

Tuesday, May 3, 2011, 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

PRESENTATION – Employee of the Month

Proclamation – Older Americans Month

Proclamation – Bike to Work Week

D.A.R.E Graduates

1. CONSENT CALENDAR

A. Minutes Approval

B. Approve Memorandum of Understanding (MOU) with Tracy Friends for Parks, Recreation and Community Services Foundation and Authorize the Mayor to Execute the MOU

C. City Council's Approval of a Resolution Authorizing the Submission of an Application for State of California Proposition 84 Statewide Park Program Grant Funds

D. Approve Amendment 2 to the Professional Services Agreement with Schack & Company, Inc., of Tracy, California, to Provide Additional Services for the Corral Hollow Road Widening Project – CIP 73014, from Grant Line Road to the West Valley Mall Entry

E. Award a Construction Contract for the Traffic Signal Pole Replacement at Holly Drive and Eleventh Street Project – CIP 72077, to Richard A. Heaps Electric Inc., of Sacramento, California, and Authorize the Mayor to Execute the Contract

F. Approve Resolution Authorizing a Leave of Absence for Tracy Transportation Advisory Commissioner Joseph Orcutt

G. Approval for the Mayor to Sign a Letter Opposing AB 438 which Requires Voters to Approve a City Council's Decision to Provide Library Services through a Private Contractor

H. Adopt a Resolution Amending the Department Heads Compensation and Benefits Plan by Extending the Term of the Plan, Requiring Employee Contribution Toward Pension Costs, Reducing City Paid Deferred Compensation, Instituting Furloughs and Authorizing the City Manager to Enter into Severance Agreements

2. ITEMS FROM THE AUDIENCE

3. PUBLIC HEARING TO AWARD A FACILITY FINANCING CONTRACT (DESIGN-BUILD) FOR THE CIVIC CENTER SOLAR PANEL INSTALLATION PROJECT – CIP 71068

4. THAT COUNCIL DISCUSS AND ACCEPT THIS UPDATE REPORT BY THE POLICE DEPARTMENT STAFF REGARDING THE PROGRESS OF THE VIOLENT CRIME AND GANG SUPPRESSION PLAN
5. AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$45,000 BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT TO PROVIDE 5TH GRADE DRUG ABUSE RESISTANCE EDUCATION (DARE) SERVICES FOR FISCAL YEAR 2010-2011 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT
6. CONSIDERATION OF A RESOLUTION ADOPTING BUDGET PRINCIPLES AND A PRELIMINARY REPORT ON BALANCING THE CITY'S BUDGET IN 2016 WITHOUT MEASURE E REVENUE
7. INTRODUCE AN ORDINANCE OF THE CITY OF TRACY ADDING CHAPTER 3.04, ENTITLED "FIREWORKS" TO THE TRACY MUNICIPAL CODE
8. ITEMS FROM THE AUDIENCE
9. COUNCIL ITEMS
10. ADJOURNMENT

March 1, 2011, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for March 2011, to Bob Gravelle, Public Works Superintendent.

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

Mayor Ives presented Certificates of Appointment to Arch Bakerink, George Riddle, Robert Tanner, and Larry Hite appointees to the Measure E Residents' Oversight Committee.

1. CONSENT CALENDAR - Following the removal of items 1-G by a member of the audience, and item 1-I by Council Member Abercrombie, it was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Closed session minutes of February 15, 2011, were approved.
 - B. Award a Construction Contract to M.C.I. Engineering of Stockton, California, for Construction of Storm Drain Improvements at Various Locations, 2010 Project – CIP 76057, and Authorize the Mayor to Execute the Construction Contract – Resolution 2011-036 awarded the contract in the amount of \$17,280.
 - C. Award a Construction Contract to Rodgers Construction & Engineering, of Stockton, for the Chrisman Road Widening (Eleventh Street to Brichetto Road) Project - CIP 73110, and Authorize the Mayor to Execute the Contract – Resolution 2011-037 awarded the contract in the amount of \$ 215,994.
 - D. Authorize Removal of Existing “U” Turn Restrictions at Intersections on Valpico Road at Tracy Boulevard and MacArthur Drive – Resolution 2011-038 authorized removal of the “U” turn restrictions.
 - E. Approval of an Offsite Improvement Agreement (OIA) with AMB Property, L. P., for Construction of Public Improvements at the Intersection of Grant Line Road and Chabot Court and at the Entrance to the Best Buy Distribution Facility on

Grant Line Road, and Authorization for the Mayor to Execute the OIA – Resolution 2011-039 approved the agreement.

- F. Approve Resolution Authorizing a Leave of Absence for Tracy Transportation Advisory Commissioner Christina Frankel - Resolution 2011-040 authorized the leave of absence.
- H. Authorization to Amend the City's Conflict of Interest Code – Resolution 2011-041 authorized amending the code.
- J. Approving Consent of an Assignment and Assumption Agreement for the Existing Reimbursement Agreement of the Tracy Lammers Road Project with the New Developer, and Authorizing the Mayor to Execute the Consent – Resolution 2011-042 approved the agreement.
- G. Oppose the Governor's Proposal to Eliminate Redevelopment Agencies in California - Steven Qualls, Regional Public Affairs Manager, on behalf of the League of California Cities, addressed Council in support of the "Stop the State's Redevelopment Proposal." Mr. Qualls provided Council with information regarding the proposal.

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

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-042 opposing the Governor's proposal to eliminate redevelopment agencies in California. Voice vote found all in favor; passed and so ordered.

- I. Appropriation of Funds for a Variety of FY 10-11 Budget Items - Council Member Abercrombie asked for clarification regarding the \$10,000 for the San Joaquin Partnership. Leon Churchill, Jr., City Manager, stated the value of the partnership to the City of Tracy has increased to include business visits and trade missions.

Mayor Ives indicated the Partnership is conducting a search to replace Mr. Locke and have received applications from a number of good candidates. Mayor Ives further indicated the City is participating with the Partnership at an enhanced level.

Council Member Elliott asked if, with the departure of Mr. Locke, the Partnership has become more Stockton centric or are Tracy's interests being represented. Mayor Ives indicated the City is now positioning itself to get a seat on the executive board. That will allow the City to get a first look at things coming down the pike.

Council Member Abercrombie asked for clarification of the \$75,000 being allocated to the Police Department. Mr. Churchill stated this is an appropriation to address gang activity for the remainder of the fiscal year and represents overtime costs. Captain Espinoza stated the plan is to have the funds available to provide flexibility if activity spikes.

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

Robert Tanner, 1371 Rusher Street, addressed Council regarding the audit fees and asked what the estimated value of the find was and which distribution center provided the additional sales tax. Mr. Johnston, Finance and Administrative Services Director, stated the actual sales tax data and the particular company involved is confidential information that could not be disclosed. Mr. Johnston added that this particular item represented a sizeable six figure sum for one year.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-044 approving the appropriation of funds for a variety of FY 10-11 budget items. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Chris Long, 1024 Central Ave., on behalf of Surland Companies, addressed Council regarding the recent court action against the Ellis project and swim center project. Mr. Long stated Surland is committed to the project.

Paul Miles, 1397 Mansfield Street, addressed Council regarding a Police misconduct complaint he had previously filed. Mr. Miles requested a formal investigation of Mr. Churchill. Mr. Miles also requested that his documents be made a part of the minutes of the meeting.

Sandy Taylor, 8721 Julie Lind Circle, addressed Council regarding the Ellis Swim Center. Ms. Taylor thanked staff and the Council for all their hard work on the project. Ms. Taylor encouraged Council to continue to work to bring the swim center to fruition.

Al Nero, Fire Chief, addressed Council regarding Daylight Savings Time, which begins on March 13, 2011. Fire Chief Nero reminded residents to change the batteries in their smoke and carbon monoxide alarms and to test their alarms. Fire Chief Nero further stated the Fire Department is available to install and test smoke alarms in residents' homes. Residents can schedule an appointment by contacting Fire Administration.

Michel Bazinet, 1005 Mabel Josephine, addressed Council regarding the suit filed by TRAQC against the City. Mr. Bazinet indicated the judge's decision was tentative and not final. Mr. Bazinet stated it was important to proceed with the project until a final ruling is provided.

Marsha McCray, 560 W. Schulte Road, addressed Council voicing her disappointment in the tentative decision of the judge against the Ellis project. Ms. McCray stated she did not understand how TRAQC could oppose a quality project for the City.

Dave Helm, 1001 Central Avenue, addressed Council regarding gangs and gang activity. Mr. Helm suggested the six beats should include six officers if needed. Mr. Helm stated Council needed to make the necessary funds available.

3. APPROVAL OF MEMORANDUM OF UNDERSTANDINGS WITH TRACY LITTLE LEAGUE; TRACY BABE RUTH; TRACY YOUTH SOCCER LEAGUE; AND TRACY FUTBOL CLUB FOR CONSTRUCTION AND MAINTENANCE OF SPORTS FIELDS AND RELATED AMENITIES WITHIN THE HOLLY SUGAR SPORTS COMPLEX AND; APPROVAL OF AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT

WITH NOLTE ASSOCIATES, INC. FOR ADDITIONAL DESIGN AND CONSTRUCTION RELATED SERVICES FOR THE HOLLY SUGAR YOUTH SPORTS COMPLEX, CIP 78115, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AMENDMENT Rod Buchanan, Parks & Community Services Director, presented the staff report. On November 18, 2009, Council approved a conceptual design for the Holly Sugar Youth Sports Complex (Complex) and directed staff to prepare a Request for Proposals to obtain the services of a qualified consultant to design the first phase of the Complex, which encompasses approximately 60 acres. On July 20, 2010, the Council approved a Professional Services Agreement with Nolte Associates to complete design and construction documents for the Complex for a not to exceed amount of \$1,716,741. The scope of work involved master conceptual plan design of the whole 150+/- acre site to size the infrastructure, complete the improvement plans and specifications for Phase 1 infrastructure and sports fields.

Since the award of this agreement, Nolte Associates conducted meetings with staff, the Parks and Community Services Commission and local youth sports organizations to receive input on the Design Development Package for the Complex. The two factors that were primarily considered in the final Design Development Package were available funding and the 2006 Playing Field Needs Assessment. Consideration of these factors resulted in the availability of eight soccer fields and 12 baseball fields. The design adjustment was endorsed by the Parks and Community Services Commission at its February 3, 2011 meeting.

Over the last two years, staff conducted meetings with representatives of the local youth sports leagues to finalize MOUs for access to specific areas within the project site for development and ongoing maintenance of playing fields as designated in the conceptual design. A total of 12 leagues participated in developing the draft MOU deal points, and eight leagues submitted Statements of Interest and Ability to be considered in Phase 1 development. Because not all leagues can be accommodated in Phase 1, staff met with all eight leagues who have agreed with the Phase 1 plan. The four leagues that will be included in Phase 1 include Tracy Little League, Tracy Babe Ruth, Tracy Youth Soccer League and Tracy Futbol Club.

The remaining four leagues will have first right of refusal on their identified fields in the conceptual design in future phases and include Tracy Express Softball, Asociacion de Clubs Unidos Soccer League, Soccer Xtar Liga and Afghan Soccer Club. Separate MOUs will be presented for Council approval in April/May 2011 for these leagues.

Four additional leagues involved in the MOU development process have indicated they will wait for future phasing. They are Tracy Raiders, Tracy Cougars, Tracy Buccaneers and Alternativo Futbol.

Minor adjustments were made to the final conceptual design and the first phase of the Complex. Adjustments to the conceptual design were necessary to accommodate user group needs, space limitations and budget considerations. These factors included:

- Reduced space due to the inclusion of wind buffers as requested by user groups.
- Reduced space due to necessary storm water detention area.
- Additional parking area needed to accommodate facility users.
- Insuring adequate restroom/concession facilities and storage space for each league to operate.

The proposed first phase would encompass approximately 70.2 acres of the project site and would include a total of 12 baseball fields, eight soccer fields and four parking lots to accommodate facility users. The proposed phase adds approximately 10 acres which expands the scope of Nolte Associates' services requiring an amendment to their agreement. Nolte Associates has submitted a proposal to provide additional services for a not to exceed amount of \$83,000 which will be paid from the project budget.

A current available budget of \$10,778,324 exists for this CIP. In previous years, funds have been expended for environmental review and other related costs. The additional cost for the agreement amendment with Nolte Associates will be paid from the project budget. There is a construction shortfall of \$482,801 which staff believes can be made up in this favorable bid environment and in project contingencies. Adequate funding is available to pay the construction cost including Amendment 1 to the agreement with Nolte Associates. Due to the favorable construction bidding environment, the City may realize substantial savings in construction costs and the final project costs may be within the budgeted amount. Additionally, some shortfall may be absorbed in project contingencies or in slight changes in project scope and the City's rights to exercise the option of alternate bid items.

Staff recommended that City Council:

1. Approve a memorandum of understanding with Tracy Little League relating to the lease of property within the complex and construction of sports fields and related amenities; and
2. Approve a memorandum of understanding with Tracy Babe Ruth relating to the lease of property within the complex and construction of sports fields and related amenities; and
3. Approve a memorandum of understanding with Tracy Youth Soccer League relating to the lease of property within the complex and construction of sports fields and related amenities; and
4. Approve a memorandum of understanding with Tracy Futbol Club relating to the lease of property within the complex and construction of sports fields and related amenities; and
5. Accept the status of Holly Sugar Sports complex and approve Amendment 1 to the Professional Services Agreement with Nolte Associates, Inc. for additional design and construction related services for the Holly Sugar Sports Complex, CIP 78115, in the amount of \$83,000.

Derek McKee of Verde Design provided a presentation outlining the project.

Kuldeep Sharma, City Engineer, provided an infrastructure update.

Norm Soares, addressed Council indicating the amount of parking should be reviewed to ensure it was adequate.

Mayor Pro Tem Maciel thanked the sports leagues for their past and future efforts.

Council Member Rickman stated the design looked excellent and added he was excited that the kids will have a great place to play sports.

Mayor Ives indicated this has been a long time coming. Mayor Ives thanked staff for all their efforts.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-045 approving an MOU between the City of Tracy and Tracy Little League, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-046 approving an MOU between the City of Tracy and Tracy Babe Ruth, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-047 approving an MOU between the City of Tracy and Tracy Youth Soccer League, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-048 approving an MOU between the City of Tracy and Tracy Futbol Club, Inc. relating to the lease of property and construction and maintenance of youth sports fields at the Holly Sugar Sports Complex. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-049 approving Amendment No. 1 to the Professional Services Agreement with Nolte Associates for additional design and construction related services for the Holly Sugar Sports Complex in the amount of \$83,000 and authorizing the Mayor to execute the amendment. Voice vote found all in favor; passed and so ordered.

4. **SEEK CITY COUNCIL DIRECTION OF THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM PROFESSIONAL SERVICES AGREEMENT WITH THE TRACY UNIFIED SCHOOL DISTRICT (TUSD) AND WHETHER AND HOW TO PHASE OUT OF CITY FUNDING THE DARE PROGRAM - Council Member Abercrombie recused himself from consideration of the item because of his involvement with the DARE program.**

Captain John Espinoza presented the staff report. Captain Espinoza stated that on July 20, 2010, the Council endorsed the DARE program in Tracy schools. However, the worsening economic climate prompted the City to reduce its financial support for the DARE program from \$60,000 to \$45,000 for the 2010-11 Fiscal Year.

At the July 20, 2010 meeting the Council asked that six items be brought back to Council for discussion before a new Professional Services Agreement was signed with TUSD. The items to be evaluated include:

- 1) Because the City provides funding, Council wanted a voice on the DARE board
- 2) The desire to have accounting reported on calendar versus fiscal year
- 3) The desire to have greater accountability for expenditures
- 4) The feasibility of reducing storage fees through use of school facilities
- 5) How Tracy police officers can become more involved in the DARE program
- 6) Evaluate a phase out schedule to eliminate the reliance on City funding

In preparing this report, staff spoke with members of the DARE board of directors, the Kiwanis Club board of directors, the TUSD DARE liaison, Mr. Paul Hall, and Police Department command staff to explore the feasibility of implementing each item.

1) Because the City provides funding, Council wanted a voice on the DARE board

The DARE Board is comprised of volunteers representing a cross section of the community with backgrounds in education, law enforcement, business, and community service. According to the DARE board, members are not appointed to any fixed terms and can serve on the board as long as they have the energy and are willing to commit the time to promote DARE. The board states they work collaboratively and vote on who will serve as their board officers and what policy direction the program will take. New members are selected when there is a vacancy and all candidates must show a commitment to furthering the objectives of the DARE program and educating Tracy's youth before they are selected. Board members are required to put in the time needed to actively solicit fundraising to support the program, to prepare for and attend DARE graduations, and to attend regular and ad hoc meetings based on the needs of the DARE program.

The DARE board stated it had no objection to a City representative serving on the board of directors, but the designated City representative would be subject to the same screening standards and fulfill the same commitments as any other candidate seeking to serve on the board. That is, the candidate will be interviewed and voted on by the existing board members for membership and be required to fully participate in promoting the DARE program through active fundraising, regular and ad hoc meeting participation, and preparation and attendance at DARE events. Because DARE board membership is a voluntary service, the DARE board would not pay for any City employee labor costs and the City would be responsible for the time or the City employee must be willing to donate their personal time and energy in furtherance of the DARE objectives. The board stated that because they put in so much time and energy to support the program, it would be unfair to other board members if the City wanted to assign a member to the board of directors, have a voice, and vote on program direction without being involved.

Recommendation: Staff recommended the City's role in the DARE program oversight remain as is with the Command Officer overseeing the Police Department budget serving as the staff liaison to the DARE board of directors and to TUSD. Adding a Council Member designee to the DARE Board of Directors may have Brown Act implications and subject the non-profit board to the same noticing and agenda requirements as the City has for its Boards and Commissions, and would not be recommended. The City Manager retains the right to assign a staff liaison to represent the City to any contracting agency if such involvement is in the best interests of the City.

2) The desire to have accounting reported on calendar versus fiscal year

The DARE board currently reports financials on a fiscal year basis and no adjustment can be made in its financial statement reporting schedules. The DARE board falls under the dual umbrella of Kiwanis International for its insurance and 501(c)4 status, and of Good Samaritan for its 501(c)3 status, and is obliged to report their financial statements from July 1 through June 30. The DARE board is compelled to comply with Kiwanis International and Good Samaritan's rules and by-laws otherwise it will lose its insurance and non-profit status. However, the DARE board stated if the City was willing to indemnify the Board and help it obtain its own tax-exempt status, then the DARE board could change to calendar year reporting.

Recommendation: Staff recommended leaving accounting reporting as is.

3) The desire to have greater accountability for expenditures

The parameters for which invoices are paid are clearly delineated in the Professional Services Agreement (PSA) between the City and TUSD. The review and approval process currently in use to audit the expenditure of City funds to ensure compliance with the intended purpose from Council has a triple review and confirmation process on all submitted expenses, backed with itemized receipts, before any payment is made by the City. The triple check on expenses is as follows:

- 1) All DARE receipts are reviewed by the DARE board treasurer for compliance with the guidelines set forth under the City of Tracy and Tracy Unified School District. These receipts are then shared with the Kiwanis Club Board of Directors as part of its financial report and it approves the submission to the TUSD. Tracy Kiwanis is the subcontractor to the TUSD and it is the fiscal agent for the DARE board.
- 2) All DARE receipts are reviewed by TUSD's DARE Liaison, Paul Hall, Director of Student Services, for compliance with the PSA. Mr. Hall then forwards the receipts to TUSD Finance Department staff for another review and preparation of the invoicing which is forwarded to the Police Department.
- 3) All DARE receipts are reviewed by the Tracy Police Department's staff member responsible for billing and invoices to ensure compliance for appropriateness. After all these reviews, all invoices and receipts are forwarded to the Command Officer who oversees the Police Department budget for final approval and sign off for payment. The invoices are forward to the City's Finance Department for payment to TUSD.

Recommendation: Triple review of the expenditures is already in place to ensure the public's funds are appropriately used. Over the years, the scrutiny on expenditures has created a better contract and items that were once allowed were removed. Staff believes the auditing system currently in place is sufficient and recommended leaving as is. It is recommended, however, that Council receive a semi-annual update on performance and budget in January/February and July/August.

4) The feasibility of reducing storage fees through use of school facilities

The DARE board stated it was open to any storage alternatives, provided the space was securable to protect all items from theft/loss and the elements, and the space was accessible by their volunteer group, usually after hours or on weekends. The concept of finding alternative storage at TUSD and saving the monthly expenditure for storage fees was explored and determined to be impractical. TUSD staff stated they had a two prong problem in accommodating this request;

- a) No isolated and securable location that could house the purchased DARE items is available such that TUSD can guarantee security from potential loss or damage.
- b) Due to liability issues, even if TUSD could locate a secure area on TUSD property, it could not give a key and/or access to any non-TUSD person to enter TUSD property without an escort and retrieve DARE items whenever they wanted. Because access is required at nights or on weekends, the DARE program would have to be charged overtime for a TUSD employee to escort them around the facility.

Recommendation: Staff has determined that neither TUSD option is practical and paying money to access DARE supplies would result in a different type of program expense, much less the inconvenience associated with the practice.

5) How Tracy police officers can become more involved in the DARE program

The Tracy Police Department used to solely teach the DARE program with its own sworn officers. However, when it became too costly to continue using TPD's sworn officers the decision was made to outsource its teaching. Today, TUSD subcontracts with the Kiwanis Club to find a qualified DARE instructor to teach the program and the DARE board serves under the Kiwanis Club umbrella. From a cost-benefit analysis, outsourcing the program has been a good fiscal decision. The decision has allowed a service delivery model to be implemented at a lesser per student cost than using police officers and it has allowed the Police Department to allocate the former DARE officer position to other law enforcement needs for the community.

More recently the Police Department has visibly supported the DARE program by having sworn police officer staff, including Command Officers, participate in DARE graduations. Another idea is to have "on duty" uniformed patrol staff participate in the DARE program by visiting DARE classrooms during certain sessions, particularly the ones dealing with topics like "consequences," "role models," and "gangs." The operational concern would be that these same uniformed patrol officers would be subject to patrol duty responses. The Police Department's emphasis is to keep uniformed patrol officers available and focused on addressing street and gang related events. Thus, the certainty with which the officers could be in the classroom was questionable. Given the negative impact on the students and teachers if the officer did not show up as expected, how it would undermine TPD's credibility, and the emphasis is on high visibility uniformed patrol as a deterrent to gang activity on the street, the use of uniformed patrol officers for this outreach effort would not be the best option.

However, in order to have Tracy Police Department personnel involvement in the program, staff recommends "uniformed" police presence include command staff,

and officers, sergeants or lieutenants in order to provide more flexibility based on availability of staff so the burden is lifted from a sole reliance on uniformed patrol. For example, gang officers could attend certain sessions to speak about the dangers of gang membership. Gang officers already make community presentations and their work schedules can be more readily adjusted to fulfill commitments as they are not the primary responders to immediate calls for service. Likewise, personnel not assigned to primary patrol functions, like detectives and sergeants could occasionally be put into uniforms for school presentations. Even command officers can adjust their schedules and participate in the community presentations. Patrol personnel can be used when possible and as calls for service permit. The combined organizational effort should allow for sufficient Tracy Police Department presence in support of the DARE program without additional expense.

Recommendation: Staff recommended Council accept the Police Department's new strategy for incorporating more Tracy Police Department personnel into the DARE classrooms as a supplement to the lessons already taught.. While the logistics of who will attend and when have yet to be worked out, those outcomes will be included in a planned semi-annual performance report to Council. Police staff will also continue to attend DARE graduations.

6) Evaluate a "phase out" schedule to eliminate the reliance on City funding

Through the PSA with the TUSD, the City's current funding allocation ensures the DARE program is taught to all public school fifth grade classes within the City limits and two Jefferson School District schools. The estimate is over 2000 students per year. At the July 20, 2010 Council meeting, members of the Council discussed a desire to phase out City funding of program and encourage the DARE board to increase its donation gathering efforts to continue the program. Council agreed that the DARE program in Tracy was valued by the community.

The DARE Board of Directors was asked to offer its input on the rate at which they could sustain a phase out strategy to eliminate the need for continued City financial support. Given the poor economy, like all other non-profits, the DARE board is spending significant amounts of time and resources soliciting donations and the capacity of donors to give money has diminished. The DARE board could not offer any definitive time frame and stated that whatever time they are given by the City, they will simply have to adjust to keep some semblance of the DARE program going.

The DARE board asked the following three points be suggested to the Council in determining any phase out timeline.

- a) Consider increasing the City contribution for the DARE program to the original amount of \$60,000 and to allow for the use of City funds for salary or compensation to instructors.
- b) Retain the \$45,000 per year contribution going forward without a phase out. DARE board members stated that, like many non-profits, board members are having to put more hours into fundraising because fewer people have disposable income. Any loss of funds would make their fundraising efforts that much more difficult.

c) If the City wanted a phased out approach, the DARE board stated it would do all it could to raise funds to continue and support the DARE program in the City. The DARE board also recognized that if it fell short of its objectives, it would then have to make the difficult choice of which schools would have DARE programs eliminated because of financial shortfalls.

Recommendation: Staff recommended sustaining the current funding level of \$45,000. Staff also recommended a semi-annual performance report be sent to Council on the DARE program's accomplishments.

The Council has already approved the reduced City contribution of \$45,000 for FY 2010-11 and these funds will be used to pay for supplies and expenses, less any salaries. Staff recommends that Council maintain the current financial contribution level of \$45,000 per year for the upcoming FY 2011-12 as little time is left to sufficiently ramp up any donation efforts to overcome funding reductions.

If Council would like to implement a phase out schedule, staff recommends the topic be discussed as part of the City's FY 2012-13 budget preparation discussions. This would allow the DARE board to be better positioned to evaluate the likelihood of obtaining more donation dollars to become wholly self-sufficient or to evaluate what reductions in service delivery to the number of classrooms reductions would create.

There is no immediate impact to the City's FY 2010-11 Budget as \$45,000 has already been approved for the continued City contribution toward the DARE program. The funds would be added to the Police Department's Operating Budget for reimbursement to the Tracy Unified School District.

Staff recommended that the Council discuss the six recommendations and provide direction to staff. All direction will be incorporated into a new, revised, Professional Services Agreement (PSA) with the Tracy Unified School District to provide DARE program services. The revised PSA will be presented at a future meeting for Council approval.

Mayor Pro Tem Maciel thanked Captain Espinoza and the DARE program for their efforts. Mayor Pro Tem Maciel indicated he was satisfied with the mechanisms that have been put in to place to provide an accounting of all funds.

Council Member Elliott stated he was glad to see a plan to increase participation by the City's Police Department. Council Member Elliott stated it was important that City Council see that this program continues. Council Member Elliott asked if the program was working well with the current funding level. Captain Espinoza stated the DARE program does a good job with what they have, but added more money would benefit the kids.

Council Member Rickman asked if they were pursuing any grants. Captain Espinoza stated yes, and stated that the DARE Program has have received cop grant funds in the past. Council Member Rickman stated it was an important program for the children, as well as the support received in the community by the children who provide community service. Council Member Rickman indicated knowledge was power and the DARE program provided students with the necessary knowledge to stay away from drugs.

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

Larry Hite, 1373 Evergreen Way, addressed Council regarding grants that the DARE board has applied for. Mr. Hite stated he believed there was a crime problem in our City which was a sign of tough economic times. Mr. Hite encouraged Council to attend a DARE graduation and speak with the children and parents to find out how the program has affected their lives.

Nicholas, a fifth grader, addressed Council regarding the benefits of the DARE program and provided three examples of why the program is so important. Nicholas encouraged Council to keep the program in the schools.

Erica Sanchez touted Officer "Abs" encouragement of "stand up straight, stick your chest out and your chin up". Ms. Sanchez asked Council to keep the DARE program in schools.

Raymond Moses addressed Council regarding the important aspects of the DARE program.

Randy Luiz, 11407 W. Valpico Road, addressed Council regarding his experience in the DARE program. Mr. Luiz stated the DARE program helped him and stated he was currently enrolled in criminal justice and hopes to be the next DARE officer in Tracy.

Mayor Pro Tem Maciel reiterated that Council had never considered eliminating the DARE program; that the goal was to look for other funding sources. Mayor Pro Tem Maciel stated he supported the DARE program and added the City needed to continue to be a part of the program.

Mayor Ives stated attends as many DARE graduations as possible and stated the program is too effective to let go.

Council responded to the recommendations as follows:

1. No
2. A semi-annual report was acceptable
3. Regarding expenditures, all questions were answered
4. Storage fees were not within Council's purview
5. Additional police officer involvement at all levels
6. Remain at the \$45,000 funding level (option B)

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Elliott to support option B with a \$45,000 funding level and no phase out. Voice vote found all in favor; passed and so ordered.

Mayor Ives called for a recess at 8:59 p.m. The meeting was reconvened at 9:06 p.m.

5. PUBLIC MEETING TO CONSIDER A RESPONSE TO THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT REGARDING COMMENTS ON THE DRAFT HOUSING ELEMENT - Alan Bell, Senior Planner, presented the staff report.

Mr. Bell stated that at the December 21, 2010 City Council meeting, public input was solicited regarding the State Department of Housing and Community Development's (HCD's) comments on the City's Draft Housing Element. The focus of the discussion was on HCD's comments regarding the City's Growth Management Ordinance (GMO) and the 2000 voter initiative, Measure A. State HCD believes the limit on the number of new residential building permits does not allow the City to meet its RHNA (Regional Housing Needs Allocation), and asserts the Housing Element "must include programs to address and mitigate and/or remove constraints of the GMO." The City's RHNA is 4,888 units from 2007 through 2014 – 1,341 more than could be accommodated by the limits of the GMO.

Representatives from Tracy Region Alliance for a Quality Community (TRAQC) and the Building Industry Association of the Delta (BIA) spoke at the meeting.

TRAQC, essentially, is asking the City to accommodate the RHNA by obtaining credit for building permits issued during the past two RHNA cycles, dating back to 1993, during a time when the City issued more building permits than the RHNA.

State housing law does not authorize this approach. The RHNA planning cycle is adopted by legislation and the RHNA allocation is specific to that planning cycle. Furthermore, the RHNA is a planning goal, not a production goal. HCD has maintained that the RHNA is a minimum that each jurisdiction must meet through land use planning and zoning, but it is not a maximum.

In HCD's interpretation of the law, there is no "over production" in housing units. If housing production exceeds the RHNA, production is responding to market demands at the time (during that specific Housing Element planning period). Therefore, if a jurisdiction produces building permits (in excess of the RHNA) in one planning period, it does not earn a credit for the next planning period. By the same token, because the RHNA is not a production goal, if the jurisdiction under produces building permits (compared to the RHNA), it does not get penalized by being required to produce more in a later cycle.

The City is obligated under State law to "address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities."

Specifically, the City must demonstrate, to the satisfaction of the State, that it has mitigated its constraints to housing development. According to HCD comment letters for the 2003 Housing Element and 2009 Housing Element, limiting supply is a constraint to housing development. It is precisely due to this reasoning that the City's 2003 Housing Element did not receive certification from HCD.

Once a jurisdiction fulfills its planning obligations for the RHNA - providing adequate sites with appropriate densities and development standards, and mitigating identified constraints to housing development – then regardless of actual production, the RHNA is wiped clean at the end of the planning period, with a new RHNA starting for the next period. The majority of jurisdictions in California do not meet their RHNA in terms of production. However, according to HCD, no jurisdiction can receive certification if it does not adequately accommodate the RHNA through planning.

The BIA, by contrast, is endorsing an approach described as “Option B” in the December 21, 2010 City Council staff report. Basically, Option B would rely on an interpretation and implementation of Measure A that would allow issuance of building permits up to the City’s RHNA. This option is described in more detail below.

As discussed during the December 21, 2010 City Council meeting, HCD certification would decrease the frequency required to update the Housing Element in the future (from once every four years to once every eight years) and increase competitiveness or access to certain State grants or loans. Consultant costs to update the Housing Element are estimated at \$75,000 or more plus staff time for each update.

Two examples of programs affected by Housing Element certification from HCD are a residential project in Long Beach and a State infrastructure loan program. In 2009, the City of Long Beach and a residential developer received \$26 million to help develop a mixed use project in downtown Long Beach consisting of approximately 500 units, including 150 affordable senior housing units. The grant is a Transit Oriented Development grant authorized under California’s Proposition 1C. The project would not have qualified for funding if Long Beach’s Housing Element had not been certified by HCD.

Another example of infrastructure financing affected by Housing Element certification is a loan program offered through the California Infrastructure and Economic Development Bank (I-Bank). An I-Bank loan is a low-interest loan program and one potential source of funding the City could pursue for the upcoming Wastewater Treatment Plant Outfall Project.

Options

During the December 21, 2010 City Council meeting, City staff identified three options as possible responses to HCD’s concerns with Measure A, summarized as follows:

A. Submit an Initiative Measure to the Voters

Under the California Elections Code, no ordinance that is adopted by the voters, such as Measure A, may be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance. (Elections Code, section 9217.)

It should be kept in mind that the State Housing Element law provides in relevant part that the City is only required to “[a]ddress and, where appropriate and *legally possible*, remove governmental constraints to the maintenance, improvement, and development of housing for all income levels and housing for persons of disabilities.” (Italics added.) (Government Code, section 65583(c)(3).) Therefore, because the City Council cannot legally amend or repeal Measure A on its own, it is not an option that should be included in the Housing Element. Nevertheless, the City Council could adopt a program in the Housing Element directing the City Council to propose an initiative measure to the voters to repeal or amend Measure A to ensure that the City can meet the RHNA.

B. Amend the GMO

Measure A provides in relevant part that:

Nothing in this Initiative Ordinance shall be construed to preclude, prohibit or limit the City from complying with any requirements under state housing law. To the extent that any provision of this Initiative Ordinance can be read to conflict with state housing law, it shall be read to allow for compliance with state housing law, while honoring the intent and purpose of the Initiative Ordinance.

Interpreting and implementing this provision of Measure A, the City Council could adopt a program in the Housing Element directing the City Council to adopt an amendment to the GMO which would allow issuance of building permits up to the City's RHNA in each income category based on HCD criteria.

Should the demand for building permits exceed Measure A limits in a calendar year, the City would issue building permits until the City's RHNA obligation in each income category has been met.

Any building permits issued in excess of Measure A's 600 units-per-year average or 750 in a calendar year would be exempt from the GMO, up to the RHNA. The building permit exemptions to accommodate the RHNA would be available to any project that otherwise qualifies to obtain building permits (complies with all City standards, has approved tentative and final maps, has paid all fees for public services, etc.).

The City of Tracy's RHNA for the 2007 through June 2014 cycle is 4,888, for the four income categories combined: Very Low, Low, Moderate, and Above Moderate. To date, the City has issued 372 building permits during this RHNA cycle, leaving a balance of 4,516. The number of additional units needed to meet the RHNA, by income category, is as follows: Very Low, 907; Low, 582; Moderate, 669; and Above Moderate, 2,357.

C. Suggest No Changes to the GMO at This Time

The City Council could direct staff to respond to HCD that, at this time, the City chooses not to suggest any changes to the GMO (including Measure A) or the GMO Guidelines in the Housing Element.

Whichever option is chosen by the Council, staff will communicate with and submit implementation details for review by HCD. Any changes requested by HCD would be brought to Council for consideration and final review.

HCD Review

In accordance with State housing law, all cities are required to submit a draft Housing Element to HCD for review and comment. State HCD is required to determine whether the Draft Housing Element substantially complies with State housing law. State housing law requires each city's Housing Element, generally, to (1) identify and analyze housing needs for all income levels, (2) contain goals and programs to preserve and develop housing, (3) identify adequate sites for housing, and (4) analyze governmental and nongovernmental constraints upon the maintenance and development of housing.

If HCD determines that Tracy's Draft Housing Element substantially complies with State housing law, the Council may adopt the Housing Element. If HCD determines the Draft Housing Element does not substantially comply with State housing law, the Council may

modify the Draft Housing Element and resubmit to HCD for review, or the Council may adopt the Housing Element without changes. If the Council adopts the Housing Element without changes requested by HCD, the Council shall include findings which explain the reasons the City believes the Housing Element complies with State housing law. Each time HCD reviews a draft Housing Element, housing law provides 60 days for their review. State HCD has 90 days to review and provide comments on the Housing Element eventually adopted by the Council.

The Draft Housing Element preparation is within the scope of work approved by the Council for VTA on April 21, 2009 (Resolution 2009-068). No additional expenditure of funds is required. To date, VTA has been paid \$39,076.60 of the \$75,000 Professional Services Agreement maximum. The source of funding for this CIP was the General Fund.

Staff recommended that the City Council direct staff to amend the Draft Housing Element to respond to HCD comments and include Option B as a program in the Housing Element as described above.

Council Member Elliott asked for clarification regarding a memorandum received regarding grants. Mr. Malik indicated the City has not applied for those grants; they were provided as examples of grant funding.

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

John Beckman, on behalf of the Building Industry Association, applauded staff in pointing out the merits of the arguments included in the BIA letter and the fallacies of TRAQC in their letter. Mr. Beckman stated he agreed with staff's recommendation of Option B.

Mark Connolly, 121 E. Eleventh Street, on behalf of TRAQC, addressed Council regarding the alternatives provided. Mr. Connolly stated Alternative B as proposed is not legal for Council to consider, indicating Council could not set aside any portion of a voter approved initiative. Mr. Connolly added if Council attempted Alternative B, it would be challenged. Mr. Connolly stated Council's only legal option was Option C.

Mayor Ives asked Dan Sodergren, City Attorney, to advise Council's on its authority. Mr. Sodergren indicated Measure A does have a provision that states it cannot preclude the City from complying with any requirements under State Housing Law. Therefore, we do not believe such an amendment would violate Measure A.

Mayor Ives asked if there was any case law provided. Mr. Sodergren referred to a confidential memo that was provided to City Council. Mr. Sodergren indicated the City of Pleasanton was different from the City of Tracy.

Mayor Ives asked if this was the only way to certify the Housing Element. Mr. Sodergren stated as staff outlined in the report, it is a requirement of Housing Law that the City remove any constraints that would not permit the City to reach its RHNA numbers.

Council Member Elliott stated the City was facing economic difficulties and that in order for the City to take advantage of every economic opportunity, it appears the City does need to have a certified housing element. Council Member Elliott added the question is

whether it is in the best interests of the City to have a certified housing element. Council Member Elliott stated he believed the City should have a certified housing element and stated Council should adopt staff's recommendation.

Mayor Pro Tem Maciel stated he was in favor of Option 2, and further stated it was clear there was a benefit to the City of having a certified housing element.

Council Member Rickman asked how the City would comply with State law. Mr. Sodergren stated the amendment the City would suggest is that if the demand for building permits exceeded what was allowed under Measure A, the City would issue building permits up to its RHNA obligations for each income category as required by State law. Mr. Sodergren stated it created an exception if there is demand above Measure A for RHNA numbers for each income level.

Council Member Rickman asked if this amendment passes, would the City do the minimum to meet the RHNA numbers. Mr. Sodergren stated yes.

Council Member Rickman indicated the will of the voters needs to be heard on one hand, and on the other the City has State law. Council Member Rickman indicated there has to be compromise to keep the intent of Measure A alive. Council Member Rickman indicated Option B seemed to be the best alternative.

Mr. Connolly stated the provision staff is referring to might allow the court to interpret Measure A to make it comply with State law. Mr. Connolly stated this was not a matter of interpretation. Mr. Connolly further stated the State is now going to dictate how the City is going to grow if this is the path we are going to follow. Mr. Connolly stated Council's first line of defense was to go back to the voters and indicated TRAQC doesn't agree with the analysis that the City does not comply with State law.

John Beckman responded to a comment made by Mr. Connolly regarding the City relegating to the State the authority to determine what the housing limits are in the City of Tracy. Mr. Beckman indicated the State has already dictated what the City must plan for and allow to be built through its RHNA numbers. Mr. Beckman further indicated it was clear through HCD that Cities will be held accountable.

Council Member Abercrombie asked for clarification regarding the State relegating authority to other agencies. Mr. Sodergren stated a challenge of the Housing Element or Measure A can be brought by any one and challenges have been brought throughout the State for various reasons.

Mayor Ives indicated Council has determined that the best path for the City is to have the Housing Element certified. Mayor Ives referred to the Ordinance that addressed Measure A. Mayor Ives stated he was in favor of Option B.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to direct staff to amend the Draft Housing Element to respond to HCD comments and include Option B as a program in the Housing Element. Voice vote found all in favor; passed and so ordered.

6. APPROVE THE INCREASE IN BAIL SCHEDULE FOR TRACY MUNICIPAL CODE PARKING AND EQUIPMENT VIOLATIONS TO REFLECT CHANGES IN STATE OF CALIFORNIA FEES AND INTRODUCTION OF AN ORDINANCE TO REMOVE THE TRAFFIC FINE SCHEDULE FROM THE TRACY MUNICIPAL CODE AND ALLOW IT TO BE SET BY COUNCIL RESOLUTION - Captain Espinoza presented the staff report. Captain Espinoza stated that the State Legislature has increased "surcharges" on a variety of programs. To that end, the State Legislature has passed AB 1617 which imposed an additional State surcharge of \$3.00 on parking violations for the State Trial Court Trust Fund. The State of California is collecting the \$3.00 surcharge on every parking citation paid so local jurisdictions are left with the decision to either pass along the surcharge increase to the persons receiving the parking citation or for the local jurisdiction to absorb the surcharges. To remain revenue neutral, this additional \$3.00 surcharge should be added to the bail schedule.

As fee increases due to state legislative action may continue, it would be more efficient to reflect any bail schedule changes through a resolution rather than amending the Tracy Municipal Code (TMC). There are no costs to implementing the increases to the bail schedule. The increase would be revenue neutral.

Staff recommended the Council approve, by resolution, the \$3.00 increase in the bail schedule for Tracy Municipal Code parking violations. Staff further recommended that the Council introduce an ordinance to remove the bail schedule from the TMC and maintain and update the bail schedule through resolution as needed.

Council Member Rickman asked if the State had added the fee. Captain Espinoza stated yes.

Mayor Ives indicated he believed more items like this will be pushed down to the city level.

The Clerk read the title of proposed Ordinance 1156.

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

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to introduce Ordinance 1156. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-050 approving an increase in the bail schedule for the Tracy Municipal Code parking and equipment violations to reflect changes in State of California fees. Voice vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE – None.
8. COUNCIL ITEMS - Council Member Abercrombie asked if an update was available on the AMR contract.

Al Nero, Fire Chief, stated the Board of Supervisors approved the contract extension. Chief Nero stated American Medical Response (AMR) would no longer restock the City

with various supplies. The agreement between the City and the County included that when the City started the Advanced Life Support (ALS), the City would bear all costs relative to provision of ALS services. Another issue is the Interfacility Transport, which is when the City is called to render aid while that person is in route to another medical facility. The City is part of the Joint Radio Users Group, which oversees dispatch services. That group agreed with the interpretation that the City would no longer provide that service through its Fire Department. Fire Chief Nero stated there is a community expectation that the Tracy Fire Department respond and provide ALS services. Fire Chief Nero added he intends to meet with Mr. Dan Birch, EMS Director, to discuss that issue. Another issue is Mountain House response times. Mountain House was considered rural because of the population density and the amount of responses. That response time was 17 minutes and 29 seconds. The contract and designation were changed from rural to suburban moderate and the response time reduced to 15 minutes and 29 seconds. Another change to the contract was the addition of a \$931 Basic Life Support (BLS) fee. The BLS fee is in lieu of the transport fee of over \$1,700 for all transport whether ALS or BLS. The new contract includes that when a person is transported and ALS care is not needed, they will not be charged the \$1700 ALS fee, but will only be charged the \$931 BLS fee.

Council Member Abercrombie asked if the Basic Life Support fee would have the same incremental increase similar to the ALS fee, or would it remain at \$931 throughout the contract. Fire Chief Nero responded he was unsure, but suspected it will be raised incrementally similar to other fees.

Council Member Rickman asked if the Fire Department would continue to not be radioed to the medial facilities for either a Code 2 or 3. Fire Chief Nero responded this will be discussed with Mr. Birch, EMS Director in the future.

Mayor Ives suggested a written update be provided to Council.

9. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time 9:54 p.m.

The above agenda was posted at the Tracy City Hall on February 24, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

JOINT TRACY CITY COUNCIL/COMMUNITY DEVELOPMENT AGENCY
SPECIAL MEETING MINUTES

March 8, 2011, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Mayor Pro Tem Maciel called the meeting to order at 6:18 p.m.
2. Roll call found Council Member Abercrombie, Rickman, and Mayor Pro Tem Maciel present; Council Member Elliott and Mayor Ives absent.
3. Items from the audience – None.
4. Consideration of a Conveyance Agreement for the Transfer of Various Community Development Agency Parcels to the City of Tracy (APN Numbers: 235-056-15; 235-05616; 235-056-17; 235-056-19; 235-056-21; 235-056-22; 212-260-09; 212-290-41; and 212-290-44) - Ursula Luna-Reynosa, Economic Development Director, presented the staff report. Ms. Luna-Reynosa stated that the Agency was the owner of the following real property located within the Project Area:

APN #	SITUS ADDRESS	DESCRIPTION
235-056-15	15 W. Ninth St	Improved Parking in Downtown
235-056-16	31 W. Ninth St	Improved Parking in Downtown
235-056-17	41 W.. Ninth St	Improved Parking in Downtown
235-056-19	50 W Gillette Ally	Improved Parking in Downtown
235-056-21	71 W Ninth St	Improved Parking in Downtown
235-056-22	918 B St	Improved Parking in Downtown
212-260-09	3055 N Corral Hollow Rd	Remnant Parcel
212-290-41	None Listed	Vacant Land Adjacent to Texas Roadhouse
212-290-44	None Listed	Remnant Parcel

Ms. Luna-Reynosa stated the City desires to enter into the Agreement with the Agency under which the Agency would convey to the City, and the City would accept from the Agency, the above properties (collectively, the "Property").

This action will not result in a fiscal impact to either the City or Agency.

Staff recommended that the Agency take the following actions:

1. Approve the Agreement and all ancillary documents, including but not limited to, grant deeds (the "Grant Deeds"); and
2. Authorize and direct the Executive Director to sign the Agreement and all ancillary documents on behalf of the Agency.

Staff also recommended that the City take the following actions:

1. Approve the Agreement and all ancillary documents, including but not limited to, Grant Deeds; and
2. Authorize and direct the City Manager to sign the Agreement and all ancillary documents on behalf of the City.

Council Member Abercrombie asked if the group was operating as the Community Development Agency. Dan Sodergren, City Attorney, indicated it was a joint meeting of the Agency and the City Council that included action from each group.

It was moved by Agency Member Abercrombie and seconded by Agency Member Rickman to adopt CDA Resolution 250 authorizing the execution of a property conveyance agreement with the City of Tracy for the conveyance of certain real property located in the Redevelopment Project Area. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011- 051 authorizing the execution of a property conveyance agreement with the Community Development Agency of the City of Tracy for the conveyance of certain real property located in the Redevelopment Project area. Voice vote found all in favor; passed and so ordered.

5. It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adjourn. Time: 6:24 p.m. Voice vote found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on March 7, 2011. The above are summary minutes.

Mayor

ATTEST:

City Clerk

April 5, 2011, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was given by Reverend Vijh, Sant Nirankari Mission.

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel, and Mayor Ives present.

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for April 2011, to Barbara Harb, Economic Development Department.

Mayor Ives presented a proclamation to Don Sader, D.A.R.E. Coordinator, and Larry Hite, declaring April 8, 2011 National D.A.R.E. day.

Mayor Ives presented a proclamation to Jazmin Hurtado, Sexual Assault Prevention Specialist, Women's Center of San Joaquin County, declaring April Sexual Assault Awareness Month.

Mayor Ives presented a proclamation to Walter McGinnis, Senior Volunteer, Lolly Hansen Senior Center, declaring April National Volunteer Month.

Mayor Ives presented a proclamation to Valda Van Gelderen, Donate Life Ambassador, California Transplant Donor Network, declaring April DMV/Donate Life California Month.

1. CONSENT CALENDAR – Following the removal of items 1.A, 1.E, 1.H and 1.I 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; motion carried 5:0.
 - A. Minutes Approval – Regular meeting minutes of February 15, 2011, special meeting minutes of February 28, 2011, and closed session minutes of March 15, 2011, were approved. Council Member Elliott stated there was an omission in his comments on Item 3 relating to the Sustainability Action Plan (SAP), for the February 1, 2011, regular City Council minutes. Carole Fleischmann, Assistant City Clerk stated she would review the recording and amend the minutes as necessary. Mayor Ives stated the regular meeting minutes of February 1, 2011 were adopted as modified.
 - B. Award a Construction Contract for the Street Patch & Overlay (FY 2010-11) – CIP 73121, Traffic Signal Loop Detectors and Controllers Replacement at Various Locations in the City – CIP 72070, & 72075, to Desilva Gates Construction of Dublin, California, and Authorize the Mayor to Execute the Contract – Resolution 2011-064 approved the contract in the amount of \$520,774.

- C. Authorize a Professional Services Agreement with BKF Engineers of Pleasanton, CA, for a Not to Exceed Amount of \$58,800 to Provide Professional Engineering Services for the Preparation of Environmental Documents, Plans, Specifications and Cost Estimates for the Traffic Signal at Lammers Road and Schulte Road (West) Project - CIP 72068, and Authorize the Mayor to Execute the Agreement – Resolution 2011-065 authorized the agreement.
- D. Acceptance of the Bessie Avenue Reconstruction Phase 1 (Eleventh Street to Carlton Way) Project - CIPs 73101, 74076, 74082, 74086, 75095, 75101, 76027 (Federal Project Number ESPL 5192(028)), Completed by Desilva Gates Construction of Dublin, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-066 accepted the project
- F. Approve the Second Amendment to the Offsite Improvement Agreement with Winco Holdings, Inc. of Boise, Idaho, to Extend Time for Completion of Work and Authorize the Mayor to Execute the Amendment – Resolution 2011-067 approved the amendment.
- G. Acceptance of the Additional Parking for the Civic Center Area Project – CIP 71065, Completed by Rodgers Construction & Engineering Company, Inc., of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-068 accepted the project.
- J. Award a Construction Contract to Knife River Construction of Stockton, California, for Construction of the Kavanagh Avenue Extension West of Corral Hollow Road Project - CIP 73097, and Authorize the Mayor to Execute the Contract – Resolution 2011-069 approved the contract in the amount of \$430,982.50.
- E. Authorize Establishment of Stop Signs to Replace Existing Yield Signs at Various Locations throughout the City – Kul Sharma, City Engineer, presented the staff report. The Development and Engineering Services Department has received comments from a concerned resident regarding existing yield signs at the intersection of Twelfth Street and Adam Street. Currently, the intersection is controlled by a two-way yield sign on Adam Street. Traffic on Adam Street sometimes does not yield to Twelfth Street traffic and creates traffic conflict points at the intersection. The current City practice is to use stop signs to provide a greater right of way control and enforceability at intersections compared to yield signs. Staff completed a city wide survey of intersections that are controlled with yield signs and identified a total of nine intersections: Twelfth Street & Adam Street; Twelfth Street & Wall Street; Twelfth Street & Roosevelt Ave; Twelfth Street & El Portal Street; Twelfth Street & E Street; Twelfth Street & F Street; Mae Ave & Hollywood Ave; Highland Ave & Roosevelt Ave, and Standridge Road & Vallerand Road. To provide uniformity and consistency staff recommended converting the existing yield controlled intersections with stop signs.

The Police Department staff has reviewed the proposed changes and concurred with the recommendation. City crews will install the necessary signs during spring and summer of this year. Funding for the maintenance of City streets,

which includes striping and installation of stop signs, is included in the Public Works Department operating budget.

Robert Tanner, 1371 Rusher Street, questioned whether accidents had been reported at these locations. Mr. Tanner stated he lived close to the Standridge and Vallerand intersection and was not aware of any accidents at this location, particularly during the past two years. Mr. Sharma responded there had been an accident at Twelfth and Adam and a number of near misses. However, staff had reviewed all nine intersections and determined that the physical and site conditions indicate it will be safer to install Stop signs as opposed to Yield signs. Mr. Tanner asked if the City really needed to spend the money, and inquired as to the cost for each intersection.

Andrew Malik, Director of Development and Engineering Services, stated the cost amounted to approximately \$500 per intersection and was included in the annual maintenance fund budget.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-070 authorizing Stop signs to replace existing Yield signs at various locations throughout the City. Voice vote found all in favor; passed and so ordered.

- H. Award a Construction Contract to Coastside Concrete of Santa Rosa, California, for the Lowell Avenue Bikeway Improvement Project - CIP 78113, and Authorize the Mayor to Execute the Contract – Paul Miles, 1397 Mansfield Street, asked if locations would be provided for bicycle parking. Mr. Sharma responded bicycle racks were provided at City Hall, and the Transit Station. Staff is looking to place bike racks at other locations and there is a possibility of some funding being available for the project. It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-071 awarding a construction contract in the amount of \$44,671 to Coastside Concrete of Santa Rosa, California, for the Lowell Avenue Bikeway Improvement Project, CIP 78113, and authorizing the Mayor to execute the contract. Voice vote found all in favor; passed and so ordered.
- I. Approving Consent of an Assignment and Assumption Agreement for the Existing Development Agreement of Bank of America Properties with the New Buyer, Authorizing the Mayor to Execute the Agreement, and Authorizing the City Clerk to File the Agreement with the San Joaquin County Recorder – Andrew Malik presented the staff report. The Developer's predecessor in interest, BA Properties Inc., a Delaware corporation (BAPI) entered into a Development Agreement dated July 20, 1999, with the City. The Development Agreement was recorded in the Official Records of San Joaquin County on August 20, 1999, as Document number 99106319. BAPI assigned all its interests and obligations under the Development Agreement to Shea Homes Limited Partnership, a California limited partnership (SHLP) pursuant to an Assignment and Assumption Agreement that was recorded on October 1, 1999 as Document number 99124396 of the San Joaquin County Records. Pursuant to that certain Assignment and Assumption Agreement, recorded on the Official Records of San Joaquin County on May 3, 2001, as Document number 01083735, SHLP assigned all its interests under the Development Agreement to South Tracy

Industrial Park, LLC. As the first step of a complex financial transaction, the City Council recently approved an Assignment and Assumption Agreement, recorded on the Official Records of San Joaquin County on March 23, 2011, as Document number 2011-035445, whereby South Tracy Industrial Park, LLC, assigned all its interests under the Development Agreement to STIP SPE II, LLC, the developer of the South Tracy Industrial Park Subdivision (Developer). To complete the financial transaction, the Developer now desires to assign its respective interests under the Development Agreement to HOF Financial I, LLC, a Delaware limited liability company (Assignee) to that portion of the property shown on the map attached to the staff report.

City staff reviewed the request to approve an assignment and found it to be consistent with the Development Agreement. Pursuant to the Development Agreement, the City had to consent to an assignment of developer's rights, interests, and obligations in the Development Agreement. The Assignee has acknowledged and understands that any outstanding obligations of the Developer under the Development Agreement will be assumed by the Assignee. The new Assignment and Assumption Agreement have been executed by both the Developer and the Assignee. The Assignment and Assumption Agreement is on file with the City Engineer.

Council Member Elliott inquired whether there was an underlying problem due to the number of previous transactions. Mr. Malik responded no; sale of the property did not require the City's consent. The action is to complete some administrative work which will facilitate sales and development in the area.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-072 approving Consent of an Assignment and Assumption Agreement for the Existing Development Agreement of Bank of America Properties with the new buyer, authorizing the Mayor to execute the Agreement, and authorizing the City Clerk to file the Agreement with the San Joaquin County Recorder. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Steve Nicolaou, Attorney, commented on an article in a recent edition of the Tracy Press related to employee claims against the City. Mr. Nicolaou stated insurance is available to cover employees' claims against companies employing 10 or more people.

Dave Helm, 1000 North Central Avenue, reported his business in downtown Tracy had been hit by vandals recently causing approximately \$2,000 worth of damage to his property. Mr. Helm suggested the violence is more widespread than the original downtown area, and while he appreciated the two-man patrol car he had seen neither the Gang Suppression Unit nor the Street Crimes Unit which he understood would be assigned to the downtown area.

3. APPOINT SIX APPLICANTS TO THE TRANSPORTATION ADVISORY COMMISSION
ITEMS FROM THE AUDIENCE - There are six vacancies on the Transportation Advisory Commission due to term expirations and mid-term resignations. To fill the vacancies the City Clerk's office conducted a recruitment which opened on February 1, 2011, and closed on March 2, 2011. Eight applications were received. On March 17,

2011, a Council subcommittee consisting of Council Member Abercrombie and Mayor Pro Tem Maciel interviewed the applicants. In accordance with Resolution 2004-152, the Council subcommittee recommended six applicants for appointment. Three appointees will serve four year terms, two appointees will serve terms of three years and one month, and one appointee will serve a term of two years and one month. Council Member Abercrombie stated he and Mayor Pro Tem Maciel had interviewed some outstanding applicants. Council Member Abercrombie motioned to appoint the following applicants: Joseph Orcutt (Incumbent), John Favors, and Shane O'Neill to four year terms beginning May 1, 2011, and ending April 30, 2015. Mark Gainor and Daniel Ramey to three year terms beginning April 6, 2011, and ending April 30, 2014, and Adam Duran to a two year term beginning April 6, 2011, and ending April 30, 2013. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

4. SECOND READING AND ADOPTION OF ORDINANCE 1157 AN ORDINANCE OF THE CITY OF TRACY ADOPTING THE 2010 CALIFORNIA BUILDING CODE, 2010 CALIFORNIA ELECTRICAL CODE, 2010 CALIFORNIA PLUMBING CODE, 2010 CALIFORNIA RESIDENTIAL CODE, 2010 CALIFORNIA MECHANICAL CODE, 2010 CALIFORNIA GREEN BUILDING STANDARDS CODE, 2010 CALIFORNIA HISTORICAL BUILDING CODE, 2010 CALIFORNIA EXISTING BUILDING CODE, AND 2010 CALIFORNIA ENERGY CODE, ADOPTING ADMINISTRATIVE AND PENALTY PROVISIONS, ADOPTING CERTAIN CODE APPENDICES, ADOPTING MINIMUM DESIGN STANDARDS FOR CONCRETE SLABS, REPEALING SECTIONS TO ELIMINATE ANTIQUATED OR REPETITIVE LANGUAGE, CODIFYING BYLAWS FOR THE BUILDING BOARD OF APPEALS AND ADDING CHAPTER 9.62 TO THE TRACY MUNICIPAL CODE TO REQUIRE PLACARDING FOR POST-DISASTER SAFETY ASSESSMENTS – Following a request by Mayor Ives the Assistant City Clerk read the title of proposed Ordinance 1157. Council Member Abercrombie moved to waive reading of the text. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered. Council Member Abercrombie motioned to adopt Ordinance 1157. Mayor Pro Tem Maciel seconded the motion. Roll call vote found Council Member Abercrombie, Mayor Pro Tem Maciel, Council Member Elliott, Council Member Rickman and Mayor Ives in favor; motion carried 5:0. Ordinance 1157 was adopted.
5. ITEMS FROM THE AUDIENCE - None
6. COUNCIL ITEMS
 - A. Consider an Item for Discussion on a Future City Council Agenda Regarding the Adoption of a Resolution Recommending the California Citizens Redistricting Commission Place San Joaquin County in One Congressional, Assembly, and State Senate District – Mayor Ives stated the action was to discuss whether this item would be brought forward at a future Council meeting for discussion and action.

Council Member Elliott stated he had requested the Council consider placing an item on a future agenda to discuss adopting a resolution recommending the California Citizens Redistricting Commission place San Joaquin County in one Congressional, Assembly, and State Senate District.

In 2008, Proposition 11 established an independent Citizens Redistricting Committee, to configure state, assembly and senate district lines. In 2010, Proposition 20 was approved which granted the Citizens Redistricting Committee the authority to configure congressional district lines as well. Currently, San Joaquin County is represented by two congressional districts, four state assembly districts, and two state senate districts. The districts encompass Alameda, Amador, Contra Costa, El Dorado, Fresno, Madera, Mariposa, Merced, Sacramento, Solano, Santa Clara, Stanislaus, Tuolumne and Yolo counties. Mr. Elliott added since the population of San Joaquin County continues to grow at a faster pace than the rest of the state it is important that San Joaquin County be placed into one congressional, assembly, and state senate district to provide a unified voice on issues affecting the County. Mr. Elliott encouraged the Council to take a stand on the issue.

Following a brief discussion Council agreed to bring an item back for discussion and action at the April 19, 2011 City Council meeting.

7. ADJOURNMENT – It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time 7:45 p.m.

The above agenda was posted at the Tracy City Hall on March 31, 2011. 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

April 19, 2011, 5:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 5:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives present; Council Member Elliott absent.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –
 - I. Special Joint City Council/Community Development Agency Meeting Real Property Negotiations (Govt. Code section 54956.8)
 - A. Property Location: 741 and 729 Central Avenue (APN #235-068-06)
Negotiator(s) for the City/Agency Ursula Luna-Reynosa, Economic Development Director
Negotiating Parties: Fahd Olomari and Steve Nicolaou
Under Negotiation: Price and terms of payment for the purchase of the property
 - B. Property Location: The approximately 21.6 acres of land situated at the north-west corner of Central Avenue and Sixth Street (APN #s 235-150-06, 235-150-23, and 235-150-24)
Negotiator(s) for the City/Agency Ursula Luna-Reynosa, Economic Development Director
Negotiating Parties: Representatives of Union Pacific Railroad
Under Negotiation: Price and terms of payment for the purchase of the property
 - II. Special City Council Meeting
 - A. Personnel Matter (Gov. Code section 54957)
Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal
Position Title: City Manager

B. Labor Negotiations (Gov. Code section 54957.6)

1. Unrepresented Employees: Department Heads

City's designated
representative:

R. Leon Churchill, Jr., City Manager

2. Unrepresented Employee: City Manager

City's designated
representative(s):An individual City Council Member
or a subcommittee of the City Council

5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 5:31 p.m. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:45 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:46 p.m.

The agenda was posted at City Hall on April 14, 2011. The above are summary minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH TRACY FRIENDS FOR PARKS, RECREATION AND COMMUNITY SERVICES FOUNDATION AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

EXECUTIVE SUMMARY

Since 1992, the Tracy Friends for Parks, Recreation and Community Services Foundation has been a non-profit organization dedicated to assisting the City in providing funds to support the City of Tracy Parks and Community Services Department programs, events, special projects and scholarship opportunities for our youth.

DISCUSSION

The Tracy Friends for Parks, Recreation and Community Services Foundation was formed in 1992. The mission of the Tracy Friends for Parks, Recreation and Community Services Foundation is to increase scholarship opportunities for Tracy youth, provide funding for special projects, enhance programs, activities and events offered by the City of Tracy Parks and Community Services Department that promote the social, cultural and leisure needs of the residents of the City of Tracy.

So the Tracy Friends for Parks, Recreation and Community Services Foundation can continue to support the efforts of the Parks and Community Services Department and provide potential funding for scholarships and special projects, it is requesting a MOU with the City of Tracy to provide facility use for its meetings and two fundraising events per year. The terms of the request are outlined in Exhibit "A".

FISCAL IMPACT

Approval of this MOU will have a fiscal impact to the General Fund for staff time and resources to support the free use of City facilities. Staff time may vary based on actual needs and demands of each event and use. These costs currently can be absorbed within existing budgets. Additionally, there is a potential loss of facility rental revenues due to competing requests, however it is the hope that the Foundation's efforts will result in additional financial support for programs, special projects and scholarships not currently funded that in turn will benefit the community of Tracy.

RECOMMENDATION

That Council approve a Memorandum of Understanding (MOU) with the Tracy Friends for Parks, Recreation and Community Services Foundation and authorize the Mayor to execute the MOU.

Agenda Item 1.B

May 3, 2011

Page 2 of 2

Prepared by: Kim Scarlata, Recreation Supervisor

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

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

Attachments: Exhibit "A" – Memorandum of Understanding between the City of Tracy and the Tracy Friends for Parks, Recreation and Community Services Foundation.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY
and
TRACY FRIENDS for PARKS, RECREATION and
COMMUNITY SERVICES FOUNDATION**

- I. PARTIES:** This Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and Tracy Friends for Parks, Recreation and Community Serviced Foundation (hereinafter "TFPRCSF.")
- II. RECITALS:** TFPRCSF was formed in 1992. TFPRCSF's mission is to increase scholarship opportunities for Tracy youth, provide funding for special projects, enhance programs, activities and events offered by the City of Tracy Parks and Community Services Department that promote the social, cultural and leisure needs of the residents of the City of Tracy.

The City Council recognizes TFPRCSF as a non-profit organization dedicated to assisting the City in providing funds to support the City of Tracy Parks and Community Services Department programs, events, special projects and scholarship opportunities for our youth.

- III. RESPONSIBILITIES:** The City and TFPRCSF agree that:

A. City shall:

1. Coordinate free use of a conference room at a City Facility for monthly meetings and monthly Executive Board meetings. TFPRCSF to determine dates and times with the City of Tracy to reserve a conference room.
2. Provide a city facility of the City's City Manager's, or designee's, choosing up to twice a year for TFPRCSF fundraising events at no charge.
3. Indemnify, defend, and hold TFPRCSF harmless 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 the performance of this MOU by City's agents, representatives, contractors, subcontractors, or employees.

B. TFPRCSF shall:

1. Provide additional funding to assist and support the City of Tracy Parks and Community Services Departments programs, events, special projects and youth scholarships.
2. Provide and conduct adequate fundraising activities/events to obtain funds needed to ensure on-going operations of TFPRCSF and its ability to fulfill its mission.
3. Provide volunteers and promotions to successfully conduct two annual fundraising activities and/or events.

4. Adequately clean any City facility to acceptable condition after permitted use and facilitate and pay for any required repairs or damages caused by such use.
5. Carry insurance coverage and provide proof of insurance with coverage amounts and types and endorsements evidencing the following:
 - a. Policy shall name the City of Tracy, its officers, agents and employees as "additional insured" in relation to the activities performed in/on City property.
 - b. General liability insurance, including personal injury, in the amount of One Million Dollars (\$1,000,000.00) combined single limit per occurrence, including bodily injury, personal injury and property damage.
6. Indemnify, defend, and hold harmless the City (including its elected officials, officers, agents, volunteers and employees) from and against any and all claims, demand, damages, liabilities, costs and expenses (including court costs and attorney's fees) resulting from or arising out of the performance of this MOU.
7. This MOU shall be subject to any and all policies, regulations and ordinances of the City of Tracy.

IV. TERMINATION: Either party may terminate this MOU by providing prior written notice to the other party of intention to terminate not less than ninety days prior to actual termination.

V. TERM: This MOU shall take effect on May 3, 2011, for a term of five years.

VI. DESIGNATED REPRESENTATIVES: For the purposes of administering the MOU, the President of TFPRCSF and the Parks and Community Services Director for the City of Tracy shall act as representatives for their respective organizations.

VII. NOTICES:

CITY

City of Tracy
 Parks and Community Services Director
 400 East Tenth Street
 Tracy, CA 95376

With a Copy to:

Tracy City Attorney
 333 Civic Center Plaza
 Tracy, CA 95376

**TRACY FRIENDS for PARKS, RECREATION
 and COMMUNITY SERVICES FOUNDATION**

James Atkins
 2814 Redbridge Road
 Tracy, CA 95377

With a Copy to:

Eugene Birk
 475 Peerless Way
 Tracy, CA 95376

VIII. ENTIRE AGREEMENT: This MOU constitutes the entire agreement between the City and TFPRCSF.

IX. SIGNATURES: The individuals executing the MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of their respective legal entities of TFPRCSF and the City. This MOU shall ensure to the benefit of

and be binding upon the parties thereto and their respective successors and assigns.

CITY OF TRACY

**TRACY FRIENDS for PARKS, RECREATION
and COMMUNITY SERVICES FOUNDATION**

By: _____
Brent H. Ives
Title: Mayor

By: 
James Atkins
Title: Foundation Chair

Date: _____

Date: 4-27-11

By: 
Eugene Birk
Title: Foundation Treasurer

Date: 4-27-11

ATTEST:

By: _____
Sandra Edwards
Title: City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Bill Sartor
Title: Assistant City Attorney

Date: _____

RESOLUTION _____

APPROVING MEMORANDUM OF UNDERSTANDING (MOU) WITH TRACY FRIENDS FOR PARKS, RECREATION AND COMMUNITY SERVICES FOUNDATION AND AUTHORIZING THE MAYOR TO EXECUTE THE MOU

WHEREAS, Since 1992, the Tracy Friends for Parks, Recreation and Community Services Foundation has been a non-profit organization dedicated to assisting the City in providing funds to support the City of Tracy Parks and Community Services Department programs, events, special projects and scholarship opportunities for our youth; and

WHEREAS, The mission of the Tracy Friends for Parks, Recreation and Community Services Foundation is to increase activities that promote the social, cultural and leisure needs of the residents of the City of Tracy; and

WHEREAS, In order for the Tracy Friends for Parks, Recreation and Community Services Foundation to continue to support the efforts of the Parks and Community Services Department and provide potential funding for scholarships and special projects, an MOU Agreement with the City of Tracy is needed.

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby approve a Memorandum of Understanding (MOU) with the Tracy Friends for Parks, Recreation and Community Services Foundation and authorizes the Mayor to execute the MOU.

* * * * *

The foregoing Resolution 2011- was passed and adopted by the City Council of the City of Tracy on the 3rd day of May, 2011, 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

**CITY COUNCIL'S APPROVAL OF A RESOLUTION AUTHORIZING THE
SUBMISSION OF AN APPLICATION FOR STATE OF CALIFORNIA PROPOSITION 84
STATEWIDE PARK PROGRAM GRANT FUNDS**

EXECUTIVE SUMMARY

The City of Tracy is nearing the final design of phase one of the Holly Sugar Sports Complex. Currently, the City has limited funds allocated for construction of the first phase of facility and will be relying on a partnership with local sports organizations for construction of playing facilities. Staff is preparing to apply for State grant funds for construction costs associated with the first phase of development. For that reason, staff is requesting that Council approve that attached resolution authorizing the City to submit an application for these grant funds.

DISCUSSION

On November 7, 2006, the Californian voters passed Proposition 84, the \$5.4 billion "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Project Bond Act of 2006". The Sustainable Communities and Climate Change Reduction chapter of the act allocated \$368 million in grant funds for the acquisition, development or improvements to community parks. This is a competitive grant program with specific rating criteria used to rank the applications submitted for grant funds.

Presently, the City of Tracy is nearing the final design of the first phase the Holly Sugar Sports Complex. The City has allocated funds for the off-site improvements and on-site infrastructure for the first phase of the project. The City has also entered into memorandum of understandings with four local sports organizations relating to the development of property leases to provide the sports organizations access to a specific area of the project site, permit construction of sports fields and for the maintenance of these fields.

Staff is preparing an application for Prop 84 grant funds to increase funds available for this project. A resolution from the applying agency's governing body is required to be submitted along with the application for grant funds. For this reason, staff is requesting that Council approve a resolution authorizing the submission of an application for Prop 84 grant funds.

STRATEGIC PLAN

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

Community Amenities Priority

Goal 1: Create a community with a wide range of amenities

Objective 1a: Identify the amenities desired by the community

FISCAL IMPACT

There would be no impact to the City's general fund by approving the resolution to submit an application for Prop 84 grant funds. Staff, in conjunction with our consultants, is currently refining the first phase construction costs estimate to determine the amount that will be requested in the grant application.

RECOMMENDATION

That City Council approve a resolution authorizing the submission of an application for State of California Proposition 84 Statewide Park Program grant funds.

Prepared by: Floyd Lewis, Recreation Supervisor, Parks and Community Services

Reviewed by: Rod Buchanan, Parks and Community Services Director

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

RESOLUTION _____

APPROVING THE APPLICATION FOR STATEWIDE PARK PROGRAM
GRANT FUNDS THROUGH THE STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

WHEREAS, The State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Program, setting up necessary procedures governing the Application; and

WHEREAS, Said procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of application before submission of said application to the State; and

WHEREAS, The applicant will enter into a contract with the State of California to complete the grant scope project.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the filing of an application for the Holly Sugar Sports Complex and

1. Certifies that said applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
2. Certifies that the applicant has or will have sufficient funds to operate and maintain the project; and
3. Certifies that the applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Delegates the authority to the Parks and Community Services Department Director to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope; and
5. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

* * * * *

The foregoing Resolution 2011- was passed and adopted by the City Council of the City of Tracy on the 3rd day of May, 2011, by the following vote:

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.D

REQUEST

APPROVE AMENDMENT 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH SCHACK & COMPANY, INC., OF TRACY, CALIFORNIA, TO PROVIDE ADDITIONAL SERVICES FOR THE CORRAL HOLLOW ROAD WIDENING PROJECT – CIP 73014, FROM GRANT LINE ROAD TO THE WEST VALLEY MALL ENTRY

EXECUTIVE SUMMARY

Approval of Amendment 2 to the Professional Services Agreement with Schack & Company, Inc., will facilitate completion of design for the Corral Hollow Road Widening Project from Grant Line Road to the West Valley Mall entry in a timely manner and will avoid compromising federal and state funds allocated for this project.

DISCUSSION

On February 17, 2009, City Council approved a Professional Services Agreement (PSA) with Schack & Company (Consultant) to provide services for preparation of design, improvement plans, specifications and construction documents for the widening of Corral Hollow Road from Grant Line Road to the West Valley Mall Entry – CIP 73014, for a not to exceed amount of \$402,832. The construction of this project involves acquisition of rights of way from adjoining properties to widen the street. The total cost of this project is estimated at \$5.12 million and the project had received approval for federal funding from the Regional Surface Transportation Program (RSTP)

The environmental document for the project and acquisition of rights of ways have been completed. The project design and construction documents are 95% complete. Staff is working with the California Department of Transportation (CALTRANS) to secure authorization for construction. Since construction of the Kavanagh Road extension west of Corral Hollow Road, is going ahead of this project, it is necessary to modify the design of the traffic signal at the Kavanagh Avenue and Corral Hollow Road intersection. Furthermore, Caltrans is requiring that the construction documents should also include the Traffic Control Plan. Generally the Traffic Control Plans are prepared later prior to the start of construction. This requirement was not originally included in the scope of work for design by the consultant.

During construction of the Grant Line Road and Corral Hollow Road intersection by Winco, staff also found that the structural section of the street varies between the east and west side of the street and it is necessary to perform additional potholes to provide more accurate quantities of excavation to avoid change orders during construction.

In order to complete this additional work, staff requested a proposal and negotiated the cost of the required services for a not to exceed amount of \$26,975.

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 from this amendment to the PSA. The Corral Hollow Road Widening Project (CIP 73014) is an approved Capital Improvement Project with sufficient funding to complete the design and construction.

RECOMMENDATION

Staff recommends that City Council approve Amendment 2 to the Professional Services Agreement with Schack & Company, Inc., of Tracy, California to provide additional services for the Corral Hollow Road Widening Project – CIP 73014, from Grant Line Road to the West Valley Mall Entry for a not to exceed amount of \$26,975, and authorize the Mayor to execute the agreement.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Kul Sharma, City Engineer

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

Attachment - Professional Services Agreement

**CITY OF TRACY
AMENDMENT NO. 2 TO
PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS**

**CORRAL HOLLOW ROAD WIDENING
GRANT LINE ROAD TO WEST VALLEY MALL ENTRY
CIP 73014 (FORMERLY CIP 7314)**

This Amendment No. 2 (hereinafter "Amendment") to the Professional Services Agreement for Design Professionals is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Schack & Company, Inc. (hereinafter "CONSULTANT").

RECITALS

- A. The City and Consultant entered into a Professional Services Agreement for Design Professionals (hereinafter "Agreement") for the Corral Hollow Road Widening Grant Line Road to West Valley Mall Entry, CIP 7314 which was approved by the City Council on February 17, 2009, pursuant to Resolution No. 2009-029.
- B. On November 3, 2009, the City Council adopted Resolution No. 2009-203 approving Amendment No. 1 to the Agreement to provide for additional services.
- C. At the request of the City and in compliance with the terms of the Agreement, on February 22, 2011, CONSULTANT submitted a proposal to perform the services as described in this Amendment 2 to the referenced Professional Service Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of the services in accordance with the term set forth in this Amendment. On May 3, 2011, City Council, by the Resolution 2011-_____ approved the subject Amendment.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation By Reference.** This Amendment 2 hereby incorporates by reference all terms and conditions set forth in the Agreement and in Amendment No. 1 to the Agreement, unless specifically modified by this Amendment 2. 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.**
The following language shall be added to Paragraph 1 of the Agreement.

CONSULTANT shall perform the tasks described in Exhibit "A" attached hereto and incorporated herein by reference.

City of Tracy

**Amendment No. 2 to Professional Services Agreement for Design Professionals
Corral Hollow Road Widening Grant Line Road to West Valley Mall Entry,
CIP 73014 (formerly 9314)**

Page 2 of 7

The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: **Danial Ray Schack**. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," 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.2, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," of the Agreement incorporated herein by reference. CONSULTANT's fee for this Amendment No. 2 is Not to Exceed TWENTY SIX THOUSAND NINE HUNDRED SEVENTY FIVE DOLLARS (\$26,975.00). CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Amendment No. 2 to the Agreement, as described in Exhibit "A" attached hereto. 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. 2 shall be as described in Exhibit "A".

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

INTENTIONALLY LEFT BLANK

City of Tracy
Amendment No. 2 to Professional Services Agreement for Design Professionals
Corral Hollow Road Widening Grant Line Road to West Valley Mall Entry,
CIP 73014 (formerly 9314)
Page 3 of 7

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

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

CITY OF TRACY

CONSULTANT

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

By: Daniel R. Schack
Daniel R. Schack
Title: President
Date: 04/26/11

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

By: Richard Paulson
Richard Paulson
Title: Vice President
Date: 04/26/11

Approved as to form

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

EXHIBIT A

AMENDMENT NO. 2

SCOPE OF SERVICES

A. ADDITIONAL TRAFFIC SIGNAL DESIGN / TRAFFIC CONTROL DESIGN SERVICES

ASSUMPTIONS:

- (1) *The City Staff requested additional work to provide design and plan sheet(s) for installation of signal poles in the final configuration on the future right-of-way for Kavanagh Avenue (extending westerly) from the Kavanagh Avenue / Corral Hollow Road intersection.*
- (2) *The City Staff requested additional work to provide design and plan sheet(s) for Kavanagh Avenue / Corral Hollow Road intersection to install traffic signals on the westerly side of Corral Hollow Road in temporary locations, to complete the intersection signal system.*
- (3) *The City Staff requested additional work to prepare a basic traffic control plan drawing roadway construction period.*
- (4) *The City Staff requested the design plans and specifications be revised to include decorative traffic signal poles at the intersection of Kavanagh Avenue / Corral Hollow Road and at the intersection of West Valley Mall Entry Road / Corral Hollow Road.*

TASK NO. 1 REVISE SIGNAL DESIGN AT THE KAVANAGH AVENUE / CORRAL HOLLOW ROAD INTERSECTION BASED ON THE KAVANAGH EXTENSION DESIGN

- A. Provide a plan sheet with final design for installation of signal poles on the west leg future right of way of the Kavanagh Avenue/Corral Hollow Road intersection. A total of three signal poles are anticipated, which are one signal mast arm/pole and two Type 1-B poles on the west leg future

City of Tracy

**Amendment No. 2 to Professional Services Agreement for Design Professionals
Corral Hollow Road Widening Grant Line Road to West Valley Mall Entry,
CIP 73014 (formerly 9314)**

Page 5 of 7

right of way. A preliminary review submittal of the design plan sheet will be made to the City. A final design plan sheet will be provided incorporating comments from the preliminary review submittal. The design plan sheet will show conductors, conduits, and pole types for the three signal poles. Included will be a design plan sheet for the decorative traffic signal pole detail for the Kavanagh Avenue Extension project plan set for one decorative traffic signal pole on the southwest corner.

- B. Provide a basic traffic control plan drawing showing the concept for traffic control on Corral Hollow Road during the roadway construction period. The design will show one northbound lane and one southbound lane open at all times on Corral Hollow Road.
- C. Revise the Corral Hollow Road Widening Project CIP73014 signal final design to install signals to complete the intersection signal system design for the signal at Kavanagh Drive. This plan sheet will include the design for the signal poles for the remaining three legs of the intersection. This revised plan sheet will show the complete final design for the traffic signal system for the Corral Hollow Road Widening Project CIP73014.

FEE FOR TASK NO. 1 SERVICES: \$ 10,255.00

TASK NO. 2 CONCEPTUAL TRAFFIC CONTROL PLAN

As requested by City Staff, prepare drawings showing the concept for the traffic control on Corral Hollow Road. The design will show one northbound lane and one southbound lane open at all times on Corral Hollow Road.

FEE FOR TASK NO. 2 SERVICES: \$ 7,065.00

**TASK NO. 3 DECORATIVE TRAFFIC SIGNAL POLE PLANS AND SPECIFICATIONS
FOR THE
CORRAL HOLLOW ROAD WIDENING PROJECT (CIP7314)**

- A. Revise the traffic signal design for decorative traffic signal poles at Kavanagh Avenue/Corral Hollow Road.
- B. The traffic signal pole at the southwest corner of West Valley Mall Road/Corral Hollow Road will also be a decorative traffic signal pole.

City of Tracy

**Amendment No. 2 to Professional Services Agreement for Design Professionals
Corral Hollow Road Widening Grant Line Road to West Valley Mall Entry,
CIP 73014 (formerly 9314)**

Page 6 of 7

FEE FOR TASK NO. 3 SERVICES: \$ 360.00

**TOTAL FEE FOR TASK NO. 1 THRU TASK NO. 3 SERVICES
\$ 17,680.00**

(AMENDMENT NO. 2, PARAGRAPH A)

B. ADDITIONAL VALUE ENGINEERING DESIGN SERVICES

ASSUMPTIONS:

- (1) *In February, 2009, a Professional Services Agreement for Design Professionals was executed by and between the City of Tracy and Schack & Company, Inc, whereby Schack & Company, Inc. was authorized and directed to provide engineering and design services for the Corral Hollow Road Widening Project (CIP 7314.) Included in the Scope of Work was Value Engineering Services relating to determination of existing roadway pavement and base conditions, and Evaluation / determination of potential pavement and base alternatives.*

- (2) *In November, 2009, Amendment No. 1 to the above- referenced Professional Services Agreement between the City of Tracy and Schack & Company, Inc. was approved by the City Council. Amendment No.1, Paragraph B-6 included the following:*

'City Staff has decided that all street and roadway asphalt and sub-base in the project area is to be removed and replaced during roadway construction. Therefore, the following tasks within the Geotechnical Investigation (and report) will no longer be needed and are to be removed from the Scope of Work: a) A Deflection Study; and b) A Value Engineering process including determination of existing conditions and evaluation of potential alternatives for ultimate pavement section design and / or mitigation.'

- (3) *In January, 2011, City Staff requested additional, specific project value engineering work to be completed, including: a) evaluation and determination of existing roadway cross-section conditions throughout the project to quantify the total amounts of removed asphalt and base materials, including total quantities of pulverized materials that can be re-used as base materials within the cement treated base (CTB.) To more*

accurately calculate this data, additional geotechnical investigations / evaluations are required; and b) additional geotechnical research, evaluation and preparation of reports regarding alternatives for ultimate roadway base (including cement-treated base) and pavement sections design (including rubberized asphalt specification review.)

TASK NO. 4 ADDITIONAL GEOTECHNICAL INVESTIGATION SERVICES

Complete additional potholing work down the centerline of Corral Hollow Road as needed (to supplement available potholing data) to gather necessary data to determine and reasonably quantify the existing roadway hardscape material conditions throughout the entire project (base and pavement cross-sections, and total quantities.)

FEE FOR TASK NO. 4 SERVICES: \$ 6,535.00

TASK NO. 5 ADDITIONAL GEOTECHNICAL RESEARCH, EVALUATION AND REPORTS

Complete additional geotechnical research / evaluation, and preparation / modification of existing project geotechnical reports, regarding two-(2) new technical specifications documents City Staff provided in January, 2011. City Staff requested these new specifications be incorporated into the final Technical Provisions Manual. One document provides new, modified specifications for Cement Treated Base (CTB), and the second document provides new, modified specifications for Rubberized Asphalt Concrete.

FEE FOR TASK NO. 5 SERVICES: \$ 2,760.00

**TOTAL FEE FOR TASK NO. 4 AND TASK NO. 5 SERVICES \$ 9,295.00
(AMENDMENT NO. 2, PARAGRAPH B)**

**TOTAL FEES FOR AGREEMENT, AMENDMENT NO. 2: \$ 26,975.00
(TASK NO. 1 THRU TASK NO. 5 SERVICES)**

RESOLUTION 2011-_____

APPROVING AMENDMENT 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH SCHACK & COMPANY, INC., OF TRACY, CALIFORNIA, TO PROVIDE ADDITIONAL SERVICES FOR THE CORRAL HOLLOW ROAD WIDENING PROJECT – CIP 73014, FROM GRANT LINE ROAD TO THE WEST VALLEY MALL ENTRY

WHEREAS, On February 17, 2009, City Council approved a Professional Services Agreement with Schack & Company to provide services for preparation of design, improvement plans, specifications and construction documents for the widening of Corral Hollow Road from Grant Line Road to the West Valley Mall Entry – CIP 73014, and

WHEREAS, Since construction of the Kavanagh Road extension west of Corral Hollow Road, is going ahead of this project, it is necessary to modify the design of the traffic signal at the Kavanagh Avenue and Corral Hollow Road intersection, and

WHEREAS, Caltrans is requiring that the construction documents should also include the Traffic Control Plan, and

WHEREAS, During construction of the Grant Line Road and Corral Hollow Road intersection by Winco, staff also found that the structural section of the street varies between the east and west side of the street and it is necessary to perform additional potholes to provide more accurate quantities of excavation to avoid change orders during construction, and

WHEREAS, In order to complete this additional work, staff requested a proposal and negotiated the cost of the required services for a not to exceed amount of \$26,975, and

WHEREAS, There is no fiscal impact to the General Fund from this amendment to the PSA. The Corral Hollow Road Widening Project (CIP 73014) is an approved Capital Improvement Project with sufficient funding to complete the design and construction;

NOW, THEREFORE, BE IT RESOLVED That City Council approves Amendment 2 to the Professional Services Agreement with Schack & Company, Inc., of Tracy, California to provide additional services for the Corral Hollow Road Widening Project – CIP 73014, from Grant Line Road to the West Valley Mall Entry for a not to exceed amount of \$26,975, and authorize the Mayor to execute the agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of May 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.E

REQUEST

AWARD A CONSTRUCTION CONTRACT FOR THE TRAFFIC SIGNAL POLE REPLACEMENT AT HOLLY DRIVE AND ELEVENTH STREET PROJECT – CIP 72077, TO RICHARD A. HEAPS ELECTRIC INC., OF SACRAMENTO, CALIFORNIA, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

EXECUTIVE SUMMARY

The traffic signal pole at the intersection of Eleventh Street and Holly Drive/Central Avenue was damaged during a traffic collision. The damaged pole was replaced with a temporary wooden pole in the interim to keep the signal operational. City Council is requested to award a construction contract for installation of permanent traffic signal pole – CIP 72077.

DISCUSSION

This project provides for the replacement of the traffic signal pole located at the median island on the north side of Eleventh Street at the intersection of Eleventh Street and Holly Drive/Central Avenue. The pole was damaged during a traffic collision and was replaced with the temporary wooden pole on an emergency basis to keep the signal operational until a permanent pole can be installed. The pole foundation and pole shaft along with heads and mast arms were damaged due to the impact of the collision and needed replacement.

The project design was completed in-house by Engineering staff and was advertised for competitive bid on March 2 and March 9, 2011. A total of seven bids were received on March 23, 2011. The bid results are as follows:

Richard A Heaps Electric Inc, Sacramento, CA	\$19,470
Mike Brown Electric Co, Cotati, CA	\$21,968
Tennyson Electric Inc, Livermore, CA	\$24,385
Pacific Excavation Inc, Elk Grove, CA	\$25,165
Steiny and Company Inc, Vallejo, CA	\$25,886
Wingard Engineering Inc, Bethel Island, CA	\$26,760
Republic ITS, Fremont, CA	\$30,650

The lowest bid is from Richard A. Heaps Electric Inc., of Sacramento, California. Staff has reviewed the lowest bid and completed the bid analysis. The bid is within 10% of the engineer's estimate. The lowest bid is responsive and the bidder is responsible. Richard A. Heaps Electric Inc., of Sacramento, California has good references and has completed similar projects for other public agencies.

The total construction cost of this project if awarded to Richard A. Heaps Electric Inc., is as follows:

<u>Construction Cost</u>	<u>Base Bid</u>
Contractor's Bid for Construction	\$19,470
Contingency @ 15%	\$ 3,000
Design	\$ 2,000
Design Support During Construction	\$ 1,000
Inspection (10%)	\$ 2,000
City Wide Management	<u>\$ 7,500</u>
Total Construction Cost	\$34,970

STRATEGIC PLAN

This agenda item is a routine operational item and is not related to the City Council's Seven Strategic Plans.

FISCAL IMPACT

The project's associated costs will be paid by the Gas Tax Fund. The City is pursuing full recovery of the cost of a new signal pole from the party responsible for damage to the old pole through their insurance company and through the City's Risk Management. Therefore, there will be no impact to General Fund.

RECOMMENDATION

That City Council, by resolution, award a construction contract to Richard A. Heaps Electrical Inc., of Sacramento, California, in the amount of \$19,470 for installation of a traffic signal pole at the intersection of Eleventh Street and Holly Drive, and authorize the Mayor to execute the contract.

Prepared by: Ripon Bhatia, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

RESOLUTION 2011-_____

AWARDING A CONSTRUCTION CONTRACT FOR THE TRAFFIC SIGNAL POLE REPLACEMENT AT HOLLY DRIVE AND ELEVENTH STREET PROJECT – CIP 72077, TO RICHARD A. HEAPS ELECTRIC INC., OF SACRAMENTO, CALIFORNIA, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, The traffic signal pole at the intersection of Eleventh Street and Holly Drive/Central Avenue was damaged during a traffic collision, and

WHEREAS, This project provides for the replacement of the traffic signal pole located at the median island on the north side of Eleventh Street at the intersection of Eleventh Street and Holly Drive/Central Avenue, and

WHEREAS, The project was advertised for competitive bid on March 2 and March 9, and seven bids were received on March 23, 2011, and

WHEREAS, The lowest bid is from Richard A. Heaps Electric Inc., of Sacramento, California, and

WHEREAS, The total construction cost of this project if awarded to Richard A. Heaps Electric Inc., is as follows:

<u>Construction Cost</u>	<u>Base Bid</u>
Contractor's Bid for Construction	\$19,470
Contingency @ 15%	\$ 3,000
Design	\$ 2,000
Design Support During Construction	\$ 1,000
Inspection (10%)	\$ 2,000
City Wide Management	<u>\$ 7,500</u>
Total Construction Cost	\$34,970

WHEREAS, The project's associated costs will be paid by the Gas Tax Fund. The City is pursuing full recovery of the cost of the new signal pole from the party responsible for damage to the old pole through their insurance company and the City's Risk Management;

NOW, THEREFORE, BE IT RESOLVED That City Council awards a construction contract to Richard A. Heaps Electrical Inc., of Sacramento, California, in the amount of \$19,470 for installation of a traffic signal pole at the intersection of Eleventh Street and Holly Drive, and authorizes the Mayor to execute the contract.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of May 2011 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

**APPROVE RESOLUTION AUTHORIZING A LEAVE OF ABSENCE FOR TRACY
TRANSPORTATION ADVISORY COMMISSIONER JOSEPH ORCUTT**

EXECUTIVE SUMMARY

On March 10, 2011, staff received a request from Transportation Advisory Commissioner Joseph Orcutt for a leave of absence from May 1, 2011 to May 31, 2011. The Transportation Advisory Commission Bylaws state a Transportation Advisory Commission member may submit a written request to the City Council for a leave of absence of up to six-months which may be approved at the City Council's discretion.

DISCUSSION

Transportation Advisory Commissioner Joseph Orcutt has requested a leave of absence from May 1, 2011 to May 31, 2011 for Air Force Reserve training. The Transportation Advisory Commission (TAC) Bylaws stipulate that any Commissioner can request up to six-months leave of absence from their duties on the Commission. This request is to be directed to, and can only be approved by, the City Council.

The TAC consists of nine members and all seats are currently filled.

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, Transportation Fund, or Airport Fund at this time.

RECOMMENDATION

That the City Council, by Resolution, approve a leave of absence for Transportation Advisory Commissioner Joseph Orcutt.

Prepared by: Ed Lovell, Management Analyst II

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

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZATION FOR A LEAVE OF ABSENCE FOR
TRANSPORTATION ADVISORY COMMISSIONER JOSEPH ORCUTT

WHEREAS, Transportation Advisory Commissioner Joseph Orcutt has requested a leave of absence from May 1, 2011 to May 31, 2011 due to a work schedule conflict; and

WHEREAS, The Transportation Advisory Commission (TAC) Bylaws stipulate that any Commissioner can request up to six-months leave with Council approval; and

WHEREAS, The Transportation Advisory Commission consists of nine members and one seat is currently vacant.

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes a leave of absence from May 1, 2011 to May 31, 2011 for Transportation Advisory Commissioner Joseph Orcutt.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the 3rd day of May, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

May 3, 2011

AGENDA ITEM 1.G

REQUEST

**APPROVAL FOR THE MAYOR TO SIGN A LETTER OPPOSING AB 438 WHICH
REQUIRES VOTERS TO APPROVE A CITY COUNCIL'S DECISION TO PROVIDE
LIBRARY SERVICES THROUGH A PRIVATE CONTRACTOR**

EXECUTIVE SUMMARY

Council will discuss and consider whether the City should send a letter to Assembly Member Das Williams opposing AB 438.

DISCUSSION

The City has received a request from Stephen Qualls, Central Valley Regional Public Affairs Manager, League of California Cities, that the Council discuss and consider whether to send a letter to Assembly Member Das Williams opposing AB 438.

AB 438 would require voters to approve a City Council's decision to provide library services through a private contractor.

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.

RECOMMENDATION

It is recommended that the City Council discuss and determine whether to send a letter to Assembly Member Das Williams in opposition to AB 438 and provide direction to staff.

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

Attachment: Exhibit A – Letter from Council to Assembly Member Das Williams



EXHIBIT A

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

CITY MANAGER'S OFFICE

MAIN 209.831.6000
FAX 209.831.6120
www.ci.tracy.ca.us

May 3, 2011

Assembly Member Das Williams
State Capitol, Room 6011
Sacramento, CA 95814

RE: **AB 438 (Williams). County Free Libraries: withdrawal.** (As amended April 4, 2011)
NOTICE OF OPPOSITION

Dear Assembly Member Williams:

The City of Tracy must respectfully oppose your bill, AB 438, which would require voters to approve a city council's decision to provide library services through a private contractor. Our concerns are based on the following issues:

- *AB 438 undermines the ability of a city to operate efficiently and effectively.* City Councils, routinely make administrative decisions on contracts, policies and fiscal decisions that are essential to government functioning smoothly. Sometimes these decisions must take place in an expedited manner so as to balance the city's budget. Forcing a city to put a contract to a vote at the *next regularly scheduled election*, which could be as far away as 18 months or 2 years, could exacerbate an already bad fiscal situation for the city.
- *Role of Council Members.* While we appreciate the intent to have voters weigh in on a city council decision relating to public contracts, we believe that these decisions are exactly the type of decisions that council members are elected to make.

For the aforementioned reasons, the City of Tracy must respectfully oppose your bill.

Sincerely,

Brent H. Ives, Mayor
Tracy City Council

cc: Tracy City Council
Cameron Smyth, Chair, Assembly Local Government Committee
Kyra Ross, League of California Cities
Assembly Member Cathleen Galgiani
Senator Lois Wolk
William Webber, Assembly Republican Caucus

AGENDA ITEM 1.H

REQUEST

ADOPT A RESOLUTION AMENDING THE DEPARTMENT HEADS COMPENSATION AND BENEFITS PLAN BY EXTENDING THE TERM OF THE PLAN, REQUIRING EMPLOYEE CONTRIBUTION TOWARD PENSION COSTS, REDUCING CITY PAID DEFERRED COMPENSATION, INSTITUTING FURLOUGHS AND AUTHORIZING THE CITY MANAGER TO ENTER INTO SEVERANCE AGREEMENTS

EXECUTIVE SUMMARY

The recommended action continues the City's efforts to reduce costs related to labor. The proposed salary and benefit reductions related to the Department Heads, which equate to up to 8%, will be realized with a combination of a reduction in salary through unpaid furlough days, a reduction in City paid deferred compensation, and Department Heads contributing to their pension plans. The proposed amendments to the Department Heads Compensation and Benefits Plan ("Plan") also extend the term of the Plan and authorize the City Manager to enter into severance agreements in order to minimize the risk of potential litigation.

DISCUSSION

The City periodically reviews its relationship with senior management, and its frequency has increased with the advent of furloughs and waiving of pay increases during the last three years. This effort needs to continue in light of the City's financial circumstances and senior management's desire to provide a leadership example. Almost all labor contracts become open this year and the proposed actions related to the Departments Heads gives the City Council a rare opportunity to set expectations.

The City currently has 11 classifications designated as Department Heads. The salary and benefits provided to employees in this group are detailed in the Department Head Compensation and Benefits Plan. On November 20, 2007, the City Council adopted Resolution 2007-262, which established a revised Compensation and Benefits Plans for Department Heads ("Plan").

Since the adoption of the Plan, the Department Heads have taken several steps to reduce the costs to the City under the Plan.

Under the Plan, in April of 2009, Department Heads were scheduled to receive a COLA of a minimum of 3%, based on the Consumer Price Index, as well as an equity increase of 2%. Due to the City's structural budget deficit, Department Heads chose to forego this 5% increase as well as to reduce expenditures by an additional 3% through participation with other City employees in 8 unpaid furlough days. This total reduction in compensation for Department Heads equaled 8%.

In April of 2010, Department Heads again chose to forego a 3% COLA included in the Plan and reduced expenditures by an additional 5% in compensation for FY 2010-11,

which included participation in unpaid furlough days. This total reduction in compensation for Department Heads equaled 8%.

In September of 2010, a second-tier retirement benefit was established for Department Heads.

The City's Department Heads are again proposing a reduction in compensation of up to 8% by July 1, 2013 through unpaid furlough days, a reduction in City paid deferred compensation, and contributions to their pension plans. Under the proposed Resolution:

- Department Heads will begin contributing up to 3 per cent of their pay toward their pension plans over the next two fiscal years.¹
- City paid deferred compensation for Department Heads will be reduced by one-half of one percent; and
- Department Heads will take 12 unpaid furlough days in each of the next two fiscal years.

It is also recommended that Department Heads be eligible for six months of severance pay in the event of involuntary resignation or termination in exchange for a release of liability for all claims connected with the employment relationship. The cost of such a provision is usually borne through vacancy savings while looking for a department head's successor, if the position is to be filled. The provision is recommended to minimize the risk of potential litigation and as reasonable consideration for high level at-will employment that is relatively scarce in the marketplace. A recent survey of northern California communities shows 2/3 of responding communities provide such a provision. The release of liability requirement ensures a smooth transition.

STRATEGIC PLAN

This agenda item supports the City Council's goal for an Efficient and Effective organization.

FISCAL IMPACT

Departments Heads continued participation in unpaid furloughs and deferred compensation reduction amount to \$90,000 in savings in FY 2011/12. In addition, implementation of the Department Heads contributing up to 3 per cent toward their pension plans will save the City's General Fund \$53,647 over the next two fiscal years.

RECOMMENDATION

That City Council, by resolution, approves the attached amendments to the Compensation and Benefits Plan for Department Heads.

¹ There would be \$3 million in annual savings to the City of Tracy if all labor groups similarly contribute to the employee portion of their pension. The FY 2011-12 PERS increase is \$1 million.

Agenda Item 1.H

May 3, 2011

Page 3

Recommended and Approved by: Leon Churchill, Jr., City Manager

Attachments: Resolution

Department Heads Compensation and Benefits Plan (as amended)

Department Head Severance Pay – Northern California

RESOLUTION _____

AMENDING RESOLUTION 2007-262 RELATING TO
THE DEPARTMENT HEADS COMPENSATION AND BENEFITS PLAN

WHEREAS, On November 20, 2007, the City Council adopted a revised Department Heads Compensation and Benefits Plan (Resolution 2007-262); and

WHEREAS, On April 6, 2010, the City Council amended Resolution 2007-262 by rescinding a 3% cost of living increase that was due to go into effect on April 1, 2010 (Resolution 2010-039); and

WHEREAS, On September 7, 2010, the City Council amended Resolution 2007-262 by establishing a second-tier retirement benefit (Resolution 2010-152); and

WHEREAS, The City wishes to extend the term of Resolution 2007-262 (as amended) until September 30, 2013; and

WHEREAS, Due to the severe economic recession, the City wishes to take additional steps to reduce personnel costs and other expenses by: (a) requiring Department Heads to contribute to PERS rates; (b) reducing City paid deferred compensation; and (c) instituting furloughs; and

WHEREAS, To minimize the risk of potential litigation, the City wishes to authorize the City Manager to enter into severance agreements with Department Heads who involuntarily resign or are terminated in exchange for a release of liability for all claims connected with the employment relationship.

NOW THEREFORE, BE IT RESOLVED, that Resolution 2007-262 (Department Heads Compensation and Benefits Plan ("Plan")) is amended as follows:

1. Section 1 (Purpose and Intent) of the Plan is amended to reflect that the Plan provides the basis for recognition, benefits and compensation, effective April 1, 2007 through September 30, 2013.
2. Subsection C of Section 3 (Compensation) of the Plan is amended to read as follows:
 - C. Deferred Compensation. A contribution to the Department Heads' Deferred Compensation Plan will be made in the amount of 4.5% of the Department Heads' annual salary. Effective January 1, 2008, City paid deferred compensation to a Department Head shall be paid to a 401 Plan.
3. Subsection B of Section 5 (Benefits) of the Plan is amended to read as follows:
 - B. PERS Retirement.
 1. Miscellaneous (Non-Public Safety) Department Heads: Effective as soon as the contract can be amended with the Public Employees' Retirement System ("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 PERS.

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.
- b. Police Chief. Effective July 1, 2010, the City 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 50 benefit formula.

3. Contributions:

For all Department Heads the following applies:

- a. Until June 30, 2011, the City will pay both the employee's and employer's share of the PERS rates.
- b. From July 1, 2011 until June 30, 2012, each employee will be required to pay 1.5% of the employee's salary as a portion of the employee's share of the PERS rates and the City will pay the remainder of both the employee's and employer's share of the PERS rates.
- c. From July 1, 2012 until September 30, 2013, each employee will be required to pay 3% of the employee's salary as a portion of the employee's share of the PERS rates and the City will pay the remainder of both the employee's and employer's share of the PERS rates.

4. A new Section 6 (Furlough) is added to the Plan to read as follows:

Section 6: Furlough

Department Heads shall take 12 unpaid furlough days between July 1, 2011 and June 30, 2012 and 12 unpaid furlough days between July 1, 2012 and June 30, 2013. Furlough days will be identified by the City.

5. A new Section 7 (Severance) is added to the Plan to read as follows:

Section 7: Severance

- A. Determined by City Manager. The City Manager, in his or her discretion, is authorized to enter into severance agreements with Department Heads

if they involuntarily resign or are terminated by the City, for up to six months severance pay.

- B. Severance Pay. "Severance pay" shall include salary and health benefits. Severance pay shall be paid in a lump sum payment to the Department Head by the City within fifteen (15) working days after the effective date of the severance agreement, or as agreed to by City and the Department Head. Severance pay shall not be included in final compensation for the purposes of PERS retirement nor shall any payments of the employee's share of the PERS rates be deemed to extend the date of separation past termination or resignation of the employee.

- C. Waiver and Release. All severance agreements must contain a release of liability for all claims connected with the employment relationship and must be in a form approved by the City Attorney.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 3rd day of May, 2011, 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

EFFECTIVE

APRIL 1, 2007 – SEPTEMBER 30, 2011

Approved by City Council Resolution 2007-262 Dated November 20, 2007

Revised by City Council Resolution 2010-039 Dated April 6, 2010

Revised by City Council Resolution 2010-152 Dated September 7, 2010

Section 1: Purpose and Intent

The City Council has established a Department Heads Compensation and Benefits Plan. Department Heads are exempt from the Fair Labor Standards Act (FLSA), are at will employees and serve at the pleasure of the City Manager. They are covered by the authority of the Personnel Rules; however, they are not included in the grievance or appeals procedure. The City Manager is empowered to grant compensation adjustments as specified in the Department Heads Compensation and Benefits Plan.

The City of Tracy is desirous of providing greater service to its citizens, and of recruiting and maintaining qualified Department Head staff. The following plan provides the basis for recognition, benefits and compensation, effective April 1, 2007 through September 30, 2011.

Section 2: Department Heads Unit Membership

Positions covered by this plan exclusively are as follows:

Assistant City Manager
Development and Engineering Services Director
Economic Development Director
Finance and Administrative Services Director
Fire Chief
Human Resources Director
Parks and Community Services Director
Police Chief
Public Works Director

Section 3: Compensation

A. Salary Plan. There shall be a minimum and maximum salary for all classifications.

All rates of pay set forth in this Section represent the standard rate of pay for full-time employment for each classification. Employees occupying a position in a classification covered by this Plan shall be paid at a base salary within the range established for that position's classification.

The salary ranges for all classifications covered in the plan shall be increased as outlined in this Section.

1. Equity Increases:

	<u>4/01/07</u>	<u>4/01/08</u>	<u>4/01/09</u>
All Department Heads	4%	4%	2%

Equity adjustments for all Department Heads will be reassessed prior to April 1, 2010 to determine if adjustments in particular classifications are warranted. At any time during the term of this Resolution, the City Manager may direct that the compensation and benefits for any classification within the Department Heads Group be reassessed to determine if market changes affect the City's ability to be competitive.

2. Cost of Living Increases:

4/01/07 3.2% Cost of Living increase for all Department Heads

4/01/08 Effective April 1, 2008, the pay range for all Department Heads shall be increased by a minimum of 3% and a maximum of 5% based on the increase to the Consumer Price Index, Urban Wage Earners and Clerical Workers (SF-Oakland-San Jose) from December 2006 to December 2007

4/01/09 Effective April 1, 2009, the pay range for all Department Heads shall be increased by a minimum of 3% and a maximum of 5% based on the increase to the Consumer Price Index, Urban Wage Earners and Clerical Workers (SF-Oakland-San Jose) from December 2007 to December 2008

~~4/01/10 Effective April 1, 2010, the pay range for all Department Heads shall be increased by a minimum of 3% and a maximum of 5% based on the increase to the Consumer Price Index, Urban Wage Earners and Clerical Workers (SF-Oakland-San Jose) from December 2008 to December 2009~~ *(Rescinded by Resolution 2010-039)*

ALL SALARY INCREASES RETROACTIVE TO APRIL 1, 2007 APPLY ONLY TO MEMBERS WHO ARE CURRENT CITY EMPLOYEES AS OF THE DATE OF COUNCIL APPROVAL OF THIS RESOLUTION.

B. Components of Salary. The City Manager is authorized to set the salary of Department Heads at any point within the salary range.

1. Base Salary. This is the amount set at any point within the range at initial appointment and will be subject to adjustment until the Department Head reaches the top of the range. Base salary may be adjusted on an annual basis by the City Manager, based on meritorious performance, but not to exceed the established range.

2. Cost of Living. The cost of living adjustment will increase simultaneously with the salary range and the employee's base salary.

- C. Deferred Compensation. A contribution to the Department Head's Deferred Compensation Plan will be made in the amount of five (5) percent of the Department Head's annual salary. Effective January 1 2008, City paid deferred compensation to a Department Head shall be paid to a 401 Plan.

Section 4: Leave

- A. Vacation. Leave will be granted as provided for in the following chart. Leave may be used during the first six (6) months of service in accordance with Administrative Procedure Section V.

0-5 years	120 hours per year
6-10 years	160 hours per year
11-15 years	200 hours per year
16-20 years	220 hours per year
21 + years	240 hours per year

- B. Management Leave. In recognition of the need to devote more than 40 hours per week to their duties, management leave in the amount of 104 hours per calendar year shall be granted to Department Heads.
- C. Floating Holidays. Two floating holidays per calendar year shall be granted to Department Heads.
- D. Maximum Accumulation of Leave. The maximum accrual for Department Heads of vacation, management leave, and floating holidays shall be 750 hours.
- E. Buy-Back of Accumulated Leave. Department Heads are allowed an optional buy-back of accumulated leave. They may, once in a calendar year, buy back up to 50 percent of accumulated leave, but not more than the equivalent of one year's earning rate for vacation, management leave and floating holidays.
- F. Sick Leave Accrual. All Department Heads shall be eligible to accrue sick leave at the rate of one (1) working day for each month of service. Unlimited accrual of sick leave is allowed.

Eligible Department Heads shall be eligible to accrue two (2) working days for each month of service beginning the 21st year of employment and thereafter. This provision is only applicable to individuals first employed by the City of Tracy prior to January 1, 1987.

- G. Conversion of Sick Leave Balance.

1. Conversion of Sick Leave Balance Upon Retirement. Upon retirement, employees may 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 Department Head's hourly rate of pay. The retired employee and his/her dependents shall be entitled to continue group health insurance coverage, dental and/or vision coverage currently in effect, with premiums for such coverage being deducted from the medical insurance bank until said bank is exhausted. At that time, the employee and his/her dependents may continue to participate in the

City's group health plan provided the City receives the employee's payment for the premium(s) by the 10th of each month. The medical insurance bank may also be used to pay for long term care premiums in accordance with the limits set by federal law.

2. Conversion of Sick Leave Balance Upon Death/Termination. Upon death, the employee's estate shall receive straight-time pay for all accrued sick leave in excess of nine hundred sixty (960) hours.

If a Department Head terminates or is terminated for any reason, all accumulated sick leave shall be canceled. Such accumulated sick leave, however, shall be credited to such employee if he/she returns to City employment within two years of such termination.

- H. Bereavement Leave. In the event of death in the immediate family of a Department Head, absence from duty may be allowed not to exceed five working days within two weeks of the date of death of the family member. Such absences shall not be charged to sick leave.
- I. Family Leave. Department Heads may be granted leave with pay when absence from work is required because of illness or injury of a member of the immediate family. Immediate family is defined as child, parent or spouse. Each day utilized for this leave shall be subtracted from the sick leave accrual of the Department Head. Employees may utilize up to one-half (1/2) of their annual accrual of sick leave for the care of their immediate family.

Section 5: Benefits

- A. Determined by City Manager. Department Heads shall receive benefits based on the maximum granted to represented and unrepresented employees, or other reasonable basis, as determined by the City Manager.

B. PERS Retirement. *(Amended by Resolution 2010-152)*

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 50 benefit formula. The City pays both the employee and employer rates during the term of this Plan.

C. Short-Term Disability Insurance (STD).

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

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

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

D. Long Term Disability Program. City paid long term disability insurance shall be provided to all Department Heads.

E. Annual Physical. An annual physical examination shall be provided.

F. Education Reimbursement. Educational expenses shall be reimbursed, up to \$2,500 per calendar year, but are limited to the cost of a State College or University's fees, books, and tuition. A grade of "C" or better is required for reimbursement. Approval by the City Manager is required prior to enrollment.

G. Travel. Administrative Procedure, Section T – Travel Expenses, shall be used to reimburse mileage expenses incurred when using a personal vehicle for City business.

H. City Vehicle/Allowance. Department Heads shall be provided with either a City vehicle or a car allowance of \$500 per month effective April 1, 2007. Department Heads shall not receive mileage reimbursement, in accordance with Administrative Procedure Section T – Travel Expense, unless the one-way mileage from the City of Tracy work site to the final destination exceeds 75 miles. In such circumstances, the Department Head may apply for reimbursement for mileage above the initial 75 miles.

I. Insurance

1. Medical Plans Provided. The City offers medical insurance through Kaiser, Health Net HMO and Health Net PPO. During the term of this agreement the City reserves the right to change medical providers and the parties shall meet and discuss regarding such change. New employees hired on or after December

- 1, 2007 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.
2. Dental. The City shall make available dental insurance coverage for full-time employees and their eligible dependents to a maximum annual covered benefit of \$1,200 per participant per year.
 3. Vision. The City shall make available vision care benefits for full-time employees and their eligible dependents through the existing providers.
 4. Life Insurance. Effective January 1, 2008, the City shall purchase life insurance in the amount of \$150,000 for each department head.
 5. Flexible Benefits Plan. The City shall maintain a Flexible Benefits Account for each full-time employee in regular status. The City shall continue to make monthly payments of \$996 to each employee's Flexible Benefits Account through December 31, 2007. Effective January 1, 2008, the City will increase the City's contribution to the Flexible Benefits Account by \$220 per person per month for employees electing family coverage.

Effective January 1, 2008, the City will increase the City's contribution to the Flexible Benefits Account by the amount necessary to fully cover the health, dental and vision plans selected up to a maximum of \$130 per person per month for employees electing two-party coverage. There shall be no increase in the Flexible Benefits Account for employees who select single coverage or who elect no health insurance coverage.

Future Contributions and Cash Out Options

For employees hired after December 1, 2007, 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). For Department Heads employed prior to December 1, 2007 who also received payment from the previous Flexible Benefits Plan (net amount after cost of insurances) they will continue to receive the amount per month in effect in 2007 for the duration of this resolution, provided however, that said amount will not increase over the amount in effect in 2007 and that this amount plus the cost of insurances will not be greater than the caps for any given year.

Additionally, if premiums increase in the plans to which City employees subscribe effective January 1, 2008 and each January thereafter during the term of this Agreement, 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 \$100 and the Health Net HMO Family Plan monthly increase is \$125 per month, the average dollar amount for the two plans would be \$112.50. The City's increase contribution will be \$95.62 per month (85% of the premium increase).

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.

On April 1, 2009, the City will review the 85-15% split in the share of health premium increases and determine whether the ratio remains appropriate in light of current market conditions and City budgetary considerations. In no event shall the portion of the increase in the medical premium increase shared by the employee be more than 15% each year of this Agreement.

6. Section 125 Plan. The City will implement an Internal Revenue Code Section 125 to redirect employees' pre-selected amount of 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 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 liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

Each employee shall provide the Personnel Officer in writing on a form provided, and at times designed by the City each year, all information necessary to administer the Flexible Benefits 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, except for those which qualify under the IRS Section 125 rules.

- J. Management Benefit Plan. Effective January 1, 2008, the \$480 allocated for Management Benefits shall be increased to \$960 per calendar year to be utilized at the discretion of each individual Department Head for job related expenses or for professional development. The monies will be allocated per pay period and may be utilized for a wide variety of job related expense, training, association memberships, computer hardware and software, conference registration and attendance and other miscellaneous job expenses or professional development opportunities.
- K. Uniform Allowance. Effective July 1, 2007 the City shall provide the Police Chief and the Fire Chief a uniform allowance in the amount of \$1,000 per year.

DEPARTMENT HEAD SEVERANCE PAY

Northern California

City	Severance for DH's (Yes or No)	Notes
American Canyon	Yes	Six (6) months.
Berkeley	No	No severance offered
Brentwood	Yes	Six (6) months.
Burlingame	No	No severance offered
Citrus Heights	Yes	Four (4) to eight (8) months
Dublin	Maybe	Case by Case basis.
Emeryville	Yes	Two (2) to six (6) months
Galt	Yes	Two (2) to four (4) months
Gilroy	No	No severance offered
Healdsburg	Yes	Three (3) months
Hercules	Yes	Three (3) months
Manteca	No	No severance offered
Moraga	Yes	Three (3) months
Orinda	No	No severance offered
Pittsburg	Yes	Three (3) to five (5) months
Richmond	No	Only offered to City Manager
Roseville	Yes	Six (6) months
San Bruno	Yes	One (1) week for every one (1) year of service
San Francisco (City and County)	Yes	Six (6) to eight (8) months
San Pablo	Yes	Six (6) months
Saratoga	Yes	Six (6) months
Seaside	Yes	Six (6) months
Tracy	No	City Manager and City Attorney only
Truckee	Yes	Six (6) months
Watsonville	Yes	Three (3) months
West Sacramento	No	No severance offered

AGENDA ITEM 3

REQUEST

PUBLIC HEARING TO AWARD A FACILITY FINANCING CONTRACT (DESIGN-BUILD) FOR THE CIVIC CENTER SOLAR PANEL INSTALLATION PROJECT – CIP 71068

EXECUTIVE SUMMARY

Staff is requesting City Council open the public hearing, receive any comments and continue consideration of the award of the Facility Financing Contract to the next City Council meeting of May 17, 2011.

DISCUSSION

The City of Tracy was awarded an Energy Efficient & Conservation Block Grant (EECBG) from the Department of Energy for \$571,600 to install solar panels on Civic Center buildings per Award No. DE-SC0001645.

The State of California Government Code allows local agencies to award Facility Financing contracts to complete design and construction of such projects to qualified individuals or firms by conducting a public hearing with at least two weeks notice. The City issued a Request for Proposals (RFP) and met with perspective proposers. Due to the complexity of the grant funding and proposal requirements, most of the proposers required an extension of the RFP. In order to receive qualified and competitive proposals, the deadline of the RFP was extended by ten days. As a result, the proposals will not be received until after the May 3, 2011 City Council meeting. Therefore, staff requests that City Council open the public hearing and continue it to the next scheduled meeting of May 17, 2011 to receive staff's recommendation and award the Facility Financing Contract.

STRATEGIC PLAN

This request for continuance is not related to City Council's strategic plans.

FISCAL IMPACT

This agenda item has no fiscal impact to the General Fund.

RECOMMENDATION

Staff recommends that City Council open the public hearing, receive comments and continue consideration of the award to the next City Council meeting of May 17, 2011.

Prepared by: Kul Sharma, City Engineer
Reviewed by: Andrew Malik, Development & Engineering Services Director
Approved by: Leon Churchill, Jr., City Manager

AGENDA ITEM 4

REQUEST

THAT COUNCIL DISCUSS AND ACCEPT THIS UPDATE REPORT BY THE POLICE DEPARTMENT STAFF REGARDING THE PROGRESS OF THE VIOLENT CRIME AND GANG SUPPRESSION PLAN

EXECUTIVE SUMMARY

After presenting the preliminary report on this matter to Council on January 18, 2011, the Police Department staff seeks to update Council and the community on the progress of the Violent Crime and Gang Suppression Plan.

DISCUSSION

The Police Department has implemented the program as previously outlined to Council with some scheduling modifications. The four prong approach focused on improving Enforcement, Intervention, Education, and Communication.

Violent Crime and Gang Suppression Plan:

Since January of 2011, we have:

- Reshaped the Directed Patrol Unit to consist of a 6 Patrol Officer team
- Directed Patrol Team (DPU) formed a direct link with Gang And Narcotics Enforcement Team (GNET) as a liaison to patrol
- Increased the number of gang related contacts and documentation
- Trained 3 V.I.P.S. to update and manage Cal Gang files
- Purged and updated the internal gang files at the police department
- Coordinated training for several officers to access the Cal-Gang system as an investigative tool
- Scheduled monthly meeting with Mayor's Community Youth Support Network (MCYSN), School Resource Officers, Gang & Narcotics Enforcement Team and Crime Prevention
- Coordinated and scheduled semi-monthly meetings with adult and juvenile probation in an effort to streamline communication and enforcement efforts
- Organizing a team of instructors to train and teach Gang Resistance Education And Training (GREAT) to include a Juvenile Probation Officer targeting elementary and middle school students (Grades 4 and 6-7)
- Crime Analyst provides weekly updates and temporal maps on gang related contacts and enforcement activity
- Juvenile probation is posting weekly updates to the juvenile probation list through the Police Department's Intranet

- GNET and General Investigations Unit (GIU) conducted 5 presentations to schools and service providers

Through this plan, the Tracy Police Department has taken a number of steps to increase its overall efforts to interdict violent crime and criminal gang activity and discourage conduct that interferes with quality of life in the City of Tracy.

- First quarter contacts with documented gang members represent the total number of contacts by both the Directed Patrol Unit and Patrol Officers.

Contacts With Documented Gang Members		
	January-March 2011	%
Officer Initiated	172	78%
Citizen Initiated	48	22%
Total	220	100%

- Contacts resulting in arrest were fairly stable throughout the first quarter with a slight decrease during the month of March.

Contacts Resulting in Arrests			
	January	February	March
Arrests - Officer Initiated	17	12	11
Arrests - Citizen Calls	5	10	4
Total	22	22	15

Results of the Internal Gang Data Base Audit:

The Tracy Police Department's internal database on documented gang members was reviewed, updated and out of date information purged in compliance with Department of Justice guidelines. The Department of Justice requires agencies to purge any gang intelligence files if an individual has not had a gang related contact within a five year period, therefore these numbers are constantly fluctuating.

The database contains the names of 750 individuals that have come in contact with Tracy Police officers over the past five years. Each of these individuals had at least one validated gang contact with Tracy Police during this time period. Of the 750 documented gang members, 115 were juveniles and 635 were adults. While these individuals were contacted within the City of Tracy and were entered into our database, this information should not be construed as being the number of documented gang members who actually reside in Tracy.

Documented Gang Members in Tracy (5 Year Period)	
115	635
Juvenile	Adult

Among these 750 individuals, 552 have validated Norteno Gang contacts, 120 Sureno Gang contacts, and 78 individuals with various other gang ties. The other gang ties include, but are not limited to, affiliations with Hells Angels, Border Brothers, and White Pride, to name a few.

Gang Types in Tracy		
Norteno	552	74%
Sureno	120	16%
Other	78	10%

Summary

The mission of the Violent Crime and Gang Suppression Operation remains the same - to provide high police visibility, strong enforcement, and regular contacts with individuals suspected of committing crimes of violence or involved in gang-related activity. Long-term goals will continue to focus on education and intervention as well as continually improving communication with all stakeholders.

Staff members from the Tracy Police Department met with representatives from the community, G.R.E.A.T, MCYSN, and the Tracy Unified School District to begin the process of researching and implementing an educational program targeting positive life skills and gang resistance training for specific age levels and parent groups. This group plans to implement Gang Resistance Education and Training at one school as a pilot program during the 2011-2012 school year. The City of Tracy and Tracy Police Department will confer with TUSD before making a determination on which school and grade level will receive GREAT training.

STRATEGIC PLAN

This agenda item supports the public safety strategic plan and specifically implements the following goal and objective:

Goal 4: Establish a Multi-Departmental Team to effectively address safety, blight & quality of life issues

Objective 2: Implement department protocol for addressing community concerns

FISCAL IMPACT

First quarter costs are not an accurate reflection of the actual costs of the program due to changes in the staffing model. Based on data since the modification was made, an estimated annual cost to operate the program full-time is \$125,000.

All instructor and classroom materials for the G.R.E.A.T. program are paid for by the Department of Justice. The Tracy Police Department will contribute a minimum of two sworn officers to teach this program in one school during the 2011-2012 school year and will absorb any personnel costs within its approved FY 11-12 budget.

RECOMMENDATION

That the City Council discusses and accepts this updated report as it relates to the violent crime and gang suppression detail and provides direction to staff regarding future briefings.

Prepared by Greg Farmanian, Police Lieutenant

Reviewed by Janet Thiessen, Chief of Police

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

AGENDA ITEM 4

REQUEST

THAT COUNCIL DISCUSS AND ACCEPT THIS UPDATE REPORT BY THE POLICE DEPARTMENT STAFF REGARDING THE PROGRESS OF THE VIOLENT CRIME AND GANG SUPPRESSION PLAN

EXECUTIVE SUMMARY

After presenting the preliminary report on this matter to Council on January 18, 2011, the Police Department staff seeks to update Council and the community on the progress of the Violent Crime and Gang Suppression Plan.

DISCUSSION

The Police Department has implemented the program as previously outlined to Council with some scheduling modifications. The four prong approach focused on improving Enforcement, Intervention, Education, and Communication.

Violent Crime and Gang Suppression Plan:

Since January of 2011, we have:

- Reshaped the Directed Patrol Unit to consist of a 6 Patrol Officer team
- Directed Patrol Team (DPU) formed a direct link with Gang And Narcotics Enforcement Team (GNET) as a liaison to patrol
- Increased the number of gang related contacts and documentation
- Trained 3 V.I.P.S. to update and manage Cal Gang files
- Purged and updated the internal gang files at the police department
- Coordinated training for several officers to access the Cal-Gang system as an investigative tool
- Scheduled monthly meeting with Mayor's Community Youth Support Network (MCYSN), School Resource Officers, Gang & Narcotics Enforcement Team and Crime Prevention
- Coordinated and scheduled semi-monthly meetings with adult and juvenile probation in an effort to streamline communication and enforcement efforts
- Organizing a team of instructors to train and teach Gang Resistance Education And Training (GREAT) to include a Juvenile Probation Officer targeting elementary and middle school students (Grades 4 and 6-7)
- Crime Analyst provides weekly updates and temporal maps on gang related contacts and enforcement activity
- Juvenile probation is posting weekly updates to the juvenile probation list through the Police Department's Intranet

- GNET and General Investigations Unit (GIU) conducted 5 presentations to schools and service providers

Through this plan, the Tracy Police Department has taken a number of steps to increase its overall efforts to interdict violent crime and criminal gang activity and discourage conduct that interferes with quality of life in the City of Tracy.

- First quarter contacts with documented gang members represent the total number of contacts by both the Directed Patrol Unit and Patrol Officers.

Contacts With Documented Gang Members		
	January-March 2011	%
Officer Initiated	172	78%
Citizen Initiated	48	22%
Total	220	100%

- Contacts resulting in arrest were fairly stable throughout the first quarter with a slight decrease during the month of March.

Contacts Resulting in Arrests			
	January	February	March
Arrests - Officer Initiated	17	12	11
Arrests - Citizen Calls	5	10	4
Total	22	22	15

Results of the Internal Gang Data Base Audit:

The Tracy Police Department's internal database on documented gang members was reviewed, updated and out of date information purged in compliance with Department of Justice guidelines. The Department of Justice requires agencies to purge any gang intelligence files if an individual has not had a gang related contact within a five year period, therefore these numbers are constantly fluctuating.

The database contains the names of 750 individuals that have come in contact with Tracy Police officers over the past five years. Each of these individuals had at least one validated gang contact with Tracy Police during this time period. Of the 750 documented gang members, 115 were juveniles and 635 were adults. While these individuals were contacted within the City of Tracy and were entered into our database, this information should not be construed as being the number of documented gang members who actually reside in Tracy.

Documented Gang Members in Tracy (5 Year Period)	
115	635
Juvenile	Adult

Among these 750 individuals, 552 have validated Norteno Gang contacts, 120 Sureno Gang contacts, and 78 individuals with various other gang ties. The other gang ties include, but are not limited to, affiliations with Hells Angels, Border Brothers, and White Pride, to name a few.

Gang Types in Tracy		
Norteno	552	74%
Sureno	120	16%
Other	78	10%

Summary

The mission of the Violent Crime and Gang Suppression Operation remains the same - to provide high police visibility, strong enforcement, and regular contacts with individuals suspected of committing crimes of violence or involved in gang-related activity. Long-term goals will continue to focus on education and intervention as well as continually improving communication with all stakeholders.

Staff members from the Tracy Police Department met with representatives from the community, G.R.E.A.T, MCYSN, and the Tracy Unified School District to begin the process of researching and implementing an educational program targeting positive life skills and gang resistance training for specific age levels and parent groups. This group plans to implement Gang Resistance Education and Training at one school as a pilot program during the 2011-2012 school year. The City of Tracy and Tracy Police Department will confer with TUSD before making a determination on which school and grade level will receive GREAT training.

STRATEGIC PLAN

This agenda item supports the public safety strategic plan and specifically implements the following goal and objective:

Goal 4: Establish a Multi-Departmental Team to effectively address safety, blight & quality of life issues

Objective 2: Implement department protocol for addressing community concerns

FISCAL IMPACT

First quarter costs are not an accurate reflection of the actual costs of the program due to changes in the staffing model. Based on data since the modification was made, an estimated annual cost to operate the program full-time is \$125,000.

All instructor and classroom materials for the G.R.E.A.T. program are paid for by the Department of Justice. The Tracy Police Department will contribute a minimum of two sworn officers to teach this program in one school during the 2011-2012 school year and will absorb any personnel costs within its approved FY 11-12 budget.

RECOMMENDATION

That the City Council discusses and accepts this updated report as it relates to the violent crime and gang suppression detail and provides direction to staff regarding future briefings.

Prepared by Greg Farmanian, Police Lieutenant

Reviewed by Janet Thiessen, Chief of Police

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

AGENDA ITEM 5

REQUEST

AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$45,000 BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT TO PROVIDE 5TH GRADE DRUG ABUSE RESISTANCE EDUCATION (DARE) SERVICES FOR FISCAL YEAR 2010-2011 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

This request is to authorize a Professional Services Agreement with the Tracy Unified School District for Drug Abuse Resistance Education (DARE) services for fiscal year 2010-2011. This report is also intended to provide the City Council with a summary of the classes taught, activities shared and materials purchased with the City of Tracy's funding allocation of \$45,000. It provides an overview of actions taken this fiscal year and planned upcoming events for council evaluation.

DISCUSSION

The City Council has already held two public discussions on July 20, 2010 and March 1, 2011 council meetings on the effectiveness of the Drug Abuse Resistance Education (DARE) program in Tracy and the appropriate funding level the City intends to continue going forward. The Council concluded that the DARE program does have a value to the Tracy community and endorsed its continuance in the Tracy schools. There was much public commentary in support of the DARE program and the City Council committed to allocating \$45,000 for FY 2010-11 for authorized expenses.

During fiscal year 2010-2011, the Tracy DARE program has incurred expenses of \$109,000 in providing the DARE program to 5th grade students in and around the City of Tracy. Specifically, the DARE program is taught in classes within the school districts of Tracy Unified, Jefferson, Banta, New Jerusalem, and Lammersville, as well as three private schools. Council has appropriated \$45,000 to be paid to the Tracy Unified School District (TUSD) for DARE classes taught in public schools within the city limits. The City of Tracy funds will not include any compensation to instructors. The balance of DARE's operating expenses are covered by the DARE Advisory Board's fundraising efforts.

The DARE curriculum takes ten weeks to complete and it concludes with a DARE graduation ceremony where dignitaries are invited to participate and disperse the various awards to the students. Functionally, the DARE program is taught in three cycles over the course of the school year. In August, the DARE program begins its annual cycle by teaching classes in Mountain House and Banta and, in September, it begins in TUSD schools. The first cycle ends with DARE graduations in October and November. In October, the second cycle of DARE instruction begins in TUSD and New Jerusalem schools and their respective graduations occur in January. Then in February the third cycle of classes begins in more TUSD schools as well as Jefferson schools and private schools. These last graduations of the year occur in April and May. Tracy police

command staff members have attended every DARE graduation within the City limits during the current school year.

During this fiscal year, the DARE board has provided the following services. In total, 1400 students were taught the DARE curriculum at 13 schools. City funding was only authorized for TUSD schools within the City of Tracy city limits.

Schools receiving D.A.R.E.	# of students taught	Program completed
Bohn School	96	Nov. 2010
Central School	70	Nov. 2010
Freiler School	100	Feb. 2011
George Kelly School	134	Feb. 2011
Hawkins School	96	April 2011
Hirsch School	125	Feb. 2011
Jacobson School	135	Nov. 2011
Jefferson School	100	April 2011
McKinley School	87	Nov. 2010
North School	90	Nov. 2010
South School	175	May 2011
Traina School	96	April 2011
Villalovoz School	96	Nov. 2010

The DARE program has also been used as a platform to encourage greater social responsibility among the students by encouraging community service. To this end, the DARE program has initiated a contest between the various schools to promote community service time and to publish the results on LuckyKatTV.com for all Tracy area schools. For example, the students at one school alone earned over 40,000 points this school year. Students can earn points in a variety of ways. A sampling is offered as follows:

- Brighter Christmas and Inter-faith Ministries – over nine tons of food donated
- Inter-faith Ministries - 30 pick-up loads of clothing donated
- Public library and other non-profits - 2,500 books donated
- Pregnancy Resource Center and Women's Shelter – numerous items donated
- Astoria Garden's Senior Center - Singing, reading and playing Bingo with residents
- Relay for Life City Yard Sale – In just four hours on a Saturday they raised over \$1000
- SLA Walk for Life with Ronnie Lott and Keena Turner - Supported donation drive
- Military Mom's of Tracy – Wrote 8,000 letters and cards to our troops overseas
- Military Mom's of Tracy - 4,500 tooth brushes, deodorant, sun screen, Chap Stick, etc.
- American Cancer Society in name of a DARE officer battling cancer - Over \$2,700 raised by organizing two yard sales
- Helping the needy – collected 35 bicycles
- Volunteerism – over 2,700 hours volunteering in a variety of activities including cleaning schools, parks, streets and downtown, assisting Brighter Christmas and working at Astoria Gardens (an Alzheimer facility)

The Tracy Unified School District provides the DARE program to students of the public schools in the Tracy city limits and selected the Tracy DARE Advisory Board to deliver the DARE curriculum. The DARE Advisory Board fronts the money for all materials

purchased in support of the DARE program and then submit receipts to TUSD for reimbursement. On April 18, 2011, the Tracy Unified School District liaison, Mr. Paul Hall, Director of Student Services, reviewed the submitted receipts from the DARE board and approved expenses for reimbursement. The majority of the expenses are used for the purchase of DARE booklets, pencils, erasers and T-shirts. Mr. Hall's signed endorsement and a TUSD invoice was forwarded to the Tracy Police Department for reimbursement.

The submitted receipts were reviewed by Tracy Police personnel, including a command officer, for compliance with the expectations of the City Council for allowable expenses. Upon execution of the Professional Services Agreement with TUSD for the provision of DARE services, allowable expenses up to a maximum amount of \$45,000 for fiscal year 2010-2011 will be paid to the TUSD.

Going forward, the Police Department will bring back semi-annual staff reports to the City Council for as long as requested to provide status updates on the DARE program's performance. The next staff report will be brought forth in July or August 2011 to provide authorization to enter into a new Professional Services Agreement with TUSD to provide DARE services in fiscal year 2011-2012, a plan of proposed activities, such as the number of classes to be taught and at which schools and at what days and times. This information will be used by the Police Department to schedule Tracy police personnel to attend certain portions of the DARE program in fulfillment of its commitment to actively participate in the Tracy DARE program and to offer a unique Tracy Police Department perspective with gang information.

The subsequent report will be offered in January or February of 2012 to offer a mid-year assessment of the DARE program and an evaluation of how Tracy police officers are being used in the DARE program.

STRATEGIC PLAN

This agenda item supports the Public Safety strategic plan and specifically implements the following goal and objectives:

Goal 3: Empower the residents with the tools needed to maintain a safe quality of life. As DARE is a life skills program, the City is educating residents at an age when they are becoming most vulnerable to the dangers and lures of drugs, gangs and anti-social behavior.

FISCAL IMPACT

There is no immediate impact to the City's fiscal year 2010-2011 Budget as \$45,000 has already been approved through Council Resolution for the continued city funding for the DARE program. The funds are placed in the Police Department's Operating Budget for payment to the Tracy Unified School District.

RECOMMENDATION

That the City Council approve the attached Professional Services Agreement between the City of Tracy and the TUSD for an amount not to exceed \$45,000 for providing DARE services to 5th Grade students in public schools within the City limits for fiscal year 2010-2011 and authorize the Mayor to execute the Agreement.

Prepared by: John Espinoza, Police Captain

Reviewed by: Janet Thiessen, Chief of Police

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

Attachment – Professional Services Agreement

CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and the TRACY UNIFIED SCHOOL DISTRICT (hereinafter "DISTRICT").

RECITALS

- A. The CITY recognizes the benefit that providing education to youth on the perils of drug and alcohol abuse provides to the residents of the City of Tracy.
- B. The CITY and the DISTRICT each recognize that the DISTRICT is in a much better position to provide such education to youth attending classes within the City of Tracy.
- C. In the past, the CITY has provided financial assistance to the DISTRICT to provide funding to teach the Drug Abuse Resistance Education program to various students in the DISTRICT and within the City limits.
- D. The CITY wishes to continue its financial support for the program.
- E. The CITY and the DISTRICT now wish to enter into an agreement setting forth the terms whereby the CITY can provide approximately the same level of financial assistance for such education and the DISTRICT can provide such education for fiscal year 2010-2011.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** DISTRICT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference (the "DARE services").
- 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. DISTRICT 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 DISTRICT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the DISTRICT. DISTRICT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 2 of 8

3. **INDEPENDENT CONTRACTOR STATUS.** DISTRICT is an independent contractor and is solely responsible for all acts of its employees, agents, subcontractors or consultants, including any negligent acts or omissions. DISTRICT is not CITY's employee and DISTRICT 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 DISTRICT. DISTRICT is free to work for other entities while under contract with the CITY. Contractors and DISTRICT are not entitled to CITY benefits.

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

5. **COMPENSATION.**
 - 5.1. For services performed by DISTRICT in accordance with this Agreement, DISTRICT's fee is Not To Exceed \$45,000. DISTRICT's billing rates shall cover all costs and expenses of every kind and nature for DISTRICT's performance of this Agreement. No work shall be performed by DISTRICT in excess of the Not To Exceed amount without the prior written approval of the CITY.

 - 5.2. DISTRICT shall, at the completion of each completed session of DARE services (i.e. after each graduation ceremony referred to in Exhibit "A"), submit invoices to the CITY describing the services performed, including locations, times, dates, and names and qualifications of persons performing the services and grades and number of students attending the services. When invoicing for DARE supplies, DARE graduation ceremony expenses, DARE storage costs, DARE insurance costs and DARE fixed expenses DISTRICT shall provide CITY with the following information:
 - (a) the total number of students to whom DISTRICT has provided DARE services, inclusive of those students receiving DARE services at Traina and Hawkins schools; and

 - (b) the total number of those students that received such DARE services in public schools located inside CITY's city limits. CITY shall pay, up to the Not To Exceed amount referenced in Section 5.1 above, the pro rata costs per student provided the DARE service within the CITY's city limits for DARE supplies, DARE graduation ceremony expenses, DARE storage costs, DARE insurance costs and DARE fixed expenses.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 3 of 8

(d) DISTRICT may include, in its billings to City, costs and expenses related to providing the DARE program to fifth graders at Traina and Hawkins schools, pursuant to Paragraph 5 of the Agreement provided, however, that the total amount the City will pay under the Agreement shall not exceed the Not To Exceed amount set forth in Section 5.1 of the Agreement.

5.3. Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the DISTRICT based upon the services described on the invoice and approved by the CITY.

6. TERMINATION. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice.

If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party. In the event that this Agreement is terminated prior to the full completion of the DARE services, DISTRICT shall promptly refund, on a pro-rata basis, any monies received from the CITY. In the event that this Agreement is terminated prior to the CITY paying any monies to DISTRICT, CITY shall promptly pay DISTRICT, on a pro-rata basis, for any DARE services already performed.

7. OWNERSHIP OF WORK. All original documents prepared by DISTRICT 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 DISTRICT's services, or upon demand from the CITY. No such documents shall be revealed or made available by DISTRICT 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. DISTRICT 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 DISTRICT's performance of services under this Agreement.

10. INSURANCE.

10.1. General. DISTRICT shall, throughout the duration of this Agreement, maintain insurance to cover DISTRICT, its agents, representatives, and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 4 of 8

employees in connection with the performance of services under this Agreement at the minimum levels set forth herein. DISTRICT may satisfy these requirements with self-insurance.

- 10.2. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3. Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4. Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5. Primacy of Coverage.** For any claims related to this Agreement, DISTRICT's coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the DISTRICT's insurance and shall not contribute with it.
- 10.6. Notice of Cancellation.** DISTRICT 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.
- 10.7. Authorized Insurers.** All insurance companies providing coverage to DISTRICT 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. DISTRICT may be self-insured.
- 10.8. Insurance Certificate.** DISTRICT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five (5) days after the execution of this Agreement.
- 10.9. Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, DISTRICT shall provide a substitute certificate of insurance.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 5 of 8

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

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

12. NOTICES.

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

To CITY:

Police Chief
Tracy Police Department
1000 Civic Center Drive
Tracy, CA 95376

To DISTRICT:

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

14. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

15. SEVERABILITY. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 6 of 8

16. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
17. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
18. **COMPLIANCE WITH THE LAW.** DISTRICT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
19. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to DISTRICT'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 DISTRICT 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

DISTRICT

By: Brent H. Ives
Title: Mayor

By: Dr. James Franco
Title: Superintendent

Date: _____

Date: _____

Attest:

Fed. Employer ID No.
94-1055500

By: Sandra Edwards
Title: CITY CLERK

Date: _____

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 7 of 8

Approved As To Form:

By: Bill Sartor
Title: ASSISTANT CITY ATTORNEY

Date: _____

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

Page 8 of 8

EXHIBIT "A"

**TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT**

The DISTRICT shall, through subcontract or otherwise, provide and complete the following services during CITY's fiscal year 2010-2011:

Administer and provide the Drug Abuse Resistance Education Program ("DARE services"), or its equivalent, through completion to all public school fifth grade classes housed within the City of Tracy City limits (approximately 1,500 students).

The DARE services shall be a drug education and prevention program with a primary emphasis on helping students to recognize drugs and realize their effects. The program shall provide accurate information about alcohol and drugs and aims to equip youths with skills needed to resist the peer pressure to experiment with harmful drugs. The program shall also teach the students decision making skills.

All DARE services instructors shall be uniformed police officers certified to teach the DARE services. The DISTRICT shall provide each DARE services program participant with a DARE services workbook, a supplemental DARE services workbook, and a DARE t-shirt. Also, the DISTRICT shall provide DARE awards and a graduation ceremony for each DARE services program participant.

RESOLUTION _____

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$45,000 BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT TO PROVIDE 5TH GRADE DRUG ABUSE RESISTANCE EDUCATION (DARE) SERVICES FOR FISCAL YEAR 2010-2011 AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The City of Tracy has supported the Drug Abuse Resistance Education (DARE) program designed to educate our youth on the perils of drug and alcohol use since 1994, and

WHEREAS, The Tracy Unified School District (TUSD) no longer provides financial support for the program because of budgetary concerns, and

WHEREAS, The City recognizes the value of administering this program to over 1,500 5th grade student and wants to financially support the program by providing \$45,000 during fiscal year 2010-2011 to cover both direct and indirect costs, and

NOW THEREFORE BE IT RESOLVED, That the City Council hereby authorizes a Professional Service Agreement with TUSD to provide DARE services, up to \$45,000 for fiscal year 2010-2011.

* * * * *

The foregoing Resolution 2011- _____ is hereby passed and adopted by the Tracy City Council this 3rd day of May, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 6

REQUEST

CONSIDERATION OF A RESOLUTION ADOPTING BUDGET PRINCIPLES AND A PRELIMINARY REPORT ON BALANCING THE CITY'S BUDGET IN 2016 WITHOUT MEASURE E REVENUE

EXECUTIVE SUMMARY

The City Council discussed existing budget policies at a workshop on February 15, 2011. Three of these existing principles need revision and a new one will be added. This item is a resolution to adopt these revised and new budget principles. In addition to the budget principles, this agenda item also provides a preliminary report on actions that will be necessary to balance the City's budget in 2016 without Measure E revenue.

DISCUSSION

BUDGET AND FISCAL POLICY CONSIDERATIONS

City Council Resolution #2009-086 adopted thirteen budget principles to address the City's structural budget deficit. Several of these principles were examined by the City Council in a workshop on February 15, 2011 in light of the five year budget analysis which was presented at that time. At that meeting City Council directed Staff to return with an official update to the Council policies. Specifically four of the existing thirteen principles were to be modified and a fourteenth one was to be added. They are as follows:

1. General Fund Reserves:

Current Principle: Over the upcoming years through FY 2012/2013, maintain a General fund Reserve of at least 15% of the City's General Fund Operating budget.

Proposed Revised Principle: Through FY 2015/2016, the City shall maintain a General Fund reserve of at least 20% of the City's General Fund Operating Budget.

This means that if the City adopted a General Fund operating budget of \$55 million that \$13.25 million would be required in reserves. The reserves at the end of FY 10/11 (June 30, 2011) are projected to be approximately \$25 million. As such no more than approximately \$11.75 million could be used in reserves over the next three fiscal years (FY 11/12, 12/13, and 13/14). Increasing the reserve level has the self trigger mechanism of requiring the City stay the course toward a balanced budget with the FY 14/15 budget.

7. Reserves:

Current Principle: All City funds shall maintain an adequate reserve level and/or ending fund balance, as determined annually and as appropriate for each fund. For the General Fund, a contingency reserve amount which is a minimum of 15% of the operating budget shall be maintained.

Proposed Revised Principle: All City funds shall maintain an adequate reserve level and/or ending fund balance, as determined annually and as appropriate for each fund. For the General Fund, a contingency reserve amount which is a minimum of 20% of the operating budget shall be maintained.

This change from 15% to 20% is to be consistent with the revised General Fund Reserve of 20% noted in the previous principle

2. Budget

Current Principle: By the end of FY 2012/2013, present a balanced budget.

Proposed Revised Principle: Reserves may be used to balance the General Fund Operating Budget through FY 13/14. The General Fund Operating Budget to be adopted by City Council for FY 14/15 must be balanced without the use of reserves.

The current “balanced budget” principle states that by the end of FY12/13 a balanced budget must be presented. This means that FY 11/12 (the upcoming fiscal year) would be the last year that reserve funds could be used to bridge the gap between revenues and expenditures that year. A balanced budget is defined in the principles as “ongoing revenues shall equal or exceed ongoing expenditures”. The FY 12/13 budget would have to be balanced without using any reserve funds.

While City Council discussed this issue at length at its February 15, 2011 workshop there remained some confusion regarding this proposal. Some thought by saying “by the end of FY 13/14” present a balanced budget meant that beginning with FY 14/15 the budget would have to be balanced (this was Staff’s understanding). Others may have interpreted this statement to be that the budget would have to be balanced by the end of FY 13/14 meaning that the FY 13/14 budget when adopted by City Council in June 2013, that such budget would have to be balanced in order for it to be balanced by the “end of FY 13/14”. However, there is no way for a budget to be balanced at the end of a year. The budget to be balanced must not use any reserves upon adoption of the budget for that year.

As was discussed at the workshop, due to rising expenses to maintain current staffing, presenting a balanced budget for FY 12/13 would require significant cuts to public safety and other essential services highly desired by the community. It may take additional time to continue to implement a variety of actions that will help the City continue to make progress toward overall reduction in General Fund expenditures while still maintaining acceptable levels of service to the community. So as to not jeopardize the disruption of needed services to the community, the time frame for migration to a balanced budget is proposed to be extended by 2 additional years.

The proposed revised budget principle has been rewritten to clearly spell out that reserves could be used through FY 13/14 and that the FY 14/15 budget must be adopted without the use of reserves (i.e. a “balanced budget”).

3. Economic Uncertainty Fund

Current Principle: In five years beginning in FY 2012/2013 or when conditions permit, begin building up the Economic Uncertainty Fund.

Proposed Revised Principle: When conditions permit begin building up the Economic Uncertainty Fund.

Since the recession has been deeper and longer than originally expected, it will not be possible to begin building reserves in FY 12/13. The revision simply deletes a reference to a specific year and instead states the overall goal is to build reserves when economic conditions permit.

14. Budget Offsets

Current Principle: None

Proposed Revised Principle: City Council approval of a General Fund supplemental appropriation (additional monies after the adoption of the budget for the fiscal year), shall be accompanied by a corresponding action to reduce the General Fund budget in another area.

This provision will assist in the management of adhering to budget plans while still permitting for a change in expenditure priorities should they be desired.

The attached prepared resolution to this report has the complete set of proposed budget principles attached to it which includes the four revisions to the current thirteen budget principles (#'s 1, 7, 2, 3) discussed above plus the one new principle (#14)

PRELIMINARY REPORT ON BALANCING THE CITY'S BUDGET IN 2016 WITHOUT MEASURE E REVENUE

In November 2010 Tracy voters approved Measure E which provided for a half cent sales tax for a period of five years beginning April 1, 2011 and ending March 31, 2016. This revenue will assist the City in providing time to continually make changes to the way services are delivered without having to take immediate and draconian actions which could have significant impact on the quality of life in Tracy. Measure E is expected to provide approximately \$4.6 million in revenue during its first full fiscal year (FY 11-12). The annual amount will be approximately \$5 million at the conclusion of the 5 year period.

Although the five year Measure E revenue just began on April 1, 2011, preliminary plans should begin to be developed now that can be implemented over the next five years which will result in bridging this \$5 million annual revenue source once Measure E expires. Although a lot can change between now and 2016, the following represents a potential path by which the City can once again supply necessary services to the community without Measure E revenue.

New labor contracts

The current contracts (MOUs) with the Teamsters Union, Mid-Managers Unit, and the Fire Union all expire on 6/30/11. The resolution governing the Technical and Support unit expired on 9/30/10 and the resolution governing the Confidential Mid-Managers expired on 3/30/11. The resolution governing Department Heads expires on 9/30/11 although practically speaking it may be amended at any time. The contract with the Police Union expires on 6/30/12.

With each new contract there is the opportunity to negotiate pay and benefit terms. The City Council has been briefed in Executive Session regarding the City's negotiating strategy in this regard. In future Fire contracts not only will the City's continued fiscal situation need to be considered but also the fiscal condition of the City's partners in fire service, Tracy Rural Fire District and the Mountain House Community Service District.

A second tier retirement formula has already been put into effect for the Teamsters (and all miscellaneous city employees) and for Police. This assists with long term (i.e. 10 years or more) efforts to reduce benefit costs.

Contracting of services – Service redesign

The City has recently moved to contracting out for janitorial and tree trimming services. Additional areas for contracting out of services where such services are readily available in the private sector for a lower price and of equal quality will be examined for potential savings.

Continued change to the City's organizational structure

The City has already reduced its work force from 560 FTE to 470. This reduction was the result of a strategic effort to maintain services while at the same time reducing the number of City positions. Specific targets of this approach were to compact layers of management, eliminate duplication of services, contract out services and invest in and utilize technology. While efforts were made to minimize layoffs, this approach did necessitate the City issuing pink slips.

It will be necessary to continue to examine the organizational structure of the City and make changes where appropriate. It is anticipated that such changes can be made without the need for layoffs providing sufficient time is offered for attrition and by using targeted retirement and/or other exit incentives. It is anticipated to further discuss the Workforce Readiness Initiative at the May 17th City Council meeting. Whereas the previous reorganization (or "right-sizing") was implemented within a short time frame, it is anticipated that additional organizational changes will be continually implemented over the next few years. Specifically organizational changes resulting from any targeted retirement incentive are expected to be concluded by 11/30/12 (18 months).

Reduced number of City Departments

The number of City Departments will be reduced. Departments will be merged and there will be fewer department heads resulting in significant savings to the City. These plans may be implemented in conjunction with the organizational changes resulting from targeted retirement incentives. However, some may occur more rapidly.

Reprioritize existing expenditures

As noted earlier, community needs may shift over time. Such needs often necessitate additional expenditures to address the issue. But this does not mean that such expenditure must always add to the bottom line. Instead, a focus can be made on identifying an expenditure offset at the same time consideration is given to the increased expenditure. For example, in Police if additional efforts for gang prevention is deemed necessary, such resources might come from reallocating resources from elsewhere in the department (such as from traffic enforcement) or even from another department.

Elimination or reduction in non-essential services

Ultimately to supply City services in a post Measure E Environment, will also require the identification of programs which may to be considered for elimination or reduction. When funding was more widely available for City functions, such programs were often nice things to offer to the community. But with City revenue far more restricted, programs of non-essential value may have to be eliminated or reduced. Periodically, specific programming will be presented to City Council for appropriate consideration to eliminate or reduce.

Technology

Technological advances may also create some operating savings to the City over time. Such savings must also recoup the initial investment in the technology. An example of this is the City currently examining the use of new street lights that use less electricity. The City will save on annual electrical costs but must also finance the acquisition costs of the bulbs. Possible savings to the City could begin in five years even after debt service on the new bulbs is included.

Improved Economy

It is anticipated in the next year that there will be modest growth in revenues. Because property taxes lag actual reflection in current market conditions it is unlikely that during the next five years that the City property tax revenue will grow to its former level even if new home construction begins in calendar year 2012 as allowed under Measure A. However, sales tax is much more elastic. If there is a rebound in the economy and improved consumer spending, the City's sales tax revenue could grow more rapidly. At present the City's five year fiscal forecast anticipates sales tax (without Measure E) revenue in FY 15-16 at approximately \$11 million. However, sales tax revenue to the City peaked in FY 06-07 at \$13.3 million. As such, the five year forecast is very conservative in that it does not project the City to return to even the 06-07 level. But continued economic growth could easily outpace this conservative estimate by as much as \$1 million per year. Such potential will only be known as time goes by and will be periodically examined in order to update budget estimates for this key General Fund revenue source.

It is anticipated that all of the above will be needed to be implemented over the course of the next five years in order to provide for General Fund operations without the need for Measure E revenue. As such any of these plans not implemented to the extent envisioned will result in the City not being able to fully fund General Fund operations without Measure E revenue.

STRATEGIC PLAN

This item relates to one of the City Council's seven strategic plans, specifically Organizational Effectiveness – Goal #1 Assure Fiscal Health.

FISCAL IMPACT

Approval of the proposed budget principles will likely result in a greater use of reserve funds during the next few years but such will also result in the continuation of essential services to the community. The items contained in the preliminary report on balancing the City's General Fund budget in 2016 without Measure E revenue could result in annual savings in the range of \$7 to \$8 million when fully implemented.

RECOMMENDATION

It is recommended the City Council approve the attached resolution adopting budget principles for the City. No action is required by City Council regarding the preliminary plan on balancing the City's budget in 2016 without Measure E revenue.

Prepared by: Zane Johnston, Finance & Administrative Services Director

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

A RESOLUTION ADOPTING BUDGET PRINCIPLES

WHEREAS, The City Council previously adopted resolution 2009-086 which approved the adoption of 13 budget principles, and

WHEREAS, It is appropriate to revise some of these principles in light of continued economic trends, and

WHEREAS, The principles will allow the City to continue to make organizational and other changes to reduce expenditures over a period of time while continuing to supply essential services to the community;

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby adopt the attached budget principles listed as exhibit A to this resolution.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the _____ day of _____, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

_____ City Clerk

EXHIBIT "A" TO RESOLUTION _____

**CITY OF TRACY
BUDGET PRINCIPLES**

1. **General Fund Reserves:** Through FY 2015/2016, the City shall maintain a General Fund reserve of at least 20% of the City's General Fund Operating Budget.
2. **Budget:** Reserves may be used to balance the General Fund Operating Budget through FY 13/14. The General Fund Operating Budget to be adopted by City Council for FY 14/15 must be balanced without the use of reserves.
3. **Economic Uncertainty Fund:** When conditions permit begin building up the Economic Uncertainty Fund.
4. **Structurally Balanced Budget:** The annual budgets for all City funds shall be structurally balanced throughout the budget process. Ongoing revenues shall equal or exceed ongoing expenditures in both the proposed and adopted budgets. If a structural imbalance occurs, a plan shall be developed and implemented to bring the budget back into structural balance.
5. **Proposed Budget Revisions:** The annual General Fund proposed budget balancing plan shall be presented and discussed in context of the updated five-year forecast. Any revisions to the proposed budget shall include an analysis of the impact on the forecasted years. If a revision creates a negative impact on the forecast, a funding plan shall be developed and approved to offset the impact.
6. **Use of One-Time Resources:** Once the General Fund budget is brought into structural balance, one-time resources (e.g., revenue spikes, budget savings, sale of property, or similar nonrecurring revenue) shall not be used for current or new ongoing operating expenses. Examples of appropriate uses of one-time resources include rebuilding the Economic Uncertainty Reserve, early retirement of debt, capital expenditures without significant operating and maintenance costs, and other nonrecurring expenditures.
7. **Reserves:** All City funds shall maintain an adequate reserve level and/or ending fund balance, as determined annually and as appropriate for each fund. For the General Fund, a contingency reserve amount which is a minimum of 20% of the operating budget shall be maintained.
8. **Prudent Use of Debt:** The City shall not issue long-term (over one year) General Fund debt to support ongoing operating costs. All General Fund debt issuance shall identify the method of repayment or have a dedicated revenue source. General obligation debt shall be limited to 8% of the operating budget.
9. **Capital Improvement Projects:** Capital Improvement Projects shall not proceed for projects with annual operating and maintenance costs exceeding \$25,000 without City Council certification that funding will be made available in the applicable year of the cost impact.

10. **Fees and Charges:** Fee increases shall be utilized, where appropriate, to assure that the program operating costs are fully covered by fee revenue and explore opportunities to establish new fees for services where appropriate.
11. **Grants:** City staff shall seek out, apply for and effectively administer federal, state and other grants that address the City's priorities and policy objectives and provide a positive benefit to the City. Before the grant is pursued, staff shall provide a detailed pro-forma that addresses the immediate and long-term costs and benefits to the City. One-time operating grant revenues shall not be used to begin or support the costs of ongoing programs.
12. **Personnel Services Costs:** Total General Fund personnel services costs shall not exceed 75% of the General Fund operating budget.
13. **Performance Measures:** All requests for departmental funding shall include performance measurement data so that funding requests can be evaluated and approved based on effective accomplishment of community desired outcomes and priorities.
14. **Budget Offsets:** City Council approval of a General Fund supplemental appropriation (additional monies after the adoption of the budget for the fiscal year), shall be accompanied by a corresponding action to reduce the General Fund budget in another area.

AGENDA ITEM 7

REQUEST

INTRODUCE AN ORDINANCE OF THE CITY OF TRACY ADDING CHAPTER 3.04, ENTITLED "FIREWORKS" TO THE TRACY MUNICIPAL CODE

EXECUTIVE SUMMARY

During the City Council meeting of April 19, 2011, the Council directed staff to develop an ordinance to allow the sale, possession, and discharge of "Safe and Sane" fireworks for consideration. Staff has developed a proposed ordinance that, if adopted, will permit the use, sale, and discharge of "Safe and Sane" fireworks. Additionally, the proposed ordinance codifies requirements for public fireworks displays.

DISCUSSION

On April 19, 2011, staff presented Council with a staff report to discuss allowing the sale, possession, and discharge of Safe and Sane fireworks within the city limits of Tracy. Council directed staff to return to Council with a proposed ordinance allowing such to occur.

The attached proposed ordinance contains sections that define "Safe and Sane" fireworks, which are legal provided they meet the requirements of the California Health and Safety Code and the local authority having jurisdiction approves of their use. The ordinance also defines "Dangerous Fireworks", which are typically for public display and may only be used by a licensed pyrotechnical operator.

The proposed Fireworks Ordinance provides provisions for the public display of fireworks, the sale and discharge of "Safe and Sane" fireworks, permit and application requirements, the number of "Safe and Sane" fireworks sales stands to be permitted, and the operational requirements of "Safe and Sane" fireworks sales stands.

The proposed Fireworks Ordinance establishes permit requirements for both the public display of fireworks and for the sale of "Safe and Sane" fireworks. The amount of associated permit fees is not identified in the ordinance, however, such would be established by resolution of the City Council. Should Council introduce the proposed ordinance, a suggested fee schedule and accompanying resolution will be brought before Council at the May 17, 2011 regular meeting.

The proposed Fireworks Ordinance provides a means for non-profit organizations to utilize the sale of Safe and Sane Fireworks to fund raise for their organizations. The proposed ordinance outlines eligibility requirements for non-profit organizations to apply for a "Safe and Sane" Fireworks Sales Permit. If the ordinance is adopted, staff suggests that Council determine, by resolution, the process by which non-profit organizations are selected to sell "Safe and Sane" fireworks. Given the time constraints of this ordinance in relation to July 4, 2011, the forthcoming resolution may provide an expedited process for selecting non-profit organizations this year.

Should Council adopt the Fireworks Ordinance, the ordinance would be effective June 17, 2011. An effective date of June 17, 2011 would provide the ability for non-profit organizations to sell "Safe and Sane" fireworks in time for celebration of July 4, 2011.

STRATEGIC PLAN

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

FISCAL IMPACT

The fiscal impact of adopting the Fireworks ordinance is not yet known. Adopting this ordinance will create an increased workload to Fire Department and other City staff in permit processing, inspection services and enforcement. There is potential for the offset of staff impacts through permit fees; however the amount will not be evident until a fee schedule is adopted by resolution. The City will also receive a limited amount of sales tax on the gross sales of "Safe and Sane" fireworks. It is not anticipated the City will yield a significant amount of revenue above program administration costs associated with the "Fireworks" ordinance.

RECOMMENDATION

Staff recommends that Council introduce an ordinance of the City of Tracy adding Chapter 3.04, entitled "Fireworks", to the Tracy Municipal Code.

Prepared by: David A. Bramell, Fire Division Chief

Reviewed by: Al Nero, Fire Chief

Approved by: Leon Churchill, Jr., Executive Director

Attachment: Ordinance: An Ordinance of the City of Tracy Adding Chapter 3.04, entitled "Fireworks" to the Tracy Municipal Code

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY ADDING CHAPTER 3.04, ENTITLED
“FIREWORKS”, TO THE TRACY MUNICIPAL CODE

Whereas, the City Council wishes to add Chapter 3.04 to the Tracy Municipal Code to allow for the sale, use and discharge of “Safe and Sane” Fireworks in the City of Tracy:

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

SECTION 1: Chapter 3.04 of Title 3 (Public Safety) of the Tracy Municipal Code is hereby added to read as follows:

“TITLE 3 - PUBLIC SAFETY

Chapter 3.04 - FIREWORKS

Sections:

3.04.010	Definitions
3.04.015	Public Displays-Effective Date
3.04.020	Public Displays-Permits Required
3.04.030	Sale-Discharge Time Limit-Dangerous Fireworks
3.04.040	Permit to Sell and Store Safe and Sane Fireworks
3.04.050	Maximum Number of Safe and Sane Fireworks Permits Issued
3.04.060	Applications for Safe and Sane Fireworks Sales Permit Lottery
3.04.070	Documents and Fees Required for Fireworks Sales Permit Issuance
3.04.080	Operation of Safe and Sane Fireworks Stand Only by Permittee
3.04.090	Safe and Sane Fireworks Sales Stand Requirements
3.04.100	Locations for Discharge
3.04.110	Sales and Use by Minors
3.04.120	State Law
3.04.130	Violation
3.04.140	Enforcement

3.04.010 – Definitions

“Fireworks” means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effect which are useful as pyrotechnic devices or for entertainment.

The term “fireworks” includes, but is not limited to devices designated by the manufacturer as fireworks, Heath and Safety Code both as “dangerous fireworks” and as “safe and sane fireworks” and shall include firecrackers, torpedoes, skyrockets, roman candles, bombs, sparklers, chasers, snakes or other fireworks containing any explosives or flammable substance. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party popper or snap caps.

“Safe and Sane Fireworks” also known as “State Approved Fireworks” means any fireworks which do not come within the definition of “dangerous fireworks” or “exempt fireworks”

as defined by section 12505 of the Health & Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6 pertaining to "Safe and Sane Fireworks" which are hereby incorporated by reference.

"Dangerous fireworks" means any fireworks classified as such as defined by Sections 12505 and 12561 of the Health & Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6 pertaining to dangerous fireworks which are hereby incorporated by reference;

"Public Display of Fireworks" means an entertainment feature where the public or private group is admitted or permitted to view the display or discharge of dangerous fireworks.

"Fireworks Sales Stand" means any building, counter, or other structure of a temporary nature used in the sale, offering for sale, or display for sale of "Safe and Sane Fireworks"

3.04.015 – Public Displays-Effective Date

The provisions of this chapter pertaining to public displays shall be effective as of July 5, 2011.

3.04.020 – Public Displays-Permits Required

(a) Notwithstanding the prohibitions on Dangerous and Safe and Sane Fireworks set forth in this chapter, this section shall not prohibit public fireworks displays which may be allowed upon issuance of a permit therefore under the provisions of the Health and Safety Code of the State of California. This chapter also does not prohibit the use of railroad or other transportation agencies for signal purposes or illumination of torpedoes, flares or fuses; nor the sale of use of blank cartridges for theatrical or ceremonial purposes, athletic events, or military ceremonials or demonstrations.

(b) Fireworks Display Permits are required to conduct a fireworks display as required by local and state regulations. Permit application shall be made not less than 60 days prior to the scheduled date of the display. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways and other lines of communication; the lines behind which the audiences will be restrained; and the location of nearby overhead obstructions. At the time of permit application, the Fire Chief or his/her designee shall be consulted regarding reasonable conditions or requirements for standby personnel and fire apparatus. Fireworks Display Permits shall only be granted to licensed pyrotechnic operators.

(c) Fireworks Display Permits may be secured by application to the Fire Chief with the concurrence of the Police Chief. The Fire Chief and Police Chief may deny issuance of such permits provided such denial is reasonably based on public health and safety concerns, including but not limited to an application for another event to be held on the same date as that requested has been previously filed or approved, and the other event is so close in time and location to the event proposed as to cause undue traffic congestion or to place the City in a position of being unable to meet the needs for Fire, Police or Public Works services for both

events. Any decision regarding such permits may be appealed to the City Manager as set forth in Section 1.12.010 of this code.

(d) Fireworks Displays may also require a special events permit pursuant to Chapter 4.40 of this code.

(e) The Fireworks Display Permit fee, requisite deposits, time of payment shall be set by resolution of the City Council.

3.04.030 – Sale-Discharge-Time Limit-Dangerous Fireworks

Subject to the permitting provisions of this chapter, the provisions of the State Fireworks Law, sections 12500 through 12726 of the Health and Safety Code of the State of California and any regulations promulgated there under and notwithstanding the portions of section 9.06.080 of this code that address fireworks, safe and sane fireworks, as defined in Section 12529 and 12562 of the Health and Safety Code of the State of California, may be sold and discharged within the city limits of the City of Tracy during the period beginning at noon on the twenty-eighth day of June and ending at midnight on the fourth of July, each year. It is unlawful and shall be a misdemeanor to possess, sell or discharge fireworks classified as “dangerous fireworks” by Section 12505 of the Health and Safety Code of the State of California within the City of Tracy.

(a) Safe and Sane fireworks may only be sold between the hours of 12:00 a.m. and 8:00 p.m. on June 28, between 8:00 a.m. and 8:00 p.m. from June 29 through July 3, and 8:00 a.m. and 5:00 p.m. on July 4.

3.04.040 – Permit to Sell and Store Safe and Sane Fireworks

(a) The City Council shall establish, by resolution, the process by which the City will issue annual permits to sell Safe and Sane Fireworks and the conditions that applicants must satisfy to receive the permits.

(b) It is unlawful for any person to engage in the sale or distribution of fireworks within the City of Tracy without first having secured a permit to do so from the fire department.

(c) It is unlawful to store fireworks within the City of Tracy without first having secured a permit to do so from the fire department.

(d) The annual permit fee for the sale of Safe and Sane Fireworks shall be set by resolution of the City Council and payable prior to permit issuance.

(e) A temporary use permit is required per 10.08.4240

(f) Permit applications shall be made prior to the end of May of each year.

3.04.050 – Maximum Number of Safe and Sane Fireworks Permits Issued

(a) The maximum number of permits to sell Safe and Sane Fireworks which the City may issue during any one calendar year shall not exceed one permit for each ten thousand

resident population or portion thereof. No more than one Safe and Sane Fireworks stand can be operated under each permit.

(b) Prior to June 8, 2011, City Council shall provide the process, by City Council resolution, for selection of non-profit organizations that will be eligible to apply for permits to sell and store Safe and Sane Fireworks. After July 5, 2011, City Council shall provide, by City Council resolution, a process for a lottery to determine which non-profit organizations will be eligible to apply for an annual permit to sell and store Safe and Sane Fireworks.

3.04.060 – Applications for Safe and Sane Fireworks Sales Permit Lottery

After July 5, 2011, applications for the lottery to be eligible to apply for a permit to store or sell Safe and Sane Fireworks may be filed during normal business hours from November 1st of each year up to and including the first Friday of December of the same year, at which time the filing period for that year will close. All applications shall be submitted in writing to the Fire Chief or his designee, on forms provided by the City and meet the following conditions:

(a) The applicant is a local nonprofit organization which shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes as defined by Section 501 (c) of the Internal Revenue Code of the United States. Each organization shall provide the City with a copy of their "Letter of Incorporation" as proof of their nonprofit status and establish status as a 501(c)(3) tax-exempt organization as recognized by the Secretary of State.

1. Public school organizations shall provide current written verification from an affiliation from the school each year.

2. Each organization may file an application for one sales permit for which there is only one tax ID number.

(b) The organization must possess a nonprofit identification number. However, a given identification number may not be used by more than one organization. Should the Fire Chief or designee determine that more than one organization has submitted the same nonprofit identification number; the Fire Chief's office shall notify the organizations in writing and give each of them the opportunity to correct the situation to ensure compliance with this section. If such compliance is not achieved, none of the affected nonprofits organizations shall be eligible to receive a permit.

(c) A local nonprofit organization must have its principal and permanent meeting place in the City of Tracy. The organization must have obtained nonprofit status and have been organized and established in the City for a minimum of one continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least twenty members who reside in the City, which will be verified each year. Applications shall be signed by two bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state laws, administrative regulations, and all

stipulation of this code and the permit if permission to operate a Safe and Sane Fireworks stand is granted to the organization.

(d) Should the Fire Chief or designee determine that a lottery awardee does not satisfy these requirements or otherwise comply with requirements of this chapter; the lottery awardee's application shall be denied.

3.04.070 – Documents and Fees Required for Fireworks Sales Permit Issuance

(a) In addition to all other requirements contained in this chapter, each lottery awardee shall comply with each of the following requirements:

(1) Apply for a permit to store or sell Safe and Sane Fireworks on a form approved by the Fire Chief with the required permit fee as established by City Council resolution paid prior to permit issuance.

(2) State of California Fire Marshal's firework retail license:

(3) Provide proof of a temporary sellers permit from the State Board of Equalization;

(4) Sign a form provided by the City whereby the lottery awardee agrees to indemnify and hold harmless the City, its officers, employees, volunteers and agents from any and all claims, damages, demands, liability, costs, losses, and expenses, including without limitation court costs and reasonable attorneys' fees, arising out of or in connection with the permittee's sale of fireworks, except such loss or damage which was solely caused by the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, or agents.

(5) Furnish to the City proof of coverage by a policy of public liability and property damage insurance. The policy shall provide limits of bodily injury and property damage liability of not less than five million dollars combined single limit for each occurrence annually as payment for damages to persons or property which may result from or be caused by the public sale or storage of fireworks, or any negligence on the part of the permittee or his or her agents, servants, employees or subcontractors relating thereto.

(6) Obtain a Temporary Use Permit from the City of Tracy and provide any other information as may be required by the Fire Chief.

(7) Booth location with the exact placement of fireworks.

(8) Plot plan of storage.

(b) The Fire chief, or designee, may revoke, immediately and without notice or hearing, the Safe and Sane Fireworks sales permit of any organization when any of the provisions of this code, Health and Safety Code, Uniform Fire Code or the California Code of Regulations are violated. The Fire Chief shall inform the permittee that permittee may seek review of the Fire Chief's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Chief shall provide the

City Manager with written notice that a permit for retail sales of Safe and Sane Fireworks has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or designee, shall meet with the permittee and the Fire Chief, or designee, that day to review the Fire Chief's decision. The decision of the City Manager shall be final.

(c) Revocation of any permit will be effective for that calendar year.

(d) Permits for retail sales of Safe and Sane Fireworks issued pursuant to the provisions of this section are not transferable to any other person or organization and is issued for the purpose of operating a single Safe and Sane Fireworks sales booth at the approved location. The permit may be used only by the organization to which it is issued.

(e) Each applicant that has been granted a permit shall have no less than two members of its sales staff attend an operator safety seminar approved and supervised by the Tracy Fire Department.

3.04.080 – Operation of Safe and Sane Fireworks Stand Only by Permittee

(a) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the Safe and Sane Fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operations of such Safe and Sane Fireworks stand. Violations will result in the immediate loss of the organization's permit.

(b) It is unlawful for a nonprofit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, to sell or otherwise participate in the sale of Safe and Sane Fireworks at such Safe and Sane Fireworks stand.

(c) It is unlawful for any nonprofit organization to pay any consideration to any person for selling or otherwise participating in the sale of Safe and Sane Fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

(d) Each sales stand must have a minimum of one adult 21 years of age or older in attendance and in charge thereof while fireworks are stored therein.

(e) No person may sleep in or remain in the stand after close of business.

(f) All unsold fireworks must be removed from the stand during non-sale hours and stored in a centrally located locked metal container or other secure and fire safe structure during non-sale periods. Each fireworks distributor shall provide a single storage location and container for storage of its stand's fireworks. The container shall be approved by the Fire Chief and located in an M1 or M2 zoned location approved by the Development and Engineering Services Director and the Fire Chief.

(g) Each sales stand must have on duty at all times during the sales period, at least one salesperson who attended the City of Tracy Fire Department operator safety seminar, required pursuant to Section 3.04.070.

(h) Permittees shall require all persons who appear to be under the age of 30 years to provide proof of age and shall make no sales of fireworks to persons younger than 18 years of age.

3.04.090 – Requirements of Safe and Sane Fireworks Sales Stand

All retail sales of Safe and Sane Fireworks shall be made from within a temporary fireworks sales stand only, and sales from any other building or structure is hereby prohibited. Safe and sane fireworks sales stands are subject to the following requirements:

- (a) No fireworks sales stand shall be put in place by the permittee any earlier than 8:00 a.m. on June 24 of each year.
- (b) No fireworks sales stand shall be located within 25 feet of any building or structure, within five feet of any curb line, or within 100 feet of any gasoline pump.
- (c) A minimum of 100 feet shall be maintained from any building used as a school, day care, hospitals, place of detention, public garage or place of assembly that can accommodate 300 or more occupants and the fireworks booth.
- (d) A minimum of twenty feet of separation shall be provided between the fireworks booths and the parked vehicles of the public.
- (e) No fireworks sales stand shall interfere with required site access, circulation, fire lanes or fire hydrants.
- (f) No weeds or other combustible materials are permitted within 25 feet of any fireworks sales stand.
- (g) No generators shall be allowed within 25 feet of any fireworks sales stand.
- (h) Smoking and the consumption of alcoholic beverages shall not be allowed within 50 feet of any fireworks sales stand and “No Smoking” signs shall be displayed on and in the fireworks sales stand.
- (i) Each fireworks sales stand shall be provided with two, two-and-one half gallon pressurized water type fire extinguishers, or two 2A10BC dry chemical/powder type fire extinguishers, in good working order, and easily accessible for use.
- (j) The permit to sell fireworks shall be displayed in a prominent place within the fireworks sales stand and shall at all times be visible to members of the public.
- (k) Fireworks sales stands shall be either 24 or 32 feet long by eight feet wide. Stands 24 feet in length shall have two exits and a maximum occupancy of six people. Stands 32 feet in length shall have three exits and a maximum occupancy of eight people.

(l) All fireworks sales stands shall be built and maintained in accordance with the safety requirements of the City prior to opening for business.

(m) All unsold fireworks and accompanying litter shall be cleared from the location by 5:00 p.m. on July 5, and the fireworks sales stand shall be removed from the temporary location by 12:00 p.m. on July 9 of each year. If the permittee does not remove the stand and/or clean the sales site as required, the City may do so, or cause the same to be done, and the reasonable cost thereof shall be charged against the permittee.

3.04.100 – Locations for Discharge

(a) It shall be unlawful and a misdemeanor to discharge any fireworks including Safe and Sane Fireworks on public, semi-public or private open areas such as parking lots, vacant properties, or open commercial or industrial areas except in those areas approved by the Fire Chief as provided in section 3.04.020 of this ordinance.

(b) It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any fireworks, or to permit the ignition, explosion or projection thereof, upon or over or onto the property of another without his or her consent.

(c) It is unlawful for any person to discharge any fireworks within one hundred feet of a fireworks booth.

(d) When discharging Safe and Sane Fireworks, a water source must be within 100 feet of discharge location.

3.04.110 – Sales and Use by Minors

(a) It is unlawful for any person under the age of eighteen to sell, or handle for sale, any classification of fireworks.

(b) It is unlawful for any person under the age of eighteen to purchase or be allowed to purchase any classification of fireworks.

(c) It is unlawful for any person having the care, custody or control of a minor under the age of eighteen to permit such minor to discharge, explode, fire, or set off any fireworks, as defined herein, unless such minor does so under the direct supervision of a parent or guardian, or such other person having care, custody or control of such minor.

3.04.120 – State Law

The provisions of this chapter are in addition to applicable state and federal law, including, but not limited to, the State Fireworks Law (California Health and Safety Code Section 12500 through 12726), the State Fireworks Regulations (Title 19, California Code Regulations, Chapter 6), and any and all other state or federal laws or regulations pertaining to the sale or use of fireworks.

3.04.130– Violation

Any violation of any of the provisions of this chapter is a misdemeanor, and may be enforced by any of the methods provided in Chapter 1.04 of this Code.

3.04.140 – Enforcement

Sworn Peace Officers and other City staff with training in the Powers of Arrest and designated by the Police Chief or Fire Chief are authorized to enforce this Chapter pursuant to section 3.04.130 above.”

SECTION 2: Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 5: A summary of this ordinance shall be published and a certified copy of the full text posted in the office of the City Clerk at least five days before the City Council meeting at which the proposed ordinance is to be adopted. Within 15 days after adoption, the City Clerk shall publish a summary, and shall post in her office a certified copy, of the ordinance with the names of those Council Members voting for and against the ordinance. (Government Code section 36933(c)(1).)

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 3rd day of May 2011, and finally adopted on the ____ day of ____, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT COUNCIL MEMBERS:

ABSTAIN COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk