

REGULAR MEETING OF THE TRACY CITY COUNCIL AND SPECIAL JOINT
MEETING OF THE CITY COUNCIL AND COMMUNITY DEVELOPMENT AGENCY

Tuesday, June 7, 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 – Proclamation – United States Army Week

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Adoption of the Appropriations Limit for Fiscal Year 2011-2012 for the City of Tracy
- C. Approval of the San Joaquin County Council of Governments' (SJCOG) Annual Financial Plan for Fiscal Year (FY) 2011-2012
- D. Annual Review of City's Investment Policy and Approval of Revisions
- E. Authorization to Remove a "No Parking" Zone on the North Side of Ninth Street Between the Two Driveways Accessing the Parks and Community Services South Parking Lot to Allow Parking Spaces and Establishment of "No Stopping Anytime" Zones on Both Sides of Ninth Street between East Street and School Street, Excluding the Existing Parking West of North School Street
- F. Award a Professional Services Agreement with RBF Consulting to Provide Topographic Surveying Services for MacArthur Drive Widening Project Between Valpico Road and Schulte Road – CIP 73126, and Authorize the Mayor to Execute the Agreement
- G. Award a Construction Contract to Zim Industries of Fresno, California, for the Construction of the Lincoln Park Well & Production Well #1 Rehabilitation Project – Cip 75076, Approve a Supplemental Appropriation of \$251,000 from Water Fund (F513), and Authorize the Mayor to Execute the Construction Contract
- H. Reject All Bids for the HVAC Replacement – Parks And Community Services Building Project - CIP 78119 and Authorize Staff to Update the Project Specifications and Contract Documents and Re-Advertise the Project for Construction Bids
- I. Approval of an Offsite Improvement Agreement (OIA), for the Construction of Public Improvements Along the Frontage of the Proposed American Custom Meats Meat Processing Facility to be Located on 4276 North Tracy Boulevard, and Authorization for the Mayor to Execute the Agreement
- J. Approve Amendment Number 4 to the Professional Services Agreement with MV Transportation to Increase the Not to Exceed Amount by \$25,000 for Fiscal Year 2010/2011 and Authorize the Mayor to Sign the Amendment

2. ITEMS FROM THE AUDIENCE

3. JOINT PUBLIC HEARING OF THE CITY COUNCIL AND THE COMMUNITY DEVELOPMENT AGENCY TO CONSIDER ADOPTION OF THE ANNUAL BUDGET FOR THE CITY OF TRACY AND THE TRACY COMMUNITY DEVELOPMENT AGENCY FOR FISCAL YEAR 2011-2012 AND APPROPRIATE FUNDS
4. APPROVAL OF A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND FAHD OLOMARI, OLOMARI PROPERTIES LLC, AND OLOMARI ENTERPRISES, INC. FOR PROPERTY LOCATED AT 729 AND 741 CENTRAL AVENUE AND AUTHORIZE THE AGENCY BOARD TO ACCEPT THE ASSIGNMENT OF THE PURCHASE AND SALE AGREEMENT
5. REVIEW AND APPROVE TRACY ARTS COMMISSION'S RECOMMENDATIONS FOR THE LANDMARK FEATURE OF THE DOWNTOWN PARK PLAZA
6. INTRODUCTION OF AN ORDINANCE TO UPDATE SECTION 3.16 OF THE MUNICIPAL CODE WHICH REGULATES TAXICABS AND AUTOMOBILES FOR HIRE
7. SECOND READING AND ADOPTION OF ORDINANCE 1159 AN ORDINANCE OF THE CITY OF TRACY AMENDING AND REPEALING VARIOUS SECTIONS OF THE TRACY MUNICIPAL CODE AS A COMPREHENSIVE CLEAN-UP ORDINANCE RELATING TO THE ESTABLISHMENT OF A CITY MASTER FEE SCHEDULE: SECTIONS 3.16.030, 3.16.040, 3.20.060, 3.20.070, Chapter 4.36 (repealed), 4.20.040, 4.20.060, 4.20.110, 4.20.160, 4.20,180, 4.24.060, 5.08.130(n), 5.08.185 (new), 5.08.240
8. ITEMS FROM THE AUDIENCE
9. COUNCIL ITEMS
 - A. Consider an Item for Discussion an a Future City Council Agenda Regarding the Police Firing Range - Council Member Abercrombie
 - B. Consider an Item for a Future City Council Agenda Related to Scheduling a Workshop to Discuss Downtown Issues – Council Member Abercrombie
 - C. Consider Placing an Item on a Future Agenda to Reconsider Council's Prior Decision Authorizing the Wayfinding Sign System Phasing Plan – Council Member Rickman
10. ADJOURNMENT

February 15, 2011, 5:30 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Call to Order - Mayor Ives called the special meeting of the Tracy City Council to order at 5:47 p.m.
2. Roll Call - Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.
3. Items from the Audience - None.
4. CONDUCT A CITY COUNCIL WORKSHOP REGARDING CITY FISCAL ISSUES INCLUDING FY 10-11 CITY OPERATING BUDGET, 5-YEAR GENERAL FUND PROJECTION, AND PROVIDE DIRECTION TO STAFF REGARDING POLICY UPDATES TO RESERVE LEVELS AND BALANCED BUDGETS – Leon Churchill, City Manager, stated this would be the first of two, or possibly more workshops to be held over the next few weeks during which the City's strategies and priorities would be shaped for the foreseeable future. Mr. Churchill introduced Zane Johnston, Director of Finance and Administrative Services, who utilized a power point in his presentation.

Mr. Johnston began by thanking Allan Borwick, Budget Officer, for the long hours and extraordinary effort he had contributed into putting together the City's financial statements. Mr. Johnston stated the City had won a FY 10-11 Government Finance Officers Association award for distinguished budgeting for the 23rd year in a row. In addition, only five cities in California have won more CAFRA awards than Tracy.

Mr. Johnston stated the Council would discuss a variety of fiscal issues facing the City including a mid-year review of the FY 10-11 General Fund, a fiscal projection of where the City will be during the next five years, how the City might deal with challenges which might arise in the next five years, and some budget and fiscal policy considerations.

FY 10-11 GENERAL FUND BUDGET AND CURRENT FISCAL POSITION - The City's General Fund Balance as of 6/30/10 was \$18,985,106. Additionally, the City had \$10,550,972 in the Reserve for Economic Uncertainty Fund for a total of \$29.5 million in reserves as of 6/30/10. The City's adopted FY 09-10 General Fund budget was \$53.8 million. Due to previous budget reduction and reorganization actions the City's FY 10-11 budget was reduced to \$47.2 million. Even so, the FY 10-11 adopted budget anticipated a budget shortfall of \$4.8 million as revenues were only expected to be \$42.4 million. The budget shortfall would be drawn from the reserves. The mid-year budget review of FY 10-11 has been completed (see Exhibit A to the staff report). Total revenues for the year are expected to be \$42,204,190 and expenses are projected to be \$47,386,250. As such, the FY 10-11 deficit will total \$5,182,000 which is more than the original deficit of \$4,813,000 anticipated with adoption of the FY 10-11 budget.

The following explanation of revenues and expenditures will identify the combination of factors resulting in this greater than anticipated deficit.

Revenues - the amount of expected property taxes is 99.6% of the budget estimate. Measure E sales tax revenue will begin on April 1, 2011. As such there will be one quarter of Measure E sales tax that will be posted to FY 10-11. The budget did not include any revenue from Measure E. Sales tax was projected to be \$9.4 million but will likely be \$10.5 million due to the posting of one quarter (April to June 2011) Measure E sales tax revenue. Although there will be an extra \$1.1 million in sales tax in FY 10-11 overall General Fund revenues are approximately \$260,000 less than budget. There are several other General Fund revenue line items that are tracking at much less than budget estimates. Most notably engineering charges, cultural arts fee revenue, and CIP charges. Engineering charges were budgeted at \$1,195,700, but are estimated to be \$930,500 due to less activity in this area than assumed. CIP project management charges are paid by City capital projects to the General Fund as reimbursements and overhead charges for City and consultant staff efforts devoted to such projects. The amount charged varies depending on the progress made and staff and consultant efforts in terms of design, inspection, and program management. \$3,621,000 was budgeted for these charges in FY 10-11 but the mid-year analysis indicates that \$2,667,000 is likely to result from these charges. This less than expected revenue is due to a combination of factors. Also CIP staff has become more efficient which has a consequence of the City not charging overhead to consultant assistance as much as in previous years. In addition, there are currently slightly fewer CIP projects plus the earlier advancement of some projects (as part of the City's efforts stimulate the local economy) which skewed the number higher than can most likely be maintained in the current economic environment. For FY 10-11 Cultural Arts revenues were budgeted at \$337,780 but are now projected to be \$170,000. The economy has hurt the Arts Education Program as well as program offerings in the theatre as families have less money to spend on entertainment. 80% of seasonal rentals occur in the third and fourth quarters of this fiscal year so some ground should be made up in overall revenues. The very popular Arts Camps are also scheduled for fourth quarter.

Expenditures - Total expenses are expected to be about \$108,000 more than budget. However, Police and Fire are on target to spend 100% of their budgets without any savings although other departments are operating with significant savings. With the adoption of the budget it was anticipated that City-wide not 100% of every line item budget would be spent. While it cannot be predicted in which department these savings would fall, it was expected savings City-wide would total \$1.4 million. This offset was deducted from the overall operating budget. At present it is anticipated that these savings will total about \$1.3 million. As line item discretionary budgets have been previously cut by as much as 55%, departments are skimming by with little unspent funds remaining in their expense budgets. Also, budget savings often resulted when employees terminated and before their replacements were hired. But due to the economy, attrition (vacancy) has slowed.

Reserves at 6/30/11 - With an estimated draw on reserves of \$5.1 million for FY 10-11 remaining reserves as of 6/30/11 would be approximately \$24.3 million. Although the \$24.3 million in remaining funds represents a healthy 52% of General Fund Operating expenses, a continued draw on reserves in the range of \$5 million a year would exhaust the City of necessary reserves within several years.

FIVE-YEAR BUDGET AND FISCAL PROJECTION - Revenues are expected to grow slightly as the economy continues a slow recovery. The big boost in revenues comes from additional Measure E revenue. With these considerations, General Fund revenues are expected to grow from the current \$42.2 million to \$52.3 million by FY 15/16. During the same period however, expenditures are projected to increase from \$47.3 million to \$55.6 million. This will result in continued annual budget deficits of approximately \$4 million which has been identified as the City's structural deficit. Should this occur at the end of the five-year projection period the City would have only \$8.4 million remaining in total reserves (the Economic Uncertainty Fund would be completely exhausted and the General Fund would have a balance of just \$8.4 million). Measure E was projected to bring in approximately \$4.6 million per year which would plug the structural deficit and enable the City to continue to offer the current level of services. In order for this to occur, the current cost of those services cannot exceed the modest growth rate in revenues, otherwise no progress is ever made toward balancing the budget. And along the way, the annual budget deficits would eat way at the City's reserves. There are several factors that contribute to increased expenses for the current level of service.

PERS Employer Rate - The huge investment losses in the stock market and real estate in 2008 and 2009 also had a dramatic effect on CalPERS investments. Due to the normal actuarial processes, these losses were included in the actuarial completed in October 2010. This actuarial becomes the basis for the July 1, 2011 CalPERS employer rate. This is the rate the City pays as an employer to fund its account with CalPERS for employee retirement. The employer rate for police and fire will jump from about 24% to 27.2%, and the employer rate for all other employees will jump from 11.6% to 13.8%. In addition to the investment losses these rates reflect actuarial demographic changes – most notably an increase in life expectancy. The additional cost due to the employer rate increase in FY 11-12 will cost the City \$2.8 million in the General Fund (\$3.2 million in all funds). The FY 11-12 increase will likely be the first of three successive years in which the PERS employer rate will increase. The FY 08-09 investment losses by PERS have been isolated into a three year smoothing process to begin with the FY 11-12 rate. The actual investment losses in FY 08-09 were a negative 24%, a swing of a negative 31.75% from an actuarial perspective because positive earnings of 7.75% are assumed by the actuaries as an annual rate of return. While the PERS investment returns of late have been excellent, these would have to experience a prolonged period of double digit returns to offset the FY 08-09 actual losses. The 5-year budget forecast has the estimated employer PERS rate as identified by PERS for the City for the next three years as follows:

| <u>Plan</u> | <u>FY 11-12</u> | <u>FY 12-13</u> | <u>FY 13-14</u> |
|-----------------|-----------------|-----------------|-----------------|
| Public Safety | +3.2% | +5% | +2.0% |
| Misc. Employees | +2.8% | +3% | +1.4% |

In addition, the PERS Board is considering a change in the actuarial assumption for investment return from the current 7.75% to 7.5%. If this change is adopted it would become effective with the FY 12-13 employer rate. The effect of this change for the public safety employer rate is estimated to be an additional 3% to 5% and an estimated additional 1.5% to 3% for miscellaneous employees. The employer rate for the public safety (police and fire) group is increasing faster than the rate for miscellaneous employees basically due to the fact that employees in public safety are mostly male. This is of critical importance because 80% of General Fund taxes are spent on public safety.

Other provisions in labor contracts - Health insurance costs also continue to rise. Current labor contract provisions place 85% of any such cost increases as the City's responsibility. These escalating costs are also factored into the 5-year analysis. A variety of other labor contract provisions can result in additional expenses each year. No current contracts call for any additional across the board wage increases. But employees not currently at E step (the last step of 5 wage steps each 5% apart) can continue to advance to the next step annually until they reach E step. While all employees except Police have taken unpaid furloughs or contribute to pension costs ranging from 3% to 4.5% those employees not yet at E step can actually experience a salary increase of the net between their 5% step increase and the offsetting furlough. Police Officers not yet at E step receive a full 5% because they do not have any unpaid furlough. As a result, the financial benefit to the City of employees taking unpaid furloughs is borne entirely by non-police City employees at E step. Education and training incentives in the current police and fire contracts can also add to expenses each year. The City offers a 5% pay incentive to fire personnel who have obtained an AA or AS degree (completion of junior college) in Fire Science. Police are offered a similar 5% incentive for a degree in Police Administration. Police can also receive successive 2.5% increases for obtaining certain POST certificates. The increase of as much as a 15% for officers qualifying for designation as Master Patrol Officer has also resulted in additional expenses.

Additional Community Priorities - The 5-year budget forecast only continues the budget priorities of FY 10-11. No additional programs, services or efforts are added in the 5-year horizon. However, community needs may result in additional expenses. An example of this may be an additional expenditure to address the issue of gangs. If such expenditure is added to the FY 10-11 budget as proposed and is an ongoing expense each year, then the figures in the 5-year forecast become more negative resulting in continued budget deficits.

HOW TO ADDRESS THE ONGOING BUDGET CHALLENGES - Measure E revenue has assisted the City in not having to take draconian actions which could have significant impact on the quality of life in Tracy. But with ongoing fiscal pressure to fund services at the existing level, the City will face continued fiscal challenges. In order to meet these challenges there are a variety of options to consider. The ultimate solution to long term and sustainable fiscal health may be some, all, or a combination of the following.

New labor contracts - The current contracts with the Teamsters Union and the Fire Union expire on 6/30/11. The contract with the Police Union expires on 6/30/12. Most unrepresented employee group contracts expire in June. The issue of increasing benefit costs will need to be addressed. A second tier retirement formula has 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. Since both State law and a variety of judicial case law prevent the elimination of retirement benefits for existing employees, the focus of collective bargaining should be on who should pay for such benefits. Also, the City will need to examine its long term fiscal resources in setting wages for new employees. With attrition the City could migrate to lower costs over time without ongoing annual salary concessions which have been the source of much contention in other communities. Until new contracts are executed, it is not possible to identify potential savings from the current 5-year budget projection. 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.

Contracting of services - 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 need to 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 incentives. 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.

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 should be made to identify an expenditure offset at the same time consideration is given to the increased expenditure. For example, if additional efforts for gang prevention are deemed necessary, such resources might come from reallocating resources from elsewhere in the Police Department (such as from traffic enforcement) or even from another department.

Elimination or reduction in non-essential services - The City will continue to assess its ability to fund non-essential services such as cultural arts. While efforts have reduced the General Fund subsidy to the Grand Theatre Center for the Arts, the FY 10-11 subsidy remains at \$885,000. Similar arguments can be made regarding parks and community services, grounds maintenance, and others. The City could evolve into a public safety only community. However, such a trend would undermine the tenants of Measure E and the real impact on the community's quality of life.

Improved Economy – The 5-year budget forecast anticipates a modest growth in revenues. Because property taxes lag actual reflection in current market conditions it is unlikely that during this 5-year period the City will realize significant growth in this key revenue source 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 than this forecast assumes. In addition, new sales tax producing establishments could add to sales tax revenue. And because of Measure E, this growth could be compounded. While it may not be fiscally prudent to include a greater growth rate in sales tax at this time in the budget forecast, there is potential that this could assist the City on the revenue side of the balance sheet. 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.

Mr. Churchill discussed the City's Budget and Fiscal Policy Considerations. Mr. Churchill stated the organization has done a magnificent job of changing how it does business, including automating, consolidating and contracting out. Mr. Churchill proposed continuing to accelerate how the organization changes and evolves in an employee centric manner. Considerations include how to prepare employees, and whether to manage the transition, and whether to let it happen or to overtly manage it. The City needs to maintain the principles it has adhered to over the last few years. The organization is obsessive about continuous improvement and finding better ways to do business. Next steps include incentives to reshape the turnover. The first step is to ask employees about their future plans so that the reorganization can be put together based on that information. Mr. Churchill asked Council to allow him to pursue this strategy over the next two years, by which time the organization should be reshaped. Mr. Churchill suggested the City has healthy reserves which will allow time to accomplish the reorganization. The goal is \$3 million. The estimate received from CalPERS is alarming but the City will respond. Mr. Churchill added that while revenues are beginning to bottom out, and in some cases recover, the City is beginning to be impacted by some third party costs.

BUDGET AND FISCAL POLICY CONSIDERATIONS - City Council Resolution 2009-086 adopted 13 budget principles to address the City's structural budget deficit. Several of these principles need to be examined in light of the most recent 5-year budget analysis to ascertain if they are still a desired course of action. 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 would be the last year reserve funds could be used to bridge the gap between revenues and expenditures. 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. 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. These include labor negotiations, contracting services, and continued refinement to the City's organizational structure resulting in fewer positions, reprioritizing current expenditures, and elimination or reduction in non-essential programs. An improved economy may also assist on the revenue side of the ledger. In order to continue to transition to a balanced budget without significant interruption to desired services, it is recommended that this budget principle be amended to allow two additional years for this goal. This means reserves could be used in FY 12/13 and FY 13/14. FY 14/15 would require the budget to be balanced without the use of reserves. In conjunction with this change and to assure the public that the City continues long term prudent fiscal management, it is recommended that the existing 15% reserve level be increased to 25%. 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 \$24.3 million. As such, no more than approximately \$11 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. An additional budget principle could also be considered which would provide additional fiscal fortitude toward the long term goal of balanced budgets. This requirement would be that anytime additional funds are sought

through either a General Fund supplemental appropriation (additional monies after the adoption of the budget for the fiscal year), or through a General Fund augmentation (adding funds to the previous base budget for program expansion, new programs, etc., when the budget is adopted), that such action be accompanied by a corresponding action to reduce the General Fund budget in another area. There is also an existing budget principle that states "beginning in FY 12/13 or when conditions permit, begin building up the Economic Uncertainty Fund." As noted, this is not realistically possible by FY 12/13. It will be a major accomplishment to get a balanced budget by FY 14/15 let alone add to reserve levels. It was recommended this provision be eliminated because the recommendation to increase reserves to 25% and maintain them should suffice to provide the City with prudent ongoing reserves.

Mr. Churchill referred to Resolution 2009-086 and suggested some revisions are necessary to the current budget principles which show the City reaching a balanced budget in FY 12/13. Mr. Churchill stated he did not believe this would be attainable without extraordinary pain and damage to the organization and to services. Mr. Churchill recommended moving the deadline to FY 14/15. Also, since the economic recovery is uncertain and because of the poor relationship local government, including Tracy, has with the state Mr. Churchill recommended increasing the current 15% minimum reserve to 25%. As far as unexpected expenditures, any time there is a new expenditure there should be a direct response in the form of reduced expenditures elsewhere, or identification of new revenues for the service to be provided. Finally, Mr. Churchill suggested eliminating the principle related to building reserves in FY 12/13.

Mr. Churchill suggested the Council complete a graph indicating their expectations of when revenues should equal expenditures. The second part of the exercise required Council to determine to what level the City's reserves should be drawn down.

Mayor Ives invited Council to ask questions.

Mayor Ives stated the results of the exercise were not definitive or directional. Mr. Churchill agreed.

Mr. Johnston indicated a \$15 million expenditure budget with 25% reserves meant reserves could not go below \$12.5 million. Mayor Ives asked why 25% was recommended rather than the standard 15% reserve. Mr. Johnston responded in order to allow for some self correcting since there is a recommendation that the City extend for two years a budget that would have more expenses than revenues.

Mayor Pro Tem Maciel stated maintaining \$12.5 million as a 25% reserve against the current reserve allows the City approximately \$4 million per year to play with over three years, assuming everything else stays the same.

Council Member Elliott inquired why the City wanted to eliminate the principle regarding building up reserves. Mr. Churchill responded the City cannot build up reserves unless revenues exceed expenditures, and that is not possible in FY 12/13. Mr. Elliott suggested leaving the recommendation as is so that whenever conditions permit reserves could begin to build up. Mr. Johnston suggested eliminating the precise fiscal year, since raising the percentage from 15% to 25% addresses the real impact. Mr. Johnston stated it is unlikely the City would be able to add to the reserve in FY 12/13.

Council Member Elliott stated the City anticipates balancing the budget in FY 12/13 with the help of Measure E. At the end of the five year period the budget will have to be balanced without Measure E. Rather than change that the City ought to balance the budget with Measure E in FY 12/13, or add another year, and then move toward balancing it without Measure E by the time it expires.

Mayor Ives inquired what would be a reasonable assumption related to revenues. Mr. Johnston suggested that Council focus on property tax and sales tax which are expected to increase approximately 3% per year. Property tax is harder to predict. However, sales tax is showing a 4.5% increase this year. Mr. Johnston referred to FY 14/15 when \$15.5 million in sales tax is anticipated, minus \$5 million for Measure E, leaving \$10.5 million. Three years ago the one cent the City receives from sales taxes resulted in \$13.5 million for the City. Mr. Johnston stated the figures are conservative.

Mayor Pro Tem Maciel clarified that Measure E would expire at the end of the third quarter of FY 15/16.

Mr. Johnston referred to the results of the exercise which indicated a balanced budget by FY 14/15, meaning expenditures would equal revenues and there would be no further draw on reserves, and the City would still have about 25 percent in reserves.

In response to a question from Mayor Ives related to PERS, Mr. Johnston responded the City had received the PERS employer rate for July 1, 2011, and estimated increases for the next two years. PERS is doing better, but in order to recoup what was lost in 2008 and 2009 PERS would need double digit rate returns for three to five years to reduce the numbers considerably.

Mr. Johnston stated the overall message is that the Council does have time to make changes toward getting the organization to a point where it could continue past FY 15/16. Mayor Pro Tem Maciel suggested that by the time Measure E expires the City should have revenues exceeding expenditures by \$4.5 million. Mr. Johnston responded without Measure E it would need to be between \$4 and \$5 million.

Mr. Churchill gave a breakdown of the results of the exercise completed earlier by the Council and indicated that in general the Council was in consensus regarding when expenditures should equal revenues and how far the City should spend down its reserves.

Mayor Ives indicated he was in favor of getting to the point where the Council could articulate some policies or resolutions relative to the City's expectations for the future.

Council Member Abercrombie asked if the Council was being unrealistic in setting the expenditure level at \$45m when the City's figures showed \$50m. Mr. Johnston responded the largest expense in the General Fund is personnel costs which are relatively unknown. The figure could be more or less depending of what is achievable through negotiations. Mr. Johnston added it is not only how much employees are paid, but how many employees are paid. There is some potential to make organizational changes over time which would result in fewer employees. Mr. Churchill added if \$3m is the goal 30 positions need to be obtained over the next two years.

Council Member Rickman asked how much of the City's annual budget comes from investments. Mr. Johnston stated in FY 08/09 the General Fund earned about \$3 million in interest. At that time rates were higher and the City had more money in the bank earning interest. Also, in the fall of 2008 the City was able to sell some of its conservative investments at a profit. Since then the amount of earnings has fallen considerably because of the amount that is being drawn down. In addition, the City is limited by state law as to what it can invest in, and the rate of return on those investments has fallen from 4% to a little over 2%.

Council Member Elliott reiterated that to meet a deficit of \$3 million would take a reduction of 30 employees and inquired if that was the only way to eliminate the deficit. Mr. Churchill stated that was correct. The average cost of salary and benefits equals \$100,000 per employee. The City will continue to look at other ways to eliminate the deficit, but the vast majority of the City's expenses are labor related. Council Member Elliott asked if other options could be used to reduce the deficit without eliminating employees. For example, if the City is able to negotiate more favorable pension and benefit agreements, and/or focus on economic development to expand the tax base. Mr. Churchill responded that is possible; it depends on how revenues are doing at that time. Mr. Johnston stated it could be a combination of a number of different things that contribute to reducing the deficit. Mayor Pro Tem Maciel stated the City is looking at a two year time period to achieve these reductions

Mayor Ives asked what was next and whether staff needed direction. Mr. Churchill concluded by stating a new set of policies will be brought to the Council in spring.

Mr. Johnston stated there was one more budget principle regarding "pay as you go." This principle requires that anytime additional funds are sought through either a General Fund supplemental appropriation or through a General Fund augmentation, that such action would be accompanied by a corresponding action to reduce the General Fund budget in another area.

Mayor Ives stated Council had been fairly clear on the fact that budget expenses need to go down each year. Mayor Ives suggested staff bring back policy statements which could be debated in the future.

5. Adjournment – Mayor Ives adjourned the meeting at 6:54.

The above agenda was posted at the Tracy City Hall on February 10, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST

City Clerk

March 15, 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 7:22 p.m., and led the Pledge of Allegiance.

The invocation was provided by Pastor Jessica Richmond, Seventh Day Adventist Church.

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

Mayor Ives presented 2010 Certificates of Commendation to Paul O'Neal – Firefighter of the Year; Carlos Ramirez – Police Officer of the Year; Diane Manuel – Civilian Employee of the Year; and Mario Ysit – Volunteer of the Year.

Mayor Ives presented a proclamation to Liza Cruz, Regional Manager, San Joaquin American Red Cross proclaiming March as American Red Cross Month.

1. CONSENT CALENDAR - Following the removal of 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 – Regular meeting minutes of January 18, 2011, and closed session minutes of March 1, 2011, were approved.
 - B. Authorization to Enter into a Master Professional Services Agreement with Willdan Financial Services for Administrative, Engineering, and Financial Services for the Tracy Consolidated Landscape Maintenance District and Authorization for the Mayor to Sign the Agreement – Resolution 2011-052 authorized the agreement.
 - C. Find it is in the Best Interest of the City to Forego the Formal RFP Process; Authorize an Amendment to the Professional Services Agreement with RHJ Consulting Inc, a California Company dba Innovative Technologies Ltd., for an Amount Not to Exceed \$272,500 to Assist the Tracy Police Department in Vendor Selection, Contract Negotiations and the Implementation Process of a New Computer Aided Dispatch/Records Management System, and Authorize the Mayor to Execute the Amendment – Resolution 2011-053 authorized foregoing the formal RFP process and approved an amendment to the Professional Services Agreement.
 - D. Acceptance of the Construction Emergency Storage Pond and Drying Beds Improvements Project - CIPs 74004, 74080, & 74077, Completed by A. Tiechert & Sons, Inc., dba Tiechert Construction, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-054 accepted the project.

- E. Acceptance of the Community Center Rehabilitation (Wall Coverings) Project - CIP 78108, Completed by Gowan Construction Co. Inc., of Tracy, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-055 accepted the project.
- F. Approving Consent of an Assignment and Assumption Agreement for the Existing Development Agreement of the 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 – Resolution 2011-056 approved the agreement.
- G. Approve an Activity Agreement with the San Luis Delta Mendota Water Authority (WA) to Reimburse the WA for Administrative Costs Incurred from Evaluating and Assisting the City of Tracy's Application for Proposition 84 and 1E Grant Funding to Complete a Portion of the City's Recycle Water Distribution System, Authorize an Appropriation of \$20,000 from Wastewater Fund 521, and Authorize the City Manager to Execute the Agreement – Resolution 2011-057 approved the activity agreement.
- H. Approve Task Order 1 (LR-01) to the Master Professional Services Agreement (MPSA-LR1) with Lee and Ro Inc. (L & R), to Provide Professional Services for Design of the Upgrade of the Corral Hollow Road Sewer Lift Station and Force Main on Larch Road – CIP 74097, and Authorize the City Manager to Execute the Task Order – Resolution 2011-058 approved the task order.
- J. Reject Bids for Construction of the Kavanagh Avenue Extension West of Corral Hollow Road Project - CIP 73097, and Authorize Staff to Rebid the Project – Resolution 2011-059 rejected the bids and authorized staff to rebid the project.
- I. Authorize Establishment of Parking Restrictions and Striping Modifications on Dove Drive in Front of Wanda Hirsch Elementary School - Council Member Abercrombie asked if the City was hoping that individuals will pull into the curb line and allow through traffic to pass. Mr. Sharma stated that was correct; that removing the parking will allow a full lane for maneuvering. Council Member Abercrombie inquired if the No Parking zone would be enforced. Mr. Sharma indicated the No Parking included No Stopping.

Council Member Abercrombie asked if there was any other way to re-configure the parking lot. Mr. Sharma indicated staff and the school had looked into various options, and that the school was not open to an additional driveway.

Council Member Abercrombie asked if this was the best plan. Mr. Sharma indicated it would improve circulation and would require enforcement from time to time. The solution would alleviate the problem and the area would be monitored for one year. Mr. Sharma stated the school will work to educate the parents.

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 2011-060 establishing parking restrictions and striping modifications on Dove Drive in front of Wanda Hirsch Elementary School. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Dave Helm, 1000 Central Avenue, addressed Council regarding concerns with the Japanese earthquake and tsunami victims. Mr. Helm requested that Council consider asking citizens to volunteer by donating blood or other necessities to the victims, and to review the procedure the City has in place in case of a natural disaster.
3. PUBLIC HEARING TO CONSIDER A RESOLUTION AUTHORIZING THE OBLIGATION AND EXPENDITURE OF THE ALLOCATED \$100,000 TO BE RECEIVED FROM CITIZENS OPTIONS FOR PUBLIC SAFETY (COPS) GRANT PROGRAM TO THE POLICE DEPARTMENT BUDGET TO IMPROVE FRONT-LINE LAW ENFORCEMENT SERVICES BY PURCHASING TECHNOLOGY AND HIRING ONE FULL TIME PERSON IN THE NEWLY CREATED POSITION OF CAD/RMS SYSTEMS ADMINISTRATOR - Captain Espinoza and Police Chief Thiessen presented the staff report. Captain Espinoza stated that the California State Legislature allocates state funds to local law enforcement agencies to help fight crime through the "Citizens Option for Public Safety" (COPS) program. The State COPS program was initiated through Assembly Bill 3229 and was first funded in California's 1996-1997 budget. The Legislature's commitment for this program to continue into the future appears in the language of Government Code 30061(c)(1).

State COPS funds are allocated to individual governmental agencies through their respective county governments and the amount allocated is based upon the population they serve. Accordingly, the funds allocated to Tracy for Fiscal Year 2010-11 total \$100,000 payable in four quarterly installments of \$25,000. To date, the City has received two installments totaling \$50,000.

In order to utilize these funds, under California Government Code Section 30061(c)(2), "...the city council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with the written requests submitted by the chief of police..." These written requests shall be acted upon by the city council at a public hearing. The funds must be used for frontline municipal police services and must supplement but not supplant existing funding. The legislation requires that each local government agency report expenditures of COPS funds to a Supplemental Law Enforcement Oversight Committee formed by the County as an accountability measure.

Law enforcement has become increasingly more reliant upon technological systems to improve their effectiveness in combating crime and increasing efficiencies in delivering service to the community while reducing operating costs. Currently, the Police Department is in the process of implementing a new computer aided dispatch and records management system (CAD/RMS) to benefit the community by increasing efficiencies with which the Police Department handles calls for service and stores and retrieves data.

On occasion the Department will use COPS funds to offset the financial cost of hiring a full time position, if the position can leverage greater service capacity to the community. The Police Department has identified such a need and proposed the hiring for a new job

classification of CAD/RMS Systems Administrator. Currently, a sworn police sergeant is assigned full-time to the implementation of the project. The goal is to hire a civilian CAD/RMS Systems Administrator to learn and monitor the maintenance of the system. The sworn police sergeant position overseeing the CAD/RMS project can then be reassigned to other front line duties, or if there are vacancies, through retirements for example, the sergeant can be reassigned and the vacant position eliminated. This would be a net savings to the City as a sworn police sergeant is more costly than the new proposed position.

The Police Department projects the actual start date for this position to be September 1, 2011. Since all COPS funds must be expended by June 30, 2012, the equivalent of nine months of salary and benefits will be allocated to this position. Thereafter, the position must be absorbed into the FY 12- 13 General Fund budget.

The Police Department intends to use the balance of the FY 2010-11 COPS funds to purchase equipment or technology that assists in reducing potential liability, streamlining efficiencies and/or enhancing the department's service delivery capabilities.

The following are the major itemized expenses on how the funds will be used:

Newly created CAD/RMS systems administrator position \$77,174 - Estimated salary and benefits of \$102,858/yr X .75 yrs (9 months)

Video monitoring system in the Department's detention facility \$ 5,000 - Risk management tool to record interactions between arrestees and staff

Hands-free blue tooth technology for police vehicles \$ 5,000 - Continuation of plan to outfit all police vehicles with hands-free capabilities. Though police are legally exempt, it addresses public perceptions of staff talking on phones while driving.

Total Station scene reconstruction technology system \$10,000 - Used by the traffic unit to reconstruct collision scenes; particularly important tool in major injury and fatality collisions.

Miscellaneous Technology Items \$ 2,826 - The balance will be used to purchase minor technology items or supportive materials for the above technological purchases.

Beginning in FY 12-13, the position must be absorbed into the General Fund budget. While the exact means to fund this position have not been identified, Police Department staff will evaluate where the greatest efficiencies will be gained through the new CAD/RMS system implementation and where personnel adjustments can be made without compromising the quality of service delivery to the community.

Staff recommended that the Council: (1) hold the required public hearing; (2) approve the request to appropriate and expend the COPS Grant funds to add a new CAD/RMS Systems Administrator position and to purchase the aforementioned equipment; (3) that the Human Resources Department be allowed to conduct the appropriate job analysis and compensation package assessment; and (4) that the Council authorize the Budget Officer to amend the Position Control Roster to add the new position of CAD/RMS Administrator position.

Council Member Rickman asked where the money would come from to fund this position in FY 2012/13. Leon Churchill, City Manager, stated from existing City resources. Council Member Rickman asked Mr. Churchill to elaborate. Mr. Churchill responded that changes planned over the next two years would create an opportunity to fund the position.

Council Member Rickman asked if a sergeant could do the job. Captain Espinoza stated not efficiently.

Council Member Rickman stated he was concerned because of the many unknowns. Captain Espinoza stated the new system should provide the City with better technology and reduce double data entries due to current constraints.

Council Member Rickman stated he was concerned with creating a \$100,000 position. Captain Espinoza stated the department needs to civilianize the position and save costs.

Council Member Abercrombie asked staff how confident they were that this was the system that would work best for Tracy. Captain Espinoza stated research continues and a vendor has not yet been selected. Staff is committed to the project which will need to last for the next 10-15 years.

Council Member Elliott inquired whether future COPs grants could be used to fund this project. Captain Espinoza stated the future of COPS grants is unknown and may change due to shortfalls in the state's budget. Captain Espinoza added the City would be prohibited from supplanting an existing project/position.

Council Member Elliott asked if there was an existing civilian qualified to train on this system. Captain Espinoza stated not at this point. Council Member Elliott asked if there was a commitment from the Police Department to identify a position that will become vacant to make up for this new one. Captain Espinoza stated command staff is committed to reducing costs.

Mayor Pro Tem Maciel stated there was a benefit to having a non-sworn person fill the position, although it may require bringing on a staff member with a specific skill set. Mayor Pro Tem Maciel added that although it might sound contrary to the current down-sizing efforts it will help the department work more efficiently.

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

Dave Helm, 1000 Central Avenue, asked if it was a canned program that needed to be customized. Captain Espinoza stated the department was looking for a vendor that could supply the City's needs as closely as possible. Mr. Helm asked if there would be space in the system to include Fire. Captain Espinoza stated if the City decides to go in that direction, the program was set up to include Fire.

Mr. Helm stated he was concerned about losing a sergeant position. Chief Thiessen stated it was highly technical and the number of interfaces that need to be built are a key portion of the system. Chief Thiessen stated over time the sergeant should be able to rotate out which will hold the vendor to the contract for someone who really knows the ins and outs of the system.

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

Council Member Abercrombie asked if there was a reason for taking action at this meeting. Captain Espinoza explained that it would take approximately six months to create the job description and advertise the position.

Mayor Pro Tem Maciel asked if there would be on-site technical support available in the beginning. Captain Espinoza stated the consultant is very qualified and there would be support.

Council Member Elliott asked if it would be possible to contract out with someone other than the supplier. Captain Espinoza stated that had been considered, but in dealing with data bases and understanding the law and how the system is integrated into our organization need to be considered.

Council Member Rickman stated he could not support the additional staff person.

Mayor Ives asked that the vendor be able to articulate the ability to link additional programs.

Council Member Elliott indicated he also had misgivings about hiring a new individual to fill the position.

Chief Thiessen stated the money had to be expended before next June. Chief Thiessen added there were other projects, but the CAD/RMS system was the priority.

Mayor Ives stated Council should not micro-manage the department; when cuts come the department will have to make those cuts. Mayor Ives stated he believed a civilian operator was the way to go.

It was moved by Council Member Abercrombie and seconded by Mayor Pro Tem Maciel to adopt Resolution 2011-061 authorizing the obligation and expenditure of the allocated \$100,000 to be received from Citizens Options for Public Safety (COPS) Grant Program to the Police Department budget to improve front-line law enforcement services by purchasing technology and hiring one full time person in the newly created position of CAD/RMS Systems Administrator. Roll call vote found Council Members Abercrombie, Elliott, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Rickman opposed. Motion carried 4:1.

4. PUBLIC HEARING TO CONSIDER THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME FUNDS FOR FISCAL YEAR 2011-2012 - Ursula Luna-Reynosa, Director of Economic Development, presented the staff report. Ms. Luna-Reynosa stated that CDBG funds are allocated to cities and counties by the U.S. Department of Housing and Urban Development (HUD) for use in projects that demonstrate a minimum of 51% benefit to low and moderate income individuals and families. The estimated amount allocated to the City, as a sub recipient of San Joaquin County, is \$439,330 for FY 2011-2012.

A public notice announcing the availability of CDBG funds and inviting proposals for their use appeared in the Tri-Valley Herald on December 16, 2010. The application was

posted on the City's website and a public meeting was held on December 16, 2010. The deadline to submit proposals for CDBG funding was January 24, 2011.

CDBG regulations list the following categories for proposal requests: Public Facilities, Public Services, Planning, Housing and Administration. Public Services requests are limited to 15% of the total CDBG allocation; 15% of this year's estimated allocation is about \$65,889 but was reduced to \$55,772 since HUD allocated \$10,127 for Fair Housing Assistance. Planning and Administration is limited to 14% of the total CDBG allocation or approximately \$61,506 of this year's allocation.

Historically, the City has received the majority of applications under the Public Services category. In the past, staff reviewed the applications to ensure they complied with the CDBG eligibility criteria and then equally distributed the 15% allocation among the qualified entities. The remainder of the City's allocation has been applied under the Public Facilities category. In the past, fewer applications have been received in this category resulting in a surplus of funds. The protocol has been to award the requested amount with the remainder of the funds going toward an eligible City CIP project. For example, in 2010-2011 \$201,767 of the Public Facilities money went toward improving the accessibility of intersections in downtown.

The City Council has refined the previous CDBG evaluation process so entities that best address the needs of the Tracy community receive priority for funding. On October 5, 2010, the Council approved the following local priorities: 1) economic development/job creation, 2) emergency food and shelter, 3) domestic violence services, and 4) senior/adult services. In order to encourage meaningful citizen involvement, public examination and appraisal of the process, as well as to enhance program accountability, the Council approved staffs' recommendation that a sub-committee of the Parks and Community Services Commission assist City staff in evaluating and ranking CDBG applications. The sub-committee is composed of three members selected annually by the Chair of the Parks and Community Services Commission, and two City staff members.

The sub-committee conducted Special Meetings on February 2, 2011, and February 10, 2011, to evaluate, rank, and make funding allocation recommendations for CDBG applications in the following categories: Public Services (i.e. programs), Public Facilities, and Planning and Administration. The subcommittee established a criterion requiring an applicant to score better than 60 points to receive any funding allocation. The maximum score that could be received under all categories was 100 points.

Nine applications were received under the Public Services category. The top scoring application received 92 points while the bottom scoring application received 50 points. Since the sub-committee decided that any application receiving 60 or less points would not receive funding, two applicants were declined. Seven applications scored above 60. The allocations were calculated as a percentage for each applicant based on their proportionate points divided by the total number of points generated among all seven applicants. This percentage was then applied to the \$55,772 available under the Public Services category to determine how much money each entity should receive.

A total of six applications were received under the Public Facilities category; two submitted by the City. One request came from the Emergency Food Bank. The County suggested not funding this project this year since the County and surrounding cities will

not be funding the proposed project which means they will not have sufficient funds to move forward. Therefore, staff recommended that this request be denied.

During FY 2009-2010 CDBG grant allocations, the Council approved \$70,000 for a Community Garden Project which never moved forward. The Council re-allocated \$48,000 (of the \$70,000) for consultant services associated with downtown. Therefore, \$22,000 was added to the \$373,441 available for Public Facilities bringing the total to \$395,431 for FY 2011- 2012.

The same 60 point threshold was used as described above under Public Services; however, all applicants in this category received over 60 points. The top scoring application received 87 points while the bottom scoring application received 75 points. The allocations were calculated as a percentage for each applicant based on their proportionate points divided by the total number of points generated among five applicants. This percentage was then applied to the \$395,431 available under the Public Services category to determine how much money each entity should receive.

One application was received under the Planning and Administration category. This application scored 58 points and was not recommended for funding.

On March 3, 2011, the Parks and Community Services Commission approved support of the CDBG sub-committee's recommendations for funding allocations for FY 2011- 2012.

As part of the CDBG program, the City will also receive \$151,999 in HOME funds. Staff recommended that the entire amount be allocated to the Down Payment Assistance Loan program for low income households administered for the City by San Joaquin County. Currently, there are no other identified eligible projects. Each applicant that is awarded funds is required to sign an agreement with the City to ensure that the funds are spent in the manner described in the applications.

There will be no impact to the General Fund. The City will receive an estimated \$439,330 in CDBG funds in FY 2011-2012 and \$151,999 in HOME funds.

Staff recommended that the Council allocate \$439,330 in estimated CDBG funds, and \$151,999 in HOME funds to the Down Payment Loan program for FY 2011-2012.

Council Member Elliott asked where the deficiencies were for the rejected project. Ms. Luna-Reynosa indicated the project did not receive enough points when scored by the committee.

Council Member Elliott asked for clarification regarding the HOME funds and what type of down payment assistance it provided. Ms. Luna-Reynosa stated it was administered by the County where each property is eligible for funding and is often combined with the Down Payment Assistance (DPA) program as part of the economic stimulus given by the federal government. Ms. Luna-Reynosa further stated the County has used that DPA program to augment the program and get foreclosed properties occupied.

Mayor Ives opened the public hearing.

Jan Courtrier, on behalf of Tracy City Center Association, thanked the City for the funding. Ms. Courtrier stated they were grateful for the opportunity and believed this project will go a long way to identify downtown as a vibrant part of the city.

Kelly Wilson, 753 W. Lowell, on behalf of the Boys and Girls Club, thanked staff and Council for their continued support. Ms. Wilson stated over 2,600 children were served last year, with 170 kids currently on a waiting list.

Robert Tanner, 1371 Rusher Street, asked if a landmark sign was similar to a way finding sign. Ms. Luna-Reynosa stated it was not the same and explained the difference.

Ms. Courtrier stated the group was looking to develop a brand identity for the downtown and that this sign would be part of it.

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

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-062 allocating Community Development Block Grant (CDBG) and Home Funds for Fiscal Year 2011-2012.

Mayor Pro Tem Maciel applauded staff for developing an objective way of reviewing the applications.

Council Member Rickman thanked all the employees and volunteers who assist Tracy residents.

Mayor Ives thanked the Parks Commission for their help and input.

Voice vote found all in favor; passed and so ordered.

5. INTRODUCTION OF AN ORDINANCE ADOPTING THE 2010 CALIFORNIA BUILDING AND RELATED CODES AND PENALTY PROVISIONS, SPECIFYING WHICH APPENDICES APPLY TO THE CITY OF TRACY, REPEALING CERTAIN SECTIONS OF TITLE 9 OF THE TRACY MUNICIPAL CODE, ADDING SECTION 9.44.050 TO THE TRACY MUNICIPAL CODE TO PROVIDE BYLAWS FOR THE BUILDING BOARD OF APPEALS, AND ADDING CHAPTER 9.62 TO THE TRACY MUNICIPAL CODE TO ADOPT PLACARDING REQUIREMENTS FOR USE IN A POST-DISASTER SAFETY ASSESSMENT - Kevin Jorgensen, Building Official, presented the staff report. Mr. Jorgensen stated new versions of the various codes related to building design and construction are adopted by the State of California every three years. The codes under consideration are the 2010 California Codes that replace the 2007 versions of the same which are set forth in Title 24 of the California Code of Regulations. These California Codes include the following: California Building Code (CBC), California Mechanical Code (CMC), California Plumbing Code (CPC), California Electrical Code (CEC), California Energy Code (CEnC) and the California Historical Building Code (CHBC). Additionally, some of the California Codes are amended International Codes (copyrighted by the International Code Council or ICC), Uniform Codes (copyrighted by the International Association of Plumbing and Mechanical Officials or IAPMO) and the National Electric Code (copyrighted by the National Fire Protection Agency or NFPA),

having been amended by various state agencies and ratified by the California State Building Standards Commission.

Besides new versions of codes, there are three new codes that are new to the City; the California Residential Code (CRC), California Existing Building Code (CEBC) and the California Green Building Standards Code (CGBSC). The CRC provides building requirements for one and two-family structures. Formerly, the requirements for one and two-family structures were found in the CBC and were somewhat restrictive because commercial and residential applications were blended. Hence, the new CRC provides greater latitude for such residential buildings. The CEBC provides seismic strengthening provisions for unreinforced masonry bearing wall buildings. Although the City does not have many unreinforced masonry buildings, such structures can be a hazard during a seismic event. Therefore, to have such provisions whenever upgrades are required, gives clear direction to design. The 2007 version of the CGBSC was largely voluntary. With the 2010 version, it is now mandatory with the exception of its appendices. This publication serves to enhance sustainability in the built environment.

These codes provide minimum requirements and standards for the protection of life, limb, health, property, safety and welfare of the general public, owners and occupants of buildings. California Health and Safety Code section 17922 requires cities to enforce the most recent editions of the California Codes. As such, the 2010 California Codes are required by the State to be enforced beginning January 1, 2011.

The following list of California Codes and corresponding appendices are recommended for adoption:

- 2010 California Building Code; Appendices F, H, K
- 2010 California Electrical Code
- 2010 California Mechanical Code
- 2010 California Plumbing Code; All Appendices
- 2010 California Energy Code; Appendix 1-A
- 2010 California Residential Code; Appendices H, R
- 2010 California Historical Building Code; Appendix A
- 2010 California Existing Building Code
- 2010 California Green Standards Building Code

Several Tracy Municipal Code (TMC) sections contained in Title 9 of the TMC contain references to the 2001 or 2005 editions of the above listed codes rather than the current 2010 editions. To avoid confusion in the enforcement of such codes, the corresponding TMC sections should be amended to reflect the most current version of the state mandated codes.

The CEC lacks administrative provisions and the TMC amendment proposes a reference to the administrative provisions of the CBC. Also, the CBC, CMC, and the CPC all have administrative provisions that essentially parallel themselves in purpose as they provide formalized inspection and plan review processes related to each corresponding code. However, since the CMC and CPC have been copyrighted by IAPMO and the bulk of the other codes by ICC, permit expiration requirements do not harmonize. Therefore, the proposed ordinance seeks to provide such consistency and includes simple to understand administrative provisions that are uniformly implemented across the board

for all codes. There are a number of other administrative modifications that eliminate repetitive language or align existing and renumbered current California Code references.

The CFC, CBC, CRC and the existing TMC have discord related to the requirements for addressing a building. These requirements have been homogenized for uniformity in the proposed ordinance. For example, the CRC, CBC, and CFC require a minimum half-inch stroke for numbers/letters whereas the TMC is silent on stroke width. All the codes require a minimum of four-inch high figures, but only the TMC permits the four-inch figures if they are electrically illuminated. The TMC doesn't address the need for emergency vehicles to readily identify a building from the street, whereas the CRC and CFC give intent in the requirements that a building address must be legible and visible from the street fronting the property. These conflicting requirements will be harmonized with the proposed ordinance.

Most of the 2010 California Building Codes have appendices. Not all appendices are being adopted locally. Such appendices are only enforceable locally when adopted locally. The matrix below identifies all of the appendices recommended for approval and briefly clarifies the reason for recommendation.

Recommended Appendices

- 2010 CBC Appendix F; gives specific requirements enabling rodent-proofing.
- 2010 CBC Appendix H; provides requirements for unique construction aspects of commercial signage.
- 2010 CBC Appendix K; State-mandated requirements for the Central Valley Flood Protection Plan for commercial buildings.
- 2010 CRC Appendix H; provides requirements for unique aspects of patio construction
- 2010 CRC Appendix R; State-mandated requirements for the Central Valley Flood Protection Plan for residential buildings.
- 2010 CPC Appendix A; provides standardization to the sizing of water supply systems.
- 2010 CPC Appendix B; provides explanatory direction for combination waste and vent systems.
- 2010 CPC Appendix D; provides standardization for sizing of storm water and drainage systems.
- 2010 CPC Appendix G; provides standards for graywater systems.
- 2010 CPC Appendix I; provides standardization for specific plumbing installations.
- 2010 CPC Appendix K; provides standards where private sewage disposal systems are found within the City limits.
- 2010 CPC Appendix L; enables alternate plumbing systems where such systems are not specifically covered elsewhere in the CPC.
- 2010 CEnC Appendix 1-A; provides expanded information regarding energy standards and other documents referenced within the CEnC.
- 2010 CHBC Appendix A; clarifies if modifications made to qualified historical buildings meet Federal requirements as the CHBC is intended to work in conjunction with Federal standards.

The matrix below identifies all of the appendices not recommended for approval and also briefly clarifies the reason for exclusion from recommendation.

- 2010 CBC Appendix A; the City's Human Resources Department provides employee qualifications
- 2010 CBC Appendix B; TMC already has Building Board of Appeals provisions.
- 2010 CBC Appendix C; the City does not typically regulate agricultural buildings.
- 2010 CBC Appendix D; the City does not have fire districts within the City.
- 2010 CBC Appendix E; the appendix is reserved.
- 2010 CBC Appendix G; TMC already has requirements for flood-resistant construction.
- 2010 CBC Appendix I; the CRC already has requirements for residential patio covers.
- 2010 CBC Appendix J; the City already has standards for grading.
- 2010 CRC Appendix A; these regulations represent other national code standards.
- 2010 CRC Appendix B; these regulations represent other national code standards.
- 2010 CRC Appendix C; these regulations represent other national code standards.
- 2010 CRC Appendix D; the City does not perform inspections of existing appliances and therefore does not need these prescriptive requirements.
- 2010 CRC Appendix E; these regulations are comparative to the California Code of Regulations Title 25.
- 2010 CRC Appendix F; Tracy has not been known to be an area where radon-resistant construction is required.
- 2010 CRC Appendix G; repetitive requirements already found in CBC.
- 2010 CRC Appendix I; these regulations represent other national code standards.
- 2010 CRC Appendix J; TMC already has requirements for existing buildings and structures.
- 2010 CRC Appendix K; repetitive requirements already found in CBC.
- 2010 CRC Appendix L; the City already has a fee schedule.
- 2010 CRC Appendix M; State laws trump these requirements for home day care.
- 2010 CRC Appendix N; these regulations represent other national code standards.
- 2010 CRC Appendix O; these regulations represent other national code standards.
- 2010 CRC Appendix P; these regulations represent other national code standards.
- 2010 CRC Appendix Q; the cross reference is to a national code standard that is not used in California.
- 2010 CMC Appendix A; this metal duct standard is already referenced in the CMC but is included here as required by the Department of Public

Health and enforced by the local San Joaquin County Health Department.

- 2010 CMC Appendix B; the City does not place gas equipment in operation and therefore does not need these prescriptive procedures.
- 2010 CMC Appendix C; the City does not install and test oil fuel-fired equipment and therefore does not need these prescriptive procedures.
- 2010 CMC Appendix D; these unit conversion tables are readily available standards and are not necessary to adopt.
- 2010 GBSC Appendix A4; additional residential requirements that will have an adverse economic impact to the project.
- 2010 GBSC Appendix A5; additional commercial requirements that will have an adverse economic impact to the project.
- 2010 CEC Annex A; identifies product safety standards which are informational but not necessary to adopt.
- 2010 CEC Annex B; provides an alternate method for calculating ampacities but is not necessary to adopt.
- 2010 CEC Annex C; provides conduit and tubing fill tables that are useful but not necessary to adopt.
- 2010 CEC Annex D; provides load calculation examples that are helpful to understand load calculations but not necessary to adopt.
- 2010 CEC Annex E; these tables represent information from other national code standards.
- 2010 CEC Annex F; provides information for critical operations power systems but is not necessary to adopt.
- 2010 CEC Annex G; provides parameters for supervisory control and data acquisition systems (SCADA) but are not necessary to adopt.
- 2010 CEC Annex H; the City already has administrative provisions for the CEC.

The City's Building Board of Appeals (BBA) met on May 25, 2010, and adopted bylaws in order to be able to conduct its business appropriately. The TMC establishes the need for a BBA and the proposed ordinance incorporates the BBA's bylaws.

Currently, Title 9.56 of the TMC enables the use of the 1997 Uniform Code for Building Conservation within the City. However, the code is completely antiquated and no longer useful for the function of City business as it relates to building conservation. The proposed ordinance would repeal Chapter 9.56.

Placards have been widely used after earthquakes to denote the condition of buildings and structures. In many cases, the placards have been recommended by the Applied Technology Council (ATC). These placards were first used after the Loma Prieta earthquake in 1989. A panel was convened by the ATC to review the ATC-20 and update the document based on the Loma Prieta experience. One of the major revisions to come from that panel was to revise the three basic placards. Unfortunately, most jurisdictions have not officially adopted such placards. Technically, these unofficial placards represent only a recommendation which do not carry the weight of law and cannot be enforced. Adopting the use of placards by ordinance makes them official and enforceable. In past events, there have been a number of reports of placards being removed from buildings by owners or tenants. In other cases, there have been reports of the unauthorized change of placards, usually from UNSAFE to one of the other

categories, RESTRICTED USE or INSPECTED – LAWFUL OCCUPANCY PERMITTED. In both cases, adopting the use of placards by ordinance allows the City to enforce the posting with the Police Department. Additionally, adopting the revised ATC-20 placards, means Tracy will be part of a uniform placard system that is in place throughout the state.

Several sections of Chapter 9.04 of the Tracy Municipal Code are now antiquated and the proposed ordinance would remove them.

Section 9.04.050 currently addresses Tracy's expansive soils by requiring a certain minimum slab thickness and reinforcement of the slab with a minimum of 6" x 6" No. 10 welded wire fabric. The 2010 CBC and CRC set forth specific requirements for the construction of footings that bear upon expansive soils but do not address the slabs themselves. Historically, the City has experienced excessive horizontal and vertical displacement of slabs-on-grade due to our expanding soils. This is the result even with the existing requirement for reinforcement of welded or woven wire fabric. Empirically, the fabric reinforcement is found at the bottom of the slab where it serves no useful purpose. Due to the pervasive local heaving soils and the subsequent damaging deformation of slabs, the proposed ordinance would require that slabs, like footings, be designed to resist the effects of soil volume change.

Most of the changes noted within the 2010 California Codes from previous editions should have minimal impact upon construction, yet constitute a continued effort to achieve the highest levels of safety in the built environment under specified minimum standards. One of the most significant changes is the requirement of fire suppression systems for new single-family dwellings as required by the new CRC. Another new code, the CGBSC, contains many new requirements that have a positive environmental impact and encourage sustainable construction practices.

Government Code section 50022.2 provides an exception to the public hearing requirements for adopting codes by reference for those codes which the City is required to enforce as a condition of compliance with a state statute.

Adoption of the Ordinance will have a fiscal impact. Although the fees collected at permit issuance will not change, the addition of three new codes will create additional work load. The California Residential Code, the California Green Building Standards Code and the California Existing Building Code impose construction requirements upon builders that are necessary to be inspected and plan reviewed by staff in both the plan review and inspection processes. The rate of plan review and inspections performed and the corresponding plan review and inspection production levels will be diminished accordingly. As such, the fiscal impact will be uniformly negative. However, because the State mandates the enforcement of these codes, it may be prudent to consider a future permit and plan review fee adjustment.

Staff recommended that City Council introduce the ordinance.

Bill Sartor stated an amended Ordinance had been provided to Council.

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

The Clerk read the title of proposed Ordinance 1157. It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive reading of the text. Voice vote found all in favor; passed and so ordered. It was moved by Council Member Abercrombie and seconded by Council Member Elliott to introduce Ordinance 1157. Voice vote found all in favor; passed and so ordered.

6. DISCUSS CITY UTILITY BILLING AND COLLECTION PROCESSES AND PROVIDE DIRECTION TO STAFF - Zane Johnston, Finance and Administrative Services Director, presented the staff report. The City utilities of water, sewer and garbage have not fared well in recent years. Revenue is down due to a large volume of vacant homes (homes that go through the foreclosure process). Yet there remains a fixed cost of these utility operations. Water and sewer continue to have net operating losses after the charge for depreciation. Continued operations from this perspective have the effect of reducing the ability to replace plant and equipment in the future. The situation in the garbage fund is more immediate. The City contracts out all garbage service operations and therefore there is no City owned plant or equipment. The operating losses of the garbage fund over the past 4 to 5 years have now depleted the fund's cash. A rate analysis is being prepared and will be presented to the Council this spring.

One factor contributing to the fiscal performance of City utilities is the expense of bad debt write-off which has been exacerbated during the recession and housing crisis. When homeowners "walk away" from houses prior to foreclosure proceedings, inevitably they also leave an unpaid bill for city utilities. Compounding this is the current policy requiring only renters to provide deposits for opening up a utility account. Tenants, even if required to provide a deposit (currently set at \$80), still remain an ongoing source of bad debt. In some communities and utility districts, only owners are allowed to open utility accounts. The owner is responsible for the municipal utility bill and usually includes such in the monthly rent. In Tracy this is the practice for multi-unit residential (and commercial) buildings served by a master meter. For example, the owner of a triplex with one water meter is the account holder and responsible for the City utility bill. But current policy permits the owner of three separate single family rental homes each with their own water meter to allow the tenant to open the City utility account.

The number of vacant homes has also added to the poor fiscal situation for City utilities. The monthly water fee is broken down into two components to reflect the City's cost of providing water service. The fixed meter charge (currently \$11.70 or \$20.40 per month depending upon meter size for most single family homes) covers the fixed cost (i.e. pipe/delivery) of the water system regardless of how much water is consumed and the consumption charge which covers the variable costs (i.e. supply and treatment) associated with the amount of water used by the customer. For vacant homes both the water and sewer monthly charge continues to be applied. If no one is living in the home, the actual charge is reflective of the reduced water use (consumption charge will be less than occupied homes). But continued landscaping water use may be the same with or without someone occupying the home. These charges to a vacant home assume that the City identifies the legal owner which can be murky during the foreclosure process. The City attempts to hold owners responsible through the date that they legally still owned the house either through a normal sell/buy process or when the mortgage company regains ownership through foreclosure proceedings. Often the prior owner has already left the home and is mistaken in the belief that they are no longer responsible for any bill after they moved out.

Vacant homes will inevitably result in lower water revenue due to there being no domestic use (water used within the home for normal living functions) occurring in a large number of vacant homes throughout the City.

Upon vacancy the disposal company picks up the garbage, garden, and recycling totes and the monthly fee of \$29.45 is not charged. Currently, there are about 1,000 vacant homes in Tracy in any given month. During the peak of the foreclosure crisis, this number was in the 1,700 range. With 1,000 homes not being charged the monthly garbage charge of \$29.45 this results in an annual reduction of revenue to the Solid Waste Fund of \$350,000. While there are some associated variable expenses of not having this garbage tonnage (i.e. MRF and landfill), there remains fixed expenses. The garbage collection truck is already driving down the street picking up totes at neighboring properties to the vacant home. There is little savings associated with the collection as a result. This has put strain on the disposal company to keep costs down because the fixed costs are now being covered by a smaller number of ratepayers. It is inevitable that ultimately this will affect the rates paid by the remaining customers.

In the past several years the City has added technology to provide for the more efficient administration of utility billing and collection. Customers can now receive a bill via e-mail and pay through an automatic electronic debit to their bank account. The customer's bill notes the amount due and on what date the automatic payment will be transacted. Customers can also go on line and authorize a payment (as opposed to having an automatic payment) from their credit card or bank account.

In the summer of 2010 the City added the ability for customers to dial in 24/7 to make payments over the phone to their account by either bank account number or through the use of a credit card. These methods assist the City in holding down billing and collection expenses.

Some customers also use their own banking services to initiate electronic payment. The customer authorizes payment to the City via their own bank and this information is transmitted electronically to the City. The most expensive form of payment the City must process is through the receipt of cash. The transaction must be handled in person which takes much more time to process than processing a payment by check received through the mail. There are many factors to the high cost of handling cash and these include the necessity to account for and balance such cash, preparation for the cash and coin to be deposited to the bank, internal accounting controls to insure against possible embezzlement, and transportation of the resulting cash deposit to the bank via armored car, as well as bank fees. In order to address the expenses associated with the variety of City utility billing and collection issues addressed above Mr. Johnston suggested the following solutions for consideration by the Council.

As noted, until the foreclosure crisis hit, most issues with uncollected debt was associated with renters. But now homeowners have begun to leave outstanding bills and there is no deposit from which to offset these remaining charges. Seeking a deposit from anyone who opens up a new account would address this issue. This policy could be implemented as of a certain effective date and thereafter any person opening a new account would be required to pay a deposit. Homeowners closing one account but opening another (i.e. transferring) at the same time could be excluded if desired. No existing account holder would be required to pay a deposit when this new requirement went into effect. It would only be applied prospectively with each new account opened.

The typical minimum bill for City utilities (water, sewer, garbage and storm drain) is about \$80 to \$85 without water consumption. Factoring typical water use, the average monthly bill is about \$110 to \$120. As such, the current \$80 amount does not cover one month of charges. Since City utilities are billed in arrears this means if someone used utilities from February 21, 2011 to March 21, 2011, they would not be billed for those services until March 21, 2011. As such the customer will virtually always have at least one month's worth of charges upon closing an account. The deposit is applied to the closing account and the customer is sent a bill for the balance. It is these remaining balances that are often not paid.

As noted the utility account of a multi-unit building must be in the owner's name. In some instances the homeowners' association of a condo building is the account holder. In these instances the landlord must factor into the rent the cost of City utilities. Yet tenants are allowed to put the services in their name in single family homes serviced by one water meter. When a tenant skips on the bill, the City experiences bad debt. A solution is to allow only property owners to hold accounts. This would also cut down on the administrative expense of having to open and close numerous accounts every time a tenant leaves and a new tenant moves in.

There are currently about 4,860 existing City utility accounts held in the name of a renter. If this change were implemented it would be done prospectively, meaning existing tenant accounts would remain in place until that tenant terminated the account. Thereafter, the property owner would be required to put the account in their name from that point forward.

Government Code Section 54347 permits the City to require "a guaranty by the owner of property that the bills for service to said property or the occupants thereof will be paid." To date, this section has not been enforced. If tenants continue to be permitted to open City utility accounts, it is recommended this provision be fully enforced. An unpaid bill left by a tenant would become the obligation of the owner. This can be a "surprise" to such a landlord. As such, the better alternative might be to not permit the tenant to be the account holder. In this way, the property owner is always responsible and can include the cost of utilities in the rent.

Not only do tenant sign ups result in higher bad debt write off, but they require considerable administrative staff time to process. This is because each time there is a change in the tenant an account must be opened and closed. This also involves sending meter readers to the property. For example, the current tenant moves out and closes the account but a new tenant does not move in immediately. The current account is closed (read taken) and a new account opened in the owner's name. Two weeks later, a new tenant moves in and signs up for the service. The owner's account is closed (another meter read taken) and the account is opened in the name of the new tenant. This is frequently repeated on 4,860 single family homes in rental status.

Reflecting the high cost and labor intensive nature of cash handling the Board of Directors of the Golden Gate Bridge Authority will eliminate cash tolls on the bridge beginning in 2012. FasTrak or other electronic format will be required to cross the bridge. Electronic passes can be purchased at convenience stores in the area. If implemented with the City utility bill payment, customers would be informed well in advance of the date after which cash payments would be directed to other locations in the private sector. Customers without banking accounts or charge cards would be

directed to nearby stores to purchase a money order which could be mailed or dropped off at City Hall. The cost of utilizing cash would be borne by the customer choosing this high cost method of payment and not by the remaining customers through their rates.

Currently, the City outsources the printing and mailing of utility bills. The City transmits a file to a private firm who prints the utility bills and mails them to the customers (along with an enclosed envelope for payment or any other bill enclosure). One such private firm is currently working on a process by which the bill would contain a "cash payment" bar code. The firm is working with a national convenience store chain to accept the cash payment. Data would be transmitted directly to the City regarding such payment and the money would be sent automatically to a City bank account. This service would be available 24/7 to the customer. The customer would pay a fee to the store for the bill payment (just like a fee to obtain a money order) but would not have the added step of getting the payment to the City. This service is anticipated to be available within a year.

Transferring cash payments to other locations instead of City Hall could actually be a service enhancement since such locations are often open to the public far more than City Hall operational hours and in some cases open 24/7. In the future, the Social Security Administration will no longer issue and mail checks and instead will only make direct deposit of such payments. This means that seniors and the disabled receiving such payments must have a bank account. As such, a change in where cash is receipted will not negatively impact seniors or those receiving Social Security disability benefits as they would already have a bank account by which they could write a check if paying their bill in person at City Hall. In addition, they could use this bank account number to make a payment via the phone (they don't need a computer or e-mail).

There is no direct impact to the General Fund as City utility billing and administration matters are funded by the City enterprise funds of water, sewer, garbage and storm drain. Depending upon ultimate action in this regard, significant savings to these funds could be realized.

Staff recommended that the Council discuss various aspects of utility billing and collections processes and provide direction to staff as to methods which Council should consider for future action.

Mayor Pro Tem Maciel stated the City did need to recover its costs and if that meant raising the deposit, that would be reasonable. Mayor Pro Tem Maciel stated that staff should always be available to accept cash.

Council Member Rickman suggested requiring a utility deposit was like a one time fee and asked if the City could require a property owner to guarantee that a tenant pays. Mr. Sodergren stated the City can require a guarantee by the property owner under the Government Code.

Council Member Rickman asked how the City fairs with regular collections. Mr. Johnston stated outstanding debts go to a collection agency and the City receives less than 10%.

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

Don Sader, 16214 Redondo Drive, stated it seemed unreasonable to require the landlord to be held responsible. Mr. Sader suggested a deposit be collected to cover any outstanding bill.

Linda Jiminez, P.O. Box 1065, stated that as a senior who pays in cash, she finds it ridiculous that the City won't take cash. Ms. Jiminez disagreed that property owners should be held responsible for a tenant's outstanding balance. Ms. Jiminez stated the City should require a deposit from the tenant.

Council Member Elliott stated: 1) the City needs to operate on the premise that utilities pay for themselves; 2) garbage fees have to support themselves; 3) cash is the most expensive way of collecting payments. Mr. Johnston stated it probably cost 50% more to collect cash because it is labor intensive.

Council Member Elliott asked if the City would consider lowering the number of personnel if cash was not accepted. Mr. Johnston stated yes, by approximately two full time personnel per year.

Council Member Rickman stated like any business the City has to have more than one type of customer and suggested reducing hours.

Council Member Abercrombie stated he would like to see the deposit issue addressed. Council Member Abercrombie asked how far behind does a customer get before the water is shut off. Mr. Johnston stated 15 days past the 30 days past due notice.

Council Member Abercrombie asked if a deposit of \$250 would cover it. Mr. Johnston stated that legally the City is only able to ask for a fee equal to approximately double the monthly rate. Council Member Abercrombie stated he was not interested in forcing this upon the landlords and that residents still need to be able to pay in cash.

Mayor Pro Tem Maciel stated he needed more information about the cost of tenants skipping. Mr. Johnston stated the amount of bad debt was outlined in the staff report.

Council Member Rickman stated if landlords have to pay utility debt they will cut down on the number of rentals they hold. Council Member Rickman stated times are going to change and it could have a detrimental effect on the residents of Tracy.

Council Member Elliott indicated a marketing effort needed to be done to make the other means of payment other than cash available. Council Member Elliott stated the City still needs to accept cash.

Mayor Ives stated he was in favor of a reasonable deposit for everyone. Mayor Ives suggested offering incentives for other payment methods. Mayor Ives added the City still needed to accept cash.

Mr. Johnston asked for clarification regarding another alternative to collecting cash. Mayor Ives stated other alternatives could be looked into.

Mayor Ives called for a recess at 9:53 p.m. The meeting was reconvened at 9:57 p.m.

7. APPROVAL OF AMENDMENT NO. 4 (PRE-PAID SERVICES) TO THE JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE CITY OF TRACY AND THE TRACY RURAL FIRE PROTECTION DISTRICT; APPROVAL OF AMENDMENT NO. 3 TO THE AGREEMENT BETWEEN THE CITY OF TRACY AND THE SOUTH COUNTY FIRE AUTHORITY FOR PROVISION OF FIRE SERVICES; AND AUTHORIZATION FOR THE MAYOR TO SIGN THE AMENDMENTS - Zane Johnston, Director of Finance and Administrative Services presented the staff report. Mr. Johnston stated that the City of Tracy (City) and the Tracy Rural Fire Protection District (District) entered into a Joint Powers Authority agreement in September 1999 to form the South County Fire Authority (SCFA). Pursuant to a separate agreement, the City provides labor services to the SCFA so it can meet its obligations to provide fire protection and prevention services to the City and to the District. The District procures additional labor services from the City which in turn are delivered to the Mountain House Community Services District which is not part of the SCFA.

The District has two sources of revenues: (1) its share of property tax (about eleven cents per dollar) and (2) its special fire tax of three cents per square foot of building (with some exceptions for garages, barns etc.) When the SCFA was formed, the consultant working on the formation informed the parties that the District would not have sufficient revenues for approximately seven years at which time the District's revenue should match the cost of fire services. District revenues were expected to grow over time as development occurred within the District on lands that would be annexed to the City of Tracy for development but would NOT be de-annexed from the District. The result is that some areas of the SCFA coverage area are in the City limits but are in the District and not the City for the purposes of funding. The Northeast Industrial Area is the prime example of one of these areas, as well as the 550 home subdivision surrounding the Tracy Sports Complex (commonly referred to as the "Presidio" development and developed as "Lourence Ranch").

True to prediction, the District had operating losses for the first seven years after the SCFA was formed. Unfortunately, the losses were greater than the consultant predicted. The District owes the City approximately \$5.6 million as of June 30, 2008, (after crediting a payment received in August 2008 after the books were closed). The City and District discussed the best way to resolve this debt. The result of these discussions was the concept of a "pre-paid services agreement". Under this concept, the District's current Station 92 located in Banta would be moved further west on Grant Line Road to an area that could continue to service Banta as well as part of the eastern portion of the City of Tracy "proper" (meaning the portion of the City also not in the District). In this way, the City could move its Station 96 farther east to serve the mall area within adopted response times. Such a station location would provide for the optimum and efficient use of existing fire resources because both the District and the City have experienced significant declines in property tax revenue.

Because a relocated Station 92 will provide greater service to the City "proper", the City would have some responsibility for the cost of the operation of this station. Because the District has the existing debt to the City, this debt will represent the City prepaying for fire service delivered from Station 92 to the City proper. The District will continue to be responsible to pay for 100% of the cost of operating Station 92 for a period of 7.5 years from the date the relocated Station 92 opens. Station 92 must be constructed at a location acceptable to the City for the City to make use of Station 92 covering a portion of the City proper. It is anticipated that at the end of this 7.5 year period, a new cost

distribution formula will be adopted to reflect the distribution of fire services between the City and the District at that time.

No additional interest will be added to the debt after June 30, 2008, unless the District does not meet the terms of the pre-paid services agreement. A portion of the debt (13%) will be discharged each year that the District performs under the agreement. At the end of the 7.5 years, the District will no longer have debt as it paid for services that were delivered to the City proper ($13\% \times 7.5 =$ approximately 100%). The District has not incurred any additional annual operating deficits to the City since June 30, 2008 (Fiscal Years 2008/2009 and 2009/2010).

This agreement does not include the obligations of the District as they relate to accumulated leave time of the District's former employees when they became City employees on September 16, 1999. This District will continue to make annual contributions to that liability.

Station 92 construction and ownership will be subject to a separate agreement. It is currently anticipated that 75% of the station will be funded via City funds and 25% by the District. The District may need to finance some or all of its 25% share.

The pre-paid services agreement (Amendment No. 4 to the JPA Agreement) has been drafted by the City Attorney's Office and reviewed by District's Counsel. The District Board of Directors approved Amendment No. 4 on March 7, 2011. A Council subcommittee consisting of Council Member Abercrombie and Mayor Pro Tem Maciel have met and reviewed the draft and recommend approval. Given that many years have passed since the agreement between the City and the SCFA for the City to provide labor forces to SCFA, Amendment No. 3 to the Agreement for Provision of Fire Services was proposed as a clean up measure only.

This action will convert the existing \$5.6 million debt owed by Tracy Rural Fire District to a pre-paid services agreement representing 7.5 years of advance payment to the District to operate a relocated Station 92 which will serve portions of the City of Tracy as well as the District and joint District/City areas. This will not effect the General Fund balance as this debt has not been placed on the City's financial statements due to the view of the City's auditors that such matter was likely not collectable in the short term.

Staff recommended that City Council approve Amendment No. 4 (Prepaid Services Agreement) to the Joint Powers Authority Agreement between the City of Tracy and the Tracy Rural Fire Protection District; approve Amendment No. 3 to the Agreement between the City of Tracy and the South County Fire Authority for Provision of Fire Services; and authorize the Mayor to sign the amendments.

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

Council Member Abercrombie asked if this had been presented to the Rural District. Mr. Johnston stated yes; it was approved with one person absent.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-063 approving Amendment No. 4 (Pre-paid Services) to the Joint Exercise of Powers Agreement between the City of Tracy and the Tracy Rural Fire

Protection District; approval of Amendment No. 3 to the agreement between the City of Tracy and the South County Fire Authority for provision of fire services. Voice vote found all in favor; passed and so ordered.

8. SECOND READING AND ADOPTION OF ORDINANCE 1156 AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING TITLE 3, CHAPTER 3.08, ENTITLED "TRAFFIC REGULATIONS" TO REPEAL SECTION 3.08.600 ENTITLED "VIOLATIONS OF TRAFFIC REGULATIONS—PENALTIES AND FEES", AND REPLACING IT WITH A NEW SECTION 3.08.600 ENTITLED "VIOLATIONS OF PARKING OR EQUIPMENT REGULATIONS-FINES"

The Clerk read the title of proposed Ordinance 1156. It was moved by Council Member Abercrombie and seconded by Council Member Elliott to waive reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Ordinance 1156. Roll call vote found all in favor; passed and so ordered.

9. ITEMS FROM THE AUDIENCE – None.

10. COUNCIL ITEMS

- A. Update on an agreement between the County of San Joaquin and AMR-West for Emergency Ambulance Service in San Joaquin County - Chief Nero presented a brief background on ambulance and advanced life support services in the City of Tracy.

Council Member Abercrombie thanked the Chief for meeting with the EMS Director. Council Member Abercrombie asked about particular codes and responses. Chief Nero stated the codes were based on national protocol.

Council Member Abercrombie asked if the City was looking at the possibility of dispatching out of the City's Police Department. Chief Nero stated his next report would be based on what is being done with EMS service today.

Mr. Churchill stated Council was at the point where more discussion was needed. Mr. Churchill stated he was concerned about the presumption that we are moving in that particular area.

Council Member Rickman thanked the Chief for his quick response. Council Member Rickman stated he was concerned about the inter facility transport.

Council Member Elliott asked for clarification regarding dispatching fire units to care facilities. Chief Nero stated Fire is dispatched to everything else where there is a 911 call for service.

Mayor Pro Tem Maciel stated it sounded like a decision had been made that a fire fighter never responds to those calls. Mayor Pro Tem Maciel stated it sounded like a protocol needed to be established. Chief Nero stated that is the work the City is going through.

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

Robert Tanner, 1371 Rusher Street, asked if re-stocking supplies could be accommodated in the budget. Chief Nero stated it will not become a separate line item and didn't want to guess at what the cost is but believed it was not an appreciable amount.

Don Sader, 16214 Redondo Drive, asked for clarification regarding it being a contract extension with AMR and suggested it needed to be re-bid. Chief Nero stated it has been classified as a contract extension for the second five year period.

Council Member Abercrombie stated the Salvation Army was accepting clothing, food and cash collections this weekend at the Altamont Raceway from 10 a.m. to 6 p.m.

Mayor Ives stated that the blood bank was looking for donors.

11. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Abercrombie to adjourn. Voice vote found all in favor; passed and so ordered. Time: 10:28 p.m.

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

Mayor

ATTEST:

City Clerk

April 19, 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 7:01 p.m., and led the Pledge of Allegiance.

The invocation was given by Pastor Kal Waetzig, Saint Paul's Lutheran Church.

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

Mayor Ives presented Certificates of Recognition to outgoing Transportation Advisory Commissioners Trina Anderson, and Larry Hite, Certificates of Appointment to Commissioners John Favors, Mark Gainor, Adam Duran, Shane O'Neill and Daniel Ramey, and a Certificate of Reappointment to Commissioner Joseph Orcutt.

Mayor Ives recognized D.A.R.E. graduates from Traina Elementary School and invited students and their teachers to the podium.

1. CONSENT CALENDAR - It was moved by Council Member Abercrombie and seconded by Council Member Rickman to approve the Consent Calendar. Voice vote found Council Members Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott absent. Motion carried 4.0.1.
 - A. Minutes Approval – Special meeting minutes of March 15, 2011, and closed session minutes of April 5, 2011, were approved
 - B. Acceptance of the Holly Drive North of Grant Line Road Sidewalk Improvement Project - CIP 73119, Completed by Granite Construction of Watsonville, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-073 accepted the project.
 - C. Acceptance of the Median Improvements at Various Arterial Streets - CIP 73113, Completed by Green Valley Group dba Green Valley Landscape of Livermore, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-074 accepted the project.
 - D. Acceptance of the Sidewalk, Curb & Gutter Repairs (ADA Improvements, FY 10-11), - CIP 73122, Completed by Nor-Cal Concrete of Suisun, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-075 accepted the project.
 - E. Authorize an Offsite Improvement Agreement with the Tracy Joint Unified School District and Robbelen Construction Company, Inc., for the Construction of Streets and Utilities Improvements along the Frontage of the Monte Vista Middle School on Tracy Boulevard and Lowell Avenue and Authorization for the Mayor to Execute the Agreement – Resolution 2011-076 authorized the agreement.

- F. Authorization to Enter into a Cooperative Agreement between the City of Tracy, Contra Costa County, San Joaquin County, the City of Brentwood, and the Mountain House Community Services District for the Partial Reimbursement of City of Tracy Staff Expenses Related to Development of Technical Studies and Reports Regarding the Phase I Planning Analysis of Future State Route 239 and Authorization for the City Manager to Execute the Agreement – Resolution 2011-077 authorized entering into the Cooperative Agreement.
- G. Authorization of a Professional Services Agreement with Telstar Instruments, Inc. for Preventative Maintenance and Repairs of Chemical Systems at the Wastewater Treatment Plant, and Authorization for the Mayor to Execute the Agreement and Designation of Specialized Maintenance Activities at Water and Wastewater Facilities as Professional Services – Resolution 2011-078 authorized the PSA with Telstar Instruments. Resolution 2011-079 designated specialized maintenance activities at water and wastewater facilities as professional services.
- H. Authorizing an Amendment to the Professional Services Agreement with the Boys and Girls Club of Tracy, Sutter Central Valley Hospitals doing business as Sutter Tracy Community Hospital, and Vinewood Center for Children and Families for Additional Services Associated with Proposition 63 Funding and to the City's Finance Department, appropriating \$250,000 from the San Joaquin County Behavioral Health Services Community Service Agreement and Authorizing the Mayor to Execute the Amendments – Resolution 2011-080 authorized the amendment to the Professional Services Agreement.
- I. Approve a Professional Services Agreement with RBF Consulting for the Preparation of an Environmental Impact Report for the Tracy Hills Specific Plan Amendment Project – Resolution 2011-081 approved the Professional Services Agreement.
2. ITEMS FROM THE AUDIENCE - Dave Helm, 1000 N. Central, addressed Council regarding a letter in the Tracy Press from Council Member Maciel. Mr. Helm referred to a number of newspaper articles related to activities in the downtown area, an interview with Sergeant Sheneman, and various comments from City staff and Council Members. Mr. Helm requested a future agenda item to address Police staffing, crime reporting procedures, how crime is reported, any discrepancies; standards for taking the report, status of the crime suppression unit, and accountability and professional standards.
8. Tom Benigno, 2473 Angora Court, addressed Council regarding agenda item #9 "Consider the Adoption of a Resolution Recommending the California Citizens Redistricting Commission Place San Joaquin County in One Congressional, Assembly, and State Senate District," and asked that it be moved to a future Council meeting when Council Member Elliott would be present.

Veronica Vargas, 1135 Dahlia Court, addressed Council regarding construction of sidewalks on Valpico Rd, between MacArthur and Tracy Boulevard, to connect neighborhoods in the area to the new Raley's Shopping Center. Ms. Vargas indicated she had spoken with Kul Sharma, City Engineer, prior to the meeting and had discussed a future agenda item on this subject.

3. PUBLIC HEARING TO APPROVE A RESOLUTION OF THE CITY OF TRACY APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES, A MUTUAL EASEMENT AND MAINTENANCE AGREEMENT WITH ARMADILLO, LLC, AND A DECLARATION OF RESTRICTIONS - Andrew Malik, Development and Engineering Services Director, presented the staff report. Mr. Malik stated that the Community Development Agency and Armadillo Realty, LLC, entered into a Disposition and Development Agreement on April 19, 2005 (the DDA). Armadillo Realty, LLC, (Armadillo) is the owner and operator of the Texas Roadhouse restaurant, located at the corner of Naglee Road and Grant Line Road. The Armadillo Property is approximately 1.23 acres, also referred to as Parcel A.

The City owns a parcel adjacent to and north of the Armadillo Property, formerly owned by the Agency, but transferred to the City on March 8, 2011. This City Property is approximately 1.01 acres, and is referred to as Parcel B.

The City and the Agency are involved in a dispute with Armadillo regarding the payment of certain development impact fees, which the City and Agency believe are due under the Disposition and Development Agreement dated April 19, 2005. The disputed amount is \$211,386.

Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that City or Agency would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of reimbursable improvements to Parcel B is \$416,942. Parcel B is currently for sale.

City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute and have entered into extended tolling agreements in December 2009, March 2010, July 2010, October 2010, and March 2011, to toll the statute of limitations with respect to legal claims the City or Agency may have.

Other, more minor issues have been addressed in the negotiations between the Parties:

- (a) Armadillo constructed certain improvements just over the property line between Parcels A and B (trash enclosure and walkway) and, as part of this settlement, City will agree to do a lot line adjustment and convey a small portion of Parcel B property (.072 acres) to Armadillo; and
- (b) City has agreed to record a Declaration restricting the use of Parcel B to uses which are not steakhouses; and
- (c) The Parties wish to have a reciprocal easement and maintenance agreement for the operation and maintenance of the parking lots on both parcels.

The Parties have reached a settlement and wish to enter into a Settlement Agreement and Mutual Release, and other related documents, to reflect that settlement. The Parties wish to: (1) compromise and settle the dispute between them in order to avoid the cost and uncertainties of litigation; (2) memorialize the agreement of the Parties regarding recordation of a Grant Deed and Reciprocal Easements for the mutual benefit of Parcel A and Parcel B; (3) agree to a limitation on the steakhouse use of Parcel B; and (4) address such other outstanding matters between the Parties as are set forth in the agreement. In addition, the Parties wish to amend the DDA to reflect the terms of

the settlement. Under the terms of the settlement, City will receive a portion of the disputed development impact fees.

Staff recommended that the Council approves the Settlement Agreement and Mutual Release between the Community Development Agency of the City of Tracy, City of Tracy and Armadillo Realty, LLC in substantially the form attached as Exhibit A to the resolution.

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

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-082 approving the Settlement Agreement and Mutual Release between the Community Development Agency of the City of Tracy, City of Tracy and Armadillo Realty, LLC. Voice vote found Council Member Abercrombie, Rickman, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Elliott absent. Motion carried 4.0.1.

4. THAT COUNCIL DISCUSS AND ACCEPT THIS UPDATE REPORT ASSESSING CRIMINAL CONDUCT AND QUALITY OF LIFE ISSUES IN THE CENTRAL DOWNTOWN BUSINESS DISTRICT - Lieutenant Sant presented the staff report. The community has raised concerns about criminal conduct and quality of life issues in the Central Downtown District. The Police Department has been working with the community to assess the scope of the concerns and whether perception might be exceeding the reality of the true issues. In previous meetings, the Police Department had discussed community concerns in detail and offered response strategies it would implement as part of its assessment and implementation program. Following is an update on the results of the community survey and the results of the implementation plan to date:

Since November of 2010, the Police Department has:

- Deployed two Neighborhood Resource Officers for a minimum of 12 hours each; total 24 hours per week.
- Deployed Volunteers in Police Services (VIPS) for a minimum of 10 hours of "Eyes and Ears" patrol per week.
- Directed uniformed Patrol Officers to spend a minimum of 21 hours of patrol time per week.
- Used Officers, Community Services Officers, and VIPS to make weekly, personal contacts with merchants, community members and business owners.
- Identified and diverted resources to specific crime / quality of life issues.
- Conducted two Safety Surveys of business owners to gauge their perception of safety within the downtown business district.
- Conducted a Business Watch survey to determine which educational programs interest the merchants.

Through this initiative, the Tracy Police Department has dramatically increased its overall efforts to dissuade criminal activity and discourage unlawful conduct that interferes with the quality of life in the area.

In comparing activity levels between the first four months after the full time Downtown officer was reassigned (July through October 2010) and comparing it to the four months after the Downtown Security Initiative operational period began (November 2010 through February 2011), several significant trends have emerged.

The number of total calls for service increased significantly by 53% as did the number of activities initiated by police officer observations by 202%. The number of reports increased between the two periods by 27%. Evaluating arrest data, shows the number of arrests because of citizen initiated calls as the Department's "eyes and ears" dropped by 50%. However, the number of officer initiated arrests in the downtown area increased noticeably by 188%.

Two safety surveys were conducted in an attempt to gauge the public's perception of safety as a baseline assessment and then later to evaluate any changes after full response strategy implementation. The first downtown safety survey was conducted from November 29 through December 3, 2010, and netted 89 businesses responding. The same questionnaire was given in the second survey and only 52 businesses elected to participate.

Regarding the perception of safety since the merchants opened their businesses, the November survey listed 56% as feeling safety had improved while 19% perceived no improvement. The March survey revealed 62% of responding merchants said that improvement was noted while 19% felt there was none. Between surveys the Police Department was able to positively improve the business community's perception of safety by 6%.

Regarding the question on whether respondents felt that the Downtown was a safe place to shop and walk around, the November and March surveys respectively reiterated that the overwhelming majority (64% and 62%, respectively) believed it was safe.

The surveys continue to show a strong level of confidence in the safety of the Downtown area. Both surveys indicate a significant percentage of satisfaction with Downtown safety, 72% and 71%, respectively. Those dissatisfied fell from 7% to 4%.

The Crime Prevention Specialists conducted a Business Watch interest survey with the merchants. Of the 71 responsive merchants, several requested training on the topics of Personal Safety, Robbery Prevention and Identity Theft. Merchants preferred the training be held in or close to Downtown because of their businesses and that the classes be conducted before or after business hours or on a regular basis.

Tracy Police Department staff will continue building and maintaining relationships with the residents and business people in and near the Downtown area. The Police Department will continue partnering with other City departments, such as code enforcement, public works, and fire when issues emerge that can best be handled by their expertise and unique resources. Over the course of the next six months the Downtown area can expect the Police Department at least to maintain and, hopefully to improve the perception of public safety in the Downtown by:

- Enforcing violations of law (crimes) and abating nuisance activity.
- Providing preventative patrols using Neighborhood Resource officers, patrol officers and volunteers.

- Using crime analysis to collect, analyze and interpret data from calls for service and crime statistics to better direct resources as needed.
- Adjusting strategies and tactics based upon crime analysis.
- Providing crime prevention information specific to businesses through educational venues such as Business Watch, Chamber of Commerce meetings, Tracy Civic Center Association and other interested community groups.
- Maintaining regular contacts with individual business representatives and through associations serving merchants and property owners in Downtown Tracy.
- Continuing “Eyes and Ears” patrol by the Tracy Police Department’s Volunteers in Police Service (VIPS) through December 31, 2011.
- Monitoring areas bordering the downtown area and promptly addressing any “spillover” problems that emerge as a result of increased presence and enforcement in Downtown.

While pursuing this Downtown Security Initiative has not cost the City any additional funding beyond the allocated operating budget, the Police Department has diverted a significant amount of staff resources to this initiative. The minimum cost calculation for officers during this five month period has been \$54,513, and amortized on a yearly basis, the cost would be \$130,831. While it may appear that the cost would be the same as reinstating the Downtown Officer position, the Police Department’s current initiative provides greater value and hours of coverage than any solo officer assignment could.

Staff recommended that the Council discuss and accept this updated report related to activities in the Central Downtown Business District and discuss whether it wants any further update briefings and at what frequency.

Council Member Maciel thanked Lt. Sant for the report and asked for clarification regarding the category “gang offense.” Lt. Sant stated it included any crime where a gang member or gang affiliate was involved, or contact with a gang member in the Downtown.

Council Member Abercrombie asked if surveys were taken of the Downtown patrons. Lt. Sant stated no.

Council Member Abercrombie stated he had heard that residents do not feel safe Downtown at night, and asked if there were any trends of criminal activity during the day vs. night. Lt. Sant stated vandalism has occurred late in the evening for the most part.

Council Member Abercrombie stated he was concerned with the perception of safety Downtown at night. Chief Thiessen stated that the data could be polled on a 24 hour basis although it was very quiet downtown after 9 p.m., with most activity occurring outside the Great Plate and Helm’s Ale House. Chief Thiessen added another business had opened downtown that will generate additional traffic after 9 p.m.

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

Carolyn Landin, 1596 Gentry Lane, addressed Council indicating there appeared to be a discrepancy between businesses and residents and the efforts to ensure the quality of life downtown. Ms. Landin suggested Downtown residents and businesses should receive equal support.

Mayor Ives asked Lt. Sant to discuss security checks. Lt. Sant indicated the term is used when officers are checking various areas; checking alleys, looking for problematic areas and issues etc., and did not necessarily mean "checking doors." Steven Ho, 1685 Foxwood Drive, addressed Council regarding suppression vs. demotivating individuals from doing crime. Mr. Ho suggested creating job opportunities decreases criminal activity.

Paul Miles, 1397 Mansfield, indicated the definition of Downtown used for the report was primarily businesses. The statistics appeared to show citizen initiated calls were flat, suggesting the statistics were confusing.

Robert Tanner, 1371 Rusher Street, asked what constituted a service call to a report, and stated that it appeared fewer reports resulted in arrests. Lt. Sant indicated he would have to pull individual reports.

Mr. Tanner asked how many of the surveys were handed out vs. mailed out. Lt. Sant stated over 100 surveys were handed out downtown.

Dave Helm, 1000 Central Avenue, stated he appreciated everything the Police Department had done although he was concerned about the boundaries shown for Downtown. Mr. Helm also asked if the security checks were performed by officers. Lt. Sant stated the majority of security checks were performed by uniformed officers.

Ray Morellos, a Downtown business owner, thanked the Police Department for being Downtown, and stated he felt safe Downtown. Mr. Morellos stated he would like to see more businesses involved with the Tracy City Center Association.

Mayor Pro Tem Maciel asked Lt. Sant to respond to the survey numbers. Lt. Sant stated there were a variety of events or concerns available per survey.

Mayor Pro Tem Maciel commended the Police for their responsiveness and encouraged the Police Department to respond to residents' concerns.

Council Member Rickman thanked staff for the detailed report.

Council Member Abercrombie also thanked staff for the report and encouraged them to keep up the good work.

Mayor Ives asked for clarification regarding the map and the Downtown area. Lt. Sant indicated the lines were drawn from where the data was derived.

Mayor Ives referred to the etchings of windows that occurred Downtown and asked if there had been any arrests. Lt. Sant indicated 26 businesses were victimized on March 29. Evidence has been gathered and forwarded to the detectives.

Mayor Ives asked if there was voracity to the decrease in events taking place Downtown and the increase in policing. Lt. Sant stated the increase in the number of reports is related to the increase in police presence in the Downtown. Mayor Ives stated at some point the City would need to begin polling the residents' perception of Downtown.

Council accepted the report.

5. CITY COUNCIL'S APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND YMCA OF SAN JOAQUIN COUNTY FOR PROVIDING AQUATICS PROGRAMMING SERVICES TO THE TRACY COMMUNITY AT THE PINKIE PHILLIPS POOL AT WEST HIGH SCHOOL AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY – Rod Buchanan, Parks and Community Services Director, presented the staff report. Mr. Buchanan stated that in response to the City's ongoing efforts to improve efficiency and reduce allocations of general funds for operations, the Parks and Community Services Department has undertaken a systematic review of all programming areas, evaluated the cost effectiveness of these programs and explored methods to continue to offer popular programs while reducing the financial impact of the programs. During this process, City staff realized that potential for savings exists by contracting out to a qualified entity to conduct the City's aquatics services.

On March 8, 2011, the City issued a Request for Proposals/Qualifications (RFP) to provide aquatic services at the Pinkie Phillips Pool at West High School. The deadline to submit proposals was March 27, 2011. YMCA of San Joaquin County submitted the only proposal. Staff evaluated YMCA's proposal and concluded that YMCA of San Joaquin County was qualified to offer well rounded, quality aquatics programming. The YMCA's proposed programming offers the same level of programmed services the City has offered in the past, and includes new and expanded programming which is anticipated to increase use of the facility. Additionally, the YMCA's suggested fees are similar to those the City has charged for similar programming. As an example, for swim classes and other training programs, the YMCA is planning to charge a fee of \$60 per participant (\$55 with resident discount), while in the 2010 season the City charged a fee of \$55 (\$50 with resident discount). The fees YMCA has suggested for other activities (such as water exercise, recreation swim, etc.) are the same as the City charges. Rental fees will remain the same.

YMCA of San Joaquin County also agreed to provide these services while being paid 94% of all revenues received for the programming for the first \$150,000 collected, and 70% of any revenues collected over \$150,000.

Staff estimated that contracting for the provision of these services will reduce the allocation of general funds to the Parks and Community Services Department annual operating budget by a minimum of \$65,000 while maintaining at least the existing level of services.

Staff recommended that the Council approve a professional services agreement between the City of Tracy and YMCA of San Joaquin County for providing aquatics programming services to the Tracy community at the Pinkie Phillips Pool at West High School and authorize the Mayor to execute the agreement on behalf of the City.

Council Member Rickman asked if the schedule of classes would be somewhat the same. Mr. Buchanan stated yes.

Council Member Rickman asked about access. Mr. Buchanan stated the YMCA was looking at some new activities that have not been offered in the past.

Mayor Pro Tem Maciel asked if any of the revenue goes toward the cost of operating the pool. Mr. Buchanan stated there was a base amount of money needed to keep both pools operating, and that this amount was over and above the amount of maintaining it.

Mayor Pro Tem Maciel asked if programming revenue went towards maintenance and operation. Mr. Buchanan stated it was General Fund and was an annual set fee.

Mayor Pro Tem Maciel stated the contract provided language that the YMCA would be encouraged to hire locally. Mr. Buchanan stated the YMCA would consider local folks to fill those positions.

Council Member Abercrombie asked about lifeguard certifications. Mr. Buchanan stated the City offers a class and so did the YMCA.

Council Member Abercrombie asked how long the City would maintain the Joe Wilson pool while not using it. Mr. Buchanan stated the City wants to keep the pool for future use. Basic maintenance was being done until a final decision is made.

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

Cindy Seligman, Aquatic Instructor, YMCA, addressed Council indicating they were looking forward to working with the community to provide a fun and safe environment for residents.

Mayor Ives asked if the YMCA met all safety standards, and if they would hire local lifeguards. Ms. Seligman stated yes, and added the YMCA would work with the team to ensure cohesiveness.

Rich Good, Executive Director, YMCA of San Joaquin County, stated this would be a "Y" program. The goals would include containing the costs of the program, and employing local folks.

Carolyn Landin, 1596 Gentry Lane, stated it would be beneficial to "Think Inside the Triangle" when looking for this type of arrangement. Ms. Landin added she would like to see a stronger commitment and the permanency of the arrangements for locals.

Jacquelyn Halverson addressed Council indicating her child has been taking swim lessons through the YMCA for years and that she has learned a great deal from them.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-083 approving a Professional Services Agreement between the City of Tracy and YMCA of San Joaquin County for providing aquatics programming services to the Tracy community at the Pinkie Phillips Pool at West High School and authorizing the Mayor to execute the agreement on behalf of the City. Voice vote found all in favor; passed and so ordered.

6. DISCUSS THE SALE AND DISCHARGE OF SAFE AND SANE FIREWORKS WITHIN THE CITY OF TRACY AND PROVIDE DIRECTION TO STAFF AS HOW TO PROCEED
Chief Nero presented the staff report. The current Tracy Municipal Code (TMC) prohibits the sale, transport, possession, use or discharge of any and all fireworks. The TMC does permit the public display of fireworks by a licensed pyrotechnic operator, such

as the July 4th event held at Tracy High School. In recent months, staff has received increased interest from non-profit organizations and fireworks vendors to reverse this longstanding position and to allow the sale and use of fireworks categorized as "Safe and Sane" by the Office of the California State Fire Marshal. The reason given for this request is that it provides fundraising opportunities for local non-profit organizations.

The California State Fire Marshal (CSFM) evaluates fireworks for compliance with the California Code of Regulations Title 19 and the Health and Safety Code. Fireworks that meet the standards of the CSFM are categorized as "Safe and Sane" and approved for sale and use in California, subject to approval of the local authority having jurisdiction. In San Joaquin County, several jurisdictions have reversed the ban on fireworks and have approved the sale and use of "Safe and Sane" fireworks. In fact, since 2004 the cities of Manteca, Stockton and Lodi have joined Ripon in allowing "Safe and Sane" fireworks to be both sold and discharged within their communities. These communities have determined that the fund raising opportunities generated for non-profits outweigh the safety considerations.

Each year, children and adults are injured as a result of using fireworks, including those fireworks categorized as "Safe and Sane". Each year, fires are caused by the use of fireworks, including those classified as "Safe and Sane". For example, in the City of Manteca, there have been 13 fires started by "Safe and Sane" fireworks during the past five years.

The Fire Chief does not condone in any way the sale, possession, or use of any fireworks, including those classified as "Safe and Sane." Each year, illegal fireworks are discharged throughout the City. It is the intent of the Tracy Fire Department, with assistance from the Tracy Police Department, to enforce current ordinances regarding sale, possession, and use of illegal fireworks based on the availability of staff.

There is an undetermined fiscal impact to approving the sale and use of "Safe and Sane" fireworks. Staff will make every effort to ensure that fees are established to cover the costs incurred by the City in administering and regulating sales and use.

Staff asked Council for direction as how to proceed.

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

Carolyn Landin, on behalf of two non-profits, provided a statement from Darlene Quinn, Director of Tracy Interfaith Ministries. Ms. Quinn's statement encouraged Council to approve the sale of safe and sane fireworks. Ms. Landin, on behalf of the Coalition of Tracy Citizens to Assist the Homeless, also encouraged Council to approve the request.

Paul Miles, 1397 Mansfield, stated he has seen fireworks openly used in the City without any enforcement.

Jody Price, 1321 Tulloch Drive, encouraged Council to approve the sale of fireworks for all athletic teams as well as non-profits.

Director of Operations for the Boys and Girls Club of Tracy indicated it was a great opportunity to raise funds for the organization.

Sheila Soares, Vice President of Tracy Raiders, asked Council to consider approval of the item since it is a good opportunity to keep funds in the City.

Dennis Rovellet, President of Rovellet Communications, addressed Council stated it is difficult for non-profits to raise funds to provide the services needed in the community and that many service providers are able to survive because of the sale of state approved fireworks. Mr. Rovellet stated the program has to be at a minimum, cost neutral to the City.

Council Member Abercrombie asked Mr. Rovellet how many stands he would recommend for the City. Mr. Rovellet stated an appropriate number would be 6-7 to start off, but suggested the numbers be discussed with Police and Fire.

Council Member Maciel stated he believed it was time for the City to consider the endeavor with an emphasis on safety. Council Member Maciel stated the sale of "Safe and Sane" fireworks presented a great opportunity for local non-profits and suggested safety literature be provided at the point of sale.

Council Member Rickman thanked those who provided comments stating he didn't think the City could ignore the fact that it could have a positive impact on the community.

Council Member Abercrombie indicated as a former police officer he had seen what could happen to children with "Safe and Sane" fireworks. Council Member Abercrombie indicated he had a difficult time with this proposal weighing money against safety.

Mayor Ives indicated there would be more fireworks during the July 4th holiday if the City allowed the sale of "Safe and Sane" fireworks. Mayor Ives added he didn't mind approving the request as long as the City has a clear plan on enforcement of illegal fireworks.

Chief Nero stated staff will develop an ordinance for the sale and discharge of "Safe and Sane" fireworks for consideration at the May 3, 2011 City Council meeting. Such an ordinance could be approved and effective by June 17, 2011. Staff will also develop the appropriate vehicles to administer the sale and use for implementation immediately, subject to final approval of the ordinance.

Mayor Ives called for a recess at 9:18 p.m. The meeting was reconvened at 9:24 p.m.

7. AUTHORIZATION TO ENTER INTO AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH COMBINED SOLAR TECHNOLOGIES, INC. FOR GREEN ENERGY AND THERMAL DESALINATION PROJECT FEASIBILITY STUDY - Vanessa Carrera, Management Analyst, Public Works Department, presented the staff report. On April 20, 2010, the Council authorized Combined Solar Technologies (CST) to conduct a Green Energy Pilot Project at the wastewater treatment plant (WWTP). The pilot project demonstrated how thermal desalination can be used to remove salt from Tracy's wastewater. On January 4, 2011, the Council authorized staff to negotiate with CST for a feasibility study. Meetings held with CST identified the recommended approach for the City and CST is to enter into an ENRA. The ENRA will reserve the City-owned property for use by the energy project and, in turn, the City will receive the feasibility study, valued at several hundred thousand dollars.

The first portion of the feasibility study is a “fatal flaws” analysis that is estimated to require 60 days to complete. If the fatal flaws analysis shows the project to be feasible, the detailed feasibility study will be prepared, and will lead to further negotiations and preparation of the required California Environmental Quality Act (CEQA) documents.

Also, CST will evaluate the necessary required permits such as those issued by the San Joaquin Valley Air Pollution Control District (SJVAPCD).

A separate cost recovery agreement will provide funding from CST for the negotiating, drafting, preparation and processing of various agreements and documents (including CEQA) needed for the financing of the facility and for the sale and/or lease of the property to CST.

The term of the ENRA is 18 months, which is anticipated to be adequate for completion of the feasibility study and environmental document. The CEQA document would be brought to the Council for consideration.

CST's approach, in comparison to other green energy alternatives, provides a public benefit to the daunting, ongoing challenge of reducing the salinity of Tracy's wastewater while producing renewable energy. CST operates its business in Tracy and specializes in creating renewable systems that support the production of clean water and green energy. The company prides itself in developing American-made systems and hiring staff locally.

CST has constructed a 100,000 gallon per day full-scale project for the Musco Family Olive Tracy facility which is currently operating. The Musco Olive project uses olive pits to fuel boilers that produce steam to generate electricity for the olive plant. The heat energy is then used to thermally desalinate the boiler brine. The steam condensate is essentially distilled water and is blended back into the effluent. Musco Olive received a permit from the SJVAPCD to operate this facility. The proposed Green Energy Project for the Tracy WWTP would utilize the same technology and would use a renewable fuel source. A fuel supply analysis will be included in the feasibility study to determine the availability and long-term reliability of various fuel sources.

The electricity generated through the green energy plant would be used at the WWTP and the excess would be sold. City energy cost savings will be explored in the feasibility study. The salts contained in the boiler would be evaporated into a solid state, and the condensed steam would be blended with the effluent. Currently, reuse of the solid salt byproduct is being evaluated as part of a CVSalts (Central Valley Salts) study.

The City is a member of CVSalts and will be given notice of the study once completed. The salinity standards for the Delta are more stringent during the months of April through August. The feasibility report will analyze the potential for solar thermal production to augment the heat produced from the green energy plant, especially during these months.

The potential for grant funding for this type of renewable energy project will be explored as part of the feasibility study. Project financing will take research and evaluation to determine the optimal method of ownership. Project options include the project being privately owned and the City contracting to purchase the electrical power and operation of the thermal desalination, or the project could be a public/private venture. Staff has

met with Tracy Blast Development, LLC regarding the possibility that another suitable property for the Green Energy Project instead of the City-owned property identified in the ENRA may be viable, thus freeing up land along Tracy Boulevard for other uses. The proposed ENRA allows for these discussions through the term of the agreement.

The Green Energy Project is at the beginning stages and a significant amount of information is needed to formulate an optimally sized facility. Initial thoughts are that a 700,000 gallon per day project would provide significant reduction of salts. A project of this size is estimated to cost approximately \$20 to \$30 million, generate 10 to 15 megawatts of electricity, and have a seven year payback period resulting in positive cash flow in future years.

There is no fiscal impact to the City's General Fund. Professional services are anticipated for reviewing certain aspects of the project and there are adequate funds in the approved budget. For this phase of the work, the cost of professional services is estimated to be less than \$5,000. Funding will be from the Wastewater Enterprise Fund.

Staff recommended that City Council authorize the Exclusive Negotiating Rights Agreement with CST for a Green Energy and Thermal Desalination Project Feasibility Study and authorize the Mayor to execute the Agreement.

Mayor Pro Tem Maciel asked if this was for a feasibility study only. Ms. Carrera stated yes. Mayor Pro Tem Maciel asked if it comes back that this is a feasible process, would it be an open bid process. Dan Sodergren, City Attorney, stated the City could enter into a lease or sale negotiation with the company, depending on the ultimate structure.

Council Member Rickman asked if the feasibility study encompassed all 200 acres. Ms. Carrera stated yes, all 237 proposed acres. Ms. Carrera added that staff was looking at other possibilities if other projects were deemed more important for the property.

Mayor Ives asked if they could do it on less property and added the feasibility study needed to determine how much acreage is needed.

Council Member Abercrombie asked if there was some understanding that the project could move to a different portion of the property. Ms. Carrera stated yes.

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 Rickman to adopt Resolution 2011-084 approving entering into an exclusive negotiating rights agreement with Combined Solar Technologies, Inc. for green energy and thermal desalination project feasibility study. Voice vote found all in favor; passed and so ordered.

8. APPROVE AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, LLC TO EXPLORE THE DEVELOPMENT OF RECREATIONAL, COMMERCIAL AND OTHER RELATED USES ON APPROXIMATELY 600 ACRES OF THE CITY-OWNED HOLLY SUGAR PROPERTY AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT - Andrew Malik, Development and Engineering Services Director, presented the staff report. Mr. Malik stated that on March 3, and July 7, 2009,

Council approved two separate ENRAs with Jeff Macey to develop a motorsports park and bike park on approximately 300 acres of the City-owned Holly Sugar property just north of the Sports Complex. The purpose of the ENRAs was to allow Mr. Macey to form a development team and legal entity capable of developing the project, and to allow Mr. Macey the opportunity to refine his development proposal. While the timelines for both of the previous ENRAs with Mr. Macey have expired, Mr. Macey has formed a new legal entity, Tracy's California Blast, LLC (TCB), and appears to have established a development team to initiate development applications once the current ENRA is approved. The new development entity, TCB proposes to expand on the original motorsports park concept by 300 additional acres. New development ideas include expanded commercial and other recreational uses on a total of 628 acres.

Exhibit A to the staff report shows the location of Airsoft and Combined Solar Technologies (CST) which represent development of an Airsoft training/recreational area and development of an electrical generation and water desalination facility respectively. These projects are subject to separate ENRAs with the City. The Airsoft proposal is consistent with adopted City plans for a park at this location. The CST proposal is not yet fully defined in a geographic scope, but proposes uses consistent with existing Industrial designations of the City's General Plan. TCB ideas and proposal would require amendments to the General Plan. Staff would work with TCB, CST, and Airsoft on the evaluation of plans as they are developed for consideration.

Following are the highlights from the TCB ENRA:

- 1) The Agreement for exclusive negotiating rights has a term of three years, subject to successful completion of the milestones set forth in sections 4 through 9 and 12 of the Agreement.
- 2) Provides for cost recovery for the City's time and resources through a future Cost Recovery Agreement.
- 3) Authorizes TCB to prepare and submit applications for various entitlements for the property.
- 4) Authorizes amending the ENRA when and if additional City-owned property east of Tracy Boulevard is not needed for the CST project. (Staff will continue to work with TCB, CST, and Airsoft on further defining buildout of all properties and how each project can work to complement the other.)
- 5) Allows the parties to begin discussions regarding the eventual sale or lease of the property.

There is no fiscal impact to the City's General Fund. TCB will pay an initial fixed fee of \$25,000 to cover initial staff time on this project. Within 180 days of entering into this ENRA, TCB is required to enter into a Cost Recovery Agreement to cover all staff costs. For consideration for the three-year term, TCB will pay \$1,500 per month for exclusive rights to negotiate with the City.

Staff recommended that the City Council approve the Exclusive Negotiating Rights Agreement with Tracy's California Blast, LLC for the potential development of

recreational, commercial, and other related uses on approximately 628 acres of the City-owned Holly Sugar property.

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

Robert Tanner, 1371 Rusher Street, asked for clarification regarding zoning on the property. Mr. Malik stated the area is zoned Industrial.

Marvin Rothschild, 1652 Waverly Court, indicated if the public was surveyed he didn't believe the majority of people in Tracy would want the use confined to these two specific uses.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-085 approving the Exclusive Negotiating Rights Agreement with Tracy's California Blast, LLC for the potential development of recreational, commercial, and other related uses on approximately 628 acres of the City-owned Holly Sugar property. Voice vote found all in favor; passed and so ordered.

9. CONSIDER THE ADOPTION OF A RESOLUTION RECOMMENDING THE CALIFORNIA CITIZENS REDISTRICTING COMMISSION PLACE SAN JOAQUIN COUNTY IN ONE CONGRESSIONAL, ASSEMBLY, AND STATE SENATE DISTRICT
Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that at the April 5, 2011 City Council meeting, the Council agreed to place an item on the April 19, 2011 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, made up of California residents to configure state assembly and senate districts. 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.

However, the population of San Joaquin County continues to grow at a faster pace than the rest of the state. Therefore, 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, and to better serve the needs of the entire constituency.

There will be no fiscal impact to the General Fund.

Staff recommended that the Council consider the adoption of a resolution recommending the California Citizens Redistricting Commission place San Joaquin County in one congressional, assembly, and state senate district, and direct staff to forward the resolution to the Redistricting Commission.

Mayor Ives stated that earlier, under Items from the Audience, Mr. Benigno had suggested the item be moved to a future Council meeting when Council Member Elliott

would be present. Council Member Maciel indicated the item was pretty straight forward.

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

George Riddle, 1850 Harvest Landing, encouraged Council to move forward.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-086 recommending the California Citizens Redistricting Commission place San Joaquin County in one congressional, assembly, and state senate district. Voice vote found all in favor; passed and so ordered.

10. ITEMS FROM THE AUDIENCE – None.
11. COUNCIL ITEMS - Mayor Ives reported he had been in Washington D.C. last week attending the One Voice trip sponsored by the San Joaquin Council of Governments. Mayor Ives stated it was interesting to talk with representatives who were trying to figure out the edicts that have come down from the state and federal offices. Mayor Ives indicated he spent a lot more time with federal officers trying to understand what their formulas were for earmarking funding.

Mayor Ives wished his wife a happy 36th wedding anniversary.
13. 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: 9:47 p.m.

The above agenda was posted at the Tracy City Hall on April 14, 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

May 3, 2011, 6:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –

DEVIATION

- II. Special City Council Meeting
Pending Litigation (Gov. Code section 54956.9(b))
 - Claim of Bryan Denman
 - *Christopher Bosch v. City of Tracy, et al.*
(San Joaquin County Superior Court Case No. 39-2010-00252419-CU-OE-STK)

- I. Special Joint City Council/Community Development Agency Meeting
(Real Property Negotiations (Govt. Code section 54956.8))

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; Andrew Malik, Director of Development and Engineering Services

Negotiating Parties: Representatives of Union Pacific Railroad

Under Negotiation: Price and terms of payment for the purchase of the property

5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:30 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 6:56 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Mayor Ives to adjourn the Special City Council meeting and the Special Joint City Council/Community Development Agency meeting. Voice vote found all in favor; passed and so ordered. Time: 6:56 p.m.

The agenda was posted at City Hall on May 2, 2011. The above are summary minutes.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

May 17, 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, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –
(Real Property Negotiations (Govt. Code section 54956.8))
Property Location: APN # 213-070-68 (generally in area of north side of Grant Line Road between MacArthur Drive and Chrisman Road)
Negotiator(s) for the City/Agency: Andrew Malik, Director of Development and Engineering Services; Kul Sharma, Assistant Director of Development and Engineering Services
Negotiating Parties: Velma C. Pimental or representative
Under Negotiation: Price and terms of payment for the purchase of the property
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:30 p.m. Council Member Elliott 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 5:48 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – Council Member Abercrombie moved to adjourn the meeting. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 5:49 p.m.

The agenda was posted at City Hall on May 12, 2011. The above are summary minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

ADOPTION OF THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2011-2012 FOR THE CITY OF TRACY

EXECUTIVE SUMMARY

The City Council is required by the State constitution to annually adopt an appropriations limit pertaining to the proceeds of taxes. The Finance and Administrative Services Department has done the necessary calculations to determine the limit for FY 11-12. Council adoption is required.

DISCUSSION

As per Article XIIB of the State Constitution, the City of Tracy is subject to an appropriations limit pertaining to the proceeds of taxes (Gann Initiative). The base year for the limit is Fiscal Year 1978-79 and it may be updated annually for growth and inflation. Proposition 111, approved by the voters in June 1990, provided for certain modifications to the appropriations limit. The City now has two options each for calculating growth and inflation.

For growth, the options are:

- 1) City's population growth, or
- 2) County's population growth.

For inflation, the options are:

- 1) The California Per Capita Income, or
- 2) Percent change in the local assessment roll from the preceding year due to the addition of local nonresidential construction in the City.

The decision as to which options to select must be done by a recorded vote of the City Council.

In addition to establishing a new method with options for the annual update of the appropriations limit, Proposition 111 expanded the categories of expenditures exempt from the limit.

The attached worksheets illustrate the computation used to derive the appropriations limit for FY 11-12. This limit is \$47,336,316. This is a 4.1% increase over the FY 10-11 limit of \$45,450,187.

Page 1 of the attachments shows the calculation to determine the base for the appropriations limit. It also shows the annual update of the limit under the original method. Pages 2, 3, and 4 calculate the annual update of the limit under the new Proposition 111 method. Page 5 indicates the appropriations subject to the limit for FY 11-12.

Staff has used the City's population growth and California Per Capita Income options in the computations and recommends these options for Council selection. These factors were 1.0069% and 1.0251% respectively for a combined factor of 1.0322%. The population figure provided by the State of California, Department of Finance was 83,418 for the City as of January 1, 2011.

As shown on Page 5, the City of Tracy is within its limit. For FY 11-12, the margin is \$14,373,706 or 69.6% below the limit. This margin can be construed as the amount by which City tax revenues have been restrained since FY 78-79 when compared to City growth and inflation.

The following represents the City's "proceeds of taxes" by fiscal year.

| | | |
|----------|--------------|--------|
| FY 01-02 | \$27,115,610 | |
| FY 02-03 | \$28,909,770 | 6.6% |
| FY 03-04 | \$30,951,450 | 7.1% |
| FY 04-05 | \$33,833,590 | 10.6% |
| FY 05-06 | \$35,601,660 | 5.2% |
| FY 06-07 | \$39,904,820 | 12.1% |
| FY 07-08 | \$42,434,700 | 6.3% |
| FY 08-09 | \$43,709,400 | 3.0% |
| FY 09-10 | \$38,007,030 | -13.0% |
| FY 10-11 | \$30,069,810 | -20.9% |
| FY 11-12 | \$35,931,410 | +19.5% |

The "proceed of taxes" figure of \$35,931,410 can be adjusted downward to an "appropriations subject to the limit" of \$32,962,610. This adjustment can be made due to \$1,238,800 budgeted for debt service in FY 11-12 to be paid out of tax proceeds and \$1,730,000 of tax proceeds either budgeted or reserved for capital outlays.

RECOMMENDATION

Staff recommends that the City Council of the City of Tracy adopt a resolution establishing the Appropriations Limit for FY 11-12.

It is further recommended that, in adopting this resolution, the City Council select "The City's Population Growth" and "California Per Capita Income" options for the annual update of the City's appropriations limit for FY 11-12.

Prepared by: Allan J. Borwick, Budget Officer
Reviewed by: Zane H. Johnston, Finance and Administrative Services Director
Approved by: R. Leon Churchill, Jr., City Manager

RESOLUTION _____

ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE CITY OF TRACY
FOR FISCAL YEAR 2011-2012

WHEREAS, Article XIII B of the State Constitution places an appropriations limit on the proceeds of taxes received by the State and local governments in California, and

WHEREAS, Article XIII B provides that the appropriations limit can be adjusted annually to account for growth and inflation, and

WHEREAS, It is necessary for the City Council to establish the appropriations limit for the City of Tracy for FY 11-12 and to specify the options used in the annual adjustment, and

WHEREAS, The attachments to this resolution show the calculations used to determine the appropriations limit as adjusted for the City of Tracy for FY 11-12.

NOW, THEREFORE, BE IT RESOLVED That:

- 1) The FY 11-12 appropriations limit for the City of Tracy is established as \$47,336,316;
- 2) In setting the appropriations limit for FY 11-12 the City Council has chosen the "City Population Growth" and "California Per Capita Income" options for the annual adjustment in the limit;
- 3) The appropriations, subject to the limit based upon the proposed City budget for FY 11-12 are \$32,962,610, or 69.6% of the limit, which is \$14,373,706 below the limit.

* * * * *

The foregoing Resolution _____ was 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

AGENDA ITEM 1.C

REQUEST

APPROVAL OF THE SAN JOAQUIN COUNTY COUNCIL OF GOVERNMENTS' (SJCOG) ANNUAL FINANCIAL PLAN FOR FISCAL YEAR (FY) 2011-2012

EXECUTIVE SUMMARY

Ratification of San Joaquin County Council of Governments' Annual Financial Plan.

DISCUSSION

The Joint Powers Agreement between member agencies and the Council of Governments requires that the Annual Financial Plan be sent to member agencies for ratification by each governing body.

Attached is a letter from SJCOG dated May 4, 2011, requesting the City ratify the Plan prior to June 30, 2011; SJCOG Resolution R-11-32 adopting the Plan, and a copy of the Annual Financial Plan summary.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no impact on the General Fund.

RECOMMENDATION

Staff recommends that the City Council, by resolution, ratify the SJCOG Annual Financial Plan for FY 2011-2012.

Prepared by: Maria A. Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager

Attachment "A": Letter from San Joaquin Council of Governments dated May 4, 2011



SAN JOAQUIN COUNCIL OF GOVERNMENTS

Attachment A
City Clerk

555 E. Weber Avenue • Stockton, California 95202

209.235.0600 • 209.235.0438 (fax)

www.sjcog.org



Ann Johnston
CHAIR

May 4, 2011

Chuck Winn
VICE CHAIR

Mr. Leon Churchill, Jr.
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Andrew T. Chesley
EXECUTIVE DIRECTOR

Member Agencies

CITIES OF
ESCALON,
LATHROP,
LODI,
MANTECA,
RIPON,
STOCKTON,
TRACY,
AND
THE COUNTY OF
SAN JOAQUIN

Dear Mr. Churchill:

Enclosed is a summary of the San Joaquin Council of Governments' Annual Financial Plan (AFP) for Fiscal Year 2011-12. The Board unanimously adopted the Plan on April 28, 2011. A copy of the adopting resolution is enclosed. Pursuant to SJCOG's Joint Powers Agreement, following adoption of the budget by the SJCOG Board, it is to be delivered to member agencies for ratification by each governing body. Approval by governing bodies representing 55% or more of the county's population is considered ratification.

Therefore, SJCOG requests you place SJCOG's Annual Financial Plan for Fiscal Year 2011-12 on a forthcoming agenda prior to June 30, 2011 for approval.

The Annual Financial Plan implements the FY 2011-12 Overall Work Program (OWP) that was also adopted by the SJCOG Board on April 28, 2011.

The attached Annual Financial Plan (AFP) provides a detail of expenditures by cost category and line item comparing the proposed 2011/12 budgets with the current year (FY 2010/11) adopted budget as most recently amended and actual revenue and expenditures in FY 2009/10. The Annual Financial Plan represents the general fund budget for SJCOG. The revenues and expenditures in the AFP are the same as the Overall Work Program (OWP) presented in a traditional line item format vis-à-vis the work element format of the OWP.

REVENUES

Compared to the current year amended AFP. SJCOG general fund operating revenues are down 1.31% or \$95,595 lower. Overall, federal funding for operating is 5.93% higher than FY 2010/11. State funding sources are down 15.28% due to the near completion or completion of several grant funded planning projects. Local revenues are 1% lower reflecting the reduction in funds allocated to the ALUC. Of a positive note, sales tax-based funding continues to rebound. This is equally good

news for SJCOG member agencies and Local Transportation Fund claimants that will be receiving more Measure K local street repair funds and transit funding.

EXPENDITURES

Salaries and Benefits These line items are budgeted to remain fractionally below the 2010-11 level.

Services and Supplies is proposed to be 13% lower than the FY 10/11 budget. This includes reducing the Office Expense line item by nearly 30% to reflect more cost effective operations such as reductions in printing and postage, etc. With the exception of Building Maintenance, all other line items are frozen at last year's levels.

For accounting purposes, Building Maintenance has been reduced by \$60,000. Because these expenditures result in the extension of the life span of certain items, this \$60,000 has been shifted to Fixed Assets for capitalization purposes. Between the reduction in Building Maintenance and the increase in Fixed Assets, the net change is zero.

Professional Services is increasing less than 1% reflecting the stability of consulting work in the OWP.

Fixed Assets is increasing by \$60,000 as described above. The annual allocation of \$80,500 for primarily IT and office equipment-related expenditures are the same.

FY 2010-11 Work Program

SJCOG continues to support our city and county members delivering on our Metropolitan Planning Organization responsibilities including preparing the Regional Transportation Plan and the Federal Transportation Improvement Plan, the biannual Congestion Management Plan update, developing Transportation Systems/Demand Management and safety strategies, transit coordination and monitoring and actively participating in the transportation reauthorization debate.

As the Regional Transportation Planning Agency, SJCOG continues to administer the Transportation Development Act process. We will be updating the State Transportation Improvement Plan coordinating closely with Caltrans and the California Transportation Commission, complete the Congestion Management Plan Update, complete, with Bay Area agencies, the Interregional Transportation Plan (ITP) Study, and complete, with Sacramento and Solano Counties, the Highway 12 Corridor Major Investment Study.

SJCOG is active in Intergovernmental Coordination including working closely with the other Valley Counties on transportation and air quality modeling, preparation of

SJCOG Annual Financial Plan

May 3, 2011

Page 3

a goods movement action plan, leadership in the Northern California Trade Corridor Coalition and Blueprint planning.

As the Local Transportation Authority, SJCOG will continue to deliver Measure K and Measure K Renewal projects. Nearly \$500 million of Proposition 1B bond funds have been programmed in San Joaquin County requiring not only Measure K and Measure K Renewal local tax dollars to fully fund the projects, but also project development, design, right of way support, and construction management assistance. SJCOG will deliver to construction (with Caltrans and partner agencies) major Highway 99 Capacity Improvements, Highway 12 Operational Improvements and I-205 Operational Improvements. The Regional Transportation Impact Fee update will be completed in FY 2011-12.

In addition, SJCOG will be updating the Strategic Plan, developing the Safe Route to School Program, preparing Bike and Pedestrian Program Guidelines and administering round two of the SMART Growth Incentive Program.

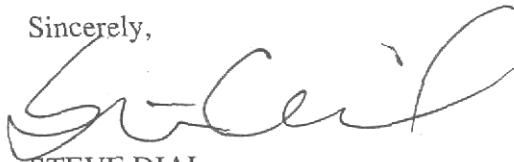
SJCOG will continue to sponsor Commute Connection to San Joaquin, Stanislaus and Merced Counties. Commute Connection also continues development of the 511 traveler information system, managing park and ride lot implementation and bike and pedestrian programs. Freeway Service Patrol vehicles will continue on I-205 and SJCOG will begin the process to have FSP on other highway facilities as they go into construction.

As the JPA responsible for the implementation of the San Joaquin County Multispecies Habitat Conservation Plan, SJCOG, Inc. will be active in conservation easement acquisition, preserve management and coordinating with the state on the development of the Bay-Delta Conservation Plan.

SJCOG staff would be pleased to appear before your policymakers to answer any questions they might have regarding this matter. **We request ratification prior to June 30, 2011.** Please let me know when this will be on your agenda. If you have any questions regarding this matter, don't hesitate to contact me at 235-0600.

Thank you for your assistance.

Sincerely,



STEVE DIAL

Deputy Executive Director/Chief Financial Officer



RESOLUTION
SAN JOAQUIN COUNCIL OF GOVERNMENTS

R-11-32

**RESOLUTION APPROVING THE ADOPTION OF THE 2011-2012
ANNUAL FINANCIAL PLAN
FOR THE SAN JOAQUIN COUNCIL OF GOVERNMENTS**

WHEREAS, the San Joaquin Council of Governments is required by the Joint Powers Agreement to adopt a budget (Annual Financial Plan) annually, and

WHEREAS, the adopted budget is to be sent to the member agencies for ratification.


NOW THEREFORE BE IT RESOLVED, that the San Joaquin Council of Governments adopts the FY 2011-2012 Annual Financial Plan and directs the Executive Director to transmit it to the member agencies for ratification.

PASSED AND ADOPTED this 28th day of April 2011 by the following vote of the San Joaquin Council of Governments, to wit:

AYES: Supervisor Bestolarides, SJ County; Councilman Fritchen, Stockton; Councilman Hansen, Lodi; Councilman Harris, Manteca; Councilman Laugero, Escalon; Councilmember Lowery, Stockton; Mayor PT Maciel, Tracy; VM Mateo, Lathrop; VM Miller, Stockton; Supervisor Ornellas, SJ County; Supervisor Vogel, SJ County; Councilman Winn, Ripon.

NOES: None.

ABSENT: None.



CHUCK WINN
Vice Chair

San Joaquin Council of Governments

ANNUAL FINANCIAL PLAN

Fiscal Year 2011/12

Proposed April 28, 2011

| REVENUES | FY 2009-10 Actual | FY 2010-11 Adopted Amend. #1 | FY 2011-12 Proposed 4/28/11 | +/- Change |
|--|----------------------|---------------------------------|--------------------------------|-----------------------|
| Federal Grants | \$2,376,650 | \$2,632,039 | \$2,788,250 | \$156,211 |
| State Grants | \$644,406 | \$1,437,404 | \$1,217,723 | (\$219,681) |
| Local | \$2,465,385 | \$3,225,000 | \$3,192,875 | (\$32,125) |
| Interest | \$6,819 | \$5,000 | \$5,000 | \$0 |
| Other | \$1,775 | \$15,000 | \$15,000 | \$0 |
| SJCOG OPERATING REVENUES | \$5,495,034 | \$7,314,443 | \$7,218,848 | -\$95,595 |
| Federal Pass-Through | \$63,969,742 | \$189,646,000 | \$119,553,000 | (\$70,093,000) |
| State Pass-Through | \$4,587,275 | \$0 | \$1,500,000 | \$1,500,000 |
| Local Pass-Through | \$53,502,790 | \$54,900,000 | \$56,272,500 | \$1,372,500 |
| Commercial Paper | \$167,000,000 | \$167,000,000 | \$75,000,000 | (\$92,000,000) |
| TOTAL SJCOG REVENUE | \$294,554,841 | \$418,860,443 | \$259,544,348 | -\$159,316,095 |
| EXPENDITURES | | | | |
| Salaries & Benefits | \$3,525,917 | \$3,647,295 | \$3,636,010 | (\$11,285) |
| Services & Supplies | \$1,052,022 | \$1,274,500 | \$1,108,500 | (\$166,000) |
| Office Expense | \$176,064 | \$362,000 | \$256,000 | (\$106,000) |
| Communications | \$80,913 | \$60,000 | \$60,000 | \$0 |
| Memberships | \$31,613 | \$42,000 | \$42,000 | \$0 |
| Maintenance - Equipment | \$2,242 | \$13,000 | \$13,000 | \$0 |
| Rents & Leases - Equipment | \$200,136 | \$210,000 | \$210,000 | \$0 |
| Transportation, Travel & Training (In & Out of State) | \$117,298 | \$110,000 | \$110,000 | \$0 |
| Allocated Service Cost | \$18,936 | \$4,000 | \$4,000 | \$0 |
| Publications & Legal Notices | \$16,279 | \$27,000 | \$27,000 | \$0 |
| Insurance | \$82,661 | \$85,000 | \$85,000 | \$0 |
| Building Maintenance | \$127,280 | \$120,000 | \$60,000 | (\$60,000) |
| Building Debt Service | \$198,600 | \$241,500 | \$241,500 | \$0 |
| Professional Services | \$1,618,668 | \$2,312,148 | \$2,333,838 | \$21,690 |
| Fixed Assets | \$13,732 | \$80,500 | \$140,500 | \$60,000 |
| Unallocated/Reserve | \$0 | \$0 | \$0 | \$0 |
| SJCOG OPERATING EXPENDITURES | \$6,210,339 | \$7,314,443 | \$7,218,848 | -\$95,595 |
| Excess (Deficit) Revenues Over Expenditures (Operating) | -\$715,305 | \$0 | \$0 | \$0 |



San Joaquin Council of Governments
ANNUAL FINANCIAL PLAN
Fiscal Year 2011/12

April 28, 2011

CHAIR

Mayor Ann Johnston, City of Stockton

VICE-CHAIR

Councilmember Chuck Winn, City of Ripon

BOARD OF DIRECTORS

| | |
|-------------------------------|-----------------------|
| Councilmember Jeff Laugero | City of Escalon |
| Vice Mayor Christopher Mateo | City of Lathrop |
| Councilmember Larry Hansen | City of Lodi |
| Councilmember Steve DeBrum | City of Manteca |
| Supervisor Ken Vogel | County of San Joaquin |
| Supervisor Leroy Ornellas | County of San Joaquin |
| Supervisor Steve Bestolarides | County of San Joaquin |
| Vice Mayor Kathy Miller | City of Stockton |
| Councilmember Dale Fritchen | City of Stockton |
| Mayor Brent Ives | City of Tracy |

EX OFFICIO DIRECTORS

| | |
|-----------------------------------|--|
| Carrie Bowen, District Director | Caltrans District 10 |
| Gary Giovanetti, Director | San Joaquin Regional Transit District |
| Gary Christopherson, Commissioner | Port of Stockton |

SUBMITTED BY:

Andrew T. Chesley
Executive Director

Steve Dial
Deputy Executive Director/
Chief Financial Officer

RESOLUTION 2011-

APPROVING THE SAN JOAQUIN COUNTY COUNCIL OF GOVERNMENTS' ANNUAL FINANCIAL PLAN FOR FISCAL YEAR (FY) 2011-2012

WHEREAS, The Joint Powers Agreement between the Council of Governments and its member agencies requires the Annual Financial Plan to be ratified by the governing body of each member agency, and

WHEREAS, The Tracy City Council considered the Annual Financial Plan at its meeting of June 7, 2011.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: That the City Council hereby approves the San Joaquin Council of Governments' Annual Financial Plan for FY 2011-2012.

* * * * *

The foregoing Resolution 2011- was passed and adopted by the Tracy City Council on the 7th day June 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

ANNUAL REVIEW OF CITY'S INVESTMENT POLICY AND APPROVAL OF REVISIONS

EXECUTIVE SUMMARY

Submit periodic review of the City's Investment Policy for City Council approval.

DISCUSSION

The City has adopted an investment policy that provides guidance regarding investment of City funds which is consistent with the State. Periodically this policy is reviewed by the City Treasurer with assistance from one of the City's Investment Advisory firms. As the current policy is comprehensive and meets all requirements of law, only some revision to the existing policy is needed.

The following is a summary of proposed changes:

- ◆ Remove any reference to savings and loans as a type of bank throughout the Investment Policy.
- ◆ Qualification of Brokers, Dealers and Financial Institutions
Paragraph B, correction of Time Deposits from \$100,000 to \$250,000
- ◆ Eligible Securities
Category One: Local Agency Investment Fund – dollar value – Per LAIF Limit

Category Three: State Gov't Code #'s were updated.

At the April 25, 2011 meeting of the Investment Review Committee the City Treasurer briefed the committee on the proposed revisions to the Investment Policy (formerly Council Policy B-6) and the committee voted in favor of accepting the changes and submitting the Investment Policy to City Council for their approval.

FISCAL IMPACT

None.

RECOMMENDATION

The City Treasurer recommends that the City Council, by resolution, revise the existing City Investment Policy (formerly Council Policy B-6) to reflect revisions.

Prepared by: Ray McCray, City Treasurer
Zane H. Johnston, Finance & Administrative Services Director
Approved by: Leon Churchill Jr., City Manager

RESOLUTION _____

ACCEPTING REVISIONS TO THE CITY'S INVESTMENT POLICY

WHEREAS, The City has an adopted investment policy that provides guidance regarding investment of City funds which is consistent with the State, and

WHEREAS, The current policy is comprehensive and meets all requirements of law, and

WHEREAS, Periodically the City Treasurer reviews this policy with support from its registered investment advisors for any changes that would require amendment to the investment policy, and

WHEREAS, At the April 25, 2011 meeting of the Investment Review Committee the City Treasurer reviewed the City's Investment Policy (formerly Council Policy B-6) with the committee and recommended some changes;

NOW, THEREFORE, BE IT RESOLVED, That the City Council accept the review with updates to the City's Investment Policy (formerly Council Policy B-6) and repeal Resolution 2009-036 dated March 3, 2009.

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

City of Tracy**COUNCIL POLICY
(Formerly Referred to as B-6)**

SUBJECT: Investment Policy

AUTHORIZATION: Resolution 93-103

EFFECTIVE DATE: April 6, 1993

I. STATEMENT OF OBJECTIVES

Temporarily idle or surplus funds of the City of Tracy shall be invested in accordance with principles of sound treasury management and in accordance with the provisions of California Government Code Section 53600 et seq., the Tracy Municipal Code, and this Investment Policy.

A. Overall Risk Profile

The basic objectives of Tracy investment program are, in order of priority:

1. Safety of invested funds;
2. Maintenance of sufficient liquidity to meet cash flow needs; and
3. Attainment of the maximum yield possible consistent with the first two objectives.

The achievement of these objectives shall be accomplished in the manner described below:

1. Safety of Invested Funds

The City shall ensure the safety of its invested idle funds by limiting credit and interest rate risk.

Credit risk is the risk of loss due to the failure of the security issuer or backer. Interest rate risk is the risk that the market value of portfolio securities will fall due to an increase in general interest rates.

a. Credit risk will be mitigated by:

- i. Limiting investment to the safest types of securities;
- ii. By pre-qualifying the financial institutions with which it will be doing business;
- iii. By diversifying the investment portfolio so that the failure of any one issuer or backer will not place an undue financial burden on the City;
- iv. By timely monitoring all of the City's investments to anticipate and respond appropriately to a significant reduction of credit worthiness of any of the depositories.

- b. Interest rate risk will be mitigated by:
 - i. Structuring the City's portfolio so that securities mature to meet the City's cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to their maturation to meet those specific needs; and
 - ii. Investing primarily in shorter-term securities, unless it is anticipated that long-term securities can be held to maturity without jeopardizing liquidity requirements.
 - iii. Occasionally restructuring the portfolio to minimize the loss of market value and/or maximize cash flows in income.
- c. The physical security or safekeeping of the City's investments is also an important element of safety. Detailed safekeeping requirements are defined in Section III of this Policy.

2. Liquidity

The City's investment portfolio must be structured in a manner, which will provide that securities mature at the same time as cash is needed to meet anticipated demands (static liquidity). Additionally, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity). The specific percentage mix of different investment instruments and maturities is described in Section II of the Policy.

3. Yield

Yield on the City's investment portfolio is of secondary importance compared to the safety and liquidity objectives described above. Investments are limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. While it may occasionally be necessary or strategically prudent for the City to sell a security prior to maturity to either meet unanticipated cash needs or to restructure the portfolio to meet the current market conditions.

B. Time Frame for Investment Decisions

The City's investment portfolio shall be structured to provide that sufficient funds from investments are available every month to meet the City's anticipated cash needs. Subject to the safety provisions outlined above, the choice of investment instruments and maturities shall be based upon an analysis of anticipated cash needs, existing and anticipated revenues, interest rate trends and specific market opportunities. The average maturity of the investment portfolio will not exceed three years, and no investment will have a maturity of more than five years from its date of purchase, including U.S. Treasury and/or its Government affiliated Agencies.

1. Definitions

- a. "Maturity" shall mean the period from the date of purchase until the final maturity date stated on the instrument.
- b. "Average maturity of the investment portfolio" shall be computed as follows:

$$\frac{\text{Sum of } \$ \times \text{Years}}{\text{Total } \$ \text{ of portfolio}} = \text{Average maturity (years)}$$
- c. "Total dollar amount of portfolio" shall mean all monies of the City excluding proceeds from bond issues.

C. Definition of Idle or Surplus Funds

Idle or surplus funds for the purpose of this Policy are all City funds, which are available for investment at any one time, including the estimated checking account float, excepting those minimum balances required by the City's banks to compensate them for the cost of banking services. This policy also applies to the idle or surplus funds of other entities for which the City of Tracy personnel provide financial management services.

D. Limitations on Reverse Repurchase Agreements

A reverse repurchase agreement is a transaction in which the City sells securities to a counter part and agrees to repurchase the securities from the counter party at a date certain. Under no circumstances shall the City sell securities through reverse repurchase agreements for the purpose of financing the acquisition of other securities. Except as otherwise authorized by the City Council, the use of reverse repurchase agreements will be limited to those occasions where unanticipated, short-term cash requirements can be met more advantageously by initiating a reverse repurchase agreement than by selling a security into the secondary market prior to its maturity. (For example, if a specific cash requirement precedes the maturity of a security, which had been intended to meet that requirement; it may be advantageous to initiate a reverse repurchase agreement by transferring the security to a counterpart rather than selling the security into the secondary market prior to its maturity. Proceeds from the maturity of the security would then be used to close out the reverse repurchase agreement.) When such a reverse repurchase agreement is being considered it shall be reported to the City Council for Council approval.

E. Standards of Prudence and Ethics

Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. The overall portfolio shall be designed and managed with a degree of professionalism worthy of the public trust.

The standard of Prudence to be used by investment officials shall be the prudent investor (see below) and shall be applied in the context of managing an overall portfolio.

Prudent Investor Standard

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.

II. INVESTMENT OF IDLE FUNDS

A. Eligible Securities

The City may invest temporarily idle funds through banks, securities dealers, the State Local Agency Investment Fund (LAIF), California Asset Management Plan (CAMP) and other investment instruments as designated by the California State Code.

The following table summarized the authorized investment instruments, and applicable limitations on each. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase as per California Government Code Section 53601. Consistent with the terms of this policy, no investment is permitted which is not listed on the following table:

| | <u>LOCATION</u> | <u>DOLLAR VALUE</u> | <u>MATURITY</u> |
|---------------------------------------|-----------------|---------------------|-----------------|
| <u>CATEGORY ONE:</u> | | | |
| Local Agency Investment Fund | California | Per LAIF Limit | On Demand |
| California Asset Management Program | California | No Limit | On Demand |
| Safekeeping Services Sweep Accounts | Banks | Per Investment Type | On Demand |
| US Treasury Issues | ----- | No Limit | NTE 5 Yrs |
| US Government Agency Debenture Issues | ----- | Per State Code | NTE 5 Yrs |
| Insured Deposits Banks | California | Per State Code | On Demand |

CATEGORY TWO:

| | | | |
|-------------------------|---------------------|---------------|-------------|
| Repurchase Agreements | Banks and Dealers | No Limit | NTE 1 Year |
| Reverse Repurchase | Banks and Dealers | NTE 20% | NTE 92 days |
| Certificates of Deposit | Banks in California | 30% Portfolio | NTE 1 Year |

CATEGORY THREE:

| | | | |
|-------------------------|---------------------|----------------|-----------|
| Bankers Acceptances (1) | Domestic US Foreign | 30% Portfolio | NTE 6 Mo |
| Commercial Paper | Domestic US | Per State Code | NTE 9 Mo |
| Negotiable CDs | Domestic US | Per State Code | NTE 18 Mo |
| Municipal Securities | Domestic US | 30% Portfolio | NTE 5 Yrs |
| Med Tern Corp Notes | Domestic US | 30% Portfolio | NTE 5 Yrs |
| Money Market Funds | Domestic US | 20% Portfolio | On Demand |

CODE REFERENCES

STATE GOV'T CODE#

FOOTNOTES

| | | |
|-------------------------|-------------------|--|
| US Treasury & Agencies | 53601(b),(f) | (1) Must be dollar denominated |
| Bankers Acceptance | 53601(g) | (2) Money Market funds must be comprised of eligible securities permitted under this policy. |
| Commercial Paper | 53601(h) | |
| Certificate of Deposits | 53638 | |
| Negotiable CDs | 53601(i) | |
| Repurchase Agreements | 53601(j) (1), (2) | |
| Reverse Repo Agreements | 53601(j) (3) | |
| Medium Term Corp Notes | 53601(k) | |
| Money Market Funds | 53601(m to o)(2) | |
| Municipal Securities | 53601 (a) | |
| LAIF | 16429(l) | |
| CAMP | 53601(p) | |
| Active Deposits | 53632(b), (c) | |

No more than 10% of the total portfolio shall be invested in the issuances of any single institution other than securities issued by the U.S. Government, its affiliated agencies, LAIF and CAMP.

B. Qualification of Brokers, Dealers and Financial Institutions

Aside from LAIF, CAMP, insured deposits, and U.S. Treasury and Government Agency issues, investments shall be placed only in those instruments and institutions rated favorably by a nationally recognized statistical-rating organization (NRSRO). For Banker's Acceptances, domestic depositories shall be limited to banks rated "b" or better, and selected major California banks rated "c" or better. Foreign Bankers Acceptances shall be limited to depositories rated 1/11 or better (the equivalent of an A/B domestic rating) and must be dollar-denominated instruments. An information log containing the type of collateral in the acceptance shall be maintained. Negotiable Certificates of Deposit shall be issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or by a state-licensed branch of a foreign bank, provided that the senior debt obligations of the issuing institution are rated A or better by a NRSRO. For Time Deposits over \$250,000, depositories shall be limited to California State banks and financial institutions that have received a minimum overall satisfactory rating for meeting the credit needs of California Communities in its most recent evaluation. Except for insured deposits in California banks, City investment transactions will be conducted only with institutions meeting the tests described above, and/or with dealers from the list of Government Security dealers reporting to the Market Reports Division of the Federal Reserve Bank of New York (Exhibit A) and/or with dealers from the list of Commercial Paper dealers reporting to the Market Reports Division of the Federal Reserve Bank of New York (Exhibit B). Except for investment in Banker's Acceptances and Negotiable Certificates of Deposit, the City will limit its investments in banks to those institutions maintaining offices in the State of California.

The California Government Code restricts cities to investing in commercial paper of the highest rankings provided for by a NRSRO. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

1. The entity meets the following criteria: (i) Is organized and operating in the United States as a general corporation. (ii) Has total assets in excess of five hundred million dollars (\$500,000,000). (iii) Has debt other than commercial paper, if any, that is rated "A" or higher by a nationally recognized statistical-rating organization.
2. The entity meets the following criteria: (i) Is organized within the United States as a special purpose corporation, trust, or limited liability company. (ii) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond. (iii) Has commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical-rating organization.

The City may not hold more than 5% of an issuing corporation's commercial paper.

The California Government Code restricts cities to investing in medium term corporate notes of a maximum of five years maturity issued by corporations operating within the United States. Securities eligible for investment must be

rated A or better by two of the three largest nationally recognized services. Medium-term corporate notes may not exceed 30% of the City's portfolio.

C. *Collateralization Requirements*

Uninsured time deposits with banks shall be collateralized in the manner prescribed by law for depositories accepting municipal investment funds.

D. *Pre-formatted Wire Transfers*

Wherever possible, the City will use pre-formatted wire transfers to restrict the transfer of funds to pre-authorized accounts only. When transferring funds to an account not previously approved, the bank is required to call bank a second employee for confirmation that the transfer is authorized.

E. *Requirement for Financial Statements*

Each bank, and security dealer, otherwise qualified under the provisions of this policy, who wishes to do business with the City shall submit a copy of its latest financial statement to the City including a balance sheet and profit and loss statement. If the security dealer is a private partnership registered with the SEC, the following shall be required in lieu of a profit and loss statement: 1) disclosure of its excess net capital in the notes to the statement of financial condition, and 2) a separate letter from its CPA firm attesting to the fact that Rule 15c 3-1 has been complied with and the dealer's internal systems and controls have no material inadequacies.

After a review of the financial statement and all other relevant information, the City will determine whether a service agreement should be executed with the institution based on the standards outlined in this Policy. The City requires that an agreement for services be executed prior to entrusting its funds to any dealer or financial institution, and that up-to-date financial statements be sent to the City Treasurer.

F. *Notice to Dealers*

The City Treasurer shall annually send a copy of the current edition of this Investment Policy to all institutions, which are approved to handle City of Tracy investments. Receipt of the Policy, including confirmation that it has been reviewed by persons handling the City's account, shall be acknowledged in writing within thirty days.

G. *Requirements for Repurchase Agreements*

A repurchase agreement is a transaction in which a counterpart agrees to transfer to the City securities or financial instruments in exchange for funds with a simultaneous agreement by the City to resell the securities to the counterpart at a date certain. In such cases, the transferred securities shall be U.S. Treasury or Government Agency issues whose market value at the time of transfer is equal to at least 102% of the repurchase agreement's face value. For other than

overnight investments, the securities transferred shall be marked to market on a daily basis and maintained at an amount equal to at least 102% of the repurchase agreement's face value. The market value of the transferred securities may be required to exceed the repurchase agreement's face value by an amount, which is expected to protect against a sudden decrease in the market value of the transferred securities.

The types of securities to be accepted as transferred securities in repurchase agreements in which the City is the buyer shall be limited to the types of eligible U.S. Treasury or Government Agency issues described in Sections II.A and II.B. The maturities of transferred securities shall not be limited as described in Section II.A. Substitutions or transferred securities may not be made without prior approval by the City.

III. SAFEKEEPING OF SECURITIES

A. *Safekeeping Agreement*

Securities purchased from Brokers/Dealers shall be held in third party safekeeping by the trust department of the local agency's bank or other designated third party trust, in local agency's name and control, whenever possible. The City may contract with a bank or banks for the safekeeping of marketable securities, which are transferred to the City under the terms of repurchase agreements.

B. *Handling of City-Owned Marketable Securities & Time Deposit Collateral*

All marketable securities owned by the City shall be held by its safekeeping agent, except the collateral for time deposits in banks. The collateral for time deposits is held by the Federal Home Loan Bank. The collateral for time deposits in banks is held in the City's name in the bank's trust department or with its correspondent bank (if a safekeeping agreement has been executed) or, alternatively, in the San Francisco Federal Reserve Bank.

C. *Handling of Repurchase Agreement Securities*

The securities transferred to the City under the terms of repurchase agreements with banks may be held in the issuing bank's trust department, provided that a master trust agreement has been executed insuring fiduciary separation of these assets from other bank assets. The securities transferred to the City under the terms of repurchase agreements with dealers must be delivered to a third-party custodian with whom the City has established a safekeeping agreement.

IV. STRUCTURE AND RESPONSIBILITY

This section of the Investment Policy defines the overall structure of the investment management program.

A. *Responsibilities of the City Treasurer*

The City Treasurer is charged by law with responsibility for the deposit and investment of City funds, which come into his hands in accordance with principles of sound treasury management and in accordance with applicable laws and ordinances, and the development of procedures to implement this investment policy. He is responsible to keep the City Council fully advised as to the financial condition of the City Treasury.

Security Transfers

The authorization to release City securities will be telephoned to the appropriate bank by the Treasurer. A written confirmation outlining details for the transaction and confirming the telephoned instructions will be sent to the bank within five (5) working days.

B. *Responsibilities of the Finance and Administrative Services Director*

The City Finance and Administrative Services Director is responsible for the fiscal procedures of the City. A review of the City's investment program is a part of the responsibility described above.

C. *Verification of Security*

Securities transferred to the City under the terms of repurchase agreements and collateral securing time deposits, which are being held in safekeeping for the City, will be verified in writing and examined on a surprise basis during the year. Verification of transferred securities and time deposit collateral will be part of the City's annual independent audit.

D. *Responsibilities of the City Council*

The City Council shall consider and adopt, by resolution, an investment policy. As provided in that Policy, the Council shall receive, review, and accept monthly Investment Reports.

V. REPORTING

The City Treasurer shall prepare a monthly Investment Report within 45 days after the close of the month, including a succinct management summary that provides a clear picture of the status of the current investment portfolio and significant transactions made over the past month. This management summary will be prepared in a manner, which

will allow the City Manager and City Council to ascertain whether investment activities during the reporting period have deviated from the City's Investment Policy.

A monthly Investment Report will include the following:

- A. Trend of average portfolio maturity;
- B. Maturity aging by type of investment;
- C. Percentage mix of portfolio by type of investment, including a listing of individual securities held at the end of the reporting month;
- D. A statement that the portfolio investments comply with all State and Federal laws and are in compliance with this policy. Any prior violations which have not been corrected must be so identified;
- E. Trend of rate of return on investments;
- F. Unrealized gains or losses resulting from appreciation or depreciation in the market value of securities;
- G. Interest cost and interest earnings from reverse repurchase agreement transactions;
- H. All investment transactions occurring during the month whether or not the transaction has been fully settled; and
- I. As per State applicable laws, demonstrate current market position of all marketable securities.

The following can be found on file in the City Treasurer's office:

- A. Realized trading gains and losses and interest received on trading activity;
- B. Aggregate commitments to purchase securities or make other payments to dealers in a manner to permit adequate cash need forecasting;
- C. A description of the current investment strategy and the assumptions upon which it is based;
- D. Average rate of return on reporting month's purchases;
- E. Average rate of return on reporting month's sales and/or maturities;
- F. Distribution reports by bank and broker/dealer; and
- G. Cash management projections;

VI. REVIEW OF INVESTMENT MANAGEMENT

A. *Policy Exceptions*

There shall be no exceptions to the prescribed limits and obligations of this policy.

B. *Investment Review*

The City Council, by Resolution No. 95-087, has established an Investment Review Committee. This Committee, composed of two City Council Members, the City Treasurer, the City Manager, and the Finance and Administrative Services Director shall meet not less than quarterly to review the City Treasurer's report and investment activities.

C. Policy Review

This Investment Policy shall be reviewed annually to ensure its consistency with respect to the overall objectives of safety, liquidity and yield, and its relevance to current laws and financial trends. Proposed amendments to the Policy shall be prepared by the City Treasurer, and after review and approval by the City Manager, shall be forwarded to the City Council for consideration and approval.

VII. INVESTMENT OF PROCEEDS OF DEBT ISSUANCE

The following section governs the investment of proceeds from debt issuance. Investments can be made in accordance with this policy when not in conflict with applicable provisions of a particular debt financing.

“Permitted Investments” means any of the following, which at the time of investment are legal investments under the laws of the State for the monies proposed to be invested therein:

- A. Direct obligations (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America;
- B. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises rated “AAA” by an NRSRO.
- C. Interest-bearing demand or time deposits (including certificates of deposit, and bank investment contracts whether negotiable or non-negotiable) in federal or state chartered savings and loan associations or in national or State banks (including the Trustee) provided that either: (a) the obligations of such association or bank or the obligations of the holding company of such association or bank are rated in one of the three highest rating categories by a NRSRO; or (b) such deposits are fully insured by the Federal Deposit Insurance Corporation, provided, however, that the portion of any certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation, if any, shall be secured at all times in the manner provided by law by collateral security having market value not less than the amount of such excess, consisting of securities described in this section, items (1) through (4);
- D. Investment agreements, guaranteed investment contracts, funding agreements, or any other form of corporate note representing the unconditional obligations of entities; (a) the unsecured long-term debt obligations or claims-paying ability ratings of which are rated in the top three rating categories by a NRSRO, or (b) the short-term debt obligation rated in the two highest categories of either of such rating agencies;
- E. Repurchase agreements with financial institutions insured by the FDIC or FSLIC, or any broker-dealer with “retail customers” which falls under the jurisdiction of the Securities Investors Protection Corporation (SIPC), provided that: (a) the

over-collateralization is at one hundred two percent (102%), computed weekly, consisting of such securities as described in this section, items (1) through (4); (b) a third party custodian, the Trustee or the Federal Reserve Bank shall have possession of such obligations; © the Trustee shall have perfected a first priority security interest in such obligations; and (d) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral;

- F. Money Market Mutual Funds registered with the Securities and Exchange Commission and rated in the highest category by a NRSRO;
- G. Tax-exempt obligations rated in either of the two highest rating categories by a NRSRO, including money market funds so rated;
- H. Deposits in the Local Agency Investment Fund (LAIF) referred to in Section 16429.1 of the Government Code of the State;
- I. Deposits in the California Asset Management Plan (CAMP) referred to in the JPA Investment, approved by Resolution No. 98-104, of the Tracy City Council on April 7, 1998.
- J. In the event the issue becomes credit enhanced, the foregoing permitted investments must be approved by the credit enhancement agency. In addition, the permitted investments may be expanded to include any other investments approved by the credit enhancement agency.

Amended by: Resolution 93-103 - 4/6/93
Resolution 94-228 - 7/19/94
Resolution 95-132 - 5/2/95
Resolution 97-354 - 10/21/97
Resolution 98-190 - 6/16/98
Resolution 99-343 - 9/7/99
Resolution 2000-351 - 8/15/00
Resolution 2001-360 - 10/2/01
Resolution 2002-236 - 8/6/02
Resolution 2004-209 - 7/6/04
Revised by Resolution 2005-300 - 12/6/05
Resolution 2007-002 - 1/2/07
Revised by Resolution 2009-036 - 3/3/09
Revised by Resolution 2011-

AGENDA ITEM 1.E

REQUEST

AUTHORIZATION TO REMOVE A “NO PARKING” ZONE ON THE NORTH SIDE OF NINTH STREET BETWEEN THE TWO DRIVEWAYS ACCESSING THE PARKS AND COMMUNITY SERVICES SOUTH PARKING LOT TO ALLOW PARKING SPACES AND ESTABLISHMENT OF “NO STOPPING ANYTIME” ZONES ON BOTH SIDES OF NINTH STREET BETWEEN EAST STREET AND SCHOOL STREET, EXCLUDING THE EXISTING PARKING WEST OF NORTH SCHOOL STREET

EXECUTIVE SUMMARY

A “No Parking” zone and a designated bus stop is located on the north side of Ninth Street between north School Street and the Parks & Community Services south parking lot main driveway. Three additional longitudinal parking spaces can be added in this “No Parking” zone which was temporarily used by Tracer for bus transfers. With completion of the Tracy Transit Center, bus transfers have moved from this area and additional parking spaces can be created to provide much needed parking in this area.

In addition, due to the narrow width of Ninth Street between north School Street and East Street, parked vehicles in this segment block the sidewalk resulting in unsafe conditions. Staff recommends changing the existing “No Parking” red zone to a “No Stopping Any Time’ zone in this segment.

DISCUSSION

The north side of Ninth Street between the Parks & Community Services south parking lot main driveway and School Street is currently signed as a “No Parking” zone to allow for the Tracer bus transfer (waiting area for next round trip). With construction of the new Transit Station, the transfer terminal has been relocated from this site to the Transit Station at Sixth Street. Therefore, the bus transfers at Ninth Street are no longer required. Staff recommends that the existing “No Parking” zone be removed to allow parking (3 spaces) in this area and 20 feet of “No Parking” zone be established on both sides of the driveways to provide sight distance for vehicles exiting these driveways. The existing bus stop between the western driveway of Parks and Community Services to School Street is recommended to remain without any changes.

In addition, vehicles stopping on Ninth Street between School Street and East Street block the sidewalk due to the insufficient street width. This segment of Ninth Street has three angled spaces to allow for parking and the remaining portion includes a curb painted red that has aged and is fading. To improve safety and pedestrian circulation, staff recommends changing the existing “No Parking” red zone to a “No Stopping Anytime” zone in this segment without impacting the angled parking.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. This work will be completed in FY 2011-12. There is sufficient funding budgeted for signing and striping in the FY 2011-12 budget within the street operating budget of the Public Works Department to complete this work.

RECOMMENDATION

That City Council, by resolution, authorize removal of the existing "No Parking" zone on the north side of Ninth Street between the driveways of the Parks and Community Services south parking lot and authorize establishment of a "No Stopping Anytime" zone on both sides of Ninth Street between East Street and School Street.

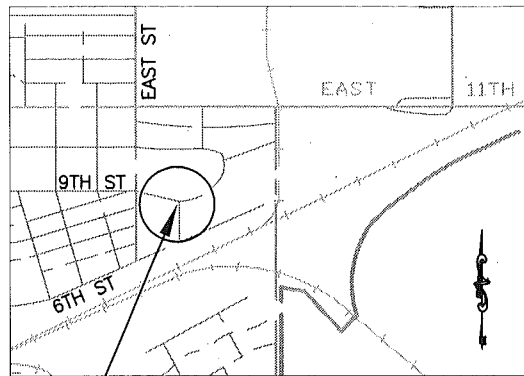
Prepared by: Ripon Bhatia, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer
Kevin Tobeck, Public Works Director

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

Attachment: Location Map

EXHIBIT "A"



PROJECT LOCATION

COMMUNITY CENTER
950 E 9TH ST

PROPOSED NO STOPPING ZONES

INSTALL R26S ON EXISTING STREET LIGHT (TYP)

SENIOR CENTER
375 E 9TH ST

INSTALL R26S

EXISTING BUS STOP SIGN

INSTALL BUS STOP SIGN R28C(L) AND POST

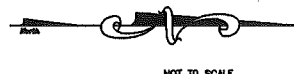
SENIOR HOUSING
435 E 6TH ST

PARKS AND COMMUNITY
SERVICES
400 E 10TH ST

REMOVE EXISTING PARKING
RESTRICTIONS TO ADD AN
ADDITIONAL 3 PARKING
SPACES.

RED ZONE 20FT EACH SIDE OF DRIVEWAYS (TYP.)

NOTE: REMOVE ALL EXISTING CONFLICTING
SIGNING AND STRIPING



9TH ST PARKING
IMPROVEMENTS NEAR
TRACY COMMUNITY CENTER

| DESIGNED BY | DATE | DESCRIPTION | APPROVED |
|-------------|------|-------------|----------|
| DM | | | |
| DRAWN BY | | | |
| DM/JA | | | |
| CHECKED BY | | | |
| RB | | | |
| SCALE | | | |
| N.T.S. | | | |

SHEET 1
OF 1 SHEETS

CITY OF TRACY

APPROVED FOR CONSTRUCTION SUBJECT TO THE DATA SHOWN
CITY OF TRACY AND THE UNDERSIGNED ARE NOT RESPONSIBLE FOR
ERRORS AND/OR OMISSIONS THAT MAY BE PRESENT ON THESE PLANS.
KILDEEP SHARMA CITY ENGINEER DATE

RESOLUTION 2011-_____

AUTHORIZING REMOVAL OF A "NO PARKING" ZONE ON THE NORTH SIDE OF NINTH STREET BETWEEN THE TWO DRIVEWAYS ACCESSING THE PARKS AND COMMUNITY SERVICES SOUTH PARKING LOT TO ALLOW PARKING SPACES AND ESTABLISHING A "NO STOPPING ANYTIME" ZONES ON BOTH SIDES OF NINTH STREET BETWEEN EAST STREET AND SCHOOL STREET, EXCLUDING THE EXISTING PARKING WEST OF NORTH SCHOOL STREET

WHEREAS, The north side of Ninth Street between the Parks & Community Services south parking lot main driveway and School Street is currently signed as a "No Parking" zone to allow for the Tracer bus transfer, and

WHEREAS, The transfer terminal has been relocated from this site to the Transit Station at Sixth Street, and

WHEREAS, To improve safety and pedestrian circulation, staff recommends changing the existing "No Parking" red zone to a "No Stopping Anytime" zone, and

WHEREAS, There is no impact to the General Fund. This work will be completed in FY 2011-12. There is sufficient funding budgeted for signing and striping in the FY 2011-12 budget within the street operating budget of the Public Works Department to complete this work;

NOW, THEREFORE, BE IT RESOLVED That City Council authorizes removal of the existing "No Parking" zone on the north side of Ninth Street between the driveways of the Parks and Community Services south parking lot and authorizes establishing a "No Stopping Anytime" zone on both sides of Ninth Street between East Street and School Street.

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

AWARD A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING TO PROVIDE TOPOGRAPHIC SURVEYING SERVICES FOR MACARTHUR DRIVE WIDENING PROJECT BETWEEN VALPICO ROAD AND SCHULTE ROAD – CIP 73126, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

Topographic surveys are needed to complete the design for the MacArthur Drive Widening between Valpico Road and Schulte Road Project – CIP 73126. Since the City does not have surveying staff, the services of a consultant are needed to complete the required work. The project design, preparation of improvements plans and construction documents will be completed in-house by engineering staff.

DISCUSSION

The widening of MacArthur Drive from Schulte Road to Valipco Road is an approved Capital Improvement Project with an estimated cost of \$5,638,900. The project is partly funded from Infill and Industrial Area Specific Plan development impact fees. The majority of the remaining funds are anticipated from Federal grants. A recent award of a Federal TEA grant of \$542,900 has facilitated the design and acquisition of rights-of-ways for this project which has also received additional funding from a Federal grant for \$1,146,000 due in FY 2012-13. After completion of the design and acquisition of rights-of-ways, the project construction may be completed in multiple phases depending upon the availability of remaining funds either from grants or from development impact fees.

Consultant services are needed related to performing topographic surveying to complete design work for the MacArthur Drive Widening Project between Valpico Road and Schulte Road Project – CIP 73126. In-house engineering staff will complete the design, prepare improvement plans and construction documents.

Since completion of topographic surveys are routinely required to finalize the design of various capital projects and due to the lack of surveying staff, two consultants were previously selected for topographic surveying work through the City's qualifications based Request for Proposal process as follows:

- Northstar Engineering Group, Inc. - Modesto
- RBF Consulting, Inc. - Sacramento

On September 13, 2010, the City requested proposals from these two consultants to provide topographic survey services for design of the MacArthur Drive Widening Project. The proposal by RBF Consulting is more responsive and provides staff availability for this project in a timely manner.

Staff negotiated with RBF Consulting to provide the topographic services necessary for this project on a time and material basis for a "not to exceed" amount of \$29,800. The consultant will be paid for services provided in accordance with the scope of work on an hourly basis. RBF Consulting has a qualified team of professionals experienced in this

type of work and has successfully completed similar projects for the City and other agencies.

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. Funds for the professional services agreement will be paid from TEA Fund 313.

RECOMMENDATION

That City Council, by resolution, award a Professional Services Agreement with RBF Consulting of Sacramento, California, on a time and material basis for an amount not to exceed \$29,800, to provide topographic surveying services for design of the MacArthur Drive Widening Project – CIP 73126, and authorize the Mayor to execute the Agreement.

Prepared by: Khoder Baydoun, Associate Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer
Andrew Malik, Development and Engineering Services Director

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION 2011-_____

AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING TO PROVIDE TOPOGRAPHIC SURVEYING SERVICES FOR MACARTHUR DRIVE WIDENING PROJECT BETWEEN VALPICO ROAD AND SCHULTE ROAD – CIP 73126, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The widening of MacArthur Drive from Schulte Road to Valipco Road is an approved Capital Improvement Project with an estimated cost of \$5,638,900, and

WHEREAS, A recent award of a Federal TEA grant of \$542,900 has facilitated the design and acquisition of rights-of-ways for this project which has also received additional funding from a Federal grant for \$1,146,000 due in FY 2012-13, and

WHEREAS, Consultant services are needed related to performing topographic surveying to complete design work, and

WHEREAS, Two consultants were previously selected for topographic surveying work through the City's qualifications based Request for Proposal process, and

WHEREAS, On September 13, 2010, the City requested proposals from these two consultants to provide topographic survey services for design of the MacArthur Drive Widening Project, and

WHEREAS, The proposal by RBF Consulting is more responsive and provides staff availability for this project in a timely manner, and

WHEREAS, Staff negotiated with RBF Consulting to provide the topographic services necessary for this project on a time and material basis for a "not to exceed" amount of \$29,800, and

WHEREAS, There will be no fiscal impact to the General Fund. Funds for the professional services agreement will be paid from TEA Fund 313;

NOW, THEREFORE, BE IT RESOLVED That City Council awards a Professional Services Agreement with RBF Consulting of Sacramento, California, on a time and material basis for an amount not to exceed \$29,800, to provide topographic surveying services for design of the MacArthur Drive Widening Project – CIP 73126, and authorizes the Mayor to execute the Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 7th day of June 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS
MACARTHUR DR WIDENING - VALPICO RD TO SCHULTE RD
CIP 73126**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and RBF CONSULTING, a California Corporation (hereinafter "CONSULTANT").

RECITALS

- A. CONSULTANT is a professional planning, design and construction management firm (including land surveying services).
- B. CONSULTANT surveying services are needed related to preparing topographic maps, right-of-way calculations and field staking for road widening within the City right-of-way on both sides of MacArthur Drive from Valpico Road to Schulte Rd.
- C. At the request of CITY, on October 6, 2010, CONSULTANT submitted a proposal to perform surveying services described in this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services with the terms set forth in this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: **Patrick Tami, PLS.** CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement, subject to adherence to sound professional practices and procedures, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
MACARTHUR DR WIDENING - VALPICO RD TO SCHULTE RD CIP 73126
Page 2 of 9**

no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.

- 3. INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. CONSULTANT is not CITY's employee and CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT. Contractors and CONSULTANT are free to work for other entities while under contract with the CITY. Contractors and CONSULTANT are not entitled to CITY benefits.
- 4. CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
- 5. COMPENSATION.**

 - 5.1.** For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Agreement is Not To Exceed \$29,800.00 (Twenty Nine Thousand Eight Hundred Dollars). CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY.
 - 5.2.** CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3.** Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.
- 6. TERMINATION.** The CITY may terminate this Agreement by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the CITY all original documents, including preliminary drafts and supporting documents, prepared by CONSULTANT for this Agreement. The CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
MACARTHUR DR WIDENING - VALPICO RD TO SCHULTE RD CIP 73126
Page 3 of 9**

7. **OWNERSHIP OF WORK.** All original documents prepared by CONSULTANT for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONSULTANT to any third party without the prior written consent of the City.
8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services under this Agreement.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE.**
 - 11.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 11.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 11.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 11.5. **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONSULTANT in an amount not less than \$1,000,000 per claim.
 - 11.6. **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - 11.6.1 The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - 11.6.2 For any claims related to this Agreement, CONSULTANT's coverage shall be primary insurance with respect to the CITY. Any

insurance maintained by the CITY shall be excess of the CONSULTANT's insurance and shall not contribute with it.

- 11.7. **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date.
- 11.8. **Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 11.9. **Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five (5) days after the execution of this Agreement.
- 11.10. **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11. **CONSULTANT's Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
12. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.
13. **NOTICES.**
- 13.1 All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:
- | | |
|---|---|
| <u>To CITY:</u> City of Tracy Attn: Zabih Zaca 333 Civic Center Plaza Tracy, CA 95376 | <u>To CONSULTANT:</u> RBF Consulting Attn: Patrick Tami 4540 Duckhorn Drive, Suite 202 Sacramento, CA 95834 |
|---|---|
- 13.2 Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2)

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
MACARTHUR DR WIDENING - VALPICO RD TO SCHULTE RD CIP 73126
Page 5 of 9**

three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

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

INTENTIONALLY LEFT BLANK

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT
MACARTHUR DR WIDENING - VALPICO RD TO SCHULTE RD CIP 73126
Page 6 of 9**

21. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

CONSULTANT
RBF Consulting

Patrick J. Tami

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

By: Patrick J. Tami
Title: Vice President
Date: 4-4-2011
Fed. Employer ID No. _____

Attest: _____

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Douglas J. Frost
By: Douglas J. Frost
Title: Executive V.P./CFO
Date: April 4, 2011

Approved As To Form:

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

EXHIBIT "A"
SCOPE OF SERVICES

TASK I SERVICES: Topographic Survey

RBF Consulting will perform a topographic survey of MacArthur Drive between Schulte Road and Valpico Road. The width of the survey shall be between right of way lines plus ten feet where possible. All intersections and cross streets will be surveyed a minimum of 100' in each direction. Permanent features including paved areas, concrete curbs, walls, sidewalks, surface evidence of underground utilities, aboveground utilities, fences, vegetation, driveways, and buildings will be located. Invert elevations for SD/SS manholes and catch basins will be collected, along with the top nut of water valves. The topographic mapping will be compiled at a scale of 1" = 40' with a contour interval of 1-foot. Spot elevations will be shown to the nearest 0.1'. Temporary bench marks will be placed along MacArthur Drive approximately every 500 feet, at intersections, and at the top of the canal headwall. Coordinates and elevations will be based upon the City of Tracy Survey Control Network.

Total Estimated Fee for Task I Services = \$ 20,800.00

TASK II SERVICES: *Record Right of Way Calculations*

RBF will utilize information provided by the City of Tracy and research performed by RBF to compute record right of way lines based upon record maps and assessor parcel map information. Street monuments along MacArthur Drive will be surveyed to assist in placing the right of way lines. Individual property deeds may need to be obtained in areas where the right of way is ambiguous.

Total Estimated Fee for Task II Services = \$ 5,900.00

TASK III SERVICES – Record Right of Way Staking

RBF will utilize the information obtained in Task 2 above to provide field observation points at approximately 20 points near the existing side lot lines intersected with the record right of way lines. A full boundary survey of each lot is not anticipated at this point and will be performed at the property or easement acquisition stage. The locations will be marked with a temporary wooden marker and a paint dot opposite the stake on the pavement.

Total Estimated Fee for Task III Services = \$2,900.00

Total Estimated Reimbursable Fee = \$200.00

Total Estimated Fee all Services = \$29,800.00

COMPLETION OF THE SCOPE OF SERVICES. CONSULTANT shall complete the services identified in this Exhibit "A" within twenty five (25) working days of receipt of authorization to proceed from the CITY.

PERSONNEL. CONSULTANT shall assign the following person/persons to perform the tasks set forth in this Agreement.

Patrick Tami, PLS, Project Manager
Dan Bustamante, PLS, Project Surveyor/GPS Coordination
Tim Case, PLS, Project Surveyor
David Baumann, PLS, Project Surveyor
Jason Fong, LSIT, Project Surveyor

EXHIBIT "B"

FEE SCHEDULE

The billing rate schedule for this Project is as depicted below:

| | |
|-----------------------------------|----------|
| Project Manager | \$215/hr |
| Project Surveyor/GPS Coordination | \$195/hr |
| Field Crew Supervisor | \$195/hr |
| Project Surveyor | \$148/hr |

AGENDA ITEM 1.G

REQUEST

AWARD OF A CONSTRUCTION CONTRACT TO ZIM INDUSTRIES OF FRESNO, CALIFORNIA, FOR THE CONSTRUCTION OF THE LINCOLN PARK WELL & PRODUCTION WELL #1 REHABILITATION PROJECT – CIP 75076, APPROVE A SUPPLEMENTAL APPROPRIATION OF \$251,000 FROM WATER FUND (F513), AND AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT

EXECUTIVE SUMMARY

The Lincoln Park Well and Production Well #1 are two of the nine City water wells providing underground water to the City's water distribution system. The major source of water for the City's distribution system is surface water from the Delta Mendota Canal, which is treated at the John Jones Water Treatment Plant and from the South San Joaquin Irrigation District. The existing wells augment the water distribution system during peak demand months on an as needed basis. The Lincoln Park Well and Production Well #1 are both more than 25 years old. The performance of these wells have declined considerably during the past several years due to the extensive use and were taken out of service when the pumps failed. Furthermore video of the well reveals blockage of the well screen and gravel pack by sand and silt. To put these wells back in service, complete rehabilitation is required. Award of this construction contract will facilitate work on the rehabilitation of these wells.

DISCUSSION

The scope of work for this project includes replacement of the well pumps; well cleaning and rehabilitation including video survey, mechanical cleaning, chemical treatment, well development, and disinfecting. The project plans and specifications were prepared by GEI Consultants, Inc. of Rancho Cordova, California, and the contract documents for the project were prepared by in-house engineering staff.

Originally the project scope of work included rehabilitation of the Lincoln Park well only. However, during the design phase, Production Well #1, located in the City water treatment plant, also failed. The scope of work for CIP 75076 was then amended to include rehabilitation of Production Well #1 in the FY 2011-12 budget to achieve cost savings to complete both wells under one project.

The Lincoln Park well is located immediately east of the Tracy Library building in Lincoln Park. The construction work related to rehabilitation of this well will be coordinated with the ongoing construction and improvements of Lincoln Park to avoid any conflicts and overlapping of construction activities.

The project was advertised for competitive bids on April 8, and April 15, 2011, and four bids were received and publicly opened on May 3, 2011, with the following results:

| Contractors | Base Bid |
|---|-----------------|
| Zim Industries, Inc., Fresno, CA | \$451,975.00 |
| Maggiora Bros. Drilling Inc., Watsonville, CA | \$464,775.00 |
| Pump Repair Service Co, San Francisco, CA | \$492,369.82 |
| Layne Christensen Company, Woodland, CA | \$586,386.92 |

Zim Industries of Fresno, California, is the lowest monetary bidder. The bid analysis indicates that the lowest bid is “responsive” and the bidder is “responsible”. Zim Industries has the appropriate contractor’s license in current and active standing with the State of California and has completed numerous similar projects with the City of Tracy and other public agencies.

The total cost for this project, if awarded to Zim Industries is as follows:

| | |
|------------------------------------|------------------|
| • Design Cost | \$ 59,600 |
| • Construction Cost | |
| Construction Bid | \$451,975 |
| Contingency (10%) | \$ 45,198 |
| Design Support During Construction | \$ 6,000 |
| Inspection (5%) | \$ 22,599 |
| City wide Project Management | <u>\$ 48,149</u> |
| Total Project Construction Cost | \$633,521 |

If the project is awarded to Zim Industries, construction of the project will commence in July 2011 with completion expected by the end of November 2011.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no fiscal impact to the General Fund. A total of \$383,900 is budgeted for the Lincoln Park Well Rehabilitation Project – CIP 75076 in FY 2010-11. Due to the addition of the Rehabilitation of Production Well #1 in the scope of work of this project, a supplemental appropriation in the amount of \$251,000 is needed from Water Capital Fund (F513) in to CIP 75076.

RECOMMENDATION

That City Council, by resolution, award a construction contract to Zim Industries, of Fresno, California, in the amount of \$451,975, for construction of the Lincoln Park Well & Production Well #1 Rehabilitation Project – CIP 75076, approve a supplemental appropriation of funds in the amount of \$251,000 from Water Fund (F513), and authorize the Mayor to execute the construction contract.

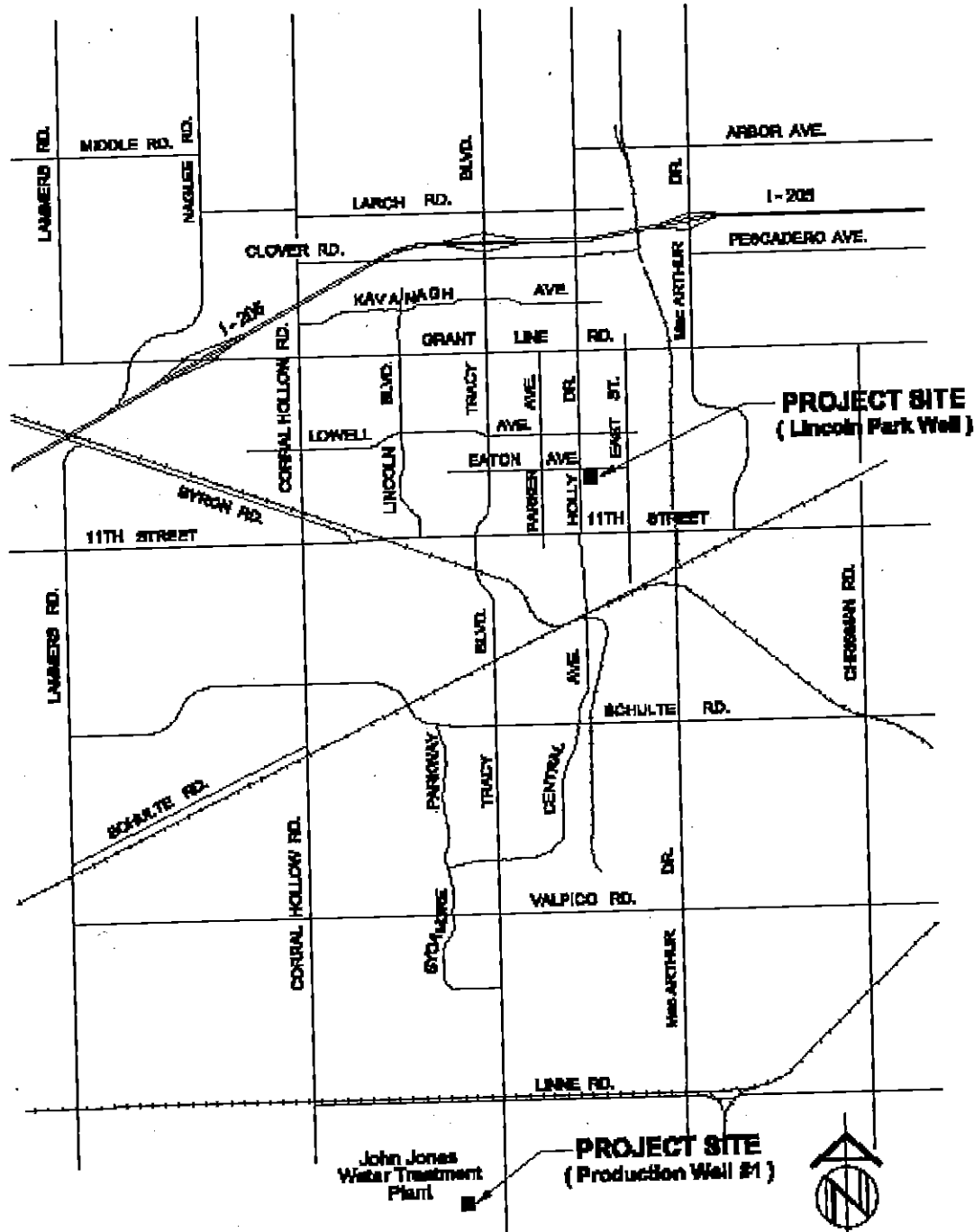
Agenda Item 1.G
June 7, 2011
Page 3

Prepared by: Dan Pangilinan, Assistant Civil Engineer
Paul Verma, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

Attachment A – Location Map



**LOCATION MAP
(CITY OF TRACY)**

NOT TO SCALE

RESOLUTION 2011-_____

AWARDING A CONSTRUCTION CONTRACT TO ZIM INDUSTRIES OF FRESNO, CALIFORNIA, FOR THE CONSTRUCTION OF THE LINCOLN PARK WELL & PRODUCTION WELL #1 REHABILITATION PROJECT – CIP 75076, APPROVING A SUPPLEMENTAL APPROPRIATION OF \$251,000 FROM WATER FUND (F513), AND AUTHORIZING THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT

WHEREAS, The scope of work for this project includes replacement of the well pumps; well cleaning and rehabilitation including video survey, mechanical cleaning, chemical treatment, well development, and disinfecting, and

WHEREAS, The project was advertised for competitive bids on April 8, and April 15, 2011, and four bids were received and publicly opened on May 3, 2011, and

WHEREAS, Zim Industries of Fresno, California, is the lowest monetary bidder, and the bid analysis indicates that the lowest bid is “responsive” and the bidder is “responsible”, and

WHEREAS, The total cost for this project, if awarded to Zim Industries is as follows:

| | |
|------------------------------------|------------------|
| • Design Cost | \$ 59,600 |
| • Construction Cost | |
| Construction Bid | \$451,975 |
| Contingency (10%) | \$ 45,198 |
| Design Support During Construction | \$ 6,000 |
| Inspection (5%) | \$ 22,599 |
| City wide Project Management | <u>\$ 48,149</u> |
| Total Project Construction Cost | \$633,521 |

WHEREAS, There will be no fiscal impact to the General Fund. A total of \$383,900 is budgeted for the Lincoln Park Well Rehabilitation Project – CIP 75076 in FY 2010-11. Due to the addition of the Rehabilitation of Production Well #1 in the scope of work of this project, a supplemental appropriation in the amount of \$251,000 is needed from Water Capital Fund (F513) in to CIP 75076;

NOW, THEREFORE, BE IT RESOLVED That City Council awards a construction contract to Zim Industries, of Fresno, California, in the amount of \$451,975, for construction of the Lincoln Park Well & Production Well #1 Rehabilitation Project – CIP 75076, approves a supplemental appropriation of funds in the amount of \$251,000 from Water Fund (F513), and authorizes the Mayor to execute the construction contract.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 7th day of June 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.H

REQUEST

REJECT ALL BIDS FOR THE FOR THE HVAC REPLACEMENT – PARKS AND COMMUNITY SERVICES BUILDING PROJECT - CIP 78119 AND AUTHORIZE STAFF TO UPDATE THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS AND RE-ADVERTISE THE PROJECT FOR CONSTRUCTION BIDS

EXECUTIVE SUMMARY

City Council is being asked to reject all bids for construction of the HVAC Replacement – P&CS Building Project - CIP 78119. This project was to replace the original heating ventilating and air conditioning (HVAC) system including the ductwork and temperature controls. After rejection of the bids, the project will be re-advertised with minor changes to the bid documents.

DISCUSSION

This project involves removal, disposal, and replacement of the existing old and high maintenance HVAC units located on the roof of the building. The new HVAC units include an energy-efficient HVAC multi-zone unit, packaged gas/electric unit, and fan coil units. The scope of work also includes installation of new thermostats, ductwork, grilles, diffusers, and climate controls.

The project plans and specifications were prepared by Alexander Scheflo and Associates of Stockton, California. The project was advertised for competitive bids on May 3, and May 10, 2011. The following six bids were received for the project and publicly opened on May 19, 2011 with the following results.

| <u>Contractor</u> | <u>Bid Amount</u> |
|---|-------------------|
| • J.H. Simpson Co., Stockton, CA | \$293,000 |
| • Kinetics Mechanical Service Inc., Livermore, CA | \$383,753 |
| • Hometown Construction Inc, Rio Linda, CA | \$434,138 |
| • Martinez Sheet Metal Inc, Martinez, CA | \$468,194 |
| • Cooper Oates Air Condition, Sacramento, CA | \$590,853 |
| • Modern Air, Merced, CA | \$622,260 |

J.H. Simpson Co. of Stockton, California, the lowest monetary bidder, gave the City written notice that it made a mistake in its bid and that it is withdrawing the bid in accordance with the provisions of the specifications.

Kinetics Mechanical Service Inc., of Livermore, CA, the second lowest bidder, did not attend the mandatory pre-bid conference as required by the project specifications. Therefore, the bid as submitted by Kinetics Mechanical Services is nonresponsive.

Staff has evaluated the remaining bids and concluded that rejecting all bids and rebidding the project will result in lower bids. Staff believes that it is in the City's best

interest to reject all bids and re-advertise the project. After City Council rejects all bids, staff will update the project specifications and contract documents and re-advertise the project for bids.

STRATEGIC PLAN

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

FISCAL IMPACT

This project is funded from the General Fund. An appropriation of additional funding is required to complete this project. The exact amount of the appropriation will be determined after opening the bids and at the time of award of the construction contract.

RECOMMENDATION

That City Council, by resolution, reject all bids for construction of the HVAC Replacement – Parks and Community Services Building Project - CIP 78119, and authorize staff to re-advertise the project after updating the project specifications and contract documents.

Prepared by: Paul Verma, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

RESOLUTION 2011-_____

REJECTING ALL BIDS FOR THE FOR THE HVAC REPLACEMENT – PARKS AND COMMUNITY SERVICES BUILDING PROJECT - CIP 78119 AND AUTHORIZING STAFF TO UPDATE THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS AND RE-ADVERTISE THE PROJECT FOR CONSTRUCTION BIDS

WHEREAS, This project involves removal, disposal, and replacement of the existing old and high maintenance HVAC units located on the roof of the building, and

WHEREAS, The project was advertised for competitive bids on May 3, and May 10, 2011, and six bids were received for the project and publicly opened on May 19, 2011, and

WHEREAS, J.H. Simpson Co. of Stockton, California, the lowest monetary bidder, gave the City written notice that it made a mistake in its bid and that it is withdrawing the bid in accordance with the provisions of the specifications, and

WHEREAS, Kinetics Mechanical Service Inc., of Livermore, CA, the second lowest bidder, did not attend the mandatory pre-bid conference as required by the project, rendering their bid nonresponsive, and

WHEREAS, Staff has evaluated the remaining bids and concluded that rejecting all bids and rebidding the project will result in lower bids, and

WHEREAS, This project is funded from the General Fund. An appropriation of additional funding is required to complete this project. The exact amount of the appropriation will be determined after opening the bids and at the time of award of the construction contract;

NOW, THEREFORE, BE IT RESOLVED That City Council rejects all bids for construction of the HVAC Replacement – Parks and Community Services Building Project - CIP 78119, and authorizes staff to re-advertise the project after updating the project specifications and contract documents.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 7th day of June 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.I

REQUEST

APPROVAL OF AN OFFSITE IMPROVEMENT AGREEMENT (OIA), FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS ALONG THE FRONTAGE OF THE PROPOSED AMERICAN CUSTOM MEATS MEAT PROCESSING FACILITY TO BE LOCATED ON 4276 NORTH TRACY BOULEVARD, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

American Custom Meats, LLC (Developer) is planning to renovate the existing industrial building located on Tracy Boulevard north of Larch Road for use as a meat storage and processing facility. Certain offsite street improvements on Tracy Boulevard are required to be constructed as a condition of approval of the building permit. The Developer wants to enter into an Offsite Improvement Agreement with the City to construct these improvements. Approval of this agreement will allow the Developer to proceed with construction of the required improvements.

DISCUSSION

The Developer has submitted a building permit application (10-1705) for renovation of the existing building located at 4276 North Tracy Boulevard, for a meat processing business.

As a condition of approval of the building permit, the Developer is required to construct certain offsite improvements on Tracy Boulevard to serve the Project. The offsite improvements primarily include street and utility improvements along the entire frontage of the Project on Tracy Boulevard. The Developer has offered dedication of frontage right-of-way for the purpose of widening Tracy Boulevard.

Improvement Plans and Specifications for the Offsite Improvements have been prepared and reviewed by Engineering staff. The Developer has executed the OIA and submitted the required security to guarantee completion of the Offsite Improvements covered under the OIA. The OIA is on file with the office of the City Engineer and is available for review upon request.

Upon completion, the City will accept all offers of dedication of public right-of-way, and accept the improvements for maintenance.

FISCAL IMPACT

There will be no impact to the General Fund.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

RECOMMENDATION

That the City Council, by resolution, approve the Offsite Improvement Agreement with American Custom Meats, and authorize the Mayor to execute the Offsite Improvement Agreement.

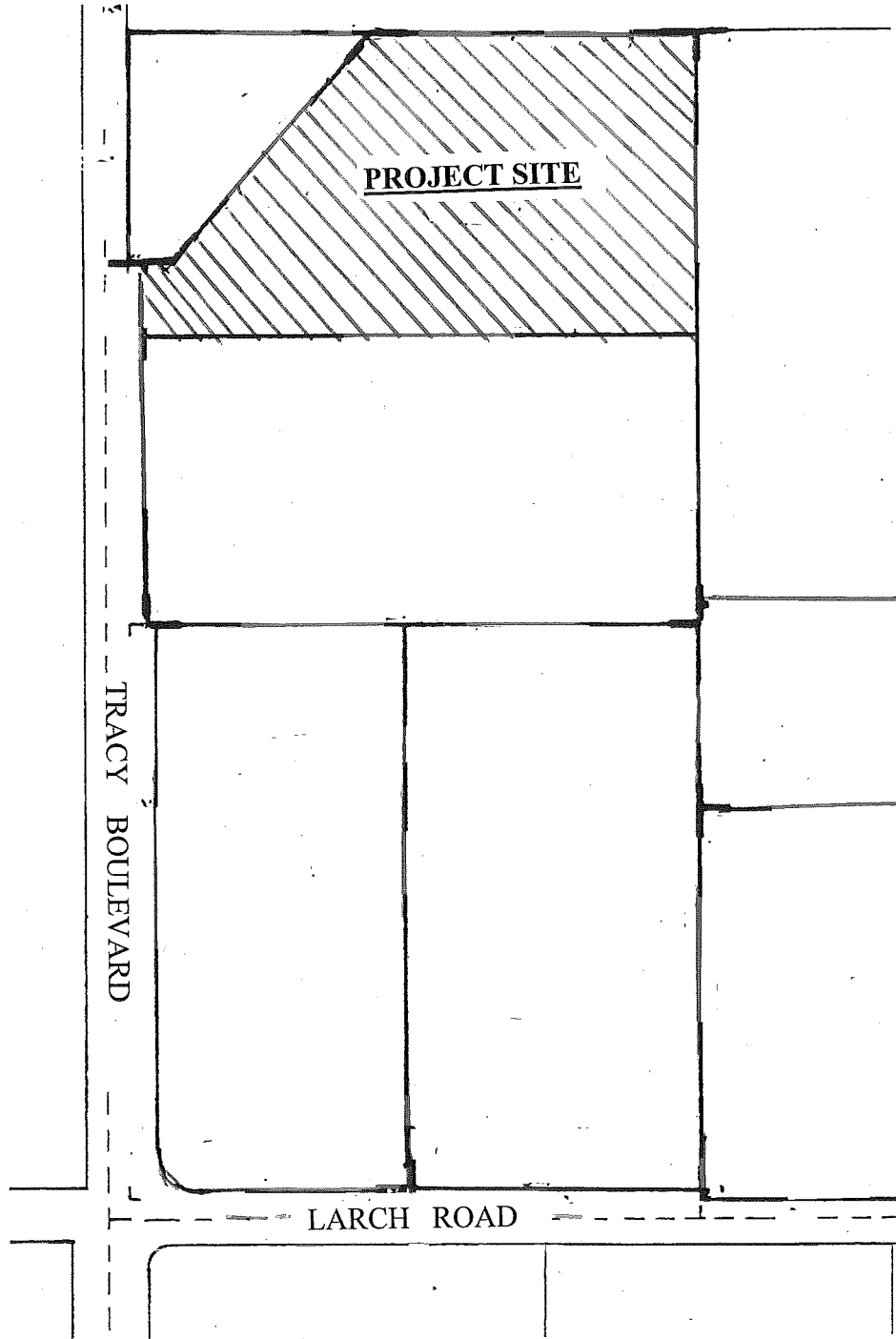
Prepared by: Ranchhod Pandya, Assistant Civil Engineer
Cris Mina, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

Approved by: Andrew Malik, Development and Engineering Services Director

Attachment - Vicinity Map

AMERICAN CUSTOM MEATS



VICINITY MAP
(NOT TO SCALE)

RESOLUTION 2011-_____

APPROVING AN OFFSITE IMPROVEMENT AGREEMENT (OIA), FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS ALONG THE FRONTAGE OF THE PROPOSED AMERICAN CUSTOM MEATS MEAT PROCESSING FACILITY TO BE LOCATED ON 4276 NORTH TRACY BOULEVARD, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The Developer has submitted a building permit application (10-1705) for renovation of the existing building located at 4276 North Tracy Boulevard, for a meat processing business, and

WHEREAS, As a condition of approval of the building permit, the Developer is required to construct certain offsite improvements on Tracy Boulevard to serve the Project, and

WHEREAS, The Developer has executed the OIA and submitted the required security to guarantee completion of the Offsite Improvements covered under the OIA, and

WHEREAS, Upon completion, the City will accept all offers of dedication of public right-of-way, and accept the improvements for maintenance, and

WHEREAS, There will be no impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council approves the Offsite Improvement Agreement with American Custom Meats, and authorizes the Mayor to execute the Offsite Improvement Agreement.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 7th day of June 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.J

REQUEST

APPROVE AMENDMENT NUMBER 4 TO THE PROFESSIONAL SERVICES AGREEMENT WITH MV TRANSPORTATION TO INCREASE THE NOT TO EXCEED AMOUNT BY \$25,000 FOR FISCAL YEAR 2010/2011 AND AUTHORIZE THE MAYOR TO SIGN THE AMENDMENT

EXECUTIVE SUMMARY

The City of Tracy currently has a Professional Services Agreement (PSA) with MV Transportation to operate the Tracer Bus System. This contract is set to expire June 30, 2011. Due to changes in the system over the past year, the amount of service hours has increased resulting in the necessity to increase the Not To Exceed amount in the current contract.

DISCUSSION

The City of Tracy currently has a Professional Services Agreement (PSA) with MV Transportation to operate the Tracer Bus System. The latest amendment to this contract was executed in June of 2009, which extended the contract for an additional two year period and specified a Not To Exceed amount for each year.

In November of 2009, the City Council approved a Short Range Transit Plan (SRTP) for the Tracer bus system. This plan detailed various route extensions to occur once the Tracy Transit Station was opened. In February of 2010, the Tracy Transit Station opened and minor route modifications were made to accommodate services outlined in the approved SRTP.

MV Transportation has informed City staff that, as a result of the additional service hours from the expansion of the Commuter bus route as well as an increase in the hours of Paratransit service, the cost of its services will exceed the contract amount by \$25,000.

The contract provides that an amendment to the price can only be approved by the City in writing. This approval must come from the City Council.

STRATEGIC PLAN

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

FISCAL IMPACT

As a result of this action, an additional \$25,000 will be spent from the Transit Enterprise Fund for Fiscal Year 2010-2011.

RECOMMENDATION

That City Council, by resolution, approves Amendment No. 4 to the the Professional Services Agreement with MV Transportation to increase the Not To Exceed amount by \$25,000 for Fiscal Year 2010/2011 and authorizes the Mayor to sign the Amendment.

ATTACHMENT

Exhibit "A" – Amendment No. 4 to the Professional Services Agreement

Prepared by: Ed Lovell, Management Analyst II

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

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

**AMENDMENT NO. 4 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF TRACY AND WITH MV PUBLIC TRANSPORTATION, INC.**

This Amendment No. 4 (hereafter "Amendment") amends the Professional Services Agreement that the City of Tracy ("CITY") and **MV PUBLIC TRANSPORTATION, INC.**, a California corporation, ("CONTRACTOR").

RECITALS

- A. On June 17, 2006, CITY executed a Professional Services Agreement ("Agreement") with CONTRACTOR for Public Transportation Services.
- B. Section 17 of the Agreement states that the Agreement may not be modified orally or in any manner other than by an amendment in writing signed by both parties.
- C. CITY and CONTRACTOR have entered into three previous written amendments to the Agreement.
- D. Section 6.1 of the Agreement provides that No other work shall be performed by CONTRACTOR in excess of the "Not To Exceed" amounts without prior written approval of the CITY.
- E. CITY and CONTRACTOR want to increase the "Not to Exceed" amount for July 1, 2010 through June 30, 2011 by \$25,000.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. The recitals set forth above are true and correct.
- 2. The "Not to Exceed" amount for Fiscal Year 2010/2011 is increased to \$814,273.
- 3. This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, and prior Amendments thereto, unless specifically deleted or modified hereby. Such deletions or modifications shall not be deemed to extinguish any monetary obligation that CONTRACTOR assumed thereunder.
- 4. 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 CONTRACTOR and the CITY. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY:

By: _____

Brent H. Ives

Title: Mayor

Date: _____

CONTRACTOR:

By: _____

Title: CFO

Date: _____

CITY OF TRACY AMENDMENT NO. 4
TO PROFESSIONAL SERVICES AGREEMENT WITH MV PUBLIC TRANSPORTATION, INC.
Page 2 of 2

Attest:

By: _____

Sandra Edwards

Title: Clerk

Date: _____

By: _____

Title:

Date: _____

Approved As To Form:

By: _____

Bill Sartor

Title: Assistant City Attorney

Date: _____

RESOLUTION _____

APPROVING AMENDMENT NUMBER 4 TO THE PROFESSIONAL SERVICES AGREEMENT WITH MV TRANSPORTATION INCREASING THE NOT TO EXCEED AMOUNT \$25,000 FOR FISCAL YEAR 2010/2011 AND AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT

WHEREAS, The City of Tracy has entered into a Professional Services Agreement with MV Transportation which expires June 30, 2011; and

WHEREAS, The City Council approved changes in service to the Tracer bus system which resulted in the increase of service hours based on recommendations in the Short Range Transit Plan; and

WHEREAS, To cover the cost of the increase in services hours, the Not To Exceed Amount of the Professional Services Agreement needs to increase by \$25,000 for Fiscal Year 2010/2011.

NOW, THEREFORE, BE IT RESOLVED, That City Council approves an Amendment to the Professional Services Agreement with MV Transportation increasing the Not To Exceed Amount by \$25,000 for Fiscal Year 2010/2011 and authorizes the Mayor to sign the Amendment.

* * * * *

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

AGENDA ITEM 3

REQUEST

JOINT PUBLIC HEARING OF THE CITY COUNCIL AND THE COMMUNITY DEVELOPMENT AGENCY TO CONSIDER ADOPTION OF THE ANNUAL BUDGET FOR THE CITY OF TRACY AND THE TRACY COMMUNITY DEVELOPMENT AGENCY FOR FISCAL YEAR 2011-2012 AND APPROPRIATE FUNDS

EXECUTIVE SUMMARY

This is a joint public hearing in regards to the proposed City and Agency budget for Fiscal Year 2011-2012. Upon conclusion of the hearing the Council will consider an appropriations resolution to adopt the City budget and the Board of Directors of the Community Development Agency will consider an appropriations resolution to adopt the Agency budget.

DISCUSSION

Operating Budget. The proposed operating budget for the Fiscal Year 2011-2012 was presented to the City Council at a budget workshop on May 17, 2011. The focus of the operating budget is the General Fund. As presented at the budget workshop the proposed General Fund expenditure budget was \$47,285,150. However, revenues are not sufficient to cover expenses thereby resulting in a draw on reserves (budget deficit) of \$1,555,230.

The budget to be adopted is identical to that presented at the workshop as City Council did not request any changes to the proposed budget. However, a further review by staff indicated the additional \$125,000 for Police overtime for gang intervention had inadvertently not been included in the published figures. This has been corrected.

At the budget workshop it was also noted that the Police Department proposed a different organizational structure and program budget that what was published in the proposed budget. Although the total appropriation of \$22,430,850 to the department remains the same, its allocation to the 14 programs in the department is slightly modified. Attached are new budget pages for the Police Department programs.

All labor agreements with City labor units (except Police) have either already expired or will expire on 6/30/11. Possible outcome from these negotiations may lessen the budget deficit. The Police labor contract does not expire until 6/30/12.

CIP Budget. The proposed capital budget for Fiscal Year 2011-2012 was presented to the City Council at a workshop on March 17, 2011. At the workshop no changes were requested to the proposed CIP.

The Budget Resolution

The text of the proposed resolution authorizes the appropriations and interfund transfers for FY 11-12 in Sections 1 and 2.

Section 3 of the resolution provides for all investment earnings and gains in FY 10-11 and FY 11-12 for funds with General Fund derived cash balances and the City's internal services funds will be allocated to the General Fund 101.

Section 4 of the budget resolution appropriates any unappropriated proceeds of taxes to contingency reserves although none are anticipated. This section provides for a formal statement of the practice as policy for purposes of Gann Limit compliance. Also, it sets a targeted fund balance of \$18,985,100 for the City's General Fund 101. It authorized staff to maintain this targeted fund balance at fiscal year-end, by transferring monies in or out of the General Fund 101 with the Economic Uncertainty Fund 299.

Section 5 specifies there is no uncommitted development impact fee monies held by the City from prior fiscal years. All fees collected to date have either been spent on capital projects or are committed to projects scheduled in the City's capital improvement plan.

Section 6 provides that any over expenditures in the current FY 10-11 operating budget as amended at the fund and department level will be offset by an equal reduction for the same fund and department in the new adopted budget for FY 11-12. It is not anticipated that any department will exceed their FY 10-11 amended budget.

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

STRATEGIC PLAN

Although difficult fiscal times, the proposed budget will allow for funding of substantial efforts to meet all of the Council's strategic plans. If a certain item within one of these plans cannot be accomplished within the proposed budget, such matter will be identified for City Council at a later date.

FISCAL IMPACT

The annual City budget to be adopted for FY 11-12 will be as follows:

| | <u>General Fund</u> | <u>CDA Funds</u> | <u>All Funds</u> |
|------------------|---------------------|--------------------|----------------------|
| Operating Budget | \$47,408,150 | \$383,560 | \$111,907,350 |
| Capital Budget | 0 | 0 | 43,698,390 |
| Debt Service | <u>1,173,000</u> | <u>7,216,000</u> | <u>26,259,100</u> |
| TOTAL | \$48,581,150 | \$7,599,560 | \$181,864,840 |

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

RECOMMENDATION

Upon concluding the Public Hearing, staff recommends that the City Council adopt the attached City of Tracy Budget and Appropriations Resolution for Fiscal Year 2011-2012; and that the Agency Board of Directors adopt the Community Development Agency Budget and Appropriations Resolutions for Fiscal Year 2011-2012.

Prepared by: Allan J. Borwick, Budget Officer
Reviewed by: Zane H. Johnston, Finance and Administrative Services Director
Approved by: R. Leon Churchill, Jr., City Manager

RESOLUTION _____

ADOPTING THE ANNUAL BUDGET AND APPROPRIATIONS FOR THE CITY OF TRACY
FOR FISCAL YEAR 2011-2012

WHEREAS, The proposed operating, capital, and debt budgets for the City of Tracy for Fiscal Year 2011-2012 were submitted to the City Council on May 12, 2011, and

WHEREAS, Public workshops and a public hearing were held by the City Council to review, consider, and deliberate upon the proposed budgets, as well as to hear any public comments upon the budgets, and

WHEREAS, The proposed budgets presented to the City Council and any modifications made have been incorporated into budget;

NOW, THEREFORE, BE IT RESOLVED That the City Council of the City of Tracy does approve as follows:

Section 1: Adopted Budget for the Fiscal Year 2011-2012

There is hereby appropriated from the unappropriated fund balances anticipated to be available on July 1, 2011, and from the estimated revenues and transfers in to be received during the Fiscal Year beginning July 1, 2011, and ending June 30, 2012, the following amounts necessary to fund the operating programs of City departments, the City debt service programs, and the various projects of the City's Capital Improvement Program (CIP) during said Fiscal Year.

1. From the General Fund 101 and its various sub-funds for:

| | |
|---|---------------------|
| The Police Department | \$22,416,850 |
| The Fire Department | 8,486,770 |
| The Public Works Department | 3,321,320 |
| The Parks & Community Services Department | 2,888,020 |
| The Development & Engineering Department | 6,098,310 |
| The Economic Development Department | 344,690 |
| The City Council | 99,900 |
| The City Attorney's Office | 817,030 |
| The City Manager's Office | 2,907,480 |
| The Human Resources Department | 695,530 |
| The Finance & Administrative Services | 2,114,580 |
| The Indirect Costs Program | (1,154,000) |
| The Equipment Acquisition Program | 121,650 |
| The Special Reserves Program | 250,020 |
| CIP Projects | 0 |
| Debt Service Program | 0 |
| Sub-Total | \$49,408,150 |
| Budget Savings | (2,000,000) |
| TOTAL | \$47,408,150 |

| | | | |
|-----|--|----|------------------|
| 2. | From the South County Fire Authority Fund 211 for: | | |
| | The Indirect Costs Program | \$ | 184,900 |
| | The Equipment Acquisition Program | | 15,660 |
| | The Fire Department | | 6,740,940 |
| | Special Reserves Program | | 15,000 |
| | | \$ | <u>6,956,500</u> |
| 3. | From the Downtown Improvement District Fund 221 for: | | |
| | The Downtown Promotions Program in Economic Dev | \$ | 135,000 |
| 4. | From the Parking District Fund 222 for: | | |
| | The Downtown Parking Program in DES | \$ | 0 |
| 5. | From the Asset Forfeiture Fund 231 for: | | |
| | The Equipment Acquisition Program | \$ | 30,000 |
| | The Police Department | | 14,000 |
| | | \$ | <u>44,000</u> |
| 6. | From the Transportation Development Act Fund 241 for: | | |
| | The Indirect Costs Program | \$ | 37,000 |
| | The Public Works Department | | 1,279,000 |
| | The Development and Engineering Department | | 175,000 |
| | The Equipment Acquisition Program | | 0 |
| | CIP Streets and Highways Projects | | 0 |
| | | \$ | <u>1,491,000</u> |
| 7. | From the Transportation Sales Tax Fund 242 for: | | |
| | CIP Traffic Safety Program | \$ | 0 |
| | CIP Streets and Highways Projects | | 1,830,000 |
| | CIP Parks & Recreation Projects | | 0 |
| | | \$ | <u>1,830,000</u> |
| 8. | From the Traffic Congestion Relief Fund 243 for: | | |
| | CIP Streets and Highway Projects | \$ | 0 |
| 9. | From the State Prop 1B Road Bonds Fund 244 for: | | |
| | CIP Streets and Highway Projects | \$ | 0 |
| 10. | From the Gas Tax (Maintenance) Funds 245, 246 & 247 for: | | |
| | The Indirect Costs Program | \$ | 39,000 |
| | The Public Works Department | | 1,311,000 |
| | CIP Traffic Safety Program | | 600,000 |
| | CIP Streets & Highways Projects | | 230,000 |
| | | \$ | <u>2,180,000</u> |
| 11. | From the Federal TEA Grant Fund 261 for: | | |
| | CIP Traffic Safety Program | \$ | 0 |
| | CIP Streets & Highways Projects | | 5,654,300 |
| | | \$ | <u>5,654,300</u> |
| 12. | From the Community Development Block Grant Fund 268 for: | | |
| | The Economic Development Department | \$ | 333,330 |
| | CIP Streets and Highways Projects | | 0 |
| | CIP Parks & Recreation Projects | | 128,000 |
| | | \$ | <u>461,330</u> |

| | | | |
|-----|---|----|------------------|
| 13. | From the Landscaping Districts Fund 271 for: | | |
| | The Indirect Costs Program | \$ | 88,300 |
| | The Equipment Acquisition Program | | 0 |
| | The Public Works Department | | 2,229,530 |
| | The CIP Streets and Highways Projects | | 0 |
| | The CIP Parks & Recreation Projects | | 0 |
| | | \$ | <u>2,317,830</u> |
| 14. | From the Community Development Agency Housing Fund 281 for: | | |
| | The Indirect Costs Program | \$ | 42,000 |
| | The Equipment Acquisition Program | | 0 |
| | The Economic Development Department | | 341,560 |
| | Debt Service Programs | | 36,500 |
| | CIP Miscellaneous Projects | | 0 |
| | | \$ | <u>420,060</u> |
| 15. | From the Education Government CTV Fund 295 for: | | |
| | The Indirect Costs Program | \$ | 13,700 |
| | The Equipment Acquisition Program | | 0 |
| | The City Manager's Office | | 96,070 |
| | The Equipment Acquisition Program | | 0 |
| | | \$ | <u>109,770</u> |
| 16. | From the General Projects Fund 301 for: | | |
| | CIP General Government Projects | \$ | 43,000 |
| | CIP Streets & Highways Projects | | 0 |
| | CIP Parks & Community Services Projects | | 1,053,000 |
| | CIP Miscellaneous Projects | | 0 |
| | | \$ | <u>1,096,000</u> |
| 17. | From the Parks Infill Fund 311 for: | | |
| | CIP Parks and Recreation Projects | \$ | 0 |
| 18. | From the Drainage Infill Fund 312 for: | | |
| | CIP Drainage Projects | \$ | 0 |
| 19. | From the Arterials Infill Fund 313 for: | | |
| | CIP Streets and Highways Projects | \$ | 0 |
| 20. | From the Building Infill Fund 314 | | |
| | CIP General Government Projects | \$ | 0 |
| 21. | From the Redevelopment Agency Obligations Fund 317 | | |
| | Indirect Costs Program | \$ | 87,900 |
| | The Development & Engineering Department | | 125,150 |
| | The Economic Development Department | | <u>260,770</u> |
| | | | 473,820 |
| 22. | From the Plan C Arterials Fund 322 for: | | |
| | CIP Drainage Projects | \$ | <u>0</u> |
| 23. | From the Plan C Drainage Fund 323 for: | | |
| | CIP Traffic Safety Projects | \$ | <u>0</u> |

| | | |
|-----|---|--|
| 24. | From the Plan C General Facilities Fund 324 for: CIP Parks and Recreation Projects | \$ <u>0</u> |
| 25. | From the Plan C Utilities Fund 325 for: CIP Water Projects CIP Wastewater Projects CIP Interfund Reimbursements | \$ 0 0 0 <u>0</u> \$ 0 |
| 26. | From the RSP Program Management Fund 345 for: CIP General Government Projects CIP Arterials Projects CIP Interfund Reimbursements | \$ 0 0 0 <u>0</u> \$ 0 |
| 27. | From the Northeast Industrial Area #1 Fund 351 for: CIP General Government Projects CIP Arterials Projects CIP Water Projects CIP Miscellaneous Projects CIP Interfund Reimbursements | \$ 3,420 0 0 50,000 2,600,000 <u>2,653,420</u> \$ 2,653,420 |
| 28. | From the South MacArthur Area Fund 352 for: CIP General Government Projects CIP Parks & Recreation Projects CIP Miscellaneous Projects | \$ 5,100 8,900 50,000 <u>64,000</u> \$ 64,000 |
| 29. | From the I-205 Corridor Development Fund 353 for: CIP Arterials Projects CIP Miscellaneous Projects | \$ 0 25,000 <u>25,000</u> \$ 25,000 |
| 30. | From the Industrial Specific Plan, South Fund 354 for: CIP General Government Projects CIP Traffic Safety Projects CIP Streets and Highways Projects CIP Wastewater Projects CIP Drainage Projects CIP Miscellaneous Projects | \$ 334,600 0 0 0 231,500 75,000 <u>641,100</u> \$ 641,100 |
| 31. | From the Presidio Fund 355 for: CIP Parks & Recreation Projects CIP Miscellaneous | \$ 7,000 50,000 <u>57,000</u> \$ 57,000 |
| 32. | From the Tracy Gateway Area Fund 356 for: CIP Traffic Safety Projects CIP Streets & Highways Projects CIP Wastewater Improvements CIP Water Improvements CIP Parks & Recreation Projects | \$ 0 9,477,370 0 5,273,000 242,300 <u>14,992,670</u> \$ 14,992,670 |

| | | | |
|-----|---|----|-------------------|
| 33. | From the NE Industrial Area #2 Fund 357 for: | | |
| | CIP General Government Projects | \$ | 0 |
| | CIP Streets & Highways Projects | | 653,700 |
| | CIP Miscellaneous Projects | | 280,200 |
| | | \$ | <u>933,900</u> |
| 34. | From the Community Development Agency Project Fund 381 for: | | |
| | The Indirect Costs Program | \$ | 0 |
| | The Development & Engineering Services Department | | 0 |
| | The Economic Development Department | | 0 |
| | CIP Streets & Highways Projects | | 0 |
| | CIP Airport Projects | | 0 |
| | CIP Parks & Recreation Projects | | 0 |
| | | \$ | <u>0</u> |
| 35. | From the UMP Facilities Fund 391 for: | | |
| | CIP Parks and Recreation Projects | \$ | 310,000 |
| | CIP Miscellaneous Projects | | 100,000 |
| | | \$ | <u>410,000</u> |
| 36. | From the CIP Deposits Fund 395 for: | | |
| | The Capital Improvements Programs CIP Deposits | \$ | 10,380,000 |
| 37. | From the Community Development Agency Debt Fund 404 for: | | |
| | The Redevelopment Debt Program | \$ | 7,179,500 |
| 38. | From the 2008 Lease Revenue Bonds Fund 407 for: | | |
| | Debt Service Programs | \$ | 284,800 |
| 39. | From the 2009 Lease Revenue Bonds Fund 408 for: | | |
| | Debt Service Programs | \$ | 1,354,500 |
| 40. | From the Water Operating Fund 511 for: | | |
| | The Indirect Costs Program | \$ | 278,100 |
| | The Finance Department | | 559,400 |
| | The Special Reserves Program | | 25,000 |
| | The Equipment Acquisition Program | | 150,100 |
| | The Public Works Department | | 12,133,300 |
| | The Development & Engineering Department | | 79,050 |
| | Debt Service Programs | | 1,657,700 |
| | | \$ | <u>14,882,650</u> |
| 41. | From the Water Capital Fund 513 for: | | |
| | CIP Water Improvements Projects | \$ | 3,295,000 |
| | CIP Interfund Reimbursements | | (2,600,000) |
| | | \$ | <u>695,000</u> |
| 42. | From the Wastewater Operating Fund 521 for: | | |
| | The Indirect Costs Program | \$ | 210,000 |
| | The Finance Department | | 248,700 |
| | The Special Reserves Program | | 25,000 |
| | The Equipment Acquisition Program | | 132,900 |
| | The Public Works Department | | 7,190,060 |
| | The Development & Engineering Department | | 98,970 |
| | Debt Service Programs | | 2,259,200 |
| | | \$ | <u>10,164,830</u> |

| | | | |
|-----|--|----|-------------------|
| 43. | From the Wastewater Capital Fund 523 for: | | |
| | CIP Wastewater Improvements Projects | \$ | 1,190,000 |
| | CIP Interfund Reimbursements | | 0 |
| | | \$ | <u>1,190,000</u> |
| 44. | From the Solid Waste Funds 531, 532 and 533 for: | | |
| | The Indirect Costs Program | \$ | 31,900 |
| | The Finance & Administrative Services Department | | 283,500 |
| | The Public Works Department | | 18,234,150 |
| | | \$ | <u>18,549,550</u> |
| 45. | From the Drainage Fund 541 for: | | |
| | The Indirect Costs Program | \$ | 17,600 |
| | The Finance & Administrative Services Department | | 19,800 |
| | The Public Works Department | | 466,030 |
| | The Development and Engineering Department | | 25,000 |
| | CIP Drainage Projects | | 43,000 |
| | | \$ | <u>571,430</u> |
| 46. | From the Airport Fund 561 for: | | |
| | The Indirect Costs Program | \$ | 57,600 |
| | The Parks and Community Services Department | | 314,820 |
| | Debt Service Programs | | 25,300 |
| | | \$ | <u>397,720</u> |
| 47. | From the Airport Capital Fund 563 for: | | |
| | CIP Airport Improvements Projects | \$ | <u>0</u> |
| 48. | From the Transit Fund 571 for: | | |
| | The Indirect Costs Program | \$ | 35,500 |
| | The Equipment Acquisition Program | | 0 |
| | The Parks and Community Services Department | | 1,628,700 |
| | | \$ | <u>1,664,200</u> |
| 49. | From the Transit Capital Fund 573 for: | | |
| | CIP Transit Projects | \$ | 1,775,000 |
| 50. | From the Central Garage Fund 601 for: | | |
| | The Indirect Costs Program | \$ | 30,500 |
| | The Equipment Acquisition Program | | 0 |
| | The Public Works Department | | 1,315,810 |
| | CIP General Government Projects | | 0 |
| | | \$ | <u>1,346,310</u> |
| 51. | From the Central Services Fund 602 for: | | |
| | The Finance and Administrative Services Department | \$ | 1,434,120 |
| | The Equipment Acquisition Program | | 0 |
| | Debt Service Programs | | 0 |
| | | \$ | <u>1,434,120</u> |
| 52. | From the Equipment Acquisition Fund 605 for: | | |
| | Debt Services Programs | \$ | 73,200 |
| | The Equipment Acquisition Program | | 504,220 |
| | CIP Projects | | 300,000 |
| | | \$ | <u>877,420</u> |
| 53. | From the Vehicle Acquisition Fund 606 for: | | |
| | The Equipment Acquisition Program | \$ | 371,200 |

| | | | |
|------------------------------|---|-----------|----------------------------------|
| 54. | From the Building Maintenance Fund 615 for: | | |
| | The Public Works Department | \$ | 1,061,800 |
| | The Equipment Acquisition Program | | 0 |
| | | \$ | <u>1,061,800</u> |
| 55. | From the Self-Insurance Fund 627 for: | | |
| | The Equipment Acquisition Program | \$ | 0 |
| | The Human Resources Department | | 512,960 |
| | The NonDepartmental Group | | 3,128,600 |
| | | | <u>3,641,560</u> |
| 56. | From the Medical Leave Bank Fund 811 for: | | |
| | The Special Reserves Program | \$ | 300,000 |
| 57. | From the Assessment District 87-3 (Water) Fund 831 for: | | |
| | Debt Service Program | \$ | 1,670,420 |
| 58. | From the CFD 89-1 Debt Fund 835 for: | | |
| | Debt Service Programs | \$ | 1,317,400 |
| | CIP Interfund Reimbursements | | 0 |
| | | \$ | <u>1,317,400</u> |
| 59. | From the CFD 99-1 Fund 837 for: | | |
| | Debt Service Programs | \$ | 744,100 |
| 60. | From the CFD 99-2 Fund 838 for: | | |
| | Debt Service Programs | \$ | 888,000 |
| 61. | From the AD 00-02 Fund 839 for: | | |
| | Debt Service Programs | \$ | 74,800 |
| 62. | From the CFD 00-01 Fund 840 for: | | |
| | Debt Service Programs | \$ | 896,600 |
| 63. | From the Assessment District 94-1 Fund 841 for: | | |
| | Debt Service Programs | \$ | 396,000 |
| 64. | From the CFD 93-1 Fund 844 for: | | |
| | Debt Service Programs | \$ | 306,000 |
| 65. | From the CFD 98-1 Fund 846 for: | | |
| | Debt Service Programs | \$ | 4,690,700 |
| 66. | From the CFD 98-3 Fund 847 for: | | |
| | Debt Service Programs | \$ | 325,000 |
| 67. | From the AD 98-4 Fund 849 for: | | |
| | Debt Service Programs | \$ | 204,000 |
| 68. | From the I-205 RAA Debt Refinancing Fund 850 for: | | |
| | Debt Service Programs | \$ | 930,000 |
| 69. | From the AD 02-03 Larch Clover Area Fund 851 for: | | |
| | Debt Service Programs | \$ | 0 |
| 70. | From the AD 03-01 Berg Avenue Area Fund 852 for: | | |
| | Debt Service Programs | \$ | 79,800 |
| 71. | From the CFD 06-01 NE Industrial Area #2 Fund 853 for: | | |
| | Debt Service Programs | \$ | 657,800 |
| 72. | From new Financing Districts to be established: | | |
| | Debt Service Program | \$ | 208,000 |
| Grand Total All Funds | | \$ | <u><u>181,864,840</u></u> |

Section 2: Authorized Interfund Transfers for Fiscal Year 2011-2012.

There is hereby authorized the transfers of the following amounts from one fund to another for the stated purpose during said Fiscal Year 2011-2012.

| | | |
|----|--|---------------------|
| 1. | From the General Fund 101 for debt service payments: | |
| | To the 2007 Lease Revenue Bond Fund 407 | \$ 284,000 |
| | To the 2008 Lease Revenue Bond Fund 408 | \$ 889,000 |
| | Sub-total | \$ 1,173,000 |
| 2. | From the CDA Debt Fund 404 for 20% housing set-aside: | |
| | To CDA Housing Fund 281 | \$ 1,848,000 |
| 3. | From CDA Debt Fund 404 for debt service payments | |
| | To the 208 Lease Revenue Bond Fund 408 | \$ 400,000 |
| 4. | From the Airport Fund 561 for loan repayment: | |
| | To the Water Capital Fund 513 | \$ 20,000 |
| 5. | From the Economic Uncertainty Fund 299 for a operating transfer: | |
| | To the General Fund 101 | \$ 1,555,230 |
| | Total Transfers | <u>\$ 4,996,230</u> |

Section 3: Interest Allocation and Stabilization

All investment earnings and gains in FY 10-11 and FY 11-12 for funds with General Fund derived cash balances and the City's internal services funds, will be allocated to the General Fund 101.

Section 4: Contingency Reserves

Any proceeds of taxes received in FY 10-11 or FY 11-12, in excess of those appropriated or transferred in Sections 1 and 2 above shall be appropriated into a contingency reserve for their respective fund.

The General Fund fund balance is targeted at \$18,985,100 at fiscal year-end for both FY 10-11 and FY 11-12. Staff is authorized to transfer any monies into or out of the General Fund 101, and from or to the Economic Uncertainty Fund 299 respectively, to maintain the targeted fund balance.

Section 5: No Uncommitted Development Fees

The City prepares and maintains a five-year capital improvement plan. In accordance with this plan, there are no uncommitted development fee monies from prior fiscal years that should be refunded as per Government Code 66001(d).

Section 6: Reduction for Prior Year Over Expenditures

Any over expenditures of the FY 10-11 operating budget as amended at the fund and department level shall be offset by an equal reduction for the same fund and department in the new FY 11-12 budget.

Section 7: Reduction for Expenditures of Unrealized Fee & Grant Revenues

In any program where a budget is established based upon a projection of fee and/or grant revenues, covering at least 20% of program costs, it is expected that if actual revenues received are less than projected, that actual expenses paid from the program should also be less by an equal amount. If any expenditure of unrealized revenue occurs in FY 10-11, the portion over shall be offset by an equal reduction for the same fund and department in the new FY 11-12 budget.

Section 8: Franchise Fees

Franchise fees for the City's Solid Waste Enterprise will be charged at 10% of enterprise receipts as per the agreement with Tracy Disposal. The charges collected will be deposited to the City's General Fund.

* * * * *

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

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

Mayor

ATTEST:

City Clerk

CDA RESOLUTION _____

ADOPTING THE ANNUAL BUDGET AND APPROPRIATIONS RESOLUTION FOR THE
COMMUNITY DEVELOPMENT AGENCY FOR THE CITY OF TRACY
FOR FISCAL YEAR 2011-2012

WHEREAS, The Community Development Agency of the City of Tracy's proposed budget for Fiscal Year 2011-2012 was included in the proposed City budget for the Fiscal Year 2011-2012, and

WHEREAS, The proposed City budget for Fiscal Year 2011-2012 was submitted to the City Council on May 12, 2011 and a budget workshop was held on May 17, 2011 to present the proposed budget, and

WHEREAS, it is necessary for the Agency to take separate action on its proposed budget;

NOW, THEREFORE, BE IT RESOLVED That the Community Development Agency of the City of Tracy does hereby approve as follows:

Section 1: Adopted Budget for the Fiscal Year 2011-2012

There is hereby appropriated from the unappropriated fund balances anticipated to be available on July 1, 2011, and from the estimated revenues and transfers to be received during the Fiscal Year beginning July 1, 2011, and ending June 30, 2012 the following amounts necessary to fund the operating programs, debt service, and capital projects of the Community Development Agency of the City Of Tracy.

| | | | |
|----|--------------------------------|-------------|-----------|
| 1. | CDA Housing Fund 281 | | |
| | Administrative Costs | \$ | 42,000 |
| | Housing Program 56830 | | 341,560 |
| | Capital Projects | | 0 |
| | Debt Service | | 36,500 |
| | Total | \$ | 420,060 |
| 2. | CDA Project Fund 381 | | |
| | Administrative Costs | \$ | 0 |
| | Redevelopment Program 56820 | | 0 |
| | Code Enforcement Program 56515 | | 0 |
| | Capital Projects | | 0 |
| | Total | \$ | 0 |
| 3. | CDA Debt Fund 404 | | |
| | Debt Services | \$ | 7,179,500 |
| | Transfer to Housing Fund 281 | | 1,848,000 |
| | Transfer to Project Fund 381 | | 0 |
| | Transfer to Debt Fund 404 | | 400,000 |
| | Total | \$ | 9,427,500 |
| | Agency Total | \$ | 9,847,560 |
| | Interfund Agency Transfers | (1,848,000) | |
| | Net Agency Total | \$ | 7,999,560 |

Section 2: Contingency Reserves

Any proceeds of taxes received in FY 10-11 or FY 11-12, in excess of those appropriated above, shall be appropriated into a contingency reserve for their respective funds.

* * * * *

The foregoing Resolution _____ was adopted by the Community Development Agency of the City Of Tracy on the _____ day of _____, 2011, by the following vote:

AYES: AGENCY MEMBERS:

NOES: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

Chairperson

ATTEST:

Agency Secretary

June 7, 2011

CC AGENDA ITEM 4
CDA AGENDA ITEM 4

REQUEST

APPROVAL OF A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND FAHD OLOMARI, OLOMARI PROPERTIES LLC, AND OLOMARI ENTERPRISES, INC. FOR PROPERTY LOCATED AT 729 AND 741 CENTRAL AVENUE AND AUTHORIZE THE AGENCY BOARD TO ACCEPT THE ASSIGNMENT OF THE PURCHASE AND SALE AGREEMENT

EXECUTIVE SUMMARY

Fahd Olomari, an individual, ("Mr. Olomari"), Olomari Properties LLC, a California limited liability company (the "Olomari LLC"), and Olomari Enterprises, Inc., a California corporation d.b.a. Westside Market (the "Affiliated Tenant") desires to sell the property commonly referred to as 729 and 741 Central Avenue, Tracy, CA (A.P.N. 235-068-06), including all buildings and improvements located thereon and including the business (the "Property"). Mr. Olomari, Olomari LLC and the Affiliated Tenant are collectively referred to as the Seller. The City of Tracy desires to purchase the Property from the Seller upon the specific terms and conditions as set for in the Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement").

DISCUSSION

The City and Seller have been negotiating for the purchase of the Property. City staff and the Seller have tentatively agreed to a purchase price of \$650,000 (the "Purchase Price") for the Property (approximately \$59 per square foot). The Property consists of an approximately 11,017 square feet of leasable space on a 10,500 square foot lot. It is staff's opinion that the Purchase Price represents the fair market value of the Property based on utilizing the income approach for the analysis. The income approach is a common approach to value commercial real estate based on net operating income and the market cap rate.

There are currently two tenants occupying the Property, including the Affiliated Tenant and Jack Elliot, d.b.a. Jack Elliot Productions (the "Unaffiliated Tenant"). The Seller intends to cause the Affiliated Tenant to vacate the Property not later than sixty days from the close of escrow in accordance with the short term lease agreement (the "Short Term Lease"). The Short Term Lease is between the City and the Affiliated Tenant.

The City will inherit the lease agreement with the Unaffiliated Tenant. The term of this lease agreement is November 1, 2010 through August 31, 2013 with the following rent schedule:

Rent from 11/01/10 to 12/31/10 to be rent free.
Rent from 01/01/11 to 06/30/11 to be \$1,200 per month.
Rent from 07/01/11 to 12/31/11 to be \$2,400 per month.

Rent from 01/01/12 to 12/31/12 to be \$2,700 per month.
Rent from 01/01/13 to 08/31/13 to be \$3,000 per month.

The Unaffiliated Tenant has a two-year option which includes the following rent schedule:

Rent from 09/01/13 to 08/31/14 to be \$3,250 per month.
Rent from 09/01/14 to 08/31/15 to be \$3,500 per month.

The City and Community Development Agency of the City of Tracy (the "Agency") entered into a Public Improvements Grant and Cooperation Agreement (the "Cooperation Agreement") on January 17th, 2011. The Cooperation Agreement included a list of public improvements to be funded by the Agency but for the City to cause the installation of such public improvements. Acquisition of real property and assistance for public improvements and related public-private improvements to eliminate blight and revitalize downtown was included in the list. Therefore, the funding source for the acquisition of the Property will come from tax increment funds.

Under the terms of the Agreement, the City has the authority to assign its rights, duties and obligations to any person or entity. It may be determined that it is in the best interest of the City to assign the Agreement to the Agency. In the case that this determination is made, staff is recommending that the City approve such assignment and that the Agency Board assume the Agreement. The specific approvals for such actions are outlined below in the Recommendation section of this staff report.

The approval of the Purchase and Sale Agreement is exempt from the California Environmental Quality Act ("CEQA") pursuant to Title 14 of the Code of California Regulations sections 15332 (In-Fill Development Projects) and 15061(b)(3) (there is no possibility that the activity may have a significant effect on the environment).

STRATEGIC PLAN:

This agenda item supports the Economic Development strategic plan. This agenda item specifically implements the following goal:

ECONOMIC DEVELOPMENT

Goal 1: Increase the employment opportunities and sales tax base in Tracy.

FISCAL IMPACT

The execution of the Agreement will cost \$650,000 plus any title and escrow fees associated with the transaction. There will be further costs associated with inspections that will also be incurred as part of the due diligence period.

RECOMMENDATION

Staff recommends that the City take the following actions:

1. Authorize and direct the City Manager to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA;
2. Authorize the use of \$650,000 of the funds provided to the City pursuant to the Cooperation Agreement to fund acquisition of the Property;
3. Approve the Agreement and authorize and direct the Mayor to execute the Agreement on behalf of the City and to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Agreement;
4. Approve the assignment of the Agreement of the Agency, if such assignment is determined to be in the best interest of the City by the City Manager, and direct the City Manager to make such approvals and take all actions necessary to effectuate such assignment; and
5. Amend the City FY 10-11 Budget or the FY 11-12 Budget to the extent necessary to carry out the City's obligations pursuant to the Agreement.

Staff recommends that the Agency take the following actions:

1. Authorize and direct the Agency's Executive Director to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA;
2. Consent to the City's authorization to use \$650,000 of the funds provided to the City pursuant to the Cooperation Agreement to fund acquisition of the Property;
3. Approve the assignment of the Agreement to the Agency, if such assignment is determined to be in the best interest of the Agency by the Agency's Executive Director, and direct the Agency's Executive Director to make such approvals and take all actions necessary to effectuate such assignment; and
4. In the event the Agency assumes the Agreement from the City, authorize and direct the Agency's Executive Director to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement.

Prepared by: Ursula Luna-Reynosa, Economic Development Director

Approved by: Leon Churchill, Jr., City Manager

Attachments: Resolutions (2)
Exhibit A – Agreement
Exhibit B – Short Term Lease

RESOLUTION ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TRACY AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED IN THE REDEVELOPMENT PROJECT AREA

The City Council of the City of Tracy resolves as follows:

WHEREAS, the City Council (the "City Council") of the City of Tracy (the "City") has adopted the Community Development Project Area Plan (as amended, the "Redevelopment Plan"). The Redevelopment Plan sets forth plans for redevelopment of the Community Development Project Area (the "Project Area"); and

WHEREAS, the Community Development Agency of the City of Tracy (the "Agency") is responsible for administering the Redevelopment Plan to cause redevelopment of the Project Area; and

WHEREAS, on January 17, 2011, the Agency and the City entered into that certain Public Improvements Cooperation Agreement for the Community Development Project Area (the "Cooperation Agreement"); and

WHEREAS, to effectuate the terms of the Cooperation Agreement, the City desires to acquire certain real property located at 729 and 741 Central Avenue, Tracy, CA 95376 in Tracy, California (the "Property"), including all buildings and improvements located thereon from the current owner, Olomari Properties LLC, a California limited liability company, affiliated tenant Olomari Enterprises, Inc., a California corporation, d.b.a. Westside Market and Fahd Olomari (collectively, the "Seller"); and

WHEREAS, the City desires to enter into a Purchase and Sale Agreement (the "Agreement"), with the Seller, pursuant to which the City may acquire the Property from the Seller for Six Hundred Fifty Thousand Dollars (\$650,000) for purposes consistent with the Redevelopment Plan; and

WHEREAS, the Property is more particularly described in the Agreement, and the acquisition of the Property by the City, on behalf of the Agency, is authorized by California Health & Safety Code Section 33391; and

WHEREAS, as a condition of the Agreement, if the City acquires the Property, the Affiliated Tenant may continue to occupy a portion of the Property pursuant to the terms of the Short-Term Lease (the "Lease"), which is attached as an exhibit to the Agreement, on the condition that the Affiliated Tenant vacate the Property within sixty (60) days from the close of escrow; and

WHEREAS, under the terms of the Agreement, the City has the authority to assign its rights, duties and obligations to any person or entity; and

WHEREAS, pursuant to Sections 15332 and 15061(b)(3) of the Guidelines for the implementation of the California Environmental Quality Act ("CEQA"), the Agreement is exempt from the requirements of CEQA because it relates to in-fill development and the acquisition of the Property will not have a significant effect on the environment; and

WHEREAS, by staff report accompanying this Resolution and incorporated into this

Resolution by this reference (the "Staff Report"), the City Council has been provided with additional information upon which the actions set forth in this Resolution are based.

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

Section 1.

All the Recitals above are true and correct and incorporated herein.

Section 2.

The City Manager is hereby authorized and directed to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

Section 3.

The City Council hereby authorizes the use of Six Hundred Fifty Thousand Dollars (\$650,000) of the funds provided to the City pursuant to the Cooperation Agreement, to fund the acquisition of the Property.

Section 4.

The City Council hereby approves the Agreement and authorizes and directs the Mayor, on behalf of the City, to execute the Agreement and to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Agreement (which would include but not be limited to performing due diligence activities, potentially acquiring the Property, and executing the Lease and certificate of acceptance upon acquisition).

Section 5.

The City Council hereby approves the assignment of the Agreement to the Agency, if such assignment is determined to be in the best interest of the City by the City Manager, and directs the City Manager to make such approvals and take all actions necessary to effectuate such assignment.

Section 6.

The City Council hereby amends the City FY 10-11 Budget or the FY 11-12 Budget to the extent necessary to carry out the City's obligations pursuant to the Agreement.

Section 7.

The City Clerk shall certify to the adoption of this Resolution.

Section 8.

This Resolution shall take effect immediately upon adoption.

Resolution _____

Page 3 of 3

The foregoing Resolution _____ was adopted by the City Council on the 7th day of
June 2011, by the following vote:

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

Mayor

ATTEST:

City Clerk

CDA RESOLUTION ____

A RESOLUTION OF THE BOARD OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY CONSENTING TO THE EXECUTION OF A PURCHASE AND SALE AGREEMENT FOR THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED IN THE REDEVELOPMENT PROJECT AREA

The Community Development Agency of the City of Tracy resolves as follows:

WHEREAS, the City Council (the "City Council") of the City of Tracy (the "City") has adopted the Community Development Project Area Plan (as amended, the "Redevelopment Plan"). The Redevelopment Plan sets forth plans for redevelopment of the Community Development Project Area (the "Project Area"); and

WHEREAS, the Community Development Agency of the City of Tracy (the "Agency") is responsible for administering the Redevelopment Plan to cause redevelopment of the Project Area; and

WHEREAS, on January 17, 2011, the Agency and the City entered into that certain Public Improvements Cooperation Agreement for the Community Development Project Area (the "Cooperation Agreement"); and

WHEREAS, to effectuate the terms of the Cooperation Agreement, the City desires to acquire certain real property located at 729 and 741 Central Avenue, Tracy, CA 95376 in Tracy, California (the "Property"), including all buildings and improvements located thereon from the current owner, Olomari Properties LLC, a California limited liability company, affiliated tenant Olomari Enterprises, Inc., a California corporation, d.b.a. Westside Market and Fahd Olomari (collectively, the "Seller"); and

WHEREAS, the City desires to enter into a Purchase and Sale Agreement (the "Agreement"), with the Seller, pursuant to which the City may acquire the Property from the Seller for Six Hundred Fifty Thousand Dollars (\$650,000) for purposes consistent with the Redevelopment Plan; and

WHEREAS, the Property is more particularly described in the Agreement, and the acquisition of the Property by the City, on behalf of the Agency, is authorized by California Health & Safety Code Section 33391; and

WHEREAS, as a condition of the Agreement, if the City acquires the Property, the Affiliated Tenant may continue to occupy a portion of the Property pursuant to the terms of the Short-Term Lease (the "Lease"), which is attached as an exhibit to the Agreement, on the condition that the Affiliated Tenant vacate the Property within sixty (60) days from the close of escrow; and

WHEREAS, under the terms of the Agreement, the City has the authority to assign its rights, duties and obligations to any person or entity; and

WHEREAS, the City Council has by Resolution No. ___, adopted June 7, 2011, authorized the use of Six Hundred Fifty Thousand Dollars (\$650,000) of the funds provided to the City pursuant to the Cooperation Agreement, to fund the acquisition of the Property and approved the Agreement.

WHEREAS, pursuant to Sections 15332 and 15061(b)(3) of the Guidelines for the implementation of the California Environmental Quality Act ("CEQA"), the Agreement is exempt from the requirements of CEQA because it relates to in-fill development and the acquisition of the Property will not have a significant effect on the environment; and

WHEREAS, by staff report accompanying this Resolution and incorporated into this Resolution by this reference (the "Staff Report"), the Agency has been provided with additional information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE BE IT RESOLVED by the Community Development Agency of the City of Tracy as follows:

Section 1.

All the Recitals above are true and correct and incorporated herein.

Section 2.

The Agency's Executive Director is hereby authorized and directed to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

Section 3.

The Agency consents to the City's authorization to use of Six Hundred Fifty Thousand Dollars (\$650,000) of the funds provided to the City pursuant to the Cooperation Agreement, to fund the acquisition of the Property and the City Council's approval of the Agreement.

Section 4.

The Agency hereby approves the assignment of the Agreement to the Agency, if such assignment is determined to be in the best interest of the Agency by the Agency's Executive Director, and directs the Agency's Executive Director to make such approvals and take all actions necessary to effectuate such assignment.

Section 5.

In the event the Agency assumes the Agreement from the City, the Agency hereby authorizes and directs the Agency's Executive Director to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement(which would include but not be limited to performing due diligence activities, potentially acquiring the Property, and executing the Lease and certificate of acceptance upon acquisition).

Section 6.

The Agency Secretary shall certify to the adoption of this Resolution.

Section 7.

This Resolution shall take effect immediately upon adoption.

The foregoing Resolution _____ was passed and adopted by the City of Tracy Community Development Agency on the 7th day of June, 2011, by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

Chair

ATTEST:

Agency Secretary

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(Occupied Property Located at 729 and 741 Central Avenue, Tracy CA 95376)

This Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") dated, for reference purposes only, June __, 2011, by and between the City of Tracy, a municipal corporation or its permitted Assignee (the "Buyer") and Fahd Olomari, an individual, ("Mr. Olomari"), Olomari Properties LLC, a California limited liability company (the "Olomari LLC"), and Olomari Enterprises, Inc., a California corporation, d.b.a. Westside Market (the "Affiliated Tenant"), with reference to the following facts and purposes. Mr. Olomari, Olomari LLC and the Affiliated Tenant shall hereinafter collectively be referred to as the Seller.

RECITALS

A. Olomari LLC is the fee owner of certain real property located at 729 and 741 Central Avenue, Tracy, CA 95376 (A.P.N. 235-068-06) in Tracy, California, including all buildings and improvements located thereon (including the Business), as more particularly described in Exhibit A attached to this Agreement (the "Property").

B. The Property currently consists of an approximately 11,017 square feet of leasable space on a 10,500 square foot lot.

C. The Buyer desires to purchase the Property from the Seller, subject to the terms and conditions of this Agreement.

D. The Seller desires to sell the Property to the Buyer.

E. There are currently two tenants occupying the Property, including the Affiliated Tenant and Jack Elliot, d.b.a. Jack Elliot Productions (the "Unaffiliated Tenant"). The Seller intends to cause the Affiliated Tenant to vacate and the Affiliated Tenant shall vacate the Property not later than sixty (60) days from the Closing Date (as defined below) in accordance with the lease attached hereto as Exhibit C, incorporated herein by this reference (the "Short-Term Lease"). The Unaffiliated Tenant shall remain as a tenant of the Property pursuant to the terms of the existing lease agreement dated as of November 18, 2010.

F. The Buyer's governing board approved the acquisition of the Property and authorized the Buyer's authorized representative to execute the necessary documents and take the necessary actions to complete the acquisition of the Property in accordance with this Agreement.

G. The California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") imposes no conditions on the City's consideration and approval of this Agreement, because the project undertaken pursuant to this Agreement is exempt from CEQA requirements under the exemption set forth in 14 CCR Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the mere purchase of the Property will have a significant effect on the environment.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Buyer, and the Seller (collectively, the "Parties") agree as follows:

Section 1. Purchase and Sale of the Property. Subject to the terms and conditions set forth below, the Seller agrees to sell, and the Buyer agrees to purchase, the Property. (For the purposes of this Agreement, the Property shall also include any leasehold or other interest of Affiliated Tenant at the Property.)

Section 2. Opening Escrow. Upon the Effective Date of this Agreement, Buyer shall establish an escrow (the "Escrow") with the Pleasanton office of North American Title Company (the "Escrow Holder"). The "Effective Date" of this Agreement shall be the date upon which the Seller and the Buyer have executed this Agreement as reflected by the last signature date shown on the final page of this Agreement.

Section 3. Purchase Price.

(a) The purchase price for the Property shall be SIX HUNDRED FIFTY-THOUSAND DOLLARS (\$650,000) in cash (the "Purchase Price").

(b) The Seller understands and agrees that the amounts to be paid to the Seller pursuant to this Agreement are in full settlement of all claims the Seller has made or could have made against the Buyer in connection with or related to the Buyer's acquisition of the Property, including but not limited to, claims for compensation for the Property, improvements thereon or interests therein, severance damages, any amounts for relocation benefits and/or assistance pursuant to Government Code Sections 7260 *et seq*, loss of goodwill, inverse condemnation, unreasonable precondemnation activities, interest, costs, and litigation expenses. Except as provided in this Agreement, the Seller shall not be entitled to receive and hereby waives all rights to receive any compensation, damages, or other amounts by reason of such claims and releases the Buyer from any claim or cause of action for any damage related to the Buyer's acquisition of the Property.


(c) The Seller acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 3 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (2) the disclaimers and other agreements set forth in this Section are an integral part of this Agreement, that the consideration provided by the Buyer has been adjusted to reflect the same and that the Buyer would not have agreed to purchase the Property from the Seller for such consideration without the disclaimers and other agreements set forth in this Section.


(d) The release set forth in this Section 3 hereof includes claims of which the Seller is presently unaware or which the Seller does not presently suspect to exist which, if known by the Seller, would materially affect the Seller's release of the Buyer. The Seller specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Seller agrees, represents and warrants that the Seller realizes and acknowledges that factual matters now unknown to the Seller may have

given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Seller further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Seller nevertheless hereby intends to release, discharge and acquit the Buyer from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Seller, on behalf of itself and anyone claiming by, through or under the Seller, hereby assumes the above-mentioned risks and hereby expressly waives any right the Seller and anyone claiming by, through or under the Seller, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Seller's Initial (NOTE: Every Seller Must Initial)


Mr. Olomari


Olomari LLC


Affiliated Tenant

Section 4. Payment of Purchase Price. The Purchase Price shall be paid by the Buyer as follows:

(a) Deposit. Within five (5) business days following the Effective Date, the Buyer shall deposit with the Escrow Holder FIFTEEN THOUSAND FIVE HUNDRED DOLLARS (\$15,500.00) as an earnest money deposit (the "Deposit"). The Deposit and all accrued interest shall be fully refundable to the Buyer in the event that Buyer timely exercises its rights to terminate the Agreement under Section 5 or Section 6 below. The Deposit shall be credited against the Purchase Price at Closing. Any accrued interest on the Deposit shall be released to Buyer.

(b) Balance of the Purchase Price. The Buyer shall also deposit into Escrow the balance of the Purchase Price in the amount of SIX HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$635,000), together with any closing costs, as soon as practicable but in no event later than one (1) business day prior to the Close of Escrow for the purchase of the Property (the "Balance of the Purchase Price"). Notwithstanding anything to the contrary in this Agreement, the Balance of the Purchase Price shall be returned to Buyer in the event that the Buyer, for any reason, does not acquire the Property pursuant to this Agreement,

Section 5. Title Contingency Period. The Seller shall provide a preliminary title report for the Property, including legible copies of the underlying documents referred to in the preliminary title report (collectively, the "Title Report") to the Buyer on the Effective Date of this Agreement. Buyer's obligation to purchase the Property is contingent on the Buyer making a determination that the condition of title to the Property is acceptable, within thirty (30) days



following the later of : (1) the Effective Date or (2) delivery of the Title Report by the Seller to Buyer. If the Buyer objects to any exception appearing on the Title Report, or should any title exception arise after the date of the Title Report (other than due to the acts of Buyer), Buyer may object to such exception, provided such objection is made to the Seller in writing, within ten (10) days following the delivery of the Title Report by the Seller to Buyer for exceptions listed on the Title Report and prior to Closing Date for any title condition arising before the Closing Date and not listed on the Title Report. Any exceptions to which Buyer fails to object in a timely manner which are listed on the Title Report shall be deemed a "Permitted Exception". If the Buyer objects to any exception to title, the Seller, within five (5) business days after receipt of the Buyer's objection, shall notify the Buyer in writing whether the Seller elects to: (1) cause the exception to be removed of record, (2) obtain a commitment from Escrow Holder for an appropriate endorsement to the policy of title insurance reasonably acceptable to the Buyer to be issued to the Buyer, insuring against the objectionable exception, or (3) terminate this Agreement unless the Buyer elects to take title subject to such exception. The Seller's failure to notify Buyer of its election within such five (5) day period shall be deemed to waive Seller's right to terminate this Agreement. Upon exercise of Seller's rights to terminate this Agreement under this Section 5, the Deposit, and any interest earned thereon, and any other funds deposited by Buyer into Escrow shall be immediately refunded to the Buyer and this Agreement shall be terminated without further action by either party, and thereafter neither party shall have any further duties, obligations, rights, or liabilities under this Agreement, except for those provisions specified to survive the termination of this Agreement.

Section 6. Physical Inspection Contingency Period; Right of Entry. Buyer's obligation to purchase the Property is contingent on the Buyer making a determination, within thirty (30) days following the Effective Date (the "Physical Inspection Period") that Buyer is satisfied with the conditions of the Property.

(a) During the Physical Inspection Period, Buyer shall have the right to:

(1) Conduct such engineering, feasibility, seismic surveys and other studies regarding the condition of the Property which Buyer deems prudent.

(2) Conduct such environmental audits and studies regarding the environmental conditions of the Property which Buyer deems prudent.

(3) Conduct such pest and structural inspections and related inspections of the Property which Buyer deems prudent.

(b) The Seller hereby grants the Buyer, and Buyer's employees, representatives, and agents, a right of entry to enter the Property for the purposes of conducting examinations and investigating the Property. During regular business hours, the Seller will provide the Buyer reasonable access to the Property, including all improvements, for the purpose of conducting examinations. The Buyer shall notify the Seller and obtain Seller's approval, which approval shall not be unreasonably withheld, prior to inspecting the Property or conducting any invasive testing of the Property. The Buyer shall cooperate with the Seller and make diligent efforts to ensure that any such access results in a minimum of disruption of Seller's ongoing



operations on the Property. The Buyer shall repair any damage to the Property caused by the Buyer's inspections and tests and shall restore the Property to the condition existing as of the date of the inspection; provided, however, Buyer shall have no obligation to repair any damage to the Property which is revealed (but not caused by) such inspection. The Buyer shall not have any liability to the extent incurred by the Seller as a result of the discovery by the Buyer of any existing state of facts relating to the Property. Any reports generated pursuant to this Section shall be given to the Seller if Buyer elects to terminate this Agreement pursuant to Sections 5 or 6 of this Agreement.

(c) Within two (2) business days following the Effective Date (and in addition to the documents previously provided to Buyer by the Seller), the Seller shall deliver or make available to the Buyer the following information related to the Property (all of which may be duplicated by the Buyer in its discretion) for the Buyer's review and approval: (1) any and all third party reports, studies and investigations related to the Property's physical condition or the physical condition of any structure on the Property including environmental conditions, soils reports, seismic reports or inspection reports; (2) operating statements for the Property from the date the Seller purchased the Property, including budgets and financial statements, (3) the two (2) most recent Property tax bills, including all information on any tax assessments, (4) any architectural plans and drawings, record of survey, and specifications for the Property (if available), (5) all service and maintenance contracts, (6) any public sector notices, (7) any information or correspondence related to the historic status on any of the improvements located on the Property, if any, (8) all leases and rent rolls related to the Property and (9) any records relating to any lawsuits pending against the Seller, its agents or employees in connection with the ownership, operation, or management of the Property.

(d) The Seller shall complete and deliver, within fifteen (15) days after the Effective Date, all legally required disclosures regarding the Property.

(e) The Buyer shall have until 5:00 p.m. (Pacific Standard Time) on the expiration date of the Physical Inspection Period to notify the Seller of: (1) the Buyer's satisfaction with the Property, and (2) that the Buyer's governing board has duly approved the purchase of the Property pursuant to this Agreement, by providing written notice to the Seller pursuant to this Section. The Buyer's failure to provide timely notice to the Seller shall automatically terminate this Agreement and shall conclusively be deemed to reflect the Buyer's dissatisfaction with the physical condition of the Property, and/or the Buyer's governing board's failure to approve this Agreement. Upon the Buyer's failure to timely notify the Seller of the Buyer's satisfaction with the Property under this Section 6, the Deposit, and any interest earned thereon, and any other funds deposited by Buyer into Escrow shall be immediately refunded to the Buyer and this Agreement shall be terminated without further action by the Parties, and thereafter neither party shall have any further duties, obligations, rights, or liabilities under this Agreement, except for those provisions specified to survive the termination of this Agreement.

Section 7. Assignments/Possession. The Buyer may transfer its rights under this Agreement to any person or entity (the "Assignee") without the approval or consent of the Seller. Possession of the Property shall be delivered to the Buyer or the Assignee, as applicable, at the Close of Escrow.



Section 8. LIQUIDATED DAMAGES. IN THE EVENT THAT THE ESCROW AND THIS TRANSACTION FAIL TO CLOSE AS A RESULT OF THE DEFAULT OF THE BUYER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE BUYER AND THE SELLER AGREE THAT THE SELLER WILL SUSTAIN THESE AND OTHER DAMAGES, AND THAT THE SELLER'S ACTUAL DAMAGES WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. THE PARTIES THEREFORE AGREE THAT IN THE EVENT THAT ESCROW AND THIS TRANSACTION FAIL TO CLOSE AS A RESULT OF DEFAULT OF BUYER, AND THE SELLER IS READY, WILLING AND ABLE TO PERFORM THEIR OBLIGATIONS HEREUNDER, THE SELLER, AS THE SELLER'S SOLE AND EXCLUSIVE REMEDY, SHALL BE ENTITLED TO THE DEPOSIT (as specifically defined in Section 4(a)), AS LIQUIDATED DAMAGES AND AS CONSIDERATION FOR ENTERING INTO THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE RESULTING DAMAGES WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ASCERTAIN, AND, THEREFORE, THE PARTIES AGREE AFTER NEGOTIATION BETWEEN THEM THAT RETENTION OF THE DEPOSIT, AS LIQUIDATED DAMAGES WILL BE AN APPROPRIATE FORM OF COMPENSATION TO THE SELLER. BY PLACING THEIR INITIALS IN THE SPACES BELOW, BOTH PARTIES AGREE TO LIQUIDATE DAMAGES AS SET FORTH ABOVE. IN THE EVENT ESCROW FAILS TO CLOSE AS A RESULT OF BUYER'S DEFAULT AND THE SELLER IS READY, WILLING AND ABLE TO PERFORM ITS OBLIGATIONS HEREUNDER, THEN (A) FOLLOWING THE SELLER'S RECEIPT OF THE DEPOSIT, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE ESCROW CREATED HEREBY SHALL TERMINATE, AND (B) ESCROW AGENT SHALL, AND IS HEREBY AUTHORIZED AND INSTRUCTED TO, RETURN PROMPTLY TO PARTIES ALL DOCUMENTS AND INSTRUMENTS TO THE PARTY WHO DEPOSITED THE SAME. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 8, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS. NOTHING IN THIS SECTION IS INTENDED TO OR SHALL MEAN THAT SELLER IS ENTITLED TO THE BALANCE OF THE PURCHASE PRICE. THE BALANCE OF THE PURCHASE PRICE SHALL BE RETURNED TO BUYER IN THE EVENT THAT BUYER, FOR ANY REASON, DOES NOT ACQUIRE THE PROPERTY PURSUANT TO THIS AGREEMENT.



SELLER'S INITIALS:

(NOTE: Every Seller Must Initial)



Mr. Olomari Olomari LLC Affiliated Tenant

BUYER'S INITIALS

~~City Manager~~
Mayor

Section 9. Representations and Warranties of the Seller. The Seller hereby represents and warrants the matters set forth below to be true to the best of the Seller's knowledge as of the date hereof and as of the Closing Date. Such representations shall survive the closing and conveyance of title to the Property. Prior to the Closing Date, the Seller shall deliver to the Buyer a certificate dated as of the Closing Date, signed by the Seller, certifying that the representations and warranty are true to the best of the Seller's knowledge as of the Closing Date.

(a) The Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. Olomari LLC is the owner of the Property in fee simple absolute. The individuals executing this Agreement and the instruments referenced herein on behalf of the Seller hereby represent and warrant that they have the power, right and authority to bind Seller.

(b) Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Seller is a party or by which the Seller or the Property may be bound.

(c) There is no claim, action, litigation, arbitration or other proceeding pending or threatened against the Seller which relates to the Property, the Seller's activities on the Property or the transaction contemplated hereby or which could result in the imposition of a lien against the Property or have an adverse effect on the Property or its operation. If the Seller receives notice of any such claim, litigation, arbitration or proceeding prior to the Closing Date, the Seller shall promptly notify the Buyer of the same in writing.

(d) There is no pending or threatened condemnation or similar proceeding affecting the Property, or any portion thereof, nor does the Seller have any knowledge that any such action is contemplated.

(e) There will be no management agreements, contracts, warranties, guaranties, bonds or other agreements which will affect or will be obligations of the Buyer of the Property which cannot be terminated on thirty (30) days prior notice, including without limitation, maintenance contracts, design services contracts, construction contracts, architects agreements, or parking agreements, other than as disclosed to the Buyer pursuant to Section 6 or as specifically approved by the Buyer in writing.



(f) Other than the Unaffiliated Tenant, whose tenancy is more particularly described in the estoppel certificate attached hereto as Exhibit B (the "Elliot Estoppel Certificate") and the Affiliated Tenant (who shall vacate the Premises no later than sixty (60) days from the Closing Date, as a condition of this Agreement and in accordance with the Short-Term Lease attached hereto as Exhibit C), the Property is vacant and no person or entity is currently occupying the Property or has any lease, rental agreement, or other right to occupy the Property, or portion thereof. In the event the foregoing warranty is breached, the Seller shall indemnify and hold harmless the Buyer for all damages sustained or incurred by the Buyer, including but not limited to, any compensation or benefits that the Buyer is required to pay to the person or entity other than Seller under the Eminent Domain Law (Civil Procedure Code Sections 1230.010 et seq.) or the Relocation Law (Government Code Sections 7260 et seq.) in connection with the Buyer's acquisition of that person or entity's interest in the Property and relocation from the Property.

(g) The Seller will cause the Affiliated Tenant to vacate and the Affiliated Tenant shall vacate the Property not later than sixty (60) days after the Closing Date.

(h) There will be no substantial alterations or repairs made or undertaken on the Property (except for those required in an emergency) without the prior written approval of the Buyer which shall not be unreasonably withheld or delayed.

(i) As of the Closing Date, there will be no personal property owned by the Seller located on the Property, save and except for the tools, equipment, machinery, furniture, fixtures and inventory of Affiliated Tenant that are used in conjunction with the operation of that certain business known as the "Westside Market" which may remain on only that portion of the Property leased to the Affiliated Tenant pursuant to Section 26(l) below.

(j) The Seller has not received any written notice of any violation of, any law, ordinance, regulation, order or requirement applicable to the Property including without limitation, requirements imposed under any recorded covenants, conditions, restrictions, easements or other rights affecting the Property. If the Seller receives such a notice prior to the Closing Date, the Seller shall immediately notify the Buyer.

(k) The Seller has not received written notice from any governmental authority that the Seller or the Property (or any portion thereof) is in violation of any governmental or other legal requirements. If the Seller receives such a notice prior to the Closing Date, the Seller shall immediately notify the Buyer of the same in writing.

(l) The Seller has no knowledge, except as otherwise disclosed in writing or in any of the documents delivered pursuant to Section 6, of the existence or prior existence in, on or under the Property of any hazardous substance, nor the existence of or prior existence of any above or below ground storage tank. The Seller has no knowledge that any generation, transportation, storage or discharge of any hazardous substance in, on or under the Property has not been in compliance with all applicable laws.



(m) The Seller is not a "foreign person" under Section 1445 of the Internal Revenue Code.

(n) The Seller is not the subject of bankruptcy, insolvency or probate proceedings.

(o) During the term of this Agreement, the Seller shall have a continuing duty to notify Buyer of any material facts in Seller's knowledge which would render any of the representations set forth above false. Such duty shall not, however, abrogate nor limit the Buyer's independent obligation to perform its own investigation into the Property.

Section 10. Representations and Warranties of Buyer. The Buyer hereby represents and warrants the matters set forth below to be true to the best of Buyer's knowledge as of the date hereof and as of the Closing Date. Such representations shall survive the closing and conveyance of title to the Property. Prior to the Closing Date, the Buyer shall deliver to the Seller a certificate dated as of the Closing Date, signed by the Buyer, certifying that the representations and warranty are true to the best of the Buyer's knowledge as of the Closing Date.

(a) Subject to the approval of the Buyer's board, the Buyer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

(b) Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Buyer is a party or by which the Buyer may be bound.

Section 11. Indemnification.

(a) The Seller hereby agrees to defend, indemnify and hold the Buyer harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) arising from: (1) any obligation of the Seller not expressly assumed by the Buyer related to the ownership or operation of the Property prior to the Close of Escrow; (2) personal injury or property damage relating to the Property which occurred prior to the date of Close of Escrow and not caused by the acts or omissions of the Buyer or Buyer's agents, employees, or invitees; and (3) the breach of any of the Seller's representations made hereunder. The indemnity contained in this Section 11 (a) shall survive the termination of this Agreement.

(b) The Buyer hereby agrees to defend, indemnify and hold the Seller harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) arising from: (1) any obligation of the Buyer not expressly assumed by the Seller related to the ownership or operation of the Property after the Close of Escrow; (2) personal

injury or property damage relating to the Property which occurred after the date of Close of Escrow and not caused by the acts or omissions of Seller's or Seller's agents; and (3) the breach of any of Buyer's representations made hereunder. The indemnity contained in this Section 11 (b) shall survive the termination of this Agreement.

Section 12. Hazardous Materials Indemnification.

(a) In the event of any Seller misrepresentation (including omissions) regarding hazardous or toxic materials or conditions on the Property, the Seller shall indemnify, hold harmless, and defend with counsel as reasonably selected by the Buyer, the Buyer, the Buyer's officers, employees, and agents, any successors to the Buyer's interests in the chain of title to the Property or any portion thereof, and such successors' directors, officers, employees, or agents (collectively the "Indemnitees"), against any and all claims, and causes of action arising from any dispute (including, but not limited to, a lawsuit, an administrative proceeding, arbitration, or an enforcement action of any kind) and any and all damages (direct or consequential), costs, losses, injuries, fines, penalties, liens, encumbrances, charges, liabilities, demands, judgments, remedial action requirements, obligations, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and costs), imposed upon or accruing against the Indemnitees as a result of investigatory or remedial action required by any public entity or agency having jurisdiction in connection with the hazardous or toxic materials or conditions on the Property that were the subject of the misrepresentation, or as damages to third persons for personal injury or property damage arising from the hazardous or toxic materials or conditions on the Property that were the subject of the misrepresentation.

(b) The provisions of this Section 12 shall survive termination of this Agreement and the Closing.

Section 13. Condemnation. If, prior to Close of Escrow, any portion of the Property is taken or is in the process of being taken by any entity by condemnation or with the power of eminent domain, or if the access thereto is reduced or restricted thereby (or is the subject of a pending taking which has not yet been consummated), the Seller shall immediately notify the Buyer of such fact. In such event, the Buyer shall have the right, in Buyer's sole discretion, to terminate this Agreement upon written notice to the Seller not later than seven (7) business days after receipt of Seller's written notice thereof, which notice shall contain the amount of compensation proposed to be paid by the public entity for the taking. If this Agreement is terminated, notwithstanding any other provision of this Agreement, all documents and funds, including the Deposit, if made, including any interest thereon and any other funds deposited into escrow by Buyer, shall be returned to the Buyer, and neither party shall have any further rights or obligations hereunder, except for payment of any escrow and title cancellation fees which shall be borne equally by the Buyer and the Seller and those provisions specified to survive the termination of this Agreement. If the Buyer fails to deliver timely notice of its election to terminate this Agreement, the Buyer shall continue to be bound by this Agreement and upon the Close of the Escrow Seller shall assign and turn over, and Buyer shall be entitled to receive and keep, any and all awards made or to be made in connection with such condemnation or eminent domain, and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without any reduction in the Purchase Price.

Section 14. Casualty. If, prior to the Close of Escrow, the Seller becomes aware that all or any material portion of the Property has been destroyed or substantially damaged, then the Seller shall promptly give the Buyer notice thereof, and the Buyer, at its option, may: (1) terminate this Agreement; (2) may keep this Agreement in full force or effect (with no adjustment to the Purchase Price or the Close of Escrow); or (3) request that the Seller repair such damage or destruction prior to the Close of Escrow (provided that the proceeds of any insurance policies will be sufficient to pay for the costs of repairing such damage or destruction as mutually determined by the Parties). The Buyer shall notify the Seller of such determination by written notice to the Seller not later than seven (7) business days after receipt of Seller's written notice of such damage or destruction. The Seller's notice shall contain an estimate of the repair costs and an estimate of insurance payments to be made to the Seller. For purposes of this Agreement, a "material portion" of the Property shall mean a casualty in excess of ten percent (10%) of the Purchase Price of the Property. If this Agreement is terminated, notwithstanding any other provision of this Agreement, all documents and funds, including the Deposit, if made, including any interest thereon, and any other funds deposited into escrow by Buyer, shall be returned to the Buyer, and neither party shall have any further rights or obligations hereunder, except for payment of any escrow and title cancellation fees which shall be borne equally by the Parties and those provisions specified to survive the termination of this Agreement. If the Buyer fails to deliver timely notice of its election to terminate this Agreement, then this Agreement shall remain in full force, without adjustment in the Purchase Price and at the Close of Escrow, the Seller shall assign to the Buyer all of the Seller's right, title, and interest in and to any insurance proceeds resulting from any casualty, if any.

Section 15. "As Is" Sale. The Property shall be transferred to the Buyer "as is." The Seller's shall not be liable to the Buyer for any conditions of the Property, except to the extent of Seller's misrepresentation or failure to disclose.

Section 16. Buyer's Remedies. In the event of a breach of this Agreement by the Seller's, the Buyer may pursue any and all remedies at law and equity, including specific performance.

Section 17. Close of Escrow. Subject to the other provisions of this Agreement and the satisfaction or waiver of the contingencies contained in Sections 5 and 6 hereof, Escrow shall close on a date mutually agreeable to the parties but in no event later than the date which is the earlier of: (1) ten (10) days following written notice from the Buyer to the Seller confirming that the contingencies contained in Sections 5 and 6 have been satisfied or waived; or (2) July 17 2011. The Agency may determine to submit additional escrow instructions to Escrow Holder in addition to this Agreement.

In the event the Seller fails to deliver the executed Estoppel Certificate, then the Buyer may either terminate this Agreement, or may proceed with the Close of Escrow without the Seller being required to deliver such Estoppel Certificate. If this Agreement is terminated, notwithstanding any other provision of this Agreement, all documents and funds, including the Deposit, if made, including any interest thereon, and any other funds deposited into escrow by Buyer shall be returned to the Buyer, and neither party shall have any further rights or

obligations hereunder, except for payment of any escrow and title cancellation fees which shall be borne equally by the Buyer and the Seller and those provisions specified to survive the termination of this Agreement.

Upon Close of Escrow, the Seller shall convey the Property to Buyer by grant deed in form reasonably acceptable to the Buyer (the "Grant Deed"). The "Closing Date" or "Close of Escrow" hereunder shall be the date that the Grant Deed is recorded with the office of the Recorder of San Joaquin County.

Section 18. Condition of Title. At Close of Escrow, the Seller shall deliver insurable title to the Property, free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession except:

- (a) applicable building, subdivision and zoning laws and regulations;
- (b) any lien for current taxes and assessment not yet delinquent, or taxes and assessment accruing subsequent to recordation of the Grant Deed;
- (c) any liens, encumbrances, clouds, conditions, or exceptions arising due in whole or in part to the actions of the Buyer; and
- (d) any Permitted Exceptions, or exceptions for which the Seller has obtained an appropriate endorsement, pursuant to Section 5.

Section 19. Prorations and Adjustments. The Parties shall meet three (3) business days prior to the Close of Escrow to apportion or prorate (or to cause the apportionment or proration of), as of 11:59 pm (Pacific Standard Time), of the day preceding the Closing Date, the following in respect of the Property and the net amount thereof shall be added to (if such net amount is in Seller's favor) or deducted from (if such net amount is in Buyer's favor) the Purchase Price with respect to the Property:

(a) Subject to the specific provisions of this Section 19, all items of income and expense shall be prorated between the Seller and the Buyer as of the Closing Date. Income and expenses shall be prorated on the basis of the actual number of days in the particular month and on the basis of the accrual method of accounting. All such items attributable to the period prior to the Closing Date shall be credited to the Seller; all such items attributable to the period on and following the Closing Date shall be credited to the Buyer.

(b) The Seller shall be credited in the Purchase Price with any refundable (or otherwise creditable) deposits or bonds held by any utility, governmental agency or service contractor with respect to the Property (to the extent the same are assigned to the Buyer in connection with the sale of the Property (to the extent the same are assigned to the Buyer in connection with the sale of the Property).

(c) General and special real estate and personal property taxes and assessments (other than those taxes and assessments required to be paid directly by any tenant



under its lease) payable for the tax year in which the Closing Date occurs shall be prorated by the Parties as of the Closing Date. The Affiliated Tenant shall be responsible for all those taxes and assessments required to be paid directly by the Affiliated Tenant under its lease.

(d) Unless otherwise provided in this Section 19, all prorations shall be made on the basis of the actual days in a month and a 365-day year.

Section 20. Costs of Escrow and Closing. The Seller shall pay transfer taxes, and the Buyer shall pay title costs and escrow costs. All other closing costs shall be prorated pursuant to local custom and paid by the Buyer.

Section 21. Title Insurance. As a condition to the Close of Escrow, Escrow Holder shall be ready to issue a CLTA Owner's Policy of Title Insurance to the Buyer in the insurable amount of the Purchase Price and showing only those exceptions to title described in Section 18. Escrow Holder's willingness to issue the Title Policy, subject to Buyer's paying the applicable premium, shall be conclusive evidence of Seller's satisfaction of their obligations of the title conditions reflected in Section 18.

Section 22. No Changes. The Seller shall maintain the Property prior to the Closing Date in a condition consistent with its current condition and shall make at its own expense, all repairs necessary to maintain the Property in such condition. The Seller shall make no material alterations in the Property without Buyer's prior written consent, which shall not be unreasonably withheld. The Seller also agrees that no new leases or rental agreements, or extensions or modifications of existing leases shall be made or entered into prior to the Close of Escrow. Nothing in this Section 22 shall be read to limit Olomari LLC's ability to terminate the Affiliated Tenant's lease.

Section 23. Broker's Commission. The Buyer represents to the Seller that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement. The Seller represents to the Buyer that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement. The Buyer and the Seller (each, reciprocally, as an "Indemnitor") agree to indemnify and hold the other (as "Indemnitee") harmless from all expense, loss, damage and claims, including the Indemnitee's attorneys' fees, if necessary, arising out of the Indemnitor's breach of the foregoing representation.

Section 24. Notices. All notices required or permitted hereunder shall be in writing. Unless otherwise provided herein, any notice, tender or delivery to be given pursuant to this Agreement by either party may be accomplished by personal delivery, by first class certified mail, return receipt requested, or by delivery via an overnight courier which guarantees next day delivery. Any notice delivered by certified mail, return receipt requested shall be deemed received on the date of delivery reflected on the return receipt. Any notice delivered by overnight shall be deemed received one (1) business day after deposit thereof with the overnight courier. Notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this Section 24, on not less than ten (10) days prior written notice.



To Buyer: City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attn: City Manager

With a Copy to: Goldfarb & Lipman LLP
1300 Clay Street, 9th Floor
Oakland, CA 94612
Attn: Heather Gould

To Seller: Olomari Properties, LLC
c/o Fahd Olomari, Manager
741 N. Central Avenue
Tracy, CA 95376

To Affiliated Tenant: Olomari Enterprises, Inc.
c/o Fahd Olomari, President
741 N. Central Avenue
Tracy, CA 95376

With a Copy to: Steve Nicolaou, Esq.
445 W. 11th Street, Suite C
Tracy, California 95376

Section 25. Seller's Cooperation. During the term of this Agreement, the Buyer may seek certain governmental permits related to the development of the Property, if any. The Seller shall cooperate with Buyer to pursue applications, government permits, and related requirements provided that such cooperation shall be at no cost, liability or prejudice to the Seller.

Section 26. General Provisions.

(a) Headings. The title and headings of the various sections hereof are intended as a means of reference and are not intended to place any construction on the provisions hereof.

(b) Invalidity. If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision hereof shall be valid and enforceable to the fullest extent permitted by law.

(c) Attorneys' Fees. In the event of any litigation between the Parties hereto to enforce or interpret any of the provisions of this Agreement, the prevailing party therein shall be entitled to recover from the unsuccessful party all costs and expenses, including reasonable attorneys' fees, all of which may be included as part of the judgment rendered in such litigation.



(d) Entire Agreement. This Agreement supersedes all prior negotiations and agreements between the Parties, and is intended by the Parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. No provision of this Agreement may be amended except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

(f) Time of the Essence. Time is of the essence in this Agreement.

(g) Cooperation of Parties. The Buyer and the Seller shall, during the Escrow period, execute such further escrow instructions and any and all other documents reasonably necessary or appropriate to close the purchase and sale pursuant to the terms of this Agreement.

(h) Business Days. The term "business days" in this Agreement shall mean days on which the city offices of the City of Tracy are open for business.

(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

(j) Security Deposit. Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that the Seller shall, on the Closing Date, transfer to the Buyer the security deposit of the Unaffiliated Tenant in the amount of THREE THOUSAND DOLLARS (\$3,000) previously deposited with the Seller by the Unaffiliated Tenant and that such amount shall not be added to the Purchase Price.

(k) Assignment. Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that the Buyer may assign its rights, title and interest in this Agreement to the Community Development Agency of the City of Tracy or to any other public entity.

(l) Lease to Affiliated Tenant. The Buyer, the Seller and the Affiliated Tenant agree to the following:

(1) Upon Buyer's acquisition of the Property, Buyer agrees to lease to the Affiliated Tenant, for a period of not more than sixty (60) days following the Closing Date, ___ square feet of space currently occupied by the Affiliated Tenant and located at 741 N. Central Avenue, Tracy, CA, pursuant to the terms of the Short-Term Lease attached hereto as Exhibit C;

(2) Nothing in this Agreement or in the Short-Term Lease is intended or shall be read to allow the Affiliated Tenant to continue to occupy the Property more than sixty (60) days after the Closing Date.

(3) The provisions of this subsection 26(1) shall survive the Closing Date.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates shown below.

BUYER:

CITY OF TRACY, a municipal corporation

By: _____


~~XX~~
Brent H. Ives, Mayor

APPROVED AS TO FORM:

Date: _____


By: _____
City Attorney

OLOMARI LLC:
OLOMARI PROPERTIES LLC, a California limited liability company

By:  _____

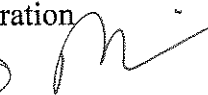
Date: 05/23/11 _____

MR. OLOMARI:
FAHD OLOMARI, an individual

By:  _____

Date: 05/23/2011 _____

AFFILIATED TENANT:
OLOMARI ENTERPRISES, Inc., a California Corporation

By:  _____

Date: 05/23/2011 _____



Exhibit A
Legal Description of the Property

Real property in the City of TRACY, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

LOTS 12, 13 AND 14 AND ALL THAT CERTAIN PORTION OF LOT 15 LYING EASTERLY OF THE LINE RUNNING FROM A POINT 1.25 FEET WESTERLY OF THE WESTERLY LINE OF LOT 14 MEASURED ALONG THE SOUTH SIDE OF 8TH STREET TO APPOINT 6.31 FEET WESTERLY OF THE WESTERLY LINE OF LOT 14 MEASURED ALONG THE SOUTH LINE OF SAID LOT 15, ALL IN BLOCK 13. THE ABOVE-DESCRIBED PROPERTY BEING ALL OF LOTS 12, 13 AND 14 AND A STRIP OFF OF THE EASTERLY SIDE OF LOT 15; SAID STRIP BEING 1.25 FEET WIDE ON THE SOUTH SIDE OF WEST 8TH STREET AND 6.31 FEET WISED ON THE NORTH SIDE OF ALLEY, ALL IN BLOCK 13 IN THE CITY OF TRACY, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, FILED FOR RECORD JUNE 29, 1892 IN BOOK OF MAPS AND PLATS, VOL. 2, PAGE 63, SAN JOAQUIN COUNTY RECORDS.

APN: 235-068-06



Exhibit B

Estoppel Certificate

To: City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Attn: City Manager

RE: 729 Central Avenue, Tracy, CA 95376 (the "Premises")

The undersigned (the "Tenant") hereby certifies to the City of Tracy (the "Buyer"), and to Olomari Properties, LLC (collectively, the "Landlord") the following information regarding the Tenant's occupancy of the Premises, and Tenant agrees that the Landlord, Buyer and Buyer's successors and assigns may rely upon the same:

1. At the commencement of the Tenant's occupancy of the Premises, the Tenant and the Landlord entered into that certain Commercial Lease and Deposit Receipt agreement, dated as of November 18, 2010 (the "Lease"). The Lease is in full force and effect and has not been amended or otherwise modified. A true and correct copy of the Lease is attached hereto as Exhibit A and is incorporated herein by this reference.
2. The Tenant commenced occupying the Premises on, or about, November 1, 2010, and has the right to continue to occupy the Premises until August 31, 2013, the date on which the Lease expires. Pursuant Section 32 of the Lease, the Tenant has the option to renew the Lease for an additional 24 months. Other than said option to renew the Lease, Tenant has no other options or rights to renew or extend the term of the Lease. Other than the possible extension of 24 months pursuant to Section 32 of the Lease, the Landlord has not granted a first right of refusal to lease or purchase, option to terminate, or option to purchase the Premises. Tenant has no other right or interest to the Premises.
3. All fixed base rental has been paid to the end of the current calendar month, which is March __ 2011, and no rent had been paid more than one month in advance of its due date. Current monthly fixed base rental for the Premises is \$2,400.00 per month plus \$392.55 representing a pro-rata share of property taxes (required to be paid by the Tenant pursuant to Section 3 of the Lease). The rent paid by the Tenant is subject to an escalator as more specifically outlined in Addendum 1 of the Lease.
4. The Tenant asserts no claim of default or offset or defense against the payment of rent or other charges payable by the Tenant and assert no claim against the Landlord in regard to the Premises occupied by Tenant. To the best of Tenant's knowledge and belief, there is no default by Landlord under the Lease and no event has occurred that,

with the passage of time or the giving of notice, or both, would constitute a default by Landlord under the Lease.

5. Landlord is holding a security deposit of \$3,000 from the Tenant.
6. The Tenant is current in the payment of any taxes, utilities, common area maintenance payments, or other charges required to be paid by the undersigned.
7. The Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Premises.
8. The Tenant is the only individual currently occupying the Premises. During the Tenant' occupancy of the Premises, no other individuals have resided at, or occupied, the Premises or have any right to occupy the Premises.
9. There are no actions, whether voluntary or otherwise, pending against the Tenant under the bankruptcy or insolvency laws of the United States or any state thereof.
10. To the best of the Tenant's knowledge, the Tenant is not in default under the Lease nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute a default or breach by the Tenant.
11. The Tenant recognizes and acknowledges that the Tenant is making these representations to Buyer and Landlord with the intent that the Buyer, and the Landlord, and their successors and assigns shall rely hereon, and as a material inducement to the Buyer's transaction with the Landlord, as the seller. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of the Tenant and the Buyer.
12. The undersigned signatory hereto hereby warrants that he/she has full and valid legal power and authority to make and deliver this certificate and to bind the Tenant to the statements and certifications made herein.

Tenant:

JACK ELLIOT, d.b.a. JACK ELLIOT PRODUCTIONS

Jack Elliot

Date

Exhibit C

SHORT-TERM LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this ___ day of _____, 2011 ("Effective Date"), by and between **THE CITY OF TRACY, a California municipal corporation** (hereinafter referred to as "Landlord"), and **OLOMARI ENTERPRISES, INC., a California corporation** (hereinafter referred to as "Tenant").

In consideration for \$1 and the covenants hereinafter set forth in this Lease, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the Leased Premises (as defined in Recital B, below), upon the following terms and conditions:

RECITALS

A. The Landlord acquired a fee interest in that certain property located 729 and 741 N. Central Avenue, Tracy, San Joaquin County, California, as further described in the attached Exhibit A, incorporated herein by this reference (the "Property"), under that certain Purchase Agreement entered into between Landlord as Buyer and Fahd Olomari, an individual, Olomari Properties LLC, a California limited liability company, and Olomari Enterprises, Inc., a California corporation, d.b.a. Westside Market, collectively referred to as Seller, dated June ___, 2011 (the "Purchase Agreement")

B. The Tenant operates a retail grocery and liquor store on a portion of the Property described in the attached Exhibit B, incorporated herein by this reference (the "Leased Premises").

C. Pursuant to the terms of the Purchase Agreement, the Landlord and the Tenant desire to enter into this Lease for the Leased Premises for the purposes of winding down the Tenant's business affairs on the Leased Premises.

Section 27.

TERM

(a)The lease term shall commence on the Effective Date and shall automatically terminate sixty (60) days following the Effective Date (the "Term"). There shall be no extensions of the Term.

Section 28.

RENT

(a)The monthly rental ("Minimum Rent") to be paid by Tenant to Landlord for the Leased Premises during the Term shall be \$-1-, and the Landlord acknowledges the receipt of such payment from the Tenant . The parties hereby acknowledge that the continued short-term

occupation of the Leased Premises by the Tenant constituted part of the consideration paid to the Seller under the Purchase Agreement. Notwithstanding anything to the contrary, the Minimum Rent shall also include any amounts due as "Additional Rent" described in Section 5.1(f) below.

Section 29.
TAXES, SERVICES AND UTILITIES

(a) The Tenant shall pay, prior to delinquency, any personal property taxes related to Tenant's personal property, fixtures and equipment located on the Leased Premises, and any charges for gas, electricity, telephone, internet and any and all other utilities and services that are furnished to, or used on or about, the Leased Premises while this Lease is effective.

(b)

(a) To the extent that the Leased Premises are assessed for property tax purposes as if privately owned during the Term of the Lease, the Landlord shall be responsible for the payment of all such property taxes, including but not limited to ad valorem taxes or privilege taxes levied, assessed, or imposed on such property.

(b) Subject to Section 3.2(a) above, the Tenant agrees and acknowledges that this Section 3.2 satisfies the requirements of Section 107.6 of the California Revenue and Taxation Code (as amended from time to time), which requires that the Landlord must include a statement that the Leased Premises, and the Tenant, may be subject to property taxation, and that the Tenant has actual knowledge of the existence of a possessory interest tax against the Tenant's leasehold interest in the Leased Premises.

Tenant's Initials: _____

Section 30.
USE OF LEASED PREMISES

(a) The Leased Premises are hereby leased to Tenant upon the express condition that Tenant shall use said Leased Premises for the purpose of winding down the operation of a retail grocery and liquor store. The Leased Premises shall not be used by Tenant for any other purpose whatsoever without the prior written consent of Landlord and subject to the conditions contained in this Lease.

Section 31.
CONDITION OF LEASED PREMISES

(a) The rights and responsibilities of Tenant with respect to the condition of the Leased Premises are as follows:

(1)By accepting occupancy of the Leased Premises, the Tenant shall be deemed to have agreed that the Leased Premises are in a clean and sanitary condition and good state of repair, and in a condition suitable for the use authorized under this Lease.

(2)Tenant will, at Tenant's own cost and expense maintain the Leased Premises in good condition and repair and in accordance with applicable laws. Tenant will also during the full term of this Lease, at its own cost and expense, make all repairs and replacements of whatsoever kind or nature to the Leased Premises rendered necessary by reason of any negligence or misconduct of Tenant or its agents, employees, or guests or invitees. The Landlord shall not be responsible for any maintenance or repair of the Leased Premises. In the event that extraordinary repairs are required to the Leased Premises for reasons other than Tenant's actions or omissions, then (i) neither the Tenant nor the Landlord shall be obligated to make such repairs and (ii) either party may terminate the Lease by providing five (5) days written notice to the other party (in which event the "Term" shall expire upon the date that is five (5) day's following such party's receipt of such notice).

(3)AS IS CONVEYANCE. THE LANDLORD LEASES AND THE TENANT TAKES THE LEASED PREMISES AS IS. THE TENANT ACKNOWLEDGES THAT THE LANDLORD ACQUIRED THE PROPERTY FROM THE TENANT AND THEREFORE, THE LANDLORD (WHETHER ACTING AS THE LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL THE LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO: (1) ITS FITNESS, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE; (2) THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN; (3) THE EXISTENCE OF ANY DEFECT, LATENT OR PATENT; (4) THE LANDLORD'S TITLE THERETO; (5) VALUE; (6) DURABILITY; (7) THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, HAZARDOUS CONDITION OR HAZARDOUS ACTIVITY; OR (8) COMPLIANCE OF THE LEASED PREMISES WITH ANY LAW OR LEGAL REQUIREMENT; AND ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE TENANT. THE TENANT ACKNOWLEDGES THAT THE LEASED PREMISES ARE OF ITS SELECTION AND TO ITS SPECIFICATIONS AND THAT THE LEASED PREMISES IS SATISFACTORY TO THE TENANT. IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY OF THE LEASED PREMISES OF ANY NATURE, WHETHER LATENT OR PATENT, THE LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO STRICT LIABILITY IN TORT). THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED, AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES BY THE LANDLORD, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, ARISING PURSUANT TO ANY LAW NOW OR HEREAFTER IN EFFECT OR ARISING OTHERWISE.

(4)In consideration for the conveyance of the Leased Premises pursuant to this Lease, the Tenant, on behalf of itself and anyone claiming by, through, or under the Tenant hereby waives its right to recover from and fully and irrevocably releases the Landlord, the



Landlord's council members, board members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Tenant may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Leased Premises, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the Released Parties under or in connection with this Lease. The release set forth in this Section includes claims of which the Tenant is presently unaware or which the Tenant does not presently suspect to exist which, if known by the Tenant, would materially affect the Tenant's release of the Released Parties. The Tenant specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Tenant agrees, represents and warrants that the Tenant realizes and acknowledges that factual matters now unknown to the Tenant may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Tenant further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Tenant nevertheless hereby intends to release, discharge and acquit the Landlord from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Tenant, on behalf of itself and anyone claiming by, through or under the Tenant, hereby assumes the above-mentioned risks and hereby expressly waives any right the Tenant and anyone claiming by, through or under the Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Tenant's Initials: _____

(5) If the Tenant fails to make any payment or perform any act required under this Lease, then the Landlord may make such payment or perform such other act. Before making any such payment, the Landlord shall first give the Tenant advance notice of five (5) days and an opportunity to make the payment. Before performing any such other act, and except in emergencies (in which case no prior notice is required), the Landlord shall first give the Tenant advance notice of five (5) days and an opportunity to cure. The Tenant shall reimburse the Landlord immediately upon demand for any the Landlord expenditures under this Section. If the Tenant fails to reimburse the Landlord for such expenditures, then such costs shall be additional rent owed by the Tenant to the Landlord (the "Additional Rent").

(6) Upon termination of this Lease, the Tenant shall immediately and unconditionally surrender the Leased Premises, in the same condition as received on the commencement of this Lease excepting ordinary and reasonable wear and tear. While this Lease is effective and upon termination of this Lease, the Tenant at its expense shall repair all damage



caused to the Leased Premises, by the removal or replacement of any personal property, trade fixtures, furniture, or equipment owned or leased by the Tenant. In the event the Tenant fails to perform such repairs and/or maintenance as set forth in this Lease, or fails to repair any other damage to the Leased Premises caused by the Tenant or the Tenant's guests, licensees, or agents, then the Landlord may repair such loss or damage, and then seek reimbursement from the Tenant using any available remedy at law or at equity.

(7) Any property of the Tenant not removed by the Tenant upon the termination of this Lease shall be considered abandoned, and the Landlord may remove any or all such items and dispose of the same in any manner permitted by law. The Landlord may sell any or all of such property at public or private sale, in such matter and at such times and places as permitted by law.

Section 32.

TENANT'S ACTIVITIES; TENANT'S REPRESENTATIONS

(a) The Tenant covenants and agrees and makes the following representation with respect to the activities on the Leased Premises:

(1) The Tenant agrees not to do or permit anything to be done in or about the Leased Premises nor bring or keep anything on the Leased Premises which will in any way increase the existing rate or affect any fire or other insurance upon the Leased Premises or cause a cancellation of any insurance policy covering the Leased Premises. The Tenant agrees not to sell or permit to be kept, used, or sold in or about said Leased Premises any articles which may be prohibited by a standard form policy of fire insurance.

(2) The Tenant agrees not to use or allow the Leased Premises to be used for any unlawful or objectionable purpose (as determined by the Landlord). The Tenant further agrees not to cause, maintain, or permit any nuisance in or about the Leased Premises. The Tenant agrees not to commit or suffer to be committed any waste in or about the Leased Premises or the Property.

(3) The Tenant agrees not to use the Leased Premises or permit anything to be done in or about the Leased Premises or the Property which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. The Tenant agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Leased Premises.

(4) The Tenant shall not use, store, treat, dispose of or otherwise handle any Hazardous Materials on or about the Leased Premises, and the Tenant shall not permit the use, storage, treatment, disposal or other handling of any Hazardous Material on or about the Leased Premises by its employees, agents, contractors, sublessees, assignees, licensees, guests or invitees. For purposes of this Lease, "Hazardous Materials" shall mean and include any substance which is: (1) defined under any Environmental Law (as defined below) as a hazardous

substance, hazardous waste, hazardous material, pollutant or contaminant; (2) a petroleum hydrocarbon, including crude oil or any fraction thereof; (3) a hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant; or (4) otherwise regulated pursuant to any Environmental Law. For purposes of this Lease, "Environmental Law" shall mean and include all federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals, authorizations and similar requirements of all federal, state and local governmental agencies or other governmental authorities pertaining to the protection of human health and safety or the environment now existing or later adopted while this Lease is effective. Notwithstanding the foregoing, however, the Tenant shall be entitled to store and use (in a commercially reasonable manner) on the Leased Premises reasonable quantities of customary to the operation of a retail grocery and liquor store.

(5) Tenant shall keep any display windows or signs in or attached to the Leased Premises well lit on days and hours as determined by Landlord from time to time.

Section 33.

LIENS

(a) During the term of this Lease, Tenant shall keep the Leased Premises free and clear of all liens and charges (including mechanic's liens, judgment liens, attachments and executions), excepting those liens or charges which have resulted from Landlord's act or omission. If Tenant desires to dispute any claim on account of which a lien has been imposed on the Leased Premises, it may withhold payment or satisfaction of the disputed claim until the validity thereof has been judicially established or a settlement thereof agreed upon; provided, however, that if Tenant elects to withhold payment or satisfaction of any such disputed claim, it shall indemnify Landlord in writing, with good and sufficient corporate sureties, to pay such claim if it should be determined to be valid. Tenant shall bear and pay all expenses of resisting such claim.

Section 34.

ALTERATIONS BY TENANT

(a) The parties agree that the following provisions govern all alterations to the Leased Premises by Tenant:

(1) Tenant shall make no alterations to the Leased Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any alterations made to the Leased Premises by Tenant after that consent has been given, and any trade fixtures installed as a part of that work, will remain the Tenant's property; and, Tenant shall have the right to remove any such trade fixtures at Tenant's cost on termination of this Lease and to repair any damage caused by such removal. Should Tenant fail to remove such trade fixtures, then Landlord may, at Tenant's sole discretion, have such trade fixtures removed at Tenant's sole cost and expense, with Tenant acquiring title to such removed trade fixtures upon payment in full of the costs associated with their removal. If Tenant does not remove Tenant's trade fixtures and Landlord chooses not to have them removed for Tenant's benefit, then such trade fixtures shall

revert to Landlord, with Tenant's failure to removing them constituting an abandonment of the same.

Section 35.
INSURANCE

(a) The Tenant shall, at its expense, procure, carry, and maintain in full force and effect in a form acceptable to the Landlord and with insurance companies authorized to transact business in the State of California, insurance coverage by the following policies of insurance:

(1) Workers' Compensation Insurance, in accordance with applicable law;

(2) Liability insurance on an occurrence basis, arising out of or resulting from: (1) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Leased Premises; and (2) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, and (3) liability arising out of or resulting from the Tenant's covenant in Article 10 to indemnify the Landlord, its agents and employees; and

(3) Fire insurance with an extended coverage endorsement insuring the Tenant for loss in amount equal to ninety percent (90%) of replacement cost of the Leased Premises.

(b) The insurance purchased and maintained by the Tenant shall provide the following minimum limits:

(1) Workers' Compensation Insurance, in accordance with applicable law;

(2) Personal injury and bodily injury \$1,000,000 each occurrence; and

(3) Automobile Liability \$1,000,000 each occurrence. Tenant shall procure and maintain, at its sole cost and expense, plate glass insurance coverage for the mutual benefit of Landlord and Tenant.

(c) All policies of liability insurance obtained and maintained by the Tenant in accordance with the requirements of this Lease shall name the Landlord as additional insured and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for the Landlord.

(d) Upon the Landlord's request, the Tenant shall furnish to the Landlord copies of the certificates of insurance. The certificate of insurance shall provide that the insurance company shall notify the Landlord by written notice at least thirty (30) days prior to any cancellation, reduction or modification of coverage. In the event the Tenant does not comply with the requirements of this Article 9, the Landlord may, at its option, purchase insurance coverage to protect the Landlord and the Leased Premises and the cost of such insurance shall be Additional Rent owed by the Tenant to the Landlord.

Section 36.
INDEMNIFICATION

(a)The Tenant shall indemnify, defend and hold harmless the Landlord, the Landlord, and the Landlord's council members, the Landlord's board members, and their officers and employees from and against any and all claims and causes of action arising from any dispute (including, but not limited to, a lawsuit, an administrative proceeding, arbitration, or an enforcement action of any kind) and any and all damages (direct or consequential), costs, losses, injuries, fines, penalties, liens, encumbrances, charges, liabilities, demands, judgments, remedial action requirements, obligations, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys' fees and costs) in connection with the Tenant's occupancy and use of the Leased Premises. The obligations of the Tenant under this paragraph shall survive the termination of this Lease.

Section 37.
ASSIGNMENT AND SUBLETTING

(a)The Tenant shall not assign, transfer, sublet, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, or any part thereof, and any attempt to do so without the explicit prior written consent of the Landlord shall be wholly void.

Any consent by the Landlord to any assignment or subletting by the Tenant shall not relieve the Tenant of any obligation to be performed by the Tenant under this Lease, whether occurring before or after such consent, assignment or subletting. The acceptance of any Rent by the Landlord from any other person shall not be deemed to be a waiver by the Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

Section 38.
QUIET ENJOYMENT, RIGHT OF ACCESS

(a)The Tenant, by paying the Minimum Rent and performing all terms and conditions of this Lease, shall peaceably and quietly have, hold and enjoy the Leased Premises with all appurtenances on the Leased Premises while this Lease is effective.

(b)The Landlord or its agents shall have the right of access to the Leased Premises at all reasonable times with twenty-four (24) hours prior notice to the Tenant, (except in case of emergency in which event no prior notice need be given), for purposes of: (a) structural inspections, testing and repairs; (b) determining compliance with the provisions of this Lease; (c) posting notices in connection with this Lease; and (d) exhibiting the Leased Premises to lenders, contractors, or prospective tenants or purchasers, or other parties.

Section 39.
DEFAULT BY TENANT

(a) Any of the following shall constitute a default and breach of this Lease by the Tenant (a "Default"):

(1) Abandonment. If the Tenant abandons or vacates the premises;

(2) Failure to Pay Rent. If Tenant fails to pay any charges required to be paid by Tenant under this Lease and such failure continues for three (3) days after written notice has been given to Tenant that such payment is due and payable;

(3) Assignment. The Tenant's assignment or subletting of any portion of the Leased Premises without the prior written consent of the Landlord;

(4) Misrepresentation. Any representation or warranty made by the Tenant herein or in any certificate, demand or request made pursuant hereto proves to be incorrect, now or hereafter, in any material respect;

(5) Failure to Perform. If Tenant fails to promptly perform any other covenant, condition, or agreement contained in this Lease and such failure continues for ten (10) days after written notice thereof from Landlord to Tenant; or if such default reasonably requires more than ten (10) days to cure, such cure is not commenced within ten (10) days after written notice thereof from Landlord to Tenant or is not diligently pursued after commencement;

(6) Lien. If a writ of attachment or execution is levied on this Lease or on any of Tenant's property;

(7) Assignment to Creditor. If Tenant makes a general assignment for the benefit of creditors;

(8) Receiver. If, under the provision of any law providing for the winding up and/or dissolution of corporations, any court of competent jurisdiction assumes jurisdiction, custody, or control of Tenant or any substantial part of its property and such jurisdiction, custody, or control remains in force unrelinquished, unstayed, or unterminated for a period of forty five (45) days;

(9) Bankruptcy. In any proceeding or action in which Tenant is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Leased Premises or Tenant's property (or has the authority to do so) for the purpose of enforcing a lien against the premises or Tenant's property;

(10) The filing of a voluntary petition in bankruptcy by Tenant or the filing of an involuntary petition by Tenant's creditors, with the petition remaining undischarged for a period of ninety (90) days. Notices given under this paragraph shall specify the alleged default and the

applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture of termination of this Lease unless Landlord so elects in the notice

(b) Landlord Remedies. In the event of a Tenant Default, the Landlord shall have all the remedies available at law or in equity, including, but not limited to: (a) terminating this Lease; (b) seeking an action for specific performance; and (c) seeking an action for monetary damages.

Section 40.
EMINENT DOMAIN

(a) In the event that any public agency or any corporation (save and except for Landlord or any governmental agency or subdivision of Landlord) exercising the right of eminent domain should condemn or take the whole or any material part of the Leased Premises, then this Lease shall be terminable at the option of either party hereto at any time on or after said public agency or such corporation shall have legally demanded actual physical possession and in the event of any such condemnation of the whole or any material part of the building in which the Leased Premises are situated, the Landlord or Tenant shall likewise have the right to terminate this Lease. All of said fund acquired through the condemnation proceedings, save and except any such moneys attributable to trade fixtures and equipment, shall belong to Landlord, with the moneys attributable to any trade fixtures and equipment belonging to Tenant. Notwithstanding the foregoing, Tenant is not prohibited from obtaining any damages from the condemning agency it may have suffered as a result of the condemnation.

Section 41.
DESTRUCTION OF LEASED PREMISES

(a) If, during the term of this Lease, the Leased Premises are totally or partially destroyed from a risk covered by insurance in effect at the time, all insurance proceeds shall be paid to Landlord. The Landlord shall have no obligation whatsoever to restore the Leased Premises. Such destruction shall terminate this Lease.

Section 42.
NOTICES

(a) Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease shall be deemed to be served when personally delivered to the party to whom the notice is directed, or, in lieu of personal service, when deposited in the United States mail, certified mail, return receipt requested, first class postage prepaid as follows:

If to Landlord: City of Tracy
 333 Civic Center



Tracy, California 95376
Attn: City Manager

If to Tenant: Olomari Enterprises, Inc.
265 San Simeon Way
Tracy, California 95376
Attn: Fahd Olomari

With a copy to: Steve Nicolaou, Esq.
445 W. 11th Street, Suite C
Tracy, California 95376

Either party to this Lease may change their address for purposes of this section by giving written notice of the change to the other party in the manner provided in this section. All payments due under this Lease shall be made to the addresses provided in this Section.

Section 43.
RELOCATION WAIVER AND RELEASE OF CLAIMS

(a) The Tenant agrees and acknowledges that the Landlord has acquired the Leased Premises, from the Tenant, for the purpose of redeveloping the Leased Premises, and that, the Term, and the Tenant's right to use and occupy the Leased Premises pursuant to this Lease, is temporary.

The Tenant further agrees and acknowledges that: (i) the use and occupancy of the Leased Premises pursuant to this Lease shall be temporary in nature; (ii) the Tenant, or any person claiming by, under, or through the Tenant (including, but not limited to, any manager, member, shareholder) shall not qualify as a "displaced person" under any state law (including, but not limited to, California Government Code Section 7260, et seq., as may be amended from time to time); (iii) upon the termination or expiration of this Lease the Tenant will not be eligible for any relocation benefits or assistance for persons displaced by governmental activities; (iv) the Tenant may suffer economic loss or other consequences related to the failure of the Landlord to extend this Lease, following the expiration of the Term (as may be extended), including, but not limited to, economic loss or other consequences due to the Tenant's inability to operate any form of business within the Leased Premises; and (v) specifically releases and waives any claim against the Landlord for such loss or economic consequences in connection with the failure of the use or occupy the Leased Premises (or any portion thereof), or the Leased Premises (or any portion thereof) set forth above. The Tenant, on behalf of itself and any person claiming by, through or under the Tenant, hereby assumes the above-mentioned risks related to the Landlord's discretion to the term use of the Leased Premises and hereby expressly waives any right the Tenant and any Person claiming by, through or under the Tenant, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Tenant's Initials: _____

Section 44.
MISCELLANEOUS

(a) If the Tenant, or any person claiming under the Tenant, should hold possession of the Leased Premises or any part thereof after the termination or expiration of this Lease, then such holding over shall constitute a tenancy from month-to-month, upon the same terms, covenants and conditions contained in the Lease so far as they are applicable, provided monthly Rent shall be equal to \$5,000 per month at the time of such holding over. In addition, the Tenant shall pay all damages sustained by the Landlord by reason of such holding over, and shall, upon demand by Landlord, indemnify, defend (with counsel selected by the Landlord) and hold the Landlord harmless from and against any loss or liability resulting from such holding over. Landlord's acceptance of such rent shall create only a tenancy at sufferance, upon the terms set forth in this Section. Any such tenancy shall be terminable at any time by either party upon ten (10) days written notice to the other party. Nothing contained in this Section shall be deemed or constructed to waive Landlord's right of re-entry or any other right of Landlord hereunder or at law, or as permission for the Tenant to hold-over beyond the Term of this Lease.

(b) The title and headings of the various sections hereof are intended as a means of reference and are not intended to place any construction on the provisions hereof.

(c) This Lease supersedes all prior negotiations and agreements between the parties, and is intended by the parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Lease.

(d) The waiver by Landlord of any breach of Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant of the same or of another provision of this Lease.

(e) If any legal action or proceeding arising out of or related to this Lease is brought by either party thereto, the prevailing party, in addition to any other relief that may be granted, shall be entitled to recover reasonable attorneys fees, costs, and other expenses incurred in the action or proceeding by the prevailing party.

(f) This Lease shall be binding upon and shall inure to the benefit of the heirs, executors, personal representatives, successors, assigns, officers, directors and shareholders of the parties thereto; provided, however, that nothing in this section shall be construed as a consent by Landlord to any assignment of this Lease or any interest in it by Tenant.

(g) Time is expressly declared to be of the essence in this Lease.



(h) If any term or provision of this Lease or any application thereof shall be held invalid or unenforceable, the remainder of this Lease and any application of the terms and provisions shall not be affected thereby, but shall be valid and enforceable pursuant to this Lease or California law.

(i)

(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

(j) Any amendments or modification to this Lease shall be of no force and effect whatsoever unless it is in writing and signed by Landlord and Tenant. This instrument constitutes the sole and only agreement between Landlord and Tenant with respect to the Leased Premises, the leasing of the Leased Premises to Tenant, and the lease term created under this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Leased Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are null and void.

(k) This Lease shall not be construed to constitute any form of partnership or joint venture between the Landlord and the Tenant. The Landlord and the Tenant acknowledge that no business or financial relationship exists between them other than as landlord and tenant, and that the Landlord is not responsible in any way for the debts of the Tenant or any other party.

(l) This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Executed on the date first indicated above at Tracy, California.

LANDLORD:

CITY OF TRACY, a municipal corporation

By: _____

Name: _____

Its: _____

TENANT:

OLOMARI ENTERPRISES, INC., a California corporation

By: _____
Fahd Olomari, President



EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of TRACY, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

LOTS 12, 13 AND 14 AND ALL THAT CERTAIN PORTION OF LOT 15 LYING EASTERLY OF THE LINE RUNNING FROM A POINT 1.25 FEET WESTERLY OF THE WESTERLY LINE OF LOT 14 MEASURED ALONG THE SOUTH SIDE OF 8TH STREET TO APPOINT 6.31 FEET WESTERLY OF THE WESTERLY LINE OF LOT 14 MEASURED ALONG THE SOUTH LINE OF SAID LOT 15, ALL IN BLOCK 13. THE ABOVE-DESCRIBED PROPERTY BEING ALL OF LOTS 12, 13 AND 14 AND A STRIP OFF OF THE EASTERLY SIDE OF LOT 15; SAID STRIP BEING 1.25 FEET WIDE ON THE SOUTH SIDE OF WEST 8TH STREET AND 6.31 FEET WISED ON THE NORTH SIDE OF ALLEY, ALL IN BLOCK 13 IN THE CITY OF TRACY, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, FILED FOR RECORD JUNE 29, 1892 IN BOOK OF MAPS AND PLATS, VOL. 2, PAGE 63, SAN JOAQUIN COUNTY RECORDS.

APN: 235-068-06



EXHIBIT B

LEASED PREMISES DESCRIPTION



AGENDA ITEM 5

REQUEST

REVIEW AND APPROVE TRACY ARTS COMMISSION'S RECOMMENDATIONS FOR THE LANDMARK FEATURE OF THE DOWNTOWN PARK PLAZA

EXECUTIVE SUMMARY

Civic art is being considered as the landmark feature for the new Downtown Park Plaza. The Tracy Arts Commission formed a Civic Art Project Subcommittee to solicit and review artist's proposals for a landmark feature and a finalist is being recommended for approval. The proposal recommended for negotiation with the artist and potential future funding integrates a large format artwork in the planned roundabout feature at Central Avenue and 6th Street. The landmark, along with the pavilion, is among several additional features of the Plaza for Council's future consideration in regards to priority and community impact. Upon Council review and approval, staff will enter into negotiations to initially contract with the artist in the amount of \$500 to finalize design in preparation for roundabout construction.

DISCUSSION

City Council provided direction on the conceptual design alternatives for the Downtown Park Plaza on June 15th, 2010. At that time City Council opted to wait on providing direction for the landmark feature in order to consider recommendations provided through the Civic Art Program. As part of the Capital Improvement Project (CIP) for the Downtown Park Plaza to be located at Central Avenue and 6th Street, staff explored the incorporation of a civic art project as a prominent landmark feature at a cost not to exceed \$200,000. A Request For Proposals (RFP) was issued in July of 2010. Over 100 artists/artist collectives were solicited for interest, with 19 individual artists and 3 artist teams submitting a total of 29 proposals.

A project subcommittee was formed to review the artists' proposals, solicit and review public feedback, and provide a finalist recommendation to the Tracy Arts Commission. The Downtown Park Plaza Landmark Civic Project Subcommittee included: Tracy Arts Commissioners Michael Hays, Barbara Howard, and Marlene Jones; Transportation Advisory Commissioner and Architect Christina Frankel, Planning Commissioner and Member of the West Side Pioneers Pete Mitricos, Local Sculptor and Member of the Tracy Art League Frank Cameron, Downtown Business Owner Ray Morelos, and Downtown Business Owner Melody Potter.

All 29 proposals met the required criteria and were placed on public display from September 15th to November 6th at the Grand Theatre Center for the Arts. The public was invited, via media release, email announcement and flyers, to rate interest and provide commentary. The public was asked to consider the Artistic Excellence/Creativity (design concepts that are creative and demonstrate quality of work) and Strength of Content (considerations of the project, the community, and users) in order to provide useful data and comments. 190 public surveys were collected and quantified.

The Subcommittee reviewed the proposals to identify questions/concerns for the artists, toured the Downtown Park Plaza site, reviewed public feedback, discussed the proposals in depth, and then submitted evaluation worksheets and made finalist

recommendation. The Subcommittee and the public both preferred the same proposal. The Tracy Arts Commission reviewed the Subcommittee recommendations on November 9th, 2010. Commissioners discussed the historical significance of the project location, the public use of the transit station, plaza and roundabout, the site lines and scale of the artwork in relationship to the streetscape and architecture of the area, the durability of materials, and the desire for a low-maintenance artwork. The Commission unanimously agreed that the success of the landmark is dependent upon linking the history of Tracy and the community to the artwork.

The recommended proposal would integrate a large format sculpture in the center of the roundabout and is outlined below. This project celebrates Tracy's historic themes of labor, transportation and agriculture in the form of a monumental bronze figure. The sculpture forms an image of symbiotic strength and action. The highly recognizable, regional subject matter in a richly textured, impressionistic style make this sculpture a symbol of the importance of Tracy's past and future.

Upon Council approval, staff will negotiate with the artist to provide a revised itemized budget and for an initial contract in the amount of \$500 to provide a final design that could be referenced by project engineers to provide the proper infrastructure, such as concrete footings and electrical components, in the roundabout to accommodate future potential installation of the sculpture. The working budget below incorporates production, foundry casting, artist's fee and installation, as well as any known or suggested revisions to the project. In addition, a 10% contingency is established for required signage and fluctuating market-driven expenses.

The Tracy Arts Commission's recommendation is as follows:

| | |
|------------------|--|
| Artist/City | Rowland Cheney - Clements, CA |
| Working Title | <i>Railroad Conductor / Farmer</i> |
| Description | 16' tall bronze sculpture featuring co-joined figures of a railroad conductor facing to the west and a farmer facing to the east. 4' tall concrete base with lights. Conductor lantern to be red patina or illuminate red. |
| Sculpture Size | Approximately 11' W x 16' H to 8' W |
| Project Location | Roundabout – Downtown Park Plaza at Central Ave & 6 th St. |
| Working Budget | \$200,000 (\$180,000 project/\$20,000 contingency) |

The Artist will be asked to submit final scale model and/or drawings of project upon City Council review and approval of the finalist recommendation. As the compensation for final design is nominal in this project, the expense of \$500 can be incurred from the Cultural Arts Division's budget, which includes the operations of the Tracy Arts Commission and the Civic Art Program.

With project approval staff can begin to research funding sources for any expenses needed to execute project completion outside of the Downtown Park Plaza CIP (Capital Improvement Project).

If future funding is identified to pay for this project, and upon Council approval, staff will negotiate a contract with the artist to include all aspects of fabrication and installation

that follows the guidelines of the Civic Art Plan in the best interests of the City. Such contract will also be subject to Council approval as it will likely exceed the \$50,000 amount that the City Manager may authorize.

FISCAL IMPACT

The fiscal impact is \$500, which is General Fund support for the Cultural Arts Division allocated in the FY10-11 budget. There is no additional General Fund impact.

RECOMMENDATION

Approve the Tracy Arts Commission's finalist recommendation for a civic art project in the form of a landmark feature in the proposed roundabout at the new Downtown Park Plaza.

ATTACHMENTS

None. Artist Support Materials and Maquette will be available at the Council meeting.

Prepared by: William Wilson, Gallery Supervisor
Reviewed by: Bill Dean, Assistant Director, DES
Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

APPROVING THE TRACY ARTS COMMISSION'S FINALIST RECOMMENDATION FOR THE LANDMARK FEATURE OF THE DOWNTOWN PARK PLAZA

WHEREAS, The City Council has established Tracy Arts Commission for the purpose of advising the City Council on policies and programs pertaining to Cultural Arts; and

WHEREAS, The Commission has reviewed and approved on November 9th, 2010, the finalist chosen by the Civic Art Program Subcommittee for artwork at the planned roundabout.

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves the Tracy Arts Commission's finalist recommendation which, upon further Council approval, would potentially integrate a large format artwork in the planned roundabout feature at Central Avenue and 6th Street.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the _____ day of June, 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

INTRODUCTION OF AN ORDINANCE TO UPDATE SECTION 3.16 OF THE MUNICIPAL CODE WHICH REGULATES TAXICABS AND AUTOMOBILES FOR HIRE

EXECUTIVE SUMMARY

Section 3.16 of the Tracy Municipal Code, which regulates taxicabs and vehicles for hire, has become outdated and needs to be updated to reflect current State law. The proposed ordinance meets these new requirements.

DISCUSSION

The regulation of taxicabs was created by Ordinance 189 which was adopted in February 1943. It has only been amended once by Ordinance 238 in October 1968. Since then, there have been changes in State law that now require local agency regulation of taxi drivers and taxi companies operating within its jurisdiction to include among other things, drug testing of drivers and safety checks of vehicles. Due to the extensive changes needed, the proposed ordinance deletes existing Section 3.16 in its entirety and replaces it with the new regulations and requirements.

After researching ordinances from other cities in the surrounding area, staff has drafted a proposed ordinance that is similar to other cities and meets the requirements of State law. Staff has met with the existing cab companies currently doing business in Tracy and all were in agreement with the language contained in the new proposed ordinance.

The proposed ordinance requires that the City Council establish limits on the number of taxicabs allowed to do business in the City, as well as establish limits on the number of vehicle permits allowed for any one business. The action to establish these limits will be brought to the City Council after the ordinance has been adopted. The establishment of the various fees listed in the new ordinance will also be brought to the City Council as a separate action item at a later date.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be an increase in the revenue collected by the Police Department and the Parks and Community Services Department as a result of the annual permit fees established by the ordinance. Revenues collected by the Police Department will go to the General Fund and revenues collected by the Parks and Community Services Department will go to the Transit Fund.

RECOMMENDATION

That City Council introduce an ordinance to update and replace Section 3.16, "Taxicabs and Automobiles for Hire," of the Tracy Municipal Code.

Prepared by: Ed Lovell, Management Analyst II

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

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

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING
TITLE 3, CHAPTER 3.16, ENTITLED "TAXI CABS AND AUTOMOBILES FOR HIRE"

WHEREAS, The City's existing ordinance regulating taxi cabs and vehicles for hire is outdated and does not contain the necessary regulations required by state law;

WHEREAS, The City Council desires to update its ordinance to include the current regulations required by Government Code sections 53075.5 et seq., that are designed to protect the public health, safety and welfare.

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

SECTION 1: Chapter 3.16 of Title 3 of the Tracy Municipal Code is hereby deleted and amended to read as follows:

**"Chapter 3.16
TAXI CABS AND AUTOMOBILES FOR HIRE**

Sections:

| | |
|-----------------|--|
| 3.16.010 | Definitions |
| 3.16.020 | Annual Permits |
| 3.16.030 | Limitations on Number of Permits |
| 3.16.040 | Business Owner's Permits |
| 3.16.050 | Vehicle Permits |
| 3.16.060 | Driver's Permits |
| 3.16.070 | Suspension of Permits |
| 3.16.080 | Revocation of Permits |
| 3.16.090 | Logs and Trip Sheets – Requirements |
| 3.16.100 | Liability Insurance Requirements |
| 3.16.110 | Indemnification |
| 3.16.120 | Registration and licensing Requirements |
| 3.16.130 | Vehicle Color Scheme and Markings |
| 3.16.140 | Equipment Requirements |
| 3.16.150 | Maintenance and Inspection Requirements |
| 3.16.160 | Rates |
| 3.16.170 | Taximeter Regulations |
| 3.16.180 | Standards for Driver Conduct |
| 3.16.190 | Operating Regulations For Services Provided |
| 3.16.200 | Taxicabs and Vehicles for Hire from other Locations |
| 3.16.210 | Impoundments |
| 3.16.220 | Disclaimers |
| 3.16.230 | Violation - Penalty |

3.16.010 Definitions.

(a) "City" means the City of Tracy.

(b) "Driver" means every individual who operates any taxicab or vehicle for hire as an employee of a business owner, independently owns the taxicab or vehicle for hire and operates under the auspices of such owner, or has independently contracted with such owner to operate the taxicab or vehicle for hire pursuant to a lease, license or any other form of agreement.

(c) "Employee" includes self-employment as an independent driver.

(d) "Motor vehicle" means every motor vehicle used for public hire propelled by mechanically produced power and intended for use on public streets and highways, except street cars, trains and motor buses.

(e) "Business owner" means any entity engaged in the business of providing vehicles for the purpose of carrying passengers in a taxicab or other vehicle for hire, whether comprised of an individual, group of individuals, partnership, limited partnership, joint venture, corporation or any other organizational structure identified by name, phone number, central dispatch, color scheme, monogram, or insignia distinguishing itself from any other entity engaged in such business.

(f) "Taxicab" means a motor vehicle, designed for carrying not more than eight passengers excluding the driver, of distinctive color or combinations of colors used in the transportation of passengers over the public streets of the City, operated at rates per mile, per destination or for a combination of any two of the foregoing rates, irrespective of whether or not the operations extend beyond the limits of the City, and which is made available for hire on call or demand, at taxi stands, by telephone or by internet.

(g) "Taximeter" means any mechanical or electronic instrument, appliance, device or machine by which the charge for hire of a motor vehicle is mechanically calculated, either for distance traveled or time consumed, or both, and upon which instrument, appliance, device or machine such charge is indicated by figures.

(h) "Vehicle for hire" means any motor or electric vehicle offered to the public for hire with the services of a driver, whether equipped with a taximeter, used for the transportation of passengers over the public streets of the City, irrespective of whether such operations extend beyond the boundary limits of the City, at rates per distance, trip, per hour, per day, per week, per month, and where transportation is under the control, as to route, of the persons hiring the same. "Vehicle for hire" shall not include a charter-party carrier of passengers within the meaning of the Passenger Charter-party Carriers' Act, Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code. "Vehicle for hire" includes taxicabs.

3.16.020 Annual Permits and Business License Required for Business Owners, Drivers and Vehicles--Fees, Expiration and Change of Address

(a) Permits – Approval Required. No person, corporation, partnership, cooperative, business, fictitious name or dispatch center shall engage in the business of operating any kind of taxicab or vehicle for hire within the City, without a business owner's permit, driver's permit and vehicle permit issued by the City. Each permit shall be valid for one year, unless suspended or revoked, and must thereafter be renewed. Such permits shall not be assigned, sold or transferred to another business, owner, driver or vehicle.

(b) Permit Fees. The City council shall set by resolution the fees required for obtaining business owner's, driver's and vehicle permits, including, but not limited to, fees for fingerprinting, background checks and vehicle inspections.

(c) Business License. There shall be imposed on each business owner and driver if required by the business owner, a business license fee in an amount established by City council resolution. It is unlawful to operate, or allow to be operated, a taxicab or vehicle for hire without payment of such business license.

(d) Permit Application, Renewal and Expiration. All permits shall be for a period not to exceed one calendar year. Unless otherwise provided by the Parks and Community Services Director, applications for all permits shall be submitted on or before September 1st of each year for the following calendar year and all permits shall expire on December 31st of each year.

(e) Notice of Change of Address. Every business or person holding a permit issued under this chapter shall at all times keep the City notified of his or her current address. He or she shall notify the City in writing within ten days of any address or phone change.

3.16.030 Limitations on Number of Permits.

(a) The City council shall set by resolution the maximum number of vehicles for hire to be operated in the City and the maximum number of vehicles for hire for which each business owner may seek vehicle permits.

(b) Should the maximum number of taxicabs or vehicles for hire in the City be reached as stated by City Council resolution, the City shall create a waiting list for vehicles which shall be notified when permits become available. Existing permit holders in good standing have priority in renewal and vehicles on the waiting list shall receive annual permits only after existing vehicle permit holders have been given an opportunity to renew.

3.16.040 Business Owner's Permits.

(a) Permit Applications. Any person or entity seeking to operate as a business owner shall apply in the matter set forth in this chapter. The application shall be in writing, signed by the business owner, and shall set forth all information required, including but not limited to the following:

- (1) Name and address of each business owner applying to operate taxicabs or other vehicles for hire;
- (2) Fictitious business name of the applicant, if any;
- (3) Mailing address and business telephone number of the applicant;
- (4) Name, address, age and driver's license number of each employee who will be driving the owner's vehicles;
- (5) Total number of vehicles to be operated in the City under the business owner's permit, including the numbering of said vehicles; legal and registered ownership of each of the vehicles to be used by the applicant; and the manufacturer, model year, vehicle type, vehicle identification number ("VIN") for each vehicle; license plate number; company identification number; passenger capacity and proof of commercial registration for each vehicle to be operated within the City; together with evidence satisfactory to the City that each taxicab or vehicle for hire proposed to be operated under the permit has been safety-inspected in accordance with the terms of this chapter, and otherwise complies in all respects with all applicable laws, rules and regulations;
- (6) Description of the color scheme, insignia, trade style and/or any other unique characteristics of the taxicab design and placement of City required markings and company markings along with a color photograph of the vehicle;
- (7) The street address(es) from which the applicant conducts or will conduct the taxicab or vehicle for hire business; where dispatch will be conducted; and each location at which the business's vehicles will be garaged;
- (8) Prior experience of the applicant in a taxicab or vehicle for hire business, including the details of any prior permit denial, revocation or suspension by any public agency of any type of operator's or driver's permit, license or certificate;
- (9) A certification by the business owner that no driver employed or to be employed by the operator has been convicted of driving under the influence of alcohol or drugs in any state within five calendar years preceding the date of application;
- (10) A copy of the business owner's maintenance program, including preventative maintenance. The program must be in accordance with the vehicle manufacturer's warranty specifications and any applicable state and federal laws;

- (11) Rates to be charged to the public throughout the term of the business owner's permit;
- (12) Federal taxpayer identification or social security number of the applicant;
- (13) Satisfactory proof of insurance as provided in Section 3.16.110 of this chapter for each driver and vehicle to be operated in the City under the permit;
- (14) Satisfactory evidence establishing that the applicant has complied and currently complies with the provisions of California Government Code Section 53075.5 (b)(3), or any successor provision, pertaining to pre-employment and periodic testing of drivers for controlled substances and alcohol, and with provisions pertaining to payment for drug and alcohol testing programs and related reporting requirements. The applicant must also provide satisfactory evidence from a City approved lab that each driver who will operate a taxicab or vehicle for hire within the City has tested negative for drugs and alcohol as required by Section 53075.5;
- (15) Unless otherwise provided by law, evidence that the applicant has procured worker's compensation insurance covering all drivers to be employed by the applicant;
- (16) Acknowledgement that the taxicab service or vehicle for hire has the ability to provide service to persons utilizing the City's mandatory subsidized taxi service program within 24 hours notice;
- (17) The history of the organization and the manner in which it is organized, including, without limitation, the date of formation, the business commencement date(s), and all business locations in California during the five calendar years preceding the year of application;
- (18) Submission of Department of Motor Vehicles (DMV) Pull Notice Program Requestor Code Number, as defined in Vehicle Code Section 1808.1, issued to the applicant. As a condition of accepting a business owner's permit, the business owner is required to notify the City immediately if it receives a DMV Pull Notice on one of its drivers that would affect that person's driver's permit. In the event a driver's DMV record indicates that a driver no longer qualifies for a driver's permit, the business owner must require the driver to surrender the driver's permit to the Chief of Police. DMV Pull Notice records must be made available for review by the City upon request;
- (19) Submission of records of any convictions in any court of any state of the United States or in any United States court with respect to any business owner or driver identified in the business owner's permit application; including any such convictions following a plea of no contest (or nolo contendere). The City council specifically authorizes the Chief of Police or designee to receive state and local summary criminal history information in fulfilling his licensing duties under this chapter;

(20) Satisfactory proof that the business will be operated in compliance with all provisions of this chapter;

(21) Any additional information pertinent to the operation of the proposed taxicab or vehicle for hire service that the City may require.

(b) Disposition of Business Owner's Application--Conditions.

(1) Such business owner's permit shall be granted unless:

(i) The applicant fails to submit a complete application; or

(ii) The applicant makes any omission, untrue statement or material misrepresentation in the application, or provides fraudulent documentation with the application; or

(iii) Any vehicle proposed to be operated lacks the required equipment, is improperly licensed or unsafe; or

(iv) Additional taxicab service or vehicle for hire will have a detrimental effect on traffic and parking within the City, or will otherwise be contrary to the public welfare; or

(v) The applicant has been convicted of any felony offense, or of any misdemeanor offense involving moral turpitude, theft or fraud, including any such convictions following a plea of no contest, taking into consideration the nature of the conviction, the age of the applicant at the time of the conviction, any evidence of rehabilitation, and the relationship of the conviction to the propriety of the applicant operating a vehicle for hire; or

(vi) The applicant's proposed schedule of rates conflicts with those set by resolution by the City council, or are otherwise unjust, unreasonable, discriminatory or preferential; or

(vii) The applicant has not otherwise complied with this chapter.

(2) The issuance of a business owner's permit is conditional upon such owner ensuring that each vehicle for hire operated by such business owner has a vehicle permit issued by the City, and each driver of such vehicle for hire has a driver's permit issued by the City, within the limits and in the manner set forth in this chapter.

(3) The business owner shall notify the City immediately upon termination of employment of an employee hired to operate a taxicab or vehicle for hire in the City.

3.16.050 Vehicle Permits.

(a) Permit Application. No vehicle for hire shall operate in the City without a vehicle permit from the City as set forth in this chapter. The application shall be in writing, signed by the owner, and shall set forth all information required including, but not limited to the following:

(1) A copy of the state vehicle registration under owner's name, license plate number and corresponding vehicle identification number of each vehicle to be operated in the City;

(2) Make, model or type, year of manufacture and passenger-seating capacity of each motor vehicle for which such application is made;

(3) Taximeter with current weights and measures seal intact to be installed in each taxicab for which application is made;

(4) Valid inspection certificate issued by the County of San Joaquin, Division of Weights and Measures which certificate shall state the name and model number of the taximeter and the vehicle number for which it is assigned;

(5) Valid "certificate of safety" vehicle inspection certificate from the City or a City-approved vehicle inspection station for each vehicle to be operated in the City as required in Section 3.16.160 of this chapter;

(6) Certificates of insurance from the insurance carrier verifying the coverage required in Section 3.16.110 of this chapter for each vehicle to be operated in the City;

(7) Final of each vehicle by the City to ensure that the vehicle has met all the requirements of this chapter;

(8) Acknowledgement that the business will be operated in compliance with all provisions of this chapter.

(b) Disposition of Vehicle Permit – Conditions. Such vehicle permit shall be granted unless:

(1) The applicant fails to submit a complete application; or

(2) The applicant makes any omission, untrue or material misstatement or provides fraudulent documentation with the application; or

(3) The applicant has violated this chapter more than three times within the last three years; or

(4) There is an absence of satisfactory proof of compliance with the provisions of this chapter.

3.16.060 Driver's permits.

(a) Permit Application. Any person seeking to operate a vehicle for hire as a driver shall apply for a permit in the manner set forth herein. No person under the age of twenty-one years shall be issued a driver's permit. The application shall be in writing, signed by the driver, and shall set forth all the information required in the permit application form including, but not limited to, the following:

- (1) Name, age and address of the applicant;
- (2) Any convictions in any court of any state of the United States or in any United States court, including any conviction following a plea of no contest. [The City council specifically authorizes the Chief of Police or designee to receive State and local summary criminal history information in fulfilling the licensing duties under this chapter];
- (3) His/her past experience in operating a motor vehicle;
- (4) Applicant's current California Class C driver's license number and a photocopy of that license; including any endorsement pursuant to Vehicle Code Sections 15275 and 15278 to operate a commercial motor vehicle;
- (5) Name and address of all employers during the five calendar years preceding the application;
- (6) The disclosure of whether any state driver's license, taxi driver's permit, or commercial or chauffeur's driver's license, issued by the state of California or any state or governmental agency, held by the applicant has ever been revoked or suspended;
- (7) Name and address of the business owner by whom he or she is employed as a driver, or for whom he or she intends to operate a taxicab;
- (8) Current certificate (within the previous six months) of negative test for drugs and alcohol from a City-approved lab, as required by Government Code § 53075.5 as amended;
- (9) Two photographs of the driver (size one and one-half inch by one and one-half inch) taken by the City, one to be filed with the application and one to be permanently attached to the driver's permit when issued;
- (10) State Department of Motor Vehicles driving record report;
- (11) A list of all jurisdictions in which the applicant is permitted to operate a vehicle for hire, including the identification number and expiration date of each permit;

(12) Satisfactory proof that the insurance required by Section 3.16.110 of this chapter covers the driver when operating the taxicab or vehicle for hire;

(13) Any other information the City may require which is reasonably related to the application for the driver's permit.

(14) All applicants shall assent to and be fingerprinted by the Police Department of the City which shall maintain a file of the fingerprints of drivers who are issued permits.

(b) Disposition of Driver's Permit – Conditions.

(1) Such driver's permit shall be granted unless:

(i) The applicant fails to submit a complete application; or

(ii) The applicant makes any omission, untrue or material misstatement or provides fraudulent documentation with the application; or

(iii) Department of Motor Vehicle records of any state of the United States that indicate the department has taken administrative action which resulted in actual suspension or revocation of the applicant's driver's license, unless such suspension or revocation was based on a nondriving related matter; or

(iv) The applicant has violated this chapter three or more times within the last three years; or

(v) There is an absence of satisfactory proof that the vehicle for hire will be operated in compliance with the provisions of this chapter; or

(vi) The applicant has failed to maintain a valid California driver's license; or

(vii) The applicant has been convicted of any felony offense, or of any misdemeanor offense involving moral turpitude, theft or fraud, including any such convictions following a plea of no contest or nolo contendere, taking into consideration the nature of the conviction, the age of the applicant at the time of the conviction, any evidence of rehabilitation, and the relationship of the conviction to the propriety of the applicant operating a vehicle for hire.

(2) The issuance of a driver's permit is conditional upon the driver ensuring that he or she will only operate a vehicle which has received a valid vehicle permit for a business owner who has received a valid business owner's permit.

(3) The driver's permit shall become void upon termination of such driver's employment driving a vehicle for hire, including termination of self-employment as an independent driver, and the driver shall immediately return his or her permit to the City upon such termination of employment.

(4) The issuance of a driver's permit is conditioned upon the driver complying with the mandatory controlled substance and alcohol testing and program certification set forth in Government Code Section 53075.5.

3.16.070 Suspension of Permits.

The Parks and Community Services Director or designee may, following twenty-four hours notice, suspend any business owner's permit, driver's permit, or vehicle permit if a taxicab or vehicle for hire is operating without required insurance or registration, or is being operated by an unlicensed or unpermitted driver; when a fact exists which would have been a ground for refusal to issue the permit; when there has been a violation of any of the terms of this chapter; or where there is damage to, or mechanical malfunction of, a vehicle for hire such that it cannot be operated safely. Such permit suspension shall be lifted upon a showing that the violations have been corrected. If no such showing has been made within 14 business days, unless otherwise approved by the Parks and Community Services Director, depending on the type of violation, the City may issue a notice of revocation and proceed as set forth in this chapter. It is unlawful for the permittee to exercise any of the rights granted under this chapter during the time that the permit is suspended; provided that, the notice of suspension contains facts supporting a finding that the continued operation of the business, the continued operation of a taxicab vehicle, or possession of a driver's permit represents an unsafe condition for the public, and the Parks and Community Services Director or designee so concludes.

3.16.080 Revocation of Permits.

(a) Generally. Any permit issued by the City under this chapter may be revoked by the Chief of Police for any of the following reasons including, but not limited to, the following:

(1) The existence of any fact which, at the time of application, would have caused the Chief of Police to deny the application, whether or not such fact existed at the time of the application or occurred thereafter;

(2) Any violation of laws relating to the operation of a motor vehicle including, but not limited to, reckless driving, driving under the influence of alcohol or controlled substances, or other violations indicating that a driver is not competent to operate a vehicle for hire;

(3) A motor vehicle accident resulting in injuries to persons or property caused by the culpable act or omission of the driver or business owner;

(4) Failure to pay any judgment for damages arising out of the unlawful or negligent operation of any vehicle for hire;

(5) Failure to maintain insurance, permits or business license as required by this chapter;

(6) Failure to maintain a vehicle for hire in a safe and sanitary condition such that the vehicle could pass, at any time throughout the permit period, the inspection required for the issuance of a vehicle permit;

(7) Any violation of this chapter.

(8) For any cause which in the opinion of the City Manager makes it contrary to the public interest, convenience, and necessity for the permit to be continued.

(b) Appeal of Notice of Revocation or Suspension.

(1) The permit holder shall be entitled to appeal the City's decision to revoke or suspend his or her permit by filing a written notice of appeal with the City clerk within ten days from the date the notice of revocation is mailed. The appeal shall set forth the reasons why such action is not proper. Failure to set forth specific reasons why the action is improper, or to timely file such appeal, shall constitute a waiver of the right to appeal, and the proposed adverse action shall become final.

(2) If the permit holder files a timely request for appeal, a hearing shall be held with at least ten days written notice of the hearing date, time and location to the appellant. The hearing shall be conducted by the Transportation Advisory Commission who will make recommendations to staff.

(3) The appellant shall be entitled to present evidence and testimony in this hearing. The Transportation Advisory Commission will make a recommendation to the City Manager. The City Manager's decision shall be final.

(4) Pending the appeal hearing it shall be lawful for the permit holder to operate his or her business or operate a vehicle for hire unless the permit at issue has been suspended, with a finding by the Chief of Police that continued operation represents an unsafe condition for the public. If the notice of revocation is affirmed on appeal, the permit at issue shall immediately be revoked and surrendered to the City.

(5) Any business owner or driver whose permit has been revoked shall not be eligible to apply for another permit for one year after the effective date of revocation.

(6) The City council may establish by resolution a fee for such appeals.

3.16.090 Logs and Trip Sheets--Requirements.

(a) Both taxicab drivers and dispatchers shall keep a contemporaneous log or trip sheet of each and every taxicab service rendered which shall include the following information and produce it within 24 hours upon request from the City:

(1) The identity of the taxicab driver and dispatcher for the taxicab service rendered;

- (2) The location where the passenger(s) entered the vehicle;
- (3) The time of entry of the passenger(s) at that location;
- (4) The number of passenger(s) entering the cab;
- (5) The time at which the passenger(s) were delivered to their final destination;
- (6) The precise location of the final destination of the passenger(s);
- (7) The time and location of any stops made by the passenger(s) between initial pick-up and final drop-off and collection of fare;
- (8) The amount of fare collected from the passenger(s);
- (9) The starting and ending mileage of each trip.

(b) The owner of every such taxicab shall require that the logs or trip sheets be completed by the driver and dispatcher contemporaneously with each taxicab service rendered and filed at the end of each shift of such taxicab driver and dispatch operator. The owner of every such taxicab shall keep the logs and trip sheets on file in his or her office for a period of six months, and shall make the same at all times convenient to be open to examination by an authorized representative of the Chief of Police or other authorized City official. The falsifying of any trip sheet by an owner, taxicab driver, or dispatch operator shall be grounds for the revocation of the driver's permit and taxicab owner's business permit.

3.16.100 Liability Insurance Requirements

In order to obtain a business owner's permit from the City, the applicant must demonstrate that it maintains at its sole expense liability insurance meeting the following requirements:

- (a) A Business Automobile Policy(s) that covers any vehicle proposed to be operated within the City pursuant to the business owner's permit, with at least the following limits of liability:
 - (1) Primary bodily injury at limits per person and per occurrence as established by the Risk Manager; and primary property damage at limits per occurrence established by the Risk Manager; or
 - (2) Combined single limits per occurrence as established by the Risk Manager.
- (b) Unless otherwise provided by law, evidence that the applicant has procured workers compensation insurance covering all drivers to be employed by the applicant;

(c) Required insurance must be issued by companies admitted to do business in California with an AM Best rating of no less than an "A:VII." Any lesser rating must be approved by the City.

(d) The City, the City council, and each present and former member of the City council, City boards and commissions, and every officer, agent, official, employee and volunteer of the City (collectively, "City entities") must be named as additional insureds under the automobile liability policy.

(e) Each policy of required insurance must contain a provision that no termination, cancellation or change of coverage can be made without thirty days' notice to the City.

(f) The applicant must provide certificates of insurance and/or endorsements to the Risk Manager prior to issuance of a permit. Any deviations from the requirements of these Insurance provisions must be approved in writing by the Risk Manager.

3.16.110 Indemnification.

As a condition of receiving a business owner's permit, the applicant will be required to execute a statement agreeing to indemnify, defend and hold harmless the City, its employees and officials from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from bodily injury, death, personal injury, property damage, loss of use, or property loss, however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless will include, but not be limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of the applicant, its officers, employees, agents, joint venturers, subcontractors or vendors. The applicant's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of the City, its employees and officials, except for liability resulting solely from the negligence or willful misconduct of the City employees or officials. Payment by City will not be a condition precedent to enforcement of this indemnity. In the event of a dispute between the applicant and the City as to whether liability arises from the sole negligence of the City employees or officials, the applicant will be obligated to pay for the City employees and officials' defense until a final judgment has been entered adjudicating the City employees or officials as solely negligent. In the event a final judgment is entered adjudicating the City employees or officials as solely negligent, the applicant will not be entitled to a reimbursement of any defense costs, including but not limited to, attorney's fees, expert fees and costs of litigation. This indemnity will apply regardless of whether the City approved a business owner's, vehicle or driver's permit or whether the City inspected or approved any vehicle used in conjunction with a permit.

3.16.120 Registration and Licensing Requirements--Conspicuous Posting in Vehicles.

(a) Driver's License Requirements. All drivers shall carry their license to operate a motor vehicle in the state of California at all times while operating a vehicle for hire in the City.

(b) Vehicles – Licensing and Registration Requirements. All vehicles for hire within the City shall carry the State Department of Motor Vehicles registration in the vehicle at all times and all such vehicles for hire shall be registered in the name of the taxicab business owner or the driver to whom a permit has been issued.

(c) Vehicle Permit Affixed to Vehicle. Every vehicle for hire authorized to operate under this chapter shall have attached to the left rear window a current vehicle permit issued by the City in accordance with the provisions of this chapter and all expired permits will be removed.

(d) Owner's Identification and Rates to be Displayed in Vehicle. Every vehicle for hire shall have conspicuously displayed in full view of the passenger or passengers a card not less than two inches by four inches in size which shall have stated thereon the name of the business owner, together with the business address and telephone number of the business, and the identifying number of such vehicle, and also the rates of fare to be charged for the use of such vehicle. Rates of fare are also to be conspicuously displayed in both the front and rear of the interior of the vehicle for hire.

(e) Driver's Permit – Required Posting. The driver's permit shall be posted in full view of the passenger at all times while said driver is operating the vehicle. Every driver's permit shall show the photograph of the driver, driver's permit number, name of the business owner by which the driver is employed, if any, a telephone number of the business.

3.16.130 Vehicle Color Scheme And Markings.

(a) Color Scheme – Approval.

(1) A unique and characteristic color scheme approved by the Chief of Police shall be used by each business owner operating vehicles for hire in the City to distinguish all of the vehicles for hire such owner operates. Such color scheme shall not be used by any other business owner.

(2) No change whatever in the color scheme or distinguishing characteristics of any vehicle for hire shall be made without the written permission of the City.

(b) Vehicle Markings. It is unlawful to operate a taxicab or vehicle for hire within the City which does not have printed or placed upon both rear doors of the vehicle and on the rear deck of such vehicle for hire the name and telephone number of the

business owner. All such lettering shall be in letters not less than two inches in height and not less than five-sixteenths inches in stroke. (Magnetic signs will not be permitted). In addition, the dome light markings shall read the same as the business owner's name or fictitious name written upon the rear doors and rear of the vehicle or only shall read "Taxi." In addition, every vehicle for hire shall have printed or placed upon the exterior in conspicuous block letters of the same color not less than three and one-half inches in height and not less than one-half inch stroke, of a color in contrast of the color of the vehicle for hire, the number of such vehicle for hire, which numbering shall be printed or placed in the following locations:

- (1) On each side of the vehicle on the leading edge of the front door;
- (2) On the rear of the trunk.

In addition, the taxicabs of each owner holding a permit under this chapter shall be numbered from number one to a number corresponding with the total number of taxicabs for which such permit has been issued. Such a taxicab number shall be given to the City in writing at the time of the making of the application for a permit under Section 3.16.050 and must be approved by the Chief of Police.

3.16.140 Equipment Requirements.

(a) Every taxicab and vehicle for hire authorized by City permit must fulfill the following equipment requirements by possessing:

- (1) A trunk device which will permit the opening of the trunk lid from the inside of the trunk;
- (2) A permanent fixture to display the taxicab or vehicle for hire driver's permit in prominent view of the passengers;
- (3) A prominent sign within the passenger area of each taxicab or vehicle for hire informing passengers to call the City's police department at (209) 831-4550, with comments or complaints about the service provided;
- (4) No fewer than four working doors, except that a handicapped accessible mini-van may be used;
- (5) A current fire extinguisher;
- (6) Four flares;
- (7) At least two emergency reflectors;
- (8) Spare tire and jack;
- (9) Windows which patrons can open from the inside; and

(10) Working headlights, taillights, turn-signals, back-up lights, and brake lights, including the "cyclops" or third brake light, if the car has been manufactured in 1988 or later;

(11) A light of not less than two candlepower within such vehicle, so arranged as to illuminate the entire passenger compartment. The light shall be kept constantly lighted at all times while any passengers are being loaded into or unloaded from any such vehicle from one-half hour after sunset of any day until one-half hour before sunrise of the next day, and no shades or blinds shall be drawn over the windows of any such vehicle while the same is occupied;

(12) Safety belts in good working order for use of passengers.

(b) Additional Taxicab Equipment. In addition to the equipment requirements set forth in subsection A of this section, every taxicab into which passengers are accepted for transportation within the City must have the following equipment:

(1) A taximeter, as defined in Section 3.16.010(g) of this chapter;

(2) A two-way radio and a mobile display terminal capable of communication with a dispatcher.

(c) Prohibited Equipment. No vehicle for hire or taxicab may be equipped with a scanner or other device that can be used to intercept radio signals and dispatches sent to specific destinations.

(d) Equipment Waiver Conditions. Notwithstanding the provisions of this chapter, the Chief of Police may waive any equipment requirement upon a showing of good cause by any applicant or permittee. Each waiver must be specified on the permittee's permit and any applicable vehicle permit.

(e) Operation When in Unsafe or Unsanitary Condition Prohibited. It is unlawful for any business owner, permittee or driver to operate any vehicle for hire or taxicab while the same or any of the equipment used thereon or therewith is in a defective, unsafe or unsanitary condition.

3.16.150 Maintenance and Inspection Requirements.

Requirements for Inspection of Taxicabs and Vehicles for Hire.

(a) Initial Inspection: Before a vehicle permit is issued to a business owner, each vehicle for which a vehicle permit is requested shall be inspected by the City or shall be delivered to a City-approved vehicle inspection station for inspection of such vehicle and its equipment to ascertain whether such vehicle and equipment comply with the provisions of this chapter. The City shall provide to the business owner a list of approved vehicle inspection stations. Any vehicle which is found after such inspection to be unsafe or in any way unsuitable for service will not be issued a vehicle permit and

immediately may be ordered out of service. Before a vehicle permit is issued, or the vehicle is again placed in service, it shall be placed in a safe and sanitary condition, inspected, and a completed "certificate of safety" inspection certificate shall be filed with the City. Before a vehicle permit is issued, or the vehicle is again placed in service, the inspecting garage shall also issue an official smog certificate for each vehicle inspected to accompany the "certificate of safety" inspection certificate. The interior and exterior of any vehicle shall be clean and well maintained as determined by the City and meet California Vehicle Code requirements and the requirements of this chapter at all times when in operation.

(b) Annual Reinspections: To insure continued maintenance of safe operating conditions, each vehicle to be operated and its equipment shall be reinspected upon annual renewal of the vehicle permit by the City or at a City-approved garage as provided on the City's list of approved vehicle inspection stations. The City or garage shall, after such annual inspection, issue a "certificate of safety" inspection certificate stating that the vehicle and its equipment comply with the safety requirements of this chapter. The inspecting garage shall issue an official smog certificate for each vehicle inspected to accompany the "certificate of safety" inspection certificate. The owner of taxicabs shall also annually take the taxicabs to the County of San Joaquin, Division of Weights and Measures, for recertification of the taximeters. The cost of the inspections shall be paid by the owner of the vehicles.

(c) Authority of City to Inspect Taxicabs and Vehicles for Hire. Any City official charged by the Chief of Police with the authority to enforce this chapter shall have the right, after displaying the proper identification, to enter into or upon any permitted taxicab or vehicle for hire in the City for the purpose of ascertaining whether or not any of the provisions of this chapter are being violated. The last inspection form, a current commercial vehicle registration, a copy of the current Division of Weights and Measures certificate certifying the taximeter, and a copy of the current insurance policy shall be carried in the vehicle at all times and shall be made readily available to the City representative in the course of the inspection. The scope of this inspection is limited to determining compliance with the requirements of this chapter and may be done without notice, warrant, or individualized suspicion of wrongdoing.

3.16.160 Rates.

The City council may set by resolution the maximum rates to be charged per flag drop, per mile and per minute of waiting time or traffic delay time. In the event such a resolution is adopted, it is unlawful for the taxicab business owner or driver to fix or charge or collect or receive a rate in excess of the rates established and set by resolution of the City Council. Any charge or rate in excess of the rate set by resolution of the City Council shall be cause for revocation of such business owner's permit.

3.16.170 Taximeter regulations.

(a) Charges, Location and Posting Required. No taxicab may be operated in the City unless such taxicab be equipped with a taximeter in good operating condition. No fare higher than what is recorded on the taximeter shall be charged. Every taximeter shall be installed at the center of the dashboard or console of the taxicab. The reading face of the taximeter shall at all times be well lighted and distinctly readable to the passengers within the taxicab. At the time of permitting, the business owner shall provide a valid taximeter inspection certificate issued by the county of San Joaquin Division of Weights and Measures. The certificate shall state the name and model number of the meter and the vehicle number for which it is assigned and shall be current at all times.

(b) Manual and Electronic Flag Use Restrictions. No driver of a taxicab while carrying passengers shall display a manual flag or electronic flag attached to the taximeter or taxicab in such a position as to denote that such vehicle is not employed, or throw the manual flag or start the electronic flag of the taximeter in a recording position when such vehicle is not actually employed, or fail to start operation of the taximeter at the beginning of an exclusive or shared ride trip, or fail to stop the operation of the taximeter at the termination of each and every service.

(c) Charges – To be as Indicated on Taximeter. All exclusive and shared and shared ride charges for transportation of passengers in taxicabs operated in the City must be as indicated on the taximeter installed in said taxicabs.

(d) Charges – Deduction for Time Vehicle is Disabled. In the event any vehicle for hire shall become disabled or break down without fault of the passenger, there shall be no charge to the passenger for the waiting time caused by the delay.

(e) Charges – Receipt for Payment Provided When Requested. Every driver shall, if requested, give a correct receipt upon payment of the correct fare.

(f) Taximeter – Manipulation Prohibited. It is unlawful to manipulate or cause to be manipulated the taximeter so as to cause a registration to be made of more time or greater distance than the correct amount of time and distance for the particular trip.

3.16.180 Standards For Driver Conduct.

(a) Misrepresentation in Solicitation of Fares Prohibited. It is unlawful for the driver of any taxicab or vehicle for hire to solicit fares by misrepresenting in any manner the identify of the owner of the vehicle for hire or business owner, and it is unlawful to misrepresent the location of, travel time or distance to any destination.

(b) Interference with Passengers Seeking Transportation. It is unlawful for the driver of any taxicab or vehicle for hire to interfere in any manner with any person who is negotiating for, inquiring about transportation in, or employing a vehicle for hire.

(c) Unlawful Obstruction of Public Right-of-way and Provision of Assistance to Passengers. It is unlawful for the driver of any taxicab or any vehicle for hire at any time or place when waiting for or engaged in his or her employment, to obstruct any street or sidewalk. The driver of any taxicab or vehicle for hire shall remain on or beside his vehicle at all times when such vehicle is standing upon the public streets of the City. The driver of any taxicab or vehicle for hire shall offer to provide assistance and, if requested, shall provide reasonable assistance to each passenger in entering and leaving the taxicab unless the passenger indicates otherwise.

(d) Lost Property--Report and Record Keeping Required. All property of value found by drivers or business owners in the vehicles for hire operated by said business owners or drivers, or delivered to them by any person who has found such property, shall be reported to the police department within forty-eight hours, unless such property shall have been claimed by and returned to the rightful owner within that time. Every business owner shall keep a record of all such property, whether returned to the owner of the property or not, for thirty days.

(e) Denial of Service. It is unlawful for a driver or business owner to refuse a prospective fare based on the distance of the route for which the service is requested (except where that distance exceeds a total of fifty miles beyond the City limits of the City of Tracy), or to take any action to actively discourage a prospective fare solely on the basis of race, creed, color, age, sex, sexual orientation, national origin, or physical disability, including use of service animals.

(f) State Mandated Drug and Alcohol Testing. Pursuant to the provisions of California Government Code Section 53075.5, each and every driver authorized to operate a taxicab or vehicle for hire in the City shall submit proof of negative testing for controlled substances and alcohol to the City as required by state law, as provided elsewhere in this chapter.

3.16.190 Operating Regulations For Services Provided.

(a) Types of Service to be Provided. A vehicle for hire is authorized to provide the following types of service:

(1) Exclusive ride, which shall mean exclusive use of a taxicab by one or more passengers at a time;

(2) Shared ride, which shall mean nonexclusive use of a taxicab by two or more unrelated passengers, traveling between different points of origin and/or destination and traveling in the same general direction.

(b) Flag Loads Limited Permission. Flag loads, meaning passengers soliciting a vehicle for hire at random points on the street, may be picked up at any location within the City except when it is apparent that the prospective fare has already

phoned for a vehicle for hire operated by another person or firm and is waiting for such vehicle for hire to arrive.

(c) Solicitation of Fares Permitted at Certain Locations. Solicitation of fares is permitted when located at areas as may be declared open to solicitation by all properly permitted business owners or drivers. No driver of any vehicle for hire shall seek employment by repeatedly driving his or her vehicle to and fro in a short space in front of, or by otherwise interfering with, the proper and orderly access to or egress from any theater, hall, hotel, railway or other place or public gathering; or by leaving his or her vehicle or otherwise approaching and soliciting patronage by any pedestrian upon the sidewalk, in any theater, hall, hotel, railway or street railway loading point. The designated area at the Tracy Transit Station and the designated area at the Naglee Park and Ride Lot are approved standing locations for taxicabs.

(d) Passengers not to Ride with Driver – Exceptions. All persons other than the driver shall ride in the passenger compartment of the vehicle for hire, except passengers who are physically disabled, are unable to get into the passenger compartment, or have extreme difficulty in doing so, and except where there are more passengers than can be accommodated in such compartment or where it is necessary to have someone seated with the driver in connection with the normal operation of the vehicle for hire.

(e) Driver to Use Direct Route. The driver of a taxicab or vehicle for hire employed to carry passengers to a definite point shall take the most direct route possible that will carry the passengers safely, lawfully and expeditiously to said destination.

(f) Baggage to be Conveyed in Motor Vehicle Without Charge. Persons engaging a vehicle for hire shall be entitled to have such valises, small hand baggage, or wheel chairs as can be conveniently carried within the vehicle loaded, conveyed and unloaded without charge.

(g) Daily Operation Required. Every business owner approved to operate under the provisions of this chapter shall regularly operate his or her business to the extent reasonably necessary to meet the public demand for service. Upon abandonment of such business for a period of thirty consecutive days by such business owner, approval to operate under this chapter may be revoked.

(h) Smoking Prohibited. Smoking shall be prohibited in taxicabs and vehicles for hire. The driver of said vehicle shall promptly direct any passenger smoking in a taxicab or vehicle for hire to promptly and safely extinguish any cigarette or other smoking device. The refusal of any passenger to extinguish a cigarette or other smoking device shall constitute sufficient reason for the driver to immediately suspend service to the passenger.

(i) Maintenance and Use of Seatbelts. Every owner or driver of a taxicab operated on a highway shall maintain safety belts in good working order for the use of

the occupants of the vehicle. The driver of a taxicab shall not operate the taxicab unless passengers who are at younger than 6 years of age or weigh less than sixty pounds are secured in appropriate State required baby/child car seats which shall be provided by the passenger. The driver of a taxicab shall require all passengers to be properly restrained by a safety belt when the taxicab is being driven on a public highway.

3.16.200 Taxicabs And Vehicles For Hire From Other Locations.

Taxicabs and vehicles for hire which are not permitted in the City and whose place of business is not in the City, may bring passengers into the City but may not solicit any passenger in the City for any destination within the City.

3.16.210 Impoundment.

(a) Any police officer is considered a transportation inspector under this chapter and is authorized to cite any person for operating as a taxicab without a valid taxicab permit required by this chapter. Such transportation inspector may impound and retain possession of any vehicle used in violation of this chapter.

(b) If the vehicle is seized from a person who is not the owner of the vehicle, the City shall immediately give notice to the owner by first class mail. The vehicle shall immediately be returned to the owner, without cost to the owner if the violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner, upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the City may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

(c) No vehicle shall be impounded if it is owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501 (c)(3) of the Internal Revenue Code, which serves the youth or senior citizens and provides transportation incidental to its programs or services.

(d) This section is authorized by the provisions of Government Code Section 53075.61, as it may be amended from time to time.

3.16.220 Disclaimers.

By providing for the regulation of taxicabs, vehicles for hire and drivers in the manner provided for in this chapter, the City is only protecting the general welfare. It is not assuming, nor is it imposing on the City, or its officers and employees, an obligation for which there may be liability and money damages to any person who claims that such breach proximately caused injury.

3.16.230 Violation--Penalty.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. It is unlawful to violate any provision of this chapter. If after a hearing, the City determines that any person or corporation is or has operated as a taxicab transportation service without a valid certificate, license, or permit, or has failed to comply with the requirements of this chapter with regard to any written or oral advertisement, that person or corporation shall be subject to a fine of up to five thousand dollars (\$5,000) for each violation. In addition, the City shall assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the City. Interest on any fine or assessment will be charged beginning on the first day the payment of the fine or assessment becomes delinquent and shall continue to accrue until all fines, assessments and interest are paid.”

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 _____ day of _____, 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

AGENDA ITEM 7

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1159 AN ORDINANCE OF THE CITY OF TRACY AMENDING AND REPEALING VARIOUS SECTIONS OF THE TRACY MUNICIPAL CODE AS A COMPREHENSIVE CLEAN-UP ORDINANCE RELATING TO THE ESTABLISHMENT OF A CITY MASTER FEE SCHEDULE: SECTIONS 3.16.030, 3.16.040, 3.20.060, 3.20.070, Chapter 4.36 (repealed), 4.20.040, 4.20.060, 4.20.110, 4.20.160, 4.20,180, 4.24.060, 5.08.130(n), 5.08.185 (new), 5.08.240

EXECUTIVE SUMMARY

Ordinance 1159 was introduced at the Council meeting held on May 17, 2011. Ordinance 1159 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1159 was introduced at the Council meeting held on May 17, 2011, to amend and repeal various sections of the Tracy Municipal Code as a Comprehensive Clean-up Ordinance relating to the establishment of a Master Fee Schedule. Ordinance 1159 will incorporate the following: 1) Amend several Code sections where a specific fee dollar amount was set forth in the Code itself. In this case, the amendment will remove the specific dollar amount and state the fee will be "in the amount set by resolution of the City Council". 2) Repeal current Chapter 4.36, Regulations Pertaining to Amusement Machine Businesses, on the recommendation of the Police Department, since these regulations are no longer used. 3) Add a new section 5.08.185, Owner Surrender of Live animals, to provide legal authority for the charges that are imposed for this type of surrender.

Ordinance 1159 is before Council for a second reading and adoption

STRATEGIC PLAN

This agenda item supports the Organizational Effectiveness strategic plan and specifically implements the following goals:

Goal 1: Assure fiscal health

Goal 2: Ensure systems are in place to meet the City's service delivery strategies.

FISCAL IMPACT

None.

RECOMMENDATION

Agenda Item 7
June 7, 2011

That Council adopts Ordinance 1159 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk
Reviewed by: Carole Fleischmann, Assistant City Clerk

Approved by: Leon Churchill, Jr., City Manager

ORDINANCE 1159

AN ORDINANCE OF THE CITY OF TRACY AMENDING AND REPEALING VARIOUS SECTIONS OF THE TRACY MUNICIPAL CODE AS A COMPREHENSIVE CLEAN-UP ORDINANCE RELATING TO THE ESTABLISHMENT OF A CITY MASTER FEE SCHEDULE: SECTIONS 3.16.030, 3.16.040, 3.20.060, 3.20.070, Chapter 4.36 (repealed), 4.20.040, 4.20.060, 4.20.110, 4.20.160, 4.20,180, 4.24.060, 5.08.130(n), 5.08.185 (new), 5.08.240

WHEREAS, the City Council intends to adopt for the first time a City-wide Master Fee Schedule; and

WHEREAS, in preparing this Master Fee Schedule, the staff became aware of miscellaneous Municipal Code provisions that were out-of-date, required amending based on current practices, or contained fixed fees that would be better established by resolution; and

WHEREAS, the City Council considered this ordinance at a regular meeting of the City Council held on May 17, 2011.

The Tracy City Council hereby ordains as follows:

SECTION 1. Section 3.16.030, Permit fees -- Application requirements [for taxicabs], of the Tracy Municipal Code is amended to read as follows:

"3.16.030 - Permit fees—Application requirements.

Any person desiring to obtain the permit required by Section 3.16.020 of this chapter shall pay a fee to the City Clerk in the amount set by resolution of the City Council, and shall make an application for such permit to the Council, which application shall set forth:

- (a) The name and address of the applicant, and if the applicant shall be a corporation, the names of its principal officers, or if the applicant shall be a partnership, association, or fictitious company, the names of the partners or persons comprising the association or company, with the address of each;
- (b) A statement as to whether the permit is desired for an automobile for hire or for a taxicab;
- (c) A description of every motor vehicle which the applicant proposes to use, giving:
 - (1) The trade name;
 - (2) The motor and serial number;
 - (3) The State license number;
 - (4) The seating capacity; and
 - (5) The body style;
- (d) The street number and exact location of the place where the applicant proposes to stand each such vehicle;
- (e) The proposed schedule of rates or fares to be charged for carrying passengers in such vehicle;
- (f) The distinctive color scheme, name, monogram, or insignia which shall be used on such vehicle; and
- (g) If any proposed stand is in a public street, such application shall be accompanied by a written consent thereto of all the occupants of the ground floor of any buildings in front of which such vehicle is to be located, and for twenty-five (25') feet each way therefrom, or if there is no such occupant, by the written consent thereto of the owner or lessee of such building or lot."

SECTION 2. Section 3.16.040, Renewal application fees and requirements [for taxicabs], of the Tracy Municipal Code, is amended to read as follows:

"3.16.040 - Renewal application fees and requirements.

Any person desiring to renew a permit required by this chapter shall pay a fee to the City Clerk in the amount established by resolution of the City Council, and shall make an application for the renewal permit to the City Manager. The application shall set forth all of the information required by Section 3.16.030 of this chapter.

At the time such renewal application is filed, or within five (5) days thereafter, the City Manager may examine the application and all persons interested in the matter set forth in such application and shall determine whether or not the public interest, convenience, and necessity require the issuance of the renewal permit applied for. The City Manager shall direct the renewal permit to be issued in accordance with such renewal application, subject to the filing and approval of an undertaking as set forth in Section 3.16.060 of this chapter.

The reasons set forth in Section 3.16.050 of this chapter shall be sufficient for the City Manager to deny such renewal permit."

SECTION 3: Section 3.20.060, License fees [Bicycles] of the Tracy Municipal Code, is amended to read as follows:

"3.20.060 - License fees.

License fees are hereby established for the purposes of issuing bicycle licenses and registration certificates, the transfer of registration certificates, the replacement of bicycle licenses and/or registration certificates, and the renewal stickers as required by the Vehicle Code of the State for the registration and licensing of bicycles. Revenues collected pursuant to this section from license fees shall be retained by the City and shall be used for the support of such bicycle licensing provisions as set forth in this section, for the enforcement of bicycle violations, and for bicycle education and safety. In addition, fees collected may be used to improve bicycle safety programs and establish bicycle facilities, including bicycle paths and lanes, within the City.

The fees required to be paid under this article shall be in the amounts established by resolution of the City Council, for the following items, as follows:

- (a) For each new bicycle license and registration certificate.
- (b) For each transfer of a registration certificate.
- (c) For each replacement of a bicycle license or registration certificate..
- (d) For each bicycle license renewal. Any fraction thereof shall be considered a full year."

SECTION 4: Section 3.20.070, Renewal of registration – Fees [Bicycles], of the Tracy Municipal Code is amended to read as follows:

"3.20.070 - Renewal of registrations—Fees.

A renewal sticker shall be in the amount established by resolution of the City Council and shall be renewed every three years under Section 3.20.060 of this article."

SECTION 5: Chapter 4.36 entitled Regulations Pertaining to Amusement Machine Businesses, of the Tracy Municipal Code, consisting of Sections 4.36.010 through 4.36.170, is repealed in its entirety.

SECTION 6: Section 4.20.040, Massage establishments—Permits—Renewal—Fees, of the Tracy Municipal Code, is amended to read as follows:

"4.20.040 - Massage establishments—Permits—Renewal—Fees.

On or before the 45th day prior to the expiration date of a currently valid massage establishment permit, the permittee shall apply for the renewal of such permit. The Police Chief shall grant the renewal provided all facts set forth on the original application are substantially the same and provided the application is accompanied by a fee in the amount established by resolution of the City Council, no part of which shall be refundable. The fee shall not be in lieu of, and shall be in addition to, any business license tax required to be paid pursuant to chapter 6.04 of title 6 of this Code. If all the facts set forth on the original application are not substantially the same, the applicant for renewal shall comply with all the requirements set forth in this chapter for an initial application for a license."

SECTION 7: Section 4.20.060, Massage establishments—Permits—Applications -- Fees -- Investigations, of the Tracy Municipal Code, is amended to read as follows:

"4.20.060 - Massage establishments—Permits—Applications—Fees—Investigations.

Each application for a massage establishment permit shall be accompanied by an investigation fee in an amount established by resolution of the City Council, no part of which shall be refundable. The fee shall not be in lieu of, and shall be in addition to, any business license tax required to be paid pursuant to the provisions of chapter 6.04 of title 6 of this Code. Upon the receipt of the application, the Police Chief shall refer the application to the Building Department, Fire Department, and Planning Department, each of which, within a period of 30 days from the date of the application, shall review records, make an inspection of the premises proposed to be used as a massage establishment, and make a written recommendation to the Police Chief concerning compliance with this chapter and other applicable law."

SECTION 8: Section 4.20.040, Massage establishments—Permits—Transferability—Fees, of the Tracy Municipal Code, is amended to read as follows:

"4.20.110 - Massage establishments—Permits—Transferability—Fees.

No massage establishment permit shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person except with the written

approval of the Police Chief. An application for such a transfer shall be in writing and shall be accompanied by a filing and investigation fee of in an amount established by resolution of the City Council, no part of which shall be refundable. The application for the transfer shall contain the same information as required by the provisions of this chapter for an initial application for such a permit. In the event of denial, a notification and the reasons for denial shall be set forth in writing and shall be sent to the applicant by means of registered or certified mail or hand delivery. Any such sale, transfer, or assignment, or attempted sale, transfer or assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void."

SECTION 9: Section 4.20.160, Massage technicians and practitioners—Permits—Renewal—Fees., of the Tracy Municipal Code, is amended to read as follows:

"4.20.160 - Massage technicians and practitioners—Permits—Renewal—Fees.

If, on or before the 45th day prior to the expiration date of a currently valid massage technician or massage practitioner permit, the permittee applies for the renewal of such permit, the Police Chief shall grant such renewal provided all facts set forth on the original application are substantially the same, including a certified statement from a medical doctor stating that the applicant, within 30days immediately prior to filing his or her application for renewal, has been examined and found to be free from any contagious or communicable disease which is likely to be communicated during the administration of a massage, and provided such application is accompanied by a fee in an amount established by resolution of the City Council, no part of which shall be refundable. The fee shall not be in lieu of, and shall be in addition to, any business license tax required to be paid pursuant to chapter 6.04 of title 6 of this Code. If all the facts set forth on the original application are not substantially the same, the applicant for renewal shall comply with all the requirements set forth in this chapter for an initial application for a permit."

SECTION 10: Section 4.20.160, Massage technicians and practitioners—Permits—Applications—Fees—Investigations, of the Tracy Municipal Code, is amended to read as follows:

"4.20.180 - Massage technicians and practitioners—Permits—Applications—Fees—Investigations.

Each application for a massage technician permit or massage practitioner permit shall be accompanied by an investigation fee in an amount established by resolution of the City Council, no part of which shall be refundable. The fee shall not be in lieu of, and shall be in addition to, any business license tax required to be paid pursuant to chapter 6.04 of title 6 of this Code. Upon the receipt of the application, the Police Chief shall, within a period of t30 days from the date of the application, make an investigation concerning compliance with this chapter and the law."

SECTION 11. Section 4.24.060, Licenses – Terms – Fees [Bingo], of the Tracy Municipal Code is amended to read as follows:

"4.24.060, Licenses – Terms – Fees.

The term of a bingo license shall be six months, and the license may be renewed every six months upon an application therefor.

The fee for a bingo license shall be in an amount established by resolution of the City Council, of which one-half, shall be refunded if the application is denied. The fee for each renewal thereafter shall be in the amount established by resolution of the City Council. The appropriate fee shall accompany the submission of each application, shall be nonrefundable, and shall be used to defray the costs of the issuance of the license."

SECTION 12: Subsection (n) of Section 5.08.130, License tags for dogs, of the Tracy Municipal Code, is amended to read as follows:

"5.08.130 - License tags for dogs.

....

(n) Prohibition against assigning unaltered dogs or cats. Deposits for costs of spaying or neutering.

(1) The small animal shelter shall not assign any dog or cat which has not been spayed or neutered, unless a deposit for spaying or neutering has been tendered to the shelter. The deposit shall be in the amount determined by resolution of the Council to be comparable to the lowest fee charged by veterinarians in the locale. The deposit shall be held in trust and accounted for in a manner consistent with City policies. The deposit may be paid directly to a veterinarian for altering the assigned animal or returned to the person receiving the assigned animal upon the presentation of a certificate of alteration from a veterinarian to the Finance Department.

(2) Any dog or cat six (6) months of age or younger at the time of assignment shall be spayed or neutered within six (6) months, or the deposit shall be deemed unclaimed. Any dog or cat over six (6) months of age at the time of assignment shall be spayed or neutered within sixty (60) days, or the deposit shall be deemed unclaimed. Any deposit not claimed shall be used only for the following purposes:

- (i) A public education program to prevent the overpopulation of cats and dogs;
- (ii) A program to spay or neuter cats and dogs;
- (iii) A follow-up program to assure that animals assigned by the shelter are spayed or neutered; or
- (iv) Any additional costs incurred pursuant to this section.

...."

SECTION 13. A new Section 5.08.185, Owner surrender of live animals, of the Tracy Municipal Code, is added to read as follows:

"5.08.185, Owner surrender of live animals.

If an owner wishes to surrender an animal to the Animal Service Officer or Police Department, the owner shall pay the cost of surrendering the animal, in an amount established by resolution of the City Council."

SECTION 14. Section 5.08.240, Impounding, of the Tracy Municipal Code, is amended to read as follows:

"5.08.240 - Impounding.

The Chief of Police and all police officers and other persons employed to perform any of such duties are hereby authorized and empowered to take up and impound any animals or poultry running at large in violation of the provisions of this Article, and to keep such animals or poultry confined at the public pound or at such other place as the Chief of Police may provide, for not less than three days unless such animals or poultry be redeemed by the payment in the amount established by resolution of the City Council. Notices containing a description of the animals or poultry impounded shall be posted on the bulletin board near the entrance to the City Hall for at least three days. The Chief of Police may, in his discretion, publish notices of the impounding of such animals or poultry in an attempt to locate the owner, in which event, the cost of so doing shall be added to the costs of the care of such animals or poultry.

At the expiration of the three days, if the animals or poultry are not redeemed, the Chief of Police shall be deemed to have acquired jurisdiction over the animals or poultry and is hereby authorized to destroy, or to sell, or to otherwise dispose of them , and any proceeds derived therefrom shall accrue to the City, to be deposited in its general fund."

SECTION 15. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 16. This Ordinance shall be published once in the San Joaquin Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

* * * * *

Ordinance 1159
Page 7

The foregoing Ordinance 1159 was introduced at a regular meeting of the Tracy City Council on the 17th 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

June 7, 2011

AGENDA ITEM 9.A

REQUEST

CONSIDER AN ITEM FOR DISCUSSION ON A FUTURE CITY COUNCIL AGENDA REGARDING THE POLICE FIRING RANGE

EXECUTIVE SUMMARY

Determine whether an item should be placed on a future Council agenda to discuss the Police Firing Range.

DISCUSSION

At the City Council meeting held on May 17, 2011, Council Member Abercrombie requested that Council consider placing an item on a future City Council agenda to discuss the Police Firing Range.

The purpose of this agenda item is to provide an opportunity for Council to discuss whether staff time and city resources should be devoted to researching the issue, and to determine whether the item should be placed on a future agenda. An item placed on a future agenda would enable the City Council to discuss in detail the merits of the Police Firing Range.

RECOMMENDATION

It is recommended that the City Council discuss and determine whether an item regarding the Police Firing Range should be placed on a future City Council agenda for discussion.

Prepared by: Carole Fleischmann, Assistant City Clerk

Reviewed by: Maria Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager

AGENDA ITEM 9.B

REQUEST

CONSIDER AN ITEM FOR A FUTURE CITY COUNCIL AGENDA RELATED TO SCHEDULING A WORKSHOP TO DISCUSS DOWNTOWN ISSUES

EXECUTIVE SUMMARY

Determine whether an item should be placed on a future Council agenda to schedule a workshop to discuss downtown issues.

DISCUSSION

At the City Council meeting held on May 17, 2011, Council Member Abercrombie requested Council consider placing an item on a future City Council agenda to discuss scheduling a workshop to discuss downtown issues. The Joint Workshop on Downtown Issues would be for two hours with the Tracy City Council, the Board of Directors of the Tracy City Center Association (TCCA) and the Chamber of Commerce.

The purpose of this agenda item is to provide Council the opportunity to discuss whether staff time and city resources should be devoted to scheduling a two-hour joint workshop to discuss downtown issues with the Tracy City Council, the Board of Directors of the Tracy City Center Association (TCCA) and the Chamber of Commerce

RECOMMENDATION

It is recommended that the City Council discuss whether an item related to scheduling a workshop to discuss downtown issues should be placed on a future City Council agenda. If Council agrees to schedule a joint workshop, available dates for a workshop are:

August 2, 2011;
September 6, 2011 or
September 20, 2011

Once Council selects a date, that date will need to be coordinated and confirmed with the Board of Directors of both the Chamber of Commerce and the Tracy City Center Association.

Prepared by: Carole Fleischmann, Assistant City Clerk

Reviewed by: Maria Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager

June 7, 2011

AGENDA ITEM 9.C

REQUEST

**CONSIDER PLACING AN ITEM ON A FUTURE AGENDA TO RECONSIDER
COUNCIL'S PRIOR DECISION AUTHORIZING THE WAYFINDING SIGN SYSTEM
PHASING PLAN**

EXECUTIVE SUMMARY

Determine whether to place an item on a future agenda to reconsider Council's previous decision regarding the wayfinding signage program.

DISCUSSION

At the City Council meeting held on May 17, 2011, the Council adopted Resolution 2011-100, approving a Wayfinding Sign System Phasing Plan, authorizing staff to prepare bid documents for Phase 1 and directing staff to incorporate as many components of the System as possible within the \$360,000 approved CIP.

Council Member Rickman requests that Council consider placing an item on a future agenda to reconsider Council's May 17th decision approving the wayfinding sign system phasing plan.

The purpose of this agenda item is to provide an opportunity for Council to discuss whether staff time and resources should be devoted to preparing an agenda item for a future Council meeting to reconsider Council's prior decision.

RECOMMENDATION

It is recommended that the City Council discuss whether an item should be placed on a future agenda to reconsider Council's prior decision authorizing the Way finding Sign System Phasing Plan.

Prepared by: Carole Fleischmann, Assistant City Clerk

Reviewed by: Maria Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager