

**Tuesday, September 20, 2016, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://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, including those distributed within 72 hours of a regular City Council meeting, 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.

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION  
ROLL CALL  
PRESENTATION

1. CONSENT CALENDAR

- A. Adopt Council Minutes – Special Meeting minutes of September 6, 2016 and Closed Session meeting minutes of September 6, 2016.
- B. Approve Amendment No. 1 to the Professional Services Agreement with Maze & Associates Accounting Corporation for Professional Auditing Services, Approve \$34,000 Funding Allocation, and Authorize Mayor to Execute the Amendment
- C. Authorize Amendment of the City's Classification and Compensation Plan and Position Control Roster by Approving the Establishment of Two New Classification Specifications and Salary Ranges for Information Systems Technician I and Senior Information Systems Technician; Approve Revisions to the Classification Specification for Information Systems Technician II; Approve the Reallocation of One Information Systems Technician II Position to One Information Systems Technician I Position and One Information Systems Technician II Position to One Senior Information Systems Technician within the Information Technology Division
- D. Adopt a Labor Compliance Program for Certain Public Works Projects Funded from Proposition 84, Authorize Professional Services Agreement (PSA) with Contractor, Compliance and Monitoring, Inc. for Implementation and Enforcement Services Related to the Labor Compliance Program for the Recycled Water Project CIP 74091 and Authorize the Mayor to Execute the Agreement
- E. Approve a Professional Services Agreement for an Amount Not to Exceed \$490,000 with Odyssey Landscaping Company, Inc., of Lodi, California, to Provide Professional Support Services in Assisting the Review and Plan Checking of Landscaping and Irrigation Elements for New Developments and Capital Improvement Projects, for a Period of Three Years, and Authorize the Mayor to Execute the Agreement and Furthermore, Authorize the Development Services Director to Execute Future Agreement(s) if Needed Pursuant to the Agreement
- F. Authorize the Purchase of Emergency Equipment and Installation from Lehr Auto Electric of Sacramento, California
- G. Accept a Grant from the California Office of Traffic Safety and Appropriate \$70,000 of Reimbursable Funds from the General Fund to the Police Department's Fiscal Year 2016-17 Budget for the Selective Traffic Enforcement Program (STEP) Grant
- H. Authorization for the City Manager or Designee to Execute and File Applications with the Federal Transit Administration, an Operating Administration of the United States Department of Transportation, for Federal Transportation Assistance Authorized by 49 U.S.C. Chapter 53, Title 23 United States Code and Other Federal Statutes Administered by the Federal Transit Administration

- I. Approve Memorandum of Understanding (MOU) With Notre Dame De Namur University (NDNU), for use of City Facilities to Administer its Bachelor's and Master's Degree Programs; and Approve Appropriation in the Amount of \$29,251 for the City's Contribution Towards a Higher Education Feasibility Study Administered by NDNU and Maguire Associates; and Authorize the Mayor to Execute the MOU
  
2. ITEMS FROM THE AUDIENCE
  
3. APPROVE LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT BETWEEN THE CITY OF TRACY AND TRACY LITTLE LEAGUE AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT
  
4. ADOPTION OF RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; INTRODUCE AN ORDINANCE AUTHORIZING THE AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN TO PROVIDE SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COST) OF 3% FOR ALL LOCAL POLICE MEMBERS IN THE TRACY POLICE OFFICERS ASSOCIATION
  
5. DISCUSSION AND DIRECTION TO STAFF ON THE LEVEL OF PUBLIC EDUCATION THE CITY SHOULD PROVIDE REGARDING MEASURE V
  
6. ITEMS FROM THE AUDIENCE
  
7. COUNCIL ITEMS
  
8. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**September 6, 2016, 5:00 p.m.**

333 Civic Center Plaza, Council Chambers, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 5:02 p.m.
2. ROLL CALL – Roll call found Council Members Mitracos, Young, Mayor Pro Tem Rickman and Mayor Maciel present. Council Member Vargas arrived at 5:05 p.m.
3. ITEMS FROM THE AUDIENCE – There were no speakers.
4. CITY COUNCIL WORKSHOP REGARDING DESIGN GUIDELINES AND DEVELOPMENT PROCESSES FOR NEW DEVELOPMENT AND CITY PROJECTS

Bill Dean, Developments Services Deputy Director, presented the staff report.

City Council comments and questions followed.

After Council deliberation the following feedback was given to staff: Council would like a policy implemented for new Single Family Homes on a single lot to maintain consistency and compatibility to the existing neighborhood. It was suggested that for new industrial buildings an on-site staging area for large distributors should be added as a means to help reduce truck movements/travel on non-truck routes. For both ground level and elevated water tanks aesthetic planning should take place in the beginning of development and include City logo on all tanks. Water tank CIP process should be changed to allow City Council input early on in the design process to ensure appropriate design and landscaping. In the Citywide Design Guidelines, it was recommended not to change the language from “should” to there “shall” be 25% of single story homes built on a new development in order to maintain flexibility for developers to react to the market. It was recommended that in moving forward and planning the landscaping utilized throughout City streets, it should represent the Cities orchard heritage. It was also recommended that the City codify a policy for aesthetic guidelines and Council have the final approval of the feel and look of all CIP project buildings.

In conclusion, it was recommended that the Council review aesthetic improvements for Citywide buildings. Staff should continue to comment on County projects that are routed to staff and staff should now include aesthetics in our comment letters. The Citywide Design Guidelines should be amended to include a sample landscape theme that all developments fronting I-205 should include. The Industrial section of the Citywide Design Guidelines should be improved. The development permit process should be streamlined for Director level approvals so that it is not different across the City with the exception that developments along I-205 will go to Planning Commission and City Council.

5. Adjournment – Time 6:38 p.m.

**ACTION** Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Vargas to adjourn the meeting. Voice vote found all in favor; passed and so ordered.

The agenda was posted at City Hall on September 1, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

September 6, 2016, 6:35 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Maciel called the meeting to order at 6:39 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Mitracos, Vargas, Young, Mayor Pro Tem Rickman and Mayor Maciel present.
3. ITEMS FROM THE AUDIENCE –There were none.
4. CLOSED SESSION

Pending Litigation (Gov. Code, §54956.9(d)(1))

Pending litigation pursuant to paragraph (1) of subdivision (d) of Government Code section 54956.9. One case. This is based on the complaint filed on April 7, 2015 in the United States District Court, Eastern District of California, 2:15-CV-007751-WBS-KJN, titled Espinoza v. City of Tracy, et al.

Real Property Negotiations (Gov. Code, § 54956.8)

Property acquisition for the widening of MacArthur Drive.

Property Locations: APN: 252-020-04  
25820 S. MacArthur Dr., Tracy, CA

Negotiators for the City: Stephanie Garrabrant-Sierra, Assistant City Manager  
Andrew Malik, Development Services Director  
Robert Armijo, City Engineer  
Zabih Zaca, Senior Civil Engineer

Negotiating Parties: Martha J. Gelsomini

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

Real Property Negotiations (Gov. Code, § 54956.8)

Property acquisition for intersection Improvements at Eleventh Street and MacArthur (west intersection)

Property Location: APN: 235-190-11  
516 E. Eleventh Street, Tracy, CA

Negotiators for the City: Kul Sharma, Utilities Director  
Ripon Bhatia, Senior Civil Engineer  
Stephanie Garrabrant-Sierra, Assistant City Manager  
Todd A. Amspoker, Price, Postal and Parma LLP

Negotiating Parties: Robert Bogetti & Albert Bogetti, Robert Mehlhaff

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

5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Rickman motioned to recess the meeting to closed session at 6:39 p.m. Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Maciel reconvened the meeting into open session at 7:04 p.m.
7. REPORT OF FINAL ACTION

**ACTION** Motion was made by Mayor Pro Tem Rickman, and seconded by Council Member Mitracos to authorize the City to defend individually named and served employees in the matter of Espinoza v. City of Tracy, et al, filed in the United States District Court, subject to a reservation of rights. The motion passed unanimously.

8. ADJOURNMENT – Mayor Pro Tem Rickman motioned to adjourn the meeting Council Member Vargas seconded the motion. Voice vote found all in favor; passed and so ordered. Time 7:05 p.m.

The agenda was posted at City Hall on August 30, 2016. The above are action minutes.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.B

REQUEST

**APPROVE AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH MAZE & ASSOCIATES ACCOUNTING CORPORATION FOR PROFESSIONAL AUDITING SERVICES, APPROVE \$34,000 FUNDING ALLOCATION, AND AUTHORIZE MAYOR TO EXECUTE THE AMENDMENT**

EXECUTIVE SUMMARY

In July, 2015, Maze & Associates was retained by the City for professional auditing services associated with the city’s annual audit of their financial records in accordance with federal guidelines.

This Amendment No. 1 to the PSA with Maze & Associates is necessary to make final payment for the FY2014/15 financial records audit services.

DISCUSSION

On July 21, 2015 the City Manager entered into a Professional Services Agreement (PSA) with Maze & Associates Accounting Corporation to conduct an annual audit of the City’s financial records.

Due to the extended time, added testing and effort needed to finalize the FY2014/15 Comprehensive Annual Financial Report (CAFR) and the Federal Single Audit Report the approved “not to exceed” amount for year one (FY2014/15) of the Agreement increased by \$57,484. Year two (FY2015/16) and year three (FY2016/17) increased by \$784 and \$819, respectively, to include a Web-Ready PDF version of the CAFR. The total estimated cost for the three-year annual auditing services is \$237,975. A contingency in the amount of \$17,889 was approved during the initial request.

Amendment No. 1 to the PSA with Maze & Associates is required to make the final payment for the FY2014/15 financial records audit services. The original item was budgeted at \$57,025, an additional \$23,484 was absorbed in the operating budget and \$34,000 is needed to make final payment for the FY2014/15 audit services. The total cost for the FY2014/15 audit services is \$114,509.

Below is a chart reflecting a comparison of the original cost of the three-year Agreement and Amendment No. 1:

	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>3-Year Total</b>	<b>Contingency</b>	<b>Term Total</b>
<b>Original</b>	\$57,025	\$59,591	\$62,272	\$178,888	\$17,889	\$196,777
<b>Amendment</b>	\$114,509	\$60,375	\$63,091	\$237,975	\$17,889	\$255,864
<b>Difference</b>	\$57,484	\$784	\$819	\$59,087	\$0	\$59,087



STRATEGIC PLAN

This item is in accordance with Goal 2 of City Council's Governance Strategy:

- Goal 2: Ensure continued fiscal sustainability through financial and budgetary stewardship.

FISCAL IMPACT

This is a budgeted item; however, it will require additional funding of \$34,000 from the General Fund to make final payment for the FY2014/15 audit services. Future costs associated with the audit of FY2015/16 and FY2016/17 financial records are included in the Administrative Services Department operating budget.

RECOMMENDATION

That City Council, by resolution, authorize Amendment No. 1 to the Professional Services Agreement with Maze & Associates Accounting Corporation for professional auditing services, approve \$34,000 funding allocation, and authorize the Mayor to execute the Amendment.

Prepared by: Martha Garcia, Interim Administrative Services Director

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A – Amendment No. 1 to PSA for Professional Auditing Services with Maze & Associates

**City of Tracy**  
**AMENDMENT NO. 1 TO**  
**PROFESSIONAL SERVICES AGREEMENT**  
**PROFESSIONAL AUDITING SERVICES**

This Amendment No. 1 (Amendment) to the Professional Services Agreement is entered into between the City of Tracy, a municipal corporation ("City"), and Maze & Associates Accounting Corporation, a California corporation ("Consultant").

**Recitals**

- A. The City and Consultant entered into a Professional Services Agreement (Agreement) on July 21, 2015, approved by Resolution No. 2015-126 for professional auditing services to conduct an annual audit of the City's financial records.
- C. Due to the extended time and effort necessary to conduct the audit, additional funding is necessary to complete the scope of work set forth in the Agreement.

**Now therefore, the parties mutually agree as follows**

- 1. **Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment will remain in effect.
- 2. **Terms of Amendment.** Section 5.1 COMPENSATION of the Agreement is hereby amended in its entirety to increase the Not to Exceed amount by \$59,087 and shall read as follows:

**5.1 General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Attachment "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$114,509 for City's fiscal year one, \$60,375 for fiscal year two, and \$63,091 for fiscal year three. If City extends this Agreement pursuant to Section 1, the not to exceed amount shall be increased by no more than 4.5% each additional City fiscal year. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval."

- 3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.

**City OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
FOR PROFESSIONAL AUDITING SERVICES**

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4. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.

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


The parties agree to the full performance of the terms set forth here.

City of Tracy

Consultant

Maze & Associates Accounting  
Corporation

By: Michael Maciel  
Title: Mayor  
Date: \_\_\_\_\_  
Attest: \_\_\_\_\_

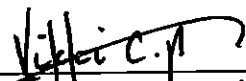
  
By: Amy L. Meyer  
Title: VICE PRESIDENT-AUDIT

By: Nora Pimentel  
Title: City Clerk  
Date: \_\_\_\_\_

Date: 8/24/16  
Fed. Employer ID No. 94-2590179

Approved as to form:

By: Bill Sartor  
Title: City Attorney  
Date: \_\_\_\_\_

  
By: VIKKI C. RODRIGUEZ  
Title: CFO  
Date: 8/24/16

**ATTACHMENT B**  
**AUDIT WORK COST PROPOSAL FORM**

Name of Firm: Maze & Associates  
Office Address: 3478 Buskirk Avenue, Suite 215, Pleasant Hill, CA 94523  
Contact Name: Amy L. Meyer  
Contact Phone: (925) 930-0902 Fax #: (925) 930-0135  
Contact e-mail: amym@mazeassociates.com

REQUIRED SERVICES			
Service	2014/15	2015/16	2016/17
City Audit Report w/Management Letter	\$ 46,430	\$ 48,519	\$ 50,702
Single Audit and related reports (if required) - Per Tested Program (one program) (A)	\$ 3,020	\$ 3,156	\$ 3,298
Preparation of CAFR	\$ 2,790	\$ 2,916	\$ 3,047
Preparation of City's Financial Transactions Report	\$ 4,050	\$ 4,232	\$ 4,422
Agreed-Upon Procedures Applied to Appropriations Limit Schedule	\$ 735	\$ 768	\$ 803
CAFR Web-Ready PDF	\$ 750	\$ 784	\$ 819
<b>Work Outside of Original Audit Scope:</b>			
Investigate unreconciled cash difference in fiscal agent statements/accounts	\$ 3,785		
Capital assets - assist City staff with reconciling beginning balances	\$ 2,505		
Revenue - additional receipts testing and variance research	\$ 750		
Disbursements - extended procedures related to vendor history report	\$ 225		
Payroll - extended procedures	\$ 225		
Journal entry testing (testing sample of JEs posted during times when certain City staff was out and testing of entries affecting cash)	\$ 6,640		
Mobilization / waiting for City staff	\$ 640		
Post-closing journal entry input	\$ 1,950		
City's agreed-upon portion of the net cost overruns	\$ 33,974		
Single Audit - Test 2 Additional Programs	\$ 6,040		
<b>Total for Fiscal Year (not-to-exceed)</b>	<b>\$ 114,509</b>	<b>\$ 60,375</b>	<b>\$ 63,091</b>

- (A) City will pay for the number of the programs that are required to be tested.  
(B) City staff added this service in fiscal year 2015.

RESOLUTION \_\_\_\_\_

APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH MAZE & ASSOCIATES ACCOUNTING CORPORATION FOR PROFESSIONAL AUDITING SERVICES, APPROVE \$34,000 FUNDING ALLOCATION, AND AUTHORIZE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, on July 21, 2015 the City Council authorized a Professional Services Agreement with Maze & Associates Accounting Corporation to conduct an annual audit of the City's financial records, and

WHEREAS, the current Agreement requires an Amendment No. 1 to allow a mechanism to increase the compensation not to exceed amount, and

WHEREAS, the current Administrative Services Department operating budget is insufficient to cover final payment for FY2014/15 audit services thus requiring an additional funding allocation, and

WHEREAS, the Amendment No. 1 and additional funding allocation requires City Council approval;

NOW, THEREFORE, BE IT RESOLVED, That City Council does hereby approve Amendment No. 1 to the Professional Services Agreement with Maze & Associates Accounting Corporation for professional auditing services, approve \$34,000 funding allocation, and authorize the Mayor to execute the Amendment.

\* \* \* \* \*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by City Council on the 20th day of September, 2016, 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**

**AUTHORIZE AMENDMENT OF THE CITY'S CLASSIFICATION AND COMPENSATION PLAN AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF TWO NEW CLASSIFICATION SPECIFICATIONS AND SALARY RANGES FOR INFORMATION SYSTEMS TECHNICIAN I AND SENIOR INFORMATION SYSTEMS TECHNICIAN; APPROVE REVISIONS TO THE CLASSIFICATION SPECIFICATION FOR INFORMATION SYSTEMS TECHNICIAN II; APPROVE THE REALLOCATION OF ONE INFORMATION SYSTEMS TECHNICIAN II POSITION TO ONE INFORMATION SYSTEMS TECHNICIAN I POSITION AND ONE INFORMATION SYSTEMS TECHNICIAN II POSITION TO ONE SENIOR INFORMATION SYSTEMS TECHNICIAN WITHIN THE INFORMATION TECHNOLOGY DIVISION.**

**EXECUTIVE SUMMARY**

This report recommends the establishment of two new classifications of Information Systems Technician I and Senior Information Systems Technician. It also recommends the reclassification of one Information Systems Technician II to the position of Senior Information Systems Technician and one Information Systems Technician II to an Information Systems Technician I. It also recommends approval of revisions to the Information Systems Technician II classification specification within the Information Technology Division of the Administrative Services Department.

**DISCUSSION**

Periodically, the Human Resources Division receives requests for classification studies to allow for changes that have occurred in areas such as job responsibilities, organizational structure, and/or service needs. Based on the results of a discussion with the Information Technology Manager, the Human Resources Division recommends the reallocations of two Information Systems Technician II positions.

One Information Systems Technician II position was recently vacated and the manager recognized a need to modify the existing Information Systems Technician series to include one advanced journey level technician and one entry level technician. This new structure will allow for the entry level classification to perform more routine tasks and will enable the journey level and advanced journey level positions to focus more on critical complex tasks which include project oversight, network/server infrastructure upgrades, and evaluating new technologies.

**STRATEGIC PLAN**

This agenda item supports the City's Governance Strategy and Business Plan, and specifically implements the following goals and objectives:

Governance Strategy

**Goal 1:** Further develop an organization to attract, motivate, develop and retain a

high quality, engaged, high-performing and informed workforce.

**Objective 1b:** Affirm organizational values.

**FISCAL IMPACT**

This action is a cost neutral item and no additional funds are being requested.

**RECOMMENDATION**

That the City Council, by resolution, authorize the Administrative Services Director or designee to amend the City's Classification, Compensation Plan and Position Control Roster by approving the establishment of two new classification specifications and salary ranges for Information Systems Technician I and Senior Information Systems Technician; approve revisions to the classification specification for Information Systems II; approve the reallocation of one Information Systems Technician II position to one Information Systems Technician I position and one Information Systems Technician II position to one Senior Information Systems Technician within the Information Technology Division.

Prepared by: JoAnn Weberg, Human Resources Analyst  
Matt Engen, Information Technology Manager

Reviewed by: Martha Garcia, Acting Administrative Services Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachment: Exhibit A – Information Systems Technician I  
Exhibit B – Information Systems Technician II  
Exhibit C – Senior Information Systems Technician

**City of Tracy****INFORMATION SYSTEMS TECHNICIAN I**

Class Title:	Information Systems Technician I	Class Code:	XXXXX
Department:	Administrative Services	Bargaining Group:	TSSU
EEO Code:	77	Effective Date:	9/20/16
FLSA Status:	Non-Exempt	Revision History:	

**DESCRIPTION**

Under general supervision, to perform a variety of technical duties and specialized tasks related to information system design, installation and support. The scope of duties and responsibilities include a wide range of technical support, and customer service related activities including maintaining confidentiality. The position serves in a support role for the Information Systems Manager.

**DISTINGUISHING CHARACTERISTICS**

The Technician I is the entry-level class in the Information Systems Technician series and performs trainee level work. Incumbents work under immediate supervision while learning job tasks, progressing to general supervision as procedures and processes of assigned area of responsibility are learned. The Technician I class is distinguished from the II level by the level of responsibility and less than the full range of duties assigned to the II level.

**SUPERVISION RECEIVED AND EXERCISED**

Receives general direction from the Information Systems Manager in carrying out the position duties and responsibilities.

**EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES**

*The Information Systems Technician I may perform the following duties at entry level.*

Duties may include, but are not limited to the following:

Working closely with all City departments, coordinates support functions with the mission to implement information systems to achieve city-wide goals, objectives and policies.

Performs technical related activities supporting City information systems including telecommunications, computer hardware and software acting in a support role for City staff.

Performs various administrative functions including budgeting, contract supervision, equipment acquisition and vendor payments.

Works on specific applications including but not limited to geographic information systems, financial software, computer-aided dispatch, records management and other systems implemented and/or coordinated by the Information Systems Division.



Works closely with the Information Systems Manager to expand knowledge regarding the field of Information Technology.

Develops work plans, monitors work flow, reviews work product and makes recommendations to improve efficiency of City operations.

Install computer hardware, peripheral equipment and software applications.

Assists with all levels of computer network operations including cabling, network administration and end user support.

### **PERIPHERAL DUTIES**

Assists in training staff in the use of computer hardware software, telephones and other City systems.

Represents the City at various conferences and meetings.

Attends training course to expand knowledge of City systems.

Make presentations to City Council regarding division activities.

Assists in the implementation and maintenance of City-wide radio system.

As a member of the Information Systems Division serves as City contact for cellular phone and pager services.

Observes and enforces City policies on computer, Internet, e-mail, and telephone use.

Provides custom modifications to existing software applications.

Assists Information Systems Manager with other Duties as assigned

### **MINIMUM QUALIFICATIONS**

#### Knowledge of:

A knowledge of municipal government operations and how information technology impacts those operations.

Administrative principles and practices used in development of policy within a municipal government setting.

Knowledge of how computer software can be implemented to improve operational effectiveness of municipal government operations.

#### Ability to:

Manage time effectively while supporting a high demand for end user training and assistance.

Communicate with technical and non-technical individuals to promote the use of technology.

Expand knowledge of information systems which relate to accomplishing the goals of the Information Systems Division.

Analyze system issues and determine a logical course of action.

Work effectively with employees at all levels of the organization, vendors, and contractors.

### **SPECIAL REQUIREMENTS**

See well enough to read fine print and VDT's; hear well enough to converse on the telephone and in person over machinery noise: communicate frequently through the use of a telephone or in person on a technical basis

Communicate through written means

Occasionally lift up to 50 pounds and frequently bend, stoop, twist, crawl under desks and in tight spaces to install or repair equipment.

Attend evening meetings as required.

### **EDUCATION AND EXPERIENCE**

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

#### **Education**

Equivalent to an Associate Degree in computer science, information technology or closely related field.

#### **Experience**

None required. Work experience performing technical support and network administration on personal computers, peripheral equipment including software administration is desirable.

### **LICENSES AND CERTIFICATES**

Possession of or ability to obtain an appropriate, valid California drivers' license.

Candidate must pass POST level background investigation for clearance to work on Police Department Systems.

### **PHYSICAL DEMANDS**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to walk, sit and talk or hear. The employee is occasionally required to use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl.

The employee must occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, color vision, and the ability to adjust focus.

### **WORK ENVIRONMENT**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee occasionally works in outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions, toxic or caustic chemicals.

The noise level in the work environment is usually quiet while in the office, or moderately loud when in the field.

*The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

*This job description does not constitute an employment agreement between the City of Tracy and the employee and is subject to change by the City as the needs of the City and/or the requirements of the job change.*

## City of Tracy

**INFORMATION SYSTEMS TECHNICIAN II**

Class Title:	Information Systems Technician II	Class Code:	40205
Department:	<del>Finance</del> <u>Administrative Services</u>	_____	Bargaining Group:
	TSSU		
EEO Code:	77	Effective Date:	_____ 7/1/99
FLSA Status:	Non-exempt	Revision History:	_____ <u>09/16</u>

**DESCRIPTION**

Under general supervision, to perform a variety of technical duties and specialized tasks related to information system design, installation and support. The scope of duties and responsibilities include a wide range of technical support, and customer service related activities including maintaining confidentiality. The position serves in a support role for the Information Systems Manager, ~~and may serve in the absence of the Information Systems Manager.~~

**DISTINGUISHING CHARACTERISTICS**

The Technician II is the journey-level of the series and is responsible for performing more complex technical work.

**SUPERVISION RECEIVED AND EXERCISED**

Receives general direction from the Information Systems Manager in carrying out the position duties and responsibilities.

~~The incumbent is responsible for providing a wide variety of technical support to the Information Systems Manager. This position is distinguished from the part time Information Systems Technician by the level of responsibility assigned for maintaining information systems including the telephone and voice mail systems.~~

The incumbent will be required to use independent judgment and initiative in carrying out assignments and tasks and discretion while performing duties including maintaining confidentiality.

**EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES**

Working closely with all City departments, coordinates support functions with the mission to implement information systems to achieve city-wide goals, objectives and policies.

Performs technical related activities supporting City information systems including telecommunications, computer hardware and software acting in a support role for City staff.

Performs various administrative functions including budgeting, contract supervision, equipment acquisition and vendor payments.

Works on specific applications including but not limited to geographic information systems, financial software, computer-aided dispatch, records management and other systems implemented and/or coordinated by the Information Systems Division.

Works closely with the Information Systems Manager to expand knowledge regarding the field of Information Technology.

Develops work plans, monitors work flow, reviews work product and makes recommendations to improve efficiency of City operations.

Install computer hardware, peripheral equipment and software applications.

Assists with all levels of computer network operations including cabling, network administration and end user support.

Provides responsive on-going support and training on City telephone and voice mail equipment and software; and administers telephone and voice mail vendor contracts and services.

### **PERIPHERAL DUTIES**

Assists in training staff in the use of computer hardware software, telephones and other City systems.

Represents the City at various conferences and meetings.

Attends training course to expand knowledge of City systems.

Make presentations to City Council regarding division activities.

Assists in the implementation and maintenance of City-wide radio system.

As a member of the Information Systems Division serves as City contact for cellular phone and pager services.

Observes and enforces City policies on computer, Internet, e-mail, and telephone use.

Provides custom modifications to existing software applications.

Assists Information Systems Manager with other Duties as assigned

### **MINIMUM QUALIFICATIONS**

#### **Knowledge of:**

A knowledge of municipal government operations and how information technology impacts those operations.

Administrative principles and practices used in development of policy within a municipal government setting.

Knowledge of how computer software can be implemented to improve operational effectiveness of municipal government operations.

Ability to:

Manage time effectively while supporting a high demand for end user training and assistance.

Communicate with technical and non-technical individuals to promote the use of technology.

Expand knowledge of information systems which relate to accomplishing the goals of the Information Systems Division.

Analyze system issues and determine a logical course of action.

Work effectively with employees at all levels of the organization, vendors, and contractors.

**SPECIAL REQUIREMENTS**

See well enough to read fine print and VDT's; hear well enough to converse on the telephone and in person over machinery noise: communicate frequently through the use of a telephone or in person on a technical basis

Communicate through written means

Occasionally lift up to 50 pounds and frequently bend, stoop, twist, crawl under desks and in tight spaces to install or repair equipment.

Attend evening meetings as required.

**EDUCATION AND EXPERIENCE**

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education

Equivalent to an Associate Degree in computer science, information technology or closely related field ~~or vocational training in computer science or related field.~~

Experience

Two ~~to three~~ years of responsible technical experience performing technical support and network administration on personal computers, peripheral equipment including software administration.

**LICENSES AND CERTIFICATES**

Possession of or ability to obtain an appropriate, valid California drivers' license.

Candidate must pass POST level background investigation for clearance to work on Police Department Systems.

**PHYSICAL DEMANDS**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to walk, sit and talk or hear. The employee is occasionally required to use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl.

The employee must occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, color vision, and the ability to adjust focus.

### **WORK ENVIRONMENT**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee occasionally works in outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions, toxic or caustic chemicals.

The noise level in the work environment is usually quiet while in the office, or moderately loud when in the field.

*The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

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**City of Tracy**

**SENIOR INFORMATION SYSTEMS TECHNICIAN**

Class Title:	Senior Information Technician	Class Code:	XXXXX
Department:	Administrative Services	Bargaining Group:	TSSU
EEO Code:	77	Effective Date:	9/20/16
FLSA Status:	Non-exempt	Revision History:	

**DESCRIPTION**

Under general supervision, to perform a variety of technical duties and specialized tasks related to information system design, installation and support. The scope of duties and responsibilities include a wide range of technical support, and customer service related activities including maintaining confidentiality. The position serves in a support role for the Information Systems Manager and may serve in the absence of the Information Systems Manager.

**DISTINGUISHING CHARACTERISTICS**

The Senior Technician is the advanced journey level of the series and is responsible for performing the most complex technical work.

**SUPERVISION RECEIVED AND EXERCISED**

Receives general direction from the Information Systems Manager in carrying out the position duties and responsibilities.

The incumbent is responsible for providing a wide variety of technical support to the Information Systems Manager. The incumbent will be required to use independent judgment and initiative in carrying out assignments and tasks and discretion while performing duties including maintaining confidentiality.

**EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES**

Working closely with all City departments, coordinates support functions with the mission to implement information systems to achieve city-wide goals, objectives and policies.

Performs technical related activities supporting City information systems including telecommunications, computer hardware and software acting in a support role for City staff.

Performs various administrative functions including budgeting, contract supervision, equipment acquisition and vendor payments.

Serves as project lead for new Information Technology projects.

Works as lead technician providing direction and training to less experienced staff.



Works on specific applications including but not limited to geographic information systems, financial software, computer-aided dispatch, records management and other systems implemented and/or coordinated by the Information Systems Division.

Works closely with the Information Systems Manager to expand knowledge regarding the field of Information Technology.

Develops work plans, monitors work flow, reviews work product and makes recommendations to improve efficiency of City operations.

Install computer hardware, peripheral equipment and software applications.

Assists in the planning, integration, and deployment phases of new technologies.

Assists with all levels of computer network operations including cabling, network administration and end user support.

Provides responsive on-going support and training on City telephone and voice mail equipment and software; and administers telephone and voice mail vendor contracts and services.

### **PERIPHERAL DUTIES**

Assists in training staff in the use of computer hardware software, telephones and other City systems.

Represents the City at various conferences and meetings.

Attends training course to expand knowledge of City systems.

Make presentations to City Council regarding division activities.

Assists in the implementation and maintenance of City-wide radio system.

As a member of the Information Systems Division serves as City contact for cellular phone and pager services.

Observes and enforces City policies on computer, Internet, e-mail, and telephone use.

Provides custom modifications to existing software applications.

Assists Information Systems Manager with other duties as assigned.

### **MINIMUM QUALIFICATIONS**

#### **Knowledge of:**

A knowledge of municipal government operations and how information technology impacts those operations.

Administrative principles and practices used in development of policy within a municipal government setting.

Knowledge of how computer software can be implemented to improve operational effectiveness of municipal government operations.

Ability to:

Manage time effectively while supporting a high demand for end user training and assistance.

Communicate with technical and non technical individuals to promote the use of technology.

Expand knowledge of information systems which relate to accomplishing the goals of the Information Systems Division.

Analyze system issues and determine a logical course of action.

Work effectively with employees at all levels of the organization, vendors, and contractors.

**SPECIAL REQUIREMENTS**

See well enough to read fine print and VDT's; hear well enough to converse on the telephone and in person over machinery noise: communicate frequently through the use of a telephone or in person on a technical basis

Communicate through written means

Occasionally lift up to 50 pounds and frequently bend, stoop, twist, crawl under desks and in tight spaces to install or repair equipment.

Attend evening meetings as required.

**EDUCATION AND EXPERIENCE**

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education

Equivalent to an Associate Degree in computer science, information technology or closely related field.

Experience

Four years of responsible technical experience performing technical support and network administration on personal computers, peripheral equipment including software administration.

**LICENSES AND CERTIFICATES**

Possession of or ability to obtain an appropriate, valid California drivers' license.

Candidate must pass POST level background investigation for clearance to work on Police Department Systems.

## **PHYSICAL DEMANDS**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

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*This job description does not constitute an employment agreement between the City of Tracy and the employee and is subject to change by the City as the needs of the City and/or the requirements of the job change.*

**RESOLUTION \_\_\_\_\_**

AUTHORIZING THE ADMINISTRATIVE SERVICES DIRECTOR OR DESIGNEE TO AMEND THE CITY'S CLASSIFICATION AND COMPENSATION PLAN AND POSITION CONTROL ROSTER BY APPROVING THE ESTABLISHMENT OF TWO (2) NEW CLASSIFICATION SPECIFICATIONS AND SALARY RANGES FOR INFORMATION SYSTEMS TECHNIICAN I AND SENIOR INFORMATION SYSTEMS TECHNICIAN; APPROVE REVISIONS TO THE CLASSIFICATION SPECIFICATION FOR INFORMATION SYSTEMS TECHNICIAN II; APPROVING THE REALLOCATION OF ONE (1) INFORMATION SYSTEMS TECHNICIAN II POSITION TO ONE (1) INFORMATION SYSTEMS TECHNICIAN I POSITION AND ONE (1) INFORMATION SYSTEMS TECHNICAN II POSITION TO ONE (1) SENIOR INFORMATION SYSTEMS TECHNICIAN WITHIN THE INFORMATION TECHNOLOGY DIVISION.

WHEREAS, The City has established Classification and Compensation Plans and Position Control Roster, and

WHEREAS, The City has completed a classification review to establish new class specification and salary range, and

WHEREAS, It is necessary to amend the City's Classification and Compensation Plans and Position Control Roster effective September 20, 2016, as follows:

Establish Classification and Compensation

Information Systems Technician I: \$4,520.30 to \$5,494.45 monthly.

Senior Information Systems Technician: \$5,718.17 to 6,950.48 monthly.

WHEREAS, The City has completed a classification review and determined it is in the best interest and efficiency of the Administrative Services Department to reallocate an existing Information Systems Technician II position to an Information Systems Technician I and an Information Systems Technician II position to a Senior Information Systems Technician position, and

WHEREAS, Reallocation of positions is cost neutral to the City, and

NOW, THEREFORE, BE IT RESOLVED, As follows:

The City Council authorizes the City Manager and the Administrative Services Director or designee to amend the City's Classification, Compensation Plan and Position Control Roster by approving the establishment of two new classification specifications and salary ranges for Information Systems Technician I and Senior Information Systems Technician; approve revisions to the classification specification for Information Systems II; approving the reallocation of one Information Systems Technician II position to one Information Systems Technician I position and one Information Systems Technician II position to one Senior Information Systems Technician within the Information Technology Division.

\* \* \* \* \*

Resolution \_\_\_\_\_  
Page 2

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 20<sup>th</sup> day of September, 2016, by the following votes:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.D

REQUEST

**ADOPT A LABOR COMPLIANCE PROGRAM FOR CERTAIN PUBLIC WORKS PROJECTS FUNDED FROM PROPOSITION 84, AUTHORIZE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH CONTRACTOR, COMPLIANCE AND MONITORING, INC. FOR IMPLEMENTATION AND ENFORCEMENT SERVICES RELATED TO THE LABOR COMPLIANCE PROGRAM FOR THE RECYCLED WATER PROJECT CIP 74091 AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT**

EXECUTIVE SUMMARY

This item requests two actions of the City Council. As part of the implementation of the Proposition 84 funded Recycled Water Project CIP 74091, the City is required to adopt: 1) a Labor Compliance Program and 2) implement and enforce this program for the Recycled Water Project. The City has prepared a Labor Compliance Program. Specialized services are needed from a consultant in obtaining approval from the Department of Industrial Relations (DIR) for implementation and enforcement of the Labor Compliance Program.

DISCUSSION

The California Department of Water Resources has awarded a Proposition 84 grant to the City in the amount of \$18 million for a Recycled Water Project ("Project") which will construct backbone infrastructure for the distribution of recycled water from the City's existing Wastewater Treatment Plant (WWTP). The recycled water will be used to irrigate sports fields, parks, median islands, and new and existing landscaping within the City's right of ways. As part of the grant application, the recycled water may also provide regional benefit by serving the AltaGas power facility and West Side Irrigation District.

One of the conditions of the grant requires the City to adopt and implement a Labor Compliance Program on this Project approved by the DIR. This Project falls into the State's category of Public Works projects. City staff has completed the Labor Compliance Program for submittal to the DIR for approval. However, DIR requires submittal of the names of consultants and/or staff, along with the application, identifying who will be responsible for the implementation and enforcement of this Program. The implementation and enforcement of this Program needs to be approved by DIR and DIR must approve City staff/consultants. Since the City does not have either the expertise or the staff to complete this work, services of a consultant are needed.

In March 2016, the City of Tracy posted a request for proposals on its website from qualified labor compliance firms to provide services for this project. The City received three proposals and conducted phone interviews with each of the firms. Contractor Compliance and Monitoring, Inc. was found to be the most qualified firm to complete this work and a PSA needs to be executed for completion of this work.

Contractor Compliance and Monitoring, Inc. has submitted a proposal to complete this task for a not to exceed amount of \$64,000. The scope of work consists of: auditing the various contractors' certified payroll forms, monitoring apprenticeship requirements, jobsite audits and random interview of workers. The work also includes submittal of the City's Labor Compliance Program and application to the DIR, and preparing and submitting annual reports to the DIR.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

There is no fiscal impact to the General Fund. This PSA is funded from the approved Capital Improvement Project, Wastewater Recycling Pipeline (CIP 74091). The services are to be provided on a time and materials basis for the Project for a not to exceed amount of \$64,000. Staff believes the level of effort of work projected in the PSA for such typical work is reasonable. If additional services are needed, the PSA will be amended accordingly.

#### RECOMMENDATION

That the City Council, by two separate resolutions;

- 1) Adopt the Labor Compliance Program for certain Public Works projects funded from Proposition 84.
- 2) Authorize the Professional Services Agreement with Contractor Compliance and Monitoring, Inc. for services implementation and enforcement related to Labor Compliance Program for the Water Recycling Project CIP 74091 for a not to exceed amount of \$64,000 on time and material basis and authorize the Mayor to execute the agreement.

Prepared by: Steve Bayley, Project Specialist

Reviewed by: Kuldeep Sharma, Utilities Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

Attachment A: Labor Compliance Program  
Attachment B: Professional Services Agreement

**LABOR COMPLIANCE PROGRAM IMPLEMENTED BY  
CONTRACTOR COMPLIANCE AND MONITORING, INC.  
ON BEHALF OF THE CITY OF TRACY**

**INTRODUCTION**

**CONTRACTOR COMPLIANCE AND MONITORING, INC. (hereinafter referenced collectively as the “CCMI”) implements this Labor Compliance Program on behalf of the above named Public Agency for the purpose of complying with Labor Code Section 1771.3 and/or 1771.5. CCMI was previously approved by the DIR as a Third Party LCP from March 2003 through 2011. This Administrative Manual is a summary of the services CCMI will provide and the implementation of the LCP we perform as part of the Agency’s continuing commitment to the requirements of LCP laws and regulations. CCMI will continue to update its program as the laws and regulations relating to Labor Compliance Programs are changed and updated.**

California Labor Code Section 1770, et seq., requires contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code Section 1776 requires contractors to keep accurate payroll records of tradeworkers on all public works projects and to submit copies of certified payroll records upon request.

California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This labor compliance program contains the labor compliance standards required by State for project subject to the requirements of Proposition 84 which include, but are not limited, the following:

1. Payment of applicable general prevailing wage rates.
2. Employment of properly registered apprentices.
3. Providing certified payroll records upon request but not less than monthly.
4. Monitoring Agency construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-job conferences with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Applicable reports to the California Labor Commissioner
8. Preparation and submittal of an Annual Report to the Department of Industrial Relations.



CCMI is committed to providing a current, complete and accurate LCP program for all applicable projects. As such, CCMI has adopted and will update this administrative manual and LCP documents each time the Labor Code is amended and /or the DIR issues new regulations relating to LCPs. CCMI will also continue see that its staff receives updated training when the Labor Code and DIR regulations relating to LCP change.

## **SECTION I.**

### **PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS**

State prevailing wage rates as set forth in Labor Code Sections 1720, 1720.2, 1720.3, and 1771, have been made applicable to construction contracts funded with public funds and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

#### **A. Types of Contracts to Which Prevailing Wage Requirements Apply**

As provided in Proposition 84 and/or Labor Code Section 1771.5, an Awarding Body shall implement a Labor Compliance Program (LCP) that includes the following steps. CCMI will perform or assist in the performance of these items:

1. Provide LCP compliance under the requirements of the California Labor Code.
2. Submit appropriate Application and forms to DIR for approval of LCP compliance on Proposition 84 projects.
3. Review specifications and bid and contract documents (as requested) for compliance with prevailing wage language.
4. Conduct a Preconstruction Conference meeting and provide training and information on LCP requirements including providing handout materials (checklist) for all contractors and subcontractors.
5. Provide a phone line and e-mail contact where contractors and subcontractors can contact CCMI for clarification on prevailing wage, certified payrolls, apprenticeship and compliance issues.
6. License check and confirmation with California Contractor's State License Board of current and active license status, as well as worker's compensation coverage of all contractors and all listed subcontractors.
7. Review and comparison of work classification with California prevailing wage classification to ensure the contractor is paying the correct prevailing wage rate.

8. Monitoring of all Apprenticeship Requirements. Collection and review of all DAS-140 and DAS-142 forms. Review of applicable apprenticeship ratios employed, correct wages paid, training contributions (CAC2 forms).
9. Monthly audit of certified payrolls forms. This includes obtaining the applicable prevailing wage determinations for each project. Certified Payrolls are generally delivered by the Contractor to CCMI for review and audit. Auditing the payrolls includes: checking proper trade classifications, checking for overtime, weekend, holiday or shift work, checking for \*\* increases, reviewing fringe benefit contribution and verifying that amortization is correct (when used) and review of training contributions made. When appropriate, travel and subsistence is also reviewed
10. Monthly jobsite audits and random interviews of workers (to determine veracity of certified payroll information, compliance with anti-kickback, equal employment opportunity requirements, jobsite posting requirements, etc.).
11. Verification of posting on the projects on a regular basis.
12. Monthly request for verification of payment by requesting each contractor and subcontractor on the project provide proof of payment (cancelled check and wage statement or direct deposit and wage statement) for an employee selected (by CCMI) on a random basis from the certified payrolls.
13. Additional detailed audit and/or investigations of contractors through review of cancelled checks, time cards, and related records (as needed).
14. Monthly report to the Agency by CCMI regarding compliance of contractors and subcontractors audited. To the extent that a contractor is either not in compliance and/or additional paperwork is needed for review, the Agency and the general contractor are contacted by CCMI.
15. Communication of potential violations to the Agency with recommended action. In the event that potential paperwork or compliance issues with a contractor cannot be resolved quickly, the Agency will be notified of this potential problem and a recommendation will be made to the Agency to retain a certain portion of the scheduled progress payment until the issue is resolved. The Awarding Body shall always maintain the authority whether or not to withhold funds or take other corrective action.
16. Communications with Contractors. CCMI will work with all contractors and subcontractors with the goal of amicable agreement on resolving issues related to violations, penalties and compliance. All meeting and calls with contractors will be documented in the project folder maintained by CCMI.
17. Third Party Requests for documents. A project with a high profile oftentimes draws the attention of certain local watchdog groups who frequently request copies of certified payrolls and related "Public Documents". CCMI will provide the appropriate

redacted copies of certified payroll and related LCP documentation to any third party who makes an appropriate request.

18. Issuing of all final close of project reports, including imposition of penalties and reports to Labor Commissioner (Request for Forfeiture); issuing Notices to Withhold and other close out documentation with the approval of the Awarding Body.
19. Provide Annual Report to DIR for all LCP projects on which CCMI provided LCP services.

## SECTION II.

### **COMPETITIVE BIDDING ON PUBLIC WORKS CONTRACTS – CONTRACT LANGUAGE**

CCMI will provide the following information to Awarding Agencies with whom it has been contracted. All Public Agency bid advertisements (or bid invitations) and public works contracts requiring LCP compliance shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code similar to the sample language listed below:

*This project is subject to the requirements of Section 1770 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wage information for this project is available at the Agency's main office or may be obtained via the internet at: [www.dir.ca.gov](http://www.dir.ca.gov).*

*This project is subject to the requirements of a Labor Compliance Program as required by the California Labor Code. This requires full compliance by all contractors and subcontractors on the project in accordance with the provisions of Labor Code Section 1720 et. seq. The Agency is required by law to review and audit the work performed on this project to ensure that proper prevailing wages and all apprenticeship requirements are met. Specifically, contractors are reminded the need for compliance with Labor Code Section 1774 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls), Section 1777.5 in the employment of apprentices on public works projects and Section 1811-1813 regarding the payment of overtime on public works projects.*

*As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the Agency or its designee, along with its request for payment, all applicable and necessary certified payrolls for the time period covering such payment request. The term "certified payroll" shall include all required documentation to comply with the mandated Labor Compliance Program, as well as any additional documentation requested by the Agency or its designee pursuant to Labor Code Section 1720 et. seq.*

*The Agency shall withhold any portion of a payment, including the entire payment amount, until certified payroll forms and related documentation are properly submitted. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the Agency may continue to hold sufficient funds to cover estimated wages and penalties under the contract.*

## **SECTION III.**

### **JOB START MEETING**

After the Agency awards the public works contract, and prior to the commencement of the work, a mandatory Pre-Construction Conference shall be conducted with the contractor and subcontractors for the particular project. The general contractor is responsible to see that the information provided at the Pre Construction Conference, relating to Labor Compliance Program (LCP) requirements, is distributed to its subcontractors.

At that meeting, the Agency will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the Agency, the prohibition against discrimination in employment and other items required to be covered at the pre-job conference (see Appendix A).

Included in the handout package is a “Checklist of Labor Law Requirements for Review at Job Start Meetings” and is a brief summary of the labor laws which will be reviewed in the Pre-Construction Conference.

Additionally, the handout material includes the following sample forms:

Certified Payroll Form

Fringe Benefit Reporting Form (PW 26)

DAS 140- Register to Train Apprentices

DAS 142 – Request for Dispatch of Apprentices

CAC 2- Apprenticeship Contribution Form

Notice of LCP Contact Information- required to be posted on jobsite

Also included in the packet for illustrative purposes, is a sample copy of a prevailing wage determination. This assists the contractors as the Agency reviews prevailing wage requirements and such things as the double asterisk rule, the difference between Basic Hourly Rate and Total Hourly Rate, etc.

Contractors are referred to the DIR website at [www.dir.ca.gov](http://www.dir.ca.gov) for updated prevailing wage information, apprenticeship regulations, forms, etc. And, the contractor is provided with information regarding the LCP contact person assigned to the specific project. Contractors are reminded that all of the steps required of the Labor Compliance Program are the same steps currently required on all prevailing wage projects. It is just that the LCP now requires that all the documentation be submitted and reviewed.

The last page of the handout is a duplicate copy of the signature page from the “Checklist” included earlier in the packet. This page is repeated so the contractor can merely remove the last page from the packet, sign it and turn it in to the Agency staff at the conclusion of the meeting.

The contractors and subcontractors present at the Pre Construction Meeting will be given the opportunity to ask questions of the Agency and CCMI relative to the items contained in the Labor Law Requirements Checklist. The checklist will then be signed by the contractor’s representative and a copy will be kept by the Agency and/or CCMI.

The average time to review this information with contractors is approximately 30 minutes to one hour, depending on the number of contractors in attendance and the number of questions asked.

The General (Prime) Contractor is responsible to provide copies of the LCP Pre Construction Package and Checklist of Labor Law Requirement to all subcontractors on the project who are not in attendance at the Pre Construction Conference.

## SECTION IV.

### REVIEW OF CERTIFIED PAYROLL RECORDS

#### A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain “payrolls records” (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs (as defined by Title 8 CCR Section 16000) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the Agency’s project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs to provide fringe benefits), daily and weekly number of hours worked, overtime worked and paid, training contributions paid (if applicable), deductions made, actual wages paid and check number or other tracking number for direct deposit confirming payment to the worker.

##### 1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain weekly certified payroll records for submittal to the Agency as required, but not less than monthly. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance or “certification” signed by the contractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed and shall include at least the following language:

I, \_\_\_\_\_ (Name-print) the undersigned, am \_\_\_\_\_ (position in business) with the authority to act for and on behalf of \_\_\_\_\_, (name of business and/or contractor) certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ (description, no. of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named. Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

The Public Agency reserves the right to include more stringent language.

For weeks in which a contractor/subcontractor is not working on a project, a Statement of Non-Performance is required. Once a particular contractor/subcontractor has completed their work, the last Certified Payroll submitted should be identified as the “Final” Certified Payroll.

The certified payroll records required by Labor Code Section 1776 shall be submitted to the DIR electronically through the eCPR system. Complete certified payroll information shall also be maintained and submitted either in hard copy or electronically to the City subject to all of the following conditions:

- (a) The reports must contain all of the information required by Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations' suggested "Public Works Payroll Reporting Form" (Form A-1-131);
- (b) The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, Labor Compliance Programs, and the Department of Industrial Relations;
- (c) Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;
- (d) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and
- (e) No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

## 2. Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall permit such representatives of the Agency and/or the DIR to interview trades workers during working hours on the project site.

## 3. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors of which it has knowledge.

- a. The contractor shall monitor the payment of the specified general prevailing per diem wages by each subcontractor to its employees by periodic review of the subcontractor's certified payroll records.
- b. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor



for work performed on the public works project (upon receipt of notification that a wage complaint has been resolved, the contractor shall pay any money retained from and owed to a subcontractor).

- c. Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the general prevailing rate of per diem wages to its employees on the public works project, as well as any penalties which may have been imposed for working hours violations (Labor Code Section 1775 and 1813).

#### 4. Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the contractor who contracted for his or her services as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium (overtime) pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

#### 5. Maintaining Records:

The Agency/CCMI shall maintain all records relating to any project subject to Labor Compliance for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the Agency/CCMI shall maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

#### B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any

craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e. Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, upon request by the Agency or CCMI.

Pre-apprentices, trainees, trainees in nonapprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Register the prevailing wage project (DAS-140);
2. Request to Train apprentices on public works projects in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice hour to each five (5) journeypersons hours worked on the project. (DAS-142 or equivalent documentation or the actual employment of apprentices).
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

### C. Payroll Review and Audits

Payroll review and audits shall be conducted by the CCMI..

CCMI preference and practice is to review all certified payroll for all employees for all weeks of work on a project at least once a month. However, CCMI **shall** review the certified payrolls not less than one a month. The CCMI **shall** review payrolls for **at least** one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project.

1. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:

- a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the Agency's Facility Office and posted at the public works job site;
- b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are available at the Agency's Facility Office and posted at the public works job site.

CCMI shall also request verification of proper payment of prevailing wages to workers by randomly requesting paycheck verification for at least one worker from each contractor/subcontractor for at least one weekly period within each month.<sup>1</sup>

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received (DAS-140), including an estimate of journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested (DAS-142), and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council (CAC-2); and whether persons listed on the certified payroll in that craft or trade being paid less than the journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards. Alternatively, or in addition to inquiring of the program sponsor, CCMI shall, as appropriate, reference the DIR website for the listing of enrolled apprentices and any contribution alleged made by a contractor on a CAC-2 form for the payment of training contributions.

**DAS 140 - Register to Train** – CCMI will collect a DAS-140 from each contractor for **each** apprenticeable craft employed on the project. The original DAS-140 should be sent within ten days of each contractor/subcontractor signing the contract, but not later than the first day the contractor/or applicable subcontractor commenced work on the project. A copy of DAS 140 forms should be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, the

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<sup>1</sup> Title 8 CCR §16432- (c) "Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month ...."

contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

**DAS 142 - Request apprentices-** CCMI will look for apprentices being employed on the project (through examination of certified payrolls) in proper ration and/or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is NOT REQUIRED to use the DAS-142 form, but can document its request for apprentices by any other written means. However, if a contractor does use the 142 form (filling it out properly and filing it promptly), with a delivery receipt, the contractor is “legally presumed” to be in compliance.

**Employ Apprentices in 1:5 ratio** – To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5 ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

**Pay correct apprenticeship rates** - Apprenticeship wage rates paid will also be verified by CCMI against the applicable prevailing wage determination for such apprentice level.

**Pay correct training contribution (CAC 2)** - CCMI will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council. (CAC-2 contributions to be confirmed through DIR website).

**Additional Review:** CCMI will also engage in the following additional review to determine LCP compliance:

### **Proper Licensing**

Businesses and Professions Code Section 7000 et seq. requires all companies performing construction work to be properly licensed and bonded. CCMI will check the contractor’s/subcontractor’s license status through the Contractors State License Board website at: [www.cslb.ca.gov](http://www.cslb.ca.gov). Contractors working without a valid license will be removed from the project.

### **Worker’s Compensation Insurance**

Labor Code Section 1861- All contractors and subcontractors employing workers on the project are required to provide worker’s compensation coverage. CCMI will verify that all contractors/subcontractors have appropriate worker’s compensation while employing workers on

the project. This information can also be verified through the California Contractor's State Licensing Board website.

**Electrician Certification:**

The Division of Labor Standard Enforcement also requires that all electricians employed by a C-10 licensed contractor in the State of California possess adequate training to perform their job. As such, all electricians must fall into one of the following categories:

- Journeyman- Certified
- Journeyman- Trainee
- Apprentice

CCMI will check the status of all electricians employed by using the DIR website. A list of any electricians which do not fall into one of these categories will be communicated immediately to the Agency and the prime contractor so that the individual can be removed from the project. And, the incident will be reported to the DLSE/CSLB at the end of the project.

The Agency shall also review and provide compliance review for all other items listed on the Checklist (Appendix A).

## **SECTION V.**

### **ONSITE JOB VISITS AND WORKER INTERVIEWS**

#### **Site Visitations**

1. Safety is the paramount factor for any site visit to any Agency construction projects. CCMI's site monitor is will comply with all safety rules and exercise reasonable caution at all times.
2. All personnel working on or visiting any Agency construction sites are required to be properly identified and visibly wear CCMI issued picture ID's (badge). Additionally, all authorized personnel are required to wear hard hats and safety shoes.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes.
  - a. Upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer to determine if the appropriate postings are on the jobsite. These include, but are not limited to:
    - EEO Posters
    - Prevailing wage sheets posted
    - Notice informing the employees that the project is subject to a Labor Compliance Program and providing the Agency's LCP contact information.
    - Other appropriate required postings required by law.

Where a jobsite trailer is not present on the site, CCMI or the Agency shall seek to confirm that this information is posted elsewhere on the site or available to the employees at the jobsite or at their place of employment and is readily accessible and visible to each such employee.

#### **Interviewing**

1. Not less than once a month, job site interviews of employees will take place. It is CCMI's practice to attempt to interview at least one employee from each contractor/subcontractor who performs work on the project. With that goal in mind, interviews may be conducted on a weekly basis, but in no event less than monthly.
2. Once CCMI's staff checks in with the site superintendent and obtains access to the site, the Interviewer will attempt to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. The interviewer shall identify themselves as a CCMI employee and Agency representative, and ask to speak to the employee for a few minutes. Interviews should not be conducted in an area or during

a time when either the interviewer or the worker would be subject to injury due to worksite activity.

These interviews are random; two or three tradespersons for each subcontractor is sufficient for one visit. Any persons missed are usually interviewed on subsequent visits. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of subcontractors present. Contractor tradespersons should also be interviewed.

3. Using the Labor Compliance Site Visitation Interview form, each person will be asked the following: name, social security number, employer, title (trade), rate of pay, and task being performed at the time of interview. (See Appendix B).

#### Guidelines for Interviewers:

- a. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. CCMI works with both open and closed shop trades.
- b. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report. CCMI's Interviewer staff is also fluent in Spanish.
- c. If someone refuses to disclose his/her social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.
- d. If someone does not know their rate of pay (most tradespersons do not know the exact penny of wages earned), ask for an estimate. If the response is, "whatever prevailing wage is", so indicate on the form.
- e. If someone indicates that he/she is an apprentice, make sure that you ask him/her what period. These can be anywhere from 1<sup>st</sup> to 10<sup>th</sup>. If s/he's not sure, ask him/her how many years s/he's been apprenticed in the specific trade and/or to estimate and so indicate on the interview form.
- f. ALWAYS thank them for their time.
- g. Keep in mind that you are there to collect information only, do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report your findings to the CCMI staff person responsible for the certified payroll audit for this project.

## **Reporting**

All original interview forms shall be submitted to the CCMI no later than the end of each workweek.

## **Daily Job Logs**

The Daily Job Logs will be used by the Agency/CCMI to cross check staffing on the various LCP projects. The Daily Reports should list those contractors and subcontractors present on the site on a specific day as well as the number of employees employed on the project by each contractor/subcontractor. While the Daily Reports are merely a “snap shot” of the project at the time of the report information, the Daily Reports are used by the Agency/CCMI to determine if a Contractor has failed to properly list all employees performing work on the project.

## **Extended Audits**

When the Agency/CCMI finds a potential violation which leads it to believe that prevailing wages has not been properly paid and the documentation submitted by the contractor/subcontractor is inconclusive, the Agency/CCMI will exercise its authority to conduct a full investigation to verify whether appropriate prevailing wages were paid on the project

### **1. Requesting Additional Documentation from Contractor**

The Agency/CCMI shall request additional documents in writing, listing the specific documentation requested. The Agency/CCMI will also invoke the provisions of Labor Code Section 1776 in demanding that the documents be produced within 10 days.

### **2. Conducting Additional Interviews**

Based on CCMI’s investigation, the CCMI may engage in additional interviewing of employees who worked on the project. These interviews may be conducted in person or via other means of communication (i.e. email, telephone, mail).



## **SECTION VI.**

### **ENFORCEMENT**

#### **Duty of the Awarding Body**

A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the LCP to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. It is also the practice of the LCP to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and sections 17201-17270 of Title 8 of the California Code of Regulations.

CCMI has a duty to report all violations and proposed remedial action to the Agency who in turn has a duty to enforce the Labor Code public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code).

#### **Audits:**

An Audit shall be conducted as deemed necessary whenever the Labor Compliance Program has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined by the Labor Compliance Program after consideration of the best information available as to actual hours worked, amounts paid, and classifications of workers employed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project. An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. An Audit using the forms in Appendix B of 16437, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at sections 17201-17270 of Title 8 of the California Code of Regulations.

After the Labor Compliance Program has determined that violations of the prevailing wage laws

have resulted in the underpayment of wages and an audit has been prepared, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Program reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the Labor Compliance Program shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the Labor Compliance Program. For each instance in which a wage deficiency is resolved in accordance with this regulation, the Labor Compliance Program shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to subpart (e) above along with any exculpatory information submitted to the Labor Compliance Program by the affected contractor or subcontractor.

#### Monthly Communication to the Contractor:

Upon completion of the monthly review of certified payrolls, CCMI shall communicate to the Agency and with the prime contractor on the project as to all violations, inadequacies, or deficiencies for the prime contractor and any applicable subcontractor. CCMI shall create Monthly Audit Reports for each contractor/subcontractor on the project who has failed to submit correct LCP documentation and/or has failed to pay the applicable prevailing wage or comply with other LCP requirements.

CCMI on behalf of the Public Agency shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. The Public Agency shall not avoid the use of its enforcement authority based on cost considerations nor use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred.

CCMI's monthly report to the Contractor shall include:

- Name of Project
- Prime Contractor
- Subcontractor with outstanding violation
- Weeks of Certified Payrolls reviewed
- Any deficiency in paperwork  
Incorrect or Missing:

- Certified Payrolls
- Fringe Benefit Statement
- DAS 140
- DAS 142
- CAC 2

- Identify any wage deficiencies, classification issues, etc.

- Direct Contractor to correct said deficiencies and provide documentation of corrective action.

- Request verification of payment (cancelled check or proof of direct deposit) for randomly selected employee from the certified payroll.

- Invoke 1776 documents request – as needed.

**A. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate**

1. “Withhold” means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729. A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.

2. “Contracts,” except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;

3. “Delinquent payroll records” means those not submitted on the basis set forth in the Agency contract and the Labor Compliance Program;

4. “Inadequate payroll records” are any one of the following:

a. A record lacking the information required by Labor Code Section 1776;

b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;

c. A record remaining uncorrected for one (1) pay period, after the awarding body has given the contractor notice of inaccuracies/omissions detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies/omissions do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus.

The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Agency shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Public Agency/CCMI provides notice that the subcontractor has cured the delinquency or deficiency.

When contract payments are withheld under this section, the Public Agency/CCMI shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

Once the Public Agency/CCMI has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Program reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the Labor Compliance Program shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the Labor Compliance Program

Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729. The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.

### **Apprenticeship Obligations:**

The duties of a Labor Compliance Program with respect to apprenticeship standards are as follows:

(1) Either the Awarding Body or the Labor Compliance Program acting on its behalf shall (A) inform contractors and subcontractors bidding public works about apprenticeship requirements, (B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

(2) The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

### **Request for Forfeitures**

"Forfeitures" means the amount of wages, penalties, and forfeitures assessed by the Public Agency and proposed to be withheld pursuant to Labor Code section 1771.6(a), and includes the following: (1) the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and (2) penalties assessed under Labor Code Sections 1775, 1776 and 1813.

If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a); (2) an Audit as defined in

section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.

For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with Title 8 CCR Section 16437, set forth below:

*Where the Labor Compliance Program requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the information specified in subparts (1) through (9) below. Appendix D is a suggested format for a Request for Approval of Forfeiture under this section.*

*(1) Whether the public work has been accepted by the awarding body and whether a valid notice of completion has been filed, the dates if any when those events occurred, and the amount of funds being held in retention by the Awarding Body;*

*(2) Any other deadline which if missed would impede collection;*

*(3) Evidence of violation, in narrative form;*

*(4) Evidence of violation obtained under section 16432 of these regulations and a copy of the Audit prepared in accordance with section 16432(e) setting forth the amounts of unpaid wages and applicable penalties;*

*(5) Evidence that before the forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor's attention, and (B) the contractor and subcontractor either did not do so or failed to convince the Labor Compliance Program of its position;*

*(6) Where the Labor Compliance Program seeks not only wages but also a penalty as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, a short statement should accompany the proposal for a forfeiture, with a recommended penalty amount pursuant to Labor Code Section 1775(a);*

*(7) Where the Labor Compliance Program seeks only wages or a penalty less than \$200 per day as part of the forfeiture because the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, the file should include the evidence as to the contractor or subcontractor's knowledge of his or her obligation, including the program's communication to the contractor or subcontractor of the obligation in the bid invitations, at the prejob conference agenda and records, and any other notice given as part of the contracting process. With the file should be a statement, similar to that described in (6), and recommended penalty amounts, pursuant to Labor Code Section 1775(a);*

*(8) The previous record of the contractor and subcontractor in meeting their prevailing wage obligations; and*

*(9) Whether the Labor Compliance Program has been granted approval on only an interim or temporary basis under sections 16425 or 16426 above or whether it has been granted extended approval under section 16427 above.*

*(b) The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than 30 days before the final payment, but in no event not less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.*

*(c) A copy of the recommended forfeiture and the file or report shall be served on the contractor and subcontractor at the same time as it is sent to the Labor Commissioner. The Labor Compliance Program may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an audit, investigation, or meeting if those are clearly referenced in the file or report.*

*(d) The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due.*

*(e) The Labor Commissioner's determination of the forfeiture is effective on one of the two following dates:*

*(1) For all programs other than those having extended authority under section 16427 of these regulations, on the date the Labor Commissioner serves by first class mail, on the Labor Compliance Program, on the Awarding Body if different, on the contractor and on the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.*

*(2) For programs with extended authority under section 16427 above, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.*

## SECTION VII.

### THIRD PARTY REQUESTS AND ENFORCEMENT

#### **1. Third Party Requests for Payroll**

When the Agency receives a request for certified payrolls of a contractor /subcontractor from a third party pursuant to Labor Code Section 1776, any records which the Agency makes available to such a third party shall be appropriately redacted pursuant to Labor Code Section 1776 (e) to protect the privacy of the individual worker. Pursuant to Title 8 CCR 16403. Such requests are frequently forwarded from the Agency to CCMI. CCMI will comply with the provisions of 1776(e) whenever providing payrolls to any third party.

Records received from the employing contractor shall be kept on file in the office or entity that processed the request for at least 6 months following completion and acceptance of the project. Thereafter, they may be destroyed unless administrative, judicial or other pending litigation, including arbitration, mediation or other methods of dispute resolution, are in process. Copies on file shall not be obliterated in the manner prescribed below;

Copies provided to the public upon written request shall be marked, obliterated or provided in such a manner that the name, address and Social Security number, and other private information pertaining to each employee cannot be identified. All other information including identification of the contractor shall not be obliterated;

The Public Agency/CCMI may affirm or deny that a person(s) was or is employed on a public works contract (by a specific contractor) when asked, so long as the entity requires such information of an identifying nature which will reasonably preclude release of private or confidential information.

Requests for certified copies of payroll records pursuant to Section 1776 of the Labor Code may be made by any person. However, any such request shall be in writing and contain at least the following information:

- (1) The body awarding the contract;
- (2) The contract number and/or description;
- (3) The particular job location if more than one;
- (4) The name of the contractor;
- (5) The regular business address, if known.

Acknowledgment of Request. The public entity receiving a request for payroll records shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an



estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400(d) below, to the person who requested said records

**Request to Contractor.** The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:

- (1) Specify the records to be provided and the form upon which the information is to be provided;
- (2) Conspicuous notice of the following:
  - (A) that the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and
  - (B) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five (\$25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;
- (3) Cost of preparation as provided in Section 16402; and
- (4) Provide for inspection.

**Inspection of Payroll Records.** Inspection of the original payroll records at the office of the contractor(s) pursuant to subdivision (b) of Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice.

**Costs of Certified Payrolls:** The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be \$1 for the first page of the payroll record and 25 cents for each page thereafter, plus \$10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.

## **2. Third Party Complaints**

Upon receipt of a written complaint from a third party alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, CCMI will respond to the complaining party as follows:

- (1) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name,

address, and telephone number of the investigator assigned to the complaint;

(2) Within 15 days after receipt of the complaint, provide the effected contractor with the notice required under Labor Code Section 1775(c) if the complaint is against a subcontractor;

(3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;

(4) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and

and

(5) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has not been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

## SECTION VIII.

### PROJECT CLOSE-OUT- FORFEITURES AND PENALTIES

**IF NO WAGE VIOLATIONS HAVE OCCURRED** during the course of the project, and **nothing is outstanding**, the CCMI shall issue a close out report See Appendix H to the Agency and keep this data to reference for the Agency's Annual Report.

CCMI is aware of its obligation to take prompt and vigorous enforcement of all violations of the LCP and is committed to doing so. Wage Violations which occur during the course of the project will be promptly corrected and the following penalties assessed: (after consultation with the Agency)

•**Wage Violation** – Labor Code 1775 - \$200 per day per worker per violation. The Agency now has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775, subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction or waiver shall be made if there are outstanding wages still due. Reasons for reduction of penalties will be documented and included in Notice of Request for Forfeitures to the Labor Commissioner.

•**Overtime Violation** – Labor Code Section 1813 - \$25.00 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is Labor Code Section 1813 which controls with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.

•**Failure to Provide Certified Payrolls** (including fringe benefit statements, timecards, canceled checks, etc.) within 10 days of Request - Labor Code 1776 (h). The penalty of \$100.00 per day per worker continues until strict compliance is met (all documents delivered). Before imposing 1776 penalties, the CCMI/Agency will ensure that any request for documentation includes:

- Identification of the specific documents requested
- Identification that the request is made pursuant to Section 1776(h) of the Labor Code and that penalties of \$100 per day per worker will be imposed until there is strict compliance
- Delivery of the notice must be by certified mail or other means where the contractor signed a receipt of the notice

•**Willful and/or Repeat Offenders** will be subject to maximum penalties as stated above and a recommendation of debarment from public works will be made to the DIR.

•**Liquidated Damages** – If prevailing wages remains unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. CCMI will advise the Agency shall hold

appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.

• **Apprenticeship Violation** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training contributions, employ apprentices at the ratio required, etc. The Agency does not have the authority to impose penalties for Apprenticeship Violations, but instead will have CCMI file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DLSE (who is now enforcing DAS violations).

• **Unlicensed Contractor** – Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is not a penalty that LCPs enforce. Rather, the Agency may direct CCMI to file a complaint with the DIR, as well as with the Contractors State License Board (CSLB).

3. If the total wages and penalties outstanding and due are less than \$1,000, then the CCMI (with the direction and approval of the Agency) will proceed to issue a Notice to Withhold to the Contractor/and any applicable subcontractor. (See Notice to Withhold Appendix E).

4. If wages and penalties exceed \$1,000, CCMI will prepare and file (with the approval and direction of the Agency) the Request for Forfeiture form (see Appendix D) and send it with the appropriate documentation to the Labor Commissioner for review and decision. “LCP Request for Forfeitures” and “Penalty Worksheet” spreadsheet will be completed in full. Penalty worksheet will list dates of violation and include summary worksheet, including the following:

- a. Audit summary (Agency’s penalty worksheet summary and individual employee penalty worksheets).
- b. 1<sup>st</sup> Bid Advertisement Publication Notice of Completion (if filed).
- c. Scope of Work.
- d. Complaint forms and declarations, if any from third parties or employees.

The close out documents will be sent to the following:

General Contractor – certified and regular mail;  
Affected Subcontractor – certified and regular mail;  
Overnight delivery (with signature required) or certified mail to the Labor Commissioner

5. The Labor Commissioner then has 30 days to respond. (Once the Agency/CCMI has a response from the Labor Commissioner, a Notice to Withhold shall issue). In the event the Labor Commissioner does not respond within 30 days, the Agency/CCMI shall then issue a Notice to

Withhold based on the information provided in the Request for Forfeiture Notice. The Notice to Withhold shall be sent as follows:

General Contractor –certified and regular mail  
Effected Subcontractor – certified and regular mail

6. Allow 60 days for the contractor to contest the penalties. If the contractor contests the Notice to Withhold, then the Agency/CCMI (upon receipt of the written Request for Review) will promptly forward the Request for Review to the Agency’s General Counsel.

\*\*Potential Settlement Options – CCMI will advise the Agency that it has the ability to engage in settlement discussions and will do so before the filing of a Request for Forfeiture. CCMI shall engage in these discussions as requested by the Agency. Specifically, once the Agency/CCMI has determined/confirmed an actual violation has occurred, notification will be provided to the effected contractor/subcontractor with an opportunity to correct the wage deficiency. The contractor/subcontractor shall have at least 10 days from such notification to submit information/documentation that such error was made in good faith and corrected promptly. If the correction is made promptly and a waiver of penalties is determined, no Request for Forfeiture will be made to the Labor Commissioner. However, the Agency will keep this information and include it with its Annual Report. When considering the compromise or waiver of penalties, the Agency will consider the nature of the violation, good faith error versus a knowing violation.

If, after a Notice to Withhold is issued, a contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b). CCMI will assist the Agency in exercising the same rights and responsibilities of the Enforcing Agency (as defined in Section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the Awarding Body, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.

Except in cases where the Labor Commissioner has intervened pursuant to subpart (b) of CCR Title 8 Section 16439, the Agency shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever the Agency settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the Agency/CCMI shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

7. If the 60-day time period expires and no request for review is filed, then the sums set forth in the Notice to Withhold are deemed forfeit to the Agency (except to the extent that any wages due, must be turned over by the Agency to the affected employees (if the employees cannot be

located after a diligent search, then those wage funds are turned over to the Labor Commissioner).

Close Out Completion Report:

For each project, CCMI shall prepare a Project Completion Report, deliver such report to the Agency and keep such report in the applicable project file. The Project Completion Report is attached hereto as Appendix H.

**APPRENTICE/TRAINING VIOLATION:**

- Unpaid training contribution for any trade
- No DAS 140 form submitted
- No DAS 142 form submitted and no apprentices on the project
- Electrician certification violation

For any violation relating to apprenticeship or training, the CCMI shall complete and file (on behalf of the Agency) a Public Works Complaint with the Division of Apprenticeship Standards and enclose the applicable documentation.

The Public Works Complaint and applicable documents shall be sent to:

- General Contractor – certified and regular mail;
- Effected Subcontractor – certified and regular mail;
- DLSE:

**Southern California**

Division of Labor Standards Enforcement  
BOFE- Public Works (1777.5 and 1777.7)  
Attention: Lorna Espiritu, Senior Deputy  
300 Oceangate, Suite 850  
Long Beach, California 90802

**Northern California**

Division of Labor Standards Enforcement  
BOFE- Public Works (1777.5 and 1777.7)  
Attention: Sherry Gentry, Senior Deputy  
7718 Meaney Avenue  
Bakersfield, California 93308

## **SECTION IX.**

### **NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS OF PROGRAM ENFORCEMENT ACTION**

#### **Notice of Withholding of Contract Payments (NWCP)**

After determination of the amount of forfeiture by the Labor Commissioner, the CCMI/Agency shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. CCMI/Agency shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body. A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the Agency is found as Appendix E to this document.

#### **A. Review of NWCP**

1. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request to the Agency/CCMI that appears on the NWCP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.
2. Within ten days following the receipt of the Request for Review, the Agency/CCMI shall complete and serve a Notice of Transmittal on the DIR and the applicable contractor(s). Within 20 days of receipt of the Request for Review, the Agency/CCMI shall provide to the party requesting review and a copy of the Opportunity to Review Evidence. (A copy of the required Notice of Transmittal to be utilized is found as Appendix F to this document. A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is found as Appendix G to this document).
3. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the Director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Agency at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Agency subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Pursuant to Labor Code Section 1742.1, there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties has been deposited by the contractor with the Department of Industrial Relations within 60 days following service of Notice to Withhold.

Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Agency. Within 15 days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. The Director has adopted regulations setting forth procedures for hearings under this subdivision.

4. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
5. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.
6. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
7. This procedure shall provide the exclusive method for review of a NWCP by the Agency to withhold contract payments pursuant to Section 1771.7.



## SECTION X

### **PRIORITY DISTRIBUTION OF FORFEITED SUMS**

#### A. Withholding of Forfeited Sums

CCMI shall assist the Agency in distributing any withheld sums in the following manner:

1. Before making payments to the contractor of money due under a contract for public work, the Agency shall withhold and retain from sums owing Contractor, if any, all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the Agency until receipt of a final order that is no longer subject to judicial review.
2. Pending a final order, or the expiration of the time period for seeking review of the Notice of the Withholding, the Agency shall not disburse any contract payments withheld.
3. From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the prevailing wage rate. Said wages due shall have **PRIORITY** over all Stop Notices filed against the prime contractor.
5. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the Agency that has enforced this chapter pursuant to Section 1771.7.
6. If insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all said underpaid workers.
7. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the Labor Compliance Program shall deposit penalties and forfeitures with the Agency.

Where collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and Agency or its Labor Compliance Program are both parties, the fines, penalties or forfeitures shall be divided between the general funds of the state and the Awarding Body, as the Hearing Officer or court may decide.

All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner and to which the Agency or its Labor Compliance Program is not a party, shall be deposited in the general fund of the State.

## SECTION XI.

### ANNUAL REPORTS AND RECORDKEEPING

#### A. Annual Report on the Labor Compliance Program to the Director of the Department of Industrial Relations

CCMI shall assist the Agency in submitting to the Director of the Department of Industrial Relations an annual report (LCP-AR1) on the operation of its Labor Compliance Program on or before August 31 (60 days after the close of its fiscal year.). The annual report will contain, as a minimum, the following information:

1. Labor Code violations identified and reported to the Labor Commissioner;
2. The number of public works contracts awarded which require LCP compliance;
3. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates; the total amount withheld from money due the contractors; and the total amount recovered by action in any court of competent jurisdiction;
4. A summary of apprenticeship violations;
5. And all other information required as part of the Annual Reporting requirements as required by CCR Title 8 Section 16431.

B. For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Appendix C following this section provides a suggested format for tracking and monitoring enforcement activities. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

Revised 01/12/2013

**CHECKLIST OF LABOR LAW REQUIREMENTS**  
**FOR REVIEW AT JOB START MEETINGS**

(In accordance with CCR Section 16430)

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors. Prevailing wage determinations for this project can be obtained at: [www.dir.ca.gov](http://www.dir.ca.gov). This includes a total package including fringe benefits and training contributions which are paid to the employee or for the benefit of the employee to a bona fide ERISA approved or otherwise unconditionally paid for the benefit of the employee Trust Fund.

The contractor is responsible for obtaining and complying with all applicable general prevailing wage rates for trades workers and any rate changes, which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view. Or the contractor may post a notice stating where the prevailing wage determinations are available on the jobsite and the contractor shall provide access to such information upon reasonable notice.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects per Labor Code Section 1777.5; Contractors and subcontractors must submit proof of Request to Train Apprentices (DAS140) or other documentation for Division of Apprenticeship Standards approved apprenticeship programs. Apprentices are to be employed in all crafts and in all trades with approved training programs. Contractors are to employ apprentices on a ratio of 1 apprentice hour for every 5 journeymen hours or as otherwise approved by the DAS approved Apprenticeship Training Committee. Contractors and subcontractors who do not meet this ratio must submit documentation that apprentices were requested and were not provided and/or not available in sufficient number to meet this ratio. The submission of an accurate DAS142 meets this requirement. Additional documentation may be required to verify the apprenticeship status of employees.

3. Penalties

Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit accurate certified payroll records upon request, failure to employ apprentices, and for failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813. Monetary penalties of \$200 per day per worker shall be imposed for failure to pay correct prevailing wage; \$25 per day per worker shall be imposed for overtime violated; \$100 per day per worker for failure to provide certified payroll information; \$100-\$300 per calendar day for noncompliance of Apprenticeship issues.

4. Certified Payroll Records

Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project. A listing of all current prevailing wage determinations can be obtained from the Agency's main office or by accessing the Department of Industrial Relation's website at: [www.dir.ca.gov](http://www.dir.ca.gov)

Employee payroll records shall be certified (signed under penalty of perjury by someone in authority at the company) and shall be made available for inspection at all reasonable hours at the principal office of

the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request. Disclosure of certified payroll information to anyone other than the Awarding Body, its agent, or the Department of Industrial Relations requires that personal information about the employees (name, address and social security number) listed on the forms be redacted (omitted) to protect employee privacy.

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls on a monthly basis in conjunction with contractors requests progress or final payment. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated "No Work" for that week. The Agency or its authorized representative is also authorized to request and review all related payroll records such as time cards, cancelled checks, etc.

5. Nondiscrimination in Employment

Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:

a. Equal Employment Poster

The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project. All other labor and employment related posters are also to be properly displayed on the jobsite.

6. Kickback Prohibited

Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages;

7. Acceptance of Fees Prohibited

Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work (Labor Code Section 1779); or for filling work orders on public works contracts (Labor Code Section 1780);

8. Listing of Subcontractors

Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Public Contract Code Section 4100, et seq.);

9. Proper Licensing

Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed (Labor Code Section 1021 and Business and Professions Code Section 7000, et seq. under California Contractors License Law);

10. Unfair Competition Prohibited

Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code Sections 17200-17208);

11. Workers' Compensation Insurance

All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code Section 3700 (Labor Code Section 1861);

12. OSHA

Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.

13. Prompt Payment of Subcontractors and Suppliers

Contractors are required by law to promptly pay their subcontractors and suppliers within seven (7) days of receipt of any progress or final payment from the Public Agency. Likewise the subcontractor and supplier are required to pay their respective subcontractors and suppliers within seven (7) days of receipt of payment from the general contractor.

14. IRCA

Pursuant to the Immigration Reform and Control Act of 1986, employers are required to verify that all employees working on public works contracts are legally able to work in the United States. Employers shall keep on file appropriate I-9 forms and documentation for all workers employed on the jobsite and make such forms available to inspection and review by the LCO upon request.

In accordance with federal and state laws, and with Agency's policy and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

15. Jobsite Interviews

The Labor Compliance Program requires that a sampling of employees is interviewed each month. To the extent practical, we will attempt to notify the General Contractor prior to arriving on the jobsite.

16. Certification of Electricians

Those employing electricians must comply with employment testing and certification requirements for electricians. Additional information may be required to verify the certification status of those employed.

17. Employee Wage Statements - It is required to provide itemized wage statements (pay stubs) to Employees under Labor Code Section 226.

18. Posting of Labor Compliance – Notice of Labor Compliance Approval is required to be posted at the job site in accordance with section 16429, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. (Sample attached in handout).

19. Confirmation of Payroll Records – Confirmation of payment to employees for each contractor and subcontractor shall be undertaken randomly for at least one worker for at least one weekly period within that month. This will entail a monthly request of the front and back of a canceled check and employee pay stub for each contractor/subcontractor. Per Title 8 of the California Code Regulations section 16432(c).

In accordance with federal and state laws, and with the Public Agency's policy and contract documents, the undersigned contractor herein certifies that they will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject them to the penalties cited herein.

The contractor also herein certifies that it has been provided with a copy of the Labor Compliance Program Package for Contractors with includes:

1. Labor Law Requirements Checklist (included herein)
2. The Location of Applicable General Prevailing Wage Rate Determinations
3. Blank Certified Payroll Record form
4. Fringe Benefit Statements
5. State apprenticeship contribution form (CAC2)
6. State apprenticeship requirements and form to register apprentices (DAS-140)
7. Request for apprentices (DAS-142)
8. Copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1816 can be found at [www.dir.ca.gov](http://www.dir.ca.gov)).

**IT IS THE CONTRACTOR'S RESPONSIBILITY TO PROVIDE COPIES OF THE LABOR COMPLIANCE PROGRAM PACKAGE TO ALL LISTED SUBCONTRACTORS AND TO ANY SUBSTITUTED SUBCONTRACTORS.**

Project Name and Number: \_\_\_\_\_

Public Agency: \_\_\_\_\_

Contractor: Name \_\_\_\_\_

Contractor Address: \_\_\_\_\_

Contractor Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

License Number: \_\_\_\_\_ Date: \_\_\_\_\_

I acknowledge that I have been informed and am aware of the foregoing requirements and that I am authorized to make this certification on behalf of \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
Signature/Name/Title of Contractor Authorized Representative

## **Additional Explanation And Instructions Relating To Required LCP Forms and Information**

**Certified payroll or non performance documentation** - is required for each week from the beginning of the contractor's /subcontractor's work on the project until completion of that contractor's/subcontractor's work. These documents need to reflect a consistent 7 day work week for the entirety of the project. The certified payroll forms need to be complete, listing the employee's correct name, address, social security number, hours worked per day, total hours worked per week, wages, deductions and check number. It is critical that the employee's craft classification be listed correctly. Just listing "Journeyman" or "Laborer" is not sufficient. Many trades have sub-classifications and it is the contractor's obligation to correctly classify the employees. Employees must be classified and paid based on what type of work they are performing, not merely by title. It is acceptable for an employee to work in more than one trade category per day, but it is the employer's obligation to keep accurate records of the different type of work performed by the employee.

Please be aware non performance statements must be submitted for weeks in which no work is performed. More information about trade classifications and wage rates can be found at [www.dir.ca.gov](http://www.dir.ca.gov).

**Fringe Benefit Statement** - In order to complete a payroll audit, we need a copy of the fringe benefit statement listing the fringes being paid to each employee or employees on each trade. You are not required to use the worksheet in the packet, however all the information on that worksheet needs to be included in the documentation we receive. This should show an hourly breakdown of the specific contributions (health, pension, etc.) for each trade and the addresses of the plans being paid into. For contractors who pay medical benefits directly to a medical plan, such as Kaiser or Blue Shield, the monthly payment for each employee must be amortized into an hourly rate. (For example: Joe's health premium is \$300 a month, that rate multiplied by 12 (months) divided by 2080 (hours) yields an hourly rate of \$1.72 per hour). Similar amortization is allowed for vacation and holiday time paid. Training contributions paid to an approved apprenticeship committee needs to be listed as a separate item on this form (i.e. not just training/other together).

### **Apprenticeship**

#### **Submit contract award information- DAS-140**

Submit the contract award information in writing to each of the apprenticeship program sponsors in the area of your public works project within 10 days of the prime execution of the contract or subcontract, but in no event later than the first day in which the contractor has workers employed on the public work. This is simply a notification of award, it is not automatically a request for dispatch of a registered apprentice.

If you are not already approved to train apprentices with an approved apprenticeship committee and you are not willing to abide by the terms of and conditions of an apprenticeship program for this project, then (check Box 3) you must send a copy of the DAS-140 form to ALL approved apprenticeship Training Committee for that craft in the County in which the work is being performed.

### **Request to employ registered apprentices- DAS-142**

A contractor on a public works project must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman.

All contractors must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of the request at least 72 hours (business days only) before the date on which apprentices are required. Contractors who do not receive sufficient number of apprentices from their initial request must continue to request apprentices from all other approved apprenticeship committees in the county, if more than one exists, until the proper ratio of apprentices is reached or until all apprenticeship committees (for that trade) have been contacted at least once.

When an apprentice is dispatched, the employer is required to employ the apprentice for at least one full day of work (8 hours) or 20% of the total apprenticeship hours calculated for the project- unless the total number of journeyman hours total under 40 hours for that craft.

### **Make training fund contributions – CAC 2**

Contractors who are awarded public works jobs must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices. This nominal fee contributes to the assurance that new apprentices coming into the craft will be guaranteed the highest level of training and as those skilled craftsmen retire, the trade will survive.

Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions for each apprentice working on the project and to not more than the specified training contribution amount for journeyman.. Contractors who do not contribute to an apprenticeship program must submit their contributions to the California Apprenticeship Council, PO Box 420603, San Francisco, CA 94142-0603.

Training fund contributions to the Council are due and payable on the 15th day of the month for work performed during the preceding month. The contribution should be paid by check and be accompanied by a completed training fund contribution form (CAC – 2) or a letter containing the following information:

1. The name, address and telephone number of the contractor making the contribution.
2. The contractor's license number.
3. The name and address of the public agency that awarded the contract.
4. The jobsite location, including the county where the work was performed.
5. The contract or project number.
6. The time period covered by the enclosed contributions.
7. The contribution rate and total hours worked by apprenticeable occupation.
8. The name of the program(s) that provide apprentices if any.
9. The number if apprentice hours worked, by apprenticeable occupations and by program.

Comments, suggestions and questions welcome. Email to [daspublicworks@dir.ca.gov](mailto:daspublicworks@dir.ca.gov) or call your local district office.

\* \* \* \* \*

\* DAS-140 and DAS-142 forms are not required when the general contract is less than \$30,000 or when the company performing the work is a sole proprietor and is the only worker employed by that company on the project.



## PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

**Do not send this form to the Division of Apprenticeship Standards.**

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

***This is not a request for dispatch of apprentices.***

*Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations*

***Check One Of The Boxes Below***

1.  We are already approved to train apprentices by the \_\_\_\_\_  
Apprenticeship Committee. We will employ and train under their Standards.      Enter name of the Committee
  
2.  We will comply with the standards of \_\_\_\_\_  
Apprenticeship Committee for the duration of this job only.      Enter name of the Committee
  
3.  We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

*Signature* \_\_\_\_\_

*Date* \_\_\_\_\_

*Typed Name* \_\_\_\_\_

*Title* \_\_\_\_\_

State of California - Department of Industrial Relations DIVISION  
OF APPRENTICESHIP STANDARDS

# REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

DO NOT SEND THIS FORM TO DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments.**

<b>Date:</b> _____	<b>Contractor Requesting Dispatch:</b>
<b>To Applicable Apprenticeship Committee:</b>	
<b>Name:</b> _____	<b>Name:</b> _____
<b>Address:</b> _____	<b>Address:</b> _____
_____	_____
<b>Tel. No.</b> _____ <b>Fax No.</b> _____	<b>License No.</b> _____
	<b>Tel. No.</b> _____ <b>Fax No.</b> _____

**Project Information:**

**Contract No.** \_\_\_\_\_

**Name of the Project:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Dispatch Request Information:**

**Number of Apprentice(s) Needed:** \_\_\_\_\_ **Craft or Trade:** \_\_\_\_\_

**Date Apprentice(s) to Report:** \_\_\_\_\_ (72 hrs. notice required) **Time to Report:** \_\_\_\_\_

**Name of Person to Report to:** \_\_\_\_\_

**Address to Report to:** \_\_\_\_\_

*You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via either first class mail, fax or email. **Proof of submission may be required.** Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit <http://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>*

DAS 142 (Revised 12/11)

State of California  
 Department of Industrial Relations  
 California Apprenticeship Council  
 P. O. Box 420603  
 San Francisco, CA 94142

## TRAINING FUND CONTRIBUTIONS

Please use a separate *form* for each jobsite, listing the occupations for the jobsite. One *check* payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are *not accepted* by the California Apprenticeship Council for federal public works projects, or for non-apprenticeable occupations such as utility technicians, teamsters, etc.

### California Apprenticeship Council

NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR MAKING CONTRIBUTION		CONTRACTOR'S LICENSE NUMBER		
		CONTRACT OR PROJECT NUMBER		
		JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE. GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, ETC.		
NAME AND ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT		PERIOD COVERED BY CONTRIBUTION (FROM-TO)		
CLASSIFICATIONS OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)	COUNTY WORK PERFORMED IN	HOURS	CONTRIBUTION RATE PER HOUR	AMOUNT
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
			Total	\$0.00
SIGNATURE PLEASE TYPE OR PRINT YOUR NAME			DATE	
TITLE			AREA CODE & TELEPHONE NUMBER	

# CONTRACTOR FRINGE BENEFIT STATEMENT

Contract Number / Name:	Contract Location:	Today's Date:
-------------------------	--------------------	---------------

Contractor / Subcontractor Name:	Business Address:
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In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
-----------------	-----------------	--

<b>FRINGE BENEFITS</b>	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training Other	\$ _____ \$ _____	PAID TO: Name: _____	Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
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<b>FRINGE BENEFITS</b>	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training Other	\$ _____ \$ _____	PAID TO: Name: _____	Address: _____

Classification:	Effective Date:	Subsistence or Travel Pay: \$ _____
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<b>FRINGE BENEFITS</b>	Health & Welfare	\$ _____	PAID TO: Name: _____	Address: _____
	Pension	\$ _____	PAID TO: Name: _____	Address: _____
	Vacation/ Holiday	\$ _____	PAID TO: Name: _____	Address: _____
	Training Other	\$ _____ \$ _____	PAID TO: Name: _____	Address: _____

Submitted: Contractor / Subcontractor	By: Name / Title
---------------------------------------	------------------

Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made.



California Department of Industrial Relations PUBLIC WORKS PAYROLL REPORTING FORM

NAME OF CONTRACTOR OR SUB CONTRACTOR CONTRACTORS LICENSE # SPECIALTY LICENSE # ADDRESS

PAYROLL NO. FOR WEEK ENDING SELF-INSURED CERTIFICATE # PROJECT OR CONTRACT NO.

WORKERS' COMPENSATION POLICY # PROJECT AND LOCATION

Table with columns: (1) NAME ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE, (2) HOME PHONE, (3) WORK CLASSIFICATION, (4) Day (M T W T H F S S), (5) TOTAL HOURS, (6) HOURLY RATE OF PAY, (7) GROSS AMOUNT EARNED, (8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS, (9) NET WGS PAID FOR WEEK, CHECK NO.

\*OTHER - Any other deductions, contributions and/or payment whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet if necessary. CERTIFICATION must be completed

I, \_\_\_\_\_, the undersigned, am \_\_\_\_\_ with the authority to act for and on behalf of \_\_\_\_\_ (Name - Print) (position with business) (name of business and/or contractor) certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named. (description, no. of pages)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ A public entity may require a more strict and/or more extensive form of certification.

Title 8 of the California Code and Regulations Section 16429, please be advised that this project falls under Labor Compliance Regulations. The Labor Compliance Program contact information for this project is:

**NAME**

**ADDRESS**

**PHONE/FAX**

**EMAIL**

This project is subject to the payment of prevailing wage. The prevailing wage rates for this project fall under determination XXXXXX. To obtain information regarding the wages due for the project, please go to [www.dir.ca.gov](http://www.dir.ca.gov).

In accordance with federal and state laws, and with the Public Agency's policy and contract documents, the undersigned contractor herein certifies that they will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject them to the penalties cited herein.

The contractor also herein certifies that it has been provided with a copy of the Labor Compliance Program Package for Contractors with includes:

1. Labor Law Requirements Checklist (included herein)
2. The Location of Applicable General Prevailing Wage Rate Determinations
3. Blank Certified Payroll Record form
4. Fringe Benefit Statements
5. State apprenticeship contribution form (CAC2)
6. State apprenticeship requirements and form to register apprentices (DAS-140)
7. Request for apprentices (DAS-142)
8. Copy of the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1816 can be found at [www.dir.ca.gov](http://www.dir.ca.gov)).

**IT IS THE CONTRACTOR'S RESPONSIBILITY TO PROVIDE COPIES OF THE LABOR COMPLIANCE PROGRAM PACKAGE TO ALL LISTED SUBCONTRACTORS AND TO ANY SUBSTITUTED SUBCONTRACTORS.**

Project Name and Number: \_\_\_\_\_

Public Agency: \_\_\_\_\_

Contractor: Name \_\_\_\_\_

Contractor Address: \_\_\_\_\_

Contractor Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

License Number: \_\_\_\_\_ Date: \_\_\_\_\_

I acknowledge that I have been informed and am aware of the foregoing requirements and that I am authorized to make this certification on behalf of \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
Signature/Name/Title of Contractor Authorized Representative

**Appendix B**  
**LABOR COMPLIANCE SITE VISIT INTERVIEW FORM**

Job Site-General Contractor- Project

Job Site-General Contractor- Project

Job Site-General Contractor- Project

Contractor/Subcontractor: \_\_\_\_\_

Time of Interviews: \_\_\_\_\_ Weather Conditions: \_\_\_\_\_

Prevailing Wage info Posted LCP information Posted

Craft:

Carpenter  Laborer  Cement  Operator  Drywall  Electrician  Tile Setter  Plumber

Glazier  Painter  Taper  Plasterer  Roofer  Sheet Metal  Tile Finisher  Pipe Tradesman

Other \_\_\_\_\_

Trade Level: Journeyman  Apprentice

Apprentice Level and Program: \_\_\_\_\_

Person Interviewed: \_\_\_\_\_

SS#: \_\_\_\_\_ Hourly Pay Rate: \_\_\_\_\_ Benefits: \_\_\_\_\_

Have you performed overtime, Saturday or Sunday work? \_\_\_\_\_ Have you worked nights? \_\_\_\_\_

Total number of workers observed on the visit: \_\_\_\_\_

Type of work observed: \_\_\_\_\_

Was the worker believable? Yes  No

Observations and other work being performed on site: \_\_\_\_\_

Comments: \_\_\_\_\_

Did the superintendent or foreman accompany you on the site? Yes  No

Interview Conducted by: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_



**APPENDIX C**

[Name and Contact Information for person issuing Notice]	
Date:	Case or Contract No.:

**NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT PAYMENTS DUE TO DELINQUENT OR INADEQUATE PAYROLL RECORDS (8 CCR §16435)**

Awarding Body:	Work performed in County of:
Project Name and Number (if any):	
Prime Contractor:	
Subcontractor:	

Pursuant to Labor Code §1771.5(b)(5) and 8 CCR §16435, contract payments are being withheld due to delinquent or inadequate payroll records.

Contractor or subcontractor whose payroll records are delinquent or inadequate:

\_\_\_\_\_

The following payroll records are delinquent (specify weeks and due dates):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following payroll records are inadequate (specify weeks and ways in which records are deemed inadequate under 8 CCR §16435(d)):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated amount of contract payments due to contractor or subcontractor that are being withheld pursuant to this Notice:

\_\_\_\_\_

**See page 2 for additional information, including appeal rights.**

\_\_\_\_\_  
Labor Compliance Officer

**Prime Contractor Obligations:** If contract payments are being withheld due to the delinquency or inadequacy of your subcontractor's payroll records, you are required to cease all payments to that subcontractor until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

### **Notice of Right to Obtain Review – Expedited Hearing**

An affected contractor or subcontractor may request review an expedited hearing to review this Notice of Withholding of Contract Payments under Labor Code §1742. *The only issue in any such review proceeding is whether the specified payroll records are in fact delinquent or inadequate within the meaning of 8 CCR §16435 or whether the Labor Compliance Program has exceeded its authority under 8 CCR §16435.* **To obtain an expedited hearing, a written request must be transmitted to the both the Labor Compliance Program and to the Lead Hearing Officer for the Director of the Department of Industrial Relations, as follows:**

(On behalf of the Public Agency)

CCMI

635 Mariners Island Blvd, Suite 200

San Mateo, CA 94404

650-522-4403/ fax: 650-522-4402

Attn Deborah Wilder

dwilder@ccmi-tpa.com

Office of the Director – Legal Unit

Attention: Lead Hearing Officer

***Expedited Hearing Request***

Fax to: (415) 703-4277

The request for expedited hearing should specify the basis for challenging this Notice and include a copy of this Notice as an attachment. The request should also identify and provide contact information for the person who will represent the contractor or subcontractor at the hearing.

**Important Additional Information:** This is a Notice of Temporary Withholding of Contract Payments for Delinquent or Inadequate Payroll Records *only*. This is *not* a determination of liability for wages or penalties under Labor Code §§1775 and 1776 or any other statute. *Contract payments cannot continue to be withheld pursuant to this notice, once the required records have been produced.* However, the contractor and subcontractor may still be subject to the assessment of back wages and penalties and the withholding of contract payments if, upon investigation, a determination is made that the contractor or subcontractor violated the public works requirements of the Labor Code.

This Notice only addresses rights and responsibilities under state law. Awarding bodies, labor compliance programs, and contractors may have other rights or responsibilities under federal or local law, where applicable, and may also have additional rights or remedies under the public works contract.

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**§16435. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.**

- (a) "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.
- (b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.
- (c) "Delinquent payroll records" means those not submitted on the date set in the contract.
- (d) "Inadequate payroll records" are any one of the following:
- (1) A record lacking any of the information required by Labor Code Section 1776;
  - (2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;
  - (3) A record remaining uncorrected for one payroll period after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.
- (e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.
- (f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.
- (g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
- (h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

**Labor Compliance Program Regulations – APPENDIX D**

**REQUEST FOR APPROVAL OF FORFEITURE -- Suggested format**

**1. AWARDING BODY / THIRD PARTY LCP:**

Name and Contact Information:	Date of Request:
Name and Contact Information for Awarding Body if different from LCP:	LCP Approval Status (specify if either interim or temporary or if LCP has extended authority):

**2. PROJECT INFORMATION:**

Project Name:	Contract Number:
Project Location:	
Bid Advertisement Dates:	Estimated Date Project is to be completed:
Acceptance Date of Project by the Awarding Body:	Notice of Completion/Date Recorded with County Recorder:
Other Relevant Deadline (specify):	Amount being held in Retention:

**3. CONTRACTOR INFORMATION:**

Name and address of Affected Contractor:	Name and address of Affected Subcontractor:
General Description of Scope of Work of the Entire Project:	
General Description of Scope of Work covered in the proposed Forfeiture (describe and attach relevant portions of contract or subcontract):	

4. **LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:**

<b>Total Amount of Request for Notice of Withholding of Contract Payments:</b>			
Wages Due:	Training Funds Due:	Total Penalties Due:	Potential Liquidated Damages [Wages + Training Funds]:
LC 1775 Penalties Due:	LC 1813 Penalties Due:	LC 1776 Penalties Due:	Other:

[Provide narrative summaries covering the following]:

- A. *Statement of Issues.*
- B. *Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).*
- C. *Audit Report (detailed explanation of how audit was completed addressing each of the issues above).*
- D. *Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).*
- E. *Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).*

**ATTACHMENTS**

- 1. Audit Summary (Appendix B)
- 2. 1<sup>st</sup> Bid Advertisement Publication
- 3. Notice of Completion
- 4. Scope of Work
- 5. Complaint form(s) and Declarations, if any

---

Send the Request and all Attachments to:

Division of Labor Standards Enforcement  
Bureau of Field Enforcement  
Attn.: Regional Manager  
300 Ocean Gate Blvd., No. 850  
Long Beach, CA 90802

**COPIES OF THIS REQUEST, INCLUDING ALL ATTACHMENTS, SHALL BE SERVED ON THE AFFECTED CONTRACTOR AND AFFECTED SUBCONTRACTOR AT THE SAME TIME THAT IT IS SENT TO THE DIVISION OF LABOR STANDARDS ENFORCEMENT.**

## Appendix E

<b>(On behalf of the Public Agency)</b> CCMI 635 Mariners Island Blvd, Suite 200 San Mateo, CA 94404 650-522-4403 / fax: 650-522-4402 Attn XXXXXXXX Email: XXXXXXXX	
	Date:

### Notice of Withholding of Contract Payments

Awarding Body :	Work Performed in County of
Project Name	Project No.
Prime Contractor :	
subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for XXXXXXXX has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

- \_\_\_\_\_ Failure to pay correct prevailing wage rate Section 1775
- \_\_\_\_\_ Failure to pay correct overtime Section 1813
- \_\_\_\_\_ Failure to submit certified payrolls and other requested documents within timeframe set forth by statute Section 1776

Explanation:

The Labor Compliance Program has determined that the total amount of wages due is: \$0.00

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1776 is: \$ -0-

The Labor Compliance Program has determined that the amount of penalties assessed under Labor Code section 1777.5 is: \$ -0-

**LABOR COMPLIANCE PROGRAM**

By: \_\_\_\_\_  
Analyst

## Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

(On behalf of the Public Agency)  
CCMI  
635 Mariners Island Blvd, Suite 200  
San Mateo, CA 94404  
650-522-4403 / fax: 650-522-4402  
Attn Deborah Wilder  
dwilder@ccmi-tpa.com

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

**Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.**

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

### Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to:

(On behalf of the Public Agency)  
CCMI  
635 Mariners Island Blvd, Suite 200  
San Mateo, CA 94404  
650-522-4403/ fax: 650-522-4402  
Attn Deborah Wilder  
dwilder@ccmi-tpa.com

**Liquidated Damages**

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

**The Amount of Liquidated Damages Available Under this Notice is \$ -0-.**

Distribution:

General Contractor - certified and regular mail

Subcontractor - certified and regular mail

Public Agency - regular mail only



Appendix F

<b>LABOR COMPLIANCE PROGRAM</b> On behalf of XXXX (Public Entity) CCMI 635 Mariners Island Blvd, Suite 200 San Mateo, CA 94404 650-522-4403 / fax: 650-522-4402 Attn XXXXXXXX Email: xxxxxxxxx	(SEAL )
Date:	In Reply Refer to Case No.:

**Notice of Transmittal**

Public Entity  
Address

Project Identification:

**General Contractor:**  
**Subcontractor:**

To: Department of Industrial Relations  
Office of the Director-Legal Unit  
Attention: Lead Hearing Officer  
P. O. Box 420603  
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated and received by this office on or about  
Also enclosed please find the following:

- \_\_\_ Copy of Notice of Withholding of Contract Payments
- \_\_\_ Copy of Audit Summary

**LABOR COMPLIANCE PROGRAM**

By: \_\_\_\_\_

cc: **General Contractor:**  
**Subcontractor:**

**STATE OF CALIFORNIA – DEPARTMENT OF INDUSTRIAL RELATIONS**

TO: California Department of Industrial Relations  
 Division of Apprenticeship Standards  
 P.O. Box 420603  
 San Francisco, CA 94142

AWARDING AGENCY ID NUMBER

--

If you do not have an ID number please contact DAS

FROM:

**EXTRACT OF  
PUBLIC WORKS CONTRACT AWARD**

A CONTRACT TO PERFORM PUBLIC WORKS UNDER LABOR CODE SECTION 1777.5 HAS BEEN AWARDED TO:

1. NAME OF GENERAL CONTRACTOR		2. CONTRACTOR'S LICENSE NO	
3. MAILING ADDRESS (STREET NUMBER OR P.O. BOX)		4. CITY	
		5. ZIP CODE	6. TELEPHONE NUMBER
7. GENERAL CONTRACTOR'S CONTACT EMAIL ADDRESS		8. ADDRESS/LOCATION OF PUBLIC WORKS SITE (INCLUDE CITY AND COUNTY):	
9. NAME OF PROJECT		8a. County	
10. CONTRACT NUMBER	11. PROJECT NUMBER	12. DOLLAR AMOUNT OF CONTRACT AWARD	
13. FIRST ADVERTISED BID DATE MONTH    DAY    YEAR	14. CONTRACT AWARD DATE MONTH    DAY    YEAR	12a. ESTIMATED TOTAL PROJECT COSTS, IF DIFFERENT FROM ITEM 12 (see instructions).	
		15. WHICH STATUTE, IF ANY, APPLIES TO THIS PROJECT?	
16. STATE CONSTRUCTION BONDS If YES, List the Sources and Dollar Amount of Bond Proceeds: SOURCES		17. WILL YOU OPERATE A DIR-APPROVED LABOR COMPLIANCE PROGRAM (LCP) FOR THIS PROJECT? YES    NO	
		18. IS THERE A PROJECT LABOR AGREEMENT (PLA) ASSOCIATED WITH THIS PROJECT? If yes, please email a copy to <a href="mailto:cmupla@dir.ca.gov">cmupla@dir.ca.gov</a> YES    NO	
19. STARTING DATE (ESTIMATED OR ACTUAL)  (MM/DD/YYYY)	20. COMPLETION DATE (ESTIMATED OR ACTUAL)  (MM/DD/YYYY)		
21. BRIEF DESCRIPTION OF WORK TO BE PERFORMED		22  NEW CONSTRUCTION    REMODELING  ALTERATION, DEMOLITION, REPAIR OR MAINTENANCE	
23. CLASSIFICATION OR TYPE OF WORKER (CARPENTER, PLUMBER, ETC.) THAT WILL BE EMPLOYED BY THE CONTRACTOR(S)  Please list sub-contractors and their worker classifications on page 2			
24. Is language included in the Contract Award to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code?		YES    NO	
25. SIGNATURE	26. TITLE	27. DATE	
28. PRINTED OR TYPED NAME	29. E-MAIL ADDRESS	30. TELEPHONE NUMBERS	
If different from above, name, title, and contact information of person responsible for carrying out Awarding Body's LCP or CMU responsibilities.			
31. NAME	32. TITLE	33. E-MAIL ADDRESS	34. TELEPHONE NUMBER

Provided for Reference Only Application Award Information  
 Please use the Web Contract Award Information  
 to submit your Contract Award Information  
<https://www.dir.ca.gov/PWC100>

Duplication of this form is permissible

EXTRACT OF PUBLIC WORKS CONTRACT AWARD (Continued)

Listing of Sub Contractors

Con. Lic. #	Contractor	Classification of workers

Provided for Reference Only.  
Please use the Web Application  
to submit your Contract Award information.  
<https://www.dir.ca.gov/PWC100>

Appendix G

<b>LABOR COMPLIANCE PROGRAM</b> <hr/> Review Office - Notice of Withholding of Contract Payments Name and Address of Public Agency	(SEAL)
Date:	In Reply Refer to Case No.:

**Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)**

To: Prime Contractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please be advised that this office has received your **Request for Review**, dated \_\_\_\_\_, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. \_\_\_\_\_.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all

## Appendix G

such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

**Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:**

**Name and Address phone and fax of public entity**

Appendix G

**Request to Review Evidence**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Regarding Notice of Withholding of Contract Payments Dated \_\_\_\_\_

Our Case No.: \_\_\_\_\_

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

\_\_\_\_\_  
Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Appendix H  
**Suggested Single Project Labor Compliance Review and Enforcement Report Form**  
[Appendix C following 8 CCR §16434]

Awarding Body: \_\_\_\_\_

Project Name: \_\_\_\_\_

Name of Approved Labor Compliance Program: \_\_\_\_\_

Bid Advertisement Date: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Notice of Completion Recordation Date: \_\_\_\_\_

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Prejob Conference(s) -- Attach list(s) of attendees and dates

3. Notification to Project Workers of Labor Compliance Program's Contact Person. (Explain Manner of Notification for each project work site.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Certified Payroll Record Review

- a. CPRs Received From:

Contractor/Subcontractor

For weeks ending ("w/e") through w/e

_____	_____
_____	_____
_____	_____
_____	_____

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

<u>Classification</u>	<u>Determination No.</u>
_____	_____
_____	_____
_____	_____
_____	_____

5. Further investigation or audit due to CPR review, information or complaint from worker or other interested person, or other reason:

a. Independent Confirmation of CPR Data

<u>Contractor/Subcontractor</u>	<u>Worker Interviews (Yes/No)</u>	<u>Reconciled CPRs with Pay-checks or Stubs (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

b. Employer Payments (Health & Welfare, Pension, Vacation/Holiday) Confirmation

<u>Contractor/Subcontractor</u>	<u>Recipients of Employer Payments</u>	<u>Written confirmation Obtained (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

c. Contributions to California Apprenticeship Council or Other Approved Apprenticeship Program

<u>Contractor/Subcontractor</u>	<u>Recipients of Contributions</u>	<u>Written confirmation Obtained (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



d. Additional Wage Payments or Training Fund Contributions Resulting from Review of CPRs

<u>Contractor/Subcontractor</u>	<u>Additional amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

\* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

<u>Name of Complainant</u>	<u>Date Received</u>	<u>Resolution or Current Status</u>
_____	_____	*
_____	_____	*
_____	_____	*
_____	_____	*

\*Use separate page(s) to explain resolution or current status

7. Requests for Approval of Forfeiture to Labor Commissioner

<u>Contractor/Subcontractor</u>	<u>Date of Request</u>	<u>Approved/Modified/Denied</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Litigation Pending Under Labor Code Section 1742

<u>Contractor/Subcontractor</u>	<u>DIR Case Number</u>
_____	_____
_____	_____
_____	_____

9. (Check one): \_\_\_\_\_ Final report this project      \_\_\_\_\_ Annual report this project

\_\_\_\_\_  
Authorized Representative for Labor Compliance Program

## Appendix I

### **Labor Compliance Program Regulations – Appendix B**

Audit Record Worksheets [8 Cal. Code Reg. §16432]

- Public Works Investigation Worksheet
- Public Works Audit Worksheet
- Prevailing Wage Determination Summary

**DEPT. OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT**

**PUBLIC WORKS INVESTIGATION WORKSHEET**

EMPLOYEE'S NAME	PERIOD ENDING YEAR wk end	SOCIAL SECURITY NUMBER							EMPLOYEE		OFFICE			DEPUTY		EMPLOYER		Case Number			
		HOURS OF WORK							TOTAL HOURS WORKED	ACTUAL RATE	OTHER COMPEN-SATION	TOTAL WAGES PAID	Required Wage Rates SL,OL,DL	OTHER COMPEN-SATION	TOTAL WAGES REQUIRED	AMOUNT DUE AND OWING	No. of Violations	PENAL-TIES 1775	No. of Violations	PENAL-TIES 1813	Amount Due and Owing
		-Thu	-Fri	-Sat	-Sun	-Mon	-Tue	-Wed													
DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE		
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ST hours worked  
OT hours worked  
DT hours worked

TOTALS



PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	Effective Date	HOURLY RATE	Contributions	TRAINING	TIME 1/2 SUNDAY	HOLIDAY / TRAVEL & SUBSISTENCE	Other hourly Requirements
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

# PUBLIC WORKS PAYROLL REPORTING FORM



Page \_\_\_\_\_ of \_\_\_\_\_

NAME OF CONTRACTOR: OR SUBCONTRACTOR:		CONTRACTOR'S LICENSE NO.: SPECIALTY LICENSE NO.:		ADDRESS:		PROJECT OR CONTRACT NO.: PROJECT AND LOCATION:											
PAYROLL NO.:		FOR WEEK ENDING:		SELF-INSURED CERTIFICATE NO.: WORKERS' COMPENSATION POLICY NO.:		(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS											
(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF HOLIDAY EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY DATE				(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS				(9) NET WGS PAID FOR WEEK	CHECK NO.		
			M	T	W	TH										F	S
			HOURS WORKED EACH DAY														
		S															
		O															
		S															
		O															
		S															
		O															
		S															
		O															

\*OTHER - Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary

CERTIFICATION MUST be completed (See reverse side)

**NOTICE TO PUBLIC ENTITY**

**For Privacy Considerations**

**Fold back along dotted line prior to copying for release to general public (private persons).**

(Paper Size then 8-1/2 x 11 inches)

-----

I, \_\_\_\_\_, the undersigned, am the  
(Name - print)

\_\_\_\_\_ with the authority to act for and on behalf of  
(Position in business)

\_\_\_\_\_, certify under penalty of perjury  
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of \_\_\_\_\_  
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)  
of the actual disbursements by way of cash, check, or whatever form to the individual or  
individuals named.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

A public entity may require a stricter and/or more extensive form of certification.

LABOR COMPLIANCE PROGRAM ANNUAL REPORT

Format for Awarding Body that enforces its own Labor Compliance Program for some but not all projects

Report for the reporting period \_\_\_\_\_ (mm/dd/yyyy) to \_\_\_\_\_ (mm/dd/yyyy)

1. Name of Labor Compliance Program (LCP):

2. LCP I.D. Number (assigned by DIR):

3. Date of Initial Approval:

4. Contact person (include name, title, address, telephone, fax, and e-mail, if available):

5. Did LCP perform any LC § 1771.5 enforcement activities during the 12 months in the reporting period?

Please check one:  Yes If Yes, proceed to item 6 on the next page

No If No, complete the information below, sign the form and submit to DIR, Office of the Director, Attn: LCP Special Assistant,

455 Golden Gate Avenue, 10th Floor, San Francisco CA 94102

What suggestions do you have for the Department of Industrial Relations to better assist you with your program in the coming year? (attach additional sheets if necessary)

SUBMITTED BY:

Signature

Name and Title

Date



6. LC § 1771.5 enforcement activities (provide all information requested, attaching as many sheets as necessary).

A. List projects handled by LCP within the past 12 months.

Project Name	Bid Advertisement Date	Prime Contractor	Contract Amount
Total			

B. Summary of all wages and penalties assessed and/or recovered.

Project Name	Affected Contractor (who directly employed the worker)	Amount Assessed	Amount Recovered	Approval of Forfeiture Requested from Labor Commissioner?	Description of Violation
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total				<input type="checkbox"/> Yes <input type="checkbox"/> No	

C. For any amount identified in item B for which approval of forfeiture not requested from the Labor Commissioner, please explain below.

Project Name	Amount Assessed	Amount Recovered	Explanation
Total			

D. For any amount identified in item B for which approval of forfeiture was requested from the Labor Commissioner, please provide the following:

Project Name	Amount Assessed				Total	Amount Recovered				Total
	LC §1776(g)	LC § 1775	LC § 1813	Wages		LC § 1776(g)	LC § 1775	LC § 1813	Wages	
Total										

E. Identify cases that are or were the subject of LC § 1742 proceedings.

Project Name	Contractor	Nature of Violation	ODL Case #	Current Status

F. Did you refer any contractor to the Labor Commissioner for debarment per LC § 1777.1?

Please check one:  Yes  No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: \_\_\_\_\_

G. Did you refer any apprenticeship violation to the Division of Apprenticeship Standards (DAS)?

Please check one:  Yes  No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: \_\_\_\_\_

**City of Tracy**  
**PROFESSIONAL SERVICES AGREEMENT**  
**CONTRACTOR COMPLIANCE AND MONITORING, INC.**

This Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and Contractor Compliance and Monitoring, Inc. a California corporation, (Consultant).

**Recitals**

- A. In March of 2016, City of Tracy requested proposals from qualified labor compliance firms to provide services for ensuring prevailing wage rates are paid to the trade workers on the City website. The City received three proposals and conducted phone interviews with each of the firms. Contractor Compliance and Monitoring, Inc. was selected for the necessary services
- B. Consultant represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of this Agreement.
- C. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

**Now therefore, the parties mutually agree as follows:**

1. **Scope of Services.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Deborah Wilder. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
3. **Compensation.**
  - 3.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$64,000. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.
  - 3.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.

**3.3 Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 5 relating to insurance.

**5. Insurance.**

**5.1 General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

**5.2 Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

**5.3 Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

**5.4 Workers' Compensation** coverage shall be maintained as required by the State of California.

**5.5 Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

**5.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:

**5.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

**5.6.2** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

**5.7 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

**5.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

**5.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

**5.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.

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

**6. Independent Contractor Status; Conflicts of Interest.** Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

**7. Termination.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

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

**9. Miscellaneous.**

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

To City:  
Kuldeep Sharma  
Director of Utilities  
3900 Holly Drive  
Tracy, CA 95304

To Consultant:  
Contractor Compliance and Monitoring, Inc.  
635 Mariners Island Blvd. #200  
San Mateo, CA 94404

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

**9.2 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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

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

**9.5 Assignment and Delegation.** Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**9.6 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

**9.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

In addition, during the performance of this Agreement, Consultant or its sub consultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave.

Consultant or its sub consultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free of from such discrimination and harassment. Consultant or its sub consultants shall comply with the provisions of the California Fair Employment and Housing Act (CA Gov. Code Section 12990(a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

Consultant or its sub consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

**9.8 Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. City may void this Agreement if Contractor is a suspended corporation, limited liability company or limited partnership at the time it enters into this Contract, City may take steps to have this Agreement declared voidable.

**9.9. Business License.** Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License.

**9.10 Entire Agreement; Severability.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

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

The parties agree to the full performance of the terms set forth here.

**City of Tracy**

**Consultant**

By: Michael Maciel  
Title: Mayor

Deborah EG Wilder  
By: Deborah EG Wilder

Date: \_\_\_\_\_

Title: President

Date: August 30, 2016

Attest:

Federal Employer Tax ID No. 46-0509386

Nora Pimentel, City Clerk

Mark R Aydelotte

Approved as to form:

By: Mark Aydelotte

Bill Sartor, City Attorney

Title: CFO

Date: August 30, 2016

EXHIBITS:

- A. Scope of Services
- B. Compensation

RESOLUTION 2016-\_\_\_\_\_

ADOPTING AND IMPLEMENTING LABOR COMPLIANCE PROGRAMS ON CERTAIN PUBLIC WORKS CONTRACTS

WHEREAS, California Labor Code Section 1770, et seq., requires contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research and;

WHEREAS, California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request and,

WHEREAS, California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects and,

WHEREAS, the provisions of the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) require the establishment of a Labor Compliance Program (LCP) to monitor the prevailing wage and apprenticeship requirements on any project using Proposition 84 funding; and

WHEREAS, City of Tracy has received approval for Proposition 84 funding for a Recycled Water Project CIP 74091;

NOW, THEREFORE, BE IT RESOLVED, that the Tracy City Council, having reviewed the item hereby adopts the City of Tracy’s Labor Compliance Program and directs staff to proceed with obtaining approval of said Program from the Department of Industrial Relations;

The foregoing Resolution 2016-\_\_\_\_\_ was passed and adopted by the Tracy City Council on the 20<sup>th</sup> day of September, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



RESOLUTION 2016-\_\_\_\_\_

AUTHORIZING THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH CONTRACTOR COMPLIANCE AND MONITORING INC. FOR SERVICES RELATED TO LABOR COMPLIANCE PROGRAM FOR THE RECYCLED WATER PROJECT CIP 74091 AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The California Department of Water Resources as part of the implementation of Proposition 84 awarded a grant to the City in the amount of \$18 million for a Recycled Water Project, and

WHEREAS, One of the requirements of the Proposition 84 Recycled Water Grant, is for the City to implement a Labor Compliance Program approved by the Department of Industrial Relations (DIR), and

WHEREAS, The approved Labor Compliance Program will be implemented and enforced, and

WHEREAS, The City does not have the staff or the expertise in this area and services of a consultant need to be acquired, and

WHEREAS, In March 2016, the City posted a request for proposals from qualified labor compliance firms to provide the required services, and

WHEREAS, The City received three proposals and conducted phone interviews with each of the firms., and

WHEREAS, After review of the proposals and an interview process, the contractor Compliance and Monitoring, Inc. was found to be the most qualified firm to provide the necessary services, and

WHEREAS, Funding for this work is available from approved CIP 74091;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes the Professional Services Agreement (PSA) with contractor Compliance and Monitoring Inc. for services related to Labor Compliance Program for the Recycled Water Project CIP 74091 for a not to exceed amount of \$64,000 on time and material basis and authorizes the Mayor to execute the agreement.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was passed and adopted by the Tracy City Council on the 20<sup>th</sup> day of September, 2016, 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

**APPROVE A PROFESSIONAL SERVICES AGREEMENT FOR AN AMOUNT NOT TO EXCEED \$490,000 WITH ODYSSEY LANDSCAPING COMPANY, INC., OF LODI, CALIFORNIA, TO PROVIDE PROFESSIONAL SUPPORT SERVICES IN ASSISTING THE REVIEW AND PLAN CHECKING OF LANDSCAPING AND IRRIGATION ELEMENTS FOR NEW DEVELOPMENTS AND CAPITAL IMPROVEMENT PROJECTS, FOR A PERIOD OF THREE YEARS, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT AND FURTHERMORE, AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE FUTURE AGREEMENT(S) IF NEEDED PURSUANT TO THE AGREEMENT.**

EXECUTIVE SUMMARY

Due to the specialized nature of these services and the fluctuation of work load, the City uses the services of consultants to provide plan checking for landscaping and irrigation projects for new developments and Capital Improvement Projects. Since the current Professional Services Agreement with the City's existing consultant (Odyssey) is expiring, new landscape plan check consultant services needs to be acquired to continue the plan checking work. Staff posted a request for proposal on June 14, 2016 on the City's website to acquire services of qualified consultants. Based on the qualifications of the proposals received, staff recommends selecting Odyssey Landscaping Company, Inc. for continued landscape plan checking services.

DISCUSSION

The City uses the services of an outside consultant firm to provide plan review and checking of landscaping and irrigation improvements for new developments and Capital Improvement Projects within the City. This is the most cost effective way to provide the required services since the extent of the work load varies widely and the City does not have a dedicated full-time plan checker, due to the specialized nature and pace of the work, which varies widely.

The existing Professional Services Agreement with the City's landscape plan check consultant (i.e. Odyssey) is expiring in the next month and the City Engineer's office needs to acquire the services of a consultant to continue providing those services. A notice of request for proposals was posted on the City website on June 30, 2016, and two (2) proposals were received from:

Odyssey Landscaping Company, Inc. – Lodi, CA  
Builders Protection Group, LLC – Hawthorne, CA

After careful review of the proposals, staff has determined that the proposal from Builders Protection Group was not responsive due to the following reasons:

1. No landscape architects were named.
2. No personnel were identified to conduct their service on the City's premises.

Odyssey Landscaping Company, Inc., of Lodi is a qualified consultant to provide the required services. Odyssey Landscaping Company, Inc. will provide landscape design and plan check services for a period of three years on an as-needed basis. The Professional Services Agreement allows the City the discretion to extend the services for an additional year. Services will be provided at hourly rates and the cost will be charged to the Capital Improvement Project and new developments.

#### FISCAL ANALYSIS

There is no additional fiscal impact to the General Fund. The cost of these services will be paid from respective budgeted Capital Improvement Projects and new developments.

#### STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's Strategic Plans.

#### RECOMMENDATION

Staff recommends that City Council approve a Professional Service Agreement for an amount not to exceed \$490,000 with Odyssey Landscaping Company, Inc., of Lodi, California, to provide professional support services in assisting in the review and plan checking for landscaping and irrigation elements of new developments and Capital Improvement Projects, for a period of three years, and authorize the Mayor to execute the Agreement and furthermore, authorize the Development Services Director to execute future agreement(s) if needed, pursuant to the agreement.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Robert Armijo, City Engineer  
Andrew Malik, Development Services Director  
Stephanie Garrabrant-Sierra, Assistant City Manager  
Martha Garcia, Interim Administrative Services Director

Approved by: Troy Brown, City Manager

#### ATTACHMENTS

Attachment A – Professional Services Agreement

**City of Tracy**  
**PROFESSIONAL SERVICES AGREEMENT ODYSSEY 16-01**

*PROVIDE PROFESSIONAL STAFF SUPPORT SERVICES  
FOR ENGINEERING DIVISION OF  
DEVELOPMENT SERVICES DEPARTMENT  
FOR LANDSCAPE PLAN CHECKING*

This Professional Services Agreement (Agreement) is entered into between the City of Tracy, a municipal corporation (City), and ODYSSEY LANDSCAPING COMPANY, INC., a California Corporation, (hereinafter "Consultant").

**Recitals**

- A. On April 14, 2016, the City issued a Request for Proposals (RFP) for the solicitation of Proposals from interested Landscape firms to provide the services of a qualified landscape plan checker for the duration of three years with the Development Services department to work on a number of current and future Capital improvement Projects and New Subdivisions (the Project).
- B. Consultant represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of this agreement.
- C. On June 30, 2016, Consultant submitted its proposal for the Project to the City. After negotiations between the City and Consultant, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement." On September 20, 2016, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2016-\_\_\_\_\_.

**Now therefore, the parties mutually agree as follows:**

- 1. Scope of Services.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Janet Baniewicz. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
- 2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

**3. Compensation.**

**3.1 General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's fee for this Agreement is Not to Exceed \$490,000. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.

**3.3 Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 5 relating to insurance.

**5. Insurance.**

**5.1 General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

**5.2 Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

**5.3 Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

**5.4 Workers' Compensation** coverage shall be maintained as required by the State of California.

**5.5 Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

**5.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:

**5.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

**5.6.2** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

**5.7 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

**5.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

**5.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

**5.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.

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

**6. Independent Contractor Status; Conflicts of Interest.** Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

**7. Termination.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

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

**9. Miscellaneous.**

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

To City:

City of Tracy  
Attn: Zabih Zaca, Senior Civil Engineer  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

Odyssey Landscaping Company, Inc.  
Attn: Martin Gates  
5400 W. Highway 12  
Lodi, CA 95240

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

**9.2 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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

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

**9.5 Assignment and Delegation.** Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**9.6 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

**9.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**9.8 Business Entity Status.** Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. City may void this Agreement if Contractor is a suspended corporation, limited liability company or limited partnership at the time it enters into this Contract.



**9.9. Business License.** Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License.

**9.10 Entire Agreement; Severability.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

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

The parties agree to the full performance of the terms set forth here.

**City of Tracy**

**Consultant**

Odyssey Landscaping Company, Inc., a California Corporation

\_\_\_\_\_  
By: Michael Maciel  
Title: Mayor

Martin Gates  
\_\_\_\_\_  
By: Martin Gates  
Title: President

Date: \_\_\_\_\_

Date: 8/26/16

Attest:

Federal Employer Tax ID No. 68-0360679

\_\_\_\_\_  
Nora Pimentel, City Clerk

Michael Moore  
\_\_\_\_\_  
By: ~~Allan Sudderth~~ MIKE MOORE

Approved as to form:

Title: Chief Financial Officer

\_\_\_\_\_  
Bill Sartor, City Attorney

Date: 8/26/16

Exhibits:

- A Scope of Services, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

## **Exhibit A Scope of Services**

The Scope of services of the Project Landscape Plan Checker and Landscape Architect shall consist of but not be limited to the following:

1. Review project specific design requirements and plan check against them.
2. Review the drawings for the elements: Landscape Plan (including trees, shrubs, lawn, ground cover etc.), Irrigation plan (including all aspects and types of irrigation methods and plans, Grading and Drainage plan (including trees, shrubs, lawn, ground cover, etc.) Irrigation plan (including all aspects and types of irrigation methods and plans), Grading and Drainage plan (including checking of grades necessary for compliance with all city and state requirements, review of drainage plans including drainage structures and pipes as it relates to landscape issues), Site amenities/Layout (including benches, tables, trash receptacles, signs arbors walls, etc.) And Detail/Notes (including completeness of all necessary notes and details necessary for construction).
3. Review and comment base upon Health, Safety and Welfare concerns which may affect project outcomes.
4. Attend meetings with City Staff, project designer/ landscape architects to coordinate improvements.
5. Attend Parks Commission meetings on an as needed basis.
6. Make necessary site visits to verify existing conditions and proposed improvements.
7. Make necessary site inspection on an as needed basis for construction review.
8. Review all necessary submittals, shop drawing and specifications for conformance to City Standards and project guidelines.
9. Prepare construction documents (Plans specifications, and cost estimates) for in house Capital Improvement Design Projects.
10. Review and or update for landscape/ irrigation to City Design Standards and Guidelines.
11. Perform other duties for landscape/irrigation related work as required.
12. Be available to City staff and the public as needed (City will supply work space to accomplish this task).

### **INCLUSIONS**

City of Tracy – Capital Improvement & New Subdivision Plan Checking Services Proposal

### **Includes:**

Landscape/Irrigation and Site improvement Plan Check:

- Review and become familiar with City of Tracy design guidelines.

- Receive project specific design requirements and plan check against specific project requirements.
- Review of drawings for the following elements: Landscape plan (including trees, shrubs, lawn, ground cover, etc.), Irrigation plan (including all aspects and types of irrigation methods and plans), Grading & Drainage plan (including checking of grades necessary for compliance with all city and state requirements, including drainage structures and pipes as it relates to landscape issues), Site amenities/Layout (including benches, tables, trash receptacles, signs, arbors, walls, etc.), and Details/Notes (including completeness of all necessary notes and details necessary for construction).
- Review and comment based upon Health, Safety and Welfare concerns which may affect project outcomes.
- Attend meetings with City Engineers to coordinate improvements.
- Attend Parks Commission or City Planning Commission meetings on an as needed basis to confer Cities standard level of acceptance
- Make necessary site visits to verify existing conditions and proposed improvements
- Make necessary site inspections on an as needed basis for construction review.
- Review all necessary submittals and specifications for conformance to City standards and project guidelines.
- Any review and or updates for landscape/irrigation to City Design Standards/Guidelines

**Paper/Travel:**

- Provide all necessary paper/documents for approval of plans and/or construction
- Provide necessary vehicles for site visits and/or required meetings.
- Provide necessary Gas for vehicle travel from Odyssey office to City offices.

**Work Space/Work Load Notification:**

- Work space will be provided at City offices.
- Work Load Notification can be a negotiated schedule based upon current work load. At minimum there should be at least 1 work load notification bi-weekly and no more than 3 Days per week
- Notifications should include: Project name, Developer/Owner/Architect/Engineer contact information, Copy of vicinity map and/or reduced copy of project boundaries, timelines needed/required, Conditions of Approval, Improvement plans to be reviewed, Adjacent subdivision/properties for coordination of improvements

**Exhibit B**

**Fee Schedule**

Plan Checker:	\$ 100.00/Hr. (for 2016-17 fiscal year)
	\$ 105.00/Hr. (for 2017-18 fiscal year)
	\$ 110.00/Hr. (for 2018-19 fiscal year)
Vehicle/Gas:	\$ 0.65/Mile for City required meetings

RESOLUTION 2016-\_\_\_\_\_

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ODYSSEY LANDSCAPING COMPANY, INC., OF LODI, CALIFORNIA, TO PROVIDE PROFESSIONAL SUPPORT SERVICES IN ASSISTING THE REVIEW AND PLAN CHECKING OF LANDSCAPING AND IRRIGATION FOR NEW DEVELOPMENTS AND CAPITAL IMPROVEMENT PROJECTS

WHEREAS, The City uses the services of outside consultants to provide plan review and checking of landscaping and irrigation improvements for new developments and Capital Improvement Projects within the City, and

WHEREAS, The existing Professional Services Agreement with the consultant is expiring and there is a need to acquire the services of a consultant to continue providing those services, and

WHEREAS, Staff posted a Request For Proposal on the City's website, and

WHEREAS, Two proposals were received from Odyssey Landscaping Company, Inc., of Lodi, California, and Builders Protection Group LLC, of Hawthorne, California, and

WHEREAS, Staff has determined that Builders Protection Group proposal was not responsive due to the proposal not complying with the requirement of RFP's to assign person/persons to work within the City premises, and

WHEREAS, The proposal from Odyssey Landscaping Company, Inc., is responsive and they are qualified to provide the required services, and

WHEREAS, Odyssey Landscaping Company, Inc., will provide landscape design/plan checking services for a period of three years on an hourly basis as needed, and

WHEREAS, The agreement allows the City to extend the services for an additional year after satisfactorily completion of this agreement, and

WHEREAS, There is no impact to the General Fund. The cost of these services will be paid from Capital Improvement Projects and new developments;

NOW, THEREFORE, BE IT RESOLVED, That City Council approve a Professional Service Agreement in a not to exceed amount of \$490,000 with Odyssey Landscaping Company, Inc., of Lodi, California, to provide professional support services in assisting the review and plan checking for landscaping and irrigation for new developments and Capital Improvement Projects for a period of three years, authorize the Mayor to execute the Agreement and further, authorize the Development Services Director to extend the agreement for another year if needed, after its satisfactory completion.

\*\*\*\*\*

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the Tracy City Council on the 20<sup>th</sup> day of September, 2016 by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 1.F

REQUEST

**AUTHORIZE THE PURCHASE OF EMERGENCY EQUIPMENT AND INSTALLATION FROM LEHR AUTO ELECTRIC OF SACRAMENTO, CALIFORNIA**

EXECUTIVE SUMMARY

The Police Department is in the process of replacing several fleet vehicles. All vehicles require specific after-market emergency and safety equipment, which is purchased and installed from specialized vendors. The Police Department has been working with Lehr Auto Electric for several years on configuring custom equipment to the specific needs of our vehicles.

DISCUSSION

The 2016-2017 fiscal year budget provides designated funds for replacement of police vehicles, including the purchase and outfitting of the vehicles with protective and emergency equipment.

The emergency and safety equipment that is custom configured to the vehicles needs to remain consistent in appearance, function and location inside the vehicle to ensure the officers' ability to use it safely, efficiently and effectively. The Police Department has been working with Lehr Auto Electric for several years on developing customized configurations for Tracy PD vehicles.

Staff recommends we maintain the working relationship with Lehr Auto Electric as the vendor and installer of our equipment, thus ensuring the equipment consistency. It is also recommended that the City "piggybacks" on an existing government contract between Lehr Auto Electric and the County of Placer (Contract #BP021656). The cooperative purchasing agreement has already gone through a competitive bid process and is likely a better deal, due to the economies of scale from agencies throughout the State, including the lead agency Placer County as well as Tehama County, City of Sacramento, City of Roseville and City of Turlock.

Staff is requesting that Council approve the purchase of emergency equipment and installation services under a cooperative purchasing agreement through the County of Placer as allowed under Section 2.20.220 of the Tracy Municipal Code (the purchasing ordinance).

STRATEGIC PLAN

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

FISCAL IMPACT

This purchase is budgeted for FY2016-17 for \$61,482 and is within the budgeted amount.

RECOMMENDATION

Staff recommends the City Council approve, by resolution, the purchase of emergency equipment and installation services from Lehr Auto Electric, in the amount of \$61,482 from the approved fiscal year 2016-2017 vehicle replacement budget.

Prepared by: Alex Neicu, Lieutenant

Reviewed by: Larry Esquivel, Chief of Police

Approved by: Troy Brown, City Manager



RESOLUTION \_\_\_\_\_

AUTHORIZING THE PURCHASE OF  
POLICE VEHICLES EMERGENCY EQUIPMENT AND  
INSTALLATION SERVICES FROM  
LEHR AUTO ELECTRIC OF SACRAMENTO, CALIFORNIA

WHEREAS, The procurement of replacement police vehicles including the purchase and outfitting of both vehicles with associated emergency equipment has been budgeted in the 2016-2017 fiscal year vehicle replacement budget,

WHEREAS, Staff had recommended that the emergency equipment and installation services be purchased through Lehr Auto Electric of Sacramento,

WHEREAS, Lehr Auto Electric and the County of Placer have an existing government contract,

WHEREAS, the equipment and services are available to purchase under the cooperative purchasing agreement with the County of Placer as authorized under Tracy Municipal Code section 2.20.220 (the purchasing ordinance).

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby authorize the purchase of police vehicle emergency equipment and installation services from Lehr Auto Electric in the amount of \$61,482.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ is hereby passed and adopted by the Tracy City Council this \_\_\_\_\_ day \_\_\_\_\_, 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk

## AGENDA ITEM 1.G

REQUEST

**ACCEPT A GRANT FROM THE CALIFORNIA OFFICE OF TRAFFIC SAFETY AND APPROPRIATE \$70,000 OF REIMBURSABLE FUNDS FROM THE GENERAL FUND TO THE POLICE DEPARTMENT'S FISCAL YEAR 2016-17 BUDGET FOR THE SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT.**

EXECUTIVE SUMMARY

The City of Tracy has been awarded \$70,000 from the Office of Traffic Safety (OTS) for the Selective Traffic Enforcement Program (STEP). This grant is aimed to reduce the number of persons killed and injured in crashes involving alcohol, speed, intersection violations, and other primary collision factors. The grant is 100% reimbursable and requires no matching of City funds. The grant will require an upfront appropriation of \$70,000 which will be reimbursed as it is expended.

DISCUSSION

The funded strategies may include: DUI Checkpoints and saturation patrols to apprehend drunk drivers. Enforcement and education efforts concentrated on speed violations, aggressive driving, seatbelt enforcement, intersection violations, distracted driving, special enforcement operations and encouraging motorcycle safety education and enforcement.

The budget will consist of personnel overtime costs, training, and equipment.

<b>EXPENSES</b>	<b>BUDGET</b>
<b>Personnel Overtime</b>	
DUI Checkpoints	\$18,029
DUI Saturation Patrols	\$18,384
Benefits @ 9.85%	\$3,587
Traffic Enforcement	\$10,213
Distracted Driving	\$5,107
Motorcycle Safety Enforcement	\$1,532
Pedestrian and Bicycle Enforcement	\$3,064
Traffic Safety Presentations	\$766
Benefits @9.85%	\$2,038
Category Subtotal	<u>\$62,720</u>
<b>Other Direct Costs</b>	
Lidar Device	\$4,800
Educational Materials	\$2,480
Subtotal Other Direct Costs	<u>\$7,280</u>
<b>TOTAL</b>	<b>\$70,000</b>

### STRATEGIC PLAN

This agenda item relates to the Public Safety Strategy Priority in the Council's Strategic Plan. The Public Safety Strategy Plan focuses on promoting a responsive public safety system that includes civic engagement and partnerships, community involvement, public education and offering prevention, intervention and suppression services that meet the needs of Tracy residents. Specifically, Goal 4 is to promote traffic safety by awareness, enforcement and education.

### FISCAL IMPACT

Receiving the grant will require an initial appropriation to the police department in the amount of \$70,000 from the general fund. The OTS grant is 100% reimbursable with no matching requirement of the City. Reimbursement is requested as funds are expended.

The grant funds cover all costs related to administering the grant objectives including purchases of supplies, printing of educational materials, training and overtime costs of personnel.

### RECOMMENDATION

That the City Council, by resolution, authorizes the acceptance of the grant and the appropriation of \$70,000 of reimbursable funds from the general fund to the police department's Fiscal Year 2016-17 budget for the Selective Traffic Enforcement Program (STEP) Grant.

Prepared by: Octavio Lopez, Police Corporal

Reviewed by: Larry Esquivel, Police Chief  
Martha Garcia, Acting Administrative Services Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION \_\_\_\_\_

**AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE OFFICE OF TRAFFIC SAFETY AND THE APPROPRIATION OF \$70,000 OF REIMBURSEABLE FUNDS FROM THE GENERAL FUND TO THE POLICE DEPARTMENT'S FISCAL YEAR 2016-2017 BUDGET FOR THE SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT**

WHEREAS, The California Office of Traffic Safety has awarded the City of Tracy with the Selective Traffic Enforcement Program (STEP) Grant to reduce the number of persons killed and injured in crashes involving alcohol, speed, intersection violations, and other primary collisions factors, and

WHEREAS, The City of Tracy was awarded \$70,000 of reimbursable funds, and

WHEREAS, The Tracy Police Department intends to use the appropriation to purchase equipment, provide training and overtime costs of personnel.

NOW THEREFORE BE IT RESOLVED, That City Council hereby accepts a STEP grant from the Office of Traffic Safety and authorizes the appropriation of \$70,000 from the general fund to reduce the number of major injury collisions through public awareness of traffic safety and increasing traffic related enforcement.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 20<sup>th</sup> day of September, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 1.H

REQUEST

**AUTHORIZATION FOR THE CITY MANAGER OR DESIGNEE TO EXECUTE AND FILE APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23 UNITED STATES CODE AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION**

EXECUTIVE SUMMARY

In 2002, the City Council authorized the City Manager, to execute and file applications with the Federal Transit Administration (FTA) for the purpose of receiving Federal funds. Given the length of time since Council's previous authorization, and the continual change in Federal transportation legislation since then, the FTA has requested the City adopt a new resolution re-authorizing a designee to execute and file Federal funding applications and associated agreements with the FTA.

DISCUSSION

In 2002, under Resolution 2002-370, City Council authorized the City Manager or designee to execute and file applications with the FTA for the purpose of receiving Federal funds. Given the length of time since Council's previous authorization and the continual change in Federal transportation legislation over the last 14 years, the FTA has requested the City adopt a new resolution re-authorizing a designee to execute and file Federal funding applications and associated agreements with the FTA. This will allow the City to continue applying for Federal funding through the FTA's electronic grant management system, execute annual certifications and assurances, and further comply with all other requirements for direct recipients that receive Federal funding.

The Moving Ahead for Progress in the 21st Century (MAP-21) transportation legislation and the newly enacted Fixing America's Surface Transportation (FAST) Act provide various sources of Federal transportation funding, administered by the FTA, for transit operators to use for eligible capital and operations projects. The City of Tracy is eligible to receive both FTA Sections 5307 and 5339 funding for the purchase of capital assets (buses and supporting equipment), transit operations and preventive maintenance.

STRATEGIC PLAN:

This agenda item is a routine operational item and does not relate to the Council's Strategic Plans.

FISCAL IMPACT

There is no impact to the General Fund. This will continue the City's ability to apply for and receive Federal transportation funds apportioned to Tracy for on-going transit capital

and operating needs. The City's public transit services and related CIP projects are funded through the Transit Fund.

RECOMMENDATION

That the City Council adopt a resolution authorizing the City Manager or designee to execute and file applications with the Federal Transit Administration (FTA), an operating administration of the United States Department of Transportation, for Federal transportation assistance authorized by 49 U.S.C. Chapter 53, Title 23 United States Code or other Federal statutes administered by the FTA.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: André Pichly, Parks & Recreation Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

RESOLUTION 2016-\_\_\_\_\_

AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE AND FILE APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23 UNITED STATES CODE AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION

WHEREAS, The Congress of the United States has previously enacted the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), which was recently superseded by the Fixing America's Surface Transportation (FAST) Act, to fund various transportation programs administered by the Federal Transit Administration, and

WHEREAS, The Federal Transit Administration (FTA) has been delegated authority by the United States Department of Transportation to award Federal financial assistance for transit projects, and

WHEREAS, The grant or cooperative agreement for Federal financial assistance will impose certain obligations upon the City of Tracy (City), and may require the City to provide the local share of the project cost, and

WHEREAS, The City has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED, That City Council does hereby authorize the following:

1. That the City Manager, or designee, is authorized to execute and file an application for Federal assistance on behalf of the City of Tracy with the Federal Transit Administration for Federal assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration. The City of Tracy has received authority from the San Joaquin Council of Governments (SJCOG), the Designated Recipient for the Tracy Urbanized Area, to apply for Urbanized Formula and Non-Formula Program assistance pursuant for FTA Sections 5307 and 5339; and
2. That the City Manager, or designee, is authorized to execute and file with its applications the annual certifications and assurances and other documents that the Federal Transit Administration requires before awarding Federal assistance grants or cooperative agreements; and
3. That the City Manager, or designee, is authorized to execute grant and cooperative agreements, and file any associated documents directly with the Federal Transit Administration on behalf of the City of Tracy.

\* \* \* \* \*

Resolution 2016-\_\_\_\_\_  
Page 2

The foregoing Resolution 2016-\_\_\_\_\_ was adopted by the Tracy City Council on the 20<sup>th</sup> day of September 2016, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



AGENDA ITEM 1.1

REQUEST

**APPROVE MEMORANDUM OF UNDERSTANDING (MOU) WITH NOTRE DAME DE NAMUR UNIVERSITY (NDNU), FOR USE OF CITY FACILITIES TO ADMINISTER ITS BACHELOR'S AND MASTER'S DEGREE PROGRAMS; AND APPROVE APPROPRIATION IN THE AMOUNT OF \$29,251 FOR THE CITY'S CONTRIBUTION TOWARDS A HIGHER EDUCATION FEASIBILITY STUDY ADMINISTERED BY NDNU AND MAGUIRE ASSOCIATES; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU**

EXECUTIVE SUMMARY

The City entered into an MOU with Notre Dame de Namur University on June 2, 2015 for the use of City facilities to carry out the university's accredited bachelor's and master's degree programs at the Tracy Transit Station. The MOU is set to expire on December 31, 2016 and given the local and regional benefit of NDNU's higher education presence in Tracy and growing student interest, both parties have agreed to extend the agreement through 2017.

An MOU (Attachment "A") has been drafted between the City and NDNU for: (1) Use of the Tracy Transit Station to administer NDNU's BA and MBA programs from January – December 2017 (2) City marketing and business outreach assistance to further solidify NDNU's presence in Tracy (3) A one-time fiscal contribution in the amount of \$29,251 toward a Higher Education Feasibility Study administered by NDNU and Maguire Associates (which equates to one-third of the total project cost).

Staff is requesting Council's approval to authorize the MOU with NDNU to include the aforementioned services.

DISCUSSION

In 2013, representatives from Notre Dame de Namur University (of Belmont, California) met with City staff, the Tracy Consortium for Higher Education (TCHE) and elected officials to discuss the potential for higher educational programming in Tracy. In 2014, NDNU expressed interest in the City of Tracy and began discussing options available as it relates to expanding its academic programming. City staff, the TCHE and the City's educational consultant, Dr. Jonathan Brown, continued to engage NDNU which aided in the launch of its accredited business degree programs in Tracy in 2015.

The City of Tracy entered into an MOU with NDNU on June 2, 2015 for the use of City facilities to administer the university's first BA completion and MBA degree cohort in Tracy. The MOU is set to expire on December 31, 2016 and given the local and regional benefit of NDNU's higher education presence in Tracy and growing student interest, both parties have agreed to extend the agreement through 2017.

The benefits of the NDNU Tracy cohort includes: (1) Providing access to higher education opportunities for residents of Tracy and the surrounding region (2) Boosting economic activity through students and faculty purchasing goods and services from local businesses (3) Preparing the local workforce for jobs that require advanced degrees (4) Attracting future businesses that are drawn to cities with higher education establishments or programs.

Per the MOU (Attachment "A"), NDNU is requesting the use of the Tracy Transit Station, Rooms 103, 104, and 105 (or comparable conference rooms), for 100 Tuesday dates, from 5:00 p.m. to 10:15 p.m. and 100 Wednesday dates from 5:00 p.m. to 10:15 p.m., from January 2017 through December 2017; and as space is available with a minimum two-week notice, NDNU may also reserve Rooms 103, 104, and/or 105 for program related special events for up to 10 additional uses for the duration of the MOU. The BA and MBA programs will meet individually one night per week, and are offered in an accelerated seven-week format designed for working professionals. The bachelor's program is designed for students with some college credits and the master's program will be delivered in a hybrid format (in-class and online instruction).

The non-profit rental fee associated with the proposed facility rental is \$ 35,735. Given the local and regional benefits of the NDNU accredited degree programs, and the long-term partnership the City is forming with NDNU to establish a possible brick and mortar campus, the City and NDNU negotiated a rental fee of \$5,035 for the 2017 academic year in Tracy. The \$5,035 rental fee will assist with personnel expenses associated with opening and closing the rental for the duration of the agreement.

The amended MOU also includes a financial contribution by the City towards a Higher Education Feasibility Study administered by NDNU and Maguire Associates in the amount of \$29,251 (one-third of the project cost). The study was launched in 2015 and evaluated local demographics and population forecasts, labor market projections, student program preferences, and the local and regional demand for higher education programs. The feasibility study was completed in 2016 and confirmed that Tracy's population is underserved in respect to higher education, and interest exists from prospective students and regional employers on accelerated bachelor's and master's degree programs. The study also found that prospective students would prefer a mixture of classroom instruction on weekday evenings and online/hybrid courses; NDNU tuition costs may need to be adjusted for optimal revenue yield; and relatively low brand awareness exists of NDNU and its Tracy campus.

In response to the results of the feasibility study, the City (as part of the MOU) will provide ongoing outreach support to NDNU through the following mechanisms:

- Access and installation of up to thirteen (13) light post banners along West 11<sup>th</sup> Street that promote NDNU – Tracy Campus community-wide special events;
- Production of a video Public Service Announcement (PSA) via Channel 26 to promote NDNU's Tracy cohort;
- Posting of NDNU materials on the City website and social media sites;

- Ongoing outreach assistance to local businesses, major employers, and community organizations.

Staff is requesting that Council approve the MOU with NDNU for the use of City facilities through December 31, 2017, a one-time fiscal contribution in the amount of \$29,251 toward a Higher Education Feasibility Study administered by NDNU and Maguire Associates, and ongoing outreach assistance.

#### STRATEGIC PRIORITY

This agenda item supports the City's Economic Development Strategic Plan and specifically implements the following goal:

Economic Development Strategy

**Goal 3:** Support a higher education presence in Tracy.

#### FISCAL IMPACT

This MOU is not a budgeted item for Fiscal Year 2016-17 and will require budget authorization and funding. A supplemental appropriation of \$29,251 from the general fund is proposed. Other expenses will be absorbed within respective operating budgets.

#### RECOMMENDATION

That City Council adopt a Resolution approving an MOU with Notre Dame de Namur University, for use of City facilities to administer its bachelor's and master's degree programs; and approve an appropriation from the general fund in the amount of \$29,251 for the City's contribution towards a Higher Education Feasibility Study administered by NDNU and Maguire Associates; and authorize the Mayor to execute the MOU.

Prepared by: Vanessa Carrera, Public Information Officer

Reviewed by: Stephanie Garrabrant-Sierra, Assistant City Manager  
Shelley Burcham, Economic Development Manager

Approved by: Troy Brown, City Manager

Attachment "A" – MOU between the City of Tracy and Notre Dame de Namur University.

ATTACHMENT "A"

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE CITY OF TRACY AND**  
**NOTRE DAME DE NAMUR UNIVERSITY**

- I. **PARTIES:** This Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and Notre Dame de Namur University (hereinafter "NDNU"), a Catholic, independent, not-for-profit, coeducational institution of higher education.
- II. **RECITALS:** The City of Tracy and the Tracy Consortium for Higher Education (TCHE) have been working actively to attract a university to support the higher education needs of the community and surrounding region. The City and TCHE have partnered with Notre Dame de Namur University (NDNU) out of Belmont, California, to develop a higher education presence in Tracy. One of the first steps to developing a physical university presence in Tracy is to partner with NDNU to launch an extended education cohort program for students and working adults.

The City Council recognizes NDNU's extended education program as a means to enhance educational opportunities for its citizens and individuals in the region through the provision of offering bachelor's and master's degree programs to the Tracy community.

- III. **RESPONSIBILITIES:** It is agreed by and between the parties hereto that each party has the following responsibilities:

**A. City shall:**

1. Shall contribute \$29,251 towards a Higher Education Feasibility Study administered by NDNU and McGuire and Associates (please refer to the MOU outlined in Exhibit A) which will evaluate local demographics and population forecasts, labor market projections, and the regional demand for higher education programs.
2. Provide rental of the Tracy Transit Station Rooms 103, 104, and/or 105 (or comparable conference rooms), for up to 100 Tuesday dates, from 5:00 p.m. to 10:15 p.m. and up to 100 Wednesday dates from 5:00 p.m. to 10:15 p.m., from January 2017 through December 2017 (schedule outlined in Exhibit B) for a total rental fee in the amount of five thousand thirty-five dollars (\$5,035). The estimated value for this rental is \$35,735.

The City shall have the ability to modify rental accommodations at the Transit Station depending on the size of the cohort(s). Rental of the Tracy Transit Station does not include the use of City computers or

Memorandum of Understanding  
City of Tracy / Notre Dame de Namur University

equipment located in the Transit Station office.

3. As space is available and with a minimum two-week notice, NDNU may also reserve rooms 103, 104, and/or 105 for program related events to be included in the cost outlined in item A1 above, up to 10 additional uses for the duration of this MOU. For the purpose of this agreement, a "use" is defined as a one-day set up. Should NDNU chose to secure additional rental dates at the Tracy Transit Station, outside of the facility rentals outlined in items A.2 and A.3, NDNU will be charged at the non-profit rental rate.
4. Provide a maximum of 11 tables and 60 chairs for Room 105, a maximum of 8 tables and 30 chairs for Room 103, and a maximum of 8 tables and 30 chairs for Room 104. Room 105 can accommodate up to 20 students, and Room 103/104 combined can accommodate up to 30 students. Each classroom will include one white board, one speaker's podium and access to a projector. The City shall not provide NDNU with access to storage facilities at the Transit Station.
5. Provide access to restrooms and free parking for program participants.
6. Provide clean facilities in good repair.
7. Ensure that the room is unlocked prior to the start of the day and locked at the end of the day for each program day.
8. Provide access and installation of up to thirteen (13) light post banners along West Eleventh Street between Lammers Road and Corral Hollow Road for the duration of the MOU (a value of \$2,964). The banners shall promote NDNU – Tracy Campus community-wide events, such as informational workshops or open houses. Please refer to City of Tracy Banner Specifications and Guidelines attached in Exhibit C.
9. Provide use of Channel 26 to produce a video Public Service Announcement (PSA) that promotes NDNU – Tracy Campus programs, valued at roughly \$2,500.
10. Air the NDNU – Tracy Campus PSA on Channel 26 and post the video to the City of Tracy's website and social media sites.
11. Advertise NDNU – Tracy campus promotional flyers on Channel 26 and the City's website and social media sites.
12. Engage in joint marketing meetings with NDNU.
13. Actively introduce NDNU to local businesses, employers, community

Memorandum of Understanding  
City of Tracy / Notre Dame de Namur University

organizations and businesses in neighboring towns.

**B. NDNU shall:**

1. Provide the necessary staff, volunteers, equipment, and promotions to successfully conduct the Tracy campus programs, and have an NDNU representative or faculty member on site during classroom instruction. NDNU shall notify the City in advance if rentals are vacated early.
2. Adequately clean any City facilities to acceptable condition after permitted use. This includes ensuring all perishable food and trash is removed.
3. Facilitate and pay for any repairs to damages caused by such use, other than normal wear and tear.
4. Adhere to the City's established facility rental policies and processes outlined in the City's Facility Reservation Handbook (Exhibit D).
5. Notify the Community Facilities Division in writing, no later than the first day of each academic term, of rentals that will not be occupied as part of the MOU. The City shall charge NDNU, at the non-profit rental rate, for unoccupied rooms that remain reserved.
6. Provide the Community Facilities Division with NDNU's schedule of academic programs at the Tracy Transit Station, including the estimated number of students enrolled in each program, on or before the first day of each academic term.
7. Provide computer laptops and audio/visual cables for classroom use.
8. To the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of NDNU's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "NDNU" means the NDNU, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to."

Memorandum of Understanding  
City of Tracy / Notre Dame de Namur University

9. Throughout the duration of this Agreement, maintain insurance to cover NDNU, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
  - 9.1. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - 9.2. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - 9.3. **Workers' Compensation** coverage shall be maintained as required by the State of California.
  - 9.4. **Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of NDNU in an amount not less than \$1,000,000 per occurrence.
  - 9.5. **Endorsements.** NDNU shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - 9.5.1. The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
    - 9.5.2. For any claims related to this Agreement, NDNU's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the NDNU's insurance and shall not contribute with it.
  - 9.6. **Notice of Cancellation.** NDNU shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. NDNU shall immediately obtain a replacement policy.
  - 9.7. **Authorized Insurers.** All insurance companies providing coverage to NDNU shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
  - 9.8. **Insurance Certificate.** NDNU shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.

Memorandum of Understanding  
City of Tracy / Notre Dame de Namur University

- 9.9. **Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, NDNU shall provide a substitute certificate of insurance.
- 9.10. **NDNU's Obligation.** Maintenance of insurance by the NDNU as specified in this Agreement shall in no way be interpreted as relieving the NDNU of any responsibility whatsoever (including indemnity obligations under this Agreement), and the NDNU may carry, at its own expense, such additional insurance as it deems necessary.

C. **The parties shall agree that:**

1. This MOU shall be subject to any and all policies, regulations and ordinances of the City of Tracy.
  2. Under no circumstances shall this MOU be interpreted as creating a partnership, joint venture or employment between the parties. Each party acknowledges and agrees that it neither has, nor will give the appearance of having, any legal authority to bind or commit the other party in any way other than adherence to the terms of this MOU. NDNU and the City agree that each party shall be responsible for the payment of wages and benefits of each of their respective employees and agents.
- IV. **TERMINATION:** Either party may terminate this MOU by providing prior written notice to the other party of intention to terminate not less than thirty (30) days prior to actual termination.
- V. **TERM:** This MOU shall take effect on September 21, 2016, and shall continue through December 31, 2017, unless terminated by either party as set forth herein.
- VI. **AMENDMENTS:** This MOU may be amended in writing and the amendment must be approved by mutual agreement of both parties.
- VII. **DESIGNATED REPRESENTATIVES:** For the purposes of administering the MOU, the NDNU Vice President for Finance and Administration and the City Manager of the City of Tracy shall act as representatives for their respective organizations.



Memorandum of Understanding  
City of Tracy / Notre Dame de Namur University

VIII. NOTICES:

CITY

NOTRE DAME DE NAMUR UNIVERSITY

City of Tracy  
City Manager's Office  
333 Civic Center Plaza  
Tracy, CA 95376

Attn: Henry Roth  
VP for Finance and Administration  
1500 Ralston Avenue  
Belmont, CA 94002

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

- IX. **ENTIRE AGREEMENT:** This MOU constitutes the entire agreement between the City and NDNU. Any amendment to this MOU, including oral modification, must be reduced to a writing and signed by both the City and NDNU.
- X. **SIGNATURES:** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of NDNU and the City. This MOU shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

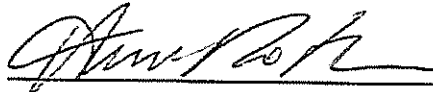
**City of Tracy**

**Notre Dame de Namur University**

Michael Maciel  
Mayor

Henry Roth  
VP for Finance and Administration

\_\_\_\_\_

  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: 9/12/16

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Nora Pimentel  
City Clerk

\_\_\_\_\_  
Bill Sartor  
City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## MEMORANDUM OF UNDERSTANDING

This Agreement, made this 27<sup>th</sup> day of August 2015, between Maguire Associates, Inc. (hereinafter "Maguire Associates") and Notre Dame de Namur University ("NDNU"), reflects the full scope of their understanding. In consideration of the mutual promises and conditions contained in this Agreement, and for good and valuable consideration, the parties agree as follows:

### 1. Scope of Service.

Maguire Associates will provide market research over the course of three phases:

#### Phase I: Validation

##### Document Review & Project Kickoff

We will begin by holding an in-person kickoff meeting with your project team. The agenda will include discussion of: goals and objectives for the project, strategic imperatives and institutional vision, target audiences, and next steps. We will then conduct an overall assessment by reviewing:

- any planning and assessment materials;
- news releases;
- newsletters;
- enrollment statistics & trend data (undergraduate and graduate);
- important planning documents; and
- previous research or competitive information collected thus far.

The insights gained in this stage will help with the research design process

##### Secondary Research

**Demographic and Labor Market Projections:** Maguire Associates will synthesize information from population projections and labor market projections to analyze the current and projected regional need for higher education offerings in the region. This effort will establish the likely viability of a satellite location in Tracy, and set the context for new program development. We will examine local population demographics and Bureau of Labor Statistics projections at an appropriate level of detail to assess market demand. This effort will match educational credentials with expected demand in the San Joaquin County area.

**Adult & Graduate Program Competitive Scan by Service Area:** Maguire Associates will conduct a competitive assessment of all undergraduate and graduate degree completions within a 50-mile radius of an NDNU Tracy campus to gain an overview of market size and relevant players. We will then do a peer benchmarking of eight to ten comparison institutions that NDNU is interested in benchmarking against on key dimensions using secondary data sources such as IPEDS. These metrics may include factors such as pricing, financial aid, admissions selectivity, and demographic characteristics.

**Phase II: Program Planning****Primary Research**

**Survey of Prospective Students:** Maguire Associates will conduct an online survey of prospective students to assess demand for degrees, enrollment drivers, preferred delivery mode, acceptable price and brand awareness.

**Executive Interviews with Employers:** Maguire Associates will conduct 10 to 12 executive interviews to assess employer needs. *If NDNU has names and contact information (preferably email addresses) from key San Joaquin County employers, either through its relationships with the City of Tracy or the Tracy Consortium of Higher Education, Maguire Associates can recruit and schedule these interviews. Otherwise, Maguire Associates can secure from a panel provider – at an additional expense – a list of employers who may be willing to participate in such interviews.*

**Phase III: Implementation Guidance & Recommendations**

We will provide guidance and recommendations based on this research, our experience in the industry and our conversations with NDNU. To provide a comparative perspective, we will supplement our effort with a review of the higher education landscape for projects similar to the NDNU-Tracy initiative. We will interweave these findings with the rest of our work and use it to inform our recommendations. We will synthesize our work to provide specific guidance on implementation.

**2. Deliverables and Timeline.****Phase I: Validation - 8 to 10 weeks to complete.**

A summary we-based presentation and discussion to a group of project leaders and key stakeholders (NDNU and Tracy Civic and Political leadership) of market opportunities for graduate and adult programs including recommendations on prioritization of efforts.

**Phase II: Program Planning - 12 to 14 weeks.**

A summary presentation and discussion of recommended programs, marketing strategies and cost structures.

**Phase III: Implementation Guidance & Recommendations - 2 weeks.**

Maguire Associates will return to NDNU for a final presentation of recommendations based on the research findings from Phase I, Phase II, and Phase III. We will discuss these recommendations with Notre Dame de Namur University President, Board of Trustees, administrators, faculty, and staff (as appropriate), as well as the City of Tracy and the Tracy Consortium for Higher Education.

We will provide specific action plans on potential site expansion, positioning, delivery mode, and cost structure needed to launch programs that have sufficient demand.

### 3. Fees and Expenses.

The total cost for this project is \$83,600. Phase I is \$16,000, Phase II is \$36,400, and Phase III is \$9,600, with general project management being \$21,600. These costs are all-inclusive except for any travel-related expenses, list purchases for survey research, and research incentives, which will be pre-approved by NDNU and billed at cost.

We will invoice you monthly for the duration of the work. The first invoice (\$14,000) is included with this MOU. The subsequent invoices (\$14,000) will be sent in September through December, and the final invoice (\$13,600) will be sent in January, 2016.

### 4. Confidentiality of Information.

- a. Maguire Associates agrees to keep confidential and not to disclose to third parties any information provided by Notre Dame de Namur University pursuant to this agreement unless Maguire Associates has received prior consent of Notre Dame de Namur University to make such disclosure. This obligation of confidentiality does not extend to any information that was in possession of Maguire Associates at the time of disclosure by Notre Dame de Namur University directly or indirectly; is or shall become, through no fault of Maguire Associates, available to the general public; or is independently developed and hereafter supplied to Maguire Associates by the third party without restriction or disclosure.
- b. This provision shall survive expiration and termination of this Agreement.

### 5. Conformance to Laws, Regulations, and Policies.

Maguire Associates shall observe and abide by all applicable laws, regulations, and policies pertaining to the work performed under this MOU, including the Family Educational Rights and Privacy Act of 1974, as amended (FERPA).

The parties agree that all provisions of this Agreement will be interpreted according to the Laws of the Commonwealth of Massachusetts.

### 6. Termination.

Either party may terminate this MOU for convenience, at any time, by giving the other party thirty (30) days advanced written notice. Any such termination shall not be deemed a breach or default and shall not give rise to any action for damages or other cause of action. Upon such termination, (i) Notre Dame de Namur University shall pay all amounts due, including incurred expenses, through and including the date of termination to Maguire Associates, and (ii) Maguire Associates shall furnish all necessary reports of research completed, or in progress, through the date of termination.

## 7. Rights in Data.

All original data and records of work created, made, performed or developed by Maguire Associates for Notre Dame de Namur University pursuant to this MOU (hereinafter "Notre Dame de Namur University Developed Works") shall be deemed "works for hire" and shall become the property of Notre Dame de Namur University, and the parties acknowledge and agree that any inventions or copyrights arising out of, resulting from or related to Notre Dame de Namur University Developed Works shall belong to Notre Dame de Namur University. The parties agree that Maguire Associates, in the performance of its obligations under this MOU, will provide information to Notre Dame de Namur University in the form of summary reports of past results, matrices demonstrating the consequences of current practices, and/or analyses and presentations, the results of such analyses and presentations being derived from the use of Maguire Associates modeling software and service. The parties further acknowledge and agree that both Notre Dame de Namur University and Maguire Associates shall retain exclusive rights to all pre-existing patents, inventions (whether or not the subject of patents or patent applications), copyrights and software, and for the avoidance of doubt, the parties agree that the Maguire Associates modeling software and services referenced herein is pre-existing intellectual property of Maguire Associates and shall remain such.

## 8. Indemnification.

Each party (for purposes of this Paragraph 8, the "Indemnifying Party") shall indemnify, defend and hold harmless the other party (for purposes of this Paragraph 8, the "Indemnified Party"), its trustees, directors, officers, employees and agents from and against any and all claims, damages, losses and expenses (including attorney's fees) incurred or brought by the Indemnified Party's trustees, directors, officers, employees and agents and by all third parties, where such claims, damages, losses and expenses arise from the Indemnifying Party's negligence and/or from its breach of this MOU. Notwithstanding the foregoing, each party agrees to waive any claims against the other for special, consequential, indirect, punitive and exemplary damages as well as economic loss or business disruption.

## 9. Modifications and Amendments.

It is understood and agreed that this is the entire agreement between the parties. Modifications or amendments may be entered into only by mutual agreement, by the production of a written and numbered amendment, which must be attached to this agreement, and countersigned by the parties (official signatories of Maguire Associates and Notre Dame de Namur University).

10. **Notice.**

Notice of termination to either party hereunder must be in writing signed by the party giving it, and shall be served either personally or by registered or certified mail addressed within thirty (30) days as follows:


To Notre Dame de Namur University:

Jason Murray  
Vice President for Enrollment Management  
Notre Dame de Namur University  
1500 Ralston Avenue  
Belmont, CA 94002

To Maguire Associates:

Ismael Carreras  
Vice President of Research  
Maguire Associates, Inc.  
555 Virginia Road, Suite 201  
Concord, MA 01742

NOTRE DAME DE NAMUR UNIVERSITY

  
\_\_\_\_\_  
Jason Murray  
Vice President for Enrollment Management  
Notre Dame de Namur University

MAGUIRE ASSOCIATES, INC.


  
\_\_\_\_\_  
Ismael Carreras  
Vice President of Research  
Maguire Associates, Inc.

EXHIBIT B

Permit Contract

**Tracy Civic Center (CVC)**  
 333 Civic Center Plaza  
 Tracy, CA 95376  
 Phone: (209) 831-6200  
 FAX: --  
 Email: parks@ci.tracy.ca.us

**Permit #9000958, Pending approval**

Aug 26, 2016 3:38 PM  
 Expires Sep 25, 2016



**Company:** City Of Tracy  
 333 Civic Center Plaza  
 Tracy, CA 95376

Customer Type: City  
 Prepared By: Christine Mabry

**Agent:** Cerena Sweetland-Gil  
 Email: csweetlandgil@ndnu.edu

Home: (209) 833-5020

Charges	Taxes	Discounts	Total Charges	Deposits	Deposit Taxes	Total Payments	Refunds	Balance
\$35,735.00	\$0	\$0	\$35,735.00	\$0	\$0	\$0	\$0	\$35,735.00

▼ RESERVATIONS

Event		Resource	Center	Notes
NDNU Classes 2016 (MOU) Type: Class/Instruction Attend/Qty: 14		TTS RM 103	Tracy Transit Station (TTS) 50 E. Sixth Street Tracy, CA 95376 (209) 831-6201	--
Days Requested		Event Begins	Duration	Event Ends
Day	Date			
Tuesday	Jan 10, 2017	5:00 PM	5 hours, 15 minutes	Jan 10, 2017 at 10:15 PM
Wednesday	Jan 11, 2017	5:00 PM	5 hours, 15 minutes	Jan 11, 2017 at 10:15 PM
Tuesday	Jan 17, 2017	5:00 PM	5 hours, 15 minutes	Jan 17, 2017 at 10:15 PM
Wednesday	Jan 18, 2017	5:00 PM	5 hours, 15 minutes	Jan 18, 2017 at 10:15 PM
Tuesday	Jan 24, 2017	5:00 PM	5 hours, 15 minutes	Jan 24, 2017 at 10:15 PM
Wednesday	Jan 25, 2017	5:00 PM	5 hours, 15 minutes	Jan 25, 2017 at 10:15 PM
Tuesday	Jan 31, 2017	5:00 PM	5 hours, 15 minutes	Jan 31, 2017 at 10:15 PM
Wednesday	Feb 1, 2017	5:00 PM	5 hours, 15 minutes	Feb 1, 2017 at 10:15 PM
Tuesday	Feb 7, 2017	5:00 PM	5 hours, 15 minutes	Feb 7, 2017 at 10:15 PM
Wednesday	Feb 8, 2017	5:00 PM	5 hours, 15 minutes	Feb 8, 2017 at 10:15 PM
Tuesday	Feb 14, 2017	5:00 PM	5 hours, 15 minutes	Feb 14, 2017 at 10:15 PM
Wednesday	Feb 15, 2017	5:00 PM	5 hours, 15 minutes	Feb 15, 2017 at 10:15 PM
Tuesday	Feb 21, 2017	5:00 PM	5 hours, 15 minutes	Feb 21, 2017 at 10:15 PM
Wednesday	Feb 22, 2017	5:00 PM	5 hours, 15 minutes	Feb 22, 2017 at 10:15 PM
Tuesday	Feb 28, 2017	5:00 PM	5 hours, 15 minutes	Feb 28, 2017 at 10:15 PM
Wednesday	Mar 1, 2017	5:00 PM	5 hours, 15 minutes	Mar 1, 2017 at 10:15 PM
Tuesday	Mar 7, 2017	5:00 PM	5 hours, 15 minutes	Mar 7, 2017 at 10:15 PM
Wednesday	Mar 8, 2017	5:00 PM	5 hours, 15 minutes	Mar 8, 2017 at 10:15 PM
Tuesday	Mar 14, 2017	5:00 PM	5 hours, 15 minutes	Mar 14, 2017 at 10:15 PM
Wednesday	Mar 15, 2017	5:00 PM	5 hours, 15 minutes	Mar 15, 2017 at 10:15 PM
Tuesday	Mar 21, 2017	5:00 PM	5 hours, 15 minutes	Mar 21, 2017 at 10:15 PM
Wednesday	Mar 22, 2017	5:00 PM	5 hours, 15 minutes	Mar 22, 2017 at 10:15 PM
Tuesday	Mar 28, 2017	5:00 PM	5 hours, 15 minutes	Mar 28, 2017 at 10:15 PM
Wednesday	Mar 29, 2017	5:00 PM	5 hours, 15 minutes	Mar 29, 2017 at 10:15 PM

## EXHIBIT B

Tuesday	Apr 4, 2017	5:00 PM	5 hours, 15 minutes	Apr 4, 2017 at 10:15 PM
Wednesday	Apr 5, 2017	5:00 PM	5 hours, 15 minutes	Apr 5, 2017 at 10:15 PM
Tuesday	Apr 11, 2017	5:00 PM	5 hours, 15 minutes	Apr 11, 2017 at 10:15 PM
Wednesday	Apr 12, 2017	5:00 PM	5 hours, 15 minutes	Apr 12, 2017 at 10:15 PM
Tuesday	Apr 18, 2017	5:00 PM	5 hours, 15 minutes	Apr 18, 2017 at 10:15 PM
Wednesday	Apr 19, 2017	5:00 PM	5 hours, 15 minutes	Apr 19, 2017 at 10:15 PM
Tuesday	Apr 25, 2017	5:00 PM	5 hours, 15 minutes	Apr 25, 2017 at 10:15 PM
Wednesday	Apr 26, 2017	5:00 PM	5 hours, 15 minutes	Apr 26, 2017 at 10:15 PM
Tuesday	May 2, 2017	5:00 PM	5 hours, 15 minutes	May 2, 2017 at 10:15 PM
Wednesday	May 3, 2017	5:00 PM	5 hours, 15 minutes	May 3, 2017 at 10:15 PM
Tuesday	May 9, 2017	5:00 PM	5 hours, 15 minutes	May 9, 2017 at 10:15 PM
Wednesday	May 10, 2017	5:00 PM	5 hours, 15 minutes	May 10, 2017 at 10:15 PM
Tuesday	May 16, 2017	5:00 PM	5 hours, 15 minutes	May 16, 2017 at 10:15 PM
Wednesday	May 17, 2017	5:00 PM	5 hours, 15 minutes	May 17, 2017 at 10:15 PM
Tuesday	May 23, 2017	5:00 PM	5 hours, 15 minutes	May 23, 2017 at 10:15 PM
Wednesday	May 24, 2017	5:00 PM	5 hours, 15 minutes	May 24, 2017 at 10:15 PM
Tuesday	May 30, 2017	5:00 PM	5 hours, 15 minutes	May 30, 2017 at 10:15 PM
Wednesday	May 31, 2017	5:00 PM	5 hours, 15 minutes	May 31, 2017 at 10:15 PM
Tuesday	Jun 6, 2017	5:00 PM	5 hours, 15 minutes	Jun 6, 2017 at 10:15 PM
Wednesday	Jun 7, 2017	5:00 PM	5 hours, 15 minutes	Jun 7, 2017 at 10:15 PM
Tuesday	Jun 13, 2017	5:00 PM	5 hours, 15 minutes	Jun 13, 2017 at 10:15 PM
Wednesday	Jun 14, 2017	5:00 PM	5 hours, 15 minutes	Jun 14, 2017 at 10:15 PM
Tuesday	Jun 20, 2017	5:00 PM	5 hours, 15 minutes	Jun 20, 2017 at 10:15 PM
Wednesday	Jun 21, 2017	5:00 PM	5 hours, 15 minutes	Jun 21, 2017 at 10:15 PM
Tuesday	Jun 27, 2017	5:00 PM	5 hours, 15 minutes	Jun 27, 2017 at 10:15 PM
Wednesday	Jun 28, 2017	5:00 PM	5 hours, 15 minutes	Jun 28, 2017 at 10:15 PM
Tuesday	Jul 4, 2017	5:00 PM	5 hours, 15 minutes	Jul 4, 2017 at 10:15 PM
Wednesday	Jul 5, 2017	5:00 PM	5 hours, 15 minutes	Jul 5, 2017 at 10:15 PM
Tuesday	Jul 11, 2017	5:00 PM	5 hours, 15 minutes	Jul 11, 2017 at 10:15 PM
Wednesday	Jul 12, 2017	5:00 PM	5 hours, 15 minutes	Jul 12, 2017 at 10:15 PM
Tuesday	Jul 18, 2017	5:00 PM	5 hours, 15 minutes	Jul 18, 2017 at 10:15 PM
Wednesday	Jul 19, 2017	5:00 PM	5 hours, 15 minutes	Jul 19, 2017 at 10:15 PM
Tuesday	Jul 25, 2017	5:00 PM	5 hours, 15 minutes	Jul 25, 2017 at 10:15 PM
Wednesday	Jul 26, 2017	5:00 PM	5 hours, 15 minutes	Jul 26, 2017 at 10:15 PM
Tuesday	Aug 1, 2017	5:00 PM	5 hours, 15 minutes	Aug 1, 2017 at 10:15 PM
Wednesday	Aug 2, 2017	5:00 PM	5 hours, 15 minutes	Aug 2, 2017 at 10:15 PM
Tuesday	Aug 8, 2017	5:00 PM	5 hours, 15 minutes	Aug 8, 2017 at 10:15 PM
Wednesday	Aug 9, 2017	5:00 PM	5 hours, 15 minutes	Aug 9, 2017 at 10:15 PM
Tuesday	Aug 15, 2017	5:00 PM	5 hours, 15 minutes	Aug 15, 2017 at 10:15 PM
Wednesday	Aug 16, 2017	5:00 PM	5 hours, 15 minutes	Aug 16, 2017 at 10:15 PM
Tuesday	Aug 22, 2017	5:00 PM	5 hours, 15 minutes	Aug 22, 2017 at 10:15 PM
Wednesday	Aug 23, 2017	5:00 PM	5 hours, 15 minutes	Aug 23, 2017 at 10:15 PM
Tuesday	Aug 29, 2017	5:00 PM	5 hours, 15 minutes	Aug 29, 2017 at 10:15 PM
Wednesday	Aug 30, 2017	5:00 PM	5 hours, 15 minutes	Aug 30, 2017 at 10:15 PM
Tuesday	Sep 5, 2017	5:00 PM	5 hours, 15 minutes	Sep 5, 2017 at 10:15 PM
Wednesday	Sep 6, 2017	5:00 PM	5 hours, 15 minutes	Sep 6, 2017 at 10:15 PM
Tuesday	Sep 12, 2017	5:00 PM	5 hours, 15 minutes	Sep 12, 2017 at 10:15 PM
Wednesday	Sep 13, 2017	5:00 PM	5 hours, 15 minutes	Sep 13, 2017 at 10:15 PM
Tuesday	Sep 19, 2017	5:00 PM	5 hours, 15 minutes	Sep 19, 2017 at 10:15 PM
Wednesday	Sep 20, 2017	5:00 PM	5 hours, 15 minutes	Sep 20, 2017 at 10:15 PM



**EXHIBIT B**

Tuesday	Sep 26, 2017	5:00 PM	5 hours, 15 minutes	Sep 26, 2017 at 10:15 PM
Wednesday	Sep 27, 2017	5:00 PM	5 hours, 15 minutes	Sep 27, 2017 at 10:15 PM
Tuesday	Oct 3, 2017	5:00 PM	5 hours, 15 minutes	Oct 3, 2017 at 10:15 PM
Wednesday	Oct 4, 2017	5:00 PM	5 hours, 15 minutes	Oct 4, 2017 at 10:15 PM
Tuesday	Oct 10, 2017	5:00 PM	5 hours, 15 minutes	Oct 10, 2017 at 10:15 PM
Wednesday	Oct 11, 2017	5:00 PM	5 hours, 15 minutes	Oct 11, 2017 at 10:15 PM
Tuesday	Oct 17, 2017	5:00 PM	5 hours, 15 minutes	Oct 17, 2017 at 10:15 PM
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Wednesday	Oct 25, 2017	5:00 PM	5 hours, 15 minutes	Oct 25, 2017 at 10:15 PM
Tuesday	Oct 31, 2017	5:00 PM	5 hours, 15 minutes	Oct 31, 2017 at 10:15 PM
Wednesday	Nov 1, 2017	5:00 PM	5 hours, 15 minutes	Nov 1, 2017 at 10:15 PM
Tuesday	Nov 7, 2017	5:00 PM	5 hours, 15 minutes	Nov 7, 2017 at 10:15 PM
Wednesday	Nov 8, 2017	5:00 PM	5 hours, 15 minutes	Nov 8, 2017 at 10:15 PM
Tuesday	Nov 14, 2017	5:00 PM	5 hours, 15 minutes	Nov 14, 2017 at 10:15 PM
Wednesday	Nov 15, 2017	5:00 PM	5 hours, 15 minutes	Nov 15, 2017 at 10:15 PM
Tuesday	Nov 21, 2017	5:00 PM	5 hours, 15 minutes	Nov 21, 2017 at 10:15 PM
Wednesday	Nov 22, 2017	5:00 PM	5 hours, 15 minutes	Nov 22, 2017 at 10:15 PM
Tuesday	Nov 28, 2017	5:00 PM	5 hours, 15 minutes	Nov 28, 2017 at 10:15 PM
Wednesday	Nov 29, 2017	5:00 PM	5 hours, 15 minutes	Nov 29, 2017 at 10:15 PM
Tuesday	Dec 5, 2017	5:00 PM	5 hours, 15 minutes	Dec 5, 2017 at 10:15 PM
Wednesday	Dec 6, 2017	5:00 PM	5 hours, 15 minutes	Dec 6, 2017 at 10:15 PM
Tuesday	Dec 12, 2017	5:00 PM	5 hours, 15 minutes	Dec 12, 2017 at 10:15 PM
Wednesday	Dec 13, 2017	5:00 PM	5 hours, 15 minutes	Dec 13, 2017 at 10:15 PM
Tuesday	Dec 19, 2017	5:00 PM	5 hours, 15 minutes	Dec 19, 2017 at 10:15 PM
Wednesday	Dec 20, 2017	5:00 PM	5 hours, 15 minutes	Dec 20, 2017 at 10:15 PM
<b>Summary</b>				<b>Notes</b>
Total Number of Dates: 100				--
Total Time: 525 hours				

**RESERVATIONS**

Event		Resource	Center	Notes
NDNU Classes 2016 (MOU) Type: Class/Instruction Attend/Qty: 14		TTS RM 104	Tracy Transit Station (TTS) 50 E. Sixth Street Tracy, CA 95376 (209) 831-6201	--
Days Requested	Event	Duration	Event	
Day	Date	Begins	Ends	
Tuesday	Jan 10, 2017	5:00 PM	5 hours, 15 minutes	Jan 10, 2017 at 10:15 PM
Wednesday	Jan 11, 2017	5:00 PM	5 hours, 15 minutes	Jan 11, 2017 at 10:15 PM
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Wednesday	Feb 15, 2017	5:00 PM	5 hours, 15 minutes	Feb 15, 2017 at 10:15 PM

## EXHIBIT B

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Wednesday	Feb 22, 2017	5:00 PM	5 hours, 15 minutes	Feb 22, 2017 at 10:15 PM
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Wednesday	Mar 1, 2017	5:00 PM	5 hours, 15 minutes	Mar 1, 2017 at 10:15 PM
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Tuesday	Mar 14, 2017	5:00 PM	5 hours, 15 minutes	Mar 14, 2017 at 10:15 PM
Wednesday	Mar 15, 2017	5:00 PM	5 hours, 15 minutes	Mar 15, 2017 at 10:15 PM
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Tuesday	Mar 28, 2017	5:00 PM	5 hours, 15 minutes	Mar 28, 2017 at 10:15 PM
Wednesday	Mar 29, 2017	5:00 PM	5 hours, 15 minutes	Mar 29, 2017 at 10:15 PM
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Wednesday	May 24, 2017	5:00 PM	5 hours, 15 minutes	May 24, 2017 at 10:15 PM
Tuesday	May 30, 2017	5:00 PM	5 hours, 15 minutes	May 30, 2017 at 10:15 PM
Wednesday	May 31, 2017	5:00 PM	5 hours, 15 minutes	May 31, 2017 at 10:15 PM
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EXHIBIT B

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<b>Summary</b>				<b>Notes</b>
Total Number of Dates: 100				--
Total Time: 525 hours				

▼ RESERVATIONS

Event		Resource	Center	Notes
NDNU Classes 2016 (MOU) Type: Class/Instruction		TTS RM 105	Tracy Transit Station (TTS) 50 E. Sixth Street Tracy, CA 95376 (209) 831-6201	--
Days Requested	Date	Event Begins	Duration	Event Ends
Day				

EXHIBIT B

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<b>Summary</b>				<b>Notes</b>	
Total Number of Dates: 100				--	
Total Time: 525 hours					

**CHARGES**

Description	Event / Resource	Unit Fee	Units	Tax	Charge
Permit Application Fee	NDNU Classes 2016 (MOU) #9000958 TTS RM 103	\$35.00	1.00	--	\$35.00
Rental Fee	NDNU Classes 2016 (MOU) #9000958 TTS RM 103	\$19.00	525.00	--	\$9,975.00
Rental Fee	NDNU Classes 2016 (MOU) #9000958 TTS RM 104	\$19.00	525.00	--	\$9,975.00
Rental Fee	NDNU Classes 2016 (MOU) #9000958 TTS RM 105	\$30.00	525.00	--	\$15,750.00

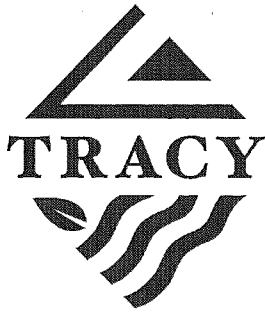
**Payment Schedule for Original Balance of \$35,735.00**

Due Date	Amount Due	Amount Paid	Withdrawal Adjustment	Balance
Jan 3, 2017	\$35,735.00	\$0	\$0	\$35,735.00
			<b>Current Balance</b>	<b>\$35,735.00</b>

EXHIBIT B

In case of major problems in your facility on the day of your activity, please call (209) 640-2733. For issues at the Sports Complex call (209) 814-0706. Weather Conditions Hotline: (209) 831-6350.





Think Inside the Triangle™

## City of Tracy Banner Guidelines

Tracy Municipal Code Section 10.08.4465  
Approved by DES Director on 2-9-2011

Initials: DL

These Banner Guidelines are adopted to implement Tracy Municipal Code Section 10.08.4465, Banner signs on public property. Definitions are as set forth in the Municipal Code.

### A. General requirements.

1. Applicability; City priority. These banner guidelines apply only to banners for co-sponsored community events, and not to City-sponsored banners.

The City has priority for City-sponsored banners placed in the public right of way, whether street light banners or over-the-street banners.

2. Scheduling and reservations; Fees. Scheduling and reservations are accomplished through the Special Event permit process (Tracy Municipal Code Chapter 4.40) through the Parks and Community Services Department reservation system. The Director of that department is authorized to approve the placement of banners and their conformance to these guidelines.

The applicant shall pay the special event application fee of \$35.00 at the time of application.

A separate installation fee is also due, to cover the City's installation and removal costs, in the amount set forth in Section B below.

All reservations are scheduled on a first-come, first-serve basis. A reservation may be made up to 12 months before the date of the event.

3. Timing; duration. No co-sponsored community event banners are allowed three weeks before a local, state, or federal election.

A banner may remain in place for a maximum of three weeks in any one year period.

EXHIBIT C

4. Installation and removal. Banners may only be installed and removed by the City Public Works Department staff. The City will not adjust banners which have shifted from winds unless they pose a safety hazard. The banner shall be delivered to the Public Works Department one week before the date of installation, and must be retrieved from the City within two weeks after the event.

**B. Fees.** The applicant shall pay the installation and removal fees at the time of submitting a special event application. The fees are to reimburse the City for staff time, for traffic control during installation and removal, and for the use of City vehicles required in the installation. There are no fees for City-sponsored banners. The fees are:

1. For each over-the-street banner location: \$200 per banner.
2. For each street light banner zone (see Section D below):
  - Zone 1: \$4,000
  - Zone 2: \$1,000
  - Zone 3: \$1,000
3. The fees reflect the cost of both installation and removal. If removal of a set of banners happens to occur simultaneously with installation of other non-City banners in the same location, then each of the applicants may apply to the Parks and Community Services Department for a 25% refund of the fees.

**C. Over-the-street banners.**

1. Locations. An over-the-street banner may be placed in one, two or three of the following locations (set forth in Section 10.08.4465):

- a. In the center median of Eleventh Street between Lammers Road and Crossroads Drive
- b. On Central Avenue between Eleventh Street and Tenth Street
- c. At Sixth Street and Central Avenue, upon completion of the Downtown Plaza.

Only one over-the-street banner is allowed at each of the above locations. The banner may only be attached to City designated and installed pole structures.

2. Banner specifications.

- a. The banner must be associated with a community-wide public event co-sponsored by the City.
- b. An over-the street banner must:
  - (i) be material of 13-ounce woven vinyl fabric with wind relief holes. The text and graphics must be permanently adhered to the surface of the fabric, except when interchangeable panels are used, which firmly attach with Velcro.

(ii) be sized according to dimension requirements to be established by the Public Works Director, and attached to these guidelines, once the City has installed the appropriate pole structures.

(iii) contain a sewn-in sleeve across both the top and bottom edges of the banner for the ropes to run through. The applicant must provide a minimum of 80 feet of ½-inch diameter rope for each sleeve.

**D. Street light banners.**

1. Locations. A street light banner may be placed in one, two or three of the zones set forth in Section 10.08.4465:

- a. Zone 1: Eleventh Street between Lammers Road and Corral Hollow Road;
- b. Zone 2: Tenth Street between A and East Streets; and
- c. Zone 3: Central Avenue between Eleventh and Sixth Streets.

These three zones do not include the four street corners at Tenth Street and Central Avenue, which are reserved for City banners.

An applicant must apply for an entire zone (or more), and not parts of zones. The banners may only be installed on light poles with City installed brackets.

2. Banner specifications.

a. The banner must be associated with a community-wide public event co-sponsored by the City.

b. Zone 1. A street light banner in Zone 1 must meet the following specifications:

- 48" x 24" double-sided 15oz. blockout outdoor banner vinyl with pole pockets top and bottom
- 1" 600# webbing sewn into hem
- double stitched edges and pockets with single-side grommets every 2-3 feet
- outdoor life 3 to 4 years

c. Zones 2 and 3. A street light banner in Zone 2 or 3 must meet the following specifications:

- 35" x 18" double sided 15oz. blockout outdoor banner vinyl with pole pockets top and bottom
- 1" 600# webbing sewn into hem
- double stitched edges and pockets with single-side grommets every 2-3 feet
- outdoor life 3 to 4 years

CITY OF TRACY

# Facility Reservation Handbook

*Effective July 1, 2016*



Think Inside the Triangle™

**City of Tracy Parks & Recreation Department**

**Community Facilities Division**

333 Civic Center Plaza, Tracy, CA 95376

Phone: (209) 831-6201

Fax: (209) 831-6218

Email: [facilityreservations@ci.tracy.ca.us](mailto:facilityreservations@ci.tracy.ca.us)

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**INTRODUCTION**

Thank you for considering the City of Tracy for your next business, family, or personal gathering or event. The City's Parks & Recreation Department, through its Community Facilities Division, administers the allocation and reservation of City-owned and operated indoor facilities and outdoor, park and picnic areas.

The City of Tracy recognizes the importance of providing safe, well-maintained and aesthetically appealing facilities to all users. The policy provided herein reflects this philosophy, as well as the City's desire to provide an outstanding quality of life through park amenities and facilities.

Please carefully review this handbook prior to submitting your request for facility usage, and sign the Acknowledgement Form on the last page of the Handbook to signify that you (and/or the representing organization) have read and understood the information and policy herein.

Contact information for the Community Facilities Division is as follows:

Tracy City Hall  
333 Civic Center Plaza  
Tracy, CA 95376

City Hall Business Hours:

Monday – Thursday 8:00 am – 6:00 pm  
Friday\* 8:00 am – 5:00 pm

*\*City offices are closed every other Friday. Please call ahead for office availability.*

Phone (209) 831-6201  
Fax (209) 831-6218  
Email [facilityreservations@ci.tracy.ca.us](mailto:facilityreservations@ci.tracy.ca.us)

City website: [www.thinkinsidethetriangle.com](http://www.thinkinsidethetriangle.com)

Online facility reservations (picnic areas only): [www.TracyArtsandRec.com](http://www.TracyArtsandRec.com)

**GENERAL FACILITY RESERVATION PROCEDURES****Reservation Requests**

Reservation requests must be submitted no later than 30 calendar days prior to the event date. Applications for reservations that do not require further review (see **Special Permits & Requirements**, p. 13) may be accepted within the 30-day window. An **Approved** Facility Use Permit is required for all indoor facility reservations, or for exclusive use of a reservable outdoor facility. Additional activities requiring a Facility Use Permit are detailed in TMC 4.16.050.

To hold an available date for a facility reservation or special event on public property, the following must be submitted:

- APPLICATION:** Completed Facility Use Application. Application must be submitted by a person twenty-one (21) years of age or older (TMC 4.16.060(b)).
- POLICIES ACKNOWLEDGMENT:** Signed Facility Reservation Handbook Acknowledgment Form
- APPLICATION FEE:** *Non-refundable* Permit Application Fee (\$35) or Special Event Application Fee (\$77 non-profit/\$153 private or commercial)
- SECURITY/ALCOHOL DEPOSITS:** Payment of security and alcohol deposits, if applicable

The following requirements are due **no later than 30 calendar days prior** to the reservation date:

- USE FEES:** Payment of use fees, usually a per-hour rental fee
- INSURANCE:** Provide Certificate outlined in insurance requirements
- ADDITIONAL REQUIREMENTS:** Submit additional requirements, or supplemental permits, required as conditions of your permit (e.g., copies of City of Tracy business license, ABC license, County Health Permit, security guard contract, vendor contract for inflatable, etc.).

When all requirements have been met, the City will approve and issue a:

- FACILITY USE PERMIT:** An **Approved** Facility Use Permit status indicates that all reservation requirements and full payment have been submitted and approved.

If the above obligations are not met, the City reserves the right to consider the event cancelled and subject to the stated **Cancellation & Refund Policy**. The City also reserves the right to cancel the contract and release the facility. **Submittal of an application does not guarantee that the reservation request has been authorized.**

**Hours of Use**

- Reservations may be requested during the following hours. Exceptions may be approved by the Director, or his/her designee, as a condition of the Permit.
  - **Indoor facility hours:** 8:00 am-1:00 am (excluding Transit Station Lobby, Civic Center Lobby)
  - **Outdoor park/facility hours:** 8:00 am to Dusk
- If requesting to set up the night prior to the event in an indoor facility, the reservation will be booked and charged up until 10:00 pm that evening (or the reservation end time, whichever is later), and then starting at 8:00 am the morning of the reservation.
- Reservations on City Holidays are contingent upon staff availability and shall be charged Weekend Rates.

**Facility Tours**

Facility tours are available during business hours, respecting the privacy of other facility users and renters using the facility, and are based upon staff availability. Contact the Community Facilities Division at (209) 831-6201 or [facilityreservations@ci.tracy.ca.us](mailto:facilityreservations@ci.tracy.ca.us) to schedule a 15-minute appointment.

## FACILITY BOOKING POLICIES

### Rental Classifications

The City has established the following rental classifications:

- **City of Tracy-Sponsored Programs:** Activities organized by the City of Tracy
- **Non-Profit:** Groups that have obtained 501(c)3 status as a charitable organization.
- **Government-Sponsored Events:** A governmental function, which benefits the city of Tracy residents
- **Private:** Individuals or groups holding private events not open to the public.
- **Commercial:** Companies, groups, or individuals holding events (social, business, educational, or profit making) for their own private use.

### Allocations & Scheduling

- Requests for use of facilities are addressed on a first-come, first-served and as-available basis according to the following, maximum booking windows:
  - **City-Sponsored Programs:** 18 months prior to event
  - **Non-Profit Organizations & Government Agencies:** 12 months prior to event
  - **Private Groups and Individuals & Commercial Uses:** 10 months prior to event
- Only the designated organization representative(s) listed on the City reservation account or in the Memorandum of Understanding (MOU), or other legal agreement with the City, will be permitted to book facilities for their affiliated organization. Other individuals must receive permission in writing from the organization representative to reserve facilities for the organization, or under the organization's name (see **Authorized Agent**, p. 10).
- The City reserves the right to cancel any event as deemed necessary for the safety of all participants and in the best interest of the facility.
- The City of Tracy will not grant use of its facilities to any individual or group, political or otherwise, that advocates the overthrow of the government of the United States of America or the State of California by force, violence or any other unlawful means; or to any individual or group, political or otherwise, that discriminates because of race, religious creed, color, national origin, ancestry or sex.

### Consecutive Booking Policy

- Bookings of large rooms, 1,500 square feet or greater (Tracy Community Center, Civic Center Lobby, Council Chambers, Tracy Transit Station Lobby) and large parks (Dr. Powers, Lincoln, and Veterans Parks) may not to exceed nine (9) bookings within a three (3) month period. Renters are required to complete their first set of bookings prior to renting for an additional period.
- Bookings of small meeting rooms, less than 1,500 square feet, are allowed for as many dates as needed, within a calendar year, for either groups or individuals. Renters may book on a monthly or weekly basis.

### Non-Profit Status

An organization's non-profit status must be on file and current in order to qualify for a non-profit priority classification and rental rate. Proof of non-profit status must be submitted no later than 30 days prior to the reservation date. An organization must demonstrate its non-profit status by:

- Being registered as a non-profit business or corporation with the State of California **or** an acknowledged IRS 501(c) organization, **and**
- Maintaining good standing (business entity status "Active") with the State of California Secretary of State's office (<http://kepler.sos.ca.gov>).



## FACILITY USE PERMIT REQUIREMENTS

### Facility Use Permit Conditions

- Reservations may not be transferred, assigned, or sublet.
- Applicant is subject to all conditions listed on the Facility Use Permit.
- Requests for activities beyond the scope of a traditional facility reservation must be included as part of the Facility Use Application, and approved activities must be listed as conditions of the Facility Use Permit (see **Special Permits & Requirements**, p. 13).
- Facility users must have a copy of their Facility Use Permit on hand during each reservation and must be prepared to present it to City staff on demand. Facility users without permits may be asked to vacate the facility.
- The City reserves the right, on a case-by-case basis, to add conditions or modifications to the Facility Use Permit.

### Permitted Hours

- **Permitted reservation hours must include set-up and clean-up time. Set-up and clean-up are the renter's responsibility.** Users may not access a facility prior to their permitted reservation time, and the facility must be cleaned and vacated by the end time specified in the Facility Use Permit.
- The applicant is responsible to meet all facility clean-up requirements.
- The applicant must be present during the entire reservation. If unavailable, the applicant may authorize another individual, in writing, to act as their representative.
- Fees will not be refunded if actual use time is less than the rental period agreed upon in the Facility Use Permit.
- Supplies and equipment may not be stored in City facilities overnight without prior arrangement and approval, conditions of which shall be listed on the Facility Use Permit. Any items left in or on the property will be held for two (2) business days, after which time, said items will be disposed of at the discretion of City staff. Additional rental, staff, and disposal fees may apply and may be deducted from the security deposit.

### Amending the Permit

- Changes to the reservation must be made in writing, a minimum of 3 business days in advance, but in no case later than 12:00 noon on the Wednesday prior to the reservation.
- Changes to a rental date may be considered as a cancellation and re-booking if amendments are made within the ranges of when cancellation fees would be assessed. (See **Cancellation & Refund Policy**, p. 9.)

### Insurance Requirements

Insurance must provide protection from claims arising from injuries or damage to other people or property. The following items are required on the insurance certificate, and the endorsement page must be included:

- The certificate of insurance must be submitted no later than 30 calendar days prior to the reservation date.
- Insured's name is the same as listed on the Facility Use Application.
- Minimum of \$1,000,000 General Liability Insurance, and \$2,000,000 Aggregate.
- Naming of the City of Tracy as "Additional Insured."
- Date, time and location of event.
- If serving and/or selling alcohol, a liquor liability endorsement to the user's general liability is required.
- If selling items of any kind, a product liability endorsement to the user's general liability is required.

*continued, next page*

**City of Tracy Facility Reservation Handbook (July 1, 2016)**

- Certificate Holder: City of Tracy/Community Facilities Division  
333 Civic Center Plaza  
Tracy, CA 95376

**Grounds for Permit Denial or Revocation**

- The City reserves the right to deny an allocation request in order to accommodate a City-sponsored/co-sponsored program or special event.
- The City of Tracy reserves the right to refuse to grant the use of its facilities to any person or group if such use is deemed to be contrary to the best interest of the City and/or its residents.
- A request may be denied, or a permit cancelled, on the grounds that the applicant has previously had a Facility Use Permit revoked in the City of Tracy or another jurisdiction for violation of permit conditions, or failure to fulfill any use requirement by the established deadline, including, but not limited to, the payment of facility fees or extra fees.
- Permits may be cancelled for failure to adhere to policies outlined in the Facility Reservation Handbook, as presented herein, or as contained in the Tracy Municipal Code. **Failure to uphold conditions of an approved Permit may result in immediate revocation of the Permit, with no refund of use fees.**

**Appealing Permit Denial or Revocation**

Applicants shall have the right to appeal to the Parks and Community Services Commission a permit denial, permit condition, the Director's refusal to waive the filing deadline, or the Director's decision pertaining to fees or insurance coverage. Notice of appeal shall be filed with the Director stating the grounds for appeal.

The appeal must be filed no later than 12:00 noon on Thursday, a week preceding the Parks and Community Services Commission meeting, to be placed on the next regular meeting's agenda. Regular meetings of the Parks and Community Services Commission are scheduled on the first Thursday of each month, at 7:00 p.m. inside of City Hall Council Chambers. The decision of the Parks and Community Services Commission may be appealed to the City Council which has final authority.

**City of Tracy Facility Reservation Handbook (July 1, 2016)****FACILITY DEPOSITS & USE FEES (Adopted July 1, 2016)****Security and Alcohol Deposits**

A Security Deposit is required to reserve any indoor City facility and is due at time of booking. An additional Alcohol Deposit is required to reserve an indoor or outdoor City facility when alcohol will be served/ sold.

All deposits are fully refundable three to four weeks after the event if the following criteria are met:

- There is no damage to the facility.
- There is no additional City staff time required to clean or repair the facility as a result of the event.
- The cleaning of the facility is completed per the checklist.
- The hours of use do not exceed those paid for and agreed upon in the rental contract.
- Only the rooms designated on the rental contract were used.
- Police or City staff intervention was not required as a result of the event.

Facility security deposits may be waived by the department for membership, public or business meetings conducted by local non-profit organizations or other governmental agencies, when no other activities are being conducted in association with said meeting.

**Indoor Facility Fees**

See individual facility information sheets for user fees, amenities, and requirements. Reservations on City Holidays are contingent upon staff availability and shall be charged Weekend Rates. Weekend rates begin on Fridays at 5:00 pm. If requesting to set up the night prior to the event, the reservation will be charged up until 10:00 pm that evening (or the reservation end time, whichever is later), and starting at 8:00 am the morning of the reservation.

	<b>Security Deposit</b>	<b>Additional Alcohol Deposit</b>
<b>Entire Community Center/ Main Rooms</b>	\$456	\$456
<b>Conference/Meeting Rooms</b>	\$228	\$456

Extra Dumpster Disposal Fee (required for crab feeds)	\$100 / rental / dumpster
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**Park & Picnic Area Fees**

For information on reserving sports fields, request a copy of the **Sports Field Reservation Handbook**. For information on reserving sports courts, including tennis courts, see the Sports Courts information sheet.

A security deposit is required for any event with alcohol, approved inflatable(s), and non-traditional activities. Fees related to supplemental permit applications, such as tent and generator permits, may also apply.

<b>Estimated Attendance</b>	<b>Security Deposit</b>
Fewer than 50 + traditional picnic activities	N/A
50-100; or less than 50 + non-traditional picnic activities	\$108
101 to 200 attendees	\$216
201 to 300 attendees	\$324
301 or more attendees	\$540

Inflatable Structures Administrative Fee	\$49 / day / structure
Mobile Stage Rental Fee (non-profits only)	\$338 / day

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Group Classification	Hourly Rate (minimum booking hours apply)		
	1-50 People	51-100 People	101+ People
Non-Profit (Max \$108/day)	\$14	\$21	\$27
Private	\$25	\$36	\$48
Commercial	\$36	\$52	\$68

**Facility Use Fee Classifications**

Non-profit/government, private, and commercial rates are available. "Commercial" rates apply for any activity conducted in or on a City facility where monies are collected for the specific purpose to financially benefit an individual, business, or organization; non-profit corporations are excluded.

**Payments**

- Non-refundable Permit Application Fee, refundable Security Deposit, and Alcohol Deposit (if applicable) are due upon submittal of Facility Rental Application.
- The balance of all use fees is due no later than thirty (30) calendar days prior to reservation.
- Payments accepted include: American Express, Discover, MasterCard, Visa, check, cash.
- Personal checks will **not** be accepted on behalf of a non-profit, for-profit, or commercial organizations. Checks must be issued by the associated organization.
- Payment plans are available by request, as approved by the Director or his/her designee.
- **If payments are not made on time, facilities may be released, and the reservation may be subject to the Cancellation and Refund Policy.**

**Cancellation & Refund Policy**

Cancellation fees are determined by the date the City receives written notification by the responsible party listed on the Facility Rental Permit of their intent to cancel the event. Upon receipt of the written cancellation request, the refund, if applicable, will be processed as follows:

	NUMBER OF DAYS PRIOR TO EVENT				
	90 Days or More	89-61 Days	60-31 Days	30-15 Days	14 Days or Less
<b>Entire Community Center/ Main Rooms</b>	No penalty	50% of fees held	75% of fees held	100% of fees held	100% of fees held
<b>Conference/Meeting Rooms</b>	No penalty	No penalty	No penalty	50% of fees held	50% of fees held
<b>Park &amp; Picnic Areas</b>	No penalty	No penalty	No penalty	50% of fees held	50% of fees held

Cancellation fees and designated percentages are calculated from the rental fee listed in the Facility Use Permit. Any fees assessed on cancelled events will be deducted from the security deposit, if fees have not been paid. Deposits and rental fees will be refunded in the same form of payment (cash payments are refunded by check), within four (4) weeks of the final permit date.

**Exception:** If the event is cancelled by the permit holder or the City due to inclement or extreme weather conditions, a full credit will be issued to the permit holder's account to apply to another park/picnic area use within 12 months of the permitted date.

**GENERAL FACILITY USE POLICIES & PROCEDURES****Audio/Visual Equipment**

The following audio/visual amenities are included with the facility reservation. The permit holder is responsible for all A/V system set-up during the reservation and must provide additional equipment, including but not limited to: laptop, speakers, and connector cables.

**Tracy Civic Center (City Hall)**

- Council Chambers: Projector and screen
- Room 203: Projector and screen

**Tracy Community Center**

- Main Hall: Lectern with microphone, projector screen

**Tracy Transit Station**

- Room 103: Portable projector (subject to availability only) and screen
- Room 104: Portable projector (subject to availability only) and screen
- Room 105: Projector and screen

**Authorized Agent**

An applicant representing an organization renting a City facility is required to provide a letter from the agency or organization, on official letterhead, specifically authorizing the individual to conduct business with the City of Tracy to reserve a facility on the organization's behalf, and signed by the individual listed on the business license, a titled officer, or designated signatory.

**Cleaning Requirements**

See **Cleaning Checklist** at end of this Handbook.

**Damages**

The applicant agrees to reimburse the City for all costs incurred in repairing damages including, but not limited to, the facility, furnishings, fixtures, grounds, and/or additional cleaning required outside of the normal scope for said facility maintenance, including sidewalk steam cleaning and street sweeping if needed, which occurred in connection with the permitted activity and caused by the renter, sponsoring organizations and/or attendees. Reimbursement for such expenses that are in excess of the security deposit will be invoiced to the renter. Said costs must be paid to the City within thirty (30) days of receipt of the invoice. Failure to meet this deadline may be cause for legal action. The renting party will be responsible for any costs incurred by the City for such legal action and/or any costs to collect on any judgment against that party.

**Decorations**

- Tacks, nails, screws, duct tape and scotch tape are not permitted on walls, tables, trees, park poles and amenities, standards, etc. Painter's tape and removable, self-stick hooks are permissible.
- No decorations are allowed which would damage or discolor the facility or grounds.
- Any special decorations, activities, or amenities must have the written approval of the Parks & Recreation Department.
- All decorations must be non-combustible or non-flammable material, or shall be treated or maintained in a flame-retardant condition.
- Open flames or candles (with the exception of small birthday candles) are not allowed inside any facility.

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- All streamers, balloons, signage and other decorations must be removed from the facility and properly disposed of immediately after the event. Fees may be withheld from the deposit if City staff time is required to remove or dispose of any remaining decorations.
- Decorations may not be hung from the room dividers at the Tracy Community Center.

**Event Promotion**

City staff will not distribute or promote information on rentals and uses held in City facilities. Therefore, ensure fliers, advertisements and other promotional materials list the renter's contact phone number. Applicant must provide copies of all event fliers and/or advertisements, as well as website links for events held at City facilities.

**Floor Layout Plan**

Applicants with indoor facility reservations with 50 attendees or greater must submit a floor layout plan for approval, including decorations plan and extra amenities, to ensure all safety codes and regulations are adhered to. The City reserves the right to place additional requirements on the Facility Use Permit.

**Food Preparation and Warming**

Where applicable, the kitchens are to be used for the warming of food and minor preparation only. Per State and County Health Code regulations, full meal preparation is not allowed. Any food/beverage items left on site will be disposed of immediately following the rental period as indicated on the contract. Fees may be withheld from the deposit if City staff time is required to dispose of any leftover food or trash.

The use of chafing dishes for the warming of food will be approved provided the following conditions are met:

- Paper and plastic table coverings shall not be used.
- There are no combustible decorations within 10 feet of the food warming table, including wall hung curtains, drapes or decorations.
- There are no combustible napkins, plates, cups (paper, plastic or cloth) placed on the serving table or within 10 feet of the chaffing dishes.
- All open flame canisters for the chafing dishes must be firmly affixed to the chaffing dish and supported above the serving table surface.
- No open flame for cooking is to take place within the occupancy.
- NOTE: Additional conditions apply and shall be imposed for food preparation and warming in proximity to tents and other membrane structures. (See **Tents / Booths / Canopies**, p. 15.)

**Good Neighbor Policy**

Please arrive quietly and depart in the same manner to avoid disrupting the neighborhood. Balls and /or any other equipment thrown, batted, kicked, or otherwise propelled that land on private property are not to be retrieved without permission of property owner. Do not climb walls or enter gates to gain access onto private property. For assistance, contact the Facility Attendant.

**Inappropriate Behavior**

Any type of indecent exposure including public urination or any other inappropriate exposure will not be tolerated. The Tracy Police Department will be contacted immediately should individuals become unruly and further enforcement is needed.

**Live Animals**

Live animals are not allowed inside City buildings with the exception of service animals and Police canines. Owners are responsible for cleaning up after their service animals. Permit holders must indicate a designated waste area for service animals attending their event.

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Animals must be leashed at all times at City parks and sports fields. Animals may not access sports fields while games are in play. Farm animals of any type are not allowed on/in public facilities to include public buildings, grounds and parking lots. This includes, but is not limited to, horses and ponies.

**Parking & Overnight Policy**

Parking is restricted to designated areas only. Parking large vehicles such as RVs, moving trucks and tractor-trailer trucks on City property is prohibited. Vehicles are not permitted to be parked on the grass or sidewalks. Damage done to City property or a facility as a result of a vehicle will be charged against the Security Deposit.

Unless the Permit expressly allows it, no overnight parking of vehicles in City parking lots is allowed at any time (this includes RVs and other camper vehicles). Individuals or organizations cannot charge or collect revenue for the use of public parking.

**Police Enforcement**

If a renter refuses to comply with City Facility Reservation Policies or follow the request of a City staff member, the Tracy Police Department Dispatch will be notified for assistance. For your own convenience, in the case of an emergency, the Tracy Police Department Dispatch can be reached at (209) 831-4552.

**Smoking**

Smoking is not permitted inside City facilities. State Law GC 7597(a) states: "No public employee or member of the public shall smoke any tobacco product inside a public building, or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building, or in a passenger vehicle, as defined by Section 465 of the Vehicle Code, owned by the state."

**Temperature Control**

Temperature at the Tracy Community Center and Civic Center (City Hall) are centrally controlled and can only be adjusted 2 degrees in either direction from the thermostat at the location. Thermostat control is not available at the Transit Station. Contact the on-duty Facility Attendant for assistance or concerns.

## SPECIAL PERMITS & REQUIREMENTS

The following items may require further review and approval from multiple City departments, and therefore require an advanced written request to process. Upon approval, City staff will add approved item(s) as a condition(s) of the Facility Use Permit.

### **Alcohol Permit/ABC License**

Possession or consumption of alcohol is prohibited in all City parks and facilities without a Facility Use Permit and Alcohol Deposit on file. Tracy Municipal Code 4.16.050(f) provides guidelines regarding the possession of or consumption of any alcoholic beverage in designated City parks and facilities. The following criteria have been established by the Parks and Community Services Commission by which permits will be granted or denied:

- Not allowed in locations that are adjacent to schools (TMC 4.16.180(s))
- Restricted to sites with restroom facilities on site
- Not to exceed six (6) hours total facility usage
- Glass beverage containers are not allowed within the boundaries of any park (TMC 4.16.180(r))
- Restricted to beer and wine; distilled spirits are not permitted at any time
- Must have a park permit and alcohol deposit on file

Alcohol served and/or sold at a function held in a City facility requires an Alcohol Deposit and a Host Liquor Liability endorsement to the user's General Liability insurance.

Alcohol sold by any means (selling tickets, cost in admission price, donations, or charging a sponsor fee) also requires the user to obtain a City of Tracy Business License and an Alcoholic Beverage Control (ABC) Liquor License. Both requirements must be on file with the Community Facilities Division prior to the renter being issued an Approved Facility Use Permit with alcohol permit condition. Security guards are required as a condition of an ABC license, 1 security guard per 100 guests. (See **Security Guards**, p. 15.)

### **Amplified Sound**

A permit is required for use of amplified sound in a park. The Director, upon granting a permit for use of any amplified sound system, may impose reasonable restrictions concerning the location of the sound system, and the maximum decibel level for the sound system (TMC 4.16.150). (See **Facility Electrical Access**, p. 14.)

### **BBQ Grills / Cooking Trailers**

BBQs are designated and supplied by the City, and are located near the Picnic Areas. Use of private BBQs is not permitted. Requests to use a larger BBQ cooking trailer must be submitted in writing or on the rental application. Such requests will require a detailed Event Map, including trailer location and description of fuel source, size and type. Approved BBQ cooking trailers must be placed in an approved designated area at least 20 feet from the nearest tent or structure and supervised at all times to prevent injury to bystanders. BBQs and cooking trailers are not permitted on the premises of the Tracy Transit Station.

### **Channel 26 Filming**

Requests for Channel 26 to film an event must be noted on the facility application and are subject to staff availability and additional fees. To discuss your specific filming needs and obtain a quote for services, contact Channel 26 directly at (209) 831-6220 or [channel26@ci.tracy.ca.us](mailto:channel26@ci.tracy.ca.us).

### **Concessions & Merchandise Sales**

The sale of items in any City park is prohibited without a permit from the Community Facilities Division. Facility



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users interested in selling merchandise or food and beverage items at their event held at a City park or facility must request authorization to do so in writing, obtain a permit from the Community Facilities Division, obtain a City of Tracy Business License (TMC 4.16.140), and obtain a product liability endorsement as part of the insurance certificate. (See **Vendors**, p. 15.)

The City may deny a permit application if the sole purpose of the activity is advertising or sale of any product, goods, wares or merchandise and is designed to be held for private profit and not for First Amendment expression (TMC 4.16.090(i)).

**County Health Permit**

If you are selling or serving food to the general public, and you are not cooking in an approved kitchen, including the Tracy Community Center, you may be required to obtain a County Health Permit. A Temporary Event Health Permit Application can be obtained from the San Joaquin County Environmental Health Department website: <http://www.sjcehd.com/docs/TEMPORARY%20EVENT%20APPLICATION.pdf>

**Event Map**

If an event is expected to have more than 100 attendees and/or is intended to utilize areas of the Park, not considered to be the picnic area, an event layout map is required, which requires additional time to process. The City reserves the right to place additional requirements on the event use permit.

**Facility Electrical Access**

Any and all access to City electrical units must be requested in writing from the Community Facilities Division. The City reserves the right to impose restrictions on electrical access due to outlet load capacities. Approved access and capacity will be noted on the Facility Use Permit.

**Generators**

Applicant must specify the size, type, and intended location of each generator to be used. The City reserves the right to impose restrictions on use and placement of equipment. Some generators may require an additional permit application and fees.

**Inflatable Structures**

The Parks and Community Services Commission has established that the erection or placement on park property of portable and inflatable structures is allowed by permit and at the following, designated parks only: Dr. Powers Park, Galli Family Park, Hoyt Park, Lincoln Park, Veterans Park, and Zanussi Park. Applicant must use a vendor from the City's Approved Provider List only to reserve inflatable play equipment, and shall provide written proof of contract. Inflatable shall not remain in the park past the approved, permitted time. Applicant must sign additional **Inflatable Structures Policy**.

**Mobile Stages**

Size, type, and placement of any mobile stage or platform must be approved by the City as a condition of the permit. Rental of the City's Mobile Stage is available to non-profit organizations only, and is subject to availability.

**Recycling Program/Bins**

The City of Tracy has adopted a Special Events Recycling program to assist the city to meet mandatory recycling goals. Groups conducting large public events in city parks are requested to contact the City's Recycling Coordinator at (209) 831-600 to obtain a copy of the program and develop a recycling plan for their event. The City can also provide portable recycling bins to be used during special events and/or park rentals. The applicant agrees to reimburse the City for all costs incurred by it due to damage or replacement of equipment. It is the

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renter's responsibility to dispose of the recyclables, and any and all proceeds received from such disposal are the property of the renter.

**Security Guards**

Security guards may be required as a condition of a Facility Use Permit at the discretion of the Tracy Police Department. Events requiring an ABC license for alcohol must have one security guard per 100 attendees. Applicant must include a copy of the security guard contract with facility application packet.

**Street Closures**

Street closures are not permitted for private events on public streets. Requests for street closure for parades, fun runs, and other special events will be considered on a case-by-base basis, are contingent upon Transit schedule and needs, and may be subject to additional fees and conditions as determined by the City. There are three City-approved, downtown parade routes: Short, Standard, and Long. Processions generally do not require street closures but require a permit and may be subject to additional permit conditions.

**Tents / Booths / Canopies**

All Events with tents or canopies are required to complete an additional form. Tents are defined as having walls; canopies are defined as having no walls. Tents larger than 400 square feet, and canopies larger than 700 square feet will require a Tent Permit and inspection by Tracy Building and Fire Prevention on the day they are set up (additional permit application and fees may apply). Tents and canopies must be adequately weighted; no grass stakes permitted. Tents must be 20 feet from permanent buildings and structures, parking areas, lot lines, generators, and BBQs.

**Vehicle Access**

No vehicles may be driven on sports fields or parks without a City-issued Vehicle Access Permit, including golf cart or mule-type vehicles. Additionally, it is unlawful to ride or drive any horse or other animal or any motorized vehicle, cycle, go-cart or scooter other than on the roads or drives provided for such purpose (TMC 4.16.180(l)).

A request must be submitted in writing to the Community Facilities Division, and upon approval, specific conditions of vehicle access and applicable fees will be added to your permit. **Approved requests will be restricted to loading and unloading ONLY**, and a limited number of "Temporary Access Passes" will be issued for the event. The pass must be displayed on the dashboard of the vehicle at all times while in the park or open space and is valid only for the date, time, location and event as indicated on the pass. Violators will be cited and fined appropriately.

**Vendors**

If you would like to host a vendor(s) during your rental, submit a written request to the Community Facilities Division. Each vendor must be in possession of a business license and liability insurance. Additional conditions may apply to food vendors. **Tents/Booths/Canopies** policy applies. (See **Concessions & Merchandise Sales**, p. 13.)

The City may deny a permit application if the sole purpose of the activity is advertising or sale of any product, goods, wares or merchandise and is designed to be held for private profit and not for First Amendment expression (TMC 4.16.090(i)).

**RESERVABLE CITY FACILITIES****Indoor Facilities**

See individual facility information sheets for fees, amenities, and requirements.

Tracy Civic Center (City Hall), 333 Civic Center Plaza

- Lobby (additional conditions and restrictions apply)
- Council Chambers
- Conference Room 109
- Conference Room 203

Tracy Community Center, 950 East St.

- Entire Facility (required for weekend rentals)
- Main Hall
- Conference Rooms A and B

Tracy Sports Complex, 955 Crossroads Dr.

- Meeting Room

Tracy Transit Station, 50 E. Sixth St.

- Entire Facility
- Room 103 or Room 104
- Combo Room 103/104
- Room 105
- Lobby (hour restrictions apply)
- Outside Patio

**Outdoor, Park & Picnic Areas**

Large Parks and Outdoor Areas:

- Civic Center Outdoor Area (Park/Amphitheatre/Fountain/Patio), 333 Civic Center Plaza
- Dr. Powers Park\*, 900 W. Lowell Ave.
- Lincoln Park\*, East St. & Eaton Ave.
- Veterans Park\*, 238 Glenhaven Dr.

Other Reservable Parks:

- Bland Park, 1753 Blandford Ln.
- Cecilian Park, Cypress & Hickory
- Galli Park\*, 2341 W. Lowell Ave.
- Hoyt Park\*, 300 3<sup>rd</sup> St.
- Kenner Park, 1850 Kavanagh Rd.
- Larson Park, Central & Ferdinand
- Talley Park, 1551 Dove Ct.
- Thoming Park, 100 Cambridge Place
- Zanussi Park\*, 1500 Promenade Cir.

\* Inflatable Play Structures/Jump Houses permitted at these locations only. Additional fee, security deposit and insurance requirements apply.

**City of Tracy Facility Reservation Handbook (July 1, 2016)****CLEANING CHECKLIST – INDOOR FACILITIES\***

Check off each item completed, and give list to Facility Attendant at check-out time.

Facility/Room: _____		Permit # _____	Renter (✓)	City Staff (✓)
<b>ALL MAIN ROOMS AND MEETING ROOMS</b>				
Decorations removed from all walls and ceilings and properly disposed of at the completion of the function.				
Balloons removed from ceilings.				
Tables and chairs free of all tape and strings, wiped off, stacked neatly, and returned to storage area.				
	Tracy Community Center: Maximum 6 chairs per rack, 8 stacked tables, stored according to posted diagram.			
	Tracy Sports Complex Meeting Room: Chairs and tables stored according to posted diagram.			
	Tracy Transit Station: 103 and 104: Return 10 tables, 32 chairs to EACH; 105: 11 tables, 60 chairs. Refer to back of check-in/out sheet for current amenities.			
A/V equipment returned to proper location, if applicable.				
Floor dust mopped, and wet mopped (hot water only) where needed.				
Hallways and lobby cleaned of all food and trash.				
Carpets vacuumed.				
All personal items, supplies and equipment removed from the facility.**				
All debris around exterior of building (walkways and planted areas) disposed of properly.				
All trash bagged and placed <u>inside</u> the dumpster located outside of the facility.				
Return thermostat to neutral position or original temperature.				
Storage closets locked and secured.				
All lights turned off.				
ALL doors to outside locked and secured.				
<b>RESTROOMS</b>				
Restrooms cleaned of all trash; toilets flushed.				
<b>KITCHEN FACILITY</b>				
All dishes/utensils/tableware removed from facility.				
Stovetop and ovens cleaned.				
Stove and oven turned OFF.				
All food removed from oven and refrigerator.				
Refrigerator wiped clean, inside and out.				
Microwave wiped clean, inside and out.				
All sinks scrubbed and cleaned; disposal sink emptied.				
All counter tops cleaned.				

Rev. 063016

**\* The renter is expected to provide their own cleaning supplies to clean the facility.** The City will furnish paper towels, bathroom tissue, plastic garbage bags, broom, mop, vacuum and bucket. If emergency maintenance or other assistance is required during non-business hours, call the Facility Attendant on duty at (209) 640-2733.

**\*\* Any items left in or on the property will be held for (2) business days, after which time, said items will be disposed of at the discretion of City staff.** Additional facility use, staff, and/or disposal fees may apply.

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**CITY OF TRACY FACILITY RESERVATION HANDBOOK  
ACKNOWLEDGEMENT FORM**

I, \_\_\_\_\_, have read and understood the policies and procedures contained in the City of Tracy Facility Reservation Handbook, and agree to abide by them. I understand that failure to adhere to these policies may result in forfeiture of the deposit and any fees that I have paid. I have retained a copy of the Handbook for my reference and will share the information contained in the Handbook with the individuals and/or organization that I represent.

In addition to the policies and procedures listed in this Handbook, all functions conducted on/in City facilities must abide by the Tracy Municipal Codes as listed in Sections 4.16 and 4.40. A complete list of Municipal Codes is located on the City of Tracy web site at [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us).

I understand that the City of Tracy cannot anticipate every situation that may occur, nor can it anticipate all questions regarding a particular policy and that the City reserves the right to amend these policies as necessary. I have clarified any questions I have regarding these policies prior to executing this Acknowledgement.

I understand that the City of Tracy has the right to stop all usage, cancel and/or revoke my Facility Use Permit, if a violation of the policies and procedures contained in the Handbook are made by me, another organization representative(s), or an event or meeting attendee.

\_\_\_\_\_  
Event Title Event Date

\_\_\_\_\_  
Printed name of facility user

\_\_\_\_\_  
Signature of facility user Today's Date

\_\_\_\_\_  
Name of organization (if applicable)

RESOLUTION \_\_\_\_\_

AUTHORIZING A MEMORANDUM OF UNDERSTANDING (MOU) WITH NOTRE DAME DE NAMUR UNIVERSITY (NDNU), FOR USE OF CITY FACILITIES TO ADMINISTER ITS BACHELOR'S AND MASTER'S DEGREE PROGRAMS; AND APPROVAL OF APPROPRIATION IN THE AMOUNT OF \$29,251 FOR THE CITY'S CONTRIBUTION TOWARDS A HIGHER EDUCATION FEASIBILITY STUDY ADMINISTERED BY NDNU AND MAGUIRE ASSOCIATES; AND AUTHORIZE THE MAYOR TO EXECUTE THE MOU

WHEREAS, The City entered into an MOU with Notre Dame de Namur University on June 2, 2015 for the use of City facilities to carry out the university's accredited bachelors and masters degree programs at the Tracy Transit Station. The MOU is set to expire on December 31, 2016 and given the local and regional benefit of NDNU's higher education presence in Tracy and growing student interest, both parties have agreed to extend the agreement through 2017; and

WHEREAS, An MOU (Attachment "A") has been drafted between the City and NDNU for the use of City facilities to administer the degree programs; a financial contribution by the City towards a Higher Education Feasibility Study administered by NDNU and Maguire Associates in the amount of \$29,251, and ongoing outreach assistance; and

WHEREAS, The non-profit rental fee associated with the proposed facility rental is \$35,735. Given the benefits of the NDNU accredited business degree programs to the Tracy community and the surrounding region, the City and NDNU negotiated a rental fee of \$5,035.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy does hereby approve the Memorandum of Understanding with Notre Dame de Namur University and authorizes the Mayor to execute the agreement.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 20 day of September, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AGENDA ITEM 3

REQUEST

**APPROVE LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT BETWEEN THE CITY OF TRACY AND TRACY LITTLE LEAGUE AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT**

EXECUTIVE SUMMARY

In 2012, City Council approved a Property Development and Lease Agreement with Tracy Little League (TLL), a local youth non-profit organization, which provides recreational and competitive baseball and softball programs that benefit the community. The original concept for Legacy Fields was for youth leagues to construct fields, maintain them year-round, and program the site in exchange for exclusivity of use. However, on October 6, 2016 and after months of discussions with TLL and other local youth leagues, City Council approved the use of City funds to construct additional fields - three of which were baseball fields on a portion of the area TLL was leasing from the City. As a part of that process, the City amended the original property development and lease agreement to take those three fields out of that agreement. Now that the fields are ready for play, staff is recommending that the Council approve a new lease agreement with TLL for full control, maintenance and programming of the three fields.

DISCUSSION

Construction of the three new city-built baseball fields (3.57 acres) has been completed and the fields are now ready for play. Tracy Little League (TLL) has committed to operating, maintaining and programming these fields. TLL has requested year-round exclusive use of the three new fields to work in conjunction with the adjacent two fields and the two yet to be built 90' diamonds that are still covered under the original agreement with TLL. This will provide TLL with a total of five completed baseball fields, plus two future fields to be built by TLL.

Per Council direction, staff negotiated a lease agreement with TLL over the past several months based on the idea of providing TLL with a long-term commitment from the City and providing the City with long-term protection of the City-built fields. In the proposed model, the City will be leasing the property to TLL with TLL exclusively operating, programming and maintaining the fields year-round. City staff will conduct inspections of the three City-built fields for compliance to the terms of this agreement.

The following is a summary of the Agreement being presented to Council for consideration:

- **Leased Area:**
  - 3.57 acres
- **Term:**
  - October 1, 2016 through December 31, 2019.
  - Renewals - Up to six additional three-year terms upon TLL's written request and satisfactory fulfillment of all terms of the Agreement.



- No such renewal shall occur if TLL is in default under the Agreement.
- **Rent:**
  - Annual lump sum of \$9,200 based upon fair-market rate of \$2,577 per leased acre for unimproved land (the fair market agricultural rate).
- **Use:**
  - Exclusively for the purposes of conducting youth baseball and softball practices, games and tournaments, all at TLL's own cost and expense.
- **Standards for Maintenance:**
  - Maintain and operate the property on a year-round basis to the agreed upon standards and frequencies (Exhibit B of the Agreement).
- **Timetable for Correction of Deficiencies:**
  - TLL must correct deficiencies not involving irrigation or water loss within 10 calendar days.
  - TLL must shut off water to irrigation breaks and other water loss immediately and must complete repairs within 48 hours, unless an extension is approved by the Public Works Director.
  - TLL will maintain a qualified licensed contractor on retainer for implementation by City in case of emergencies or significant defaults.
- **Documentation:**
  - TLL will meet monthly (or more frequently as deemed necessary by the City) with a representative of the City to inspect the site.
  - TLL will provide a maintenance schedule to the City.
  - TLL will provide receipts for expenditures of all costs associated with maintenance of the fields.
- **Security Deposit - Failure to comply with maintenance standards:**
  - In lieu of a security deposit, TLL will maintain a retainer of \$5,000 with a contracted landscape maintenance company.
  - If TLL fails to comply with the maintenance standards or repair timetable, the City can direct TLL's contractor to remedy any deficiencies at TLL's sole expense.

After this Agreement is finalized, TLL will assume full control of the three fields on October 1, 2016. In the meantime, the City is paying the construction contractor, McGuire Hester to maintain the fields until said date. Any delay in implementation of the Agreement will result in additional costs for maintenance.

### STRATEGIC PLAN

This item supports the Council's Quality of Life strategy, Goal #1, Objective 1.C.4. "Finalize Legacy Fields agreements..."

### FISCAL IMPACT

This lease agreement will generate revenue in the amount of \$9,200 per year. An amount of \$536 per year (3.57 acres at \$150 per acre) will be deposited in the Wastewater Fund, which purchased the property, as fair-market agricultural ground lease rent of the land. The remaining amount of \$8,664 will be deposited in the General Fund. No new impact to the General Fund. Management of the Agreement will be absorbed within the existing budget. However, this lease agreement will generate

revenue in the amount of \$9,200 per year. \$536 per year will be programmed in the Wastewater Fund, which owns the property (as fair-market rent of the land). The remainder (\$8,664) will be programmed in the General Fund.

RECOMMENDATION

Staff recommends that City Council, by resolution, approve a Lease Agreement between the City of Tracy and Tracy Little League and authorize the Mayor to execute the Agreement.

Prepared by: Brian MacDonald, Management Analyst II

Reviewed by: Don Scholl, Public Works Director  
André Pichly, Parks & Recreation Director  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

ATTACHMENTS

Attachment A: Lease Agreement with Tracy Little League

**LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT**  
**Between City of Tracy and Tracy Little League**

- I. **PARTIES:** This Lease Agreement (hereinafter "Agreement") is made by and between the City of Tracy (hereinafter "City"), a municipal corporation, and Tracy Little League (hereinafter "TLL"), a California Non-Profit Corporation.
- II. **RECITALS:**
- A. City owns approximately 166 acres of land located near the corner of Tracy Boulevard and Sugar Road, commonly known as Legacy Fields Sports Complex ("Sports Complex"), designated for development as a youth sports complex. Assessor's Parcel Number 212-15-0001.
- B. TLL is a California non-profit corporation, formed as a youth sports organization, whose membership includes various youth and their families within the Tracy area.
- C. The City has completed 3 baseball fields for Phase 1 of the Sports Complex consisting of approximately 70 acres (of the 166 acre site).
- D. The portions of the Sports Complex property which are subject to this Agreement total 3.57 acres and are shown on the diagram and description attached as Exhibit A ("Property").

**NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **DEFINITIONS.** In this Agreement:

"Property" means the approximately 3.57 acre site which is the subject of this Agreement, for use by TLL, as shown in the diagram and legal description attached as Exhibit "A" attached hereto and made a part hereof.

"Maintenance Standards" means the maintenance standards applicable to the Property, as set forth in Exhibit "B" attached hereto and made a part hereof. (See Section 7)

2. **TERM.** This Agreement will commence on October 1, 2016 and will continue through December 31, 2019. At the end of this term, and only upon TLL's request and satisfactory fulfillment of all terms of this Agreement, including the Rent and Security Deposit provisions, TLL shall have the right by providing written notice to the City no later than 30 days prior to the end of the term, or an extended term, as the case may be, to renew this agreement for up to six additional three-year terms. No such renewal shall occur if TLL is in default under the Agreement at the time of its request to extend the Agreement or as of December 31<sup>st</sup> of any renewal period.

3. **RENT.**

- 3.1 **Rent.** TLL agrees to pay City an annual lump sum of \$9,200 as a rent for the Property. The first payment must be made by October 1, 2016. Starting the second 3-year term and annually thereafter, the lease payment shall be adjusted to the lesser of either (1) the annual cumulative change in Consumer Price Index since December 31, 2019, or (2) a three-percent per year increase. For the purposes of this Agreement, "CPI" shall mean the Consumer Price Index for all

## LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT

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 lease amount be decreased by a CPI adjustment. In the event there is a decrease in the CPI, the lease amount per year in question shall be the same as the Rent for the preceding year.

3.2 Payment: TLL shall send payment to:

Attn: Finance  
Department City of  
Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

4. **PROPERTY**: City rents to TLL, and TLL rents from City, the Property identified in Exhibit "A".
5. **USE**. TLL agrees to maintain and operate the Property exclusively for the purposes of conducting youth baseball and softball practices, games and tournaments, all at TLL's own cost and expense.
  - 5.1 Use. TLL's use of the Property shall conform to all applicable rules and regulations governing the property, including, but not limited to, Federal, State and local building and fire codes, pesticide regulations and water ordinances. TLL shall provide restroom facilities, trash cans (including trash collection) and all other required Property amenities.
  - 5.2 Use by other youth sports organizations. TLL may rent any portion of the Property to other youth sports organizations provided, however, that such rental shall only be for the purpose of those youth sports organizations' hosting youth baseball and softball games and practices. TLL need not obtain prior written permission by City, and may charge a fee for the rental, all at TLL's sole discretion.
  - 5.3 Safety and security. TLL shall safely secure the Property, and all personal property and associated equipment, and shall safely store all chemicals and other hazardous materials in accordance with Federal, State and local laws. TLL shall monitor use of the Property.
  - 5.5 Trash. TLL shall keep the Property free and clear of all rubbish, trash and other debris or weed growth generally considered to be foul, noxious or objectionable to facility attendees or the City.
  - 5.6 Naming rights. TLL shall, subject to prior written approval by the City Council, have the right to temporarily name fields located within the Property during the term of this Agreement, and to collect any naming right fees associated with such naming of fields. Such naming rights shall terminate upon termination of this Agreement and TLL shall disclose the temporary nature of the naming rights to any person or entity seeking to name the fields. Any regulations pursuant to signage shall apply. Signage must comply with the Sports Complex construction

## LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT

specifications and with the City's zoning ordinance. The City reserves the right to name the Sports Complex including collecting any naming right fees associated with such naming of Sports Complex.

- 5.7 Maintain non-profit status. TLL shall continuously maintain its status as a non-profit entity in good standing with the California Secretary of State throughout the term of this Agreement including any extensions thereof.

### 6. CITY RESPONSIBILITIES.

- 6.1 Utilities. City shall provide irrigation water for the Property.
- 6.2 Watering Schedule. City shall program and oversee the watering schedule and irrigation controllers for all fields within the Property.

### 7. TLL'S MAINTENANCE OF PROPERTY. TLL shall provide all year-round maintenance, repair and cleanup of the Property. TLL further agrees that:

- 7.1 Liable for damage. TLL shall repair or cause or pay to be repaired any and all damage to the Property, unless caused exclusively and directly by City.
- 7.2 Standards for maintenance and operation. TLL shall maintain and operate the Property on a year-round basis to the Maintenance Standards as specified in Exhibit "B" attached hereto and made a part hereof.
- 7.3 Prevailing Wages. Any paid maintenance or repair work performed on the Property is a public work subject to prevailing wages under California Labor Code Sections 1720 et. seq. TLL must pay all workers performing paid maintenance or repair work on the Property prevailing wages. TLL may not construct any improvements on the Property without prior written permission from the City.
- 7.4 Maintenance of landscaping. TLL is responsible for the care and maintenance of any turf, trees, shrubs or other plants placed on the Property by either it or the City, in accordance with the Maintenance Standards in Exhibit "B". Failure to comply with the Maintenance Standards in Exhibit "B" shall be considered "Deficiencies". In the event TLL is not able to correct Deficiencies within the time period specified in Section 7.5 below, then the conditions set forth in sections 7.6 and 7.7 of this Agreement shall be used to remedy the deficiency.
- 7.5 Timetable. TLL must correct Deficiencies not involving irrigation or water loss within 10 calendar days from notice given by the City. However, TLL must shut off water to irrigation breaks and other water loss immediately and must complete repairs to irrigation system within 48 hours. If the nature of the irrigation repairs are such that more than 48 hours are needed to make repairs to the irrigation system, the Public Works Director shall not unreasonably deny an extension of such additional time as is reasonably determined by the Public Works Director to be necessary to effectuate the repairs to the irrigation system. Irrigation repairs must be made by a qualified person.
- 7.6 Documentation. TLL shall meet monthly with a representative of the City, or more frequently as deemed necessary by the City, to inspect the Property and discuss issues and resolutions. TLL will provide documentation (maintenance

## LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT

schedule and receipts for expenditures) of all costs associated with upkeep and maintenance of the fields that will be used to meet their maintenance requirements. TLL will also submit documentation of actual field usage by field, date and time.

7.7 Failure to comply with maintenance standards. If, after notice from the City as specified above, TLL fails to comply with the maintenance requirements set forth in Exhibit "B", the City shall direct TLL's contractor to remedy the Deficiencies. TLL's failure to timely remedy Deficiencies is a material breach of this Agreement and will mean that TLL is in default of the Agreement.

7.8 Security Deposit. In lieu of a security deposit, TLL shall continuously maintain a retainer of \$5,000 with its contracted landscape maintenance company. This contractor shall be used to remedy any Deficiencies that TLL has not remedied per section 7.4. TLL shall fully replenish the retainer within 10 days if the retainer is used to make payment to its contractor. TLL shall provide the City with written documentation that the retainer is in full effect on a monthly basis.

8. UTILITIES. TLL is responsible for the payment of any connection, service and monthly fees associated with utilities at the Property, except for irrigation water which will be paid by the City.

9. HOLD HARMLESS. Each party (hereinafter referred to as "Indemnitor") agrees to indemnify and hold the other party (herein after referred to as "Indemnitee") harmless from any and all claims (including reasonable attorney's fees and costs) stemming from any of Indemnitor's acts or omissions relating to the subject matter of this Agreement.

10. INSURANCE. TLL shall procure and maintain, for the duration of the Agreement, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with TLL's operation and use of the leased Property. The cost of such insurance shall be borne by TLL.

10.1 Coverage shall be at least as broad as:

General Liability insurance coverage on a per occurrence basis which insures against all liability of City and its agents arising out of and in connection with TLL's use of the property.

Property insurance against all risks of loss to any tenant improvements or betterments.

10.2 TLL shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence, with a \$2,000,000 aggregate amount, for bodily injury or property damage.

Property Insurance: Full replacement cost with no coinsurance penalty provisions. Tenant shall provide a policy of "all risk" coverage for improvements and betterments for the full replacement value of the property of \$1,300,000. The policy shall contain the following provisions: (1) Agency shall be loss payee; and (2) the insurer shall waive all rights of recovery against Agency.

Any deductibles or self-insured retentions must be declared to and approved by

## LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT

City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, and volunteers; or TLL shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- 10.3 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees or volunteers.
- 10.4 Each insurance policy required under this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage, scope or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to City.
- 10.5 Each insurance policy required under this Agreement shall list City as an additional insured.
- 10.6 Insurance is to be placed with insurers authorized to do business in the State of California with a current A.M. Best's rating of no less than A:VII.
- 10.7 TLL shall furnish City with certificates and endorsements affecting coverage required under this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by City before this Agreement commences.

11. **ENTRY AND INSPECTION.** City reserves the right to enter the Property at any time and by whatever means necessary, including, but not limited to, the following situations: (a) in case of emergency, (b) to make necessary repairs and improvements (c) to supply necessary services, (d) when City reasonably believes that the TLL has abandoned or surrendered the Property, (e) to inspect the Property for compliance with this Agreement, (f) pursuant to court order, or (g) for necessary tests or surveying. When entering the Property, City shall take care to minimize disruption to TLL's operations. City agrees to provide notification to TLL of any approved entries to Property that City has given to any third party.

### 12. **TERMINATION; DEFAULT.**

- 12.1 Termination. The City may terminate this Agreement for default by TLL. TLL may terminate this Agreement voluntarily by giving at least 120 days advance written notice to City.
- 12.2 Default. The occurrence of any of the following events shall constitute a default by TLL:
  - 12.2.1 Failure to pay rent when due.
  - 12.2.2 Failure to maintain the Property to the standards specified in Exhibit "B".
  - 12.2.3 Failure to perform any other provision of this Agreement, if the failure to perform is not cured within 30 days after written notice is given by City to TLL. If the failure to perform cannot reasonably be cured within 30 days,

## LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT

TLL shall not be in default if TLL commences to cure the default within the 30-day period and diligently continues to cure the default.

- 12.3 Notice to cure. If TLL defaults on the payment of any installment or rent or of any amount owed to City, or defaults on the performance of any covenants or conditions of this Agreement, City may serve on TLL a 30-day notice in writing to cure the default or quit the Agreement. If a repair is needed to the irrigation system to avoid death or serious damage to plant material, or a major loss of water, this cure period shall be reduced to five days after written notice is given to TLL.

### 13. MISCELLANEOUS.

- 13.1 Regulations. TLL's use of the Property shall comply with all Federal, State and local rules, regulations, laws, ordinances, and directives of competent authority applicable to the Property.
- 13.2 Waiver. The waiver by either party of any provision or condition of this Agreement shall not be construed to be a waiver of any other provision or condition of this Agreement and shall not preclude the other party from demanding performance in accord with the other terms, nor shall any such waiver be construed to be permanent unless the waiver is in writing and signed by both City and TLL.
- 13.3 Force Majeure. Except as to the payment of rent and for damages chargeable to the responsible party, neither City nor TLL shall be chargeable with, liable for, or responsible to the other for anything or in any amount for any delay caused by fire, earthquake, explosion, the elements, acts of God, riots, strikes, lockouts and any delay due to those causes and shall not be deemed a breach of or default in the performance of this Agreement.
- 13.4 Relationship of Parties. The relationship between City and TLL shall always and only be that of Lessor and Lessee. TLL shall never at any time during the term of this Agreement become the agent of City, and City shall not be responsible for the acts or omissions of TLL or its agents.
- 13.5 Severability. The unenforceability, invalidity, or illegality of any of provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.
- 13.6 Possessory Interest Taxes. TLL shall pay, when due, any real property taxes levied against the Property as a result of any possessory interest taxes which may be imposed on TLL's interest in the Property. This provision constitutes written notice to TLL pursuant to California Revenue and Taxation Code Section 107. 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 as otherwise required by the City.
- 13.7 Recordation. Pursuant to Government Code § 37393, this Agreement (or a Memorandum of Lease) shall be recorded in the Office of the County Recorder, County of San Joaquin, State of California.



**LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT**

13.8 Notices. All notices to the parties shall be in writing and shall be addressed and mailed to their representatives as follows:

<p><b>City</b></p> <p>City of Tracy          Attn: Public Works Director          520 Tracy Boulevard          Tracy, CA 95376</p> <p>With a copy to:          City Attorney          333 Civic Center Plaza          Tracy, CA</p>	<p><b>Tracy Little League</b></p> <p>Tracy Little League          Attn: Steve Nicolaou          445 W. 11<sup>th</sup> Street, Suite C          Tracy, CA 95376</p>
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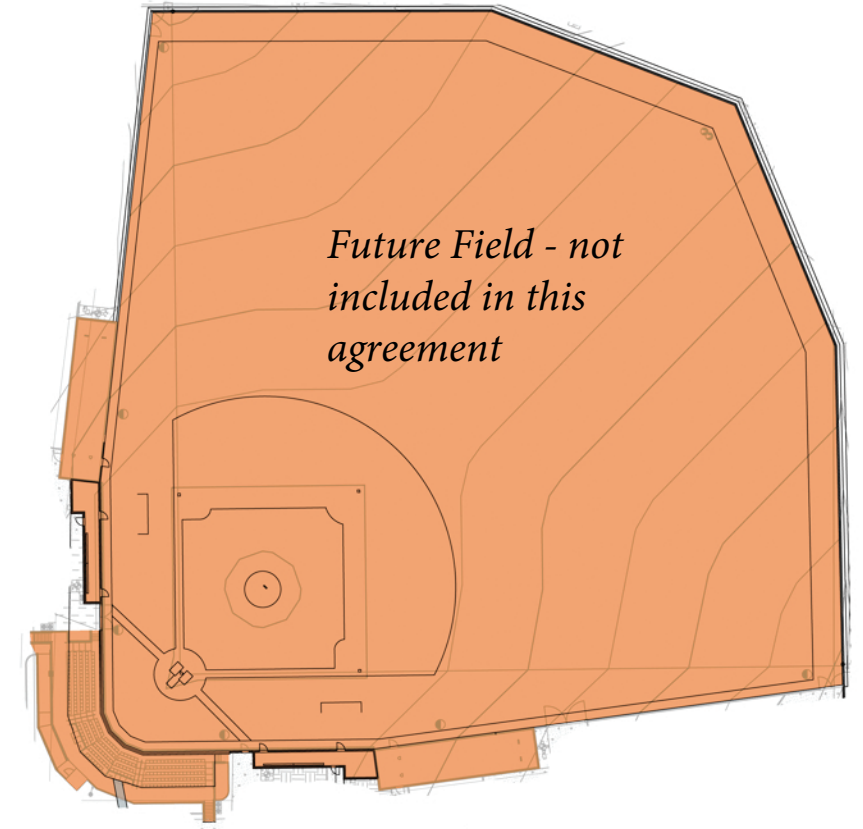
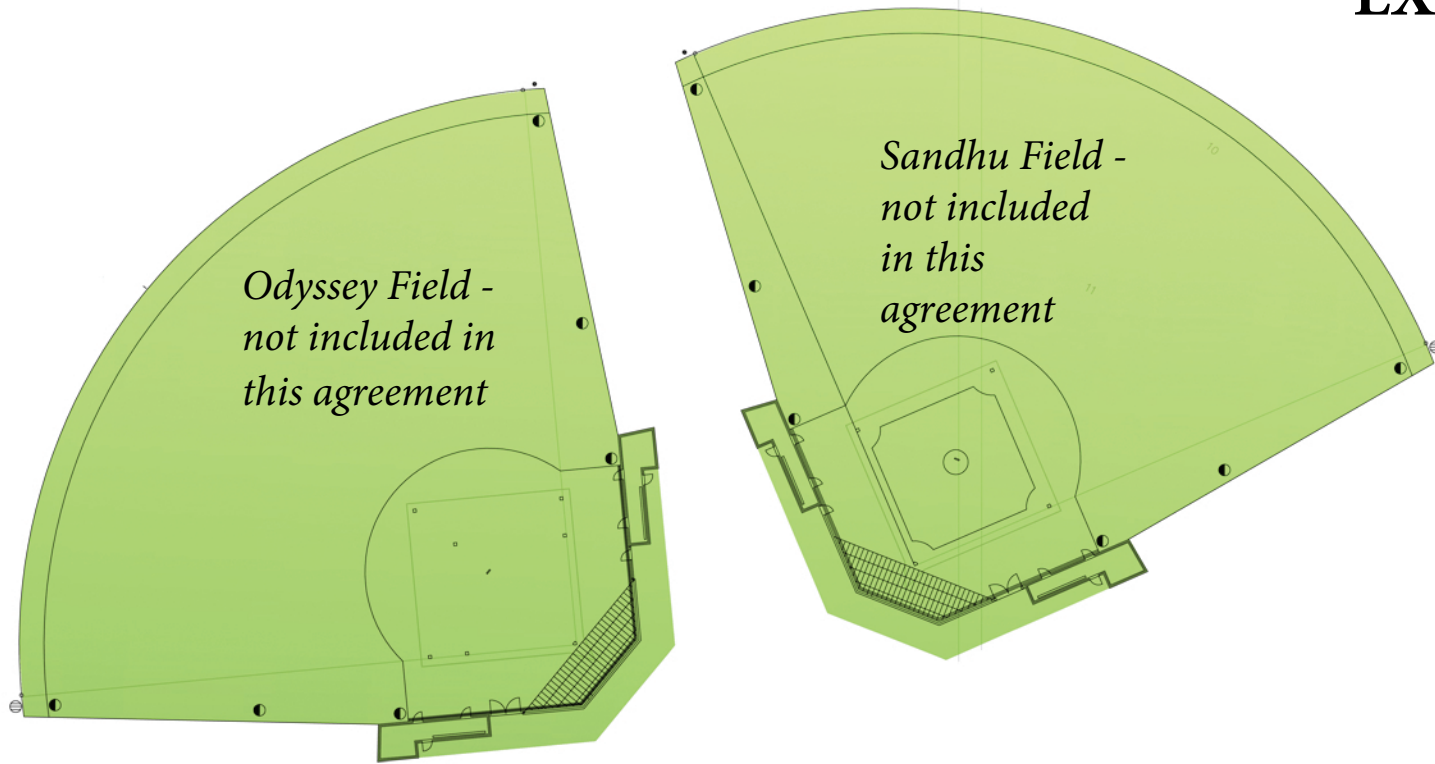
**16. SIGNATURES.**

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written:

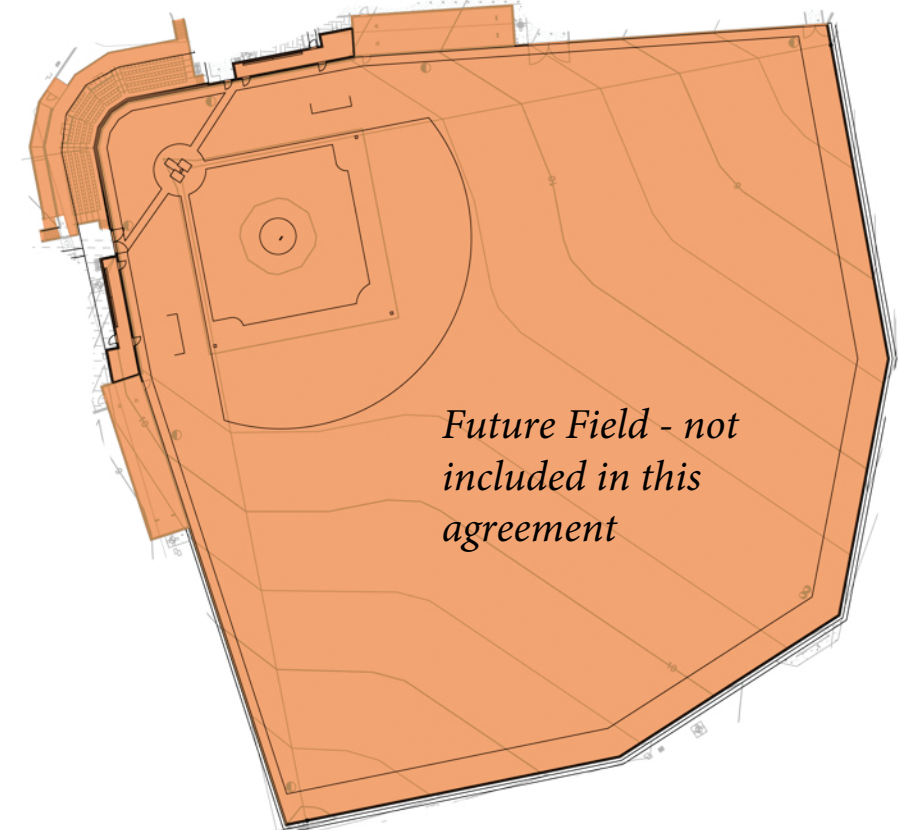
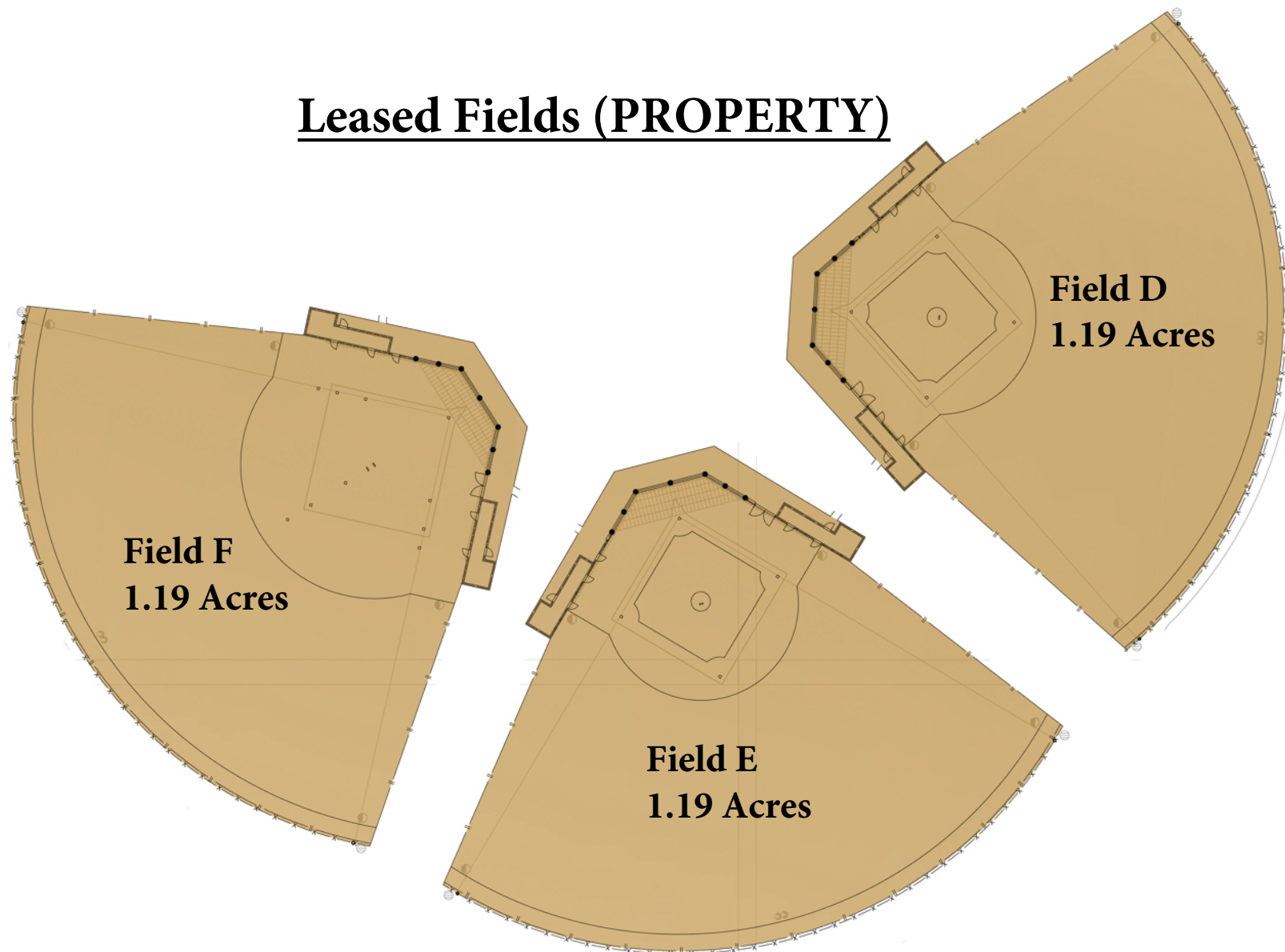
<p><b>CITY OF TRACY</b></p> <p>By: _____          Michael Maciel, Mayor</p> <p>Date: _____</p> <p>Authorized by City Council Resolution No.</p> <p>_____</p> <p>Attest:</p> <p>_____</p> <p>City Clerk</p> <p>Approved as to form:</p> <p>_____</p> <p>City Attorney</p>	<p><b>Tracy Little League</b></p> <p>By: _____          David Peltz, President</p> <p>Date: _____</p> <p>By: _____          Keri Dowell, Secretary</p> <p>Date: _____</p>
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- Exhibits:
- A Description and Diagram of the Property, prepared by Verde
  - B Maintenance Standards

# EXHIBIT A



## Leased Fields (PROPERTY)



## EXHIBIT B

### Maintenance Standards Baseball Fields (Agreement Section 7)

TLL shall be required to fulfill the following maintenance standards on the Property, including any City-installed Infrastructure Improvements, unless amended by this agreement, on the Property:

#### 1. Natural Turf Fields & Open Areas: (Warm-season turf/Bermudagrass)

- a. Mowing - Turf shall be mowed two to three times per week, as needed, to maintain a height of  $\frac{3}{4}$ " inch to 1  $\frac{1}{4}$ " during the growing season (May - October), and shall be mowed once per week if overseeded, or as needed during the dormant-season (November - April) to a height of 1" to 1  $\frac{3}{4}$ ". No more than 1/3 of the turfgrass blade shall be mowed off during a given mowing on a given day. When lowering the height of cut, the 1/3 rule shall also be followed with no less than 3 days between mowings.
- b. Edging - Edging around walkways shall be completed every other week. Edging of the ball field infield (between the infield and turf) shall be completed two times per month.
- c. Aerating - Aerate a minimum of two times per year (May & September) and additionally as needed in high-traffic areas. Aerator types should vary using deep-tine (solid and hollow), shallow hollow tine, and slice types. When plugs (from hollow tines) are pulled, allow plugs to dry, then verticut and rag them as needed to distribute material evenly over the surface; overseed the affected areas as needed. If required, remove and replace the affected wear area(s) with the proper sod if the aeration & verticut process will not adequately resolve issues of thinning or worn turf. This replacement process is intended to address smaller areas of concentrated wear.
- d. Verticutting - Turf shall be verticut twice per growing season to reduce thatch layer. Less frequent de-thatching may be allowed so long as the thatch layer does not exceed 1" in depth and no turf diseases are present.
- e. Sweeping/Blowing - Turf shall be swept or blown as needed to remove excess grass clippings and/or pick up tree leaves if weather prevents routine mowing.
- f. Soil Tests - Perform annual soil tests to determine fertilizer requirements for plants. Test equivalent to A & L Laboratories", Modesto, CA - S10C test with graphical analysis.
- g. Fertilize - The turf areas shall be fertilized a minimum of two times per year - fall (September) and early summer (June) - more often as needed or as indicated by soil tests.
- h. Topdress - Turf shall be topdressed with clean topdressing sand or a mixture of topdressing sand and compost a minimum of once per year.
- i. Overseed - Overseeding may be accomplished with perennial ryegrass once in fall (September or October) if desired to maintain green fields during the bermudagrass' dormant period. Other overseeding during growing season shall be performed as needed during the rest of the year.
- i. Weed Control - Pre-emergent shall be applied two times per year (late-winter & mid-spring) and again in the fall if needed for control of weeds - timing of applications dependent upon weather. Post-emergent should be applied as

- needed. Integrated Pest Management (IPM) practices and all applicable regulations are to be followed. Herbicides shall be selected that will not harm the desired turfgrass. IPM guidelines can be found at the UC Cooperative Extension webpage: <http://ipm.ucanr.edu/PMG/menu.homegarden.html>
- j. Pests and Diseases – Pests and diseases shall be controlled as needed and in accordance with Integrated Pest Management (IPM) practices.
- k. Miscellaneous Tasks
- i. Turf shall be rolled as needed to smooth rutted or uneven areas.
  - ii. Vandalism repair shall be completed according to sections 7.4 and 7.5 of the Agreement.
  - iii. Spot re-sodding to repair worn areas shall be accomplished as needed.
  - iv. Filling low spots, where settling or compaction occurs, shall be completed as needed.
  - v. The addition of “French” drains or other localized drainage improvements, when needed to alleviate small areas of standing water, shall be accomplished when need arises. This task may be combined with heavy topdressing.
  - vi. Wash, rake, sweep or blow in edges at transition areas of turf-infield skin surface and warning track to prevent development of a “lip” at the transition area.
  - vii. Repaint foul lines as needed.

## **2. Infield Skinned Areas & Warning Tracks:**

- a. Repack Pitchers Mounds and Batters Boxes – Repacking pitchers mounds and batters boxes shall be completed daily after use and more frequently during heavy use periods or tournaments. Packing material should be a clay or mix designed for this purpose such as Stabilizer Solutions’ Hilltopper Mound Clay or equivalent.
- b. Drag Surface – Infield surfaces shall be dragged daily with a rigid steel mesh drag and more frequently during heavy use periods or tournaments. Care is to be taken to keep drag mat approximately 6”- 8” away from the edge of all turf so as to avoid dragging infield/warning track material into the turf. Infield groomer speed should be kept low to prevent improper distribution of surfacing and/or ‘waviness’ or undulations in the infield.
- c. Line – Infield lines shall be laid daily or as needed for games and more frequently during heavy use periods or tournaments. A powdered marking line product or field paint may be used. Lines on all turf surfaces shall be maintained visible for all game play and shall be made with a paint product specifically designed for use on athletic turf surfaces. (A VOC-free, ecologically friendly products such as Pioneer Athletics’ Ultra-Friendly Brite Stripe paints are recommended.)
- d. Water – Infields shall be watered to maintain proper moisture level for safe and consistent play. Moisture should be retained throughout the entire infield mix profile but without becoming muddy or sticky. (NOTE: Mandatory water conservation ordinances may affect the frequency of this practice.)
- e. Nail Drag – Infield areas shall be “nail” dragged a minimum of once per week.
- f. Cut and Fill Drag – A cut and fill drag shall be performed once per month, or as needed to prevent uneven surfaces such as low- and high-spots.
- g. Roll – Infield areas shall be rolled to compact the surface as needed.

- h. Rake/Sweep/Wash-Out Turf Edges – The infield surfacing to turf transition area shall be raked/swept/blown-out once per week to reduce/eliminate development of a ‘lip’ at turf edges. ‘Lips’ are to be washed out with water once per year and as needed.
- i. Scarify and Drag Warning Tracks – Warning tracks shall be scarified and dragged two times per month.
- j. Clean Field Drains – All field drains shall be cleaned at least once per year, more often if needed.
- k. Re-grade to Establish Proper Drainage – At least twice a year, the infield shall be re-graded to establish proper drainage.
- l. Renovate – Once a year, the infield shall be renovated by adding infield mix with incorporated infield conditioning material. Infields shall be a mix of clay, cinders, sand and calcined clay in proportions appropriate for the specific site and to maintain a firm, consistent yet friable playing surface. Warning tracks shall consist of a mix of cinder and clay in proportions appropriate for the specific site and that, for player safety, clearly differentiate the warning track surface from the turf and infield mix surfaces.
- m. Add Infield Condition Material (calcined clay) –infield conditioning material shall be added to the infields as needed during the year. Calcined clay is recommended.

### 3. Trees:

- a. Pruning – Pruning of trees is critical due to the steady winds at the site. For the first three years trees shall be pruned once per year to develop tree structure. In years five through ten, trees shall be pruned every other year and as needed to maintain structure. After ten years, trees shall be pruned every 5 years and as needed to maintain tree shape/form and eliminate potential hazards. Additional pruning shall be completed as needed throughout the year to remove/redirect low hanging limbs or remove broken/dead branches. Suckers shall be removed as needed. Proper equipment sanitation procedures must be followed to prevent the spread of diseases such as Fireblight. Root pruning shall be completed as needed once trees begin to mature. Pruning shall be done according to International Society of Arboriculture standards.
- b. Staking – All trees shall be re-staked and/or re-tied as needed.
- c. Fertilize – All trees shall be fertilized once per year until fully established, then as needed.
- d. Pest Control – Pest control/prevention shall be performed annually on trees known to be susceptible to pests and as needed on all other trees. Integrated Pest Management (IPM) practices and all applicable regulations are to be followed.
- e. Re-plant – Trees lost due to vandalism, disease, insects or other causes shall be re-planted. Planting shall be done between the months of September and April.
- f. Re-training of Central Leaders – Central leaders shall be re-trained as needed if broken or vandalized.
- g. Supplemental Watering – Supplemental water shall be applied to trees as needed until they are established, then as needed.

#### 4. Shrubs:

- a. Prune – Hand prune appropriate genera (varieties) to maintain natural shape as needed, between two and four times per year. Shear appropriate genera, dependent upon planting plan/design requirements, four to eight times per year. Renovation prune appropriate genera once every two years. Proper equipment sanitation procedures must be followed to prevent the spread of diseases such as Fireblight.
- b. Fertilize – All shrubs shall be fertilized twice per year.
- c. Apply Plant Growth Regulators (PGRs) – Plant growth regulators may be applied twice per year on shrubs that are tolerant.
- d. Pest Control – Pest control measures shall be taken as needed and in accordance with Integrated Pest Management (IPM) practices.
- e. Weed Control – Weed control measures shall be taken in shrub beds a minimum of once per month, more as needed.
- f. Re-mulch Beds – Shrub beds shall be re-mulched once per year or as needed.

#### 5. Perennials & Biennials:

- a. Prune – Fall clean-up pruning shall be accomplished once per year.
- b. Deadhead - Shall take place as needed.
- c. Fertilize – Perennials and biennials shall be fertilized twice per year.
- d. Pest Control – Pest control measures shall be taken as needed and in accordance with Integrated Pest Management (IPM) practices.
- e. Replant – Replanting shall take place as needed.
- f. Divide – Perennials and Biennials shall be divided once every three to five years to rejuvenate.
- g. Weed Control – Weed control measures shall be taken in planter beds twice per month and in accordance with Integrated Pest Management (IPM) practices.
- h. Re-mulch Beds – Planter beds shall be re-mulched once a year or as needed.

#### 6. Annuals:

- a. Replant – Annuals shall be replanted two to three times per year.
- b. Deadhead – Shall be accomplished two times per month.
- c. Fertilize – Annuals shall be fertilized four to six times per year.
- d. Pest Control – Pest control measures shall be taken as needed and in accordance with Integrated Pest Management (IPM) practices.
- e. Weed Control – Weed control measures shall be taken in annual beds twice a month and in accordance with Integrated Pest Management (IPM) practices.

#### 7. Groundcovers:

- a. Edge – Groundcover beds shall be edged six to eight times per year or as needed.
- b. Mow, Trim or Prune – Groundcovers shall be mowed or pruned one to two times per year.
- c. Fertilize – All groundcover shall be fertilized two times per year.
- d. Pest Control – Pest control measures shall be taken as needed and in

- accordance with Integrated Pest Management (IPM) practices.
- e. Weed Control – Weed abatement shall be completed once per month or as needed and in accordance with Integrated Pest Management (IPM) practices.

## **8. Irrigation System:**

- a. Check and Adjust Program – Communicate to City staff any desired changes to the irrigation program/schedule. City staff will make appropriate modifications.
- b. Mainline, Lateral and Valve Repairs – Make repairs immediately upon identification of, or notification of break/problem.
- c. Field Check and Adjust Sprinklers – Check and adjust field sprinklers on a monthly basis and as needed. Coordinate with City staff.
- d. Spot Water – Spot water areas on a daily basis as needed.
- e. Clean Controllers/Enclosures – Clean controllers at least once per year.
- f. Winterize System – Winterize the irrigation system each year in November or December depending upon weather. This includes wrapping of backflows to prevent freezing.
- g. System Start-up – Start up the irrigation system each spring. Re-check all sprinkler patterns, arcs, etc. to ensure best performance and efficiency of system.
- h. Service Backflow Devices – Test/check backflow devices annually and as required by applicable regulations.
- i. Clear/Repair Backflows – Clear and/or repair backflow devices as needed and as required by applicable regulations.
- k. Pest Control – At least four times per year, perform pest control measures for ants, spiders, etc. in accordance with Integrated Pest Management (IPM) practices and all applicable regulations

## **9. Dugouts:**

- a. Clean/Blow Out – Each day after use, dugouts shall be blown or swept out.
- b. Wash Down/Pressure Wash – Dugouts shall be washed down with high pressure water twice per year and as needed.
- c. Repair Damage/Wear and Tear – Any damage or wear and tear shall be repaired monthly or as needed.
- d. Touch-up Paint – Dugouts shall have paint touched-up once annually and as needed.
- e. Pest Control – Pest control measures shall be taken four times per year. Integrated Pest Management (IPM) practices are to be followed and according to all applicable regulations.
- f. Repair/Replace Shade Fabric – Repair and/or replace dugout shade fabric as needed.
- g. Repair/Replace Misters (if applicable) – as needed.

## **10. Bleachers/Grandstands:**

- a. Clean/Blow Out – In, under and around the bleachers/grandstands shall be blown out daily following use.
- b. Wash Down/Pressure Wash – In, under and around the bleachers/grandstands shall be washed down with high pressure water two times per year. Clean and sanitize as needed.

- c. Repair Damage/Wear and Tear – Any damage or wear and tear shall be repaired monthly or as needed.
- d. Touch-up Paint – Bleachers/grandstands shall have paint touched-up once per year and as needed.
- e. Pest Control – Pest control measures shall be taken four times per year and in accordance with Integrated Pest Management (IPM) practices and all applicable regulations.

#### 11. Walkways:

- a. Blow Off – All walkways around turf areas shall be blown off once per week or as needed. Such areas around bleachers/grandstands shall be blown off daily following use.
- b. Pressure Wash/Scrub – Walkways shall be washed down with high pressure water once per year and as needed.
- c. Repair Cracks, etc. – Repair cracks, trip hazards, etc. as needed.
- d. Repair/Replace Pavers – Repair/replace pavers as needed.

#### 12. Backstops, Fences and Netting:

- a. Inspect – All backstops, fences and netting shall be inspected monthly.
- b. Repair – Repairs to backstops, fences and netting shall be performed as needed
- c. Tighten Chain Link Tensioners– Tightening shall occur once per year and as needed.
- d. Repaint All Wood and Metal Surfaces – All painted surfaces on backstops, fences and netting shall be re-painted every two years and as needed.
- e. Replace Wood – Any wood on backstops and/or fences shall be replaced every 5 years or as needed.
- f. Clean and Treat Protective Padding – Any protective padding on backstops and/or fences shall be cleaned and treated once per year.
- g. Replace Fence Guards on Chain Link Fences – Fence guards shall be replaced as needed.

#### 13. Security Lights:

- a. Inspect Operation – Twice per month, operation of security lights shall be checked routinely.
- b. Replace Bulbs/Lamps – All light bulbs/lamps shall be replaced as needed or as per manufacturer's recommendation depending on fixture type.
- c. Program – Re-program security lights monthly or as needed.

#### 14. Playing Field Lights:

- a. Inspect Operation – Inspect and check operation of field lights once per month.
- b. Check Alignment and Re-aim – Check alignment and re-aim field lights once every five years or as needed.
- c. Replace Bulbs/Lamps – Replace field lights once 20% of lamps on the individual pole malfunction or burn out and as needed to maintain proper foot candle output on each field.
- d. Repair Field Lights – Repair lights and lighting system as needed to maintain proper function. This includes any repairs made necessary due to vandalism.



- e. Program – Program field lights weekly or as needed.

**15. Signs/Signage and Scoreboards:**

- a. Inspect and Repair/Tighten – Inspect, repair and tighten hardware on all signs and scoreboards as needed.
- b. Replace – Replace any signs and scoreboards as needed.
- c. Remove Graffiti – Remove graffiti from signs within 48 hours.

**16. Park Amenities:**

- a. Drinking Fountains – Clean all drinking fountains once per week. Polish drinking fountains four times per year. Clear drinking fountain drain as needed. Repair as needed. Winterize drinking fountains in November depending upon weather to prevent freezing. Start fountain up in March or once threat of freezing has past.
- b. BBQs – Empty BBQs daily or as needed. Clean/pressure wash – monthly or as needed. Repair – as needed.
- c. Benches and Tables – Remove graffiti within 48 hours. Inspect benches and tables monthly. Repair damage as needed. Repaint/seal benches and tables as needed. Replace as needed.
- d. Shade Structures – Clean – twice per year. Inspect – once per year

**17. General:**

- a. Field Closures – Manage field closures to ensure protection of the playing fields and facility, and to assure user safety. Closures may be required during inclement weather and during repair/maintenance periods.
- b. Litter Pick up – All litter is to be picked up daily and as needed.
- c. Garbage Cans – Garbage Cans shall be emptied daily following use and as needed. During heavy use periods and tournaments empty twice per day minimum and as needed.
- d. Wash Out Dumpster Areas – Dumpster areas shall be washed out and sanitized with pressure washer once per year and as needed. Dumpsters must be emptied on a routine basis and not allowed to overflow or stagnate.
- e. Graffiti Abatement – Remove/cover within 48 hours of occurrence and as needed.
- f. Vandalism Repair – Vandalism shall be repaired as soon as possible not to exceed one month from occurrence; immediately if it poses a safety issue.
- g. Gopher/Rodent Control – Gopher/Rodent control measures shall be taken twice per month and as needed to maintain a safe facility per Integrated Pest Management (IPM) practices.
- h. Recycling of Cans, Bottles, Cardboard, etc. – An active recycling program must be in place and operating at all times for all recyclable materials.
- i. Stormwater Runoff Requirements – All State and Federal stormwater runoff regulations must be followed at all times.
- j. IPM guidelines can be found at the UC Cooperative Extension webpage: <http://ipm.ucanr.edu/PMG/menu.homegarden.html>

RESOLUTION \_\_\_\_\_

APPROVE LEGACY FIELDS SPORTS COMPLEX LEASE AGREEMENT BETWEEN THE CITY OF TRACY AND TRACY LITTLE LEAGUE AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The City constructed three new built baseball fields (3.57 acres) that were once under Tracy Little League's (TLL) original lease agreement and the fields are now ready for play, and

WHEREAS, TLL has committed to operating, maintaining and programming these fields and have requested year-round exclusive use of the three new fields, and

WHEREAS, Council directed staff to negotiate a lease agreement with TLL based on the idea of providing TLL with a long-term commitment from the City and providing the City with long-term protection of the City-built fields, and

WHEREAS, the City will be leasing the property to TLL with the intent of TLL exclusively operating, programming and maintaining the fields year-round. City staff will conduct inspections of the three City-built fields for compliance to the terms of this agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Lease Agreement between the City of Tracy and the Tracy Little League, and authorizes the Mayor to execute the Amendment.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by City Council on the 20<sup>th</sup> day of September 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AGENDA ITEM 4

REQUEST

**ADOPTION OF RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; INTRODUCE AN ORDINANCE AUTHORIZING THE AMENDMENT TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN TO PROVIDE SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COST) OF 3% FOR ALL LOCAL POLICE MEMBERS IN THE TRACY POLICE OFFICERS ASSOCIATION.**

EXECUTIVE SUMMARY

This report recommends action to amend the contract with the California Public Employee Retirement System (CalPERS) to allow for employees of the Tracy Police Officers' Association to pay 3% of the employer share of CalPERS costs.

DISCUSSION

In March 2016, the City Council adopted a Memorandum of Understanding (MOU) for the Tracy Police Officers' Association. The agreement included language which stated that the employees in the unit agree to pay 3% towards the employers' share of CalPERS pension costs, regardless of which CalPERS pension formula is applicable to the employee. In exchange, the City shall pay the corresponding salary increase that represents the 3% contribution. The agreement stipulated that the City will amend the Public Employees' Retirement System contracts between the City of Tracy and the California Public Employees' Retirement System to provide for Employees Sharing Additional cost (Section 20516 of Public Employees Retirement Law).

Pursuant to Government Code Section 20471, a 20-day period between the adoption of the Resolution of Intention and the adoption of the final Ordinance is required.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategy and Business Plan, and specifically implements the following goals and objectives:

Governance Strategy

Goal 1: Further develop an organization to attract, motivate, develop, and retain a high-quality, engaged, high-performing, and informed workforce.

Objective 1b: Affirm organizational values.

FISCAL IMPACT

There is no impact to the General Fund for approval of this action. This is a cost neutral item for the City.

RECOMMENDATION

That the City Council: 1) Adopt a Resolution of Intention to approve a contract amendment between the City of Tracy and the Board of Administration of the California Public Employees' Retirement System to include Section 20516 of the Public Employees Retirement Law (Employees Sharing Additional Cost); and 2) Introduce an ordinance authorizing the amendment to the contract between the City of Tracy and the Board of Administration of the California Public Employees' Retirement System to implement this benefit.

Prepared by: Judy Carlos, Human Resources Analyst

Reviewed by: Midori Lichtwardt, Human Resources Manager  
Stephanie Garrabrant-Sierra, Assistant City Manager

Approved by: Troy Brown, City Manager

Attachments: Ordinance  
Resolution of Intention  
Exhibit – Amendment to Contract between the Board of Administration  
CALPERS and the City of Tracy City Council

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRACY AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF TRACY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

WHEREAS, The Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said contract: and

WHEREAS, The Government Code sets forth procedures to amend this contract: and

WHEREAS, One of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of an ordinance to approve an amendment to said contract: and

WHEREAS, Pursuant to adopted Memorandum of Understanding between the City of Tracy and the Tracy Police Officers' Association, the parties stipulated that the City will amend its contract with California Public Employees' Retirement System to provide for Section 20516 of the Public Employees Retirement Law (Employees Sharing Additional Cost); and

WHEREAS, A Resolution of Intention (Resolution # \_\_\_\_\_) to approve the Public Employees' Retirement System contract amendment was adopted on September 20, 2016; and

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

SECTION 1: That an amendment to the contract between the City Council of the City of Tracy and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked as Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2: That the Mayor of the City of Tracy is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Tracy.

SECTION 3: That this Ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of fifteen (15) days from the passage thereof shall be published once in the Tri-Valley Herald, a newspaper of general circulation, published and circulated in the City of Tracy and thenceforth and thereafter the same shall be in full force and effect.

\* \* \* \* \*

The foregoing Ordinance \_\_\_\_\_ was introduced at a regular meeting of the Tracy City Council on the 20th day of September, 2016, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS

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Mayor

ATTEST:

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City Clerk

RESOLUTION 2016-

ADOPT A RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL OF CITY OF TRACY

NOW, THEREFORE, be it resolved by the City Council of Tracy that does hereby give notice of intention to approve an amendment to the contract between the City of Tracy and the Board of Administration of the Public Employees' Retirement System by Resolution, a copy of said resolution being attached hereto, as an "Exhibit" and by this reference made a part of hereof.

The foregoing Resolution 2016-\_\_\_\_, was passed and adopted by the Tracy City Council on the 20th day of September, 2016, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**RESOLUTION OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
CITY OF TRCY**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of 3% for local police members in the Tracy Police Officers Association.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: \_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date adopted and approved





**EXHIBIT**

California  
Public Employees' Retirement System

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**AMENDMENT TO CONTRACT**

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Tracy

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1948, and witnessed September 8, 1948, and as amended effective January 1, 1960, June 1, 1972, November 1, 1972, March 19, 1974, July 1, 1978, February 1, 1983, September 1, 1983, May 3, 1985, January 18, 1991, June 30, 1997, November 16, 1997, June 1, 2000, January 1, 2004, January 1, 2005, January 1, 2006, October 1, 2006, July 2, 2010, December 17, 2010 and July 16, 2016 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 20 are hereby stricken from said contract as executed effective July 16, 2016, and hereby replaced by the following paragraphs numbered 1 through 20 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local police members entering membership in the police classification on or prior to July 2, 2010, age 55 for classic local police members entering membership for the first time in the police classification after July 2, 2010, age 55 for classic local fire members and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after January 10, 1948 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

**NO ADDITIONAL EXCLUSIONS**

6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment before and not on or after October 1, 2006 shall be determined in accordance with Section 21354 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 55 Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment on or after October 1, 2006 and not entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010 shall be determined in accordance with Section 21354.4 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2.5% at age 55 Modified).
9. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010 shall be determined in accordance with Section 21354 of said Retirement Law subject to the reduction provided therein for Federal Social Security (2% at age 55 Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Supplemental to Federal Social Security).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member entering membership in the police classification on or prior to July 2, 2010 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

12. The percentage of final compensation to be provided for each year of credited current service as a classic local police member entering membership for the first time with this agency in the police classification after July 2, 2010 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
14. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
15. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members only.
  - b. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local safety members only.
  - c. Section 20965 (Credit for Unused Sick Leave) for local fire members entering membership on or prior to May 3, 1985 only.
  - d. Section 20475 (Different Level of Benefits). Section 20965 (Credit for Unused Sick Leave) is not applicable to local fire members entering membership for the first time with this agency in the fire classification after May 3, 1985.

Section 21363.1 (3% @ 55 Full formula) is applicable to classic local police members entering membership for the first time with this agency in the police classification after July 2, 2010.

Section 21354 (2% @ 55 Modified formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after December 17, 2010.
  - e. Section 20903 (Two Years Additional Service Credit).
  - f. Section 21024 (Military Service Credit as Public Service).

g. Section 20042 (One-Year Final Compensation) for classic local miscellaneous members entering membership on or prior to December 17, 2010 and classic local safety members.

h. Section 20516 (Employees Sharing Additional Cost):

From and after July 16, 2016, 3% for local miscellaneous members in the Confidential Mid-Managers Unit, local police members in the Tracy Police Management Association and local fire members in the Confidential Mid-Managers Unit.

From and after the effective date of this amendment to contract, 3% for local police Members in the Tracy Police Officers Association.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

16. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on February 1, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
17. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
18. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.

- b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
19. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
20. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF TRACY

BY \_\_\_\_\_  
CHERYL EASON  
CHIEF FINANCIAL OFFICER  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

PLEASE DO NOT SIGN "EXHIBIT ONLY"  
PLEASE DO NOT SIGN "EXHIBIT ONLY"

AGENDA ITEM 5

REQUEST

**DISCUSSION AND DIRECTION TO STAFF ON THE LEVEL OF PUBLIC EDUCATION THE CITY SHOULD PROVIDE REGARDING MEASURE V**

EXECUTIVE SUMMARY

The City has a half-cent sales tax authorized to appear on the November ballot. Staff is seeking direction from Council on the level of public education and the City should provide regarding the measure.

DISCUSSION

On June 21, 2016, the City Council authorized the placement of a half-cent sales tax measure on the November 2016 ballot. If approved, the measure would provide funding that cannot be taken by the State to maintain local services and improve facilities, including police, fire protection, emergency services, street, median and park repair/maintenance, senior/youth services, planning and business retention/attraction, and building facilities (such as parks/sports fields). No ballot argument was provided by the City either for, or against, the measure; however, information regarding the purpose of the measure has been provided on the City's website, along with other pertinent election information.

Other than providing information on the website, the City has not provided education to the public regarding Measure V. The City has not taken a position on the Measure which is demonstrated by the absence of no City Council authored argument for or against the measure.

At the September 6, 2016 meeting, Council directed staff to return with the details of an educational plan to educate the voting public about the measure. The attached exhibit details the specifics of what an educational effort would entail, along with anticipated costs to complete certain tasks.

Now that the Measure has qualified and will appear on the November ballot, the City is prohibited by law from advocating in favor of the measure. Providing information about the Measure, its intended uses, and other factual information is permissible.

Staff is seeking direction from the City Council on the appropriate level, if any, of additional public education on the measure, and appropriations where necessary to complete the tasks.

STRATEGIC PLAN

This agenda item does not relate to the Council's Strategic Plans.

FISCAL IMPACT

There is no financial impact associated with this report.

RECOMMENDATION

That the City Council discusses and provides direction on educational tasks to be undertaken by the City for educating members of the public on Measure V.

Prepared by: Troy Brown, City Manager

Reviewed by: Troy Brown, City Manager

Approved by: Troy Brown, City Manager

Attachment: Exhibit A – Measure V Public Education Opportunities



MEASURE V PUBLIC EDUCATION OPPORTUNITIES

A) Informational Mailer (addressed to homes, apartments and trailers)

Quantity – 26,119

Size: 8.5 x 11, 65lb card stock

Full Color

Includes printing, processing and delivery to postal carrier

Quote: \$8,500.00

B) Utility Bill Insert

Quantity – 17,000 (estimated number of active utility customers)

Size: 8.5 x 3.66, Green colored paper with black ink

Includes printing and inserting into billing envelopes

Quote: \$629

C) Community Stakeholder Outreach

Presentations targeted to service, youth and non-profit organizations. Staff outreaches to local community organizations on an ongoing basis; personnel time can be absorbed within the existing budget.

D) City Manager's Newsletter

This action is already scheduled on a monthly basis. Staff time can be absorbed within the existing budget.

E) City Webpage on November 8<sup>th</sup> Election

An informational webpage was created on the City's website in August on the November 8<sup>th</sup> election. This includes information on Measure V. Staff time can be absorbed within the existing budget.

F) Social Media Education

Social media posts are scheduled on an ongoing basis. Staff time can be absorbed in the existing budget.