

Tuesday, July 5, 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. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "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. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of 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 members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public 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 – Parks and Recreation Month

– Recognition – Janet Thiessen, Outgoing Police Chief

– Recognition – Ursula Luna-Reynosa, Outgoing Economic Development Director

1. CONSENT CALENDAR

- A. Acceptance of the South Area Well Demolition Project, CIP 75099A, Completed by MCI Engineering Inc., of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion
- B. Acceptance of the Tidewater Well Conversion Project, CIP 75099, Completed by Zim Industries, Inc. of Fresno, California, and Authorization for the City Clerk to File the Notice of Completion
- C. Adopt a Resolution Reducing the Amount of Employees' Share of Contributions to the California Public Employees Retirement System (CalPERS) Paid by the City for Department Heads
- D. Approve a 33-Foot Wide Public Utility Easement (PUE) Within the City Owned Parcel Located on the East Side of Tracy Boulevard North of Larch Road, for Placement and Maintenance of Electrical Service for a Meat Storage and Processing Facility to be Located on 4276 N. Tracy Boulevard, Authorize the Mayor to Execute the Grant of Easement, and Further Authorize the City Clerk to File the Easement Document with the San Joaquin County Recorder

2. ITEMS FROM THE AUDIENCE

- 3. APPROVE RESOLUTION AWARDING A FIVE-YEAR PROFESSIONAL SERVICES AGREEMENT TO MV PUBLIC TRANSPORTATION, INC., NOT TO EXCEED \$827,871 IN FISCAL YEAR 2011/2012, FOR SERVICES RELATING TO THE CITY OF TRACY'S TRACER PUBLIC TRANSIT SYSTEM; AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT AND AUTHORIZE MV TRANSPORTATION, INC., TO ENTER INTO A CONTRACT WITH GREYHOUND LINES, INC. TO PROVIDE GREYHOUND BUS SERVICES AT THE TRACY TRANSIT STATION
- 4. APPROVE AMENDMENT NUMBER 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT PERTAINING TO THE WEST HIGH SCHOOL SWIMMING POOL AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY
- 5. RECEIVE AN UPDATE ON PLANNED USE OF TRACY POLICE PERSONNEL TO ASSIST IN THE DARE CLASSROOM; AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$45,000 BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT TO PROVIDE 5TH GRADE DRUG ABUSE RESISTANCE EDUCATION (DARE) SERVICES FOR FISCAL YEAR 2011-2012 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

6. SECOND READING AND ADOPTION OF ORDINANCE 1161 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 11-12.060 and 11-12.080 OF THE TRACY MUNICIPAL CODE REGARDING DELINQUENT ACCOUNTS AND ADVANCE DEPOSITS
7. ITEMS FROM THE AUDIENCE
8. STAFF ITEMS
 - A. Economic Development Update
9. COUNCIL ITEMS
10. ADJOURNMENT

AGENDA ITEM 1.A

REQUEST

ACCEPTANCE OF THE SOUTH AREA WELL DEMOLITION PROJECT - CIP 75099A, COMPLETED BY MCI ENGINEERING INC., OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed demolition of the South Area Well Project - CIP 75099A, in accordance with plans, specifications, and contract documents. This well had been abandoned for a long time and had become the source of a nuisance and graffiti. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention

DISCUSSION

On November 16, 2010, City Council awarded a construction contract for the Demolition of the South Area Well buildings and structures, materials, and equipment - CIP 75099A, to MCI Engineering, Inc., of Stockton, California, in the amount of \$62,875. This well, abandoned in the early 1980's, is located north of Valpico Road, immediately south of the Central Avenue storm channel located east of the Raley's shopping center on Tracy Boulevard.

The scope of work for this project included demolition of the existing well building, water pump house, water storage tank, piping, electrical and mechanical equipment, and all related items. The scope of work also included removal of asbestos materials, site restoration, and cleanup. The South Area Well is located on Valpico Road in the City of Tracy

Two change orders were issued in the amount of \$ 2,976.00 for this project which consisted of repairing leaking water pipes and the chain link fence.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$62,875
B. Change orders	\$ 2,976
C. Design, construction management, inspection, Testing, & miscellaneous expenses (Estimated)	\$ 4,700
D. Project Management Charges (Estimated)	<u>\$ 7,050</u>
Total Project Costs	\$77,601
 Budgeted Amount	 \$99,000

The project has been completed within the available budget for the project, on schedule, per plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 75099A is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred back into the City's water enterprise fund.

RECOMMENDATION

That City Council, by resolution, accept the Demolition of the South Area Well Project - CIP 75099A, completed by MCI Engineering, Inc., of Stockton, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: 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

RESOLUTION 2011-_____

ACCEPTING THE SOUTH AREA WELL DEMOLITION PROJECT - CIP 75099A, COMPLETED BY MCI ENGINEERING INC., OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On November 16, 2010, City Council awarded a construction contract for the Demolition of the South Area Well buildings and structures, materials, and equipment - CIP 75099A, to MCI Engineering, Inc., of Stockton, California, in the amount of \$62,875, and

WHEREAS, Two change orders were issued in the amount of \$2,976 for this project which consisted of repairing leaking water pipes and the chain link fence, and

WHEREAS, Status of budget and project costs is as follows:

Construction Contract Amount	\$62,875
Change orders	\$ 2,976
Design, construction management, inspection, Testing, & miscellaneous expenses (Estimated)	\$ 4,700
Project Management Charges (Estimated)	<u>\$ 7,050</u>
Total Project Costs	\$77,601
 Budgeted Amount	 \$99,000

WHEREAS, CIP 75099A is an approved Capital Improvement Project with sufficient funding and there will be no fiscal impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council accepts Demolition of the South Area Well Project - CIP 75099A, completed by MCI Engineering, Inc., of Stockton, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 5th day of July 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.B

REQUEST**ACCEPTANCE OF THE TIDEWATER WELL CONVERSION PROJECT, CIP 75099, COMPLETED BY ZIM INDUSTRIES, INC. OF FRESNO, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION**EXECUTIVE SUMMARY

The contractor has completed the abandonment of the Tidewater Well Project - CIP 75099, in accordance with plans, specifications, change order, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

On May 18, 2010, City Council awarded a construction contract for the Tidewater Well Conversion Project - CIP 75099, Zim Industries, Inc., of Fresno, California, in the amount of \$69,500.

The Tidewater Well is located at the northwest corner of the City's Boyd Service facility located at 520 Tracy Boulevard. The scope of work of this project included video taping and salvaging the existing well casing, demolition and removal of the Tidewater Well building, foundation, well pump, mechanical and electrical equipment, piping, and all related items. The scope of work also included conversion of the existing salvaged well casing into a monitoring well casing.

During construction the contractor videoed the existing well casing in accordance with the contract specifications and observed that the existing well casing was damaged and there was extensive metal scales. Staff, in conjunction with the City's consultant, reviewed the video and concluded that conversion of the existing abandoned well into a monitoring well would not be feasible and the well casing needed to be closed in accordance with State regulations. Staff negotiated a change order deleting the monitoring well scope of work and adding work involving abandonment of the existing well casing in accordance with State and County requirements for a not to exceed amount of \$3,400. All of the remaining work involving demolition and removal was completed by the contractor in accordance with the project scope, specifications, and contract documents.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$ 69,500
B. Change orders	\$ 3,400
C. Design, construction management, inspection, Testing, & miscellaneous expenses (estimated)	\$ 8,500
D. Project Management Charges (estimated)	<u>\$ 12,750</u>
Total Project Costs	\$ 94,150
Budgeted Amount	\$157,000

The remaining funds from this project were utilized for demolition of the South Area Well and building located on Valpico Road - CIP 75099A. Construction of this project is also complete and staff is recommending acceptance of this project under a separate agenda item at tonight's Council meeting.

The project has been completed within the available budget for the project, on schedule, per plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 75099 is an approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept construction of the Tidewater Well Conversion Project - CIP 75099, completed by Zim Industries, Inc., of Fresno, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: 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

RESOLUTION 2011-_____

ACCEPTING THE TIDEWATER WELL CONVERSION PROJECT, CIP 75099, COMPLETED BY ZIM INDUSTRIES, INC. OF FRESNO, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On May 18, 2010, City Council awarded a construction contract for the Tidewater Well Conversion Project - CIP 75099, Zim Industries, Inc., of Fresno, California, in the amount of \$69,500, and

WHEREAS, The scope of work of this project included video taping and salvaging the existing well casing, demolition and removal of the Tidewater Well building, foundation, well pump, mechanical and electrical equipment, piping, and all related items, and

WHEREAS, Status of budget and project costs is as follows:

Construction Contract Amount	\$ 69,500
Change orders	\$ 3,400
Design, construction management, inspection, Testing, & miscellaneous expenses (estimated)	\$ 8,500
Project Management Charges (estimated)	<u>\$ 12,750</u>
Total Project Costs	\$ 94,150
Budgeted Amount	\$157,000

WHEREAS, The remaining funds from this project were utilized for demolition of the South Area Well and building located on Valpico Road - CIP 75099A

WHEREAS, CIP 75099 is an approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council accepts construction of the Tidewater Well Conversion Project - CIP 75099, completed by Zim Industries, Inc., of Fresno, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 5th day of July 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

ADOPT A RESOLUTION REDUCING THE AMOUNT OF EMPLOYEES' SHARE OF CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CalPERS) PAID BY THE CITY FOR DEPARTMENT HEADS

EXECUTIVE SUMMARY

The City will no longer be paying the employee's entire share of CalPERS for Department Heads. CalPERS requires a new resolution to reflect this reduction in the amount the City is paying. This item is a request for the City Council to approve such a resolution.

DISCUSSION

The City participates in the California Public Employees Retirement System (CalPERS). Retirement contributions consist of an "employer" share and an "employee" share. There are also two groups of employees in the retirement system and each has a separate employer and employee rate. These groups are Public Safety (sworn police and fire officers) and Miscellaneous (all other city employees eligible for CalPERS participation).

The employee CalPERS rate for Public Safety is 9% and for the Miscellaneous group it is 8%. Historically the City has paid the employee share of PERS. However, the City has proposed to phase this out and have employees pay the employee share of CalPERS. It is anticipated that the employee share paid by the City will be phased out over several years in steps.

To set an example, beginning with the 7/15/11 payroll, Department Heads will begin to pay 1.5% of the 8% employee contribution thereby leaving 6.5% paid by the City. It is expected these contributions will be increased over the next several years until the employee will pay for the entire 8%. CalPERS requires a new resolution specifying the amount of the employee share that will be paid by the City since it no longer is the full 8% on these employees.

Discussions with the City's remaining "unrepresented" employees (those not formally represented by a union or official organization) have not been completed. These include Confidential Mid-Management, Technical and Support and part time (those part-time employees who have earned CalPERS status). Negotiations with the Fire Union, Teamsters Union and Tracy Mid-Managers Association have not been concluded. All of these contracts expire 6/30/11. Should such negotiations result in some of the employee share of CalPERS no longer being paid by the City, another resolution to reflect this will be required. The contract with the Tracy Police Officers' Association does not expire until 6/30/12. As such no contract negotiations have begun in this regard.

STRATEGIC PLAN

This matter addresses one of the City's seven strategic plans – that of Organizational Effectiveness. Goal #1 – Assure Fiscal Health.

FISCAL IMPACT

This action will result in less General Fund expenditures. By way of reference, if all Miscellaneous CalPERS employees of the City paid 1.5% of the employee share, this would result in total savings to the City of \$292,000 and approximately 80% (\$234,000) would be General Fund Savings.

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution which will reduce the amount of Employees' share of contributions to the California Public Employees Retirement System paid by the City for Department Heads.

Prepared by: Zane Johnston, Finance & Administrative Services Director

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

RESOLUTION _____

A RESOLUTION OF THE CITY OF TRACY FOR PAYING AND REPORTING THE VALUE OF EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, The City Council of the City of Tracy has the authority to implement Government Code Section 20636(c) (4) pursuant to Section 20691, and

WHEREAS, The City Council of the City of Tracy has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as final compensation, and

WHEREAS, The City Council of the City of Tracy has previously adopted a resolution to commence paying and reporting the value of said Employer Paid Member Contribution (EPMC), and

WHEREAS, The City of Tracy historically has paid the entire Member Contribution but due to budget considerations now desires to reduce this amount, and

WHEREAS, The City Council of the City of Tracy has identified the following conditions for the purpose of its election to pay EPMC: This benefit shall apply to all employees of the following groups: Department Heads

- This benefit shall consist of paying 6.5% of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable (excluding Government Code Section 20636(c)(4) as additional compensation
- This resolution only applies to the groups specified above and remaining employee groups of the City of Tracy will continue to received the amount of EPMC as previously adopted
- This effective date of this resolution is July 1, 2011.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy elects to pay and report the value of EPMC, as set forth above.

* * * * *

The foregoing Resolution 2011- _____ was passed and adopted by the Tracy City Council on the 5th day of July, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.D

REQUEST

APPROVE A 33-FOOT WIDE PUBLIC UTILITY EASEMENT (PUE) WITHIN THE CITY OWNED PARCEL LOCATED ON THE EAST SIDE OF TRACY BOULEVARD NORTH OF LARCH ROAD, FOR PLACEMENT AND MAINTENANCE OF ELECTRICAL SERVICE FOR A MEAT STORAGE AND PROCESSING FACILITY TO BE LOCATED ON 4276 N. TRACY BOULEVARD, AUTHORIZE THE MAYOR TO EXECUTE THE GRANT OF EASEMENT, AND FURTHER AUTHORIZE THE CITY CLERK TO FILE THE EASEMENT DOCUMENT WITH THE SAN JOAQUIN COUNTY RECORDER

EXECUTIVE SUMMARY

This report requests approval of a 33-foot wide Public Utility Easement (PUE) along the northern boundary of the City property located on the east side of Tracy Boulevard, north of Larch Road with PG&E. The PUE will provide access rights to PG&E for the installation, repair, use, operation, and maintenance of an overhead electrical line necessary for the meat storage and processing facility to be located on the adjacent parcel east of the City property.

DISCUSSION

The proposed 33-foot wide PUE is needed for the placement of approximately 290 feet of overhead electrical line to serve the proposed meat storage and processing facility on the adjacent parcel with a site address of 4276 N. Tracy Boulevard. The electrical service will be installed by PG&E from the existing utility pole on the west side of Tracy Boulevard to the eastern boundary of the City property. The location of the 33-foot wide PUE is shown on Attachment "A".

Staff has reviewed the legal description and map that describes the easement area for completeness and technical accuracy, and recommends approval of the 33-foot wide PUE to PG&E.

FISCAL IMPACT

There will be no impact to the General Fund. PG&E is responsible for the cost of preparing the legal description and Grant of Easement and recording of the easement document.

STRATEGIC PLAN

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

RECOMMENDATION

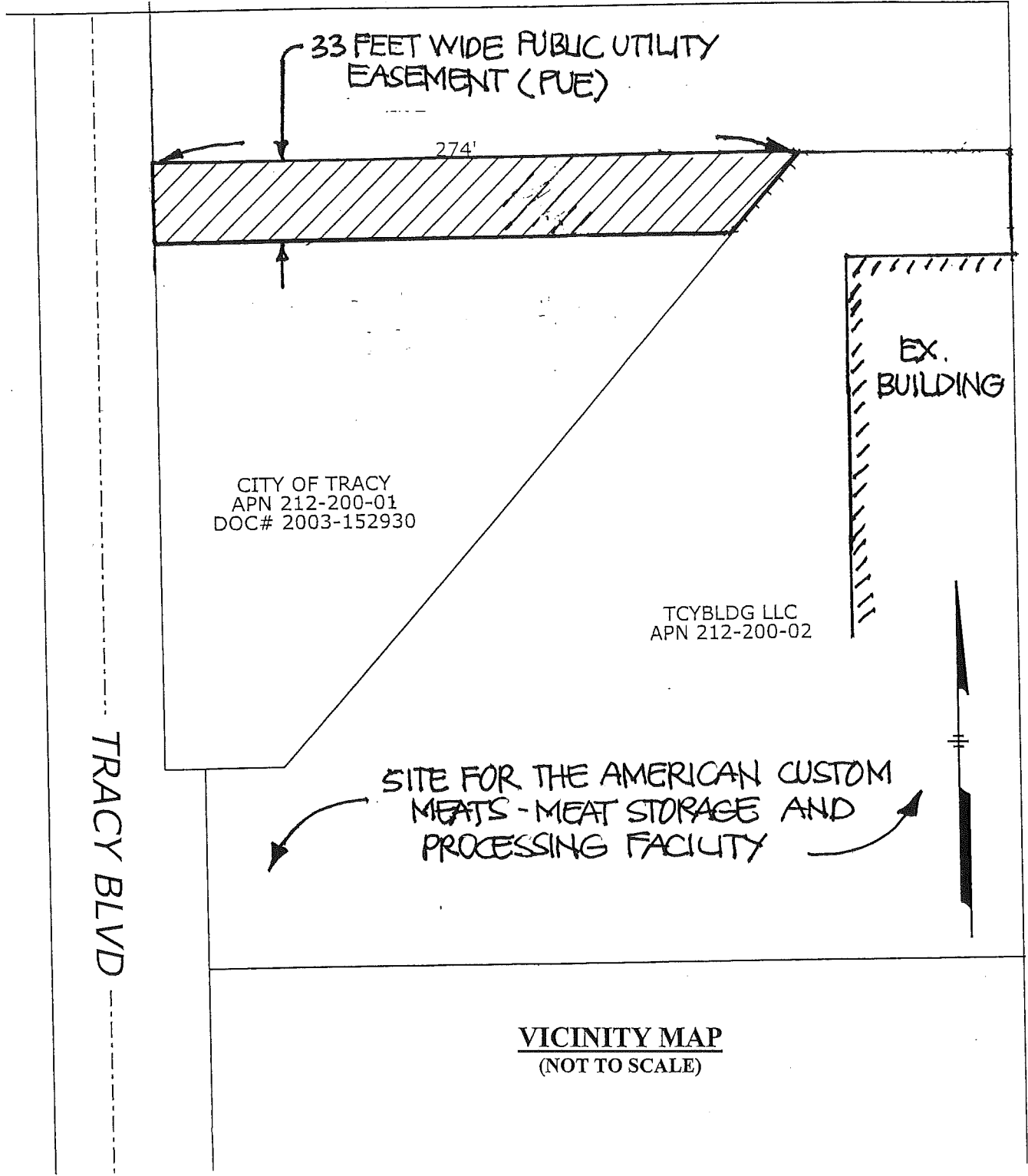
That the City Council, by resolution, approve the Grant of Easement to PG&E for the purpose of installation, operation and maintenance of 12-KW overhead electrical line, and authorize the Mayor to execute the Grant of Easement and further authorize the City Clerk to file the easement documents for recordation with the San Joaquin County Recorder.

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 "A"
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VICINITY MAP
(NOT TO SCALE)

RESOLUTION 2011- _____

APPROVING A 33-FOOT WIDE PUBLIC UTILITY EASEMENT (PUE) WITHIN THE CITY OWNED PARCEL LOCATED ON THE EAST SIDE OF TRACY BOULEVARD NORTH OF LARCH ROAD, FOR PLACEMENT AND MAINTENANCE OF ELECTRICAL SERVICE FOR A MEAT STORAGE AND PROCESSING FACILITY TO BE LOCATED ON 4276 N. TRACY BOULEVARD, AUTHORIZING THE MAYOR TO EXECUTE THE GRANT OF EASEMENT, AND FURTHER AUTHORIZING THE CITY CLERK TO FILE THE EASEMENT DOCUMENT WITH THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, The proposed 33-foot wide PUE is needed for the placement of approximately 290 feet of overhead electrical line to serve the proposed meat storage and processing facility on the adjacent parcel with a site address of 4276 N. Tracy Boulevard, and

WHEREAS, Staff has reviewed the legal description and map that describes the easement area for completeness and technical accuracy, and recommends approval of the 33-foot wide PUE to PG&E, and

WHEREAS, There will be no impact to the General Fund. PG&E is responsible for the cost of preparing the legal description and Grant of Easement and recording of the easement document;

NOW, THEREFORE, BE IT RESOLVED That City Council approves the Grant of Easement to PG&E for the purpose of installation, operation and maintenance of 12-KW overhead electrical line, authorizes the Mayor to execute the Grant of Easement and further authorizes the City Clerk to file the easement documents for recordation with the San Joaquin County Recorder.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 5th day of July 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

APPROVE RESOLUTION AWARDING A FIVE-YEAR PROFESSIONAL SERVICES AGREEMENT TO MV PUBLIC TRANSPORTATION, INC., NOT TO EXCEED \$827,871 IN FISCAL YEAR 2011/2012, FOR SERVICES RELATING TO THE CITY OF TRACY'S TRACER PUBLIC TRANSIT SYSTEM; AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT AND AUTHORIZE MV TRANSPORTATION, INC., TO ENTER INTO A CONTRACT WITH GREYHOUND LINES, INC. TO PROVIDE GREYHOUND BUS SERVICES AT THE TRACY TRANSIT STATION

EXECUTIVE SUMMARY

On March 14, 2011, the City mailed a Request for Proposals (RFP) to various transportation service providers, and published the RFP on the City's website. MV Public Transportation, Inc. (MV) and Storer Transportation both submitted a proposal. Three other companies declined to bid including First Transit, Compass Transportation, and Tectrans. No other companies submitted bids. Both bid submissions were responsive with proposals that meet the needs of the City of Tracy. While both companies have a long history of experience in transportation services, and both would be able to meet the needs of the City, continuing with MV will save over \$2 million dollars over the initial term of the agreement.

Upon City Council approval, as part of the contract, MV has agreed to contract with Greyhound Lines, Inc. to provide Greyhound bus service at the Tracy Transit Station.

DISCUSSION

Since July 2001, the City of Tracy has contracted for certain operational components of the TRACER Fixed Route and Paratransit Bus services, primarily drivers, bus maintenance and dispatching. Initially a two-route bi-directional Fixed Route system, by July 2004 the service had evolved into a five-route system with stops to key destinations throughout the City. The City currently has a fleet of four Compressed Natural Gas (CNG) 25' buses, six CNG 30' buses and three gasoline/electric hybrid 26' buses and two ADA accessible mini-vans. MV Public Transportation, Inc. (MV) was awarded the contract to operate the service in 2001 and again in 2006.

On March 14, 2011, the City mailed a Request for Proposals (RFP) to various transportation service providers, and published the RFP on the City's website. The service requirements (Exhibit "A") primarily include providing drivers and dispatch of the TRACER Fixed Route and Paratransit Bus services and facilitating revenue service operations and maintenance of buses. MV and Storer Transportation both submitted a proposal. Three other companies declined to bid including First Transit, Compass Transportation, and Tectrans. No other companies submitted bids. Both bid submissions were responsive with proposals that meet the needs of the City of Tracy. While both companies have a long history of experience in transportation, and both would be able to

meet the needs of the City, continuing with MV will save over \$2 million dollars over the initial term of the agreement.

As part of the agreement, in addition to the service levels they are already providing, MV has also agreed to provide additional software to manage the Fixed Route system, continue with a recently implemented secret rider program, and assist the City in marketing the Tracer system.

In addition, as part of the contract, MV has agreed to be the Greyhound Lines, Inc. (Greyhound) Agent, upon Council allowing Greyhound operations to take place at the Tracy Transit Station. Both MV and Greyhound have agreed to use the same contract that would have been in place had the City of Tracy entered into the agreement with Greyhound. A copy of the proposed contract with Greyhound is attached. If the Council decides to allow Greyhound operations to take place at the Transit Station, Greyhound will provide all the equipment necessary to operate its service and MV will provide all of the staffing required. Any revenue as a result of the Greyhound contract will go to MV. It is anticipated that the revenue will be approximately \$8,500 per year which will offset expenditures by MV.

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 no impact to the General Fund. Funding for the TRACER transit service is provided through County, State and Federal revenue sources, and passenger fares. The anticipated revenues from MV's contract with Greyhound of approximately \$8,500 per year will go to MV Transportation and be used to offset their expenditures.

RECOMMENDATION

Approve resolution awarding a five-year Professional Services Agreement to MV Public Transportation, Inc., not to exceed \$827,871 in Fiscal Year 2011/12, for services relating to the City of Tracy's TRACER public transit system, authorize the Mayor to execute the agreement and authorize MV Transportation, Inc., to enter into a contract with Greyhound to provide Greyhound bus services at the Tracy Transit Station.

ATTACHMENT

Exhibit "A" – Professional Services Agreement
Exhibit "B" – Sample Greyhound Contract

Prepared by: Ed Lovell, Management Analyst II
Reviewed by: Rod Buchanan, Director of Parks and Community Services Department
Approved by: R. Leon Churchill, Jr., City Manager

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT
MV PUBLIC TRANSPORTATION, INC.**

This Agreement (hereafter "Agreement") is made this ____ day of July 2011, by and between the CITY OF TRACY, a municipal corporation ("CITY"), and **MV PUBLIC TRANSPORTATION INC.**, a California corporation ("CONTRACTOR").

RECITALS

1. **WHEREAS**, CITY issued a Request for Proposal ("RFP") for Public Transportation Services on March 14, 2011, and
2. **WHEREAS**, CONTRACTOR responded by submitting a proposal ("Proposal") dated April 21, 2011, and
3. **WHEREAS**, CONTRACTOR has the technical expertise necessary to provide certain required services of the CITY's public transportation system and submitted the most attractive proposal to CITY.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** CONTRACTOR shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONTRACTOR's Authorized Representative: General Manager or Site Manager. CONTRACTOR shall not replace its Authorized Representative, nor shall CONTRACTOR replace any of the personnel listed in Exhibit "A" and in CONTRACTOR's proposal, nor shall CONTRACTOR use any Subcontractors, without the prior written consent of the CITY.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONTRACTOR shall commence performance, and shall complete all required services no later than the dates set forth in Section 5, "TERM", in the main body of this Agreement. Any services for which times for performance are not specified in this Agreement shall be commenced and completed by CONTRACTOR in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONTRACTOR. CONTRACTOR shall submit all requests for extensions of time to the CITY in writing no later than ten days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due. CITY, through its City Manager, or designee, shall grant or deny any such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** CONTRACTOR is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. CONTRACTOR is not CITY's employee and CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONTRACTOR. Contractors are free to work for other entities while under Agreement with the CITY. Contractors are not entitled to CITY benefits.
4. **CONFLICTS OF INTEREST.** CONTRACTOR (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONTRACTOR maintains or acquires such a conflicting interest, any Agreement (including this Agreement) involving CONTRACTOR's conflicting interest, may be terminated by the CITY.
5. **TERM.** The term of this Agreement shall be from the date it is fully executed by both CONTRACTOR and CITY through June 30, 2016.
 - 5.1 **OPTION TO EXTEND.** This Agreement may be extended upon mutual written Agreement between CITY and CONTRACTOR for two additional periods of one-year each: July 1, 2016 through June 30, 2017 and July 1, 2017 through June 30, 2018.
6. **COMPENSATION.**
 - 6.1. **RATES.** CONTRACTOR's rates are set forth in Exhibit "B", attached hereto and made a part hereof. For services performed by CONTRACTOR in accordance with this Agreement, CITY shall pay CONTRACTOR on a time and expense basis, at the billing rates set forth in Exhibit "B". CONTRACTOR's billing rates shall cover all costs and expenses of every kind and nature for CONTRACTOR's performance of this Agreement. No work shall be performed by CONTRACTOR in excess of the Not To Exceed amount without the prior written approval of the CITY.
 - 6.2. **MAXIMUM OBLIGATION.** The "Not To Exceed" amount that can be paid by CITY to CONTRACTOR for the budget period of July 1, 2011 through June 30, 2012 is \$827,871. For the period of July 1, 2012 through June 30, 2013, the "Not To Exceed" amount that can be paid by CITY is \$946,258. For the period of July 1, 2013 through June 30, 2014, the "Not To Exceed" price that can be paid by CITY is \$1,014,422. For the period of July 1, 2014 through June 30, 2015, the "Not To Exceed" amount that can be paid by CITY is \$1,353,317. For the period of July 1, 2015 through June 30, 2016, the "Not To Exceed" amount that can be paid by CITY is

\$1,385,307. No work shall be performed by CONTRACTOR in excess of the “Not To Exceed” amounts, without the prior written approval of the CITY.

If the option to extend is exercised, for the period of July 1, 2016 through June 30, 2017, the “Not To Exceed” amount that can be paid by CITY shall be \$1,548,221. If another option to extend is exercised, for the period of July 1, 2017 through June 30, 2018, the “Not To Exceed” amount that can be paid by CITY is \$1,597,675. No work shall be performed by CONTRACTOR in excess of the “Not To Exceed” amounts, without the prior written approval of the CITY.

6.3. INVOICES. CONTRACTOR shall invoice the CITY on a monthly basis for the services described herein. Invoices for the fixed monthly rate and associated revenue service costs for each month of service must be submitted within ten days of the month following service provision. Within thirty days after the CITY’s receipt of CONTRACTOR’s invoice, the CITY shall make payment to the CONTRACTOR based upon the services described on the invoice and approved by the CITY.

1.1. RATE ADJUSTMENTS. The CITY or CONTRACTOR may request immediate re-negotiation of rates contained in Exhibit “B” of this Agreement in the event of the following occurrence during the term of this Agreement or any extensions thereof:

1.1.1. A 10% or more increase or decrease in the number of revenue vehicle service hours provided.

1.1.2. An increase in the mandated minimum wages, payroll taxes applicable to employees of CONTRACTOR that was not public knowledge or otherwise known by CONTRACTOR at the time CONTRACTOR submitted its Proposal to CITY.

1.1.3. Changes in laws or regulations adopted by Federal, State, Regional or Local governmental bodies that result in increases or decreases in CONTRACTOR’s operating costs.

1.1.4. In the event of a CONTRACTOR cost increase or decrease as described in this Section, CONTRACTOR shall notify CITY in writing of the cost increase or decrease and CONTRACTOR and CITY shall meet to potentially negotiate a change to CONTRACTOR’s rates.

7. NEGLIGENCE OR MISCONDUCT. In the event that CONTRACTOR’s negligence or misconduct results in damages to the CITY, CONTRACTOR shall, upon receipt of written notice from the City either: (a) reimburse the CITY (and CONTRACTOR’s payment may be offset) for the damages incurred, or (b) re-perform (without additional compensation to the CONTRACTOR) any services

which have not been performed in accordance with the terms of this Agreement. Nothing in this section shall be interpreted to relieve or limit CONTRACTOR's liability for any damages to the CITY or to relieve CONTRACTOR from any of the indemnity, defense, or hold harmless provisions contained in this Agreement or to limit the extent to which such indemnity, defense, or hold harmless provisions will apply.

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

If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this agreement upon written notice to the defaulting party.

9. **OWNERSHIP OF WORK.** All original documents prepared by CONTRACTOR for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of CONTRACTOR's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONTRACTOR to any third party without the prior written consent of the City.
10. **PERFORMANCE STANDARDS.** CONTRACTOR agrees to fulfill the performance standards set forth in this agreement and in CONTRACTOR's proposal.
11. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
12. **INDEMNIFICATION.** CONTRACTOR shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of CONTRACTOR's performance of services under this Agreement.
13. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONTRACTOR shall obtain a City of Tracy Business License.

14. **INSURANCE.**

- 14.1. **General.** CONTRACTOR shall, throughout the duration of this Agreement, maintain insurance to cover CONTRACTOR, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 14.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 14.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 14.4. **Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 14.5. **Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONTRACTOR in an amount not less than \$1,000,000 per claim.
- 14.6. **Endorsements.** CONTRACTOR shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 1.1.1. The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 1.1.2. For any claims related to this Agreement, CONTRACTOR’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONTRACTOR’s insurance and shall not contribute with it.
- 14.7. **Notice of Cancellation.** CONTRACTOR shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 14.8. **Authorized Insurers.** All insurance companies providing coverage to CONTRACTOR shall be insurance organizations authorized by the

Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

- 14.9. Insurance Certificate.** CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 14.10. Substitute Certificates.** No later than thirty days prior to the policy expiration date of any insurance policy required by this Agreement, CONTRACTOR shall provide a substitute certificate of insurance.
- 14.11. CONTRACTOR's Obligation.** Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
- 15. ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONTRACTOR's duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 16. NOTICES.**
- 16.1** All notices, demands, or other communications that 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>
Director of Parks & Community Services
City of Tracy
400 East 10 th Street
Tracy, CA 95376 | <u>To CONTRACTOR:</u>
Contracts Administrator
MV Public Transportation, Inc.
4620 Westamerica Drive
Fairfield, CA 94534 |
|---|---|
- With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376
- 16.2** Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above,

or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

17. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by both parties.
18. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
19. **SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
20. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
21. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or Agreements.
22. **COMPLIANCE WITH THE LAW.** CONTRACTOR shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
23. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONTRACTOR's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
24. **CONTRACTOR'S GUARANTEE.** CONTRACTOR will not sell a majority of the outstanding common shares of the corporation during the term of this Agreement, or any extension thereof. Additionally, CONTRACTOR will not relocate, reassign or transfer the Project/General/Site Manager without the prior written approval of the CITY, during the term of the Agreement or any extensions thereof.
26. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the

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

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

CITY OF TRACY

CONTRACTOR
MV Public Transportation, Inc.

By: _____
Brent Ives
Title: Mayor

By: _____
Title:

Date: _____

Date: _____

Fed. Employer ID No.: _____

By: _____
Title:

Date: _____

Fed. Employer ID No.: _____

Attest:

By: _____
Sandra Edwards
Title: City Clerk

Date: _____

Approved as to Form:

By: _____
Daniel Sodergren
Title: City Attorney

Date: _____

EXHIBIT “A”

SCOPE OF WORK

Contractor shall conduct the day-to-day operation of the City of Tracy’s TRACER Public Transit System, which includes the TRACER Fixed Route and Paratransit Bus services. The Fixed Route consists of five routes (A, B, C, D, E) which serve key destinations/activity centers in the City, and is available to the general public.

The Paratransit Bus service serves senior residents 65 years of age and older, ADA certified individuals, and individuals requiring trips that either originate in the City of Tracy to the unincorporated areas or originate in the unincorporated areas to the City.

Both services operate Monday through Friday, approximately 7:00 AM to 7:00PM, and Saturdays, approximately 9:00 AM to 5:00 PM, within the specified service areas; see Exhibit “C” for service area and Fixed Route Patterns. Neither service operates on holidays. Holidays include New Years Day, Labor Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Timed connections with SJRTD buses are currently available at the Wal-Mart and the Tracy Transit Station. Bus stops are located approximately every three to five blocks and/or at major intersections or activity centers. Each stop has a pole, sign and timed stops have a posted bus schedule.

CONTRACTOR shall be responsible for keeping the TRACER Public Transit services operating as designed and scheduled by the City of Tracy. During the course of the Agreement, the City reserves the right to adjust service hours, routes, schedules, fares, service area boundaries and operating rules so as to accommodate ridership increases, decreases, or changes in the local economy.

The City Council has the final control and authority to determine policy, including, but not limited to, funding levels, fare structure, the scope of services the system should provide, planning requirements, and all capital purchases. The City will perform an independent audit of the transit operations and reserves the right to perform an unscheduled cash count of farebox revenues or other inventory inspection at any time. The City will also be responsible for preparing the Annual State Controller’s and National Transit Database Reports.

1. CONTRACTOR’s Responsibilities

The responsibilities of the CONTRACTOR shall include, but not be limited to, the following:

A. Personnel

CONTRACTOR shall:

(1) provide a full-time on-site Project/Operations Manager who will manage the Tracy Public Transit System throughout the term of this Agreement, with full authority to independently make any decisions required for the safe and efficient operation of services;

(2) ensure that at least one dispatcher is on duty from at least one-half hour prior to the first scheduled pick up until the last scheduled pick up to ensure performance standards noted in this Agreement are met;

(3) provide Vehicle Operators for Fixed Route and Paratransit services, who possess a State of California Driver's License (Class B), required for the operation of the transit vehicles. CONTRACTOR shall conduct an adequate background check (including criminal background checks) to ensure that each Vehicle Operator holds and maintains at all times a valid license that meets the standards and has the qualifications to operate a vehicle in the required capacity, has not accumulated more than six points on his/her driver's license within the last four years, and has no convictions for misdemeanor or felony driving under the influence (DUI) and no failures to appear to Court; Vehicle Operators must also wear uniforms satisfactory to CITY. At a minimum, uniforms shall consist of identical shirt with a patch (to be determined), trousers (including work shorts), and professionally appearing clip/pin-on name tag indicating Vehicle Operator's name, at all times;

(4) participate in the "Pull Notice" program where by the DMV record for each driver is checked at least once every six months for accidents, vehicle code violations and status;

(5) hire all ancillary staff needed to properly operate the services in compliance with the Agreement, including but not limited to dispatch supervisor(s), dispatchers, supervisors, management personnel, mechanics and at least one telephone receptionist. The determination of wages and benefits for the employees is at the CONTRACTOR's sole discretion based on legal requirements, negotiated labor agreements or system needs;

(6) seek and hire staff that have the skills and temperament to represent the City of Tracy in a professional manner, and work with clients, especially the elderly, frail, physically or cognitively impaired individuals; If CITY does not find an employee of CONTRACTOR to be acceptable, CITY shall first try to rectify the issue with the CONTRACTOR. CITY shall have final determination as to if an employee of CONTRACTOR is able to represent the City of Tracy in the manner outlined above;

(7) provide increased personnel to meet enhanced service requirements or special requests from the CITY;

B. Operations

CONTRACTOR shall:

(1) ensure that dispatch maintains constant communication with on-street Vehicle Operators;

(2) purchase and maintain a GPS Tracking System as outlined in the submitted proposal by CONTRACTOR and ensure its use (provided, however, that CONTRACTOR shall not be held responsible if the provider of the GPS tracking system defaults, withdraws or is unable to financially sustain the Agreement that is executed by CONTRACTOR and the provider);

(3) conduct pre-trip vehicle inspections at least fifteen minutes prior to the start of service each day, completing and maintaining checklists on a daily basis;

(4) ensure accurate assignment of Vehicle Operators and dispatchers to work shifts, including ensuring respective availability for inspections and scheduling updates;

(5) train staff on map-reading skills, and ensuring awareness of service area, and on Safety measures to comply with all Federal and State regulations regarding safety;

(6) monitor transit operations, route and schedule adherence, and providing on-street /road supervision;

(7) ensure that **all** staff present a neat appearance, including wearing city approved uniforms, and conduct themselves in a courteous and professional manner at all times;

(8) provide Vehicle Operator training, including sensitivity training, and implementation of safety programs;

(9) conduct drug and alcohol testing of all employees associated with transit operations, including new hires, in accordance with FTA 49 CFR Parts 653 and 654 Drug and Alcohol guidelines and the requirements of the Drug Free Workplace Act and the Omnibus Transportation Employee Testing Act of 1991. This will include random testing and testing of all employees involved in accidents;

- (10) at CONTRACTOR's own expense, develop and implement a drug control program (includes alcohol abuse);
- (11) maintain records regarding all transportation functions, including maintenance of work records;
- (12) ensure confidentiality of eligibility files and other sensitive information;
- (13) report vehicle problems as they occur and annotate daily vehicle logs specifying whether vehicles are in service and any maintenance issues, if any, keeping vehicles out of service;
- (14) maintain records regarding all accidents and passenger injuries;
- (15) contact CITY within one hour of any noteworthy accident/incident, or any accident/incident involving bodily injury or death. Twenty-four hour notice is required for non-emergencies. All accident/incident reports must be also submitted with the monthly invoices;
- (16) maintain tight control over air/fuel ratio to monitor low emission and verify fuel economy;
- (17) maintain a daily checklist for the fuel canopy, pumps and compressor at the CNG fueling station; Checklists and training will be provided by CITY;
- (18) maintain daily ridership records for all services, including route information, number of passengers and passenger type;
- (19) prepare a monthly report including, at a minimum, the number of revenue hours, revenue miles, fare revenue and ridership figures noting breakdown according to Regular, Seniors, Students, Disabled, Tickets, Free, with timed usage by each group, and any other information requested by the CITY. Free ridership should also be broken down noting all groups, and Personal Care Attendants (does not have to be broken down) separately. With each invoice packet, include a signed cover sheet acknowledging that all information presented is truthful "to the best of your knowledge;"
- (20) submit monthly invoices on or before the tenth working day following the end of each month to the CITY, for services rendered under the Agreement;
- (21) answer customer service calls, documenting compliments and complaints, logging issues and resolving issues to meet requirements of the Federal Transit Administration;
- (22) collect fare revenues, passes, and transfer tickets from all patrons by using the procedures established by CITY. Make daily deposits utilizing

appropriate CITY form, and at a location specified by CITY. CONTRACTOR must ensure the safe passage of fare revenues to the CITY and report on the revenues collected and deposited on behalf of the CITY;

(23) hold the City harmless for any responsibility for payment of any fines, penalties, or costs incurred by any of the CONTRACTOR's employees;

(24) ensure that a sufficient number of transit brochures, tickets, forms and other CITY information are always available on-board every vehicle;

(25) maintain a vehicle locator system and relevant software;

(26) work in conjunction with the CITY to ensure that FTA and TDA conditions and assurances are met;

(27) assist the CITY with marketing efforts as required and requested;

(28) identify problems with radio communication devices and coordinate repairs;

(29) maintain and use a computer system that verifies applicant status and eligibility, schedules and assigns trips, and supplies trip update and other reporting information;

(30) ensure that ADA certified individuals are given priority service. Seniors, and then other passengers, are accommodated on a space available basis on the Paratransit service;

(31) advise customers to call one to four days in advance to schedule trips. Develop a database for all customers, with an identification number. Request the following information from all customers for Paratransit trips: ID#, Name, Pick-up time, whether customer has a specific appointment time (medical etc.) to allow for the appropriate Pick-up time, Pick-up location, Drop off location, and a contact phone number, cell number if available.

(32) ensure that the Paratransit service is door-to-door and that passengers are assisted, by the Vehicle Operators, with any bags and/or packages;

(33) ensure that Vehicle Operators assist passengers to board and disembark vehicle. Passengers able to ambulate without devices, and passengers that use walkers and canes, can request to use the lift.

(34) ensure that Vehicle Operators assist all passengers using wheelchairs and ensure that they are properly secured while being transported;

- (35) ensure that Vehicle Operators make contact with ADA certified passengers within ADA guidelines and standards, and ensure the highest degree of care when assisting customers;
- (36) illustrate compliance with the Americans with Disabilities Act of 1990 and facilitate relevant staff training including but not limited to daily verification of lift devices documented on a daily vehicle inspection report (DVI) and ADA passenger rights and allowances;
- (37) process and provide certification for ADA and Senior Paratransit applications, including incurring all costs associated with mailing and accepting applications, verifying age (driver's license, passport and so forth) and/or disability information presented by a physician, medical facility or relevant agency, and issuing certification cards or rejecting applications;
- (38) monitor route and schedule adherence, and provide on-street supervision;
- (39) ensure that CONTRACTOR's personnel treat all passengers in a courteous and respectful manner consistent with the requirements of the ADA and the CITY. If the CITY determines that a pattern of customer relation complaints is established, CONTRACTOR shall be required to upgrade its customer relations training program and retrain its personnel as necessary to reduce complaints;
- (40) not permit passengers to smoke, eat, or drink anything on board the vehicles at any time. Drivers are not to smoke or eat at anytime on the bus, however they may drink on the bus but only while the bus is stopped;
- (41) not permit passengers to solicit on the vehicles with the exception of personnel specifically authorized to do so by the CITY;
- (42) ensure that the wheelchair lift operation is in compliance with the procedures recommended by the manufacturer and required by the ADA;
- (43) ensure that spare vehicles, including reserves, belonging to the City of Tracy, are not used by CONTRACTOR or its employees for road supervision purposes or any private use;
- (44) provide information on debarment status or certification regarding debarment, suspension and other ineligible and voluntary exclusion;
- (45) provide Assurance of Compliance, Certification and Verification to meet requirements of the Federal Transit Administration;

CITY OF TRACY – PROFESSIONAL SERVICES AGREEMENT

MV PUBLIC TRANSPORTATION, INC.

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(46) provide Assurance of Compliance, Certification and Verification regarding Equal Employment Opportunity Policy, non-discriminatory hiring practices and all requirements imposed by the US Department of Transportation;

(47) unlock the Tracy Transit Station building during normal business hours as posted at the site;

(48) secure (lock) the Tracy Transit Station building at the end of the business hours as posted at the site;

(49) provide information and assistance as necessary to anyone who may enter the Tracy Transit Station including, but not limited to unlocking rooms for renters, facilitating tours of the building, showing rooms to potential renters, issuing keys, etc.;

(50) for the Fixed Route service, ensure that the following standards are met:

- a. 95% of scheduled fixed route departures shall be on-time or shall not be more than 5 minutes late;
- b. 0% of scheduled fixed route departures shall leave early;
- c. 0% of fixed route trips shall be missed;
- d. 0% of fixed route trips shall depart from timed stops earlier than the time listed on the schedule;
- e. there shall be a minimum of 100,000 miles between accidents;
- f. there shall be no more than one passenger complaint for every 5,000 Fixed Route passengers; and,
- g. there shall be a minimum of five primary vehicles available every day, and one back up;

(51) For the Paratransit Bus service, ensure that the following standards are met:

- a. 90% of Paratransit passengers must be picked up within +/- 10 minutes of the scheduled pick up time;
- b. passengers are contacted fifteen minutes prior to scheduled pick up to advise as to whether the route is on time, or to advise as to how

late the route is. This gives the passenger the option of waiting or rescheduling the trip;

- c. the Vehicle Operator is fully trained on the appropriate use of securements and utilizes them with each customer. Vehicle Operators must immediately contact dispatch if a customer refuses the securements. This refusal to co-operate should be noted in customer's database file;
- d. a maximum of one passenger complaint for every 2,000 Paratransit passengers;
- e. a minimum of 40,000 miles between accidents;
- f. each staff person coming into contact with Paratransit customers is trained on ADA requirements for interacting with individuals with disabilities; and,
- g. for customers with three or more no show cancellations within a one-year period, notify the customer in writing that privileges will be suspended for 30 days. The CITY reserves the right to allow the customer to appeal to designated CITY personnel and for the CITY to waive suspension at the discretion of the CITY.

(52) upon the CITY's City Council authorizing, by resolution at its meeting on July 5, 2011, Greyhound Lines, Inc. services to be provided at the Tracy Transit Station, CONTRACTOR is required to use its best efforts to enter into a contract as soon as practicable, and in substantially the form attached hereto as Exhibit "D", for such services with Greyhound Lines, Inc. Upon full execution of said contract by Greyhound Lines, Inc. and CONTRACTOR, CITY grants exclusive rights to the ticketing area shown in Exhibit "E" attached hereto and made a part hereof and non-exclusive rights to the lobby and restrooms shown in Exhibit "E" to the extent necessary to satisfy the requirements of the contract between CONTRACTOR and Greyhound Lines, Inc.

C. Maintenance: CONTRACTOR shall be responsible for all aspects of vehicle maintenance and upkeep for all existing and future TRACER buses including, but not limited, to the requirements listed below.

CONTRACTOR shall:

- (1) establish and follow a pre-trip/post-trip inspection program including but not limited to checking heating and air-conditioning systems, oil and other fluids, belts and hoses, customer seats, wheelchair positions and tie-downs,

lights, doors including lifts, windshield wiper and washer system, emergency equipment including a first aid kit, brakes, tires and wheels, exhaust system, mirrors, glass, horn and body damage. A checklist should be established whereby Vehicle Operators can annotate any problems encountered during the inspections. A file should be maintained for each bus. The Vehicle Operators must conduct these inspections at least 15 minutes prior to the start of route, and upon return to the yard;

(2) maintain the vehicles in “Service Ready” condition at all times, including daily fueling and fluid checks, exterior and interior cleaning including washing, sweeping and mopping, fan belt, flat tires, replace worn windshield wipers, hoses, bulbs and lenses, batteries and fuses, preliminary road service, cycle wheelchair lifts and maintain tie-downs, currently certified fire extinguisher;

(3) obtain timely maintenance and repairs, while maintaining total fleet availability consistent with service requirements;

(4) ensure proper use, care, maintenance and towing of all revenue service vehicles to and from the Maintenance Contractor’s facility;

(5) maintain an inventory of parts and fluids sufficient to assure timely repairs;

(6) conduct Preventative Maintenance Inspections (PMIs), at least every forty-five days or 5,000 miles whichever comes first, to include replacement of engine oil and filters, checking body, doors and windows, seatbelts and seats, wheelchair securement positions and belts, wheelchair lift, interior climate controls, interior and exterior lights, vehicle operator gauges and controls, brake system, drive train, steering system, suspension system, engine fluids, belts, hoses, transmission fluids, air filter/system, water pump, batteries, ignition system, engine electrical system, spark plugs, fuses, exhaust system, fuel system, emergency equipment, customer grab rails, damage to vehicles;

(7) maintain relevant PMI Inspection logs;

(8) fuel vehicles at the CITY owned CNG or gasoline fueling station only, unless otherwise directed by the CITY;

(9) clean vehicles (inside and outside), including daily sweeping and garbage removal of interior of vehicles, weekly mopping and wiping of soiled surfaces of the interior of vehicles, washing of the exterior surface of each vehicle at least once per week;

(10) conduct mandatory California Highway Patrol inspections;

- (11) make exterior repairs, including painting and bodywork upkeep;
- (12) complete all required governmental and regulatory documents;
- (13) supply own maintenance facility capable of handling CNG and gasoline and hybrid vehicles;
- (14) not allow any vehicle into operation when its condition is unsafe or uncertain;

D. Federal Requirements: CONTRACTOR agrees to abide by the terms and conditions required by the Federal Transit Administration (FTA) as outlined below, in addition to any other requirements as may be imposed by the FTA.

FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Fly America Requirements

CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Charter Service Operations - CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any

charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

**SCHOOL BUS REQUIREMENTS
49 U.S.C. 5323(F)
49 CFR Part 605**

School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

**ENERGY CONSERVATION REQUIREMENTS
42 U.S.C. 6321 et seq.
49 CFR Part 18**

Energy Conservation - CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**CLEAN WATER REQUIREMENTS
33 U.S.C. 1251**

Clean Water - (1) CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**ACCESS TO RECORDS AND REPORTS
49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17**

Access to Records - The following access to records requirements apply to this Agreement:

1. Where the CITY is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), CONTRACTOR agrees to provide the CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. CONTRACTOR agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

4. FTA does not require the inclusion of these requirements in subcontracts.

Sources of Authority:

1 49 USC 5325 (a)

2 49 CFR 633.17

3 18 CFR 18.36 (i)

FEDERAL CHANGES

49 CFR Part 18

Federal Changes - CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between CITY and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement.

CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Recovered Materials - CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The CITY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the CITY, CONTRACTOR, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(2) CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**
31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying

Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.

(2) CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.

(3) CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

a. Termination for Convenience (General Provision) The CITY may terminate this Agreement, in whole or in part, at any time by written notice to CONTRACTOR when it is in the CITY's best interest. CONTRACTOR shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. CONTRACTOR shall promptly submit its termination claim to the CITY to be paid CONTRACTOR. If CONTRACTOR has any property in its possession belonging to the CITY, CONTRACTOR will account for the same, and dispose of it in the manner the CITY directs.

b. Termination for Default If CONTRACTOR does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, CONTRACTOR fails to perform in the manner called for in the Agreement, or if CONTRACTOR fails to comply with any other provisions of the Agreement, the City of Tracy may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on CONTRACTOR setting forth the manner in which CONTRACTOR is in default. CONTRACTOR will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the CITY that CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of CONTRACTOR, the City of Tracy, after setting up a new

delivery of performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure The CITY in its sole discretion may, in the case of a termination for breach or default, allow CONTRACTOR ten calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If CONTRACTOR fails to remedy to the CITY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten days after receipt by CONTRACTOR of written notice from the CITY setting forth the nature of said breach or default, the CITY shall have the right to terminate the Agreement without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude the CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Agreement, such waiver by the CITY shall not limit the CITY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

e. Termination for Convenience (Professional or Transit Service Contracts) The City of Tracy by written notice, may terminate this Agreement, in whole or in part, when it is in the Government's interest. If this Agreement is terminated, the Recipient shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If CONTRACTOR fails to deliver supplies or to perform the services within the time specified in this Agreement or any extension or if CONTRACTOR fails to comply with any other provisions of this Agreement, the City of Tracy may terminate this Agreement for default. The City of Tracy shall terminate by delivering to CONTRACTOR a Notice of Termination specifying the nature of the default. CONTRACTOR will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this Agreement.

If, after termination for failure to fulfill Agreement obligations, it is determined that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

CONTRACTOR agrees to comply, and assures the compliance of each third party contractor and subcontractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29.

PRIVACY ACT
5 U.S.C. 552

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any Agreement:

(1) CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

(2) CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

CIVIL RIGHTS REQUIREMENTS
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying Agreement:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil

Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(3) CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Disputes - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CITY. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, CONTRACTOR mails or otherwise furnishes a written appeal to the CITY's City Manager. In connection with any such

appeal, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the CITY's City Manager shall be binding upon CONTRACTOR and CONTRACTOR shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the CITY, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages thereof shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the CITY and CONTRACTOR arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the CITY is located.

Rights and Remedies - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CITY, or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS
49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Transit Employee Protective Provisions. (1) CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work on the underlying Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the

FTA Recipient's project from which Federal assistance is provided to support work on the underlying Agreement. CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any Agreement financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying Agreement, CONTRACTOR agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. CONTRACTOR agrees to perform transit operations in connection with the underlying Agreement in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Disadvantaged Business Enterprises

- a. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall Anticipated DBE Level of Participation is 6%. A separate Agreement goal **has not** been established for this procurement.
- b. CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the CITY deems appropriate. Each subcontract CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The CITY shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the Agreement work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event of: a dispute involving late payment or nonpayment by CONTRACTOR; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- e. CONTRACTOR must promptly notify the CITY whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. CONTRACTOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS
FTA Circular 4220.1E**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause CITY to be in violation of the FTA terms and conditions.

**DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654**

Drug and Alcohol Testing - CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 40 and 655, produce any documentation necessary to establish its compliance with Parts 40 and 655 and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Tracy, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 40 and 655 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Parts 40 and 655 before July 1 and to submit the Management Information System (MIS) reports by July 1st to City of Tracy Transportation Division and FTA. To certify compliance CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

2. CITY'S Responsibilities

The CITY's responsibilities (currently administered through the Parks and Community Services Department) are as follows:

A. Administration

- (1) Oversight of the operating Agreement, including invoice and reporting audits, budget monitoring, fare box and revenue verification, route

designation and revisions, Agreement liaison, ensuring compliance with City, State and Federal mandates;

(2) Determine passenger fare rates and the method of collecting and depositing fares;

(3) Make provisions for on-board communication systems;

(4) Implement all aspects of planning, including short and long term service changes;

(5) See to aspects of marketing, employing CONTRACTOR's assistance when needed, including design, print, obtain and distribute transit brochures, tickets, transfers and marketing materials;

(6) Complete required governmental and regulatory documents;

(7) Complete grant documents and funding applications and request applicable County and Federal reimbursements;

(8) Set goals, objectives and standards;

(9) Write specifications related to capital purchases;

(10) Implement bus signage measures and bus stop improvements including shelters and benches;

(11) Ensure that bus stops are located approximately every 3 to 5 blocks and/or at major intersections or activity centers;

(12) Provide fire and theft insurance for the CITY facility;

(13) Install radio communication devices and provide for maintenance and repair of radio communication systems; and

(14) Facilitate Transit route designations and revisions.

(15) Provide necessary software for operations;

B. Vehicles: The CITY shall provide CONTRACTOR with all revenue vehicles required for Fixed Route and Paratransit services. The CITY currently owns fifteen vehicles: four CNG Cutaways, six CNG MST IIs, three low-floor gasoline hybrid Cutaways, and two ADA accessible minivans. The CITY will provide:

- Reserve vehicles
- Fare boxes (electronic or manual as warranted)
- Designation signs
- Mobile Radio Units
- Vehicle Licenses
- Internal racks for marketing materials
- External decals and logos
- Fuel and fuel cards
- Fluids & waste oil dumping area
- Supplies for CNG checks
- Software for remote access for CNG Station

C. Facilities: The CITY will provide the CONTRACTOR with space for operations to include:

- Dispatch Room
- Supervisor's Office
- Drivers' Break Room
- Restrooms
- Yard for TRACER vehicle storage

EXHIBIT "B"

RATES

	July 1, 2011 - June 30, 2012	July 1, 2012 - June 30, 2013	July 1, 2013 - June 30, 2014	July 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016
Fixed Monthly Expense	\$ 25,795.58	\$ 26,365.05	\$ 27,729.50	\$ 33,846.77	\$ 34,674.73
Cost Per Vehicle Hour**	\$ 24.860	\$ 25.444	\$ 25.663	\$ 26.366	\$ 26.800
TOTAL AGREEMENT PRICE	\$ 827,870.96	\$ 946,257.99	\$ 1,014,421.92	\$ 1,353,317.00	\$ 1,385,306.93

** CITY provides 100% of transit fleet

PROJECTED VEHICLE HOURS*	July 1, 2011 - June 30, 2012	July 1, 2012 - June 30, 2013	July 1, 2013 - June 30, 2014	July 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016
Fixed Route Vehicle Hours	13,100	16,855	18,512	27,724	27,814
Paratransit Vehicle Hours	7,750	7,900	8,050	8,200	8,350

* Actual hours may vary based on City Council action in levels of service.

**CITY OF TRACY – PROFESSIONAL SERVICES AGREEMENT
 MV PUBLIC TRANSPORTATION, INC.
 Page 34 of 36**

	July 1, 2016 - June 30, 2017 (Extension)	July 1, 2017 - June 30, 2018 (Extension)
Fixed Monthly Expense	\$ 36,555.86	\$ 37,283.59
Cost Per Vehicle Hour**	\$ 27.74	\$ 28.65
TOTAL AGREEMENT PRICE	\$ 1,548,220.78	\$ 1,597,674.97

** CITY provides 100% of transit fleet

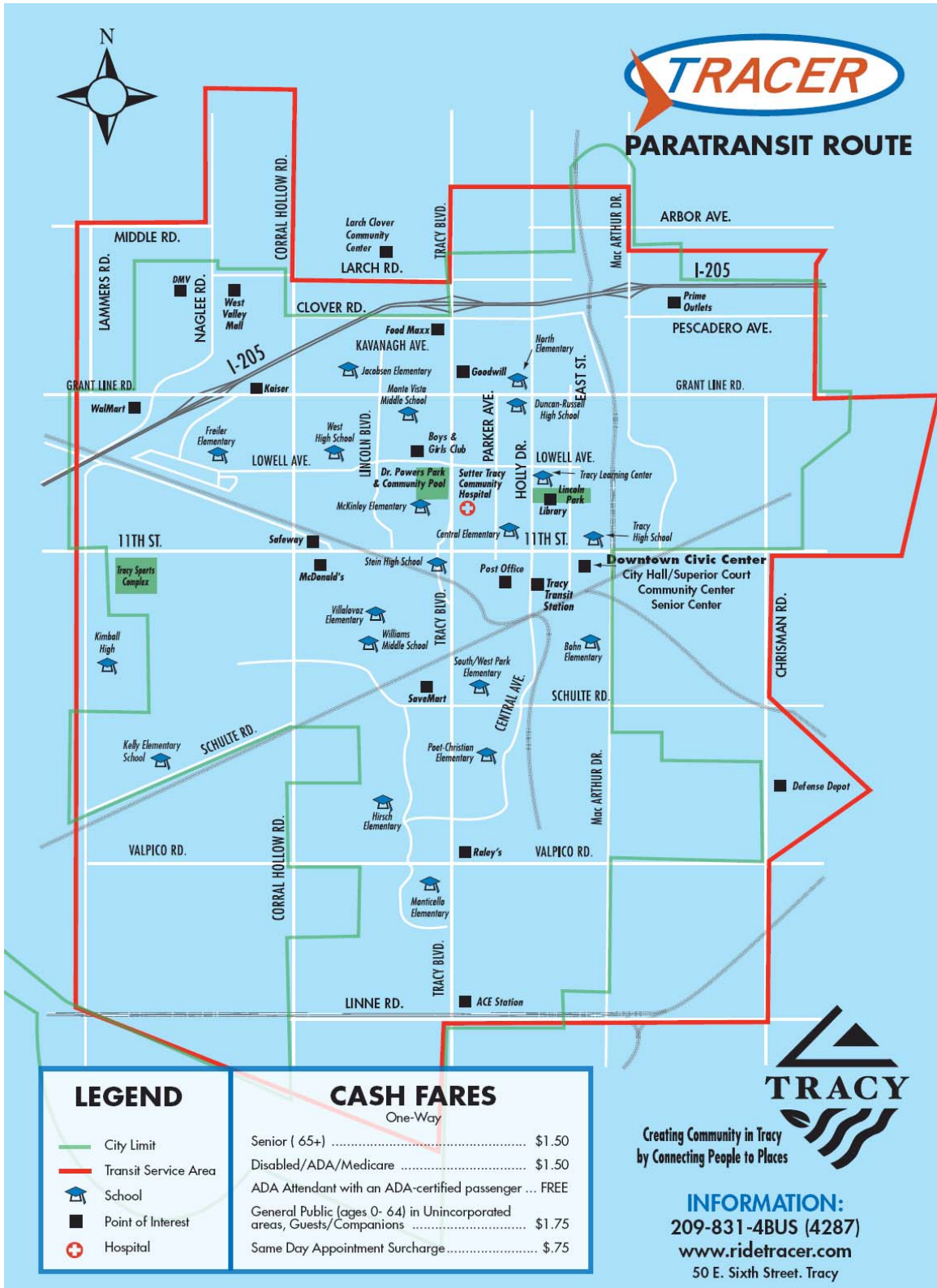
PROJECTED VEHICLE HOURS*	July 1, 2011 - June 30, 2012	July 1, 2012 - June 30, 2013
Fixed Route Vehicle Hours	31,500	31,500
Paratransit Vehicle Hours	8,500	8,650

* Actual hours may vary based on City Council action in levels of service.

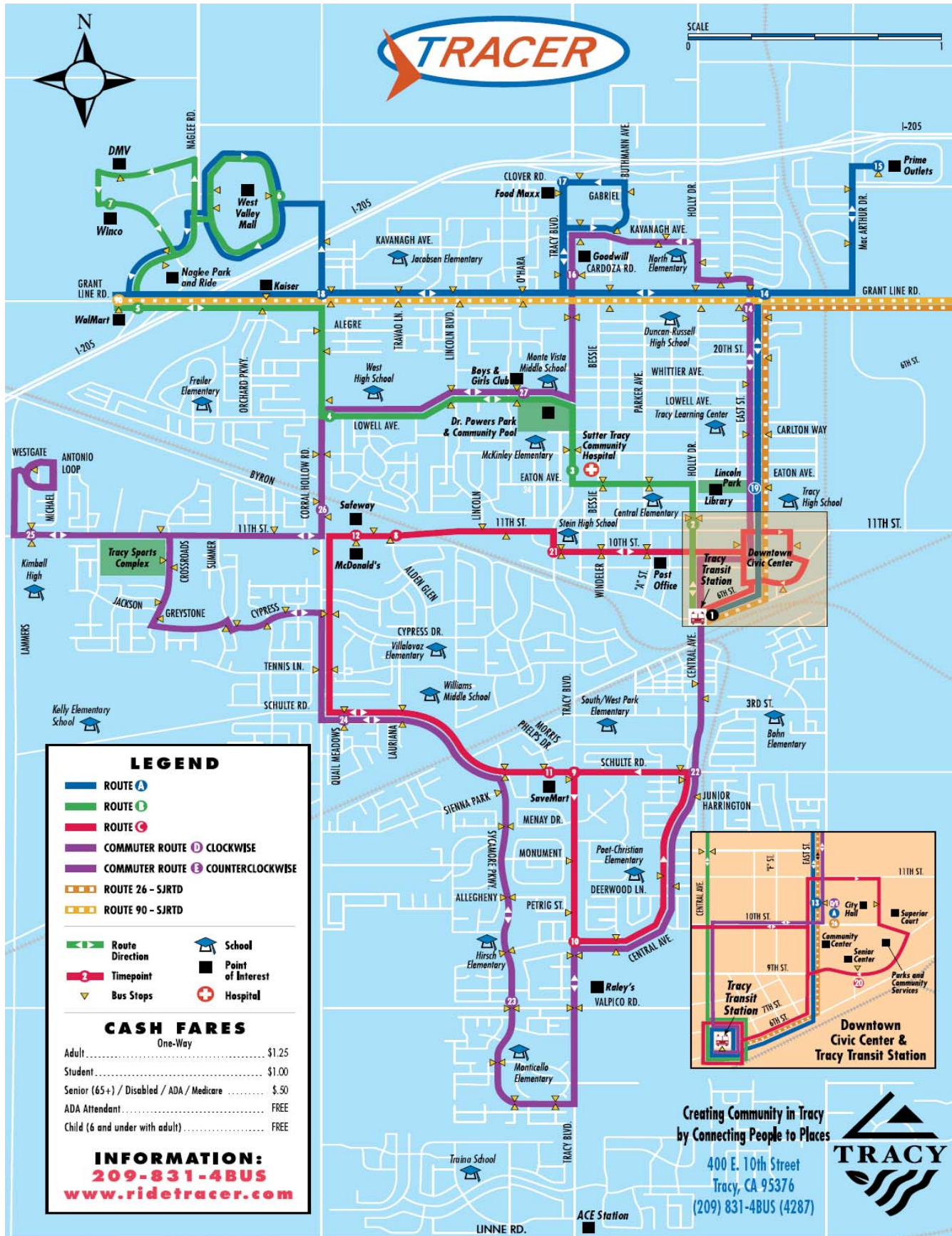
EXHIBIT "C"

CITY OF TRACY SERVICE AREA AND FIXED ROUTE PATTERNS

Service Area:



Fixed Route Pattern:





GREYHOUND LINES, INC.

STANDARD INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT made as of this **29th** day of **November, 2010** (the "Effective Date").

BETWEEN: **GREYHOUND LINES, INC.**, a body corporate having its head office at P.O. Box 660362, Dallas, TX 75266-0362 (the "Company")

-and-

_____, a body corporate or a partnership validly created, organized and in existence having an office in the City of **Tracy**, in the State of **California**;

-or-

_____, individual residents in the City of _____, in the State of _____;

(collectively the "Contractor");

WHEREAS:

THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

1. COMPENSATION

1.1 The Company agrees to pay, in the manner set out in the Company's policies, the following compensation/commission to the Contractor:

PERCENTAGE AND/OR FLAT FEE	TYPE OF SERVICE	PERCENTAGE AND/OR FLAT FEE	TYPE OF SERVICE
8%	Tickets / Prepaid Ticket Order Sales	10%	Outbound Express
8%	Commutation Tickets	10%	Inbound Express
3.2%	Will Call Ticket to be printed by the Contractor	10%	Excess Baggage
3.2%	Ticket by Mail	20%	Phone Cards
\$3.00	Prepaid Ticket Order Honored Fee (Flat rate)	\$2.00	Student Advantage Cards
10%	Discovery Pass Tickets	\$6.00	Pick-Up and Delivery Standard
10%	Charters	\$12.00	Pick-Up and Delivery Priority

The Contractor is not entitled to receive any amount whatsoever other than the compensation amounts stated above. The percentage amount is based on the amount of actual sales done by the Contractor, before applicable taxes.

2. SERVICES

2.1 The Contractor shall perform the following functions and provide the following services at **Tracy Transit Station, 50 East 6th Street** (street address) in the City of **Tracy**, in the State of **California** (the "Contractor's Premises"). **Only those functions marked shall apply. Each must be initialed by Contractor if applicable.**

Initials

- _____ Sell and issue Tickets at tariff rates approved by the Company.

- _____ Prepare and issue Transportation Documents required for the transportation of baggage, Express and other goods by the Company and its affiliated and connecting carriers at tariff rates approved by the Company.

- _____ Properly receive, store and deliver to the persons entitled to receive them all goods to be transported by, through or pursuant to the instructions of the Company and its affiliated and connecting carriers.

- _____ Furnish upon request to the public any information contained in tariffs, bulletins, circulars and literature issued by the Company for the transportation of passengers or the handling of Baggage and goods by the Company and its affiliated and connecting carriers.

- _____ Promptly send, after 30 days of storage, any loss or mishandled goods to the Company's lost items warehouse.

- _____ Allow the Company to load and unload passengers and their baggage as well as all goods (including Express) at the Contractor's Premises.

- _____ Provide or arrange for, in those areas so designated by the Company, Pick-Up and Delivery Service within the county boundaries of the City of **Tracy**, in the State of **California** ("P&D Service Area") in accordance with such tariffs, rates, regulations and accounting procedures as may be issued by the Company from time to time.

- _____ That Contractor will without compensation: Reissue tickets in exchange for tickets or ticket orders issued by another contractor, connecting carrier's contractor, or the Company.

- _____ Provide at the Contractor's Premises, at its sole cost and expense, the following to be of a nature satisfactory to the Company and to be configured, decorated and maintained in an attractive, sanitary, clean and safe manner conducive to the business of the Contractor pursuant to this Agreement:
 - (i) adequate waiting room space and furnishings;
 - (ii) attractive and sanitary lavatory facilities;
 - (iii) convenient facilities for the sale of Tickets, preparation and handling of Transportation Documents and handling of baggage, Express and other goods; and
 - (iv) all facilities, supplies, furnishings, devices and machinery necessarily incidental to the provision of items (i) to (iii); and

- _____ Place and maintain the sign or signs provided by the Company designating the Contractor's Premises as a Ticket, transportation and Express agency of the Company and its affiliated and connecting carriers.

- _____ Operate the Business with specified hours as agreed upon between the Contractor and Company and communicate alterations to the Company a minimum of fourteen (14) days in advance.

"Business" shall mean any of those services marked as applicable in this Section 2 above.

“**Ticket**” shall mean any document to be commissionable as defined in section 1.1 approved by the Company for use in the provision of passenger transportation services for the Company or its affiliated and connecting carriers.

“**Express**” shall mean any goods (excluding baggage) accepted for transportation and for which a Transportation Document has been issued by the Company, an authorized agent of the Company, or the Company’s affiliated and connecting carriers irrespective of whether such goods are carried, transported or consigned on a standard or priority basis.

“**Transportation Documents**” shall include busbills, waybills, bills of lading or other shipping documents approved by the Company for the transportation of goods, including Express over the Company’s routes or the routes of its affiliated and connecting carriers.

“**Pick-up and Delivery Service**” shall mean all work, labour and services rendered by the Contractor, at its sole cost and expense, to pick-up or deliver Express, goods or baggage of the Company’s customers between the customers’ premises and the Contractor’s Premises.

“**Standard**” or “**Priority**” shall mean transportation of Express along the routes of the Company and/or its affiliated and connecting carriers from an origin point designated by the consignor to a destination point designated by the consignor or consignee (other than the Contractor’s Premises).

2.2 In cases where a phone number is listed in the phone directories under the name Greyhound and it’s affiliates, such phone number shall belong solely to the Company and be paid by the Company. The Contractor shall have no right whatsoever in connection with that phone number. The Company shall have the absolute right to transfer such phone number to any other facility it so chooses.

In all other cases, the Contractor shall provide, at the Contractor’s sole cost and expense, all telephones, telephone lines, fax lines, fax machines, white page telephone and fax directory advertising and telephone and fax number information necessary for the Contractor to perform its obligations herein.

2.3 The Contractor shall pay all state, federal and other taxes which shall be assessed or levied against the Contractor's Premises and/or the Business during the term of this Agreement; to obtain any and all licences necessary or required in connection with the operation of the Contractor's Premises or the Business; and to pay all other charges or levies from third parties in relation to the Contractor's Premises or the Business.

2.4 Under no circumstances whatsoever shall the Contractor or the Contractor’s Personnel accept, handle or transport, any product, device, liquid, gas, item, substance or commodity of any nature, description or type whatsoever prescribed or deemed as dangerous by any regulating body governing the transportation of such goods to, from or through the Contractor's Premises, or over the routes of the Company or its affiliated and connecting carriers (the “**Dangerous Goods**”) or any other dangerous materials.

2.5 The Contractor shall not solicit or sell or permit to be solicited or sold in the Contractor's Premises, or in any other offices or agencies under the Contractor’s control, transportation or Express services via any other carrier to destinations which are competitive to the Company or its affiliated and connecting carriers without Companies authorization.

2.6 Not to use the word "Greyhound" as part of Contractor's business name for any purpose. Contractor acknowledges that the word "Greyhound," together with the various symbols, slogans, logos, and the like (“**Marks**”) owned or licensed by the Company are valuable, special and unique assets of the Company. The use of Marks under this Agreement is for the purpose of distinguishing the services of Greyhound Lines, Inc. and its subsidiaries only. Contractor may use Marks only as an aid in informing the public where Greyhound Lines, Inc.'s services may be purchased and that Contractor is authorized to sell Greyhound Lines, Inc.'s services. Contractor shall not use Marks to identify Contractor's services or in any way except as specifically authorized herein. Contractor shall indemnify and hold Company harmless for any costs, fees and expenses (including reasonable attorneys' fees) associated with any breach of this Section, such indemnity to survive any termination of this Agreement. Contractor’s internet (worldwide web) sites are strictly prohibited from using the name “Greyhound”, the image of the running dog and any other trademarks or service marks associated with Company’s transportation business.

3. FINANCIAL MATTERS

3.1 The Contractor shall adopt and comply with all financial, credit, depositing and accounting policies which may be developed and issued by the Company from time-to-time.

3.2 The Contractor shall account to the Company for and pay to the Company the value of all services sold for the transportation of passengers, baggage, Express and goods regardless of whether those transportation charges are actually collected, unless otherwise specifically agreed to in writing by the Company. The Contractor agrees to hold and protect at all times any and all money and/or property of the Company in the care or under the supervision of the Contractor, and to reimburse the Company for any loss of or damage to such money and/or property. The title to all Tickets and Transportation Documents and the proceeds of the sale or issuance thereof shall be at all times in the Company, it being the intention of this Agreement that the Contractor shall at all times be in the position of a trustee of said Tickets and Transportation Documents and the proceeds of sale or issuance thereof for the Company. Failure to remit all monies to Company will result in interest charges to Contractor for funds withheld at the maximum rate allowed by law.

CONTRACTOR(S)'S INITIALS		
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The Contractor shall remit to a bank account designated by the Company, in a manner as approved by the Company, all monies belonging to the Company or due to the Company or collected for the account of the Company the 16th of each month. Failure to properly deposit all monies will result in interest charges to the Contractor for funds withheld at the maximum rate allowed by law.

The Company hereby authorizes the Contractor to deduct the sums to which the Contractor is properly entitled pursuant to this Agreement from the Company's funds in the possession of the Contractor when remittances are made to the Company pursuant to this Agreement.

To render to the Company all required documents to support activity within the facility and to remit to the Company on a monthly basis for all monies owed, or as directed by the Company.

3.3 The Company is authorized to deduct from any money that may be due to the Contractor hereunder the compensation previously allowed to the Contractor in respect of Tickets or transportation charges subsequently refunded to patrons or not collectable from patrons and also the full amount of any payment or payments made or expenses incurred by the Company by reason of loss of or damage to baggage and/or Express chargeable to the Contractor, and the Contractor hereby agrees to pay to the Company forthwith on demand any deficiency that may exist with respect to such adjustments, refunds, losses or damages.

3.4 It is expressly understood and agreed that the personnel furnished by the Contractor to perform and render services pursuant to this Agreement shall be and shall remain employees, servants or agents of the Contractor and under no circumstances are such personnel to be considered employees, servants or agents of the Company. Further, the Contractor shall supply and pay all of the Contractor's Personnel during the term of this Agreement and shall be responsible for, among other things but not limited to, all wages, pension plan premiums, workers' compensation premiums, employment insurance premiums, employer health tax remittances and income tax source deductions (collectively, the "**Employment Remittances**").

The Contractor shall indemnify and save harmless the Company from any and all liabilities, losses, claims, expenses, damages, actions, causes of actions and obligations whatsoever incurred or suffered by or made, claimed or brought against the Company arising out of, in connection with or otherwise relating to (i) the Company being deemed to be an employer of the Contractor's Employees for the purposes of applicable employment legislation; or (ii) the failure of the Contractor to pay the Employment Remittances as they become due.

4. INDEMNITY AND INSURANCE

4.1 The Contractor shall save, defend, hold harmless and indemnify the Company, its affiliates, officers, directors, employees, affiliated and connecting carriers and their respective representatives (the "**Protected Parties**") against any claims, losses, death, damages, including property, costs or expenses or attorney's fees of any kind or nature incurred or to be incurred by the Protected Parties arising from:

- a) the failure of the Contractor to comply with any covenant or obligation contained in this Agreement;
- b) any damage to property or injury to persons of any description, including without limitation illness or death, occurring in, upon or about the Contractor's Premises, or arising directly or indirectly from or out of:
 - (i) the acts, negligence or omissions of the Contractor, its employees, representatives, contractors, servants or agents (the "**Contractor's Personnel**");
 - (ii) any act or thing done or permitted to be done upon the Contractor's Premises by the Contractor or the Contractor's Personnel; or
 - (ii) any default under this Agreement by the Contractor or the Contractor's Personnel;
- c) any use or occupancy of Contractor's Premises, automobiles or equipment;
- d) accepting, handling or transporting Dangerous Goods or other dangerous materials by the Contractor or the Contractor's Personnel;
- e) loss or damage of Baggage or goods while under the care and supervision of the Contractor or the Contractor's Personnel; or
- f) any employment-related claim by Contractor Personnel for failure to pay, including but not limited to, salaries, benefits, taxes or Worker's Compensation Board payments as they become due.

The Contractor is not required to indemnify the Protected Parties from and against any claims, losses, damages, costs or expenses of any kind or nature arising from any damages caused by equipment owned by the Company or for which the Company is responsible to maintain, unless said damages result in part from the negligent acts or omissions of the Contractor or the Contractor's Personnel.

4.2 Contractor represents and warrants that its facilities are and will be operated in compliance with all laws applicable to it, including but not limited to, the Americans with Disabilities Act as amended ("ADA"). Contractor agrees to assist Company personnel with boarding or deboarding of customers with disabilities at Contractor's facility and will provide such other assistance or accommodations to Company's customers to the extent required under the ADA.

4.3 To be liable for all charges for transportation services sold regardless of collection of such charges. To be liable for and protect any and all money and/or property of the Company in the care or under the supervision of Contractor and to reimburse Company for any loss or damage to such money and/or property. At Contractor's expense to furnish a **bond or other** security of a type and in an amount satisfactory to Company for the protection of Company funds and/or property. **The Company will waive the requirement for a bond or other security upon the payment by Contractor to Company of an annual waiver fee.** The title to all tickets and busbills and proceeds thereof and of all other monies collected for the Company shall be at all times in the Company, it being the intention of this Agreement that the Contractor shall at all times be in the position of trustee and fiduciary of the same for the Company.

5. TERMINATION

5.1 This Agreement starts on the Effective Date and continues until terminated by either the Contractor or the Company at any time for any reason, without penalty of any kind, effective thirty (30) days after delivery of advance written notice, provided that:

- a) in the following events, the Company shall have the right to terminate this Agreement immediately without notice or penalty of any kind whatsoever and that the Company is hereby authorized to do so:
 - i. any default in the account remittances of the Contractor for monies due to the Company;
 - ii. any failure to provide competent and continuing service;
 - iii. in the event that a receiver is appointed in respect of the Contractor, or in the event of an assignment in bankruptcy or receiving order in respect of the Contractor;
 - iv. in the event the Contractor assigns this Agreement. A change of control of the Contractor shall be deemed to be an assignment.
 - v. any violation by the Contractor of any provision of this Agreement which is not remedied within ten (10) days after notice thereof is given;
 - vi. in the event that the Contractor's Premises shall be completely or substantially destroyed by any cause whatsoever during this Agreement, the Company, the Contractor and/or the Principal(s) may terminate this Agreement on seven (7) days written notice;
 - vii. in the event the Company's right to load and unload passengers and their baggage or any goods (including Express) at the Contractor's Premises, including the right to move and park vehicles to the extent necessary to conduct operations to or from the Contractor's Premises, or the Company's right to carry on its business of transporting passengers, baggage and Express to and from the Contractor's Premises, is restricted, denied or prevented, whether by municipal, provincial or federal law, ordinance or decree or otherwise; or
- b) in the event any notice of termination is provided to the Company by any one of the parties comprising the Contractor, the Company shall have the right to terminate this Agreement for the remaining parties.

5.2 Upon termination of this Agreement, the Contractor:

- a) shall not be entitled to receive any compensation from the Company in any form whatsoever including without limitation any alleged damages for the impairment of the goodwill associated with the Business, lost profits, loss of potential profits or any other related damages;
- b) shall not operate or do business under any name or in any manner that might tend to give the public the impression that the Contractor is either directly or indirectly associated or affiliated with, licensed by or related to the Company or its affiliated and connecting carriers;
- c) shall not, either directly or indirectly, use any name, logo, insignia, slogan, copyright, design, symbol or format likely to cause confusion when compared reasonably to those used by the Company;
- d) shall jointly and severally continue to be bound to pay to the Company on demand such amounts as may be determined by the Company to be owing by the Contractor pursuant to this Agreement;
- e) shall, promptly upon demand by the Company, repaint its vehicles in a colour scheme different from that used by the Company. The Contractor acknowledges that the Company's vehicles have a distinctive colour scheme design;
- f) shall remove and return or, if requested by the Company, permit a representative of the Company to remove and return, at the Contractor's cost and expense, all signs, insignia, decals, logos and any and all other documents and equipment in any way whatsoever connected or related to the Company;
- g) shall remove from the telephone directory and from any other advertising medium any listing or reference to the fact that the Contractor is or has provided services in accordance with this Agreement; and
- h) shall provide the Company with the sales reports required pursuant to paragraph 3.2 for any time period upon request by authorized Company personnel.

5.3 The title to all equipment, signs, insignia or other materials furnished to the Contractor by the Company shall remain the property of the Company at all times, and upon the termination of this Agreement must be returned to the Company.

6. ADDITIONAL COVENANTS

- 6.1 The Contractor shall have no authority or power to bind the Company by contract or otherwise except as herein provided for the sale and/or issuance of Tickets and Transportation Documents for the transportation of passengers, baggage, Express and other goods.
- 6.2 The Contractor agrees to adopt and comply with all policies and guidelines developed by the Company from time-to-time in respect of the effective operation and promotion of the Business.
- 6.3 The rights and privileges of the Contractor granted or created by virtue of this Agreement are not exclusive. The Company reserves the right to engage others to perform the services to be rendered by the Contractor under this Agreement, either within the P&D Service Area or elsewhere.
- 6.4 All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other (a "Notice") shall be done in writing and sent by registered mail, overnight delivery or fax to the following addresses:
 - a) if to the Company at Greyhound Lines, Inc., 350 North St. Paul, Dallas, TX 75201, Attention: Contracts Administration (V. Cole);
 - b) if to the Contractor at:

- 6.5 This Agreement, its obligations and benefits may not be assigned, transferred or subcontracted in whole or in part. Any change in the corporate ownership or the beneficial control of the Contractor shall be deemed to be an assignment of this Agreement.
- 6.6 This Agreement shall be governed and construed by the laws of the State where the Contractor's Premises are located.
- 6.7 In the event any provision of this Agreement is determined to be invalid or not enforceable, it shall be considered separate and severable from the balance of this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto.
- 6.8 If there shall be more than one person referred to as the Contractor herein, then their obligations and liabilities shall be joint and several.
- 6.9 No amendment to this Agreement will be valid except in writing signed by all of the parties hereto.
- 6.10 This Agreement contains all of the terms and conditions agreed upon by the parties in connection with the subject matter and this Agreement supersedes any prior agreement, be it in writing or verbal. No director, employee or agent of the Company has the authority to make any representation or promise not contained in this Agreement, and the parties agree that they have executed this Agreement without reliance upon any such representation or promise.

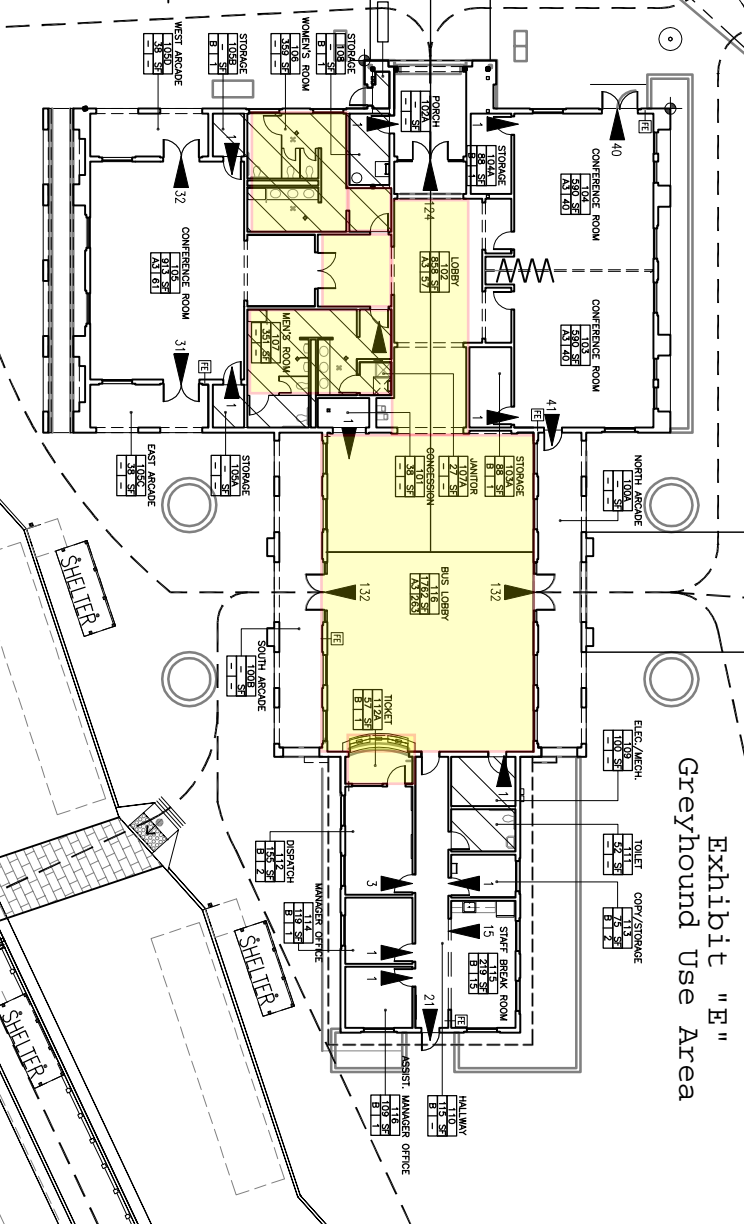
IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed.

<u>COMPANY</u>	DATE: _____	GREYHOUND LINES, INC.
		_____ Name: Title: Authorized Signature

<u>CONTRACTOR</u>	DATE: _____
_____ Witness to Contractor's Signature	_____ Contractor's Name:
_____ Witness (Print Name)	_____ Signature's Title if contractor is a corporation:
_____ Witness Address	_____ Signature I have authority to bind the corporation.

<u>INDIVIDUAL</u>	DATE: _____
_____ Witness to Individual's Signature	_____ Individual's Name:
_____ Witness (Print Name)	_____ Signature
_____ Witness Address	

Exhibit "E" Greyhound Use Area





GREYHOUND LINES, INC.

STANDARD INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT made as of this **29th** day of **November, 2010** (the "Effective Date").

BETWEEN: **GREYHOUND LINES, INC.**, a body corporate having its head office at P.O. Box 660362, Dallas, TX 75266-0362 (the "Company")

-and-

_____, a body corporate or a partnership validly created, organized and in existence having an office in the City of **Tracy**, in the State of **California**;

-or-

_____, individual residents in the City of _____, in the State of _____;

(collectively the "Contractor");

WHEREAS:
THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:

1. COMPENSATION

1.1 The Company agrees to pay, in the manner set out in the Company's policies, the following compensation/commission to the Contractor:

PERCENTAGE AND/OR FLAT FEE	TYPE OF SERVICE	PERCENTAGE AND/OR FLAT FEE	TYPE OF SERVICE
8%	Tickets / Prepaid Ticket Order Sales	10%	Outbound Express
8%	Commutation Tickets	10%	Inbound Express
3.2%	Will Call Ticket to be printed by the Contractor	10%	Excess Baggage
3.2%	Ticket by Mail	20%	Phone Cards
\$3.00	Prepaid Ticket Order Honored Fee (Flat rate)	\$2.00	Student Advantage Cards
10%	Discovery Pass Tickets	\$6.00	Pick-Up and Delivery Standard
10%	Charters	\$12.00	Pick-Up and Delivery Priority

The Contractor is not entitled to receive any amount whatsoever other than the compensation amounts stated above. The percentage amount is based on the amount of actual sales done by the Contractor, before applicable taxes.

2. SERVICES

2.1 The Contractor shall perform the following functions and provide the following services at **Tracy Transit Station, 50 East 6th Street** (street address) in the City of **Tracy**, in the State of **California** (the "Contractor's Premises"). **Only those functions marked shall apply. Each must be initialed by Contractor if applicable.**

Initials

- _____ Sell and issue Tickets at tariff rates approved by the Company.

- _____ Prepare and issue Transportation Documents required for the transportation of baggage, Express and other goods by the Company and its affiliated and connecting carriers at tariff rates approved by the Company.

- _____ Properly receive, store and deliver to the persons entitled to receive them all goods to be transported by, through or pursuant to the instructions of the Company and its affiliated and connecting carriers.

- _____ Furnish upon request to the public any information contained in tariffs, bulletins, circulars and literature issued by the Company for the transportation of passengers or the handling of Baggage and goods by the Company and its affiliated and connecting carriers.

- _____ Promptly send, after 30 days of storage, any loss or mishandled goods to the Company's lost items warehouse.

- _____ Allow the Company to load and unload passengers and their baggage as well as all goods (including Express) at the Contractor's Premises.

- _____ Provide or arrange for, in those areas so designated by the Company, Pick-Up and Delivery Service within the county boundaries of the City of **Tracy**, in the State of **California** ("P&D Service Area") in accordance with such tariffs, rates, regulations and accounting procedures as may be issued by the Company from time to time.

- _____ That Contractor will without compensation: Reissue tickets in exchange for tickets or ticket orders issued by another contractor, connecting carrier's contractor, or the Company.

- _____ Provide at the Contractor's Premises, at its sole cost and expense, the following to be of a nature satisfactory to the Company and to be configured, decorated and maintained in an attractive, sanitary, clean and safe manner conducive to the business of the Contractor pursuant to this Agreement:
 - (i) adequate waiting room space and furnishings;
 - (ii) attractive and sanitary lavatory facilities;
 - (iii) convenient facilities for the sale of Tickets, preparation and handling of Transportation Documents and handling of baggage, Express and other goods; and
 - (iv) all facilities, supplies, furnishings, devices and machinery necessarily incidental to the provision of items (i) to (iii); and

- _____ Place and maintain the sign or signs provided by the Company designating the Contractor's Premises as a Ticket, transportation and Express agency of the Company and its affiliated and connecting carriers.

- _____ Operate the Business with specified hours as agreed upon between the Contractor and Company and communicate alterations to the Company a minimum of fourteen (14) days in advance.

"Business" shall mean any of those services marked as applicable in this Section 2 above.

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2.4 Under no circumstances whatsoever shall the Contractor or the Contractor’s Personnel accept, handle or transport, any product, device, liquid, gas, item, substance or commodity of any nature, description or type whatsoever prescribed or deemed as dangerous by any regulating body governing the transportation of such goods to, from or through the Contractor's Premises, or over the routes of the Company or its affiliated and connecting carriers (the “**Dangerous Goods**”) or any other dangerous materials.

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2.6 Not to use the word "Greyhound" as part of Contractor's business name for any purpose. Contractor acknowledges that the word "Greyhound," together with the various symbols, slogans, logos, and the like (“**Marks**”) owned or licensed by the Company are valuable, special and unique assets of the Company. The use of Marks under this Agreement is for the purpose of distinguishing the services of Greyhound Lines, Inc. and its subsidiaries only. Contractor may use Marks only as an aid in informing the public where Greyhound Lines, Inc.'s services may be purchased and that Contractor is authorized to sell Greyhound Lines, Inc.'s services. Contractor shall not use Marks to identify Contractor's services or in any way except as specifically authorized herein. Contractor shall indemnify and hold Company harmless for any costs, fees and expenses (including reasonable attorneys' fees) associated with any breach of this Section, such indemnity to survive any termination of this Agreement. Contractor’s internet (worldwide web) sites are strictly prohibited from using the name “Greyhound”, the image of the running dog and any other trademarks or service marks associated with Company’s transportation business.

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CONTRACTOR(S)'S INITIALS		
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The Company hereby authorizes the Contractor to deduct the sums to which the Contractor is properly entitled pursuant to this Agreement from the Company's funds in the possession of the Contractor when remittances are made to the Company pursuant to this Agreement.

To render to the Company all required documents to support activity within the facility and to remit to the Company on a monthly basis for all monies owed, or as directed by the Company.

3.3 The Company is authorized to deduct from any money that may be due to the Contractor hereunder the compensation previously allowed to the Contractor in respect of Tickets or transportation charges subsequently refunded to patrons or not collectable from patrons and also the full amount of any payment or payments made or expenses incurred by the Company by reason of loss of or damage to baggage and/or Express chargeable to the Contractor, and the Contractor hereby agrees to pay to the Company forthwith on demand any deficiency that may exist with respect to such adjustments, refunds, losses or damages.

3.4 It is expressly understood and agreed that the personnel furnished by the Contractor to perform and render services pursuant to this Agreement shall be and shall remain employees, servants or agents of the Contractor and under no circumstances are such personnel to be considered employees, servants or agents of the Company. Further, the Contractor shall supply and pay all of the Contractor's Personnel during the term of this Agreement and shall be responsible for, among other things but not limited to, all wages, pension plan premiums, workers' compensation premiums, employment insurance premiums, employer health tax remittances and income tax source deductions (collectively, the "**Employment Remittances**").

The Contractor shall indemnify and save harmless the Company from any and all liabilities, losses, claims, expenses, damages, actions, causes of actions and obligations whatsoever incurred or suffered by or made, claimed or brought against the Company arising out of, in connection with or otherwise relating to (i) the Company being deemed to be an employer of the Contractor's Employees for the purposes of applicable employment legislation; or (ii) the failure of the Contractor to pay the Employment Remittances as they become due.

4. INDEMNITY AND INSURANCE

4.1 The Contractor shall save, defend, hold harmless and indemnify the Company, its affiliates, officers, directors, employees, affiliated and connecting carriers and their respective representatives (the "**Protected Parties**") against any claims, losses, death, damages, including property, costs or expenses or attorney's fees of any kind or nature incurred or to be incurred by the Protected Parties arising from:

- a) the failure of the Contractor to comply with any covenant or obligation contained in this Agreement;
- b) any damage to property or injury to persons of any description, including without limitation illness or death, occurring in, upon or about the Contractor's Premises, or arising directly or indirectly from or out of:
 - (i) the acts, negligence or omissions of the Contractor, its employees, representatives, contractors, servants or agents (the "**Contractor's Personnel**");
 - (ii) any act or thing done or permitted to be done upon the Contractor's Premises by the Contractor or the Contractor's Personnel; or
 - (ii) any default under this Agreement by the Contractor or the Contractor's Personnel;
- c) any use or occupancy of Contractor's Premises, automobiles or equipment;
- d) accepting, handling or transporting Dangerous Goods or other dangerous materials by the Contractor or the Contractor's Personnel;
- e) loss or damage of Baggage or goods while under the care and supervision of the Contractor or the Contractor's Personnel; or
- f) any employment-related claim by Contractor Personnel for failure to pay, including but not limited to, salaries, benefits, taxes or Worker's Compensation Board payments as they become due.

The Contractor is not required to indemnify the Protected Parties from and against any claims, losses, damages, costs or expenses of any kind or nature arising from any damages caused by equipment owned by the Company or for which the Company is responsible to maintain, unless said damages result in part from the negligent acts or omissions of the Contractor or the Contractor's Personnel.

4.2 Contractor represents and warrants that its facilities are and will be operated in compliance with all laws applicable to it, including but not limited to, the Americans with Disabilities Act as amended ("ADA"). Contractor agrees to assist Company personnel with boarding or deboarding of customers with disabilities at Contractor's facility and will provide such other assistance or accommodations to Company's customers to the extent required under the ADA.

4.3 To be liable for all charges for transportation services sold regardless of collection of such charges. To be liable for and protect any and all money and/or property of the Company in the care or under the supervision of Contractor and to reimburse Company for any loss or damage to such money and/or property. At Contractor's expense to furnish a **bond or other** security of a type and in an amount satisfactory to Company for the protection of Company funds and/or property. **The Company will waive the requirement for a bond or other security upon the payment by Contractor to Company of an annual waiver fee.** The title to all tickets and busbills and proceeds thereof and of all other monies collected for the Company shall be at all times in the Company, it being the intention of this Agreement that the Contractor shall at all times be in the position of trustee and fiduciary of the same for the Company.

5. TERMINATION

5.1 This Agreement starts on the Effective Date and continues until terminated by either the Contractor or the Company at any time for any reason, without penalty of any kind, effective thirty (30) days after delivery of advance written notice, provided that:

- a) in the following events, the Company shall have the right to terminate this Agreement immediately without notice or penalty of any kind whatsoever and that the Company is hereby authorized to do so:
 - i. any default in the account remittances of the Contractor for monies due to the Company;
 - ii. any failure to provide competent and continuing service;
 - iii. in the event that a receiver is appointed in respect of the Contractor, or in the event of an assignment in bankruptcy or receiving order in respect of the Contractor;
 - iv. in the event the Contractor assigns this Agreement. A change of control of the Contractor shall be deemed to be an assignment.
 - v. any violation by the Contractor of any provision of this Agreement which is not remedied within ten (10) days after notice thereof is given;
 - vi. in the event that the Contractor's Premises shall be completely or substantially destroyed by any cause whatsoever during this Agreement, the Company, the Contractor and/or the Principal(s) may terminate this Agreement on seven (7) days written notice;
 - vii. in the event the Company's right to load and unload passengers and their baggage or any goods (including Express) at the Contractor's Premises, including the right to move and park vehicles to the extent necessary to conduct operations to or from the Contractor's Premises, or the Company's right to carry on its business of transporting passengers, baggage and Express to and from the Contractor's Premises, is restricted, denied or prevented, whether by municipal, provincial or federal law, ordinance or decree or otherwise; or
- b) in the event any notice of termination is provided to the Company by any one of the parties comprising the Contractor, the Company shall have the right to terminate this Agreement for the remaining parties.

5.2 Upon termination of this Agreement, the Contractor:

- a) shall not be entitled to receive any compensation from the Company in any form whatsoever including without limitation any alleged damages for the impairment of the goodwill associated with the Business, lost profits, loss of potential profits or any other related damages;
- b) shall not operate or do business under any name or in any manner that might tend to give the public the impression that the Contractor is either directly or indirectly associated or affiliated with, licensed by or related to the Company or its affiliated and connecting carriers;
- c) shall not, either directly or indirectly, use any name, logo, insignia, slogan, copyright, design, symbol or format likely to cause confusion when compared reasonably to those used by the Company;
- d) shall jointly and severally continue to be bound to pay to the Company on demand such amounts as may be determined by the Company to be owing by the Contractor pursuant to this Agreement;
- e) shall, promptly upon demand by the Company, repaint its vehicles in a colour scheme different from that used by the Company. The Contractor acknowledges that the Company's vehicles have a distinctive colour scheme design;
- f) shall remove and return or, if requested by the Company, permit a representative of the Company to remove and return, at the Contractor's cost and expense, all signs, insignia, decals, logos and any and all other documents and equipment in any way whatsoever connected or related to the Company;
- g) shall remove from the telephone directory and from any other advertising medium any listing or reference to the fact that the Contractor is or has provided services in accordance with this Agreement; and
- h) shall provide the Company with the sales reports required pursuant to paragraph 3.2 for any time period upon request by authorized Company personnel.

5.3 The title to all equipment, signs, insignia or other materials furnished to the Contractor by the Company shall remain the property of the Company at all times, and upon the termination of this Agreement must be returned to the Company.

6. ADDITIONAL COVENANTS

- 6.1 The Contractor shall have no authority or power to bind the Company by contract or otherwise except as herein provided for the sale and/or issuance of Tickets and Transportation Documents for the transportation of passengers, baggage, Express and other goods.
- 6.2 The Contractor agrees to adopt and comply with all policies and guidelines developed by the Company from time-to-time in respect of the effective operation and promotion of the Business.
- 6.3 The rights and privileges of the Contractor granted or created by virtue of this Agreement are not exclusive. The Company reserves the right to engage others to perform the services to be rendered by the Contractor under this Agreement, either within the P&D Service Area or elsewhere.
- 6.4 All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other (a "Notice") shall be done in writing and sent by registered mail, overnight delivery or fax to the following addresses:
 - a) if to the Company at Greyhound Lines, Inc., 350 North St. Paul, Dallas, TX 75201, Attention: Contracts Administration (V. Cole);
 - b) if to the Contractor at:

- 6.5 This Agreement, its obligations and benefits may not be assigned, transferred or subcontracted in whole or in part. Any change in the corporate ownership or the beneficial control of the Contractor shall be deemed to be an assignment of this Agreement.
- 6.6 This Agreement shall be governed and construed by the laws of the State where the Contractor's Premises are located.
- 6.7 In the event any provision of this Agreement is determined to be invalid or not enforceable, it shall be considered separate and severable from the balance of this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto.
- 6.8 If there shall be more than one person referred to as the Contractor herein, then their obligations and liabilities shall be joint and several.
- 6.9 No amendment to this Agreement will be valid except in writing signed by all of the parties hereto.
- 6.10 This Agreement contains all of the terms and conditions agreed upon by the parties in connection with the subject matter and this Agreement supersedes any prior agreement, be it in writing or verbal. No director, employee or agent of the Company has the authority to make any representation or promise not contained in this Agreement, and the parties agree that they have executed this Agreement without reliance upon any such representation or promise.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed.

<u>COMPANY</u>	DATE: _____	GREYHOUND LINES, INC.
		_____ Name: Title: Authorized Signature

<u>CONTRACTOR</u>	DATE: _____
_____ Witness to Contractor's Signature	_____ Contractor's Name:
_____ Witness (Print Name)	_____ Signature's Title if contractor is a corporation:
_____ Witness Address	_____ Signature I have authority to bind the corporation.

<u>INDIVIDUAL</u>	DATE: _____
_____ Witness to Individual's Signature	_____ Individual's Name:
_____ Witness (Print Name)	_____ Signature
_____ Witness Address	

RESOLUTION _____

AWARDING A FIVE-YEAR PROFESSIONAL SERVICES AGREEMENT TO MV PUBLIC TRANSPORTATION, INC., NOT TO EXCEED \$827,871 IN FISCAL YEAR 2011/2012, FOR SERVICES RELATING TO THE CITY OF TRACY'S TRACER PUBLIC TRANSIT SYSTEM; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND AUTHORIZING MV TRANSPORTATION, INC., TO ENTER INTO A CONTRACT WITH GREYHOUND LINES, INC. TO PROVIDE GREYHOUND BUS SERVICES AT THE TRACY TRANSIT STATION

WHEREAS, Since July 2001, the City of Tracy has contracted for certain operational components of the TRACER Fixed Route and Paratransit Bus services and the current contract will soon expire; and

WHEREAS, Initially a two-route bi-directional Fixed Route system, by July 2004 the service had evolved into a five-route system with stops to key destinations throughout the City; and

WHEREAS, A Request For Proposals was mailed to four contractors on March 14, 2011 and placed on the City's website on March 15, 2011, and two bids were received and opened on April 25, 2011; and

WHEREAS, MV Public Transportation, Inc., of Fairfield, California, was a responsive and qualified bidder with a proposal that meets the needs of the City of Tracy; and

WHEREAS, City Council desires that Greyhound bus services be offered at the Tracy Transit Station.

NOW, THEREFORE, BE IT RESOLVED, That the City Council: (1) hereby awards a five-year Professional Services Agreement to MV Public Transportation, Inc., not to exceed \$827,871 in Fiscal Year 2011/2012, for services relating to the City of Tracy's TRACER public transit system and authorizes the Mayor to execute the agreement, and (2) authorizes MV Transportation, Inc., to enter into a contract with Greyhound Lines, Inc. to provide Greyhound bus services at the Tracy Transit Station.

* * * * *

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

Resolution _____
Page 2

ATTEST:

City Clerk

AGENDA ITEM 4

REQUEST

APPROVE AMENDMENT NUMBER 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT PERTAINING TO THE WEST HIGH SCHOOL SWIMMING POOL AND AUTHORIZE THE MAYOR TO EXECUTE THE AMEMDMNT ON BEHALF OF THE CITY

EXECUTIVE SUMMARY

On February 6, 2007, the City of Tracy entered into a Memorandum of Understanding (MOU) with the Tracy Unified School District (TUSD) pertaining to the construction, maintenance and operation of a swimming pool at West High School. Contained within the MOU was a stipulation that the City would annually pay a total of \$44,895 into a Capital Maintenance Fund (CMF) and TUSD would annually pay \$134,683 into a CMF. Due to the current fiscal situation, the City and TUSD have a mutual interest to institute a two-year hiatus from the CMF obligation. Representatives from both agencies believe that there are ample monies in the fund to cover any short term capital maintenance or repair needs. Staff is requesting that Council amend the MOU regarding payments into this fund for a period of two fiscal years, beginning 2011/2012.

DISCUSSION

On February 6, 2007, the City of Tracy entered into a Memorandum of Understanding (MOU) with the Tracy Unified School District (TUSD) pertaining to the construction, maintenance and operation of a 52-meter competitive swimming pool at West High School. The term of the MOU was set at 30 years. Included in the MOU, were stipulations that annually the City would pay \$44,895 into a Capital Maintenance Fund (CMF) and that TUSD would pay \$134,683 into a CMF. The CMF was established to accumulate the funds over 30 years necessary to replace the pool and to provide a mechanism to fund major repairs that may be needed during the 30 year MOU period. As of this date, there have been two occasions that these funds have been utilized to make repairs to the pool or pool equipment.

The City and TUSD have a mutual interest to institute a two-year hiatus from the CMT obligation (*Section 6C of the MOU*). Representatives from both agencies believe that there are ample monies in the CMT to cover any short term capital maintenance or repair needs. The balance through 6/30/11 would remain intact for its intended use, less any agreed upon expenses that have been, and will be, charged to the fund. At the present time, a total of \$718,309 is available in the fund, less any agreed upon expenses. With this in mind, the representatives of the two agencies felt it would be possible to suspend these payments for period of two years without impacting the ability to fund any capital maintenance and repair needs that might arise during that time. In view of this, staff is requesting City Council to amend the existing MOU. Amendments to the MOU require mutually written agreement by both parties. Specifically, Amendment No. 1 of the MOU would suspend payment by both parties into the CMT for a period of two years from fiscal year 2011-12 through 2012-13. TUSD staff will also seek approval for this item from the TUSD School Board.

STRATEGIC PLAN

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

Organizational Effectiveness

Goal 1: Assure Fiscal Health

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

FISCAL IMPACT

As a result of this action, an additional \$44,895 will be available annually to the City's General Fund for the next two years.

RECOMMENDATION

That City Council approve Amendment No. 1 to the Memorandum of Understanding between the City of Tracy and the Tracy Unified School Districts pertaining to the West High School pool and authorize the Mayor to execute the amendment on behalf of the City.

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

Reviewed by: Rod Buchanan, Parks and Community Services Director

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

Attachments:

Exhibit A: Amendment to the Memorandum of Understanding between the City of Tracy and the Tracy Unified School District relating to the West High School swimming pool.

**AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT
RELATING TO THE WEST HIGH SCHOOL SWIMMING POOL**

This Amendment No. 1 (hereinafter "Amendment") to the Memorandum of Understanding (the "MOU") entered into on the 6th day of February, 2007, between the City of Tracy and the Tracy Unified School District relating to the operations of the swimming pool located at West High School is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and the Tracy Unified School District (hereinafter "TUSD").

RECITALS

- A. The City and TUSD entered into a Memorandum of Understanding, on or about the 6th day of February, 2007, relating to the operations of the swimming pool located at West High School (the "MOU").
- B. The parties wish to amend the capital maintenance payment provisions of the MOU (Section 6C of the MOU) as provided herein.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the MOU, unless specifically modified by this Amendment. All terms and conditions set forth in the MOU which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** Subsection C of Section 6, entitled "Operations, Maintenance, and Cleanup" is amended to read as follows:

"C. District shall pay \$134,683 annually, for a period of 30 years, for Capital Maintenance. City shall pay \$44,895 annually, for a period of 30 years, for Capital Maintenance. These amounts reflect the actual costs anticipated for Capital Maintenance and Repair for operation of the Pool and Community Buildings over a 30 year period. These amounts shall be deposited by both parties into separately established facilities funds to be used solely as repair and replacement funds for long-term improvements on the Pool and Community Buildings (the "Capital Maintenance Funds (CMF)"), provided, however, that for City's fiscal years 2011-2012 through 2012-2013 (the "hiatus period", neither District nor City shall be obligated to deposit any amount into such separately established CMFs." The hiatus period may be extended for up to three additional fiscal years upon written agreement signed by both City's City Manager and TUSD's Superintendent. If the City elects early termination and withdrawal from the MOU, during the hiatus period, the City shall deposit all funds in its CMF fund as if the hiatus period did not exist during such period. If TUSD elects early termination and withdrawal from the MOU, during the hiatus period, TUSD shall deposit all funds in its CMF fund as if the hiatus period did not exist during such period. Should a shortfall in the separately established CMF funds occur due to costs being greater

Amendment No. 1 to MOU Between the City of Tracy and the Tracy Unified School District Relating to the Operations of West High School Swimming Pool
Page 2 of 2

than the balance in such funds, the City and District shall each contribute to the fund in the same proportion required when the hiatus period is not in effect up to the amount required under this MOU.

- 3. Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
- 4. Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
- 5. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the District and the City. This Amendment shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

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

CITY OF TRACY

TRACY UNIFIED SCHOOL DISTRICT

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

By: _____
Dr. James Franco
Title: Superintendent
Date: _____

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

Approved as to form

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

RESOLUTION _____

APPROVING AN AMENDMENT TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT PERTAINING TO THE WEST HIGH SCHOOL SWIMMING POOL AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY

WHEREAS, On February 6, 2007 Council approved a Memorandum of Understanding (MOU) between the City of Tracy (City) and the Tracy Unified School District (TUSD) for the construction, maintenance and operation of a swimming pool at West High School; and

WHEREAS, Stipulations within said MOU requires that the City deposit \$44,895 annually into a Capital Maintenance Fund (CMF) and that the TUSD pay \$134,683 into a CMF; and

WHEREAS, Provisions of the MOU permits amendments to its provisions upon mutual written consent of both parties; and

WHEREAS, The City and TUSD desire to suspend payments into the CMT for two years from 2011/2012 through 2012/2013.

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves Amendment Number 1 to the Memorandum of Understanding between the City and TUSD pertaining to the West High Pool to suspend payment of monies into the joint CMF for a period of two years and authorize the Mayor to execute Amendment Number 1 of the MOU on behalf of the City.

* * * * *

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

July 5, 2011

AGENDA ITEM 5

REQUEST

RECEIVE AN UPDATE ON PLANNED USE OF TRACY POLICE PERSONNEL TO ASSIST IN THE DARE CLASSROOM; AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$45,000 BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT TO PROVIDE 5TH GRADE DRUG ABUSE RESISTANCE EDUCATION (DARE) SERVICES FOR FISCAL YEAR 2011-2012 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

This request is to authorize a Professional Services Agreement with the Tracy Unified School District (TUSD) for Drug Abuse Resistance Education (DARE) services for fiscal year 2011-2012 in an amount not to exceed \$45,000. This report is also intended to provide the City Council with a summary of the planned use of Tracy Police Department personnel to assist in instructional aspects of the DARE classroom during the upcoming school year.

DISCUSSION

The City Council has concluded the Drug Abuse Resistance Education (DARE) program offers a value to the Tracy community and endorsed its continuance in the Tracy schools. There was much public commentary in support of the DARE program and the City Council committed to allocating \$45,000 for FY 2011-12 for authorized expenses.

The DARE program is taught to 5th grade students in and around the City of Tracy. Specifically, the DARE program is taught in classes within the school districts of Tracy Unified, Jefferson, Banta, New Jerusalem, and Lammersville, as well as three private schools. While it costs about \$105,000 per year to teach in all the aforementioned schools, the City Council has appropriated \$45,000 to be paid to the Tracy Unified School District (TUSD) for DARE classes taught in public schools within the city limits. The City of Tracy funds will not include any compensation to instructors. The balance of DARE's operating expenses is covered by the DARE Advisory Board's fundraising efforts.

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

In the May 3, 2011 City Council meeting, the Council approved the Professional Services Agreement with TUSD for the provision of DARE services with allowable expenses up to a maximum amount of \$45,000 for fiscal year 2010-2011 payable to the TUSD. That payment has been made. Today, the City Council is being asked to authorize the execution of a new Professional Services Agreement with TUSD for the provision of DARE services with allowable expenses up to a maximum amount of \$45,000 for fiscal year 2011-2012 payable to the TUSD.

The Tracy City Council has stated it wanted to see more Tracy Police Department involvement in the DARE program, beyond just supporting it through attending DARE graduation. The DARE advisory board has stated they willingly invite the involvement of Tracy PD staff in presenting some aspects of the curriculum. Consequently, Police command staff has worked with the DARE advisory board on how to best use Tracy Police personnel in the program.

An agreement has been made that in this upcoming 2011-12 school year, Tracy Police Department sworn personnel will assist the trained DARE instructor in the presentation of some components of the DARE curriculum. With the understanding that some adaptations in how Tracy Police personnel will be used to maximize the educational value to the students, the initial idea is to use staff during the introduction meeting and the lesson on gangs and then having them attend their class' DARE graduation. In this way, the DARE students will have an opportunity to interact with their assigned Tracy Police Department sworn personnel at least three times so a positive police to student relationship can be forged. The Police Department hopes the positive interaction with students in a non-enforcement setting will foster greater trust with police and serve as a preventative effort against criminal conduct rather than require an enforcement only contact.

Since the Tracy Unified School District is on summer break and no classes have been assigned or the number of students per class is known, no concrete schedule of classes or graduation dates can be set. Once the dates and times of classes are known, this information will be used by the Police Department to schedule Tracy police personnel to attend certain portions of the DARE program in fulfillment of its commitment to actively participate in the Tracy DARE program and to offer a unique Tracy Police Department perspective with gang information. The sworn Tracy Police personnel assigned will include representatives of the Command Staff, sergeants, detectives, patrol officers, Neighborhood Resources Officers and Gang Narcotics Enforcement detectives.

D.A.R.E. Classes (63) in TUSD during School year 2011 - 12

August – October total number of classes (24)

Wicklund (3)
Questa (2)
Villalovoz (3)
Central (3)
Bohn (3)

Lammersville (1)
Bethany (3)
North (3)
McKinley (3)

November – February total number of classes (20)

Hirsch (3)
Freiler (4)
Jacobson (4)

George Kelly (4)
Poet Christian (5)

February – May (total number of classes (19)

Traina (3)
Jefferson (3)
Bella Vista (1)
South (7)

Hawkins (3)
St. Bernard's (1)
West Valley (1)

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

STRATEGIC PLAN

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

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

FISCAL IMPACT

There is no immediate impact to the City's fiscal year 2011-2012 Budget as \$45,000 has already been approved through Council Resolution for the continued city funding for the DARE program. The funds are placed in the Police Department's Operating Budget for payment to the Tracy Unified School District. Every effort will be made to use on duty personnel to attend the DARE classes so overtime costs can be avoided.

RECOMMENDATION

That the City Council approve the attached Professional Services Agreement between the City of Tracy and the TUSD for an amount not to exceed \$45,000 for providing DARE services to 5th Grade students in public schools within the City limits for fiscal year 2011-2012 and authorize the Mayor to execute the Agreement.

Prepared by: John Espinoza, Police Captain

Reviewed by: Janet Thiessen, Chief of Police

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

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

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

RECITALS

- A. The CITY recognizes the benefit that providing education to youth on the perils of drug and alcohol abuse provides to the residents of the City of Tracy.
- B. The CITY and the DISTRICT each recognize that the DISTRICT is in a much better position to provide such education to youth attending classes within the City of Tracy.
- C. In the past, the CITY has provided financial assistance to the DISTRICT to provide funding to teach the Drug Abuse Resistance Education program to various students in the DISTRICT and within the City limits.
- D. The CITY wishes to continue its financial support for the program.
- E. The CITY and the DISTRICT now wish to enter into an agreement setting forth the terms whereby the CITY can provide approximately the same level of financial assistance for such education and the DISTRICT can provide such education for fiscal year 2011-2012.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** DISTRICT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference (the "DARE services").
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. DISTRICT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by DISTRICT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the DISTRICT. DISTRICT shall submit all requests for extensions of time to the CITY in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.

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

Page 2 of 8

3. **INDEPENDENT CONTRACTOR STATUS.** DISTRICT is an independent contractor and is solely responsible for all acts of its employees, agents, subcontractors or consultants, including any negligent acts or omissions. DISTRICT is not CITY's employee and DISTRICT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to DISTRICT. DISTRICT is free to work for other entities while under contract with the CITY. Contractors and DISTRICT are not entitled to CITY benefits.

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

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

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

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

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

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

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

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

7. OWNERSHIP OF WORK. All original documents prepared by DISTRICT for this Agreement, whether complete or in progress, are the property of the CITY, and shall be given to the CITY at the completion of DISTRICT's services, or upon demand from the CITY. No such documents shall be revealed or made available by DISTRICT to any third party without the prior written consent of the City.

8. ATTORNEY'S FEES. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

9. INDEMNIFICATION. DISTRICT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of DISTRICT's performance of services under this Agreement.

10. INSURANCE.

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

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

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

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

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

12. NOTICES.

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

To CITY:

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

To DISTRICT:

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

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

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

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

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

CITY OF TRACY

DISTRICT

By: Brent H. Ives
Title: Mayor

By: Dr. James Franco
Title: Superintendent

Date: _____

Date: _____

Attest:

Fed. Employer ID No.
94-1055500

By: Sandra Edwards
Title: CITY CLERK

Date: _____

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Approved As To Form:

By: Bill Sartor
Title: ASSISTANT CITY ATTORNEY

Date: _____

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EXHIBIT "A"

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

The DISTRICT shall, through subcontract or otherwise, provide and complete the following services during CITY's fiscal year 2011-2012:

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

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

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

RESOLUTION _____

AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$45,000 BETWEEN THE CITY OF TRACY AND THE TRACY UNIFIED SCHOOL DISTRICT TO PROVIDE 5TH GRADE DRUG ABUSE RESISTANCE EDUCATION (DARE) SERVICES FOR FISCAL YEAR 2011-2012 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

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

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

WHEREAS, The City recognizes the value of administering this program to over 1,500 5th grade student and wants to financially support the program by providing \$45,000 during fiscal year 2011-2012 to cover both direct and indirect costs.

NOW THEREFORE BE IT RESOLVED, That the City Council hereby authorizes a Professional Service Agreement with TUSD to provide DARE services, up to \$45,000 for fiscal year 2011-2012.

* * * * *

The foregoing Resolution 2011-_____ is hereby passed and adopted by the Tracy City Council this 5th day of July, 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

SECOND READING AND ADOPTION OF ORDINANCE 1161 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 11-12.060 and 11-12.080 OF THE TRACY MUNICIPAL CODE REGARDING DELINQUENT ACCOUNTS AND ADVANCE DEPOSITS

EXECUTIVE SUMMARY

Ordinance 1161 was introduced at the Council meeting held on June 21, 2011. Ordinance 1161 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1161 was introduced at the Council meeting held on June 21, 2011, to amend Sections 11-12.060 (Delinquent accounts), and 11-12.080 (Advance Deposits). The penalties and costs for delinquent accounts have not been updated since 1994. The advance deposit amount has not been updated since 2007. The proposed amendments to Sections 11-12.60 and 11-12.080, will update these fees to reflect current costs.

Ordinance 1161 is before Council for a second reading and adoption.

STRATEGIC PLAN

This agenda item supports the Organizational Effectiveness strategic plan, and implements the following goal: Goal 1: Assure fiscal health

FISCAL IMPACT

Significant savings to the City enterprise funds of water, sewer, garbage and storm drain could be realized and have a large impact on future rate increases when necessary.

RECOMMENDATION

That Council adopts Ordinance 1161 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 1161

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 11-12.060 and 11-12.080
OF THE TRACY MUNICIPAL CODE
REGARDING DELINQUENT ACCOUNTS AND ADVANCE DEPOSITS

WHEREAS, the Tracy Municipal Code includes Chapter 11.12, Uniform Billing, Collection and Delinquency Procedures for City Services. This chapter relates to garden refuse services, garbage collection and water and sewage services; and

WHEREAS, the advance deposit amount has not been updated since 2007. The penalties and costs for delinquent accounts have not been updated since 1994; and

WHEREAS, the City staff has recommended that the Municipal Code be updated to reflect current costs.

The Tracy City Council hereby ordains as follows:

SECTION 1. Section 11.12.060, Delinquent accounts—Charges for restoration of service, of the Tracy Municipal Code is amended to read as follows:

“11.12.060, Delinquent accounts—Charges for restoration of service

- (a) A fee \$35.00 shall be charged for restoring water service to the same user when it is discontinued for failure to pay a delinquent account.
- (b) In the event it is necessary to lock a water meter because of a delinquency and the lock is subsequently found damaged or cut, a fee of \$50.00 shall be charged in addition to the fee set forth in subsection (a) of this section.
- (c) If it is necessary to remove a water meter because of a delinquency, a fee of \$100.00 shall be charged in addition to the fee set forth in subsection (a) of this section.
- (d) A fee of \$25.00 may be charged for all checks returned by banks for non-sufficient funds. The fee shall be added to the customer's utility account.
- (e) All charges set forth in this section shall be added to the amount of the delinquent account.
- (f) The entire amount of a delinquent account, including all fees which have been billed for services and all charges or fees set forth in this section, shall be paid in order for service to be continued or restored.”

SECTION 2. Section 11.12.080, Advance deposits, of the Tracy Municipal Code, is amended to read as follows:

“11.12.080 - Advance deposits.

Any tenant, either residential or commercial, upon application for City utility services, shall make a deposit of \$175.00. The deposit is required for any, or all, services of water, sewer, garbage and garden to be provided by the City.

The City shall apply such deposit, or portion thereof as may be necessary, upon any account remaining unpaid at the discontinuance of service. If, thereafter, a new application for such services is made by the same person, firm, or corporation a new deposit shall be required. Each advance deposit, or portion thereof, not so applied shall be returned to the depositor whenever there is a change in occupancy of the premises.”

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

SECTION 4. This Ordinance shall be published once in the Tracy Press, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance 1161 was introduced at a regular meeting of the Tracy City Council on the 21st day of June, 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

July 5, 2011

AGENDA ITEM 8.A

REQUEST

ECONOMIC DEVELOPMENT UPDATE

EXECUTIVE SUMMARY

Staff will make a presentation to provide an update on past, present and future economic development projects, programs and activities.

DISCUSSION

The presentation will include the following categories:

1. Background – This section will include statistics on 2010 foreclosures, building permits issued and valuation, new business license data, enterprise zone voucher statistics, demographic data, and data from the Employment Development Department (EDD). The purpose of providing this information is to provide the economic environment that serves as the context within which recent economic development efforts have occurred;
2. Accomplishments – This section will review the economic development related accomplishments achieved by the City recently and will explore various metrics used to measure success; and
3. Future – This section will focus on economic development related efforts that are on the cusp of being realized and other efforts that are longer term aspirations.

STRATEGIC PLAN:

This agenda item supports the Economic Development Strategic Plan.

FISCAL IMPACT

There is no fiscal impact associated with this item.

RECOMMENDATION

It is recommended that the City Council accept the presentation.

Reviewed by: Ursula Luna-Reynosa, Economic Development Director

Approved by: Leon Churchill, Jr., City Manager