

Tuesday, October 4, 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 – Employee of the Month

- Proclamation – “Make a Difference Day”
- Proclamation – “Fire Prevention Week”
- Proclamation – “Domestic Violence Awareness Month”

1. CONSENT CALENDAR

A. Minutes Approval

B. Acceptance of the Court Drive, 22nd Street, 23rd Street, and Whittier Avenue Improvements - CIPS 73104, 73123, 73124, 75105, 75109, & 75110, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion

C. Approval of Permit for the Consumption of Alcoholic Beverages on City Streets for the City of Tracy’s “Witches and Broom Sticks Girls Night Out” on October 28, 2011

D. Authorize the Appointment of Eleven Youth and Two Adult Commissioners to the Youth Advisory Commission

E. Authorize Task Order CH01-14 to Master Professional Services Agreement CH01 with CH2M Hill for Services Related to Wastewater Discharge Permit Studies for the Tracy Wastewater Treatment Plant and Authorize the Mayor to Execute the Task Order

2. ITEMS FROM THE AUDIENCE

3. PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL AT 2200 NORTH MARTIN ROAD A PUBLIC NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, APPROVE A CONTRACTOR TO ABATE SAID NUISANCES, AND APPROVE A SUPPLEMENTAL APPROPRIATION FROM THE CITY’S GENERAL FUND

4. INTRODUCTION OF AN ORDINANCE AMENDING SECTION 3.08.580 OF THE TRACY MUNICIPAL CODE WHICH REGULATES THE ESTABLISHMENT OF SPECIAL SPEED ZONES

5. PRESENT AND DISCUSS THE CITY’S FUTURE ORGANIZATIONAL STRUCTURE AND ADOPT RESOLUTIONS TO GRANT DESIGNATED PERIODS FOR TWO YEARS ADDITIONAL SERVICE CREDIT WITH THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

6. THAT CITY COUNCIL DISCUSS AND ACCEPT THIS REPORT PROPOSING GANG INTERVENTION AND PREVENTION EDUCATION FOCUSED ON 5th GRADE CHILDREN, IMPLEMENTED THROUGH THE CLASSROOM, IN PARTNERSHIP WITH TRACY UNIFIED SCHOOL DISTRICT AND TRACY D.A.R.E.
7. ADOPT RESOLUTION AWARDDING A FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT TO TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AT TRACY MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENT
8. SECOND READING AND ADOPTION OF ORDINANCE 1162 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 3.04.010, 3.04.020(e), 3.04.030(c), 3.04.040(a),(b),(e) and (f), 3.04.050(a) and (b), 3.04.060(a), 3.04.070(b), 3.04.080(e), 3.04.090(a) and 3.04.100(b) OF CHAPTER 3.04, ENTITLED "FIREWORKS", OF THE TRACY MUNICIPAL CODE
9. ITEMS FROM THE AUDIENCE
10. COUNCIL ITEMS
 - A. Consider an Item for Discussion on a Future City Council agenda Regarding Allowing Electronic Reader Board Signs to be Erected on Private Property
11. ADJOURNMENT

September 6, 2011, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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Mayor Ives called the meeting to order at 7:04 p.m. and led the Pledge of Allegiance.

The invocation was given by Pastor Edward Dondi, Church of the Resurrection.

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

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for August 2011, to Captain Scott Arganbright, Fire Department, and for September 2011, to Carol Zandona, Executive Assistant II, Fire Department.

Mayor Ives swore in Police Chief Gary Hampton.

Mayor Ives presented two proclamations to Chris Freeman, City Librarian, Stockton-San Joaquin County Public Library, recognizing September 2011 as "National Literacy Month" and August 27 through September 30, 2011, as "One Book, One San Joaquin Month" and urging residents to read the featured book "All the King's Men".

Sam Kaur, Associate Regional Planner, San Joaquin Council of Governments, provided a presentation regarding the Regional Smart Growth Program.

1. CONSENT CALENDAR - Following the removal of item 1-G by George Riddle, items 1A and 1C by Council Member Elliott, and item 1-D by Council Member Rickman, it was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Regular meeting minutes of July 5, 2011, and closed session minutes of August 2, 2011, were approved. Regular meeting minutes of June 21, 2011, to be reviewed and brought back to Council on September 20, 2011.
 - B. Acceptance of the John Jones Water Treatment Plant (JJWTP) Buried Piping Corrosion Protection Project - CIP 75103, Completed by Premier Cathodic Protection, Inc., of Langley, Washington, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-157 accepted the project.
 - E. Authorize Establishment of a Four Way Stop Sign at the Intersection of Lowell Avenue and Mae Avenue – Resolution 2011-158 authorized establishing the four way stop sign.
 - F. Approve a Professional Services Agreement with West Yost and Associates for a Water System Evaluation in the City's Water Pressure Zone 3 Area – Resolution 2011-159 approved the agreement.

- H. Authorization of Contract Laboratory Services for Fiscal Year 2011 – 2012 – Resolution 2011-160 authorized the contract laboratory services.
- I. Acceptance of the Lowell Avenue Bikeway Improvements Project - CIP 78113, Completed by Coastside Concrete, of Santa Rosa, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-161 accepted the improvements.
- J. Approve Task Order 10 to the Master Professional Services Agreement (MPSA) HA-07-01 with Harris and Associates for Providing on Call Program Management Services for Multiple Projects – Resolution 2011-162 approved the task order.
- K. Acceptance of the Kenner Park Restroom Rehab & Path Resurfacing Project - CIP 78125, Completed by G & G Builders of Livermore, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2011-163 accepted the project.
- L. Adopt Resolution Authorizing the City Manager to Execute Grant Contracts Necessary for the Purpose of Obtaining Proposition 63 Funds in the Amount of \$200,000 for the Mayor's Community Youth Support Network Grant Program and Appropriating \$200,000 from the San Joaquin County Behavioral Health Services Community Service Agreement – Resolution 2011-164 authorized the City Manager to execute the contracts and approved the appropriation.
- M. Approve Amendment Number 1 to the Specialized Aeronautical Services Operator and Leased Facility Agreement between City of Tracy and Skyview Aviation, LLC to Clarify the Agreement, Modify Payment Terms, and Add Additional Services to the List of Allowed Aeronautical Services, and Authorize the Mayor to Sign the Amendment – Resolution 2011-165 approved the amendment.
- N. Approving Amendment One to the Public Agency Offsite Improvement Agreement with Tracy Joint Unified School District (TUSD) for Street and Utility Improvements on Lammers Road and Authorization for the Mayor to Execute the Amendment – Resolution 2011-166 approved the amendment.
- O. Authorize the City Manager to Offer Severance to Designated Represented and Unrepresented Full-Time Employees in the Classified Service who are Separated from Employment Due to Workforce Reduction (Layoff) – Resolution 2011-167 authorized the City Manager to offer severance.
- P. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a New Classification Specification and Salary Range for Information Technology Specialist – Resolution 2011-168 authorized the amendment.
- Q. Authorize Amendment of the City's Classification and Compensation Plans by Approving the Revision and Re-Titling of the Environmental Control Inspector Classification to Environmental Compliance Officer in the Department of Public Works – Resolution 2011-169 authorized the amendment.

- A. Minutes of June 21, 2011 - Council Member Elliott referred to page 11, item 6, third paragraph from the bottom regarding the Leprino Foods noise issue. Council Member Elliott indicated a line may have been left out that describes what those items were. Council Member Elliott asked that the line be inserted into the minutes. Council Member Elliott indicated what the Council was talking about was what was a reasonable definition of insuring we were not creating conditions detrimental to public health. Council Member Elliott indicated his point was that if the measurements that were taken during the study were worst case scenario and those measurements were less than the day night average level livability standards used by the FAA HUD and the State of California noise insulation standards, then the City could reasonably say that it had insured that it had not created conditions detrimental to public health. Council Member Elliott asked that wording be added in this regard. Mr. Churchill indicated staff could review the video and bring the item back for approval.
- C. Award a Construction Contract in the Amount of \$430,115 for the Playground Renovation Project - CIP 78127, 78122, 78118, 78106 & 78063 to Mcnabb Construction, Inc., of Lafayette, California, Approve Amendment 3 to Tanaka Design Group to Provide Design Support Services During Construction, and Authorize the Mayor to Execute the Contract - Kuldeep Sharma, City Engineer, presented the staff report. In 2005, a study was conducted to identify parks that require playground improvements/replacement. A total of 12 parks were identified. The improvements involve ADA improvements and the removal and replacement of playground equipment. Completion of the project was scheduled in two phases. In 2009, five parks were renovated and five playground areas were replaced with new play equipment as part of phase I of this project. Phase II involves renovation and replacement of playground equipment for the remaining seven parks. In addition, Dr. Powers Park has been added to this project due to existing deteriorating conditions of the playground equipment. The six parks in this phase of the project have funds available from the Landscape and Maintenance District (LMD) funds, general, and development funds.

The project plans and specifications were prepared by Tanaka Design Group of San Francisco, California. The project scope includes reconstruction of eight play areas and installation of ADA ramps, benches, and resilient surfaces and play area cover. The scope of work also includes replacement of existing concrete curbs and concrete work in the immediate vicinity of the play areas to satisfy current ADA standards.

To make use of the lowest bid prices due to a slow-down in the construction industry, the bid document was divided into a base bid and four additive bid items. This gives the City the flexibility to award the construction contract based on the base bid with or without the additive bids, depending upon the bid amounts and availability of funds. The base bid included the renovation of five play areas at four parks: Dr. Powers Park, and Dorothy Zanussi Park (north play area, 5 to 12 age group), and (south play area, up to five age group), Mt. Diablo Park, and Mt. Oso Park. The additive bid items included renovation of play areas at Kit Fox Park, George Kelly Park, Valley Oak Park and Golden Spike Park. The project was advertised for competitive bids on June 20 and June 27, 2011, and three bids were received and publicly opened on July 12, 2011.

McNabb Construction, Inc. is the lowest monetary bidder. Bid analysis indicates the bid is “responsive” and the bidder is “responsible”. McNabb Construction, Inc. has good references and has completed similar projects for other agencies.

Based on available funds and consultation with the departments of Public Works, Parks and Community Services, and Development and Engineering Services, staff recommended that the base bid and Additives A2 and A3 be awarded to McNabb Construction, Inc., of Lafayette, California, for \$430,115. Improvements at Valley Oak Park and Golden Spike Park will be completed under a separate project when sufficient funding is available. The total construction cost of this project is as follows:

Construction Bid	\$430,115
Construction management, testing, and Inspection (8%)	\$34,400
Design Support during construction (2%)	\$8,600
Contingency (10%)	\$43,015
City-wide project Management (150% of Construction Management & Design Support)	<u>\$64,500</u>
Total Construction Cost	\$580,530

Construction of the project will commence in mid-October 2011, with completion expected in mid-February 2012. A design consultant will be retained to provide support services during construction and to address design related issues and resolve conflicts due to unforeseen conditions.

There is approximately \$585,000 in General Projects (F301) and LMD (F271) currently available in CIPs 78127, 78122, 78118, 78106 & 78063 to cover the design and construction cost of this project. These are approved CIP projects in the FY 09/10 budget.

Council Member Elliott asked how many parks were being improved with this action. Mr. Sharma indicated eight parks needed improvements, including Dr. Powers Park.

Council Member Elliott stated he was happy to see that the contractor with lowest base bid was also the contractor with the lowest additives. Council Member Elliott asked if the bidding process had been revised. Dan Sodergren indicated construction contracts were governed by the State public contract codes which pre-empts what can be done in that regard and that it was based on the lowest base bid.

Council Member Elliott asked that staff exercise extreme care on what the City identifies as the base bid.

Mayor Pro Tem Maciel asked for clarification regarding the difference between a base bid and additives. Mr. Sharma stated the base bid includes the back bone needed improvements while the additives are the “wish list” for what could be done based on funding availability. Mr. Sodergren clarified that it was a funding issue; the base bid was the heart of the contract and that if bids come in low then the City could add items from the “wish list”.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-170 awarding a construction contract to McNabb Construction, Inc., of Lafayette, California, in the amount of \$430,115, for the Playground Renovation Project (Phase II) at six City parks (CIP 78127, 78122, 78118, 78106 & 78063), approving Amendment 3 to the Professional Services Agreement with Tanaka Design Group, and authorizing the Mayor to execute the construction contract and Amendment 3. Voice vote found all in favor; passed and so ordered.

- D. Approval of Amendments to Professional Services Agreements with Various Consultants for Additional Services Required to Complete the City's Infrastructure Master Plans - Council Member Rickman asked how often the City has used each of these consultants in the past years. Mr. Sharma stated within the last 15 years the City has used CH2M Hill, West Yost and Harris & Associates 10-15 times, along with Stantec Consulting. Mr. Sharma further stated that when an infrastructure analysis is done a base model is needed, and it is always good to use a consultant who has basic knowledge of the model. Staff also reviews the qualifications of the consultants' staff before a recommendation is made for a particular consultant. Mr. Sharma added that at all times the City has gone through the competitive request for proposals.

Council Member Rickman asked if these agreements go out for bid. Mr. Sharma stated yes. Council Member Rickman asked that since the City has used these consultants, are we trying to get the best price possible. Mr. Malik stated staff also worked with the development community to reduce the scope of work, as well as worked with the consultant to negotiate the contract.

Council Member Rickman asked if was foreseeable as to why these amendments were occurring. Mr. Malik provided an example of why a particular contract was changed.

Council Member Rickman stated he was concerned with contracts that come in low and then go up because of unforeseen changes. Mr. Malik indicated there is a lot of interaction between the consultant, the developer and staff to keep the contracts in line.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-171 approving amendments to Professional Services Agreements with various consultants for additional services required to complete the City's Infrastructure Master Plans. Voice vote found all in favor; passed and so ordered.

- G. Approve Amendment One to the Professional Services Agreement With RBF Consulting for the Preparation of an Environmental Impact Report for the Tracy Hills Specific Plan Amendment Project and Authorize the Mayor to Execute the Amendment - George Riddle, 1850 Harvest Landing Lane, referred to Table 1 indicating there was no inclusion of the airport as part of an impact to this report. Mr. Riddle asked that it be appended to include the airport and added he would like the color graphics to include Tracy Hills.

Bill Dean, Assistant DES Director, indicated the CEQA document will address any airport issues in the environmental process and encouraged Mr. Riddle to stay involved in the process. Mr. Dean further stated additional visuals will be available throughout the process such as at the Planning Commission meeting.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-172 approving Amendment One to the Professional Services Agreement with RBF consulting for the preparation of an Environmental Impact Report for the Tracy Hills Specific Plan Amendment project and authorizing the Mayor to execute the Amendment. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE - Ray Morelos, 600 Central Avenue, addressed Council regarding the Sixth Street Plaza. Mr. Morelos outlined construction events to date, and indicated business owners were frustrated due to little work going on at the site. Mr. Morelos added minimal communication was being provided to business owners.

Brian Van Lehn, 540 Winston Court, addressed Council regarding a fair resolution to noise issues he has with Leprino Foods. Mr. Van Lehn indicated his main complaint is related to the vibrations of the rail cars which are not the rail cars approved in Leprino's Conditional Use Permit.

Dave Helm, 1000 Central Avenue, addressed Council regarding a Tracy family in need of assistance. Mr. Helm indicated many community members and businesses helped the family, which was a wonderful example of what the community is capable of doing. Mr. Helm thanked the Council for hiring Police Chief Hampton and asked that he be given the support he needs to do his job.

3. PUBLIC HEARING TO CONSIDER APPROVAL OF THE TRANSFER AND COMMITMENT AGREEMENT OF \$590,857.40 FEDERAL HOME INVESTMENT PARTNERSHIP ACT (HOME) FUNDS FROM THE COUNTY'S MANAGED FIRST TIME HOME BUYER AND REHABILITATION PROGRAMS TO THE BOUNCE BACK TO HOMEOWNERSHIP OPTION TO OWN PROGRAM - Andrew Malik, DES Director, presented the staff report. The HOME Block Grant program is a federally funded grant program designed exclusively to create affordable housing for low-income households. HOME Block Grant Funds are offered to states and local jurisdictions and are allocated on a formula basis.

San Joaquin County's share of HOME funds is \$869,897 for 2011. As a sub-recipient of these funds, Tracy's share for 2011 is \$134,203. San Joaquin County manages and, with coordination from city staff, administers the funds for local projects. Tracy's share of the County's HOME Fund allocation has accrued to \$590,857.40 over the years. To meet federal deadlines regarding the use of these funds, Tracy, and other jurisdictions in the County, must commit these HOME funds to certain programs by September 30, 2011. After researching various programs staff has identified a viable option for these funds.

As for the use of the Federal Home Funds, participating jurisdictions may choose from a broad range of eligible activities including, but not limited to: 1) provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; 2) build or rehabilitate housing for rent or ownership; or 3) other related affordable housing programs.

In the past, the City has used HOME funds for families which are 80% low income for rehabilitation projects on single family homes in Tracy. These HOME funds were leveraged with the City's redevelopment funds which service up to 120% Moderate Income families to implement the rehabilitation program. Since 2007, these funds have been used to rehabilitate the McHenry House Homeless Shelter, create affordable housing with Habitat for Humanity, and provide eight down payment assistance loans and eight rehabilitation properties in the downtown for very low income families. The funds are available to assist low income families. The Down Payment Assistance Program and Revitalization Loan and Grant program which service Moderate Income families in a targeted area are funded redevelopment funds. The City has been able to assist 24 families with rehabilitation loans for work under \$50,000, 23 families using grant funds up to \$2,000 each, and 39 families in becoming first time home buyers with the down payment assistance loans of up to \$75,000 each in the downtown selected area using redevelopment funding. Since the State has frozen all Redevelopment Agency activities, the City will not be able to leverage its redevelopment funds for the Bounce Back to Homeownership-Option to Own Program.

In researching other viable programs that also include leveraging these HOME Funds, staff has identified an opportunity to partner with Visionary Home Builders of California (VHB), a local non-profit agency that focuses on providing affordable housing assistance with an emphasis on those who have suffered through a foreclosure. VHB has worked in the Central Valley since 1983 and has completed a few affordable housing projects with the City in the past. The City of Manteca and the County of San Joaquin have recently contracted with VHB to earmark their HOME funds for this program.

The specific program VHB would like to implement is the Bounce Back to Ownership-Option to Own Program. VHB will purchase homes and lease them to participants for a period of 5 years. During this time participants will meet quarterly with a VHB Housing Coach who will guide them through their 5 year curriculum program. At the end of the 5 year program, participants will be educated and financially ready to buy the home they are leasing.

VHB will leverage the City's HOME funds by obtaining a note for 65% of the purchase price of the home from different lending institutions and other non-profits. The other 35% will come from the City's HOME funds. An example of how the City's HOME funds could be leveraged is as follows: The City has \$590,857.40 available; the price of the homes to be purchased is approximately \$150,000. With \$590,857 the City could acquire approximately three to four homes. VHB believes by leveraging these HOME funds with funding from different lending institutions and other non-profits they will be able to purchase up to 14 homes in the Tracy area.

Also, this program would help reduce the amount of foreclosures in Tracy as well as to clean up those foreclosures that now sit vacant. Staff believes this program would be successful in that funding could be directed for use in specific areas such as the downtown, and it leverages private funding with these federal dollars in order to maximize the funding impact. There will be no impact to the General Fund.

Staff recommended that City Council approve the Transfer and Commitment Agreement of \$590,857.40 Federal Home Investment Partnership Act (HOME) Funds from the County's managed First Time Home Buyer and Rehabilitation Programs to the Bounce Back to Homeownership-Option to Own Program.

Mayor Pro Tem Maciel asked if this was an existing program. Mr. Malik indicated it was a new program.

Jose Nunos, 315 N. San Joaquin Street, of Visionary Home Builders stated it was a new program. Mr. Nunos added they were taking this model and educating families on how to be successful home owners.

Mayor Pro Tem Maciel asked how eligibility was established. Mr. Nunos indicated 80% of the area median income.

Mayor Pro Tem Maciel asked if it was also for those who had lost their homes due to foreclosures. Mr. Nunos stated yes.

Council Member Abercrombie asked how the loans would be set. Mr. Nunos stated it would be a 30 year fixed rate loan with Visionary as the buyer. Mr. Nunos further stated that after 3 to 5 years the occupant would become the owner.

Council Member Elliott asked for clarification regarding the lease and what would happen if the occupant changed their mind. Mr. Nunos indicated they would have the occupant move out and make the home available for another family.

Council Member Elliott asked if any portion of the home funds would be allocated to any individuals other than low income. Mr. Nunos indicated it was for those at 80% of median income. Mr. Malik indicated the program was geared for those in the 50-80% median income range.

Council Member Rickman asked how Visionary would ensure that all qualified Tracy residents were aware of the program. Mr. Nunos responded through marketing outreach efforts, holding informational meetings, and participating in community events.

Mayor Ives opened the public hearing.

Rhodesia Ransom, resident, indicated the program was presented as a "bounce back" and asked if it was also available to first time home buyers. Ana Reynosa, Housing Program Specialist, stated yes.

Ms. Ransom asked if there was a way to amend the program to avail the program to first time home buyers. Ms. Reynosa indicated these funds were not necessarily for first time home buyers, but were rehabilitation funds for current home buyers.

Ms. Ransom asked if the lease to own option included a portion of the lease amount going into a savings plan toward a down payment for the home. Ms. Reynosa stated she believed the applicants would be set up with a savings account to help toward the down payment.

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

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2011-173 approving the Transfer and Commitment Agreement of \$590,857.40 Federal Home Investment Partnership Act (HOME) Funds from the

County's managed First Time Home Buyer and Rehabilitation Programs to the Bounce Back to Homeownership-Option to Own Program. Voice vote found all in favor; passed and so ordered.

4. AUTHORIZATION FOR STAFF TO NEGOTIATE A DEVELOPMENT AGREEMENT WITH PROPERTY OWNERS OF THE PROPOSED CORDES RANCH DEVELOPMENT WHICH IS LOCATED ON APPROXIMATELY 1700 ACRES OF LAND ON THE WEST SIDE OF TRACY PLANNED FOR INDUSTRIAL, OFFICE, AND RETAIL DEVELOPMENT - Bill Dean, Assistant DES Director, presented the staff report. Mr. Dean stated State Law authorizes the use of Development Agreements (Government Code §65864-65869.5), which states in part that a Development Agreement (DA) is a means to, "strengthen the public planning process, to encourage private participation in comprehensive, long-range planning, and to reduce the economic costs of development."

A DA is a binding contract between the City and developer (property owner), which establishes performance criteria for both the City and developer. The intent of a DA is to provide security for both parties; it locks in certain approvals and rights for a defined period of time in exchange for benefits for the City.

In accordance with City Council Resolution 2004-368, there are procedures and requirements for the consideration of Development Agreements. For example, an application for a DA must contain details on which property is proposed for the DA, information on the intended land uses, and the proposed public benefit offered to the City as an incentive for entering into the DA. The City has entered into several DAs in the last 20 years for projects such as Tracy Gateway, the I-205 Specific Plan area, and residential projects including the Presidio and Ellis projects, among others.

The benefit of a DA, from the City perspective, typically occurs when the City receives a defined public benefit, which it may not otherwise receive through standard conditions of project approval and implementation. Benefits from the developer perspective may include, guaranteed land uses, provision of water and sewer utilities, and provisions of certainty that development requirements cannot be changed during the life of the agreement, e.g. zoning changes (unless one party defaults).

The first step in the DA process is to obtain City Council authorization to negotiate per Resolution 2004-368. Another step, in addition to the Council's authorization to negotiate a DA, is a requirement for a Cost Recovery Agreement to offset the City's costs for preparation of the DA. The City entered into a Cost Recovery Agreement with the property owners of the Cordes Ranch project on March 3, 2011, to cover all project processing costs.

Processing a DA is typically done in conjunction with other land use applications, such as the Gateway and Ellis projects which involved DAs, annexation and zoning approvals. A DA must also comply with the California Environmental Quality Act (CEQA), which is typically completed in conjunction with those land use applications, and can involve preparation of an Environmental Impact Report (EIR).

This project is seeking a General Plan Amendment, a Specific Plan (zoning document), annexation, and a DA. Work has commenced on the General Plan Amendment and a first draft of the Specific Plan is nearing completion. The EIR consultants have an approved scope of work (City Council Resolution 2011-017) and work is commencing on

the EIR. The anticipated schedule is to complete the EIR and entitlement applications in 2012. Adding a DA to the list of project applications will require additional levels of engineering analysis depending on the terms and complexity of the DA.

The property owner's request, dated August 25, 2011 is summarized as follows:

The applicant's request of the City includes the following:

- 1) A 30-year term to the DA;
- 2) Securing vested rights to develop the Cordes Ranch project in accordance with the applicable fee structure and the laws, policies and regulations in existence at the DA's effective date;
- 3) Assuring sufficient infrastructure capacity to develop the project as envisioned in the Cordes Ranch Specific Plan;
- 4) Providing for flexibility in connection with the applicable fee structure, including opportunities to construct infrastructure and/or dedicate land in lieu thereof, modifications to the timing of payment, and potential ability to obtain credits and/or adjust fee amounts based on actual generation rates and other appropriate criteria.

In exchange, the applicant identifies the following as initial concepts of public benefit, which are further explained in their letter:

- 1) Development of a state-of-the art commerce and business center integrating industrial, commercial, and office uses with high quality design, architecture and landscaping treatments to provide a remarkable entry to the City;
- 2) Open space and parks of approximately 64-acres connected by a system of bike and pedestrian trails. Class I bikeways and trail network would facilitate multi-modal access throughout the development with connection to the California Aqueduct Bike Trail.
- 3) Jobs creation, including "head of household" jobs;
- 4) Commitment of financial and human capital resources to foster economic development with activities such as business recruitment to attract higher wage jobs and support for emerging industries;
- 5) Comprehensive infrastructure systems to benefit the broader community by providing enhanced infrastructure-sharing opportunities in areas such as recycled water, drainage, and water supply;
- 6) Financial support and human capital resources to help achieve other important long-term community objectives; for example, assistance in revitalizing Downtown and/or implementation of a comprehensive beautification program along I-205.

Following Council approval, the goal would be to bring the DA back for Council consideration as soon as possible. Likely the DA would be brought back in conjunction with the applicant's proposed amendments to the General Plan, the Cordes Ranch Specific Plan (zoning), and annexation request. Together these applications are a "project" under CEQA and involve preparation and certification of an EIR. The development team and City staff are working toward Council action on the Cordes Ranch project in late 2012.

An approval authorizing staff to negotiate the DA will have no fiscal impact; actual costs are tracked by staff and paid by the property owners through the Cost Recovery Agreement. This project may require the assistance of outside legal counsel depending on the timing needs of the applicants/property owners. Any such costs would be incurred by the developers as established in the Cost Recovery Agreement, which would be amended to clarify that the agreement also covers the processing of a DA.

Staff recommends that the City Council discuss the request submitted by the Cordes Ranch project property owners and provide direction to staff.

Council Member Rickman requested confirmation that Council was not approving a Development Agreement. Mr. Dean stated no.

Council Member Rickman indicated it looked like a large-scale industrial project and asked how many acres were dedicated to industrial or warehouses. Mr. Dean stated the project includes 1,700 acres with 1,000 or more acres for industrial development. Mr. Dean further stated that from a design perspective the goal is to have a new look to the frontage along I-205. This goal has been a major portion of the discussions. Mr. Dean stated the balance of land use is still in flux and that they were trying to be flexible in the range of land uses. Council Member Rickman stated he was concerned that Tracy would become surrounded by warehouses. Mr. Malik stated staff was on the same page with Council and shared the same concerns.

Council Member Rickman indicated he would like to see progress on the project in 2-3 months before Council gives the go-ahead to negotiate to see what they were getting into.

Council Member Abercrombie asked where water was coming from for this project. Mr. Dean indicated staff would not bring a project for Council consideration that could not be accommodated with water. Mr. Dean stated there would be a water assessment to identify the sources of water for the project before the environmental work was undertaken.

Council Member Elliott asked how work with the Byron Bethany District was going. Mr. Dean stated he believed it was going well and stated Steve Bayley, Deputy Director Public Works Utilities, would be the watch dog on water leading staff through the process.

Council Member Elliott asked how this proposed development would complement the Gateway project and asked if it would be competing for resources. Mr. Malik indicated this project would not compete for resources.

Council Member Elliott indicated the staff report mentions late 2012 asking what was supposed to happen by that date. Mr. Dean indicated the project includes an Environmental Impact Report, Development Review as well as infrastructure designed. Mr. Dean stated staff was looking for project approval by the end of 2012.

Council Member Elliott asked if there was any reason to believe that there would be any residential uses in this plan. Mr. Dean stated that has already been discussed. Mr. Dean stated that as the project builds over the years, it may develop and change, there will be some flexibility built in.

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

Robert Tanner, 1371 Rusher Street, asked if the property was in the City limits and what prevented Mountain House from coming toward this project. Mr. Dean stated this is a second-tier document coming after the General Plan which includes this site. Mr. Dean further stated he would meet with Mr. Tanner separately from this meeting.

Dana Perry, President of Reynolds Brown, addressed Council on behalf of the developers of the proposed project. Mr. Perry stated the project was being designed to attract businesses and jobs to Tracy. Mr. Perry stated the purpose of the development agreement was to provide predictability regarding entitlements, fee structures, etc., while trying to attract businesses to the City. Mr. Perry added that they were a development partner that was not about compromise, but were here to synergize.

Mr. Dave Babcock thanked Bill Dean, Andrew Malik and Kul Sharma for their assistance in getting this project going. Mr. Babcock stated they have been in discussions for over a year and that they have an excellent relationship with city staff.

Mayor Ives indicated it was obvious that the Council was tuned into this and that the Council has an opinion and that it was very important for them to introduce the Council to their thoughts. Mr. Perry indicated they were committed.

Council Member Rickman asked if one of the public benefits was the creation of head of household jobs. Mr. Dean stated they would be talking about head of household jobs, and how the discussions have been going thus far includes how the flexible zoning would accomplish that. Mr. Malik indicated it would be one item that is included in the Development Agreement. Council Member Rickman indicated his main concern was that it was not just the creation of more warehouse jobs.

Council Member Rickman asked staff when they could return with additional information. Mr. Dean indicated he would meet with the team tomorrow to see when they could present an overview of the project.

Mayor Pro Tem Maciel indicated that land for businesses was one of the greatest assets that Tracy has to offer. Mayor Pro Tem Maciel stated the City has to keep in mind that this is a very preliminary step to attract businesses to Tracy.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adopt Resolution 2011-174 authorizing staff to negotiate a Development Agreement with property owners of the proposed Cordes Ranch Development which is located on approximately 1700 acres of land on the west side of Tracy planned for industrial office, and retail development. Voice vote found all in favor; passed and so ordered.

5. RECEIVE AND DISCUSS THE END OF YEAR REPORT FOR THE GRAND THEATRE CENTER FOR THE ARTS - Jeff Haskett, Technical Theatre Supervisor, presented the staff report. Mr. Haskett stated that the Grand Theatre Center for the Arts ("Grand Theatre") is both a catalyst and victim of the regional and local economy. The Grand Theatre continues to be one of downtown's focal points hosting 209 separate performances, rehearsals or special events beyond the daily class and exhibition

programming. On the other hand, demand for some services showed a decline during the 2010-11 season.

Patron Services completed its first year as a one-stop point for ticket sales and registration for all city activities as well as many community events. Over the year Patron Services Staff handled over 5,800 registrations, nearly 20,000 tickets and fielded over 10,000 calls. In previous years the Box Office handled around 400 registrations per year. Call volume was also considerably lower since many calls are informational regarding internet registration. Ticket sales have had steady increases all four years.

PRESENTING SEASON

The Grand Theatre's fourth Presenting Season scheduled performances from September through May. Comedian John Heffron, winner of NBC's *Last Comic Standing*, kicked off the season that featured two musicals, eight plays, seven concerts, nine family events, a jazz nightclub series and 22 cinematic treasures. The Resident Company program continued for a second year with the Tracy Performing Arts Foundation and the newly accepted Children's Dance Theatre. Together they provided 8 of the Season's events.

Family programming continued to be the most successful within our Season. *Grease* and *The Nutcracker* were the most popular shows selling 75% or more for all performances. The total attendance for the Presenting Season was 9,288 – a 92% increase from the previous year.

COMMUNITY AND COMMERCIAL PRESENTATIONS

The rental operations remain active six to seven days a week, depending on demand, and staff continues to work with community groups to showcase their performances to families and friends. For the first time the Grand Theatre has started to see significant interest from communities outside of Tracy as being the best location to produce their shows. Groups from Stockton and Brentwood produced dance and religious based events bringing over 2,500 people from their communities to downtown Tracy.

The Grand Theatre's rentals totaled 89 in the fourth year. This is a 40% decline over the third year's number of more than 150. This lower number can be directly attributed to the increased size of the presenting season, and efforts by staff to provide rehearsal space to local companies providing season events. The overall attendance for the community and commercial presentations was not as drastically affected with 12,467 patrons attending during the fourth Season at the Grand Theatre. This is a 23% drop from last year. The most noticeable change in this category is that there are much fewer free and open-to-the-public events that the community and commercial presenters are able to produce.

GRAND GALLERIES

The Grand Galleries exhibition schedule operated five days a week from July 2010 through July of 2011 presenting six exhibits in the galleries. The most notable exhibitions of this season were *Recollection – Centennial Celebration Historical Exhibition* and *Kunstlerleben* – a retrospective of Stephen Gyermek, a master artist who trained in Europe and immigrated to the US in 1957.

Across the 2010-11 Season visitors and patrons interacted with exhibitions programming, including a multitude of diverse special events such as receptions, gallery talks by the artists, demonstrations and workshops. The overall attendance of the Grand Galleries was 7,102 – down 20% from the previous year largely attributed to a significant drop in Bean Festival Weekend attendance in 2010.

Introduced at the start of the holiday season in December of 2009, Art Co-opted continued to serve as a modern, cooperative exhibition space. During its second year, 133 items were sold grossing \$5,330 – a 21% increase compared to the previous year.

ARTS EDUCATION

The Arts Education Program operates all year long, six days a week, 12 hours a day. The program presented a variety of classes and workshops in visual and performing arts for children, teens and adults. The classes included tap, ballet, hip-hop, ballroom dance, oil and acrylic painting, drawing, ceramics wheel throwing, photography and private and group music instruction.

Staff assesses the interests and demands of arts education within our community by listening to public feedback, appraising student evaluations and speaking with faculty members. The program held 589 classes for 1,824 total participants – a 35% decrease over the previous year. Of all the programming at the Center, Arts Education was the hardest hit from the state of the economy, and the first two quarters saw substantial decline as a result of a large turnover of contract instructors. As staff recruited new instructors and marketing was increased, the third and fourth quarters did improve and the positive growth is expected to continue for the 2011-12 season.

UPCOMING FISCAL YEAR 2011-2012 PROGRAMMING

This year for the anniversary weekend, which falls on the same weekend as the annual Tracy Bean festival, the Grand Theatre will have an open house for the public. All programming will be free. The Eleni Tsakopoulos-Kounalakis Theatre will feature full days of classic cartoons and other shorts, the Arts Education Programming will provide demonstrations and activities in the classrooms, and the Grand Galleries will kick off its season with a folk art exhibition featuring an intriguing selection of antique and contemporary outsider folk art from the collection of Roff and Arlene Graves.

The Grand Theatre's Presenting Season will kick off on September 23rd with Country artist Kellie Pickler. Only 8 hours after tickets went on sale the concert was 91% sold, and completely sold out three days later. The Season will run through May 2012 and will feature, two musicals, three dance performances, five family shows, a brand new comedy film festival, the return of the haunted house, continuation of the Friday Night Jazz Series and eight concerts, including the legendary Phantom Franc D'Ambrosio and the return of the Stockton Symphony.

The Galleries will feature 6 exhibitions and a special holiday event in the Co-Op. The Arts Education Program will continue its regular programming and explore new classes and workshops through new collaborations with the Tracy Art League and Tracy Camera Club. In all areas of programming, staff will continue to research trends and look toward community and local business relationships to improve marketing and program outreach.

Further decline in the annual subsidy would erode the Grand Theatre's ability to secure high- profile entertainment that enables Tracy to be a regional attraction. Private contributions, sponsorships, and underwriting remains the biggest opportunity to improve the Grand Theatre's financial picture. Communities of Tracy's size should be able to generate much more in private contributions, but the effects of the Great Recession and lagging consumer confidence are unknown. These efforts will best be aided by a robust and fully functional Grand Theatre Foundation in 2011-12.

The financial performance of the Grand Theatre showed a steady decline in General Fund support totaling 37% over its first four years of operation. The General fund subsidy in FY2010-11 was \$843,158, a decline of \$491,000 since FY 2007-08.

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

Council Member Elliott congratulated Mr. Haskett on what looked like a great calendar. Council Member Elliott stated he was concerned with the continued fall in revenues and encouraged staff to focus on the items that have been successful.

Mayor Pro Tem Maciel thanked Mr. Haskett and staff for their efforts. Mayor Pro Tem Maciel asked if there is an on-going effort to work with TCCA in promoting the theatre. Mr. Haskett stated every time TCCA holds an event he tries to attend. Mr. Haskett stated they have combined efforts to hold events while their events are going on to compliment each other.

Mayor Pro Tem Maciel referred to the midnight showing of the Rocky Horror Picture Show asking if staff was anticipating any hazards. Mr. Haskett indicated they are anticipating a very active, successful evening and would take appropriate precautions.

Council Member Rickman indicated the Kellie Pickler item looked like it would be a big success.

Council Member Abercrombie asked when the ALA would be coming for discussion. Mr. Churchill indicated discussions were underway and staff was encouraged that they will come to a conclusion within the next couple of months.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to accept the report. Voice vote found all in favor; passed and so ordered.

6. APPOINT ONE APPLICANT TO THE TRACY ARTS COMMISSION

There is one vacancy on the Tracy Arts Commission due to the mid-term resignation of Commissioner Michael Hays. To fill the vacancy, the City Clerk's office conducted a recruitment which opened on July 1, 2011, and closed on July 21, 2011. Three applications were received.

On August 23, 2011, a Council subcommittee consisting of Council Member Abercrombie and Council Member Rickman interviewed the applicants. In accordance with Resolution 2004-152, the Council subcommittee recommended an applicant for appointment to the Tracy Arts Commission. The subcommittee can recommend the

Council establish an eligibility list that could be used to fill vacancies that occur in the following 12 months.

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to appoint Patricia Hand to the Tracy Arts Commission to serve the remainder of the vacated term which expires on December 31, 2013. Voice vote found all in favor; passed and so ordered.

7. ITEMS FROM THE AUDIENCE

Nancy Young encouraged everyone to come out to the Dry Bean Festival this weekend.

8. COUNCIL ITEMS

A. That the City Council Makes a Determination of their Position on Resolutions to be Considered at the Annual Business Meeting of the 2011 League of California Cities Annual Conference

Maria Hurtado, Assistant City Manager, provided the staff report. Ms. Hurtado stated that the League of California Cities Annual Conference is scheduled for Wednesday, September 21st through Friday, September 23rd, in San Francisco. An important part of the conference is the Annual Business Meeting. At this meeting, the League membership takes action on resolutions that establish League policy.

At the request of the League of California Cities, and in order to expedite the conduct of business at this policy-making meeting, a City Council Member from each city is designated as the voting delegate. Mayor Ives will be the voting delegate for the City of Tracy. Assistant City Manager Maria Hurtado is attending the conference and may act as the alternate.

Ms. Hurtado stated the Council was provided with a packet of information from the League of California Cities which included the following six resolutions which will be considered at the Annual Business Meeting:

1. A resolution supporting alternative methods of meeting public notice requirements and to advocate for revisions to the government code recognizing alternative methods as a means to meet noticing requirements;
2. A resolution relating to Tort reform;
3. A resolution related to raising public awareness about the imminent health and safety concerns for bullied children;
4. A resolution supporting the prison rape elimination act of 2003;
5. A resolution calling for the replacement of the death penalty with the sentence of life imprisonment without the possibility of parole;
6. A resolution referred to general assembly;

Staff recommended that Council discuss and determine their position on each of the six resolutions.

After discussion among the Council member's, it was agreed that Mayor Ives would vote on the resolutions as follows:

1. Resolution supporting alternative methods of meeting public notice requirements and to advocate for revisions to the Government Code recognizing alternative methods as a means to meet noticing requirements – Yeah.
2. Resolution relating to Tort Reform – Yeah.
3. Resolution related to raising public awareness about the imminent health and safety concerns for bullied children – Yeah.
4. Resolution supporting the Prison Rape Elimination Act of 2003 – Abstain.
5. Resolution calling for the replacement of the death penalty with the sentence of life imprisonment without the possibility of parole – No.
6. Resolution acknowledging the efforts of the City of Bell to address municipal corruption and create a responsible and open government – No.

Mayor Pro Tem Maciel suggested returning veterans be presented with a proclamation recognizing their time of service, medals, etc. Mayor Ives suggested Mayor Pro Tem Maciel work with staff to bring an item back for Council discussion.

Council Member Rickman stated high school football has begun and encouraged everyone to attend local games in support of the youth of the community.

9. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adjourn. Voice vote found all in favor; passed and so ordered. Time 9:23 p.m.

The above agenda was posted at the Tracy City Hall on September 1, 2011. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

September 20, 2011, 6:00 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:45 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION -

Pending Litigation (Gov. Code, section 54956.9(b))

- Claim of Juan “John” Espinoza”
 - *Christopher Bosch v. City of Tracy, et al.*
(San Joaquin County Superior Court Case No. 39-2010-00252419-CU-OE-STK)
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:45 p.m. Council Member Elliott seconded the motion. Voice vote found all in favor; passed and so ordered.
 6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:58 p.m.
 7. REPORT OF FINAL ACTION – None.
 8. ADJOURNMENT – Council Member Abercrombie moved to adjourn the meeting. Mayor Pro Tem Maciel seconded the motion. Voice vote found all in favor; passed and so ordered. Time: 6:58 p.m.

The agenda was posted at City Hall on September 15, 2011. The above are action minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST

ACCEPTANCE OF THE COURT DRIVE, 22ND STREET, 23RD STREET, AND WHITTIER AVENUE IMPROVEMENTS - CIPS 73104, 73123, 73124, 75105, 75109, & 75110, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

The contractor has completed construction of the Court Drive, 22nd Street, 23rd Street, and Whittier Avenue Improvements - CIPs 73104, 73123, 73124, 75105, 75109 and 75110, in accordance with plans, specifications, 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 January 18, 2011, City Council awarded a construction contract to Knife River Construction of Stockton, California for construction of the Court Drive, 22nd Street, 23rd Street, and Whittier Avenue Improvements (CIPs 73104, 73123, 73124, 75105, 75109 and 75110), in the amount of \$1,029,402.

The scope of work for this project involved the overlay and waterline replacements at the following locations:

- Court Drive between 23rd Street and just south of Lowell Avenue (CIPs 73123 and 75109)
- 22nd Street between Parker Avenue and Holly Drive (CIPs 73124 and 75110).

In addition, the project included waterline replacement at the following locations:

- 23rd Street between Bessie and Court Drive (CIP 75105)
- Whittier Avenue between Tracy Boulevard and East Street (CIP 73104)

The street overlay included the application of 1,030 tons of rubberized asphalt concrete (RAC) on Court Drive and 22nd Streets.

The water main included abandoning the existing 4-inch cast iron and asbestos cement pipes in place and installing approximately 4,357 linear feet of 8-inch ductile iron water main, water service lines, valves, and fire hydrants along Court Drive, 22nd and 23rd Streets. These replacements shall increase the size of existing pipes to better serve the areas and improve service reliability.

The improvements on Whittier Avenue involved the removal and replacement of approximately 7,835 square feet of damaged or deteriorated sidewalks and driveways, 2,964 linear feet of curb and gutter, 24 handicap access ramps, and 17 tree removals and replacements.

Two change orders were issued in the amount of \$25,499 for this project which consisted of adding removal and disposal of existing asbestos pipe, tie-in new water line to the existing water line at Court Drive and Holly Drive and installation of three additional storm drain inlets.

The contract unit prices are based on estimated engineering quantities. Actual payment is based on field measured quantities installed by the contractor. According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$51,050.60. These quantities were paid in accordance with the bid unit prices listed in the contract and are listed as overrun quantities.

Status of budget and project costs is as follows:

A. Construction Contract Amount	\$1,029,402.00
B. Change orders	\$ 25,499.00
C. Over run of Quantities	\$ 51,050.60
D. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 104,122.95
E. Project Management Charges	\$ 109,542.66
 Total Project Costs	 \$1,319,617.21
 Budgeted Amount	 \$1,614,000.00

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 strategic plans.

FISCAL IMPACT

CIPs 73104, 73123, 73124, 75105, 75109 and 75110 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred proportionally back into the Measure K Transportation Tax Fund 242, Gas Tax Fund 245, and Water Fund 513.

RECOMMENDATION

That City Council by resolution accept the Court Drive, 22nd Street, 23rd Street, and Whittier Avenue Improvements - CIPs 73104, 73123, 73124, 75105, 75109 and 75110, completed by Knife River Construction 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.

Agenda Item 1.B
October 4, 2011
Page 3

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 COURT DRIVE, 22ND STREET, 23RD STREET, AND WHITTIER AVENUE IMPROVEMENTS - CIPS 73104, 73123, 73124, 75105, 75109, & 75110, COMPLETED BY KNIFE RIVER CONSTRUCTION OF STOCKTON, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On January 18, 2011, City Council awarded a construction contract to Knife River Construction of Stockton, California for construction of the Court Drive, 22nd Street, 23rd Street, and Whittier Avenue Improvements (CIPs 73104, 73123, 73124, 75105, 75109 and 75110), in the amount of \$1,029,402, and

WHEREAS, Two change orders were issued in the amount of \$25,499 for this project, and

WHEREAS, According to the City's inspection records, actual field measurement quantities exceeded the contract quantities in the amount of \$51,050.60, and

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

Construction Contract Amount	\$1,029,402.00
Change orders	\$ 25,499.00
Over run of Quantities	\$ 51,050.60
Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 104,122.95
Project Management Charges	\$ 109,542.66
Total Project Costs	\$1,319,617.21

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

WHEREAS, CIPs 73104, 73123, 73124, 75105, 75109 and 75110 are approved Capital Improvement Projects with sufficient funding and there will be no fiscal impact to the General Fund. All remaining funds will be transferred proportionally back into the Measure K Transportation Tax Fund 242, Gas Tax Fund 245, and Water Fund 513;

NOW, THEREFORE, BE IT RESOLVED That City Council accepts the Court Drive, 22nd Street, 23rd Street, and Whittier Avenue Improvements - CIPs 73104, 73123, 73124, 75105, 75109 and 75110, completed by Knife River Construction of Stockton, 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 4th day of October, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVAL OF PERMIT FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE CITY OF TRACY'S "WITCHES AND BROOM STICKS GIRLS NIGHT OUT" ON OCTOBER 28, 2011

EXECUTIVE SUMMARY

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

DISCUSSION

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

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

At the present time, the Parks and Community Services Department is coordinating a request for an alcohol permit in conjunction with the community event, the "Witches and Broom Sticks Girls Night Out" being conducted by the City of Tracy. In conjunction with this event, a request for an alcohol permit, to allow alcoholic beverages to be served as a component of the event, is being presented for approval.

The City of Tracy is requesting a permit to serve alcoholic beverages at its Girls Night Out event on October 28th, 2011, from 6:00 p.m. to 10:00 p.m., along 7th Street between Central Avenue and C Street.

To protect against excessive alcoholic consumption, the City of Tracy will have several measures in place at the Girls Night Out event. As required by law, an ABC License from the California Department of Alcoholic Beverage Control has been obtained for this event. The street portion of the event will occur inside an enclosed Tent. All alcoholic beverages served in the tent, must stay in the tent. In addition, those attending the

event will have to show ID, proving that they are 21 years old or over, in order to receive their wrist band and two drink tickets.

STRATEGIC PLAN

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

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

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

FISCAL IMPACT

There is no impact on the General Fund.

RECOMMENDATION

It is recommended that City Council, by resolution, authorize and approve the permit described above for consumption of alcoholic beverages within the above-described designated areas for the City of Tracy "Witches and Broom Sticks Girls Night Out" on October 28, 2011.

Prepared by: Mark Honberger, Recreation Services Supervisor

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

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

APPROVING PERMITS FOR THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR A SPECIAL EVENT IN THE CITY OF TRACY ON OCTOBER 28, 2011 (CITY OF TRACY "WITCHES AND BROOM STICKS GIRLS NIGHT OUT")

WHEREAS, The Tracy Chamber of Commerce has requested a permit to conduct a special event in the City of Tracy on October 28, 2011, that requires the authorization of the City Council for a permit for the consumption of alcoholic beverages in public places; and

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

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

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby authorize the issuance of a permit for the possession and consumption of alcoholic beverages within the boundary of the above described Special Event, as further described in the staff report accompanying this resolution, to be conducted in the Downtown Business District of Tracy to: The City of Tracy on October 28, 2011, between 6:00 p.m. and 10:00 p.m.

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

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

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.D

REQUEST

AUTHORIZE THE APPOINTMENT OF ELEVEN YOUTH AND TWO ADULT COMMISSIONERS TO THE YOUTH ADVISORY COMMISSION

EXECUTIVE SUMMARY

The bylaws of the Youth Advisory Commission set the minimum number of youth appointed commissioners at eight, with a maximum limit at fourteen and a maximum of three adult commissioners. A selection panel was established and they have made recommendations for four youth and one adult to be appointed for a nine month term and seven youth and one adult to be appointed for a two year term to fill the existing youth and adult vacancies on the Youth Advisory Commission.

DISCUSSION

The bylaws of the Youth Advisory Commission call for a minimum of eight youth, and a maximum of fourteen youth commissioners and a maximum of three adult commissioners that may sit on the commission. The bylaws are crafted to include two youth representatives from each of the four comprehensive high schools in the area (Kimball, Millennium, Tracy and West) and the three continuation high schools (Delta Charter, Stein Continuation, and Excel High.) The selection process for the Youth Advisory Commission is to have a diverse group of teens that reflect each of the Tracy area high schools who wish to have a voice in their community and be involved in the Commission. Adult Commissioners shall reside within the jurisdiction of any Tracy school district to include one member of the School District and two members of the community who desire to work with youth. Currently the Commission has fourteen youth and three adult vacancies.

The City recruits new commissioners on an ongoing basis to fill any vacancies created by outgoing Commissioners. The bylaws of the Youth Advisory Commission call for a selection panel to review new applications and make recommendations for appointment to the City Council. This year's panels consisted of Recreation Coordinator Jolene Jauregui, Recreation Coordinator Laura Johnston, Recreation Leader III Beatrice Amezquita, Parks Commissioners Tim Jayne and Parks Commissioner Gloria Saltzman.

The interview panel conducted interviews on the following three days: September 14, 15 and 19. The following four youth: Haley Arganbright, Cadre Shelton, Annalisa Mascot, and Michelle Mizuno and one adult: Babette Shelton are being recommended to serve a nine month term, from October 4, 2011 to July 31, 2012. The following seven youth: Arashpreet Gill, Connor Goulart, Inyoung Hong, Kayla McGuinness, Aloukika Shah, Kshity Shah, and Antonetta Shibata and one adult: Wes Huffman are being recommended to serve a two year term, from October 4, 2011 to July 31, 2013.

FISCAL IMPACT

There is no impact on the General Fund.

RECOMMENDATION

Staff recommends that the City Council approve, by resolution, the appointment of eleven youth commissioners and two adult commissioners to the Youth Advisory Commission based upon the interview and selection panel recommendations.

Prepared by: Kim Scarlata, Recreation Services Supervisor
Reviewed by: Rod Buchanan, Director of Parks and Community Services
Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING THE APPOINTMENT OF ELEVEN YOUTH AND TWO ADULT COMMISSIONERS TO THE YOUTH ADVISORY COMMISSION

WHEREAS, The bylaws of the Youth Advisory Commission call for a minimum of eight commissioners, and a maximum of fourteen youth commissioners and a maximum of three adult commissioners that may sit on the commission; and

WHEREAS, The eligibility criteria and selection process of YAC commissioners are established; and

WHEREAS, The City recruits new commissioners on an ongoing basis to replace the outgoing commissioners and existing vacancies, and has established a recommendation selection panel to recommend appointees to City Council; and

WHEREAS, The recommendation selection panel recommended the following four youth: Haley Arganbright, Cadre Shelton, Annalisa Mascot, and Michelle Mizuno and one adult: Babette Shelton for a nine month term, from October 4, 2011 to July 31, 2012: and seven youth: Arashpreet Gill, Connor Goulart, Inyoung Hong, Kayla McGuinness, Aloukika Shah, Kshity Shah, and Antonetta Shibata and one adult: Wes Huffman for a two year term, from October 4, 2011 to July 31, 2013:

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby approves the appointment of the eleven new Youth Commissioners and two new Adult Commissioners recommended by the selection panel as identified above, and for the recommended terms, to the Youth Advisory Commission.

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.E

REQUEST

AUTHORIZE TASK ORDER CH01-14 TO MASTER PROFESSIONAL SERVICES AGREEMENT CH01 WITH CH2M HILL FOR SERVICES RELATED TO WASTEWATER DISCHARGE PERMIT STUDIES FOR THE TRACY WASTEWATER TREATMENT PLANT AND AUTHORIZE THE MAYOR TO EXECUTE THE TASK ORDER

EXECUTIVE SUMMARY

Professional services are required to prepare State mandated NPDES Permit technical studies regarding the Wastewater Treatment Plant and the discharge of treated effluent. The services included in this Task Order are required by the City's wastewater discharge permit. Services are included for renewal of the City's NPDES permit which will expire in May 2012.

DISCUSSION

In 2007, the California Regional Water Quality Control Board (RWQCB), Central Valley Region, adopted waste discharge requirements for the City's Wastewater Treatment Plant. Included in the requirements are the preparation of 14 studies and reports. The work on these studies commenced three years ago and some portions are ongoing.

A list of the studies is as follows:

1. Effluent Dissolved Oxygen Evaluation
2. Toxicity Reduction Evaluation
3. Electrical Conductivity Studies (Salinity Plan)
4. Evaluation of Thermal Impacts
5. Best Practicable Treatment or Control of Salinity
6. Pollution Prevention Plan for Mercury
7. Treatment Feasibility Study for Copper
8. Compliance Schedule for Final Effluent Limitations for Aluminum
9. Pollution Prevention Plan for Aluminum
10. Pollution Prevention Plan for Copper
11. Copper Corrective Action Plan
12. Pollution Prevention Plan for Salinity
13. Salinity Reduction Goal
14. Groundwater Monitoring Work Plan and Well Installation

Several of the plans are closely linked; for example three plans pertain to controlling copper discharges and four plans relate to salinity control. All such linked work products are carefully scoped to maximize the advantages of shared information and staff knowledge. In order to minimize costs, City staff performs all water quality monitoring and sampling using the City water quality laboratory or through contract services.

This Task Order authorizes the fourth year of services of a multi-year program. The RWQCB has approved the multi-year work plans, and data collection and analysis are underway. Of these 14 studies, four studies have been completed: Best Practical Treatment or Control of Salinity (Task 5), Treatment Feasibility Study for Copper (Task 7), Copper Corrective Action Plan (Task 11), and the Groundwater Monitoring Work Plan and Well Installation (Task 14). The information obtained from these studies, in addition to being mandated by the RWQCB, will be helpful in negotiating favorable conditions in the National Pollutant Discharge Elimination System (NPDES) permit renewal process which will commence in November 2011.

CH2M Hill was selected through a competitive bidding process to provide necessary consulting services for wastewater treatment engineering and planning services. The work in this contract is a continuation of previous work. The work is being performed over a number of years due to data collection needs, budget constraints and on-going review by the RWQCB.

STRATEGIC PLAN

This agenda item supports the Environmental Sustainability Strategic Plan by improving wastewater effluent water quality.

FISCAL IMPACT

There is no fiscal impact to the General Fund. These services are included in the approved budget as CIP 74073 NPDES Permit Technical Studies. The estimated cost for these services is \$374,840.

RECOMMENDATION

That the City Council, by resolution, authorize Task Order CH01-14 to Master Professional Services Agreement No. CH01 with CH2M Hill for services related to NPDES permit studies for the Tracy Wastewater Treatment Plant and authorize the Mayor to execute the Task Order.

Attachment: Master Professional Services Agreement

Prepared by Steve Bayley, Deputy Director of Public Works

Reviewed by Kevin Tobeck, Director of Public Works

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

City of Tracy
Master Professional Services Agreement CH01
Task Order No. CH01-14

Tracy Wastewater Treatment Plant (WWTP)
NPDES Permit Studies--2011

This Task Order is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and CH2M HILL, INC, a Florida Corporation, (hereinafter "CONSULTANT").

Recitals

- A. CONSULTANT services are needed to continue prepare engineering studies and reports meeting the National Pollutant Discharge Elimination System (NPDES) Permit requirements. Central Valley Regional Water Quality Control Board (RWQCB) issued a new NPDES Permit to the City of Tracy in 2007 and the new permit requires 14 studies/assessments over the course of the permit duration. ("PROJECT) as shown on Exhibit A.
- B. The CONSULTANT was selected through a competitive bidding process to provide necessary consulting services including engineering and planning services. This is a continuation of previous work and the PROJECT is being performed over a number of years due to data collection needs, budget constraints and on-going review by the Regional Board.
- C. As approved by the City Council pursuant to Resolution No. 2008-041, CITY entered into a Master Agreement with the CONSULTANT for Professional Consulting Services.
- D. At the request of CITY, in July 2011, CONSULTANT submitted a proposal to perform the services described in this Task Order. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Task Order. On October 4, 2011, the City Council authorized the execution of this Task Order pursuant to Resolution No. 2011-_____.

Now Therefore, the Parties Mutually Agree as Follows:

- 1. INCORPORATION OF MASTER AGREEMENT. This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Agreement for this project, unless specifically modified by this Task Order.
- 2. SCOPE OF SERVICES. CONSULTANT shall perform the scope of services described in Exhibit "A" attached hereto and incorporated herein by reference.
- 3. TIME OF PERFORMANCE. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A."
- 4. COMPENSATION. For services performed by CONSULTANT in accordance with this Task Order, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Task Order is Not To Exceed \$374,840 as shown in Exhibit "C".
- 5. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task

Order on behalf of the respective legal entities of CONSULTANT and CITY. This Task Order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

CONSULTANT
CH2M HILL INC.

By: Brent H. Ives
Title: Mayor

By: Vijay Kumar, P.E.
Title: Vice President & Area Manager

Date: _____

Date: 9/15/2011

Fed. Employer ID No. 59-0918189

Attest:

By: Sandra Edwards
Title: CITY CLERK

By: *Allan H. J. Jant*

Date: _____

Vice President
Title

Approved As To Form:

9.15.11
Date

By: Dan Sodergren
Title: CITY ATTORNEY

Date: _____

Exhibit "A"

Scope of Services

I. Overview of Scope of Services

The City of Tracy owns and operates an existing wastewater treatment plant to treat wastewater from the City of Tracy. On May 4, 2007, the Central Valley Regional Water Quality Control Board (RWQCB) adopted an NPDES permit regulating the Tracy wastewater treatment plant (WWTP). The permit was most recently amended on February 3, 2011, by order R5-2011-0012. The amended permit required 14 water quality studies and Pollution Prevention Plans. The majority of these studies required preparation of a multiyear work plan that required approval by RWQCB. After approval, applicable analysis and/or studies and routine monitoring reports must be completed as described in the work plan. It is assumed that the City of Tracy will perform all required water quality monitoring and sampling using its own water quality laboratory or through contract services. There is no budget given here for any water quality analysis or sampling.

To comply with the 14 studies originally included in the NPDES permit, City started collecting data and performed technical analysis. Four studies were completed during the third year of this project. Thus 10 studies remain to be completed. This scope of work includes additional efforts needed to finalize these 10 studies and prepared the reports that will be submitted to the RWQCB to comply with NPDES permit requirements. Several of the plans are closely linked; for example three plans pertain to controlling copper discharges and two plans relate to salinity control. All such linked work products will be carefully scoped to maximize the advantages of shared information and staff knowledge. Since technical studies need review and approval by the RWQCB, it is difficult to estimate the level of effort needed to complete the necessary studies. Based on similar studies, a preliminary estimate has been made. Additional efforts may be needed to complete the required studies if RWQCB provides additional comments or additional efforts are needed to meet RWQCB expectations.

Task 1 – Effluent Dissolved Oxygen Summary Report

RWQCB's WDR Order No. R5-2007-0036 contains Final Effluent Limitations IV.A.1.h., which states, "Dissolved Oxygen (DO). The daily average effluent DO concentration shall not be less than 5.0 mg/L." A work plan was developed to document concentration in the wastewater effluent and address methods to maintain the daily average effluent DO concentration in the Old River above 5 mg/l.

Effluent DO Preliminary Report will be finalized under Year 4 include:

- Analysis of DO concentrations at the discharge point in the final effluent.
- Evaluation of DO concentrations at Old River and estimation of the degree of linkage between receiving water DO and effluent DO (if any). This will be a preliminary analysis only, and not a complete mixing zone study of factors governing receiving water DO concentrations.
- Tables, graphs and charts showing results
- Conclusions
- List of references

Task 2—Salinity Reduction Plan

City of Tracy's NPDES Permit requires that the electrical conductivity in the discharge shall not exceed a monthly average of 700 $\mu\text{mhos/cm}$ (April 1 to August 31) and a monthly average of 1,000 $\mu\text{mhos/cm}$ (September 1 to March 31), if:

- A. The City of Tracy fails to submit a Salinity Plan to reduce its salinity impacts to the Southern Delta, including a schedule, to comply with conditions (1) – (3) below to the Regional Water Board within six months of the effective date of the permit, or
- B. The City of Tracy fails to timely implement the Salinity Plan upon the Regional Water Board's approval. The proposed Salinity Plan will be circulated for no less than 30 days of public comment prior to the Regional Water Board's consideration of the Salinity Plan and the Regional Water Board may revise the Salinity Plan prior to approving it.

The main components of the Salinity Reduction Plan are:

- A. Identification of reasonable steps to obtain alternative, lower salinity water supply sources.
- B. Development of a salinity source control program that will identify and implement measures to reduce salinity in discharges from residential, commercial, industrial and infiltration sources in an effort to meet the interim salinity goal of a maximum 500 $\mu\text{mhos/cm}$ electrical conductivity increase over the weighted average electrical conductivity of the City of Tracy's water supply. It is assumed that the City of Tracy will implement identified measures. Since CONSULTANT will not have any direct control over the implementation and/or anticipated discharge water quality, additional studies and/or analysis may be needed if the above goal is not achieved.
- C. Discussions with the Regional Board about City of Tracy's obligation to participate financially in the development of the Central Valley Salinity Management Plan at a level commensurate with its contributions of salinity to the Southern Delta.

As part of the year 1 work, a Salinity Reduction Plan was prepared and submitted to the Regional Board. Regional Board staff reviewed and requested additional information that was submitted to the Board in August 2008. During the second year of the project, additional analysis was conducted to quantify and characterize the salinity contribution from the City water supply sources.

Further, the third year work focused on the evaluation of the estimated salinity reduction measures identified in the Salinity Reduction Plan under pollution prevention plan and the salinity BPTC evaluation.

Tasks to be completed under Year 4 include the development of an implementation plan and preparation of final report. Budget for implementation of this plan has not been included in this scope of work.

Task 3— Evaluation of Thermal Impacts—Year 4 Data Collection

As described in the Final EIR for the expansion of Tracy WWTP, the City of Tracy proposed mitigation measures to ensure that any thermal impacts will be less than significant. In the approved EIR, the City of Tracy proposed to conduct four years of intensive monitoring of thermal impacts in the vicinity of the outfall and develop an appropriate range of mitigation measures, if necessary.

Furthermore, as required by other regulations, the City of Tracy is required to conduct consultations with the United States Fish and Wildlife Services, National Marine Fisheries

Service, and California Department of Fish and Game to develop mitigation measures for the protection of aquatic species, including rare, threatened, and endangered species protected under the Endangered Species Act. These consultations would be beneficial during Phase 2A portion of the WWTP Expansion projects since installation of new outfall requires extensive Federal and State permits.

Under this task CH2M HILL will finalize under Year 4 data collection from data loggers at six locations that were installed as part previous work.

Task 4— Pollution Prevention Plan for Mercury

The purpose of the Pollution Prevention Plan (PPP) for Mercury is to comply with the California Water Code (CWC) Section 13263.3(d)(3), as required by NPDES Permit No. CA0079154.

A Work Plan was structured to comply with the CWC intention to provide pollution prevention to support the Federal goal of zero discharge of pollutants into navigable waters. Previously submitted work plan was approved by the Regional Board in 2008.

The overall approach for the preparation of the pollution prevention plan for mercury includes the following steps.

1. Identification of the sources of mercury contributing, or potentially contributing, to the mercury loadings in the WWTP influent. This required the implementation of a data collection process to investigate the contribution from the potential sources – This task was completed during Years 1 and 2 of the project. Locations that were evaluated include:
 - Potable water supply sources
 - WTP finished water
 - Industrial discharges
 - Commercial discharges
 - Discharges from specific residential areas
 - I/I in the collection system
2. Identify methods for mercury loads reduction in the WWTP effluent and preparation of a testing plan for pilot evaluation of treatment technologies that could potentially be used as effluent polishing – This task was completed during Years 1 and 2 of the project.
3. An analysis of the methods that could be used to prevent the discharge of mercury into the wastewater treatment facility. Work on this will start during Year 3 in 2010 and will continue through Year 4. This analysis requires that the following evaluations be conducted:
 - Evaluation of the need to develop a baseline monitoring report to establish the level of industrial compliance.
 - In cooperation with the City staff, conduct an evaluation/audit of categorical and significant dischargers self monitoring programs.
 - In cooperation with the City staff, prepare an updated industrial survey and conduct an evaluation of the existing pretreatment program and enforcement actions.
 - Evaluation of the need to implement local limits (i.e., local discharge standards) to industrial or commercial dischargers.

- Evaluation of the effectiveness of implementing a public education and outreach program, or other alternative approaches to reduce discharges of the pollutant to the WWTP.
 - Evaluation of City's ordinances and identification of potential updates required.
 - Prepare an analysis of sources, or potential sources, not within the ability or authority of the Discharger to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.
4. Prepare an estimate of load reductions that may be attained through the methods identified in subparagraph ii. – This was completed under this task for Year 3.
 5. Preparation of an implementation plan for the pollution prevention measures identified and a plan for monitoring the results of the pollution prevention program.
 8. In cooperation with the City staff, develop goals and strategies of the pollution prevention plan, including priorities for short-term and long-term action, and a description of the Discharger's intended pollution prevention activities for the immediate future.
 9. Conduct an analysis, to the extent feasible, of any adverse environmental impacts, including cross-media impacts or substitute chemicals that may result from the implementation of the pollution prevention program.
 10. Prepare an analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

Tasks 5 through 8 will be completed under Year 4.

Task 5— Pollution Prevention Plan for Copper

The City of Tracy is required to prepare a pollution prevention plan for copper, in accordance with CWC section 13263.3(d)(3). The overall approach for the preparation of the pollution prevention plan for copper includes the following.

1. Identification of the sources of copper contributing, or potentially contributing, to the copper loadings in the WWTP influent. This identification process required that a data collection plan were implemented to investigate the contribution from the potential sources. This was completed between Years 1 and 2 of the project.
2. An analysis of the methods that could be used to prevent the discharge of copper into the wastewater treatment facility. This work will start during Year 3 and will continue through Year 4. This requires that the following evaluations be conducted:
 - Evaluation of the need to develop a baseline monitoring report to establish the level of industrial compliance.
 - In cooperation with the City staff, conduct an evaluation/audit of categorical and significant dischargers self monitoring programs.
 - In cooperation with the City staff, prepare an updated industrial survey and conduct an evaluation of the existing pretreatment program and enforcement actions.
 - Evaluation of the need to implement local limits (i.e., local discharge standards) to industrial or commercial dischargers.

- Evaluation of public education and outreach methods, or other innovative approaches to reduce discharges of the pollutant to the WWTP.
 - Evaluation of City’s ordinances and identification of potential updates required.
 - Prepare an analysis of sources, or potential sources, not within the ability or authority of the Discharger to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.
3. Prepare an estimate of load reductions that may be attained through the methods identified in the Pollution Prevention Plan. This task was completed under Year 3.
 4. Develop an implementation plan as well as a plan for monitoring the results of the pollution prevention program.
 5. In cooperation with the City staff, develop goals and strategies of the pollution prevention plan, including priorities for short-term and long-term action, and a description of the Discharger’s intended pollution prevention activities for the immediate future.
 6. Prepare documentation that describes the City’s current pollution prevention program.
 7. Conduct an analysis, to the extent feasible, of any adverse environmental impacts, including cross-media impacts or substitute chemicals that may result from the implementation of the pollution prevention program.
 8. Prepare an analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

Tasks 5 through 8 will be completed under Year 4.

Task 6— Pollution Prevention Plan for Salinity

City of Tracy’s NPDES Permit requires preparation and implementation of a pollution prevention plan for salinity in accordance with CWC section 13263.3(d)(3) to reduce the salinity of its discharge.

According to RWQCB, City of Tracy’s wastewater discharge contains total dissolved solids (TDS), chloride, sulfate, and electrical conductivity (EC). These are water quality parameters that are indicative of the salinity of the water. Their presence in water can be growth limiting to certain agricultural crops and can affect the taste of water for human consumption. There are no USEPA water quality criteria for the protection of aquatic organisms for these constituents. The Basin Plan contains a chemical constituent objective that incorporates State MCLs, contains a narrative objective, and contains numeric water quality objectives for EC, TDS, Sulfate, and Chloride as shown below:

Table 1
Salinity Water Quality Criteria/Objectives

Parameter	Agricultural ¹ WQ Goal	Secondary ³ MCL	Basin Plan ⁴ (Bay-Delta Plan)	Effluent	
				Avg	Max

Table 1
Salinity Water Quality Criteria/Objectives

Parameter	Agricultural ¹ WQ Goal	Secondary ³ MCL	Basin Plan ⁴ (Bay-Delta Plan)	Effluent	
				Avg	Max
EC (µmhos/cm)	Varies ²	900, 1600, 2200	700 (1 Apr – 31 Aug) 1000 (1 Sep – 31 Mar)	1753	2410
TDS (mg/L)	Varies ²	500, 1000, 1500	N/A	1019	2060
Sulfate (mg/L)	N/A	250, 500, 600	N/A	246	350
Chloride (mg/L)	Varies ²	250, 500, 600	N/A	286	340

1. Agricultural water quality goals based on *Water Quality for Agriculture*, Food and Agriculture Organization of the United Nations—Irrigation and Drainage Paper No. 29, Rev. 1 (R.S. Ayers and D.W. Westcot, Rome, 1985)
2. The EC level in irrigation water that harms crop production depends on the crop type, soil type, irrigation methods, rainfall, and other factors. An EC level of 700 µmhos/cm is generally considered to present no risk of salinity impacts to crops. However, many crops are grown successfully with higher salinities.
3. The secondary MCLs are stated as a recommended level, upper level, and a short-term maximum level.
4. Compliance with the Bay-Delta Plan water quality objectives are determined at three monitoring locations in the South Delta.

The overall approach for the preparation of the pollution prevention plan for salinity includes the following:

1. Identification of the sources of salinity contributing, or potentially contributing, to the salinity loadings in the WWTP influent. This identification process required that a data collection process were implemented to investigate the contribution from the potential sources. This was completed during Years 1 and 2 of the project.
2. Identify Alternatives for load reductions in the WWTP effluent such as potential wastewater treatment process improvements that include sidestream management, and prepare a testing plan – This work was completed as part of Year 2 work.
3. An analysis of the methods that could be used to prevent the discharge of high salinity waste into the wastewater treatment facility. This work started during Year 3 and will continue through Year 4. This analysis requires the following evaluations:
 - Evaluation of the need to develop a baseline monitoring report to establish the level of industrial compliance.
 - In cooperation with the City staff, conduct an evaluation/audit of categorical and significant dischargers self monitoring programs.
 - In cooperation with the City staff, prepare an updated industrial survey and conduct an evaluation of the existing pretreatment program and enforcement actions.
 - Evaluation of the need to implement local limits (i.e., local discharge standards) to industrial or commercial dischargers.

- Evaluation of the effectiveness of implementing a public education and outreach program, or other innovative and alternative approaches to reduce discharges of the pollutant to the WWTP.
 - Evaluation of City’s ordinances and identification of potential updates required
 - Prepare an analysis of sources, or potential sources, not within the ability or authority of the Discharger to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.
4. Prepare an estimate of load reductions that may be attained through the methods identified in the Pollution Prevention Plan. This work was completed under Year 3.
 5. Develop an implementation plan for salinity reduction measures.
 6. Develop a plan for monitoring the results of the pollution prevention program.
 7. In cooperation with the City staff, develop goals and strategies of the pollution prevention plan, including priorities for short-term and long-term action, and a description of the Discharger’s intended pollution prevention activities for the immediate future.
 8. Prepare documentation that describes the City’s current pollution prevention program.
 9. Conduct an analysis, to the extent feasible, of any adverse environmental impacts, including cross-media impacts or substitute chemicals that may result from the implementation of the pollution prevention program.
 10. Prepare an analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

Tasks 5 through 8 will be completed under Year 4.

Task 7— Groundwater Monitoring Well Sampling Reports

RWQCB is concerned about City of Tracy’s unlined ponds, unlined sludge drying beds, and unlined storage basin and its potential to discharge wastes to groundwater. City of Tracy has been issued Waste Discharge Requirements Order No. R5-2007-0038 that regulates the incidental land discharges from these treatment facilities in order to protect groundwater.

On November 1, 2007, the City of Tracy submitted a Groundwater Monitoring Work Plan prepared in accordance with, and including the items listed in, the first section of Attachment E: “Requirements for Monitoring Well Installation Work plans and Monitoring Well Installation Reports.” All monitoring wells shall comply with the appropriate standards as described in California Well Standards Bulletin 74-90 (June 1991) and Water Well Standards: State of California Bulletin 74-81 (December 1981), and any more stringent standards adopted by the Discharger or County pursuant to CWC section 13801.

After completion of the monitoring plan, the WDRs required the development of a groundwater water quality characterization at the Tracy WWTP site using groundwater data collected between 2008 and 2010 (as proposed in the Groundwater Monitoring Work plan submitted in 2007). The variability in groundwater quality data at the site did not allow to formulate a conclusive statement as to whether the holding ponds, emergency storage basin and sludge drying beds have an impact on the groundwater quality at the site. Therefore, it was recommended that the groundwater monitoring continued at the site, with an updated well monitoring plan that will address the findings of the groundwater water quality characterization.

This task is for assisting the City of Tracy during Year 4 with the following tasks:

1. Preparation of an updated monitoring plan
2. Data analysis of the updated monitoring plan
3. Evaluation of wells functionality including two CH2M HILL staff site visits, and preparation of final report. Functionally test is to be performed by a specialized subcontractor.

Task 8 — Progress Reports to RWQCB

RWQCB is requiring several progress reports as shown below.

Table 2
RWQCB Progress Reports Requirements

Special Provision	Reporting Requirements
Pollution Prevention Plan for Mercury (Special Provisions VI.C.3.a.)	1 June, annually. after approval of work plan
Pollution Prevention Plan for Salinity (Special Provisions VI.C.3.b.)	1 June, annually. after approval of work plan
Pollution Prevention Plan for Copper (Special Provisions VI.C.3.b.)	1 June, annually. after approval of work plan
Title 22 Disinfection Requirements (Special Provisions VI.C.4.a.)	1 December, annually, until final compliance

The purpose of this task is to help the City with the preparation of the above listed progress reports.

Task 9 — Meetings with RWQCB

Based on similar projects, additional meetings with RWQCB staff are necessary to discuss various permit conditions and to provide update on City's ability to comply with NPDES Permit requirements. It is assumed that two meetings will occur over next 12 months. CONSULTANT will arrange meetings with RWQCB staff, prepare meeting agenda, attend meeting, and distribute meeting minutes/notes. It is assumed that all meetings would occur at RWQCB office in Sacramento.

Task 10 — Disinfection Byproducts Reduction Study

The NPDES permit established effluent limitations for Dibromochloromethane and Bromodichloromethane.

In addition, the NPDES permit also established an effluent limit for ammonia (as N) at 1.3 mg/l (monthly average). Tracy WWTP started meeting the new ammonia limit in July 2007, when the new advanced activated sludge process with full nitrification capabilities came online (part of WWTP upgrade project). Since July 2007, City of Tracy WWTP is consistently meeting the NPDES permit requirements for ammonia.

However, the NPDES permit also includes provisions to reduce total coliform to levels that in the absence of chloramines require very high dosages of chlorine (current disinfection technology used at the plant). The increased dosage of chlorine added for disinfection to meet NPDES Permit requirements is causing the formation of Dibromochloromethane and

Bromodichloromethane in the WWTP effluent. Due to the absence of chloramines, it was infeasible to meet NPDES permit limits for Dichlorobromomethane and Chlorodibromomethane.

Therefore, City of Tracy requested a compliance schedule to comply with the NPDES effluent limitations for Dichlorobromomethane and Chlorodibromomethane. In response to the City's request, the California Regional Quality Control Board adopted Resolution No. R5-2008-0086 on June 12, 2008 that amended Order No. R5-2007-0036 to establish a compliance schedule for the effluent limitations for Dichlorobromomethane and Chlorodibromomethane, with full compliance required by May 18, 2010.

The compliance schedule requires the City of Tracy to submit to the Regional Water Board a work plan and implementation schedule to assure compliance with the final effluent limitations for Dichlorobromomethane and Chlorodibromomethane by October 1, 2008. The compliance schedule also requires that annual progress reports be submitted on June 1st, after approval of the work plan and until final compliance. City of Tracy submitted a work plan on October 1, 2008. This task will perform data collection and analysis to comply with the submitted work plan.

The scope of work under this task includes the following:

1. Project Status Assessment – Completed during Year 2 of this project
 - Obtain historical water quality data for ammonia, chlorine dose, chlorine residual
 - Obtain information on operational practices
 - Review of chemical feed strategies
 - Determine chemical doses and time concentration
2. Preparation of operational and testing protocol – Completed during Year 2 of this project
 - Based on historical data and permit requirements, identify investigation goals
 - Identify sampling locations, schedule, QA/QC procedures, laboratory analysis and meet with City staff to review sampling plan objectives and instructions
 - Ongoing assistance to City staff with pilot system operation and monitoring (via phone calls and emails; site visits excluded)
3. Continued analysis of laboratory results and field/pilot data (note that this effort continues until final completion of the project (i.e., start up of permanent solution) – This analyses started during Year 2 and were completed during Year 3.
 - Obtain field data
 - Review and update calculations and evaluation analysis
 - Prepare progress reports (once a year)
4. Development of Potential Reduction Alternatives – This was completed during Year 3.
 - Identify alternative design criteria
 - Evaluation of implementation factors and development of benefit analysis model
 - meetings with City staff (once in 3 months)
5. THM Reduction Alternatives Evaluation and Selection – This work started under Year 3 and will be finalized during Year 4.

- Prepare planning level capital cost estimates
 - Prepare planning level Operations and Maintenance cost estimates
 - Prepare Life Cycle cost analysis
6. Provide limited technical assistance with evaluation of the chloramination system implemented by City staff – This work started in Year 3 and will continue through Year 4 so that the City can demonstrate that full compliance has been achieved consistently and reliably.

Tasks 5 and 6 will be completed under Year 4.

Task 11—Application for Renewal of NPDES Permit

The City is required to submit a Report of Waste Discharge (RWD) as the first step in the process to renew the NPDES permit for WWTP. As identified in environmental documents, additional supporting documentation and previous monitoring results will be included in this application package.

1. Prepare a Report of Waste Discharge

Prepare a report of waste discharge (NPDES application package) including required environmental documents and previous monitoring data. The NPDES application package consists of the following:

- NPDES permit application
- Supplemental application information
- Industrial user discharge information
- Process Schematics
- Environmental documents
- Monitoring Reports
- Facility Plan

2. Additional Water Quality Analysis

Prepare additional water quality analysis related to total dissolved solids (TDS) and temperature issues identified in the final environmental documentation review process. This analysis is required to address issues related to TDS and temperature impacts on receiving waters. Include results of this analysis with NPDES permit application package. Meet with RWQCB staff and City staff to determine the scope of analysis and assist City staff in meetings with RWQCB staff and City's legal staff.

3. Compile Environmental Documentation

Compile environmental documentation including copying and distribution of FEIR, mitigation and monitoring measures and notice of determination. Assist City staff during presentation to the City Council and other stakeholders. It is assumed there will be one meeting.

4. Process NPDES Permit Application

After submission of NPDES permit application package to RWQCB, attend meetings to discuss and resolve issues raised by the RWQCB staff. Provide additional information and documentation to technical and water quality related items. Attend RWQCB board meetings to provide additional information to the board members and/or answer questions. Review and provide comments to Draft NPDES permit prepared by the RWQCB staff. Assist City staff to renew the NPDES permit for the facility.

Tasks 1 through 4 will be completed under Year 4

Task 12-- Project Management

Define client and CH2M HILL project organization, communication, project cost control procedures, document control, health and safety considerations, change management and other project management requirements. Define protocols for communicating with various City and RWQCB staff. In addition, a document management plan will be included in the project management plan.

Manage CONSULTANT staff, prepare project plans including work breakdown structure, provide review and quality assurance, prepare invoices, review project budget, and update senior management. Invoices will be based on one top task. Also, included are meetings and consultations with Federal, State, County and City staff including response to reasonable requests for analysis and reports. A maximum of three meetings are anticipated.

II. Completion of the Scope of Services

CONSULTANT shall complete the Technical Report identified in this Exhibit "A" within the following time frame:

PROJECT SCHEDULE

Task	Completion Date
The following schedule assumes that RWQCB provides their comments within 30 days after submittal of reports. Additional time and fee are needed if RWQCB provides comments after 30 days.	
Task 1 – DO Monitoring Report	3 months after NTP
Task 2 – Salinity Plan	6 months after NTP
Task 3 – Thermal Impacts Evaluation	8 months after NTP
Task 4 – PPP for Mercury	6 months after NTP
Task 5 – PPP for Copper	6 months after NTP
Task 6 – PPP for Salinity	6 months after NTP
Task 7 – Groundwater Monitoring Assistance	12 months after NTP
Task 8 – Preparation of Progress Reports	9 months after NTP
Task 9 -- Meetings with the RWQCB	9 months after NTP
Task 10 – Disinfection Byproducts Reduction Study	4 months after NTP
Task 11 Application for Renewal of NPDES Permit	6 months after NTP
Task 12 – Project Management	12 months after NTP

Exhibit “B” Billing Rate Schedule

Classification	Hourly Rate
Office Staff	
Engineering/Environmental Tech 1	\$71
Engineering/Environmental Tech 2	\$83
Office/Clerical/Accounting	\$83
Staff Engineer 1*	\$110
Engineering/Environmental Tech 3	\$110
Staff Engineer 2*	\$126
Engineering/Environmental Tech 4	\$126
Associate Engineer*	\$143
Engineering/Environmental Tech 5	\$148
Safety/Contract staff	\$170
Project Engineer*/Associate Project Manager	\$176
Engineer Specialist*/Project Manager	\$198
Sr. Technologist/Sr. Project Manager	\$214
Principal Technologist/Principal Project Manager	\$241

1. These rates for all types of labor including permanent, part-time, flex and contract employees and effective through the last day of December and new billing rates will be in effect starting January 1 of the following year.
2. A markup of 10% shall be applied to all Other Direct Costs and Expenses
3. An additional premium of 25% shall be added to the above rates for Expert Witness and Testimony services.

Exhibit "C" Fee Estimate

City of Tracy NPDES Permit Studies--Year 2011/12																				
Task Description	Office staff										Total Hours	Labor (\$)	Expenses (\$)	Subcontractor (\$)	Total Fee (\$)					
	Principal Project Manager	Principal Technologist/Principal Project Manager	Sr. Technologist/Sr. Project Manager	Project Engineer	Associate Engineer	Contracting/Safety	Engineering/Env. Tech 5	Engineering/Env. Tech 3	Office/Clerical/Accounting											
2008/09 Hourly Billing Rates	\$241	\$241	\$214	\$176	\$143	\$170	\$148	\$110	\$83											
1 Effluent Dissolved Oxygen Summary Report	8			30				8				\$ 8,090	\$ 810		\$ 8,900					
2 Salinity Reduction Plan	16		16	60	44			24			160	\$ 26,780	\$ 2,680		\$ 29,460					
3 Evaluation of Thermal Impacts (Year 2 Data Collection)	20			24							44	\$ 9,050	\$ 910		\$ 9,960					
4 Pollution Prevention Plan for Mercury	20	16		110	40		16	16			218	\$ 37,890	\$ 3,790		\$ 41,680					
5 Pollution Prevention Plan for Copper	20	16		110	40		16	16	16		234	\$ 39,220	\$ 3,930		\$ 43,150					
6 Pollution Prevention Plan for Salinity	20	20		120	20		16	24	24		244	\$ 40,620	\$ 4,070		\$ 44,690					
7 Groundwater Monitoring Well Sampling Reports	20	12	8		120	8	20	8	8		204	\$ 32,450	\$ 3,260	\$ 3,000	\$ 38,710					
8 Progress Reports to RWQCB	24			48				16	40		128	\$ 19,320	\$ 1,940		\$ 21,260					
9 Meetings with RWQCB	16			30							46	\$ 9,140	\$ 920		\$ 10,060					
10 THM Reduction Study	16	40		140			24	16	16		252	\$ 44,780	\$ 4,480		\$ 49,260					
11 NPDES Permit Application Renewal	40			160							200	\$ 37,800	\$ 3,780		\$ 41,580					
12 Project Management	80			24		12		18	64		198	\$ 32,840	\$ 3,290		\$ 36,130					
											0									
Subtotal	292	104	24	826	264	20	92	138	168	1,928	\$ 329,890	\$ 33,050	\$ 3,000	\$ 374,840						

RESOLUTION _____

AUTHORIZING TASK ORDER CH01-14 TO MASTER PROFESSIONAL SERVICES AGREEMENT CH01 WITH CH2M HILL FOR SERVICES RELATED TO WASTEWATER DISCHARGE PERMIT STUDIES FOR THE TRACY WASTEWATER TREATMENT PLANT AND AUTHORIZING THE MAYOR TO EXECUTE THE TASK ORDER

WHEREAS, In 2007, the California Regional Water Quality Control Board (RWQCB), Central Valley Region, adopted waste discharge requirements for the City's Wastewater Treatment Plan, and

WHEREAS, Included in the requirements are the preparation of 14 studies and reports; work on these studies commenced three years ago and some portions are ongoing.

WHEREAS, The RWQCB has approved the multi-year work plans, and data collection and analysis are underway, and

WHEREAS, Of the 14 studies, four studies have been completed: Best Practical Treatment or Control of Salinity (Task 5), Treatment Feasibility Study for Copper (Task 7), Copper Corrective Action Plan (Task 11), and the Groundwater Monitoring Work Plan and Well Installation (Task 14), and

WHEREAS, This Task Order authorizes the fourth year of services of a multi-year year program. The information obtained from these studies, in addition to being mandated by the RWQCB, will be helpful in negotiating favorable conditions in the National Pollutant Discharge Elimination System (NPDES) permit renewal process which will commence in November 2011, and

WHEREAS, CH2M Hill was selected through a competitive bidding process to provide necessary consulting services for wastewater treatment engineering and planning services. The work in this contract is a continuation of previous work. The work is being performed over a number of years due to data collection needs, budget constraints and on-going review by the RWQCB, and

WHEREAS, There is no fiscal impact to the General Fund, and

WHEREAS, These services are included in the approved budget as CIP 74073 NPDES Permit Technical Studies and the estimated cost is \$374,840;

NOW, THEREFORE, BE IT RESOLVED That the City Council authorizes Task Order CH01-14 to Master Professional Services Agreement No. CH01 with CH2M Hill for services related to NPDES permit studies for the Tracy Wastewater Treatment Plant and authorizes the Mayor to execute the Task Order.

* * * * *

RESOLUTION _____

Page 2

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 4th day of October, 2011, a by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3

REQUEST

PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL AT 2200 NORTH MARTIN ROAD A PUBLIC NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, APPROVE A CONTRACTOR TO ABATE SAID NUISANCES, AND APPROVE A SUPPLEMENTAL APPROPRIATION FROM THE CITY'S GENERAL FUND

EXECUTIVE SUMMARY

The Code Enforcement Division of Development & Engineering Services (DES) performs inspections upon receipt of complaints regarding the existence of weeds, rubbish, refuse and flammable material on residential and commercial parcels. Abatement notices have been sent to the property owner pursuant to Section 4.12.280 of the Tracy Municipal Code, ordering the property owner to abate the nuisance within 20 days of receipt of the abatement order.

Said notice outlines the time and date of the Public Hearing to be conducted by the City Council to address any and all objections to the proposed abatement and, as necessary, authorize Code Enforcement staff to direct the City's contractor to abate parcels determined to be a nuisance.

DISCUSSION

On April 7, 2011 the City of Tracy Code Enforcement staff received a complaint and followed up with inspecting the residence located at 2200 North Martin Road, Tracy, California, hereinafter referred to as the "referenced property" and determined the referenced property is a public nuisance per the 2010 California Fire Code (CFC) and the Tracy Municipal Code (TMC) Chapter 1.32. The referenced property is a public nuisance because of violations of the California Fire Code and the Tracy Municipal Code.

It was determined that if the tumbleweeds, weeds, rubbish, refuse, and flammable materials are not removed from the property, they have the potential of becoming a fire hazard and constitute a public nuisance under Tracy Municipal Code section 4.08.260. Also found in and around the property was an excessive amount of garbage, debris and an overall accumulation of items both inside and outside the structure. Voluntary compliance is the ultimate goal in abatement of nuisances within the City of Tracy. However, given the lack of response by the property owner and due to the severity of health and safety issues associated with this case, the City has no other alternative than to move forward with forced compliance remedies. To date, Code Enforcement staff has issued four violation notices, three criminal citations, and \$400 in administrative citations.

On September 8, 2011, pursuant to Tracy Municipal Code, Section 4.12.280, the Code Enforcement Department sent a notice to the property owner. The notice required the owner to abate weeds, rubbish, refuse and flammable material on the parcel within twenty days of receipt of the notice and further advise the owner of the City's intent to abate the nuisance following Council's consideration of the matter during a public hearing. The Tracy Municipal Code provides that upon failure of the owner, or

authorized agent, to abate the nuisance within twenty days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property. All unpaid assessments will be filed with the San Joaquin County Auditor Controller's office to establish a lien on the property. As of the date of writing this report, the nuisances in the front yard have been partially abated; however, access to the back yard and the interior of the structure have been restricted and are unable to verify if any progress has been made in eliminating the nuisances. As a result, staff is proceeding with the preparation of an inspection warrant for judicial approval to substantiate that violations continue to exist both inside the structure and within the back yard of the property.

Upon Council's direction, abatement proceedings will begin and upon conclusion, the property owner billed for all costs associated with the abatement, including contractor's charges plus a 25% administrative fee. Abatement fees are calculated based on the labor involved and the amount of weeds, rubbish, refuse, and/or flammable materials removed from the property.

STRATEGIC PLAN

This agenda item relates to the City Council's Public Safety Strategy. More specifically, the goal to eliminate blighted and dangerous building conditions throughout community.

FISCAL IMPACT

Staff estimates the cost to abate this property to be approximately \$10,000 to \$11,000. The property owner will be billed for all costs associated with the abatement, including contractor's charges plus a 25% administrative fee. Staff requests a supplemental appropriation in the amount of \$11,000 from the City's General Fund. The City will be reimbursed the cost of the abatement once the property is sold, transfers ownership, or is refinanced.

RECOMMENDATION

Staff recommends that City Council conduct a Public Hearing to hear and consider any and all objections to the proposed abatement, and by resolution, declare the weeds, rubbish, refuse, and flammable material located at 2200 North Martin Road to be a nuisance, authorize the Code Enforcement Division to direct a contractor to abate such nuisances with the total cost for abatement to be placed with the San Joaquin County Auditor Controller's Office as a tax lien against the property.

Prepared by: Laura Serrano, Administrative Assistant II
Reviewed by: Ana Contreras, Community Preservation Manager
Approved by: Andrew Malik, Development and Engineering Services Director
Leon Churchill Jr., City Manager
Attachment: Exhibit A - Notice of Intent to Abate



City of Tracy
 Development & Engineering Services Department
 Code Enforcement Division
 333 Civic Center Plaza
 Tracy, CA 95376

**Notice To Remove Weeds, Rubbish, Refuse, and/or Flammable Materials
 (Fire Hazard)**

Date of Abatement Order: September 8, 2011

Case Number: 08CD-00863

Property Owner: Ronald D. Mullins

C/o: Olga Mullins

Assessor Parcel No.: 232-100-62

Address of Property in Violation: 2200 North Martin Road, Tracy, California 95376

Property Owner's Mailing Address: 1700 W. Duncan Drive, Tracy, CA 95376

**RONALD D. MULLINS,
 AS OWNER OF THE ABOVE REFERENCED PROPERTY,
 YOU ARE HEREBY SERVED THIS NOTICE TO REMOVE WEEDS, RUBBISH,
 REFUSE, AND/OR FLAMMABLE MATERIALS**

On April 7, 2011, May 4, 2011 and May 31, 2011 the City of Tracy Code Enforcement staff inspected the residence located at 2200 North Martin Road, Tracy, California, hereinafter referred to as the "referenced property" and determined the referenced property is being maintained as a public nuisance per the 2010 California Fire Code (CFC) and the Tracy Municipal Code (TMC) Chapter 1.32. The referenced property is a public nuisance because of violations of the California Fire Code and the Tracy Municipal Code which are set forth in more detail in the table below.

It was determined that if the tumbleweeds, weeds, rubbish, refuse, and/or flammable materials are not removed from the property, they have the potential of becoming a fire hazard and constitute a public nuisance under Tracy Municipal Code section 4.08.260. For the safety of your property and those around you, the potential fire hazard must be removed.

Article 6 of Tracy Municipal code 4.12 (sections 4.12.250 et seq.) provides that you, as the property owner, have twenty (20) days to remove any such thing declared by the provisions of that article to be a public nuisance. Any property owner may abate the nuisance at his own expense prior to abatement by the City.

Weeds shall not exceed 4 inches in height and the preferred method of removing them is by disking, rototilling, or flail cutting (closely cut to the ground). Weeds shall be removed from around all fence lines. Handwork may be required to clear the borders around structures or fences. All cuttings must be removed from the property to reduce the fire hazard. Please see the attached Order to Abate for additional correction requirements.

Notice to Remove Weeds, Rubbish, Refuse and/or Flammable Materials
2200 North Martin Road
September 8, 2011
Page 2

The Code Enforcement Division will be conducting a re-inspection of your property on October 3, 2011. If your property is still out of compliance, abatement procedures will begin and you may be billed for all costs associated with abating the property (which includes the contractor's charges plus a 25% administrative fee). Abatement fees are calculated based on the labor involved and can be very expensive regardless of the size of the lot or the amount of weeds, rubbish, refuse, and/or flammable materials removed from the property.

A "Public Hearing" will be conducted at 7:00 p.m. on October 4, 2011 at the regular City Council meeting at 333 Civic Center Plaza, Tracy, to hear and consider any and all objections to the proposed abatement. By motion or resolution the Council shall allow or overrule any objections. At that time the council shall acquire jurisdiction to proceed and perform the abatement of the nuisance. The decision of the Council shall be final. After having disposed of any objections, the council shall, by motion or resolution, order the abatement of the nuisance.

If you've removed the potential fire hazard(s) from your property or if you have questions about this notice, please call (209) 831-6410 and be prepared to leave your name, telephone number, situs address and parcel number.

Sincerely,



JIM DECKER
Code Enforcement Officer / Building Inspector II

Attachment: Order to Abate dated June 30, 2011



City of Tracy
Development & Engineering Services Department
Code Enforcement Division
333 Civic Center Plaza
Tracy, CA 95376

ORDER TO ABATE PUBLIC NUISANCE OR SHOW CAUSE

Date of Abatement Order: June 30, 2011
Case Number: 08CD-00863
Property Owner: Ronald D. Mullins
Assessor Parcel No.: 232-100-62
Address of Property in Violation: 2200 North Martin Road, Tracy, California 95376
Property Owner's Mailing Address: 1700 West Duncan Drive, Tracy, CA 95376

**RONALD D. MULLINS,
AS OWNER OF THE ABOVE REFERENCED PROPERTY,
YOU ARE HEREBY SERVED THIS
ORDER TO ABATE PUBLIC NUISANCE OR SHOW CAUSE**

On April 7, 2011, City of Tracy Code Enforcement staff inspected the residence located at 2200 North Martin Road, Tracy, California, hereinafter referred to as the "referenced property" and determined the referenced property is being maintained as a public nuisance per the 2010 California Fire Code (CFC) and the Tracy Municipal Code (TMC) Chapter 1.32. The referenced property is a public nuisance because of violations of the California Fire Code and the Tracy Municipal Code which are set forth in more detail in the table below.

NARRATIVE

This property consists of a single family residence with an attached garage. The front, side and back yards have overgrown vegetation and weeds. The public sidewalk in front of the residence is partially blocked with this vegetation. The back, side yards and the residence contain trash, garbage and refuse including but not limited to; paper, cardboard, broken appliances, tires, glass, plastic storage containers, tin cans, clothing, kitchen utensils, lumber, ceramic tile, processed food items, broken furniture, dead tree branches and an in-operative vehicle. This property was previously inspected on October 21, 2010, a violation notice was left at the property and a copy mailed to the property owner. Follow-up inspections were done on November 10, 2010, December 14, 2010, and April 7, 2011. No evidence of any effort to correct the violations was noted. Olga E. Mullins, who was in control of the property during her son's current incarceration, was contacted at her residence on April 7, 2011 and issued an infraction citation for the accumulation of garbage and refuse. A follow up inspection was done on April 14, 2011. The structure was found open and unsecured with gas leaking from a damaged flex line in the garage. The gas line was damaged due to persons unknown entering the garage and removing the water heater. PG & E was notified, responded and removed the gas meter.

VIOLATION DEFINITIONS

Order to Abate Public Nuisance or Show Cause
2200 North Martin Road
June 30, 2011
Page 3

If you do not abate the above-described nuisance on or before the dates set forth above, or if you do not provide the City of Tracy Code Enforcement Division with a written request for an administrative hearing on this matter and an administrative hearing officer does not specify otherwise at any hearing that may be held, the City will enter the property and abate the nuisance. Pursuant to TMC Sections 1.32.060, 1.32.070, 1.32.080 and 1.32.090, the cost of abatement may become a charge against you personally and a lien or special assessment against the referenced property. Be advised that, due to administrative overhead and other costs related with being a public entity, the City's cost will likely be **much higher** than the cost of abating the nuisance by you or your contractor.

Failure to respond to this order may result in further action, up to and including Administrative and/or Criminal Citations issued for each day the violations continue to exist until all work set forth above is completed. Pursuant to Tracy Municipal Code Section 1.28, this Notice and Order serves as notification that the Tracy Municipal Code provides the legal authority to issue Administrative Citations for TMC violations. The fines are \$100.00 for the first citation, \$200.00 for the second, \$500.00 for the third **and subsequent citations for violations of the same code section within one year**. These fines are cumulative and new citations may be issued for *each day the violation continues to exist*. A person who receives an Administrative Citation may contest the citation in the form of an appeal. Details regarding the appeal process are set forth in Chapter 1.28, attached.

Please be further advised that California law authorizes the Court to appoint a receiver to take possession of your property for the purposes of abating all nuisances. Pursuant to that receivership process, the receiver may have the ability to sell the property to recover all costs of abating the nuisance, including attorney fees, with the receiver's lien taking priority over any liens on the property that may be in effect at the time of the sale.

Any person having record title or legal interest in the referenced property may request an administrative hearing on this Order to Abate Public Nuisance or Show Cause provided the appeal is made pursuant to TMC Section 1.32.040(a) which specifies that a "written request for hearing must be received by the enforcement officer within the time specified in the notice to abate or show cause." Pursuant to TMC Section 1.32.040(a), failure to provide the City of Tracy with a written request for a hearing on this Order by July 30, 2011 shall constitute a waiver of all rights to an administrative hearing as to the validity of the Order to Abate.

If you have any questions regarding this Order to Abate or Show Cause and the provisions contained herein, please contact me at (209) 831-6408, Monday – Thursday, 8:00 a.m. to 6:00 p.m. and every other Friday, 8:00 a.m. to 5:00 p.m.

Sincerely,



JIM DECKER
Code Enforcement Officer / Building Inspector II

Attachments:

- Tracy Municipal Code Chapter 1.28 – Administrative Citations and Penalties

before issuing the decision. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.110 Hearing officer's decision.

(a) Decision. After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation. The hearing officer shall State the reasons for the decision and shall send a copy of the decision to the person requesting the hearing and to the enforcement officer. The decision of the hearing officer is final, and may not be appealed under chapter 1.12.

(b) Status of fine. If the citation is upheld, then the fine amount on deposit with the City shall be retained by the City. If the fine has not been deposited because there was an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

If the person cited requests a reduction in the fine under section 1.28.050(c), the hearing officer's decision shall respond to that request. If the fine has been reduced, the City shall refund the difference between the amount on deposit with the City and the amount of the reduced fine.

If the citation is canceled, the City shall promptly refund the amount of any fine deposited, together with interest at the average rate earned on the City's portfolio for the period of time that the fine was held by the City.

(c) No employment evaluation based on citations upheld. If the hearing officer is an employee of the City, the employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by the amount of administrative citation fines upheld by the hearing officer. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.120 Late payment charges.

A person who fails to pay to the City any fine imposed under this chapter on or before the due date is liable for payment of any applicable late payment charges set forth in the schedule of fines. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.130 Recovery of administrative citation fines and costs.

(a) A person who fails to pay any fine or other charge owed to the City under this chapter is liable in any action brought by the City for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees. Such collection costs are in addition to any fines, interest, and late charges.

(b) In addition to the administrative citation fine, the City may collect its administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs.

(c) The City may collect any past due administrative citation fine and other costs and charges by any available legal means. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.140 Right to judicial review.

Notwithstanding section 1.20.010 of this Code, a person aggrieved by an administrative decision by a hearing officer under this chapter may obtain review of the administrative decision by filing a petition for review with the Superior Court of California, San Joaquin County, Tracy Branch, within twenty (20) days after service of the final decision, in accordance with Government Code section 53069.4. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.150 Notices.

(a) Method of service. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party either by personal service, by first class mail, or by certified mail, return receipt requested. (See section 1.08.100.)

(b) Real property. When real property is involved in the violation, the original notice, the administrative citation and all notices required to be given by this chapter shall be served on the responsible party and, if different, to the property owner at the address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The City may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

(c) Failure to receive notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter. (Ord. 1040 § 2 Exh. B (part), 2002)

the seriousness of the violation; (D) the good faith efforts of the violator to come into compliance; (E) the impact of the violation on the community; and (F) such other factors as justice requires. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.060 Payment of the fine.

(a) Due date. The fine shall be paid to the City within thirty (30) days from the date of the administrative citation. The City may suspend the imposition of fines for any period of time during which the violator has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

(b) Refund. The City shall refund a fine paid if the hearing officer determines, after a hearing held under section 1.28.090, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.

(c) Further violations not excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.070 Hearing request.

A person who receives an administrative citation may contest the citation on the basis that there was no violation of the Code or that he or she is not the responsible party. To contest the citation, the person shall submit a request for hearing form to the City within thirty (30) days from the date of the administrative citation. The request form may be obtained from the department specified on the citation. The completed request must be submitted together with either an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed under section 1.28.080. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.080 Advance deposit hardship waiver.

(a) A person who intends to contest an administrative citation under section 1.28.070 and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver under this section.

(b) An advance deposit hardship waiver shall be filed with the finance department on a form provided by that department. The application submitted shall include an affidavit, together with any supporting documents or materials, demonstrating the person's actual financial inability to deposit with the City the full amount of the fine. The waiver form shall be filed within ten (10) days of the date of the administrative citation.

(c) The requirement of depositing the fine shall be stayed unless or until the Finance Director makes a determination not to issue the advance deposit hardship waiver.

(d) The Finance Director may waive the requirement of an advance deposit under section 1.28.070 and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the director the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.

(e) The director shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the director is final. The written determination shall be served upon the person who applied for the waiver.

(f) If the director determines not to issue a waiver, the person cited shall deposit the fine with the City within ten (10) days of the date of that decision or thirty (30) days from the date of the citation, whichever is later. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.090 Hearing procedure.

(a) Setting the hearing. A hearing before the hearing officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed. The person requesting the hearing shall be notified of the time and place set for the hearing as soon as it is set, and at least ten (10) days before the hearing. If the enforcement officer submits a written report concerning the citation to the hearing officer for consideration at the hearing, then a copy of the report shall be served on the person requesting the hearing at least five (5) days before the hearing.

No hearing shall be held unless the fine has been deposited in advance, under section 1.28.070 or an advance deposit hardship waiver has been issued under section 1.28.080.

(b) Failure to appear. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

(c) At the hearing. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. At the hearing, the party contesting the citation shall be given the opportunity to testify and to present evidence concerning the citation.

(d) Continuances. The hearing officer may continue the hearing and may request additional information from the enforcement officer or the person receiving the citation

RESOLUTION 2011- _____

DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL AT 2200 NORTH MARTIN ROAD A PUBLIC NUISANCE; CONSIDERING OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND APPROVING A CONTRACTOR TO ABATE SAID NUISANCES

WHEREAS, On April 7, 2011 the City of Tracy Code Enforcement staff inspected the residence located at 2200 North Martin Road, Tracy, California, and determined the referenced property is a public nuisance per the 2010 California Fire Code (CFC) and the Tracy Municipal Code (TMC) Chapter 1.32, and

WHEREAS, On September 8, 2011 and September 12, 2011, pursuant to Tracy Municipal Code, Section 4.12.280, the Code Enforcement Department sent a notice to the property owner, and

WHEREAS, The notice required the owner to abate weeds, rubbish, refuse and flammable material on the parcel within twenty days of receipt of the notice and further advised the owner of the City's intent to abate the nuisance following Council's consideration of the matter during a public hearing, and

WHEREAS, The nuisances continue to exist with no effort made on the part of the property owner to abate the violations, and

WHEREAS, Abatement proceedings will begin and upon conclusion, the property owner billed for all costs associated with the abatement, including contractor's charges plus a 25% administrative fee, and

WHEREAS, The cost to abate this property is estimated at approximately \$10,000 to \$11,000. The property owner will be billed for all costs associated with the abatement, including contractor's charges plus a 25% administrative fee. The funds are available in the FY2011-12 program budget account 101-56510-621 P5610, Demolition Work;

NOW, THEREFORE, BE IT RESOLVED That City Council declares the weeds, rubbish, refuse, and flammable material located at 2200 North Martin Road to be a nuisance, authorizes the Code Enforcement Division to direct a contractor to abate such nuisances with the total cost for abatement to be placed with the San Joaquin County Auditor Controller's Office as a tax lien against the property.

The foregoing Resolution _____ was adopted by the Tracy City Council on the 4th day of October, 2011 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST

CITY CLERK

AGENDA ITEM 4

REQUEST

INTRODUCTION OF AN ORDINANCE AMENDING SECTION 3.08.580 OF THE TRACY MUNICIPAL CODE WHICH REGULATES THE ESTABLISHMENT OF SPECIAL SPEED ZONES

EXECUTIVE SUMMARY

To assist the Police Department in enforcing posted traffic speed on streets using radar equipment, it is necessary to establish speed limits in accordance with the requirements of the California Vehicle Code (CVC). The CVC requires completion of engineering and traffic surveys to establish posted speeds on streets once every five years. Staff has recently completed engineering and traffic surveys to update speed limits on arterial and collector streets (14 segments) in accordance with the CVC and California Manual of Uniform Traffic Control Devices and recommends introduction of an ordinance updating and amending special speed zones.

DISCUSSION

The use of radar equipment is one of the most effective tools for enforcing speed limits and traffic safety on City streets. To assist the Police Department in fully using the equipment, it is necessary to establish speed limits in accordance with the requirements of the California Vehicle Code (CVC). To legally use radar equipment for speed enforcement, engineering and traffic surveys are needed to establish posted speeds once every five years. Also, if any major renovation to the street occurs that changes the characteristics of the roadway, traffic surveys are needed to re-establish speed limits in those segments.

Section 3.08.580, Article 12, of the Tracy Municipal Code (TMC) establishes speed zones on various streets in the City. The speed limit on streets is established on the basis of engineering and traffic surveys and the applicable traffic engineering standards. Speed limits in the vicinity of schools are posted in accordance with the requirements of the CVC and the California Manual of Uniform Traffic Control Devices. Because these surveys are good for a period of five years, the amendment to the TMC is necessary every five years to update these surveys resulting in an update of posted speeds.

An engineering and traffic survey was completed on a total of 14 segments of arterial and collector streets by the Engineering Division in August 2011. This survey is used to update the posted speeds and provide the basis for the proposed amendments of the TMC, thus resulting in continuation of special speed zones with updated speed limits on the street segments listed in Exhibit A and shown in Exhibit B.

This update to the TMC will establish radar enforceable speed limit zones for segments on arterial and collector streets including Barcelona Drive, Central Avenue, Dove Drive/Way, Eastlake Circle, Glenbrook Drive, Grant Line Road, Jackson Avenue, Jefferson Parkway, Presidio Place, Starflower Drive and Summer Lane.

Speed limits are only recommended to be changed on Grant Line Road as listed in this agenda item. Minor corrections are made to the street names on Dove Drive/Way and Starflower Drive without any changes to the speed limits. The speed limits on the remaining 11 street segments surveyed remain unchanged.

Grant Line Road was recently widened from a two lane roadway to a four lane roadway segment between Parker Drive and Mac Arthur Drive. The speed survey shows that existing speed limits on Grant Line Road should be changed from 35 mph to 40 mph. This will raise the existing speeds by 5mph and will be consistent with the remaining Grant Line Road segment. Speed limits on all other remaining streets segments will remain unchanged. The following table lists the proposed changes on the Grant Line Road segment:

Street	Segment	Previously Established	Newly Established	Change
Grant Line Road	Tracy Boulevard to MacArthur Drive	35	40	5 mph up

The following roadway segments are changed relative to name only; no changes to the speed limits are proposed.

Street	Segment	Previously Posted	Newly Established	Change
Dove Drive/Way ¹	Sycamore Parkway to Starflower Drive	25	25	-
Starflower Drive	Corral Hollow Road to Dove Drive/Way ²	25	25	-
Summer Lane	Eleventh Street to Brittany Way ³	25	25	-

¹ Noted as Dove Street in the existing Tracy Municipal Code
² Noted as Dove Street in the existing Tracy Municipal Code
³ Noted as Brittany Place in the existing Tracy Municipal Code

The recent survey also indicated that Chrisman Road between Eleventh Street and Brichetto Road is within the jurisdiction of San Joaquin County. Therefore all references to this segment in the speed zone article shall be removed. In addition, suffixes/prefixes such as Drive, Way, Road, etc. for a few street names in the Tracy Municipal Code have been corrected to match the names listed in the San Joaquin County Assessor's Map books. Exhibit D reflects the corrected street names as an update to the Tracy Municipal Code.

The recommendations are primarily based upon the 85th percentile speed of surveyed moving vehicles on those streets under normal conditions with consideration given to the existing road site conditions such as street alignment, classification, collision history, etc. These considerations allow further adjustment of the surveyed speed based on the above conditions in accordance with the provisions of the CVC. The recommended speed limits have already been adjusted for such considerations. Research indicates that posting speeds lower than the closest 85th percentile speed does not lower the speed of motorists unless the above constraints exist.

The Police Department has reviewed the surveys and concurs with the proposed speed limits. A copy of the proposed Ordinance Amendment is provided as Exhibit C. Exhibit D provides an update of the table for TMC section 3.08.580.

A copy of all engineering and traffic surveys certified as correct by the City Engineer will be maintained in the Engineering Division files with a duplicate copy on file with the Police Department (Exhibit E).

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no fiscal impact to the General Fund. Enforcement of speed limits is a budgeted item and is the Police Department's responsibility. Signing and striping is a budgeted item and changes as a result of speed changes will be performed by Public Works staff. This recommended change involves only one speed sign on Grant Line Road.

RECOMMENDATION

That City Council introduce an ordinance amending Section 3.08.580, "Special Speed Zones," Article 12, of the Traffic Regulations of the Tracy Municipal Code.

Prepared by: Ripon Bhatia, Senior Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

Attachments

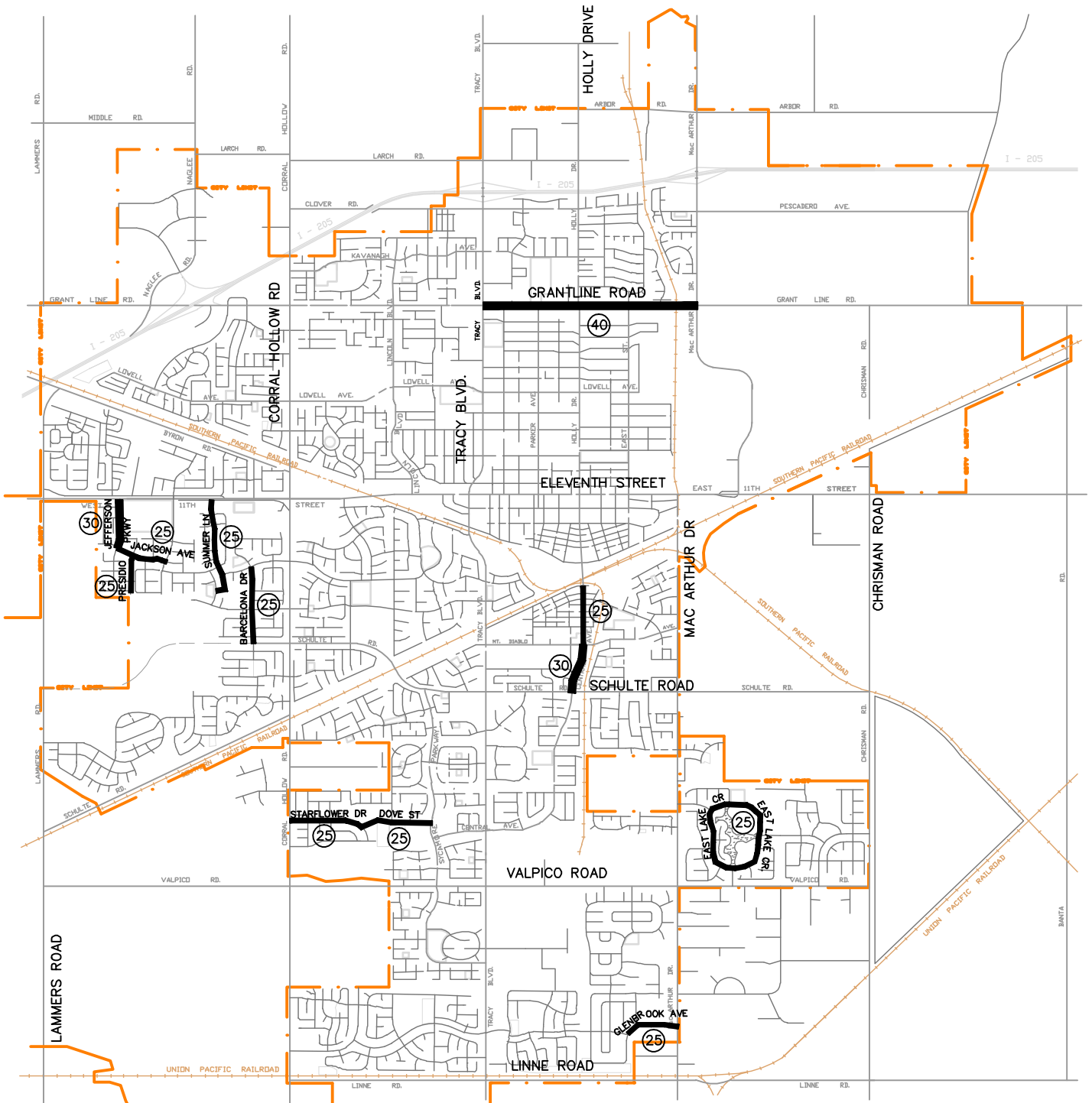
- Exhibit – A List
- Exhibit – B Map
- Exhibit – C Ordinance
- Exhibit - D Table Update in Ordinance
- Exhibit - E Engineering & Traffic Speed Survey Report 2011

Exhibit "A"

Sr. No	Name of Street	Portion of Segment	Previously Established Limit	85th Percentile Speed	Recommended Speed Limit
1	Barcelona Drive	Cypress Drive to Tennis Lane	25	31.9	25
2	Barcelona Drive	Tennis Lane to Schulte Road	25	31.6	25
3	Central Avenue	Fourth Street to Mount Diablo Avenue	25	32	25
4	Central Avenue	Mount Diablo Avenue to Schulte Road	30	35.8	30
5	Dove Drive/Way	Sycamore Pkwy to Starflower Drive	25	32	25
6	Eastlake Circle	Carter Place to Lakeview Drive (West Side)	25	30.8	25
7	Eastlake Circle	Carter Place to Lakeview Drive (East Side)	25	28	25
8	Glenbrook Drive	Brookview Drive to Mac Arthur Drive	25	31.8	25
9	Grant Line Road	Tracy Blvd. to Mac Arthur Drive	35	43.7	40
10	Jackson Avenue	Crossroads Drive to Jefferson Parkway	25	31.3	25
11	Jefferson Parkway	Eleventh Street to Jackson Avenue	30	35.8	30
12	Presidio Place	Jackson Avenue to Compton Place	25	31.8	25
13	Starflower Drive	Corral Hollow Road to Dove Drive/Way	25	32	25
14	Summer Lane	Eleventh Street to Brittany Way	25	31.9	25

EXHIBIT B

AUGUST 2011



LEGEND

- 25 MPH
- 30 MPH
- 40 MPH



SPEED ZONE SURVEY
2011

DESIGNED BY
DM
DRAWN BY
DM
CHECKED BY
RB
SCALE
NTS

REVISIONS			
SYMBOL	DATE	DESCRIPTION	APPROVED

SHEET 1
OF 1 SHEETS

CITY OF TRACY

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

KULDEEP SHARMA CITY ENGINEER DATE

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY, AMENDING SECTION 3.08.580, OF CHAPTER 3.08 (TRAFFIC REGULATIONS) OF TITLE 3 (PUBLIC SAFETY) OF THE TRACY MUNICIPAL CODE

WHEREAS, The use of radar equipment is one of the most effective tools for enforcing speed limits and traffic safety on City streets, and

WHEREAS, Subsection (c) of California Vehicle Code section 40803 provides that evidence of conducting a speed zone survey within the last five years to establish the prima facie speed for a local street or road shall constitute a prima facie case that such local street or road is not a speed trap for the purposes of radar enforcement, and

WHEREAS, City staff completed an Engineering & Traffic survey in August of 2011, and

WHEREAS, The survey shows that the declared prima facie speed limits are still accurate for the majority of the City's streets and roads, and

WHEREAS, The survey shows that certain street portions require a change in the declared prima facie speed limits as set forth below, and

NOW THEREFORE, The City Council of the City of Tracy, does ordain as follows:

SECTION 1: Amended Section. Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to change the previously established Declared Prima Facie Speed Limit (Miles per Hour) for the below described Portions of Streets:

Name of Street or Portion Affected	Declared Prima Facie Speed Limit (Miles per Hour)
- Grant Line Road Tracy Boulevard to Mac Arthur Drive	40

SECTION 2: Amended Section. Section 3.08.580 of Chapter 3.08 of Title 3 of the Tracy Municipal Code is hereby amended to correct description for segments with a Declared Prima Facie Speed Limit (Miles per Hour) for the below described street portions:

<u>Name of Street or Portion Affected</u>	Declared Prima Facie Speed Limit (<u>Miles per Hour</u>)
- Dove Drive/Way Sycamore Parkway to Starflower Drive	25
- Starflower Drive Corral Hollow Road to Dove Drive/Way	25

SECTION 3: Remaining sections. Except as herein amended, the remaining sections of the Tracy Municipal Code, including the Declared Prima Facie Speed Limit (Miles per Hour) for the Portions of Streets not set forth above, shall remain in full force and effect.

SECTION 4: Title, chapter, and section headings. Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 5: Constitutionality. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6: Effective date. This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 7: Publication. This Ordinance shall be published once in the Tracy Press, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the 4th day of October, 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

Exhibit D

3.08.580 Special speed zone Table

Name of Street or Portion Affected	Declared Prima Facie Speed Limit (Miles per Hour)
- Arbor Avenue	
West City limits to east City limits	40
- Balboa Drive	
Portola Way to Clover Road	25
- Barcelona Drive	
Cypress Drive to Schulte Road	25
- Beechnut Avenue	
Sequoia Boulevard to Tracy Boulevard	30
- Beverly Place	
Lincoln Boulevard to Tracy Boulevard	25
- Bricchetto Road	
Chrisman Road to east City limits	50
- Brookview Drive	
Regis Drive to Reids Way	30
Reids Way to Glenbrook Drive	25
- Buthmann Avenue	
Grant Line Road to Clover Road	25
- Byron Road	
Corral Hollow Road to Lammers Road	45
- Central Avenue	
Sycamore Parkway to Tracy Boulevard	35
Tracy Boulevard to Mount Diablo Avenue	30
Mount Diablo Avenue to Eleventh Street	25
- Chester Drive	
Eaton Avenue to Lowell Avenue	25
- Chrisman Road	
Valpico Road to north City limits	45

- Clover Road	
West City limits to Holly Drive	25
- Corral Hollow Road	
North City limits to Grant Line Road	35
Grant Line Road to Eleventh Street	40
Eleventh Street to Parkside Drive	40
Parkside Drive to Valpico Road (City limits)	40
Valpico Road to Linne Road (City limits)	45
1100' south of Linne Road to I-580	50
I-580 to south City Limits	55
- Crossroads Drive	
Greystone Drive to Eleventh Street	35
Eleventh Street to Gaines Lane	30
- Cypress Drive	
Hickory Avenue to Corral Hollow Road	25
Corral Hollow Road to Summer Lane	30
- Dominique Drive	
Eastlake Circle to Elissagary Drive	30
- Dove Drive/Way	
Sycamore Parkway to Starflower Drive	25
- East Lake Circle	
Crater Place to Lakeview Drive (East side)	25
Crater Place to Lakeview Drive (West side)	25
- East Street	
Sixth Street to Grant Line Road	25
- Eaton Avenue	
Richard Drive to East Street	25
- Eleventh Street	
West City limits to Lammers Road	55
Lammers Road to Corral Hollow Road	45
Corral Hollow Road to Lincoln Boulevard	35
Lincoln Boulevard to Tracy Boulevard	30

Tracy Boulevard to East Street	30
East Street to the east City limits	35
Chrisman Road to east City limits (isolated portion within City limits)	55
- Entrada Way	
Grant Line Road to Portola Way	25
- Fabian Road	
Lammers Road to Mamie Anderson Lane	35
- Fourth Street	
Tracy Boulevard to Central Avenue	35
- Glenbriar Drive	
Valpico Road to Glenbriar Circle	30
- Glenbrook Drive	
Brookview Drive to MacArthur Drive	25
- Grant Line Road	
West City limits to Corral Hollow Road	40
Corral Hollow Road to Tracy Boulevard	40
Tracy Boulevard to MacArthur Drive	40
MacArthur Drive to east City Limits	45
- Henley Parkway	
Lowell Avenue to Bridle Creek Drive	35
- Holly Drive	
Eleventh Street to Clover Road	25
Clover Road to the north City limits	35
- Jackson Avenue	
Crossroads Drive to Jefferson Parkway	25
- Jefferson Parkway	
Eleventh Street to Jackson Avenue	30
- Joe Pombo Parkway	
Bridle Creek Drive to Grant Line Road	35
- Kavanagh Avenue	
Corral Hollow Road to Tracy Boulevard	25
Tracy Boulevard to Balboa Drive	25

- Lammers Road	
Eleventh Street to Byron Road	40
Eleventh Street to City limits south of Jaguar Run	40
Redbridge Road to Schulte Road (City Limits)	45
- Larch Road	
Tracy Boulevard to Holly Drive	35
- Lauriana Lane	
Schulte Road to Cypress Drive	30
- Lincoln Boulevard	
Eleventh Street to Grant Line Road	30
- Linne Road	
West City limits to east City limits	45
- Lowell Avenue	
Blanford Lane to Corral Hollow Road	30
Corral Hollow Road to Lincoln Boulevard	30
Lincoln Boulevard to Tracy Boulevard	30
Tracy Boulevard to East Street	25
- MacArthur Drive	
South City limits to Fair Oaks Road	35
Fair Oaks Road to Valpico Road	40
Valpico Road to Schulte Road	45
Schulte Road to SPRR Tracks	40
SPRR Tracks to Eleventh Street	30
Eleventh Street to I-205 Interchange	40
I-205 Interchange to north City limits	40
- Middlefield Drive	
Corral Hollow Road to Whispering Wind Drive	35
Whispering Wind Drive to Peony Drive	25
- Mt. Diablo Avenue	
Tracy Boulevard to Central Avenue	25
Central Avenue to MacArthur Drive	25
- Naglee Road	

Grant Line Road to north City limits	35
- Orchard Parkway	
Lowell Avenue to Grant Line Road	35
- Paradise Avenue	
Grant Line Road to north City limits	40
- Parker Avenue	
Eleventh Street to Grant Line Road	25
- Parkside Drive	
Winter Lane to Corral Hollow Road	25
- Pescadero Avenue	
MacArthur Drive to 2,500' east of MacArthur Drive	35
2,500' east of MacArthur Drive to east City limits	40
- Portola Way	
Holly Drive to Entrada Way	25
- Presidio Place	
Jackson Avenue to Compton Place	25
- Richard Drive	
Lincoln Boulevard to Eaton Avenue	25
- Schulte Road	
Corral Hollow Road to Tracy Boulevard	40
Tracy Boulevard to MacArthur Drive	35
Corral Hollow Road to west City limits (along RR tracks)	45
Corral Hollow Road to Mabel Josephine Drive	35
- Sequoia Boulevard/Avenue	
Alden Glen Drive to Beechnut Avenue	25
- Sixth Street	
Tracy Boulevard to MacArthur Drive	30
- Starflower Drive	
Corral Hollow Road to Dove Drive/Way	25
- Summer Lane	
Eleventh Street to Brittany Way	25
- Sycamore Parkway	

Tracy Boulevard to Valpico Road	30
Valpico Road to Schulte Road	35
- Tennis Lane	
Corral Hollow Road to Jill Drive	25
Tracy Boulevard to Corral Hollow Road	25
- Tenth Street	
Tracy Boulevard to East Street	25
Civic Center Drive to Mac Arthur Drive	25
- Third Street	
Central Avenue to Mt. Diablo Avenue	25
- Tracy Boulevard	
South City limits to Linne Road	40
Linne Road to Valpico Road	40
Valpico Road to Schulte Road	40
Schulte Road to Sixth Street	35
Sixth Street to Lowell Avenue	35
Lowell Avenue to Grant Line Road	35
Grant Line Road to Larch Road	30
Larch Road to the north City limits	35
- Valpico Road	
West City limits to Tracy Boulevard	40
Tracy Boulevard to MacArthur Drive	40
MacArthur Drive to Fair Oaks Road	40
Fair Oaks Road to east City limits	45
- Whispering Wind Drive	
Regis Drive to Tracy Boulevard	30
Tracy Boulevard to Middlefield Drive	30

City of Tracy

Engineering & Traffic Survey Report August 2011



**Engineering Division
Development & Engineering Services Department**

**Engineering & Traffic Survey
Report
August 2011**

**City of Tracy
Development and Engineering Services Department**

Index

Sr.No	Item Description	Page
1	Title	1
2	Index	2
3	Introduction	3
4	Study Procedures	4
5	Traffic & Engineering Studies	6
6	Engineering & traffic surveys recommendations	7
6	Maps	34
11	Appendix	-

August 2011 Engineering & Traffic Survey Report

I. INTRODUCTION

This report presents the results of Traffic and Engineering Surveys conducted in the year 2011 by and for the City of Tracy. The surveys were conducted to establish safe and reasonable speed limits. The findings of this report will enable the City to justify radar enforcement of speed limits in these roadways, as indicated in Section 40802 of the California Vehicle Code. Segments of the following City streets were investigated:

- Barcelona Drive
- Central Avenue
- Dove Drive/Way
- Eastlake Circle
- Glenbrook Drive
- Grant Line Road
- Jackson Avenue
- Jefferson Parkway
- Presidio Place
- Starflower Drive
- Summer Lane

II. STUDY PROCEDURES

Section 22352, from the California Vehicle Code requires a 25 mph prima facie speed limit on streets in residential or business district, 15 mph at railroad grade crossings, highway intersections with sight restrictions and in any alley. However, upon the basis of an Engineering and Traffic survey, a local authority may declare speed limits of 30, 35, 40, 45, 50, 55, 60, or a maximum of 65 mph in order to facilitate the orderly movement of traffic. Section 22356 currently sets the maximum speed limit at 65 mph. Also, except as provided in Section 22356, Section 22349 (b) Notwithstanding any other provisions of law, no person may drive a vehicle upon a two lane, undivided highway at a speed greater than 55 miles per hour unless that highway, or portion thereof, has been posted for higher speed by local agency on the bases of an engineering and traffic survey. Prima facie speed limits can be posted without the need for engineering and traffic surveys. The required elements in such Engineering and Traffic Survey are outlined in Section 627 of the Code. This report adopts the aforementioned guidelines in formulating the recommendations in this report.

The principle elements in this study of the selected streets are highlighted below:

Radar Check

Each street was divided into segments to account for its differing roadway characteristics. Variations in roadway segments include street width, and other significant geometric factors and constraints. One speed check was made in each section from an inconspicuously parked, unmarked vehicle. Every effort was made to insure that the presence of the vehicle does not affect the driving behavior of other motorists. A minimum of 100 samples was obtained for each section of major Roadway. All field data were coded onto forms for subsequent computer analysis.

Data Analysis

For each survey section, computer analysis and calculations were performed on the field data to obtain several key parameters. The computer analysis printouts are included in the appendix of this report. A list of these parameters and a brief discussion of each follow:

50th Percentile Speed. The 50th percentile speed is the speed above and below which 50 percent of the sample speeds lie. This is also known as the median or middle speed.

85th Percentile Speed. The 85th percentile speed, or the critical speed, is the speed at or below which 85 percent of the observed vehicles are

traveling. Traffic engineers generally consider that at least 85 percent of all motorists will drive at speeds that are reasonable and prudent for the prevailing conditions, without the benefit of posted speed limits, signs, or enforcement. Therefore, the 85th percentile speed is a good preliminary indicator of the appropriate speed limit that can be imposed, after taking into consideration all other secondary factors such as historical collision occurrence, traffic volumes, road features, and other special constraints.

Pace Speed. The pace speed is the ten-mile-per-hour increment that contains the greatest number of observed vehicles. In general, the 85th percentile speed and the recommended speed limit should lie within the upper range of the pace. This parameter is also a good indicator of a reasonable and appropriate speed limit.

Range of Speeds. The range of speeds is simply the speeds of the fastest and slowest vehicles observed. A large range of speeds, say in excess of 30 mph, indicates unfavorable road conditions that lead to inconsistent traffic stream and great likelihood of traffic collisions.

Average speed. The average speed is a simple arithmetic mean of all speeds observed in a single sample.

Collision Review

At this point, a good initial estimate of the appropriate speed limit for each of the street sections has been determined. However, as a first check, it is necessary to validate these estimates by carefully reviewing the historical collision occurrences within the last two years. The location and severity of collision occurrences, of well as their frequency are considered before a final speed limit is recommended for each road section. The intersection related collisions were not included for speed zone study.

Field Check

After performing the radar checks, data analyses, and collision review, a final field check was made. In performing a field check, the driver needs to be fully aware of the aforementioned parameters and particularly cognizant of the 85th percentile speeds and the pace speed. The driver evaluates the appropriateness of these values and notes the significance of other factors such as roadside development, driveways, parked vehicles, emergency shoulder areas, schools and playgrounds, pedestrians, roadway alignment, control, and numerous other intangible factors. These elements are given serious consideration in the determination of a reasonable and safe speed limit.

Reasonable limits are speeds at which motorists would drive without the affects of enforcement of signs. However, it is known that motorists tend to drive faster in residential districts away from their homes that the local residents would prefer.

People are more concerned about traffic speeds in their neighborhood than those elsewhere. This is not a tendency to willfully break the law, but rather a reflection of human behavior. Consequently, unlike multi-lane arterial roadways, where the 85th percentile speed closely approximates the posted speed limit, the 85th percentile speed on local residential streets may be much higher than the legal limit. In fact, it is not uncommon that the majority of the motorists, ever as high as 80 to 90 percent of those observed, travels in excess of the 25 mph prima facie residential speed limit. This fact does not imply that the 25 mph limit is inappropriate; it simply implies that the majority of the motorists are driving imprudently.

Frequent changes of the speed limit over a stretch of roadway need to be avoided in establishing speed limits. Varying the limits over a relatively short length of roadway may also be inappropriate. Speed limits that change every few blocks may accurately reflect prevailing driving conditions on the street, but they do not give the motorist the opportunity to become aware of the lawful limit.

For the reasons mentioned above, the recommendations in this report are made to produce consistency in the speed limits, and are not intended to encourage unsafe speeds.

III. TRAFFIC AND ENGINEERING STUDIES

The following sections present the findings of the Engineering and Traffic surveys. Each of the roadway segments into which a street is divided is discussed separately, and recommendation on the speed limit is provided at the end of each sub-section. The 85th percentile speed and the recommended speed limits for the surveyed roadways are included.

IV. Engineering & Traffic Survey Recommendations

- Barcelona Drive

Cypress Drive and Schulte Road

This segment of the Barcelona Drive is a two-lane residential collector street. The segment is approximately 0.40 mile in length and its width varies from 44 to 54 feet. There is Class II bike lane in this segment. On street parking is permitted. There are residential driveway openings on the street. The posted speed limit is 25 mph.

There were two reported collisions on this roadway from January 2008 to December 2010. One of the collisions was speed related.

10 mph pace speed	24 mph - 33 mph, 23 mph - 32 mph
85 th percentile speed	31.6, 31.9 mph.
50 th percentile speed	28, 27.6 mph

The 85th percentile speed indicates a 30 mph speed limit and there were two reported collisions along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking and bike lane that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Central Avenue**

Fourth Street to Mt. Diablo Avenue

This segment of the Central Avenue is a two-lane minor arterial street. The segment is approximately 0.30 mile in length and 56' feet in width. There is a Class II bike lane and two-way left turn lane in this segment. On street parking is permitted. The previously established speed limit in this section is 25 mph.

There were a total of 5 reported collisions on this roadway from January 2008 to December 2010.

10 mph pace speed 24 mph. - 33 mph.
85th percentile speed 32 mph.
50th percentile speed 28.2 mph.

The 85th percentile speed indicates a 30 mph speed limit and there are total of five reported collisions along this segment during the study period. There are residential driveways and public park in this segment. Presence of bike lane and pedestrian activity, collisions and sight distances at the intersections due to parking in this segment, justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section therefore is 25 mph

Mount Diablo Avenue to Schulte Road

This segment of the Central Avenue is a four-lane minor arterial street. The segment is approximately 0.27 miles in length and 64 feet in width. There is a Class II bike lane and two-way left turn lane in this section. This segment has residential driveways. The posted speed limit is 30 mph.

There was no reported collision on this roadway from January 2008 to December 2010.

10 mph pace speed 28 mph. - 37 mph.
85th percentile speed 35.8 mph.
50th percentile speed 31.8 mph.

The 85th percentile speed indicates a 35 mph speed limit. There are residential driveways, bike lane and two-way left turn lane in this segment in addition to on-street parking, curve and sight distance that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 30 mph.

The recommended speed limit for this section is 30 mph.

- **Dove Drive/Way**

Sycamore Pkwy and Starflower Drive.

This segment of the Dove Street is a two-lane residential collector street. The segment is approximately 0.37 mile in length and width varies from 40 to 48 feet. There is a Class II bike lane in part of this segment. There are residential driveway openings in this section. In addition there is elementary school and neighborhood park frontage in this segment. On street parking is permitted. The posted speed limit is 25 mph.

There were a total of two reported collisions on this roadway from January 2008 to December 2010. None of these Collisions were speed related.

10 mph pace speed	23 mph. - 32 mph.
85 th percentile speed	32 mph.
50 th percentile speed	28.7 mph.

The 85th percentile speed indicates a 30 mph speed limit and there were two reported collisions along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking along with elementary school and neighborhood park frontage that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section therefore is 25 mph.

- **Eastlake Circle**

Lakeview Drive to Crater Place (West Side)

Eastlake Circle is a two-lane residential collector street. The segment is approximately 0.46 mile in length and width varies from 34 to 40 feet. There are residential developments developed on both sides of this segment. On street parking is permitted in part of this segment. There are residential driveway openings on one side of the street. The posted speed limit is 25 mph.

There was a total of 1 reported collision on this roadway from January 2008 to December 2010. It was not speed related.

10 mph pace speed	23 mph. - 32 mph.
85 th percentile speed	30.8 mph.
50 th percentile speed	26.5 mph.

The 85th percentile speed indicates a 30 mph speed limit and there was one reported collision along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

Lakeview Drive to Crater Place (East Side)

Eastlake Circle is a two-lane residential collector street. The segment is approximately 0.54 mile in length and width varies from 34 to 40 feet. There are residential developments developed on both sides of this segment. On street parking is permitted in part of this segment. There are residential driveway openings on one side of the street. The posted speed limit is 25 mph.

There were three reported collisions on this roadway from January 2008 to December 2010. One of these collisions was speed related.

10 mph pace speed	20 mph. - 29 mph.
85 th percentile speed	28 mph.
50 th percentile speed	24.4 mph.

The 85th percentile speed indicates a 30 mph speed limit and there were three reported collisions along this segment during the study period.

There are residential driveways on both sides of this segment in addition to on-street parking that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

- **Glenbrook Drive**

Mac Arthur Drive and Brookview Drive

Glenbrook Drive is a two-lane residential collector street. The segment is approximately 0.31 mile in length and width varies from 40 to 44 feet. There are residential driveway openings on both sides of this segment. Some portion of this segment is undeveloped. There is no bike lane in this segment. The posted speed limit is 25 mph.

There was one reported collision on this roadway from January 2008 to December 2010. It was not speed related.

10 mph pace speed	22 mph. - 31 mph.
85 th percentile speed	31.8 mph.
50 th percentile speed	26.2 mph.

The 85th percentile speed indicates a 30 mph speed limit and there was one reported collision along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

- **Grant Line Road**

Tracy Blvd. & Mac Arthur Drive

This segment of the Grant Line Road is a four lane major arterial. The segment is 1.0 miles in length and 80 feet in width. On street parking is not allowed. There is Class II bike lane and two-way left turn lane in this segment. The posted speed limit is 35 mph. There are commercial properties along this section.

There were total of forty-two reported collisions in this segment from January 2008 to December 2010. Twelve collisions were speed related.

10 mph pace speed 36 mph. - 45 mph.
85th percentile speed 43.7 mph.
50th percentile speed 39 mph.

The 85th percentile speed indicates a 45 mph speed limit and there are total of twenty non-intersection related collisions along this segment during the study period. There are apartment complexes, residential subdivision and commercial driveways in this segment. Collision history, presence of pedestrian activity and bike lane in this segment, justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit be established at 40 mph.

The recommended speed limit for this section therefore is 40 mph.

- **Jackson Avenue**

Crossroads Drive to Jefferson Parkway

This segment of the Jackson Avenue is a two-lane residential collector street. The segment is approximately 0.26 mile in length and 44 feet in width. There is a class II bike lane in this segment. There are residential driveway openings on both sides in this section. On street parking is permitted. The posted speed limit is 25 mph.

There were no reported collision on this roadway from January 2008 to December 2010.

10 mph pace speed	23 mph - 32 mph.
85 th percentile speed	31.3 mph.
50 th percentile speed	27.8 mph.

The 85th percentile speed indicates a 30 mph speed limit and there were no reported collision along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking and bike lane that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

- **Jefferson Parkway**

Eleventh Street to Jackson Avenue

This segment of the Jefferson Parkway is a two-lane collector street with raised median island. The segment is approximately 0.23 mile in length and 54 feet in width. There is a Class II bike lane in this segment. On street parking is not permitted. This segment provides the access to the Tracy Sports Complex. The posted speed limit is 30 mph.

There was one reported collision on this roadway from January 2008 to December 2010. It was not speed related.

10 mph pace speed	28 mph - 37 mph.
85 th percentile speed	35.8 mph.
50 th percentile speed	31.4 mph.

The 85th percentile speed indicates a 35 mph speed limit and there was one reported collision along this segment during the study period. There is a sports complex on this segment in addition to on-street parking and bike lane that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 30 mph.

The recommended speed limit for this section is 30 mph.

- **Presidio Place**

Jackson Avenue and Compton Place

This segment of the Jackson Avenue is a two-lane residential collector street. The segment is approximately 0.20 mile in length and 44 feet in width. There is a class II bike lane in this segment. There are residential driveway openings in this section. On street parking is permitted. The posted speed limit is 25 mph.

There were no reported collision on this roadway from January 2008 to December 2010.

10 mph pace speed	22 mph - 31 mph.
85 th percentile speed	31.8 mph.
50 th percentile speed	27.1 mph.

The 85th percentile speed indicates a 30 mph speed limit and there were no reported collision along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking and bike lane that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

- **Starflower Drive**

Corral Hollow Road and Dove Street

This segment of the Starflower Drive is a two-lane collector street. The segment is approximately 0.35 mile in length and 48 feet in width. There is a class II bike lane in this segment. There are residential driveway openings in this section. On street parking is not permitted. The posted speed limit is 25 mph.

There were no reported collision on this roadway from January 2008 to December 2010.

10 mph pace speed	25 mph - 34 mph.
85 th percentile speed	32 mph.
50 th percentile speed	27.9 mph.

The 85th percentile speed indicates a 30 mph speed limit and there were no reported collision along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

- **Summer Lane**

Eleventh Street and Brittany Way

This segment of the Summer Lane is a two-lane collector street. The segment is approximately 0.46 mile in length and 44 feet in width. There is a Class II bike lane in this segment. There are residential driveway openings in this section. On street parking is permitted. The posted speed limit is 25 mph.

There were no reported collision on this roadway from January 2008 to December 2010.

10 mph pace speed	24 mph - 33 mph.
85 th percentile speed	31.9 mph.
50 th percentile speed	28.3 mph.

The 85th percentile speed indicates a 30 mph speed limit and there were no reported collision along this segment during the study period. There are residential driveways on both sides of this segment in addition to on-street parking and bike lane that justifies the downgrading of 85th percentile speed by 5 mph. Therefore it is recommended that the posted speed limit remain at 25 mph.

The recommended speed limit for this section is 25 mph.

Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

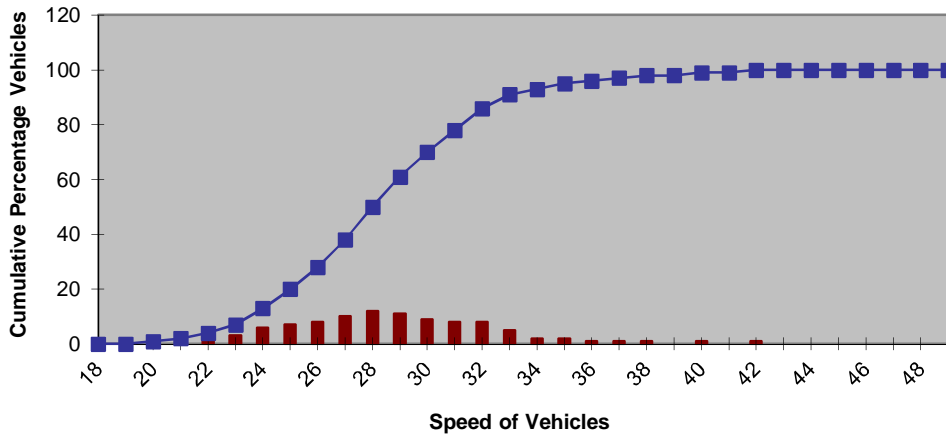
Location:	Barcelona Drive (Cypress Drive-Tennis Lane)		
Date:	<u>4/5/2011</u>	Recorder:	<u>Dennis</u>
Begin Time:	<u>9:45 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>11:20 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Tuesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25</u>

SPEED DATA	
Speed	Number
17	0
18	0
19	0
20	1
21	1
22	2
23	3
24	6
25	7
26	8
27	10
28	12
29	11
30	9
31	8
32	8
33	5
34	2
35	2
36	1
37	1
38	1
39	0
40	1
41	0
42	1
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>20-42 mph</u>
50th Percentile Speed:	<u>28 mph</u>
85th Percentile Speed:	<u>31.9 mph</u>
10 mph pace speed:	<u>24-33 mph</u>
Average Speed:	<u>28.76</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 0; Intersection 0, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

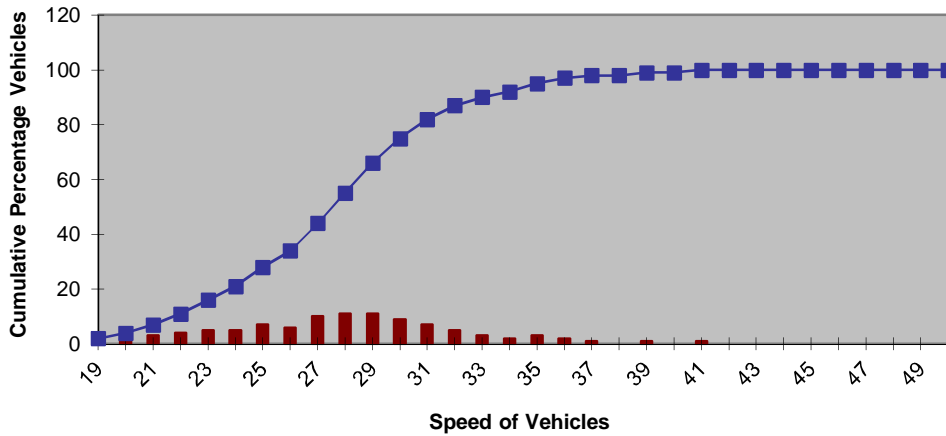
Location:	Barcelona Drive (Tennis Lane-Schulte Road)		
Date:	<u>4/5/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>1:15 PM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>2:50 PM</u>	Land use:	<u>Residential</u>
Day:	<u>Tuesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
18	1
19	1
20	2
21	3
22	4
23	5
24	5
25	7
26	6
27	10
28	11
29	11
30	9
31	7
32	5
33	3
34	2
35	3
36	2
37	1
38	0
39	1
40	0
41	1
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>18-41 mph</u>
50th Percentile Speed:	<u>27.6 mph</u>
85th Percentile Speed:	<u>31.6 mph</u>
10 mph pace speed:	<u>23-32 mph</u>
Average Speed:	<u>27.99</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 2; Intersection 0, Other 2; (Speed Related 1)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

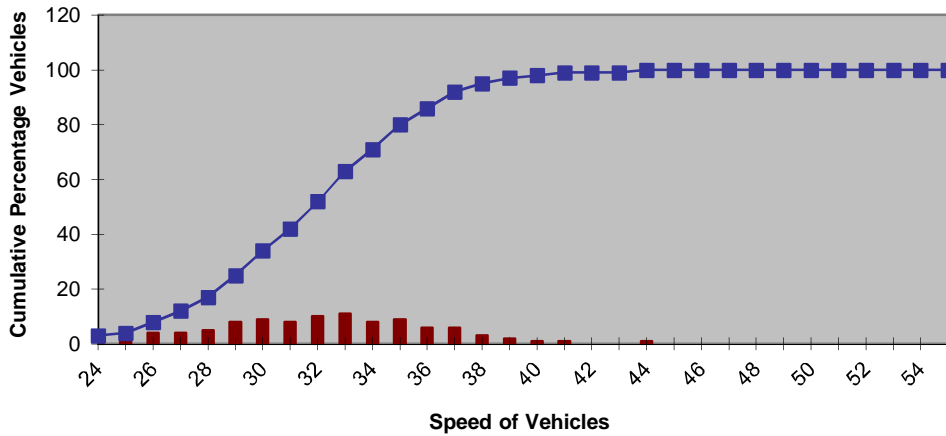
Location:	Central Avenue (Mt. Diablo Ave-Schulte Blvd.)		
Date:	<u>7/27/2011</u>	Recorder:	<u>Dennis</u>
Begin Time:	<u>11:00 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>11:40 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Wednesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>30 mph</u>

SPEED DATA	
Speed	Number
23	1
24	2
25	1
26	4
27	4
28	5
29	8
30	9
31	8
32	10
33	11
34	8
35	9
36	6
37	6
38	3
39	2
40	1
41	1
42	0
43	0
44	1
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
66	0
67	0
68	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Veh.</u>
Speed range:	<u>23-44 mph</u>
50th Percentile Speed:	<u>31.8 mph</u>
85th Percentile Speed:	<u>35.8 mph</u>
10 mph pace speed:	<u>28-37 mph</u>
Average Speed:	<u>32.23</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 0; Intersection 0, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street, There is a class II bike lane in this section
Volume (if known)	n/a
Parking Conditions:	No parking allowed except in front of residential homes
Other Considerations	Residential Driveways

RECOMMENDATIONS

Recommended speed limit = 30 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

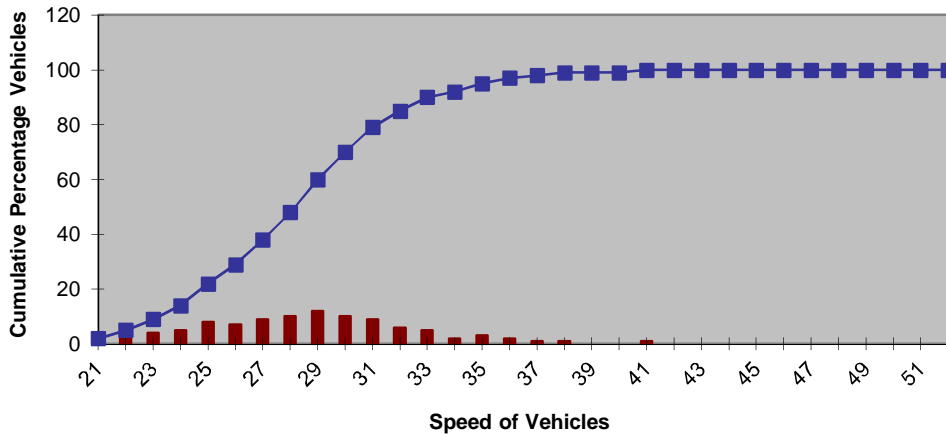
Location:	Central Avenue (Fourth St- Mt Diablo Ave)		
Date:	<u>7/27/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>10:10 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>11:00 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Wednesday</u>	Type:	<u>Minor Arterial</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25</u>

SPEED DATA	
Speed	Number
20	1
21	1
22	3
23	4
24	5
25	8
26	7
27	9
28	10
29	12
30	10
31	9
32	6
33	5
34	2
35	3
36	2
37	1
38	1
39	0
40	0
41	1
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>20-41 mph</u>
50th Percentile Speed:	<u>28.2 mph</u>
85th Percentile Speed:	<u>32 mph</u>
10 mph pace speed:	<u>24-33 mph</u>
Average Speed:	<u>28.69</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 5; Intersection 2, Other 3; (Speed Related 0)
Period:	1/1/2008-12/31/2010
Street	2 lanes with class II bike lanes
Volume (if known)	
Parking Conditions:	parking is permitted
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

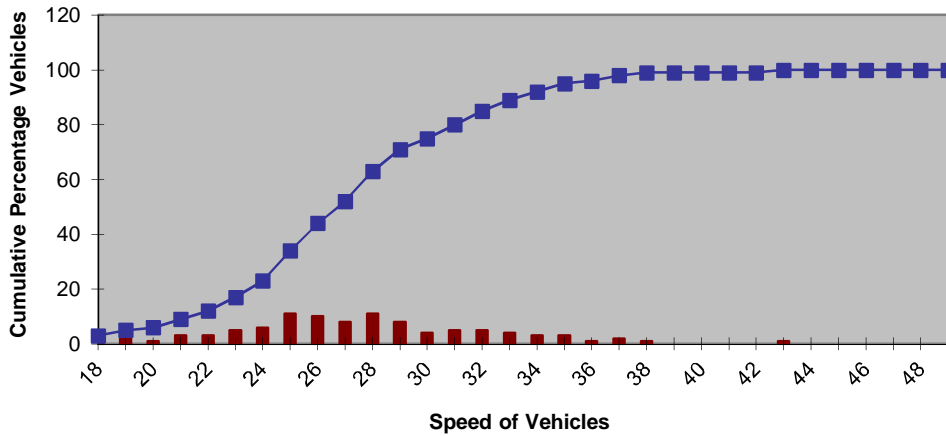
Location:	Dove Drive/Way(Sycamore Pkwy-Starflower Drive)		
Date:	<u>6/24/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>10:05 AM</u>	Direction:	<u>EB/WB</u>
End Time:	<u>11:27 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Friday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
17	1
18	2
19	2
20	1
21	3
22	3
23	5
24	6
25	11
26	10
27	8
28	11
29	8
30	4
31	5
32	5
33	4
34	3
35	3
36	1
37	2
38	1
39	0
40	0
41	0
42	0
43	1
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>17-43 mph</u>
50th Percentile Speed:	<u>28.7 mph</u>
85th Percentile Speed:	<u>32 mph</u>
10 mph pace speed:	<u>23-32 mph</u>
Average Speed:	<u>27.55</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 2; Intersection 0, Other 2; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

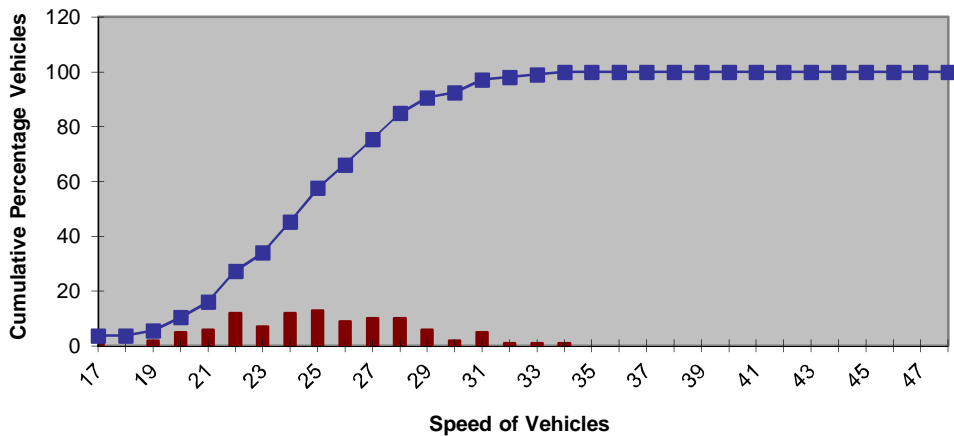
Location:	Eastlake Circle (East Side)		
Date:	<u>6/24/2011</u>	Recorder:	<u>JA</u>
Begin Time:	<u>8:35 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>9:55 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Friday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
16	1
17	3
18	0
19	2
20	5
21	6
22	12
23	7
24	12
25	13
26	9
27	10
28	10
29	6
30	2
31	5
32	1
33	1
34	1
35	0
36	0
37	0
38	0
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
Total	106

SUMMARY STATISTICS

Total observed:	<u>106 Vehicles</u>
Speed range:	<u>16-34 mph</u>
50th Percentile Speed:	<u>24.4 mph</u>
85th Percentile Speed:	<u>28 mph</u>
10 mph pace speed:	<u>20-29 mph</u>
Average Speed:	<u>24.92</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 3; Intersection 0, Other 3; (Speed Related 1)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted.
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

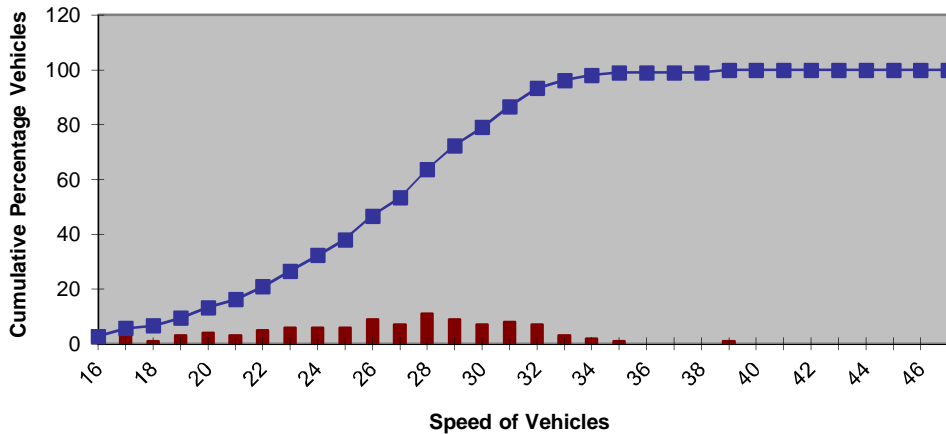
Location:	Eastlake Circle (West Side)		
Date:	<u>6/22/2011</u>	Recorder:	<u>JA</u>
Begin Time:	<u>9:30 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>11:30 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Wednesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
15	1
16	2
17	3
18	1
19	3
20	4
21	3
22	5
23	6
24	6
25	6
26	9
27	7
28	11
29	9
30	7
31	8
32	7
33	3
34	2
35	1
36	0
37	0
38	0
39	1
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
Total	105

SUMMARY STATISTICS

Total observed:	<u>105 Vehicles</u>
Speed range:	<u>15-39 mph</u>
50th Percentile Speed:	<u>26.5 mph</u>
85th Percentile Speed:	<u>30.8 mph</u>
10 mph pace speed:	<u>23-32 mph</u>
Average Speed:	<u>26.41</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 1; Intersection 0, Other 1; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted.
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

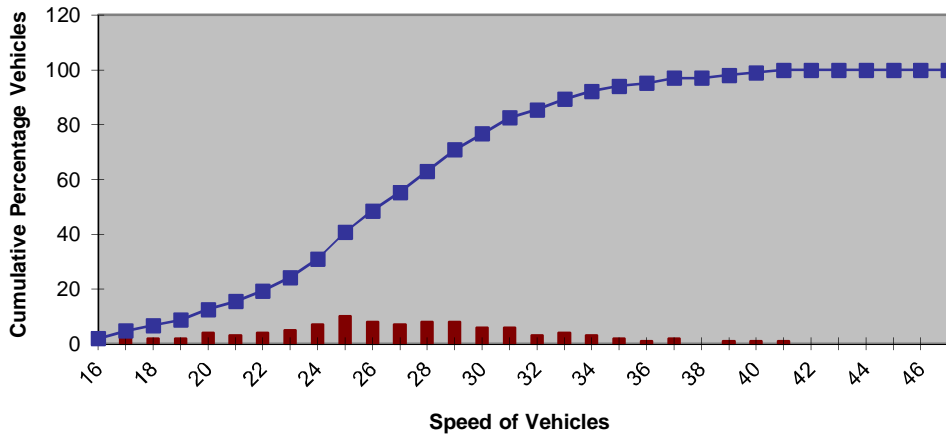
Location:	Glenbrook Drive (Brookview Dr-MacArthur Dr)		
Date:	<u>5/4/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>9:25 AM</u>	Direction:	<u>EB/WB</u>
End Time:	<u>11:50 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Wednesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
15	1
16	1
17	3
18	2
19	2
20	4
21	3
22	4
23	5
24	7
25	10
26	8
27	7
28	8
29	8
30	6
31	6
32	3
33	4
34	3
35	2
36	1
37	2
38	0
39	1
40	1
41	1
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
Total	103

SUMMARY STATISTICS

Total observed:	<u>103 Vehicles</u>
Speed range:	<u>15-41 mph</u>
50th Percentile Speed:	<u>26.2 mph</u>
85th Percentile Speed:	<u>31.8 mph</u>
10 mph pace speed:	<u>22-31 mph</u>
Average Speed:	<u>26.88</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 1; Intersection 1, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

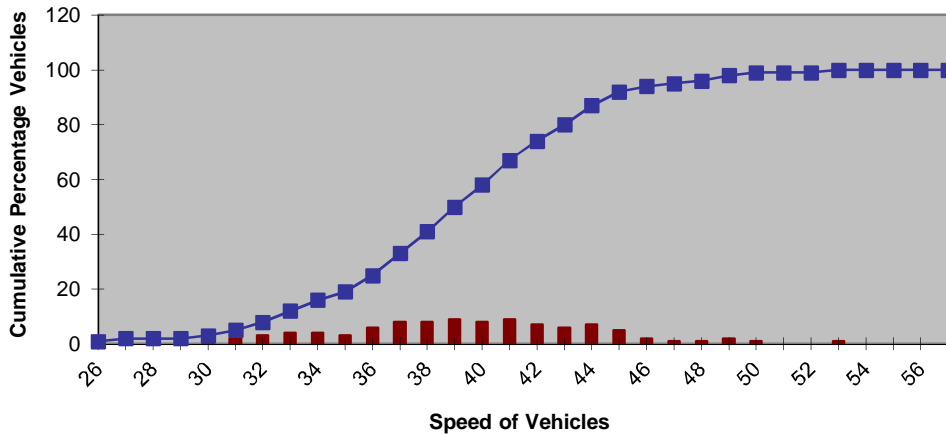
Location:	Grant Line Road(Tracy Blvd-MacArthur Drive)		
Date:	<u>7/27/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>9:20am</u>	Direction:	<u>EB&WB</u>
End Time:	<u>10:00am</u>	Land use:	<u>Commercial</u>
Day:	<u>Wednesday</u>	Type:	<u>Major Arterial</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>35 mph</u>

SPEED DATA	
Speed	Number
25	1
26	0
27	1
28	0
29	0
30	1
31	2
32	3
33	4
34	4
35	3
36	6
37	8
38	8
39	9
40	8
41	9
42	7
43	6
44	7
45	5
46	2
47	1
48	1
49	2
50	1
51	0
52	0
53	1
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
66	0
67	0
68	0
69	0
70	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 veh.</u>
Speed range:	<u>25-53 mph</u>
50th Percentile Speed:	<u>39 mph</u>
85th Percentile Speed:	<u>43.7 mph</u>
10 mph pace speed:	<u>36-45 mph</u>
Average Speed:	<u>39.42</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 42; Intersection 22, Other 20; (Speed Related 12)
Period:	01/01/2008-12/31/2010
Street	5 lanes with median island
Volume (if known)	n/a
Parking Conditions:	No parking allowed, there is a Class II bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 40 mph



Think Inside the Triangle™

Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

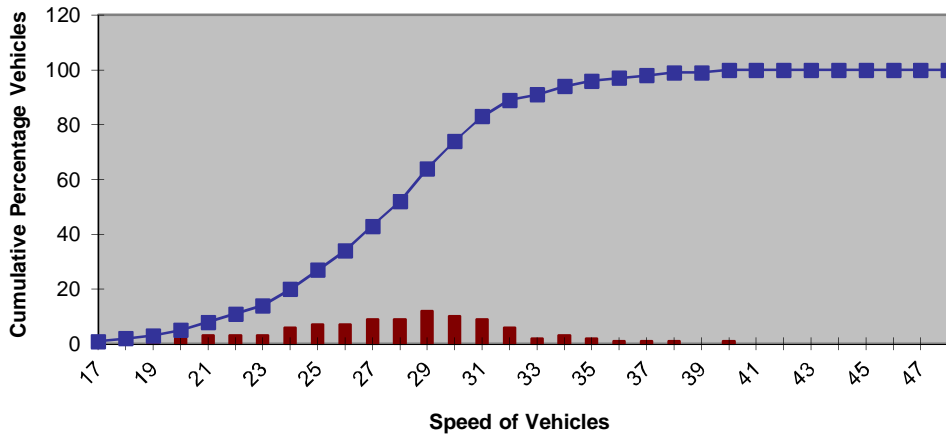
Location:	Jackson Avenue (Crossroads Dr-Jefferson Pkwy)		
Date:	<u>6/16/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>9:20 AM</u>	Direction:	<u>EB/WB</u>
End Time:	<u>11:10 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Thursday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
16	1
17	0
18	1
19	1
20	2
21	3
22	3
23	3
24	6
25	7
26	7
27	9
28	9
29	12
30	10
31	9
32	6
33	2
34	3
35	2
36	1
37	1
38	1
39	0
40	1
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>105 Vehicles</u>
Speed range:	<u>16-40 mph</u>
50th Percentile Speed:	<u>27.8 mph</u>
85th Percentile Speed:	<u>31.3 mph</u>
10 mph pace speed:	<u>23-32 mph</u>
Average Speed:	<u>27.95</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 0; Intersection 0, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

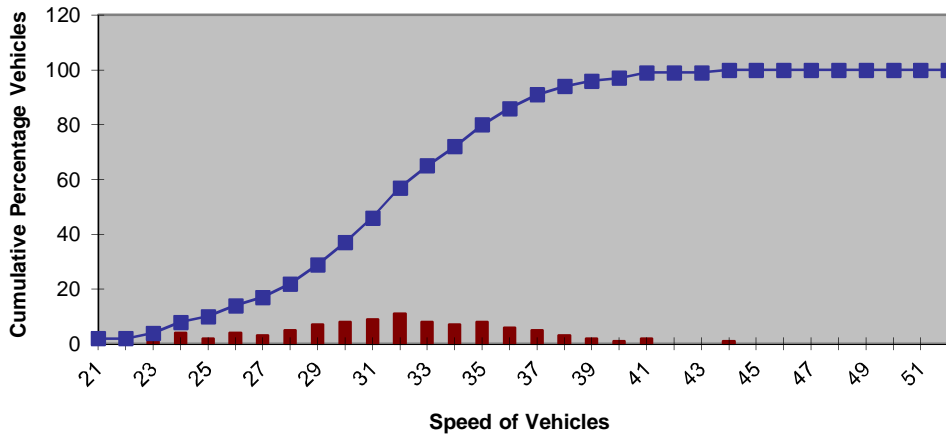
Location:	Jefferson Parkway (Eleventh St-Jackson Ave)		
Date:	<u>5/4/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>1:30 PM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>2:55 PM</u>	Land use:	<u>Residential</u>
Day:	<u>Wednesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>30 mph</u>

SPEED DATA	
Speed	Number
20	1
21	1
22	0
23	2
24	4
25	2
26	4
27	3
28	5
29	7
30	8
31	9
32	11
33	8
34	7
35	8
36	6
37	5
38	3
39	2
40	1
41	2
42	0
43	0
44	1
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>20-44 mph</u>
50th Percentile Speed:	<u>31.4 mph</u>
85th Percentile Speed:	<u>35.8 mph</u>
10 mph pace speed:	<u>28-37 mph</u>
Average Speed:	<u>31.73</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 1; Intersection 0, Other 1; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with divider
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 30 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

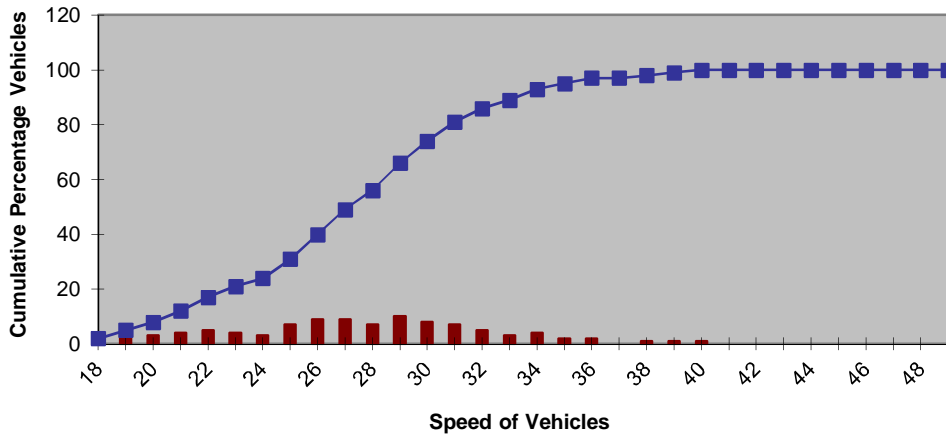
Location:	Presidio Place (Compton Pl-Jackson Ave)		
Date:	<u>5/23/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>9:00 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>11:55 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Monday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
17	1
18	1
19	3
20	3
21	4
22	5
23	4
24	3
25	7
26	9
27	9
28	7
29	10
30	8
31	7
32	5
33	3
34	4
35	2
36	2
37	0
38	1
39	1
40	1
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>17-40 mph</u>
50th Percentile Speed:	<u>27.1 mph</u>
85th Percentile Speed:	<u>31.8 mph</u>
10 mph pace speed:	<u>22-31 mph</u>
Average Speed:	<u>27.59</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 0; Intersection 0, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

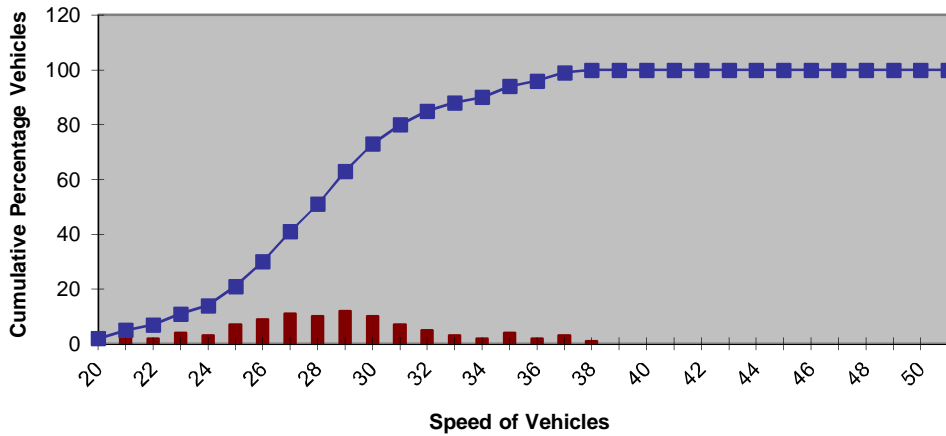
Location:	Starflower Drive (Corral Hollow Rd-Dove Dr)		
Date:	<u>5/4/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>9:45 AM</u>	Direction:	<u>EB/WB</u>
End Time:	<u>11:25 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Wednesday</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
19	1
20	1
21	3
22	2
23	4
24	3
25	7
26	9
27	11
28	10
29	12
30	10
31	7
32	5
33	3
34	2
35	4
36	2
37	3
38	1
39	0
40	0
41	0
42	0
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>19-38 mph</u>
50th Percentile Speed:	<u>27.9 mph</u>
85th Percentile Speed:	<u>32 mph</u>
10 mph pace speed:	<u>25-34 mph</u>
Average Speed:	<u>28.49</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 0; Intersection 0, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

RECOMMENDATIONS

Recommended speed limit = 25 mph



Traffic Section, Engineering Division
City of Tracy

VEHICLE SPEED SURVEY REPORT

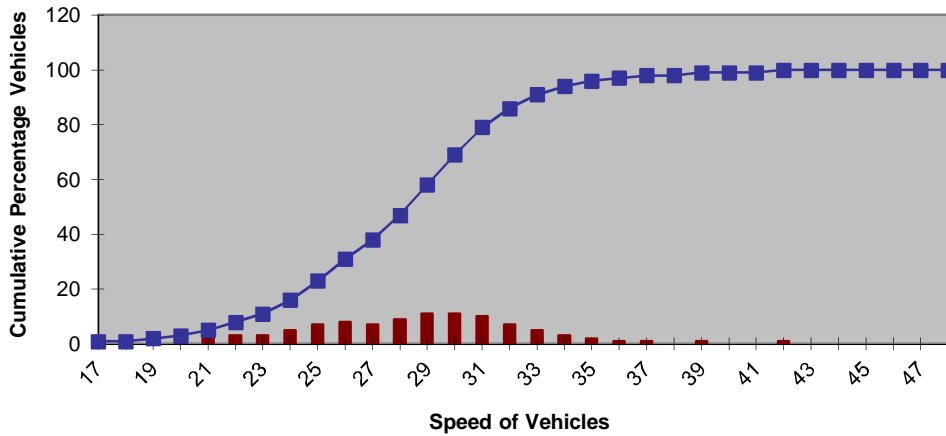
Location:	Summer Lane (Eleventh St-Brittany Way)		
Date:	<u>7/7/2011</u>	Recorder:	<u>DM</u>
Begin Time:	<u>9:50 AM</u>	Direction:	<u>NB/SB</u>
End Time:	<u>11:25 AM</u>	Land use:	<u>Residential</u>
Day:	<u>Thur</u>	Type:	<u>Collector</u>
Weather:	<u>Clear & Sunny</u>	Posted Limit:	<u>25 mph</u>

SPEED DATA	
Speed	Number
16	1
17	0
18	0
19	1
20	1
21	2
22	3
23	3
24	5
25	7
26	8
27	7
28	9
29	11
30	11
31	10
32	7
33	5
34	3
35	2
36	1
37	1
38	0
39	1
40	0
41	0
42	1
43	0
44	0
45	0
46	0
47	0
48	0
49	0
50	0
51	0
52	0
53	0
54	0
55	0
56	0
57	0
58	0
59	0
60	0
61	0
Total	100

SUMMARY STATISTICS

Total observed:	<u>100 Vehicles</u>
Speed range:	<u>16-42 mph</u>
50th Percentile Speed:	<u>28.3 mph</u>
85th Percentile Speed:	<u>31.9 mph</u>
10 mph pace speed:	<u>24-33 mph</u>
Average Speed:	<u>28.50</u>

GRAPH OF CUMULATIVE %AGE VEHICLES VS SPEED



ANALYSIS INFORMATION

Number of Accidents:	Total 0; Intersection 0, Other 0; (Speed Related 0)
Period:	1/1/2008 - 12/31/2010
Street	2 lane street with residential driveways
Volume (if known)	n/a
Parking Conditions:	Parking is permitted. There is a class II Bike lane
Other Considerations	

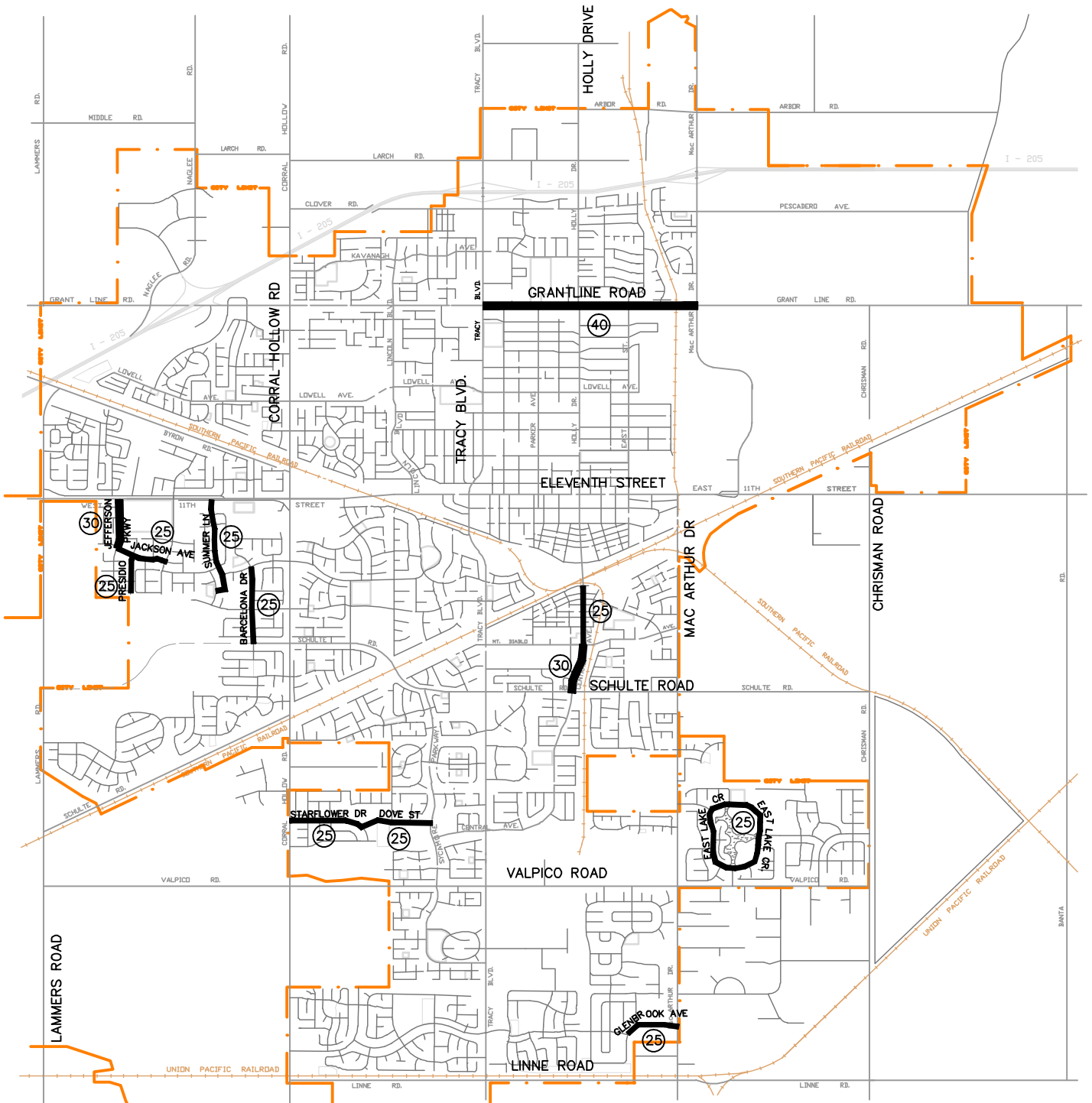
RECOMMENDATIONS

Recommended speed limit = 25 mph



EXHIBIT B

AUGUST 2011



LEGEND

- 25 MPH
- 30 MPH
- 40 MPH



SPEED ZONE SURVEY
2011

DESIGNED BY
DM
DRAWN BY
DM
CHECKED BY
RB
SCALE
NTS

REVISIONS			
SYMBOL	DATE	DESCRIPTION	APPROVED

SHEET 1
OF 1 SHEETS

CITY OF TRACY

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

KULDEEP SHARMA CITY ENGINEER DATE

AGENDA ITEM 5

REQUEST

PRESENT AND DISCUSS THE CITY'S FUTURE ORGANIZATIONAL STRUCTURE AND ADOPT RESOLUTIONS TO GRANT DESIGNATED PERIODS FOR TWO YEARS ADDITIONAL SERVICE CREDIT WITH THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

EXECUTIVE SUMMARY

This report will present information regarding the City's future organizational structure for Council discussion and, pursuant to California Government Code Section 20903, recommends Resolutions be adopted to grant two years additional service credit with the California Public Employees' Retirement System (CalPERS) who retire within three designated time periods.

DISCUSSION

At its meeting on September 20, 2011, the City Council approved Resolution 2011-179 disclosing the costs associated with funding the provision of the Two Years Additional Service Credit Program for retirement of designated classifications.

The City of Tracy has addressed its structural budget deficit by utilizing various workforce reduction principles. The City Manager has identified an incentivized workforce reduction as one of several strategies that helps stabilize the City's financial condition as personnel costs are reduced. As such, costs are the most significant expenditure for the City's annual operating budget, proposing the Two Years Additional Service Credit is an effort to get the City to a balanced budget without Measure E revenue. It has been determined that the Two Years Additional Service Credit would support fiscal sustainability goals.

Under California Government Code Section 20903, an agency may provide the Two Years Additional Service Credit Program to members who retire during a designated period because of impending mandatory layoffs, transfers, or demotions. Implementation of the Program requires public notice of prospective costs and savings, in accordance with California Government Code Section 7507, at least two weeks prior to the adoption of a Resolution. The public disclosure of costs occurred at the Council meeting of September 20, 2011.

The second action requires designating a specified time period(s) of between 90 and 180 days during which eligible employees must retire to receive the retirement incentive, as well as adopting a Resolution(s) implementing the additional service credit provision, including approving the required certifications of compliance.

The City Manager has proposed designating the following three separate time periods, or windows, during which eligible employees must retire:

- Window 1: November 1, 2011 through February 29, 2012
- Window 2: April 1, 2012 through June 30, 2012
- Window 3: September 1, 2012 through January 31, 2013

The recommended classifications to be offered the Two Years Additional Service Credit are as follows:

- Accounting Assistant
- Accounting Officer
- Accounting Technician
- Airport Coordinator
- Assistant City Clerk
- Assistant Civil Engineer
- Code Enforcement Officer
- Community Services Officer
- Crime Prevention Specialist
- Custodian
- Engineering Technician II
- Executive Assistant
- Finance and Administrative Services Director
- Housing Program Inspector II
- Maintenance Worker I
- Maintenance Worker II
- Plant Mechanic II
- Police Sergeant
- Public Works Director
- Recreation Services Supervisor
- Senior Maintenance Worker

A total of 28 employees are currently eligible to retire. Of the positions these employees occupy, 18 will be eliminated, 8 will be downgraded to lower classifications, and 2 will be filled similarly.

The City is committed to implementing the workforce reduction plan, which includes no rehiring of eliminated positions, no reclassifying of downgraded positions, and contracting out whenever possible. The City's adherence to the workforce reduction plan does not preclude it from addressing unanticipated staffing needs that could arise in the future should conditions change, such as service demand, population, or other external factors.

Following is an overview of the City's future organization structure for each department:

Police Department

Recent change of leadership over the police department has availed an opportunity to reassess efficiencies and effectiveness of the department. The Police Chief, assisted by police department Command and Supervisory staff, completed an evaluation of the current organizational structure, seeking to insure the greatest focus of organizational resources are directed toward serving the community at the first line service levels.

Utilizing the incentivized retirement program, it is proposed to eliminate from the department: two (2) Police Sergeants, two (2) Community Services Officers (non-sworn), one (1) Crime Prevention Specialist (non-sworn), and one (1) Administrative Assistant. The reduction represents ongoing decreased personnel costs of approximately \$654,000. The proposed structural reorganization of the police department effectively adds back to personnel staffing; one(1) Police Captain, one(1) Gang Investigator, one(1) Non-sworn Support Operations Division Manager, and one(1) Non-sworn Professional Standards Officer (part time). The added positions increase personnel costs by approximately \$570,000, which is offset by the ongoing personnel cost savings through the aforementioned eliminated positions. Through this plan sworn staffing remains at 85 and non-sworn staffing is reduced from 42 to 40. The proposed redeployment of existing staff, in concert with elimination and reallocation of specific staff positions, is designed to achieve the following goals:

- Enhanced Command structure achieving greater accountability and enhanced risk management;
- Increased staff deployment at first line service levels;
- Dedicated focus on suppression and eradication of Gang and Street Crimes;
- Gain efficiencies through an organizational structure recommended by POST;
- Offset cost of reorganization and achieve ongoing operational cost reduction;
- Prepare for future organizational growth;
- Facilitate succession planning, and
- Sustain current sworn staffing levels.

Police Chief Gary Hampton will provide an oral presentation of the proposed reorganization chart detailing how the effort averts degradation of service level by more effectively deploying personnel, while achieving the goals.

Fire Department

No changes are planned for the Fire Department. Therefore, no Fire Department personnel will be leaving the City as part of this initiative.

Development & Engineering Services/Economic Development

The Development and Engineering Services (DES) and Economic Development Departments will be merged by making the latter a division of the former. The new department will be referred to as the Development Services Department. The Director, currently Andrew Malik, will have a larger span of control that forces considerable changes to his and others' responsibilities. The Director will focus on economic development activities at least 50 percent of his time while daily supervision of the planning, building, and code enforcement functions will be the responsibility of the Assistant Development Services Director.

The larger department is more complex, but removes any confusion on the responsibility for economic development. It lies with all employees, but allows for sufficient tension in the planning process. The planning process is where the debate occurs on what *should* happen. There should be no debate during the *permitting* process. This structure also enables other staff such as planners to help with some economic development functions.

Efficiencies will be gained by eliminating the Housing Program Inspector, a Code Enforcement Officer, and four engineering positions. A recent analysis of the Engineering Division suggests this unit can get significantly smaller in light of reduced development, capital, and project management activity. Additional changes in this department will be necessary depending on the outcome of redevelopment authority-related litigation with the State of California. That court decision is expected in early 2012.

Parks & Community Services/Public Works

The Parks and Community Services (PCS) and Public Works Departments will be merged to take advantage of several efficiencies. The merger involves some parts of PCS, commonly referred to as, the "hard services" of transportation, airport, and facility and field management. Public Works takes on a traditional look with this merger where all of the City's infrastructure and asset management is under one roof. The most visible change will be the merger of facility maintenance and rentals, and merger of field maintenance and rentals. The merger will take place upon the retirement of the current Public Works Director.

Parks & Community Services/City Manager's Office

Other parts of PCS will become a division of the City Manager's Office (CMO) at an undetermined time in 2012. These "soft services" includes recreation and special events. The relationship with the Grand Theatre Center for the Arts and public outreach will likely be strengthened. The City will also be able to reduce the number of points of sale by eliminating the PCS building as a separate location. All "retail functions" of the City will occur at the first floor of City Hall and the Grand Theatre Center for the Arts. This re-organization step also takes advantage of the unique skills in the City Manager's Office.

Administrative Services Department

The Finance and Human Resources Departments will be merged in the spring of 2012 to form the Administrative Services Department. This consolidation includes a smaller human resources function and several downgraded positions in the finance area. This new department will require a new department leader that replaces the Finance and Human Resources Director positions. All major functions of Finance, including Information Services, and Human Resources will be retained.

STRATEGIC PLAN

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

Goal 4: Ensure long-term viability and enhancement of the City's workforce

FISCAL IMPACT

The estimated cost of providing the Two Years Additional Service Credit Program will be approximately \$97,685 annually or \$1,953,692 over 20 years. Following implementation of the Program, annual savings of \$2,078,470 are estimated, or \$41,569,408 over 20 years.

RECOMMENDATION

That the City Council adopt, by resolutions, to grant designated periods for Two Years Additional Service Credit with the California Public Employees' Retirement System.

Prepared by: Maria Olvera, Human Resources Director

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

Attachments:

- A - CalPERS Certification of compliance with Government Code Section 20903
- B - CalPERS Certification of compliance with Government Code Section 7507

CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM

Actuarial and Employer Services Branch
Public Agency Contract Services
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 20903**

In accordance with Government Code Section 20903 and the contract between the Public Employee's Retirement System, the City Council of the City of Tracy hereby certifies that:

1. Because of an impending curtailment of, or change in the manner of performing service, the best interests of the agency will be served by granting such additional service credit.
2. The added cost to the retirement fund for all the eligible employees who retire during the designated window period will be included in the contracting agency's employer contribution rate for the fiscal year that begins two years after the end of the designated period.
3. It has elected to become subject to Section 20903 because of impending mandatory transfers, demotions, and layoffs that constitute at least 1 percent of the job classification, department or organizational unit, as designated by the governing body, resulting from curtailment of, or change in the manner of performing, its services.
4. Its intention at the time Section 20903 becomes operative is to keep all vacancies created by retirements under this section or at least one vacancy in any position in any department or other organizational unit permanently unfilled thereby resulting in an overall reduction in the work force of such department or organizational unit.

THEREFORE, the City Council of the City of Tracy hereby elects to provide the benefits of Government Code Section 20903 to all eligible members who retire within one of the three designated periods, November 1, 2011 through February 29, 2012, April 1, 2012 through June 30, 2012 or September 1, 2012 through January 31, 2013.

CITY COUNCIL
OF THE
CITY OF TRACY

BY _____
Mayor - Brent H. Ives

Attest:

City Clerk – Sandra Edwards

Date

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Actuarial and Employer Services Branch
Public Agency Contract Services
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 7507**

I hereby certify that in accordance with Section 7507 of the Government Code the future annual costs as determined by the System Actuary for the increase in retirement benefit(s) have been made public at a public meeting of the

_____ of the
City Council
(governing body)

_____ of the
City of Tracy
(public agency)

on September 20, 2011 which is at least two weeks prior to the adoption of the
(date)

Resolution / Ordinance.

Clerk/Secretary

Title

Date _____

RESOLUTION _____

ADOPT RESOLUTION TO GRANT DESIGNATED PERIOD FOR TWO YEARS
ADDITIONAL SERVICE CREDIT WITH THE CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

WHEREAS, The City of Tracy's contract with the California Public Employees' Retirement System (CalPERS) allows the City to offer the Two Years Additional Service Credit Program pursuant to Government Code Section 20903; and

WHEREAS, Under the Two Years Additional Service Credit Program, eligible employees in designated classifications will be provided two years retirement service.

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby authorize this Resolution, designating the period from November 1, 2011 through February 29, 2012 for eligible members in the following classifications:

Accounting Assistant
Accounting Officer
Accounting Technician
Airport Coordinator
Assistant City Clerk
Assistant Civil Engineer
Code Enforcement Officer
Community Services Officer
Crime Prevention Specialist
Custodian
Engineering Technician II

Executive Assistant
Finance & Administrative Services Director
Housing Program Inspector II
Maintenance Worker I
Maintenance Worker II
Plant Mechanic II
Police Sergeant
Public Works Director
Recreation Services Supervisor
Senior Maintenance Worker; and

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 4th day of October, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

RESOLUTION _____

ADOPT RESOLUTION TO GRANT DESIGNATED PERIOD FOR TWO YEARS
ADDITIONAL SERVICE CREDIT WITH THE CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

WHEREAS, The City of Tracy's contract with the California Public Employees' Retirement System (CalPERS) allows the City to offer the Two Years Additional Service Credit Program pursuant to Government Code Section 20903; and

WHEREAS, Under the Two Years Additional Service Credit Program, eligible employees in designated classifications will be provided two years retirement service.

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby authorize this Resolution, designating the period from April 1, 2012 through June 30, 2012 for eligible members in the following classifications:

Accounting Assistant
Accounting Officer
Accounting Technician
Airport Coordinator
Assistant City Clerk
Assistant Civil Engineer
Code Enforcement Officer
Community Services Officer
Crime Prevention Specialist
Custodian
Engineering Technician II

Executive Assistant
Finance & Administrative Services Director
Housing Program Inspector II
Maintenance Worker I
Maintenance Worker II
Plant Mechanic II
Police Sergeant
Public Works Director
Recreation Services Supervisor
Senior Maintenance Worker; and

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 4th day of October, 2011, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

RESOLUTION _____

ADOPT RESOLUTION TO GRANT DESIGNATED PERIOD FOR TWO YEARS
ADDITIONAL SERVICE CREDIT WITH THE CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

WHEREAS, The City of Tracy's contract with the California Public Employees' Retirement System (CalPERS) allows the City to offer the Two Years Additional Service Credit Program pursuant to Government Code Section 20903; and

WHEREAS, Under the Two Years Additional Service Credit Program, eligible employees in designated classifications will be provided two years retirement service.

NOW, THEREFORE, BE IT RESOLVED, That the City Council does hereby authorize this Resolution, designating the period from September 1, 2012 through January 31, 2013 for eligible members in the following classifications:

Accounting Assistant
Accounting Officer
Accounting Technician
Airport Coordinator
Assistant City Clerk
Assistant Civil Engineer
Code Enforcement Officer
Community Services Officer
Crime Prevention Specialist
Custodian
Engineering Technician II

Executive Assistant
Finance & Administrative Services Director
Housing Program Inspector II
Maintenance Worker I
Maintenance Worker II
Plant Mechanic II
Police Sergeant
Public Works Director
Recreation Services Supervisor
Senior Maintenance Worker; and

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 4th day of October, 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

THAT CITY COUNCIL DISCUSS AND ACCEPT THIS REPORT PROPOSING GANG INTERVENTION AND PREVENTION EDUCATION FOCUSED ON 5th GRADE CHILDREN, IMPLEMENTED THROUGH THE CLASSROOM, IN PARTNERSHIP WITH TRACY UNIFIED SCHOOL DISTRICT AND TRACY D.A.R.E.

EXECUTIVE SUMMARY

During the May 3, 2011, City Council presentation on the Gang and Violent Crime Suppression Plan, the Police Department reported on progress toward implementing gang intervention/prevention programs focused on elementary school age children, designed to disrupt the attraction of gangs upon children. Police Department staff seeks to update Council on the progress and proposed implementation of a pilot intervention and prevention program.

DISCUSSION

Although there are several national gang intervention and prevention programs, such as Gang Resistance Education and Training (G.R.E.A.T.) and Gang Resistance Intervention and Prevention (G.R.I.P.) , which all have the commonality of officer-instructed classroom curriculum focused on prevention, staff found that they lacked the ability to be modified and adapted to the uniqueness of any one community. It is essential that intervention and prevention education provided to Tracy youth is developed and focused upon the uniqueness of Tracy, specifically focusing upon the individual character of the Tracy community and gang culture to which Tracy youth are subjected. Including education that provides tangible facts and lessons born out of the evolution of gang activity and culture in the Tracy region.

In June of 2011, three Tracy Police Officers and one San Joaquin County Juvenile Probation Officer received training to become G.R.E.A.T. instructors. At the conclusion of the training they provided a debrief of the program's curriculum and structured training. The police department realized that there were many similarities to D.A.R.E., and the G.R.E.A.T. program allowed for no modification or customization to address the specific needs and problems unique to the City of Tracy. We also felt that it was not necessary to re-instruct programs, such as (peer pressure, decision making, conflict resolution, bullying, etc.) that the D.A.R.E. program had already addressed. From the beginning we had identified the need to be able to structure a curriculum that was unique to the City Of Tracy.

To attain the uniqueness of gang intervention and prevention training for Tracy youth, police department staff has begun working with local experts and community stakeholders on the evolution, culture, trends and events of gangs in Tracy, developing curriculum that educates youth on the dangers and destructiveness of the gang lifestyle. The curriculum will not only be unique to Tracy, but also retain the flexibility and adaptability to what is certain to be a change in gang practices and cultures as the community begins educating children on how to resist the destructiveness of the gang lifestyle. This is a critical element that can not be gained through any of the canned national gang prevention/intervention programs.

Tracy Gang Intervention and Prevention education will be an officer-instructed curriculum facilitated in the classroom, focused on children in the fifth grade. Capitalizing on the success and credibility of the Tracy Drug Awareness Resistance and Education (D.A.R.E.) program, staff is proposing to implement the gang education within the same classrooms wherein D.A.R.E. has been successfully instructed for more than a decade. At the conclusion of the D.A.R.E. program, fifth grade children will receive three to four additional weeks of training with the gang prevention/intervention curriculum.

The Gang Intervention and Prevention pilot program will focus on the 5th grade class at South School and be taught by Tracy Police Officers and one San Joaquin County Juvenile Probation Officer. Besides the benefits of developing a curriculum that is customized to the needs of Tracy's youth, there are also benefits to instruction immediately following the D.A.R.E. program. Some of these benefits are:

- During the D.A.R.E. program the students are conditioned to an environment where they are encouraged to interact with the instructors and law enforcement. These established relationships will further enhance the success of the Gang Intervention, Prevention and Education program by reinforcing and nurturing the established trust and respect of law enforcement.
- The teachers will have been accustomed to, and supportive of, the non-traditional instructional environment.
- The students will already be conditioned to receiving life training skills such as, dealing with peer pressure, decision making, conflict resolution, bullying, all skills that can be woven into our police department's Gang Intervention and Prevention education program.

STRATEGIC PLAN

This agenda item supports the Public Safety Strategic Plan and specifically impacts the following goals and objectives:

Goal 3: *Empower residents with the tools needed to maintain a safe quality of life.*

Objective: Although the specific objectives outlined in the public safety strategy supporting goal 3 do not address Education and Intervention, the pilot program will provide residents with information and tools that are specific to maintaining quality of life issues.

Goal 4: *Establish methods and processes to effectively address safety, blight and quality of life issues.*

Objective: One of the six objectives is to update the Gang and Violent Crime Suppression Plan. As previously stated to Council, a component of the Suppression Plan was focused on Education, Prevention and Intervention. The pilot program directly addresses and supports all three of these issues.

FISCAL IMPACT

No funds are being requested to support this pilot program. The costs associated with the implementation of this program are limited to overtime hours needed to teach four lessons to seven 5th grade classes at South School. An estimated \$3,000 in overtime will be used to cover the costs of preparation and instruction. The overtime will be billed to the existing account established to support the Gang and Violent Crime Suppression Plan. There are no other costs associated with implementing this pilot program.

RECOMMENDATION

That the City Council discuss and accept this report to implement a gang prevention and intervention education program focused on 5th grade children in partnership with Tracy Unified School District and Tracy D.A.R.E.

Prepared by: Greg Farmanian, Police Lieutenant

Approved by: Gary Hampton, Chief of Police

AGENDA ITEM 7

REQUEST

ADOPT RESOLUTION AWARDING A FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT TO TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AT TRACY MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO EXECUTE AGREEMENT

EXECUTIVE SUMMARY

On May 24, 2011, the City of Tracy issued a Request for Proposals (RFP) to obtain the services of a qualified operator to provide aviation fuel services at the airport. In response to this RFP, the City received one proposal, from Turlock Air Center, LLC. Staff has determined that Turlock Air Center, LLC doing business as Tracy Air Center is qualified to provide these services and is requesting that City Council adopt a resolution awarding an agreement with Turlock Air Center, LLC.

DISCUSSION

On January 31, 2007, the City of Tracy took over management of the City-owned aviation fuel facility at the Tracy Municipal Airport following the departure of the previous private operator.

On May 24, 2011, the City issued a Request for Proposals (RFP) to determine if any aviation fuel services operators were interested in entering into an agreement with the City to provide such services at the airport. June 27, 2011 was the deadline for the submission of proposals and Turlock Air Center, LLC (TAC) submitted the only proposal.

City staff evaluated TAC's proposal to determine if TAC could provide the level and quality of aviation fuel services that local and transient aircraft owners/operators had come to expect at the airport. Some of the criteria used in this evaluation process included:

- Completeness of proposal
- Maximizing revenue to the City from the existing City-owned aviation fuel facility
- Proposer's understanding of the scope of aviation fuel services desired
- Past experience in providing similar aviation fuel services
- Methodology proposed to meet the Airport's fuel services needs
- The proposed variety of aviation fuel services to be offered
- Financial performance
- The proposed expansion of aviation related and other services to be offered or otherwise made available at the Airport.

Based on this evaluation process, staff concluded that TAC is qualified to offer aviation fuel services and other aviation services at Tracy Municipal Airport. TAC's has proposed providing: (1) self-service fueling (as the City has offered in the past), (2) full-service fueling in which aviation fuel is delivered, via TAC-owned fuel trucks, directly to an aircraft, and (3) pilot-assisted fueling in which TAC's line-personnel assist pilots to obtain aviation fuel at the existing self-service fuel island. Items (2) and (3) are new services at

the Airport. Other proposed improvements or enhancements to the fuel facility include the installation of an additional 12,000 gallon storage tank for JetA fuel, and TAC's agreement to assume complete responsibility for maintaining and updating the existing fuel system to meet all governmental requirements as well as day-to-day operating requirements.

TAC's proposed package of aviation and other services is anticipated to increase use of the Airport and should lead to additional job creation. Additionally, TAC's fuel pricing and discount plan, which is incorporated in the proposed FSO Agreement, requires that (1) aviation fuel be priced competitively with local airports, (2) provides minimum defined discounts to aircraft owners and operators with aircraft based at the Airport, and (3) effectively accommodates the pricing-discount incorporated in the SASO Agreement between the City and Skyview Aviation, LLC.

TAC has agreed to provide a minimum annual payment guarantee of \$50,000, paid in advance, in the event that the rent and fees otherwise required under the proposed agreement to be paid in any year would have otherwise been less than \$50,000. The 2010/2011 fuel revenue realized was \$51,000, which compares favorably to the minimum payment guarantee of \$50,000 which will be paid in advance each year.

TAC also desires to build a restaurant at the Airport, and has agreed, within six months of the approval of the FSO Agreement, to begin negotiations to enter into a separate ground-lease agreement with the City for unused airport land on which to place the restaurant, and to have the restaurant completed within eighteen months of FSO Agreement approval. TAC understands that the Specialized Aeronautical Services Operator agreement between the City and Skyview Aviation, LLC (Skyview) offers certain negotiation rights to Skyview that may affect the City's ability to enter into such a ground-lease agreement.

TAC also desires to build corporate hangar(s) at the Airport, and has agreed, within twelve months of the approval of the FSO Agreement, to begin negotiations, under the parameters of the SASO agreement, to enter into a separate ground-lease agreement with the City for unused airport land on which to place the corporate hangar(s), and to have a corporate hangar completed within 24 months of FSO Agreement approval. Corporate hangars are aircraft hangars that are designed specifically to support the maintenance and storage of aircraft that are generally larger than those aircraft housed in existing City owned hangars, and generally owned by organizations, corporations, or individuals who pay others for the maintenance, refueling services, and operation of their aircraft. TAC understands that the Specialized Aeronautical Services Operator agreement between the City and Skyview Aviation, LLC (Skyview) offers certain negotiation rights to Skyview that may affect the City's ability to enter into such a ground-lease agreement.

A 35-year agreement is proposed due to improvements anticipated by TAC, with options to extend for two additional 10-year terms. The proposed agreement provides the City with minimum annual revenue of \$50,000. The proposed agreement provides for a total payment for \$0.15 per gallon for the first 100,000 gallons sold each year, and a total \$0.13 per gallon for those gallons sold in excess of 100,000 gallons per year. The proposed agreement also provides for TAC to rent the ground under the existing City owned fuel facility at a rate of \$.05 per square foot per year. The proposed rent and fees are also favorable compared to similar surrounding airports. The proposed agreement

provides for rent and fees adjustments to be made annually on October 15th of each year based on the lower of either (a) a cumulative 3 percent annual increase or (b) the cumulative increase, since the commencement date of the agreement, in the Consumer Price Index for all Urban Consumers, all Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100).

Staff is recommending that Council approve the proposed agreement (Attachment A) between the City of Tracy and Turlock Air Center, LLC for the purpose of operating as a Fuel Service Operator at Tracy Municipal Airport.

STRATEGIC PLAN

This agenda item supports the Strategic Priorities Plan and specifically implements the following goals and objectives:

Economic Development

Goal 1: Job Creation

Goal 3: Focus Efforts on projects that will result in an increase to the sales tax and transient occupancy tax (TOT) revenues

Organizational Efficiency

Goal 1: Advance City Council's Fiscal Policies

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

Goal 4: Ensure long-term viability and enhancement of the City's workforce

FISCAL IMPACT

Staff has estimated that contracting for the provision of these services will increase revenues to the Airport Enterprise Fund by at least \$6,000 annually due to increased fuel sales as well as provide for a more predicable revenue stream, increase capacity of existing City staff, reduce risk to the City, attract new ancillary aircraft services, increase aviation related jobs and enhance the existing level of services.

RECOMMENDATION

That City Council approve the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, relating to the management and operation of an existing City-owned fuel-facility at Tracy Municipal Airport, for the purposes of operating as a Fuel Sales Operator.

Prepared by: Bruce Ludeman, Airport Coordinator, Parks and Community Services

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

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

Attachment - Attachment A: Fuel Sales Operator and Fuel Facility Lease Agreement between City of Tracy and Turlock Air Center, LLC DBA Tracy Air Center

**FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
BETWEEN THE CITY OF TRACY AND TURLOCK AIR CENTER, LLC
DOING BUSINESS AS TRACY AIR CENTER**

1. **PARTIES:** City of TRACY, a California Municipal Corporation, (hereinafter “City”) and Turlock Air Center, LLC, a California Limited Liability Company doing business as Tracy Air Center (hereinafter “Lessee”) hereby mutually agree and promise as follows:
2. **PURPOSE:** City owns and operates Tracy Municipal Airport (hereinafter “Airport”); a public Airport located at 5749 S. Tracy Blvd., Tracy, California, as shown on the Airport Layout Plan, which plan is on file in the office of the Public Works Director of the City of Tracy or in the office of the City Manager’s designee holding an equivalent position.

The City’s primary objective for this Agreement is to place a Fuel Sales Operator (hereinafter “FSO”) at an existing City-owned Fuel Facility (hereinafter “Fuel Facility”) located at the Airport that will assume full responsibility for the operations of the Fuel Facility, present a positive image for the Airport, maximize revenue to the City, and provide a quality and cost efficient service for Airport users.

3. **DEFINITIONS:** As used in this Agreement, the following terms shall have the following meanings:

Aircraft: Any contrivance, now known or hereafter invented, used, or designed for navigation of or flight in the air.

Aircraft Parking Areas: The approximate Apron areas as depicted in Figure 2 and in Figure 3 which is attached hereto and incorporated herein by reference), designated as “Transient Parking”, “Short Term Parking” “Tie-Down” and “Full Service Fueling”, and subject to change by the Airport Manager, for the parking of Aircraft. The Transient Parking area is to be utilized for the overnight, less than 14 days, parking of Aircraft. The Short Term Parking area is to be utilized for the parking of Aircraft that will be departing the Airport prior to midnight on the same day the Aircraft arrived at the Airport. The Tie Down area is to be utilized for the parking of Aircraft for periods exceeding 14 days. The Full Service Fueling area is for the temporary, less than four-hour, parking of Aircraft obtaining Full Service Fueling.

Airport: The Tracy Municipal Airport, located at 5749 S. Tracy Boulevard, Tracy, California 95377.

Airport Layout Plan (hereinafter “ALP”): A scaled graphic presentation of existing and proposed Airport facilities and includes such elements as the physical Airport features, wind data tabulation, location of airfield facilities and existing general aviation development. Also presented on the ALP are the runway safety areas, Airport property boundary, and revenue support areas. The ALP is used for planning, verifying Airport data, obstruction evaluation, project

coordination, and by the FAA to determine funding eligibility for future capital projects. Thus, the ALP can change as new needs are identified. The current ALP includes the location of the existing Fuel Facility (as shown on Figure 1, which is attached hereto).

Airport Operations Area (hereinafter “AOA”): Any area of the Airport used or intended to be used for landing, taking-off, or surface maneuvering of Aircraft.

Airport Manager: The individual appointed by the City Manager to supervise the Airport in accordance with the laws of the City.

Apron: Those paved areas of the Airport within the AOA designated by the Airport Manager for the loading and unloading of passengers, servicing, fueling, or parking of Aircraft.

Aviation Fuels: Aviation Fuels are those specialized types of petroleum-based fuels used to power Aircraft.

Based Aircraft: An Aircraft that is operational, airworthy, and is based or located at the Airport for a majority of the year.

Code of Federal Regulations: of which Title 14 applies to Aeronautics and Space. The Federal Aviation Regulations (FAR) are a component thereof.

Commercial Aeronautical Services: Any activity that involves, makes possible, or relates to the operation of Aircraft, the purpose of such activity being to secure earnings, income, compensation, or profit, whether or not such objective(s) is accomplished. However, Commercial Aeronautical Services at the Airport shall not include any activity that does not serve General Aviation users. Commercial Aeronautical Services does not include scheduled passenger services.

Corporate Hangar: Corporate Hangars are Aircraft hangars that are designed specifically to support the maintenance and storage of Aircraft that are generally larger than those airplanes housed in existing City owned hangars, and generally owned by organizations, corporations, or individuals who pay others for the maintenance, refueling services, and operation of their Aircraft.

Courtesy Vehicle: Any vehicle used in the undertaking of a Commercial Aeronautical Services, other than a taxicab or vehicles regulated by the Public Utilities Commission, to transport persons, baggage, or goods, or any combination thereof, between the Airport and off-Airport businesses such as hotels, motels, or other attractions, and the business establishment owning or operating such vehicle, the operation of which is generally performed as a service without direct costs to the passenger.

DOT: The United States Department of Transportation.

CITY OF TRACY – REQUEST FOR PROPOSALS
Tracy Municipal Airport – Fuel Services Operator
Page 3 of 40

Entity: A person, firm, corporation, or partnership.

Equipment: All machinery, together with the necessary supplies, tools, and apparatus necessary to the proper conduct of the activity being performed.

FAA: The Federal Aviation Administration.

FAR: Federal Aviation Regulation.

Fuel Services Operator (hereinafter “FSO”): A business granted the right by the City to operate on the Airport and provide Fuel Services, a specific Commercial Aeronautical Service.

Fuel Services: All activities associated with the purchasing, receiving, and storage of Aviation Fuel, and when requested by a fuel customer, the dispensing of Aviation Fuel into Aircraft.

Fuel Facility: The City owned Self-Service Aircraft refueling system consisting of fuel storage tanks, self-service fuel dispensers, credit-card terminals, fuel filters, fuel pumps, security lighting, security fencing, underground piping, above ground piping, and leak detection systems.

Fuel Facility Land: The Fuel Facility Land includes any land specifically identified on the Fuel Facility Diagram , particularly the land under the existing fuel storage tanks, the land under the existing self-service fuel dispensers, the Apron area specifically designated for self-serve and into-plane (full-service) refueling of aircraft, the land identified as the location of Lessee’s business office and/or Fuel Truck storage area, and any land that may be required for the construction of additional fuel storage tanks, offices, or refueling related maintenance facilities.

Fuel Facility Diagram: A scaled graphic showing the location of the major components of the Fuel Facility. The Fuel Facility Diagram is shown on Figure 3, which is attached hereto.

Full-Service Fueling: The dispensing of Aviation Fuel into an Aircraft by FSO employees who will drive a fuel truck to an Aircraft, dispense fuel from the truck into the Aircraft, and collect payment from the pilot or Aircraft operator.

Fuel Truck: A motor vehicle designed and intended for the use of hauling or carrying Aviation Fuel on the Airport. Fuel Trucks typically haul Aviation Fuel from bulk storage tanks and deliver it directly to Aircraft owners/or operators desiring Full-Service Fueling for their Aircraft.

Ground Lease: A Ground Lease offered to Lessees who have a need for additional land that may be required, for example, for construction of offices, maintenance facilities, Fuel Services facilities, Corporate Hangars, access

roads, or other Improvements. The Ground Lease will define the location and dimensions of the Airport property upon which the Improvements will be constructed. The terms and conditions of any Ground Lease will be dependent on various factors including the scope of the financial investment by the Lessee.

Hazardous Materials: Any hazardous or toxic substance, hazardous or radioactive material, or hazardous waste, pollutant or contaminant at any concentration that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Airport or the Fuel Facility located thereon.

Improvements: All buildings, structures, and facilities, including pavement, signs and landscaping, constructed, installed or placed on, under or above the Fuel Facility, or on land made available for such Improvements by virtue of a separate Ground Lease Agreement by or with the concurrence of the Lessee. Plans and specifications for all Improvements by FSO must be approved by City for conformity with building, construction, and Airport standards. All permits required for the Improvements must be obtained prior to construction.

Line Services: Any service routinely performed on an Aircraft on the Apron area including, but not limited to the servicing of Aircraft lavatories, the provisioning of Aircraft with potable water, nitrogen, and oxygen, providing Aircraft with a ground power unit, or Aircraft towing.

Pilot-Assisted Fueling: Pilot-Assisted fueling occurs when a pilot shares fueling duties and responsibilities with the FSO line person. Both the pilot and the line service technician need to be present during such fueling.

Personal Property: All property other than Real Property.

Real Property: Land, including all structures and Improvements on it.

Regulatory Measures: Federal, State, County, and City laws, codes, ordinances, policies, rules, and regulations, all as may be in existence, hereafter enacted, and amended from time to time.

Rules and Regulations: Those Airport Rules and Regulations governing the operations of the Airport, properly adopted by the City Council, and as may be amended from time to time.

Self-Service Fueling: The dispensing of fuel by the Aircraft owner or operator into an Aircraft using the self-service fueling dispensers which are part of the Fuel Facility.

Specialized Aeronautical Service Operator (hereinafter “SASO”): A business entity operating on the Airport offering specialized aeronautical service such as aircraft sales, flight training, aircraft maintenance and avionics services.

Sublease: A lease granted by Lessee to another Entity of all or part of the Fuel Facility.

Tie-down: A clearly marked and paved area suitable for the parking and mooring of a single Aircraft wherein suitable Tie-Down points have been located.

4. **Agreement:** City hereby leases to the Lessee, and Lessee leases from the City, the existing Fuel Facility at the Airport as described herein subject to the rights, covenants, terms, and conditions set forth herein.

This Fuel Services Operator and Fuel Facility Lease Agreement (hereinafter “Agreement”) expressly permits Lessee to provide Fuel Services, a specific Commercial Aeronautical Service, at the Airport. The Fuel Facility is located on the east side of the Airport, more particularly identified in the ALP, attached hereto, and made a part hereof, as Figure 1. The Lessee’s rights under this Agreement are strictly limited to the defined premises. Lessee shall, at a minimum: (1) assume full responsibility for the operations of the Fuel Facility; (2) present a positive image for the Airport; and (3) provide a quality and cost efficient service for Airport users.

5. **INSPECTION OF PROPERTY:** Lessee has carefully and completely examined the Fuel Facility, is fully informed of the condition of the premises, and is satisfied as to the suitability of the premises “AS IS” for the proposed purposes. Lessee expressly waives any and all claims against City relative to the nature, condition, or suitability of the premises. Any Improvements that Lessee may desire or find necessary shall be completed at the Lessee’s sole cost and only after the City’s prior written approval. To allow City to make a decision as to whether to grant such approval, Lessee shall provide City with plans that show contemplated Improvements with reasonably sufficient detail to allow City to fully understand the nature and scope of the proposed changes to the Fuel Facility.
6. **LEASED PROPERTY:** The Fuel Facility consists of the Real Property situated in City of Tracy, County of San Joaquin, State of California, more particularly described and shown on the ALP (Figure 1), and Fuel Facility Diagram (Figure 3), which are attached hereto and incorporated herein by reference.

Lessee has the right to provide Fuel Services (as described more fully in various sections of this Agreement) to Aircraft stored or parked on the Apron and other parts of the Airport. Lessee is not allowed to lease, rent, or otherwise permit any portion of the Apron area to be used by any third party or for any other purpose without the express written consent of the Airport Manager. The Lessee’s use of the Apron area shall not: (1) obstruct or impede the normal movement of Aircraft in the vicinity of the SASO hangar/office area, or (2) prevent convenient access to the SASO hangar/office area or restrooms by customers, or visitors.

7. **TERM:** The Agreement period is thirty-five years and shall commence on the 15th day of October 2011 (hereinafter “Commencement Date”), and run through the 14th day of October 2046.

City may, at its sole option, extend the agreement up to two times for a period of ten years each time with the first option extension period running from the 15th day of October 2046, through the 14th day of October 2056; and the second option extension period running from the 15th day of October 2056, through the 14th day of October 2066.

Lessee shall provide City with written notification of the Lessee’s interest in having City consider entering into the extension period contemplated under this section at least six months prior to the lease expiration date.

8. **HOLDING OVER:** In the event Lessee remains in possession of the Fuel Facility after the expiration of the term of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month, which may be terminated at any time by City or Lessee upon thirty days written notice. All terms and conditions of this Agreement then in place shall govern the month-to-month tenancy.
9. **COMPLIANCE WITH LAWS:** In its use and operation of the Fuel Facility, Lessee shall comply with all applicable statutes, ordinances, or regulations now or hereafter adopted.
10. **USE OF FUEL FACILITY:**
- 10.1 Lessee agrees that the use of the Fuel Facility, the development thereof, and any construction or Improvements thereon, shall be in accordance with the applicable provisions of all federal, state, and County of San Joaquin laws, regulations, and ordinances and all City of Tracy ordinances, including the Tracy Municipal Code and the Planning and Zoning Code of the City.
- 10.2 Lessee shall use the Fuel Facility for the operation of a FSO as defined in this Agreement. The Fuel Facility shall not be used for any other business or purpose without the prior written consent of the City.
- 10.3 The Lessee's use of the premises shall be in accordance with all laws concerning the Lessee's use of the premises, including, without limitation, the obligation at the Lessee's cost to alter, maintain, or restore the premises, or construct Improvements in or to the premises, in compliance and conformity with all laws and government requirements relating to the condition, use, or occupancy of the premises during the term, whether foreseen or unforeseen, regardless of the cost, and regardless of when during the term the work is required.

10.4 Lessee shall maintain at a minimum the following business hours open to the public. Fuel Services shall also be available on-call after regularly scheduled business hours with response time not to exceed 90 minutes.

Monday through Friday: 9:00 AM to 5:00 PM
Saturday and Sunday: 10:00 AM to 4:00 PM

With the following extended hours from Memorial Day to Labor Day:
Monday through Friday: 9:00 AM to 6:00 PM
Saturday and Sunday: 10:00 AM to 5:00 PM

10.5 Lessee may close on the following three holidays: New Year's Day, Thanksgiving Day, and Christmas Day.

10.6 A Fee Schedule describing all charges and any hourly rates for services for Airport patrons is to be posted at the Fuel Facility in plain view and kept up to date. The rates and charges shall be determined by Lessee and are subject to the requirements that all rates and charges shall be reasonable and fairly applied to all users of its services. All rates and charges will be filed with the Airport Manager.

11. REQUIRED COMMERCIAL AERONAUTICAL SERVICES: In addition to complying with any other applicable laws and regulations, Lessee shall follow Federal Aviation Regulations for each required Commercial Aeronautical Services as well as minimum acceptable qualifications and requirements of participants, level and quality of service, and other conditions, which will be required of Lessee to conduct Commercial Aeronautical Services at the Airport. This requirement relates to the public interest in that it is intended to provide protection from irresponsible, unsafe, or inadequate service, and to ensure that those individuals or entities engaged in Commercial Aeronautical Services at the Airport are reasonably fit, willing, and able to discharge their service obligations to their patrons.

Pursuant to this Agreement and all applicable Airport Rules and Regulations, during the term of this Agreement, Lessee is required to undertake and pursue, on a regular basis and consistent with industry practices, the following Commercial Aeronautical Services: Fuel Services.

In addition to the required Commercial Aeronautical Services, Lessee also may provide Line Services, and when appropriate, ancillary Aircraft ground services. If Lessee desires to wash Aircraft, Lessee shall submit a wash plan to the Airport Manager. Such wash plan shall not become effective unless and until the Airport Manager approves the plan and communicates such approval in writing to Lessee. The wash plan, as approved by the Airport Manager shall be strictly adhered to. If the Airport Manger does not approve the wash plan, the notification shall include a description of denial with remedies for acceptance.

- 12. OPERATION OF FUEL FACILITY:** Lessee shall continuously use the Fuel Facility for the uses specified in this Agreement. If the premises are destroyed or partially condemned or full use by Lessee is unavailable, to the extent not caused in any part by the Lessee, (1) Lessee shall be entitled to a pro rata reduction in Rent during all such periods for the destroyed areas only, and (2) Lessee shall continue operation of its business at the premises to the extent reasonably practical during any period of reconstruction.

The maintenance and operation of facilities on the Fuel Facility shall at all times during the term of this Agreement be under the direct supervision of Lessee or a competent representative of the Lessee, who shall be subject at all times to the direction and control of the Lessee.

- 13. IDENTIFICATION AND PERIODIC REPORTING OF STORED AIRCRAFT:** Lessee shall, at all times, maintain a current list of all Aircraft positioned past Midnight on the defined Fuel Service and Short Term Aircraft Parking Areas, containing for each Aircraft, the Aircraft type (make, model), the Aircraft registration number, and contact information for the pilot and/or owner of the Aircraft if known. Lessee shall provide the Airport Manager and if requested by the Airport Manger, any SASO operating on the Airport, with a copy of such a list.

- 14. AIRPORT DISASTER RELIEF SUPPORT:** Lessee shall, on commercially reasonable term, make itself available as a resource in the event of a disaster and actively plan, within its capabilities, to provide fuel and Equipment to support emergency medical evacuation flights and other relief flight activities.

- 15. CITY'S RESPONSIBILITIES:** The City's responsibilities are as follows:

15.1 Administration: City Council has the final control and authority to determine policy, including but not limited to funding levels, the scope of services the Airport should provide, planning requirements, improvement projects, and all capital purchases, including:

15.1.1 Oversight of all Airport improvements.

15.1.2 Oversight of the Agreement to monitor compliance by the Lessee.

15.1.3 Complete all required governmental and regulatory documents required as Airport sponsor.

15.1.4 Set goals, objectives, and standards for Airport.

15.1.5 Oversee capital improvements and other Airport projects.

15.1.6 Installation of FAA required Airport radio communication devices and maintenance and repair of all FAA required Airport radio communication systems.

15.1.7 Manage Airport grants and hangar rentals.

- 16. NOISE ABATEMENT PROVISIONS:** Lessee shall make an effort to aid in the mitigation of noise complaints, especially those resulting from night operations (between 2200 hours and 0600 hours local time), and help foster good public relations by requesting Aircraft operators to adhere to any noise abatement procedures now in existence or which may be subsequently adopted by City Council and/or promulgated by the Airport Manager.
- 17. AIRPORT AIR SHOWS AND STATIC DISPLAY EVENTS:** Lessee is hereby notified that an air show, an Airport open house, and similar static display events may be conducted from time to time at the Airport, and in the proximity of the Fuel Facility, which may cause an inconvenience to the Lessee. City agrees to provide reasonable advance notice of such planned events to the Lessee. During the day or days of these events, Lessee acknowledges Lessee or its customers may have limited Aircraft access to the Airport Apron, or the Fuel Facility or may be required to relocate aircraft in a timely fashion at the discretion of the Airport Manager
- 18. SPECIAL STANDARDS OF OPERATION REGARDING FUEL SERVICES:**
- 18.1 Non-exclusive Privileges:** The following shall apply to the operation and maintenance by Lessee of the Fuel Facility. Lessee shall have the non-exclusive privilege of offering for sale, selling and dispensing of Aviation Fuels and lubricants on the Airport.
- 18.2 Performance of Fuel Services:** Lessee shall adhere to all requirements of the Industrial Relations Department of the State of California covering requirements for the storage and dispensing of Aviation Fuels and lubricants, as well as all applicable local, state, and federal regulations. Lessee shall perform its Fuel Services in a manner consistent with industry practices and in accordance with this Agreement and all applicable Airport Rules and Regulations. All Fuel Services provided hereunder shall be thorough, prompt, and efficient as judged by the Airport Manager, and shall be adequate to meet the demands of the public on the Airport.
- 18.3 Performance of Service on a Non-Discriminatory Basis:** The Fuel Services performed under this Lease shall be provided on a fair, equal, and non-discriminatory basis to all users of the Airport and at fair, reasonable, and non-discriminatory prices. It is understood and agreed that reasonable and non-discriminatory discounts, rebates and other similar types of price reductions may be made to like types of purchasers and users, if otherwise lawful.
- 18.4 Fuel Prices:** The price for Avgas at any given time shall not exceed 95% of the average of Full-Service Fueling or 95% of the average of Self-Service Fueling prices charged at all airports located within a 50-mile radius of the Airport.

Lessee agrees to make available the following discounts on Avgas: (1) a forty-cent per gallon discount on Aviation Fuel purchased by Skyview Aviation, LLC until December 31, 2012; (2) a discount on Avgas purchased with cash or check from Lessee's fuel trucks by owners and/or operators of Based Aircraft and such discounted price must be less than the self-service price (3) a discount to any SASO or FBO operating on the Airport not less than the discount rate and terms made available to all owners and/or operators of Based Aircraft. This Section 18.4 makes available only a single discount to any owner, operator, SASO or FBO.

18.5 Aviation Fuels and Lubricants: Lessee shall provide for sale the following products:

18.5.1 Aviation gasoline (AvGas);

18.5.2 Jet fuel (Jet-A);

18.5.3 A full line of Aviation lubricants

All Aviation Fuels and lubricants shall be supplied by one or more nationally recognized companies. Lessee is responsible to assure the quality of all Aviation Fuels and Lubricants dispensed.

18.6 Fuel Handling and Equipment: In regards to delivery of Aviation Fuel to customers, Lessee shall provide for: (1) Self-Service and Pilot-Assisted Fueling from the existing dispensers located on the Fuel Island, and (2) Full-Service Jet-A and AvGas Fueling from fuel trucks. Lessee shall provide, by November 15, 2011 at the latest, at least one fuel truck for each grade of Full-Service fuel with a minimum tank capacity of seven hundred fifty gallons. Any fuel trucks will be the sole responsibility of the Lessee. Such operation is permitted when Lessee is in compliance with currently required licenses, permits, and applicable regulations. Each fuel truck shall have an operating two-way VHF radio permitting communication with Aircraft on the ground, and such vehicles shall be operated on the Airport only under the procedures and controls established by the Airport Manager. Aircraft fuel trucks shall be equipped with metering devices that meet all applicable regulatory measures. Each fuel truck shall be equipped and maintained to comply with all applicable safety and fire prevention requirements, standards, and regulatory measures including without limitation, those prescribed by: State of California Fire Code and local Fire Department, National Fire Protection Association (NFPA) Codes, local and state environmental and health departments, and applicable FAA Advisory Circulars (AC) including AC00-34 "Aircraft Ground Handling and Servicing" and AC 150/5210-5 "Painting, Marking and Lighting of Vehicles Used on an Airport".

18.7 Safety Training for Personnel Performing Fuel Services: Lessee is required to provide training for all employees performing Fuel Services in the

proper handling of fuel products, including but not limited to, proper testing of fuel products for contamination, proper grounding procedures, proper handling of different types of nozzles in use, safety and emergency shut-down procedures, and fire response. Lessee shall further develop and maintain Standard Operating Procedures (hereinafter the “SOP”) in compliance with standards set forth in FAA Advisory Circular 00-34A “Aircraft Ground Handling and Servicing”. The SOP shall also address public protection; control of access to fuel storage facilities; and marking and labeling of fuel storage tanks and Refueling Vehicles. Lessee’s SOP shall be submitted to the Airport Manager no later than thirty days before the Lessee commences Fuel Services at the Airport.

18.8 Ground Handling and Line Service Equipment: Lessee shall provide and properly operate and maintain a sufficient amount of fueling and line service equipment as needed to effectively perform the requirements of this Agreement.

19. RENT AND FEES: Lessee shall pay to City all rent and fees as set forth herein in accordance with the following provisions:

19.1 Fuel Facility Use Fee: For the privilege of using the City owned Fuel Facility, Lessee shall pay the City a Fuel Facility Use Fee of ten cents (\$0.10) per gallon on all Aviation Fuel sold to Airport customers. This Fee shall be payable to the City regardless of any changes, additions, or modification to the Fuel Facility including but not limited to the installation or acquisition by Lessee or others of additional fuel storage capacity, or Fuel Trucks to which fuel is delivered. Payment due City in this Section shall be credited monthly against Lessee’s prepaid Minimum Annual Payment Guarantee (Section 20.1), and after the aggregate amount of the rent and fees required under this Agreement in any given year exceeds Lessee’s prepaid Minimum Annual Payment Guarantee, Lessee shall without demand, pay such excess amount on or before fifteen days following the end of the preceding month throughout the term of this Agreement and any extensions. Lessee shall also provide, on a monthly basis, a report of Lessee’s fuel flowage during the preceding month, which shall include a copy of all State Board of Equalization (“BOE”) sales tax reports filed with the State of California during the preceding month, and a copy of each delivery receipt or bill of lading from Lessee’s fuel distributor, showing the gravity-corrected and recalibrated net quantity delivered during the preceding month. Any disputes or controversies between the parties with respect to this Section and this Agreement shall be resolved in accordance with the provisions of Section 26, LEGAL ACTION AND MEDIATION of this Agreement.

19.2 Fuel Flowage Fee: For the privilege of selling Aviation Fuel at the Airport, Lessee shall pay the City a Fuel Flowage Fee of seven cents (\$0.07) per gallon on all Aviation Fuel sold up to 100,000 gallons during the twelve month

period beginning on October 15 of each year. Lessee shall pay the City a Fuel Flowage Fee of three cents (\$0.03) per gallon on all Aviation Fuel sold to Airport customers over 100,000 gallons during such twelve month period. Payment due City in this Section shall be credited monthly against Lessee's prepaid Minimum Annual Payment Guarantee (Section 20.1), and after the aggregate amount of the rent and fees required under this Agreement in any given year exceeds Lessee's prepaid Minimum Annual Payment Guarantee, Lessee shall without demand, pay such excess amount on or before fifteen days following the end of the preceding month throughout the term of this Agreement and any extensions. Lessee shall also provide, on a monthly basis, a report of Lessee's fuel flowage during the preceding month, which shall include a copy of all BOE sales tax reports filed with the State of California during the preceding month, and a copy of each delivery receipt or bill of lading from Lessee's fuel distributor, showing the gravity-corrected and recalibrated net quantity delivered during the preceding month. For Avgas sold to Skyview Aviation, LLC (during the period ending December 31, 2012), Lessee shall provide a sufficiently detailed monthly report to the Airport Manager on or before fifteen days following the end of the preceding month, accurately showing the number of gallons purchased by Skyview Aviation, LLC. Based upon that report, for Avgas purchases by Skyview Aviation, LLC, Lessee will deduct, from Fuel Flowage Fees owed to City, the amount of twenty cents (\$0.20) for each gallon purchased with cash, and forty cents (\$0.40) for each gallon purchased with credit card. Any disputes or controversies between the parties with respect to this Section shall be resolved in accordance with the provisions of Section 26 LEGAL ACTION AND MEDIATION of this Agreement.

19.3 Fuel Facility Land Rental Fee: For the privilege of using Airport land upon which the 6,500 square foot Fuel Facility is located, beginning on the commencement date, Lessee shall pay Fuel Facility Land Rent to City in the amount of five cents (\$0.05) per square foot per year. Fuel Facility Land Rent shall be payable annually, in advance, and without demand on or before the first day of each year. Fuel Facility Land Rent for any partial year shall be prorated at the rate of 1/365 of the applicable annual Fuel Facility Land Rent per day.

19.4 Rent and Fees Adjustment: Beginning October 15, 2012 and thereafter on October 15 of each year, the Rent and Fees shall be adjusted to the lesser of either (1) the cumulative change in Consumer Price Index since December 31, 2011, or (2) a cumulative three-percent (3%) per year increase. Hereinafter, "CPI" shall mean the Consumer Price Index for all Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or its successor.

At no time will the Rent and Fees be decreased by a CPI adjustment. In the event there is a decrease in the CPI, the Rent and Fees for the year in question shall be the same as the Rent for the preceding year. City will notify Lessee of the increase in Rent when City completes the calculation of the increased rent.

19.5 Records of Fuel Products Sold: Lessee shall keep true and accurate records of all sales of fuel made to or for the account of Lessee at the Airport. On or before the fifteenth day of each calendar month during the term of this Lease, Lessee shall submit to the Airport Manager a fueling activity report, indicating the total quantity of aviation fuel sold by Lessee during the preceding calendar month.

20. ADDITIONAL PAYMENT PROVISIONS:

20.1 Minimum Annual Payment Guarantee: Lessee will pay the greater of either the combined total of the Fuel Facility Use and Fuel Flowage Fees described in 19.1 and 19.2 above, or a minimum annual payment of \$50,000.00, paid in advance, for each 12 month period beginning October 15, 2011. In the event the total of all payments specified in 19.1 and 19.2 is less than \$50,000 in any given 12 month period beginning on October 15 of any given year, Lessee shall be allowed to accrue the difference between the actual payment and \$50,000 and recoup that difference in future years to the extent that the actual Fuel Facility Use Fee and Fuel Flowage Fee combined exceeds \$50,000. But in no case shall the City receive less than \$50,000, paid in advance, in any single period, nor will the City have any responsibility for un-recouped fees at the end of the term of the Agreement. It shall be the responsibility of Lessee to provide City a report of the prior year's payments made during the preceding calendar year within fifteen days following the end of the preceding year. In the event of the total amount of such payments made during the preceding calendar year is less than \$50,000, Lessee shall pay, without demand, an amount equal to \$50,000 less such payments to City prior to November 15th of the following 12-month period.

20.2 Late Payment of Rent and Fees: In the event Lessee fails to pay City any Rent or Fees due under this Agreement within five business days after such Rent or Fee is due, regardless of notification from City, Lessee shall pay to City a late charge of One Hundred and No/100 Dollars (\$100) per occurrence, plus interest on said unpaid balance at a rate of one percent simple interest per month, from the date said payment was due and payable until paid in full. Lessee shall pay said late charge on or before the next installment of Rent or Fee is due. City and Lessee hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix the City's actual damage from any late payments and, thus, that Lessee shall pay as liquidated damages to City

the late charge specified in this section, which is the result of the parties' reasonable endeavor to estimate fair average compensation therefore. Acceptance of any late charge shall not constitute a waiver of the Lessee's breach with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to the City. If Lessee fails to pay its monthly or annual payments within 10 days after such payment is due, regardless of notification from City, Lessee shall be in default of this Agreement.

20.3 Form and Place of Payment: All Rent and Fees shall be paid in cash or by check, certified check, or money order, payable to City of Tracy, and must be received on or before due date at City of Tracy Finance Office, 333 Civic Center Plaza, Tracy, California, 95376, or at such other place as City may designate in writing from time to time.

20.4 Returned Checks: If a check written by Lessee is returned for insufficient funds, City may impose a reasonable service charge in addition to any charges imposed by the bank. City may require Lessee to pay Rent or Fees by certified check or money order if the Lessee's bank or banks have returned one or more personal checks in a twelve-month period.

20.5 Security Deposit: Upon execution of this Agreement, Lessee shall pay to City the sum of Twenty Thousand and No/100 Dollars (\$20,000) in cash as security (hereinafter "Security Deposit") for the faithful performance of the terms, covenants, and conditions of this Agreement. If Lessee performs without breach for the entire first two years, \$14,000 of the deposit will be refunded. If Lessee is in breach of this Agreement, City may in its sole discretion use the Security Deposit, or any portion of it, to cure the breach or compensate City for damages sustained by City resulting from the Lessee's default. Upon demand by the City, Lessee shall immediately pay to City a sum equal to the portion of the Security Deposit expended or applied by City as provided in this subsection so as to maintain the Security Deposit in the sum initially deposited. Upon final accounting by the City, any balance of said deposit shall be refunded to the Lessee, without interest.

20.5 No Partnership or Joint Venture: Nothing in this Agreement shall be construed to render City in any way or for any purpose a partner, joint venturer, or associate in any relationship with Lessee other than that of lessor and lessee, nor shall this Agreement be construed to authorize either to act as agent for the other.

20.6 Transfer of Inventory at Beginning and End of Lease: Upon the Commencement Date of this lease, Lessee shall purchase the existing Aviation Fuel inventory from City with payment due to City within thirty days. Upon lease termination, City will purchase existing inventory from Lessee. The price of the Aviation Fuel inventory will be based on Last-In-First-Out

(LIFO), but in no event shall the purchase price exceed the wholesale price of fuel on the date of transfer. After lease termination, and after final accounting by the City, any balance remaining of such payment shall be paid to the Lessee, without interest.

21. MAINTENANCE, REPAIRS, AND HAZARDOUS MATERIALS:

21.1 Maintenance and Repair by the Lessee: At all times during the term of this Agreement, Lessee shall, at the Lessee's own cost and expense, keep and maintain the Fuel Facility and all improvements, fixtures and Equipment which may now or hereafter exist on the Fuel Facility, in good order and repair and in a safe and clean condition consistent with good business practices. Mechanical or other problems preventing customers from obtaining Fuel Services (either AvGas or Jet Fuel) must be fixed or repaired within twenty-four hours or as soon as reasonably possible. Lessee hereby waives the benefits of Sections 1932, 1941, and 1942 of the California Civil Code and all rights to make repairs at the expense of the City, as provided therein. If, after thirty days notice from the City, Lessee fails to maintain, repair, or keep clean any part of the Fuel Facility or any improvements, fixtures, or Equipment thereon as required herein, City may, but shall not be obligated to, enter upon the Fuel Facility and perform such maintenance, repair, or clean-up and Lessee agrees to pay the costs thereof to City upon demand. Any unpaid sums under this section will bear simple interest at the prevailing statutory interest rate until paid in full.

21.2 Hazardous Materials Provisions: As used in this Agreement, the term "Hazardous Materials" shall mean any substance or material which has been determined by any state, federal or local governmental agency to be capable of posing risk of injury to health, safety, and Property, including petroleum and petroleum products, and including, but not limited to all those materials and substances designated as hazardous or toxic presently or in the future by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health, Education and Welfare, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances defined as "Toxic Materials" in section 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time.

21.2.1 The Lessee's Operations: In conducting its operations on and at the Airport, Lessee shall abide and be bound by all of the following requirements:

21.2.1.1 Lessee shall comply with all federal, state, and local laws, requirements, and policies now or hereinafter in effect relating to Hazardous Materials and environmental conditions on, under or about the Airport including, but not limited to, soil and groundwater conditions, and shall not contaminate the Airport or the subsurface with any hazardous material.

21.2.1.2 Lessee shall restrict the use of Hazardous Materials on the Fuel Facility to those kinds of materials that would be normally expected in conducting the activities permitted under this Agreement in a safe and prudent manner. Storage or disposal of any Hazardous Materials on the Fuel Facility must be done in accordance with prevailing applicable regulations.

21.2.1.3 Lessee shall be solely and fully responsible for the reporting of known hazardous material releases to the appropriate public agencies, when such releases are caused by or result from the Lessee's activities on the Airport. Lessee shall immediately notify City of any such release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.

21.2.1.4 Lessee shall be solely and fully responsible and liable in the event Lessee causes or permits Hazardous Materials to be released at the Airport, or to enter the City's sewerage or storm drainage system, soil, air, groundwater or any Improvements. Lessee shall take all reasonable precautions to prevent any Hazardous Materials from entering into the City's sewerage or storm drainage system, soil, air, groundwater, or any Improvements, or from otherwise being released on the Airport. If at any time a release of such Hazardous Materials is discovered on the Fuel Facility, the Airport, the City's sewerage, septic, or storm drainage system, soil, air, groundwater or any Improvements, which was caused or permitted in whole or in part by the Lessee, the Lessee's officers, agents, employees, contractors, permittees or invitees or there is the danger of such release of Hazardous Materials, the Lessee, at the Lessee's sole cost and expense, shall

remove such Hazardous Materials from the Airport or the groundwater underlying the Airport, or the City's soil, air, storm drainage and sewerage system, in accordance with requirements of all appropriate governmental authorities. In addition to all other rights and remedies of City hereunder, if such release of Hazardous Materials is not removed from the Airport or the subsurface or groundwater underlying the Airport by Lessee within ninety days of being put on notice thereof after the Lessee, the City, or other third party discovers such Hazardous Materials, the City, in its discretion, may pay to have same removed and Lessee shall reimburse City within ninety days of the City's demand for payment.

- 21.2.1.5** Lessee shall indemnify, defend, and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of the presence or clean-up of Hazardous Materials on the Airport or the subsurface caused by Lessee subsequent to the Commencement Date. After notice from the City, and at the discretion of the City, Lessee shall cease its activities on the Airport until such release or danger of release of Hazardous Materials is cured, without abatement of any fees or charges due under this Agreement, until such release or the danger of release of Hazardous Materials is cured.
- 21.2.1.6** Lessee shall prepare and maintain a written Spill Prevention Contingency and Control Plan, and the approved Plan shall be kept current and a copy of the most current version shall be submitted to the Airport Manager to be kept on file.
- 21.2.1.7** The Lessee's obligations under this section shall survive the expiration or earlier termination of this Agreement for ten years after such termination for requirements in place at the time of such termination.
- 21.2.1.8** Notwithstanding anything to the contrary set forth in this Lease, City hereby agrees that Lessee shall not be held responsible or liable for any remediation, clean-up, or other costs incurred to remedy any Hazardous Materials (1) existing at the Airport prior to the Commencement Date, or

(2) caused by City or its officers, agents, employees, or contractors.

21.2.2 Records and Inspections: Lessee shall maintain for a period of not less than four years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, and order or decree, separate and accurate daily records pertaining to the use, handling, and disposal of all Hazardous Materials at the Airport.

After the expiration of said four-year period, Lessee shall notify City no later than sixty days prior to any proposed destruction of any of said documents; upon request by the City, copies of all said records, documents, and information shall be delivered to City at the City's cost. In addition, Lessee shall furnish City with such records and such other documentation or reports as the Airport Manager, from time to time, and at any time during or after the term of this Agreement, may reasonably require, at the City's cost.

21.3 Stormwater Provisions: Lessee shall prevent Aviation Fuels, lubricants, fuel additives and any other petroleum products and its other deleterious waste from entering into the sewage, septic, runoff, and storm water drainage systems serving the Airport. Lessee shall comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) of the Federal Clean Water Control Act regarding permits for stormwater discharges associated with industrial activity. Lessee is responsible for ensuring full compliance with the California and federal stormwater laws and regulations.

21.4 The Lessee's Fuel Facility Maintenance, Modifications, and Improvements Responsibilities: Lessee shall be responsible for all aspects of maintenance of the Fuel Facility, including, but not limited to:

21.4.1 Lessee will take over operation of the Fuel Facility in its current, as-is condition and will be responsible, within sixty days of the Commencement Date, of ensuring compliance with all federal, state, county and local codes and regulations that deal with the storage and dispensing of aviation fuels. Any modifications of the Fuel Facility to facilitate loading of Fuel Trucks, or modification for any other purpose, will be the responsibility of Lessee. Any such modifications shall not be performed without the express written consent of the Airport Manager.

21.4.2 City will be responsible, within 120 days of the Commencement Date for modifying the existing electrical service to the Fuel Facility to ensure all electricity consumed on the Fuel Facility is metered separately. The modified electrical service and electrical meter, as installed, must be sufficient to allow the electricity provider, Pacific

Gas and Electric, to bill Lessee for all electricity used on the Fuel Facility. Lessee will pay City all costs, up to three-thousand dollars \$3,000, for modification to the electrical service as described above.

- 21.4.3** Lessee will be responsible, at its sole expense, for the proper repair, maintenance, and upgrades of the Fuel Facility and associated Equipment, which includes, but is not limited to fuel tanks, dispensers, hoses, nozzles, static reels, credit card terminal, valves, filters, pipes, and leak detection and monitoring systems, security lights, and fencing. Lessee is also responsible for tank cleaning and inspections as required, as well as obtaining and maintaining any required permits, service agreements, and electrical service. Mechanical or other problems preventing customers from obtaining Fuel Services (either AvGas or Jet Fuel) must be fixed or repaired within twenty-four hours.
- 21.4.4** Lessee will maintain the Fuel Facility in “customer ready” condition at all times, including cleaning and painting as needed, weed removal and abatement, sweeping, light bulbs, and annual testing and/or certification of fire extinguishers.
- 21.4.5** Establishing and completing a safety and maintenance inspection program for the Fuel Facility including but not limited to emergency equipment including a first aid kit and fire extinguishers, and electrical, water, and septic systems.
- 21.4.6** Establishing and completing the inspection program incorporated in the written Spill Prevention Contingency and Control Plan.
- 21.4.7** Completing all required applicable governmental and regulatory documents.
- 21.4.8** Maintaining an inventory of replacement parts and supplies sufficient to assure timely replacement or replenishment.
- 21.4.9** Notifying City of necessary repairs not the responsibility of the Lessee.
- 21.4.10** Lessee shall install an additional 12,000 gallon fuel tank, at Lessee’s sole expense, by not later than April 15, 2013.

22. TAXES AND UTILITIES:

- 22.1 Taxes to be Paid by the Lessee:** During the term of this Agreement, Lessee shall pay or cause to be paid, prior to delinquency, any and all taxes, including possessory interest taxes, Personal Property taxes, and any assessments, licenses, and fees levied or assessed as follows:

- 22.1.1** On the Fuel Facility; against any building or other structure, land and/or Improvements or Personal Property on the premises and/or the Lessee's activities.
- 22.1.2** On all possessory interests subject to taxation hereunder or in the Fuel Facility, Lessee recognizes and understands that this Agreement may create a Real Property possessory interest in Lessee that may be subject to Real Property taxes levied on such interest. In such event, City shall not be responsible for payment of any such tax. No such tax shall in any way reduce or substitute for the charges or fees required to be paid as a condition of this Agreement or such charges or fees as may otherwise be required by the City.
- 22.1.3** On any Improvements, fixtures, and Equipment hereafter added to the existing Fuel Facility and on any Personal Property situated in, on, or about the Fuel Facility, or in, on, or about any buildings or Improvements on the Fuel Facility.

It is understood, however, that Lessee may pay any such taxes and assessments under protest without liability, cost, or expense to the City, and in good faith contest the validity or amount thereof.

- 22.2 Utilities, Trash and Refuse:** Lessee shall pay or cause to be paid, and hold City free and harmless from, all charges for the installation, connection, maintenance and furnishing of all necessary utilities, utility facilities and services, including but not limited to gas, water, electricity, telephone service, cable television, sewage, and other public utilities to the Fuel Facility during the term of this Agreement and for the removal of garbage and rubbish from the Fuel Facility during the term of this Agreement.

Lessee shall arrange for the quick and efficient collection and disposal of recyclables, waste products, trash, and refuse from the Fuel Facility at the Lessee's expense in accordance with all applicable laws and ordinances. Lessee shall not allow recyclables, waste products, cans, cartons, barrels, used Equipment, scrap or other debris to collect in any way on or about the Fuel Facility; provided, however, that same may be stored in a suitable screened and protected enclosure acceptable to City pending collection and removal as long as the storage does not generate odors, or attract rodents or insects. Upon failure of Lessee to comply with the provisions of this section, City may enter upon the premises, and undertake any necessary clean-up and maintenance activities. Lessee agrees to pay reasonable and necessary costs incurred in connection therewith.

23. INDEMNIFICATION, INSURANCE, AND BONDS:

23.1 Hold Harmless: Lessee shall defend, indemnify and hold the City, its officials, directors, employees, volunteers, and agents harmless from and against any or all loss, liability, expense, claim, cost, suits, and damages of every kind, nature and description, including reasonable attorney's fees, for or on account of damage to Personal Property or injury to persons arising from anything done or performed, or omitted to be done or performed, on the premises by the Lessee, or any activity carried on by the Lessee, the Lessee's officers, directors, employees, agents, sublessees, volunteers, or for anyone for whom Lessee has custody and control in connection with the premises. Approval of the insurance required by this Agreement does not relieve Lessee from liability under this defense, indemnity, and hold harmless clause. Other sections of this Agreement referring to defense, indemnity, and hold harmless provisions shall not be construed as limiting the language of this section in any manner whatsoever.

23.2 Insurance: Lessee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to Property, which may arise from, or in connection with, the Lessee's operation, use of the Premises, which shall be provided by an insurance provider as defined in Section 23.2.7. The cost of such insurance shall be borne by the Lessee.

23.2.1 Sublease: Lessee shall carry commercial general liability insurance for all sublessees or provide a certificate of insurance naming City and sublessee as additional insured.

23.2.2 Minimum Scope of Insurance: Coverage shall be at least as broad as:

23.2.2.1 Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

23.2.2.2 Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

23.2.2.3 Workers Compensation Insurance as required by the State of California and Employer's Liability Insurance.

23.2.2.4 Property Insurance against all risks of loss to any Lessee Improvements or betterments, excluding flood and earthquake.

23.2.4 Minimum Limits of Insurance: Lessee shall maintain limits no less than:

- 23.2.4.1 General Liability:** \$2,500,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to Lessee and the Fuel Facility or the general aggregate limit shall be twice the required occurrence limit. Coverage shall include but not be limited to blanket contractual; products/completed operations, and broad form Property damage.
- 23.2.4.2 Automobile Liability:** \$1,000,000 per occurrence for bodily injury and Property damage.
- 23.2.4.3 Employer’s Liability:** \$1,000,000 per occurrence for bodily injury or disease.
- 23.2.4.4 Property Insurance:** Full replacement cost of the Fuel Facility and Improvements.
- 23.2.5 Deductibles and Self-Insured Retentions:** Any deductibles, self-insured retentions, or sub-limits must be declared to and approved by the Airport Manager.
- 23.2.6 Other Insurance Provisions:** The general liability policy is to contain, or be endorsed to contain, the following provisions:

 - 23.2.6.1** The City, its officers, elected and appointed officials, employees, agents, and volunteers are to be covered as additional insureds as to liability arising out of premises owned, occupied, or used by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected and appointed officials, employees, agents, or volunteers.
 - 23.2.6.2** The Lessee’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Lessee’s insurance and shall not contribute with it.
 - 23.2.6.3** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents, or volunteers.

23.2.6.4 Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

23.2.6.5 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty days prior written notice by certified mail, return receipt requested, has been given to City by the insurer.

23.2.7 Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Bests rating of no less than A: VII, licensed to do business in California.

23.2.8 Verification of Coverage: Lessee shall furnish a copy of these requirements to the Lessee's insurance agent. The agent shall furnish the Airport Manager with certificate(s) of insurance and original endorsements evidencing coverage required by this clause. By sending the requisite documents, the agent is certifying Lessee maintains the appropriate coverage. The documents are to be signed by a person authorized by that insurer to bind coverage and endorse policies on its behalf. All documents are to be received by the Airport Manager before Lessee takes possession, or begins work on the Fuel Facility. City may for any reason require Lessee to provide complete, certified copies of all required insurance policies affecting the coverage required by these specifications no more frequently than reasonable to verify insurance coverage. The Lessee, or its insurance agent, shall furnish City with evidence of insurance thirty days prior to expiration of the current certificate(s), and direct those to:

City of Tracy
Human Resources Department
333 Civic Center Plaza
Tracy, CA 95376
Attn: Risk Manager / FSO Agreement

24. BREACH AND REMEDIES:

24.1 Events of Breach by the Lessee: This Agreement shall be subject to termination by City in the case of any one or more of the following events of breach by the Lessee:

24.1.1 The Lessee's failure to pay the Rent or Fees herein provided at the time fixed for payment.

- 24.1.2** The Lessee's failure to pay any taxes, including possessory interest taxes or assessments agreed to be paid by Lessee in accordance with the terms of this Agreement.
 - 24.1.3** The Lessee's failure after thirty days written notice from City to keep, perform, or observe any term, covenant or condition of this Agreement to be kept, performed or observed by Lessee unless otherwise agreed to in writing by the City.
 - 24.1.4** The Lessee's failure to replace or repair any portions of the Fuel Facility in place on the Commencement Date which have been destroyed within six months after the date necessary permits have been granted or later date if it is not commercially feasible to complete such work within such time.
 - 24.1.5** The Lessee's filing of a voluntary petition in bankruptcy that will not allow for the continuation of the Lessee's business or the assignment of all or substantially all of the Lessee's assets for the benefit of the Lessee's creditors or the institution of proceedings in bankruptcy against Lessee that will not allow for the continuation of the Lessee's business or the appointment of a receiver of the assets of Lessee that will not allow for the continuation of the Lessee's business; provided, however, that if any such proceedings or appointments are involuntary, then they shall not be considered an event of breach by Lessee unless Lessee fails to procure a dismissal thereof within sixty days after the institution of involuntary bankruptcy proceedings or the appointment of a receiver.
 - 24.1.6** The Lessee's failure to permit inspection of the premises, after five calendar days advance written notice thereof, or immediately to the extent necessary in the event of an emergency or other urgent condition.
 - 24.1.7** The Lessee's failure to repair mechanical or other problems preventing customers from obtaining Fuel Services (either AvGas or Jet Fuel) in accordance with the terms of this Agreement.
- 24.2 Immediate Right of Re-entry Upon Breach:** Upon the issuance of an unlawful detainer by a court of competent jurisdiction, the City, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove or cause to be removed all persons and Property from the Fuel Facility; such Property may be removed and stored in a public warehouse or elsewhere at the cost of, with cost not exceeding the marked rate cost charged by public storage facilities and reasonable moving expenses in the city of Tracy, and for the account of, the Lessee. Should City elect to re-enter as provided herein, or should it take possession pursuant to legal proceedings or any notice provided for by law, it may either terminate

this Agreement or relet the Fuel Facility and Improvements thereon or any part thereof for such term or terms (which may extend beyond the term of this Agreement) and such rental or re-rental and upon such other terms and conditions as City in its sole discretion may deem advisable, with the right to make alterations and repairs to Fuel Facility and Improvements.

24.3 Liens: Lessee shall keep the Fuel Facility and all Improvements which constitute fixtures thereon free from any and all liens arising out of any work performed, materials furnished, or obligation incurred and to pay to the City, upon demand, the cost of discharging such liens with interest at the prevailing statutory rate from the date of such discharge, together with reasonable attorneys' fees in connection with the settlement, trial, or appeal of any such lien matter.

24.4 Waiver of Breachs: No provision of this Agreement may be waived except by the written consent of the City. Any waiver by City of any breach by Lessee of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee of either the same or a different provision of this Agreement. Forbearance or indulgence by the City, in any regard, shall not constitute a waiver of any requirement under this Agreement, and City shall be entitled to invoke any remedy available to it in equity or by law, despite such forbearance or indulgence.

24.5 Removal and Ownership of Improvements at Termination: Upon the termination of this Agreement for any reason, City shall be entitled to have the Fuel Facility and all Lessee Improvements returned to City in its original condition, excepting normal wear and tear. City may at its option and at no cost to the City, require Lessee to remove all Lessee provided Improvements. If City requests the removal of all said Improvements as described above, Lessee shall complete the removal within ninety days after the date of the City's request. If Lessee fails to remove said Improvements within the ninety day time period, said Improvements may be removed thereafter by the City, and Lessee agrees to pay City the cost of removal upon demand with interest at the highest allowable statutory rate until paid in full.

Lessee shall have the right to remove any and all trade fixtures, which Lessee may have placed, or installed upon the Fuel Facility; provided, however, that upon removal, the Lessee, at the Lessee's own expense, shall repair any damage resulting there from and leave the Fuel Facility in a clean and neat condition.

24.6 Abandonment: Lessee shall not vacate or abandon the Fuel Facility at any time during the term of this Agreement, and if Lessee shall abandon, vacate or surrender the Fuel Facility or be dispossessed by process of law or otherwise, any Personal Property belonging to Lessee and left upon the Fuel

Facility and any or all of the Lessee's Improvements and facilities thereon shall, at the option of the City, be deemed to be abandoned by Lessee and shall, at the option of the City, become the property of the City. If Lessee fails to claim the Personal Property within forty-five days following receipt of written notice by City of Personal Property, the Personal Property shall be disposed of by any lawful means available to the City. Lessee shall not be deemed to have vacated or abandoned the Fuel Facility unless notified, under the notice provisions contained in this Agreement, that City believes Lessee has vacated or abandoned the Fuel Facility and Lessee does not cure within thirty days.

25. ASSIGNMENT AND SUBLEASING:

25.1 Assignment: This Agreement, or any part thereof, shall not be assigned or transferred by Lessee other than to an Entity controlled by the Lessee, by process or operation of law or in any other manner, without the prior written consent of City. No assignee for the benefit of the Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Agreement by virtue of this section. Lessee agrees that City may hypothecate, pledge, assign, or transfer this Agreement for any lawful purpose. Lessee shall not enter into agreements with others whereby others share in the fueling privileges or the services herein authorized without the prior written consent of the City.

Any assignment, encumbrance, or Sublease without the City's consent shall be voidable and, at the City's election, shall constitute a breach. No consent to any assignment, encumbrance, or Sublease shall constitute a further waiver of the provisions of this paragraph.

If Lessee requests City to consent to a proposed assignment, the proposed assignee must demonstrate at least comparable professional competence and qualifications as the Lessee, and Lessee shall pay to the City, whether or not consent is ultimately given, the City's reasonable administrative costs, including costs for staff and attorney review incurred in connection with each such request.

One percent (1%) of any sums to be paid by an assignee to the Lessee, other than to an Entity controlled by the Lessee, in consideration of the assignment of this Agreement shall be paid to the City.

25.2 The Lessee's Right to Sublease: Lessee shall have the right to Sublease a portion of the Fuel Facility, subject to the City's written consent, which will not unreasonably be withheld; provided however, that the term of any Sublease shall not extend beyond the term of this Agreement; any and all Subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Agreement, and any sublessee shall be required to comply with the Airport Rules and Regulations, or any subsequent resolutions passed by City

Council. Lessee may sublease space only for the purposes to which City agrees in writing. The Commercial Aeronautical Services and business purpose shall be clearly stated in the Sublease and the sublessee shall be limited to those activities and business purposes. In the case of a partial Sublease, Lessee shall further specify that the operation is under the direct supervision and guidance of Lessee and subject to the terms and conditions of the Agreement in effect between Lessee and the City. Lessee shall provide ground space, facilities, and accommodations sufficient for each of its permitted activities.

Lessee immediately and irrevocably assigns to the City, as security for the Lessee's obligations under this Agreement, all Rent from any subletting of all or a part of the premises as permitted by this Agreement, and the City, as assignee and as attorney-in-fact for the Lessee, or a receiver for Lessee appointed on the City's application, may collect such Rent due subsequent to the Lessee's breach and apply it toward the Lessee's obligations under this Agreement with any excess amounts collected returned to the Lessee; except that, until the occurrence of an act of breach by Lessee or sublessee, Lessee shall have the right to collect such Rent.

26. LEGAL ACTION AND MEDIATION:

26.1 Legal Action and Alternative Dispute Resolution: If any dispute arises between the parties related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement, the parties will first attempt to resolve the dispute through informal discussions. In the event a dispute cannot be resolved in this manner within fifteen days, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement.

No action arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any person or Entity not a party to this Agreement unless the United States of America is a necessary party.

In the event of litigation, the prevailing party shall recover reasonable costs of such proceedings from the non-prevailing party.

27. GRANT AGREEMENT COVENANTS:

27.1 Grant Agreement Covenants: the Lessee, its heirs, personal representatives, successors-in-interest, and assigns, as a part of the consideration hereof, shall operate under the following conditions:

27.1.1 This Agreement shall be subordinate and subject to any Federal Grant Agreements and Amendments thereto, by and between the United States of America, Federal Aviation Administration, and the City, and subsequent grants and leases.

- 27.1.2** Lessee acknowledges that City is subject to Federal Grant Agreement obligations (“Airport Sponsor Assurances”) as a condition precedent to granting of funds for improvement of the Airport, and accordingly agrees to, and agrees to be bound by, the applicable Airport Assurances provided by the FAA. Lessee shall comply with the most recent applicable Airport Sponsor Assurances available in the Airport Manager’s office and which may be amended from time to time, and incorporated by reference.
- 27.1.3** Lessee and sublessees shall not, on the grounds of race, color, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by applicable Federal Aviation Regulations.
- 27.1.4** Lessee shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
- 27.1.5** Lessee shall comply with the requirements of the Americans with Disabilities Act, including Title III, Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities, codified as 28 Code of Federal Regulations, Part 36.
- 27.1.6** Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, or veteran status. Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability, or veteran status.
- 27.1.7** Lessee will send each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker’s representative of the Lessee’s commitments under this paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 27.1.8** Lessee agrees that if Improvements are constructed, maintained, or otherwise operated on the Fuel Facility, Lessee shall comply with all other requirements imposed pursuant to applicable Federal Regulations relating to Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and any amendments to the Regulations.

27.1.9 The Lessee's non-compliance with any applicable Governmental Agency's or Agencies' Airport Assurance provisions shall constitute a material breach. In the event of a breach of any of the nondiscrimination covenants, City or the United States shall have the right to terminate this Agreement, or seek judicial enforcement of said covenants. Lessee acknowledges that it has received and reviewed copies of the current Airport Assurance provisions. City shall provide, from time to time, future such Assurances for the Lessee's review.

28. MISCELLANEOUS PROVISIONS:

28.1 Compliance with Laws and Regulations: The Lessee, at the Lessee's own cost and expense, shall comply with all present and future statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state, and county or municipal, including those requiring capital improvements to the Fuel Facility, relating to the Lessee's use and occupancy of the Fuel Facility whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of Fuel Facility or any portion of the Fuel Facility, Lessee shall procure and maintain such license, permit, or other authorization throughout the term of this Agreement. The judgment of any court of competent jurisdiction, or the admission by Lessee in a proceeding brought against Lessee by any government Entity, that Lessee has violated any such statute, ordinance, regulation, or requirement shall be conclusive of that fact as between City and Lessee and shall constitute grounds for termination of this Agreement by the City.

Notwithstanding the foregoing provisions of this section, except as hereafter provided, Lessee shall have the right to contest by appropriate legal proceedings, but without cost or expense to the City, the validity of any governmental charge, law, ordinance, rule, regulation or requirement of the nature set forth in this section, provided Lessee furnishes City with such assurances or security (having in mind the risk involved) against loss or injury to City in connection therewith as they may require to the City's sole discretion and provided Lessee prosecutes such contest with due diligence and dispatch.

28.2 Right to Enter (Inspection of Fuel Facility and Improvements): The parties agree that it is a material term of the Agreement that City shall have the right, by its officers, employees, agents and contractors, to enter into and upon the Fuel Facility to the extent necessary giving rise to the purpose of entry and only for as long as necessary for said purpose, while the business is open and, at any time during emergencies giving rise to the necessity for entry while the business is not open, subject to giving notice to Lessee and attempting to contact the Lessee's or its designates by telephone until

reached and providing the purpose of entry specifying which provision of this Agreement City wants to determine compliance with or the nature of the emergency:

- 28.2.1** To make any inspection the Airport Manager in his or her sole discretion may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Agreement, or any other matter relevant to this Agreement;
- 28.2.2** To maintain the Fuel Facility, or to do repair, maintenance, alteration, clean-up, or removal under the conditions set forth herein; and
- 28.2.3** To post notices of non-responsibility for Improvements, alterations or repairs, if and when City shall desire to do so; provided that City acts reasonably to minimize any interference to the Lessee's use or occupancy of the Fuel Facility, all without abatement of Rent to Lessee for any loss of occupancy or quiet enjoyment of the Fuel Facility and Improvements, and without liability on the part of the City, its officers, agents, employees or contractors for loss or damage that may be sustained by Lessee thereby, provided that City acts reasonably to minimize any interference to the Lessee's use or occupancy of the Fuel Facility. City shall provide five calendar days written notice, prior to the inspection discussed herein. No advance notice is required to the extent necessary due to emergency circumstances.

Upon the time set for inspection, or an emergency inspection, the parties agree that City may use all reasonable means to effect entry into any structure, which shall first include use of any keys provided by the Lessee, or onto any portion of the Fuel Facility, and that furthermore, any unavoidable damage or cost to repair arising by virtue of such entry shall be born by the Lessee, and not the City, only if Lessee fails to appear and cooperate in arranging entry and inspection as provided for in a notice received by Lessee at least one business day in advance of such inspection. If any repair, maintenance, alteration, clean-up, or removal required under the terms of this Agreement to be done by Lessee is deemed by the Airport Manager to be necessary under the provisions of this Agreement, the Airport Manager may demand by written notice that Lessee do the same forthwith; and if Lessee fails, refuses or neglects to commence and complete the same with reasonable diligence, then City may, but shall have no obligation to, re-enter the Fuel Facility and cause such repair, maintenance, alteration or removal to be done; and Lessee agrees to pay to City on demand

the cost thereof. The notice provisions relating to inspections, above, shall apply to this section.

City shall change all locks on premises and provide four keys to Lessee and provide keys to any other party only as may be required by current and future regulations and current and future insurance underwriters' conditions of insurance. Additional keys may be purchased from the City. Lessee shall provide City the ability to gain entry into the Fuel Facility as provided hereunder. Lessee shall not change or add locks without notifying City and will provide City with duplicates of any added or changed locks.

- 28.3 Prevention of Trespass:** Lessee agrees to use reasonable efforts to prevent unauthorized persons from gaining access to the Apron areas through the Fuel Facility by installing adequate lighting, gates, doors and locks, and maintaining those in good condition. Lessee shall develop positive key control and Apron access procedures for its staff and customers and comply with any pertinent reporting requirements to the FAA, the Department of Homeland Security, and law enforcement agencies. Lessee also agrees to use reasonable efforts to prevent unauthorized persons from gaining access to the Airport by ensuring the Airport's gates that are used by Lessee after hours are secured after use.
- 28.4 Receipt of Existing SASO Agreement and Amendments:** Lessee acknowledges that existing SASO Agreements and Amendments thereto, if any, have been delivered by the City to Lessee.
- 28.5 Development of Restaurant and Corporate Hangar:** For the privilege of selling Aviation Fuel at the Airport, and for the privilege of using Airport land, Lessee agrees to: (1) within six months of the commencement date, enter into good faith negotiations with the City to lease Airport land for the purpose of constructing a restaurant, with such restaurant to be completed within eighteen months of the commencement date, and (2) within twelve months of the commencement date, enter into good faith negotiations with the City to lease Airport land for the purpose of constructing a Corporate Hangar, with such Corporate Hangar to be completed within twenty-four months of the commencement date.
- 28.5.1** Lessee understands that the SASO Agreement offers certain negotiation rights to the SASO, and that SASO's decision to exercise or not to exercise those rights shall not eliminate or delay Lessee's obligation to fulfill the requirements of this section 28.5.
- 28.5.2** City and Lessee agree that in the event Lessee is unable to successfully negotiate with the City the lease of Airport land for the purpose of constructing a restaurant, the City has the option of

immediately issuing an RFP and entering into an agreement with any qualified individual or business entity for the lease of Airport land upon which construction of a restaurant will occur. In the event Lessee has entered into an agreement with the City for the lease of Airport land, but is unable to complete construction of the restaurant within the time frames specified in this section, Lessee agrees such lease agreement shall terminate, and that the City has the option of immediately issuing an RFP and entering into an agreement with any qualified individual or business entity for the lease of Airport land upon which construction of a restaurant will occur.

28.5.3 City and Lessee agree that in the event Lessee is unable to successfully negotiate with the City the lease of Airport land for the purpose of constructing a Corporate Hangar, the City has the option of immediately issuing an RFP and entering into an agreement with any qualified individual or business entity for the lease of Airport land upon which construction of a Corporate Hangar will occur. In the event Lessee has entered into an agreement with the City for the lease of Airport land, but is unable to complete construction of the Corporate Hangar within the time frames specified in this section, Lessee agrees such lease agreement shall terminate, and that that the City has the option of immediately issuing an RFP and entering into an agreement with any qualified individual or business entity for the lease of Airport land upon which construction of a Corporate Hangar will occur.

28.6 Title to Improvements: During the term of this Agreement, except as otherwise provided for herein, title to any and all Improvements (excluding any Personal Property or trade fixtures) currently owned and /or to be placed on the Airport by Lessee shall be vested in Lessee until expiration of this Agreement.

28.7 Lessee Office: City will provide Lessee with office space, in an AS IS condition (as shown on Figure 3), for up to two Lessee employees for a period of two years from the Commencement Date. The cost of installing and/or providing utilities will be at Lessee's expense.

28.8 Hangar Rental Services: Lessee agrees as part of this Agreement, when requested by City and at no cost to City, to escort prospective hangar tenants to vacant hangars for the purpose of allowing the prospective tenant to view the vacant hangar. Such escort services will be provided during Lessee's normal business hours. Lessee will also process hangar rental forms and collect initial payment for new hangar tenants. The Lessee will notify the City, within one business day, when new hangar tenants are processed and will forward, within one business day, hangar rental forms and initial payments to the City or as directed by the Airport Manager.

Lessee will use reasonable efforts to provide, in a timely manner, a high level of customer service to prospective tenants as the City strives to maintain an occupancy rate in excess of 95%. Lessee acknowledges that the number of hangars could increase. Lessee also agrees to notify the Airport Manger in a timely manner, upon becoming aware of any hangar vacancies, hangar maintenance or other relevant issues that are known to Lessee or Lessee's employees.

29. LESSEE'S GENERAL RESPONSIBILITIES: The general responsibilities of Lessee shall include, but not be limited to, the following:

- 29.1** Provide a manager throughout the term of the contract, who is available during periods of business operations and who has authority to independently make decisions required for the safe and efficient operation of services.
- 29.2** Manager should have at least two years experience in the management and supervision of a FSO or comparable experience.
- 29.3** Hire all ancillary staff needed to properly provide Commercial Aeronautical Services, including, but not limited to management personnel, and staff.
- 29.4** Assure that all staff present a neat appearance and conduct themselves in a courteous and professional manner at all times.
- 29.5** Maintain records regarding all accidents, injuries, and damage to Aircraft or property, subject to such accident and injury being directly related to the Lessee's staff or customers. Lessee shall notify the Airport Manager within one business day of any such noteworthy accident/incident/damage, or immediately for any accident/incident involving bodily injury or death, or damage to Aircraft, Airport property, or Airport facilities.
- 29.6** Assist City with Airport marketing efforts or Airport events as reasonably required and requested, and comply with the City's reasonable demands for the use of the Fuel Facility for such events.
- 29.7** If necessary, provide for an orderly transition to a different Lessee, including providing data necessary to accomplish a smooth turnover.
- 29.8** Provide assurance of compliance, certification, and verification regarding Equal Employment Opportunity policy, non-discriminatory hiring practices, and all requirements imposed by the U.S. Department of Transportation, California Department of Transportation, and the City.
- 29.9** Pay business tax to City and obtain a business license tax certificate from City.

- 29.10** Maintain automobile insurance throughout the duration of the Agreement, in an amount not less than that identified in the Agreement, and naming City as an additional insured, for revenue and non-revenue services, to cover the Lessee, its agents, representatives, employees and any other users of the Lessee's vehicles used in connection with the performance of Commercial Aeronautical Services as outlined in this Scope of Work.
- 29.11** Maintain general liability coverage throughout the duration of the Agreement to cover damages as defined herein, in an amount not less than that identified in the Agreement, and naming City of Tracy as an additional insured.
- 29.12** Maintain Workers Compensation coverage as required by the State of California.
- 29.13** Ensure that all insurance companies providing coverage to Lessee required hereunder are insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 29.14** Post or otherwise make known, telephone number(s) or other contact information sufficient to permit an emergency call to Lessee and its designees. Lessee shall designate responsible persons available twenty-four hours a day for the coordination and communication of all requests from customers for assistance with problems they may be experiencing with the Fuel Facility. Lessee shall provide the Airport Manager with the names and telephone numbers of both the primary and secondary contacts.
- 29.15** Make reasonable efforts to protect the City-owned Equipment under the Lessee's control, the Fuel facility, and any other Airport facility from harm or damage.
- 29.16** Ensure that the Fuel Facility is kept free of any pets.
- 29.17** Attend at least one regular Transportation Advisory Commission (TAC) meeting each calendar year quarter, except that the number of meetings where attendance is required shall be reduced by the number of cancelled meetings, subject to City providing notice to Lessee of the date and location of such meetings at least seven days in advance of such meetings. Lessee shall also provide written monthly activity reports for presentation to the TAC.
- 29.18** **Licenses and Certifications:** Lessee shall comply with all federal, state, county, and/or municipal laws and regulations concerning its proposed operation and if requested, provide copies of all pertinent FAA, DOT and other related permits, licenses, and certifications. Lessee shall keep in

effect and post in a prominent place all necessary or required licenses, permits, certifications, or ratings.

Lessee and its personnel shall obtain and comply with, at the Lessee's sole expense, all necessary licenses, permits, certifications, or ratings required for the conduct of the Lessee's activities at the Airport as required by City or any other duly authorized agency prior to engaging in any activity at the Airport. Upon request, Lessee shall provide copies of such licenses, permits, certifications, or ratings to the Airport Manager within ten business days.

29.19 Personnel: Lessee shall make available to be on duty during operating hours, sufficient and trained personnel in such number as are required to meet qualifications and requirements set forth herein and to meet the reasonable demands of the aviation public for each activity being conducted in a safe, efficient, courteous, and prompt manner. Lessee shall also provide a responsible person at the Fuel Facility to supervise the operations during all business hours.

The Lessee's managers shall have sufficient experience managing a comparable activity to that proposed and shall be authorized to represent and act for and on behalf of Lessee during all hours of activities with respect to the method, manner, and conduct of Lessee and the Lessee's activities. When such responsible person is not present on the Fuel Facility, such individual shall be available by telephone or pager. Upon request of the City, subject to compliance with State and Federal privacy protection regulations, Lessee shall provide information in its possession on employees such as resumes along with their experience and qualifications, contact information, photos, and descriptions.

29.20 Security: Lessee shall designate a responsible person for the coordination and communication of all security procedures and provide the Airport Manager with the names of both the primary and secondary contacts along with twenty-four hour telephone numbers for both persons. If requested by the Airport Manager, Lessee shall develop and maintain a security plan.

29.21 Motor Vehicles: Lessee may, at its sole discretion, provide Aircraft-to-lounge ground transportation for transient passengers and pilots, and provide a Courtesy Vehicle(s) to provide transportation of passengers, crews, and baggage to and from destinations on the Airport and to and from local destinations.

- 29.22 Right to Amend:** In the event that the Federal Aviation Administration or the State of California requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport or lands and Equipment, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to obtain such funds; provided, however, that in no event will Lessee be required, pursuant to this section, to agree to an increase in rents provided for this in this Agreement or to a change in the use to which Lessee has put the Fuel Facility.
- 29.23 Consent not to be Unreasonably Withheld:** Whenever consent is required under the terms of this Agreement by either Lessee or the City, such consent is not to be unreasonably withheld.
- 29.24 Governing Law:** This Agreement, and all matters relating to this Agreement, shall be governed by the laws of the State of California, or other applicable and superseding federal law, in force at the time any need for interpretation of this Agreement or any decision or holding concerning this Agreement arises.
- 29.25 Headings:** The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.
- 29.26 Attorneys' Fees and Costs:** In the event that either party shall commence any legal action or proceedings against the other party concerning the Fuel Facility, this Agreement, or the rights and duties of either in relation to the Agreement, the party prevailing in that action or proceeding shall be entitled to recover, in addition to any other relief that may be granted in the litigation, all fees, expenses, costs, court costs and a reasonable sum as and for that party's attorneys' fees that shall be determined by the court in that litigation or in a separate action brought for that purpose. Such recovery shall include court costs and attorneys' fees on appeal, if any. The court will determine who the "prevailing party" is, and whether or not the suit proceeds to final judgment. However, if an action is voluntarily dismissed, or dismissed pursuant to a settlement of the case, neither party shall be entitled to recover its attorneys' fees. Lessee hereby waives the benefit of the provisions of Section 1161 of the California Code of Civil Procedure.
- 29.27 Notices:** Notice shall be effective from the date of mailing. Notwithstanding anything to the contrary herein or elsewhere, any and all notices to be given under this Agreement, or otherwise, shall be sent via certified mail with

postage prepaid to the addresses shown below. Either party make changes to its notification addresses by providing written notice to the other party:

City

City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, California 95376

Lessee

Stephen S. Stuhmer
Turlock Air Center LLC
DBA Tracy Air Center
Post Office Box 797
Turlock, CA 95381

With a copy to:

Director of Public Works
520 North Tracy Blvd.
Tracy, California 95376


And an additional copy to:

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, California 95376

30. **SIGNATURES:** IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their officers thereunto duly authorized so to do this _____ day of _____, 2011.

City of Tracy

Turlock Air Center, LLC
doing business as Tracy Air Center



Brent H. Ives, Mayor

Stephen S. Stuhmer, Managing Member

Attest:

City Clerk

APPROVED AS TO FORM:

City Attorney

Figure 1

AIRPORT LAYOUT PLAN

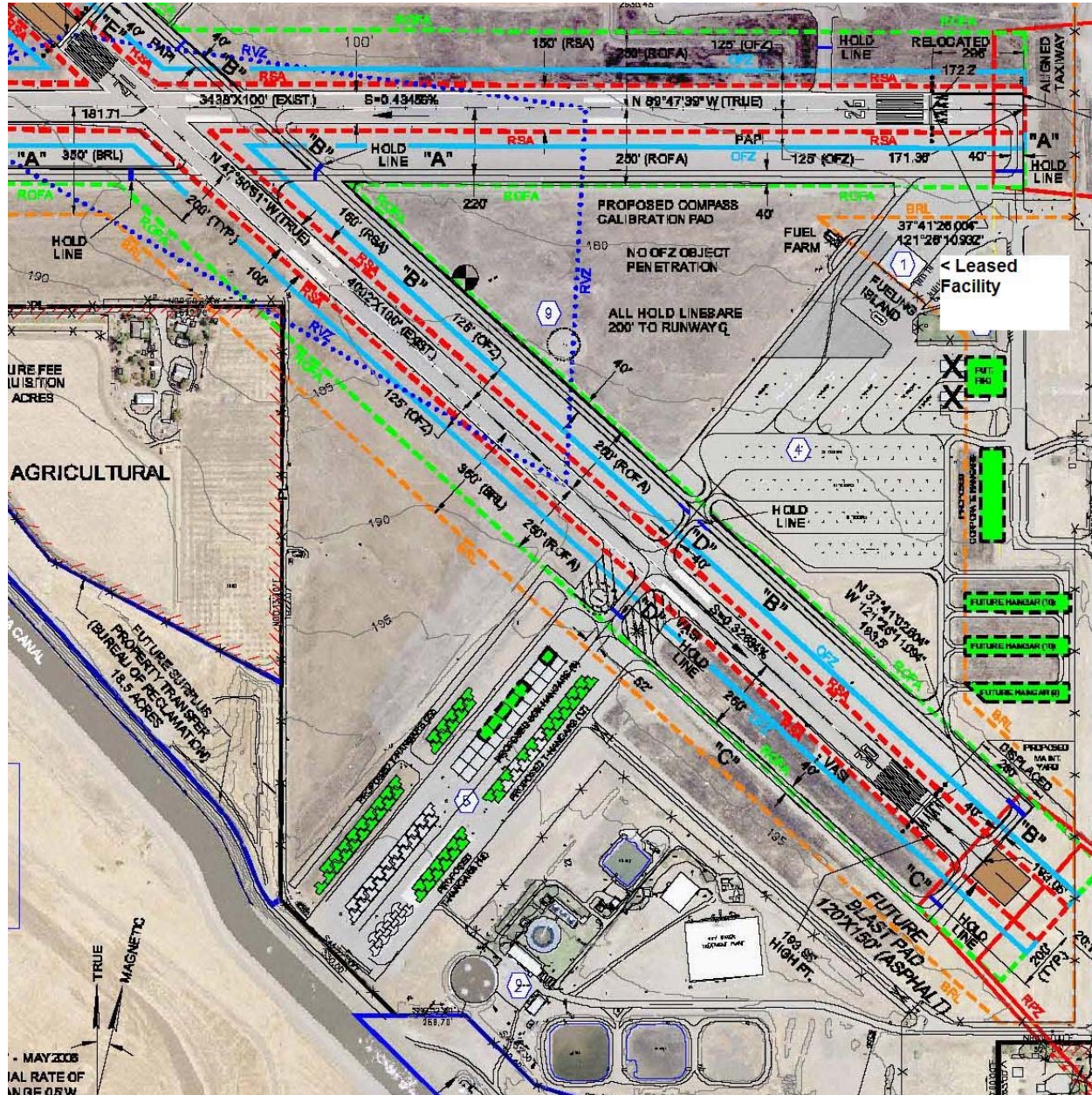


Figure 2
AIRCRAFT PARKING AREAS DIAGRAM
(Locations shown below subject to change by Airport Manager)

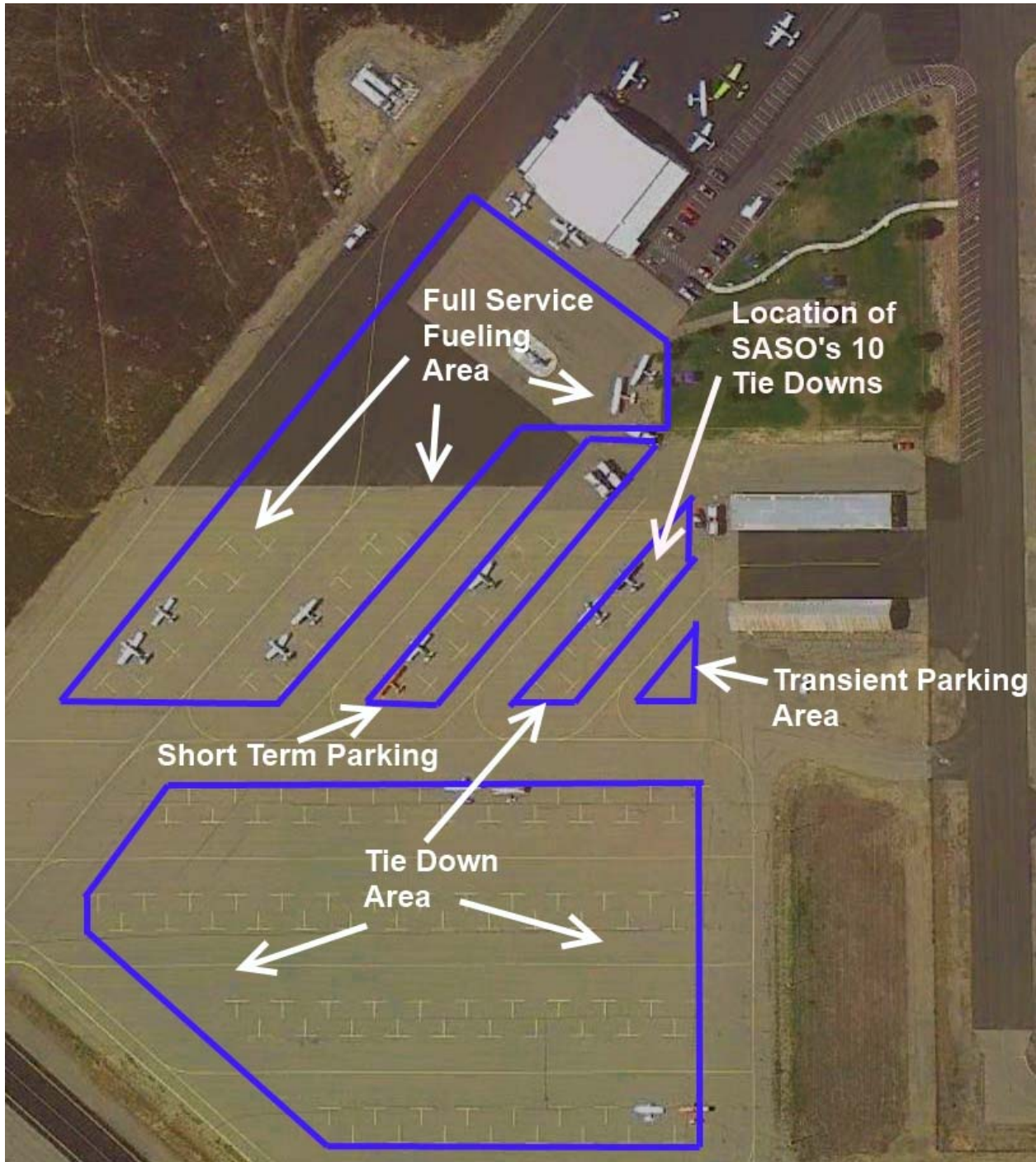
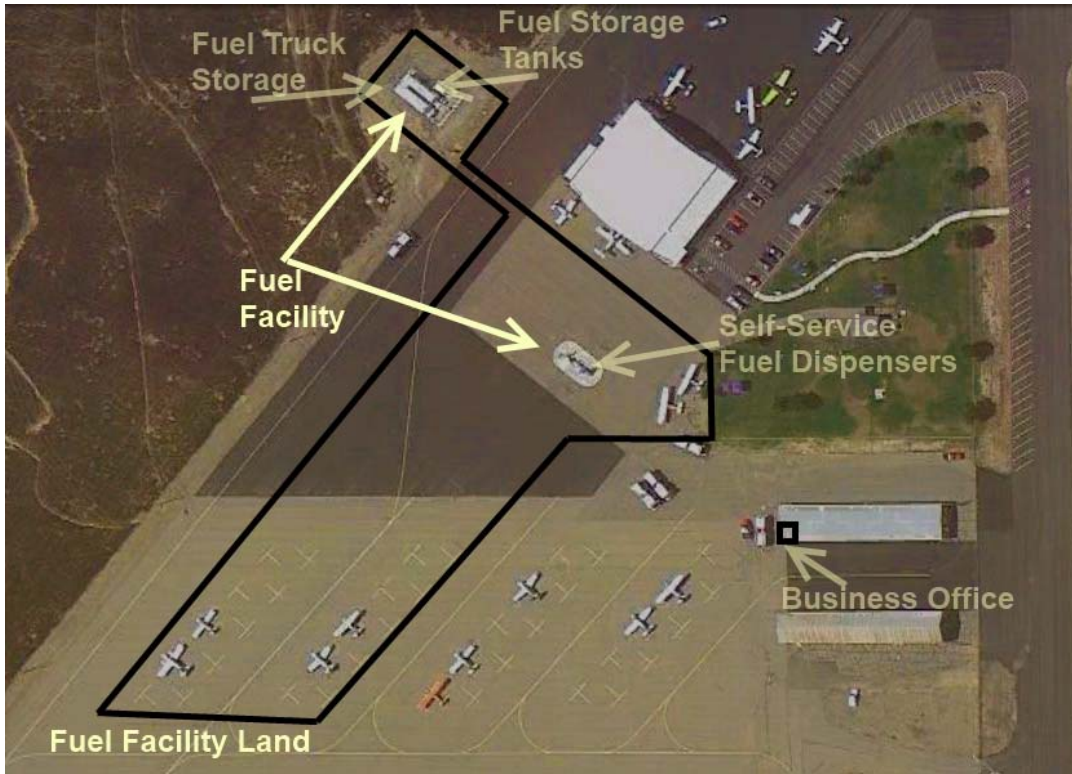


Figure 3
FUEL FACILITY DIAGRAM
(Locations shown below subject to change by Airport Manager)



RESOLUTION _____

AWARDING A FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT TO
TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AT TRACY
MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On January 31, 2007, the City of Tracy took over management of the City-
owned aviation fuel facility at the Tracy Municipal Airport; and

WHEREAS, On May 24, 2011, the City issued a Request for Proposals (RFP) to for a
fuel services operator; and

WHEREAS, On June 27, 2011, Turlock Air Center, LLC (TAC) submitted the only
proposal; and

WHEREAS, City staff evaluated TAC's proposal and determined that TAC could provide
the level and quality of aviation fuel services that local and transient aircraft owners/operators
had come to expect at the airport; and

WHEREAS, Staff recommends that Council approve the proposed agreement
(Attachment A) between the City of Tracy and Turlock Air Center, LLC for the purpose of
operating as a Fuel Service Operator at Tracy Municipal Airport.

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Fuel Sales
Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center,
LLC doing business as Tracy Air Center, relating to the management and operation of an
existing City-owned fuel-facility at Tracy Municipal Airport, for the purposes of operating as a
Fuel Sales Operator, and authorizes the Mayor to execute the agreement.

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

AGENDA ITEM 8

REQUEST

SECOND READING AND ADOPTION OF ORDINANCE 1162 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 3.04.010, 3.04.020(e), 3.04.030(c), 3.04.040(a),(b),(e) and (f), 3.04.050(a) and (b), 3.04.060(a), 3.04.070(b), 3.04.080(e), 3.04.090(a) and 3.04.100(b) OF CHAPTER 3.04, ENTITLED "FIREWORKS", OF THE TRACY MUNICIPAL CODE

EXECUTIVE SUMMARY

Ordinance 1162 was introduced at the Council meeting held on September 20, 2011. Ordinance 1162 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1162 was introduced at the Council meeting held on September 20, 2011, to amend various sections of Chapter 3.04, of the Tracy Municipal Code entitled "Fireworks". Chapter 3.04 was adopted by City Council on May 17, 2011 (Ordinance 1158) to allow for the sale and discharge of safe and sane fireworks within the City of Tracy. Proposed Ordinance 1162 will remove language that is no longer applicable and include language that facilitates the administering of the fireworks program. The amendments to Chapter 3.04 include clarified definitions of non-profit organizations, further describes permit requirements, administrative citation authority and storage of fireworks.

Ordinance 1162 is before Council for a second reading and adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopts Ordinance 1162 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 1162

AN ORDINANCE AMENDING SECTIONS 3.04.010, 3.04.020(e), 3.04.030(c), 3.04.040(a),(b),(e) and (f), 3.04.050(a) and (b), 3.04.060(a), 3.04.070(b), 3.04.080(e), 3.04.090(a) and 3.04.100(b) OF CHAPTER 3.04, ENTITLED "FIREWORKS", OF THE TRACY MUNICIPAL CODE

Whereas, On May 17, 2011, the Tracy City Council adopted Chapter 3.04 (Ordinance 1158) of the Tracy Municipal Code allowing for the sale and discharge of fireworks within the city limits of Tracy; and

Whereas, The City Council wishes to revise certain provisions of Chapter 3.04 to remove language that is no longer applicable and include language that facilitates the administering of the fireworks program.

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

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

"TITLE 3 - PUBLIC SAFETY

Chapter 3.04 - FIREWORKS

Sections:

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

3.04.010 – Definitions

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

The term "fireworks" includes, but is not limited to devices designated by the manufacturer as fireworks, Heath and Safety Code both as "dangerous fireworks" and as "safe and sane fireworks" and shall include firecrackers, torpedoes, skyrockets, roman candles,

bombs, sparklers, chasers, snakes or other fireworks containing any explosives or flammable substance. This definition does not include ammunition used for target shooting or hunting, nor does it include what is ordinarily known as cap pistol caps, party popper or snap caps.

“Safe and Sane Fireworks” also known as “State Approved Fireworks” means any fireworks which do not come within the definition of “dangerous fireworks” or “exempt fireworks” as defined by section 12505 of the Health & Safety Code of the State of California and the sections of Title 19, Code of Regulations, Subchapter 6 pertaining to “Safe and Sane Fireworks” which are hereby incorporated by reference.

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

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

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

“Nonprofit Organizations” means the applicant is a local nonprofit organization which shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes as defined by Section 501 (c) of the Internal Revenue Code of the United States. A local nonprofit organization must have its principal and permanent meeting place in the City of Tracy. The organization must have obtained nonprofit status and have been organized and established in the City for a minimum of one continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least twenty members who reside in the City, which will be verified each year.

3.04.020 – Public Displays-Permits Required

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

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

conditions or requirements for standby personnel and fire apparatus. Fireworks Display Permits shall only be granted to licensed pyrotechnic operators.

(c) Fireworks Display Permits may be secured by application to the Fire Chief with the concurrence of the Police Chief. The Fire Chief and Police Chief may deny issuance of such permits provided such denial is reasonably based on public health and safety concerns, including but not limited to an application for another event to be held on the same date as that requested has been previously filed or approved, and the other event is so close in time and location to the event proposed as to cause undue traffic congestion or to place the City in a position of being unable to meet the needs for Fire, Police or Public Works services for both events. Any decision regarding such permits may be appealed to the City Manager as set forth in Section 1.12.010 of this code.

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

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

3.04.030 – Sale-Discharge-Time Limit-Dangerous Fireworks

(a) Subject to the permitting provisions of this chapter, the provisions of the State Fireworks Law, sections 12500 through 12726 of the Health and Safety Code of the State of California and any regulations promulgated thereunder and notwithstanding the portions of section 9.06.080 of this Code that address fireworks, safe and sane fireworks, as defined in Section 12529 and 12562 of the Health and Safety Code of the State of California, may be discharged within the city limits of the City of Tracy during the period from noon and ending at 10:00 p.m. on the twenty-eighth day of June through the third day of July and from noon to midnight on the fourth of July, each year.

(b) It is unlawful and shall be a misdemeanor to possess, sell or discharge fireworks classified as “dangerous fireworks” by Section 12505 of the Health and Safety Code of the State of California within the City of Tracy.

(c) As an alternative to charging possession, sale, or discharge of dangerous fireworks as a misdemeanor as provided under subsection (b) of this section, the City may issue administrative citations pursuant to Chapter 1.28 of this Code.

(d) Safe and Sane fireworks may only be sold between the hours of 12:00 p.m. and 8:00 p.m. on June 28, between 8:00 a.m. and 8:00 p.m. from June 29 through July 3, and 8:00 a.m. and 9:00 p.m. on July 4.

3.04.040 – Permit to Sell and Store Safe and Sane Fireworks

(a) The City Council shall establish, by resolution, the process by which the City will issue annual permits to sell Safe and Sane Fireworks and the conditions to protect health, safety, aesthetics, and such other conditions City Council finds reasonably necessary, that applicants must satisfy to receive the permits.

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

(c) It is unlawful to store fireworks within the City of Tracy without first having secured a permit to do so from the Fire Chief or his or her designee.

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

(e) A temporary use permit and City business license is required pursuant to this Code.

(f) Lottery awardees and alternates, as defined by the process set forth in a Council resolution pursuant to section 3.04.050(b) may apply for a permit prior to the end of April of each year.

3.04.050 – Maximum Number of Safe and Sane Fireworks Permits Issued-Selection Procedure

(a) The maximum number of permits to sell Safe and Sane Fireworks which the City may issue during any one calendar year shall not exceed one permit for each ten thousand resident population or portion thereof. No more than one Safe and Sane Fireworks stand can be operated under each permit. Only Non-Profit Organizations, as defined in this Chapter, are eligible for such permits.

(b) . City Council shall provide, by City Council resolution, a process for a lottery to determine which Non-Profit organizations, including alternates, will be eligible to apply for an annual permit to sell and store Safe and Sane Fireworks.

3.04.060 – Applications for Safe and Sane Fireworks Sales Permit Lottery

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

(a) The applicant is a Non-Profit Organization as defined in this Chapter. Each Non-Profit Organization shall provide the City with a copy of its "Letter of Incorporation" as proof of their nonprofit status and establish status as a 501(c)(3) tax-exempt organization acceptable to the City Attorney's Office and as recognized by the Secretary of State.

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

2. Each Non-Profit Organization may file an application for one sales permit for which there is only one tax ID number.

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

(c) Applications shall be signed by two bona fide officers of the eligible Non-Profit Organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by state laws, administrative regulations, and all requirements of this Code and the permit if permission to operate a Safe and Sane Fireworks stand is granted to the organization.

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

3.04.070 – Documents and Fees Required for Fireworks Sales Permit Issuance

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

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

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

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

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

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

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

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

(8) Plot plan of storage.

(b) The Fire Chief, or designee, may revoke, immediately and without notice or hearing, the Safe and Sane Fireworks sales permit of any organization when any of the provisions of this code, Health and Safety Code, Uniform Fire Code, the California Code of Regulations, or any other applicable law or regulation are violated. The Fire Chief shall inform the permittee that permittee may seek review of the Fire Chief's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Chief shall provide the City Manager with written notice that a permit for retail sales of Safe and Sane Fireworks has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or designee, shall meet with the permittee and the Fire Chief, or designee, by the next businessday to review the Fire Chief's decision. The decision of the City Manager, or designee, shall be final.

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

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

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

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

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

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

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

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

(e) All unsold fireworks must be removed from the stand during non-sale hours and stored in a centrally located locked metal container or other secure and fire safe structure during non-sale periods. Each permittee shall provide a storage location and container for storage of its stand's fireworks. The container shall be approved by the Fire Chief and located in an M1 or M2 zoned location approved by the Development and Engineering Services Director and the Fire Chief. Such storage shall comply with all requirements of this Code, including applicable

additional permit requirements. Permittees may satisfy these storage requirements through the use of a Safe and Sane Fireworks wholesaler, provided such wholesaler also complies with all requirements of this Code, including additional permit requirements.

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

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

3.04.090 – Requirements of Safe and Sane Fireworks Sales Stand

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

- (a) No fireworks sales stand shall be put in place by the permittee any earlier than 8:00 a.m. on June 20 of each year provided there is no sale or storage of Safe and Sane Fireworks prior to the time periods set forth in section 3.04.030. .
- (b) No fireworks sales stand shall be located within 25 feet of any building or structure, within five feet of any curb line, or within 100 feet of any gasoline pump.
- (c) A minimum of 100 feet shall be maintained from any building used as a school, day care, hospitals, place of detention, public garage or place of assembly that can accommodate 300 or more occupants and the fireworks booth.
- (d) A minimum of twenty feet of separation shall be provided between the fireworks booths and the parked vehicles of the public.
- (e) No fireworks sales stand shall interfere with required site access, circulation, fire lanes or fire hydrants.
- (f) No weeds or other combustible materials are permitted within 25 feet of any fireworks sales stand.
- (g) No generators shall be allowed within 25 feet of any fireworks sales stand.
- (h) Smoking and the consumption of alcoholic beverages shall not be allowed within 50 feet of any fireworks sales stand and “No Smoking” signs shall be displayed on and in the fireworks sales stand.
- (i) Each fireworks sales stand shall be provided with two, two-and-one half gallon pressurized water type fire extinguishers, or two 2A10BC dry chemical/powder type fire extinguishers, in good working order, and easily accessible for use.
- (j) The permit to sell fireworks shall be displayed in a prominent place within the fireworks sales stand and shall at all times be visible to members of the public.

(k) Fireworks sales stands shall be either 24 or 32 feet long by eight feet wide. Stands 24 feet in length shall have two exits and a maximum occupancy of six people. Stands 32 feet in length shall have three exits and a maximum occupancy of eight people.

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

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

3.04.100 – Locations for Discharge

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

(b) It is unlawful for any person to ignite, explode, project, or otherwise fire or use, any fireworks, or to permit the ignition, explosion or projection thereof, upon or over or onto the property of another without his or her consent, or to ignite, explode, project, or otherwise fire or make use of, any fireworks within 10 feet of any residential dwelling or other structure.

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

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

3.04.110 – Sales and Use by Minors

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

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

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

3.04.120 – State Law

The provisions of this chapter are in addition to applicable state and federal law, including, but not limited to, the Sate Fireworks Law (California Health and Safety Code Section 12500 through 12726), the State Fireworks Regulations (Title 19, California Code Regulations,

Chapter 6), and any and all other state or federal laws or regulations pertaining to the sale or use of fireworks.

3.04.130– Violation

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

3.04.140 – Enforcement

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

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

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

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

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

* * * * *

The foregoing Ordinance 1162 was introduced at a regular meeting of the Tracy City Council on the 20th day of September, 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

October 4, 2011

AGENDA ITEM 10.A

REQUEST

CONSIDER AN ITEM FOR DISCUSSION ON A FUTURE CITY COUNCIL AGENDA REGARDING ALLOWING ELECTRONIC READER BOARD SIGNS TO BE ERECTED ON PRIVATE PROPERTY

EXECUTIVE SUMMARY

Determine whether an item should be placed on a future Council agenda to discuss whether Electronic Reader Board signs should be allowed on private property.

DISCUSSION

At the City Council meeting held on September 20, 2011, Mayor Pro Tem Maciel stated he had been contacted by a resident requesting information on why Electronic Reader Board signs were allowed on public school property but not on private property.

The purpose of this agenda item is to provide an opportunity for Council to determine whether staff time and City resources should be devoted to research and outreach, and to decide whether the item should be placed on a future agenda for discussion. An item placed on a future agenda would enable the City Council to fully discuss the ramifications of allowing Electronic Reader Board Signs to be erected on private property.

RECOMMENDATION

It is recommended that the City Council discuss and determine if an agenda item regarding whether Electronic Reader Board signs should be erected on private property should be placed on a future City Council agenda for discussion.

Prepared by: Carole Fleischmann, Assistant City Clerk

Reviewed by: Maria Hurtado, Assistant City Manager

Approved by: Leon Churchill, Jr., City Manager