

Tuesday, September 21, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Americans with Disabilities Act - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6000) 24 hours prior to the meeting.

Addressing the Council on Items on the Agenda - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

Consent Calendar - All items listed on the Consent Calendar are considered routine and/or consistent with previous Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. Individuals addressing the Council should state their names and addresses for the record, and for contact information. "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. The five minute maximum time limit for each speaker applies to all "Items from the Audience." Any item not on the agenda, brought up by the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When citizens address the Council, speakers should be as specific as possible about their concerns. If several speakers comment on the same issue, an effort should be made to avoid repetition of views already expressed.

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

Notice - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

Full copies of the agenda are available at City Hall, 333 Civic Center Plaza, the Tracy Public Library, 20 East Eaton Avenue, and on the City's website www.ci.tracy.ca.us

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Acceptance of the Sidewalk/ADA Improvements Project, Phase 2 - CIP 73115, and 73118, Completed by Nor-Cal Concrete, Inc., of Suisun, California, and Authorization for the City Clerk to File the Notice of Completion
- C. Approval of Master Professional Services Agreements with Various Consultants to Provide Technical Analysis of Infrastructure Needs for Various Development Projects Related to Water, Storm Drainage, and Traffic and Authorize the Development & Engineering Services Director to Execute these Agreements and Subsequent Task Orders For a Not to Exceed Aggregate Amount of \$50,000 at One Time for Each Consultant
- D. Award a Construction Contract to Republic ITS of Fremont, California, for the 2010 Traffic Calming Project - CIP 72065, and Authorize the Mayor to Execute the Contract
- E. Authorize Federal Fiscal Year 2010 Grant Application for Section 5307 U.S. Department of Transportation Federal Transportation Administration Funds in the Amount of \$1,169,777 for Tracer Public Transportation Services and for Replacement Fixed Route Buses; Certification of Application Assurances; and the City Manager or Designee to Execute the Grant Documents
- F. Declaring and Approving the List of Surplus Equipment and Commodities for Sale at Public Auction to the Highest Bidder
- G. Authorization to Award the Purchase of Three 26-Foot Low Floor Hybrid Buses and Two ADA Accessible Minivans for Tracer Paratransit Service to A-Z Bus Sales Under the CALACT/MBTA Purchasing Cooperative Agreement
- H. Authorization to Enter Into a Lease Agreement with Agra Trading, LLC for the Holly Sugar Southerly Paved Drying Bed and Authorization for the Mayor to Execute the Agreement
- I. Authorization of Task Order No. CH01-13 to Master Professional Services Agreement No. CH01 With CH2M Hill for Wastewater Treatment Plant – Final Design of Effluent Outfall Pipeline and Diffuser Improvements and Authorization for the Mayor to Execute the Task Order
- J. Approval of a Resolution Authorizing Individuals to Act on Behalf of a 457 Deferred Compensation Trust Agreement with VALIC

2. ITEMS FROM THE AUDIENCE
3. DISCUSSION AND ADOPTION OF A RESOLUTION IN SUPPORT OF PROPOSITION 22, A LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010
4. ITEMS FROM THE AUDIENCE
5. COUNCIL ITEMS
6. ADJOURNMENT

May 18, 2010, 6:00 p.m.

Council Chambers, 950 East Street

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

1. CALL TO ORDER– Mayor Ives called the meeting to order at 6:01 p.m.
2. ROLL CALL - Roll call found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives present; Council Member Abercrombie absent.
3. ITEMS FROM THE AUDIENCE – None
4. CONDUCT A WORKSHOP TO DISCUSS THE PROPOSED FY 10-11 OPERATING BUDGET AND RAMIFICATIONS OF THE 5-YEAR FISCAL FORECAST - Zane Johnston, Director of Finance and Administrative Services presented the staff report. The proposed FY 10-11 Operating Budget indicates that City tax revenues have continued to worsen with the recession. Budget cutting measures to date will continue and there will be no additional programs or services funded in FY 10-11. Even with existing budget cuts, it is projected the City will spend \$4.8 million more than it receives in General Fund revenues in FY 10-11, thereby necessitating further draw on reserves.

Mr. Johnston stated the City's FY 2010-11 proposed budget has been prepared and distributed. At this workshop only the City's Operating Budget will be reviewed. The Capital Budget has already been reviewed with the City Council. The proposed budget focuses on providing core services with no additions to General Fund staffing and no expansion of programs or new programs funded by the General Fund. Within these parameters however, the budget addresses the major goals and priorities identified by the City Council for this coming year.

Due to national, state and regional economic conditions, most notably the real estate market collapse and corresponding decline in consumer spending, the City is now faced with declining tax revenues. Combined property tax and sales tax peaked in FY 06-07 at \$33.4 million. This figure decreased slightly to \$32.9 million in FY 07-08, and fell to \$29.7 million in FY 08-09. In FY 09-10 it is estimated tax revenues will be only \$24.2 million. This means the City has experienced an \$8.7 million decline in property tax and sales tax than it received just two years ago. At best, FY 10-11 may see a leveling off of these sharp declines.

The City has responded by reducing expenses to bridge the gap between revenues and expenses as a result of this fiscal challenge. However, revenue declines have been severe and the City has had to draw on reserves. The following chart provides a history of actual draw on reserves (first draw was \$2,215,681 in FY 07-08) and the resulting balance to the City's two reserve funds. It is estimated total reserves will go from \$38.7 million on June 30, 2007, to \$27.3 million on June 30, 2010. The FY 10-11 budget further draws on reserves by \$4.8 million, resulting in an estimated \$22.4 million remaining in reserves as of June 30, 2011.

	<u>FY 07-08</u>	<u>FY 08-09</u>	<u>FY 09-10</u>	<u>FY 10-11</u>
General Fund				
Balance	\$19,111,270	\$18,578,589	\$17,923,473	\$17,923,473
Reserve for Economic	<u>\$19,621,924</u>	<u>\$17,938,924</u>	<u>\$16,878,312</u>	<u>\$9,378,312</u>
Uncertainty Subtotal				
Reserves	\$38,733,194	\$36,517,513	\$34,801,785	\$27,301,785
Deficit	<u>(\$2,215,681)</u>	<u>(\$1,715,728)</u>	<u>(\$7,500,000)</u>	<u>(\$4,833,000)</u>
Ending Total Reserves	\$36,517,513	\$34,801,785	\$27,301,785	\$22,468,785

While the City has little control over tax revenue and cannot raise taxes without a vote of the electorate (Proposition 218), the City can assess fees when appropriate. The FY 10-11 budget includes an estimated \$455,000 in fees from the implementation of the Fire EMS fee and from the related subscription program. A review of applicable franchise fees indicated that the solid waste franchise fee had been levied at approximately 3.1% whereas the franchise agreement authorizes a 10% fee. Water and Sewer franchise fees were also compared to other cities and adjusted to 10% in order to be more comparable. These adjustments will result in additional franchise fees for FY 10-11.

In FY 08-09 departments made 30% reductions and another 25% reduction in FY 09-10 to discretionary spending, commonly referred to as 200 and 300 series accounts in the City's accounting structure (contracted services and commodities). This reduced level of expenditure was extended into FY 10-11. In other words, the base budgets for the 200 and 300 series items have been permanently lowered.

Since 70% of the City's General Fund is devoted to the cost of personnel (salaries and benefits), these expenses must be reduced in order to achieve any kind of significant budget reductions. Beginning in early 2008, vacant positions were left unfilled. In late 2009, the City Manager presented plans to the Council for a total of 68 FTE (Full Time Equivalent) positions to be eliminated. The result of these and previous actions is that the City workforce has been reduced from 558.26 (FTE) in FY 07-08 to 473.64 (FTE) included in the FY 10-11 budget. This is a reduction of 84.62 FTE. Another five full time positions are included in the FY 10-11 positions but by agreement with labor will be eliminated over time through attrition.

The proposed FY 10-11 budget anticipates continuation of a 3% unpaid furlough for all groups except Police and Fire. Contract negotiations have started with the Fire Union and with the Teamsters Union due to the expiration of current contracts. Voluntary talks with the Mid-managers Unit are talking place even though their contract does not expire until March 31, 2011. Although it is possible that current negotiations will result in additional concessions, this has not been included in the budget figures. Non-represented employee groups including Confidential Mid-management, Technical and Support, and Department Heads have all indicated a willingness to achieve target reductions for FY 10-11.

As a cost savings measure, the internal services charges for equipment and vehicle replacement will be cut by 50% in FY 10-11 and FY 11-12. This will save \$1.1 million in FY 10-11, but it means that operating departments will have to utilize their equipment and vehicles longer than before.

In previous years the budget often included a line to make allowance for historical budget savings since typically the City would spend around 96% of operating budgets on average. But since discretionary spending accounts have already been cut by 55%, the likelihood of significant unspent expenditures at the end of the year has been greatly reduced. Also included in the historical spending rate of 96% were budget savings from positions which became open during the year until the time they were filled. Since the City has eliminated 90 positions and already accounted for current vacancies as part of this reduction, this also must be reexamined before inclusion in the budget as a reduction for historical budget savings.

An adjustment of \$1,200,000 has been included in the budget as likely savings from gross expenditure figures leaving a net expenditure budget of \$47,238,040. Of the \$1,200,000 it is estimated that \$500,000 will derive from unspent funds including positions that might come open during the fiscal year (due to retirement or resignation). Depending upon the position, it is likely some positions will have to remain open for the remainder of the fiscal year in order to save funds. The remaining \$700,000 in savings represents a likely 3% unpaid furlough continuing through FY 10-11. The unpaid furlough estimate has been partially offset by likely increases effective 1/1/11 for health insurance costs.

On May 19, 2009, the Council adopted Resolution 2009-086 which established 13 budget principles. A number of these principles have application to the structural deficit. One adopted principle states that the City should maintain a 15% General Fund Reserve (15% x the amount of the General Fund Operating Budget). If the FY 10-11 budget is \$47.23 million then the required reserve would be \$7.08 million. Reserves are estimated to be \$22.46 million at the end of FY 10-11 (6/30/11). Therefore, the City is meeting this goal to retain a 15% reserve.

Another adopted budget principle is that by the end of FY 12-13 the City should once again have a balanced budget. This is defined as current revenues equaling current expenses without having to draw on reserves. The FY 10-11 budget projects a budget deficit of \$4.8 million. This is the fourth year in a row that the City has had an operating deficit. It is anticipated that the City will need another year (through FY 11-12) in order to complete the transition to a balanced budget.

Mr. Johnston gave an overview of the original budget balancing ideas that have been either substantially or fully implemented to eliminate deficits by the end of FY 12-13.

Consider Possibility of Layoffs - The City has shrunk its workforce from a peak of 548 full time equivalents (FTE) in FY 07-08 to 473.6 authorized in the FY 10-11 budget. An additional five positions have been negotiated with the affected labor group to be eliminated through attrition. This will bring the total to about 90 positions and an ultimate total of 468.6 FTE. Originally it was thought that the City would have to reduce its workforce only to 487 FTE.

Eliminate Subsidies - The Grand Theatre peaked at a General Fund subsidy of approximately \$1.3 million. The FY 10-11 budget anticipates a required subsidy of \$800,000. Parks and Community Services program subsidies have been reduced by \$500,000. As such, subsidies to these areas have been reduced by a total of \$1 million.

Eliminate Programs - The Mayor's Youth Community Support Network was added as a new program in FY 07-08 with an original annual expense of \$1 million. It is estimated these programs can run at a budget of \$365,000 for FY 10-11.

Reduced Level of Compensation for City Employees - The original suggestion contemplated that as each employment contract expired it would be renegotiated to include approximately a 5% reduction in pay or benefits. Each 1% of pay and benefits equates to approximately \$500,000 (all funds). The General Fund portion of this is about 80% or \$400,000. If pay and benefits were not just held at zero but actually reduced by 5% this would save approximately \$2 million annually to the General Fund. This has been partially accomplished. Department Heads, Mid-Managers (including Confidential), and Technical and Support have all indicated a willingness to continue to impose a 3% unpaid furlough through FY 10-11, as well as possible reductions in other areas equal to 2%, even though their contract or governing resolution has not expired. In addition, all groups gave up 4/1/10 scheduled cost of living adjustments.

The Fire Union contract expired on 3/31/10, and the Teamsters Union contract will expire on 6/30/10. Currently, both unions are in negotiations.

The Police Union contract originally was scheduled to end 6/30/11. That contract called for a 5% across the board pay increase on 7/1/10. The union voluntarily gave up that scheduled raise and in doing so extended the contract to 6/30/12 without additional raises. However, this is not a deduction to existing (FY 09-10) salaries and benefits.

With the above actions fully or partially implemented a \$4.8 million deficit remains for FY 10-11. Two suggestions (listed below) previously identified toward the solution to ultimately balance the budget have not been implemented. These matters will need to be considered in order to achieve the goal of a balanced budget; otherwise other actions (not currently identified) will be necessary.

Return to Previous Service Levels - In October 2008, the Council added a second fire crew at Station 91. The crew was funded by a substantial increase in additional overtime (\$800,000) and additional permanent staffing of \$200,000, resulting in a total new cost of \$1 million per year. At the same time, the City added this additional service level, Tracy Rural also added services to its contract at a cost of \$250,000. However, Tracy Rural has since suspended this supplemental services contract as their tax revenue has also seen a decrease, although not as much as of a decrease as the City has experienced. If the City took similar action and returned to the previous level of service, the City could immediately save \$800,000 per year in overtime. Of course, this scenario assumes the latest service additions are automatically less important than its predecessors. This may not be the case and is subject to Council consideration.

Parcel tax - As noted, the City currently receives about \$5.5 million less in property taxes than it did three years ago. Obviously this does not permit continuation of essential services. A \$150 per year parcel tax for public safety would generate approximately

\$3.6 million. A landscape and park parcel tax (on those currently not included in a landscape district) of \$100 per year would generate \$900,000 per year.

Mr. Johnston recommended the Council discuss the proposed FY 2010-11 Operating Budget and any additional actions that may be necessary to eliminate the structural budget deficit.

Leon Churchill, Jr., City Manager, thanked Mr. Johnston and his staff for putting together the budget, the citizens of Tracy and the City's employees. Mr. Churchill reviewed some of the actions taken by the City to date. The plan review and permitting process has been streamlined, layers of management have been eliminated, online payments have been introduced, project and capital planning has been automated, various services have been contracted out, fees have been adjusted to create fairness, performance metrics and expectations have been established, and employee pay increases have been stopped or reduced. Mr. Churchill suggested Council approve the strategy and the budget.

Mayor Ives thanked staff and discussed the possibility of putting a parcel tax measure on the November 2, 2010 ballot. The City needs to build a reputable base that is diversified in nature, and to look at what works. The D.A.R.E. program works and is effective. Mayor Ives added he was impressed with the City's ability to provide services with a reduced budget and suggested further discussions on how the City would progress to a balanced budget.

5. ADJOURNMENT – Mayor Ives adjourned the meeting at 7:15 p.m.

The above agenda was posted at City Hall on May 13, 2010. The above are summary minutes. A recording is available at the City Clerk's office.

Mayor

ATTEST:

City Clerk

July 20, 2010, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

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

1. CONSENT CALENDAR - It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adopt the consent calendar. Roll call vote found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor, Council Member Abercrombie absent. Motion carried: 4:0:1.
 - A. Minutes Approval – Regular meeting minutes of May 18, 2010, and closed session minutes of July 6, 2010, were adopted
 - B. Acceptance of the Water Line Replacement Project at Carlton Way (Between Holly Drive and Tracy Boulevard) - CIP 75096, Completed by Knife River Construction, of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2010-112 accepted the project.
 - C. Approve an Agreement Between the City of Tracy, County of San Joaquin and All Other Fire Agencies within San Joaquin County to Provide Joint Hazardous Materials Response within San Joaquin County and Authorize the Mayor to Sign the Agreement – Resolution 2010-113 approved the agreement.
 - D. Approval of a Professional Services Agreement with Nolte Associates Inc., of San Jose, California, for Design and Construction Related Services for the Holly Sugar Youth Sports Complex - CIP 78115, and Authorization for the Mayor to Execute the Agreement – Resolution 2010-114 approved the PSA in an amount not to exceed \$1,716,741 for Tasks A and B, and authorized a 5% contingency in the amount of \$86,000 for additional services.
 - E. Approve Second Amendment to the Second Exclusive Negotiating Rights Agreement with Jeff Macey Related to the Development of a Motorsports and Bike Park on Approximately 300 Acres of the City-Owned Holly Sugar Property and Authorize the Mayor to Sign the Amendment – Resolution 2010-115 approved the second amendment to the agreement.
2. ITEMS FROM THE AUDIENCE - Carlos Jiminez, 24 James Court, addressed Council regarding the California Operation Welcome Home program for California veterans, which introduces veterans to their benefits. Mr. Carlos provided Council with various handouts of the materials provided to veterans.

Brian Van Lehn, 540 Winston Court, addressed Council regarding continued noise issues with Leprino Foods. Mr. Van Lehn indicated that the City's inaction is leaving them open to civil litigation.

3. PUBLIC HEARING TO CONSIDER (1) APPROVING THE ENGINEER'S ANNUAL LEVY REPORT AND (2) ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS FOR TRACY CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT; AND AUTHORIZING THE BUDGET OFFICER TO MAKE NECESSARY BUDGET ADJUSTMENTS - Anne Bell, Management Analyst, presented the staff report. Ms. Bell stated that since the formation of the TCLMD, the Council has reviewed and approved assessments annually based on the Engineer's Annual Levy Reports. Most recently, the Council preliminarily approved the annual assessments proposed in the Engineer's Report presented to Council on July 6, 2010.

The maximum assessment rates, summarized in the Engineer's Report, include an "assessment formula" which allows the maximum rates to be increased annually by the lesser of: three percent (3%), or the percentage increase of the applicable Consumer Price Index (CPI). The percentage difference for the CPI for the San Francisco-Oakland-San Jose Area applicable for fiscal year 2009/2010 was 2.6%. Therefore, the maximum assessment rates allowed for fiscal year 2010/2011 will increase 2.6% over the prior year's maximum assessment rates.

Since all the proposed assessment rates for fiscal year 2010/2011 are less than or equal to the maximum rates previously approved by voters, no ballot proceedings are required. Based upon the estimated costs and expenditures to maintain the landscaping and appurtenant improvements within the TCLMD staff recommended approving the assessment rates in Section IV, Appendix A of the Engineer's Report for fiscal year 2010/2011. Of the 41 zones, 19 zones would be assessed the maximum assessment rates allowed for fiscal year 2010/2011, 15 zones would be assessed at a level below their maximum rate due to lower operating costs, and seven zones will not be assessed due to a Home Owners Association providing maintenance, adequate reserves, or no improvements.

The total revenue from the assessments will be \$2,345,924. The remaining District revenues would be \$244,000 from the Drainage Fund to cover the costs of drainage related improvements, \$261,000 from General Fund support for largely general benefit improvements, \$190,000 from the Gas Tax support for zones with arterial, median and right-of-way landscaping, and \$636,197 from zone reserves. The total cost to maintain the TCLMD for fiscal year 2010/2011 is estimated to be \$3,677,121.

Staff recommended the Council approve the final Engineer's Report; authorize the Budget Officer to make necessary adjustments to the budget; and order the levy and collection of assessments for the TCLMD.

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

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-116 approving the Engineer's Report regarding the levy and collection of assessments for the Tracy Consolidated Landscape Maintenance District, FY 2010/2011, pursuant to the provisions of the Landscaping and Lighting

Act 1972. Voice vote found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-117 ordering the levy and collection of assessments within the Tracy Consolidated Landscape Maintenance District for FY 2010-2011. Mayor Pro Tem Tucker abstained from voting on Zone 7; Mayor Ives abstained from voting on Zone 24; and Council Member Abercrombie absent. Voice vote found Council Members Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

4. THAT COUNCIL CONDUCT A PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND APPROVE A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES - Germane Friends, Interim Fire Chief, presented the staff report. On June 21, 2010, and June 28, 2010, pursuant to Tracy Municipal Code, Section 4.12.280, the Fire Department sent notices to the property owners listed in Exhibit "A" to the staff report. The notice required the said owner to abate weeds, rubbish, refuse and flammable material on his/her parcel 20 days, and informed the property owners that a Public Hearing would be conducted on July 20, 2010, where any protests regarding the notice to abate would be heard.

Under the provisions of Tracy Municipal Code, Section 4.12.290, the Fire Department will proceed at Council's direction with instructing the City's contractor to perform weed, rubbish, refuse and flammable material abatement on the parcels listed in Exhibit "A" to the staff report. After the parcels have been abated, Fire Department staff will notify the property owners, pursuant to Tracy Municipal Code, Section 4.12.320, of a public hearing where Council will consider the report of costs for abatement and any objections of the property owners liable for the cost of abatement.

The cost of abatement assessed to the property owner is the actual cost of the City contractor's services, plus a 25 per cent administrative charge.

There is \$12,100 dollars budgeted for Fiscal Year 2010-2011, Grounds and Maintenance account 211-52150-252-00000, for contracting the abatement of weeds. There are sufficient funds at this time to accomplish abatement services, but in order to continue to provide this service throughout the year, it may be necessary to return to Council at some point for an additional budget appropriation.

Staff recommended the Council conduct a Public Hearing to consider any and all objections to the proposed abatement, to declare the weeds, rubbish, refuse, and flammable material located at the parcels listed within Exhibit "A" to be a nuisance, and authorize the Fire Department to direct the City's contractor to abate such nuisance.

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

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-118 declaring the existence of weeds, rubbish, refuse and flammable material on the parcels listed in Exhibit "A" to the staff report, a nuisance and authorizing Fire Department staff to order contractor to abate. Voice vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

5. DECIDE WHETHER TO CONTINUE FUNDING THE DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) PROGRAM AND, IF SO, AT WHAT LEVEL OF FUNDING AND APPROPRIATE THAT AMOUNT TO THE POLICE DEPARTMENT BUDGET - Leon Churchill, Jr., City Manager prefaced the staff report regarding the Drug Abuse Resistance Education (D.A.R.E.) program.

Captain Espinoza presented the staff report. Captain Espinoza stated staff had received inquiries from the Council related to expenditures for the D.A.R.E. program for the past three fiscal years, and had requested an assessment of the program's effectiveness.

In fiscal year (FY) 1994-95, the D.A.R.E. program was brought to the City and one full-time Tracy Police Officer was assigned as the D.A.R.E. instructor. The City and the Tracy Unified School District (District) shared the salary and benefits costs of one full-time Police Officer at about \$125,000. The City supplied a graduation T-shirt and the District paid for all instructional material used in the program.

In FY 2006-07, the District had budgetary concerns and was unable to fund the D.A.R.E. program. This meant the District and the City could no longer afford a full-time police officer for the D.A.R.E. program. However, the City continued its financial support of the program and budgeted \$60,000 for FY 2006-07 so the District, being better positioned to provide educational programs to youth, would have funding for D.A.R.E. instruction and class supplies. The City deposited \$60,000 into the Police Department's budget under the Youth Services program (101-5132) and has continued that same contribution level to the end of the FY 2009-10. The City entered into a Professional Services Agreement (PSA), and subsequent PSAs with the District. The PSAs have required the District to provide D.A.R.E. program services to public schools located within the City limits.

Since FY 2006-07, the billing arrangement between the City and the District has remained unchanged. The District is responsible for providing D.A.R.E. program services to all public school fifth grade classes located in the City limits (including two Jefferson School District elementary schools). After responsibility for D.A.R.E. program management was transferred to the District, the District subcontracted the day-to-day program management to the Kiwanis Club of Tracy. The Kiwanis Club invoices the District and submits its receipts as back-up documentation for reimbursement. The School District reviews the documentation, validates the expenses and pays the Kiwanis Club. The District then invoices the City and is reimbursed for the costs of the D.A.R.E. program, not to exceed \$60,000 per fiscal year.

The District has subcontracted with the Kiwanis Club to provide D.A.R.E. instruction, pursuant to the PSA). Mr. Don Sader, Kiwanis Club's D.A.R.E. Coordinator, reports to a Kiwanis Club D.A.R.E. Board of Directors whose goal is to ensure sufficient funding exists to support the program.

Mr. Sader has indicated it costs about \$80,000 to \$90,000 per year to operate the overall D.A.R.E. program (which is provided to public and private schools both in and outside the City limits), with the actual costs dependent upon the number of students enrolled. The \$60,000 per year the City pays the District helps fund the program and the Kiwanis Club relies upon its donation solicitation efforts to obtain the additional \$20,000 to \$30,000 needed each year. Mr. Sader shared the Kiwanis Club's accounting records for the D.A.R.E. program and explained how it conducts fundraising. Mr. Sader stated that the amount donated varies each year. In reviewing the overall accounting for the last three school calendar years, the Kiwanis Club's D.A.R.E. program had a net positive cash flow of \$9,931 as of June 4, 2010. The Kiwanis Club is hoping for more District funds to prepare for the new school year.

The Kiwanis Club's financial records show the approximate cost of instruction for all schools being taught D.A.R.E. by the Kiwanis Club's instructor varies per calendar year based upon the number of classes taught. However, City funds can only be expended for instruction to students within the approved list of schools below. Further analysis shows that during the 2009-10 school year the Kiwanis instructor was paid \$20,500 for teaching D.A.R.E. to the various classes within the authorized public schools of the City of Tracy. The cost of instruction going forward will no longer be a financial concern for the District as the Kiwanis Club's instructor will be volunteering his time to teach. Consequently, no reimbursement request for instructional costs will be submitted to the District and the City will no longer approve any reimbursement for instructional time.

City staff has asked the Kiwanis Club to submit a proposed and itemized budget for the cost of supplying the D.A.R.E. program to public schools in the City limits during the upcoming calendar year. The Kiwanis Club eliminated instructor compensation and this reduced the City's previous annual allocation by about \$20,500. However, with more students and cost increases per item, the initial 2010-11 Kiwanis Club D.A.R.E. budget was \$48,500. In that budget was a line item for \$3,500 to fund gifts for teachers and students which was denied. Public funds cannot be used to provide gifts of any type. Consequently, the allowable D.A.R.E. budget request is \$45,000.

While other schools would be served, City-funding would only support classes taught at the following schools: Jacobsen, Freiler, North, Villalovoz, McKinley, Central, Bohn, South, Poet Christian, Hirsch, George Kelly, Traina, Hawkins, and Jefferson.

In reviewing the data available online it is clear that heavy criticism exists surrounding the effectiveness of the D.A.R.E. program. The critics claim there is no empirical data to support the argument the D.A.R.E. program works to reduce drug usage among children. Many critics deem the program a failure. However, proponents argue that D.A.R.E. is making a difference in reducing drug usage among teens and the program helps to improve life skills. One example is that the program helps improve self-esteem which empowers students to resist pressure to join gangs or make poor choices. Proponents also argue there are intangible benefits such as improved relations with the police force and exposure to topics that many children may be unable to discuss with their families, such as pressures to use drugs, to join gangs, or to being bullied.

Some people believe that D.A.R.E. training alone will empower children to resist drugs and that assumption would be a mistake. The D.A.R.E. program has at its core a three-prong partnership component to make the program successful. Police provide the instruction and role model experience, while teachers and families provide the other

more important supporting roles for the program's success. The true evaluation of any program should be done in the context of how well the other "partners" are fulfilling their roles. If the children do not receive the needed support, then the children will face difficulties regardless of the program. Parents/guardians of the children play a significant role in the child's ability to remain drug and gang-free. Numerous studies show, with empirical data, that when the parents/guardians are actively involved in the child's life, the child's likelihood of developing emotionally, avoiding destructive behavior, and graduating from school is significantly improved.

It would be unfair to judge any program that is not fully implemented or supported by the key partners. The Gang Resistance Education and Training (G.R.E.A.T.) program is occasionally touted as a viable alternative to D.A.R.E. for its educational value to resist gangs, but its critics cite similar concerns like that of the D.A.R.E. program. The empirical data shows that neither the D.A.R.E. nor G.R.E.A.T. programs work alone. They require supportive partners for the children, most notably the parents/guardians to be involved and reinforcing the program messages. Any program, such as D.A.R.E., should only be seen as one line of defense in helping prepare children to make good choices. Any training should be considered a perishable skill. Data shows that without continuing support or reinforcement of desired behavior through a support system, the skill and knowledge will diminish over time.

One element in the debate that has not been answered is questions about the D.A.R.E. program's value because value always depends on what metric is being used. From an empirical perspective regarding the effectiveness of D.A.R.E. as an anti-drug program it would be rated as unsuccessful. For example in 2001 the Surgeon General of the United States placed D.A.R.E. in the category of "does not work" and in 2007 the D.A.R.E. program was placed on a list of treatments "that have the potential to cause harm in clients" in the APS journal, *Perspectives on Psychological Science* and the California Board of Education has removed D.A.R.E. as one of its officially sanctioned drug intervention programs.

However, if value is assessed on a cost per student basis for the D.A.R.E. program, Tracy is very efficient as the cost is \$24 per student over a ten session period. If we measure how many students are direct recipients of the D.A.R.E. training, then having one instructor reach 2500 students a year is a good return on investment. It is difficult to measure goodwill that is created between the students, law enforcement, and the community. In Tracy, specifically, the D.A.R.E. program is immensely popular. For example, the importance of community service is stressed during Tracy's D.A.R.E. program and, on average, students pledge 30 hours of community service during the year. This time commitment extends beyond D.A.R.E.'s ten-week session, but assuming 2500 students at 30 hours per student, the benefit to the Tracy community is 75,000 hours.

The International Association of Chiefs of Police's (IACP) recommendations on the D.A.R.E. program cite to the National Institute of Justice report stating that D.A.R.E. does not work as a pure anti-drug program; however, the IACP acknowledged both the popularity of D.A.R.E. and that it may work in some communities more than others for a variety of social issues. The IACP concluded that the decision to continue supporting or eliminating the D.A.R.E. program is ultimately a local jurisdiction decision.

The Police Department endorses continued financial support of the D.A.R.E. program at its reduced cost of \$45,000 and intends to augment the quality of the D.A.R.E. program by using Tracy police officers to supplement the D.A.R.E. curriculum. While the full curriculum will be taught by a certified D.A.R.E. instructor, the presence of Tracy police officers will enhance the relationship between Tracy students, parents, teachers and the police officers who serve them. This community outreach effort is consistent with the Tracy Police Department's objective to continue expanding its community policing efforts by developing a positive interactive experience with school age children in a non-threatening and friendly environment.

Tracy police officers can participate in some elements of the D.A.R.E. curriculum directly, under the supervision of a certified D.A.R.E. instructor, such as the Role Modeling segment or Anti-Gang or Anti-Drug segments or by simply being in the classroom and interacting with the students during the class. Likewise, the Tracy police officers could offer additional classroom presentations, with District and Jefferson School District approval, on a variety of brief, but purposeful age-specific educational pieces that are appropriate for the students. Such presentations could include anti-gang, anti-drug, and anti-bullying sessions as well life-skills training. The Police Department can manage its staffing deployments and use on-duty staff to participate in these classroom presentations and avoid the need for overtime.

Alternatively, the City Council could elect to discontinue City funding for the D.A.R.E. program.

If City Council chooses continue funding the D.A.R.E. program, staff will bring back a proposed new, revised, PSA with the District to provide D.A.R.E. program services for consideration.

Funding for the City contribution toward the D.A.R.E. program is not included in the FY 2010-11 Budget and the proposed \$45,000 D.A.R.E. budget would need to be appropriated from the General Fund and added to the Police Department's Operating Budget for reimbursement to the Tracy Unified School District.

Staff recommended that the Council continue its financial support of the D.A.R.E. program and authorize the appropriation of \$45,000 from the General Fund to the Police Department's Operating Budget to pay the costs of a Professional Services Agreement with the Tracy Unified School District to provide D.A.R.E. services to public school students at schools located within the City of Tracy city limits.

Council Member Maciel stated he was not a proponent of eliminating the D.A.R.E. program although he was concerned about how the program was run and was looking for ways to cut program expenses.

Mayor Pro Tem Tucker indicated financial times were difficult and that her concern was with the accountability and management of the funds.

Council Member Tolbert stated she intended to vote in favor of continuing funding the D.A.R.E. program, but had specific constraints that would need to be put into place. Council Member Tolbert asked how often the finances were audited, who conducted the audit, and how the Council could receive audit reports? Council Member Tolbert also asked what part the resource officers played in the program.

Mayor Ives asked for clarification of what Council was being asked to consider and if there was more to follow. Leon Churchill, Jr., City Manager, stated what would follow would be consideration of an agreement with the Tracy Unified School District. Mr. Churchill added staff was looking for items that need to be considered in any agreement.

Carrie Burnell, 1455 Cornucopia Place, thanked Council and staff for their past support of the D.A.R.E. program. Ms. Burnell voiced disappointment in Council's recent decision to reduce funding.

Larry Hite, 1372 Evergreen Way, addressed Council in support of the D.A.R.E. program. Mr. Hite urged Council to consider the daunting task of searching to find ways to save programs such as the D.A.R.E. program.

June Simski, 34055 S. Costa Road, and a group of 5th Grade teachers, addressed Council regarding the D.A.R.E. program. Ms. Simski indicated she would not support a program that did not inspire students to think about the type of life they want to lead or a program that did not support different ways of learning. Ms. Judy highlighted the volunteerism that is promoted through the D.A.R.E. program and all the youth who are contributing to the community. Ms. Simski stated Steve Abercrombie should continue as a D.A.R.E. instructor.

Mary Kahn, 2990 Loreto Court, stated the D.A.R.E. program was a part of the City's mission statement and should be continued. Ms. Kahn asked Council to put politics aside and do the right thing.

Two graduates of the D.A.R.E. program addressed Council regarding peer pressure they faced in the 8th grade and how the program helped them.

Bob Elliott, 3168 Hutton Place, asked Council to find a way to keep the D.A.R.E. program funded. Mr. Elliott stated he couldn't argue that a huge number of children have been touched by the D.A.R.E. program. Mr. Elliott urged Council to continue funding the program.

Arch Bakerink, 1030 Central Avenue, indicated he supported Steve Abercrombie and his roll in the D.A.R.E. program. Mr. Bakerink strongly urged the Council to approve the \$45,000 funding and even the original \$60,000 budgeted amount.

A graduate of the D.A.R.E. program addressed Council regarding the benefits of the program.

Don Sader, 16214 Redondo Drive, indicated he was the D.A.R.E. boss, who sets the budget, does the books, works with Steve Abercrombie about what can be done and works with the school district. Mr. Sader asked Council to consider funding at the \$60,000 level. Mr. Sader outlined the financial reporting that the D.A.R.E. program provides.

Council Member Tolbert indicated questioned the auditing procedures - how it is done, who does it, how often, etc. Council Member Tolbert suggested the D.A.R.E. board provide a plan to become independent and not require City funding. Council Member Tolbert stated the D.A.R.E. approach was quite effective, but not every 5th grader stays connected because of the D.A.R.E. program. Council Member Tolbert further stated she

would like to see the advisory board develop an assessment tool that is taken before, after, and in subsequent years. Council Member Tolbert added she did not believe it was appropriate for Steve Abercrombie to receive funds from a non-profit and serve on the Council at the same time.

Council Member Maciel asked how the \$45,000 recommendation was made. Captain Espinoza stated they looked at the previous year's allocation and eliminated the instruction materials which brought the total to approximately \$45,000.

Council Member Maciel asked who runs the D.A.R.E. program and how is the board selected. Mr. Sader responded they met with teachers and business people, took a vote and voted for president, vice president, secretary, and board members. Mr. Sader stated the board meets the third week of every month.

Council Member Maciel asked if there were terms for the board. Mr. Sader not at this time, that this was the board's first year. Council Member Maciel asked how the program was run before the board was created. Mr. Sader stated they worked with the Kiwanis and the school district. Council Member Maciel asked how many people were on the payroll. Mr. Sader stated two; a retired officer, and Steve Abercrombie.

Council Member Maciel asked if Steve Abercrombie had resigned from the board when he was appointed to Council. Mr. Sader stated no.

Council Member Maciel stated his two concerns were 1) the City funding a program where it exercises very little control; and 2) what else the board does with funds provided through other avenues. Mr. Sader provided a brief explanation.

Council Member Maciel indicated that for accounting purposes he would like to see both organizations working on a fiscal calendar. Council Member Maciel further stated there should be a City representative on the board. Council Member Maciel indicated on principle, an elected official in a City funded program represents a conflict of interest. Council Member Maciel added another problem was that a Tracy Police Officer was supposed to be involved.

Mr. Sader indicated when Steve Abercrombie became involved with the D.A.R.E. program; the City Attorney at that time contacted the Attorney General who stated there was not a problem. Mr. Sader added City Attorney Dan Sodergren also questioned Steve's participation, and was working with the Attorney General.

Council Member Maciel indicated he would support the \$45,000 in funding.

Mayor Pro Tem Tucker stated her biggest concern was accountability and recordkeeping. Mayor Pro Tem Tucker further stated the original budget was based on the number of students and the number of classes. Currently, enrollment in Tracy Unified 5th grade is down to 1,093 students, and Jefferson School has about 100 per 5th grade class. Mr. Sader indicated the Police Department does have a financial accounting of the D.A.R.E. program. Mayor Pro Tem Tucker indicated the storage fee was too high. Mr. Sader indicated they were under contract, but the storage ownership changed and they have moved since then. Captain Espinoza indicated the D.A.R.E. program has been expanded and storage for bicycles and supplies is needed.

Mayor Pro Tem Tucker stated she concurred with Council Member Maciel's concerns regarding Council Member Abercrombie's involvement in the D.A.R.E. program. Mayor Pro Tem Tucker added the D.A.R.E. program should look at becoming fully funded as a non-profit without City funding.

Mayor Ives thanked all those who work on the D.A.R.E. program stating there was no doubt in his mind that the effort that goes into this program accomplishes its mission. Mayor Ives stated the program serves the entire community and if he had his way, he would double the funding. Mayor Ives suggested the program also needed to be taught at 10th grade. Mayor Ives stated Council Member Abercrombie has stepped away from all manner of impropriety and that his work with the D.A.R.E. program is serving the community. Mayor Ives suggested the Council not lose sight of what the program does for 2,500 students per year. Mayor Ives indicated he was in favor of funding at the \$45,000 level.

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-119 appropriating \$45,000 from the General Fund to the Police Department's operating budget to pay the costs of a professional services agreement with the Tracy Unified School District to provide Drug Abuse Resistance Education to students at public schools located in the Tracy City limits. Voice vote found Council Member Maciel, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent; Council Member Tolbert abstained. Motion carried 3:0:1:1.

Dan Sodergren, City Attorney, staff would work with the School District and come back with an amended Professional Services Agreement for Council consideration.

Council recommended incorporating the following into a proposed agreement: phase out City funding; alternative storage capacity; more involvement with City Police Officers; City to have a voice regarding funding; resolve fiscal vs. calendar year accounting; and increased accountability.

Council Member Maciel indicated there needed to be communication between the Kiwanis, the City, and the School District.

Mayor Pro Tem Tucker stated there needed to be accounting uniformity. Mr. Churchill suggested pursuing guidelines similar to CDBG funding requirements. Mr. Churchill suggested staff reiterate what they heard from Council:

- phase out city funding
- storage capacity
- involvement of city police officers
- given funding, the city have a voice
- resolving fiscal vs. calendar year accounting

Mayor Ives indicated those items would be addressed in the Professional Services Agreement.

Mayor Pro Tem Tucker suggested there may be funds available through the Sheriff's Department.

Mayor Ives called for a recess at 9:29 p.m. The meeting was reconvened at 9:42 p.m.

6. ADOPT A RESOLUTION AUTHORIZING STAFF TO NEGOTIATE AND PROCESS AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE TRACY GATEWAY BUSINESS PARK WITH RESPECT TO THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY FOR LOTS 24 AND G WITHIN THE GATEWAY PHASE 1 FINAL MAP - Andrew Malik, Development & Engineering Services Director, presented the staff report. Mr. Malik stated that the Tracy Gateway Business Park is a commercial project comprised of office, commercial, and retail sites. The business park consisting of approximately 533 acres will be located on the south side of Eleventh Street, west of Lammers Road. A Development Agreement for this project was approved by the Council on June 1, 2004 (Ordinance 1062) ("DA"). Amendment No. 1 to the DA was approved by the City Council on June 17, 2008 (Ordinance 1121).

The project will be developed in multiple phases. The Developers have submitted the Gateway Phase 1 Final Map comprised of 10 lots and two remainder parcels for City approval.

The conditions of the DA require completion of various infrastructure improvements prior to the issuance of any building permits or certificates of occupancy within the Phase 1 Final Map area. This includes construction of improvements for Lammers Road and Eleventh Street widening, water lines, booster station, sewer mains and sewer pump station. These DA conditions ensure completion of all major infrastructure improvements prior to the development of any lot within the Gateway Phase 1 development area.

During the past year, the Developers of Gateway have been working with City staff to finalize the Phase 1 Final Map and related Amended and Restated Subdivision Improvement Agreement ("SIA"). This issue will be discussed directly following this agenda item.

The Developers have informed the City that development of Lots 24 and G may occur earlier than the other lots in Phase 1. To accommodate early development of these lots, in the proposed SIA, the most essential improvements required for Lots 24 and G are separated from the ultimate improvements required for the Gateway Phase 1 Final Map area listed in the DA.

In order to facilitate development of Lots 24 and G earlier than the remaining Phase 1 lots, staff recommended that the DA be amended to exempt these two lots from completion of certain improvements prior to the issuance of building permits and certificates of occupancy. One requirement is the completion of Eleventh Street widening improvements fronting the Gateway project up to the west of Club House Drive. The other requirement is the completion of improvements at the existing wastewater pump station on Corral Hollow Road.

In addition to facilitating development of Lots 24 and G, staff believes that there are public benefits associated with this proposed DA amendment. The amendment will benefit the City by providing additional employment and sales tax opportunities after development of these lots. Therefore, this is being presented to the City Council as a staff-initiated amendment.

A portion of Eleventh Street fronting Gateway will be abandoned and alignment of the remaining portion will be changed in accordance with the proposed I-205/Lammers Road

interchange. As a result, the improvements on Eleventh Street have been deferred under a Deferred Improvement Agreement. These improvements will be secured and completed after Caltran's approval of the I-205/Lammers Interchange design.

Regarding the wastewater pump station, the improvements are required to serve Phase 1 Final Map area. However, there is existing capacity to serve Lot 24 up to 45,000 square feet of office space. The conditions of approval of the SIA require the Developers to pay the cost of construction of the pump station improvements prior to recordation of Final Map and the City will complete these improvements.

Staff anticipates that the DA amendment will be limited to amending sections 300(c)(2) and 300(c)(5)(b) of the DA. Section 300(c)(2) relates to roadways and provides in relevant part that: "No occupancy of buildings in Phase 1 will be allowed unless the roadway improvements are completed." Section 300(c)(5)(b) relates to wastewater improvements for Phase 1 and provides in relevant part that: "No occupancy of buildings within Phase 1 will be allowed unless these infrastructure improvements are completed and accepted by the City Council." In the proposed amendment, staff will recommend Lots 24 and G be exempt from the above described requirement in section 300(c)(2) (related to roadways) and that Lot 24 be exempt from the above described requirement in 300(c)(5)(b) (related to wastewater improvements).

Gateway Phase 1 property owners subject to the existing DA have acknowledged their support of these proposed amendments. All property owners subject to the DA will be required to sign the amendment prior to Planning Commission and Council approval.

Negotiating and processing the DA amendment will be subject to the public hearing process before the Planning Commission and City Council as contained in the City's Regulations and Requirements for Consideration of Development Agreements (Resolution No.2004-368).

Staff recommended the Council adopt a resolution authorizing staff to negotiate and process an amendment to the DA for the Tracy Gateway Business Park.

Council Member Tolbert asked for clarification regarding completion of the Eleventh Street widening improvements up to Club House Drive and if the documents would ensure there were no safety issues. Mr. Malik indicated the next agenda item for consideration would involve a Deferred Improvement Agreement. Mr. Malik indicated staff would work with Caltrans to make sure the transition was made safely.

Mayor Ives asked if the agreements were separated what assurance would the City have that the necessary improvements would be completed. Mr. Malik explained that they were all covered in the Subdivision Improvement Agreement.

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-120 authorizing staff to negotiate and process an amendment to the Development Agreement for the Tracy Gateway Business Park with respect to the issuance of Building Permits and Certificates of Occupancy for Lots 24 and G within the Gateway Phase 1 Final Map. Voice vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

7. ADOPT A RESOLUTION REGARDING TRACY GATEWAY BUSINESS PARK – PHASE 1, TRACT 3659: RESCINDING RESOLUTION NOS. 2009-087 AND 2009-151; APPROVING AN AMENDMENT TO SUBDIVISION IMPROVEMENT SECURITY AGREEMENT; AUTHORIZING THE CITY MANAGER TO SIGN THE ESCROW INSTRUCTIONS; CONDITIONALLY APPROVING A NEW FINAL MAP AND AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT, NEW DEFERRED IMPROVEMENT AGREEMENT, AND NEW NON-POTABLE WATER SUPPLY OPERATIONS AND MAINTENANCE AGREEMENT; AND DIRECTING THE CITY CLERK TO DELIVER ALL NECESSARY DOCUMENTS INTO ESCROW - Kuldeep Sharma, City Engineer, presented the staff report. Mr. Sharma stated that the Tracy Gateway Business Park is a 550-acre commercial project composed of development of a business park and commercial/retail sites. The Vesting Tentative Subdivision Map for the Tracy Gateway Business Park was approved by City Council on April 28, 2004, (Resolution No. 2004-011). A Development Agreement between the City of Tracy and Tracy Gateway, LLC (“Developer”) was approved by City Council on June 1, 2004, (Ordinance 1062).

On May 28, 2009, the Council approved a Final Map for Tracy Gateway Business Park – Phase 1, Tract 3659 (“Final Map”), and also approved related: Subdivision Improvement Agreement (“SIA”), Deferred Improvement Agreement (“DIA”), and Non-potable Water Supply Operations and Maintenance Agreement (“Non-potable Water Agreement”) (collectively referred to as the “Original Approvals”) (Resolution 2009-087.). Related to this project, the Council also approved a Subdivision Improvement Security Agreement (“Security Agreement”), (Resolution 2009-083), and a First Amendment to the Subdivision Improvement Agreement (“First Amendment to SIA”), (Resolution 2009-151). Due to the downturn in the economy and a reduced demand for commercial and office space, development of the Gateway Business Park could not start as previously anticipated. As a result, neither the Original Approvals nor the First Amendment to the SIA has been recorded.

The Developer has been working with a proposed tenant toward finalizing infrastructure development and entitlements for various lots within the final map area. With a new tenant ready to close on two parcels within the first phase of Gateway, the Developer has requested several changes to the Original Approvals. These changes will ensure timely availability of infrastructure services to those lots.

These changes have been incorporated into:

- A new Final Map;
- An Amended and Restated Subdivision Improvement Agreement;
- A new DIA; and
- A new Non-Potable Water Agreement

(collectively referred to as the “New Approvals”).

The Owners of Tracy Gateway Business Park – Phase 1, Tract 3659 have also submitted to the City an Allocation of Water and Wastewater Capacities and two Irrevocable Offers of Dedication for well sites in connection with the Amended and Restated Subdivision Improvement Agreement.

Given the New Approvals, the Security Agreement is no longer needed. Staff recommended that the Security Agreement be rescinded.

Finally, in order to record the New Approvals, proposed Escrow Instructions have been established, which are attached to the proposed Resolution as Exhibit A (“Escrow Instructions”).

Staff recommended approval of the New Approvals contingent and effective only upon the new Final Map being recorded pursuant to the terms of the Escrow Instructions. Therefore, pursuant to the proposed Resolution, if the new Final Map is not recorded by August 31, 2010, pursuant to the terms of the Escrow Instructions, the approvals and authorizations contained in it do not take effect and shall be deemed as never having occurred.

Staff recommended that City Council adopt a resolution regarding Tracy Gateway Business Park – Phase 1, Tract 3659: rescinding Resolution Nos. 2009-087 and 2009-151; approving an amendment to Subdivision Improvement Security Agreement; authorizing the City Manager to sign the Escrow Instructions; conditionally approving a new Final Map and Amended and Restated Subdivision Improvement Agreement, new Deferred Improvement Agreement, and new Non-potable Water Supply Operations and Maintenance Agreement; and directing the City Clerk to deliver all necessary documents into escrow.

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

Clark Wallace, Managing Partner, Tracy Gateway Business Park, stated he was thrilled to be at Council with all the I’s dotted and the T’s crossed.

Mayor Ives stated 11 years had been a long time, and that this business park meant jobs for Tracy.

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-121 regarding Gateway Business Park – Phase 1, Tract 3659, rescinding Resolution Nos. 2009-087 and 2009-151; approving an amendment to the Subdivision Improvement Security Agreement; authorizing the City Manager to sign the Escrow Instructions; conditionally approving a new Final Map and amended restated Subdivision Improvement Agreement, new Deferred Improvement Agreement, and new Non-Potable Water Supply Operations and Maintenance Agreement. Voice vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

8. SECOND READING AND ADOPTION OF ORDINANCE 1150 AN ORDINANCE OF THE CITY OF TRACY AMENDING ARTICLE 15 OF CHAPTER 10.08 OF TITLE 10 OF THE TRACY MUNICIPAL CODE TO ADD A NEW ZONING DISTRICT OF PARK AND TO ZONE THE HOLLY SUGAR SPORTS PARK SITE AS PARK

The Clerk read the title of proposed Ordinance 1150.

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to waive the reading of the text. Voice vote found Council Member Maciel, Tolbert, Mayor

Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adopt Ordinance 1150. Roll call vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

9. ITEMS FROM THE AUDIENCE - Brian Van Lehn, 540 Winston Court, stated it was great to see Council's concern for D.A.R.E. students and asked what about the kids in his neighborhood. Mr. Van Lehn provided a history of Leprino Foods, residential development in the area, and development of the Noise Ordinance.

10. COUNCIL ITEMS

- A. Consider Authoring Ballot Arguments for and/or Against the Measure Regarding the Office of the City Clerk and Direct the City Attorney to Prepare an Impartial Analysis; and Clarify the Process for Filing Rebuttal Arguments on City Measures Generally - Maria Hurtado, Assistant City Manager, provided the staff report. Ms. Hurtado stated that on July 6, 2010, Council directed staff to take the necessary steps to place a measure on the November 2, 2010 ballot to change the City Clerk's position from an elected to an appointed position.

Three resolutions need to be adopted. The first resolution contains language setting the dates for filing arguments in support of and/or opposed to the measure and, as drafted, also directs the City Attorney to prepare an impartial analysis of the measure. The second resolution clarifies the process for filing rebuttal arguments. The impartial analysis and rebuttal arguments, although they are customary, are not legally required but are included in the resolution.

If the City Council chooses to file an argument in support of or against the measure it may, by resolution, authorize the argument to be authored by the entire legislative body (i.e. the signature would read "City of Tracy City Council" with individual members not being identified). The third resolution would authorize City Council, as a legislative body, to file an argument in support of, or against, the measure. In the past, when using this method to submit an argument related to a measure, the Council has, by motion, created an ad hoc subcommittee to draft and file the argument on its behalf.

Alternatively, City Council may, by motion, authorize one or more of its members to author and file a written argument in support of and/or against the measure (i.e. each signing with their title as a City Council member). Should Council choose neither of the above options, under California Elections Code section 9287, a bona fide citizens group or a registered voter may file arguments in favor of, or against, the measure.

Only one argument filed in support of, or against, a measure may be selected to appear with the measure. If multiple arguments in favor of, or against, the measure are timely filed with the City Clerk's Office, then the City Clerk must grant preference first to any argument authored by the legislative body, then to

an authorized Council member or members, then to a bona fide citizens group, and finally to an individual voter registered and eligible to vote on the measure.

Funds to cover the cost of the City's General Municipal Election have been allocated in the budget for Fiscal Year 2010-2011.

Staff recommended that the Council consider authoring ballot arguments for and/or against the measure regarding the Office of the City Clerk and, by resolution, direct the City Attorney to prepare an impartial analysis and clarify the process for filing rebuttal arguments on City measures generally.

Council Member Maciel stated unless there was any dissent on the item, Council should appoint an adhoc committee in support.

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

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-122 setting dates for filing written arguments regarding a City measure asking if the office of the City Clerk should be appointed and directing the City Attorney to prepare an impartial analysis. Voice vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-123 clarifying the procedures for the filing of rebuttal arguments for City measures submitted at Municipal Elections. Voice vote found Council Member Maciel, Tolbert, Mayor Pro Tem Tucker, and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

Council Member Maciel stated an adhoc sub-committee would be more efficient. Mayor Pro Tem Tucker stated the arguments should be from the Council as a whole.

It was moved by Council Member Maciel and seconded by Council Member Tolbert to adopt Resolution 2010-124 authorizing the legislative body to form an argument in favor of the measure. Motion carried 4:0:1.

- B. Request the Regular City Council Meeting Scheduled for Tuesday, November 2, 2010, be Rescheduled to Wednesday, November 3, 2010, Due to a Conflict with the General Municipal Election - Maria Hurtado, Assistant City Manager, presented the staff report. Ms. Hurtado stated that the November 2, 2010, regularly scheduled City Council meeting falls on the same day as the City's General Municipal Election. Given the importance of the election to all citizens of Tracy, it is recommended Council reschedule the November 2, 2010 meeting for Wednesday, November 3, 2010.

It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adopt Resolution 2010-125 approving changing the City Council meeting date from Tuesday, November 2, 2010, to Wednesday, November 3, 2010, due to the General Municipal Election. Voice vote found Council Member

Maciel, Tolbert, Mayor Pro Tem Tucker and Mayor Ives in favor; Council Member Abercrombie absent. Motion carried 4:0:1.

11. ADJOURNMENT - It was moved by Council Member Maciel and seconded by Mayor Pro Tem Tucker to adjourn. Time: 10:23 p.m.

The above agenda was posted at the Tracy City Hall on July 15, 2010. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

September 7, 2010, 6:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Maciel, Tolbert and Mayor Ives present; Mayor Pro Tem Tucker absent. Mayor Pro Tem Tucker arrived at 6:35 p.m.
3. ITEMS FROM THE AUDIENCE - None
4. CLOSED SESSION –
 - A. Personnel Matter (Gov. Code section 54957)
 - Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or DismissalPosition Title(s): City Attorney
 - C. Pending Litigation (Government Code section 54956.9 (b))
 - *Claim of Christopher Bosch*
 - *Claim of Juan “John Espinoza*
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:30 p.m. Council Member Maciel seconded the motion. Voice vote found Council Members Abercrombie, Maciel, Tolbert and Mayor Ives in favor; Mayor Pro Tem Tucker absent. Motion carried 4:0:1.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 7:00 p.m.
7. REPORT OF FINAL ACTION – In the matter of the claim of Juan “John” Espinoza Council Member Abercrombie moved to reject the claim and direct staff to send a notice of rejection to the claimant in accordance with Government Code section 913. Council Member Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.
8. ADJOURNMENT – It was moved by Council Member Abercrombie and seconded by Council Member Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time: 7:01 p.m.

The agenda was posted at City Hall on September 2, 2010.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.B

REQUEST**ACCEPTANCE OF THE SIDEWALK/ADA IMPROVEMENTS PROJECT, PHASE 2 - CIP 73115, AND 73118, COMPLETED BY NOR-CAL CONCRETE, INC., OF SUISUN, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION**EXECUTIVE SUMMARY

The contractor has completed construction of the Sidewalk/ADA Improvements Project, Phase 2 - CIP 73115, and 73118, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends Council accept the project to enable the City to release the contractor's bonds and retention.

DISCUSSION

On September 1, 2009, City Council awarded a construction contract to Nor-Cal Concrete, Inc., of Suisun, California, for construction of the Sidewalk/ADA Improvements Project, Phase 2 - CIP 73115, and 73118, in the amount of \$266,119.60.

This project involved removal and replacement of approximately 23,000 square feet of damaged or deteriorated sidewalks, 700 linear feet of curb and gutter, 15 driveways and 7 curb ramps to improve pedestrian accessibility and to comply with the Americans with Disabilities Act (ADA). The project is part of the City's Downtown Sidewalk and ADA enhancement programs. The area of construction of this project area is located between Eleventh Street and South Street and between East Street and West Street. The project improvement plans and specifications were prepared in house by engineering staff.

Due to the competitive atmosphere in the construction industry and a slow down in the construction industry, good bid prices were received by the City and the bid amount for the project was lower than the engineer's estimate. On September 1, 2009, City Council authorized the savings in the bid amount to be used in constructing handicap parking behind the existing Parks and Community Services Building serving the Senior Center. Therefore, staff negotiated and issued one change order in the amount of \$57,590.35 to complete this work. Status of budget and project costs is as follows:

A. Construction Contract Amount	\$266,119.60
B. Council authorized Change order	\$ 57,590.35
C. Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 18,218.69
D. Project Management Charges	\$ 6,651.07
Total Project Costs	\$348,579.71
Budgeted Amount	\$436,762.00

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

STRATEGIC PLAN

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

FISCAL IMPACT

CIPs 73115 and 73118 are approved Capital Improvement Projects with sufficient funding from the Community Development Block grant and there will be no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, accept the Sidewalk/ADA Improvements Project, Phase 2 - CIP 73115, and 73118, as completed by Nor-Cal Concrete, Inc., of Suisun, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Moheb Argand, Associate Civil Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

RESOLUTION _____

ACCEPTING THE SIDEWALK/ADA IMPROVEMENTS PROJECT, PHASE 2 - CIP 73115, AND 73118, COMPLETED BY NOR-CAL CONCRETE, INC., OF SUISUN, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On September 1, 2009, City Council awarded a construction contract to Nor-Cal Concrete, Inc., of Suisun, California, for construction of the Sidewalk/ADA Improvements Project, Phase 2 - CIP 73115, and

WHEREAS, This project involved removal and replacement of approximately 23,000 square feet of damaged or deteriorated sidewalks, 700 linear feet of curb and gutter, 15 driveways and 7 curb ramps to improve pedestrian accessibility and to comply with the Americans with Disabilities Act, and

WHEREAS, Due to the competitive atmosphere in the construction industry and a slow down in the construction industry, good bid prices were received by the City and the bid amount for the project was lower than the engineer's estimate, and

WHEREAS, On September 1, 2009, City Council authorized the savings in the bid amount to be used in constructing handicap parking behind the existing Parks and Community Services Building serving the Senior Center, and

WHEREAS, Staff negotiated and issued one change order in the amount of \$57,590.35 to complete this work, and

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

Construction Contract Amount	\$266,119.60
Council authorized Change order	\$ 57,590.35
Design, construction management, inspection, Testing, & miscellaneous expenses	\$ 18,218.69
Project Management Charges	<u>\$ 6,651.07</u>
 Total Project Costs	 \$348,579.71

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

WHEREAS, CIPs 73115 and 73118 are approved Capital Improvement Projects with sufficient funding from the Community Development Block grant and there will be no fiscal impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council accepts the Sidewalk/ADA Improvements Project, Phase 2 - CIP 73115, and 73118, as completed by Nor-Cal Concrete, Inc., of Suisun, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Resolution _____

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* * * * *

The foregoing Resolution _____ was adopted by the City Council on the 21st day of September 2010, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVAL OF MASTER PROFESSIONAL SERVICES AGREEMENTS WITH VARIOUS CONSULTANTS TO PROVIDE TECHNICAL ANALYSIS OF INFRASTRUCTURE NEEDS FOR VARIOUS DEVELOPMENT PROJECTS RELATED TO WATER, STORM DRAINAGE, AND TRAFFIC AND AUTHORIZE THE DEVELOPMENT & ENGINEERING SERVICES DIRECTOR TO EXECUTE THESE AGREEMENTS AND SUBSEQUENT TASK ORDERS FOR A NOT TO EXCEED AGGREGATE AMOUNT OF \$50,000 AT ONE TIME FOR EACH CONSULTANT

EXECUTIVE SUMMARY

Since the majority of the infrastructure improvements for new developments are constructed from development impact fees collected from various developments at the time of issuance of building permit, there is never enough funding to complete the required infrastructure upfront. In order to serve new developments in multiple phases, technical analyses are required to identify minimum infrastructure improvements triggered by the proposed developments within the constraints of the overall master plans.

Approval of the Master Professional Services Agreements (MPSA) with various consultants will allow completion of such technical analysis on an as needed basis to expedite the development approval process.

DISCUSSION

The City of Tracy has completed Infrastructure Master Plans for various development areas in the City including the Residential Specific Plan (RSP), I-205 Specific Plan, Plan C development area and the Northeast Industrial Area (NEI) Phases 1 and 2. These infrastructure master plans are developed to serve the full build out of these development areas and the cost of construction of infrastructure improvements are funded from the development impact fees generally collected at the time of issuance of building permits. Since the full build out of the development area occurs in multiple phases, there is never enough funding to complete all infrastructure improvements in a systematical manner upfront prior to the issuance of building permits. As a result, technical analysis are completed to identify the minimum infrastructure improvements required to serve the initial or particular developments within the confines of the City's overall Infrastructure Master Plans. Minor technical analyses are also sometimes needed to update the development area infrastructure master plans to accommodate changed conditions and amend the Finance and Implementation Plans (FIPs).

In order to complete such analysis in a timely and cost effective manner, the services of consultants, who are knowledgeable and familiar with the infrastructure and who have developed the infrastructure models are required. Since the scope of work for such technical analysis is limited, the cost of services range between \$5,000 and \$20,000 depending upon the size of the development project. Even though the above costs of Professional Services Agreements (PSA) are within the authority of the Department

Heads, the cumulative cost of PSA's with consultants exceed their authority depending upon the extent of services needed for various developments from those master plan consultants. As a result, these small PSA's need approval from Council and may take up to two to three months to complete the approval process. This results in significant delays to approve the development projects.

In an effort to expedite the approval of the development projects, it is recommended that Master Professional Services Agreements be executed with infrastructure consultants listed below. It is also recommended that the Director of Development and Engineering Services be authorized to negotiate the various Task Orders under these master agreements with each infrastructure consultant up to a total aggregate amount of \$50,000. Staff will come back to Council any time this limit is exceeded and will request authorization for continuation of Task Orders with the Development and Engineering Services Director approval for another amount of \$50,000. The list of consultants is as follows:

Storm Water Consulting, Inc.
Fehr & Peers
West Yost & Associates

The MPSAs will be valid for a period of three years from the date of execution with a possible extension for a period of an additional two years after satisfactory completion.

STRATEGIC PLAN

This agenda item is a routine operational item and does not specifically relate to Council's seven strategic plans. However, approval of this agenda item will provide a continuation of effective services to various projects and development community and will eliminate the lengthy process time for selection of consultant services.

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost of technical analysis will be funded by various developments or from program management fees collected from development areas.

RECOMMENDATION

Staff recommends that City Council, by resolution approve Master Professional Services Agreements with various consultants to provide technical analysis of infrastructure needs of various developments and authorize the Development and Engineering Services Director to execute these agreements and subsequent Task Orders for a not to exceed aggregate amount of \$50,000 at one time per consultant.

Agenda Item 1.C
Page 3
September 21, 2010

Attachments:

MPSA – Storm Water Consulting, Inc.
MPSA – West Yost
Task Order WYm4-10-1 – West Yost
MPSA - Fehr & Peers

Prepared by: Kuldeep Sharma, City Engineer

Reviewed by: Andrew Malik, Development & Engineering Services Director

Approved by: Leon Churchill, Jr., City Manager

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS
STORM DRAINAGE ENGINEERING SUPPORT**

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

RECITALS

- A. CONSULTANT is a Registered Professional Engineer in the State of California.
- B. CONSULTANT services are needed to support CITY staff on an "as needed" basis in resolving issues, performing studies, making recommendations, reviewing development proposals, and performing other assignments related to the planning, design, and function of the CITY's storm drainage facilities.
- C. At the request of CITY, in April 2010, CONSULTANT submitted its proposal to perform the services described by this Agreement. Competitive negotiations procedures were not followed, and CITY solicited proposals from one consultant since this CONSULTANT's Principal Owner, James H. Nelson, has been the Project Manager for the preparation of the current and previous Storm Drainage Master Plan for the CITY as well as the substantial majority of all storm drainage planning studies and facility designs performed in behalf of the CITY since 1990. It was more efficient, consistent and cost effective to continue with the same individual in this role. CONSULTANT submitted a proposal to perform the services described in Exhibit "A" of this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement. City Council approved this Professional Services Agreement on September 21, 2010, per Council Resolution No. 2010-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services generally described in Exhibit "A" attached hereto and incorporated herein by reference. CONSULTANT's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the CITY and CONSULTANT. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: James H. Nelson. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," without the prior written consent of the CITY. CONSULTANT intends to utilize Stantec Consulting

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 2 of 10**

Services Inc. as a subconsultant to assist with the completion of selected Task Orders authorized by this Agreement. CONSULTANT shall not use any other subcontractors or subconsultants, without the prior written consent of the CITY.

2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.
3. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. CONSULTANT is not CITY's employee and CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT. CONSULTANTS are free to work for other entities while under contract with the CITY. CONSULTANTS are not entitled to CITY benefits.
4. **CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
5. **COMPENSATION.**
 - 5.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B" and at the Not to Exceed the amount set forth in each individual Task Order. The Not to Exceed aggregate amount of individual Task Orders authorized under this Agreement shall not exceed FIFTY THOUSAND DOLLARS (\$50,000.00) at one time. Billing rates may be adjusted in an amount not to exceed five (5%) percent per year, upon CITY's receipt of written notice from the CONSULTANT. CONSULTANT's billing rates, and Not To Exceed amount, shall cover all costs and expenses of every kind and nature for

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 3 of 10**

CONSULTANT's performance of this Agreement, except for mileage expense, which will be billed separately by the CONSULTANT at the Federal approved mileage rate. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount for a given Task Order without the prior written approval of the CITY.

- 5.2. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
- 5.3. Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.
6. **TERMINATION.** The CITY may terminate this Agreement by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the CITY all original documents, including preliminary drafts and supporting documents prepared by CONSULTANT for this Agreement. The CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by CONSULTANT for this Agreement are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONSULTANT to any third party without the prior written consent of CITY.
8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services under this Agreement.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE**
 - 11.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 4 of 10**

employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 11.2. Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 11.3. Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 11.4. Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 11.5. Professional Liability** 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 occurrence.
- 11.6. Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - 11.6.1.** The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
 - 11.6.2.** For any claims related to this Agreement, CONSULTANT’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT’s insurance and shall not contribute with it.
- 11.7. Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 11.8. Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 11.9. Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five (5) days after the execution of this Agreement.
- 11.10. Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11. CONSULTANT’s Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 5 of 10**

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

13. NOTICES.

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

To CITY:

Kuldeep Sharma
City Engineer
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To CONSULTANT:

James H. Nelson
President
Storm Water Consulting, Inc.
1899 Sapphire Way
El Dorado Hills, CA 95762

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

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

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

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

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

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 6 of 10**

- 18. ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.
- 19. COMPLIANCE WITH THE LAW.** CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 20. STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 7 of 10**


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

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

CITY OF TRACY

CONSULTANT

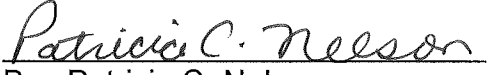
By: Brent H. Ives
Title: Mayor
Date: _____



By: James H. Nelson
Title: President
Date: 9-3-2010

Attest:

By: Sandra Edwards
Title: City Clerk
Date: _____

Fed. Employer ID No. 52-2380404


By: Patricia C. Nelson
Title: Chief Financial Officer
Date: 9/2/2010

Approved As To Form:

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

**EXHIBIT “A”
SCOPE OF SERVICES**

SCOPE OF SERVICES. CONSULTANT will assist CITY staff on an “as needed” basis in resolving issues related to the CITY’s existing and proposed storm drainage facilities. The Scope of Services will cover characteristically smaller assignments, and larger items of work may be authorized by a separate agreement. Specific work assignments shall require a written request/authorization in the form of a Task Order to the CONSULTANT from the CITY prior to commencement of work by the CONSULTANT. The Task Order will define the Scope of Work and establish a Not-to-Exceed amount for the work.

Services to be provided under this agreement shall generally fall under one or more of the following categories:

- Provide technical support to CITY related to CITY’s existing and proposed storm drainage facilities.
- Assist CITY in review of private development proposals for conformance with the CITY’s adopted Storm Drainage Master Plan and other CITY storm drainage standards and policies.
- Assist CITY in formulating conceptual storm drainage solutions for specific problem locations or areas of interest.
- Attend meetings and/or make presentations to CITY staff, other Consultants, Developer Representatives, and/or other entities.
- Assist CITY with negotiations with local irrigation districts regarding discharge agreements and other matters.
- Perform reviews of improvement plans and specifications for storm drainage improvement projects, including storm drainage facilities associated with land development projects.
- Assist CITY in working with regulatory agencies regarding storm drainage matters.
- Perform reviews of miscellaneous technical and planning documents related to storm drainage and flood control.
- Update CITY GIS data pertaining to existing storm drainage facilities.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
STORM WATER CONSULTING, INC.
STORM DRAINAGE ENGINEERING SUPPORT
Page 9 of 10**

- Assist CITY in updating the Finance and Implementation Plans (FIP).
- Other assignments as requested by CITY staff.

DURATION OF SERVICES. It is intended that the Agreement with the CONSULTANT will be effective for a period of three (3) years from the date of its execution with an additional two (2) years of option to further extend the term of the Agreement. However, CITY reserves the right to terminate the Agreement any time during the period of the Agreement. CONSULTANT may also terminate the agreement any time with 30-days written notice. This Agreement may be extended by an amendment approved by the Director of Development and Engineering Services for two additional years with the consent of the CONSULTANT and the CITY.

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

Project Manager:	James H. Nelson, P.E.
Senior Project Engineer	Sarah McIlroy, P.E.
Senior Hydrologist	Davina Gonzalez, P.E.

TIME OF PERFORMANCE AND COMPENSATION. Consultant shall provide the "Scope of Services" described in this Exhibit A and listed in specific Task Orders within the time period and not to exceed budgetary amount identified in the Task Order unless an amendment to Scope of Services is approved by the CITY.

EXHIBIT "B"

BILLING RATE SCHEDULE

<u>Position</u>	<u>Billing Rate</u> <u>(dollars per hour)</u>
Project Manager	\$170/hr
Senior Project Engineer	\$160/hr
Senior Hydrologist	\$130/hr
CAD Operator/GIS Technician	\$100/hr
Administrative	\$ 85/hr

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT NO. WYm4-10
FOR DESIGN PROFESSIONALS
VARIOUS WATER SYSTEM ANALYSES (2010)**

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

RECITALS

- A. CONSULTANT is a registered Professional Engineer in the State of California.
- B. CONSULTANT services are needed to support City staff on an as needed basis to perform water system technical analyses for proposed development projects in the City to identify improvements triggered by those developments.
- C. At the request of CITY, in May 2010, CONSULTANT submitted its proposal to perform the services described by this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Master Professional Services Agreement. On September 21, 2010, the City Council authorized the execution of this Master Professional Services Agreement, pursuant to Resolution No. 2010-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services generally described in Exhibit "A" attached hereto and incorporated herein by reference. CONSULTANT's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the CITY and CONSULTANT. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Gerry S. Nakano. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," nor shall CONSULTANT use any subcontractor or subconsultant, without the prior written consent of the CITY.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task

Order shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. CONSULTANT is not CITY's employee and CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT. Contractors and CONSULTANTS are free to work for other entities while under contract with the CITY. Contractors and CONSULTANTS are not entitled to CITY benefits.
4. **CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
5. **COMPENSATION.**
 - 5.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates amount set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order. The Not to Exceed cumulative amount of individual Task Orders authorized under this Agreement shall not exceed FIFTY THOUSAND DOLLARS (\$50,000.00). Billing rates may be adjusted in an amount not to exceed eight (8%) percent per year, upon City's receipt of written notice from the CONSULTANT. CONSULTANT's billing rates, and Not To Exceed amount, shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY.
 - 5.2. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.

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

CONSULTANT in an amount not less than \$1,000,000 per claim and in the aggregate.

11.6. Endorsements. CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:

11.6.1. The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”

11.6.2. For any claims related to this Agreement, CONSULTANT’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT’s insurance and shall not contribute with it.

11.7. Notice of Cancellation. CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

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

11.9. Insurance Certificate. CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five (5) days after the execution of this Agreement.

11.10. Substitute Certificates. No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.

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

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

13. NOTICES.

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

To CITY:

Kul Sharma, City Engineer
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To CONSULTANT:

Gerry S. Nakano, Vice President
West Yost Associates, Inc.
7041 Koll Center Parkway, Suite 110
Pleasanton, CA 94566

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

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

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

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

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

18. ENTIRE AGREEMENT. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.

19. COMPLIANCE WITH THE LAW. CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

20. STANDARD OF CARE. Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT WYm4-10
VARIOUS WATER SYSTEM ANALYSES (2010)

Page 6 of 6

diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.


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

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

CITY OF TRACY

CONSULTANT
West Yost Associates

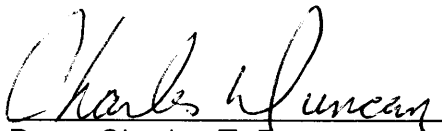
By: Brent H. Ives
Title: MAYOR
Date: _____



By: Steven R. Dalrymple
Title: President
Date: 9/13/10
Fed. Employer ID No. _____
68-0370826

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____



By: Charles T. Duncan
Title: Vice President
Date: 9/13/10

Approved As To Form:

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

**EXHIBIT A
SCOPE OF SERVICES**

CITY'S AUTHORIZED REPRESENTATIVES. As specified in each individual Task Order and as necessary, CONSULTANT shall coordinate with various City Consultants and City departments as well as with Subdivider's representatives to complete various water analysis and technical memorandums. CONSULTANT shall take all direction from CITY through CITY's Authorized Representatives, the City Engineer or his designee or the Director of Development and Engineering Services as an alternate, unless otherwise designated by the City Manager.

OVERVIEW OF SCOPE OF SERVICES. As more specifically described in each individual Task Order, CONSULTANT may be asked to provide water system analyses , technical memorandums and water system infrastructure needs assessment services to CITY regarding the Project(s) described in each Task Order, including infrastructure master planning cost estimating, findings required by the Mitigation Fee Act (AB 1600), compliance with the Impact Fee Ordinance and updates of the Finance and Implementation Plans. Services to be performed by CONSULTANT, under this agreement, shall be limited to smaller projects, generally minor water system related issues, funded by developers and program management funds from various development areas.

DURATION OF SERVICES. It is intended that the Master Agreement with the consultant will be good for a period of three years. However, CITY reserves the right to terminate the agreement any time during the period of the agreement. Consultant may also terminate the agreement any time with 30-days written notice. This Master Agreement may be extended by an amendment approved by the Director of Development and Engineering Services for two additional years with the consent of the Consultant and the City.

PROJECT PERSONNEL. Consultant shall assign the following person/persons to perform the tasks set forth in this agreement:

Gerry Nakano	Polly Boissevain
Elizabeth Dryer	Dave Jones
Steve Mccaulay	Brenda Estrada
Charles Duncan	Vivian Housen
Amy Kwong	Jim Yost
Irene Suroso	Jim Connell
Carolyn Simmons	

CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT WYm4-10
VARIOUS WATER SYSTEM ANALYSES (2010)

TIME OF PERFORMANCE. Consultant shall provide the “Scope of Services” described in this Exhibit A and is listed in the specific Task Order from the receipts of the “Notice to Proceed” for specific time period and not to exceed amount unless the scope of work is amended and approved by the City.

COMPENSATION. Consultant shall perform the “Scope of Work” described in individual Task Order executed within the umbrella of this MPSA with estimated level of effort as described in the scope of work and more specifically shown in the individual Task Orders.

**CITY OF TRACY
TASK ORDER NO. WYm4-10-1 OF
MASTER PROFESSIONAL SERVICES AGREEMENT
WATER SYSTEM EVALUATION FOR UNDEVELOPED INFILL PROPERTIES**

This Task Order is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and West Yost & Associates Inc., a California Corporation (hereinafter "CONSULTANT").

RECITALS

- A. CONSULTANT is a registered professional engineer.
- B. CONSULTANT services are needed related to the evaluation and preparation of an AB1600 Technical Report for the City of Tracy's Undeveloped Infill Properties ("PROJECT").
- C. At the request of the CITY, in May 2010, CONSULTANT submitted a proposal to perform the services described in this Task Order. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Task Order.
- D. On September 21, 2010, the City Council authorized the execution of this Task Order, pursuant to Resolution No. 2010-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **INCORPORATION OF MASTER AGREEMENT.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Agreement for this project, unless specifically modified by this Task Order.
- 2. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Charles Duncan. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.
- 3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Task Order shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition which

purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.

4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Task Order is Not To Exceed THIRTY THOUSAND EIGHT HUNDRED DOLLARS (\$30,800).
5. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of CONSULTANT and CITY. This Task Order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

CITY OF TRACY

By: Andrew Malik
Title: Director DES
Date: _____

Attest:

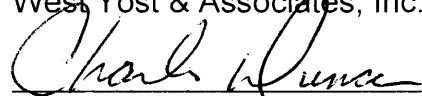
By: Sandra Edwards
Title: CITY CLERK
Date: _____

Approved As To Form:

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

CONSULTANT

West Yost & Associates, Inc.


By: Charles T. Duncan
Title: ~~Principal~~ Vice President
Date: 9/13/10
Fed. Employer ID No. 68-0370826

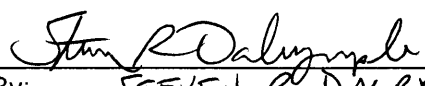

By: STEVEN R. DALRYMPLE
Title: PRESIDENT
Date: 9/13/10

EXHIBIT A

SCOPE OF SERVICES

- I. **INTRODUCTION AND ASSUMPTIONS.** INFILL” means all property which meets all of the following criteria: (a) the property is in the City limits; (b) the property is in the Core Contiguous Area as defined by the General Plan; (c) the property is not covered by the finance plan for the Residential Areas Specific Plan, the Industrial Areas Specific Plan, and the I-205 Corridor.

Special Note:

- Infill Parcel No. 39 is currently within the County and is not within the City limits, however, based upon the need for the parcel to be served by infrastructure financed by Infill fees, this parcel will be subject to Infill fees upon annexation to the City. This acreage is NOT included in the subtotal of the attached table.
- Infill Parcel No. 41 is to be served by South MacArthur Planning Area infrastructure and impact fees will be determined by a separate report.
- Infill Parcel No. 42 is to be served by Presidio infrastructure and impact fees will be determined by a separate report.

Infill Parcels are identified on Exhibit “C”, attached hereto and incorporated herein by reference.

CITY has requested that CONSULTANT make the following assumptions:

- A. Infill Projects will receive their water supply from the Delta Mendota Canal through the existing water treatment plant, and local groundwater sources, and that no additional analysis regarding supply source or reliability is required (however, Infill’s proportionate share of the recent WTP upgrades and providing water supply reliability will be evaluated and cost allocated accordingly).
- B. CONSULTANT’s technical report should be prepared in accordance with the Mitigation Fee Act, also known as “AB 1600.”

The major tasks to complete the evaluation of PROJECT is presented below.

II. **BASIC SCOPE OF SERVICES.**

Task 1 – Project Management and Meetings

CONSULTANT may be requested to attend various project status meetings, and prepare and make presentations as requested by CITY, in addition to those identified with each task below. Additionally, CONSULTANT may also have to respond to various written and verbal comments from CITY. CONSULTANT has assumed attendance at

only one (1) meeting and up to 6 hours total for preparing and verbally responding to comments. CONSULTANT will keep CITY informed, and will advise CITY if approaching this budgetary estimate, so that a budget augmentation may be considered. CONSULTANT has Identified additional meetings associated with specific tasks and are further described in the subsequent sections.

Task 2 - Review Assumptions, Criteria and Studies

Under Task 2, CITY and CONSULTANT staff will meet to discuss and evaluate previous CITY and CONSULTANT assumptions, criteria and studies to be used by CONSULTANT in the evaluation of the City's water system infrastructure for the Infill Projects. This review will allow CONSULTANT to use previous work products. CONSULTANT will develop a "working" City map presenting where Infill is located, and what portions have built out since 1990. This map will be used during the meeting with CITY to finalize the portion of Infill which has not yet built out and to establish an Infill base which will be used in CONSULTANT'S evaluation. CITY and CONSULTANT will also discuss how costs will be allocated to the Infill Properties.

Task 3 - Water Demand Evaluation

Once the PROJECT has been fully defined in Task 2, CONSULTANT will calculate the total average day water demand for the undeveloped Infill Project areas using the unit water duties presented in the March 2001 Water System Analysis for Infill Properties. Maximum day and peak hour demands will then be calculated using the peaking factors of 2.2 and 3.8 times the average day demand, respectively. These calculated water demands will be defined as the Base Infill Project Area water demands. These demands will be compared to those supplies the City has set aside for the Infill Properties. CONSULTANT'S work product will be a spread sheet tabulation of calculated demands for the PROJECT.

Task 4 - Water Treatment Plant Cost and Supply Reliability Allocation

Water Quality regulations have changed since the City's John Jones Water Treatment Plant was expanded in 1989. The California Department of Health Services staff have indicated that they would not authorize an increase in plant capacity unless the treatment process is upgraded and/or the surface water supply is shifted from the Delta Mendota Canal to the California Aqueduct. With the recent completion of the upgrade to the John Jones Water Treatment Plant and the firming up of the City's Surface Water Supply (SSJID and Kern Water Bank) to make it more reliable, CONSULTANT will interview City staff to determine the appropriate allocation of fees that should be assigned to the Infill Project.

Task 5 - Water Storage and Booster Pumping Facilities Evaluation

Based on the assumption that the Infill Project will develop concurrently with the buildout of the previously approved ISP, RSP, I-205 specific plans and the Plan C, NEI, South MacArthur, Presidio and Gateway planning areas, (and the construction of any

system facilities required to mitigate impacts to the water system caused by these approved specific plans), the sizing of required water storage and booster pumping facilities and their locations to support the Infill Project will be evaluated. The water demands calculated in Task 3 will be used to confirm that the previously calculated transmission main pipeline sizes are still adequately sized to support Infill's proposed land use. CONSULTANT will assume emergency water storage will be provided by the groundwater basin, and the City's existing groundwater production capability will be evaluated to determine whether sufficient emergency pumping capacity exists, after meeting the emergency needs of the RSP and ISP. It will be assumed that all other water storage will be provided by existing clearwell storage at the water treatment plant site. CONSULTANT will determine the storage capacity required to meet peak hour, emergency, fire, and operational storage, and determine the appropriate size of associated booster pumping facilities. CONSULTANT'S work product will be a map showing the locations and sizes of required facilities for the Infill Project.

Task 6 – Draft/Final Technical Report

- A. Prepare draft Technical Report (TR). The work performed in completing the above tasks, together with the findings, will be summarized and presented in a four to five page TR for CITY review and comment. The TR will include, pursuant to the Mitigation Fee Act (Government Code sections 66000, et seq., AB 1600), and the City's Impact Fee Ordinance (Tracy Municipal Code, Title 13), facts which support all of the findings set forth below.
1. A description of assumptions and design criteria, regarding existing level of service, including a description of the existing public facilities and the existing users (with references to all supporting documents).
 2. A description of assumptions regarding the type of development planned for PROJECT, (to be provided by CITY to CONSULTANT).
 3. A description of the impacts PROJECT will have on the level of service to existing City residents.
 4. A description of the facilities required for PROJECT to meet CITY's design criteria and level of service standards.
 5. A description of the level of service which will result after the construction of additional public facilities (described above), following full development of PROJECT.
 6. A description of how the new developments within PROJECT benefit from the additional public facilities.
 7. Pursuant to Government Code section 66005(a), an estimate of the total cost for providing the required public facilities necessary to support PROJECT build-out condition.
 8. A description of the basis, or bases, upon which the total estimated cost of providing the required public facilities will be allocated.
 9. Based upon the analysis summarized in sections 1 through 8, above, CONSULTANT shall provide facts which support the following:
 - a. Identification of the purpose of the proposed fee.

- b. Description of how the fee will be used.
- c. Determination of how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.
- d. Determination of how there is a reasonable relationship between the need for the public facility and the type of development on which the fee is imposed.
- e. Determination of how there is a reasonable relationship between the amount of fee and the cost of the public facility (or portion of the facility) attributable to new development.

Four (4) copies of all drafts of the TR and the final product, will be submitted to CITY for review and comment.

B. Final Technical Report. A meeting will be scheduled CITY to discuss the draft TR and receive comments. Following this meeting, CONSULTANT will incorporate appropriate comments received on the draft TR, and submit four (4) copies of the final TR to CITY.

III. **FEE ESTIMATE.** The estimated costs associated with performing the work scope described herein are provided below.

Task	Description	Cost
1	Project Management and Meetings	\$4,000
2	Review Assumptions, Criteria and Studies	\$3,800
3	Water Demand Evaluation	\$2,000
4	Water Treatment Plant Cost and Supply Reliability Allocation	\$4,500
5	Water Storage and Booster Pumping Facilities Evaluation	\$4,800
6	Draft/Final Technical Report	\$11,700
Basic Scope of Services, Total Cost		\$30,800

Any additional services not included in CONSULTANT's Basic Scope of Services will be performed only after receiving written authorization and a corresponding budget increase from CITY.

IV. **COMPLETION OF THE SCOPE OF SERVICES.** CONSULTANT shall complete the Draft Report ten (10) weeks after receiving written authorization to proceed with this agreement, and CONSULTANT's receipt of all supporting information from CITY. CONSULTANT shall complete the Final Report, no later than two weeks after receiving written, consolidated comments on the Draft Report from the CITY.

V. **PERSONNEL.** CONSULTANT shall assign the following person/persons to perform the tasks set forth in this Task Order:

Charles Duncan, Vice President (Authorized Representative);
Gerry S. Nakano, Vice President;
Vivian Housen, Vice President;
Elizabeth Drayer (Principal Engineer);
Irene Suroso (Senior Engineer);
Amy Kwong (Associate Engineer); and
Carolyn Simmons (Engineer I).

EXHIBIT B
 WEST YOST ASSOCIATES

Billing Rate Schedule
 (Effective January 1, 2010 through December 31, 2010)*

Position	Labor Charges (dollars per hr)
Principal/Vice President	216
Engineering Manager	206
Principal Engineer/Scientist	188
Senior Engineer/Scientist/GIS Analyst	169
Associate Engineer/Scientist	151
GIS Analyst	151
Engineer II/Scientist II	134
Engineer I/Scientist I	115
Construction Manager III	164
Construction Manager II	151
Construction Manager I	139
Resident Inspector III	127
Resident Inspector II	117
Resident Inspector I	103
Sr. Designer/Sr. CAD Operator	109
Designer/CAD Operator	97
Technical Specialist II	94
Technical Specialist I	82
Engineering Aide	68
Administrative IV	97
Administrative III	85
Administrative II	73
Administrative I	61

Hourly labor rates include Direct Costs such as general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.

Outside Services such as vendor reproductions, prints, shipping, and major WYA reproduction efforts, as well as Engineering Supplies, Travel, etc. will be billed at actual cost plus 15%.

Mileage will be billed at the current Federal Rate.

Subconsultants will be billed at actual cost plus 10%.

Computers are billed at \$25 per hour for specialty models and AutoCAD.

A Finance Charge of 1.5 percent per month (an Annual Rate of 18 percent) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

Billing rates apply to all computers and equipment, whether owned or rented by WYA, and to all employment categories including regular full-time, part-time, limited term and contract personnel as defined in WYA's Employee Handbook.

*This schedule will be updated annually

WEST YOST ASSOCIATES

Billing Rate Schedule
 (Effective January 1, 2010 through December 31, 2010)*

SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	333
GPS, 2-Person	284
GPS, 1-Person	223
Survey Crew, 2-Person	242
Survey Crew, 1-Person	182

EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	77
pH Meter	5	24
Automatic Sampler	120	658
Transducer/Data Logger	38	190
Hydrant Pressure Gage	11	47
Hydrant Pressure Recorder (HPR)	—	190
Hydrant Wrench	5	30
Pitot Diffuser	27	124
Well Sounder	27	124
Ultrasonic Flow Meter	—	249
Vehicle	82	412
Velocity Meter	11	60
Water Quality Multimeter	163	891
Thickness Gage	—	66

*This schedule will be updated annually

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS
TRAFFIC ENGINEERING SUPPORT**

THIS MASTER PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and **Fehr & Peers** (hereinafter "CONSULTANT").

RECITALS

- A. CONSULTANT is a registered professional engineer in the state of California.
- B. CONSULTANT services are needed to support CITY staff on an "as needed" basis in resolving issues, performing studies with the existing City-wide Traffic Model, making recommendations, and performing other assignments related to the Traffic Master planning and Finance and Implementation Plans (FIP).
- C. At the request of CITY, in April 2010, CONSULTANT submitted its proposal to perform the services described by this Agreement. CONSULTANT submitted a proposal to perform the services described in Exhibit "A" of this Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement. City Council approved this Professional Services Agreement on September 21, 2010, per Council Resolution No. 2010-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services generally described in Exhibit "A" attached hereto and incorporated herein by reference. CONSULTANT's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the CITY and CONSULTANT. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: **Ellen Poling.** CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," nor shall CONSULTANT use any subcontractor or subconsultant, without the prior written consent of the CITY.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task

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TRAFFIC ENGINEERING SUPPORT**

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Order shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. CITY shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. CONSULTANT is not CITY's employee and CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT.
4. **CONFLICTS OF INTEREST.** CONSULTANT (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
5. **COMPENSATION.**
 - 5.1. For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates amount set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order. The Not to Exceed amount of individual Task Orders authorized under this Agreement shall not exceed the aggregate amount of FIFTY THOUSAND DOLLARS (\$50,000.00). Billing rates may be adjusted in an amount not to exceed three (3%) percent per year, upon City's receipt of written notice from the CONSULTANT. CONSULTANT's billing rates, and Not To Exceed amount, shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount without the prior written approval of the CITY.
 - 5.2. CONSULTANT shall submit monthly invoices to the CITY describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. Within thirty (30) days after the CITY's receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by the CITY.
6. **TERMINATION.** The CITY may terminate this Agreement by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give the

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
TRAFFIC ENGINEERING SUPPORT**

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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.

7. **OWNERSHIP OF WORK.** After final payment All original documents (deliverables) prepared by CONSULTANT for this Agreement are the property of the CITY, and shall be given to the CITY at the completion of CONSULTANT's services, or upon demand from the CITY. No such documents shall be revealed or made available by CONSULTANT to any third party without the prior written consent of CITY. All documents are instruments of service and the City shall retain an ownership and property interest therein whether or not the Project is completed.
8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify, defend, and hold harmless the CITY (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) to the extent caused by the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services under this Agreement.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.
11. **INSURANCE.**
 - 11.1. **General.** CONSULTANT shall, throughout the duration of this Agreement, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 11.2. **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 - 11.3. **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
 - 11.4. **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 11.5. **Professional Liability** 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 occurrence.

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- 11.6. Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 11.6.1.** The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 11.6.2.** For any claims related to this Agreement, CONSULTANT’s coverage shall be primary insurance with respect to the CITY. Any insurance maintained by the CITY shall be excess of the CONSULTANT’s insurance and shall not contribute with it.
- 11.7. Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the CITY should the policy be canceled before the expiration date, and ten (10) days for non-payment. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 11.8. Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 11.9. Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five (5) days after the execution of this Agreement.
- 11.10. Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11. CONSULTANT’s Obligation.** Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 12. ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT’s duties be delegated, without the written consent of the CITY. Any attempt to assign or delegate this Agreement without the written consent of the CITY shall be void and of no force and effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

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13. NOTICES.

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

To CITY:
Kul Sharma
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

To CONSULTANT:
Ms. Ellen Poling
Fehr & Peers
100 Pringle Avenue, Suite 600
Walnut Creek, CA 94596

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

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

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

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

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

18. ENTIRE AGREEMENT. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.

19. COMPLIANCE WITH THE LAW. CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

20. STANDARD OF CARE. Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
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diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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

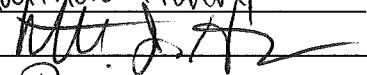
IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY

CONSULTANT
Fehr & Peers

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

Matthew Henry

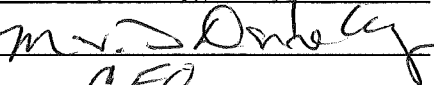
By: 
Title: President
Date: 11/11/10

Fed. Employer ID No. _____
68-0065540

Attest:

By: Sandra Edwards
Title: CITY CLERK
Date: _____

Marion Dannelly

By: 
Title: CFO
Date: 9-14-10

Approved As To Form:

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

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**EXHIBIT A
SCOPE OF SERVICES**

SCOPE OF SERVICES. The various services included in this MPSA will include but are not limited to the following development areas and specific plans within the City and within the City's influence area as follows:

- Plan C Development Area
- South MacArthur Development Area
- Infill Development Area
- I-205 Specific Plan
- North East Industrial Area Phase 1 and Phase II
- South Industrial Specific Plan
- Gateway Development
- Westside Developments
- New specific plans or infrastructure plans that may arise from new development proposals or the Transportation Master Plan (currently under development)

The City reserves the right to add or delete any of the areas or Specific Plans listed above from the proposed scope of work at any time during the period of this Master Professional Services Agreement. The services required will be part of the multiple Task Orders executed with the CONSULTANT that include and not limited to the following:

- Travel demand forecasting, traffic operations analysis and project cost estimating to support review and update of Development Impact Fees and Finance and Implementation Plans
- Transportation planning and traffic engineering analyses to support development project review, including environmental document preparation (transportation portion)
- Transportation planning and traffic engineering analyses to support roadway infrastructure project development, environmental review, and approval process
- Transportation analyses necessary to support amendments to the General Plan, Sustainability Action Plan, and/or Transportation Master Plan
- Assist CITY in updating the Finance and Implementation Plans (FIPs) of various development areas.

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- Meetings with City staff to discuss topics related to any of the above items.
- Provision of other transportation planning or traffic engineering services as required.

DURATION OF SERVICES. It is intended that the Master Agreement with the consultant will be good for a period of three years. However, CITY reserves the right to terminate the agreement any time during the period of the agreement. Consultant may also terminate the agreement any time with 30-days written notice. This Master Agreement may be extended by the City for two additional years with the consent of the Consultant and the City.

PROJECT PERSONNEL. Consultant shall assign the following person/persons to perform the tasks set forth in this agreement, or other qualified staff as approved by the City's project manager on specific project tasks:

Principal-in-Charge:	Jerry Walters, P.E.
Project Manager:	Ellen Poling, P.E.
Senior Design Engineer:	Josh Peterman, P.E.
Project Advisor:	Mike Wallace, EIT, PTP
Project Engineer:	Mackenzie Watten, EIT
Project Engineer:	Dan Hennessey, EIT
Graphics Technician:	Mike Rodriguez
Administrative Assistant:	Lorna Angeles

TIME OF PERFORMANCE. Consultant shall provide the "Scope of Services" described in this Exhibit A and is listed in the specific Task Order from the receipts of the "Notice to Proceed" for specific time period and not to exceed amount unless the scope of work is amended and approved by the City.

COMPENSATION. Consultant shall perform the "Scope of Work" described in individual Task Order executed within the umbrella of this MPSA with estimated level of effort as described in the scope of work and more specifically shown in the individual Task Orders.

RESOLUTION _____

APPROVING A MASTER PROFESSIONAL SERVICES AGREEMENTS WITH VARIOUS CONSULTANTS TO PROVIDE TECHNICAL ANALYSIS OF INFRASTRUCTURE NEEDS FOR VARIOUS DEVELOPMENT PROJECTS RELATED TO WATER, STORM DRAINAGE, AND TRAFFIC AND AUTHORIZING THE DEVELOPMENT & ENGINEERING SERVICES DIRECTOR TO EXECUTE THESE AGREEMENTS AND SUBSEQUENT TASK ORDERS FOR A NOT TO EXCEED AGGREGATE AMOUNT OF \$50,000 AT ONE TIME FOR EACH CONSULTANT

WHEREAS, The City of Tracy has completed Infrastructure Master Plans for various development areas in the City including the Residential Specific Plan (RSP), I-205 Specific Plan, Plan C development area and the Northeast Industrial Area (NEI) Phases 1 and 2, and

WHEREAS, The development area occurs in multiple phases, there is never enough funding to complete all infrastructure improvements in a systematical manner upfront prior to the issuance of building permits, and

WHEREAS, As a result, technical analysis are completed to identify the minimum infrastructure improvements required to serve the initial or particular developments within the confines of the City's overall Infrastructure Master Plans, and

WHEREAS, In order to complete such analysis in a timely and cost effective manner, the services of consultants, who are knowledgeable and familiar with the infrastructure and who have developed the infrastructure models are required, and

WHEREAS, In an effort to expedite the approval of the development projects, it is recommended that Master Professional Services Agreements be executed with the following infrastructure consultants: Storm Water Consulting, Inc., Fehr & Peers, and West Yost & Associates, and

WHEREAS, It is also recommended that the Director of Development and Engineering Services be authorized to negotiate the various Task Orders under these master agreements with each infrastructure consultant up to a total aggregate amount of \$50,000, and

WHEREAS, The MPSAs will be valid for a period of three years from the date of execution with a possible extension for a period of an additional two years after satisfactory completion, and

WHEREAS, There is no fiscal impact to the General Fund. The cost of technical analysis will be funded by various developments or from program management fees collected from development areas;

NOW, THEREFORE BE IT RESOLVED, That City Council approves Master Professional Services Agreements with various consultants to provide technical analysis of infrastructure needs of various developments and authorizes the Development and Engineering Services Director to execute these agreements and subsequent Task Orders for a not to exceed aggregate amount of \$50,000 at one time per consultant.

* * * * *

Resolution _____

Page 2

The foregoing Resolution _____ was adopted by the City Council on the 21st day of September 2010, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.D

REQUEST

**AWARD A CONSTRUCTION CONTRACT TO REPUBLIC ITS OF FREMONT,
CALIFORNIA, FOR THE 2010 TRAFFIC CALMING PROJECT - CIP 72065, AND
AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT**

EXECUTIVE SUMMARY

On February 19, 2008, the City of Tracy adopted the Traffic Calming Program and established guidelines for requesting traffic calming devices. Staff evaluated the requests received for FY 2009-10 for traffic calming in accordance with the Traffic Calming Program. Starflower Drive and Dove Drive met the criteria established in the Traffic Calming program for installation of traffic calming devices. Therefore, Staff completed design and construction documents for completion of these traffic calming improvements under CIP 72065. The project was advertised for competitive construction bids in July 2010. Award of this construction contract will facilitate the installation of traffic calming devices on these streets.

DISCUSSION

In 2008 City Council adopted the Traffic Calming Program establishing criteria for installation of Traffic Calming Devices on various streets in the City. Staff evaluates and processes the traffic calming requests in accordance with the requirements of this program. A total of five requests for traffic calming devices in FY 2009-10 were received. However, only one neighborhood met all the established criteria for installation of traffic calming devices.

After reviewing and evaluating the qualified request, staff conducted neighborhood meetings with residents to receive their input, share the results of speed surveys, and inform them about the City's policy to address their concerns in accordance with the Traffic Calming Program. Staff also conducted a mail-in ballot to receive votes for proposed solutions from the neighborhood residents in accordance with the program.

Staff prepared the project improvement plans, specifications, and contract documents in-house. The project will provide furnishing and installation of radar speed feedback electronic signs on Dove Drive and Starflower Drive. These signs will be located at City identified locations and installed on a concrete foundation.

The project was advertised for competitive bids on July 14, and July 21, 2010. The City received six bids on August 11, 2010, as follows:

Bidder	Total Bid
Republic ITS, Fremont, CA	\$35,400
Richard Heaps and Electric Company, Sacramento, CA	\$35,790
Collins Electric Compnay, Stockton, CA	\$35,990
Tim Paxin's Pacific Excavation Company, Elk Grove, CA	\$41,200
W Bradely Electric, Novato, CA	\$41,500
Tennyson Electric Inc, Livermore, CA	\$48,776

Staff has reviewed the bids and completed the bid analysis. The bid submitted by Republic ITS is the lowest monetary bid.

The bid analysis indicates that the lowest bid is responsive and the bidder is responsible. Republic ITS has good references and has completed similar projects for other public agencies. Staff recommends that the construction contract for the project be awarded to Republic ITS of Fremont, CA, for the total amount of \$35,400.

The total construction cost of this project, if awarded to Republic ITS, is as follows:

Construction Contract Base Bid Amount	\$35,400
Construction Management & Inspections (5%)	\$ 1,770
Contingency (approx. 10%)	<u>\$ 3,540</u>
Total Construction Cost	\$40,710
 Total Available Budget for construction	 \$50,000

Construction management for this project will be provided in-house by engineering staff.

FISICAL IMPACT

This is an approved Capital Improvement Project and there will be no impact to the General Fund.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, award a construction contract to Republic ITS, of Fremont, California, in the amount of \$35,400 for the Traffic Calming Project - CIP 72065, and authorize the Mayor to execute the agreement.

Prepared by: Ripon Bhatia, Senior Civil Engineer
 Reviewed by: Kuldeep Sharma, City Engineer
 Approved by: Andrew Malik, Development and Engineering Services Director
 Leon Churchill, Jr., City Manager

RESOLUTION _____

AWARDING A CONSTRUCTION CONTRACT TO REPUBLIC ITS OF FREMONT, CALIFORNIA, FOR THE 2010 TRAFFIC CALMING PROJECT - CIP 72065, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, In 2008 City Council adopted the Traffic Calming Program establishing criteria for installation of Traffic Calming Devices on various streets in the City, and

WHEREAS, A total of five requests for traffic calming devices in FY 2009-10 were received, and

WHEREAS, Only one neighborhood met all the established criteria for installation of traffic calming devices, and

WHEREAS, The project will provide furnishing and installation of radar speed feedback electronic signs on Dove Drive and Starflower Drive, and

WHEREAS, The project was advertised for competitive bids on July 14, and July 21, 2010, and six bids were received on August 11, 2010, and

WHEREAS, The bid submitted by Republic ITS is the lowest monetary bid, and

WHEREAS, Staff recommends that the construction contract for the project be awarded to Republic ITS of Fremont, CA, for the total amount of \$35,400, and

WHEREAS, The total construction cost of this project, if awarded to Republic ITS, is as follows:

Construction Contract Base Bid Amount	\$35,400
Construction Management & Inspections (5%)	\$ 1,770
Contingency (approx. 10%)	<u>\$ 3,540</u>
Total Construction Cost	\$40,710

WHEREAS, This is an approved Capital Improvement Project and there will be no impact to the General Fund;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Republic ITS, of Fremont, California, in the amount of \$35,400 for the Traffic Calming Project - CIP 72065, and authorizes the Mayor to execute the agreement.

Resolution _____

Page 2

The foregoing Resolution _____ was adopted by the City Council on the 21st day of September 2010, by the following vote:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

AUTHORIZE FEDERAL FISCAL YEAR 2010 GRANT APPLICATION FOR SECTION 5307 U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSPORTATION ADMINISTRATION FUNDS IN THE AMOUNT OF \$1,169,777 FOR TRACER PUBLIC TRANSPORTATION SERVICES AND FOR REPLACEMENT FIXED ROUTE BUSES; CERTIFICATION OF APPLICATION ASSURANCES; AND THE CITY MANAGER OR DESIGNEE TO EXECUTE THE GRANT DOCUMENTS

EXECUTIVE SUMMARY

The City of Tracy is applying for Federal Transportation Administration Grant Funding. This request is for the amount of \$1,169,777 for Tracer public transportation services and for replacement fixed route buses. The application has been presented to San Joaquin Council of Governments (SJCOG), which is the Designated Recipient for these funds. Approval of this application is necessary to ensure FTA 5307 funding of the TRACER Public Transportation System and Capital Improvement Program (CIP) Transit Projects.

DISCUSSION

Annually, the City of Tracy can apply for Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding. The available funds to the City of Tracy from FTA Section 5307, for Federal Fiscal Year 2010 (FY10) appropriation and allocation, are \$1,289,283. The Section 5307 grant funding requested in this action for Fiscal Year 2010 appropriation is the allocation of \$1,169,777. The difference of \$119,506 will be used toward a future Section 5307 Grant.

This grant application (CA90Y823) requires certain assurances from the City that funds will be used in a manner which complies with all federal statutes, regulations, executive orders and administrative procedures applicable to the grant. Application is being made to provide grant assistance for TRACER operating assistance and for replacement fixed route buses.

The application has been presented to San Joaquin Council of Governments (SJCOG), which is the Designated Recipient for these funds. SJCOG, acting as the regional transportation coordinator, assures the State that total County Section 5307 funds have been programmed, that the local funding has been committed to transit operation, that needs of the elderly and handicapped have been met, and that the City has coordinated with other transportation providers and users within the Tracy area.

Approval of this application is necessary to ensure FTA 5307 funding of the TRACER Public Transportation System and Capital Improvement Program (CIP) Transit Projects. Transportation Development Act funds will be used as the matching funds for the City's portion on all projects listed below. A breakdown of the funding sources for these projects is shown below:

PROJECT	TOTAL COST	FTA / 5307	TDA
TRACER FY10 Operating Expense	\$1,397,154	\$698,577	\$698,577
Replacement Fixed Route Buses	\$589,000	\$471,200	\$117,800
TOTALS	\$1,986,154	\$1,169,777	\$816,377

STRATEGIC PLAN:

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

FISCAL IMPACT

There is no impact to the General Fund. The City's public transit services and related CIP projects for this application will be funded from the Transit Fund.

RECOMMENDATION

That the City Council, by Resolution, authorizes the Federal Fiscal Year 2010 Grant application for Section 5307 U.S. Department of Transportation Federal Transportation Administration funds in the amount of \$1,169,777 for TRACER Public Transportation Services and for replacement Fixed Route Buses; certification of application assurances; and authorize the City Manager or designee to execute the grant documents.

Prepared by: Ed Lovell, Management Analyst II

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

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING FEDERAL FISCAL YEAR 2010 GRANT APPLICATION FOR SECTION 5307 U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSPORTATION ADMINISTRATION FUNDS IN THE AMOUNT OF \$1,169,777 FOR TRACER PUBLIC TRANSPORTATION SERVICES AND FOR REPLACEMENT FIXED ROUTE BUSES; CERTIFICATION OF APPLICATION ASSURANCES; AND THE CITY MANAGER OR DESIGNEE TO EXECUTE THE GRANT DOCUMENTS

WHEREAS, As required by 49 U.S.C. Section 5307, the Section 5307 grant application identifies the need for and use of funds to assist in transit operations, bus security cameras, and for replacement paratransit buses; and

WHEREAS, For Federal Fiscal Year 2010 appropriation and allocation, the available funds from Federal Transportation Administration Section 5307 source are \$1,289,283 and the application (CA90Y823) seeks the amount of \$1,169,777, with the difference of \$119,506 being used for a future Section 5307 Grant; and

WHEREAS, The San Joaquin County Council of Governments, acting as the regional transportation coordinator and Designated Recipient, assures the State that total County Section 5307 funds have been programmed, that local funding has been committed to transit operation, that needs of the elderly and disabled have been met, and that the City has coordinated with other transportation providers and users within the Tracy area; and

WHEREAS, The grant application requires the City to make certain assurances that the grant funds will be used in compliance with applicable laws, regulations and administrative or executive orders.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy does hereby authorize the following:

1. The Federal Fiscal Year 2010 (FY10) grant application for Section 5307 U.S. Department of Transportation Federal Transportation Administration funds in the amount of \$1,169,777 for TRACER public transportation services and for replacement fixed route buses; and
2. Certification of application assurances; and
3. The City Manager or designee to execute the grant documents.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the _____ day of _____ 2010, 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

**DECLARING AND APPROVING THE LIST OF SURPLUS EQUIPMENT AND
COMMODITIES FOR SALE AT PUBLIC AUCTION TO THE HIGHEST BIDDER**

EXECUTIVE SUMMARY

The City periodically declares equipment and commodities that have been used beyond their economical and/or useful life as surplus for sale at public auction.

DISCUSSION

The equipment and commodities on Exhibit A have been removed from service and are no longer needed by the City. These items have been used beyond their economical and/or useful life and may be declared as surplus property.

The disposal of surplus equipment and commodities or other property no longer needed by any department of the City is governed by Chapter 2.20 of the Tracy Municipal Code. Specifically, Section 2.20.310 identifies the method of disposition of surplus property.

These surplus items will be sold at public auction to the highest bidder. Items which are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value.

STRATEGIC PLAN

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

FISCAL IMPACT

The proceeds from the sale of surplus property will be deposited in the appropriate City fund from which the property was originally purchased. The estimated value of this surplus property is \$80,000.

RECOMMENDATION

That the City Council, by resolution, declares and approves the list of surplus equipment and commodities, and authorize the sale of said items at public auction to the highest bidder.

Prepared by: Robert Gravelle, Public Works Superintendent

Reviewed by: Kevin Tobeck, Director of Public Works

Approved by: Leon Churchill, Jr., City Manager

Attachment: Exhibit A

EXHIBIT A

SURPLUS EQUIPMENT AND COMMODITIES

<u>Equipment</u>	<u>Identification Number</u>
1985 Van Pelt Spartan (Fire Apparatus)	8520 29RT4B01GC423893
1987 Broyhill Sprayer Model 200FGR	8702 Serial No. 1950
1990 Ford L8000 Vac-Con Sewer Truck	9006 1FD4R82A9LBA10509
1996 Ford F250 Pick-up	9602 1FDHF25G0TEA67171
1999 Ford F250 Pick-up	9911 1FTNF20L6XEE66166
1999 Ford F150 Pick-up	9908 1FTZF1723XKB60326
2000 Ford F550 Pick-up	2019 1FDAF56F9YEE27957
2001 Dodge 2500 Pick-up	2007 3B7KC26Z41M283180
2001 Dodge 2500 Pick-up	2009 3B6KC26Z51M278557
2001 Jeep Cherokee SUV	2016 1J4FT48S91L563461
2001 Ford Crown Victoria	2030 2FAFP71W81X126407
2002 Ford Crown Victoria	2060 2FAFP71W32X129846
2003 Ford Taurus	2124 1FAFP53U63A104644
2004 Nissan Maxima	2105 1N4BA41E44C823628
2004 Nissan UD Cab & Chassis	2238 JNAUZU1J34A355009
2005 Ford Crown Victoria	2145 2FAFP71W95X124185
2005 Ford Crown Victoria	2146 2FAFP71W05X124186
2006 Ford Crown Victoria	2207 2FAFP71WX7X109553
1981 Catolac single wide trailer (12'x55')	Serial No. 10145
1998 Pony Floor Scrubber Model 20 SCA	Serial No. 4949028
1999 Canon Image Runner copy machine	Serial No. 11407083
2007 Can-Fab Power Exhaust 208/3HP	Part No. 1162-PE-E
Windsor vacuums (10)	N/A
Kent Floor Buffer	N/A
Fire extinguishers (14)	N/A
Box of miscellaneous and obsolete parts	N/A
1" Copper tubing (contains trace lead – 100')	N/A

RESOLUTION _____

DECLARING AND APPROVING THE LIST OF SURPLUS
EQUIPMENT AND COMMODITIES FOR SALE TO THE
HIGHEST BIDDER AT PUBLIC AUCTION

WHEREAS, The equipment and commodities on Exhibit A have been removed from service and are no longer needed by the City, and

WHEREAS, These equipment and commodities have been used beyond their economical and/or useful life and may be declared as surplus property, and

WHEREAS, The disposal of surplus equipment and commodities or other property no longer needed by any department of the City is governed by Chapter 2.20 of the Tracy Municipal Code; specifically, Section 2.20.310 which identifies the method of disposition of surplus property, and

WHEREAS, These surplus items will be sold at public auction to the highest bidder while items that are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value, and

WHEREAS, The proceeds from the sale of surplus property will be deposited in the appropriate City fund from which the property was originally purchased, and

WHEREAS, The estimated value of this surplus property is \$80,000;

NOW, THEREFORE, BE IT RESOLVED That the City Council of the City of Tracy hereby declares and approves the list of surplus vehicles, equipment and furniture, and authorizes the sale of said items to the highest bidder.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 21st day of September 2010, 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**AUTHORIZATION TO AWARD THE PURCHASE OF THREE 26-FOOT LOW FLOOR HYBRID BUSES AND TWO ADA ACCESSIBLE MINIVANS FOR TRACER PARATRANSIT SERVICE TO A-Z BUS SALES UNDER THE CALACT/MBTA PURCHASING COOPERATIVE AGREEMENT**EXECUTIVE SUMMARY

On, August 19, 2008, the City Council previously authorized application of Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding (Resolution 2008-164) for purchase of two paratransit minivans. Additionally on August 4, 2009, the City Council previously authorized application of Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding (Resolution 2009-137) for purchase of up to four replacement paratransit buses. FTA 5307 Grant funding requires certain assurances from the City that funds will be used in a manner which complies with all federal statutes, regulations, executive orders and administrative procedures applicable to the grant.

DISCUSSION

On, August 19, 2008, the City Council previously authorized application of Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding (Resolution 2008-164) for purchase of two paratransit minivans. Additionally on August 4, 2009, the City Council previously authorized application of Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding (Resolution 2009-137) for purchase of up to four replacement paratransit buses. FTA 5307 Grant funding requires certain assurances from the City that funds will be used in a manner which complies with all federal statutes, regulations, executive orders and administrative procedures applicable to the grant.

The Tracy Municipal Code (TMC) Chapter 2.20 Contracts and Purchasing allows the City to voluntarily participate in any cooperative purchasing agreements with other public agencies. The Morongo Basin Transit Authority (MBTA) and the California Association for Coordinated Transportation (CalACT) have formed the CalACT/MBTA Purchasing Cooperative for the purchase of cutway buses and minivans. The form of procurement to employed by the Cooperative is the development of a Local Government Purchasing Schedule as defined in the Federal Transit Administration's (FTA) Circular 4220.1F Chapter V, Part 4. Wherein the FTA extends to local governments the authority to make arrangements with multiple vendors to provide options for goods or service in the future at established prices to the local government or others that the local government chooses to share these arrangements with. This form of procurement is sometimes known as a "menu-style bid." The bid will enable transit agencies to select vehicles from a menu of choices from different vendors and manufacturers that best suit their requirements without having to go out to bid.

The total cost for one ARBOC Low Floor, Type G, 26-foot hybrid bus with recommended options will be \$185,588.94. The total cost for one Braun Entervan, Type D Minivan will be \$42,528.50. There will be other costs after the new vehicles arrive, such as radio installation and TRACER signage that is not included in this bid, and are already included in the approved grant amounts. Seating capacity for the buses will be 17 passengers and 2 wheelchair positions, or 13 passengers if three wheelchair positions

are being utilized. Seating capacity for the minivans will be 3 passengers and 2 wheelchair positions.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund. A total of \$641,823.82 will be awarded to A-Z Bus Sales for the purchase of three 26-foot low floor hybrid buses and two ADA accessible minivans. There is funding available, in the approved FY 2010/2011 budget (Transit Fund), and by previous City Council Resolutions 2008-164 and 2009-137 (FTA 5307 grant approval). The buses will be purchased using existing CIPs 77534 and 77537.

RECOMMENDATION

That the City Council, by Resolution, authorize the award of \$641,823.82 to A-Z Bus Sales for the purchase of three 26-foot low floor hybrid buses and two ADA accessible minivans for TRACER Public Transit Service under the CalACT/MBTA Purchasing Cooperative Agreement.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Director of Parks and Community Services
Allan Borwick, Budget Officer

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING THE AWARD OF THE PURCHASE OF THREE 26-FOOT LOW FLOOR HYBRID BUSES AND TWO ADA ACCESSIBLE MINIVANS FOR TRACER PARATRANSIT SERVICE TO A-Z BUS SALES UNDER THE CALACT/MBTA PURCHASING COOPERATIVE AGREEMENT

WHEREAS, The City Council previously authorized application for Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding (Resolution 2008-164) for the purchase of two paratransit minivans and application for Federal Transportation Administration (FTA) 49 U.S.C. Section 5307 Grant Funding (Resolution 2009-137) for the purchase of up to four replacement paratransit buses for the TRACER Public Transit Service; and

WHEREAS, Tracy Municipal Code Section 2.20.220 allows the City to voluntarily participate in cooperative purchasing agreements with other public agencies, and The Morongo Basin Transit Authority (MBTA) and the California Association for Coordinated Transportation (CalACT) have formed the CalACT/MBTA Purchasing Cooperative for the purchase of cutway buses and minivans and it is financially advantageous for the City to purchase two ADA accessible minivans and three low floor hybrid buses through this Cooperative.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy authorizes the award of \$641,823.82 to A-Z Bus Sales for the purchase of two (2) ADA accessible minivans and three (3) low floor hybrid buses.

* * * * *

The foregoing Resolution _____ was adopted by the Tracy City Council on the _____ day of _____ 2010, by the following vote:

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

Mayor

ATTEST:

City Clerk

September 21, 2010

AGENDA ITEM 1.H

REQUEST

AUTHORIZATION TO ENTER INTO A LEASE AGREEMENT WITH AGRA TRADING, LLC FOR THE HOLLY SUGAR SOUTHERLY PAVED DRYING BED AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT

EXECUTIVE SUMMARY

City of Tracy and Agra Trading, LLC have negotiated a lease agreement for the Holly Sugar property southerly paved drying bed for the purpose of storing, drying and distributing agricultural, forest and organic by-products.

DISCUSSION

In 2003, the City purchased approximately 1,200 acres from Holly Sugar. The majority of this property is in an agricultural lease. The purchased property included two paved areas historically used for drying sugar beets. Staff excluded these properties from the agricultural lease area.

Since 1991 Agra Trading has provided by-product marketing, recycling and trading services to growers and buyers of various commodities throughout the western United States. Agra Trading proposes to lease the Holly Sugar southerly paved drying bed area for the purposes of storing, drying and distributing agricultural by-products such as walnut shells, tomato pumice, olive pits and peach pits. Much of the by-products are transported to nearby cogeneration facilities for waste energy production.

Organic by-product storage, drying and distribution is an appropriate use for this facility as no odors or other nuisances are anticipated. The lease does not permit other uses. The proposed rent is \$4,000 per month for approximately 40 acres. After negotiations, this was the best price the City could obtain and staff believes it represents a fair market value. The proposed lease parcel is shown in Exhibit A of the Lease Agreement. The proposed lease term would be for five years through September 30, 2015. The lease contains a six month notice provision for early termination.

STRATEGIC PLAN

This agenda items supports the Environmental Sustainability Strategy and specifically implements the following goal and objective:

Goal 2c: Increase waste reduction and recycling.

FISCAL IMPACT

This lease has no fiscal impact on the General Fund. The lease will provide \$48,000 annual revenue to the Wastewater Enterprise Fund.

RECOMMENDATION

That the City Council, by resolution, authorize the City to enter into a Lease Agreement with Agra Trading, LLC for the Holly Sugar southerly drying bed and authorize the Mayor to execute the agreement.

Prepared by: Vanessa Carrera, Management Analyst I

Reviewed by: Kevin Tobeck, Director of Public Works

Approved by: Leon Churchill, Jr., City Manager

Attachment: Lease agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "City"), and Agra Trading, LLC, a California Limited Liability Company (hereinafter "Lessee").

RECITALS

- A. City owns approximately 1,197 acres of land located north of the City of Tracy, commonly known as the former Holly Sugar property, a portion of which is currently unused.
- B. Lessee is a California Limited Liability Company engaged in the marketing and trading of agricultural, forest and organic urban by-products.
- C. City desires to lease an unused portion of the former Holly Sugar property to Lessee, and Lessee desires to lease said property from City, which is the subject of this Agreement.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE upon the following terms and conditions:

1. **Term:**

This Agreement will commence on September 22, 2010 and will run through September 30, 2015 unless terminated by either City or Lessee. City or Lessee may terminate this Agreement by giving written notice to the other six months in advance of the termination date.

2. **Lease Payment:**

Lessee agrees to pay City a fixed rate lump sum in the amount of four-thousand dollars (\$4,000) per month. Rent is due on the first day of January and the first day of July for the succeeding six month period that the Agreement is in effect, provided; however, that Lessee shall pay City the first four month's rent amount of sixteen-thousand-dollars (\$16,000) on Thursday, September 30th.

2.1 Payment shall be sent to:

City of Tracy
Public Works Department
520 Tracy Boulevard
Tracy, CA 95376

3. **Property:**

City leases to Lessee, and Lessee leases from City, an area of land comprised of roughly forty acres identified as the southerly paved drying bed located on the land commonly known as the former Holly Sugar Property, such bed being located off Tracy Boulevard, in the County of San Joaquin, State of California, and as further shown in more particular detail on Exhibit "A" attached hereto (hereinafter referred to as the "Property").

4. Use:

Lessee agrees to prepare the Property all at Lessee's own cost and expense. Lessee further agrees as follows:

- 4.1 Use of the Property shall conform to all applicable rules and regulations governing the property, including, but not limited to, local zoning, building and fire codes.
- 4.2 Lessee is responsible for safely securing all property and equipment and for safely storing all materials in accordance with State and local laws.
- 4.3 Lessee shall keep the Property free and clear of all rubbish, trash and weeds.
- 4.4 Upon termination of its tenancy, Lessee shall return the Property to the same, or substantially similar, condition as exists on the commencement date of this lease.
- 4.5 Lessee and its employees, agents or invitees shall access the Property from the driveway and gate on Tracy Boulevard only.
- 4.6 Lessee shall use the Property only for the storage, drying, processing, delivery and distribution of agricultural, forest and organic urban by-products. Storage of almond hulls is allowable only upon obtaining written consent from the City's Director of Public Works.
- 4.7 Lessee's use of the property shall not result in a public nuisance.

5. Acceptance and Maintenance of Property:

Lessee further agrees that:

- 5.1 Lessee shall accept the Property in its present condition without any liability or obligation on the part of City to make any alterations, improvements or repairs of any kind which would constitute a change to the present condition of the Property.
- 5.2 Lessee shall be liable for any and all damage to the Property caused by the Lessee, its employees, agents or invitees.

6. Alterations and Modifications:

Lessee covenants and agrees not to install any fixtures or make any alterations, additions, erecting of structures or improvements to the Property without the prior written approval of City. All fixtures installed or additions and improvements made to the Property shall become City's property and shall remain on the Property at the termination of this Agreement, however such is terminated, without compensation or payment to Lessee.

7. Sublease:

Lessee may not voluntarily or involuntarily assign or sublease this Lease without first obtaining City's written consent.

8. Regulations:

Lessee'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 use of the Property.

9. Hold Harmless:

Lessee shall defend, indemnify, and hold the City, its officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Lease, including, but not limited to, those claims, injuries, damages, losses, or suits, and attorneys' fees based upon nuisance or inverse condemnation, excepting however, those claims, injuries, damages, losses, or suits, including attorneys' fees, for injuries and damages caused by the sole negligence of the City.

10. Taxes:

Lessee shall pay, when due, any real property taxes levied against the leased Property as a result of any possessory interest taxes which may be imposed on Lessee's interest in the leased Property. This provision constitutes written notice to Lessee 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 Lease or as otherwise required by the City.

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 Lessee has abandoned or surrendered the Property, (e) to inspect the Property for Lease compliance, (f) pursuant to court order, (g) for necessary tests or surveying, (h) installation of irrigation facilities adjacent to the Property. When entering the Property, City shall take care to minimize disruption to Lessee's operations. City agrees to provide appropriate notification to Lessee of any approved entries to Property that City has given to any third party.

12. Default :

If Lessee defaults on the payment of any installment or rent or for any amount owed to City, or defaults on the performance of any covenants or conditions of this Agreement, City may:

12.1 At any time while any default exists, serve on Lessee a three-day notice in writing to cure the default or quit the property. If Lessee fails to do either, City may bring a statutory proceeding in unlawful detainer to regain possession of the Property.

13. Insurance:

Lessee 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 the Lessee's operation and use of the leased Property. The cost of such insurance shall be borne by the Lessee.

03/20/2019 10:54 AM 000017715

13.1 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 Lessee's use of the property.

13.2 Lessee shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence for bodily injury or property damage.

Any deductibles or self-insured retentions must be declared to and approved by 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 the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

13.3 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.

13.4 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 thirty days prior written notice by certified mail, return receipt requested, has been given to City.

13.5 Lessee shall obtain endorsements to the automobile and commercial general liability with the following provisions:

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

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

13.6 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.

13.7 Lessee shall furnish City with original 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 Lease commences.

14. 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 thereof nor shall any such waiver be construed to be permanent unless such waiver is in writing and

signed by both City and Lessee.

15. Force Majeure:

Except as to the payment of rent and for damages chargeable to the responsible party, neither City nor Lessee 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 said causes or any of them shall not be deemed a breach of or default in the performance of this Agreement.

16. Lessee's Default:

The occurrence of any of the following events shall constitute a default by Lessee:

16.1 Failure to pay rent when due.

16.2 Failure to perform any other provision of this Agreement, if the failure to perform is not cured within three days after written notice thereof is given by City to Lessee; if the failure to perform cannot reasonably be cured within three days Lessee shall not be in default if Lessee commences to cure the default within the three day period and diligently continues to cure the default.

17. Relationship of Parties:

The relationship between City and Lessee shall always and only be that of lessor and lessee. Lessee 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 Lessee or its agents.

18. Severability:

The unenforceability, invalidity, or illegality of any of provision herein shall not render the other provisions unenforceable, invalid, or illegal.

20. Recordation:

Pursuant to Government Code § 37393, this Agreement shall be recorded in the Office of the County Recorder, County of San Joaquin, State of California.

21. Notices:

All notices to the parties shall be in writing and shall be addressed and mailed to their representatives as follows:

City:

City of Tracy
Director of Public Works
520 Tracy Boulevard
Tracy, CA 95376

Lessee:

Agra Trading
Nicholas B. Cartwright
60 Independence Circle, Ste. 203
Chico, CA 95973

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

22. 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 PROVIDER and the CITY. This Agreement shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written:

AGRA TRADING, LLC

CITY OF TRACY

By: *Nicholas B. Cartwright*
Nicholas B. Cartwright
General Manager

By: _____
Brent H. Ives
Mayor

Date: 9-13-2010

Date: _____

By: *Jon K. White*
Jon K. White
President

Attest: _____
City Clerk

Date: 9/13/2010

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

Exhibit A

Tracy Blvd

Property

Sugar Road



RESOLUTION _____

AUTHORIZATION FOR THE CITY TO ENTER INTO A LEASE AGREEMENT WITH
AGRA TRADING FOR THE LEASE OF THE HOLLY SUGAR SOUTHERLY
PAVED DRYING BED AND AUTHORIZATION FOR THE MAYOR TO
EXECUTE THE AGREEMENT

WHEREAS, The City purchased approximately 1,200 acres from Holly Sugar in 2003 which is primarily in an agricultural lease and the purchase included two paved areas historically used for drying sugar beets, and

WHEREAS, Staff excluded the paved drying beds from the agricultural lease area, and

WHEREAS, Agra Trading proposes to lease the Holly Sugar southerly paved drying bed area for the purposes of storing, drying and distributing agricultural by-products such as walnut shells, tomato pumice, olive pits and peach pits, and

WHEREAS, Organic by-product storage, drying and distribution is an appropriate use for this facility as no odors or other nuisances are anticipated, and

WHEREAS, This lease does not permit other uses, and

WHEREAS, The proposed lease parcel is shown in Exhibit A of the Lease Agreement, and

WHEREAS, The proposed lease term would be for five years through September 20, 2015, and

WHEREAS, The lease contains a six month notice provision for early termination, and

WHEREAS, This lease has no fiscal impact on the General Fund, and

WHEREAS, The lease will provide \$48,000 annual revenue to the Wastewater Enterprise Fund;

NOW, THEREFORE, BE IT RESOLVED That the City Council hereby authorizes the City to enter into a Lease Agreement with Agra Trading for lease of the Holly Sugar southerly drying bed and authorizes the Mayor to execute the agreement.

Resolution _____

Page 2

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 21st day of September, 2010, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.I

REQUEST

AUTHORIZATION OF TASK ORDER NO. CH01-13 TO MASTER PROFESSIONAL SERVICES AGREEMENT NO. CH01 WITH CH2M HILL FOR WASTEWATER TREATMENT PLANT – FINAL DESIGN OF EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENTS AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE TASK ORDER

EXECUTIVE SUMMARY

Professional services are required for final design of a new wastewater effluent outfall pipeline and diffuser in Old River.

DISCUSSION

The construction of the City's wastewater treatment plant (WWTP) Phase 1 was completed in 2007 and is providing the high level of treatment expected. A necessary future phase of wastewater facilities are improvements to the capacity and reliability of the pumping facilities and pipeline conveying the treated wastewater effluent to Old River. The existing effluent pipeline was constructed in 1978. It is a 33-inch diameter pipe and discharges approximately 3.5 miles north of the WWTP through a diffuser in Old River. The existing outfall pipe and diffuser are believed to be adequate for the projected flows for the next 4 years. The professional services task order for planning process and preliminary design for increasing the outfall capacity was approved by the City Council at the August 4, 2009 meeting. The preliminary design work has been completed and the work on obtaining the necessary permits and approvals is ongoing.

Staff anticipates that the final design, environmental compliance and permitting of the proposed outfall pipeline and diffuser will take several years or more. Installation of the diffuser will require numerous permits for work within Old River. The following is a list of the required permits:

- Section 404/Section 10 Permit from the US Army Corps of Engineers;
- Section 401 Water Quality Certification from the Central Valley Regional Water Quality Control Board;
- Section 1602 Lake and Streambed Alteration Agreement with the California Department of Fish and Game;
- Public Agency Lease Application with the State Land Commission;
- Floodplain Encroachment Permit from the Central Valley Flood Protection Board (State Reclamation Board);
- Local Reclamation District Permit;
- Coast Guard Navigation Permit;
- California Department of Fish and Game Incidental Take Permit;
- National Oceanic and Atmospheric Administration Fisheries Section 7 Consultation;
- US Fish and Wildlife Service Section 7 Consultation;
- State Historic Preservation Office Section 106 Archaeological Reconnaissance Report;
- San Joaquin County Council of Governments (SJCOG) Coordination;

- Regional Water Quality Control Board Storm Water Pollution Prevention Plan (SWPPP);
- State Lands Commission, Public Agency Lease Application;
- Central Valley Flood Protection Board (formerly DWR Reclamation Board) – Floodplain Encroachment Permit.

The next step in the process is preparation of the final design for a new 42-inch outfall pipeline and diffuser which will parallel the existing pipeline. The new outfall pipeline and diffuser will increase the effluent discharge capacity to approximately 16 million gallons per day. The planned outfall pipeline will cross two major sloughs: Tom Paine Slough and Paradise Cut, along with five minor drainage and irrigation canals. In meetings with the US Army Corp of Engineers it has been identified that the effluent outfall pipeline below Paradise Cut must be installed 70 feet below the existing ground using a tunneling method. This requirement makes the design and construction complicated and will require extensive groundwater dewatering. Installation of the diffuser pipe in Old River will require trestle support and cofferdams.

Consultation with the fisheries agencies had identified the timeframes during the year that work can take place in the Old River. Work will most likely be restricted to August through October. It is anticipated that the final design will take approximately 12 months and permitting will take an additional 12 months. Construction of the effluent outfall pipeline and diffuser will require two summers resulting in a two year construction contract, so ideally the new diffuser will be operational in 4 years.

In 2008, the City requested proposals for wastewater planning and design services. CH2M Hill was selected. The scope of work listed in the RFP included:

- Various studies including capacity analysis, development, environmental, sewer system upgrade and replacement studies.
- The planning, design, environmental documentation, preparation of construction documents and construction management services for various sanitary sewer collection systems, including gravity and force main pipelines and lift stations.
- Projects may consist of new, replacement and upgrades to the sanitary sewer systems or facilities.

The RFP project objectives included professional services for various waste water projects on an as needed basis for a period of three years. The City anticipated the force main pipeline and lift station projects within that time period; selecting CH2M Hill for the project would be consistent with RFP objectives.

CH2M Hill prepared the preliminary design for this project and are experts in the techniques required to design and permit this project.

STRATEGIC PLAN

This agenda items supports the Economic Development Strategy and specifically implements the following goal and objective:

Goal 3: Preserve and maintain existing community assets.

Goal 3a: To fund maintenance and replacement of community amenities.

FISCAL IMPACT

There is no fiscal impact to the General Fund. The project is included in the current budget as Wastewater Treatment Plant Expansion – Phase 2A, CIP 74083. The cost of the services included in this task order is \$2,698,000 and funding is from development impact fees. The project currently has \$5 million appropriated from NEI Phase 2 development impact fees. The future construction phase of this project will require an additional \$15 to \$20 million in funding. Staff is researching funding opportunities.

RECOMMENDATION

That the City Council, by resolution, authorize Task Order No. CH01-13 to Master Professional Services Agreement No. CH01 with CH2M Hill for Wastewater Treatment Plant – Final Design of Effluent Outfall Pipeline and Diffuser Improvements and authorization for the Mayor to execute the task order.

Prepared by: Steve Bayley, Deputy Director of Public Works

Reviewed by: Kevin Tobeck, Director of Public Works

Approved by: Leon Churchill, Jr., City Manager

Attachment: Task Order

**CITY OF TRACY
TASK ORDER NO. CH01-13
MASTER PROFESSIONAL SERVICES AGREEMENT CH01**

**TRACY WWTP – FINAL DESIGN OF EFFLUENT OUTFALL PIPELINE AND DIFFUSER
IMPROVEMENTS**

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

RECITALS

- A. CONSULTANT services are needed for preparation of design drawings, specifications, and permit applications to provide a new effluent outfall pipeline and diffuser for the Tracy Wastewater Treatment Plant ("PROJECT"), as described in Exhibit A.
- B. As approved by the City Council on March 18, 2008, pursuant to Resolution No. 2008-041, CITY entered into a Master Agreement with the CONSULTANT for Professional Consulting Services.
- C. At the request of CITY, in August 2010, CONSULTANT submitted a proposal to perform the services described in Exhibit A. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Task Order.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **INCORPORATION OF MASTER AGREEMENT.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Agreement for this project, unless specifically modified by this Task Order.
- 2. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference.
- 3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A."
- 4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Task Order is not to exceed two million six hundred ninety eight thousand dollars as shown in Exhibit "C".

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

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

CITY OF TRACY

CONSULTANT
CH2M HILL, Inc.

By: Brent Ives

By: Vijay Kumar, P.E.

Title: Mayor

Title: Business Vice President

Date: _____

Date: 8/25/2010

Fed. Employer ID No. 59-0918189

Attest:

By: Sandra Edwards

Allan Hightest
By:

Title: CITY CLERK

Vice President
Title

Date: _____

Approved As To Form:

8.25.10
Date

By: Dan Sodergren

Title: CITY ATTORNEY

Date: _____

EXHIBIT “A”

Introduction

To accommodate future development and population growth, the City of Tracy Wastewater Treatment Plant is planning increase its effluent conveyance and disposal capacity. Currently, effluent is conveyed through a 3.5-mile long, 33-inch diameter pipeline, which extends north from the Wastewater Treatment Plant to Old River. At Old River, the effluent is discharged into the river through a submerged river diffuser.

In 2010, CH2M HILL completed a preliminary design for a new outfall pipeline and diffuser. The new outfall pipeline and diffuser will increase the effluent discharge capacity from an average dry weather flow rate of approximately 9 mgd to 16 mgd, and provide a peak wet-weather flow rate of 40 mgd. The proposed diffuser is located approximately 800 feet west of the existing diffuser in Old River. The planned outfall pipeline is located adjacent to existing City and County roads, crosses two major sloughs: Tom Paine Slough and Paradise Cut, and crosses approximately 5 minor drainages and irrigation canals.

This scope of work provides final design, bid phase, and permitting support services necessary to construct the new 42-inch outfall pipeline. Bid-ready plans, specifications, details, and permit applications will be provided. Construction Phase services including construction management and construction inspection are not included in this scope of work, and will be provided in a subsequent task order.

I. SCOPE OF SERVICES: CONSULTANT shall provide bid-ready contract documents in digital format (pdf format) including drawings, specifications, details, and permit applications for a new 42-inch outfall pipeline and diffuser. It is assumed that the City would use pdf files to print bid documents. The pipeline alignment is shown on Figure 1. Services are described in the following eight tasks:

Task 1 – River Surveying and Mapping

Aerial photography and mapping of the pipeline corridor were completed during the Preliminary Design Phase of the project and will be used as a basis for final design. However, several additional surveying tasks are required to support final design level activities.

1.1 Utility Pothole Surveys

The pipeline alignment through the wastewater treatment plant site involves numerous conflicts with existing utilities. Although a tentative alignment was selected during Preliminary Design, additional utility research, potholing, and surveying are required to refine and confirm the alignment. In conjunction with the Utility Potholing work in Task 4, CONSULTANT shall expose and survey approximately 20 buried utilities. Horizontal and vertical survey data will be compiled and summarized on the design drawings and used to refine the pipeline alignment. Survey data on the drawings will be available to contractors for estimating costs and methods of construction under and adjacent to existing utilities.

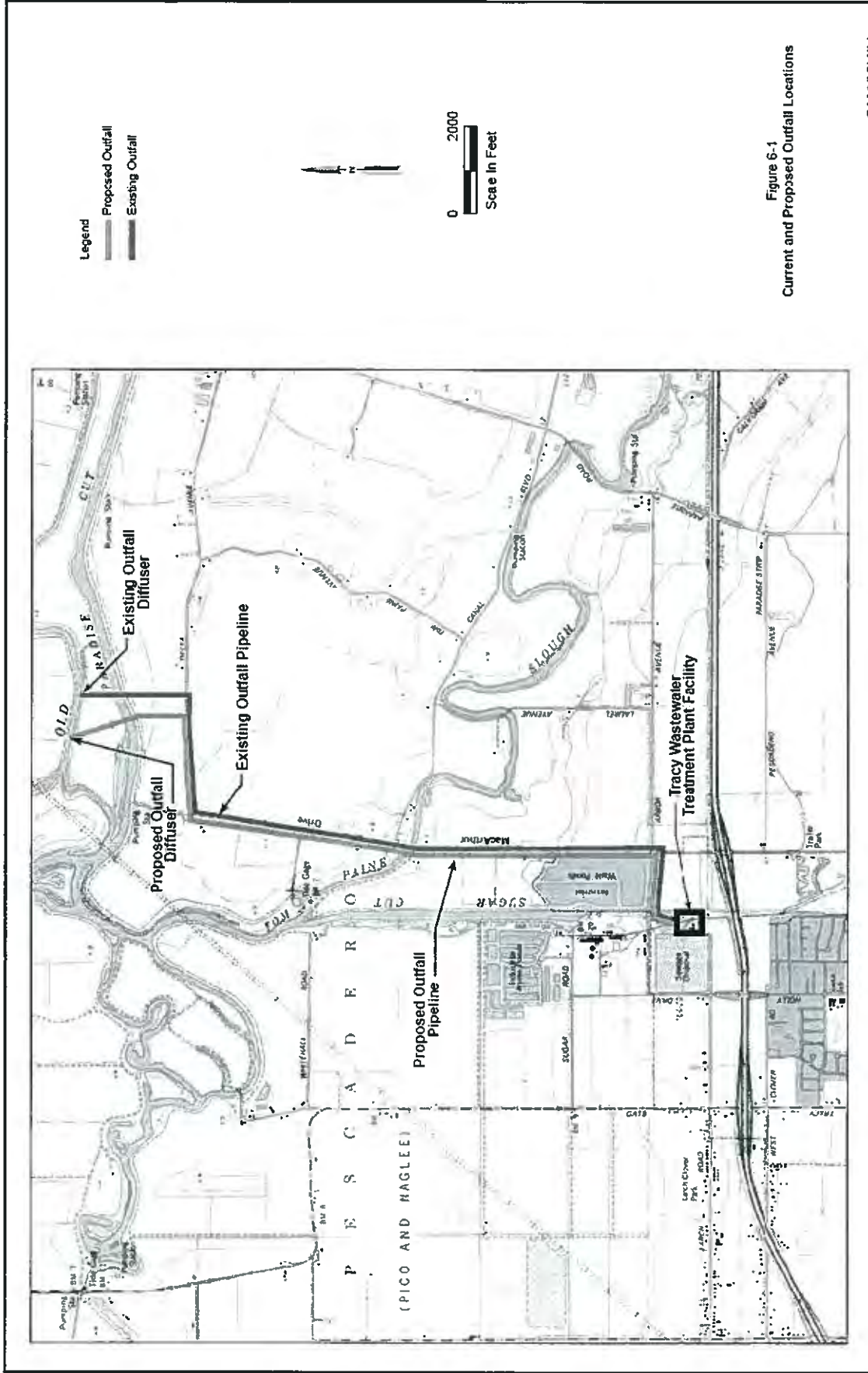


Figure 6-1
 Current and Proposed Outfall Locations

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CH2MHILL

1.2 Supplemental Field Surveys

This task supplements and expands existing field surveys conducted during Preliminary Design. CONSULTANT shall conduct a field survey to locate features not previously acquired during Preliminary Design. Such features may include objects that are not visible on aerial photography such as culverts obstructed by vegetation or water, inverts of irrigation ditches or channels, and tree locations and sizes. This survey will be done using GPS RTK methods. The scope of work provides one day of supplemental field surveys and one day of associated office support.

1.3 River Bathymetry

This task supplements and expands existing river bathymetry acquired during Preliminary Design. For construction projects in the river, the State Reclamation Board has recently required a two-dimensional model of river flow, depth, and velocity. The purpose of the model is to estimate temporary impacts of cofferdam construction on water levels and levee erosion. The purpose of this task is to collect detailed underwater contour mapping in the vicinity of the Old River diffuser. Data will be used to develop the two dimensional model and supplement the existing mapping on plan/profile drawings. Consultant shall acquire 1-foot contour mapping of the river bottom and levees approximately 1000 feet upstream and downstream of the proposed diffuser. Digital data shall be incorporated into the CADD files for site civil drawings.

1.4 Easement Identification and Acquisition Support

During the Preliminary Design Phase of the project, road easements and private property boundaries were identified along the pipeline corridor. A preliminary pipeline alignment was established and temporary construction easements were identified on several parcels.

The purpose of this task is to supplement and expand the easement acquisition work begun during Preliminary Design. CONSULTANT will conduct research and field surveys to locate existing property boundary monuments and other boundary evidence. This evidence will be analyzed to determine the location of the existing right-of-way of the public roads along the pipeline route. A dimensioned map showing the found monument descriptions and locations along with parcel identifications and locations will be prepared.

CONSULTANT will use the boundary monument information to prepare plat maps showing the parcels where new right-of-way is needed. After identification of the new right-of-way alignment, CONSULTANT will prepare descriptions of the new right-of-way area over each parcel of land. Each description will be augmented with an exhibit map showing the description graphically. The amount estimated in the cost spreadsheet is for 10 descriptions and exhibit maps. It is assumed that the CITY will initiate and pay for all necessary legal and regulatory activities for right-of-way acquisition.

Assumptions

Project Coordinate System and Datum: The horizontal datum and coordinate system will be based on monuments and coordinates currently used for control at the existing treatment plant site. The vertical datum will be an existing benchmark at the treatment plant site.

Right of Entry: Prior to commencement of field work, CITY will provide CONSULTANT permission from the appropriate authorities to enter and survey the subject properties.

Survey Accuracy: Vertical Control work will be Third Order, as outlined in the FGDC Geospatial Positioning Accuracy Standards, Part 4: Standards for Architecture, Engineering, Construction (A/E/C) and Facility Management.

Horizontal Control work can be performed using either standard surveying techniques or Global Positioning Satellite (GPS) system techniques meeting the specification requirements outlined

in this scope. If standard surveying techniques are used, all horizontal control work will comply with Third Order Class I, as outlined in the FGDC Geospatial Positioning Accuracy Standards, Part 4: Standards for Architecture, Engineering, Construction (A/E/C) and Facility Management. If GPS is used, the relative horizontal accuracy shall conform to the FGDC Geospatial Positioning Accuracy Standards, Part 2: National Standard for Spatial Data Accuracy.

Task 2 – Geotechnical Investigations

A comprehensive drilling, testing, and analysis program was conducted during Preliminary Design. The purpose of this task is to supplement and expand the work provided previously. One additional boring is required at the north side of Tom Paine Slough to confirm the proposed open cut crossing of the slough. This task also provides for groundwater monitoring in existing piezometers that were installed during Preliminary Design. The groundwater data will be summarized and provided to construction contractors for estimating dewatering techniques. This task also provides a Geotechnical Baseline Report for establishing pre-existing site conditions.

2.1 – Geotechnical Design Support

CONSULTANT's geotechnical engineer shall provide consultation and design support to the engineering and permitting team. Support may include but is not limited to sheet-pile calculations and specifications, tunneling specifications and details, dewatering specifications, and trench excavation and backfill specifications and details.

2.2 – Groundwater Level Measurements

CONSULTANT shall measure groundwater levels in existing piezometers that were installed during Preliminary Design. Monthly measurements will be collected at 3 existing wells for a period of 18 months. Data shall be summarized and provided to contractors in the construction documents. The data are important for estimating dewatering requirements and construction costs in high groundwater conditions.

2.3 - Geotechnical Baseline Report (GBR)

CONSULTANT will analyze subsurface conditions and prepare a geotechnical baseline report. The purpose of the report is to establish existing conditions prior to construction and methods for measuring and paying for changes encountered during construction. The report will address the following issues (previously identified):

- Distribution and nature of native soils across the site (soil classification)
- In-situ strength and density of the soil
- In-situ permeability of the native soil based on correlations to grain size
- Compaction characteristics of the reworked native soils
- Presence of geohazards in accordance with CGS Special Publication 117A (liquefaction, lateral spreading, etc)

The report will provide design recommendations for the following:

- Seismic design and potential mitigation of geohazards
- Recommendations for design of pipeline and outfall
- Recommendations for design of trenchless crossings and associated shafts
- Corrosion design considerations
- Recommendations for design of onsite access roads

The report will also provide recommendations for follow-on final design activities, such as the completion of permeability testing (and dewatering flow estimates) by pumping at the monitoring wells and the preparation of a GBR.

2.4 - Prepare Supplement to Geotechnical Data Report (GDR)

CONSULTANT will prepare a supplement to the existing geotechnical data report (GDR) that was prepared during the Preliminary Design Phase of the Project. The supplement will contain the data obtained during the field investigation including boring logs, laboratory test results and water level measurements. The geotechnical data will be bound separately in accordance with state of the practice for all projects involving trenchless construction in accordance with current guidelines (ASCE, 2008). The GDR is intended to serve as a contract document, as per ASCE guidelines.

2.5 - Field Boring and Laboratory Testing

One soil borings will be completed to a depth of 60 feet near Tom Paine Slough to obtain samples for laboratory testing and to investigate subsurface conditions that will affect design and construction of the pipeline. CONSULTANT’s geotechnical or geologic professionals will log the conditions observed in the borings in accordance with ASTM D2488 and will obtain samples suitable for laboratory testing. The laboratory testing plan is contained in Table 1.

TABLE 1
Tracy WWTP Outfall—Laboratory Testing Program

Test	Standard	Frequency
In situ Unit Weight and Moisture Content	ASTM D2937	8
Moisture Content and Atterberg Limits	ASTM D2216 and D4318	15
Gradation	ASTM D422	6
Maximum Density/Optimum Water Content	ASTM D1557	2
Percentage of Fine Material (<#200 sieve)	ASTM D1140	15
Corrosivity	EPA 300, ASTM G51, and G187	13
Swell/Collapse Potential	ASTM D4546	2
Direct Shear	ASTM D3080	4
Pavement Design R-Value	ASTM D2844	2
Unconfined Compressive Strength	ASTM D2166	10

ASTM – American Society for Testing and Materials

Deliverables

- Draft and Final Geotechnical Baseline Report (GDR)

Assumptions:

- Depth to invert of the pipeline will not exceed 10 feet
- Site access routes can be determined for each of the proposed exploration locations shown in Figure 1 without the need for portable bridges or earthwork to facilitate access

- Site access agreements (if required) will be provided in a timely manner by the CITY
- The proposed diffuser location is accessible by 4x4 vehicles
- A San Joaquin County boring/well fee permit will be required. Three hours of County Inspection time are included
- Continuous biological or other monitoring of the operations will not be required
- Borings will be backfilled with lean cement backfill
- Off-road drilling rigs (with balloon tires or tracks) are required
- The site is uncontaminated
- Inclement weather does not prevent completion of the work once the site mobilization is complete
- A single set of review comments on each draft report will be provided to CONSULTANT
- Report (draft and final) will be provided electronically in Adobe PDF format

Task 3 – Utility Investigations and Coordination

3.1 – Design Coordination

CH2M HILL contacted utility companies, collected utility maps and prepared base maps during preliminary design. The preliminary pipeline alignment conflicts with several utilities and therefore coordination and relocation of the utilities is required during final design.

- CONSULTANT shall provide existing Preliminary Design Drawings to the affected utility companies with a letter that explains the approximate locations and extents of utility conflicts
- CONSULTANT shall contact or meet with representatives of the affected utilities to discuss construction sequences and obtain utility relocation specifications and details. It is assumed that Utility companies will relocate their utilities in advance of construction.
- CONSULTANT shall incorporate Utility company contact information, specifications, and details into the contract documents.

3.2 – Utility Potholing

CONSULTANT will contract with a competent subcontractor to pothole existing utilities. Up to 20 buried utilities will be exposed using non-destructive methods. Potholing subcontractor shall measure and photograph the exposed utility prior to backfill and set a survey hub or reference point at the location of the hole. In Task 1 surveyors will subsequently provide field surveys of the hub to determine exact locations of the utilities. Field generated pothole site maps will be developed as part of the field work, which will document depth and dimensions to the desired utility. Utility data will be summarized and incorporated into the design drawings and specifications.

Deliverables

- Utility base maps with pothole information (e.g., utility location, type, size, depth, etc.)

Task 4 – Permitting Support

This task supplements and extends the permitting support activities provided previously during the Preliminary Design phase of the project. This task includes preparation of environmental permit applications and agency coordination, and preparation of encroachment permit and land use applications and coordination as discussed below.

4.1 – Provide Environmental Permit Applications and Coordination

CONSULTANT shall provide agency coordination to ensure permit applications are being processed in a timely manner. Coordination is required to ensure that design and construction are unimpeded by the permitting process.

Section 404/Section 10 Permit (U.S. Army Corps of Engineers)

This subtask includes completion of the preparation of an application for a Clean Water Act (CWA) Section 404 Department of the Army Nationwide Permit and Pre-Construction Notification (PCN) based on the final project plan maps. The PCN will include reference of the need for the project to comply with Section 10 of the Rivers and Harbor Act, an assessment of impacts to waters of the U.S., including wetlands and, if applicable, an assessment of impacts to federally-listed species. Two meetings in Sacramento (3 consultant team attendees) are assumed as part of this scope.

Section 401 Water Quality Certification (Central Valley Regional Water Quality Control Board)

Given the project requires a Section 404 from the Corps, water quality certification per Section 401 of the Clean Water Act must be obtained. A request for water quality certification for the project per Section 401 of the Clean Water Act will be prepared. One meeting in Sacramento (3 consultant team attendees) is assumed as part of this scope. CITY will pay the application fees.

Section 1602 Lake and Streambed Alteration Agreement (LSAA-California Department of Fish and Game)

A Streambed Alteration Agreement application on behalf of CITY for submittal to the CDFG (Region 2) will be prepared. This subtask assumes one meeting with a CDFG representative at the project site to provide project information and to discuss likely CDFG requirements for the project will be required. Additionally, one meeting in Sacramento (3 consultant team attendees) is assumed as part of this scope. CITY will pay the application fees.

California Department of Fish and Game Incidental Take Permit

Incidental take of any California listed species requires an incidental take permit (ITP) from the California Department of Fish and Game. This subtask will provide for the preparation of a CDFG Section 2081 permit application. It is assumed that the Final Mitigation, Monitoring, and Reporting Plan (MMRP) has been completed through the CEQA process. If CONSULTANT is required to draft the MMRP, CONSULTANT will require additional scope and compensation for preparation of a final MMRP.

NMFS Section 7 Consultation Support for Fisheries

Once the 404 application is made to U.S. Army Corps of Engineers, a Section 7 consultation will be initiated with NMFS. This task provides support from CONSULTANT staff (fisheries biologist, environmental scientist, and planners) to coordinate with NMFS to complete the Section 7 consultation.

USFWS Section 7 Consultation Support

Once the 404 application is made to U.S. Army Corps of Engineers, a Section 7 consultation will be initiated with the USFWS. This task provides support from CONSULTANT staff (terrestrial/aquatic biologist, environmental scientist, and planners) to coordinate with the Service related to Delta smelt and terrestrial species under the purview of the USFWS and to assist with the Section 7 consultation process.

One meeting in Sacramento (3 consultant team attendees) is assumed as part of this scope.

San Joaquin County Council of Governments (SJCOG) Coordination

San Joaquin County operates under a Multi-species Habitat Conservation Plan which SJCOG oversees. It will be necessary to consult with the SJCOG for the species listed under the HCP. One meeting in Tracy (2 consultant team attendees) and up to 4 phone conversations are assumed as part of this scope.

Regional Water Quality Control Board Stormwater Pollution Prevention Plan (SWPPP)

The City is required to obtain a General Permit, which regulates discharges to receiving waters from construction projects larger than one acre in size. Beginning in 2010, the State of California adopted significant changes to the SWPPP requirements. All projects are categorized according to one of three risk levels, and the new permit requires extensive data collection and monitoring prior to and during construction. Consultant shall prepare and submit a Notice of Intent for the Outfall project. Construction phase activities associated with this permit are not included in this scope of work.

4.2 – Provide Encroachment and Land Use Applications and Coordination

City of Tracy Encroachment Permit

The Outfall Pipeline crosses Arbor Road and is located within City of Tracy road rights-of-way. Consultant shall meet with the City Engineering Department to discuss encroachment permit requirements including but not limited to public notification, road closure and detour restrictions, signing, striping, and barricading, and excavation and backfill requirements. Consultant shall incorporate City requirements into the drawings and specifications for the project and obtain City reviews and approvals of the contract documents.

San Joaquin County Encroachment Permit

The Outfall Pipeline is located within San Joaquin County road rights-of-way along McArthur Drive and Delta Avenue. Pipeline construction will also impact several dozen trees within this corridor. Consultant shall meet with the County Public Works Department to discuss permit requirements including public notification, road closure and detour restrictions, signing, striping, and barricading, excavation and backfill requirements, and tree ordinances. Consultant shall incorporate County requirements into the drawings and specifications for the project and obtain County reviews and approvals of the contract documents.

City of Lathrop Encroachment Permit

The Outfall Pipeline is located on private property within the City of Lathrop, north of Paradise Cut. Consultant shall meet with the City Engineering Department to discuss design

requirements within the City and incorporate City requirements into the drawings and specifications if necessary.

Union Pacific Railroad Encroachment Permit

The Outfall Pipeline crosses Union Pacific Railroad tracks north of the wastewater treatment plant site. Consultant shall coordinate with UPRR and submit an encroachment application to the Railroad. Design methods and details required by UPRR shall be incorporated into the contract documents and Consultant shall obtain approvals from the railroad.

Local Reclamation District Encroachment Permits

Local Reclamation Districts (RD) that have jurisdiction in the project vicinity will need to be notified of any actions that would affect their levees. If an action is triggered, Counsel (attorneys and/or engineers) for the RDs will represent the RDs. Engineering drawings requested by the Central Valley Flood Protection Board will be submitted to the RDs and legal documents prepared by RD attorneys and will be negotiated with the CITY. Two meetings in Tracy (3 consultant team attendees) is assumed as part of this scope.

State Lands Commission, Public Agency Lease Application

The State of California maintains ownership of the bed of Old River and placement of any structure (i.e., new outfall structure) within the river requires a public agency lease issued by the State Lands Commission. A Public Agency Lease application for submittal to the State Lands Commission will be prepared. This scope of work includes initial coordination with SLC only. Development of the application will require a survey be conducted as well as site locations and construction sequencing be specifically identified. These activities will be provided during a subsequent final design task order.

Prepare Central Valley Flood Protection Board (formerly DWR Reclamation Board) – Floodplain Encroachment Permit

The placement of any structures within the designated floodway of Old River, which is under the jurisdiction of the State Reclamation Board (Board), requires the issuance of a Floodplain Encroachment Permit. This scope of work includes initial coordination with CVFPB only. A Floodplain Encroachment Permit application will be prepared for submittal during a future final design phase of the project. One meeting in Sacramento (3 consultant team attendees) is assumed as part of this scope. If CVFPB requires a hydraulic impact or scour analysis for issuance of the encroachment permit, additional scope and fee would be needed to complete this task.

Coast Guard Navigation Permit

This task includes initial consultation with USCG. USCG will likely request that a permit not be submitted (if required) until the project is under construction. The Coast Guard private aids to navigation permit may be required if a trestle or other temporary access bridge is erected by the Contractor in order to install the new outfall diffuser. This task does not include preparation of the permit application. The permit application will be included in a future task order.

4.3 – Engineering Support for Permit Applications

Obtaining environmental permits for this project will require extensive coordination between Consultant and Agency design engineers and require detailed calculations, descriptions, and specifications that are not normally required for public works projects. For example, the Regional Water Quality Control Board may require detailed information regarding in-river construction including the contractor's equipment, access and egress, size and number of

trucks, sheet pile installation techniques, noise monitoring and control, and construction sequences to name a few. Likewise, the State Reclamation Board will require similar information for the microtunnel crossing of Paradise Cut. This task provides scope and budget for the coordination beyond normal plans and specifications development as required by the agencies. This scope of work assumes up to 400 hours of engineering support. Consultant shall inform the City of efforts and progress associated with this task. If additional coordination time is required, it shall be considered a scope change.

Deliverables:

Deliverable requirements by the permitting agencies are subject to change without prior notification from permitting agencies. The quantity and amount of deliverables listed below are typically required by each agency and listed in their permit packages, but are not all inclusive, particularly when agencies bring additional staff from other offices to review the permit applications.

- 2 copies of California RWQCB Section 401 Water Quality Certification Application
- 2 copies of the State Lands Commission Land Lease Application
- 2 copies of the Central Valley Flood Protection Board Encroachment Permit Application
- 1 copy of the DFG 1602 Lake or Streambed Alteration Agreement (LSAA) Application
- 2 copies of the CDFG 2081 permit application

Copies of permit applications identified above will be completed for signature and submittal by CITY. All permitting fees will be paid for by CITY. Meetings anticipated to be required for each task are indicated above.

Assumptions

The services described below are not included in this Task Order, but can be performed if requested and approved by CITY. Time, scope, and fee have not been budgeted for the tasks listed hereunder. Authorization to proceed shall be in the form of an amendment to this Task Order or a separate Task Order specifying the work to be performed and the additional payment for such services rendered. The amendment or Task Order, after execution by both parties, shall become a supplement to and a part of the AGREEMENT.

These additional services are assumed to be part of the Final Design activities.

- Preparation of and environmental document to comply with the California Environmental Quality Act (CEQA). CONSULTANT can prepare additional CEQA compliance documentation if it becomes necessary. An EIR for the project has already been completed; however, any supplement or revision of the FEIR would require additional scope and fee.

Task 5 – Final Design

Consultant shall follow a multiphase design delivery process for preparing bid-ready contract documents. This process is divided into three subtasks corresponding to three submittal milestones. These subtasks and submittal milestones include Design Development (60 Percent), Contract Document Preparation (90 Percent), and Bid Document Preparation (100 Percent). The information collected and the concepts defined in each subtask will form the basis for subsequent work, and will provide for resolution of key issues before proceeding to the next milestone.

Each subtask will include specific deliverables as listed therein. Submittal review workshops and internal QA/QC reviews will be conducted to ensure the quality of the Project at each milestone. Consultant assumes that City review comments will be submitted to Consultant during the design submittal review workshops identified herein.

Contract Documents will be prepared for one contract, where a single General Contractor will furnish equipment, materials, and labor necessary to construct the Project. The Contract Documents will consist of City furnished Bidding Requirements, Contract Forms, General Provisions, Special Provisions, and Conditions of the Contract (CSI Division 0), and Consultant-furnished Bid Item List, Bid Item Descriptions, General Requirements and Technical Specifications (CSI Divisions 1 through 49), Standard Details, and Drawings. It is assumed that the City will prepare, coordinate, and package all Division 0 specifications with assistance from CONSULTANT. Technical Specifications, Standard Details, and Drawings will be stamped in accordance with California law and signed by licensed engineers of the appropriate disciplines.

5.1 – Design Development (60 Percent)

In this subtask, the preliminary design drawings prepared during the previous phase of the project will be further developed. Site plans, structures, plan/profile drawings and instrumentation and control concepts will be developed during this phase to allow final detailing during the next phase of design.

Constructability Review

Consultant will contact one or more experienced marine contractors and arrange to meet with them at the site. Consultant will provide relevant information to the contractor such as the size and location of proposed facilities, depth of the river and permitting constraints. This meeting will occur prior to the detailed design phase and is intended to provide a constructability review of the project from a contractor's perspective. Contractor is expected to provide input on construction methods (such as requirements for sheet piling), equipment selection (use of barges and/or cranes), staging, schedule, and costs.

60 Percent Submittal

The 60 percent review submittal is intended to show the major design concepts and features of the Project. Drawings that will be included in the 60 percent submittal are identified in Exhibit D. The submittal will include a preliminary specifications table of contents. Documents to be submitted will be reviewed by Consultant's QC team and revised accordingly prior to submitting to the City for review.

60 Percent Workshop

Consultant shall conduct a review workshop with City staff to present and discuss the major concepts and findings of the 60 percent submittal and outstanding issues. The City will provide all written review comments within 2 weeks of the Review Workshop. Major action items and decisions will be documented in minutes that will be distributed to City and Consultant's design teams. It is anticipated that one 4-hour workshop, held in Tracy, will be required for this subtask.

Deliverables

- 60 Percent Submittal – 15 copies (5 to City, 10 for the design team and internal QC) of the 60 percent submittal, including half-size construction drawings (11-inch by 17-inch) and unbound specifications table of contents
- 60 Percent Construction Cost Estimate – Consultant will furnish City with a Class 3 estimate of construction costs at the 60 percent design completion level
- Response to City Review Comments – Consultant will provide a spreadsheet showing 60 Percent review comments from the City and the Consultant's response to these comments.

5.2 – Contract Document Preparation (90 Percent)

Consultant shall prepare 90 percent complete Contract Documents, which will be the basis for the final review submittal. This submittal will include the General Requirements and Technical Specifications (CSI Divisions 1 through 49), Standard Details, and Drawings necessary for bidding the construction contract. The submittal will not include City furnished Division 0 specifications. The Contract Documents will include the applicable general, demolition, civil site, architectural, structural, structural/mechanical, mechanical, instrumentation and control, and electrical technical specifications, standard details, and design drawings necessary for permitting, bidding, and construction.

90 Percent Submittal

The 90 percent submittal is intended to be a near final version of all construction drawings, standard details, and technical specifications that will be included in the Bid/Contract Documents. It will be reviewed by Consultant's QC team and revised accordingly prior to submitting to the City for review.

90 Percent Workshop

Consultant shall conduct a review workshop with City staff to present and discuss the major concepts and findings of the 90 percent submittal and outstanding issues. The City will provide all written review comments within 2 weeks of the workshop. Major action items and decisions will be documented in minutes that will be distributed to City and Consultant's design teams. It is anticipated that a maximum of one 4-hour workshop in Tracy will be required for this subtask.

Deliverables

- 90 Percent Submittal – 20 copies (5 to City, 15 for the design team and internal QC) of the 90 percent submittal, including half-size construction drawings (11-inch by 17-inch), standard details (8-1/2-inch by 11-inch), and technical specifications (8-1/2-inch by 11-inch)
- 90 Percent Construction Cost Estimate – Consultant will furnish City with a Class 2 estimate of construction costs at the 90 percent design completion level
- Response to City Reviews Comments – Consultant will provide a spreadsheet showing 90% Review Comments from the City and the Consultants response to these comments

5.3 – Bid Document Preparation (100 Percent)

Following receipt of the City's review comments, Consultant will address and incorporate changes, and prepare the final, 100 percent complete Bid/Contract Documents. Consultant will assist City to make sure that required references are included in the appropriate location in the Division 0 front-end legal sections.

Deliverables

- Consultant will furnish City with a Class 1 "Constructor's Estimate" of construction costs which will be reviewed by a CCI cost estimator at the end of this phase of design.
- One set of 11-inch X 17-inch original, PE wet-stamped and signed Drawings, for final processing of the building permit by the City of Tracy Building Department.

5.4 – Cost Estimating

Consultant will furnish construction cost estimating services as indicated above. Estimates shall be prepared to a level of accuracy based on the information available, within normal industry standards. Estimates shall be formatted in accordance with the Project design Construction Specifications Institute (CSI) specification format and segregated by facility. Where sufficiently detailed information is lacking to obtain reasonably accurate quantities of materials, allowances will be used to provide an opinion of the estimated construction costs at the midpoint of construction. A construction cost estimator from CH2M HILL Constructors, Inc. (CCI) will assist in the preparation of and review the final cost estimate. Cost estimates and levels of accuracy (Class level) will conform to American Association of Cost Engineering International, AACE Recommended Practice No. 18R-97.

Task 6 – Public Outreach

Temporary construction easements will be required from several property owners along the pipeline alignment, and pipeline construction will temporarily disturb access to several properties. The purpose of this task is to coordinate with property owners, discuss the pipeline project, construction sequences and duration, and temporary contractor property needs. Special needs of the landowners, such as access during agricultural harvesting, will be coordinated and incorporated into the contract documents. Other impacts and special needs such as landscaping, landscape irrigation, fences, and mailboxes will be discussed mitigated.

Task 7 – Bid Phase Services

Consultant shall furnish the following services under this task:

7.1 – Pre-Bid Conference

Consultant will attend and conduct, in conjunction with the City, one pre-bid conference at the Project site. Consultant will record all questions and requests for additional technical information, and coordinate with City and issue responses to all plan holders.

7.2 – Preparation of Addenda

Consultant shall receive, log, and respond to Bidders' technical questions and requests for additional information, as forwarded to Consultant by City. Consultant shall furnish technical interpretation of the contract documents and will prepare responses to questions in the form of addenda distributed by City to all plan holders.

7.3 – Bid Opening and Evaluation

Consultant will attend the bid opening and assist the City in reviewing Bids received to verify that the Bid submitted by the apparent low bidder is complete and responsive. Consultant will verify status of Bidder's contractor license and check performance on several recent projects. After reviewing the Bids and checking references, Consultant will prepare a recommendation of award and transmit same to the City.

Task 8 - Project Management

8.1 - Project Execution Plan

CONSULTANT will develop a comprehensive Project Execution Plan (PXP) that addresses work products, staffing, schedules, budgets, and controls during project execution. The PXP will include the following:

- Project description
- Scope of services
- Information and services provided by the CITY and others
- List and schedule of deliverables, including duration of review periods
- Project schedule
- Task budgets
- Project staffing and team responsibilities
- Communication plan
- Tracking tools for milestones, schedule, budget, and project progress
- Change management plan and procedures
- Quality Assurance/Quality Control plan for deliverables
- Field Safety Instructions

8.2 – Project Kickoff Meeting

CONSULTANT will conduct a 1/2-day project kickoff meeting at CITY offices. This meeting shall be attended by the Consultant's Project Manager, Task Manager and Project Engineer and City representatives. During the kickoff meeting, the Project Execution Plan (PXP) will be distributed and discussed. The kickoff meeting will also be used to review project goals and objectives, CONSULTANT and CITY roles and responsibilities, communication plans, and the contracted scope and schedule. CONSULTANT will prepare and distribute meeting notes after the meeting.

8.3 - Progress Meetings

CONSULTANT will update the CITY's project manager monthly throughout the duration of the project, to review progress, schedules, budgets, deliverables, and upcoming work activities. Monthly progress reports will be used to provide the CITY with an update to the current status of the project and to provide the CITY and the CONSULTANT team an opportunity to disseminate information and develop project direction and consensus. The progress meetings or conference calls will also be used to resolve minor design issues that require CITY input and direction. An action item list and a decision log will also be maintained to help document design related action items as well as design decisions reached during each of these conference calls.

8.4 – Team Coordination

CONSULTANT will provide the following throughout the duration of the project:

- Records Management—Maintain Project records, manage and process Project communications, coordinate Project administrative matters, and subcontractor information.
- Coordination—Conduct weekly internal coordination meetings to complete authorized work on schedule and within budget.

- **Staff Management**—Supervise and control activities of staff assigned to the Project. Coordinate and schedule appropriate staffing to meet Project requirements.
- **Meeting Preparation**—Make arrangements for and coordinate the scheduled Project site conferences, periodic site visits, testing, startup, and punch list development trips.

8.5 - Monthly Reports

CONSULTANT will prepare monthly project reports, typically attached with the monthly invoice, for submission to the CITY. The reports will summarize project progress, describe current activities, describe activities planned for the next month, and identify any issues or problems encountered that may impact the project schedule or budget. Monthly reports will include a progress evaluation and comparison of planned budget to actual expenditures and a comparison of planned product completion to actual product completion.

8.6—Quality Control and Health and Safety

CONSULTANT shall implement a quality assurance/quality control (QA/QC) program and coordinate the participation of senior reviewers at appropriate points in the Project.

CONSULTANT will perform multidisciplinary review of CITY deliverables. Reviewer comments will be addressed and incorporated into the deliverables prior to submittal to the CITY. Since this project involves project locations with heavy traffic, water ways, agricultural properties, a comprehensive health and safety plan is needed.

Deliverables

- Kickoff meeting notes
- Monthly progress reports that include a summary of completed and on going work, budget and schedule updates, and major coordination and action items
- Health and safety plan

Assumptions

The project duration is as shown in the Schedule. Extensions to the project schedule, caused by circumstances beyond the CONSULTANT's control, may require a scope and fee amendment.

II. COMPLETION OF THE SCOPE OF SERVICES. CONSULTANT shall complete the project elements identified in this Exhibit "A" as outlined below. This schedule assumes Notice to Proceed is provided to Consultant by November 1, 2010. Permitting schedule is dependent on regulatory agency staff schedule and CONSUTLANT will submit permit applications and final permit approval is dependent on regulatory agencies.

A. December 31st 2010, CONSULTANT will deliver:

- Kickoff Meeting Notes

B. December 31st 2011, CONSULTANT will deliver:

- Bid ready (100%) contract documents

CITY OF TRACY – TASK ORDER No. CH01-13

CH2M HILL INC.

Project: Tracy WWTP Final Design of Effluent Outfall Pipeline and Diffuser Improvements

C. April 1, 2012, CONSULTANT will deliver:

- Review of bids and recommendation for award

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

Vijay Kumar, Principal In Charge
Todd Hunziker, Project Manager
Ben Romero, Project Engineer

EXHIBIT “B”

2010 BILLING RATE SCHEDULE

Classification	Hourly Rate
Principal -In-Charge/Principal Program Manager	\$263
Principal Technologist/Principal Project Manager	\$241
Sr. Technologist/Sr. Project Manager	\$214
Engineer Specialist*/Project Manager	\$198
Project Engineer*/Associate Project Manager	\$176
Safety/Contract staff	\$170
Associate Engineer*	\$143
Staff Engineer 2*	\$126
Staff Engineer 1*	\$110
Engineering/Environmental Tech 5	\$148
Engineering/Environmental Tech 4	\$126
Engineering/Environmental Tech 3	\$110
Engineering/Environmental Tech 2	\$83
Engineering/Environmental Tech 1	\$71
Office/Clerical/Accounting	\$83

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

Exhibit “C”

TRACY WWTP – FINAL DESIGN OF EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENTS																		
Task	2010 Hourly Billing Rates	Principal In Charge	Principal Technologist/ Principal Project Manager	Sr. Technologist/Sr. Project Manager	Engineer Specialist*/Project Manager	Project Engineer*/Associate Project Manager	Contracting/Safety	Associate Engineer	Staff Engineer 2*	Engineering/Env. Tech 5	Engineering/Env. Tech 4	Office/Clerical/ Accounting	Total Hours	Labor (\$)	Expenses (\$)	Subcontractor (\$)	Total Fee (\$)	
1	River Surveying and Mapping																	
1.01	Utility Pothole Survey		2			4	2	12		12		4	36	\$ 5,350	\$ 540	\$ 6,000	\$ 11,890	
1.02	Supplemental Field Surveys		2			4	2			12		4	24	\$ 3,640	\$ 370	\$ 6,000	\$ 10,010	
1.03	River Bathymetry	24	8			8	4	8		32		4	88	\$ 16,540	\$ 1,660	\$ 60,000	\$ 78,200	
1.04	Easement Identification and Acquisition Support	40	8			16	2			16		4	86	\$ 18,310	\$ 1,840	\$ 38,000	\$ 58,150	
2	Geotechnical Design																	
2.1	Design Support	12		80								16	108	\$ 21,610	\$ 2,140		\$ 23,750	
2.2	Groundwater Level Measurements		8	16				48					72	\$ 12,220	\$ 1,230		\$ 13,450	

2.3	GBR	24	24	32						40			24	232	\$ 39,440	\$ 3,950	\$	\$ 43,390
2.4	GDR Supplement Field Boring and Lab Testing		4	8									8	44	\$ 6,780	\$ 680	\$	\$ 7,460
2.5	Utility Coordination and Data Collection		4	12									16	76	\$ 11,260	\$ 1,130	\$ 18,000	\$ 30,390
3	Design Coordination	12	2	16						40			8	78	\$ 12,770	\$ 1,280	\$	\$ 14,050
3.01	Utility												4	70	\$ 11,390	\$ 1,140	\$ 50,000	\$ 62,530
3.04	Potholing	8	2	8						32								
4	Permitting Support																	
4.1	Provide Environmental Permit Applications and Coordination	240	240	160	240	80	16	1200		160	80	160	2576		\$ 434,640	\$ 43,470	\$ 25,000	\$ 503,110
4.2	Provide Encroachment Permit Applications and Coordination	120	32	24	24	40		320		320	160	24	1064		\$ 164,440	\$ 16,350	\$ 5,000	\$ 185,790
4.3	Engineering Support for Permit Applications	320	80	40	40	120		96		96	32	160	984		\$ 184,880	\$ 18,490	\$ 12,000	\$ 215,370
5	Final Design																	
5.1	Design Development (60% Percent Completion)	120	80	240	320	160		640		320	640	80	2600		\$ 412,840	\$ 41,290	\$	\$ 454,130
5.2	Contract Documents (90% Percent Completion)	120	80	240	320	80		640		180	640	80	2380		\$ 381,120	\$ 38,120	\$	\$ 419,240
5.3	Documents (100% Percent Completion)	80	48	160	80	40		240		80	240	32	1000		\$ 167,030	\$ 16,710	\$	\$ 183,740
5.4	Construction Cost Estimate	8	24	80								16	128		\$ 26,340	\$ 2,640	\$	\$ 28,980
6	Easement Acquisition and Public Outreach												6108					
6.1	Public Outreach	80	40	40						24	48	40	272		\$ 52,690	\$ 5,270	\$ 10,000	\$ 67,960

7	Bid Phase Services																		
7.1	Pre-Bid Conference	16	12			16				8			64	\$	12,430	\$	1,250	\$	13,680
7.2	Preparation of Addenda	24	16			32				16			136	\$	23,530	\$	2,360	\$	25,890
7.3	Bid Opening and Evaluation	8	8			16				8			40	\$	6,990	\$	700	\$	7,690
8	Project Management																		
8.1	Project Execution Plan	2	16			16				8			58	\$	10,940	\$	1,100	\$	12,040
8.2	Project Kickoff Meeting	8	8	8	8	8			4	4			68	\$	12,410	\$	1,250	\$	13,660
8.3	Progress Meetings	48	48			24				32			184	\$	36,880	\$	3,690	\$	40,570
8.4	Team Coordination	48	96	24		48			48	32			344	\$	62,520	\$	6,260	\$	68,780
8.5	Monthly Reports	48	24			24				96			192	\$	29,810	\$	2,990	\$	32,800
8.6	Quality Control and Health and Safety	96	96	32		40				24			288	\$	64,270	\$	7,030	\$	71,300
	Subtotal	1506	1012	1252	1076	600	62	3524	1308	200	1840	912	19,400	\$	2,243,070	\$	224,930	\$	2,468,000

RESOLUTION _____

AUTHORIZATION OF TASK ORDER NO. CH01-13 TO MASTER PROFESSIONAL SERVICES AGREEMENT NO. CH01 WITH CH2M HILL FOR WASTEWATER TREATMENT PLANT – FINAL DESIGN OF EFFLUENT OUTFALL PIPELINE AND DIFFUSER IMPROVEMENTS AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE TASK ORDER

WHEREAS, The construction of the City's wastewater treatment plant (WWTP) Phase 1 was completed in 2007 and is providing the high level of treatment expected, and

WHEREAS, A necessary future phase of wastewater facilities are improvements to the capacity and reliability of the pumping facilities and pipeline conveying the treated wastewater effluent to Old River, and

WHEREAS, The existing effluent pipeline was constructed in 1978. It is a 33-inch diameter pipe and discharges approximately 3.5 miles north of the WWTP through a diffuser in Old River, and

WHEREAS, The existing outfall pipe and diffuser are believed to be adequate for the projected flows for the next 4 years, and

WHEREAS, The professional services task order for planning process and preliminary design for a new outfall pipeline was approved by the City Council at the August 4, 2009 meeting, and

WHEREAS, The preliminary design work has been completed and the work on obtaining the necessary permits and approvals is ongoing, and

WHEREAS, Staff anticipates that the final design, environmental compliance and permitting of the proposed outfall pipeline and diffuser will take several years or more, and

WHEREAS, Installation of the diffuser will require numerous permits for work within Old River, and

WHEREAS, The next step in the process is preparation of the final design for a new 42-inch outfall pipeline and diffuser which will parallel the existing pipeline, and

WHEREAS, The new outfall pipeline and diffuser will increase the effluent discharge capacity to approximately 16 million gallons per day, and

WHEREAS, The planned outfall pipeline will cross two major sloughs: Tom Paine Slough and Paradise Cut, along with five minor drainage and irrigation canals, and

WHEREAS, It is anticipated that the final design will take approximately 12 months and permitting will take an additional 12 months, and

WHEREAS, Construction of the effluent outfall pipeline and diffuser will require two summers resulting in a two year construction contract, so ideally the new diffuser will be operational in 4 years, and

WHEREAS, The RFP project objectives included professional services for various waste water projects on an as needed basis for a period of three years, and

WHEREAS, The City anticipated the force main pipeline and lift station projects within that time period, and

WHEREAS, Selecting CH2M Hill for the project would be consistent with RFP objectives, and

WHEREAS, There is no fiscal impact to the General Fund, the project is included in the current budget as Wastewater Treatment Plant Expansion – Phase 2A, CIP 74083, and

WHEREAS, The cost of the services included in this task order is \$2,698,000 funding is from development impact fees, and

WHEREAS, The project currently has \$5 million appropriated from NEI Phase 2 development impact fees, and

WHEREAS, The future construction phase of this project will require an additional \$15 to \$20 million in funding. Staff is researching funding opportunities;

NOW, THEREFORE BE IT RESOLVED That the City Council hereby authorizes Task Order No. CH01-13 to Master Professional Services Agreement No. CH01 with CH2M Hill for Wastewater Treatment Plant – Final Design of Effluent Outfall Pipeline and Diffuser Improvements and authorizes the Mayor to execute the task order.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 21st day of September, 2010, by the following vote:

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

MAYOR

ATTEST:

City Clerk

September 21, 2010

AGENDA ITEM 1.J

REQUEST

APPROVAL OF A RESOLUTION AUTHORIZING INDIVIDUALS TO ACT ON BEHALF OF A 457 DEFERRED COMPENSATION TRUST AGREEMENT WITH VALIC

EXECUTIVE SUMMARY

On September 7, 2010 the City Council authorized Resolution 2010-148 the execution of a 457 Deferred Compensation Trust Agreement with VALIC (a subsidiary of American International Group-AIG) and repealed Resolution No. 2009-171. Further action is necessary to authorize individuals to act on behalf of the plan.

DISCUSSION

Since the execution of this agreement the City of Tracy is establishing a Custodial account for which AIG Federal Savings Bank serves as Custodian. The City desires to authorize certain individuals to act on behalf of the Plan. Three individuals have been designed to act on behalf of the plan.

STRATEGIC PLANS

This is a routine item and does not relate to one of the City's adopted strategic plans.

FISCAL IMPACT

There is no cost associated with this authorization to act on behalf of the plan.

RECOMMENDATION

It is recommended that the City Council approve the attached resolution authorizing Zane Johnston, Finance and Administrative Services Director, Maria Olvera, Human Resources Director and Maria Hurtado, Assistant City Manager to act on behalf of the plan.

Prepared by: Zane Johnston, Finance & Administrative Services Director

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION _____

AUTHORIZING INDIVIDUALS TO ACT ON BEHALF OF PLAN

WHEREAS, City of Tracy (hereinafter, the "Employer") established City of Tracy Deferred Compensation Plan for the benefit of its employees and their beneficiaries; and

WHEREAS, Employer is establishing or has established a Custodial account for which AIG Federal Savings Bank serves as Custodian; and

WHEREAS, the Employer desires to authorize individuals holding certain positions with the Employer to act on behalf of the Plan.

NOW, THEREFORE, BE IT RESOLVED that the fullest authority has been invested in any individual (each an "Incumbent") holding a position identified below according to the title of the position (each a "Designated Position") for the duration of the period (the "Incumbency Period") in which such Incumbent holds the Designated Position; that each Incumbent is empowered during his or her Incumbency Period to execute any documents that AIG Federal Savings Bank requires relevant to the opening or maintaining of an account for the Plan; and that each Incumbent is empowered during his or her Incumbency Period to take any and all action deemed by any Incumbent to be proper in connection with said account, including, but not limited to, being empowered to give written or oral instructions to AIG Federal Savings Bank with respect to account transactions.

Assistant City Manager
Designated Position

Human Resources Director
Designated Position

Maria Hurtado
Current Incumbent Name (Print)

Maria Olvera
Current Incumbent Name (Print)

Current Incumbent Signature

Current Incumbent Signature

Finance and Administrative Services Director
Designated Position

Designated Position

Zane H. Johnston
Current Incumbent Name (Print)

Current Incumbent Name (Print)

Current Incumbent Signature

Current Incumbent Signature

BE IT FURTHER RESOLVED that the responsibility and authority to take whatever actions and to execute whatever instruments that may be necessary or convenient for the day-to-day transactions and plan operations is granted to the person or persons in the positions identified below:

Assistant City Manager
Designated Position

Maria Hurtado
Current Incumbent Name (Print)

Current Incumbent Signature

Finance and Administrative Services Director
Designated Position

Zane H. Johnston
Current Incumbent Name (Print)

Current Incumbent Signature

Human Resources Director
Designated Position

Maria Olvera
Current Incumbent Name (Print)

Current Incumbent Signature

Designated Position

Current Incumbent Name (Print)

Current Incumbent Signature

The foregoing Resolution _____ was adopted by the Tracy City Council on the 21st day of September, 2010, by the following vote:

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

Mayor

ATTEST

City Clerk

AGENDA ITEM 3

REQUEST

DISCUSSION AND ADOPTION OF A RESOLUTION IN SUPPORT OF PROPOSITION 22, A LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010

EXECUTIVE SUMMARY

The League of California Cities requests that Council adopt a resolution supporting Proposition 22, a Local Taxpayer, Public Safety and Transportation Protection Act of 2010 (Proposition 22). Proposition 22 is the ballot measure on the November 2010 ballot designed to limit State of California taking, borrowing, or shifting costs to local governments.

DISCUSSION

The League of California Cities requests that Council adopt a resolution in support of Proposition 22, which is on the November, 2010 ballot and designed to limit the State of California's ability to take, borrow, or shift costs to local governments.

The main provisions of Proposition 22 include the following:

- Revokes the State's ability to borrow local government property tax funds (currently authorized by 2004 Prop 1A);
- Prohibits the State from taking or borrowing the Highway User Tax on gasoline (HUTA), which currently funds city, county and state roads, highway, transit and other transportation improvements and services;
- Prevents the State from redirecting or diverting locally levied taxes, including parcel taxes, sales taxes, utility user taxes, TOTs and other locally imposed taxes that are currently passed by local governments and/or their voters and dedicated to cities, counties and special districts;
- Prohibits the State from taking, borrowing or redirecting existing funding for public transit, including existing taxes on gas and "spillover" funds dedicated to the Public Transportation Account;
- Adds additional constitutional protections to prevent the State from raiding redevelopment funds or shifting redevelopment funds to other state purposes.

Mr. Stephen Qualls of the League of California Cities will make a presentation on this issue. Additional information on Proposition 22 can be found on <http://www.savelocalservices.com>.

STRATEGIC PLAN

This agenda item does not relate to the Council's seven strategic plans.

FISCAL IMPACT

There is no fiscal impact associated with this item.

RECOMMENDATION

That Council discuss and adopt a Resolution in support of Proposition 22, a Local Taxpayer, Public Safety and Transportation Protection Act of 2010

Prepared by: Maria A. Hurtado, Assistant City Manager

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

RESOLUTION _____

A RESOLUTION IN SUPPORT OF PROPOSITION 22
THE LOCAL TAXPAYER, PUBLIC SAFETY AND TRANSPORTATION PROTECTION ACT OF 2010

WHEREAS, California voters have repeatedly passed separate ballot measures to stop State raids of local government funds, and to dedicate the taxes on gasoline to fund Local and State transportation improvement projects; and

WHEREAS, These local government funds are critical to provide the police and fire, emergency response, parks, libraries, and other vital local services residents rely upon every day, and gas tax funds are vital to maintain and improve local streets and roads, to make road safety improvements, relieve traffic congestion, and provide mass transit; and

WHEREAS, This year's borrowing and raids of local government, redevelopment and transit funds, as well as previous, ongoing raids have lead to layoffs of police, fire and paramedic first responders, fire station closures, stalled economic development, healthcare cutbacks, delays in road safety improvements, public transit fare increases and cutbacks in public transit services; and

WHEREAS, A coalition of local government, transportation and transit advocates filed a constitutional amendment with the California Attorney General, called the Local Taxpayer, Public Safety, and Transportation Protection Act of 2010, which will be on the November 2010 statewide ballot as Proposition 22; and

WHEREAS, Approval of this ballot initiative would close loopholes and change the constitution to further prevent State politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking or interfering with tax revenues dedicated to funding local government services, including redevelopment, or dedicated to transportation improvement projects and mass transit.

NOW, THEREFORE, BE IT RESOLVED, That the Tracy City Council formally endorses Proposition 22, the Local Taxpayer, Public Safety and Transportation Protection Act of 2010, a proposed constitutional amendment and hereby authorizes the listing of the Council members in support of Proposition 22.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 21st day of September 2010, by the following vote:

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

Mayor

ATTEST:

City Clerk