

Tuesday, September 7, 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

PRESENTATIONS - Employee of the Month

- Recognition of Tracy Centennial Royalty

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Approve Amendment 1 to the Professional Services Agreement (PSA) with Tanaka Design Group (TDG) to Provide Professional Services for Revising and Completing the Plans, Specifications, and Cost Estimates for the Parks Playground Renovation Project, Phase II - CIPs 78063, 78106, and 78118 (Formerly Playground Renovation Project, Phase I - CIP 78091 and 78097), and Authorization for the Mayor to Execute the Amendment
- C. Award a Construction Contract to G & G Builders of Livermore, California, for the Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, Authorize Transfer of Funds in the Amount of \$119,770 from the Playground Equipment Replacement Project - CIP 78118, to Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, and Authorize the Mayor to Execute the Contract
- D. Approve Responses to the 2009/10 San Joaquin County Grand Jury Report on the Public Appointment Process (Case No. 1009) and the Information Services (Case No. 0609), and Authorize the Mayor to Sign the Responses
- E. Authorization of Contract Laboratory Services for Fiscal Year 2010 – 2011
- F. Award of a Professional Services Agreement with Madill Enterprises, Inc., Doing Business as Advanced Property Services, of Sacramento, California, to Provide Janitorial Services for Various City Facilities, Authorization for the Mayor to Execute the Agreement, and Authorization for the City Manager to Execute any Extension Amendments
- G. Approval of a Resolution Authorizing the Execution of a 457 Deferred Compensation Trust Agreement with VALIC and Repealing Resolution 2009-171
- H. Authorization to Award the Purchase of Seventeen Mobile Data Computers to Hewlett-Packard Public Sector Sales through the State of California WSCA/NASPO Contract B27164-CA Competitive Bid Program Pursuant to Tracy Municipal Code Section 2.20.220.
- I. Adopt Resolution to Authorize the City Manager to be the Authorized Agent of the City of Tracy and to Execute any Actions Necessary for the Purpose of Obtaining Proposition 1B Funds in the Amount of \$50,000 for the Installation of Security Cameras at the Tracy Transit Station

- J. Authorization of a Professional Services Agreement with Marcia Herrmann Design for Graphic Design and Marketing Services for the Cultural Arts Division and the Grand Theatre Center for the Arts, Authorization for the Mayor to Sign the Agreement and Authorization for the City Manager to Sign Up to Two One-Year Extensions of the Agreement
2. ITEMS FROM THE AUDIENCE
3. AUTHORIZE FURLOUGHS FOR ALL NON-REPRESENTED CITY EMPLOYEES AND REVISE SECTION 5, REGARDING RETIREMENT BENEFITS, OF THE COMPENSATION AND BENEFITS PLANS FOR DEPARTMENT HEADS, CONFIDENTIAL MANAGERS, AND THE TECHNICAL AND SUPPORT SERVICES UNIT TO PROVIDE FOR A SECOND-TIER RETIREMENT BENEFIT
4. APPROVE THE LETTER OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY MID-MANAGERS BARGAINING UNIT
5. ADOPT A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY FIREFIGHTERS ASSOCIATION
6. STAFF ITEMS – Update on Economic Development (Verbal Presentation)
7. ITEMS FROM THE AUDIENCE
8. COUNCIL ITEMS
9. ADJOURNMENT

July 6, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

The invocation was given by Pastor Nick Castro, Tracy Foursquare Church.

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

Leon Churchill, Jr. presented the Employee of the Month award for July, 2010, to Sadhu Singh Gill, Development and Engineering Services.

Mayor Ives presented a proclamation to Linda Jimenez, Chairperson, Parks and Community Services Commission, proclaiming July 2010 as Parks and Recreation Month in Tracy.

Stacey Mortensen, Executive Director, San Joaquin Regional Rail, used a power point presentation to provide an update on high speed rail alternatives.

1. CONSENT CALENDAR - Following the removal of items 1-E by Mayor Ives, 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 6, 2010, and closed session minutes of June 15, 2010, were approved
 - B. Acceptance of the Traffic Signal Coordination – Grant Line Road Project - CIP 72063, Completed by Tim Paxin’s Pacific Excavation, Inc., of Elk Grove, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-096 accepted the project.
 - C. Acceptance of the Tracy Transit Station Project (Formerly Multimodal Station) - CIP 77519, Completed by Roek Construction, of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-097 accepted the project.
 - D. Authorize Establishment of a No Parking Zone on Both Sides of the Driveways at Various School Locations in the City – Resolution 2010-098 authorized establishment of the no parking zones.
 - F. Approval of the 2010 Employee Computer Purchase Program and Authorization of a Supplemental Appropriation from the Equipment Replacement Fund in the Amount of \$150,000 – Resolution 2010-099 approved the program and appropriation of funds.

- G. Award a Construction Contract in the Amount of \$248,295 for the Median Improvements at Various Arterial Streets - CIP 73113, to Green Valley Group DBA Green Valley Landscape of Livermore, California, Authorize the Appropriation of \$190,000 from the Gas Tax Fund, and Authorize the Mayor to Execute the Contract - Resolution 2010-100 awarded the construction contract and authorized the appropriation.
- H. 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 – Resolution 2010-101 approved the amendment to the Downtown Tracy Community Benefit District Management District Plan. Resolution 2010-102 approved the Disbursement Agreement with Tracy City Center Association
- E. Approval of Resolutions: (1) Initiating Proceedings for the Annual Levy for Tracy Consolidated Landscape Maintenance District, (2) Preliminarily Approving the Engineer's Report for the Tracy Consolidated Landscape Maintenance District and (3) Declaring the Intention to Levy Annual Assessments and Setting the Date for the Public Hearing - Mayor Ives indicated he pulled the item due to the Council abstentions.

Council Member Abercrombie stated he would vote on all Zones other than Zone 9 and would abstain from Zone 9. Mayor Pro Tem Tucker stated she would vote on all Zones other than Zone 7 and would abstain from Zone 7. Mayor Ives stated he would vote on all Zones other than Zone 24 and would abstain from Zone 24

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-103 initiating the proceedings for the annual levy and collection of assessments for the Tracy Consolidated Landscape Maintenance District (TCLMD), FY 2010/2011. Resolution 2010-104 preliminarily approved the engineer's report regarding the proposed levy and collection of assessments for the TCLMD, FY 2010/2011. Resolution 2010-105 declared the City's intention to levy annual assessments for the TCLMD, FY 2010/2011.

2. ITEMS FROM THE AUDIENCE - Brian Van Lehn, 540 Winston Court, addressed Council regarding continued noise problems with Leprino Foods. Mr. Van Lehn indicated the Council has chosen not to fight big business and continues to let Leprino break the rules.
- Robert Tanner, 1371 Rusher Street, asked Council to make further cuts of up to 2.5%. Mr. Tanner suggested Tracy residents are suffering and the City is not suffering. Mr. Tanner spoke in favor of the D.A.R.E. program being run by professionals.
3. REVIEW AND APPROVE RECOMMENDED CHANGES TO THE EXISTING FEES AND ADD NEW RENTAL AND SERVICE CATEGORIES TO THE EXISTING FEE STRUCTURE FOR THE GRAND THEATRE CENTER FOR THE ARTS - Leon Churchill, Jr., City Manager, presented the staff report. Mr. Churchill recommended five changes to the existing fee structure of the Grand Theatre Center for the Arts. These changes include (1) adding hourly rates to the Visual Arts Studios to accommodate art parties;

(2) Adding hourly rates to the Grand Galleries to accommodate rentals; (3) Adding a non-profit and commercial weekday rate for rental of the Old Town Hall and Jail; (4) Adding a \$1 general admission per ticket charge per patron, and (5) adding a season discount/reward card annual fee. Minor changes are recommended to the labor fee section to accommodate two part time classifications.

The addition of a \$1 general admission per ticket charge per patron is for unassigned seating events. This is a new service option and not an addition to the existing fees. This new service fee option assists with payment for ticket printing and selling services, and will increase opportunities for using the center's ticketing system. Many events at the center do not sell tickets and opt to buy out the theatre, or simply put on a free event. Most of the center's ticketed events require assigned seating because of the type of show, or the desire to have separately priced areas. Therefore, most of the current events would not change their ticketing method.

A season discount/reward card and fee will provide cardholders with benefits for season programming. Benefits will include, but not be limited to, a 10% discount on season tickets, advanced ticket sales and complimentary ticket exchanges. Any benefits offered will take advantage of agreements made with season promoters, and will not affect City revenue. The card fee will cover the cost of card printing, associated marketing materials and staff time. The fee will generate some revenue, but this program offers the Center a viable marketing solution. Loyalty programs like this historically provide businesses with important data, return patronage and higher customer loyalty.

The three art galleries at the Grand are desirable rentals. Staff will add the Grand Galleries as a rental space and set fees based on non-profit or commercial status and the time of day. As the three spaces are tied together, one fee for all three will be required with a two hour minimum to allow for proper set-up and cleaning. In addition, staff must be present to host rentals in the galleries and to maintain proper risk management. The level of staff supervision will be determined on an as-needed basis. Clients will assume all liability for damage to the space, furniture, art, objects, etc.

Several requests to rent the Old Town Hall and Jail, as well as the Arts Office have arisen as space for meetings and small rehearsals have increased. Fees would be based on non-profit or commercial status and the time of day or week. Patrons and partners have expressed interest in renting the art studios of the Arts Education Program for celebratory and educational uses. With the establishment of a new rental fee, the Center could host Art Parties featuring an art making or educational arts activity. This new service area could accommodate a variety of events from private birthday parties to corporate training sessions. Staff would work with the client to design an activity to meet their needs in a fun and unique environment. These new services would also require the addition of hourly fees for an arts education instructor and a recreation leader.

Specialized tours are offered at the Grand Theatre on a routine basis. While small groups are easily accommodated and would remain free as a community service, larger groups require additional staff resources. In an effort to offset these expenses, staff would like to add a tour fee for groups of 10 or more.

Adding the General admission ticket fee and the discount/reward card would foster higher usage of services and potentially generate higher revenue. Adding art parties and additional rental spaces in the Center would generate extra revenue.

Staff recommended that Council approve the additions and changes to the Grand Theatre Center for the Arts fees and services.

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

Mayor Pro Tem Tucker indicated she was pleased to see that the City was tailoring its needs to meet the needs to the people.

Council Member Maciel asked when the movie projector would be operational. Mr. Churchill stated by the end of August.

Council Member Abercrombie asked if the Theatre would be showing movies again in September. Mr. Churchill stated yes.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-106 approving the changes to the existing fees and add new rental and service categories to the existing fee structure for the Grand Theatre Center for the Arts. Voice vote found all in favor; passed and so ordered.

4. PUBLIC HEARING TO CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT FOR A GENERAL PLAN AMENDMENT, ZONING ORDINANCE AMENDMENT, AND PREZONING/ ANNEXATION APPLICATIONS FOR THE HOLLY SUGAR SPORTS PARK, AND APPROVE A GENERAL PLAN AMENDMENT, ZONING ORDINANCE AMENDMENT, AND PREZONING/ ANNEXATION FOR THE HOLLY SUGAR SPORTS PARK SITE. THE HOLLY SUGAR SPORTS PARK SITE IS APPROXIMATELY 298 ACRES OF LAND LOCATED BETWEEN TRACY BOULEVARD AND CORRAL HOLLOW ROAD, NORTH OF LARCH ROAD, AND SOUTH OF SUGAR ROAD (ASSESSOR'S PARCEL NUMBER 212-150-01). THE APPLICATIONS ARE CITY INITIATED. APPLICATION NUMBERS GPA10-0002, ZA10-0003, AND A/P09-0001 Scott Claar, Associate Planner, presented the staff report. Mr. Claar stated that on July 1, 2008, the Council selected the Holly Sugar site as the preferred location for the youth sports facilities. The project site is located on City-owned property between Tracy Boulevard and Corral Hollow Road, north of Larch Road, and south of Sugar Road.

The proposed project consists of the construction and operation of an approximately 298-acre park, which would include a 166-acre active sports park facility, 86 acres of passive recreation area, and 46 acres for future expansion. The project description also includes the proposed annexation of the site into the City limits, a General Plan amendment to designate the project site as Park (P), and zoning of the site to Park (P).

A Draft EIR was prepared in accordance with the State California Environmental Quality Act (CEQA) regulations and CEQA Guidelines, and circulated for public review from August 31, 2009 until October 15, 2009. During that time, two separate public hearings were conducted to receive comments, one by the Planning Commission (September 23, 2009) and one by the Parks and Community Services Commission (October 1, 2009). A total of six comment letters were received and several comments were verbally received during the public hearings.

In light of a comment letter received from Caltrans on the Draft EIR, the City determined that the preparation and public distribution of a Recirculated Draft EIR was required.

The Recirculated Draft EIR was circulated for public review from December 16, 2009 through February 2, 2010. This public review period was later extended to May 26, 2010, due to a noticing error to an interested party. Caltrans provided a comment letter on the Recirculated Draft EIR. No other comments were received.

Collectively, the EIR contains the Draft EIR, the Recirculated Draft EIR, and the Responses to Comments and Errata, which is known as the Final EIR. While mitigations were identified, significant unavoidable environmental impacts were reported in the areas of Aesthetics, Agricultural Resources, Climate Change, Noise, and Transportation and Circulation, as shown in the Executive Summary of the Draft EIR (pages ES-5 to ES-28). Certification of the Final EIR also involves making findings related to significant impacts, alternatives, a statement of overriding considerations, and adopting a mitigation monitoring and reporting program. The resolution related to the Final EIR contains those findings and the mitigation monitoring program.

A General Plan Amendment (both to the text and the Land Use Designation Map) is proposed to change the General Plan designation of the Holly Sugar Sports Park site from Agriculture (Ag) to Park (P) (Attachment E: Proposed General Plan Amendment).

A Zoning Ordinance Amendment is proposed to establish a Park (P) zone district. Public parks are permitted in the existing residential zones, but creation of this Park (P) zone would establish a zone that is primarily dedicated to park use. In the case of the Holly Sugar Sports Park site, the proposed Park (P) zone is considered appropriate because it better reflects the intended use of the site. Due to the size of the site, and the fact that the project is not a component of a residential or commercial development, the creation of a new zone district is appropriate.

Corporate City limit changes, including property annexation, are completed at the Local Agency Formation Commission (LAFCo) based on a City application (petition to LAFCo). The application to LAFCo would be prepared by City staff based on City Council direction related to the EIR, General Plan Amendment, and Zoning Ordinance Amendment. Upon annexation, the Holly Sugar Sports Park site would be zoned Park (P), and the Park (P) zone district would be the rezoning for the application to LAFCo. Public facilities for the park site have been identified and documented in the EIR.

The Planning Commission held a public hearing on June 9, 2010, to discuss the EIR and applications for the Holly Sugar Sports Park project. Below is a summary of the comments and responses:

- Planning Commission had questions about enforcement of the mitigation measures. The City's consultant, Ben Ritchie of De Novo Planning Group, explained that enforcement of most of the mitigation measures would be a City responsibility, with a very small number of the mitigation measures being under the San Joaquin Valley Air Pollution Control District and CALTRANS.
- Planning Commission asked questions about the mitigation measures related to the I-205 freeway/ Tracy Boulevard off-ramps. Mr. Ritchie explained the mitigation measures such as off-ramp widening, but added that these improvements were infeasible due to funding limitations and permitting requirements, which are under CALTRANS sole jurisdiction.

- Planning Commission asked whether options were considered to reduce greenhouse gas emissions. Mr. Ritchie stated that for this project the possible measures were limited due to the nature of the project although a very conservative approach had been taken in estimating green house gas emissions. Mr. Ritchie added there were mitigation measures for including bike racks and monitoring the needs for bus routes to the site. Mr. Ritchie stated that when they had quantified the number of vehicle trips to the park, they had looked at every trip to the park as a new trip, although many would be made by people who were currently driving to other parks, and would now be driving to this park.
- Regarding the General Plan Amendment, a Planning Commissioner asked whether agricultural use would still be allowed until the park is constructed. Staff explained that the agricultural use would be allowed to continue as a nonconforming use.

The Planning Commission voted 4-0 (with one absent) in favor of recommending that City Council certify the Final EIR and approve the General Plan Amendment, Zoning Ordinance Amendment, and rezoning/petition to LAFCO for annexation for the Holly Sugar Sports Park site.

There is no impact to the General Fund. This is an approved Capital Improvement Project (CIP 78115) with sufficient funding to complete Phase 1 improvements.

Staff and Planning Commission recommended that the City Council take the following actions:

1. Adopt a resolution certifying the Final Environmental Impact Report, adopt findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting program for the Holly Sugar Sports Park applications;
2. Adopt a resolution approving a General Plan Amendment to designate the Holly Sugar Sports Park site as Park, Application GPA10-0002;
3. Introduce an ordinance amending Article 15 of Chapter 10.08 of Title 10 of the Tracy Municipal Code to add a new zoning district of Park and to zone the Holly Sugar Sports Park site as Park, Application ZA10-0003;
4. Adopt a resolution approving the rezoning and petition to LAFCo for annexation of the Holly Sugar Sports Park site to the City of Tracy, Application A/P09-0001.

Mayor Ives opened the public hearing.

Larry Gamino, 21 W. First Street, addressed Council regarding the EIR. Mr. Gamino stated regarding the 46 future acres, that the needs of Tracy sports will change and mentioned a native Indian cricket club.

Council Member Maciel suggested future EIRs reference motorcycles or non-motorized bicycles.

Mayor Ives indicated the Council has worked for years to get the sports parks approved and that this was a huge step toward that end.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-107 certifying the Final Environmental Impact Report and adopting Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program for the Holly Sugar Sports Park Project. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-108 approving a General Plan Amendment to designate the Holly Sugar Sports Park site as park. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to introduce Ordinance 1150. Voice vote found all in favor; passed and so ordered.

The Clerk read the title of proposed Ordinance 1150.

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

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to introduce Ordinance 1150. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-109 approving rezoning the park and petitioning LAFCO for annexation of the Holly Sugar Sports Park site to the City. Voice vote found all in favor; passed and so ordered.

5. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH RJM DESIGN GROUP, INC., OF SACRAMENTO, CALIFORNIA, FOR DESIGN AND CONSTRUCTION RELATED SERVICES FOR THE AQUATIC CENTER FACILITY - CIP 78054, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT - Kuldeep Sharma, City Engineer, Rod Buchanan, Parks & Community Services Director, and Andrew Malik, Development & Engineering Services Director, presented the staff report.

The proposed site for the Aquatic Center Facility is located west of Corral Hollow Road and south of the existing St. Bernard's development, and south of Valpico Road. This land consisting of 16 acres is presently owned by Surland Development and will be transferred to the City as part of their Development Agreement with the City. The adjacent properties are owned by Surland Companies and zoned residential.

On March 2, 2010, the Council approved the conceptual design for the Aquatic Center Facility on the proposed site and directed staff to prepare the final design and construction documents with a base bid and additive alternative bids to maximize any benefits from existing lower construction costs in the industry.

Due to the specialty type of work involved, the Development and Engineering Services Department, solicited a Request for Proposals and posted it on the City's website. The scope of services includes completion of design, preparation of improvement plans, specifications, cost estimates, and bidding documents for onsite and offsite improvements for the full build out of the Aquatic Center.

Construction bid documents will be prepared with a base bid which includes 5 amenities (Lazy River, Waterslides, Activity pool, Wet Play Structure, and Spray Ground) parking lots, walkways and associated buildings. The additive alternate bids will include 3 amenities (52 Meter Pool, Flow Rider, and Recreation/Swim Lesson Pool) and the remaining buildings, access walkways and landscaping will be clearly defined with each amenity.

A total of 15 proposals were received from various consultants. The Engineering Division, in conjunction with the Parks and Community Services Department, reviewed the proposals and short-listed the following consultants:

- RJM Design Group, Inc. of Sacramento, California
- ELS Architecture and urban Design of Berkeley, California
- MDM Architects, LLP of Walnut Creek, California
- Glass architects of Santa Rosa, California
- Gould Evans Baum Thornley + Arch-Pac of San Francisco, California

After completion of the interview process, RJM design Group, Inc., of Sacramento, was found to be the most qualified consultant to complete the required work. RJM Design Group has completed similar projects for other agencies. Staff verified the consultant's references and found their performance to be satisfactory. RJM has also completed the conceptual plan for the Aquatic Center Facility which was approved by the City Council.

Funding in the amount of \$2,854,752 for this work is available from the Aquatic Center Facility Project - CIP 78054. Additional funding for construction of the Aquatic Center project will be received from the Ellis project in accordance with the terms of the existing Development Agreement.

Staff recommended that the Council authorize a Professional Services Agreement with RJM Design Group Inc., of Sacramento, for design and construction services associated with the Aquatic Center Facility Project, for developing design and for preparation of bid documents in an amount not to exceed \$1,197,550, authorize approximately a 7.5% contingency in the amount of \$90,000, for additional services if needed to be authorized by the Development and Engineering Services Director and authorize the Mayor to execute the Agreement. The anticipated time to complete this work is 10 months after receiving the formal notice to proceed.

Mayor Ives asked if the base included the design and construction of all the amenities. Mr. Buchanan stated yes. Mayor Ives asked how difficult it would be to pick up a design and put it down in another location once the design was complete. Mr. Courtney indicated 80-90% of the engineering would apply to any area, and that once designed, the design could be placed anywhere.

Mr. Sharma stated water table and other issues could possibly come into play.

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

Craig Salwaechter, 4038 Payton Lane, thanked Council and staff for their efforts over the past four to five years. Mr. Salwaechter stated RJM had good designs and encouraged Council to approve the agreement.

Marsha McCray, 540 W. Schulte thanked staff and Council for all the work done on the Aquatic Center and stated she was looking forward to opening day.

Robert Tanner, 1371 Rusher Street, stated he was not against the park, but was concerned about the site possibly being moved. Mr. Malik outlined some of the provisions in the Development Agreement.

Joe Silvera, 455 Loma Verde Drive, stated he did not see any "green" provisions in the project, and added the long term costs of operating the facility needed to be reviewed.

Council Member Maciel indicated he believed renewable energy items were included in the project. Mr. Courtney responded the project will be designed according to LEED principles so it could be certified as a LEED project.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-110 approving a professional services agreement with RJM Design Group, Inc. of Sacramento, California, for design and construction related services for the Aquatic Center Facility – CIP 78054, and authorizing the Mayor to execute the Agreement. Voice vote found all in favor; passed and so ordered.

6. HEAR PRESENTATION ON THE RESULTS OF THE RECENTLY CONDUCTED REVENUE MEASURE COMMUNITY SURVEY AND DISCUSS NEXT STEPS - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated the City has been working on a strategy of maintaining current levels of police, fire and emergency medical services including neighborhood patrols, crime prevention and investigation programs, and 911 response times, as well as other City services, like recreation and afterschool programs. At the same time, the City must address a \$4.8 million budget deficit. At the November 17, 2009 Council meeting, Council discussed potential placement of a public safety parcel tax or a Landscape Maintenance District (LMD) revenue measure on the 2010 or 2011 ballot for the community's consideration and requested that staff return with additional information relative to the LMD financing measure.

At the June 1, 2010 Council meeting, Council discussed three staff reports related to the City's revenue options, which included reviewing additional information on the LMD financing measure, obtaining an update and discussing other revenue measure options, as well as determining whether or not to move forward with the implementation of the EMS fee. Staff informed Council that preliminary community survey efforts were underway via the Godbe Research firm to assess the community's perspectives on a variety of issues, including their potential support of a local revenue measure to maintain local services.

At that meeting, Council determined that staff should return with the results of the revenue measure community survey and postpone the implementation of the EMS fee until January, 2011.

In summary, 400 City of Tracy registered voters participated in an independent telephone survey that was conducted from June 10th through June 15th. The study was statistically valid and representative of the community. The survey results indicated strong community support for a half-cent sales tax measure to maintain city services, with 64 percent of the respondents indicating support.

Godbe Research estimates that support among the community is well above the simple majority required for a general sales tax measure in November 2010. The survey also found that a shorter duration would garner stronger support, with 67 percent of the respondents indicating support for a measure lasting 5 years. In comparison, the results show inadequate support for a \$200 parcel tax measure dedicated to police, fire, and emergency medical services. Just 36 percent of the respondents indicated support for the parcel tax measure, significantly below the two-thirds majority required in an election.

The survey also found that the funding priorities of the community align with the funding needs of the City of Tracy, including maintenance of public safety, fire, and emergency medical services; programs for youth and teens; city streets and pothole repair, and neighborhood services. At this time we have not had the opportunity to further inform our community about the many challenges we face in providing the services that they rely on. Building community education and providing information to expand awareness of the City's economic, budgetary and service delivery is an important next step that will begin on July 12, 2010.

The community survey of residents indicated that a 2/3's requirement parcel tax measure for public safety services is not supported by the community. Survey respondents preferred a local ½ cent sales tax measure that would apply to visitors, as well as residents. Revenue from this type of measure assists the City to achieve the objective of maintaining current levels of service, such as maintaining firefighters, police officers, 9-1-1 emergency response services, neighborhood police patrols and fire protection, and other essential City services.

Staff recommended that Council consider the revenue measure community survey results and direct staff to return to Council on August 3rd with a recommended local revenue measure for Council's consideration.

Dr. Amelia Davidson of Godbe Research provided the results of the survey.

Mayor Pro Tem Tucker asked how the sample size of 400 was statistically reliable. Dr. Davidson explained the process. Mayor Pro Tem Tucker asked out of the 400, how many were men and how many were women. Dr. Davidson stated the percentages were 55% women, 45% men.

Mayor Pro Tem Tucker asked how many were democrat, republican, or declined to state. Dr. Davidson indicated there were 45% democrat, 29% republican, 3% other, and 13% declined to state.

Mayor Pro Tem Tucker asked how the 15,321 registered voters were chosen from among the 31,150 registered voters in the City. Dr. Davidson responded they have access to voter participation and outlined the process.

Council Member Maciel thanked the 400 residents who took the 18 minutes to complete the survey and stated he was comfortable with the report.

Council Member Tolbert stated anything agreed upon by the voters has her support. Council Member Tolbert further stated she liked that this measure would have independent resident oversight along with mandatory financial audits on an annual basis. Council Member Tolbert suggested that upon implementation of the tax, if it passes, that the City provides records so that the annual audit shows exactly what the money is going toward.

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

Juana Dement, 1525 Franklin Avenue, encouraged Council to approve the parcel tax to allow the voters to decide. Ms. Dement stressed that there is opportunity for individuals to serve on the oversight committee.

Mayor Ives indicated he believed the oversight committee had to do with the parcel tax. Maria Hurtado stated regardless of the tax, it was important to the voters that an oversight committee is involved.

Mayor Ives asked if the sales tax went to the General Fund. Dan Sodergren, City Attorney, stated he envisioned a citizen oversight committee that would make recommendations to the Council.

Craig Salwaechter, 4083 Payton Lane, stated his largest concern was for those who were running for Council, and if they support it how will it bring jobs to the City. Mr. Salwaechter stated he agreed a sunset clause needed to be included in the measure and that the oversight committee should include members who know what they are doing.

Larry Gamino, 21 W. First Street, stated now was not the time to tax people. Mr. Gamino stated better outreach was needed along with more transparency.

Mayor Pro Tem Tucker indicated she was opposed to a tax of any kind at this time and suggested continued downsizing and cutting the budget. Mayor Pro Tem Tucker added she was opposed to asking citizens to tax themselves.

Council Member Tolbert indicated she empathized with those who are losing their jobs and the young adults entering the workforce. Council Member Tolbert stated Tracy is not one of those towns where when taxes are raised it enriches government officials; jobs have been cut and raises foregone.

Council Member Maciel stated the City has already cut \$7.5 million and is still looking at approximately a \$5 million deficit. Council Member Maciel added that what the Council hears from the public is please don't cut services; that the community still expects a certain level of service. Regarding the citizen oversight committee, Council Member Maciel stated the City could not guarantee where funds would be spent; that the

committee would provide the Council with options. Council Member Maciel stated he was in favor of placing a sales tax measure on the ballot.

Council Member Abercrombie encouraged residents to get the facts and to not rely on blogs.

Mayor Pro Tem Tucker indicated there have been cuts made in the City with the elimination of 90 positions. Mayor Pro Tem Tucker added employees have 13 paid holidays, 2-3 weeks of vacation, 2-3 weeks of sick leave, and a very rich health insurance package and no serious cuts have been made.

Council Member Tolbert stated the most radical thing the City could do is to continue with layoffs and reduce services.

Council Member Maciel indicated he previously worked for the City and although originally the compensation wasn't great it got better and more competitive for the region. Council Member Maciel added that the City was then able to attract more professional applicants.

Mayor Ives thanked all those who provided input. Bringing Tracy's taxes into parity with other cities, didn't seem like a hardship and Mayor Ives added he believed the citizens had indicated that the sales tax is acceptable. Mayor Ives stated he was concerned that the five year sunset would not be sufficient; that property values would not rebound, and suggested the sunset be 10 years. Mayor Ives stated he was in favor of placing a sales tax initiative on the ballot.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to direct staff to return to Council on August 3, 2010, with a recommended local revenue measure for Council's consideration. Voice vote found Council Member Abercrombie, Maciel, Tolbert, and Mayor Ives in favor; Mayor Pro Tem Tucker opposed.

7. **CONSIDER PLACING A MEASURE ON THE NOVEMBER 2, 2010 BALLOT TO ALLOW TRACY VOTERS TO DETERMINE IF THE OFFICE OF THE CITY CLERK SHOULD BE APPOINTED INSTEAD OF ELECTED** - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that the California Government Code requires each city to have a City Clerk who is either elected or appointed. Tracy's City Clerk is elected and, therefore, must reside in, and be a registered voter of, the City of Tracy. Other than these two obligations the duties of an elected City Clerk, as defined by the California Government Code are mostly ceremonial, and cities cannot impose minimum qualifications requirements for the position, such as level of experience, education, professional certifications or training. As cities have grown and become more complex, the duties of the City Clerk have become more technical and now require skill and expertise in election law, federal and state law, records management and conflict of interest regulation. As a result, a survey conducted in July of 2009 indicated that out of 480 incorporated cities in the State of California 132 City Clerks were elected, 323 were appointed, and in 25 cities the City Manager/City Administrator acted as the City Clerk.

The main duties of the City Clerk include preparing agendas and minutes for all City Council meetings; maintaining the Clerk's filing system and records retention program; overseeing the City's document imaging system; serving as the Elections Official for the City's General Municipal Election, serving as the Filing Officer for Conflict of Interest

Statements required by state law; supervising employees, and conducting recruitments for vacancies on the City's various boards and commissions. In addition, the City Clerk's division has a \$429,390 annual budget for Fiscal Year 2010-2011.

While the City has been fortunate that its elected clerks have been willing and able to perform tasks over and above what is legally required, future elected City Clerks may not possess the requisite skills, or be willing to perform these tasks. Alternatively, an appointed City Clerk would be hired based on educational qualifications, management experience, knowledge of, and ability to carry out the duties of the office. In addition, an appointed City Clerk would be subject to the City's personnel procedures, including annual performance reviews and possible consequences for unsatisfactory performance.

Changing the City Clerk position from elected to appointed requires placing a ballot measure before the electorate. The impartial analysis and rebuttal arguments, although they are customary, are not legally required. The City Council has the option to waive these filings.

If Tracy electorate votes in favor of the measure, the change would be effective from and after the expiration of the current City Clerk's term, which would be December 2012. The duties of the City Clerk would then be consolidated with the duties currently undertaken by the City Clerk's office. The current City Clerk is in favor of the measure.

The City's Fiscal Year 2010-2011 budget includes an allocation of \$150,000 to cover election costs. The Registrar of Voters Office has provided cost estimates of \$90,450 (based on a charge of \$3 per registered voter) for the election, and \$30,000 for each measure (based on a charge of \$1 per registered voter). As of April 15, 2010, the City had 30,150 registered voters. These costs may vary, depending on the actual number of registered voters, the type of election (local measures, city council member races), and the number of ballot types generated for each city/district.

If the measure is approved by the voters it is anticipated the City Clerk's office will be staffed by a full-time appointed City Clerk and the Deputy City Clerk. This will result in an estimated annual savings of approximately \$23,000.

Staff recommended that the Council directs staff to place a measure on the November 2, 2010 ballot to allow Tracy voters to determine whether the office of the City Clerk should be appointed.

Council Member Maciel asked if there was any record of any city clerk election ever being contested. Carole Fleischmann, Assistant City Clerk, stated she recalled one. Council Member Maciel asked if historically the city clerk's position was a one person race. Ms. Fleischmann stated more often than not.

Larry Gamino, 21 W. First Street, addressed Council regarding the fiscal impact of the election. Maria Hurtado, Assistant City Manager, clarified that the \$150,000 budget was for the entire election in November 2010, including ballot measures. Each ballot measure is anticipate to cost approximately \$30,000.

Council Member Maciel asked if eliminating an item on the ballot would reduce election costs. Ms. Hurtado indicated that was correct.

Robert Tanner, 1371 Rusher Street, questioned the \$23,000 annual cost savings. Ms. Hurtado indicated the City Clerk's office is staffed by an Assistant City Clerk and a Deputy City Clerk. If the measure is successful the Assistant City Clerk position would be eliminated and the City Clerk's office would be staffed by a full-time City Clerk and full-time Deputy City Clerk. This would result in an employee saving of .15 full time equivalents for the elected city clerk.

It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adopt Resolution 2010-111 ordering the submission to the qualified electors of the City of Tracy a certain measure relating to the City Clerk's position at the General Municipal Election to be held on Tuesday, November 2, 2010. Voice vote found all in favor; passed and so ordered.

8. ITEMS FROM THE AUDIENCE – None.
9. COUNCIL ITEMS - Council Member Abercrombie stated he was a proud parent of a boot camp Army graduate.
10. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Maciel to Adjourn. Voice vote found all in favor; passed and so ordered. Time: 9:18 p.m.

The above agenda was posted at the Tracy City Hall on July 1, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

August 17, 2010, 6:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Maciel, and Mayor Ives present; Council Member Tolbert and Mayor Pro Tem Tucker absent. Mayor Pro Tem Tucker arrived at 6:33 p.m. Council Member Tolbert arrived at 6:35 p.m.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –
 - A. Real Property Negotiations Pursuant to Government Code section 54956.8

Property Location: City-owned Schulte Road Property (Two adjoining parcels located on the south side of West Schulte Road, approximately one mile west of Lammers Road; comprised of: APN#209-230-03; and APN#209-230-29)

Negotiator(s) for the City Leon Churchill, City Manager, and Andrew Malik, Director of Development and Engineering Services

Negotiating Parties: Representatives of GWF Energy II LLC

Under Negotiation: Price and terms of payment for the sale or lease of the property
 - B. Pending Litigation (Government Code section 54956.9 (b))
 - *Claim of Christopher Bosch*
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:30 p.m. Council Member Maciel seconded the motion. Voice vote found Council Members Abercrombie, Maciel and Mayor Ives in favor; Council Member Tolbert and Mayor Pro Tem Tucker absent. Motion carried 3:0:2.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:53 p.m.
7. REPORT OF FINAL ACTION – None.

8. 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: 6:54 p.m.

The agenda was posted at City Hall on August 12, 2010.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

APPROVE AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH TANAKA DESIGN GROUP (TDG) TO PROVIDE PROFESSIONAL SERVICES FOR REVISING AND COMPLETING THE PLANS, SPECIFICATIONS, AND COST ESTIMATES FOR THE PARKS PLAYGROUND RENOVATION PROJECT, PHASE II - CIPs 78063, 78106, AND 78118 (FORMERLY PLAYGROUND RENOVATION PROJECT, PHASE I - CIP 78091 AND 78097), AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AMENDMENT

EXECUTIVE SUMMARY

An amendment to the original Professional Services Agreement (PSA) is needed with Tanaka Design Group (TDG) to include the proposed new improvements at Dr. Powers Park and updating the improvement at Zanussi Park.

DISCUSSION

On June 5, 2007, the City Council by Resolution 2007-112, authorized a Professional Services Agreement with Tanaka Design Group of San Francisco, California, on a time and material basis, for an amount not to exceed \$78,900 for architectural and engineering services to complete the design, improvement plans and construction documents for renovation of the playground equipment and the installation of ADA access to the playground areas in twelve parks (CIPs 7891 and 7897).

On July 7, 2009, the playground renovation construction of the first five parks was completed and accepted by the City. The preliminary design of the play areas and ADA access ramps at the remaining seven parks is complete; however, similar improvements are needed immediately at Dr. Powers Park which was not part of the 12 parks scheduled for this project. In addition, additional improvements are needed to be designed and constructed in Zanussi Park involving the concrete pad, rubber resilience surface in the play area including redesign of the play equipment.

Additional services are required from the consultant to complete the above work which involves site topographic surveys and design. Tanaka Design Group has submitted a proposal to complete the required work for a not to exceed amount of \$22,500. Staff has reviewed the proposal as part of Amendment 1 of the PSA with the City.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no fiscal impact to the General Fund. Adequate funding is available in the General Projects (F301) currently available in CIPs 78063, 78106, and 78118, to cover the design, construction, and this amendment to the project.

RECOMMENDATION

That City Council, by resolution, approve Amendment 1 to the PSA with Tanaka Design Group of San Francisco, California, for providing professional services for revising and completing the plans, specifications and cost estimates for the Parks Playground Renovation Project, Phase II – CIPs 78063, 78106, and 78118, in an amount not to exceed \$22,500, and authorize the Mayor to execute the Amendment.

Prepared by: Khoder Baydoun, Associate Civil Engineer

Reviewed by: Kuldeep 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
DESIGN SERVICES FOR
PLAYGROUND RENOVATION PROJECT, PHASE II
CIP 78063, 78106, & 78118 (FORMERLY PLAYGROUND RENOVATION PROJECT,
PHASE I, CIP 7891 & 7897**

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 TANAKA DESIGN GROUP, (hereinafter "CONSULTANT").

RECITALS

- A. CONSULTANT services are needed related to revising and updating the plans for the remaining seven parks on the original list of twelve parks, including George Kelly Park, Dorothy Zanussi Park, Mt. Oso Park, Mt. Diablo Park, Valley Oak Park, Kit Fox Park, Golden Spike Park; and renovating the playground area at Dr. Powers Park for the Parks Renovation, Phase II (PROJECT)
- B. As approved by the City Council on June 5, 2007, CITY entered into a Professional Services Agreement with the CONSULTANT for Professional Consulting Services to design all twelve parks.
- C. The playground renovation construction of the first five parks on the list of twelve parks was complete and accepted by the City on July 7, 2009. The design of the remaining seven parks from the list is complete; however, due to further field investigations of the prevailing conditions at the seven remaining parks by staff, the Consultant needs to update the design to match these conditions.
- D. At the request of CITY, in June 22, 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 Paragraph 1 of the Agreement.

CITY OF TRACY
Amendment 1 to Professional Services Agreement
Playground Renovation Project, Phase II, CIP 78063, 78106, & 78118
(Formerly CIP 7891 & 7897)
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CONSULTANT shall perform the tasks described in Exhibit "A" attached hereto and incorporated herein by reference.

The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: **Robert T. Tanaka**. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "B," of the Agreement, nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.

B. 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 "C," of the Agreement incorporated herein by reference. CONSULTANT's fee for this Amendment No. 1 is Not to Exceed TWENTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$22,500). 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 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

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Amendment 1 to Professional Services Agreement
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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.

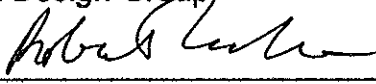
IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY

By: _____
Brent H. Ives
Title: Mayor
Date: _____

CONSULTANT

Tanaka Design Group

By:  _____
Robert T. Tanaka
Title: President
Date: AUGUST 13, 2010
Fed. Employer ID No.
573-25-4756

Attest:

By: _____
Sandra Edwards
Title: City Clerk
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form

By: _____
Daniel G. Sodergren
Title: City Attorney
Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

The scope of work for this project is to provide professional expertise and resources needed to achieve the City of Tracy's goal of renovating existing playground facilities, including improving the ADA access and drainage at nine playgrounds located throughout the city. The playgrounds are located at the following parks:

1. George Kelly Park
2. Dorothy Zanussi Park North
3. Dorothy Zanussi Park South
4. Mt. Oso Park
5. Mt. Diablo Park
6. Valley Oak Park
7. Kit Fox Park
8. Golden Spike Park
9. Dr. Powers Park

TASK NO. 1 – PROJECT PROGRAMMING and CONCEPTUAL DESIGN

SPECIFIC TASKS:

1. Attend a project kick-off meeting (Meeting No. 1) with the City's Project Manager and other staff to discuss specific issues and concerns related to the project. The focus of the meeting will be on Dr. Powers Park, which has not been designed.
2. Review available data supplied by the City such as existing conditions plans, record drawings, plot plans and surveys of the site and previously prepared design drawings or documents.
3. Conduct field investigations of the playground area at Dr. Powers Park in order to become familiar with the existing conditions and to observe any additional opportunities and constraints as related to the proposed improvements. Verify existing conditions such as the conditions of adjacent existing trees or utilities that may be impacted by the future improvements.
4. Conduct survey work at Dr. Powers Park only, as necessary to generate an accurate topographic map.
5. Coordinate with the City to verify location of underground facilities or easements. Confirm permit approval requirements.
6. Receive changes or refinements to the City's preference on the style and content of the play areas, or any other design information reflecting desired elements from the Project Manager and report any new findings or issues that require further dialogue.

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7. Prepare draft Conceptual Site Plans for the playgrounds at Dr. Powers Park and Dorothy Zanussi Park South, and present them to the Project Manager at a meeting (Meeting No. 2) for review and feedback.
8. Develop a preliminary Construction Cost Estimate for the proposed designs.
9. Revise, modify or refine the draft Conceptual Site Plans to reflect City comments. Submit Final Conceptual Site Plans, including Construction Budget.
10. Begin preparation of base sheets for each site.

Note: the following tasks are not included under this proposal:

- Coordinate with the City to verify location of underground facilities or easements.
- Confirm permit approval requirements.
- At Dorothy Zanussi Park South, where the current design will be revised to include the addition of a swing set, it is assumed that the current design will remain intact and in place, and that only the addition of space to accommodate the installation of the new swing set is required.
- Attendance of meetings with the City in excess of those identified above.

Total Service Fee for Task No. 1: \$8,000

TASK NO. 2 - PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E)

Preparation of bid documents will begin after approval of the Final Conceptual Site Plan. We anticipate submitting in-progress documents that include plans, specifications and cost estimates at appropriate and predetermined stages for review and approval. Anticipated bid documents and drawings are as follows:

SPECIFIC TASKS:

1. Prepare PS&E, which will include:
 - a. Cover Sheet.
 - b. Existing Conditions and Demolition Plans.
 - c. Site Construction Plans, which will include proposed grades and elevations.
 - d. Construction Details.
 - e. Technical Specifications. Prepare Technical Specifications for incorporation into City's boiler plate section.
 - f. Construction Cost Estimates for each playground.

Note: All referenced playgrounds, except the new playground at Dr. Powers Park and the expanded playground at Dorothy Zanussi Park South have already been designed and documented and will only receive modifications as identified in Tasks 11 through 13 below. It is assumed that the site and playground designs will not change for these playgrounds.

2. Prepare and submit five copies of documents (PS&E) to City staff for their review and comments at 50% completion phase.

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3. Attend meeting (Meeting No. 3) with project manager to receive comments, answer questions and receive directions to proceed with the project.
4. Prepare and submit five copies of documents (PS&E) to City staff for their review and comments at 90% completion phase.
5. Attend meeting (Meeting No. 4) with project manager to receive comments, answer questions and receive directions to proceed with the project.
6. Prepare and submit five copies of documents (PS&E) to City staff for their review and comments at 100% completion phase.
7. Attend meeting (Meeting No. 5) with project manager to receive comments, answer questions and receive directions to proceed with the project.
8. Prepare and submit final bid documents to City in hardcopy and Word and Autocad format.
9. Prepare final construction cost estimates.
10. Prepare conform drawings which include incorporations of all addendums into the final construction documents.

The following items (Nos. 11-13) are specific tasks requested by the City:

11. At All Playgrounds:

- a. Existing subgrade and surface elevations, where information is available, will be added to the Demolition Plans.
- b. Where new ramps occur, the renovation of adjacent existing landscaping must include the installation of at least four (4) irrigation sprinkler heads. A general note will be added to the drawings that where a ramp is installed in an existing landscape area, new sprinkler heads must be installed to match the existing conditions. In addition, where lawn repair is required, only sod lawn must be installed (no seeded lawn).
- c. Where benches are installed near lawn, they will be located 12" from the edge of lawn.
- d. Where existing drainage lines are not functioning, the contractor will be required to open and unclog them.
- e. The legends included on the drawings will be uniform and consistent, where describing existing native surface, existing finished grade of top of play surface material, proposed native subgrade, and proposed finished grade of the play cover resilient surface.

12. At Golden Spike Park:

- a. Reroute drainage pipes where conflicting with the proposed improvements to allow for the existing drainage system upstream of the playground to function.
- b. Remove existing concrete pad under existing rubber surface.
- c. Remove existing rubber surface.

13. At Zanussi Park:

- a. Remove existing concrete pad under existing rubber surface.

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- b. Remove existing concrete curb that is monolithic with the concrete pad under existing rubber surface.
 - c. Remove existing rubber surface.
 - d. Redesign and expand the tot lot area as necessary to install a swing set.
14. At Doctor Powers Park:
- a. Prepare a design that meets the City's Construction Budget of \$50,000.
 - b. Surrounding pavement is cracked and should be repaired or replaced if the budget allows it.

Note: the following tasks are not included under this proposal:

- o Attending City Council or Commission meetings.
- o Attending meetings with City in excess of those identified above.
- o Coordination and preparation of permit applications.
- o Preparation of itemized bid schedule. Bidding will be on a lump sum basis.
- o Preparation of Construction Documents that exceed the City's construction budget for Doctor Powers Park by more than 30%.
- o Mass printing of any documents.

Total Service Fee for Task No. 2: \$12,500

TASK NO. 3 – BID PERIOD SERVICES

This service entails assisting the City in selecting a qualified bidder for construction, and then following an award of contract.

1. Assist the City in responding to questions posed by prospective bidders.
2. Prepare Addenda as required.
3. Assist City staff with the preparation of addendums showing drawing clarifications.
4. Assist the City in reviewing submitted bids for compliance with the provisions of the General Requirements for Submittal.

Note: the following tasks are not included under this proposal:

- o Attendance of meetings during the Bid period.

Total Service Fee for Task No. 3: \$500

TASK NO. 4 - CONSTRUCTION SERVICES

This phase provides assistance to City staff during construction to ensure compliance with the intent of the contract documents.

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SPECIFIC TASKS:

1. Assist the City in processing change orders, responding to the contractor's requests for information, reviewing shop drawings and submittals. Submittals will be reviewed and returned to the City within four (4) working days.
2. Revise set to "as-built" based on contractor's record documents. Drawings will reflect only the information added to the plans by the contractor, and will be printed on paper and wet stamped. One (1) hard copy in addition to soft copies on disc, in pdf and tif formats will be submitted.

Note: the following tasks are not included under this proposal:

- o Attendance of meetings or site visits before, during and after the construction period.
- o Preparation of punch lists.

Total Service Fee for Task No. 4: \$1,500

TOTAL SERVICE FEE (including reimbursable expenses) FOR PROJECT: \$22,500

1. SCHEDULE OF WORK

We assume that the work will begin immediately upon receiving an authorized agreement. Task No. 1 will be completed within 6 to 8 weeks of receiving authorization to proceed with the services. Task No. 2 will be completed as follows:

- o 50% PSE: 6 to 8 weeks upon receiving approval of Task No. 1 products.
- o 90% PSE: 4 to 6 weeks upon receiving comments on the 50% PSE submittal.
- o 100% PSE: 2 to 3 weeks upon receiving comments on the 90% PSE submittal.
- o Final PSE: 1 to 2 weeks upon receiving comments on the 100% PSE submittal.

End of Exhibit "A"

EXHIBIT "B"

HOURLY RATES

The following is a summary of the proposed Consultant Team:

TANAKA DESIGN GROUP

Robert Tanaka, principal

Robert Tanaka will coordinate all required work for this contract. Mr. Tanaka will be the principal-in-charge and initial contact person between the City and the consultant team. He will attend meetings as required.

Victoria Ngo, associate

Ms. Victoria Ngo will be the project designer, and will attend meetings as required. She will be the contact person as the project develops into the documentation phase of work.

WARD SURVEYING, SURVEYORS

Mr. Joe Ward, Principal: surveying

Mr. Ward will the Dr. Powers Park site and prepare the required topographic maps that will convey the existing conditions.

End of Exhibit "B"

EXHIBIT "C"
HOURLY RATES

The following is a summary of the hourly rate schedules for the proposed Consultant Team:

HOURLY RATE SCHEDULE for TANAKA DESIGN GROUP:

<u>POSITION</u>	<u>RATE/HOUR</u>
Principal	\$125.00
Associate	\$105.00
Staff Landscape Architect	\$ 95.00
Draftsperson	\$ 90.00
Clerical	\$ 50.00

REIMBURSABLE EXPENSES: Actual expenditures made by Tanaka Design Group for the project are reimbursable at cost plus 10% for coordination and processing, and will be billed in addition to professional services fees. Examples of reimbursable expenses are travel in connection with the project, vehicular mileage (at \$0.35 per mile for travel beyond 60 mile radius of San Francisco), long distance telephone calls or facsimile transmissions, reproduction costs, postage, delivery, photography, model building, rental or purchase of special equipment and materials, and fees paid for securing approval of authorities having jurisdiction of the project.

REIMBURSABLE SUBCONSULTANTS: Professional service fees and reimbursable expenses of authorized subconsultants of the project will be reimbursed at cost plus 10% for coordination and processing. Hourly rates for the proposed subconsultants are as follows:

<u>SUBCONSULTANT</u>	<u>RATE/HOUR</u>
Joe Ward	\$105.00
Assistant to Joe Ward	\$ 90.00

End of Exhibit "C"

RESOLUTION _____

APPROVING AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH TANAKA DESIGN GROUP (TDG) TO PROVIDE PROFESSIONAL SERVICES FOR REVISING AND COMPLETING THE PLANS, SPECIFICATIONS, AND COST ESTIMATES FOR THE PARKS PLAYGROUND RENOVATION PROJECT, PHASE II - CIPs 78063, 78106, AND 78118 (FORMERLY PLAYGROUND RENOVATION PROJECT, PHASE I - CIP 78091 AND 78097), AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, On June 5, 2007, the City Council by Resolution 2007-112, authorized a Professional Services Agreement with Tanaka Design Group of San Francisco, California, on a time and material basis, for an amount not to exceed \$78,900, and

WHEREAS, On July 7, 2009, the playground renovation construction of the first five parks was completed and accepted by the City, and

WHEREAS, The preliminary design of the play areas and ADA access ramps at the remaining seven parks is complete; however, similar improvements are needed immediately at Dr. Powers Park which was not part of the 12 parks scheduled for this project, and

WHEREAS, Additional improvements are needed to be designed and constructed in Zanussi Park, and

WHEREAS, Additional services are required from the consultant to complete the above work which involves site topographic surveys and design, and

WHEREAS, Tanaka Design Group has submitted a proposal to complete the required work for a not to exceed amount of \$22,500, and

WHEREAS, There will be no fiscal impact to the General Fund. Adequate funding is available in the General Projects (F301) currently available in CIPs 78063, 78106, and 78118, to cover the design, construction, and this amendment to the project;

NOW, THEREFORE BE IT RESOLVED, That City Council approves Amendment 1 to the PSA with Tanaka Design Group of San Francisco, California, for providing professional services for revising and completing the plans, specifications and cost estimates for the Parks Playground Renovation Project, Phase II – CIPs 78063, 78106, and 78118, in an amount not to exceed \$22,500, and authorizes the Mayor to execute the Amendment.

* * * * *

Resolution _____

Page 2

The foregoing Resolution _____ was adopted by the City Council on the 7th day of September 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

AWARD A CONSTRUCTION CONTRACT TO G & G BUILDERS OF LIVERMORE, CALIFORNIA, FOR THE KENNER PARK RESTROOM REHAB & PATH RESURFACING PROJECT - CIP 78125, AUTHORIZE TRANSFER OF FUNDS IN THE AMOUNT OF \$119,770 FROM THE PLAYGROUND EQUIPMENT REPLACEMENT PROJECT - CIP 78118, TO KENNER PARK RESTROOM REHAB & PATH RESURFACING PROJECT - CIP 78125, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

The City Council is requested to award a construction contract to install a prefabricated restroom building to replace the existing deteriorated restroom and walkways to meet Americans with Disabilities Advantage (ADA) requirements.

DISCUSSION

The Kenner Park restroom is maintenance-intensive and not ADA compliant.

The scope of work for this project originally provided installation of an ADA compliant 2-unit pre-engineered and pre-fabricated restroom building including concrete masonry unit walls, metal roof, stainless steel fixtures, and site furnishings with a total budget of \$223,000. During the project design process it was noticed that the existing walkway leading to the restroom also did not comply with the latest ADA requirements. The scope of work of this project was revised to include replacement of walkways. In addition, construction of a pre-fabricated shade structure with a picnic area was also added in the project scope.

The plans and specifications were prepared in-house by engineering staff in collaboration with the Public Works Department.

The project was advertised for competitive bids on May 17 and May 24, 2010. Five bids were received and publicly opened at 2:00 p.m. on June 10, 2010, with the following results:

Contractor	Base Bid
G & G Builders	\$216,778.00
BC Construction	\$239,727.02
McNabb Construction, Inc.	\$244,300.00
Pleasanton Engineering Contractors, Inc.	\$270,000.00
Warcon Construction	\$307,982.00

G & G Builders' bid is the lowest. Their bid is responsive and the bidder is responsible. G & G Builders has good references and has completed similar projects for other agencies.

The total construction cost of this project, if awarded to G & G Builders, is as follows:

Design Cost	\$51,000
Construction contract amount	\$216,778
Construction management, testing, permits, inspection and design support	\$50,000
Contingency	\$25,000
 Total Project Cost	 \$332,778
 Original Budget in CIP 78125	 \$223,000

Additional funding of \$119,770 is needed to complete construction of this project due to the increased scope of work. Staff is recommending transferring funds in the amount of \$120,000 from the Playground Equipment Replacement Project - CIP 78118, to fund this project. Due to current economic conditions, the bids for the Playground Equipment Replacement Project are expected to be lower than the estimated amounts and will make up for the loss of funds transferred to CIP 78125.

If a contract is awarded to G & G Builders, it is anticipated that the restroom would be fabricated and erected on site by November 2010.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. This is an approved CIP project and funds have been appropriated. However the transfer of funds in the amount of \$119,770 from the Playground Equipment Replacement Project - CIP 78118, to the Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, will be required. With this transfer, sufficient funding of \$456,000 will remain available to complete playground equipment replacements at seven parks.

RECOMMENDATION

That City Council, by resolution, award a construction contract to G & G Builders of Livermore, California, in the amount of \$216,778 for the Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, authorize the transfer of funds in the amount of \$119,770 from the Playground Equipment Replacement Project - CIP 78118, to the Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, and authorize the Mayor to execute the contract.

Prepared by: Moheb Argand, Associate Engineer
Reviewed by: Kuldeep Sharma, City Engineer
Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill, Jr., City Manager

RESOLUTION _____

AWARDING A CONSTRUCTION CONTRACT TO G & G BUILDERS OF LIVERMORE, CALIFORNIA, FOR THE KENNER PARK RESTROOM REHAB & PATH RESURFACING PROJECT - CIP 78125, AUTHORIZE TRANSFER OF FUNDS IN THE AMOUNT OF \$119,770 FROM THE PLAYGROUND EQUIPMENT REPLACEMENT PROJECT - CIP 78118, TO KENNER PARK RESTROOM REHAB & PATH RESURFACING PROJECT - CIP 78125, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, The Kenner Park restroom is maintenance-intensive and not ADA compliant, and

WHEREAS, The scope of work for this project originally provided installation of an ADA compliant 2-unit pre-engineered and pre-fabricated restroom building including concrete masonry unit walls, metal roof, stainless steel fixtures, and site furnishings with a total budget of \$223,000, and

WHEREAS, During the project design process it was noticed that the existing walkway leading to the restroom also did not comply with the latest ADA requirements, and

WHEREAS, In addition, construction of a pre-fabricated shade structure with a picnic area was also added in the project scope, and

WHEREAS, The project was advertised for competitive bids on May 17 and May 24, 2010, and five bids were received and publicly opened at 2:00 p.m. on June 10, 2010, and

WHEREAS, G & G Builders' bid is the lowest. Their bid is responsive and the bidder is responsible. G & G Builders has good references and has completed similar projects for other agencies, and

WHEREAS, The total construction cost of this project, if awarded to G & G Builders, is as follows:

Design Cost	\$51,000
Construction contract amount	\$216,778
Construction management, testing, permits, inspection and design support	\$50,000
Contingency	\$25,000
Total Project Cost	\$332,778

WHEREAS, Additional funding of \$119,770 is needed to complete construction of this project due to the increased scope of work, and

WHEREAS, Staff is recommending transferring funds in the amount of \$120,000 from the Playground Equipment Replacement Project - CIP 78118, to fund this project, and

WHEREAS, There is no impact to the General Fund. This is an approved CIP project and funds have been appropriated. However the transfer of funds in the amount of \$119,770 from CIP 78118 to CIP 78125 will be required;

NOW, THEREFORE BE IT RESOLVED, That City Council award a construction contract to G & G Builders of Livermore, California, in the amount of \$216,778 for the Kenner Park

Resolution _____

Page 2

Restroom Rehab & Path Resurfacing Project - CIP 78125, authorize the transfer of funds in the amount of \$119,770 from the Playground Equipment Replacement Project - CIP 78118, to the Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, and authorize the Mayor to execute the contract.

* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 7th day of September 2010, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

September 7, 2010

AGENDA ITEM 1.D

REQUEST

APPROVE RESPONSES TO THE 2009/10 SAN JOAQUIN COUNTY GRAND JURY REPORT ON THE PUBLIC APPOINTMENT PROCESS (CASE NO. 1009) AND THE INFORMATION SERVICES (CASE NO. 0609), AND AUTHORIZE THE MAYOR TO SIGN THE RESPONSES

EXECUTIVE SUMMARY

The 2009/10 San Joaquin County Grand Jury reviewed the public appointment process for various public boards, commissions and committees, as well as the information services practices of Tracy and other incorporated cities. Two reports were published which included the Grand Jury's findings and recommendations. The reports were received by the City on June 22, 2010, and responses are due within 90 days of the report date, which is September 14, 2010. Exhibits A and B describe the City's responses to the Grand Jury's findings.

DISCUSSION

The 2009/2010 Grand Jury reviewed the public appointment process (Case No. 1009) of various public boards, commissions and committees. The Grand Jury sent out surveys to members of school districts, the incorporated cities of San Joaquin County and the Board of Supervisors. Follow up interviews were conducted with the Board of Supervisors and members of various boards, commissions and committees. City and county websites were reviewed for information regarding member qualifications and responsibilities. Board, commission and committee policies were studied to gain a better understanding of the duties, meeting frequencies, and terms of duration of the members of the various boards.

In June 2010, the Grand Jury published a report on the review which included six findings and six recommendations. California Penal Code sections 933 and 933.05 require specific responses to all findings and recommendations contained in the report be submitted to the Presiding Judge of the Superior Court from all jurisdictions named on the list, including the City of Tracy. The findings and recommendations for Grand Jury Case No. 1009, together with the City's responses are attached as Exhibit A.

City Council had previously requested an update of the process staff uses to recruit for City boards and commissions. This report shall also serve as that update.

The 2009/10 Grand Jury also reviewed city policies for information services for the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy (Case No. 0609). The goal was to ensure city websites are being properly implemented and managed, so that helpful information and relevant documents are available to residents and businesses in an efficient manner.

The Grand Jury reviewed analytical software reports, website policy and budget related documents and published a report on the process which included four findings and four recommendations. The findings and recommendations for Grand Jury Case No. 0609, together with the City's responses are attached as Exhibit B.

FISCAL IMPACT

None.

RECOMMENDATION

That the City Council, by resolution, approves the City's response to the San Joaquin Grand Jury Case No. 1009 and Case No. 0609, and authorizes the Mayor to sign the responses.

Prepared by: Carole Fleischmann, Assistant City Clerk
Reviewed by: Maria Hurtado, Assistant City Manager
Approved by: Leon Churchill, Jr., City Manager

Attachments: Exhibit A – Responses to Grand Jury Case No. 1009
Exhibit B – Responses to Grand Jury Case No. 0609

RESOLUTION _____

APPROVING THE RESPONSE TO THE SAN JOAQUIN COUNTY GRAND JURY REPORT, CASE NO 1009, ON THE PUBLIC APPOINTMENT PROCESS AND AUTHORIZING THE MAYOR TO SIGN THE RESPONSE

WHEREAS, In 2009/10 the San Joaquin County Grand Jury investigated the public appointment process for various public boards, commissions and committees throughout the County, and

WHEREAS, The Grand Jury published a report on the investigation which included six findings and six recommendations, and

WHEREAS, The Grand Jury requested responses from 15 jurisdictions within San Joaquin County, including the City of Tracy.

NOW, THEREFORE, BE IT RESOLVED, That Tracy City Council approves the response to the findings and recommendations of San Joaquin County Grand Jury Case No. 1009, attached as Exhibit A and authorizes the Mayor to sign the response.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 7th day of September 2010, by the following vote:

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

Mayor

ATTEST:

City Clerk

EXHIBIT A

The Honorable William J. Murray, Jr.,
Presiding Judge
San Joaquin County Superior Court
222 East Weber Avenue
Stockton, CA 95202

Re: Response to Grand Jury Final Report – Case No. 1009

Dear Judge Murray:

This letter contains the responses and comments to the above-referenced Grand Jury Report issued in June 2010, in accordance with California Penal Code section 933(c).

1. **Recommendation:** Develop or update policies and procedures for appointment of BCC members.

Response: Resolution 2004-152 (attached) adopted May 18, 2004, establishes the selection process for all City boards and commissions and defines the City's residency requirements. Every applicant who fills out an application form is invited to interview with a City Council subcommittee. The subcommittee is provided with a list of approximately 20 questions to assist in determining the most suitable candidate. The list of questions was updated in April of 2010. Questions are loosely divided into three groups. Initial questions relate to an applicant's interest, experience and training, followed by questions specific to each board or commission's purview. Final questions relate to conflict of interests, ethics and residency requirements. While not all questions are posed to all applicants, the final questions are mandatory and are designed to ensure that successful applicants are aware of the requirements relating to AB 1234, the annual filing of the Form 700, and the City's residency requirements. The Council subcommittee submits their recommendation to the full Council at a regular City Council meeting for final appointment. The Council also has the option to create an eligibility list. The list is kept on file for one year and is used to fill vacancies for specific boards or commissions which occur during that time. There is no limit to the number of terms members may serve; however, at the end of each term members who wish to reapply are required to fill out updated application forms and complete the interview process.

2. **Recommendation:** Provide and document Brown Act and fiduciary responsibility training to all appointees.

Response: Brown Act training is provided for all of the City's boards and commissions, with the exception of the Youth Advisory Commission. Following is a list of the City's boards and commissions together with the date of the most recent Brown Act training:

COMMISSION/ BOARD	TRAINING DATE
Planning Commission	Individual training is provided to each commissioner by the City Attorney's office following appointment
Building Board of Appeals	April 27, 2010
Parks Commission	April 3, 2008
Tracy Arts Commission	March 9, 2010
Transportation Advisory Commission	February 11, 2010

In addition, all members of the City's boards and commissions, with the exception of the Building Board of Appeals, are required to complete AB 1234 training within one year of appointment and once every two years thereafter.

Board and commission members do not exercise control over City monies and, for the most part, act as advisory bodies to the City Council only. As such, fiduciary responsibility training is not necessary.

3. **Recommendation:** Utilize alternative sources to advertise vacant positions; i.e. Twitter, movie theaters, television, radio, announcements at public events.

Response: Interest cards are available from the website and are kept for one year. Notices of vacancies are posted on the City's website, on Channel 26, and at the Tracy library. Vacancy notices are sent to the Tracy Press, The Record, and the Tri-Valley Herald for local interest stories. Subscribers to Face Book and Twitter are automatically notified when notices are posted to the website. In addition, vacancy notices are automatically mailed to retiring members and to all parties who have submitted interest cards.

4. **Recommendation:** Annually review appointee performance and take appropriate action.

Response: Currently, board and commission members are evaluated at the end of their term only if they choose to reapply and complete the interview process. Members are evaluated on an annual basis based on attendance, compliance

with required training which includes AB 1234 and submittal of Form 700, Statement of Economic Interests.

5. **Recommendation:** Develop policy and procedures defining the process for appointee removal.

Response: Resolution 2009-191 (attached) adopted October 20, 2009, provides standard bylaw language for all City boards and commissions regarding attendance, and outlines the process for removing an appointee who fails to attend four regular meetings in any calendar year.

Resolution 2010-022 (attached) adopted March 2, 2010, outlines the process for terminating an appointee who fails to comply with AB1234 training or file a Form 700, Statement of Economic Interests, in a timely manner .

Ordinance 1146 (attached) adopted on March 16, 2010, clarifies the status of Planning Commissioners and outlines a process for termination.

- 6A. **Recommendation:** Develop criminal and credit check standards for appointees.

Response: Disagree. Board and commission members do not exercise control over City monies and, for the most part, act as advisory bodies to the City Council only. As such, criminal or background checks are not necessary.

- 6B. **Recommendation:** Perform criminal and credit background checks on all appointees prior to appointment.

Response: Disagree. Board and commission members do not exercise control over City monies and, for the most part act as advisory bodies to the City Council only. As such, criminal or background checks are not necessary.

Sincerely,

Mayor Brent H. Ives
on behalf of the Tracy City Council

cc: Members of the City Council
City Manager
Director of Finance and Administrative Services
City Attorney

RESOLUTION 2004-152

REVISING RESOLUTION NO. 2004-089 ESTABLISHING THE COUNCIL SELECTION PROCESS, AND DEFINING RESIDENCY REQUIREMENTS, FOR APPOINTEE BODIES (GOVERNMENT CODE §54970 ET SEQ. LOCAL APPOINTEE OFFICERS)

WHEREAS, Council Policy D-5 was adopted by Resolution 2002-434 on October 15, 2002, which established a selection process for appointee bodies, and

WHEREAS, A variety of terms are used to define residency for the purposes of eligibility for appointment to various Appointee bodies and a method to verify residency has not been established, and

WHEREAS, Council wishes to define the terms and identify methods by which to verify residency and to incorporate those definitions into the selection process, and

WHEREAS, The definitions established herein shall apply to all boards and commissions to which the City Council appoints members unless the Bylaws of the board or commission specifically define otherwise, and

WHEREAS, Revisions to Resolution No. 2004-089 were considered and approved by the City Council on May 18, 2004 as set forth below.

NOW, THEREFORE, the Tracy City Council hereby resolves as follows:

A. SELECTION PROCESS FOR APPOINTEE BODIES:

1. On or before December 31st of each year, the clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
 - a. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
 - b. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
 - c. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
3. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final

appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.

4. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
 - a. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
 - b. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 3.
5. The council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:
 - a. Mayor (or designee) and a selected Council member will review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
 - b. If the interview subcommittee determines there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that occur in the following twelve (12) months.
 - c. At the interview subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
6. In the event there are not two or more applicants than vacancies on any board, commission or committee, the filing deadline may be extended by staff.
7. An individual already serving on a City of Tracy board, committee or commission may not be appointed to serve on an additional City of Tracy board, committee, or commission concurrently.

B. DEFINITION OF RESIDENCY REQUIREMENTS:

1. The following definitions shall be used to determine whether residency requirements are met for boards and commissions to which the Tracy City Council appoints members:
 - a. Tracy Planning Area means the geographical area defined in the City of Tracy General Plan and any amendments thereto.
 - b. City of Tracy means within the city limits of the City of Tracy.

- c. Citizen means a resident of the City of Tracy.
 - d. Tracy School District means the geographical area served by the Tracy Unified School District.
 - e. Sphere of Influence shall be the geographical area approved by the Local Agency Formation Commission (LAFCo) of San Joaquin County and any amendments thereto.
2. Residency, as defined above and as set forth in the applicable bylaws for each board or commission, shall be verified annually by the City Clerk. The residency must be verifiable by any of the following means:
- a. Voter registration,
 - b. Current California Driver's License or Identification,
 - c. Utility bill information (phone, water, cable, etc.),
 - d. Federal or State tax returns.
3. Members of boards or commissions shall notify the City Clerk in writing within thirty (30) days of any change in residency. If the change in residency results in the board member or commissioner no longer meeting the residency requirements, the member shall tender their resignation to the City Clerk who shall forward it to the City Council.

The foregoing Resolution 2004-152 was passed and adopted by the Tracy City Council on the 18th day of May, 2004, by the following vote:

AYES: COUNCIL MEMBERS: HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY

NOES: COUNCIL MEMBERS: NONE


ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk

RESOLUTION 2009-191

PROVIDING STANDARD BYLAW LANGUAGE FOR ALL CITY OF TRACY COMMISSIONS REGARDING ATTENDANCE

WHEREAS, On October 7, 2003, the City Council adopted a standard set of bylaws for all City commissions and committees; and

WHEREAS, Pursuant to Council direction, commissions have the opportunity to request modifications to these standard bylaws; and

WHEREAS, Currently, the City of Tracy has five commissions with bylaws, which provide language regarding attendance with inconsistencies relative to attendance requirements.

NOW, THEREFORE, BE IT RESOLVED, That the City Council amends the bylaws of all City of Tracy Commissions and Committees to provide the following standard language for all regarding attendance:

"If a member of _____ Commission fails to attend four regular meetings in any calendar year, his or her position on the _____ Commission shall automatically become vacant and the staff liaison shall so inform the City Clerk. Absences may not be excused; however, a commissioner may request a leave of absence as outlined in these bylaws.

For quorum confirmation, a member who is unable to attend a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting."


The foregoing Resolution 2009-191 was passed and adopted by the City Council of the City of Tracy on the 20th day of October, 2009, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, TOLBERT, TUCKER, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: MACIEL

ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk

RESOLUTION 2010-022

ESTABLISHING REQUIREMENTS RELATING TO STATE MANDATED ETHICS TRAINING (AB 1234) AND FILING OF STATEMENTS OF ECONOMIC INTEREST (FORM 700) FOR CITY BOARDS, COMMISSIONS, AND COMMITTEES AND AMENDING RESOLUTIONS 2004-016, 2004-034, 2007-120, AND 2009-198

WHEREAS, The City Council finds that it is important for members of City boards, commissions, and committees to timely complete state mandated ethics training (AB 1234) and timely file Statements of Economic Interest (Form 700); and

WHEREAS, The City Council wishes to establish policies that ensure timely compliance with these requirements.

NOW THEREFORE, BE IT RESOLVED, that:

1. Members of all City boards, commissions, and committees are subject to the following requirements:

A. State Mandated Ethics Training (AB 1234)

- The City Clerk's Office will monitor compliance with AB 1234.
- If a member of a City board, commission, or committee, who is required to complete AB 1234 training, does not do so in a timely manner the City Clerk's Office will send two written notices at least 10 days apart to the member.
- If the member does not complete the required training, and provide proof of compliance to the City Clerk's Office, within 30 days of receiving the second written notice, his or her appointment will automatically terminate.

B. Statements of Economic Interest (Form 700)

- The City Clerk's Office will monitor compliance with state and City Form 700 filing requirements.
- If a member of a City board, commission, or committee, who is required to file a Form 700, does not do so in a timely manner, the City Clerk's Office will send two written notices at least 10 days apart to the member.
- If the member does not file a Form 700 with the City Clerk's Office within 30 days of receiving the second written notice, his or her appointment will automatically terminate.

2. The following resolutions shall be amended to reference the requirements contained in section 1: 2004-016 (Planning Commission Bylaws), 2004-034 (Parks and Community Services Commission Bylaws), 2007-120 (Transportation Advisory Commission Bylaws), and 2009-198 (Tracy Arts Commission Bylaws).

The foregoing Resolution 2010-022 was passed and adopted by the Tracy City Council on the 2nd day of March 2010, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk

ORDINANCE 1146

AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING TITLE 10, CHAPTER 10.04, ENTITLED "PLANNING COMMISSION" TO DELETE SUBSECTION (e) OF SECTION 10.04.030 ENTITLED "MEETINGS" AND AMENDING SECTION 10.04.020 ENTITLED "CREATION OF PLANNING COMMISSION"

WHEREAS, Tracy Municipal Code Section 10.04.030, contains language that is inconsistent with City Council Resolution No. 09-191;

WHEREAS, Resolution 09-191 was intended to provide standard bylaw language regarding Commissioner attendance for all City Commissions,

WHEREAS, Deleting subsection (e) from Tracy Municipal Code Section 10.04.030 will result in the Planning Commission bylaws regarding attendance mirroring the language contained in Resolution 09-191, and

WHEREAS, Council may, from time to time, wish to further amend the standard bylaw language for all City Commissions to address automatic removal of Commissioners based on certain criteria.

NOW, THEREFORE, The City Council of the City of Tracy hereby ordains as follows:

SECTION 1: Subsection (e) of Tracy Municipal Code Section 10.04.030, entitled "Meetings." is hereby deleted in its entirety.

SECTION 2: Section 10.04.020 of the Tracy Municipal Code, entitled "Creation of Planning Commission." is hereby amended to read as follows:

"The Planning Commission of the City is hereby established and shall consist of five (5) members appointed by the Mayor with the approval of the Council. The members shall be citizens, not City officials or employees, of the City. The members shall serve at the pleasure of the Council. Members may be automatically terminated as may be set forth by City Council resolution. Otherwise, members may be terminated at any time by a majority vote of the entire Council. Unless subject to automatic termination, members shall first be notified in writing of the Council's intended consideration of their termination. Such members, upon a request to the Council within fifteen (15) days following their receipt of such notice, shall be entitled to a hearing before the entire Council prior to the Council's vote on their termination.

The members heretofore appointed shall complete the terms for which they were appointed, and their successors to such terms shall be appointed for terms of four (4) years, except in the case of unexpired portions of terms. If a vacancy shall occur otherwise than by an expiration of a term, it shall be filled by an appointment for the unexpired portion of such term."

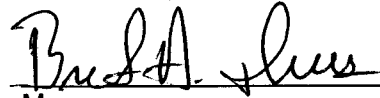
SECTION 3: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 4: This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

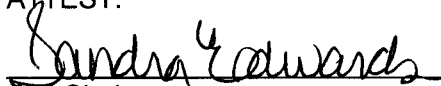
* * * * *

The foregoing Ordinance 1146 was introduced at a regular meeting of the Tracy City Council on the 2nd day of March, 2010, and finally adopted on the 16th day of March, 2010, by the following vote:

AYES:	COUNCIL MEMBERS: ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: NONE
ABSTAIN:	COUNCIL MEMBERS: NONE



Mayor

ATTEST:


City Clerk

RESOLUTION _____

APPROVING THE RESPONSE TO THE SAN JOAQUIN COUNTY
GRAND JURY REPORT, CASE NO. 0609, ON INFORMATION SERVICES
AND AUTHORIZING THE MAYOR TO SIGN THE RESPONSE

WHEREAS, In 2009/10 the San Joaquin County Grand Jury reviewed the information services practices of the City of Tracy along with other incorporated cities in San Joaquin County by requesting and reviewing analytical software reports, website policy and budget documentation, and

WHEREAS, The Grand Jury published a report on the process which included four findings and four recommendations, and

WHEREAS, The Grand Jury requested responses from the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and the City of Tracy.

NOW, THEREFORE, BE IT RESOLVED, That Tracy City Council approves the response to the findings and recommendations of the Grand Jury Case No. 0609, attached as Exhibit B and authorizes the Mayor to sign the response.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 7th day of September, 2010, by the following vote:

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

Mayor

ATTEST:

City Clerk

EXHIBIT B

The Honorable William J. Murray, Jr.,
Presiding Judge
San Joaquin County Superior Court
222 East Weber Avenue
Stockton, CA 95202

Re: Response to Grand Jury Final Report – Case No. 0609

Dear Judge Murray:

This letter contains the responses and comments to the above-referenced Grand Jury Report issued in June 2010 in accordance with California Penal Code section 933(c).

1. **Recommendation:** Cities implement analytical software for their websites and monitor the reports generated.

Response: The City of Tracy uses software (Google Analytic) that can identify how and how much the City's website is being utilized. This information is available for City management to make decisions regarding operation and content on the website

2. **Recommendation:** Cities draft and institute a policy to govern the City's website's external content. This policy must be revisited annually to make changes due to market conditions

Response: The City of Tracy currently has a website policy which addresses external links. It can be located at: http://www.ci.tracy.ca.us/site_policy/ and is attached.

3. **Recommendation:** Cities implement a specific line item in the annual budget proposal that addresses maintenance, upkeep and future upgrades of city website

Response: The City of Tracy is just completing a \$75,000 revamping of the City's website. Per City budgeting practices, this upgrade was budgeted as a Capital Improvement Project.

4. **Recommendation:** Cities implement an annual review of each department represented on the city website that includes a departmental evaluation of their documents and the relevance to the users of the city government website

Response: As part of the City of Tracy's new website, all new content will be presented. It is desired to keep information on the City's website up to date as time and resources permit.

Sincerely,

Mayor Brent H. Ives
on behalf of the Tracy City Council

cc: Members of the City Council
City Manager
Director of Finance and Administrative Services
City Attorney



Website Policy

Website Information and External Links Procedure

Section 1: Purpose

The purpose of this procedure is to identify the types of information to be provided on the City of Tracy official website and to identify the acceptable criteria for establishing external Internet website links from such website.

Section 2: Procedure

- In establishing and maintaining its official website, the City of Tracy is not, in any manner, creating a forum or other means by which public discourse, exchange of opinions, advertisement of commercial or non-profit businesses, or discussion on issues of any nature may occur. Rather, the City's website is maintained for the exclusive use and control of the City of Tracy such use and control including, but not being limited to, decisions on what content will be available on, or accessible from, the City's website. The sole and limited purpose of the City's website, and of any permitted external links from such website, is to provide non-political and non-religious factual information about

the City of Tracy and matters of general public interest as may be determined by the City, including listing commercial properties available for sale and/or lease within the City and various services and resources available to the general public within and around the City, or as may be available from other governmental agencies.

- The City of Tracy posts information, and establishes links to external websites, on the City's official website solely in conformance with this procedure.
- To avoid any perception that the City endorses or provides favorable treatment to any private person or business enterprise, no corporate or commercial logos are allowed except for those reasonably necessary to establish an Internet hyperlink to entities that provide, free of charge to the public, software, software services or content services required to process or display content on the City's website.
- Consistent with the foregoing, it is the City's procedure to limit external links to the following kinds of entities and organizations:
 - Local and regional economic development organizations that assist the City in promoting businesses throughout Tracy including the Tracy Chamber of Commerce and the Downtown Tracy Business Improvement Area;
 - Other governmental agencies;
 - Hospitals;
 - Museums, libraries, historical organizations and similar kinds of established, bona fide organizations that provide cultural resources to residents and visitors of the City;
 - Public and private, bona fide educational institutions as defined in Education Code section 210.1, or as described in Education Code section 66010(a) and (b), located within San Joaquin, Alameda, Stanislaus and Contra Costa Counties;
 - Entities and organizations whose primary purpose is to provide the location, telephone number and/or description of tourism events in the City of Tracy;
 - Sites providing maps, driving directions, and weather information;
 - Non-profit entities and organizations whose primary purpose is to provide access to legal or mediation services;
 - Non-profit entities and professional organizations whose primary purpose is to aid Cities and municipal employees in providing their services (e.g. the League of California Cities, California Society of Municipal Finance Officers, etc.);
 - Public Utilities and Private Utilities that have a franchise from the City by which the City regulates or monitors customer service issues;
 - Entities with which the City has an existing formal, contractual relationship through direct funding, co-partnership, or co-sponsorship on programs or events which are related to the City's governmental purpose; and,
 - Entities that provide, free of charge to the public, software, software services or content services required to process or display content on the City's website.
- Entities and organizations wishing to establish external links on the

City's official website must submit an application on a form provided by the Information Services division and shall provide all information necessary to verify the facts stated and as may be necessary to establish that the proposed link is in compliance with this procedure.

- The City of Tracy, through the City Manager's designee, shall have the right to:
 - Deny an external link application as to any person, business or organization when it is determined, following review of a complete application, that the entity or organization for which application is made does not meet the criteria set forth in this procedure;
 - Deny an external link application as to any person, business or organization which fails to provide all required information, or fails to provide truthful information;
 - Remove any external link if the nature of the organization or business to which the link relates no longer complies with the City's external link procedure;
 - To discontinue an external link at any time if the entities' websites provide or promote false, slanderous, illegal, immoral, or incorrect information at any time; or
 - To revise this procedure without prior notice when to do so is deemed to be in the best interests of the City.
- The City of Tracy official website, and this policy, shall be updated from time to time to incorporate improvements and to address changes in technology.
- The City of Tracy official website shall, in addition to posting this website procedure, provide the following warnings and disclaimers:
 - Unless a copyright is indicated, information on the City of Tracy website may be reproduced, published or used with the City of Tracy's permission. We request only that the City of Tracy be cited as the source of the information and that any photo credits, graphics or byline be similarly credited to the photographer, author or City of Tracy, as appropriate.
 - If a copyright is indicated on a photo, graphic, or any other material, permission to copy these materials must be obtained from the original source.
 - Using or modifying this site's materials and information for commercial or profit making purposes is prohibited and may violate the copyrights and/or other proprietary rights of the City of Tracy or third parties.
 - The following acts or activities are prohibited without prior, written permission from the City of Tracy:
 - modifying text, images or other web content from a City server; or
 - "mirroring" the City's information on a non-City server.
 - While the City attempts to keep its website accurate and timely, the materials and information contained on or obtained from the City of Tracy website, are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.

Information contained on this website, including information obtained from external links thereon, is provided without any representation of any kind as to accuracy, completeness, or quality of content and should be verified by the user.

- The City of Tracy is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the website and/or the materials contained on the site whether the materials contained on the website are provided by the City of Tracy, or by a third party.
- Messages transmitted via the Internet are not always reliable. Thus, although the City will make every effort to maintain the reliability of communications via the City's website, the City is unable to guarantee that any such communications will be received by the City. Therefore, if you want or need to communicate to the City, the City strongly recommends that you confirm the City's actual receipt of your communication via telephone. If you have any question as to the appropriate City official to whom a communication should be addressed, please contact the City Clerk's Office at (209) 831-6100.
- Communications made through this website shall in no way be deemed to constitute legal notice to, or public comment to, the City of Tracy or any of its agencies, officers, employees, agents, or representatives, with respect to any existing or potential claims or cause of action against the City or any of its agencies, employees, agents, or representatives, where notice to the City is required by any federal, state or local laws, rules, or regulations.



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AGENDA ITEM 1.E

REQUEST**AUTHORIZATION OF CONTRACT LABORATORY SERVICES FOR FISCAL YEAR 2010 - 2011**EXECUTIVE SUMMARY

The City contracts for laboratory services for testing not performed by the Public Works laboratory. This testing is more complex, specialized analysis and is needed for compliance with State and Federal regulatory mandates for water and wastewater systems.

DISCUSSION

The City contracts for laboratory services for testing not performed by the Public Works laboratory. This testing consists of the more complex, specialized analyses that are needed for compliance with State and Federal regulatory mandates for water and wastewater systems. The services provided by the contract laboratories include testing for metals, inorganic compounds, organic chemicals, and three-species bioassay testing using algae, daphnia, and rainbow trout to ensure there is no chronic toxicity in the treated wastewater. Contract laboratory services are also used to determine the amount of virus and pathogen reduction in the City's wastewater sludge.

A Request for Proposals was sent to various laboratories. Montgomery Watson Laboratories was the low bid for the majority of testing services. Other laboratories are being utilized for specific testing that is only provided by that laboratory, or could not be conducted by Montgomery Watson.

<u>LABORATORY NAME</u>	<u>ESTIMATED AMOUNT</u>	<u>METHODOLOGY</u>
Montgomery Watson Laboratories	\$100,000	Inorganics/Organics
Caltest ^A	\$ 40,000	Inorganics/Organics
Sierra Foothill Laboratory ^B	\$ 12,000	Chronic Bioassay
Alpha Analytical Laboratory ^C	\$ 10,000	Inorganics/Organics
BioVir Laboratories, Inc. ^D	\$ 6,000	Viruses/Pathogens Giardia/Cryptosporidium

Footnotes:

A – Caltest is the only laboratory in this area that meets the Method Detection Limit for mercury and methyl mercury.

B – Sierra Foothill is the only laboratory in this area that performs chronic toxicity testing.

C – Alpha Analytical is used for industrial pretreatment, storm, and soil analysis because Montgomery Watson does not do this testing.

D – BioVir is the only laboratory in this area that performs virus, pathogen, giardia, and cryptosporidium testing.

The term of these laboratory services is for one year.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. Funding is approved in the Fiscal Year 2010-11 operational budget for contract laboratory services.

RECOMMENDATION

That the City Council, by resolution, authorize contract laboratory services for Fiscal Year 2010 - 2011 to the recommended laboratories.

Prepared by Erich Delmas, Laboratory Supervisor

Reviewed by Kevin Tobeck, Director of Public Works

Approved by Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING CONTRACT LABORATORY SERVICES FOR FISCAL YEAR 2010 - 2011

WHEREAS, The City contracts for laboratory services for testing not performed by the Public Works laboratory and this testing consists of the more complex, specialized analyses that are needed for compliance with State and Federal regulatory mandates for water and wastewater systems, and

WHEREAS, Montgomery Watson Laboratories was the low bid for the majority of testing services, and

WHEREAS, Other laboratories are being utilized for specific testing that is only provided by that laboratory, and

<u>LABORATORY NAME</u>	<u>ESTIMATED AMOUNT</u>	<u>METHODOLOGY</u>
Montgomery Watson Laboratories	\$100,000	Inorganics/Organics
Caltest ^A	\$ 40,000	Inorganics/Organics
Sierra Foothill Laboratory ^B	\$ 12,000	Chronic Bioassay
Alpha Analytical Laboratory ^C	\$ 10,000	Inorganics/Organics
BioVir Laboratories, Inc. ^D	\$ 6,000	Viruses/Pathogens Giardia/Cryptosporidium

Footnotes:

A – Caltest is the only laboratory in this area that meets the Method Detection Limit for mercury and methyl mercury.

B – Sierra Foothill is the only laboratory in this area that performs chronic toxicity testing.

C – Alpha Analytical is used for industrial pretreatment, storm, and soil analysis because Montgomery Watson does not do this testing.

D – BioVir is the only laboratory in this area that performs virus, pathogen, giardia, and cryptosporidium testing.

WHEREAS, The term of these laboratory services is for one year, and

WHEREAS, There is no impact to the General Fund; funding is available in the approved budget, and

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes Contract Laboratory Services for Fiscal Year 2010 - 2011 to the recommended laboratories.

RESOLUTION _____

Page 2

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 7th day of September, 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

AWARD OF A PROFESSIONAL SERVICES AGREEMENT WITH MADILL ENTERPRISES, INC., DOING BUSINESS AS ADVANCED PROPERTY SERVICES, OF SACRAMENTO, CALIFORNIA, TO PROVIDE JANITORIAL SERVICES FOR VARIOUS CITY FACILITIES, AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE ANY EXTENSION AMENDMENTS

EXECUTIVE SUMMARY

Approval of a Professional Service Agreement to provide janitorial services for City facilities.

DISCUSSION

The City of Tracy has approximately 168,745 square feet of office and multi-use space that require janitorial services to properly maintain each facility. These services include standard cleaning such as vacuuming, sweeping, mopping, sanitizing, and trash collection, with the use of “green” practices and supplies.

The facilities being serviced are as follows:

<u>FACILITY:</u>	<u>SQUARE FOOTAGE</u>
City Hall & Council Chambers	40,700
Police Department	27,616
Community Center	9,030
Parks & Community Services	10,817
Lolly Hansen Senior Center	5,224
Support Services Building	9,116
Fire Administration Building	9,646
Tracy Library	17,058
Tracy Museum	9,654
Boyd Service Center Admin.	4,800
Tracy Transit - BSC	768
Modular Trailer 1 - BSC	2160
Modular Trailer 2 - BSC	1440
Annex Facility	6,000
Central Garage Office	160
Bessie Building	2,515
Old Jail House	1,077
Redevelopment Offices	1800
Tracy Transit Station	7,964
Sports Complex Meeting Room	<u>1,200</u>
TOTAL:	168,745 sq. ft.

Public Works requested proposals from seven janitorial service contractors. Proposals were received from four contractors and included:

Madill Enterprises, Inc. doing business as Advanced Property Services
Nova Commercial Co., Inc.
Pacific Building Care
Imperial Maintenance Services

After completing the review/evaluation process, Madill Enterprises, Inc. doing business as Advanced Property Services was found to be the most qualified. The City is currently utilizing their services at City Hall and the Fire Administration building, and found their services to be highly responsive and good quality, with competitive pricing. The agreement is for one year with the option to extend the agreement for up to four additional one-year terms up to a maximum of five years. The decision to exercise option years will be based on the performance of the contractor.

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 \$300,280.00 is approved in the Fiscal Year 2010-11 operational budget for contract janitorial services. The annual cost for the services provided by Madill Enterprises, Inc., doing business as Advanced Property Services, will not exceed \$210,294. An additional \$47,940 will be expensed for janitorial services for the Grand Theatre under a separate contract. The estimated annual cost savings utilizing contract janitorial services versus in-house staff is \$185,000.

RECOMMENDATION

That the City Council, by resolution, award janitorial services to Madill Enterprises, Inc., doing business as Advanced Property Services, of Sacramento, California, for Janitorial Services at Various City Facilities, authorize the Mayor to execute the Agreement, and authorize the City Manager to execute any extension amendments.

Prepared by: Bob Gravelle, Public Works Superintendent

Reviewed by: Kevin Tobeck, Director of Public Works

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

Attachment: PSA

CITY OF TRACY

PROFESSIONAL SERVICES AGREEMENT

FOR JANITORIAL SERVICES AT VARIOUS CITY FACILITIES

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the **CITY OF TRACY**, a municipal corporation (hereinafter "CITY"), and **MADILL ENTERPRISES, INC.**, a California Corporation doing business as **ADVANCED PROPERTY SERVICES** (hereinafter "CONTRACTOR").

RECITALS

- A. CONTRACTOR has submitted to CITY a bid to provide complete janitorial services for various City facilities as described in this Agreement in a neat and workmanlike manner.
- B. CITY has determined that CONTRACTOR's bid was the best value responsible bid, and it is therefore, advantageous and in the best interest of CITY to enter into the Agreement hereinafter set forth.

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

1. **SCOPE OF SERVICES.** CONTRACTOR 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, CONTRACTOR's Authorized Representative: **SCOTT MADILL**. CONTRACTOR shall not replace its Authorized Representative, nor shall CONTRACTOR replace any of the personnel listed in Exhibit "A," nor shall CONTRACTOR use any subcontractors or sub CONTRACTORS, 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. CONTRACTOR 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 CONTRACTOR in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONTRACTOR. CONTRACTOR shall submit all requests for extensions of time to the CITY in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
3. **INDEPENDENT CONTRACTOR STATUS.** CONTRACTOR is an independent contractor and is solely responsible for all acts of its employees, agents, or

subcontractors, including any negligent acts or omissions. CONTRACTOR is not City's employee and CONTRACTOR 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 CONTRACTOR. Contractors and subcontractors are free to work for other entities while under contract with the CITY. Contractors and subcontractors are not entitled to CITY benefits.

4. **CONFLICTS OF INTEREST.** CONTRACTOR (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONTRACTOR maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONTRACTOR's conflicting interest may be terminated by the CITY.
5. **PERFORMANCE BOND.** Upon award of contract, CONTRACTOR shall have ten days to provide the City with a performance bond or other security approved by the City, issued by a corporate surety, naming the City as obligee, in an amount equal to three months charges for janitorial services as submitted with the bid proposal. Said performance bond shall be included as part of the agreement with the City.
6. **ANNUAL RATE INCREASES.** CONTRACTOR will be entitled to an annual rate adjustment if the City exercises the option to extend the contract for additional year(s). The award of said increase is to be approved by the City. The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners for the San Francisco-Oakland Bay Area published by the U.S. Department of Labor, Bureau of Labor Statistics (Index) which is published for the date nearest the date of the commencement of the term of this Agreement. In no event shall an increase of greater than three percent (3%) be allowed per option year.
7. **TERM OF AGREEMENT.** This contract will be effective through September 30, 2011. The City retains the option to extend the contract for up to four additional one-year terms up to a maximum of five years. The City's decision to exercise the option will be based upon the CONTRACTOR'S satisfactory past performance. The City will perform monthly, semi-annual and annual review.
8. **COMPENSATION.**
 - 8.1. For services performed by CONTRACTOR in accordance with this Agreement, CITY shall pay CONTRACTOR on a time and expense basis, the schedule of prices set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONTRACTOR's fee for this Agreement is Not to Exceed **\$17,524.50** per month. CONTRACTOR's billing rates shall cover all costs and expenses of every kind and nature for CONTRACTOR's performance of this Agreement. No work shall be performed by CONTRACTOR in excess of the Not to exceed amount without the prior written approval of the CITY.

- 8.2. CONTRACTOR shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
- 8.3. Within thirty days after the CITY's receipt of invoice, CITY shall make payment to the CONTRACTOR based upon the services described on the invoice and approved by the CITY.
9. **TERMINATION.** The CITY may terminate this Agreement by giving ten days written notice to CONTRACTOR. Upon termination, CONTRACTOR shall give the CITY all original documents, including preliminary drafts and supporting documents, prepared by CONTRACTOR for this Agreement. The CITY shall pay CONTRACTOR for all services satisfactorily performed in accordance with this Agreement; up to the date notice is given.
10. **OWNERSHIP OF WORK.** All original documents prepared by CONTRACTOR for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONTRACTOR's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONTRACTOR to any third party without the prior written consent of the City.
11. **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.
12. **INDEMNIFICATION.** CONTRACTOR 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 CONTRACTOR's performance of services under this Agreement.
13. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONTRACTOR shall obtain a City of Tracy Business License.
14. **INSURANCE.**
- 14.1. **General.** CONTRACTOR shall, throughout the duration of this Agreement, maintain insurance to cover CONTRACTOR, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 14.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an

amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

- 14.3. 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.
- 14.4. Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONSULTANT in an amount not less than \$1,000,000 per claim.
- 14.5. Workers' Compensation** coverage shall be maintained as required by the State of California.
- 14.6. Endorsements.** CONTRACTOR shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 14.6.1** The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 14.6.2** For any claims related to this Agreement, CONTRACTOR's coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- 14.7. Notice of Cancellation.** CONTRACTOR 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.
- 14.8. Authorized Insurers.** All insurance companies providing coverage to CONTRACTOR 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.
- 14.9. Insurance Certificate.** CONTRACTOR 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.
- 14.10. Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONTRACTOR shall provide a substitute certificate of insurance.

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

15. ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONTRACTOR'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.

16. NOTICES.

16.1 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:

Notices to the CONTRACTOR shall be addressed to:

MADILL ENTERPRISES, INC., dba: Advanced Property Services
3045 65th St., Suite #8
Sacramento, CA 95820

Notices to the CITY shall be addressed to:

CITY OF TRACY, PUBLIC WORKS DEPARTMENT
520 Tracy Boulevard
Tracy, CA 95376

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

16.2 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.

17. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

18. **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.
19. **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.
20. **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.
21. **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.
22. **COMPLIANCE WITH THE LAW**. CONTRACTOR shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
23. **STANDARD OF CARE**. Unless otherwise specified in this Agreement, the standard of care applicable to CONTRACTOR's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
24. **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 CONTRACTOR 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

By: Brent H. Ives

Title: MAYOR

Date: _____

Attest:

By: Sandra Edwards

Title: CITY CLERK

Date: _____

Approved As To Form:

By: Dan Sodergren

Title: CITY ATTORNEY

MADILL ENTERPRISES, INC.



By: Scott Madill

Title: Chief Executive Officer

Date: 8-26-10



By: Scott Madill

Title: Chief Financial Officer

Date: 8-26-10

Federal Tax ID No. 68-041201

Contractor's License No. 72114

EXHIBIT "A"

SCOPE OF SERVICES

EQUIPMENT AND SUPPLIES: CONTRACTOR (vendor) shall provide and maintain all janitorial equipment required to perform janitorial services as well as all cleaning agents, chemicals, floor finishes, disinfectants, and plastic trash bags. **Note: all cleaning supplies must be "Green" environmentally preferred products approved by the CONTRACTOR and the City.** Paper, hand soaps, and lighting supplies will be furnished by the City of Tracy.

EMPLOYEES/STAFF OF CONTRACTOR: CONTRACTOR shall provide all names, addresses, social security numbers, drivers license numbers of employees prior to any such employees working within the City premises. Employees must be directly employed by the CONTRACTOR. No employees may be hired through a third party. No employee will be allowed to work under this Agreement until City of Tracy Police Department background checks and fingerprinting have been performed.

The names of new hires must be reported to the Public Works Superintendent. Upon CITY's request, CONTRACTOR's employees must furnish documentation of paperwork authorizing employment in the State of California. CONTRACTOR personnel shall present a neat appearance and shall wear a uniform with the CONTRACTOR'S name or logo permanently affixed to it. Uniforms shall consist of a shirt and full length pants, and be mutually approved by the CONTRACTOR and City. CONTRACTOR is responsible for the actions of its employees while such employees are on/in City premises. CONTRACTOR must comply with the statutory requirements relating to payroll records, including maintenance of the records, their certification, and their availability for inspection (Labor Code section 1776).

PROPER DRESS AND CONDUCT:

1. All employees of selected vendor must wear a standard uniform with selected vendor logo or emblem.
2. Employees may not wear any clothing that is suggestive or carries any message, slogan or phrases that may be perceived as offensive.
3. Under no circumstances is profanity permitted.
4. Smoking is not permitted while working.
5. Radios are not permitted during business hours.
6. Guests are not permitted on jobsite; children are not permitted on jobsite.
7. Please make every effort to respect the privacy of the staff in the building.

EMERGENCY SERVICES AND EXTRA WORK: CONTRACTOR agrees to provide emergency janitorial services with a 24-hour per day emergency phone number and 2 hour physical response time. Emergency services will be billed at \$55.00 for first hour and \$18.00 per additional hour. CONTRACTOR also agrees to perform extra janitorial work as requested.

SPECIFICATIONS (JANITORIAL DUTIES):

The following janitorial duties shall be performed by the CONTRACTOR (vendor). Failure to comply with the duties as noted may show due cause for delay in contractual payment and/or cancellation of services offered. These are minimum specification requirements.

ALL GENERAL JANITORIAL SERVICES:

Nightly Services:

1. Secure all locks each visit. Lock front and all exterior doors and stairwell doors.
2. Vacuum all carpets.
3. Sweep and mop all lobby and stairway tile work, including tile from front doors to sidewalks.
4. Dust mop all non-carpeted floors with dust mop. Damp-mop to remove spills and water stains treat as required.
5. Dust all cleared desks, office furniture and other horizontal services with treated dust cloths.
6. Empty all exterior ashtrays and urns, clean and sanitize as needed.
7. Empty all wastebaskets, trash containers, and containers for recyclables. Replace liners as needed, including for exterior trash containers.
8. Remove all trash and recycled paper containers from floors to the designated trash disposal areas. Boxes marked trash are to be thrown away and/or recycled.
9. Remove fingerprints, dirt smudges, graffiti, etc. from all doors, frames, glass partitions, all windows, light switches, elevator doorjambs, and elevated interiors.
10. Return chairs and wastebaskets to their proper positions.
11. Sweep, mop, and clean marks from walls and baseboards.
12. Clean, sanitize, and polish drinking fountains and sinks.
13. Dust and remove debris from all metal door thresholds.
14. Wipe clean smudged bright-work and glass cases.
15. Clean resilient, composition, tiled, and cement floors as required and per manufacturer's cleaning recommendations.
16. Steam clean carpeting as required.
17. In computer rooms, anti-static sprays to be applied to carpeting upon request.
18. Replace low-reach burnt-out lighting as needed.
19. Council Chamber must be cleaned by 5:00 p.m.
20. Clean stairwells each night.
21. Keep all custodial closets in neat and clean order.
22. Remove and dispose of all litter around exterior of each facility.

Note: Recycled goods – paper – must be disposed of in the correct bins.

Weekly Services:

1. Dust all low reach areas, including chair rugs, structural and furniture ledges, baseboards, window sills, door louvers and other ventilation louvers, wood paneling, molding, etc.
2. Dust inside all door jams.
3. Wipe clean and polish all metal and bright work.
4. Edge vacuum all carpeted areas.
5. Dust and/or wash all directory boards and display glass.
6. Dust in place all picture frames, charts, graphs, and similar wall hangings.
7. Vacuum and dust vault area upon request.
8. Bi-Weekly buff all Terrazzo floors, using high speed buffer (with hardening agent).

Monthly Service:

1. Dust all high reach areas, including tops of door frames, structural and furniture edges, air conditioning diffusers, louvers, tops of partitions, picture frames, blinds, and other areas not reached in nightly or weekly services.

Quarterly Services:

1. Clean interior mats and pads.
2. Clean all vertical and horizontal blinds.

Semi-Annual Services:

1. Strip and wax all resilient, composition, tiled and/or cement floors as required.
2. Shampoo all carpeted areas.
3. Wash and clean all interior glass surfaces.

ALL RESTROOM SERVICES:**Nightly Services:**

1. Restock all restrooms with supplies from specified stock, including paper towels, toilet tissue, seat covers, and hand soap as necessary.
2. Restock all sanitary napkin and tampon dispensers from specified stock as needed.
3. Wash and polish all mirrors, dispensers, sinks, faucets, flushometers, and bright-work with non-abrasive disinfectant cleaners.
4. Wash and sanitize all toilets, toilet seats, urinals and sinks.
5. Remove stains, de-scale toilets, urinals, and sinks, as needed.
6. Mop all restroom floors with disinfectant germicidal solution.
7. Empty and sanitize all waste and sanitary napkin and tampon receptacles.
8. Remove restroom trash.

9. Clean fingerprints, marks and graffiti from walls, partitions, glass aluminum, and light switches.
10. Maintain floor traps free of odor.

Weekly Services:

1. Dust all low and high reach areas, including structural ledges, mirror tops, partition tops and edges, air conditioning diffusers, and return air grills.
2. In all restrooms, keep floor drains filled with water and/or deodorizer.

Monthly Service:

1. Wipe down all walls and metal partitions.
2. Clean all ventilation louvers, vents and light fixtures.
3. Clean all doors and door jams as needed to maintain clean condition.
4. Scrub and wash floors as needed to maintain clean condition.

CITY HALL – MAIN LOBBY:

Nightly Services:

1. Clean all glass including low partitions and corridor side of all windows and glass doors to tenant premises.
2. Clean all chrome bright-work including swinging door hardware, kick-plates, baseboards, partition tops, handrails, waste paper receptacles, elevator call-button plates, hose cabinets, and visible hardware on the corridor side of tenant entry doors and brass handrails.
3. Clean, sweep, and damp mop all Terrazzo.
4. Thoroughly clean all door saddles of dirt and debris.
5. Clean, sweep, and damp-mop all tile flooring.
6. Clean and dust directory board glass and ledges.
7. Empty, clean/sanitize as required all waste paper baskets.
8. Vacuum all carpets, edge to edge.
9. Clean all elevator doors and frames.

ALL PASSENGER ELEVATORS CLEANING:

Nightly Services:

1. Polish rails on elevator walls.
2. Clean cab walls and interior doors.
3. Clean outside surfaces of all elevator doors and frames.
4. Vacuum and edge all cab floor carpeting thoroughly.
5. Vacuum all elevator thresholds.

Weekly Services:

1. Thoroughly clean entire interior stainless steel surfaces of all doors and frames, and outside surfaces of all doors and frames.
2. Thoroughly clean all thresholds.
3. Clean interior cab walls.

Quarterly Services:

1. Wipe clean all elevator cab light diffusers.
2. Wipe clean entire cab ceiling.

ALL TRASH AND SERVICE ENTRANCE AREAS:

Nightly Services:

1. Place all miscellaneous trash and debris in the building trash receptacles, compactors, or balers.
2. Sweep entire area.

ALL SERVICE CORRIDORS & STAIRWELLS:

Nightly Services:

1. Remove trash from all above areas.
2. Maintain, in orderly manner, all janitorial supplies and paper products in the storage rooms and service sink closets.
3. Maintain an inventory control sheet of supplies.
4. Maintain an orderly arrangement of all equipment.
- 5.

Weekly Services:

1. Damp-mop all composition floors in storerooms.
2. Clean and disinfect service sinks.
3. Sweep storeroom floors.
4. Sweep stairwells and dust accordingly.

SPECIAL NOTE ON CITY HALL CLEANING:

City Council Meetings are held on the 1st and 3rd Tuesdays of each month. On these evenings, the City Hall Lobby/Restroom Area will remain open until the close of the meeting. Various other night meetings are held in the Council Chambers on a regular basis (copy of schedule to be given to CONTRACTOR). The janitorial service is required prior to each meeting and the Lobby/Restroom area is to remain open during these meetings.

ALL WINDOW WASHING:

The outer windows will be washed two (2) times per year. The inside windows will be washed once per year. All glass partitions inside the building will be spot cleaned as listed above, but will be washed completely once per year (at the same time the inside windows are cleaned). Special care must be provided on the outside windowsill areas at City Hall.

CONTRACTOR NOTE:

With request for payment each month, CONTRACTOR shall provide a list of duties completed and items not accomplished per contract. Also included shall be a list of work to be completed the next month. No payment will be made without a completed work schedule for the month, deficiencies noted and corrected, and the work plan for the next month.

<u>CITY FACILITIES</u>	<u>ADDRESSES</u>	<u>SQUARE FOOTAGE</u>
City Hall & Council Chambers	333 Civic Center Plaza	40,700
Police Department	1000 Civic Center Drive	27,616
Community Center	900 East Street	9,030
Parks & Community Services	400 E. 10th Street	10,817
Lolly Hansen Senior Center	375 E. 9 th Street	5,224
Support Services Building	325 Civic Center Plaza	9,116
Fire Administration Building	835 Central Ave	9,646
Tracy Library	20 E. Eaton Ave	17,058
Tracy Museum	1141 Adams Street	9,654
Boyd Service Center Admin.	520 Tracy Blvd.	4,800
Tracy Transit	560 Tracy Blvd.	768
Modular Trailer 1	560 Tracy Blvd.	2160
Modular Trailer 2	560 Tracy Blvd.	1440
Annex Facility	560 Tracy Blvd.	6000
Central Garage Office	520 Tracy Blvd.	160
Bessie Building	2302 Bessie Ave	2,515
Old Jail House	25 W. 7 th Street	1,077
Redevelopment Offices	324 E. 11 th St.	1800
Tracy Transit Station	50 E. Sixth St.	7964
Sports Complex Meeting Room	955 Crossroads	1200

EXHIBIT "B"

SCHEDULE OF PRICES

CONTRACTOR shall furnish all necessary tools and equipment, materials, labor and supervision (including cost of Worker's Compensation Insurance and all payroll taxes on such labor) in accordance with the Scope of Work set forth in this Agreement at the prices quoted below.

FACILITY	MONTHLY RATE	ANNUAL RATE
City Hall & Council Chambers	\$3,850.00	\$46,200.00
Police Department	\$3,643.00	\$43,716.00
Community Center	\$779.65	\$9,355.80
Parks & Community Services	\$860.50	\$10,326.00
Lolly Hansen Senior Center	\$505.30	\$6,063.60
Support Services Building	\$856.60	\$10,279.20
Fire Administration Building	\$962.50	\$11,550.00
Tracy Library	\$1,636.25	\$19,635.00
Tracy Museum	\$529.40	\$6,352.80
Boyd Service Center Admin.	\$505.30	\$6,063.60
Tracy Transit - BSC	\$86.60	\$1,039.20
Modular Trailer - BSC	\$215.60	\$2,587.20
Modular Trailer - BSC	\$154.00	\$1,848.00
Annex Facility	\$577.50	\$6,930.00
Central Garage Office	\$43.30	\$519.60
Bessie Building	\$341.70	\$4,100.40
Old Jail House	\$240.60	\$2,887.20
Redevelopment Offices	\$221.40	\$2,656.80
Tracy Transit Station (new)	\$1275.30	\$15,303.60
Sports Complex Meeting Room	\$240.00	\$2,880.00
GRAND TOTAL	\$17,524.50	\$210,294.00

RESOLUTION _____

AWARDING A PROFESSIONAL SERVICES AGREEMENT TO MADILL ENTERPRISES, INC. DOING BUSINESS AS ADVANCED PROPERTY SERVICES, TO PROVIDE JANITORIAL SERVICES FOR VARIOUS CITY FACILITIES, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ANY EXTENSION AMENDMENTS

WHEREAS, The City of Tracy has approximately 168,745 square feet of office and multi-use space that require janitorial services to properly maintain each facility, and

WHEREAS, These services include standard cleaning such as vacuuming, sweeping, mopping, sanitizing, and trash collection, with the use of “green” practices and supplies, and

WHEREAS, The facilities being serviced are as follows:

<u>FACILITY:</u>	<u>SQUARE FOOTAGE</u>
City Hall & Council Chambers	40,700
Police Department	27,616
Community Center	9,030
Parks & Community Services	10,817
Lolly Hansen Senior Center	5,224
Support Services Building	9,116
Fire Administration Building	9,646
Tracy Library	17,058
Tracy Museum	9,654
Boyd Service Center Admin.	4,800
Tracy Transit - BSC	768
Modular Trailer 1 - BSC	2,160
Modular Trailer 2 - BSC	1,440
Annex Facility	6,000
Central Garage Office	160
Bessie Building	2,515
Old Jail House	1,077
Redevelopment Offices	1,800
Tracy Transit Station	7,964
Sports Complex Meeting Room	<u>1,200</u>

TOTAL: 168,745 sq. ft., and

WHEREAS, Public Works requested proposals from seven janitorial service contractors and proposals were received from four contractors, and

WHEREAS, After completing the review/evaluation process, Madill Enterprises, Inc., doing business as Advanced Property Services, was found to be the most qualified, and

WHEREAS, The agreement is for one year with the option to extend the agreement for up to four additional one-year terms up to a maximum of five years, and

WHEREAS, The decision to exercise option years will be based on the performance of the contractor, and

WHEREAS, Funding in the amount of \$300,280.00 is approved in the Fiscal Year 2010-11 operational budget for contract janitorial services, and

WHEREAS, The annual cost for the services provided by the contractor will not exceed \$210,294, and

WHEREAS, An additional \$47,940 will be expensed for janitorial services for the Grand Theatre under a separate contract, and

WHEREAS, The estimated annual cost savings utilizing contract janitorial services versus in-house staff is \$185,000;

NOW, THEREFORE, BE IT RESOLVED, That the City Council awards a janitorial services contract to Madill Enterprises, Inc., doing business as Advanced Property Services, of Sacramento, California, for Janitorial Services at the above listed City Facilities, authorizes the Mayor to execute the Agreement, and authorizes the City Manager to execute any extension amendments.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 7th day of September, 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

APPROVAL OF A RESOLUTION AUTHORIZING THE EXECUTION OF A 457 DEFERRED COMPENSATION TRUST AGREEMENT WITH VALIC AND REPEALING RESOLUTION NO. 2009-171

EXECUTIVE SUMMARY

City employees may participate in one of two 457 deferred compensation plans. One plan has had a change of administrators and therefore a new trust agreement is needed. Deferred compensation plan administration charges are not a City expense and are paid for by employees participating in these plans.

DISCUSSION

City employees may participate in a 457 deferred compensation program. Contributions made to a 457 plan are pre-tax. A 457 plan is akin to a 401 plan in the private sector. To date, the City has made available a choice of two 457 plans. Both are very similar in nature with a variety of investment choices the employee can make (mutual funds, stock funds, etc). One plan is administered by ICMA-RC and the other is administered by VALIC (a subsidiary of American International Group – AIG).

In 2003 a group of cities and organizations including Tracy, joined together to form a 457 group called STARS. VALIC was selected as the plan administrator. Last year VALIC elected to terminate its relationship with STARS due the high cost of servicing the smaller organizations in the STARS group. Initially, Tracy expected to stay in STARS if they found another viable plan administrator. In anticipation of this, on September 15, 2009 the City Council approved resolution #2009-171 to allow for a new STARS plan administrator. However, this did not materialize.

Although STARS was a group approach, VALIC had actually established individual plan relationships with each organization in STARS. Because of this VALIC was able to provide services to the City of Tracy account for one more year under the STARS relationship.

Because VALIC remains a popular choice of the two 457 options available to employees, it is desired to continue a 457 deferred comp with VALIC as a plan administrator. Employees will not have to move their accounts and will continue to receive quarterly statements from VALIC identical to the ones they have been receiving.

STRATEGIC PLANS

This is a routine item and does not relate to one of the City's adopted strategic plans.

FISCAL IMPACT

None, as plan administration fees are paid by participants (employees). The fees in the new VALIC trust are the same as the fees participants had in the STARS program.

RECOMMENDATION

It is recommended that the City Council approve the attached resolution authorizing the execution of a 457 deferred compensation trust agreement with VALIC, and repealing Resolution No. 2009-171.

Prepared by: Zane Johnston, Finance & Administrative Services Director

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING THE EXECUTION OF A 457 DEFERRED COMPENSATION TRUST AGREEMENT WITH VALIC AND REPEALING RESOLUTION NO. 2009-171

WHEREAS, City employees may participate in one of two 457 deferred compensation plans. One plan, administered by VALIC (a subsidiary of American International Group – AIG) has had a change of administrators and therefore a new trust agreement is needed, and

WHEREAS, In 2003 a group of cities and organizations including Tracy, joined together to form a 457 group called STARS and VALIC was the plan administrator, and

WHEREAS, Last year VALIC elected to terminate its relationship with STARS, and

WHEREAS, Tracy expected to stay in STARS if they found another viable plan administrator, and

WHEREAS, In anticipation of this, on September 15, 2009 the City Council approved Resolution No. 2009-171 to allow for a new STARS plan administrator. However, this did not materialize, and

WHEREAS, VALIC has established individual plan relationships with each organization in STARS and VALIC was able to provide services to the City of Tracy account for one more year under the STARS relationship, and

WHEREAS, VALIC remains a popular choice of the two 457 options available to employees, it is desired to continue a 457 deferred comp with VALIC as a plan administrator, and

WHEREAS, Plan administration fees are paid by participants (employees), the fees in the new VALIC trust are the same as the fees participants had in the STARS program;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes the Mayor to execute a 457 deferred compensation trust agreement with VALIC, and repeals Resolution No. 2009-171.

* * * * *

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

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.H

REQUEST

AUTHORIZATION TO AWARD THE PURCHASE OF SEVENTEEN MOBILE DATA COMPUTERS TO HEWLETT-PACKARD PUBLIC SECTOR SALES THROUGH THE STATE OF CALIFORNIA WSCA/NASPO CONTRACT B27164-CA COMPETITIVE BID PROGRAM PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.220.

EXECUTIVE SUMMARY

This request would approve the purchase of seventeen Mobile Data Computers from Hewlett-Packard Public Sector Sales using a competitive bid program allowed for by City code.

DISCUSSION

This purchase completes the replacement of the department's aging Mobile Data Computers (MDCs). The Department replaced twenty MDCs in May 2010 through the Edward Byrne Justice Assistance Grant (JAG) funds. These seventeen MDCs will be purchased with fiscal year 2010-2011 equipment replacement monies.

STRATEGIC PLAN

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

Goal 3: Ensure Systems are in place to meet the City's service delivery needs

Objective 3a: Accurately assess technology needs

Objective 3b: Automate routine processes

FISCAL IMPACT

The Police Department will purchase seventeen replacement MDCs with a five-year warranty for \$98,600 through monies allocated in the department's fiscal year 2010-2011 equipment replacement account.

RECOMMENDATION

Staff recommends that the City Council approve, by resolution, the purchase of seventeen Mobile Data Computers from Hewlett-Packard Public Sector Sales from Equipment Account # 605-59310-674-E1033.

Prepared by: Diane Manuel, Executive Assistant
Reviewed by: Janet M. Thiessen, Chief of Police
Approved by: R. Leon Churchill, Jr., City Manager

RESOLUTION _____

AWARDING THE PURCHASE OF SEVENTEEN MOBILE DATA COMPUTERS TO HEWLETT-
PACKARD PUBLIC SECTOR SALES THROUGH THE STATE OF CALIFORNIA
WSCA/NASPO CONTRACT B27164-CA COMPETITIVE BID PROGRAM PURSUANT TO
TRACY MUNICIPAL CODE SECTION 2.20.220

WHEREAS, This purchase completes the replacement of the department's fleet of aging
Mobile Data Computers (MDCs), and

WHEREAS, The Department previously replaced twenty MDCs in May 2010 with grant
funds, and

WHEREAS, The total price of \$98,600 for seventeen MDCs includes a five-year
warranty.

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves the purchase
of seventeen Mobile Data Computers from Hewlett-Packard Public Sector Sales from
Equipment Account # 605-59310-674-E1033 in the amount of \$98,600.

* * * * *

The foregoing Resolution _____ is hereby passed and adopted by the Tracy City
Council this _____ 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.I

REQUEST

ADOPT RESOLUTION TO AUTHORIZE THE CITY MANAGER TO BE THE AUTHORIZED AGENT OF THE CITY OF TRACY AND TO EXECUTE ANY ACTIONS NECESSARY FOR THE PURPOSE OF OBTAINING PROPOSITION 1B FUNDS IN THE AMOUNT OF \$50,000 FOR THE INSTALLATION OF SECURITY CAMERAS AT THE TRACY TRANSIT STATION

EXECUTIVE SUMMARY

Proposition 1B funds were approved by the voters at the November 7, 2006 general election. These funds may be used toward grants for transit system safety, security and disaster response projects. The San Joaquin Council of Governments (SJCOG) applied for these funds on behalf of the City of Tracy in the amount of \$50,000 for the installation of security cameras at the Tracy Transit Station.

DISCUSSION

The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 was approved by the voters as Proposition 1B at the November 7, 2006, General Election. This act authorizes the issuance of \$19,925,000,000 in general obligation bonds for specific purposes, including grants for transit system safety, security and disaster response projects.

The City of Tracy applied for a Prop 1B grant through SJCOG in the amount of \$50,000. This grant project will allow for installation of security cameras at the Tracy Transit Station.

The purpose of this project is to further increase the security of the Tracy Transit Station making public transportation throughout the city safer for passengers. Although the design of this project has not been finalized, cameras will be installed to overlook interior and exterior locations around the building including both of the parking lots.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. The costs are covered completely by Prop 1B funding and there are no matching funds required.

RECOMMENDATION

Adopt resolution to authorize the City Manager to be the Authorized Agent of the City of Tracy to execute any actions necessary for the purpose of obtaining Proposition 1B funds in the amount of \$50,000 for the installation of security cameras at the Tracy Transit Station.

Prepared by: Ed Lovell, Management Analyst II

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

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

RESOLUTION _____

AUTHORIZING THE CITY MANAGER TO BE THE AUTHORIZED AGENT OF THE CITY OF TRACY AND TO EXECUTE ANY ACTIONS NECESSARY FOR THE PURPOSE OF OBTAINING PROPOSITION 1B FUNDS IN THE AMOUNT OF \$50,000 FOR THE INSTALLATION OF SECURITY CAMERAS AT THE TRACY TRANSIT STATION

WHEREAS, The Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, approved by the voters as Proposition 1B at the November 7, 2006, General Election, authorizes the issuance of \$19,925,000,000 in general obligation funds for specified purposes, including grants for transit system safety, security and disaster response projects; and

WHEREAS, To secure a portion of the Proposition 1B funds, the San Joaquin Council of Governments submitted an application on behalf of the City of Tracy for a transit security project in the amount of \$50,000; and

WHEREAS, To receive the allocated amount of \$50,000 the City must submit additional paperwork including Grant Assurances signed by the Authorized Agent.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes the City Manager to be the Authorized Agent of the City of Tracy to execute any actions necessary for the purpose of obtaining Proposition 1B funds in the amount of \$50,000 for the installation of security cameras at the Tracy Transit Station.

* * * * *

The foregoing Resolution _____ was passed and adopted by the City Council of the City of Tracy 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.J

REQUEST

AUTHORIZATION OF A PROFESSIONAL SERVICES AGREEMENT WITH MARCIA HERRMANN DESIGN FOR GRAPHIC DESIGN AND MARKETING SERVICES FOR THE CULTURAL ARTS DIVISION AND THE GRAND THEATRE CENTER FOR THE ARTS, AUTHORIZATION FOR THE MAYOR TO SIGN THE AGREEMENT AND AUTHORIZATION FOR THE CITY MANAGER TO SIGN UP TO TWO ONE-YEAR EXTENSIONS OF THE AGREEMENT

EXECUTIVE SUMMARY

Staff is requesting that Council approve a professional services agreement with Marcia Herrmann Design, of Modesto, California, to provide professional graphic design and marketing service for the Cultural Arts Division - Grand Theatre Center for the Arts for Fiscal Year 2010-2011, with possible extensions for Fiscal Years 2011-2012 and 2012-2013.

DISCUSSION

The City of Tracy, through the Cultural Arts Division and the Grand Theatre Center for the Arts, offers a diverse set of educational and entertaining arts programming options to the community in the form of classes, exhibitions, performances and special events to regional audiences of all ages. To effectively communicate and market the complex offerings of this interdisciplinary programming, professional and specialized graphic design and marketing services are desirable.

After the expiration of an agreement for similar services, Staff conducted a Request For Proposals to identify a consultant capable of providing cost-effective services. Marcia Herrmann Design of Modesto is recommended to provide a host of design and marketing components including, but not limited to, Presenting Season Brochure, Art Education Class Catalogs, Tracy Arts Commission Brochure, print ads, electronic ads, online content, etc.

The Marcia Herrmann Design Team has over 60 years of combined experience working in a variety of industries including arts, education, entertainment and non-profit sectors. Clients of particular note include Gallo Center for the Arts, Salida Performing Arts, Gallo of Sonoma Winery, McManis Family Vineyards, Central Catholic High School, Community Trust Credit Union and Community Hospice, Inc.

In making its recommendation, Staff also considered the budgetary and operational changes, as well as the growth in programming, that have occurred during the first three seasons at the Grand Theatre Center for the Arts. Through a series of meetings, Marcia Herrmann Design worked with Staff to identify the successes and existing challenges in marketing programming to the community and the region. Staff is confident that Marcia Herrmann Design will create the needed messages and tools to best effectively carry the Center into the fourth and largest season yet resulting in increasing users and revenue.

STRATEGIC PLAN:

This agenda item supports the Communication/Marketing Strategy:

Goal 1: Provide the community with basic and extended services that offer opportunities to prosper as they live, work and play in Tracy

This agenda item supports the Organizational Effectiveness Strategy:

Goal 2: Strengthen Customer Value through ensuring quality and excellent customer service.

This agenda item also supports the Communication/Marketing Strategy.

Goal 3: Align available resources with marketing objectives to maximize return on investment.

FISCAL IMPACT:

\$28,000 from the Cultural Arts Division FY10-11 Adopted Budget for Advertising/Marketing.

RECOMMENDATION:

Staff recommends that Council authorize an agreement with Marcia Herrmann Design to provide graphic design and marketing services for the Cultural Arts Division - Grand Theatre Center for the Arts for Fiscal Year 2010-2011, authorize the Mayor to sign the agreement and, subject to Council appropriation of funds, authorize the City Manager to execute up to two one-year extensions of the agreement.

Attachment A: Proposed Professional Services Agreement

Prepared by: William Wilson, Gallery Supervisor

Approved by: Leon Churchill, Jr.

CITY OF TRACY
AGREEMENT FOR GRAPHIC DESIGN & MARKETING SERVICES

This Agreement (“Agreement”) is made the ____ day of _____, 2010, by and between the City of Tracy, a municipal corporation (“CITY”), and MARCIA HERRMANN, a sole proprietor (“CONSULTANT”).

RECITALS

WHEREAS, CITY wishes to enter into a graphic design and marketing services agreement, more specifically described in the Scope of Work attached as Exhibit “A” to this Agreement, for the Cultural Arts Division – Grand Theatre Center for the Arts; and

WHEREAS, competitive proposals were solicited for the operation of said design and marketing services and CONSULTANT’s proposal was the most economical and responsive;

WHEREAS, After negotiations between the CITY and the CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

CITY OF TRACY – GRAPHIC DESIGN & MARKETING SERVICES AGREEMENT

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

- 4. CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
- 5. COMPENSATION.**
 - 5.1.** For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Agreement is Not To Exceed **\$28,000**. CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY.
 - 5.2.** CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3.** Within thirty days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.
- 6. TERMINATION.** The CITY may terminate this Agreement by giving ten days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the CITY all original documents, including preliminary drafts and supporting documents, prepared by CONSULTANT for this Agreement. The CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
- 7. OWNERSHIP OF WORK.** All original documents prepared by CONSULTANT for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONSULTANT to any third party without the prior written consent of the City.
- 8. ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 9. INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees)

CITY OF TRACY – GRAPHIC DESIGN & MARKETING SERVICES AGREEMENT

from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of CONSULTANT's performance of services under this Agreement.

10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE.**
 - 11.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 11.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 11.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 11.5. **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - 11.5.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - 11.5.2 For any claims related to this Agreement, CONSULTANT's coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT's insurance and shall not contribute with it.
 - 11.6. **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty 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.
 - 11.7. **Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
 - 11.8. **Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.

CITY OF TRACY – GRAPHIC DESIGN & MARKETING SERVICES AGREEMENT

- 11.9. Substitute Certificates.** No later than thirty days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.10. CONSULTANT's Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 12. ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 13. NOTICES.**
- 13.1** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:
- | | |
|---|--|
| <u>To CITY:</u>
William Wilson, Gallery Supervisor
Grand Theatre Center for the Arts
715 Central Avenue
Tracy, CA 95376 | <u>To CONSULTANT:</u>
Marcia Herrmann, Owner
Marcia Herrmann Design
809 Sylvan Ave., Suite 104
Modesto, CA 95350 |
|---|--|
- With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376
- 13.2** Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.
- 14. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 15. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16. SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

CITY OF TRACY – GRAPHIC DESIGN & MARKETING SERVICES AGREEMENT

- 17. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 18. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
- 19. **COMPLIANCE WITH THE LAW.** CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 20. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
- 21. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the 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.

CITY OF TRACY

By: Brent Ives
Title: Mayor, City of Tracy

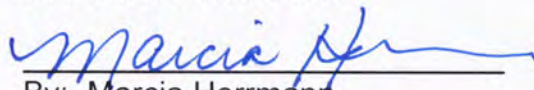
Date: _____

Attest : Sandra Edwards
Title: City Clerk
Date: _____

APPROVED AS TO FORM:

By: Bill Sartor
Title: Assistant City Attorney
Date: _____

MARCIA HERRMANN



By: Marcia Herrmann
Title: Owner

Date: Aug 20, 2010

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR agrees to diligently and faithfully furnish services to the CITY, commencing September 1, 2010 and terminating on June 30, 2011. Said services to be as follows, at sites determined by this agreement:

CONSULTANT shall deliver professional graphic design & related marketing services for the Cultural Arts Division.

CONSULTANT shall deliver professional graphic design & related marketing services for the Grand Theatre Center for the Arts.

CONSULTANT shall deliver design of the Grand Theatre Center for the Arts – Presenting Program Season Brochure.

CONSULTANT shall deliver design of three Grand Theatre Center for the Arts – Arts Education Program Class Catalogs.

CONSULTANT shall deliver design of the Grand Theatre Center for the Arts – Programming/Event Advertisements & Promotional Items including electronic and print advertisements, brochures, flyers, etc.

CONSULTANT shall deliver design of the Cultural Arts Division – Tracy Arts Commission’s Promotional Materials including electronic and print advertisements, brochures, flyers, etc.

Marcia Herrmann Design Team

Marcia Herrman – Owner/Art Director/Designer
Maria Carlson – Project Manager/Web Designer
Marlene Champlin – Marketing Specialist
Simeon Franklin – Lead Programmer
Roger Licup – Flash Designer/Programmer

1. **MAJOR COMPONENT PROJECT RESTRICTIONS**

Timing: As there are production deadlines for major components of this project, the following schedule must be met. Future specific dates will be established by City:

Presenting Season Brochures	Production/Edits	Print Ready Files to Printer
2011-12 Presenting Season Brochure	July 2011	August 2011
2012-13 Presenting Season Brochure	July 2012	August 2012

CITY OF TRACY – GRAPHIC DESIGN & MARKETING SERVICES AGREEMENT

Arts Education Class Catalogs	Production/Edits	Print Ready Files to Printer
Winter/Spring Edition 2011	October 2010	November 2010
Spring/Summer Edition 2011	February 2011	March 2011
Fall Edition 2011	July 2011	August 2011
Winter/Spring Edition 2012	October 2011	November 2011
Spring/Summer Edition 2012	February 2012	March 2012
Fall Edition 2012	July 2012	August 2012
Winter/Spring Edition 2013	October 2011	November 2012
Spring/Summer Edition 2013	February 2012	March 2013

2. AGREEMENT PERIOD

CONSULTANT shall deliver services for a period of ten months, from September 1, 2010 through June 30, 2011. CITY shall have the unilateral option, at its sole discretion, to renew this Agreement for up to two additional one-year terms for amounts subject to City Council appropriation of funds, from July 1, 2011 through June 30, 2012 and from July 1, 2012 through June 1, 2013.

CITY OF TRACY – GRAPHIC DESIGN & MARKETING SERVICES AGREEMENT

EXHIBIT “B”

COSTS OF HOURLY SERVICES

CONSULTANT shall deliver promotional items as assigned in support of the Cultural Arts Division and the Grand Theatre Center for the Arts’ programming including electronic and print advertising, postcards, flyers, posters, electronic media, broadcast, etc.

CONSULTANT shall provide itemized costs for these components for review and written approval of the City prior to commencing work on same.

CONSULTANT shall provide services for the various components at the following hourly costs:

Design & Programming

Concept Development	\$125/HR
Copywriting	\$125/HR
Production	\$75/HR
Web Design	\$110/HR
Flash Development	\$120/HR
Programming	\$110/HR
Print Supervision	\$125/HR
Photo Supervision	\$125/HR

Media & Marketing

Media Schedule Plan	\$125/HR
Media Placement Plan	\$65/HR
Script Plan	\$250/HR
Consulting/Editing	\$200/HR
On-site Visits	\$100/HR
Script Write	\$250/HR
Text Write	\$145/HR
Press Release	\$200/HR

Travel

Out of town travel beyond 100 miles is charged \$75/HR + \$.51 Mileage
No charge for travel until after 100 miles.

RESOLUTION _____

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH MARCIA HERRMANN DESIGN FOR GRAPHIC DESIGN AND MARKETING SERVICES FOR THE CULTURAL ARTS DIVISION AND THE GRAND THEATRE CENTER FOR THE ARTS, AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT AND AUTHORIZING THE CITY MANAGER TO SIGN UP TO TWO ONE-YEAR EXTENSIONS OF THE AGREEMENT

WHEREAS, The City of Tracy – Cultural Arts Division and Grand Theatre Center for the Arts is in need of a consultant to provide professional graphic design and marketing services for 2010-11, and

WHEREAS, Staff solicited proposals for the work and Marcia Herrmann Design was selected as an ideal consultant with arts and entertainment industry experience offering a full-range of professional graphic design and marketing services at cost effective rates.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes a professional services agreement with Marcia Herrmann Design to provide graphic design and marketing services to the Cultural Arts Division and the Grand Theatre Center for the Arts, authorizes the Mayor to sign the agreement and, subject to appropriation of funds, authorizes the City Manager to execute up to two one-year extensions of the agreement.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 7th day of September, 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

AUTHORIZE FURLOUGHS FOR ALL NON-REPRESENTED CITY EMPLOYEES AND REVISE SECTION 5, REGARDING RETIREMENT BENEFITS, OF THE COMPENSATION AND BENEFITS PLANS FOR DEPARTMENT HEADS, CONFIDENTIAL MANAGERS, AND THE TECHNICAL AND SUPPORT SERVICES UNIT TO PROVIDE FOR A SECOND-TIER RETIREMENT BENEFIT

EXECUTIVE SUMMARY

The recommended action will authorize furloughs for all non-represented City employees and revise section 5, regarding retirement benefits, of the Compensation and Benefits Plans for Department Heads, Confidential Managers, and the Technical and Support Services Unit, to provide for a second-tier retirement benefit.

DISCUSSION

In 2007, the City Council approved Compensation and Benefits Plans for Department Heads, Confidential Managers, and the Technical and Support Services Unit. While these employee groups are non-represented, the City has a meet and inform obligation when implementing any changes to wages, hours, or working conditions of employees within these groups.

The recommended action would formalize, by Council action, the implementation of furloughs for FY 2010-11. All employees who are Department Heads, Confidential Managers, and Technical and Support Service will reduce City costs by taking twelve (12) unpaid furlough days, or one per month during the 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.

In addition, staff is recommending that the City Council revise Section 5, regarding retirement benefits, of the Compensation and Benefits Plans for Department Heads, Confidential Managers, and Technical and Support Services Units, to provide 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 miscellaneous 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.

Employees in the aforementioned groups have been participating in furloughs as of July 1, 2010 and have been notified of the reduction in retirement benefits for future new employees.

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

The 4.5% unpaid furlough will result in annual savings of approximately \$379,000 (all funds). The budget anticipated there would be a continuation of 3% unpaid furloughs in FY 10-11 for these groups. As such, the additional 1.5% (4.5% vs. 3%) will save 126,000 beyond what was already anticipated in the budget.

RECOMMENDATION

That the City Council, by Resolution, authorize furloughs for all non-represented City employees and revise Section 5, regarding retirement benefits, of the Compensation and Benefits Plans for Department Heads, Confidential Managers, and the Technical and Support Services Unit, to provide for a second-tier retirement benefit.

Prepared by Maria Olvera, Human Resources Director

Approved by Leon Churchill, City Manager

Attachments: Section 5 of the Compensation and Benefits Plans for Department Heads, Confidential Managers, and Technical and Support Services Unit

RESOLUTION _____

AUTHORIZE FURLOUGHS FOR ALL NON-REPRESENTED CITY EMPLOYEES AND REVISE SECTION 5, REGARDING RETIREMENT BENEFITS, OF THE COMPENSATION AND BENEFITS PLANS FOR DEPARTMENT HEADS, CONFIDENTIAL MANAGERS, AND THE TECHNICAL AND SUPPORT SERVICES UNIT TO PROVIDE FOR A SECOND-TIER RETIREMENT BENEFIT

WHEREAS, In 2007 the City Council approved compensation and benefit plans for Department Heads, Confidential Managers and the Technical and Support Services Unit, and

WHEREAS, Representatives from the City have met and informed in good faith;

NOW, THEREFORE, BE IT RESOLVED, that the City Council authorize furloughs for all non-represented City employees and revise section 5 of the compensation and benefits plans to provide for a second-tier retirement benefit, 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 7th day of September, 2010 by the following vote:

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

Mayor

ATTEST:

City Clerk

CITY OF TRACY

DEPARTMENT HEADS COMPENSATION AND BENEFITS PLAN

(Revision to Public Employment Retirement System Benefits)

Section 5: Benefits

B. PERS Retirement.

1. Miscellaneous (Non-Public Safety) Department Heads: 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 Plan.

2. Public Safety Department Heads:
 - a. Fire Chief. The City's contract with PERS provides for single highest year and the 3% at 55 benefit formula. The City pays both the employee and employer rates during the term of this Plan.
 - b. Police Chief. Effective July 1, 2010, the City's contract with PERS provides for single highest year and the 3% at 55 benefit formula. Any Police Chief hired prior to July 1, 2010 shall receive the single highest year and 3% at 55 benefit formula. The City pays both the employee and employer rates during the term of this Plan.

CITY OF TRACY

CONFIDENTIAL MANAGEMENT COMPENSATION AND BENEFITS PLAN

(Revision to Public Employment Retirement System Benefits)

Section 5: Benefits

A. PERS Retirement

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 the Plan.

Fire Division Chief This Public Safety classification in the Confidential Management Group shall receive the PERS 3% at 55 retirement benefit.

CITY OF TRACY
TECHNICAL AND SUPPORT SERVICES UNIT
COMPENSATION AND BENEFITS PLAN

(Revision to Public Employment Retirement System Benefits)

Section 5: Benefits

B. PERS Retirement.

1. 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 Plan

AGENDA ITEM 4

REQUEST

APPROVE THE LETTER OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY MID-MANAGERS BARGAINING UNIT

EXECUTIVE SUMMARY

While the Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Mid Managers Bargaining Unit (TMMBU) is not scheduled to expire until March 31, 2011, representatives from the City and the TMMBU have met proactively to discuss interim measures to avoid additional reductions in workforce. This report requests approval of the components contained within the proposed Letter of Understanding.

DISCUSSION

In April 2007, the City Council approved the current MOU between the City and the Tracy Mid Managers Bargaining Unit. The Agreement covered a period of four (4) years, effective April 1, 2007 through March 31, 2011. Recently, representatives from the City and the TMMBU met to discuss the provisions of the current contract in light of the potential reductions in workforce measures necessary to address the current economic reality facing the City. To avoid further workforce reductions and potential interruptions to City services, representatives from both sides have agreed to amend the terms of the current labor contract via a Letter of Understanding.

The provisions in the Letter of Understanding accomplish several objectives. First, it assures that affected employees represented by the TMMBU reduce City costs by taking twelve (12) unpaid furlough days, or one per month during the 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 TMMBU 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 TMMBU employees for the duration of FY 2010-11.

Additionally, the contract expiration date will be extended three (3) months to June 30, 2011. The extension of the contract will align this contract expiration with other labor contracts and provide for negotiations to begin in Spring 2011. All other provisions of the current contract will remain in effect without change for the duration of the agreement.

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 unpaid furloughs are estimated to save approximately \$243,000 (all funds) in FY 2010-11 with additional savings in future years as the cost savings from the reduced retirement benefit are realized. The budget anticipated savings of approximately \$175,000 from this group (3% unpaid furlough rather than 4.5% unpaid)

RECOMMENDATION

That the City Council, by resolution, approve the Letter of Understanding between the City of Tracy and the Tracy Mid Managers Bargaining Unit and all provisions contained therein.

Prepared by: Midori Dearborn, Human Resource Analyst

Reviewed by: Maria Olvera, Human Resources Director

Approved by: Leon Churchill, City Manager

Attachments: Letter of Understanding between the City of Tracy and Tracy Mid-Managers Bargaining Unit

**LETTER OF UNDERSTANDING
BETWEEN CITY OF TRACY
AND TRACY MID MANAGERS BARGAINING UNIT
June 30, 2010**

The City of Tracy and the Tracy Mid Managers Bargaining Unit do hereby acknowledge and agree to the following for the period July 1, 2010 through June 30, 2011:

1. Beginning July 1, 2010 through June 30, 2011, TMMBU members will take at least, but not more than, ninety-six (96) hours as furlough time. A total of 12 eight (8) hour days (96 hours) will be taken in FY 2010-11. Eight (8) of these eight (8) hour days (64 hours) will be scheduled with City offices closed as follows:

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

**Any exception 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.*

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.

Implementation of furloughs will be in accordance with applicable Federal and State laws, including but not limited to the Fair Labor Standards Act regulations [29 CFR 541.710(b)] which state that in any work week that contains a furlough day, FLSA exempt employees are not exempt from overtime. Therefore, exempt employees will be forbidden to work on furlough days or work over regularly scheduled work hours during workweeks that contain a furlough day.

2. Effective as soon as the contract can be amended with PERS but no later than December 1, 2010, the City will adopt 2% @ 55 (average of 3 consecutive highest years) as the retirement model to be used for all new TMMBU employees hired after the contract amendment.

3. The City agrees to continue to Meet and Confer with the TMMBU regarding the potential impact of the 2nd tier (2% @ 55 average of 3 consecutive highest years) on existing City employees who could be subject to any future reduction in workforce (layoff).
4. For the duration of this Letter of Understanding (July 1, 2010 through June 30, 2011), no TMMBU position shall be subject to any reduction in workforce (layoff).
5. The Memorandum of Understanding between the City of Tracy and the Tracy Mid Managers Bargaining Unit (TMMBU), which is effective from April 1, 2007 to March 31, 2011, is hereby extended to an expiration date of June 30, 2011.
6. Except as set forth in this Letter of Understanding, all terms and conditions of the Memorandum of Understanding shall remain in effect, without change.

By: _____ Date _____
Scott Claar, TMMBU President

By: _____ Date _____
Maria Olvera, Human Resources Director

RESOLUTION _____

APPROVE THE LETTER OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY MID-MANAGERS BARGAINING UNIT

WHEREAS, The Memorandum of Understanding between the City of Tracy and the Tracy Mid Managers Bargaining Unit is not due to expire until March 31, 2011, and

WHEREAS, Representatives from the City of Tracy and the Tracy Mid Managers Bargaining Unit met to discuss interim measures to avoid further reductions in workforce, and

WHEREAS, The representatives agreed to the following:

- 96 hours of unpaid furlough hours for each member of the TMMBU,
- a change to the retirement formula for new employees hired into the Unit after the CalPERS contract is amended (2% @ 55, average of three consecutive highest years)
- no reduction in workforce for the duration of the LOU
- extension of current MOU expiration date to June 30, 2011

WHEREAS, All parties agree that approving a Letter of Understanding is mutually beneficial;

NOW THEREFORE, BE IT RESOLVED, That the City Council approves the Letter of Understanding between the City of Tracy and the Tracy Mid Managers Bargaining Unit, which is attached as exhibit A to this staff report, extending the current Memorandum of Understanding through June 30, 2011.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 7th day of September, 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

ADOPT A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY FIREFIGHTERS ASSOCIATION

EXECUTIVE SUMMARY

The Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Firefighters Association expired on March 31, 2009 and a Letter of Understanding, which extended the MOU for one year, expired on March 31, 2010. Representatives from the City and TFA have met to negotiate a new Agreement. Staff recommends approval of a 15-month MOU, effective April 1, 2010 through June 30, 2011.

DISCUSSION

In June 2006, the City Council approved an MOU between the City and the Tracy Firefighters Association (TFA). The Agreement covered a period of three (3) years, effective April 1, 2006 through March 31, 2009. In April 2009, the City approved a Letter of Understanding, which extended the MOU for one year, or until March 31, 2010. Representatives from the City and TFA have met and conferred in good faith and have concluded negotiations on a new, 15-month MOU.

The main components of the new MOU are as follows:

- No wage increase (COLA or equity) for the duration of the Agreement.
- Employee contribution of 3% toward the PERS contribution required by City as the employer (as of July 16, 2010).
- Establishment of furlough bank with eighty-four (84) hours that must be used by June 30, 2011.
- Cap on educational reimbursement consistent with other employee groups, or no more than \$2,500 per fiscal year.
- Continuation of employee contribution to health care benefits of approximately 15%.

While other non-public safety units at the City have taken a number of unpaid furlough days to assist in reducing personnel costs, public safety groups such as TFA cannot implement furloughs without either reducing service delivery to the public or increasing the City's overtime costs as firefighters are needed to backfill personnel taking unpaid furlough days since operations provide services 24 hours per day, 7 days per week. TFA will therefore be contributing 3% towards the employer's retirement contribution to ensure a reduction in personnel costs will be realized. In exchange, the City will provide a furlough bank of 84 hours. These hours may only be utilized if scheduled in a manner similar to vacation and only when such leave will not negatively impact service delivery or require increased overtime by other members. Any hours not taken by June 30, 2011 will be forfeited by the respective employee. Furloughs hours cannot be cashed out by the employee.

The Association also agreed to cap the educational reimbursement at \$2,500 per fiscal year, which is consistent with other employee groups. In addition, TFA members will continue to contribute approximately 15% toward their health care benefits.

To ensure service delivery, the City agreed to provide minimum staffing of 3 personnel for truck 91 and engines 91, 96, and 97 for the duration of the Agreement.

Because the second tier employee retirement benefit (or 3% at 55) is already implemented for TFA, discussions regarding a retirement benefit reduction for new hires, similar to that negotiated for all other units, was unnecessary.

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

FISCAL IMPACT

There are no wage increases for the duration of the MOU. The 3% contribution toward PERS will result in a savings of \$230,000 in FY 2010-11. The General Fund portion of this savings is \$126,500. The remaining savings will be distributed to Tracy Rural and Mountain House. The FY 2010-11 General Fund budget did not anticipate any salary savings for the Fire Department.

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

RECOMMENDATION

That the City Council, by resolution, approve the Memorandum of Understanding between the City of Tracy and the Tracy Firefighters Association and all provisions contained therein.

Prepared by: Maria Olvera, Human Resources Director

Approved by: Leon Churchill, City Manager

Attachments: Memorandum of Understanding between the City of Tracy and Tracy Firefighters Association

MEMORANDUM OF UNDERSTANDING

Between

CITY OF TRACY

And

TRACY FIREFIGHTERS' ASSOCIATION

April 1, 2010 - June 30, 2011

TRACY FIREFIGHTERS' MOU
APRIL 1, 2010 –JUNE 30, 2011

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Representatives of the Tracy Firefighters' Association 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 Fire Bargaining Unit, freely exchanged 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 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 Memorandum of Understanding shall be presented to the City Council as the joint recommendations of the undersigned for base salary and employee benefit adjustments for the period commencing April 1, 2010 through June 30, 2011.

Section 1. Recognition

1.1 Association Recognition

The Tracy Firefighters' Association, hereinafter referred to as the "Association", is recognized as the exclusive representative as provided in the City's Employer/Employee Relations Resolution for all employees assigned to the classifications set forth below:

Fire Captain
Fire Engineer
Firefighter

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 Association or because of any activities on behalf of the Association. Association activities shall not interfere with the normal operation of the City. Neither the City nor the Association 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. Association Security

3.1 Association Dues

The Association shall be entitled to have the regular dues of its members deducted from their paychecks in accordance with the procedures set forth herein.

Employees shall be entitled to have dues deducted by filling out, signing and filing with

the City an authorization form provided by the City.

The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues check-off authorized. When a member in good standing of the Association is in a non-pay status for the pay period when his dues would normally be withheld, no dues withholding will be made to cover that withholding from future earnings nor will the member deposit the amount with the City which would have been withheld if the member had been in a pay status during that period. In the case of an employee who is in a non-pay status during only a part of the pay period and the base salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Association dues.

Dues withheld by the City shall be transmitted monthly to the party designated in writing by the Association as the party authorized to receive the funds, at the address specified. The Association shall indemnify, defend, and hold the City harmless against the claims made and against any suit instituted against the City on account of check-off of employee organization dues. Any amounts paid in error shall be adjusted in subsequent payment.

3.2 Use of City Facilities and Bulletin Boards

The Association may, with the prior approval of the Fire Chief or his designee, use City facilities 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 Association.

The Association 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. Association Representatives

4.1 Attendance at Meetings by Employees

Any employee who is directed to attend a meeting at which one of the issues is the proposed discipline of said employee shall be entitled to Association 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 Association staff or witnesses who may be necessary to the meeting.

4.2 Access to Work Locations

Reasonable access to employee work locations shall be granted officers of the Association and their 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 Fire Chief. Access shall be restricted so as not to interfere with the normal operations

of the department or with established security requirements. Solicitation of membership and activities concerned with the internal management of the employee organization such as collecting dues, holding membership meetings, campaigning for office, conducting elections and distributing literature shall be conducted in accordance with department policy and procedures. The Association shall designate in writing to the Human Resources Department the names of the Association's officers and designated representatives.

4.3 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. An employee shall have the right to have his/her written comments attached to items contained in his/her personnel file.

4.4 List of Employees

The Human Resources Department shall furnish the Association twice a year with the names, classifications and date of hire of employees assigned to classifications in the bargaining unit; provided, however, the Human Resources Division shall not be required to provide such information in any format other than one already in use.

4.5 Advance Notice

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

4.6 Firefighters Procedural Bill of Rights

The City agrees to adhere to the provisions of the Firefighters Procedural Bill of Rights (FBOR) as contained in California Government Code Sections 3250-3262, in all matters in which the provisions of the FBOR apply.

Section 5. Salary Plan

5.1 Salary

The salary schedule for each classification is detailed in Exhibit A. There shall be no Cost of Living Adjustments (COLAs) or equity increases for the duration of the Agreement.

5.2 Pay Days

Employees shall be paid semi-monthly on the 15th and the last day of each month. If payday falls on a Saturday or Sunday, payday is the preceding Friday. If payday falls on a holiday, then payday is the preceding workday. Every effort will be made to distribute paychecks to departments so that shift workers may obtain their paychecks at the end of the shift prior to payday. No employee is authorized to cash or deposit paychecks in their possession prior to the date printed on the check.

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, sick leave usage, shall be processed and paid or reported on the subsequent paycheck.

5.3 Salary for New Employees

The base 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 service.

5.4 Salary Range

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

Base 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 employees are promoted, they shall normally receive the first step in the base salary range for their new position. However, if such step results in a base salary increase of less than five percent (5%), they shall receive a step increase which provides a minimum of five percent (5%) increase, provided that in no event will the new base salary be above Step E of the promoted class.

5.6 Salary Upon Demotion

When an employee is demoted, that employee's compensation shall be adjusted to the base salary which most closely approximates the employee's base salary in the higher classification; provided in no event shall that new base salary be above 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 (Out-of-Class Pay)

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. After making such assignments, the City shall not reassign for the sole purpose of avoiding payments of such higher amounts. Employees who are appointed to a higher classification, in an acting capacity, will receive a minimum of five percent (5) increase but no less than Step A and no more than Step E of the higher classification. Details regarding the processing of Personnel Action Forms and effective dates for out-of-class pay are contained ~~the~~ in the Administrative Procedure on Out-of-Class Pay.

Employees assigned as a Relief Specialist will receive out-of-class pay ten percent (10%) higher based on their current salary step when assigned as a Fire Captain.

5.8 PERS Contribution

Effective July 16th, 2010 through June 30th, 2011, employees will contribute 3% toward PERS Employer contribution, on a pre-tax basis. This additional 3% contribution shall offset the City's PERS Employer costs. In exchange, effective July 16th, 2010, a bank of furlough hours (FBH) will be created to each employee, equivalent to the 3% contribution toward PERS Employer costs. Effective July 16th, 2010 eighty-four (84) hours of furlough time will be granted to each full time 24 hour shift employee. FBH shall not be carried over beyond the term of this agreement, June 30, 2011, unless otherwise approved by the City Manager. These FBH can be utilized for previously scheduled 2010 vacation shifts to occur between July 16 and December 31, 2010, vacation shifts through June 30, 2011, and within all contractual terms pertaining to vacation as defined by the MOU and department policy. FBH shall not vest as a property right; FBH is not available for cash out; FBH must be taken in increments of either 12 or 24 hours. If an employee is promoted out of the unit or separates from employment for any reason during the term of this agreement, any unused FBH shall be forfeited. FBH shall be requested and granted in the same manner as vacation time, with no modifications to the number of employees allowed off on vacation/FBH per shift.

The City agrees to pay the portion of the employee's contribution for the Public Employee's Retirement System (PERS) two percent (2%) at fifty (50) retirement benefit during the term of this Agreement.

The City's contract with PERS includes the single highest year retirement formula; the PERS 1959 Survivor Benefit level Four (4) to all employees covered under this agreement and the three (3%) at fifty-five (55) retirement benefit formula.

The City will continue to pay the employee's contribution to PERS and will continue to treat the City's payment of the Employer Paid Member Contribution (EPMC) as "Special Compensation".

5.9 Advancement (Step Increases)

At the completion of the applicable probationary period of employment, employees appointed to Step A are eligible for a step increase. Additional step increases will be on an annual basis thereafter until the attainment of Step E. All step increases shall be based on satisfactory performance as shown from the evaluation by the employee's Supervisor. Denial of step increases shall be based on documented performance evaluations. Increases of more than one step for superior performance may be provided upon recommendation by the Fire Chief and approval of the City Manager.

5.10 Overpayment Resolution

In the event an employee receives overpayment by the City, the employee shall reimburse the City for the total overpayment, and the City may obtain reimbursement by payroll

deduction(s). Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by mutual agreement of the employee and the City Finance Director.

Section 6. Hours of Work

Section 6.1 Workweek and FLSA Work Period

The workweek for all employees shall be from Sunday at 12:00 a.m. through the following Saturday at 11:59 p.m. and workday shall mean 7:00 a.m. to 6:59 a.m. The work period for fire suppression line employees shall follow the provisions under the 7K exemption of the Fair Labor Standards Act (Exception – 40 hour per week employees). 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. Therefore, the City shall pay an overtime premium equal to one-half (1/2) time pay for hours worked as prescribed under the FLSA. For employees assigned to 40-hour workweeks, overtime shall be work which is in excess of eight (8) hours per day and forty (40) hours per week.

Section 7. Overtime, Call-Back

7.1 Definition

Overtime is work which is in excess of the regular work shift and which has the prior approval of the Fire Chief or his designated representative. Overtime shall also be paid for work performed on the employee's scheduled days off. Leave time, whether paid or unpaid, is not included in computing the work period for FLSA overtime purposes.

7.2 Scheduled and Emergency Overtime

Unless excused by the Fire Chief, 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.

7.3 Overtime Compensation

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

Overtime shall be compensated at the rate of one and one-half (1-1/2) times. To determine the overtime hourly rate for fire personnel, 2912 annual hours shall be used. Hourly rate = monthly base salary X 12 months divided by 2912 hours.

Hourly rate X total number of hours worked = straight-time pay

7.4 Call-Back Pay

Callback by means of telephone or radio communication shall be required. Failure to respond to a callback after notification may result in disciplinary action. Callback pay shall be on the following basis:

(1) Employees are to be paid at the rate of one and one half time their normal compensation rate. Hours accumulated above the two hour minimum shall be at the time and one-half rate. Compensation shall commence at the time of notification for those individuals contacted by phone.

(2) Those employees contacted by phone for callback shall respond to their assigned station within a reasonable period of time, obeying all traffic laws enroute.

(3) Any off-duty employee who has not arrived at the station and signed the duty call-in sheet by the time of the release of off duty personnel is announced, is not eligible for call-in pay. This section relates to pager calls.

(4) Should the release of off-duty personnel be prior to an elapsed time of 25 minutes from the time of response, then the 25 minute time frame shall be the cut off time for call-back pay. Any exceptions to this policy shall only be authorized by the Fire Chief. This section relates to pager calls.

Section 8. Differentials/EMT Training

8.1 EMT Training

The Department agrees to continue to provide EMT CE (Continuing Education) as part of its regular training schedule to allow all employees to maintain ongoing EMT certification, to the extent operationally feasible.

However, in the event that an employee is on leave or does not avail himself/herself of the Department training opportunities, it will remain the responsibility of the employee to complete the EMT course and recertify as required. It shall be the City's responsibility to provide an EMT course or reimburse employees for the cost of taking the course or pay employees for time spent attending such courses.

8.2 Education Incentive Pay

Upon completion of an AA or AS Degree, in Fire Science, employees shall be eligible for a five percent (5%) incentive increase in pay. Equivalent incentive pay will be provided to an employee who has completed the Fire Science Credits and Certification, and who has obtained a B.A or B.S. Degree. Details regarding procedures for education pay are contained in the Administrative Procedure on Education Incentive Pay.

8.3 Hazardous Materials Differential

8.3.1 Selection and Requirements

An employee may volunteer to be assigned to the Hazardous Material Team by written submission to the Fire Chief. The Department shall provide the initial Hazardous Materials Technician training for individuals selected to join the Hazardous Materials Team. A Team member whose initial training has been provided by the Department shall commit to serve on the Hazardous Materials Team for a minimum of three (3) years after assignment by the Chief and completion of the training.

8.3.2 Training Time

Twenty-four (24) hours of training time per individual, per twelve (12) month period, will be granted for maintenance training for each Hazardous Materials Team member. Eight (8) hours of such training shall be Joint Team training with San Joaquin County. Training is coordinated and provided by the Office of Emergency Services (OES). The City will provide and schedule these training activities as approved by the Fire Chief.

In addition, each Hazardous Materials Team member will be permitted to attend an additional twenty-four (24) hours of related Hazardous Materials training, paid at the appropriate rate. Training shall be selected by the employee subject to the approval of the Department for content and scheduling.

8.3.3 Selection of Team

Selection of candidates will be on a first come first selected basis. In the event there are more volunteers than available slots on the Hazardous Materials Team and the qualifications of the volunteers are equal, the most senior employee(s) shall be selected for the next available positions(s) on the Team.

8.3.4 Department Responsibilities

The Fire Chief will determine the number of Hazardous Materials Team positions needed.

Requirements and responsibilities of the Hazardous Materials Team shall be provided in a Department SOG.

8.3.5 Pay

Employees who maintain eligibility and a satisfactory performance will be paid an additional four percent (4%) above base salary.

8.4 Bilingual Pay

Upon adoption of this Agreement, 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 Fire Chief 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 Fire Chief as beneficial to the City.

8.5 Pay For Performance

The Department shall adopt a voluntary Pay for Performance Program that shall be available to all represented employees who have completed their probationary period. The Department and Union agree to meet and discuss revisions to the existing Pay for Performance Program design, administrative process and benchmarks by which the program is evaluated. The Department agrees to publish the new Program by September 1, 2006. Plans that have been submitted for approval as of January, 2006 shall be held and reevaluated after September 1, 2006 and employees shall be offered an opportunity to resubmit a plan to conform to any new or revised Performance Program requirements.

The Pay for Performance Program shall designate a Project term. A represented employee who has been approved for a submitted project shall receive an additional 3% of his/her base rate of pay during the approved Project period. An employee shall be eligible to participate in only one Pay for Performance Plan at a time. Performance Pay shall be paid in addition to any other Differential Pay for which an employee is eligible.

Section 9. Allowances

9.1 Education Reimbursement

An employee who completes a course of study may be reimbursed for books, supplies and tuition for courses taken at public and non-public colleges or universities in California with approval of the Fire Chief. A grade of "C" or better is required in order to receive reimbursement.

If the City initiates a Paramedic Program during the term of this MOU, paramedic studies shall be added to the Education Reimbursement program. The City and the Association will meet and confer regarding the details of Paramedic studies reimbursements. These discussions will address issues unique to paramedic studies programs including, but not limited to, the appropriate amount, method and conditions of reimbursement. Unless mutually agreed otherwise, such discussions shall begin within thirty (30) calendar days of implementation of a Paramedic Program.

Mileage reimbursement or transportation shall only be provided for those courses the City directs the employee to attend.

Educational reimbursement shall be capped at no more than \$2,500 per fiscal year. City also agrees to allow any mandatory fees as a reimbursable expense in addition to tuition, supplies and books not to exceed the cap of \$2,500.

9.2 Credit for Training

Responsibility for developing training programs for employees shall be assumed by the Fire Chief or his designee. Such training programs may include lecture courses,

demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. All completed training should be filed with the training officer who will then submit it to Human Resources for filing.

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Human Resources Department by the Fire Chief.

9.3 Uniforms

The City shall provide each employee, except those in their probationary period, an annual uniform allowance of \$915.00 which shall include the purchase of regular uniforms, Class A uniform and safety shoes as approved by the Fire Chief.

All new probationary employees shall receive a uniform allowance equal to the current annual allowance for permanent employees, which shall include the purchase of regular uniforms and safety shoes as approved by the Fire Chief. Such employees shall be required to show proof of purchase of a Class A uniform within 30 days of the first uniform allowance check after completing probation. Upon completion of the probationary period, employees will receive a uniform allowance pro-rated for the fiscal year in which they completed probation. The following fiscal year, employees will receive the full annual uniform allowance.

Uniform allowance will be paid separate from payroll checks and will be issued on June 30 or the last business day before June 30.

The City shall pay for the replacement of an employee's safety shoes and work uniform that are damaged to a point that results in a safety hazard, if such damage occurs in the line of duty through no fault of the employee. In the event of proven negligence by the employee, the replacement costs will be borne by the employee. (*Section moved from Safety Section as more appropriate here.)

9.4 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.

9.5 Mileage Reimbursement

An employee who is required to provide transportation for the performance of his job shall be compensated at a rate equal to Internal Revenue Service (IRS) rate. It is understood that such reimbursement does not apply to commuting by employees to or from their residences. Preapproval of the Fire Chief is required for reimbursement.

9.6 Payment for Required Training

In the event that a specialized team is formed and the department requires training, the City shall pay for such training cost and time at appropriate rates.

Section 10. Holidays

10.1 Paid Holidays

Full-time employees on a forty (40) hour schedule 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 Birthday (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)

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

10.2 Saturday and Sunday Holidays

Except for employees working in a seven (7) day operation, if a holiday should fall 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.

10.3 Holiday In-Lieu Pay

Holiday in-lieu pay shall be paid to employees on a fifty-six (56) hour schedule. Holiday in-lieu pay is in addition to the employee's regular base salary and shall be based on the following formula:

Annual base salary divided by 2,912 hours = Hourly rate X 18 hours = Holiday-in-Lieu Pay

For purposes of this Section, a holiday taken shall mean a twenty-four (24) hour shift.

Instead of receiving Holiday-in-Lieu pay, employees may choose to take no more than one (1) holiday per month as listed in Section 10.1 subject to the staffing needs of the City. Whenever an employee chooses this option of taking off one (1) shift per month, instead of receiving Holiday-in-Lieu pay for such holiday, such holiday shift off shall be considered to be an additional vacation shift and all scheduling and approval requirements which apply to vacation use shall govern the use of such holiday shift off. Holiday-in-Lieu shifts off may not be carried over from one month to the next.

Employees shall be allowed to take no more than one (1) holiday per month as listed in Section 10.1. For purposes of this section, a holiday taken shall mean a 24 hour shift. Employees on a forty (40) hour schedule shall not be entitled to holiday in-lieu pay as they will be on off-duty status on all holidays.

Holiday pay will be paid on separate checks on the regular payday June 30 and December 15 with one half of the annual amount being paid on each of these dates.

Section 11. Vacation Leave

11.1 Vacation Benefits

A. Employees on a forty (40) hour work week shall be entitled to annual vacation leave based on length of continuous service.

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

From beginning of 6th year of continuous employment through completion of 10 year - one hundred and thirty-six (136) hours per year.

11-15 years of continuous employment - one hundred and seventy-six (176) hours per year.

16-20 years of continuous employment - one hundred and ninety-two (192) hours per year.

20 years or more continuous employment - eight (8) additional hours per year for each year of service.

B. Employees on a fifty-six (56) hour work week shall be entitled to annual vacation leave based on length of continuous service.

From date of employment through completion of the 5th continuous year - twelve (12) hours of vacation per month.

For service beginning with the sixth year of continuous employment through completion of the 10th year, each employee shall accrue eighteen (18) hours of vacation per month; 11-15 years of continuous employment, each employee shall accrue twenty-one (21) hours of vacation per month;

16-20 years of continuous employment, each employee shall accrue twenty-four (24) hours of vacation pay per month;

20 years or more of continuous employment, each employee shall accrue one (1) additional hour per month for each additional year of service.

11.2 Vacation Accumulation

Earned vacation time may be accumulated from year to year, but an employee shall not be allowed to accumulate more than two (2) times his/her current annual vacation entitlement. Except as provided below, an employee who has reached his/her maximum allowable accumulation will not accrue vacation leave until such time as his/her vacation leave balance drops below the applicable maximum accumulation.

With prior written approval from the City Manager, an employee may accumulate vacation leave in excess of the above-described limit. The decision of the City Manager shall be final.

11.3 Vacation Scheduling

Vacations shall be scheduled yearly by employees with the approval of the Fire Chief. Preference in scheduling shall be based on seniority. Any vacation usage other than regular yearly scheduled vacation will require a minimum of twenty-four (24) hour notice and supervisor approval.

11.4 Vacation Usage

All employees shall be entitled to vacation leave with pay upon completion of six months of employment. The Fire Department's 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 and in accordance with current Fire Department policies. Leave may be taken only after it has been earned, subject to the above restrictions. No employee may take vacation during his first six months of employment.

11.5 Vacation Leave Special Account for Union Use

Employees may voluntarily donate vacation time, up to a maximum of twelve (12) hours per employee per calendar year, to a Vacation Leave Special Account to be used by Firefighters' Union Local representatives in order to attend labor union related training and other activities. Such account shall not exceed four hundred eighty (480) hours per calendar year. Such donation shall be voluntary and not retractable as demonstrated by written request and notice provided by the employee to the City's Finance Division.

This special account shall be charged for all expenses or hours necessary (including overtime relief) to allow members to conduct union activities. Such leave shall be requested at least one (1) City Hall business day in advance. All such leave must be approved by the Fire Chief in order to ensure proper accounting, record keeping, and scheduling.

11.6 Vacation Sell Back

The hourly rate of pay for vacation sell-back shall be the employee's annual salary, divided by the annual hours of work.

The total vacation sell back allowed once each calendar year shall not exceed fifty

percent (50%) of an employee's accumulated vacation leave but no more than the equivalent of one year's earning rate for vacation.

Section 12. Sick Leave

12.1 Accrual

All regular employees except Fire Inspectors shall be eligible to accrue sick leave at the following rates:

- a) Employees on a 56-hour schedule hired prior to December 31, 1974 - twenty-four (24) hours of sick leave with full pay for each month of service during the first twenty (20) years of employment; thirty-six (36) hours of sick leave with full pay for each month of service during the twenty-first (21st) year of employment and thereafter.
- b) Employees on a 56-hour schedule hired on or after January 1, 1975 - twenty-four (24) hours of sick leave with full pay for each month of service.
- c) Employees on a 40-hour schedule shall accrue sick leave at the rate of eight (8) hours for each month of service.

For the purpose of this section, months of service shall mean consecutive calendar months.

12.2 Approval

Sick leave may be requested and used as approved by the Fire Chief. Pay for approved sick leave shall be authorized until the employee's accumulated total of sick leave hours has been exhausted and at such time the employee shall receive no further pay for sick leave. An employee requesting sick leave should exercise reasonable diligence in notifying the on-duty supervisor.

Failure to request approval of the use of sick leave prior the commencement of the shift for which leave is requested may result in loss of the sick leave privilege for the subject shift. Sick leave shall not be granted for disability arising from any sickness or injury purposely inflicted or caused by the employee's willful misconduct.

12.3 Usage

Sick leave shall be requested and granted 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 utilized for this leave shall be subtracted from sick leave entitlement.

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 head 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 spouse or domestic partner, parents 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 willful misconduct.

12.4 Doctor's Certificate

It is understood that the City of Tracy 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 said verification.

The Fire Chief may require a written statement from an attending physician or dentist that an employee is capable and released to return to performance of all duties of his position.

12.5 Sick Leave Upon Death

Upon death, the estate of the employee shall receive straight-time pay for all accrued sick leave in excess of 1,440 hours.

If an employee terminates or is terminated for any reasons, all accumulated sick leave up to 1,440 hours shall be canceled; provided however, accumulated unused sick leave shall be credited to such employee if the employee returns to City of Tracy employment within two (2) years of such 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 at the time of retirement 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 his dependents shall be entitled to continued group health insurance coverage currently in effect with premiums for such coverage being deducted from the medical insurance bank until said bank is exhausted. Thereafter, the employee and his/her dependents may continue to participate in the City's group health plan, at group rates, provided the City receive the employee's payment for the premium by the 10th of each month for the following month's coverage.

Employees shall not be eligible to participate in the City's dental or vision plans after the employee's medical insurance bank has been exhausted. At such time the employee shall be afforded extended dental and vision benefits under COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985).

Terms of the Policy Agreement with the City's insurance carrier regarding coverage and eligibility shall apply to the employee and his dependents.

12.7 Retiree Health Savings Account

The City and the Union agree to implement a 414 (h)(2) vehicle which would provide a cash option, retiree health savings option and the ability of the individual employee to set aside tax deferred monies from the employee's accrued leave balances.

The City agrees to meet within thirty (30) days of a written request by the Union to negotiate plan provisions. Such meetings shall conclude by June 30, 2007 and plan design and administration shall be developed through mutual agreement. The City agrees to review the feasibility of establishing a 414 (h)(2) through available plan administrators.

Features of the plan design will include:

- At retirement employees may utilize accrued sick leave hours (some or all hours accrued beyond the initial 1440) as a contribution to the 401 portion of the plan up to the legal maximum OR the employee may utilize all hours (including the initial 1440 hours) for retiree medical benefits;
- In the event the employee elects to utilize any portion of his/her accrued sick leave hours at retirement through the 401 portion of the trust, the first 1440 hours shall be deducted but any hours not contributed to the 401 portion of the plan may then be contributed to the City's existing Retiree Medical fund;
- A 90 day window prior to retirement for employees to make an irrevocable election; and
- Hours of sick leave utilized by the employee for retiree medical shall continue to be administered by the City.

Examples:

Employee A has 3000 hours of sick leave at retirement and opts to place 500 in the 401 account. First, 1440 is deducted from the 3000 leaving 1560 hours. Then the 500 is placed in the 401 account. The employee may then choose to use all remaining 1060 hours toward retiree medical.

Employee B has 3000 hours of sick leave at retirement and chooses to use only the retiree medical bank – so 3000 hours are available for retiree medical.

Other plan features shall be by mutual agreement. In addition, it is understood that the City shall seek legal counsel regarding the establishment of such a plan to ensure compliance with state and federal law. Until such time that this provision is fully implemented, employees who retire are not eligible to receive any accrued sick leave hours in cash.

The City's agreement to this provision is contingent upon securing a third party administrator.

12.8 PERS Sick Leave Conversion

The City implemented the PERS sick leave conversion option by amendment to the City's contract with the Public Employee's Retirement System effective July 1, 1983. This

conversion is inapplicable to employees hired after January 1, 1985 by amendment to the PERS contract.

12.9 Catastrophic Leave

Employees covered by this Memorandum of Understanding shall be eligible to participate in the City's Catastrophic Leave Program as described in Personnel Rule 10, Section 15.

Section 13. Workers' Compensation

All employees receiving disability payments under Worker's Compensation Laws shall be entitled to industrial accident leave in accordance with state laws and employment status.

Section 14. Disability Insurance

The City shall contribute \$77.77 per month on behalf of each represented employee as follows:

100% of the monthly premium for the LTD Plan provided by the Association through the California Association of Professional Firefighters' (CAPF).

100% of the monthly premium for the Long Term Care policy provided by the Association through the CAPF.

In no case shall the City's total monthly contribution exceed \$77.77 per employee.

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 notice of return shall be cause for discharge.

A leave of absence without pay up to three (3) days can be approved by the Fire Chief. The City may pay health benefits for employees on approved leave of absence without pay as a result of illness or injury for up to sixty (60) days.

15.2 Bereavement Leave

(a) In the event of a death in the immediate family of an employee, absence shall be allowed not to exceed five (5) consecutive calendar days. The employee may, with the department head's permission, utilize 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.

The immediate family of an employee is defined as: parents, stepparents, parents in-law, spouse or domestic partner, child, stepchild, 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.

15.3 Military Leave

- (a) Military leave shall be granted in accordance with provisions of State and Federal laws. All employees entitled to military leave shall give the Fire Chief 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 base 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 base 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) Persons employed by the City of Tracy to fill positions made vacant by employees on military leave of absence shall hold such positions subject to being laid off upon any of the said employees being restored to their former positions. Employees promoted to fill positions made vacant by employees on military leave shall hold such positions subject to being restored to their former positions upon return of the employee.

15.4 Maternity Leave

Maternity leave shall be granted in accordance with applicable State and Federal laws. Request for maternity leave must be submitted to the Fire Chief no later than the end of the sixth month of pregnancy.

15.5 Family and Medical Leave Act

The parties acknowledge the applicability of the Family and Medical Leave Act and the California Family Rights Act and intend to comply with these Acts.

15.6 Jury Duty

All employees shall be entitled to leaves 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.

Any employee whose name shall be selected from the list of trial jurors to serve as juror in a civil or criminal action pending in a State or Federal Court convening in the State of California, shall be entitled to a leave of absence for all his/her regularly scheduled shifts during the court days of such service; provided, however, that the employee shall report

to work if released from jury service prior to 5:00 PM and does not have to report to jury service the following day.

Such leaves of absence shall be granted with pay up to the amount of the difference between the employee's regular earnings and any amount he/she receives for jury or witness fees, with the exception of any mileage allowance, which shall be retained by the employee. Such leaves of absence shall not be charged against the employee's sick leave or vacation leave.

15.7 Voting Leave

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

15.8 Absence Reports

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

15.9 Attendance

Failure on the part of an employee absent without leave to return to duty within 24 hours after notice of return shall be cause for discharge.

Section 16. Health Insurance

16.1 Medical

16.1.1. Plans Provided.

The City offers medical insurance through Kaiser and Healthnet HMO and PPO. During the term of this Agreement the City reserves the right to change medical providers and the parties shall meet and confer regarding any such change.

16.1.2. New Employees.

New employees hired after the adoption of this agreement shall be required to select a medical plan for at least the employee and are not eligible for cash benefits except as may be required by provisions of the IRS regulations covering Flexible Benefits plans.

16.2 Dental

The City shall offer dental insurance coverage for full-time employees and their eligible dependents to a maximum annual coverage benefit of One Thousand Two Hundred Dollars (\$1,200.00) per participant per year.

16.3 Vision Care

The City shall offer vision care benefits for full-time employees and their eligible dependents through the existing providers.

16.4 Life Insurance

As soon as feasible after adoption of this Agreement, the City will increase the Life Insurance to Fifty Thousand Dollar (\$50,000) from the current Ten thousand (\$10,000). This coverage will be mandatory for all employees. The City will fully pay the premium by adding the actual cost of the premium to the amount provided in the Flexible Benefits Plan each month.

16.5 Flexible Benefits Plan

16.5.1. City Contribution.

The City shall maintain a Flexible Benefits Account for each full-time employee in regular or probationary status. The City shall continue to make monthly payments of no more than the 2010 maximum amount prescribed for family coverage (\$1,452.94) to each employee's Flexible Benefit Account through June 30, 2011.

16.5.2 Future Contributions and Cash Out Options.

Effective January 1, 2007, for employees hired before June 1, 2006, the maximum cash payment shall be set at Nine Hundred and Three Dollars and ninety-seven cents (\$903.97) per month for employees who do not elect a medical plan. For employees hired after June 1, 2006, each employee shall be required to select a medical plan and the cash payment shall be limited to the minimum required by law (if any).

If premiums increase in the plans to which City employees subscribe effective January 1, 2011, the City will increase the City's monthly contribution for employees by 85% of the average of the dollar increase of the family HMO plan premiums for employees electing family coverage.

Example: "If the Kaiser Family Plan monthly increase is \$50 and the Health Net Family Plan monthly increase is \$75 per month, the average dollar amount for the two plans would be \$62.50. The City's increase contribution will be \$53.13 per month (85% of the premium increase).

For employees who elect two-party or single coverage, any increase to the Flexible Benefits Account shall be limited to the amount necessary to fully cover the plan selected or up to a maximum of the dollar amount increase allocated to employees who elect family coverage. There shall be no increase for employees who do not elect health insurance coverage.

In the event the above listed amounts are insufficient to fully pay the premiums required of employees enrolled in any one of the medical insurance plans, the City shall make a payroll deduction from the employee's pay to cover the difference in cost.

16.5.3. Continuance of Flexible Benefits Plan.

The City agrees to maintain the Internal Revenue Code Section 125 Plan to redirect employees' pre-selected amount of base salary to pay employee paid insurance premiums and other approved expenses. The City will not treat these monies as compensation

subject to income tax withholding unless the Internal Revenue Service or the Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liabilities of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

The monies in an employee's Flexible Benefit Account shall be used for one or more of the following purposes only: (1) payment of premium charges for the medical insurance program in which the employee is enrolled, (2) payment of premium charges for dental care, (3) payment of premium charges for vision, (4) payment of premium charges for life insurance (mandatory), (5) payment to the City's 125 Plan Administrator for reimbursement of Internal Revenue Code 125 eligible medical or dependent care expenses, (6) payments on the employee's behalf to the City of Tracy's Deferred Compensation Program, or (7) as a taxable cash payment of the unused balance.

Each employee shall provide the Personnel Officer in writing on a form provided and at times designated by the City each year all information necessary to administer the Flexible Benefit Program during the twelve month period beginning the first day of each plan benefit year. Thereafter, no changes to designations so made will be allowed until the following open enrollment period.

Each employee shall be responsible for providing immediate written notification to the Personnel Officer of any change to the number of his/her dependents which affects the amount of the City payment on behalf of the employee. Changes in flexible benefit payments required because of a change in an employee's number of dependents shall take effect at the start of the first pay period in the month next following the month in which advice from the employee is received by the Personnel Officer. No retroactive payments shall be allowed.

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 City Manager or, under his direction, the Fire Chief, to observe and appraise the conduct, performance, attitude, adaptability and job knowledge of new or promoted employees and to determine whether the employee is fully qualified for the position

17.2 Duration

The probationary period for new employees shall be twelve (12) months. Merit increases from Step A to B will occur after twelve (12) months on the basis of merit.

The probationary period for promoted employees shall be twelve (12) months.

Any 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

Any 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, including his/her seniority. Those rights can only be affected for cause.

The Fire Chief may extend the probationary period in three month increments not to exceed one (1) year if he 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 Fire Chief at regular intervals during the probationary period according to rules established by the City Manager.

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 the best interests of the City will be served by promoting from within.
- b) The person to be promoted meets the minimum qualifications of the promotional position.
- c) Any promotional examination shall comply with the City, State and Federal rules and regulations governing competitive examinations.

18.2 Vacancies in City Service

All vacancies in the City's service shall be filled by restoration, 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 reemployment lists;
- b) By appointment of eligibles from promotional lists;
- c) By appointment of eligibles from an open eligibility list; provided, however, when the City Manager deems it necessary, individuals on a lateral entry employment list may be considered for appointment.

The number of eligibles on a promotional list shall exceed by two (2) the number of vacancies to be filled. If there are insufficient available eligibles on a promotional list, enough available eligibles shall be certified simultaneously from the promotional and eligible list to assure that the number eligible exceeds by two (2) the number of vacancies to be filled.

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

18.3 Demotion

The City Manager may demote an employee who so requests it, or whose ability to perform his required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which he does not possess the minimum qualifications.

18.4 Suspension

The City Manager may suspend an employee without pay from his position in accordance with disciplinary procedures indicated in Section 21.6. Suspension without pay shall not exceed thirty (30) calendar days.

The Fire Chief may suspend an employee after affording due process rights for not more than three (3) working days for any one offense.

Section 19. Layoff and Recall

Permanent employees 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 the Fire Chief is instructed by the City Manager to reduce the number of employees, layoffs 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 he previously held permanent status, provided the displaced employee has less total City service. Total City service means City service as a full-time employee.
- (c) An employee may demote or transfer to a vacant position in a classification for which he possesses the necessary skills as determined by the minimum qualifications and job specifications for the position.
- (d) The name of each employee laid off shall be entered on a Reemployment List in order of seniority for two (2) years.
- (e) Former employees appointed from a reemployment 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, such reemployed employee shall not be eligible for benefits for which they received compensation at the time of or subsequent to the date they were laid off.
- (f) The City Manager may require former employees appointed from a reemployment list to undergo a physical examination, including a drug test.

Section 20. Separation from Service

20.1 Resignation

Any employee wishing to resign from employment shall file with the Fire Chief a notice of intention to leave at least two (2) weeks in advance. Upon completion and signing of a form disclosing the reasons for leaving, the resigning employee shall be entitled to his final paycheck following completion of his final day's work.

20.2 Reinstatement

A permanent employee who has resigned in good standing may request a reinstatement and the City Manager may reinstate such employee to a vacant position, if the City Manager determines reinstatement will be in the best interest of the service.

The City Manager may require such employee to submit to a physical examination, including a drug test, and may require the employee to serve a new probationary period.

20.3 Termination Interview

Employees terminating City employment, for whatever reason, shall be interviewed by their immediate supervisor who shall advise the employee of both his 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 City Manager for cause. Whenever it is the intention of the Fire Chief to discharge an employee, the City Manager shall be notified and his prior approval obtained.

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 City Manager, the Department Directors, nor the Controller, for the purpose of making collections.

21.3 Outside Employment

Employees may be employed in other jobs but other employment shall not be a job which provides an essential emergency service that would be a conflict of interest with the fire service job.

Employees may not carry on, concurrently with their public service, any private business, public office, employment or undertaking, attention to which affects the time or quality of their work, or which creates a conflict of interest with their City 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

City Manager.

21.5 Disciplinary Action

This section shall apply to the following disciplinary actions:

- Suspension
- Demotion/Reduction in Pay
- Discharge
- Written Reprimand

21.6 Causes for Disciplinary Action

Disciplinary actions may be imposed upon any employee for cause. The following shall constitute cause for disciplinary action against an employee. However, cause for discipline is not limited to the following:

- (a) Fraud in securing employment
- (b) Incompetency
- (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/departmental 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.

21.8 Skelly Notice

The City agrees to give an employee, who is being disciplined, at least eight (8) calendar days notice of such disciplinary action, as provided in Section 21.5.

Section 22. Grievance Procedure

22.1 Definition

A grievance is hereby defined as any dispute that involves the interpretation or application of this agreement or disciplinary action taken against an employee, or the application of the Personnel Rules, or the application of departmental rules.

It is the expressed intent of the parties that grievances be resolved at the lowest possible administrative level. Toward this objective, the following steps are prescribed:

22.2 Confidentiality and Privacy Rights

22.2.1 Meetings and Hearings

Except as provided by the City Personnel Rules and unless requested otherwise in writing by the grievant, all meetings and hearings for any disciplinary matter shall be private and confidential, and shall include only the parties, City representatives, and Union representatives, witnesses, and other necessary attendees.

22.2.2 Release of Arbitration Award

The parties agree that written arbitration decisions are public records. If a grievance results in a written arbitration decision and the Union releases the arbitration decision to third parties, the City may disclose any information contained within the arbitration decision to third parties. Neither the City nor Union shall release any information not contained in the arbitration decision or that is not a public record, except communications permitted by law.

22.3 Procedure

Step 1 (a) Informal Discussion

The bargaining unit member or the Union representative may present the grievance orally to the immediate supervisor within ten (10) calendar days from such time as the bargaining unit member or Union should reasonably have been aware of the occurrence of the incident giving rise to the grievance. The supervisor shall provide his/her response within ten (10) calendar days following the informal discussion.

(b) Formal Submission

Should the grievance remain unresolved, the bargaining unit member or Union representative may submit the grievance, in writing, to the Division Chief. The formal submission shall be made within ten (10) calendar days of the supervisor's response to the informal presentation of the grievance, or, if no response is received, at the conclusion of the ten (10) day period provided for informal discussion. If the grievance is not submitted within these timelines, the

grievance shall be considered resolved. The grievance shall state the specific section of the Memorandum of Understanding, the Personnel Rules, or Departmental Rules alleged to be violated, or the disciplinary action taken, and the proposed solution. The Chief, or his or her designated uniformed representative, shall render a decision in writing to the bargaining unit member and/or Union within ten (10) calendar days of receipt of the formal submission of the grievance. Copies of all written grievances filed by bargaining unit members shall be provided to the Union within a period not to exceed five (5) calendar days. Copies of responses thereto shall also be provided to the Union.

Step 2 Appeal to Department Head

Should the grievance remain unresolved, the bargaining unit member or Union representative may, within ten (10) calendar days after receipt of the Division Chief's decision, submit the grievance in writing to the Fire Chief. The Fire Chief (or designated sworn uniformed representative) shall respond to the grievance in writing ten (10) calendar days after receipts of the grievance.

It is understood that nothing shall preclude the Union from presenting a grievance to the Fire Chief if it is deemed that such action is warranted by the nature of circumstances of the grievance.

Step 3 Bargaining Unit Member Relations Officer – Union Representative

Except for a grievance concerning a verbal or written reprimand which may not be appealed beyond Step two (2) of this procedure, should the grievance remain unresolved, the bargaining unit member or Union representative may, within ten (10) calendar days after receipt of the department head response, submit the grievance in writing to the Employee Relations Officer. The Employee Relations Officer, or a designated representative, shall investigate the case and either respond to the grievance or meet with the bargaining unit member and/or assigned Union representative within ten (10) calendar days of submission and attempt to resolve the dispute.

Step 4 Conflict Resolution Team Process

The City and the Union encourage the grievant and the City to participate in a joint City-Union conflict resolution process. If mutually requested or agreed upon by the grievant and the City, a Conflict Resolution Team (CRT) shall schedule a conflict resolution meeting. The Union shall appoint two members of the conflict resolution team, the Office of Personnel shall appoint one member of the conflict resolution team, and the Department shall appoint one member. While the CRT is meeting with the grievant and the City, the Union and the City may agree to extend applicable time limits. The CRT may request the assignment of a mediator from the State Conciliation and Mediation Service.

Step 5 Adjustment Board and Arbitration

Should the grievance remain unresolved, either the City or the Union may, within fourteen (14) calendar days of said meeting submit the grievance to an Adjustment Board comprised of two (2) Association representatives, no more than one (1) of whom shall be either an employee of the City or an elected or appointed official of the Association, 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 meeting and conferring process.

If an Adjustment Board is unable to arrive at a majority decision, either the Association or the City may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the Association and the City Manager, or his designated representative. If such an agreement is not reached, the arbitrator will be chosen by each party alternately striking one name at a time from the following list of arbitrators until only one name remains:

1. Bonnie Bogue
2. Morris Davis
3. John Kagel
4. Frank Silver
5. Carol Vendrillo
6. Matt Goldberg
7. Luella Nelson
8. Wilma Rader
9. Alexander Cohn
10. Fred D'Orazio

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

Decision of Adjustment Boards 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.

If arbitration is selected, it is agreed that the decision of the arbitrator shall be final and binding on all parties and that the arbitrator's fees shall be borne equally by the parties. The arbitrator shall have not power to add to or subtract from the provisions of this Agreement, the Personnel Rules, or departmental rules.

22.4 Time Limits

Time limits prescribed in this agreement may be extended by mutual agreement of the parties. Failure by the bargaining unit member or Union to follow time limits, unless so extended, shall nullify the grievance. Failure by the City to follow the limits unless so

modified, shall cause the grievance to move to Step 2 or to Step 3, whichever is the next level.

22.5 Consolidation

Concurrent grievances alleging violation of the same provision shall be consolidated for the purpose of this procedure as a single grievance.

22.6 Immediate Dispute Resolution

In the event there is a dispute regarding the interpretation of application of this Agreement that imminently affects the City's interests, the Union, or a substantial number of members represented by the Union, either the City or the Union may request suspension of the grievance process as described in Section 22.3 of this Article and proceed to immediate resolution discussions with the Fire Chief, the Employee Relations Officer, and a Union representative. Such discussions shall be concluded within 45 days of the date of the initial request for same and the action which prompted the request for immediate dispute resolution shall be stayed, pending discussion/conclusion.

Should the dispute still not be resolved, it may be submitted directly to an arbitrator selected in accordance with the procedure detailed below.

An arbitrator to hear such case shall be selected by the parties from a panel of four professional neutral arbitrators, two submitted by each party when proceeding to arbitration pursuant to this section. The first arbitrator, selected at random, available within a 48 hour period shall be selected.

In any such case the arbitrator shall have not power to add to or to subtract from the provisions of this Agreement, the Personnel Rules, or departmental rules or orders in rendering his/her award. Pending prompt and immediate decision of the arbitrator, the stay of intended action giving rise to the dispute shall continue in effect.

It is expressly understood and agreed that the provisions of this Section shall not be invoked for actions involving individual bargaining unit member disciplinary actions or grievances.

22.7 Compensation Complaints

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the City Manager. Only complaints which allege that employees are not being compensated in accordance with the provisions of this Memorandum of Understanding shall be considered as grievances. No adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed.

22.8 Mutual Agreement on Changes

No changes in the Memorandum of Understanding or interpretations thereof (except interpretations resulting from Adjustment Board or Arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association.

22.9 No Strike

The Association, its members and representatives, agree that during the term of this Memorandum of Understanding, it and they will not engage in, authorize, sanction, or support any job action including but not limited to 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 the refusal to perform customary duties.

Section 23. City Rights

Except as modified by this Memorandum of Understanding or applicable laws the City of Tracy retains the exclusive rights and functions of management 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, the budget and the organization of the City, including 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 Memorandum of Understanding.
- (8) The City agrees to the extent required by Government Code Section 3500, etc. 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, provided that the City's duty to meet and confer hereunder shall require it to delay implementation of such management decisions for no more than thirty (30) days from the date it notified Association 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 Memorandum of Understanding, and Association shall have the right to grieve any such violation as provided in Section 22.

Section 24. General Provisions

24.1 Safety

24.1.1 Safe Work Conditions

The City shall provide and maintain safe working conditions and the Association 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.

24.1.2 Safety Equipment

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

24.2 Physicals

The City shall continue to provide a complete physical examination every other year for employees under age thirty-five (35) and once a year for those age thirty-five and over. All new employees shall pass the above physical and pass a physical fitness test, as described in Section 24.3, once per calendar year (as scheduled by the Fire Chief) as part of the minimum qualifications for employment. All new employees shall be non smokers as part of the minimum qualifications for employment.

24.3 Physical Agility and Fitness Program

(a) Testing. All sworn employees within the Fire Department must take a physical fitness test once per calendar year, as scheduled by the Fire Chief. It is the goal of this Physical Fitness Program that all employees will routinely pass the fitness test. The test components for fitness will consist of a treadmill administered by the City's physician as well as a physical agility test. Minimum standard for the fitness performance is "Bruce Protocol", level four (4) or higher.

Any employee who fails to pass the test will be placed on a supervised remediation program by the administering physician. They will be allowed to retest two times in a six-month period after the failure.

Failure to complete/pass the above testing will require the individual to participate in a remedial program to progress to minimum Department standards as prescribed by the City's physician. Reevaluation will take place in a period determined by the City's physician.

Failure to meet minimum standards at this point would require the doctor to individually reevaluate program and participation in said program, make corrections and reevaluate in another 30-60 day period as determined by the city's doctor. If there is failure to meet minimums after the second reevaluation, the doctor shall determine if individual has the capacity to continue at full-time line capacity. The above test procedure may be used as return to work/fitness for duty as determined by the Fire Chief.

If at any time a determination is made by the doctor that the individual performance level may cause him/her to constitute possible harm to themselves or others in the performance of their duties, they shall be removed from line duty immediately. In the event the

employee is determined by the City's physician to be ineligible to return to work and is not allowed to perform alternate duties, the employee shall be sent to a physician specialist and shall be placed on administrative leave until a determination is made regarding the employee's fitness for duty. The employee shall be entitled to contest the determination through a second and if necessary, third tie-breaker opinion. The costs of the second/third opinions shall be paid by the employee.

(b) Exemptions. Short Term exemptions from the testing requirement may be given for medical reasons. Exemptions will be granted by the Fire Chief when proof of medical necessity is demonstrated.

(c) Incentive. Employees will be eligible for a paid fitness incentive after satisfactory completion of probationary status in the Fire Department. Eligible Department members passing both the agility and fitness testing will be paid \$50 per month. Employees who fail a portion of the agility or fitness testing will cease to receive this incentive immediately. Incentive will not be reinstated until after satisfactory completion of all testing elements.

(d) Workout Time. Workout time will be managed through written departmental policy. Work out periods shall be utilized by all personnel. Any required records shall be turned into the Training Officer as verification of compliance.

(e) Disciplinary Action. Any employee who fails to participate and/or is placed in the remedial program and who fails to make satisfactory progress towards fitness, as determined by the City's physician, will be referred to the Fire Chief and subject to disciplinary action up to and including termination. Employees may go to their own doctor prior to any disciplinary action.

(f) Agility. Within six months after the adoption of the Memorandum of Understanding, the actual skills and agilities to be required of employees shall be determined by Labor and Fire Chief and administered by the Department. The Department will waive the agility test portion of the Fitness Program for the six months following the adoption of the Memorandum of Understanding.

24.4 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, by reason of the aforesaid requirement, the City contemplates actions, in compliance with the ADA, which are to provide reasonable accommodation to an individual employee, which are in potential conflict with any provision of this Memorandum of Understanding, the Union will be advised of any such proposed accommodation prior to implementation by the City.

Section 25. New Work

In the event the City introduces new work which the Association believes does not fall within any of the existing classifications, the City and the Association shall, upon written

request, meet and confer with respect to the base salary or other terms and conditions of such work.

Section 26. Total Agreement

This Memorandum of Understanding constitutes a full and complete agreement by the parties and contains all of the matters upon which the parties have reached agreement. Any matter not contained in this Memorandum of Understanding 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 27. Separability of Provisions

Should any section, clause or provision of this Memorandum of Understanding 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 Memorandum of Understanding. In the event of such invalidation, the parties agree to meet and confer concerning substitute provisions for provisions rendered or declared illegal.

Section 28. Past Practices and Existing Memoranda of Understanding

The term of this agreement is from April 1, 2010 through June 30, 2011. The Fire Department's Modified Duty Procedure is appended.

This Memorandum of Understanding shall supersede any prior Memorandum of Understanding, rules or regulations or past practices in direct conflict with the provisions hereof.

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

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By: _____
Antonio Perez, TFA President

By: _____
Leon Churchill, Jr., City Manager

By: _____

By: _____
Maria Olvera, Human Resources
Director

By: _____

By: _____

Attachments: Exhibit A - Salary Ranges
Letters of Understanding:
Station Shift Bidding Guidelines
Replacement of Eyeglasses
Administrative Captain Assignment
Expansion of Paramedic Program
Blood Borne Pathogens

**EXHIBIT 'A'
SALARY RANGES**

**TRACY FIREFIGHTERS
SALARY SCHEDULES**

Class Code	Position Title...	Effective Since 4/1/2010	Effective Since 4/1/2010			
			Semi-Mon Salary	Monthly Salary	Annual Salary	Hourly Rate
70102	Firefighter	A	2,474.46	4,948.92	59,387.04	20.3939
		B	2,598.18	5,196.36	62,356.32	21.4136
		C	2,728.09	5,456.18	65,474.16	22.4843
		D	2,864.49	5,728.98	68,747.76	23.6084
		E	3,007.71	6,015.42	72,185.04	24.7888
			375.96	PARAMEDIC PAY = 376.00 PER PAY PERIOD		
70108	Firefighter/Paramedic	A	2,783.91	5,567.82	66,813.84	22.9443
		B	2,923.11	5,846.22	70,154.64	24.0916
		C	3,069.27	6,138.54	73,662.48	25.2962
		D	3,222.73	6,445.46	77,345.52	26.5610
		E	3,383.87	6,767.74	81,212.88	27.8890
	2007-026	B	2,923.11	5,846.22	70,154.64	24.0916
	2/6/2007	C	3,069.27	6,138.54	73,662.48	25.2962
70103	Fire Engineer	A	2,793.08	5,586.16	67,033.92	23.0199
		B	2,932.73	5,865.46	70,385.52	24.1709
		C	3,079.37	6,158.74	73,904.88	25.3794
		D	3,233.34	6,466.68	77,600.16	26.6484
		E	3,395.01	6,790.02	81,480.24	27.9809
70105	Fire Captain	A	3,173.56	6,347.12	76,165.44	26.1557
		B	3,332.24	6,664.48	79,973.76	27.4635
		C	3,498.85	6,997.70	83,972.40	28.8367
		D				

			3,673.79	7,347.58	88,170.96	30.2785
		E	3,857.48	7,714.96	92,579.52	31.7924
70107	Fire Marshal	A				
		B				
	per #2006-042	C				
	2/7/2006	D				
	(+ 7.5% incentive)	E				
	FIRE FIGHTER TRAINEE					
90565	paid hourly, not semi-mo		1,732.12	3,464.24	41,570.88	19.9860

**LETTER OF UNDERSTANDING
REGARDING STATION/SHIFT BIDDING GUIDELINES**

**BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

During November of each year, the Station Bidding process shall be conducted. All bidding shall be conducted in order of rank seniority. Personnel shall be notified by pager of their turn to bid. Once notified, personnel have 24 hours to respond. In the event personnel do not respond within the 24-hours, they will forfeit their bid and shall be moved to the bottom of the list.

The bidding shall begin with the most senior Captain and progress through seniority list until completion. After the Captains, Engineers shall begin bidding following the Engineers seniority list until completion. After the Engineers, Firefighters' shall follow the same process if applicable.

In the event there are floating positions, the positions shall be bid for according to rank seniority. If no personnel bid for the floating positions, the least senior personnel shall be assigned the floating positions.

When a vacancy occurs during the year due to promotions, retirements, etc., the vacancy shall be filled following the same process as the yearly bid. If no personnel bid for the position, the least senior person shall be assigned to the position.

If a need arises for realignment of shifts due to injuries or other situations, the vacancy shall be filled following the same process as the yearly bid. If no personnel bid for the position, the least senior person shall be assigned the position.

Personnel shall have the option of bidding the same station for two consecutive years. After two consecutive years personnel must bid a different station for one year.

Implementation of this bid process shall not impact the City financially in any way. This policy does not negate the Fire Chief's right to assign employees based on Department workload to better serve the needs of the Department.

If the foregoing is in conformance with your understanding, please indicate your approval and acceptance in the space provided below.

**APPROVED AND ACCEPTED:
TRACY FIREFIGHTERS' ASSOCIATION**

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

**LETTER OF UNDERSTANDING
REGARDING REPLACEMENT OF EYEGLASSES**

**BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

Employees covered by this MOU will be eligible on a case-by-case basis for reimbursement for the cost to the employee of replacing prescription eyeglasses that are damaged while on duty and through no negligence on the part of the employee. This provision will only remain in effect until such time as a citywide policy has been adopted by the City on the replacement of eyeglasses damaged at work at which time the citywide policy will supersede this Letter of Understanding.

If the foregoing is in accordance with your understanding, please indicate your approval and acceptance in the space provided below.

APPROVED AND ACCEPTED:

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

**LETTER OF UNDERSTANDING
REGARDING ADMINISTRATIVE CAPTAIN ASSIGNMENT**

**BETWEEN THE CITY OF TRACY AND
TRACY FIREFIGHTERS' ASSOCIATION**

During negotiations for a successor Memorandum of Understanding the following agreement was reached to eliminate the Fire Prevention Captain assignment and to create an Administrative Captain assignment.

Administrative Captain Assignment:

1. Assignment to the Administrative position shall be offered all interested Captains. All Captains shall be notified of the qualifications and job expectations and given an opportunity to request such assignment. The most qualified Captain shall be awarded the assignment. In the event qualifications among applicants are equal, the assignment shall be awarded to the most senior Captain. In the event there is no employee who requests such assignment, the least senior Captain who meets the qualifications shall be selected. The assignment for this position shall be for a period of two years.
 - a. The schedule for this assignment will be selected by the candidate at the start of the assignment and continue for the two year period. The schedule will be selected from the following three: 0800 to 1700 Monday thru Friday; the City 9/80; or 4/10 work schedule.
 - b. Schedule to be selected at beginning of assignment and are to remain in place during assignment. Alterations to the schedule after initial selection will be on a case-by case basis as approved by the fire chief.
2. Pay differential for this assignment shall be at a rate of 7.5% above employees' current wage, converted for the forty-hour workweek.
3. Overtime for assigned personnel will be at a rate of time and one-half of Administrative Captain pay rate.
4. Overtime for Administrative Captain, when working a twenty-four (24) hour suppression assignment, in whole or in part, shall be paid at the employee's previous suppression twenty-four hour pay rate of time and one half.
5. Reasonable workout time as per Tracy Firefighters' Association Memorandum of Understanding.
6. City holidays off.
7. Use of city vehicle, while on duty only.

8. As the bid identifies, the City will offer appropriate classes to the oncoming Administrative Captain, when available. Classes for development will also be offered during the assignment to Administration
9. Disputes over interpretation and application of this Letter of Understanding are subject to the grievance process under the current TFFA MOU.

APPROVED AND ACCEPTED:

Tracy Firefighters' Association

City of Tracy

Date: _____

Date: _____

**LETTER OF UNDERSTANDING
REGARDING EXPANSION OF PARAMEDIC PROGRAM**

**BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

May 16, 2006

During the recent negotiations regarding the Paramedic assignment between the City of Tracy and the Tracy Firefighters' Association, the following understanding was reached:

Paramedic Assignment:

Purpose: To provide ALS services to areas where these responses may be delayed because of distance of responding ambulance providers.

1. Pay.

In order to further the implementation of a Paramedic Program within the City of Tracy, effective July 1, 2006, each employee who is certified or who becomes certified as a Paramedic shall receive twelve and one-half percent (12.5%) of top step Firefighter base pay per month for all hours paid. The City reserves the right to determine a limit to the number of employees paid such a differential.

This differential shall be incorporated into the base pay of any employee in the Firefighter-Paramedic classification.

2. Maintenance of Certification.

Any employee hired after April 1, 2006 shall be required to obtain and maintain Paramedic certification as a condition of employment. In addition, all employees hired prior to April 1, 2006 who are currently certified as a Paramedic shall maintain such certification as a condition of employment.

Notwithstanding the above, in the future, should the City hire a sufficient number of certified Paramedics to fully support the Paramedic Program, individual employees, hired prior to April 1, 2006, may notify the Chief of his/her intent to withdraw from the program. Such notice shall be submitted one (1) year in advance. In the event there are multiple requests for withdrawal, the most senior person(s) submitting the request (s) shall be allowed to withdraw. At such time the Paramedic pay shall no longer be paid to the individual.

The Department agrees that the number of Paramedics needed to fully support the Paramedic Program shall be one additional Paramedic per shift in excess of the minimum staffing for each ALS engine company.

3. City to pay for maintenance of required certification and City to pay for forty-eight (48) hours Of C.E. (Continued Education) every 2 years.

4. City to provide for San Joaquin County accreditation time, (required patient contacts) and skills maintenance when required.

5. City to provide liability insurance.

6. Medic will be assigned by the Department to address program, staffing, and training needs.

Qualified members may select a medic station in the bid process, as per policy, but this does not preclude any assignment of qualified personnel for the good of the department.

7. Effective July 1, 2006, the City will add the classification of Firefighter-Paramedic and will meet and confer on the job description prior to the hire of any employee in the class. The pay shall be paid as provided in #1 above.

8. Disputes over interpretation and application of this Letter of Understanding are subject to the grievance process under the current T.F.F.A. MOU.

9. Section 8.4 of the current MOU was eliminated.

APPROVED AND ACCEPTED:

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

**LETTER OF UNDERSTANDING
REGARDING SELECTION OF VACATION**

**BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

Effective as soon as operationally feasible after adoption of this Agreement, the Tracy Fire Department agrees to modify the existing practice of vacation scheduling to permit three employees off during the months of May, June, July, August, September and December of each year.

The details regarding a re-bid for the remainder of 2006 and any modification to the 2007 annual shift and vacation selection procedures shall be discussed at the Joint Labor Management meetings.

In the event the Department needs to modify the number of employees allowed to take vacation on each shift, the Department will notify the Union ninety (90) days prior to the annual shift and vacation selection. The Department will review the operational reasons for such a change with the Union, consider any alternatives and meet and confer regarding the impact of the decision on the employees.

Additionally, the vacation selection system, as modified by this Side Letter of Agreement shall be monitored by the parties and discussed during subsequent departmental Joint Labor Management meetings.

APPROVED AND ACCEPTED:

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

**LETTER OF UNDERSTANDING
REGARDING BLOOD BORNE PATHOGENS

BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

Within ninety (90) days after the adoption of the Memorandum of Understanding, the Department shall review the Department SOG regarding Blood Borne Pathogens to comply with all Cal-OSHA regulations. The Department shall ensure that all employees are trained in the proper procedure.

APPROVED AND ACCEPTED:

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

**LETTER OF UNDERSTANDING
REGARDING PERSONNEL IN ACTING CAPACITY**

**BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

Regarding “move up” of personnel in acting capacity, the Human Resources Department shall keep current Captain and Engineer eligibility lists in order to ensure that those “moved up”, both desire to be utilized at a higher level and are qualified (via appropriate testing) to serve in an acting capacity. The eligibility lists will be utilized to qualify individuals for move-up provided there are a sufficient number of candidates on the list. In the event an insufficient number of candidates is on a current eligibility list, the Fire Chief or his/her representative(s) will convene a special department labor-management meeting to discuss alternative staffing solutions prior to any decision being made.

APPROVED AND ACCEPTED:

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

**LETTER OF UNDERSTANDING
REGARDING MINIMUM STAFFING**

**BETWEEN CITY OF TRACY &
TRACY FIREFIGHTERS' ASSOCIATION**

For the term of this Memorandum of Understanding (April 1, 2010 through June 30, 2011), there shall be minimum staffing of three (3) personnel daily for truck 91 and engines 91, 96, and 97.

APPROVED AND ACCEPTED:

TRACY FIREFIGHTERS' ASSOCIATION

CITY OF TRACY

By _____

By _____

Dated _____

Dated _____

RESOLUTION _____

ADOPT A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY FIREFIGHTERS ASSOCIATION

WHEREAS, The Letter of Understanding extending the Memorandum of Understanding (MOU) between the City of Tracy and the Tracy Firefighters Association expired on March 31, 2010, and

WHEREAS, Representatives from the City of Tracy and the Tracy Firefighters Association have met in good faith to negotiate a new MOU, and

WHEREAS, Agreement has been reached on a new MOU covering the period of April 1, 2010 through June 30, 2011,

NOW THEREFORE, BE IT RESOLVED, That the City Council adopts the MOU between the City of Tracy and the Tracy Firefighters Association, effective April 1, 2010 through June 30, 2011, a copy of which is attached to the staff report of this item.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 7th day of September, 2010 by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

Mayor

ATTEST:

City Clerk