leave shall be granted in accordance with City Policy and applicable state and federal laws.

15.5 Family and Medical Leave Act

The parties acknowledge the applicability of the Family and Medical Leave Act and intend to apply and implement this M.O.U. so as to comply with the Act.

15.6 Jury Duty

An employee shall be entitled to a leave of absence, for a reasonable time necessary, to appear as a witness in court, other than as a litigant, pursuant to a lawful subpoena, to serve on a jury, or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such a leave of absence shall be granted, with pay, up to the amount of the difference between the employee's regular earnings and any amount received for jury or witness fees, with the exception of any mileage allowance, which shall be retained by the employee.

Such a leave of absence shall not be charged against the employee's sick leave or vacation leave. Any employee released from jury duty prior to the end of their regular shift shall then report to work; provided, however, that this combination of jury duty and work time shall not exceed, within a twenty-four (24) hour time period, the total number of hours of the employee's regular schedule.

An employee who is seated as a juror or alternate juror shall inform the supervisor on or before the day the trial begins of the estimated length of the trial. If an employee is

required to serve on jury duty on a regularly scheduled day(s) off, the City will endeavor to reschedule the day(s) off beginning with the sixth day of a combination jury duty and work duty, provided that such rescheduling does not require the payment of overtime.

15.7 Voting Leave

Employees shall be granted sufficient time to vote during municipal, primary and general elections.

15.8 Attendance and Leave Reports

Absence of all employees on vacation leave, sick leave, compensatory leave and leaves without pay granted by Department Director, shall be reported to the Department Director. Such reports shall indicate the hour and date of employment and regular days off included within the period of absence.

15.9 Attendance

Effective upon adoption of this Agreement, any employee who fails to call or show for work shall receive a written reprimand on the first occasion; a three (3) day suspension on the second occasion and shall be terminated on the third (3rd) occasion. A failure to call or show for work is defined as no contact with employee's supervisor or department management within the first hour of an employee's scheduled shift. The City shall require verification when an employee submits any justification for the failure to call or show for work. The City shall consider any justification and verification submitted by an employee before exercising its right to impose discipline under this section.

Section 16. Insurance

16.1 Health and Welfare

Effective October 1, 2010, the City will contribute fifty percent (50%) of the increased monthly cost of its healthcare contribution or \$75.00 per month, whichever is less, to its 2009 monthly healthcare contribution of One Thousand, one Hundred and Twenty-five Dollars (\$1,125.00) per employee per month for medical, dental and vision care. The plan selected through the Teamsters Managed Trust (TMT) shall continue to be Warehouse Plan Option II (Kaiser and Pacificare).

Employees shall pay the difference, through payroll deduction, between the City's monthly contribution and the actual cost of the plan. In the event the monies necessary to fully pay the monthly cost of the plan selected in future years is less than the monies specified above, the City will only pay the actual cost of the plan. The City agrees that employees covered by this Agreement shall not have to pay more than fifteen percent (15%) of the total cost of the monthly composite rate of Warehouse Plan Option II.

In the event that modifications or amendments to the existing terms and conditions of participation in the Teamsters Managed Trust Plan which would increase the City's liability and/or cost other than the maximum contribution per month per employee, are enacted by the Trust, the City may, at its sole option, terminate participation in the Trust upon thirty (30) days notice to the Union and the Trust. If the City exercises this option during the term of the MOU, the City will meet and confer with the Union regarding substitute health provisions which are substantially equivalent to health and welfare benefits then being provided to other City bargaining units.

16.2 Life Insurance

The City agrees to maintain the life insurance component of the Trust at Thirty Thousand Dollars (\$30,000) total, including the amount covered as part of the standard Health and Welfare Plan. The City agrees to pay the entire premium for the additional life insurance which shall be paid separately from the monies the City allocates for health and welfare, dental and vision.

16.3 Federal or State Health Plan

If, pursuant to any federal or state law which may become effective subsequent to the effective date of this Agreement, the City is required to provide health and dental through an alternate plan than is otherwise provided in this Agreement, then the parties shall immediately meet and confer regarding the impact of such requirements under the law. In addition, it is the City's intent to maintain and limit its financial commitment to providing health and dental care to the dollar amounts specified in Section 16.1.

Section 17. Probationary Period

17.1 Purpose

All new and promoted employees shall serve a probationary period. The probationary period shall be considered the last portion of the selection process. Its purpose is to allow the Personnel Officer or, under the Personnel Officer's direction, the Department Director, to observe and appraise the conduct, performance, attitude, adaptability and job knowledge of a new or promoted employee and to determine whether the employee is fully qualified for the position.

17.2 Duration

The probationary period for new and promoted City employees shall be six (6) months. Employees in the classifications of Communication Operator and Fresh Water and Wastewater Treatment Plant Operator shall have a probationary period of twelve (12) months.

An employee who is in a probationary status may be rejected without cause, without right of appeal and without recourse to the Grievance Procedure as provided in Section 22 hereof.

17.3 Promotion

An employee who has gained permanent status and thereafter accepts a promotion, may be rejected during the probationary period without cause. Said employee shall retain all other rights of a permanent employee in the classification held prior to promotion. Those rights can only be affected for cause.

The Department Director may extend the probationary period in three month increments, not to exceed one (1) year, if the Department Director feels additional time is necessary to adequately evaluate the employee.

17.4 Probationary Reports

A performance report of each probationary employee shall be made by the Department Director at regular intervals during the probationary period according to rules established by the Personnel Officer.

17.5 Effect of Probationary Period

The Personnel Officer may terminate, without cause, an employee at any time during the probationary period. Said employee shall have no recourse to any provisions for appeal set forth in the rules and regulations, except where there is an allegation of discriminatory bias, in which case, the formal appeal process may be used. In the case of a promoted employee, the City shall attempt to return said employee to his/her pre-promotional position when feasible. Probationary promotional employees are exempt from this section in cases of dismissal for cause.

Section 18. Miscellaneous Personnel Actions

18.1 Vacancies in the Classified Service

All vacancies in higher positions in the classified service shall be filled by promotion from within if the following conditions are met:

- a) The City Manager determines that there is an internal applicant pool and that the best interests of the City will be served by promoting from within.
- b) The person selected shall be the most qualified applicant for the job; and
- c) Any promotional examination shall comply with the City, state and federal rules and regulations governing competitive examinations.

- d) If the City Manager decides not to utilize a promotional only exam, the action of the City Manager shall be grievable under the grievance procedure of Section 22.2 of this MOU.

18.2 Vacancies in City Service

Prior to a vacancy being filled through the process outlined in this section, the lateral process shall first be reviewed for internal employees wishing to transfer to a new work assignment.

All vacancies in the City's service shall be filled by re-employment, promotion, transfer, demotion, reinstatement, or by appointment from an employment list. When employment lists are used to fill vacancies, they shall be used in the following order:

- a) By appointment of eligibles from re-employment lists;
- b) By consideration of eligibles from promotional lists;
- c) By consideration of eligibles from an open eligibility list.

The City shall determine the number of applicants from a promotional list to interview for any position. The most qualified applicants who are current City employees shall be interviewed prior to the consideration of any equally qualified applicant from an open list.

Promotional examinations scheduled by the City during an employee's regular working hours may be taken without loss of compensation.

18.3 Transfer

An employee may be transferred from one position to another position in the same or comparable classification upon approval of the affected Department Directors. Transfer may be made at any time by the Personnel Officer. Transfer shall not be used to effect promotion, demotion, advancement or reduction. No person shall be transferred to a position for which s/he does not possess the minimum qualifications. Upon notice to the Personnel Officer, an employee may be transferred by the appointing power at any time from one position to another position at a comparative class. For transfer purposes, a comparable class is one with the same maximum salary, involving the performance of similar duties and requiring substantially the same qualifications.

18.4 Demotion

The Personnel Officer may demote an employee who so requests it, or whose ability to perform the required duties falls below standard, or for disciplinary purposes. No

employee shall be demoted to a class for which the employee does not possess the minimum qualifications.

18.5 Suspension

The Personnel Officer may suspend an employee without pay from his/her position in accordance with disciplinary procedures indicated in Section 21.5. Suspension without pay shall not exceed thirty (30) calendar days.

A Department Director may suspend an employee after affording due process rights for not more than three (3) working days for any one offense.

18.6 Provisional

The Personnel Officer may appoint an employee to an allocated full-time position subject to certain conditions identified by the Personnel Officer or may appoint an employee who does not meet the minimum qualifications for the position to which that employee is appointed. The employee must satisfy the minimum qualifications or specified conditions prior to completion of the applicable probationary period.

18.7 Reclassification

The Personnel Officer may reclassify an incumbent to a new job classification with the same or higher maximum rate of pay based upon an analysis of job responsibilities and duties where a preponderance of the work performed is outside of the originating class. For purposes of the probationary period, a reclassification is the same as a promotion if it results in the employee's salary increasing by five percent (5%) or more. The probationary period for reclassified employees may be waived at the discretion of the Personnel Officer.

18.8 Flex Staffing

The City may choose to Flex Staff (promote) classes within the same job family that contain entry or journey positions to entry/journey or advance/journey level positions. Flex Staffing gives the flexibility to hire employees at the less experienced level or at the more experienced level depending upon applicant qualifications and City staffing needs. All positions in the following classifications are designated for flexible staffing.

From

To

Building Inspector I

Building Inspector II

Communications Operator I

Communications Operator II

Wastewater Treatment Plant
Operator

Sr. Wastewater Treatment Plant Operator

Water Treatment Plant Operator

Sr. Water Treatment Plant Operator

Section 19. Layoff and Recall

A permanent employee may be laid off, without prejudice, due to lack of funds or curtailment of work. No permanent employee, however, may be separated while there are temporary employees serving in the same or allied class or position in the City service, unless that employee has been offered the temporary work.

When a Department Director is instructed by the City Manager to reduce the number of employees, layoff shall be made in accordance with the following rules below, (a) through (e) inclusive:

- a) Layoffs shall be by job classification according to reverse order of seniority as defined by total City service.
- b) The employee to be laid off may displace the least senior employee in the lateral or next lower classification in which the employee previously held permanent status, provided the displaced employee has less total City service. Total City service means as a full-time employee.
- c) An employee may demote or transfer to a vacant position in a classification for which the employee possesses the necessary skills as determined by the minimum qualifications and job specifications for position.
- d) The name of each laid off employee shall be entered, in order of seniority, on a Re-employment List for two (2) years.
- e) A former employee appointed from a re-employment eligibility list shall be restored all rights accrued prior to being laid off, such as sick leave, vacation credits, and credit for years of service. However, a re-employed employee shall not be eligible for benefits for which s/he received compensation at the time of, or subsequent to the date the employee was laid off.

There shall be no implementation of layoffs (beyond those for which the Union was noticed on October 27, 2009) during FY 2010-11.

Section 20. Separation from Service

20.1 Resignation

An employee wishing to resign from employment shall file with the Department Director a notice of intention to leave at least two (2) weeks in advance. In the event the employee provides two (2) weeks notice, the employee shall receive his/her final pay check on the last day's work.

20.2 Reinstatement

A permanent employee who has resigned in good standing may request reinstatement to a position in his/her former classification. The City Personnel Officer (the City Manager) may reinstate such employee to a vacant position pursuant to City Policy.

The City Manager may request such employee to submit to a physical examination and may require the employee to serve a new probationary period.

20.3 Termination Interview

An employee terminating City employment, for whatever reason, shall be interviewed by his/her immediate supervisor, who shall advise the employee of both the employee's and the City's rights under the terms of resignation and shall ascertain the reasons for termination of employment.

20.4 Discharge

An employee may be discharged at any time by the Personnel Officer for just cause. Whenever it is the intention of the Department Director to discharge an employee in the competitive service, the Personnel Officer shall be notified and Personnel Officer's prior approval obtained. The City agrees to give any employee who is being discharged at leave five (5) working days notice of such disciplinary action.

Section 21. Employee Conduct and Discipline

21.1 Personal Conduct

Employees are required at all times to conduct themselves in such a manner as to reflect no discredit upon the City of Tracy.

21.2 Financial Affairs

Employees shall so arrange their personal financial affairs that creditors and collection agencies will not have to make use of the offices of the Personnel Officer, the Department Directors, nor the Finance Manager, for the purpose of making collections.

21.3 Outside Employment

An employee may not carry on, concurrently with his/her public service, any private business, public office, employment or undertaking, attention to which affects the time or quality of his/her work, or which creates a conflict of interest with his/her employment.

21.4 Private Use of City Equipment

No City facility or equipment shall be put to any private use without the permission of the Department Director or designee.

21.5 Disciplinary Action

This section shall apply to the following disciplinary actions:

Oral Reprimand
Written Reprimand
Suspension
Demotion
Discharge

21.6 Causes for Disciplinary Action

Disciplinary actions may be imposed upon any permanent employee for just cause. The following shall constitute just cause for disciplinary action:

- a) Fraud in securing employment
- b) Incompetence
- c) Inefficiency
- d) Inexcusable neglect of duty
- e) Insubordination
- f) Dishonesty
- g) Being under the influence of alcohol or controlled substance while on duty
- h) Inexcusable absence without leave
- i) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section
- j) Discourteous treatment of the public or other employees
- k) Misuse of City property
- l) Violation of any established City/Department rule, regulation, policy and/or manual
- m) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a City employee.

21.7 Manner of Reprimand

If the City has reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public. Any such oral reprimand

shall be considered final, subject only to protest in writing to the employee's personnel file.

21.8 Skelly Notice

The City agrees to give an employee, who is being suspended for five (5) days or more, demoted, reduced in pay or discharged, at least five (5) working days notice of such disciplinary action.

A copy of the Skelly Notice will be sent to the Union office.

21.9 Disciplinary Investigations

The City agrees that it is appropriate for any disciplinary investigation to be instigated and completed in a timely manner and upon request of the Union will meet to discuss any delays in such investigations.

21.10 Personnel Files

An employee shall be notified of any adverse material placed in his/her official personnel file, and may file with the Personnel Officer, for inclusion in his/her file, a written reply to any such adverse material contained in their official personnel file.

After a period of two (2) years, an employee may file a request for removal of disciplinary materials provided there has been no repetition of the behavior giving rise to the disciplinary action, no additional reprimand or disciplinary actions for any other cause have been filed during the intervening two (2) years, and there is no legal impediment to complying with the request. Such requests shall be reviewed by the Personnel Officer.

Section 22. Grievance Procedures

22.1 Definition

A grievance is any dispute which involves the interpretation or application of any provision of this MOU excluding, however, those provisions of this MOU which specifically provide that the decision of any City official shall be final, since the interpretation or application of those provisions is not subject to the grievance procedure.

22.2 Procedure

A grievance shall be processed in the following manner:

- 1) An employee who believes he/she has a grievance is encouraged to discuss the complaint with such management official in the Department in which the employee works as the Department Director may designate. Grievances shall be

presented within thirty (30) calendar days of the incident giving rise to the grievance. If the issue is not resolved within the Department, or if the employee elects to submit the grievance directly to the Union, the procedures hereinafter specified may be invoked.

- 2) A grievance that has not been resolved within thirty (30) calendar days by the procedure above may be referred to the City Manager by the complainant or by the Department Director. Such referral shall be in writing on a Union grievance form to ensure clear communication and assist in resolving the grievance. This grievance form shall contain (a) a clear statement of the problem, (b) the alleged facts upon which the grievance is based, (c) the section of the MOU claimed to have been violated and the specific violation claimed, and (d) the remedy requested by the grievant.

The City Manager shall designate a personal representative, who is not the Department Director, to investigate the merits of the complaint, to meet with the complainant and, if the complainant is not in the Union, to meet also with the officials of the Union, and to settle the grievance or to make recommendations to the City Manager. The City Manager shall respond within (30) days. This is the final step for appeals of oral or written reprimands.

- 3) If the parties are unable to reach an accord on any grievance which arises and is presented during the term of this MOU, the grievant shall have thirty (30) calendar days from the receipt of the decision of the City Manager, pursuant to (2) above, in which to request that the grievance be submitted to an Adjustment Board.

The Board shall be comprised of two (2) Union representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Union; and two (2) representatives of the City, no more than one (1) of whom shall be either an employee of the City or a member of the staff of any organization employed to represent the City in the meet and confer process. Such Adjustment Board shall be convened within sixty (60) calendar days from the receipt of the request from the grievant.

- 4) If an Adjustment Board is unable to arrive at a majority decision, either the Union or the City may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the Union and the City Manager.

In the event the parties are unable to mutually agree on the selection of an arbitrator, the arbitrator will be chosen by each party alternately striking one name at a time from the following list until only one name remains:

William Eaton
Joe Henderson
Frank Silver

Gerald McKay
Barbara Chaney

The fees and expenses of the arbitrator and of a Court Reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post hearing briefs, if any.

Within ninety (90) days of the adoption of this Agreement, the parties will meet to review and modify the list of arbitrators provided above. Any change shall be by mutual agreement.

- 5) Decisions of Adjustment Boards and arbitrators on matters properly before them shall be final and binding on the parties hereto, to the extent permitted by the laws governing General Law cities in the State of California.

No Adjustment Board and no arbitrator shall entertain, hear, decide or make recommendations on any dispute unless such dispute involves a position in a unit represented by the Union and unless such dispute falls within the definition of a grievance as set forth in Section 22.1.

- 6) Any of time limits contained in any subsection of this Section 22.2 may be waived by the mutual agreement of the parties.

22.3 Demotion, Suspension and Discharge Grievances

No grievance involving demotion, suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within five (5) working days not including Saturdays, Sundays or Holidays, of the time the affected employee was notified of such action.

When the City Manager and Union, in pursuit of Section 22.2 (2) above, settle a grievance, that involves suspension or discharge, they may agree to payment for lost time or to reinstatement with or without payment for lost time. In the event the dispute is referred to arbitration and the employee is found to have been properly discharged, under the provisions of Section 22.2, such employee may not be ordered reinstated and no penalty may be assessed upon the employer. There shall be no cessation of work pending decision.

22.4 No Change to MOU

Proposals to add to or change this MOU, or written agreements or addenda supplementary hereto, shall not be arbitrable and no proposal to modify, amend or terminate this MOU, nor any matter or subject arising out of or in connection with such proposal, may be referred to arbitration under this Section. Neither any Adjustment Board nor any arbitrator shall have the power to amend or modify this MOU or written agreements or addenda supplementary hereto or to establish any new terms or conditions of employment.

22.5 Compensation Complaints

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints that allege employees are not compensated in accordance with the provisions of this MOU shall be considered as grievances. Any other matters of compensation are to be resolved in the meet and confer process, and if not detailed in the MOU that results from such a meet and confer process, shall be deemed withdrawn until the meet and confer process is next opened for such discussion. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

22.6 Mutual Agreement on Changes

No changes or interpretations of the MOU (except interpretations resulting from Adjustment Board or arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

22.7 No Strike

The Union, its members and representatives, agree that during the term of this MOU, it and they will not engage in, authorize, sanction, or support any strike, slow down, stoppage of work, curtailment of production, concerted refusal of overtime work, refusal to operate designated equipment (provided such equipment is safe and sound) or fail to perform customary duties. Neither the Union nor any of its representatives shall engage in job action for the purpose of effecting changes in the directives or decisions of management of the City, nor to effect change of personnel or operations of management or of employees not covered by this MOU.

Section 23. City Rights

The City retains the exclusive rights, among others, in accordance with and subject to applicable laws, civil service and other regulations, and the provisions of this MOU, including, but not limited to the following:

- 1) To direct employees.
- 2) To hire, promote, transfer and assign employees in positions not inconsistent with applicable classifications and/or job specifications.
- 3) To dismiss employees because of lack of work or for other just cause.
- 4) To reprimand, demote, suspend, discharge or otherwise to discipline employees for proper cause or for violation of the City's Rules and Regulations.

- 5) To determine the mission of such employees, the budget, the organization, the number of employees and the methods and technology of performing their work.
- 6) To take whatever additional action may be necessary in order to carry out and direct the employees' mission in situations of emergency.
- 7) To review, revise and/or establish job duties, workloads and workload standards as necessary during the term of this MOU.
- 8) The City agrees, to the extent required by Government Code Sections 3500, et. seq., to meet and confer, upon request, with unit representatives concerning the practical consequences or impact upon the bargaining unit or bargaining unit members of any management decisions modifying or changing wages, hours and working conditions. The City's duty to meet and confer requires it to delay implementation of such management decisions for no more than thirty (30) days from the date it notifies Union, in writing, of its proposed action (measured from date of mailing by certified mail). Nothing above shall allow the City to violate any provision of this MOU, and Union shall have the right to grieve any such violation as provided in Section 22.

The Bargaining Unit acknowledges it is the City's right to administer and in conjunction with the Union to interpret application of this MOU.

Section 24. General Provisions

24.1 Safety

The City shall provide and maintain safe working conditions and the Union will cooperate to that end. Employees shall work in a safe manner.

No employee shall be required to work in an area where conditions exist that are unsafe or detrimental to health without adequate and proper protective clothing and/or equipment.

During inclement weather, the employer will arrange space indoors for lunch and breaks in order that employees may eat or rest in comfort.

The City shall continue to supply employees with all safety equipment required by the City and/or Cal-OSHA. All employees furnished such equipment shall use the equipment and their use shall only be for the purposes and uses specified under applicable safety rules and regulations.

24.2 Americans with Disabilities Act (ADA)

The City and the Union recognize that the City has an obligation under law to meet with individual employees who allege a need for reasonable accommodation in the workplace because of a disability. If the City contemplates actions to provide reasonable accommodation for an individual employee, in compliance with the ADA, but the actions are in potential conflict with any provision of this MOU, the Union will be advised of any such proposed accommodation prior to implementation by the City.

24.3 Modification in Certification Requirements

In the event the certifications requirements for the State of California for employees in the Water or Wastewater classifications are modified or the certification agency is changed, the City and the Union will meet and confer regarding the impact of such modifications.

Section 25. New Work

In the event the City introduces new work which the Union believes does not fall within any of the existing classifications, the City and the Union shall, upon written request, meet and confer with respect to the salary or other terms and conditions of such work.

Section 26. Sub-Contracting

The City shall send copies of all cover sheets of agendas of City Council meetings, minutes of City Council meetings, and copies of proposed ordinances, resolutions, rules, and regulations that are in any way related to labor relations in the City proposed to be adopted by the City Council, to the Union office.

The City shall give advance written notice with respect to any written intentions and proposals, plans, to contact out, and/or put out for bid, work performed by workers represented by the Union.

Consistent with Section 23(8) of this agreement the City shall meet and confer concerning any bargaining issue raised in the notices described above.

There shall be no additional outsourcing/contracting Out of bargaining unit work for the duration of the Agreement.

Section 27. Waste Water and Water Treatment Operators Cross Training Pay and Program

- 1) Operators who have obtained dual certification, have been trained at both plants according to the guidelines developed by the City and are willing and able to competently work at either plant shall be reclassified to Utilities Operator. Participation in cross training is on a voluntary basis.

- 2) The City and Union agree to meet at least once a year or more often upon request of the Union to review the training and incentives program that encourage cross certification among water treatment plant operators and wastewater treatment plant operators.
- 3) The City agrees to provide cross training time and costs of training materials for water treatment plant operators and wastewater treatment plant operators. The City will continue to provide paid training opportunities for future employees.

Section 28. Retirement

28.1 PERS Contribution

The City agrees to pay the portion of the employee's contribution for the current retirement plan through the Public Employee's Retirement System (PERS) in effect during the term of this Agreement.

28.2 PERS Formula

Effective as soon as the contract can be amended with PERS the City will adopt 2% @ 55 (average of three (3) consecutive highest years) as the retirement model to be used for all new employees hired after the contract amendment.

Miscellaneous employees hired prior to the contract amendment shall receive the Single Highest Year and 2.5% at 55 benefit formula provided through the Public Employees' Retirement System (PERS). The City agrees to pay the employee's share of the contribution for the retirement plan during the term of this Agreement.

Section 29. Total Agreement

This MOU constitutes a full and complete agreement by the parties and contains all of the matters upon which the parties reached agreement. Any matter not contained in this MOU has not been agreed upon and, if raised in negotiations, was dropped by the party raising it as part of a good faith attempt to reach agreement.

Section 30. Separability of Provisions

Should any section, clause or provision of this MOU be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this MOU. In the event of such invalidation, the parties agree to meet and confer concerning substitute provisions for provisions rendered or declared illegal.

Section 31. Past Practices and Existing MOU

This MOU shall supersede any prior MOU rules or regulations or past practices in direct conflict with the provisions hereof.

Made and entered into this _____ day of _____, 2010.

**GENERAL TEAMSTERS LOCAL
NO. 439, IBT**

CITY OF TRACY

By: _____
Edward Speckman, Business Rep.

By: _____
R. Leon Churchill, City Manager

By _____
Sam Rosas, Secretary/Treasurer

By: _____
Maria Olvera, H.R. Director

Attachments:

- Exhibit A - Salaries
- Exhibit B - Benchmarks

Letters of Understanding:

- Shift Bidding Water and Waste Water Plants
- Retiree Health
- Communications Officers POST Certification
- Sick Leave Accrual
- Union Management Meetings
- Flexible Staffing for Wastewater and Water Treatment Plant Facilities (2003)
- Pest Control Advisors (2003)
- Certification Expense Reimbursement Procedure (2003)
- Furloughs (2010)
- Inspector Certification Pay & Operator in Training Salary Survey

EXHIBIT A

TEAMSTERS
 SALARY SCHEDULES

Effective
 Since
 7/1/2009

Class Code	Position Title...		Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate
50202	Code Enforce Officer	A	2,241.57	4,483.14	53,797.68	25.8643
		B	2,353.65	4,707.30	56,487.60	27.1575
		C	2,471.33	4,942.66	59,311.92	28.5153
		D	2,594.90	5,189.80	62,277.60	29.9412
		E	2,724.65	5,449.30	65,391.60	31.4383
50211	Bldg Inspector I	A	2,362.54	4,725.08	56,700.96	27.2601
		B	2,480.67	4,961.34	59,536.08	28.6231
		C	2,604.70	5,209.40	62,512.80	30.0542
		D	2,734.94	5,469.88	65,638.56	31.5570
		E	2,871.69	5,743.38	68,920.56	33.1349
50212	Bldg Inspector II	A	2,639.48	5,278.96	63,347.52	30.4555
		B	2,771.45	5,542.90	66,514.80	31.9783
		C	2,910.02	5,820.04	69,840.48	33.5772
		D	3,055.52	6,111.04	73,332.48	35.2560
		E	3,208.30	6,416.60	76,999.20	37.0188
50213	Fire Inspector	A	2,639.48	5,278.96	63,347.52	30.4555
		B	2,771.45	5,542.90	66,514.80	31.9783
		C	2,910.02	5,820.04	69,840.48	33.5772
		D	3,055.52	6,111.04	73,332.48	35.2560
		E	3,208.30	6,416.60	76,999.20	37.0188
50215	Plan Check Examiner	A	2,847.32	5,694.64	68,335.68	32.8537

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		B	2,989.69	5,979.38	71,752.56	34.4964
		C	3,139.17	6,278.34	75,340.08	36.2212
		D	3,296.13	6,592.26	79,107.12	38.0323
		E	3,460.94	6,921.88	83,062.56	39.9339
50216	Housing Progr Insp I	A	2,362.54	4,725.08	56,700.96	27.2601
	per reso #2006-172	B	2,480.67	4,961.34	59,536.08	28.6231
	NEW 7/18/2006	C	2,604.70	5,209.40	62,512.80	30.0542
		D	2,734.94	5,469.88	65,638.56	31.5570
		E	2,871.69	5,743.38	68,920.56	33.1349
50217	Housing Progr Insp II	A	2,639.48	5,278.96	63,347.52	30.4555
	per reso #2006-172	B	2,771.45	5,542.90	66,514.80	31.9783
	NEW 7/18/2006	C	2,910.02	5,820.04	69,840.48	33.5772
		D	3,055.52	6,111.04	73,332.48	35.2560
		E	3,208.30	6,416.60	76,999.20	37.0188
50221	Engineering Technician I	A	2,214.33	4,428.66	53,143.92	25.5500
	NEW #2006-172	B	2,325.05	4,650.10	55,801.20	26.8275
	7/18/2006	C	2,441.30	4,882.60	58,591.20	28.1688
		D	2,563.36	5,126.72	61,520.64	29.5772
		E	2,691.53	5,383.06	64,596.72	31.0561
50225	Engineering Technician II	A	2,325.06	4,650.12	55,801.44	26.8276
		B	2,441.31	4,882.62	58,591.44	28.1690
	council 10-5-04	C	2,563.38	5,126.76	61,521.12	29.5775
	reso #	D	2,691.55	5,383.10	64,597.20	31.0563
		E	2,826.13	5,652.26	67,827.12	32.6092
50223	Construction Inspector II	A	2,641.08	5,282.16	63,385.92	30.4740

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		B	2,773.13	5,546.26	66,555.12	31.9977
	council 10-5-04	C	2,911.79	5,823.58	69,882.96	33.5976
	2/15/2005	D	3,057.38	6,114.76	73,377.12	35.2775
		E	3,210.25	6,420.50	77,046.00	37.0413
50222	Construction Inspector I	A	2,515.45	5,030.90	60,370.80	29.0244
		B	2,641.22	5,282.44	63,389.28	30.4756
		C	2,773.28	5,546.56	66,558.72	31.9994
		D	2,911.94	5,823.88	69,886.56	33.5993
		E	3,057.54	6,115.08	73,380.96	35.2793
50224	Jr Engineer	A	2,557.19	5,114.38	61,372.56	29.5060
		B	2,685.05	5,370.10	64,441.20	30.9813
		C	2,819.30	5,638.60	67,663.20	32.5304
		D	2,960.26	5,920.52	71,046.24	34.1568
		E	3,108.27	6,216.54	74,598.48	35.8647
50231	Jr Planner					
50232	Assistant Planner	A	2,418.10	4,836.20	58,034.40	27.9012
		B	2,539.01	5,078.02	60,936.24	29.2963
		C	2,665.96	5,331.92	63,983.04	30.7611
		D	2,799.26	5,598.52	67,182.24	32.2992
		E	2,939.22	5,878.44	70,541.28	33.9141
50531	Meter Reader	A	1,297.86	2,595.72	31,148.64	14.9753
		B	1,362.75	2,725.50	32,706.00	15.7240
	new 12-18-07	C	1,430.89	2,861.78	34,341.36	16.5103
	2007-279	D	1,502.43	3,004.86	36,058.32	17.3357
		E	1,577.55	3,155.10	37,861.20	18.2025
50301	Maintenance worker I	A	1,497.85	2,995.70	35,948.40	17.2829

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	title chg 9-16-03	B	1,572.74	3,145.48	37,745.76	18.1470
	(was gen laborer)	C	1,651.38	3,302.76	39,633.12	19.0544
		D	1,733.95	3,467.90	41,614.80	20.0071
		E	1,820.65	3,641.30	43,695.60	21.0075
50303	Maintenance Worker II	A	1,902.55	3,805.10	45,661.20	21.9525
	title chg 9-16-03	B	1,997.68	3,995.36	47,944.32	23.0502
		C	2,097.56	4,195.12	50,341.44	24.2026
		D	2,202.44	4,404.88	52,858.56	25.4128
		E	2,312.56	4,625.12	55,501.44	26.6834
50305	Sr Maint Worker	A	2,094.50	4,189.00	50,268.00	24.1673
		B	2,199.22	4,398.44	52,781.28	25.3756
		C	2,309.18	4,618.36	55,420.32	26.6444
		D	2,424.64	4,849.28	58,191.36	27.9766
		E	2,545.87	5,091.74	61,100.88	29.3754
50307	Dist Grounds Technician	A	2,447.73	4,895.46	58,745.52	28.2430
		B	2,570.12	5,140.24	61,682.88	29.6552
		C	2,698.63	5,397.26	64,767.12	31.1380
		D	2,833.56	5,667.12	68,005.44	32.6949
		E	2,975.24	5,950.48	71,405.76	34.3297
50313	Equipment Mechanic I	A	2,035.02	4,070.04	48,840.48	23.4810
		B	2,136.77	4,273.54	51,282.48	24.6550
		C	2,243.61	4,487.22	53,846.64	25.8878
		D	2,355.79	4,711.58	56,538.96	27.1822
		E	2,473.58	4,947.16	59,365.92	28.5413
50314	Equipment Mechanic II	A	2,136.77	4,273.54	51,282.48	24.6550

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	B	2,243.61	4,487.22	53,846.64	25.8878
	C	2,355.79	4,711.58	56,538.96	27.1822
	D	2,473.58	4,947.16	59,365.92	28.5413
	E	2,597.26	5,194.52	62,334.24	29.9684
50315 Sr Equipment Mechanic	A	2,243.62	4,487.24	53,846.88	25.8879
	B	2,355.80	4,711.60	56,539.20	27.1823
	C	2,473.59	4,947.18	59,366.16	28.5414
	D	2,597.27	5,194.54	62,334.48	29.9685
	E	2,727.13	5,454.26	65,451.12	31.4669
50321 Bldg Maint Worker	A	1,938.72	3,877.44	46,529.28	22.3698
	B	2,035.66	4,071.32	48,855.84	23.4884
	C	2,137.44	4,274.88	51,298.56	24.6628
	D	2,244.31	4,488.62	53,863.44	25.8959
	E	2,356.53	4,713.06	56,556.72	27.1907
50322 Bldg Maint Assistant	A	1,902.55	3,805.10	45,661.20	21.9525
reso	B	1,997.68	3,995.36	47,944.32	23.0502
9/16/2003	C	2,097.56	4,195.12	50,341.44	24.2026
(was a maint worker)	D	2,202.44	4,404.88	52,858.56	25.4128
	E	2,312.56	4,625.12	55,501.44	26.6834
50323 Sr. Building Maint Wkr	A	2,132.60	4,265.20	51,182.40	24.6069
	B	2,239.23	4,478.46	53,741.52	25.8373
reso #2007-270	C	2,351.19	4,702.38	56,428.56	27.1291
12/4/2007	D	2,468.75	4,937.50	59,250.00	28.4856
	E	2,592.19	5,184.38	62,212.56	29.9099
50324 Electrician	A	2,181.90	4,363.80	52,365.60	25.1758

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50325 Sr Electrician

B	2,290.99	4,581.98	54,983.76	26.4345
C	2,405.54	4,811.08	57,732.96	27.7562
D	2,525.82	5,051.64	60,619.68	29.1441
E	2,652.11	5,304.22	63,650.64	30.6013

A	2,400.10	4,800.20	57,602.40	27.6935
B	2,520.10	5,040.20	60,482.40	29.0781
C	2,646.10	5,292.20	63,506.40	30.5319
D	2,778.40	5,556.80	66,681.60	32.0585
E	2,917.32	5,834.64	70,015.68	33.6614

50331 Custodian

A	1,022.59	2,045.18	24,542.16	11.7991
B	1,073.72	2,147.44	25,769.28	12.3891
C	1,127.41	2,254.82	27,057.84	13.0086
D	1,183.78	2,367.56	28,410.72	13.6590
E	1,242.97	2,485.94	29,831.28	14.3420
F	1,305.12	2,610.24	31,322.88	15.0591
G	1,370.38	2,740.76	32,889.12	15.8121
H	1,438.90	2,877.80	34,533.60	16.6027
I	1,510.84	3,021.68	36,260.16	17.4328
J	1,586.38	3,172.76	38,073.12	18.3044

50333 Sr Custodian

A	1,436.29	2,872.58	34,470.96	16.5726
B	1,508.10	3,016.20	36,194.40	17.4012
C	1,583.50	3,167.00	38,004.00	18.2712
D	1,662.68	3,325.36	39,904.32	19.1848
E	1,745.81	3,491.62	41,899.44	20.1440

50403 Wtr Plant Op-in-Training
 NEW 3-4-08

A	1,992.92	3,985.84	47,830.08	22.9952
B	2,092.57	4,185.14	50,221.68	24.1450

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RESO 08-032	C	2,197.20	4,394.40	52,732.80	25.3523
	D	2,307.06	4,614.12	55,369.44	26.6199
	E	2,422.41	4,844.82	58,137.84	27.9509
50401 Wtr Plant Operator	A	2,401.10	4,802.20	57,626.40	27.7050
	B	2,521.16	5,042.32	60,507.84	29.0903
	C	2,647.22	5,294.44	63,533.28	30.5448
	D	2,779.58	5,559.16	66,709.92	32.0721
	E	2,918.56	5,837.12	70,045.44	33.6757
50402 Sr Wtr Plant Operator	A	2,632.50	5,265.00	63,180.00	30.3750
	B	2,764.13	5,528.26	66,339.12	31.8938
	C	2,902.34	5,804.68	69,656.16	33.4885
	D	3,047.46	6,094.92	73,139.04	35.1630
	E	3,199.83	6,399.66	76,795.92	36.9211
50404 Utility Operator	A	2,819.69	5,639.38	67,672.56	32.5349
	B	2,960.67	5,921.34	71,056.08	34.1616
	C	3,108.70	6,217.40	74,608.80	35.8696
	D	3,264.13	6,528.26	78,339.12	37.6630
	E	3,427.34	6,854.68	82,256.16	39.5462
50405 WW Plant Op-in-Training	A	1,870.56	3,741.12	44,893.44	21.5834
NEW 3-4-08	B	1,964.09	3,928.18	47,138.16	22.6626
RESO 08-032	C	2,062.29	4,124.58	49,494.96	23.7957
	D	2,165.40	4,330.80	51,969.60	24.9854
	E	2,273.67	4,547.34	54,568.08	26.2347
50406 WW Plant Operator	A	2,253.68	4,507.36	54,088.32	26.0040
	B	2,366.36	4,732.72	56,792.64	27.3042

Teamsters M.O.U.
 July 1, 2010 - June 30, 2011

	C	2,484.68	4,969.36	59,632.32	28.6694
	D	2,608.91	5,217.82	62,613.84	30.1028
	E	2,739.36	5,478.72	65,744.64	31.6080
50407 Sr WW Plant Operator	A	2,470.85	4,941.70	59,300.40	28.5098
	B	2,594.39	5,188.78	62,265.36	29.9353
	C	2,724.11	5,448.22	65,378.64	31.4320
	D	2,860.32	5,720.64	68,647.68	33.0037
	E	3,003.34	6,006.68	72,080.16	34.6539
50408 Principal WWTP Operator new position	A	3,023.30	6,046.60	72,559.20	34.8842
	B	3,174.47	6,348.94	76,187.28	36.6285
	C	3,333.19	6,666.38	79,996.56	38.4599
	D	3,499.85	6,999.70	83,996.40	40.3829
	E	3,674.84	7,349.68	88,196.16	42.4020
50411 Plant Mechanic I	A	2,186.18	4,372.36	52,468.32	25.2252
	B	2,295.49	4,590.98	55,091.76	26.4864
	C	2,410.26	4,820.52	57,846.24	27.8107
	D	2,530.77	5,061.54	60,738.48	29.2012
	E	2,657.31	5,314.62	63,775.44	30.6613
50412 Plant Mechanic II	A	2,240.83	4,481.66	53,779.92	25.8557
	B	2,352.87	4,705.74	56,468.88	27.1485
	C	2,470.51	4,941.02	59,292.24	28.5059
	D	2,594.04	5,188.08	62,256.96	29.9312
	E	2,723.74	5,447.48	65,369.76	31.4278
50413 Instrumentation Technician	A	2,400.10	4,800.20	57,602.40	27.6935
	B	2,520.10	5,040.20	60,482.40	29.0781

Teamsters M.O.U.
 July 1, 2010 - June 30, 2011

	C	2,646.10	5,292.20	63,506.40	30.5319	
	D	2,778.40	5,556.80	66,681.60	32.0585	
	E	2,917.32	5,834.64	70,015.68	33.6614	
50421	Laboratory Technician I	A	2,009.42	4,018.84	48,226.08	23.1856
	B	2,109.89	4,219.78	50,637.36	24.3449	
	C	2,215.38	4,430.76	53,169.12	25.5621	
	D	2,326.15	4,652.30	55,827.60	26.8402	
	E	2,442.46	4,884.92	58,619.04	28.1822	
50422	Laboratory Technician II	A	2,100.05	4,200.10	50,401.20	24.2313
	B	2,205.05	4,410.10	52,921.20	25.4429	
	C	2,315.30	4,630.60	55,567.20	26.7150	
	D	2,431.06	4,862.12	58,345.44	28.0507	
	E	2,552.61	5,105.22	61,262.64	29.4532	
50425	Envir Control Inspector	A	2,260.10	4,520.20	54,242.40	26.0781
	B	2,373.10	4,746.20	56,954.40	27.3819	
	C	2,491.75	4,983.50	59,802.00	28.7510	
	D	2,616.34	5,232.68	62,792.16	30.1885	
	E	2,747.16	5,494.32	65,931.84	31.6980	
50501	Comm Operator Trainee					
50502	Comm Operator I	A	2,133.31	4,266.62	51,199.44	24.6151
	B	2,239.98	4,479.96	53,759.52	25.8459	
	C	2,351.98	4,703.96	56,447.52	27.1382	
	D	2,469.58	4,939.16	59,269.92	28.4952	
	E	2,593.06	5,186.12	62,233.44	29.9199	
50503	Comm Operator II	A	2,340.43	4,680.86	56,170.32	27.0050

Teamsters M.O.U.
 July 1, 2010 - June 30, 2011

	B	2,457.45	4,914.90	58,978.80	28.3552
	C	2,580.32	5,160.64	61,927.68	29.7729
	D	2,709.34	5,418.68	65,024.16	31.2616
	E	2,844.81	5,689.62	68,275.44	32.8247
50504 Lead Comm Operator	A				
	B				
	C				
(s/b 5% above com op2)	D				
per reso 03-229	E				
50513 Comm Services Officer	A	1,843.17	3,686.34	44,236.08	21.2673
	B	1,935.33	3,870.66	46,447.92	22.3307
	C	2,032.10	4,064.20	48,770.40	23.4473
	D	2,133.71	4,267.42	51,209.04	24.6197
	E	2,240.40	4,480.80	53,769.60	25.8508
50517 Crime Scene Technician	A	2,083.60	4,167.20	50,006.40	24.0415
	B	2,187.78	4,375.56	52,506.72	25.2436
	C	2,297.17	4,594.34	55,132.08	26.5058
	D	2,412.03	4,824.06	57,888.72	27.8311
	E	2,532.63	5,065.26	60,783.12	29.2227
50521 Animal Services Officer I	A	1,683.27	3,366.54	40,398.48	19.4223
	B	1,767.43	3,534.86	42,418.32	20.3934
	C	1,855.80	3,711.60	44,539.20	21.4131
	D	1,948.59	3,897.18	46,766.16	22.4837
	E	2,046.02	4,092.04	49,104.48	23.6079
50522 Animal Services Aide	A	1,209.43	2,418.86	29,026.32	13.9550
	B	1,269.90	2,539.80	30,477.60	14.6527
	C	1,333.40	2,666.80	32,001.60	15.3854

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

	D	1,400.07	2,800.14	33,601.68	16.1547	
	E	1,470.07	2,940.14	35,281.68	16.9623	
50523	Animal Services Officer II	A	1,848.10	3,696.20	44,354.40	21.3242
		B	1,940.51	3,881.02	46,572.24	22.3905
		C	2,037.54	4,075.08	48,900.96	23.5101
		D	2,139.42	4,278.84	51,346.08	24.6856
		E	2,246.39	4,492.78	53,913.36	25.9199

EXHIBIT B – BENCHMARKS

Animal Control Officer

Animal Control Assistant
Animal Shelter Aide
Community Services Officer

Building Inspector II

Building Inspector I
Housing Program Inspector I & II
Assistant Planner
Code Enforcement Officer
Fire Inspector
Plan Check Examiner
Senior Code Enforcement Officer

Communication Operator II

Communication Operator I
Communications Operator Trainee
Lead Communications Operator

Crime Scene Technician

Construction Inspector I

Construction Inspector II

Custodian

Senior Custodian

Electrician

Plant Mechanic I & II
Senior Electrician
Instrument Technician

Engineering Technician II

Engineering Technician I
Junior Civil Engineer

Equipment Mechanic II

Equipment Mechanic I
Senior Equipment Mechanic

Laboratory Technician II

Environmental Control Inspector
Laboratory Technician I

Maintenance Worker II

Maintenance Worker I
Building Maintenance Worker
Building Maintenance Assistant
Senior Maintenance Worker
District Grounds Technician

Senior Wastewater Treatment Plant Operator

Principal Wastewater Treatment Plant Operator
Water Treatment Plant Operator
Senior Water Treatment Plant Operator
Wastewater Treatment Plant Operator
Utility Operator

SIDE LETTER OF AGREEMENT
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL NO. 439

**Shift and Leave Selection Rules
Water and Wastewater Treatment Plants**

The Utilities Division shall establish one seniority list inclusive of both the John Jones Water Treatment Plant and Wastewater Treatment Plant operators. All operators shall be placed on this seniority list in order of their hire date in full-time, continuous City employment. Recognition of seniority shall govern and serve as a basis for determining leave selection, and other issues pertaining to seniority within the water plant and wastewater plant operator job class series. For annual plant shift assignments and cross-training assignments seniority shall be based on hire date in a classification assigned to the Water or Waste-Water Treatment Plants.

It is the intent of the Utilities Division to ultimately staff both the water and wastewater treatment plants with certified operators at the senior level who will perform the job duties as required by the City, under law by the State of California and other applicable governing agencies. It is the intent of the Utilities Division that employees hired at less than the senior level will be provided opportunities for career advancement in the operator job class series.

The Utilities Division and Union agree that each January all operators shall be allowed to select, by seniority as specified above, a shift assignment at the water plant or the wastewater plant for the that subject year. Those operators who are not cross-trained shall remain employed at the plant for which they were originally hired. An equal number of shifts will be reserved at each plant for those operators who possess certification to operate only one plant. The shift assignment shall commence approximately February 1st. The cross-trained operator shall remain stationed at the selected plant unless further cross-training is required in accordance with established practices and/or requirements to retain their certification. It is not the intent of this agreement to require cross-trained operators to work at a facility which they have not selected for extended periods, except in the event of unforeseen emergencies.

After the yearly plant selection, the Utilities Division will meet and confer with the Union and Flex-Staff Committee to determine cross-training selection for the subject year. The Utilities Division will prepare annual schedules for each plant and all cross-trained operators will be allowed to select, by seniority, the time period required of them to maintain their certification and skill level. The Utilities Division reserves the right to review and approve selections, and make changes if necessary.

After shift selection and cross-training selection, operators shall select, by seniority, their leave requests for the subject year.

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

The Utilities Division reserves the right to propose changes due to operational needs but the City and Union will continue to meet and confer in the event of future changes and develop additional options on an as needed basis.

APPROVED AND ACCEPTED

Dated: _____

**TEAMSTERS LOCAL 439
ASSOCIATION**

By _____
Phil Rushing

CITY OF TRACY

By _____
Maria Olvera, H.R. Director

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

**SIDE LETTER OF AGREEMENT
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL NO. 439**

Retiree Health

June 27, 2006

The City and the Union agree to meet within six months following adoption of this Agreement to consider establishing a tax deferred vehicle for employees to contribute towards a Retiree Health Savings Account (RHSA) through payroll deduction or contribution of paid leaves.

Both a RHSA account (as established through ICMA) and a 414 Trust shall be explored and discussed.

It is understood that the provisions of such a plan shall comply with applicable IRS provisions and may include:

- Employees may donate vacation (pursuant to the MOU provision) or accrued compensatory time annually;
- Employees may not contribute sick leave; and
- Employees may contribute through payroll deduction.

No plan shall be adopted without approval of both the City and the Union.

Additionally, the Union may elect to assign a portion of a future pay increase to the Retiree Health Savings Account selected by the parties. In such case, Local 439 shall notify the City in writing, sixty (60) days prior to July 1st of any successive year of this Agreement.

APPROVED AND ACCEPTED

Dated: _____

**TEAMSTERS LOCAL 439
ASSOCIATION**

By _____
Phil Rushing

CITY OF TRACY

By _____
Maria Olvera, H.R. Director

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

**SIDE LETTER OF AGREEMENT
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL NO. 439**

Communications Officer POST Certificate

In the event that POST develops a POST certificate program for Communications Officer, the City and Union will meet to discuss participation of City employees, operational value to the Department and pay.

APPROVED AND ACCEPTED

Dated: _____

**TEAMSTERS LOCAL 439
ASSOCIATION**

By _____
Phil Rushing

CITY OF TRACY

By _____
Maria Olvera, H.R. Director

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

**SIDE LETTER
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL NO. 439**

**Side Letter of Agreement
Sick Leave Accrual**

Employees hired on or before January 1, 1983 shall receive sixteen (16) hours of sick leave with full pay for each month of service during the twenty-first (21st) year of employment and thereafter.

For purposes of this Section, month of service shall mean thirty (30) consecutive days.

Date _____

for the Union

for the City

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

**SIDE LETTER OF AGREEMENT
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL NO. 439**

**Side Letter of Agreement
Quarterly Union Management Meeting**

The City proposes to meet at regular intervals at least quarterly with representatives of the Union to improve communications, review and discuss City initiatives such as new management hires, location changes, upcoming training opportunities, department reorganizations and to hear budget overviews as may be appropriate.

At such meetings, the City agrees to provide information and to review the usage of any temporary or contract agency employees who may be performing bargaining unit work.

Union representatives shall be released from regularly scheduled work shift that may fall during the Union Management meeting times. The parties shall meet within ninety days of the adoption of this Memorandum of Understanding to discuss the specifics of such meetings, to develop operating rules and procedures and to set a calendar of meeting dates.

Date _____

for the Union

for the City

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

January 22, 2003

Mr. Phil Rushing
Business Representative
General Teamsters Local No. 439
PO Box 1611
Stockton, CA 95201

Re: Flexible Staffing for Wastewater and Water Treatment Plant Facilities

Dear Phil:

This side letter will confirm the continuation of the understanding reached between the City of Tracy and the General Teamsters regarding flexible staffing for the Wastewater and Water Treatment Plant facilities in accordance with the cross-training program. The original side letter was dated January 1, 2000.

1) **OBJECTIVE:** The city has established a flexible staffing program between the Water Treatment Plant and the Wastewater Treatment Plant. The benefit of the program has been to provide job skill diversity to the employees and a monetary incentive. The benefit to the City has been the ability to better meet the staffing needs of both plants.

2) **CRITERIA FOR ELIGIBILITY TO RECEIVE IN-PLANT TRAINING:** Preference will be given to Senior Water Treatment Operators or Senior Wastewater Treatment Operators. The employee must not be in any type of probationary status, and must not be undergoing any sort of disciplinary action.

Senior Water Treatment Plant Operators must have completed the appropriate Ken Kerri course(s) and passed the State Water Resources Control Board (SWRCB) Grade 2 or Grade 3 Wastewater Operator certification exam. The Operator must be in possession of a valid certificate or a valid Operator-In-Training (OIT) certificate issued in either grade.

Senior Wastewater Treatment Plant Operators must have completed the appropriate Ken Kerri course(s) and obtained a State of California, Department of Health Services (DOHS) Grade 2 Water Treatment Operator certificate.

3) **CRITERIA FOR RECEIVING INCENTIVE PAY:** The employee must have completed the appropriate in-plant training and be willing and able to competently work and operate either plant as scheduled.

The Senior Water Treatment Plant Operators shall receive five percent (5%) incentive pay when they have obtained the SWRCB Grade 3 OIT certification, successfully completed six (6) months of in-plant training enabling them to competently operate the wastewater treatment plant on an assigned shift and agree to be flexibly staffed.

An additional five percent (5%) incentive pay will be received when operators have obtained the SWRCB Grade 3 certification, successfully completed in-plant training enabling them to operate the wastewater treatment plant on an assigned shift and agree to be flexibly staffed.

Senior Wastewater Treatment Plant Operators shall receive five percent (5%) incentive pay when they have obtained the DOHS Grade 2 Water Treatment Plant Operator certificate, and successfully completed six (6) months of in-plant training and agree to operate the water plant as regulations permit.

An additional five percent (5%) incentive pay will be received when an Operator has obtained the DOHS Grade 3 Water Treatment Plant Operator certificate, successfully completed in-plant training enabling them to operate the water treatment plant on an assigned shift and agree to be flexibly staffed. The Grade 3 certification is required in order to perform the full duties of the position at any time of the year.

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

Each operator receiving in-plant training shall be evaluated at three (3) months and at six (6) months. A satisfactory six (6) month evaluation will make the operator eligible for five percent (5%) incentive pay.

FOR THE CITY

FOR GENERAL TEAMSTERS

/s/ Julie Yuan-Miu

/s/ Phil Rushing

Date: 3/11/03

Date: 3/5/03

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

**SIDE LETTER
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL No. 439**

January 01, 2003

Mr. Phil Rushing
Business Representative
General Teamsters Local No. 439
PO Box 1611
Stockton, CA 95201

Re: Pest Control Advisors

Dear Phil:

Pest control advisors shall receive an additional 2.5% differential in addition to the base salary for performing the certified pesticide operations.

The position of pest control advisor is part of the bargaining unit. The City recognizes the fact that if the position is vacated and the bargaining unit has a qualified person(s) who has met guidelines for pest control advisor, they will continue to have the work performed by the bargaining unit and the employee will receive an additional 2/5% differential.

Any employee receiving compensation for holding Pest Control Advisor Certificate (PCA) shall not receive additional compensation for holding a Qualified Applicator's Certificate.

FOR THE CITY

FOR GENERAL TEAMSTERS

/s/ Julie Yuan-Miu

/s/ Phil Rushing

Date: 3/11/03

Date: 3/5/03

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

**SIDE LETTER
BETWEEN
THE CITY OF TRACY
AND
GENERAL TEAMSTERS LOCAL No. 439**

January 01, 2003

Mr. Phil Rushing
Business Representative
General Teamsters Local No. 439
PO Box 1611
Stockton, CA 95201

Re: Certification Expense Reimbursement Procedure

Dear Phil:

This agreement covers employees who are required by State Law or City of Tracy to become or remain certified by an approved board or agency as a condition of employment.

The City of Tracy agrees to assist said employees in the following manner:

- 1) Tracking certification requirements and completion dates for each employee;
- 2) Reimbursing the employee for the cost of the certificate application;
- 3) Reimbursing the employee for the cost of tuition, approved books and materials and mileage to attend required classes or seminars;
- 4) Providing an appropriate number of paid leave hours to obtain or maintain such required certificates; and
- 5) Upon successful completion of the test, the cost of the test.

The responsibilities of the employee include:

- 1) Obtaining prior approval for each specific course or seminar, time, location and cost;
- 2) Providing receipts for expense reimbursement, and
- 3) Returning books to city for other employee usage.

FOR THE CITY

/s/ Julie Yuan-Miu

Date: 3/11/03

FOR GENERAL TEAMSTERS

/s/ Phil Rushing

Date: 3/5/03

**SIDE LETTER
BETWEEN THE CITY OF TRACY
AND TEAMSTERS LOCAL NO. 439**

Regarding Furloughs, the City and Teamsters Local No. 439 agrees to the following effective July 1, 2010 through June 30, 2011:

1. Furloughs (implementation as follows):

Classifications exempted for FY 2010-11 (required 24 hours per day, 7 days per week):

- Communications Operator Trainee
- Communications Operator I
- Communications Operator II
- Principal Wastewater Treatment Plant Operator
- Senior Wastewater Treatment Plant Operator
- Senior Water Treatment Plant Operator
- Utility Operator
- Wastewater Treatment Plant Operator
- Water Treatment Plant Operator

Ten (10) hours on nine (9) days* in FY 2010-11 for the following Teamster classifications:

- Community Services Officer
- Crime Scene Technician
- Animal Services Officer I
- Animal Services Officer II

* Specific days to be determined in consultation with affected employees in these two classifications and upon approval of Police Chief and City Manager.

Eight (8) hours on twelve (12) days ** in FY 2010-11 for all other Teamster classifications (see Attachment A) as follows:

- Friday, July 9, 2010
- Friday, August 6, 2010
- Friday, September 3, 2010
- Friday, October 1, 2010
- Friday, March 4, 2011
- Friday, April 1, 2011
- Friday, May 13, 2011
- Friday, June 10, 2011

** Any exceptions to the eight (8) hours and/or eight (8) days listed will be made on a case by case basis upon recommendation of the Department Head, approval by the City Manager, and only when necessary to assure delivery of services to the public.

Teamsters M.O.U.
July 1, 2010 - June 30, 2011

In addition to the eight (8) set furlough days, employees will be required to schedule four (4) eight (8) hour days (32 hours) to be taken at a rate of one (1) per month from November 2010 through February 2011. Employees will be allowed to choose their desired day during these months, and may have the opportunity to take their one furlough day per month in conjunction with approved time off (i.e. vacation), with departmental approval required to ensure adequate coverage of City operations; unless they are needed to provide public safety or other essential City services.

APPROVED AND ACCEPTED

Dated: _____

CITY OF TRACY

By: _____

Maria Olvera
Human Resources Director

TEAMSTERS LOCAL NO. 439, I.B.T.

By: _____

Ed Speckman
Business Agent

ATTACHMENT A

Animal Services Aide
Assistant Planner
Building Inspector I
Building Inspector II
Building Maintenance Assistant
Building Maintenance Worker
Code Enforcement Officer
Construction Inspector I
Construction Inspector II
Custodian
District Grounds Technician
Electrician
Engineering Technician I
Engineering Technician II
Environmental Control Inspector
Equipment Mechanic I
Equipment Mechanic II
Fire Inspector
Housing Program Inspector I
Housing Program Inspector II
Instrumentation Technician
Junior Engineer
Laboratory Technician I
Laboratory Technician II
Maintenance Worker I
Maintenance Worker II
Meter Reader
Plan Check Examiner
Plant Mechanic I
Plant Mechanic II
Senior Building Maintenance Worker
Senior Custodian
Senior Electrician
Senior Equipment Mechanic
Senior Maintenance Worker
Wastewater Operator in Training
Water Operator in Training

**SIDE LETTER
BETWEEN THE CITY OF TRACY
AND TEAMSTERS LOCAL NO. 439**

The City of Tracy and Teamsters Local No. 439 agree to the following effective July 1, 2010 through June 30, 2011:

1. Work Schedule for Operators in Training (OITs):

- OITs will be permitted to work a 9/80 work schedule with specific work days/hours to be determined by management based on business necessity.

2. Salary Survey:

- The City agrees to conduct a salary survey and compensation analysis of classification in the Wastewater and Water Plant Operator series.

3. Inspector Certification Pay:

- The City agrees to continue to Meet and Confer with Union regarding additional certifications the City may require of building inspection, fire inspection, or other inspection personnel assigned to perform inspections beyond the scope of duties designated by their classification. City agrees that receipt of specified certifications shall entitle employee to receive additional pay above base pay as determined and agreed to by both the City and Union.

APPROVED AND ACCEPTED

Dated: _____

CITY OF TRACY

By: _____

Maria Olvera
Human Resources Director

TEAMSTERS LOCAL NO. 439, I.B.T.

By: _____

Ed Speckman
Business Agent

RESOLUTION _____

ADOPT THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND
GENERAL TEAMSTERS LOCAL NO. 439, IBT

WHEREAS, The Memorandum of Understanding (MOU) between the City of Tracy and
the Teamsters bargaining unit expired on June 30, 2010, and

WHEREAS, Representatives from the City and the Teamsters Bargaining Unit have met
and conferred in good faith to negotiate a new MOU, and

WHEREAS, Agreement has been reached on a new MOU covering the period of July 1,
2010 through June 30, 2011;

NOW, THEREFORE, BE IT RESOLVED, that the City Council adopts the MOU between
the City of Tracy and General Teamsters Local No. 439, IBT, a copy of which is attached to the
staff report of this item.

The foregoing Resolution _____ was adopted by the Tracy City Council on this 17th
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 4

REQUEST

ACCEPT THE ATTACHED GRAND PARTNERSHIP REPORT AND AFFIRM ITS FINDINGS THROUGH A RESOLUTION, IN PREPARATION FOR A NEW MEMORANDUM OF UNDERSTANDING (MOU) AND LEASE AGREEMENT WITH A NON-PROFIT ARTS ORGANIZATION TO BE NAMED

EXECUTIVE SUMMARY

The City of Tracy and the Arts Leadership Alliance collaborated on a research project to investigate ways to strengthen the governance of the Grand Theatre. The research suggests structural changes with the following goals in mind:

1. Making the Grand more self-sustainable with less reliance on City support. The community has to make a more permanent response to the new financial realities of funding local government.
2. Initiate a non-profit's involvement in Theatre operations to increase fundraising and grant opportunities. A non-profit's involvement in the governance of the Grand Theatre creates another path to donors and outside funding sources.
3. Ensuring availability and access of the Center to the community (i.e. by increased rentals, etc.) is desirable. A non-profit Board of Directors provides an additional method for the Grand Theatre to better understand the audiences it serves.
4. Increasing the community's role in the governance structure. A governing body of the Grand Theatre can enhance democratic decision-making.

A series of recommendations are made that expands and re-names the ALA, incorporates more community outreach, and better enables private fundraising efforts for the Grand Theatre.

DISCUSSION

The Grand is in many respects a highly successful, emerging cultural institution and has begun serving the many goals set for it. It is universally acknowledged to be a beautiful and functional facility, providing vital year-round programming to a diverse spectrum of the community. In the first two years of operation (Fiscal Year 2008 and Fiscal Year 2009), the Grand's total audience rose from approximately 35,000 to 43,000 through attendance at the theatre (paid and free), gallery visitation, class enrollments, and other activities. Paid attendance in the theatre rose in the first two years from approximately 14,000 to 16,000. Classes are approaching their goals for cost recovery, a substantial volunteer and docent program has been created, and the new gallery store presents the work of regional artists while generating new revenues. It is by any measure a remarkable, out-of-the-gate accomplishment for a multi-faceted organization.

However, other fiscal challenges arise from ongoing structural issues in the State's budget, which are not caused entirely by the recession and are likely to continue after the economy has resumed a growth pattern. Several facts and figures capture the essence of these challenges. In the Grand's first three years, both the budget and staff have been cut substantially. City spending on the Grand fell from approximately \$1.3 million in Fiscal Year 2007-2008 to \$0.9 million in Fiscal Year 2009-2010, and to \$0.7 million in Fiscal Year 2010-2011 based on the recently approved City budget.

Also, like the Grand, the ALA faces new challenges. During the first years of operation of the Grand, problems in the collaborative effort with the City hampered the ALA's efforts to assist in the full spectrum of ways envisioned by Board members. Fundraising activities have fallen off, and Board membership and participation have declined somewhat. Motivated by a desire to rekindle the organization's energy and effectiveness, to maintain donors' trust, and to prepare for a renewed fundraising effort, a nucleus of Board leadership has begun rebuilding.

Financial and organizational challenges have compelled all stakeholders to re-think their relationship with the Grand Theatre. These stakeholders include the Tracy Arts Commission, resident organizations of the Grand Theatre, along with ALA and various City of Tracy leaders. The general findings include:

1. There is a shared sense of pride and satisfaction with the Grand as a community asset and as a facility. Virtually all interviewees expressed the opinion that by creating the Grand, the City and ALA had generated a significant and multi-faceted advance for the community.
2. There is a history of disagreement over the Grand among the ALA, City staff and Council, with varying perspectives on the causes. However, nearly all interviewees are focused on improving the Grand's situation, and are willing to put aside past disagreements for the sake of future success. Many also view conflict over the Grand as counter-productive and inimical to the spirit and positive image of the Grand.
3. The City budget crisis has resulted in substantial staff and programming cutbacks at the Grand, prompting reevaluation of the operating model. Moreover, ongoing changes in the City's fiscal outlook suggest the need for permanent changes in governance and operations of the Grand.
4. The Grand is an emerging cultural institution and some of its challenges would exist even if the budget were not under pressure. These issues are more related to lifecycle than the economy, such as building an audience and increasing community presence.
5. There is a consensus on the overall vision, or the definition of success, for the Grand. The vision is a cultural facility that is valued, visible, utilized and enjoyed by a diverse spectrum of the community, and that contributes to fulfilling a variety of community needs, from education to economic revitalization. In addition, because the Grand serves important artistic and community needs, there is a shared opinion that closing is not an option. The goal is to craft a sustainable path for the institution in fulfilling its mission of community service.
6. There is also a consensus on the Grand's challenges: increasing community awareness and use, providing sufficient and renewable financial support, and replacing contention with effective governance.

7. Specific needs identified for the Grand include: increased fundraising, better community visibility and relations, better marketing, a membership program, volunteer management, and cooperative governance and management.

In sum, the Great Recession and the subsequent fiscal stress on the City has stimulated creativity and renewed commitment to making the Grand Theatre successful within our new reality.

RECOMMENDATIONS

There are nineteen recommendations made in the report highlighted by the following:

Overall Recommendations

1. **Commit to collaboration:** The essential ingredient of improving the collaborative effort is a shared commitment to work towards fulfilling the mission of the Grand on the part of Board members (new and continuing), City Council and staff, resident organizations, and all other stakeholders. (January 1, 2011)
2. **Change the name of the Non-Profit:** Change the ALA name to signal a new beginning and approach to the collaborative efforts. Possibilities for the new name include: the Grand Partnership, Grand Foundation, and Grand Alliance. It was determined to be very important that the name of the governing body actually denote its mission and the facility it seeks to benefit. (January 1, 2011)

Create a new Board of Directors by expanding the ALA board, including:

3. **Expand and diversify representation on Board of Directors:** The joint effort should improve its capacity by expanding its current membership from 13 to approximately 20 seats.
4. **Be a self-electing Board and offer initial representation to identified stakeholders.**

Partners' Roles and Joint Planning

5. **Share governance and management between the City and the Non-Profit:** Where the City retains operational responsibilities and the Board of Directors assumes traditional Board responsibilities of governance, general direction, and volunteer support.

Fundraising

6. **Base fundraising on programming plans:** Fundraising is best done in relation to specific program goals, such as presentations, events and education.
7. **Set realistic fundraising goals:** To be determined as part of the governing body's strategic plan.

Additional Responsibilities

8. **Create advisory channels for the community:** The Non-Profit should create regular ways for the community to advise the Grand.
9. **Move the Non-Profit's office to the Grand:** Relocating the Non-Profit's administrative office to the Grand will promote greater communication and efficiency, and make a public demonstration of the commitment to the Non-Profit.

STRATEGIC PLAN

This agenda item supports the Community Amenities Strategic Plan and specifically implements the following goal and objective:

Goal 2: Align funding and other resources to the development of prioritized community amenities

Objective 1c: To develop joint-use agreements with community partners

FISCAL IMPACT

The City of Tracy expended \$9,000 for its share of the collaboration with ALA. The attached report required \$18,000 in funding that was equally shared by ALA and the City of Tracy.

RECOMMENDATION

The following recommendations are in order if the City Council concurs with the findings and conclusions found in The Grand Partnership Report.

1. The City should replace the current MOU with the ALA with one in alignment with the report's findings.
2. The City should craft a lease agreement with the ALA that establishes an office at no cost to the new Non-Profit.
3. The City should review its current operational plan and prepare revisions to reflect the recommendations in this report.

Prepared & Approved by: Leon Churchill, Jr., City Manager

Attachment: The Grand Partnership Report



THE GRAND PARTNERSHIP

Strengthening the Grand through shared governance

REPORT

AUGUST 2010

Grand Theatre Center for the Arts
715 Central Avenue
Tracy, CA 95376
209-831-6TKT (6858)

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I. OVERVIEW

The City of Tracy and the Arts Leadership Alliance (ALA) have a relationship in support of the community’s cultural interests extending back to the mid-1990s. In 1999, the City adopted its *Cultural Arts Master Plan* with the leadership of a community advisory committee that had called for and then overseen development of the plan during 1997 and 1998. The *Cultural Arts Master Plan* focused on the development of a cultural facility in the historic core of downtown Tracy. Members of the community advisory committee then incorporated the ALA to support implementation of the plan, and the ALA partnered with the City to develop the current Grand Theatre Center for the Arts (the Grand), which opened in 2007. While the Grand has in many respects been successful in meeting the community’s cultural needs, there are a variety of changed circumstances that warrant a redefinition of the relationship between the City and the ALA. The purpose of this report is to assist with redefinition of the relationship. More specifically, it is to improve the ALA/City partnership in support of the Grand—the Grand Partnership—by identifying the key elements of a relationship that will: 1) best ensure the long term sustainability of the Grand and 2) the vitality of its cultural service to the community.¹

This report acknowledges the history and accomplishments of the City Council, staff and the ALA in the remarkable achievements of the Grand. It also sets forth a consensus for making the governance structure of the Grand more effective, and evolving the ALA into a new organization that embodies broader community representation and fundraising capacity. This new relationship is termed the Grand Partnership.



Grand Theatre c. 1939 (Both photos copyright © Tracy Press)

¹ Note that this report focuses on the ALA/City partnership. There are many other issues affecting the sustainability of the Grand, some of which are acknowledged or addressed here, and many others which are outside the scope of this report.

II. THE GRAND THEATRE CENTER FOR THE ARTS

HISTORY AND OVERVIEW

The Grand Theatre Center for the Arts is:

...an interdisciplinary arts center owned and operated by the City of Tracy serving Tracy residents and the surrounding region. The Grand Theatre Center for the Arts offers fine arts programming through the presentation of Art Exhibitions, Arts Education Center, facility rentals and a season of presenting programs, providing professional and diverse experiences to diverse audiences.

The Grand is much more than a cultural facility, clearly, and it is this larger understanding of its genesis, purpose and current situation that has informed the recommendations of this report.

As noted in the Overview, above, the Grand is the result of a 1999 comprehensive community cultural plan (*Cultural Arts Master Plan*) created by a partnership between the Arts Leadership Alliance, which is a nonprofit organization of community leaders, and the City of Tracy. The cultural plan documented both compelling need and support for this project as a powerful strategic tool for accomplishing a range of related community development goals. City Council, senior staff, the people who would form the ALA, and many other community members came together in a remarkable series of decisions to implement the plan. Once identified as a community priority, the Grand became a community-wide effort to renovate several historic buildings in downtown Tracy into a cultural arts center.

The Grand Theatre Center for the Arts is located in the oldest district of downtown Tracy, next to the “Bowtie” railroad station, the Southern Pacific Station Depot, which was the end of the Transcontinental Railroad and is now the site of the newly-completed Tracy Transit Center. The core historic district encompasses a number of other interesting historic buildings within several blocks of the theatre, some of which have also been renovated. The Grand Theatre Center for the Arts was created from five adjacent structures occupying a parcel on the corner of Central Avenue and Seventh Street, one block from the Bowtie. These original buildings formed a coherent complex with an appealing historic character and an excellent location to animate and support the revitalization of the historic core district.

- Grand Theatre: Opened August 11th, 1923 as a vaudeville theatre, the Grand was eventually transformed into a movie house as part of the Principal Theatre chain based in Los Angeles. Its theatre organ was shipped from Los Angeles and its opera seats from Chicago. Built before the era of amplified sound, the theatre had both an elegant, classical interior and a highly desirable, intimate character. The silent film, "Heroes of the Street," starring Wesley Barry, Joe Butterworth and Marie Provost, was the first motion picture shown at the Grand Theatre. Its Art Deco tower and marquee, which was designed by prominent San Francisco architect Alexander Aimwell Canton and added in 1941, became a visual symbol for Tracy. The theatre

building closed in 1977 and was used primarily as a storage facility for the next 30 years.

- American Hotel: A 1909 two-story hotel building that predated the theatre was cosmetically connected with the theatre building and housed residential and commercial tenants.
- Shamrock Hotel: A 1907 two-story hotel building that originally served railroad employees and laborers.
- Historic Firehouse: Tracy's original firehouse, built in 1900 on Seventh Street, included the stable for the horses that drew the fire wagon. It is adjacent to the theatre.
- Historic Town Hall & Jail: Tracy's original town hall and jail, built in 1900, remains immediately adjacent to the original firehouse, on Seventh Street.

In 2002, the City of Tracy purchased the Grand Theatre and the adjoining properties and hired the architectural firm of ELS Architecture and Urban Design of Berkeley, California to develop a renovation design for the new arts center. McFadden Construction Inc. of Stockton was awarded a \$12.2 million contract to build the center and broke ground in June of 2005. The opening of the completed Grand Theatre Center for the Arts took place in September 2007.

In its renovated form, the Grand Theatre Center for the Arts is a 37,000 square foot visual and performing arts center that includes:

- 560-seat proscenium Eleni Tsakopoulos-Kounalakis (ETK) Theatre
- 110-seat Studio Theatre
- Dance Studio
- Music Studios (4)
- Ceramics Studio
- Children's Studio
- Café and Catering Service Kitchen

The Grand Theatre Center for the Arts provides a comprehensive set of programs to meet the community needs identified in the *Cultural Arts Master Plan*. Focusing primarily on serving the community of Tracy, in addition to those of the surrounding region, these programs encompass a year-round schedule of performances and films in the theatres, gallery exhibitions, and a broad range of arts education classes and workshops in the studios. The Grand's programs include fine as well as popular arts, professional as well as community groups, and local/regional as well as national artists. Programs are multi-disciplinary, spanning musical concerts, theatre and dance performances, festivals, films, lectures, exhibitions and classes in very diverse art forms. With this array of offerings, the Grand serves families, adults and children.

More broadly, the Grand helps meet a range of inter-related community priorities. It supports the City's goals for revitalization of the downtown area, serves as an economic driver, celebrates

the Western and railroad heritage and history of the community, promotes a positive community image, fosters arts education for children and adults, provides positive alternatives for young people, connects diverse segments of the community, promotes and develops local arts and cultural resources, and provides employment opportunities.



Grand Theatre c. 1939 (Copyright © Tracy Press)



Grand Theatre Center for the Arts 2007

CURRENT SITUATION

After three years of operation, the Grand is in many respects a highly successful, emerging cultural institution and has begun serving the many goals set for it. It is universally acknowledged to be a beautiful and functional facility, providing vital year-round programming to a spectrum of the community. In the first two years of operation (FY08 and FY09), the Grand's total audience rose from approximately 35,000 to 43,000 through attendance at the theatre (paid and free), gallery visitation, class enrollments, and other activities. Paid attendance in the theatre rose in the first two years from approximately 14,000 to 16,000. Staff reports a diverse audience, one that reflects many population groups in the region. The Grand also chooses ethnically-specific programming to reflect and reach specific cultures, such as the Soweto Gospel Choir and Peking Acrobats. Goals include increasing Hispanic involvement (including non-English speakers), serving lower-income residents who cannot afford higher ticket prices, and greater participation by commuters. Arts education classes are approaching their goals for cost recovery, a substantial volunteer and docent program has been created, and the new gallery store presents the work of regional artists while generating new revenues. It is by any measure a remarkable, out-of-the-gate accomplishment for a multi-faceted organization.

The Grand has also faced a variety of challenges since its opening in 2007. Many are related to the Great Recession, which has adversely affected Tracy's residents and City government alike. However, other fiscal challenges arise from ongoing structural issues in the State's budget, which are not caused entirely by the recession and are likely to continue after the economy has resumed a growth pattern. Several facts and figures capture the essence of these challenges. In the Grand's first three years, both the budget and staff have been cut substantially. City spending on the Grand fell from approximately \$1.3 million in FY08 to \$0.9 million in FY10.² They are projected to be lower again in FY11. These budget cuts resulted in staff reductions from seven to two full-time, and from six to one part-time, employees (although note that part-time staff may be increased in FY11). This is far below the original projected need of at least eight

² Note that these figures are different from, and lower than, the City's annual appropriation for the Grand, which is the number that appears in the City's operating budget and is the most familiar to Council members and staff. The City's net cost for operating the Grand is calculated here as the annual appropriation minus revenues (ticket sales, class fees, ALA contribution, etc.).

full-time positions plus additional part-timers. These cuts also meant reductions in almost all categories of programming, lower total attendance (estimated at 38,000 for FY10), an increase in staff workload, and negotiation of a rapid series of changes to the already-complex task of operating a multi-disciplinary cultural facility. Finally, the cuts also led to a diminished presenting program (in which the City selects professional artists for performances on the ETK Theatre main stage), which is important because it reduced the Grand's ability to fulfill its artistic purpose.

III. THE ARTS LEADERSHIP ALLIANCE

HISTORY AND OVERVIEW

The Arts Leadership Alliance (ALA) is a community-based nonprofit organization founded for the purpose of developing the Grand Theatre Center for the Arts and its associated programming.

As described above, the ALA arose from a community committee that formed in the mid-1990s to promote the cultural development of the community, in partnership with the City. After leading development of the *Cultural Arts Master Plan*, by serving as its Steering Committee, the committee members decided to conduct a capital campaign to raise funds towards the cost of the Grand's renovation, and then to provide annual support for programming. An additional future goal was to create a permanent endowment supporting the Grand. The ALA always envisioned itself as governing the Grand in partnership with the City, in a relationship outlined in the cultural plan. The ALA was to be the community's ongoing voice in maintaining the responsiveness and excellence of the Center's programs, in addition to being its fundraising arm. Broadly stated, ALA's activities were to include developing and implementing programs that foster the broadest possible public use of the Center for the Arts.

A five-year Memorandum of Understanding was created in 2002, setting the terms of this relationship. The purpose of the MOU was "...to support ALA's private fund raising efforts by providing a document indicating clearly that the City of Tracy is working jointly and cooperatively with the ALA on the Center for the Arts and its programming." The document elaborated that the purpose was "...to maintain a high level of cultural arts programming for the residents of Tracy and the surrounding communities, and to ensure the support and participation of both parties in private sector fund-raising efforts..." The MOU included a definition of financial roles and responsibilities. In sum, ALA committed to raising a minimum of \$1 million in renovation costs and \$30,000 in annual program support. The City agreed to purchase, remodel, operate and maintain the Grand. The MOU was automatically renewed for a five-year period by City Council in 2007 and will expire on May 27, 2012.

The ALA's financial goals were modest in relation to the total cost of renovation and annual operations, which were approximately \$19 million and \$1.3 million, respectively. Fundraising goals were set through at least two feasibility assessments that were complicated by virtue of the fact that ALA was a newly-formed nonprofit organization, with no fundraising history. Moreover, research showed that while donors were interested in the project and the economy was strong, there was a limited ability to give at the levels of larger and more affluent communities. This modest fundraising potential helped inform the ALA's choice to "right-size" its role in governance and management of the Grand, and to pursue a partnership relationship with the City. ALA's fundraising capacity derived from the community credibility and relationships of its board members, their experience in other fundraising efforts, and the assistance of seasoned, professional campaign counsel. The board of directors was expanded to 20 members for and during the effort. The ALA completed its campaign and met its financial goals in time for the September, 2007 opening of the Grand, and celebrated at a "Grand opening" gala event.

CURRENT SITUATION

Like the Grand itself, the ALA accomplished a great deal in its first few years. The ALA helped define a shared, public goal for cultural development and then led the creation of a support base in a community with a history of relatively modest interest in and financial support for arts and culture. It completed a first-time capital campaign and established a network of community relationships that have assisted the Grand's initial operations, and that have the potential for much greater service.

Also like the Grand, the ALA faces new challenges. During the first years of operation of the Grand, problems in the partnership with the City hampered the ALA's efforts to assist in the full spectrum of ways envisioned by board members. Fundraising activities have fallen off, and board membership and participation have declined somewhat. Motivated by a desire to rekindle the organization's energy and effectiveness, to maintain donors' trust, and to prepare for a renewed fundraising effort, a nucleus of board leadership has begun rebuilding. Board members have held positive meetings with City staff, including Grand staffers, to explore a new way of working together. With an invitation from staff, the ALA has moved its office into the Grand and is starting the process of planning joint initiatives, a relationship which will need to be formalized through adoption by City Council and the ALA of a new MOU.

The ALA remains in a positive financial position and has continued to fulfill its annual financial commitment to the Grand, under the terms of the MOU.



Original Grand Theatre lobby (Copyright © Tracy Press)



Renovated Eleni Tsakopoulos-Kounalakis Theatre

IV. BEST PRACTICES

It is natural to look to best practices from other successful cultural facilities in redefining the Grand partnership. While it is beyond the scope of this report to undertake new research on this topic, comparisons were done in 1999 as part of the *Cultural Arts Master Plan*, and there are at least two relevant studies of city-owned theatres done in the past ten years that provide some useful guidance. The most salient comparison study was commissioned by the City of Thousand Oaks, California, in 2008 as part of a larger report.³ The comparison (attached to this report) included ten city-owned theaters (and one privately-owned theater as a counter-example), all but one in California. Key conclusions of this comparison for the Grand Partnership are:

- *The Grand Partnership is unusual:* Shared governance and management of a city-owned cultural facility, in partnership with a community nonprofit, is unusual. There are instead two typical relationships: city control or nonprofit control. One example of shared governance is the City of Thousand Oaks, where primary management responsibility remains with the City, and a private nonprofit provides fundraising support and exercises some programming authority.
- *Partnerships are challenging but offer advantages:* A partnership providing shared governance provides a “middle way” in communities, like Tracy, where the City seeks to limit its financial commitment and where a private partner capable of assuming full responsibility is unavailable. Using a partnership approach, the community participates in the cost of operating and programming the facility, through the nonprofit partner, and the City retains majority control. With this type of partnership, Thousand Oaks is the only city-owned facility in the comparison studies that has created a permanent endowment in support of the theatre. Their partnership has also experienced relationship challenges but has served as an effective means of community involvement and support.
- *General Fund subsidy is normal:* Virtually all city-owned theatres receive a substantial annual operating General Fund subsidy from their cities.⁴ Even cities that prioritize revenue-generation over cultural service to the community must subsidize their cultural facilities. As one theatre manager said, “After 40 years in this business I can say that the arts are just not money makers, unless you have a facility that is large enough—3,000 plus. With a mid-sized facility, like ours and Thousand Oaks, it's tough.”

³ *Cultural Arts Review*, 2008, a study to address arts issues facing the City of Thousand Oaks and to recommend improvements that would enhance the community's overall cultural arts programs and services. There were two main issues: 1) an overly complicated governance structure for arts and culture in the community, and 2) enhancements for the city's two theatres (Thousand Oaks Civic Arts Plaza).

⁴ An exception to this rule is the City of Thousand Oaks, which eliminated its General Fund subsidy for a period of one year. Thousand Oaks undertook its comparison study in part because of problems created by the elimination of its subsidy and has since restored an annual General Fund contribution.

- *Subsidy enables community impact:* Theatres that do more than focus on generating revenues, and that present their own programming, report having city council support for a larger purpose of community impact. This mirrors Tracy, where City Council articulated a range of goals for community benefit through its investment in the Grand.
- *Presenting is a key part of community impact:* Theatres that present more of their own events (as opposed to rentals) and develop consistent, curated seasons of events have desirable programming and higher artistic quality. Presenting requires a subsidy, whether public or private. For city-owned theatres, presenting and the requisite subsidy are a matter of deliberate policy to provide arts programming otherwise unavailable to the community. This does not negate the essential role and value of less costly, community-based artistic events, and inexpensive professional events, such as films. Rather, it illustrates the role of providing a balanced spectrum of arts and cultural offerings to the community, including more costly professional performing and visual arts, which do require a subsidy.

The Grand has clearly exemplified these best practices to a large extent. Before the recession forced difficult budget decisions, and even during, the City has provided a generous level of subsidy to assure a comprehensive and balanced array of cultural programs. This reflects Council’s understanding that the Grand cannot both “pay for itself” and fulfill its purpose. Nonetheless, maintaining the Grand’s capacity to serve the community will require reevaluation of these practices. Governance is not static and new circumstances demand a new approach to maximize the benefit of a city-community partnership, limit the financial cost to the City, and accomplish the mission of the entire Grand enterprise.



Dance Studio



Grand Galleries

V. FINDINGS

Interviews and research conducted for this report revealed a number of findings about the Grand and the partnership. Many findings are points of consensus among interviewees.

1. There is a shared sense of pride and satisfaction with the Grand as a community asset and as a facility. Virtually all interviewees expressed the opinion that by creating the Grand, the City and ALA had generated a significant and multi-faceted advance for the community.
2. There is a history of disagreement over the Grand among the ALA, City staff and Council, with varying perspectives on the causes. However, nearly all interviewees are focused on improving the Grand's situation, and are willing to put aside past disagreements for the sake of future success. Many also view conflict over the Grand as counter-productive and inimical to the spirit and positive image of the Grand.
3. The City budget crisis has resulted in substantial staff and programming cutbacks at the Grand, prompting reevaluation of its operating model. Moreover, ongoing changes in City's fiscal outlook suggest the need for permanent changes in governance and operations of the Grand.
4. The Grand is an emerging cultural institution and some of its challenges would exist even if the budget were not under pressure. These issues are more related to lifecycle than the economy, such as building an audience and increasing community presence.
5. There is a consensus on the overall vision, or the definition of success, for the Grand. The vision is a cultural facility that is valued, visible, utilized and enjoyed by a diverse spectrum of the community, and that contributes to fulfilling a variety of community needs, from education to economic revitalization. In addition, because the Grand serves important artistic and community needs, there is a shared opinion that closing is not an option. The goal is to craft a sustainable path for the institution in fulfilling its mission of community service.
6. There is also a consensus on the Grand's challenges: increasing community awareness and use, providing sufficient and renewable financial support, and replacing contention with effective governance.
7. Specific needs identified for the Grand include: increased fundraising, better community visibility and relations, better marketing, a membership program, volunteer management, and cooperative governance and management.

VI. RECOMMENDATIONS

The following recommendations are designed to improve the City/ALA partnership by transforming it into a more effective “Grand Partnership.” They also serve the purpose of addressing challenges facing the Grand in its efforts to mature as a cultural institution and achieve a sustainable financial and operational model.

There are four primary goals for the new Grand Partnership:

1. **Making the Grand more self-sustainable with less reliance on City support:** the community has to make a more permanent response to the new financial realities of local government.
2. **Increasing fundraising and grant opportunities:** enhancing the involvement of a community-based nonprofit organization in the governance of the Grand creates another path to donors and outside funding sources.
3. **Increasing community access to the Grand:** a nonprofit board of directors provides an additional method for the Grand to better understand, reflect and serve the community.
4. **Increasing the community’s role in the governance structure:** a governing body for the Grand can enhance democratic decision-making.

Each recommendation includes a date for implementation.

Overall Recommendations

1. **Commit to collaboration:** the essential ingredient of improving the partnership is a shared commitment to work collaboratively towards fulfilling the mission of the Grand on the part of board members (new and continuing), City Council and staff, resident organizations, and all other stakeholders. (January 1, 2011)
2. **Change the name of the governance body:** Change the ALA name to signal a new beginning and approach to the partnership. Possibilities for the new name include: the Grand Partnership, Grand Foundation, and Grand Alliance. It was determined to be very important that the name of the governing body actually denote its mission and the facility it seeks to benefit. (January 1, 2011)

Partnership Board of Directors

3. **Expand and diversify representation on board of directors:** The Grand Partnership should improve its capacity by expanding its current membership and from 13 to approximately 20 seats. It should also undertake a process to diversify representation to reflect the stakeholders of the Grand and Tracy’s population, including such categories as new and long-time residents, business leaders, educators, arts community, resident organizations, diverse generations, and ethnic/racial groups. (January 1, 2011)

4. **Create specific but flexible Board member responsibilities and conduct annual self-assessment:** Board member responsibilities should include commitments to collaborate in the spirit of the partnership, give and/or raise funds, participate actively in the work of the board (such as serving on a committee or as an officer), represent community interests, and build the capacity of the Partnership and the Grand. Within these overall responsibilities, each board member should negotiate individual roles and responsibilities with the President. To assure broad access to board membership, the fundraising responsibility should be flexible; one option is for the board to set aggregate goals for board giving and allow the President to negotiate individual giving commitments. The board should conduct an annual collective and individual self-assessment process to help improve board performance and assure mutual accountability. (March 2011).
5. **Be a self-electing Board and offer initial representation to identified stakeholders:** The board should continue to elect its own members. To help ensure effective and representative leadership, the initial Partnership board should offer one board seat each to resident organizations and the Tracy Arts Commission on a voluntary, personal basis for a transitional term of one year. To provide an orderly rotation of all board members in the future, initial terms of office should be staggered: one third having one-year terms, one third having two-year terms, and one third having three-year terms. Initial terms should be assigned by the President, and then all successive terms should be three-years, renewable. All board members must agree to board member responsibilities, as described in Recommendation 4. (July 2011)

Partners' Roles and Joint Planning

6. **Share governance and management between the City and the Grand Partnership:** the ALA does not have the capacity, nor does it seek, to assume overall management of the Grand. A unique and defining feature of the Grand will continue to be shared governance and management between the City and the Partnership. This best accommodates the interests and capabilities of each, given Tracy's community characteristics and the requirements of a cultural institution. (January 2011)
7. **Define specific roles for the Grand Partnership:** The Partnership should be responsible for programming policy (see Recommendation 10, below), fundraising, membership, community relations and volunteer management. These tasks are all identified as specific needs of the Grand and promote institutional responsiveness to changing community needs. These roles should be defined in a new MOU between the governing body and the City of Tracy. This document would describe the delegation of City of Tracy authority in some areas to the new governing body. (January 2011)
8. **Continue specific City roles:** The City should remain responsible for the Grand's operations, personnel, budgeting/financing, facility maintenance, and other tasks not handled by the Grand Partnership.
9. **Identify shared goals and prepare joint plans with a three year horizon:** The Grand Partnership and staff should work together to identify shared goals for a three-year period, and coordinate plans for programming, fundraising, membership, etc.

Programming and fundraising can best be facilitated with a timeframe longer than one year, although these plans will need to be adjusted annually to reflect the City's annual budget process and the community's fundraising climate. (July 2011)

10. **Place oversight of programming policy with the Grand Partnership:** In collaboration with staff, the Partnership should guide development of programming policy for the Grand's three programming areas, presenting, exhibitions and arts education. Programming policy includes overall issues such as defining the role, amount and focus of program areas, and not specific programming choices, such as the selection of particular artists or classes. Programming policy should always remain within the mission of the Grand, and in relation to current opportunities and constraints. The intent is in part to remove oversight of specific programming decisions from the politicized arena of Council deliberation. The intent is also to enable effective fundraising (see fundraising recommendations, below) and responsive community relations through the Partnership. It is important that staff have the authority to implement program policy and to make specific programming decisions in a timely manner. Because programming decisions necessarily overlap with other management areas, such as marketing, operations, rentals, box office, and the like, the Partnership must approach programming policy decisions with attention to staff's autonomy in those areas. The City Manager will manage the Partnership relationship to assure an ongoing commitment to effective communication and practical collaboration. (July 2011)

Partnership Fundraising

11. **Base Grand Partnership fundraising on programming plans:** Fundraising is best done in relation to specific program goals, such as presentations, events and education.
12. **Set realistic fundraising goals:** As part of the three-year planning process, the Grand Partnership should set fundraising targets that are realistic based on its own funding relationships, the performance of other local campaigns, and special funding opportunities that arise. The Partnership can reassess them annually according to the fundraising climate and other factors.
13. **Lay the groundwork for creating an endowment for the Grand:** The Grand Partnership can conduct its fundraising so as to lay the groundwork for another capital campaign for endowment. An initial step would be to review and re-establish relationships with donors to the initial building campaign.

Additional Partnership Responsibilities

14. **Create advisory channels for the community:** As part of its responsibility for community relations, the Grand Partnership should create regular ways for the community to advise the Grand. These should include a range of methods, such as soliciting informal audience comments, conducting focus groups for specific issues, and holding periodic open community meetings. If there is sufficient interest, a community advisory committee can be established to meet at least annually. Staff can assist with community

relations by continuing its data collection and soliciting other evaluative feedback. (September 2011)

15. **Conduct a membership campaign:** Develop a membership program for the Grand to foster ongoing relationships with the community, engender community “ownership,” cultivate donors and volunteers, create a feedback channel, and provide a positive public image for the Grand. The membership should start modestly, including low dollar-level memberships, with the goal to encompass families, local businesses, and higher-level members. (April 2011)
16. **Assume management of the volunteer program:** Staff has requested that the Grand Partnership take over management of the volunteer program, including docent tours. This is best accomplished by establishing a volunteer auxiliary under the umbrella of the Partnership. This transition should happen before the 2011/12 season. (July 2011)
17. **Identify and address staff needs in support of Partnership activities:** Grand Partnership responsibilities will require staff and other resources. Partnership funds spent on its own staff and administration are monies not used to directly support the Grand’s programming. Therefore, the City and the Partnership should address staffing needs in a practical manner over the initial years. (February 2011)
18. **Provide an annual report:** The Grand Partnership should prepare and publish on its website an annual report that promotes transparency in its role, goals, finances and activities. This report can be prepared in tandem with the Grand’s annual report for greater community visibility. (July 2012)
19. **Move the Partnership’s office to the Grand:** relocating the administrative office to the Grand will promote greater communication and efficiency, and make a public demonstration of the commitment to the partnership. This transition should be reflected in a new lease agreement as part of or separate from a new MOU. (August 2010)



Waiting for the Light, A Photographic Retrospective by Dave Olmstead, the final exhibition in the Grand Galleries’ 2009/10 Exhibition Season.

VII. NEXT STEPS

There are several steps that will prepare a basis for implementation of the recommendations in this report:

- The City should replace the current Memorandum of Understanding (MOU) with a new agreement in line with this report's recommendations. This will require legal counsel to translate recommendations into provisions in the agreement. A key aspect of the new MOU should be to provide a complete description of partnership, one that emphasizes the importance of a mutual commitment to cooperation, specifies the new roles and responsibilities, and generally presents a definition of the partnership that expands beyond its financial aspects.
- Develop a lease agreement for rent-free use by the Partnership of office space in the Grand. As part of the MOU, the City should provide the Partnership with a no-cost lease for office space, and use of meeting spaces at the Grand and in other City facilities, to facilitate the fulfillment of its responsibilities.
- As part of its role in the Partnership, the ALA should change its name and review its bylaws to identify needed revisions in accordance with the recommendations in this report.
- The City should review its current operational plan for the Grand and prepare revisions to reflect current policy, programming, operational management and the terms of the Grand Partnership.



Arts education catalogue (Spring/Summer 2010)

VIII. PROCESS DESCRIPTION

PROCESS

To develop the findings and recommendations in this report, the City and the ALA jointly engaged a consultant to conduct a review process and facilitate consensus-building among key stakeholders for the Grand. David Plettner-Saunders of The Cultural+Planning Group in San Diego was selected for this project in April 2010. Plettner-Saunders has had a long relationship with the City of Tracy, the ALA and the Grand. He led the team that developed the *Cultural Arts Master Plan* in 2008 and 2009, and returned to Tracy for several consulting projects during development of the Grand. Between April and August 2010, he:

- Reviewed documentation on the Grand, the ALA and the Partnership.
- Interviewed key stakeholders (see list below), including City Council members, City Manager, ALA board members, Grand staff, resident companies, and Arts Commissioners.
- Reviewed studies and models that might inform the redefinition of the Grand Partnership.
- Facilitated planning sessions with the ALA board and City Manager.

INTERVIEWEES

City Council Members

Steve Abercrombie
Mike Maciel
Evelyn Tolbert

City Manager

R. Leon Churchill, Jr.

Arts Leadership Alliance

Mike Souza, President
Ellen Gripp, Secretary
Ann Langley, Immediate Past President
Kelly Kagehiro
Barbara Matthews
Sam Matthews
Gretchen Talley
Leona Willis

Tracy Arts Commission

Barbara Howard, Chair
Mercedes Silveira, Vice Chair

Resident Organizations at the Grand

Melyssa Barrett, President, Tracy Performing Arts Foundation
Deborah Skinner, Artistic Director, Children's Dance Theatre

Grand Staff

William F. Wilson, II, Gallery Supervisor
Jeffrey Haskett, Technical Theatre Supervisor
Laura Johnston, Recreation Coordinator

COMPARISON STUDY OF CITY-OWNED THEATRES

Purpose and Process

The purpose of the theatres comparison study is to assist the City of Thousand Oaks in re-evaluating its approach to support for the TOCAP, with its two theatres (1,800 and 394 seats). TOCAP was compared with a cohort of eight municipally-owned theatres plus one non-city-owned performing Arts Center. To provide the most useful comparison, the cohort included theatres with a broad range of structures and approaches.

Theatres were selected for this study according to the following criteria:

- Municipally-owned theatres
- Theatres operated by city or private non-profits
- California cities with similar demographics
- Other cities/theatres with interesting characteristics

The following theatres were included in the comparison:

1. California Center for the Arts, Escondido
2. Cerritos Center for the Performing Arts
3. La Mirada Theatre for the Performing Arts
4. Orange County Performing Artscenter, Costa Mesa (included as a "counter-example", OCPAC is privately-owned)
5. Oxnard Performing Arts and Conference Center
6. Redondo Beach Performing Arts Center
7. Scottsdale Center for the Arts, Scottsdale, Arizona
8. Leshner Center for the Arts, Walnut Creek
9. Yerba Buena Center for the Arts, San Francisco

Conclusions

Subsidy Is Normal

The most noteworthy conclusion of this comparison study is that all municipally-owned theatres receive a substantial annual operating General Fund subsidy from their cities. The counter-example, Orange County Performing Artscenter, is a private non-profit organization that relies on the largest subsidy of all in the form of fundraising done jointly by its staff and Board of Directors. Subsidy is apparently a near-prerequisite. But, it is not impossible to do without. TOCAP eliminated its General Fund subsidy in FY 2006-2007. The larger issue is the overall purpose of the facility and the support mechanisms needed to fulfill that purpose.

Subsidy Enables Community Impact

Greater subsidy is associated with community impact. Theatres that do more than focus on rentals and cost recovery, and present their own programming, report having city council support for a larger purpose of community impact. This purpose varies and is more or less fully articulated by the different cities. Nonetheless, each city council has a formal or informal policy of public subsidy for their theatre.¹

“The Council has a policy of the theatres marketing the city.”

Manager of Comparison Theatre

Presenting Means Artistic Quality

Presenting—programming in which performances are provided by the theatre, not by a renter, and for which the theatre assumes the financial risk—is associated with the type of artistic quality that Thousand Oaks says it wants. Theatres that present more of their own events and develop consistent, curated seasons of related events have programming which interviewees in the study would like to have at TOCAP. Thousand Oaks interviewees expressed different definitions of quality but some theatres in the cohort present artists that most would agree are desirable. For example, Orange County Performing Artscenter provides a blue-chip array of nationally and internationally recognized artists—symphony orchestras, dance companies, opera, jazz and world cultures—plus more commercially oriented events such as a series of

¹ It is interesting to note that the rentals-only theatres do occupy a place in the cultural lives of their communities. For example, there is a cultural vitality in renting the theatre for boxing in an Hispanic community or for hip hop concerts for urban youth. Still, this theatre usage is not only un-curated, it is inconsistent. These theatres do not develop an identity as a venue with an artistic purpose. These theatres still require a substantial subsidy. There is, arguably, less community impact for the investment of public dollars and a missed opportunity to serve the community.

touring Broadway shows. While they have a larger theatre than TOCAP, with a greater capacity for large and prestigious events, they exemplify a standard which would address the quality issues identified in TOCAP's programming. Other theatres in the cohort, closer to TOCAP's capacity, present work of comparable quality.

Cities Have Policies for Presenting

Presenting also requires a subsidy, whether public or private. For municipally-owned theatres, presenting and the requisite subsidy are a matter of deliberate policy to provide arts

programming otherwise unavailable to the community. However, given that local residents do not necessarily comprise a majority of the audience, arts programming is also valued for other reasons than community attendance. While arts are often viewed as intrinsically important, a city's policy justification for supporting and providing arts programming is often broader. City councils usually support the arts, in part, to raise the profile or

“Using sales taxes from the auto mall [to subsidize the theatres] is a great strategy to build awareness of the city through the arts and benefit local businesses, especially restaurants and the mall.”

Manager of Comparison Theatre

improve the image of their city—the “halo effect” of the arts. Regardless of the reason, city arts support has resulted, or been a factor, in a number of desirable outcomes, including increased local tax revenues, economic redevelopment, increased property values, attracting and retaining desirable businesses and employees, and improving overall quality of life.

TOCAP Compares Well

Compared with this cohort of municipally-owned theatres, TOCAP fares well by many measures. TOCAP is a very actively-used facility; its annual performance schedule is higher than average and the theatres assessment shows a very high user satisfaction among renters. Total attendance of about 310,545 is above average.

TOCAP's finances reflect its focus on rentals—a smaller budget, staff, and subsidy, with a higher earned income reliance. TOCAP's percentage of seats sold is lower than average but its marketing budget is among the lowest.

TOCAP's mission articulates a valid purpose but the theatres would benefit from greater clarity about priorities among goals that require a balance, such as artistic quality versus cost recovery; ticket revenue versus community access to arts events; and presenting touring artists versus serving as a cultural development tool for local arts organizations.

Alliance for the Arts is an Invaluable Partner

Clearly, the Alliance is a distinguishing feature of TOCAP in large part because of its accomplishments in creating a substantial operating endowment and providing an annual operating subsidy. The Alliance and the relationship between TOCAP, Alliance and City are a strength to be capitalized on.

TOCAP has Potential for Low Cost Presenting

The results of this comparison study suggest that the City has an opportunity to improve TOCAP programming quality at relatively low cost. Arts presenting is associated with the quality and range of events that Thousand Oaks interviewees view as desirable. Also, presenting requires a subsidy and, generally, large subsidies are found with artistically desirable programs. However, the partnership of the City and the Alliance has provided an unusual and desirable platform for expanding TOCAP's presenting without the scale of subsidy required at other theatres.

Starting from the position of no City subsidy, even a modest subsidy will likely enable an increase in the amount of presenting and the perceived quality and value of TOCAP's programming.

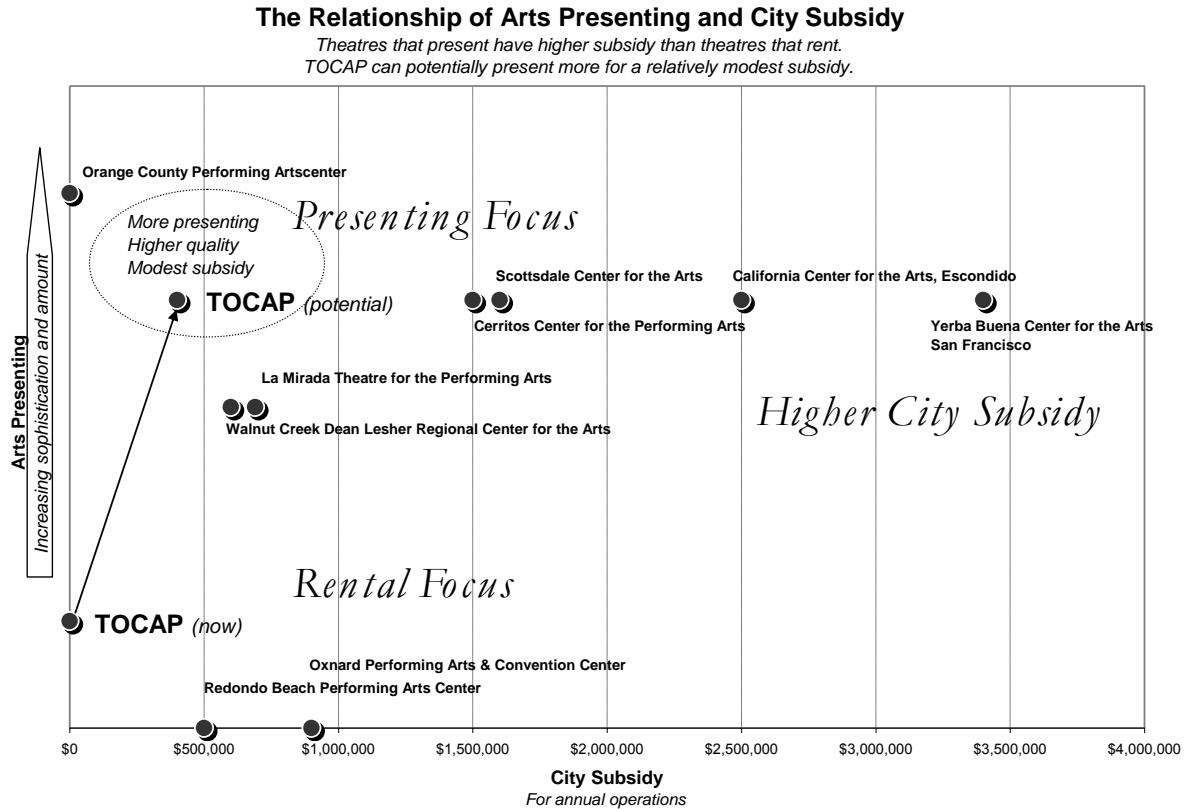
The chart below illustrates the relationship of arts presenting and City subsidy. Theatres are represented by the dots on the grid and those

towards the top of the chart focus more on presenting and generally have more sophisticated programming that Thousand Oaks would find desirable; those on the bottom focus on rentals. Theatres to the right of the chart have higher subsidy, as much as \$3.4 million annually (note that Orange County Performing Artscenter, at the top left having the greatest amount of presenting, receives no City subsidy, but is supported by about \$10 million in annual private fundraising). While it is tempting to conclude that a large subsidy is required for presenting, the key conclusion in the chart is that TOCAP, starting from no subsidy, can "move up" with a

"After 40 years in this business I can say that the arts are just not money makers, unless you have a facility that is large enough—3,000 plus. With a mid-sized facility, like ours and Thousand Oaks, it's tough."

Manager of Comparison Theatre

relatively modest amount of City subsidy. The arrow represents TOCAP's potential to provide better quality programming by presenting more; but without a multi-million dollar recurring annual subsidy.



There is no need to fundamentally alter TOCAP's current basic operating approach, with its primary reliance on rentals and use by community groups, including the resident organizations. Rather, making room in the annual schedule for an increasing amount of presentations is the preferred strategy. This will continue to meet many of the needs of local performing arts organizations, serve their largely community-based audience, and maintain an earned income revenue stream. It will allow TOCAP and the Alliance to gradually improve the quality of the programming and image of the theatres. It will also allow them to enhance the relationship with the audience, providing more of what audiences want and bringing in new audiences.

Findings and Observations

Operating Structure and Governance

About half of the theatres are private non-profit organizations governed by a Board of Directors. The other half are units of City government, reporting to a locally elected City Council without a governing body. However, the City of Walnut Creek's Leshner Center for the Arts is governed by a City Council appointed arts commission and supported by a private fundraising support organization, which makes it the most similar to the structure and governance in Thousand Oaks.

Support Organization

Few theatres have support organizations and none have endowments of any significant size. Only one, the Leshner Center for the Arts in Walnut Creek, provides annual financial support that is at all comparable to the Alliance for the Arts' support of TOCAP. This underscores the distinct capacity and value of the Alliance.

“A friendly, welcoming attitude is important: hands on, make the patron happy, fresh flowers in the lobby, smiles at the door. This helps keep the patron coming back and our earned income ratio high.”

Manager of Comparison Theatre

The non-municipally-owned, privately run Orange County Performing Artscenter (OCPAC) provides a counter-example. Like other non-profit arts organizations, OCPAC has a private Board of Directors with responsibility for fundraising and a development department. It raises about \$10 million annually for operations and has an endowment of \$30 million.

Operating Subsidy

All theatres have an operating subsidy from a City, regardless of the focus of their programming (rentals versus presenting). The amount of the annual subsidy ranges from \$500,000 for rental-only theatres to \$3.4 million for theatres with extensive and/or sophisticated presenting programs. All subsidies are from the General Fund, except one (Yerba Buena Center for the Arts in San Francisco) whose funding comes from a redevelopment agency. Note that the cohort of theatres was not pre-selected for this characteristic; rather, it appears that virtually all municipally-owned theatres require city subsidy. Nearly all managers confirmed this as a reality throughout the field.

Theatres with greater subsidy tend to present more. Also, presenting generally means providing higher profile artists and/or a greater diversity of arts events. Money appears to provide greater choice for programming.

TOCAP currently has no City annual operating subsidy, although it has had recurring General Fund subsidies of several hundred thousand dollars in the past. As discussed elsewhere in this report, TOCAP benefits from an annual subsidy from the Alliance for the Arts of \$300,000 paid to the Theatres Enterprise Fund plus about \$200,000 in grants to theatre users.

Mission and Purpose

City-run theatres have no mission statements, or generic ones.² Those operated by private non-profits have mission statements focusing on artistic excellence and community enrichment through the arts. Managers comment, however, that theatres tend to be defined more by finances and their overall usage—rentals versus presenting—than by their missions. TOCAP’s Board of Governors has a mission statement which identifies the theatres’ purpose, including presenting the finest performing arts, supporting local arts, and maintaining the facility.

Programming

Theatres span a range of programming from sophisticated arts presenting, to various mixtures of presenting and producing, to producing, to rentals only. Programming can be viewed as a range of agreements about financial risk:

- **Presenting** is defined as a theatre booking an artist at an agreed fee and assuming all the financial risk.
- **Producing** (or co-producing) is defined as a shared risk arrangement with an arts organization that often has an ongoing relationship with a theatre, such as TOCAP’s resident organizations; user fees are paid and box office may be shared.
- **Rentals** are defined as the artist booking a theatre for an agreed fee and assuming all the financial risk.

² While city-owned theatres in the cohort have no or generic mission statements, many cities themselves do have mission statements. The City of Thousand Oaks mission statement is: “Extraordinary service to the citizens we serve is our purpose and product.” The City also has the following Customer Service Philosophy: “The City of Thousand Oaks is committed to: maintain a desirable living environment while ensuring that change reinforces both environmental quality and economic vitality; respect the role of citizens, Council, and staff in establishing and implementing policies and programs; provide excellent community services in a fair, efficient, and responsive manner; and, promote public confidence and trust.”

TOCAP is primarily a rental theatre, although it also engages in some presenting of arts and popular entertainment events.

Audience and Attendance

Theatres describe their audiences as generally older (45 and up) and well-educated. However, managers report that programming (and pricing) designed to appeal to a different demographic, such as younger people, families or ethnically specific populations can attract these patrons to the theatre.

“We’re basically a direct mail, retail catalogue business. We’re highly market-driven—we have to be to fill the theatres.”

Total annual attendance ranges from 78,000 to 350,000. TOCAP’s attendance is above average, at 310,545. The percentage of total seats sold annually ranges widely from 45% to 90%. TOCAP is lower than average, with 56%.

Manager of Comparison Theatre

Residents comprise a relatively small portion of most theatres’ total audience, ranging from 10% to 60%. TOCAP does not compile this information. However, it is likely that the percentage of TOCAP patrons that reside within the Conejo Valley is high. Serving residents is a secondary purpose for many theatres and several theatres do not even track this figure. TOCAP regards, serving local residents as a higher priority than most theatres in this cohort.

Facility Use

Theatres have between about 85 and 350 performances per year in their main theatre spaces. TOCAP is well above average with 254 performances annually in the Kavli Theatre plus 194 performances in the Scherr Forum.

Marketing

Theatres with presenting programs are strongly market-driven. They practice aggressive direct marketing primarily targeted to current and potential ticket buyers, highly segmented according to the type of performance. For example, musicals are marketed to past ticket buyers plus people with the highest proven propensity to attend this type of event. This suggests that audience development is generally a lower priority than the bottom-line goal of selling tickets. Managers generally employ direct mail, print and radio advertising, and e-marketing. They comment that the key to effective marketing is “in the details” of matching the tools and

marketing dollars to the specifics of their audience and season. Some managers spoke about the necessity of being “customer-centric,” that is, focusing on providing theatre patrons with excellent customer service and a warm and welcoming experience at the theatre.

Marketing budgets range from almost none to \$2.5 million, again with rental theatres spending little and presenting theatres spending more. TOCAP does not have a separate marketing budget but spends modest amounts on marketing primarily through its annual brochure and Box Office operations.

Staff Size

Full-time staff positions range from 4 to 45; Theatres having the greatest similarity to TOCAP ranging from 9 to 27. TOCAP’s full-time staff is on the low end at 9.

Budget

Theatres’ operating budgets range widely from \$1 million to \$12 million. Theatres that focus on rentals have lower budgets and those that present have larger. TOCAP’s \$3.7 million budget places it below average, presumably reflecting its limited focus on presenting.

Theatres’ earned income (including such revenue sources as ticket sales, rental fees, concessions and parking) ranges from 54% to nearly 100% of total operating revenues. Theatres that focus on rentals have generally higher earned income ratios and those that present have lower percentages. Theatres with a strong focus on presenting appear to be able to generate substantial box office revenues, in the range of 60% to 70%, and their managers report paying careful attention to offering events with a balance of commercial potential and artistic value.

TOCAP’s earned income is 87% of its total revenues, again presumably reflecting its greater emphasis on rentals.

APPENDIX

THEATRES COMPARISON STUDY DATA*

No.	Performing Arts Center	City Subsidy	Operating Budget	Finance		
				Earned Revenues as Percentage of Total Revenues	Marketing Budget	Capital
1	California Center for the Arts, Escondido	\$2.5M	\$7.5M	55%	\$150K plus 4 FT staff	Shared City & nonprofit
2	Cerritos Center for the Performing Arts	\$1.5M - \$2M	\$10M - 12M	54% - 70%	\$2.5M	City
3	La Mirada Theatre for the Performing Arts	\$690,000	\$4M	80% earned	\$300k - \$350k	City
4	Orange County Performing Artscenter	None	\$35M	71%	\$3M +	
5	Oxnard Performing Arts & Convention Center	\$900,000	\$1.5M	Almost all earned; little contributed	No separate marketing budget	Shared City & nonprofit
6	Redondo Beach Performing Arts Center	\$500,000	\$1M	All earned	No separate marketing budget	City
7	Scottsdale Center for the Arts	\$1.6M	\$7M - \$8M	61%	\$1M +	Shared City & nonprofit
8	TOCAP	None	\$3.7M	87%	3/4 FTE & box office & brochure	Enterprise Fund and CIP
9	Walnut Creek Leshner Center for the Arts	\$600,000	\$4M	80% - 85%		Shared City & nonprofit
10	Yerba Buena Center for the Arts	\$3.4M	\$8.2M	38%		Shared City & nonprofit
	Average	\$1.46M	\$5.2M (excluding Orange County Performing Artscenter)	72%		

*Data is from most recently completed fiscal year, generally 2007.

THEATRES COMPARISON STUDY DATA—CONTINUED

No.	Performing Arts Center	Organizational				Programming & Audience			Theater Uses	
		Structure	Governance	Support Organization	Staff	Programming	Annual Attendance	% of Seats Sold	# days	# performances
1	California Center for the Arts, Escondido	Private nonprofit	Board of directors	Development department is part of nonprofit	27 FT & 50 PT	Arts presenting, several series	78,000	45% - 55%	275+	50 - 60 plus rentals
2	Cerritos Center for the Performing Arts	City department	None; report to city manager	None	19 FT & 110 PT	Presenting commercial/popular entertainment and some performing arts	135,000	71% - 78%, would be lower if more arts oriented	290	150
3	La Mirada Theatre for the Performing Arts	Enterprise fund w/ department	None; report to city manager	Friends of the La Mirada Theatre provides volunteer ushers and small donations of equipment	9 FT & 50 PT	Presenting & producing, some rentals	175,000	60%	320	225
4	Orange County Performing Artscenter	Private nonprofit	Board of directors	Development department is part of nonprofit	120 FT & 450 PT	Presenting balance of commercial and performing arts, plus four resident organizations	450,000			352
5	Oxnard Performing Arts & Convention Center	Private non-profit	Board of directors with city ex officio representation	None	11 FT & many PT	Rentals only	Not sure	Not sure	140	85 – 90
6	Redondo Beach Performing Arts Center	City division	None	None	4 FT & 32 PT (one theatre only)	Rentals only	250,000	90%	246	110
7	Scottsdale Center for the Arts	Private nonprofit	Board of directors	None	45 FT and many PT	Arts presenting, several series	330,000	72 - 76%	350	191
8	TOCAP	Enterprise fund in department	Board of Governors & City Council	Alliance for the Arts	9FT & 100PT	Rental focus with resident organizations and little presenting	310,545	56%	495	448 (254 Kavli + 194 Scherr)
9	Walnut Creek Leshner Center for the Arts	Enterprise fund in department	Arts Commission (7 members)	Diablo Regional Arts Association provides \$1 million annually, including \$700,000 in grants for Center programs. Small endowment.	14.5 FT & many PT	Co-producing; staff approves program plans	350,000	80%	350	330
10	Yerba Buena Center for the Arts	Private nonprofit	Board of directors	None	12FT & many PT	Arts presenting and rentals	90,000	75% - 80%	250	
	Average						240,949	67%	302	

RESOLUTION _____

ACCEPTING THE GRAND PARTNERSHIP REPORT AND AFFIRMING THE REPORT'S FINDINGS IN PREPARATION FOR A NEW MEMORANDUM OF UNDERSTANDING (MOU) AND LEASE AGREEMENT WITH A NON-PROFIT ARTS ORGANIZATION TO BE NAMED

WHEREAS, The City of Tracy and the Arts Leadership Alliance (ALA) collaborated on a research project to investigate ways to strengthen the governance of the Grand Theatre, and

WHEREAS, The research suggested recommendations that would expand and re-name the ALA, incorporate more community outreach, and better enable private fundraising efforts for the Grand Theatre.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby concurs with the findings in the Grand Partnership Report and with the following recommendations:

1. The City should replace the current MOU with the ALA with one in alignment with the Grand Partnership Report's findings, and
2. The City should craft a lease agreement with the ALA that establishes an office at no cost to the new Non-Profit, and
3. The City should review its current operational plan and prepare revisions to reflect the recommendations in the Grand Partnership Report.

The foregoing Resolution _____ was 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 5

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1151 AN ORDINANCE OF THE CITY OF TRACY IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

EXECUTIVE SUMMARY

Ordinance 1151 was introduced at the Council meeting held on August 3, 2010. Ordinance 1151 is before Council for a second reading and adoption

DISCUSSION

Ordinance 1151 was introduced at the Council meeting held on August 3, 2010, to add Chapter 6.28 to Title 6 (Businesses, Professions and Trades) of the Tracy Municipal Code. Based on the results of a community survey, Council adopted Resolution 2010-130 on August 3, 2010, to place a half-cent transactions and use (sales) tax measure (Measure E) to maintain City services, on the November 2, 2010, ballot, with a five-year sunset clause. Ordinance 1151 will enact the 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.

Ordinance 1151 is before Council for a second reading and adoption

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 1d: Place Parcel Tax Measure on ballot to support Public Safety Services

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopts Ordinance 1151 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk
Reviewed by: Carole Fleischmann, Assistant City Clerk
Approved by: Leon Churchill, Jr., City Manager

ORDINANCE 1151

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 31st 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 1151 was introduced at a regular meeting of the Tracy City Council on the 3rd day of August, 2010, and finally adopted on the 17th day of August, 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk