

TRACY CITY COUNCIL

REGULAR MEETING AGENDA

**Tuesday, November 20, 2012, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

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

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

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

**Addressing the Council on Items not on the Agenda** – The Brown Act prohibits discussion or action on items not on the posted agenda. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

**Presentations to Council** - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed 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](http://www.ci.tracy.ca.us)

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Introduction of Two Fire Explorers – Tracy Fire Department  
- 2012-2013 Grand Foundation Underwriting Support - Mike Souza,  
President, Grand Foundation Board, presents check to the City

1. CONSENT CALENDAR

- A. Minutes Approval
- B. Accept Grand Foundation's Fiscal Year 2012-2013 Annual Underwriting Support and Approve Supplemental Appropriation of Proceeds for Programming and Technical Support at the Grand Theatre Center for the Arts
- C. Reject Bid Protest from Broward Builders and Award a Construction Contract to Diede Construction Inc. of Woodbridge, California, for the Fire Stations 92 and 96 Project - CIPs 71062 And 71061, Authorize Approval of Amendment 3 to the Professional Services Agreement with Shah Kawasaki Architects, and Authorize the Mayor to Execute the Contract and Amendment
- D. Adopt a Resolution Authorizing a Professional Services Agreement with the Boys and Girls Club of Tracy to Perform Services Under the Reconnecting our Youth Grant Program, Authorizing the Mayor to Sign the Agreement, and Authorizing the City Manager to Sign Minor Amendments for Purposes of Administrative Efficiency
- E. Approval of Amendment 2 to the Professional Services Agreement (PSA) with Drake Haglan and Associates of Sacramento, California, for Additional Design Services for the Eleventh Street – East Tracy Overhead, Bridge #29C-0126 – CIP 73063, Federal Project No. BHLS-5192(020), Authorize the City Manager to Execute the Amendment
- F. Approve a List of City of Tracy Projects for San Joaquin Council of Government's One Voice Trip to Washington D.C., for Congressional Funding Appropriation Requests
- G. Approve a \$473,000 Supplemental Appropriation from the General Fund for Building and Fire Safety Plan Review and Inspection Services in the Development Services Department
- H. Approval of Amendment 1 to the Professional Services Agreement (PSA) with West Yost and Associates to Provide Additional Services to Complete the Cordes Ranch Specific Plan and Authorize the Mayor to Execute the Amendment

- I. Approve a Termination and Release Agreement with Angelo Tsakopoulos, Vassilis Constan Tsakopoulos and Tsakopoulos Family Partnership, a California General Partnership and the City of Tracy, a California Municipal Corporation, for Design, Construction, Operation, Maintenance and Decommissioning of the Interim Wastewater Reclamation Facility and the Timing of Design and Construction of Permanent Wastewater Reclamation Facility Recorded with the San Joaquin County Recorder Per Instrument Number 2003-032227 on February 12, 2003, and Authorize the Mayor to Execute the Agreement
- J. Approve Amendment Two to the Professional Services Agreement with Design, Community and Environment, Inc. for the Preparation of an Environmental Impact Report, Assistance with the Preparation of a Specific Plan and Annexation for the Cordes Ranch Specific Plan Project
- K. Approve a Master Professional Services Agreement (MPSA) with Associated Right of Way Services, Inc. (AR/WS) of Pleasant Hill, California, to Provide Right of Way Acquisition Services for Various Projects, Authorize the Mayor to Execute the Agreement, and Authorize the City Manager to Execute Task Order 1
2. ITEMS FROM THE AUDIENCE
3. AUTHORIZE STREET NAME CHANGES FOR NAGLEE ROAD TO WEST VALLEY AUTO MALL ROAD WITHIN THE CITY LIMIT AND MACARTHUR DRIVE BETWEEN I-205 AND PESCADERO AVENUE TO OUTLET CENTER DRIVE, AUTHORIZE AN APPROPRIATION OF FUNDS TO CIP 73136 TO INSTALL NEW STREET NAME SIGNS ON I-205
4. COUNCIL DISCUSSION AND DIRECTION RELATIVE TO THE SALE AND DISPOSITION OF THE CHRISMAN ROAD PROPERTY
5. SECOND READING AND ADOPTION OF ORDINANCE 1176 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44, BOARD OF APPEALS, AND DELETING SECTION 9.44.050, OF THE TRACY MUNICIPAL CODE
6. ITEMS FROM THE AUDIENCE
7. COUNCIL ITEMS
  - A. Appoint City Council Subcommittee to Interview Applicant(s) for One Vacancy on the San Joaquin County Mosquito Abatement District Board
8. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

**November 7, 2012, 6:45 p.m.**

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:45 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None
4. CLOSED SESSION -
  - Real Property Negotiations (Gov. Code, section 54956.8)

Property Location:	Parcel located at the Northwest corner of Grant Line Road and Paradise Road (Assessor's Parcel Number 213-070-45)
Negotiators for City:	Andrew Malik, Director of Development and Engineering Services; Kul Sharma, Assistant Director of Development and Engineering Services
Negotiating Parties:	Buddy Ender
Under Negotiation:	Price and terms of payment for the purchase
5. MOTION TO RECESS TO CLOSED SESSION – Council Member Abercrombie motioned to recess the meeting to closed session at 6:45 p.m. Council Member Rickman seconded the motion. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:57 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Council Member Abercrombie and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:58 p.m.



The agenda was posted at City Hall on November 1, 2012. The above are action minutes.

\_\_\_\_\_  
Mayor Ives

ATTEST:

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

AGENDA ITEM 1.B

REQUEST

**ACCEPT GRAND FOUNDATION'S FISCAL YEAR 2012-2013 ANNUAL UNDERWRITING SUPPORT AND APPROVE SUPPLEMENTAL APPROPRIATION OF PROCEEDS FOR PROGRAMMING AND TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS**

EXECUTIVE SUMMARY

Staff is requesting that Council accept and approve supplemental appropriation of funding from the Grand Foundation (GF) for programming and technical support expenditures for Fiscal Year 2012-2013.

DISCUSSION

The City of Tracy, through the Cultural Arts Division, works collaboratively with the Grand Foundation (GF) to provide programming and technical financial support at the Grand Theatre Center for the Arts. The GF is providing \$30,000 in Fiscal Year 2012-2013 under the current Memorandum of Understanding with the City.

The GF provides underwriting through fundraising and donor relationships to support the programming and technical support of the Arts Education, Exhibitions and Presenting Programs at the Center. Each year, financial needs are accessed and prioritized by staff and submitted to the GF Board for its consideration to supplement the adopted Cultural Arts Division budget.

This year, the GF Board has chosen to underwrite \$18,000 in the Arts Education Program, \$2,500 in the Exhibitions Program, and \$9,500 in the Presenting Program. This funding support will have significant and lasting impact on the programming and in the quality and diversity of public experiences at the Center.

Staff has prepared an outline of the estimated itemized budget in collaboration with the GF. Staff meets monthly with the GF Board to provide expenditure and programming updates.

STRATEGIC PLAN:

This agenda item supports the Organizational Efficiency Strategy:

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

This agenda item supports the Livability Strategy:

**Goal 2:** A city with enticing arts, entertainment, and recreation.

FISCAL IMPACT:

Provide \$30,000 in programming and technical underwriting support from the Grand Foundation to the Cultural Arts Division - Grand Theatre Center for the Arts for Fiscal Year 2012-2013.

RECOMMENDATION:

Staff recommends that Council authorize the acceptance and approval of supplemental appropriation of funding from the Grand Foundation to support programming and technical support expenditures of the Grand Theatre Center for the Arts for Fiscal Year 2012-2013

Attachment A: Grand Theatre Center for the Arts – GF FY2012-13 Underwriting Support Outline

Prepared by: William Wilson, Cultural Arts Manager – Visual Arts

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

Grand Theatre Center for the Arts / Grand Foundation  
Approved 2012-13 Underwriting Support Outline

<b>Programming</b>	<b>Description</b>	<b>Amount</b>
<b>Arts Education Program</b>		
Class Underwriting	Comprehensive underwriting support of approximately 25 classes, workshops and special events serving: <ul style="list-style-type: none"><li>- Special Needs Children &amp; Adults</li><li>- Youth Ages 4 to 12</li><li>- Seniors Age 65+</li></ul> Covers Contract Instructor fees, insurance, business licenses, marketing and supplies. Classes can either be free or offered for a nominal fee (\$10 – \$20), expense dependent.	\$12,500
Digital Recording Workstation	iMac System, Components & Software Instructor & Student Music Workstation Music Studio 2	\$5,000
Media Library	Print & Media for AEP Library Instructor & Student use	\$500
<b>Exhibitions Program</b>		
Hospitality Services	Catering and Floral for Feature Exhibitions: 4 Receptions & Gallery Talks November through June 2013	\$2,500
<b>Presenting Program</b>		
Anthony Rapp RENT Broadway Actor	Performance Support	\$9,500
		<b>\$30,000 Total FY12-13</b>

RESOLUTION \_\_\_\_\_

ACCEPTING GRAND FOUNDATION'S FISCAL YEAR 2012-2013 ANNUAL UNDERWRITING SUPPORT AND APPROVE SUPPLEMENTAL APPROPRIATION OF PROCEEDS FOR PROGRAMMING AND TECHNICAL SUPPORT AT THE GRAND THEATRE CENTER FOR THE ARTS

WHEREAS, the Grand Foundation is providing \$30,000 in programming and technical support to the Grand Theatre Center for the Arts for Fiscal Year 2012-2013, and

WHEREAS, the Cultural Arts Division staff manages programming and operations at the Grand Theatre Center for the Arts.

NOW, THEREFORE, BE IT RESOLVED, That the City Council accepts and approves a supplemental appropriation in the amount of \$30,000 from the Grand Foundation for Fiscal Year 2012-2013 Underwriting Support for programming and technical support of the Grand Theatre Center for the Arts.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the City Council of the City of Tracy on the 20th day of November, 2012, 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

**REJECT BID PROTEST FROM BROWARD BUILDERS AND AWARD A CONSTRUCTION CONTRACT TO DIEDE CONSTRUCTION, INC. OF WOODBRIDGE, CALIFORNIA, FOR THE FIRE STATIONS 92 AND 96 PROJECT - CIPs 71062 AND 71061, AUTHORIZE APPROVAL OF AMENDMENT 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH SHAH KAWASAKI ARCHITECTS, AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT AND AMENDMENT**

EXECUTIVE SUMMARY

Award of a construction contract to Diede Construction, Inc. of Woodbridge, California, will initiate construction of Fire Stations 92 and 96. Both Fire Stations consist of single story prototype buildings with identical floor plans, each with two apparatus bays and supporting site improvements. A new site for the aging Banta Fire Station 92 will be located north of Grant Line Road, east of MacArthur Drive and east of the Orchard Hardware Supply Warehouse. Fire Station 96 will be moved from the Parker Avenue and Grant Line Road site and a new facility will be constructed on an old storm drainage pond site east of the Kinder Care facility on the south side of Grant Line Road, east of Corral Hollow Road.

DISCUSSION

On April 21, 2009, City Council accepted the Fire Department report for medium range recommendations for resource allocation and standards response coverage work team and directed staff to implement its recommendations. The report recommended that Fire Station 96 be relocated from its existing site near Parker Avenue and Grant Line Road to the new site at 1800 W. Grant Line Road, just east of the Kinder Care facility located south of Grant Line Road, east of Corral Hollow Road. The report also recommended that the site for Fire Station 92 be relocated from its existing site in Banta at Seventh Street and Grant Line Road, to the new site at 1035 E. Grant Line Road, east of the Orchard Supply Hardware Distribution Center, on the north side of Grant Line Road.

Plans and specifications for Fire Stations 92 and 96 were prepared by Shah Kawasaki Architects, of Oakland, California. These Fire Stations have identical floor plans and will provide approximately 5,136 square feet in floor area that includes two apparatus bays. Each fire station includes three bedrooms, two full bathrooms, dining and day room, kitchen, watch room, exercise room, shop, turnout storage room, compressor, electrical and mechanical room. Fire Station construction will be single story, cement plaster and tile on the exterior, composite shingle roof, with backup power generators, mechanical, electrical systems, and an automatic fire sprinkler system. Fire Station 92 will have a deep pile foundation and lift station for the sewer system and Fire Station 96 will have a concrete beam foundation due to different site conditions. Due to specialized foundations and sewer lift station, the construction cost for Fire Station 92 will be much higher than Fire Station 96.

The project was advertised for construction bids on August 24, and 31, 2012. A total of 12 bids were received on October 10, 2012 as follows:

<b>Construction Company</b>	<b>Bid Amount</b>
Diede Construction Inc., Woodbridge, CA	\$4,919,000
Broward Builders, Woodland, CA	\$5,020,900
D G Granade Inc., Shingle Springs, CA	\$5,080,000
Seward L Schreder Construction Inc., Redding, CA	\$5,151,000
Roebbelen Contracting Inc., El Dorado Hills, CA	\$5,158,000
Jeff Luchetti Construction Inc. Santa Rosa, CA	\$5,195,000
D L Falk Construction Inc., Hayward, CA	\$5,212,880
Alten Construction Inc. , Richmond, CA	\$5,320,972
Bobo Construction Inc., Elk Grove, CA	\$5,324,000
Gonzalves & Stronck Const. Co Inc., San Carlos, CA	\$5,435,727
F & H Construction, Lodi, CA	\$5,634,000
Menghetti Construction, Modesto, CA	\$5,817,207

The lowest bid is from Diede Construction, Inc. of Woodbridge, California. The bid analysis indicates that the low bid is responsive and the bidder is responsible. Diede Construction Inc. has good references and has completed similar projects satisfactorily with other public agencies.

A bid protest was submitted by Broward Builders within the five working days as required by the project specifications and contract documents (see attached Exhibit A). The bid protest submitted by Broward Builders claims that Diede Construction's (Diede) bid is nonresponsive because: (1) Diede failed to list subcontractors for work where cost is over 0.5% of their bid amount, and (2) Diede failed to submit the complete comparison documentation with the bid package for "or equal product".

Staff has reviewed these claims and do not believe they have merit. In making a determination as to the responsiveness of Diede Construction's bid, the City must look to the face of the bid itself. Therefore, the City must assume that, if Diede Construction's bid is accepted, it will perform all work in excess of 0.5 percent of the total bid for which a subcontractor was not designated (Public Contract Code, § 4106). To the extent that work on the project requires a specific license classification, Diede Construction could contract with a subcontractor to perform it (if under the amount set forth in Public Contract Code section 4106) or have it performed by someone on its payroll. Finally, in regards to "or equal product", the City must look to the face of the bid itself also; the City cannot base its determination on speculation or other information outside of the bid.

Therefore, to the extent that work on the project requires a product specified in the specifications, the subcontractor to perform shall adhere to the contract documents. Staff recommends that City Council reject this protest.

Fire Station 92 is a facility jointly owned by the City of Tracy and the Tracy Rural Fire District; therefore, staff obtained authorization for award from the Tracy Rural Fire District Board on November 13, 2012.

Consultant Design Support Services

Since Shah Kawasaki Architects of Oakland, California prepared the project plans and specifications, it is necessary to retain their services for design support during construction. Their services will be needed for shop drawing review, design clarifications, changes, and periodic site visits for contract compliance. Shah Kawasaki submitted a proposal to provide Design Support Services for the above work during construction for an amount not to exceed \$235,000. This includes \$30,000 for contingency.

Construction management for the project will be performed in-house by Engineering staff.

The total construction cost of the project and status of funding, if awarded to Diede Construction Inc., is as follows:

Bid Amount	\$4,919,000
Contingency (15%)	\$ 737,000
Right of Way Acquisition	\$ 280,000
Design Cost (Consultant)	\$ 600,000
Design City (Plan Check, Project Management, City Wide Management & others)	\$ 261,000
Design Support During Construction	\$ 235,000
Special Inspections	\$ 120,000
Construction management (7%)	\$ 395,000
City-wide management (construction)	\$ 593,000
Furniture, Appliances and Other equipment	\$ 500,000
Total Project Cost	\$8,660,000
Total Project Budget	\$9,430,000

The cost distribution by each Fire Station is as follows.

Fire Station 92

Bid Amount	\$2,533,000
Contingency (15%)	\$ 380,000
Right of Way Acquisition	\$ 280,000
Design Cost (Consultant)	\$ 300,000
Design City (Plan Check, Project Management, City Wide Management & others)	\$ 130,000



Design Support During Construction	\$ 132,000
Special Inspections	\$ 70,000
Construction management (7%)	\$ 204,000
City-wide management (construction)	\$ 306,000
Furniture, Appliances and Other equipment	\$ 250,000
Total Project Cost	\$4,585,000
Total Project Budget	\$5,430,000

Fire Station 96

Bid Amount	\$2,386,000
Contingency (15%)	\$ 357,000
Right of Way Acquisition	\$ 0
Design Cost (Consultant)	\$ 300,000
Design City (Plan Check, Project Management, City Wide Management & others)	\$ 131,000
Design Support During Construction	\$ 123,000
Special Inspections	\$ 50,000
Construction management (7%)	\$ 191,000
City-wide management (construction)	\$ 287,000
Furniture, Appliances and Other equipment	\$ 250,000
Total Project Cost	\$4,072,000
Total Project Budget	\$4,000,000

A total of \$9,430,000 is budgeted for this project per the City's approved budget. If City Council awards the contract to Diede Construction, construction will be completed by April 2014.

STRATEGIC PLAN

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

FISCAL IMPACT:

There is no impact to General Fund. Fire Station 92 and Fire Station 96 are approved Capital Improvement Projects with sufficient funding to pay for the construction of Fire Stations project.

RECOMMENDATION:

Staff recommends that City Council by resolution, reject the bid protest from Broward Builders, award the construction contract to Diede Construction Inc. of Woodbridge, California, for the Fire Stations 92 and 96 Project – CIPs 71062 and 71061, and authorize approval of Amendment 3 to the Professional Services Agreement with Shah Kawasaki Architects, and authorize the Mayor to execute the construction contract and Amendment 3 to the Professional Services Agreement with Shah Kawasaki Architects.

Agenda Item 1.C  
November 20, 2012  
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Prepared by: Ripon Bhatia, Senior Engineer

Reviewed by: Kuldeep Sharma, City Engineer

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

RESOLUTION 2012-\_\_\_\_\_

REJECTING THE BID PROTEST FROM BROWARD BUILDERS AND AWARDING A CONSTRUCTION CONTRACT TO DIEDE CONSTRUCTION, INC. OF WOODBRIDGE, CALIFORNIA, FOR THE FIRE STATIONS 92 AND 96 PROJECT - CIPs 71062 AND 71061, AUTHORIZING APPROVAL OF AMENDMENT 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH SHAH KAWASAKI ARCHITECTS, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT AND AMENDMENT

WHEREAS, On April 21, 2009, City Council accepted the Fire Department report for medium range recommendations for resource allocation and standards response coverage work team and directed staff to implement its recommendations, and

WHEREAS, Plans and specifications for Fire Stations 92 and 96 were prepared by Shah Kawasaki Architects, of Oakland, California, and

WHEREAS, The project was advertised for construction bids on August 24, and 31, 2012. A total of 12 bids were received on October 10, 2012, and

WHEREAS, The lowest bid is from Diede Construction, Inc. of Woodbridge, California, and

WHEREAS, A bid protest was submitted by Broward Builders within the five working days as required by the project specifications and contract documents, and

WHEREAS, Staff has reviewed these claims and do not believe they have merit, and

WHEREAS, Fire Station 92 is a facility jointly owned by the City of Tracy and the Tracy Rural Fire District and staff obtained authorization for award from the Tracy Rural Fire District Board on November 13, 2012, and

WHEREAS, Shah Kawasaki submitted a proposal to provide Design Support Services for the above work during construction for an amount not to exceed \$235,000, and

WHEREAS, There is no impact to General Fund. Fire Station 92 and Fire Station 96 are approved Capital Improvement Projects with sufficient funding to pay for the construction of Fire Stations;

NOW, THEREFORE, BE IT RESOLVED, That City Council rejects the bid protest from Broward Builders, awards the construction contract to Diede Construction Inc. of Woodbridge, California, for the Fire Stations 92 and 96 Project – CIPs 71062 and 71061, and authorizes approval of Amendment 3 to the Professional Services Agreement with Shah Kawasaki Architects, and authorizes the Mayor to execute the construction contract and Amendment 3 to the Professional Services Agreement with Shah Kawasaki Architects.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

**CITY OF TRACY  
AMENDMENT NO. 3 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR DESIGN PROFESSIONALS FIRE STATION 92, CIP 71062 AND  
FIRE STATION 96, CIP 71061**

This Amendment No. 3 (hereinafter "Amendment") to the Professional Services Agreement between the City of Tracy and Shah Kawasaki Architects, Inc. is entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Shah Kawasaki Architects, Inc. a California corporation (hereinafter "CONSULTANT").

**RECITALS**

- A. CITY and CONSULTANT entered into a Professional Services Agreement (hereinafter "Agreement") for the Fire Station 92 & 96 Project which was approved by CITY's City Council on June 16, 2009, pursuant to Resolution No. 2009-114.
- B. CONSULTANT services are needed to provide design support during construction.
- C. In June 2012, CONSULTANT submitted a proposal to perform additional services described in this Amendment. After negotiations between the CITY and the CONSULTANT, the parties have reached an agreement for the performance of services with the terms set forth in this Amendment.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** A new Exhibit "A1" is hereby added to the Agreement and made a part thereof, a true and correct copy of which is attached hereto and made a part hereof. The following language is also hereby added to the end of Section 1, SCOPE OF SERVICES, of the Agreement:

"CONSULTANT shall also perform the tasks described in Exhibit "A1" attached hereto and incorporated herein by reference.

The additional tasks shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Alan Kawasaki. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A1", nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY."

- 3. **Terms of Amendment.** The following language is hereby added to the end of Section 1, SCOPE OF SERVICES, of the Agreement:

"If CITY, through its Development and Engineering Services Department Director, determines such is necessary, then, in addition to the services described above,

**CITY OF TRACY**

**Amendment No. 3 to Professional Services Agreement**

**Shah Kawasaki Architects**

**Page 2 of 6**

CONSULTANT shall perform contingency services (in the amount not to exceed \$30,000), which are necessary as design support during construction for the project but only if directed to do so in writing by CITY's Development and Engineering Services Department Director and CONSULTANT."

4. **Terms of Amendment.** Section 5.1 of the Agreement is hereby amended to increase the Not To Exceed Amount from \$567,723 to \$802,723, provided however, that the Not To Exceed amount shall be reduced by \$30,000 if CITY chooses not to exercise its option to have CONSULTANT provide the contingency services.
5. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
6. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
7. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the City. This Amendment shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

**INTENTIONALLY LEFT BLANK**

**CITY OF TRACY**  
**Amendment No. 3 to Professional Services Agreement**  
**Shah Kawasaki Architects**  
**Page 3 of 6**

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: Alan Kawasaki

Alan Kawasaki

Title: President & Secretary

Date: 10/2/2012

Attest:

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

Sandra Edwards

Title: City Clerk

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

Approved as to form:

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

Daniel G. Sodergren

Title: City Attorney

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



EXHIBIT "A1"

SCOPE OF SERVICES

OVERVIEW OF SCOPE OF SERVICES. As more specifically described in this Agreement, CONSULTANT shall provide design support during construction for the Fire Station 92 & 96 Project.

CONSULTANT shall provide Construction Phase Services as follows:

- **Field Visits:** CONSULTANT shall attend a single pre-construction conference for both project sites. CONSULTANT shall visit both project sites at intervals appropriate to the stage of construction (no more than every two weeks during the peak six months of construction) to become generally familiar with the progress and quality of the work and to determine, in general, if the work is proceeding in conformance with the Contract Documents. A total of twenty architectural site visits, including one pre-construction conference and two visits during the punch list period, four Structural, four MEP, two Civil and two Landscape site visits shall be performed by CONSULTANT.
- **Submittals / RFIs:** CONSULTANT shall review Contractor submittals and answer written Contractor requests for information (RFI). It is expected that resubmittals will not exceed 25% of all submittals and second resubmittals shall not exceed 5% of all submittals. CONSULTANT will submit all correspondence including return of RFIs and all submittals electronically in PDF format.
- The project consists of a single building design for both Fire Stations and two unique site designs. CONSULTANT shall review one set of architectural materials (except exterior finishes), building structural framing (not including foundations), mechanical, building plumbing, and building electrical will be reviewed. Two unique submittals shall be reviewed for architectural exterior finishes, structural foundations, civil earthwork, utilities, and paving, traffic signal and striping materials, and landscape materials.
- Submittals will be required to be complete and grouped by each specification section. Partial submittals will not be reviewed. RFIs for clarifications must apply to both buildings where systems are the same.
- CONSULTANT shall prepare Bulletins and Field Directives when such information clarifies the intent of the design. CITY will print and distribute Bulletins to contractor, architect, and CONSULTANT's team.
- CONSULTANT shall assist with occasional and limited review of Contractor Change Orders as they relate to CONSULTANT's contract documents.
- The CITY will review submittals and RFI's for completeness before transmission to SKA and will return to Contractor submittals which are incomplete.



## CITY OF TRACY

### Amendment No. 3 to Professional Services Agreement

Shah Kawasaki Architects

Page 5 of 6

- CITY will require the Contractor answer subcontractor RFI's when answers can be reasonably found in Contract Documents. The CITY shall make this part of the General Requirements of the Contractor.
- CITY will check and red-mark civil and landscape submittals for CITY standards prior to forwarding to SKA.
- **As-Built Documents:** CONSULTANT shall incorporate all addenda and bulletins into a "conformed set" and issue it to the Contractor approximately two to three weeks prior to Substantial Completion.
- **Punch List:** at the completion of the Work and prior to acceptance of the work by CITY, CONSULTANT shall determine if the Work is at Substantial Completion, and shall prepare a punch list of items (if any) that do not comply with the Construction Drawings or Specifications. Upon receipt of a certification by the Contractor that all punch list items are complete, CONSULTANT shall visit the site once to check the work for completion.
- The Consultant shall follow the administrative procedure of the Essential Services Act as contained in Part I of the Title 24, California Code of Regulations (CCR).
  1. The enforcement agency is the City of Tracy
  2. The Consultant shall periodically provide a verified report to the Enforcement agency of its site observation in accordance with section 4-214
  3. The relationship of the project inspector to the Architect is defined in section 4-219 (b) 2 of CCR. The Architect's "general direction" of the Project Inspector shall mean that the Architect shall provide interpretations and instructions to the Project Inspector should there be uncertainties in Inspectors comprehension of the plans and specifications. The Architect will not supervise or be responsible for the Project Inspectors fulfilling his duties.

**COMPLETION OF THE SCOPE OF SERVICES.** CONSULTANT shall complete the design within the following time frames:

Design Support during Construction Phase will commence with the award of the contract for Construction and will terminate when final payment to the Contractor is due or sixty days after the Date of Substantial Completion, whichever occurs first.

**EXIBHIT "B1"**

**Billing Rates**  
**Shah Kawasaki Architects**  
**2012-2013\***

Principal	\$ 206
Project Managers	\$ 109 - \$163
Senior Designers	\$ 109 - \$136
Intermediate Designers	\$ 87 - \$109
Junior Designers	\$ 65 - \$ 87
Administrative Staff	\$ 60 - \$114

\*Note: annual escalation per Federal documents is 2.1% per annum since 2009.

AGENDA ITEM 1.D

REQUEST

**ADOPT A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THE BOYS AND GIRLS CLUB OF TRACY TO PERFORM SERVICES UNDER THE RECONNECTING OUR YOUTH GRANT PROGRAM, AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO SIGN MINOR AMENDMENTS FOR PURPOSES OF ADMINISTRATIVE EFFICIENCY.**

EXECUTIVE SUMMARY

On June 14, 2012, the City of Tracy issued a Request for Qualifications to obtain a list of eligible non-profit agencies with capabilities to fill service gaps geared towards middle and high school youth, ages 10-18 and their families. The deadline to submit proposals was July 26, 2012. Nine local non-profit agencies submitted proposals for consideration. One of the nine agencies was the Boys and Girls Club of Tracy. The Boys and Girls Club's proposal was determined to be acceptable for the youth outreach and education service gap. Staff is requesting that City Council authorize a Professional Services Agreement and grant contract with the Boys and Girls Club of Tracy for fiscal year 2012-2013 and authorize the City Manager to sign minor amendments to same, as needed, for administrative efficiency.

DISCUSSION

On February 19, 2008, Tracy City Council approved, per resolution 2008-030, the Mayor's Community Youth Support Network (MCYSN) Strategic Plan and annualized budget allocations, which earmarked funds towards a matching grant program called the Reconnecting Our Youth Grant Program. This program is available to non-profit agencies who can fill identified service gaps while enhancing youth asset development and reducing risk factors to anti-social behaviors. Each year, the City releases a Request for Qualifications (RFQ) announcement that identifies eligible agencies whose capabilities to provide services match the needs identified. Every two years, staff, in partnership with San Joaquin County Behavioral Health, Tracy Unified School District and Tracy Police re-evaluates the target areas and service needs based on school discipline data, juvenile crime trends, focus group feedback, California Department of Education Healthy Kids survey, Blueprints for Violence Education models and statewide trends.

On June 14, 2012, the City of Tracy issued a RFQ with the deadline of July 26, 2012. This year's RFQ identified the following service needs:

1. Youth Outreach and Education
  - i. Substance abuse, prevention and education
  - ii. Bullying prevention (physical, verbal, cyber)
2. Alternative After-School & Evening Youth Activities
3. Gang Prevention & Intervention Services
4. Family or Individual Youth Case Management
5. Behavioral Health Services – Prevention and Intervention ONLY

The Boys and Girls Club of Tracy submitted a proposal for Youth Outreach & Education with a focus on substance abuse prevention and education, teen domestic violence prevention and bullying prevention. The specific youth outreach and education tool to be implemented is the Skills Mastery and Resistance Training (S.M.A.R.T.) This program is a nationally proven education program implemented at Boys and Girls Club sites throughout the United States. In Tracy, all six of the Boys and Girls Club sites will receive the program.

From time to time, minor amendments (due to staffing changes, etc.) are needed to the Agreement. For administrative efficiency, staff requests that Council authorize the City Manager to approve and sign such minor amendments.

#### STRATEGIC PLAN:

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

#### FISCAL IMPACT

The \$60,000 requested is available under the Reconnecting Our Youth Grant Program fiscal year 2012-2013 budget. The Reconnecting Our Youth grant program funding has been approved in the City Manager's Office, Mayor's Community Youth Support Network Budget for fiscal year 2012-2013.

#### RECOMMENDATION

Adopt a resolution authorizing a Professional Services Agreement and grant contracts associated with the Boys and Girls Club of Tracy to perform services under the Reconnecting Our Youth Grant Program, authorizing the Mayor to sign the Agreement and contracts, and authorizing the City Manager to approve and sign minor amendments to same for administrative efficiency.

Prepared by: Monica Gutierrez, Management Analyst

Reviewed by: Maria Hurtado, Assistant City Manager

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

Attachment "A" – Professional Services Agreement

RESOLUTION \_\_\_\_\_

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT AND GRANT CONTRACTS ASSOCIATED WITH THE BOYS AND GIRLS CLUB OF TRACY TO PERFORM SERVICES UNDER THE RECONNECTING OUR YOUTH GRANT PROGRAM, AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT AND CONTRACTS, AND AUTHORIZING THE CITY MANAGER TO SIGN MINOR AMENDMENTS TO SAME FOR ADMINISTRATIVE EFFICIENCY

WHEREAS, On June 14, 2012 the City issued a Request for Qualifications to obtain a list of eligible nonprofit-agencies with capabilities to fill service gaps; and

WHEREAS, The Boys and Girls Club of Tracy submitted a proposal determined to be acceptable for the service of youth outreach and education; and

WHEREAS, The specific youth outreach and education tool to be implemented is the Skills Mastery and Resistance Training (S.M.A.R.T.) program; and

WHEREAS, All six of the Boys and Girls Club sites will receive the program; and

WHEREAS, The contract amount exceeds the \$50,000 city manager authorization limit.

NOW, THEREFORE, BE IT RESOLVED, That the City Council hereby authorizes a Professional Services Agreement and grant contracts associated with the Boys and Girls Club of Tracy to perform services under the Reconnecting Our Youth Grant Program, authorizes the Mayor to sign the Agreement and contracts, and authorizes the City Manager to sign minor amendments to same for administrative efficiency.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the City Council of the City of Tracy on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

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

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**Reconnecting Our Youth Grant Program, Cycle V**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into by and between the CITY OF TRACY, a municipal corporation (herein after "CITY"), and BOYS AND GIRLS CLUB OF TRACY, a California non-profit corporation (herein after "CONSULTANT").

**RECITALS**

- A. June 14, 2012 the City issued a Request for Qualifications (RFQ) for the Reconnecting Our Youth Grant Program (herein after "Project).
- B. On July 26, 2012 Consultant submitted its proposal for the Project to the CITY. After negotiations between the City and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- C. Pursuant to Tracy Municipal Code 2.20.130 the City Manager has authorized the execution of this Agreement.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT's Authorized Representative: Kelly Wilson. 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 sub-consultants, 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 Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CONSULTANT shall submit all requests for extensions of time to the CITY in writing 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.

## **CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**

### **Reconnecting Our Youth Grant Program, Cycle V – Boys & Girls Club of Tracy**

Page 2 of 6

- 3. INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, agents, or sub-consultants, 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 sub-consultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that CONSULTANT maintains or acquires such a conflicting interest, any contract (including this Agreement) involving CONSULTANT's conflicting interest may be terminated by the CITY.
- 5. COMPENSATION.**

  - 5.1.** For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Agreement is NOT to exceed \$60,000.00. CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Agreement. No work shall be performed by CONSULTANT in excess of the NOT to exceed amount without the prior written approval of the CITY.
  - 5.2.** CONSULTANT shall submit monthly invoices by the 10<sup>th</sup> of each month to the CITY describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3.** CONSULTANT shall submit receipts with each monthly invoice to the CITY detailing the expense including dates, total amount and vendor from which the purchase was made, payroll record and all other payment verification allowable for type of expense.
  - 5.4.** 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. PROGRAM BUDGET:** CONSULTANT shall submit the required Program Budget as described in Exhibit "B" attached hereto and incorporated herein by reference.
- 7. GENERAL SERVICES REQUIREMENTS.** CONSULTANT agrees and understands the General Services Requirements described in Exhibit "C" attached hereto and incorporated herein by reference.

## CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT

### Reconnecting Our Youth Grant Program, Cycle V – Boys & Girls Club of Tracy

Page 3 of 6

8. **CERTIFICATION AND ASSURANCES.** CONSULTANT agrees and understands the Certification and Assurances as described in Exhibit "D" attached hereto and incorporated herein by reference.

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

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

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

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

12. **INDEMNIFICATION.** 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) resulting from or arising out of CONSULTANT's performance of services under this Agreement.

13. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Tracy Business License.

#### 14. **INSURANCE.**

14.1. **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.

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



**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**

**Reconnecting Our Youth Grant Program, Cycle V – Boys & Girls Club of Tracy**

**Page 4 of 6**

- 14.3. Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 14.4. Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 14.5. Professional Liability** “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of CONSULTANT in an amount not less than \$1,000,000 per claim.
- 14.6. Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 14.6.1** The CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 14.6.2** 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.
- 14.7. 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.
- 14.8. 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.
- 14.9. Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five (5) days after the execution of this Agreement.
- 14.10. 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.
- 14.11. 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.
- 15. 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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**Reconnecting Our Youth Grant Program, Cycle V – Boys & Girls Club of Tracy**  
**Page 5 of 6**

of no force and effect. Consent by the CITY to one assignment shall not be deemed to be consent to any subsequent assignment.

**16. NOTICES.**

**16.1** 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:

Monica Gutierrez  
333 Civic Center Dr.  
Tracy, CA 95376  
(209) 831-6123  
monica.gutierrez@ci.tracy.ca.us

To CONSULTANT:

Kelly Wilson  
753 W. Lowell Avenue  
Tracy, CA 95376  
209-832-2582  
kwilson@bgctracy.org

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

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

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

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

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

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**Reconnecting Our Youth Grant Program, Cycle V – Boys & Girls Club of Tracy**  
**Page 6 of 6**

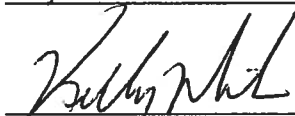
23. **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to CONSULTANT's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
24. **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  
Boys and Girls Club of Tracy

\_\_\_\_\_  
By: Brent H. Ives  
Title: Mayor  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Kelly Wilson  
Title: Executiye Director  
Date: 11/2/12  
Fed. Employer ID No. 68-0028682

Attest:

\_\_\_\_\_  
By: Sandra Edwards  
Title: CITY CLERK  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_

EXHIBIT "A"

CITY OF TRACY

Reconnecting Our Youth Grant Program, Cycle V - Boys and Girls Club of Tracy

**Program Name: *SMART Moves***

**Synopsis of the Programs:**

*Description*

SMART Moves (Skills Mastery and Resistance Training) prevention education addresses problems such as DRUG, ALCOHOL and TOBACCO use, EARLY SEXUAL ACTIVITY and BULLYING. The program uses a team approach including trained Club staff, peer leaders, parents and community members. This is more than a "say no" message, the young people learn how to say no through DISCUSSION, ROLE-PLAY, PRACTICING RESISTANCE SKILLS, DEVELOPING ASSERTIVENESS and STRENGTHENING DECISION MAKING SKILLS. The ultimate goal is to promote abstinence from substance abuse and adolescent sexual activity through the practice of responsible behavior. By the end of this program, members' self-esteem has increased and relationships to peers, family members and a trusted adult (facilitator) have strengthened.

SMART Girls is an outgrowth of the SMART Moves program. SMART Girls is a prevention program complete with health and self-esteem enhancement including teenage pregnancy prevention and teen domestic violence prevention. The program design encourages healthy attitudes and lifestyles that will enable early adolescent girls to develop their full potential.

Members ages 10-18 will participate in SMART Moves and SMART Girls at all six Boys & Girls Clubs sites in Tracy. Last year 415 of Tracy's youth participated in the SMART Programs. The City through the ROY Grant helped 200 young girls participate in SMART Girls. This year the goal is to deepen the impact and graduate 180 youth through the program!

Trained Youth Development Professionals facilitate the program in small groups, usually 15 per group and meet weekly to complete 14 sessions. The members bond through various activities, learn to support each other, and receive the benefits of positive MENTORING. Participants attend field trips that support the session topics and hear from GUEST SPEAKERS that share real-life stories. Participants are connected with outside resources if needed.

SMART Moves is a key program in helping the Boys & Girls Clubs reach one of its organizational outcomes; INCREASING HEALTHY LIFESTYLES, as outlined in the 2012-2013 Success Equation or **Logic Model** (see attached). This proven prevention program also helps the organization live its **mission**, which is to "Enable and inspire all young people, especially those who need us the most, to reach their full potential as productive, caring and responsible citizens."

**EXHIBIT "A"**

**CITY OF TRACY**

Reconnecting Our Youth Grant Program, Cycle V - Boys and Girls Club of Tracy

**Location**

The Boys and Girls Clubs of Tracy currently has **six sites**. Five of these sites are on school campuses. All of these schools are "Title-One" schools, thus serving youth in need. The sites are located at the following schools; North, Southwest Park, Villalovoz, McKinley and Central schools. The main branch is on Lowell Avenue right next to Monte Vista Middle School.

**Targeted Population**

The Boys & Girls Club had **2,425 registered members last year**. Of these youth, ages 6-18; **86% were minority races and 77% were from low-income households** (both statistics rose in the last year). **The Club also serves 36% of Tracy's single parent households** (2010 US census and Member data). The Lowell site also serves youth with various life-altering disabilities through the Inclusion Program, which serves 50 youth a year. There are approximately 200 youth with various disabilities served organization-wide in the general program.

Many of the Club members come from past traumas, abuse, foster care and broken homes. Many of the young people have had none or very little positive role modeling and do not have the tools to live healthy lives, nor make healthy choices for themselves. SMART Moves provides important life-skills and guards them with life-saving knowledge.

**Assigned Staff**

Chief Professional Officer:	Kelly Wilson,	10 years
Resource Development Director:	Kelly Low,	8 years
Director of Operations:	Rob Pane,	5 years
Grant Coordinator:	Mary Kate McCartney	5 years
Grant Billing Asst:	Maria Adiarte,	4.5 years
Administrative Asst:	Yauna Throne	.5 year
Unit Director, Lowell:	Angela Hall,	3.5 years
Unit Director, North:	Junior Cueva,	9 years
Unit Director, Central:	Leslie Cabral,	3.5 years
Unit Director, SWP:	Lisa Frymyer,	9.5 years
Unit Director, McKinley:	Naomi Burrell,	5 years
Unit Director, Villalovoz:	Jordan Durrance,	1 year

## EXHIBIT "A"

### CITY OF TRACY

Reconnecting Our Youth Grant Program, Cycle V - Boys and Girls Club of Tracy

### **Tasks & Timeline: Triple Play**

#### ***Fall of 2012***

1. Train Staff on program and grant requirements:
2. Select SMART Girls participants:
3. Enter participants into KidTrax (tracking software):
4. Begin SMART Girls:
6. Conduct Pre-Curriculum Tests:
7. Conduct Post-Curriculum Tests:

#### ***Winter of 2012-2013***

8. Conduct City Participant Surveys & Participant Youth Development Assets Survey
9. Submit parent and member testimonials:
10. **1<sup>st</sup> Semester Evaluation and Report: 12/28/2012**
11. Train Staff on program and grant requirements:
12. Select SMART Moves participants:
13. Enter participants into KidTrax:
14. Begin SMART Moves:

#### ***Spring of 2013***

15. Conduct Pre-Surveys:
16. Complete SMART Moves:
17. Conduct Curriculum Post-Tests:
18. Conduct City Participant Surveys & Participant Youth Development Assets Survey
19. Program Club-wide Graduation: 5/9/2013
20. **Final Report: 6/1/2013**

### **Type of Data Collected**

Parents and/or Guardians fill out membership forms that include ethnicity, income, age, gender, household members and emergency information. Participants are required to return a permission slip with the curriculum detail. This information is entered into Kidtrax, member-tracking software.

### **Expected Results**

#### **SMART Moves & SMART Girls Outcomes (changes in behavior or conditions)**

1. Increase participants' self-esteem
2. Increase participants' knowledge of effects of drugs, alcohol, tobacco and early sexual activity
3. Increase participants' feelings of support by a caring adult (facilitator)

## EXHIBIT "A"

### CITY OF TRACY

Reconnecting Our Youth Grant Program, Cycle V - Boys and Girls Club of Tracy

#### **These three outcomes will be achieved through**

- Weekly SMART Moves & SMART Girls sessions
- On-going emotional support and mentoring
- Positive role-modeling
- Goal-setting
- Positive adult recognition
- Rewards and incentives including healthy snacks, graduation, field trips and gift cards
- Positive peer-group

#### **Program Evaluation/Measures**

- Track a minimum of 80 participants data for grant reporting purposes
- Track weekly participation electronically via KidTrax, member tracking software
- SMART Moves and SMART Girls pre/post-tests, stored in excel
- Organization Participant Feedback Surveys
- Participant, Parent and School Official Testimonials
- City Participant Surveys
- Photo tracking

EXHIBIT "B"  
 CITY OF TRACY  
 Reconnecting Our Youth Grant Program, Cycle V - Boys and Girls Club of Tracy

**Budget**

**A. Personnel Costs**

Description	MCYSN Grant Funding Request	Agency Match	Total Program
Unit Directors (.2 FTE)		\$36,000	\$36,000
Facilitators (.2 FTE)		\$28,800	\$28,800
Director of Operations (.15 FTE)	\$6,452		\$6,452
SMART Moves Director (.3 FTE)	\$3,218	\$5,782	\$9,000
Grant Coordinator (.2 FTE)	\$4,160		\$4,160
Grant Accounting Assistant (.1 FTE)	\$2,700		\$2,700
Resource Development Director (.07 FTE)	\$3,360		\$3,360
CPO (.03 FTE)	\$2,510		\$2,510
Administrative Assistant (.05 FTE)	\$1,600		\$1,600
<b>Total Personnel Costs</b>	<b>\$24,000</b>	<b>\$70,582</b>	<b>\$94,582</b>

**B. Operating Costs**

Description	MCYSN Grant Funding Request	Agency Match	Total Program
Program Supplies Snacks, Graduation, paper, pens, etc.	\$6,400		\$6,400
Gift Card Incentives (\$20x190)	\$3,600		\$3,600
External Learning Experiences	\$6,000		\$6,000
Occupancy	\$9,400		\$9,400
Communications	\$3,000		\$3,000
Cleaning Supplies/Services	\$7,600		\$7,600
<b>Total Operating Costs</b>	<b>\$36,000</b>		<b>\$36,000</b>
<b>Total Personnel Costs</b>	<b>\$24,000</b>	<b>\$70,582</b>	<b>\$94,582</b>
<b>TOTAL COSTS</b>	<b>\$60,000</b>	<b>\$70,582</b>	<b>\$130,582</b>



EXHIBIT "C"  
CITY OF TRACY

Reconnecting Our Youth Grant Program, Cycle V – Boys and Girls Club of Tracy

**GENERAL SERVICES REQUIREMENTS**

1. CONSULTANT shall attend Monthly Mayor's Community Youth Support Network Service Provider Team meetings that will ensure coordination and linkage of services, participate in MCYSN subcommittees which may be identified or directed by the CITY staff and identify and recruit youth and parents to attend the MCYSN Awareness trainings.
2. CONSULTANT shall participate in at least two program review meetings and/or agency site visits with the CITY REPRESENTATIVE for the purpose of reviewing CONSULTANT's implementation of the Scope of Services.
3. CONSULTANT shall assist the CITY with any needs assessment meetings when held by the CITY in order to ascertain the community's needs regarding MCYSN GRANT PROGRAM funded services. CONSULTANT's assistance will include, but not be limited to, assistance with the collection of needs assessment surveys, perform outreach to persons served by CONSULTANT's Scope of Services in order to increase attendance, and to promote meaningful discussion at the needs assessment meetings.
4. CONSULTANT must contribute at least a twenty percent (20%) match of the Grant Award in cash contributions from a source other than the CITY.
5. CONSULTANT shall maintain on file with the CITY REPRESENTATIVE, a current Service Partner Agreement, in the form of Exhibit J to the RFQ, with each partner agency. CONSULTANT is responsible for notifying the CITY REPRESENTATIVE of any updates/changes to contacts or other information contained in any Service Partner Agreement.
6. CONSULTANT shall provide immediate short-term emergency response services as needed and in accordance with its expertise and capacity. The CITY-operated services will provide gang intervention emergency services, but CONSULTANT recognizes and agrees that, from time to time, the CITY may need to coordinate and/or make referrals to CONSULTANT. In addition, if CONSULTANT delivers services on any school campus, CONSULTANT shall adhere to the district's emergency protocol and procedures.
7. Each of CONSULTANT's employees and volunteers who interact or directly supervise minors in the performance of the Scope of Services shall undergo a criminal background check at applicant's expense, as provided in California Penal Code Section 11105.3 and the California Public Resource Code 5164
8. This condition applies in the event that CONSULTANT conducts the Scope of Services on school campuses. Prior to commencing its services on one (1) or more school campuses, CONSULTANT shall obtain permission from an authorized school DIRECTOR and shall represent in writing that it has obtained the school district's authorization. No later than thirty (30) days following commencement of its services, CONSULTANT shall have in place a written agreement with the school district, in the form as set forth at Exhibit J to the RFQ, which sets forth the district's permission to CONSULTANT to offer the Scope of Services on one or more of the school district's campuses. The term of the Service Partner Agreement with the school district shall be for the duration of CONSULTANT's services on the school district's campuses. CONSULTANT shall provide the CITY REPRESENTATIVE with a copy of CONSULTANT's agreement with each school district, or school, as determined appropriate by the CITY REPRESENTATIVE. CONSULTANT shall notify the CITY REPRESENTATIVE in the event that a school district terminates, amends, or suspends the agreement with


**EXHIBIT "C"**  
**CITY OF TRACY**

Reconnecting Our Youth Grant Program, Cycle V – Boys and Girls Club of Tracy  
Page 2 of 2

CONSULTANT. CONSULTANT 's failure to have and to maintain an agreement with each school district (or school) in which CONSULTANT conducts its Scope of Services shall, in addition to all other remedies available to the CITY, constitute grounds for the CITY to withhold payment of one or more portions of the Grant Award.

9. CONSULTANT shall adhere to the Welfare and Institutions Code **830.1**:
- a. in regards to Notwithstanding any other provision of law, members of a juvenile justice multidisciplinary team engaged in the prevention, identification, and control of crime, including, but not limited to, criminal street gang activity, may disclose and exchange non privileged information and writings to and with one another relating to any incidents of juvenile crime, including criminal street gang activity, that may also be part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or control of juvenile crime or criminal street gang activity. Every member of a juvenile justice multidisciplinary team who receives such information or writings shall be under the same privacy and confidentiality obligations and subject to the same penalties for violating those obligations as the person disclosing or providing the information or writings. The information obtained shall be maintained in a manner which ensures the protection of confidentiality. As used in this section, "non privileged information" means any information not subject to a privilege pursuant to Division 8 (commencing with Section 900) of the Evidence **Code**. As used in this section, "criminal street gang" has the same meaning as defined in Section 186.22 of the Penal **Code**. As used in this section, "multidisciplinary team" means any team of three or more persons, the members of which are trained in the prevention, identification, and control of juvenile crime, including, but not limited to, criminal street gang activity, and are qualified to provide a broad range of services related to the problems posed by juvenile crime and criminal street gangs. The team may include, but is not limited to:
    - (a) Police officers or other law enforcement agents.
    - (b) Prosecutors.
    - (c) Probation officers.
    - (d) School district personnel with experience or training in juvenile crime or criminal street gang control.
    - (e) Counseling personnel with experience or training in juvenile crime or criminal street gang control.
    - (f) State, county, city, or special district recreation specialists with experience or training in juvenile crime or criminal street gang control.

**ACKNOWLEDGEMENT:**

  
\_\_\_\_\_  
CONSULTANT

11/2/12  
\_\_\_\_\_  
DATE

**EXHIBIT "D"**

**CITY OF TRACY**

**Reconnecting Our Youth Grant Program, Cycle V – Boys & Girls Club of Tracy**

**CERTIFICATION AND ASSURANCES**

The following assurances are required from each CONSULTANT before the City of Tracy can execute a Funding Agreement.

CONSULTANT assures that it will:

1. Be in compliance with all local laws, ordinances, codes, regulations and decrees;
2. Practice non-discrimination in providing services, hiring personnel, and recruiting volunteers, and shall provide a Personnel Practices Plan;
3. Submit in a timely manner such program and financial reports as required by the City to monitor performance of the project;
4. Appoint one director of the project who will be responsible for the administration of the project;
5. Appoint a fiscal agent who shall be responsible for all financial and accounting activities of the project;
6. Obtain and maintain insurance provisions as required by the City. CONSULTANT understands that the project will not begin, nor can costs be incurred, until proof of adequate insurance is approved by the CITY;
7. Use the MCYSN Grant funding for delivering services to only Tracy residents and students within the Tracy Unified School District and Jefferson School District communities;
8. CONSULTANT agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with federal regulations.
9. Not supplant existing funds for services provided by the agency; and
10. Submit a Professional Services Agreement detailing funding agreements and participation as a member of Mayor's Community Youth Support Network Service Provider Team

**ACKNOWLEDGEMENT:**

  
\_\_\_\_\_  
CONSULTANT

  
\_\_\_\_\_  
DATE

EXHIBIT "E"  
CITY OF TRACY  
Reconnecting Our Youth Grant Program, Cycle V, Boys and Girls Club of Tracy

**SUBMISSION DATES FOR INVOICES AND REPORTS**

1. Please follow these dates for submitting all of your monthly invoices and receipts:

Month	Time Period Covered	Invoice due date
August	8/7/12-8/30/12	9/10/12
September	9/1/12-9/30/12	10/10/12
October	10/1/12-10/31/12	11/10/12
November	11/1/12-11/30/12	12/10/12
December	12/1/12-12/31/12	1/10/13
January	1/1/13-1/31/13	2/10/13
February	2/1/13-2/29/13	3/10/13
March	3/1/13-3/31/13	4/10/13
April	4/1/13 – 4/30/13	5/10/13
May	5/1/13-5/31/13	5/10/13

**Final Invoices due by May 10<sup>th</sup>, 2013**

2. Please follow these dates for submitting all of your quarterly reports:

Quarter	Time Period Covered	Report due date
First Quarter	7/1/12-9/30/12	10/15/12
Second Quarter	10/1/12-12/31/12	1/14/13
Third Quarter	1/1/13-3/31/13	4/15/13
Fourth Quarter	4/1/13-6/30/13	7/15/13

**If you send quarterly invoices you should follow these dates.**

Mail paper copies of quarterly reports to:

City of Tracy  
Attn: MCYSN, City Manager's Office  
333 Civic Center  
Tracy, CA 95376

Email electronic copies of quarterly reports and invoices with receipts to  
[Monica.Gutierrez@ci.tracy.ca.us](mailto:Monica.Gutierrez@ci.tracy.ca.us)

**ACKNOWLEDGEMENT:**

  
CONSULTANT

11/2/12  
DATE

AGENDA ITEM 1.E

REQUEST

**APPROVAL OF AMENDMENT 2 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH DRAKE HAGLAN AND ASSOCIATES OF SACRAMENTO, CALIFORNIA, FOR ADDITIONAL DESIGN SERVICES FOR THE ELEVENTH STREET – EAST TRACY OVERHEAD, BRIDGE #29C-0126 – CIP 73063, FEDERAL PROJECT NO. BHLS-5192(020), AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT**

EXECUTIVE SUMMARY

In October 2009, City Council approved a Professional Services Agreement (PSA) with Drake Haglan and Associates to complete environmental documents, design, project plans, specifications and estimates (PSE) of the Eleventh Street Overhead Bridge #29C0126. Since then, the consultant has been working on this project. A major portion of the project funding is available from a bridge replacement grant. Due to miscellaneous utility changes and the latest approved detour plans, additional services are needed from the consultant to complete project design and PSE. Approval of Amendment 2 to the PSA with Drake Haglan and Associates will expedite complete completion of the design and PSE for this project.

DISCUSSION

In 2008, CalTrans approved replacement of the existing Eleventh Street East Tracy Overhead Bridge #29C0126, in place of the originally proposed retrofit for seismic and structural upgrades. The City acquired the services of Drake Haglan and Associates in 2009 to complete project environmental document, design and PSE. Since then, the consultant has been working on this project and has been coordinating all the work with CalTrans. The scope of work of the consultant was increased through Amendment 1 to include value analysis of the project along with various alternate alignments of the project required by CalTrans. CalTrans initially released \$2.472 million toward the project design and environmental services.

During the design phase of the project, geotechnical analysis determined that up to 15 inches of ground settlement could occur due to the roadway approach fill. In addition, detailed utility research and coordination has determined that utility relocations are needed due to the anticipated ground settlement involving wastewater, water and storm drainage lines.

Furthermore, during final surveying of the project boundary it was discovered that the project requires acquisition of additional parcels for the purpose of permanent easement and temporary construction easement. Caltrans has conceptually approved the proposed detour plan. Additional services are needed from the consultant to complete the detour design. Relocation of utility lines needs to be designed and new legal descriptions and plat maps need to be prepared.

Since the above work was not part of the original scope, an amendment to the consultant's PSA needs to be executed to complete the work in a timely manner.

At City request, on May 21, 2012, the consultant submitted a proposal to complete the required services for a not to exceed amount of \$272,887.80, on a time and material basis. After negotiation with the consultant regarding the fees for the proposed scope, staff submitted a request to Caltrans for their authorization. Caltrans has approved the changes in the scope of services and released the requested dollar amount.

### STRATEGIC PLAN

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

### FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost of this amendment has been secured from the bridge replacement grant from Caltrans.

### RECOMMENDATION

Staff recommends that City Council approve Amendment 2 to the Professional Services Agreement (PSA) with Drake Haglan and Associates of Sacramento, California, to provide additional services for the Eleventh Street – East Tracy Overhead Bridge – CIP 73063, Federal Project # BHLS-5192(020) for a not to exceed amount of \$272,887.80, and authorize the City Manager to execute the amendment.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Kul Sharma, City Engineer

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

RESOLUTION 2012-\_\_\_\_\_

APPROVING AMENDMENT 2 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH DRAKE HAGLAN AND ASSOCIATES OF SACRAMENTO, CALIFORNIA, FOR ADDITIONAL DESIGN SERVICES FOR THE ELEVENTH STREET – EAST TRACY OVERHEAD, BRIDGE #29C-0126 – CIP 73063, FEDERAL PROJECT NO. BHLS-5192(020), AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT

WHEREAS, In 2008, CalTrans approved replacement of the existing Eleventh Street East Tracy Overhead Bridge #29C0126, in place of the originally proposed retrofit for seismic and structural upgrades, and

WHEREAS, The City acquired the services of Drake Haglan and Associates in 2009 to complete project environmental document, design and PSE, and

WHEREAS, The scope of work of the consultant was increased through Amendment 1 to include value analysis of the project along with various alternate alignments of the project required by CalTrans, and

WHEREAS, during final surveying of the project boundary it was discovered that the project requires acquisition of additional parcels for the purpose of permanent easement and temporary construction easement, and

WHEREAS, Additional services are needed from the consultant to complete the detour design, relocation of utility lines designed, and preparation of new legal descriptions and plat maps, and

WHEREAS, The consultant submitted a proposal to complete the required services for a not to exceed amount of \$272,887.80, on a time and material basis, and

WHEREAS, There is no impact to the General Fund. The cost of this amendment has been secured from the bridge replacement grant from Caltrans;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment 2 to the Professional Services Agreement (PSA) with Drake Haglan and Associates of Sacramento, California, to provide additional services for the Eleventh Street – East Tracy Overhead Bridge – CIP 73063, Federal Project # BHLS-5192(020) for a not to exceed amount of \$272,887.80, and authorizes the City Manager to execute the amendment.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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



**CITY OF TRACY  
AMENDMENT 2 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR DESIGN PROFESSIONALS  
For**

**11<sup>th</sup> STREET – EAST TRACY OVERHEAD BRIDGE #29C-0126  
CIP 73063  
FEDERAL PROJECT NO. BHLS-5192(020)**

This Amendment No. 2 (hereinafter "Amendment") to the Professional Services Agreement for Design Professionals is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Drake Haglan & Associates, Inc. (hereinafter "CONSULTANT").

**RECITALS**

- A. The City and Consultant entered into a Professional Services Agreement for project management, project study report, Environmental analysis and preparation of design alternatives, for the 11<sup>th</sup> Street – East Tracy Overhead Bridge (hereinafter "Agreement"), CIP 73063 which was approved by the City Council on October 20, 2009, pursuant to Resolution No. 2009-184.
- B. On May 10, 2011, pursuant to resolution 2009-184, the Development and Engineering Services Director has executed Amendment No. 1 to the Agreement to provide for additional services.
- C. At the request of the City and in compliance with the terms of the Agreement, on May 21, 2012, CONSULTANT submitted a proposal to perform the services as described in this Amendment 2 to the referenced Professional Service Agreement. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of the services in accordance with the term set forth in this Amendment. On November 20, 2012, City Council, by the Resolution 2012-\_\_\_\_\_ approved the subject Amendment 2.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **Incorporation By Reference.** This Amendment 2 hereby incorporates by reference all terms and conditions set forth in the Agreement and in Amendment No. 1 to the Agreement, unless specifically modified by this Amendment 2. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.**  
The following language shall be added to Paragraph 1 of the Agreement.

**City of Tracy**

**Amendment No. 2 to Professional Services Agreement for Design Professionals**

**11<sup>th</sup> Street – East Tracy Overhead Bridge #29C-0126**

**CIP 73063, Federal Project NO. BHLS-5192(020)**

**Page 2 of 3**

CONSULTANT shall perform the tasks 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: **Dennis Haglan**. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in Exhibit "A," of the Agreement, nor shall CONSULTANT use any subcontractors or subconsultants, without the prior written consent of the CITY.

**B.** The following language shall be added to Section 5.1 of paragraph 5 of the Agreement.

In addition, for services performed by CONSULTANT in accordance with Amendment No. 2, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," of the Agreement incorporated herein by reference. CONSULTANT's fee for this Amendment No. 2 is Not to Exceed TWO HUNDRED SEVENTY TWO THOUSAND EIGHT HUNDRED EIGHTY SEVEN DOLLARS AND EIGHTY CENTS (\$272,887.80). CONSULTANT's billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT's performance of this Amendment No. 2 to the Agreement, as described in Exhibit "A" attached hereto. No work shall be performed by CONSULTANT in excess of the Not-To-Exceed amount without the prior written approval of the CITY. Compensation for the extra services to be done by the CONSULTANT under this Amendment No. 2 shall be as described in Exhibit "A".

- 3. Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
- 4. Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.

INTENTIONALLY LEFT BLANK

**City of Tracy**

**Amendment No. 2 to Professional Services Agreement for Design Professionals**

**11<sup>th</sup> Street – East Tracy Overhead Bridge #29C-0126**

**CIP 73063, Federal Project NO. BHLS-5192(020)**

**Page 3 of 3**

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

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

CITY OF TRACY

CONSULTANT

By: \_\_\_\_\_  
Andrew Malik  
Title: DS Director  
Date: \_\_\_\_\_

By: Dennis Haglan  
Dennis Haglan  
Title: President  
Date: 11/9/12

Attest:  
By: \_\_\_\_\_  
Sandra Edwards  
Title: City Clerk  
Date: \_\_\_\_\_

By: Craig C. Drake  
Craig C. Drake  
Title: Chief Financial Officer  
Date: 11/9/12

Approved as to form

By: \_\_\_\_\_  
Daniel G. Sodergren  
Title: City Attorney  
Date: \_\_\_\_\_





EXHIBIT A

SCOPE OF SERVICE

**Task 16 Plans, Specifications, and Estimate**

- Subtask 16.6 Right of Way Acquisition Maps and Descriptions **\$25,006.20**
  - The existing scope is modified to include the work to appraise, appraise review, and acquire property from an additional property owner. This includes the work to negotiate, acquire the property, and title and escrow closing services. This also includes the surveying tasks of preparing the plats and legals for the additional property, in addition to revising the plats and base map to show all utility and sidewalk easements.
  
- Subtask 16.10 Final Design Utility Coordination and Potholing **\$69,116.83**
  - The scoped utility research and coordination has determined many unforeseen utility relocations due to the estimated ground settlement and conflicts with the proposed bridge and roadway approaches. Additional work is needed to coordinate with the utility agencies (including PG&E, AT&T, and West Side Irrigation District) to avoid any conflicts with the existing and relocated City utilities. The work includes potholing 31 locations by vacuum excavating, electronic detections, obtaining the required UPRR permit and flagging, and camera inspection work to determine the layout of two sewer lines and one storm drainage pipe. In the Professional Services Agreement, \$20,000 had been set aside as a Direct Cost for potholing up to 20 locations. As shown on the attached fee estimate in Attachment A, this amount has been subtracted from the fee estimate for this task.
  
- Subtask 16.12 City Water and Sewer Relocation Design (new subtask) **\$94,009.37**
  - This task includes the plans, specifications, and estimate for the needed relocation of the City water and sewer lines. The work includes the hydraulic water system modeling by West Yost. Details that will be included in the design are the construction staging of replacing different sections of the pipe while also maintaining the service lines for the nearby residences and businesses. It is anticipated that 16 additional plan sheets will be prepared.
  
- Subtask 16.13 City Storm Drainage Relocation Design (new subtask) **\$37,238.25**
  - This task includes the plans, specifications, and estimate for the needed relocation of the City storm drainage facilities. This work includes replacing the existing concrete box culvert section under the 11<sup>th</sup> Street Bridge with a more flexible pipe that can withstand the expected ground settlement, while also being designed such that it will have at least the same capacity as the existing facility even if the maximum settlement occurs. Details that will be included in the design are the staging of the replacement of the City storm drainage facility with the replacement of the West Side Irrigation District facility that runs perpendicular and crosses over it. It is anticipated that 8 additional plan sheets will be prepared.
  -

- Subtask 16.14 West Side Irrigation District Piping and Canal Modifications (new subtask) **\$23,594.67**
  - This task includes the plans, specifications, and estimate for the required piping of a portion of the open West Side Irrigation District (WSID) canal that will be in conflict with the proposed bridge abutment piles and retaining wall. In addition, this scope includes the channel modifications to the open canal located east of the railroad tracks and north of 11<sup>th</sup> Street. Per coordination with WSID, this section of the canal cannot be piped since it is used to clean out the sedimentation that builds up in the drainage system. The south side sloped face of this open canal section will be replaced with a vertical retaining wall located approximately midway up the sloped face such that a clear distance of 15' is provided between the top of canal and the 11<sup>th</sup> Street MSE wall while also maintaining the same capacity as the existing canal. The minimum 15' of clear distance is needed for WSID to clean and maintain the canal, as well as provide the City with access for maintenance and inspection of the 11<sup>th</sup> Street MSE wall. It is anticipated that 4 additional plan sheets will be prepared as part of this task.
  
- Subtask 16.15 Constructability Review (new subtask) **\$23,922.48**
  - This task includes performing a constructability/biddability review of the 90% design plans. The deliverable for this task will be a matrix of comments and recommendations on the plans. As part of this task, DHA will work with the City to respond and address the review comments and recommendations.

Total Estimated Fee for Task 15 (16.10 to 16.15) Services = \$272,887.80

**DRAKE HAGLAN & ASSOCIATES**  
**FEE SCHEDULE**

<b>Name</b>	<b>Classification</b>	<b>Billing Rate</b>
Dennis Haglan	Principal	\$ 202.79
Howard Michael	Principal	\$ 202.79
Jeff Elmensdorp	Sr. Br. Engineer A	\$ 146.22
Craig Polglase	CAD Manager	\$ 129.99
Nick Jarrell	Hwy Designer A	\$ 90.33
Theresa Bautista	Project Admin Range B	\$ 84.31

Vehicle Mileage.....Current IRS Standard Rate

*Hourly charges include provision for normal office overhead costs, such as office rental, utilities, insurance, clerical services, equipment, normal supplies and materials, and in-house reproduction services.*

AGENDA ITEM 1.F

REQUEST

**APPROVE A LIST OF CITY OF TRACY PROJECTS FOR SAN JOAQUIN COUNCIL OF GOVERNMENT'S ONE VOICE TRIP TO WASHINGTON D.C., FOR CONGRESSIONAL FUNDING APPROPRIATION REQUESTS**

EXECUTIVE SUMMARY

Approval of the list of projects by City Council will make these projects eligible for congressional funding appropriation requests.

DISCUSSION

Every year the City of Tracy submits a list of projects for consideration at the annual congressional funding appropriations during One Voice trip to Washington D.C., by San Joaquin County, Council of Governments, and cities elected officials. Each city is requested to submit a total of two projects; one project of regional significance, and one project for local improvements.

Staff has reviewed the existing needs of various transportation projects and is recommending the following two projects for the One Voice trip. The same projects were submitted for the years 2011 and 2012 consideration for the One Voice Trip as well, however, the City did not receiving any funding in 2012. The City has received funds for the I-205/Lammers Road Interchange during previous years and the City is preparing the project's environmental documents and the Project Report.

- I-205/Lammers Road Interchange Improvements  
Total Construction Cost - \$62 million  
Requested appropriation - \$5 million
- New MacArthur Drive above grade crossing over UPRR Mococo line  
Total Construction Cost - \$28 million  
Requested appropriation - \$5 million

The I-205/Lammers Road project is of regional significance and will connect Byron Road and Contra Costa County to Highway 580. This project is also essential for development of the Tracy Gateway project and will initiate developments north of I-205 along Lammers Road.

The existing at-grade Union Pacific Railroad (UPRR) Mococo line crossing with MacArthur Drive (adjacent to Sixth Street) will divide the City into two separate unconnected areas for the duration of the freight trains movement through the City when the line is activated for higher volumes of train traffic. The proposed above grade crossing at the new MacArthur Drive alignment over the Mococo line will alleviate this condition. The above grade crossing at the new alignment of MacArthur Drive (east of the UPRR switch yard) intersecting with the Eleventh Street overpass will allow for an

uninterrupted flow of traffic including quick movement of emergency vehicles on both sides of the Mocooco rail line.

This list of projects, after approval from City Council, will be submitted to the San Joaquin Council of Governments for inclusion in the One Voice Trip to Washington for congressional funding.

Submittal of projects to the SJCOG's One Voice effort does not necessarily mean continued participation in the program. Other alternatives can also be considered in the future to advocate for Tracy projects.

#### STRATEGIC PLAN

This agenda item is consistent with the Council's adopted Economic Development Strategy to ensure the availability of infrastructure necessary for development in Tracy.

#### FISCAL IMPACT

There is no fiscal impact to the General Fund. In addition to the requested congressional appropriations, funding of the above projects will be shared by a variety of sources including Measure K Sales Tax and development impact fees.

#### RECOMMENDATION:

That City Council approve the list of City of Tracy projects for the San Joaquin Council of Government's One Voice Trip to Washington D.C. for congressional funding appropriation.

Prepared by: Kuldeep Sharma, City Engineer

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



RESOLUTION \_\_\_\_\_

APPROVING A LIST OF CITY OF TRACY PROJECTS FOR SAN JOAQUIN COUNCIL OF GOVERNMENT'S ONE VOICE TRIP TO WASHINGTON D.C., FOR CONGRESSIONAL FUNDING APPROPRIATION

WHEREAS, The City of Tracy submits a list of projects for consideration at the annual congressional funding appropriations during One Voice trip to Washington D.C., by San Joaquin County, Council of Governments, and cities elected officials, and

WHEREAS, Staff has reviewed the existing needs of various transportation projects and is recommending the following two projects for the One Voice trip:

- I-205/Lammers Road Interchange Improvements  
Total Construction Cost - \$62 million  
Requested appropriation - \$5 million
- New MacArthur Drive above grade crossing over UPRR Mococo line Total Construction Cost - \$28 million  
Requested appropriation - \$5 million

WHEREAS, There is no fiscal impact to the General Fund. In addition to the requested congressional appropriations, funding of the above projects will be shared by a variety of sources including Measure K Sales Tax and development impact fees;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the list of City of Tracy projects for the San Joaquin Council of Government's One Voice Trip to Washington D.C. for congressional funding appropriation.

\* \* \* \* \*

The foregoing Resolution 2012-\_\_\_ was passed and adopted by the City of Tracy City Council on the 20<sup>th</sup> day of November, 2012 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

**APPROVE A \$473,000 SUPPLEMENTAL APPROPRIATION FROM THE GENERAL FUND FOR BUILDING AND FIRE SAFETY PLAN REVIEW AND INSPECTION SERVICES IN THE DEVELOPMENT SERVICES DEPARTMENT**

EXECUTIVE SUMMARY

For many years, the City's Building and Fire Safety Division has contracted out for some plan review and inspection services to augment the work performed by existing City staff. Contract services are particularly useful during peak demand periods or when resources are mobilized to expedite key economic development projects. The City has experienced an increase in building activity over the past six months. There have also been some very large projects submitted to the City that necessitate a supplemental appropriation in order to meet the demands of our customers. While a supplemental appropriation is being requested, all costs associated with utilizing contract staff for plan review or inspection services will be paid for by the various building permit applicants.

DISCUSSION

On January 18, 2011, Council authorized the Mayor to sign Professional Service Agreements (PSAs) with various consulting firms for the purpose of providing plan review and inspection services for the Building and Fire Safety Divisions of the Development Services Department. With reduced staffing levels in the City's Building and Fire Safety Division, the City must rely on consultant assistance to complement staff's efforts to meet the demands of our development customers.

For fiscal year 2012-2013, the City budgeted \$50,000 to pay for contracting assistance for plan review and inspection services within the Building and Fire Safety Divisions. For the past two years, the amount of contract services needed within these two divisions was no more than \$60,000. Over the past 6 months, the level of development activity has increased and building and fire safety staff are finding it difficult to keep up with the workload while maintaining our new plan review and inspection performance timelines and quality.

Staff is requesting a supplemental appropriation of \$473,000 from the General Fund be transferred to the fund numbers outlined below, to cover the costs associated with a higher demand for building and fire safety contract services through the end of the 2012-2013 fiscal year. It is important to note that these funds are fully recovered at the time plan check and building permit fees are paid.

Fire Prevention	211-52150-242-00000	\$ 25,000
Plan Check	111-56410-242-00000	\$350,000
Building Inspection	111-56420-242-00000	\$ 98,000

### STRATEGIC PLAN

This agenda item relates to the City's Economic Development Strategic plan. Specifically, to streamline our permit processes in order to better meet our customer's expectation and demands.

### FISCAL IMPACT

The General Fund will have a \$398,000 increase in budgeted expenditures. However, these expenditures will be offset by building fee revenues. The Fire Prevention portion of \$25,000 will cause an increase in the South County Fire Authority budgeted expenditures. These will also be offset by fee revenues. Fees for plan review services are collected per Section 113 and Section 109 of the California Fire Code and Building Code respectively, and are payable at time of submittal. Fees for building and fire inspection services are payable at time permit issuance. These fees are based on the 1997 Uniform Administrative Code Tables 3-A through 3-D Section 304, as adopted by City Council Resolution 2012-111. The building permit applicants pay for these fees. If contract staff is assigned various plan review or inspection tasks, they are paid from the applicant fees collected at time of plan submittal and or permit issuance.

### RECOMMENDATION

It is recommended that the City Council, by resolution, approve a \$473,000 supplemental appropriation from the General Fund for building and fire safety plan review and inspection services in the Development Services Department.

Prepared by: Kevin Jorgensen

Reviewed by: Andrew Malik, Development Services Director

Approved by: Leon Churchill Jr., City Manager

RESOLUTION 2012-\_\_\_\_\_

APPROVING A \$473,000 SUPPLEMENTAL APPROPRIATION FROM THE GENERAL FUND FOR BUILDING AND FIRE SAFETY PLAN REVIEW AND INSPECTION SERVICES IN THE DEVELOPMENT SERVICES DEPARTMENT

WHEREAS, On January 18, 2011, Council authorized the Mayor to sign Professional Service Agreements (PSAs) with various consulting firms for the purpose of providing plan review and inspection services for the Building and Fire Safety Divisions of the Development Services Department, and

WHEREAS, The level of development activity has increased and building and fire safety staff are finding it difficult to keep up with the workload while maintaining our new plan review and inspection performance timelines and quality, and

WHEREAS, A supplemental appropriation of \$473,000 from the General Fund be transferred to the fund numbers outlined below, to cover the costs associated with a higher demand for building and fire safety contract services through the end of the 2012 -2013 fiscal year:

Fire Prevention	211-52150-242-00000	\$ 25,000
Plan Check	111-56410-242-00000	\$350,000
Building Inspection	111-56420-242-00000	\$ 98,000

WHEREAS, These funds are fully recovered at the time plan check and building permit fees are paid, and

WHEREAS, The General Fund will have a \$398,000 increase in budgeted expenditures. However, these expenditures will be offset by building fee revenues, and

WHEREAS, The Fire Prevention portion of \$25,000 will cause an increase in the South County Fire Authority budgeted expenditures and these will also be offset by fee revenues;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves a \$473,000 supplemental appropriation from the General Fund for building and fire safety plan review and inspection services in the Development Services Department.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

AGENDA ITEM 1.H

REQUEST

**APPROVAL OF AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH WEST YOST AND ASSOCIATES TO PROVIDE ADDITIONAL SERVICES TO COMPLETE THE CORDES RANCH SPECIFIC PLAN AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT**

EXECUTIVE SUMMARY

The owners of the properties within the Cordes Ranch Specific Plan have finalized the land uses and the Phase I development area. Additional services are needed from West Yost and Associates to complete the Cordes Ranch Water Supply Assessment (WSA) and water infrastructure analysis for Phase 1 improvements. Approval of the amendment will facilitate completion of the Specific Plan and annexation of properties by the City of Tracy.

DISCUSSION

On October 8, 2011, City Council approved a Professional Services Agreement (PSA) with West Yost and Associates to provide services for completion of water infrastructure for the Cordes Ranch Specific Plan in a not to exceed amount of \$86,500. The Cordes Ranch development is located west of Lammers Road between I-205 and old Schulte Road.

The property owners and the City have been working together toward completion of the Specific Plan, which has gone through various iterations of land use changes. At the November 7, 2012, City Council meeting, the owners provided the latest land uses especially along the I-205 corridor area.

Due to the large area of development within the Specific Plan, the project will be developed in multiple phases. The owners have now finalized Phase 1 development scenarios, and are working with the City to analyze infrastructure improvements required to serve that phase. Additional services are needed from West Yost and Associates to finalize the projects' Water Supply Assessment (WSA) and confirm the water infrastructure improvements to serve the Phase 1 development.

West Yost and Associates have submitted a proposal to complete the above tasks for a not to exceed amount of \$16,000. Staff and the Cordes Ranch Developers have reviewed the proposal. The services will be provided at hourly rates.

STRATEGIC PLAN

This agenda item is consistent with the City's Economic Development Strategy with the following goal:

- Ensure physical infrastructure and systems necessary for development

FISCAL IMPACT

There is no fiscal impact to the General Fund. The cost of this amendment will be paid by the owners of Cordes Ranch Development under the existing reimbursement agreement.

RECOMMENDATION

It is recommended that City Council approve Amendment 1 to the Professional Services Agreement (PSA) with West Yost and Associates to provide additional sewer to complete the Cordes Ranch Specific Plan and authorize the Mayor to execute the amendment.

Prepared by: Kul Sharma, Senior Civil Engineer

Reviewed by: Andrew Malik, Development Services Director

Approved by: Leon Churchill, Jr., City Manager

RESOLUTION 2012-\_\_\_\_\_

APPROVING AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) WITH WEST YOST AND ASSOCIATES TO PROVIDE ADDITIONAL SERVICES TO COMPLETE THE CORDES RANCH SPECIFIC PLAN AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, On October 8, 2011, City Council approved a Professional Services Agreement (PSA) with West Yost and Associates to provide services for completion of water infrastructure for the Cordes Ranch Specific Plan in a not to exceed amount of \$86,500, and

WHEREAS, Due to the large area of development within the Specific Plan, the project will be developed in multiple phases, and

WHEREAS, The owners have now finalized Phase 1 development scenarios, and are working with the City to analyze infrastructure improvements required to serve that phase, and

WHEREAS, Additional services are needed from West Yost and Associates to finalize the projects' Water Supply Assessment (WSA) and confirm the water infrastructure improvements to serve the Phase 1 development, and

WHEREAS, West Yost and Associates have submitted a proposal to complete the above tasks for a not to exceed amount of \$16,000, and

WHEREAS, There is no fiscal impact to the General Fund. The cost of this amendment will be paid by the owners of Cordes Ranch Development under the existing reimbursement agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment 1 to the Professional Services Agreement (PSA) with West Yost and Associates to provide additional sewer to complete the Cordes Ranch Specific Plan and authorize the Mayor to execute the amendment.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

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



**CITY OF TRACY  
AMENDMENT NO. 1 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR DESIGN PROFESSIONALS  
REQUESTED ENGINEERING SUPPORT FOR THE REVISED CORDES RANCH  
SPECIFIC PLAN PROJECT**

This Amendment No. 1 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), West Yost Associates, (hereinafter "CONSULTANT").

**RECITALS**

- A. The City and CONSULTANT entered into a Professional Services Agreement (hereinafter "Agreement") for the Cordes Ranch Specific Plan project which was approved by the City Council on October 18, 2011, pursuant to Resolution No. 2011-198.
- B. CONSULTANT services are needed related to the providing engineering services related to the revised phasing plans and water supply assessment for the revised Cordes Ranch Specific Plan Project (PROJECT).
- C. At the request of the CITY, in October 2012, CONSULTANT submitted a proposal to perform the services described in 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.
- D. On November 20, 2012, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2012-\_\_\_\_\_.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment:**
  - Section 1, Scope of Services is amended to read as follows:** Consultant to perform the services described in Exhibit "A" attached as part of Amendment No. 1 to the Professional Services Agreement for Design Professionals, Evaluation of Potable Water and Recycled Water Systems to Support the Proposed Cordes Ranch (Tier 2) Specific Plan and Preparation of SB 610 Water Supply Assessment.

CITY OF TRACY – PROFESSIONAL SERVICES AGREEMENT  
WEST YOST ASSOCIATES, INC.  
REQUESTED ENGINEERING SUPPORT SERVICES FOR THE REVISED CORDES RANCH SPECIFIC  
PLAN PROJECT

**Section 5, Compensation is amended to read as follows:** Consultant's fee to perform the Scope of Services provided in Exhibit A of the original Agreement and Amendment No. 1 to the Agreement is Not to Exceed a total of \$102,500 (\$86,500 from the original PSA, plus an additional \$16,000 for Amendment No. 1).

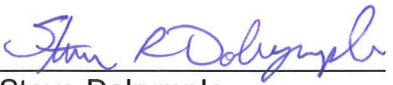
3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction,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

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

CITY OF TRACY

CONSULTANT  
West Yost Associates

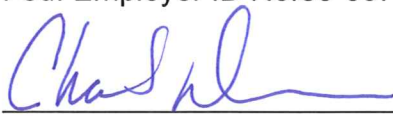
\_\_\_\_\_  
By: Brent H. Ives  
Title: MAYOR  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Steve Dalrymple  
Title: ~~President~~ SR. VICE PRESIDENT  
Date: 11/8/12

Attest:

Fed. Employer ID No.68-0370826

\_\_\_\_\_  
By: Sandra Edwards  
Title: CITY CLERK  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Charles Duncan  
Title: ~~Vice~~ President  
Date: 11/8/12

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_



## EXHIBIT A

### SCOPE OF SERVICES

#### I. SERVICES:

##### TASK 1: PREPARE REVISED WATER SUPPLY ASSESSMENT

CONSULTANT will revise the previously prepared Water Supply Assessment for the PROJECT to be consistent with the changes made in the revised Cordes Ranch Specific Plan (as discussed and provided to West Yost on October 18, 2012) for the PROJECT. The revised Water Supply Assessment will be prepared in accordance with the requirements of Senate Bill 610 (SB 610) as adopted in the California Water Code as Sections 10910-10915.

To be clear, the proposed work effort will be focused on evaluating available supplies, for both potable and non-potable PROJECT demands, compared to available potable and recycled water supplies. Also, phasing will not be evaluated, only Buildout of the PROJECT will be evaluated. And finally, it is further assumed that this PROJECT WSA (Cordes Ranch WSA) will follow the City Council's consideration of the Ellis Project WSA.

Five (5) copies of the Final Water Supply Assessment Report (Final WSA) will be submitted to the CITY along with five CDs. The CITY will be responsible for forwarding and distributing the Final WSA to the appropriate parties. There will not be a revised Draft WSA issued. However, if both a budget augmentation and schedule extension are authorized by the City, a revised Draft WSA can be provided.

CONSULTANT has only budgeted time to attend a CITY Council meeting when the WSA is considered for adoption. No other meetings, project status conference calls or other correspondence time have been budgeted.

***Estimated Fee for Task 1 Services = \$6,000***

##### TASK 2: RE-CONFIRM WATER DEMANDS AND REQUIRED PHASE 1 INFRASTRUCTURE FOR REVISED LAND USE ASSOCIATED WITH CORDES RANCH SPECIFIC PLAN AND ISSUE A REVISED TM

It is the CONSULTANT's understanding that a revised Specific Plan with a slightly revised phasing plan and land use is being prepared for the PROJECT. Based on the new Specific Plan land use and phasing plan for the PROJECT, CONSULTANT will re-evaluate potable and recycled water demands for the PROJECT. Cordes Ranch representatives will be responsible for providing CONSULTANT with the detailed land use data (including parcel acreages) and a land use map for the PROJECT (including building footprints, number of stories, construction type, intended use, impervious

areas, landscaped areas, etc.) to clearly define the potable and recycled water needs for the PROJECT. CONSULTANT will use standard water use factors adopted in the Water System Master Plan to calculate the potable and recycled water demands for the PROJECT.

Based on the revised potable and recycled water demands, if any, CONSULTANT will use the CITY's hydraulic water system model to verify the previously determined potable and recycled water infrastructure to serve the Cordes Ranch Specific Plan.

CONSULTANT will evaluate and confirm the previously identified potable water and recycled water system infrastructure needs of the revised, specifically defined Phase 1 area of the Cordes Ranch Specific Plan. This Phase 1 area will be identified and defined by the CITY and Cordes Ranch representatives prior to the initiation of this task. CONSULTANT will determine the potable and recycled water demands for the overall Phase 1 area using the same water use factors as used in the City's Water Master Plan, and will identify the potable and recycled water infrastructure required to serve the Phase 1 area.

Total costs for the required potable and recycled water infrastructure to serve Phase 1, consistent with the infrastructure previously identified, will be determined. If possible, storage tanks and pump stations will be phased to assist in matching proposed Phase 1 demands for the PROJECT. To be clear, there will not be an AB1600 evaluation conducted for this phasing plan.

The findings will be documented in a Final Technical Memorandum (TM) which will be prepared and submitted to the CITY for distribution to the appropriate parties. There will not be a Draft TM issued.

***Estimated Fee for Task 2 Services = \$10,000***

### **TASK 3: PROVIDE ENGINEERING SUPPORT FOR THE CORDES RANCH SPECIFIC PLAN EIR**

Upon request, CONSULTANT will provide the CITY and Cordes Ranch representatives with up to 20 hours of engineering staff effort associated with providing support for the Cordes Ranch Specific Plan EIR preparation.

***Estimated Fee for Task 3 Services = \$5,000***

### **TASK 4: MONTHLY MEETINGS AND PROJECT COMMUNICATIONS**

CONSULTANT has assumed no attendance or participation in any project meetings or conference calls with either the CITY or PROJECT representatives to discuss progress on the work described in the tasks above or the findings of this PROJECT.

***Estimated Fee for Task 4 Services = \$0***



CITY OF TRACY - PROFESSIONAL SERVICES AGREEMENT  
WEST YOST ASSOCIATES, INC.  
REQUESTED ENGINEERING SUPPORT SERVICES FOR THE REVISED CORDES RANCH SPECIFIC  
PLAN PROJECT (EXHIBIT A)

CONSULTANT currently has an available funding balance of approximately \$5,000 from the previously authorized Cordes Ranch Specific Plan Support for Tier 2 analysis. Assuming that these previously authorized funds are available to partially offset the costs described in this Agreement, the net requested budget to perform the engineering support services described in this Professional Services Agreement is listed below:

***Total Estimated Fee for Tasks 1 - 4 Services = \$21,000 - \$5,000 = \$16,000.00***

**II. COMPLETION OF THE SCOPE OF SERVICES.** CONSULTANT shall complete the Final WSA described in Task 1 approximately 4 weeks after receiving Notice to Proceed and all required data to be provided to CONSULTANT by the CITY. CONSULTANT shall complete the Final TM described in Tasks 2 and 3, no later than 4 weeks after receiving all required data and written Notice to Proceed from the City.

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

Charles Duncan, Principal In Charge;  
Gerry S. Nakano, Vice President (Authorized Representative);  
Elizabeth Drayer (Principal Engineer);  
Jim Connell (Principal Engineer);  
Irene Suroso (Senior Engineer);  
Amy Kwong (Associate Engineer);  
Christine Encelan (Administrative IV); and  
Angelica Perea (Administrative III).

CITY OF TRACY – PROFESSIONAL SERVICES AGREEMENT  
 WEST YOST ASSOCIATES, INC.  
 REQUESTED ENGINEERING SUPPORT SERVICES FOR THE REVISED CORDES RANCH SPECIFIC  
 PLAN PROJECT

**EXHIBIT B**  
**WEST YOST ASSOCIATES**

Billing Rate Schedule  
 (Effective January 1, 2012 through December 31, 2012)

Position	Labor Charges (dollars per hr)
Principal/Vice President	223
Engineering Manager	212
Principal Engineer/Scientist	193
Senior Engineer/Scientist/GIS Analyst	174
Associate Engineer/Scientist	155
GIS Analyst	155
Engineer II/Scientist II	138
Engineer I/Scientist I	119
Construction Manager III	168
Construction Manager II	155
Construction Manager I	144
Resident Inspector III	130
Resident Inspector II	121
Resident Inspector I	106
Sr. Designer/Sr. CAD Operator	113
Designer/CAD Operator	100
Technical Specialist II	97
Technical Specialist I	84
Engineering Aide	70
Administrative IV	100
Administrative III	88
Administrative II	75
Administrative I	63

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 West Yost 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.

Expert witness, research, technical review, analysis, preparation and meetings billed at 150% of standard hourly rates. Expert witness testimony and depositions billed at 200% of standard hourly rates.

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

### SURVEYING AND EQUIPMENT CHARGES

Position	Labor Charges (dollars per hr)
GPS, 3-Person	343
GPS, 2-Person	293
GPS, 1-Person	230
Survey Crew, 2-Person	249
Survey Crew, 1-Person	187

### EQUIPMENT CHARGES

Equipment	Billing Rate (dollars per day)	Billing Rate (dollars per week)
DO Meter	16	79
pH Meter	5	25
Automatic Sampler	124	678
Transducer/Data Logger	39	196
Hydrant Pressure Gage	11	48
Hydrant Pressure Recorder (HPR)	—	196
Hydrant Wrench	5	31
Pitot Diffuser	28	128
Well Sounder	28	128
Ultrasonic Flow Meter	—	256
Vehicle	84	424
Velocity Meter	11	62
Water Quality Multimeter	168	918
Thickness Gage	—	68

AGENDA ITEM 1.I

REQUEST

**APPROVE A TERMINATION AND RELEASE AGREEMENT WITH ANGELO TSAKOPOULOS, VASSILIS CONSTAN TSAKOPOULOS AND TSAKOPOULOS FAMILY PARTNERSHIP, A CALIFORNIA GENERAL PARTNERSHIP AND THE CITY OF TRACY, A CALIFORNIA MUNICIPAL CORPORATION, FOR DESIGN, CONSTRUCTION, OPERATION, MAINTENACE AND DECOMMISSIONING OF THE INTERIM WASTEWATER RECLAMATION FACILITY AND THE TIMING OF DESIGN AND CONSTRUCTION OF PERMANENT WASTEWATER RECLAMATION FACILITY RECORDED WITH THE SAN JOAQUIN COUNTY RECORDER PER INSTRUMENT NUMBER 2003-032227 ON FEBRUARY 12, 2003, AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT**

EXECUTIVE SUMMARY

The owners of Tracy Hills Development entered into an agreement with the City to construct an Interim Wastewater Reclamation Facility (IWRf) on site until the permanent facility was constructed within the Tracy Hills area. Construction of an IWRf was one of the options provided by the Tracy Hills Wastewater Master Plan, Specific Plan and environmental documents completed in the late nineteen hundreds. The other option included use of the existing wastewater treatment plant (WWTP) after expansion of its capacity. However, the Tracy Hills project did not develop during the last decade and the City has recently finalized the City-wide Wastewater Master Plan that allows Tracy Hills the use of existing WWTP facility which will be expanded for additional capacity. This is a less expensive and viable option and the owners of the Tracy Hills Development have requested termination of the existing agreement requiring construction of the IWRf. This will free up land previously reserved for the IWRf and will allow its orderly planning and development.

DISCUSSION

The Tracy Hills project's Specific Plan and Wastewater Infrastructure Master Plan completed in the late nineteen hundreds provided various options for treatment of wastewater generated from that project. These included expansion of the City's existing Wastewater Treatment Plan and construction of an on-site treatment facility. Since the treated wastewater effluent was to be used for irrigation purposes, the treatment facility was called Wastewater Reclamation Facility.

The use of the existing Wastewater Treatment Plant was expensive due to higher cost of sewer conveyance from the project site to the existing plant, especially when no other developers were to share the conveyance system cost at that time.

Due to stringent requirements from the regulatory agencies and timing for completion of design and construction of a new wastewater recycling facility on-site, it was cost effective to construct an interim Wastewater Recycling Facility (IWRf) until construction of the permanent Wastewater Recycling facility is completed. The IWRf required less regulations and easier permit process.



Since the owners of the Tracy Hills project were exploring early development of the project, it was necessary for them to address all possible scenarios of construction and wanted to enter into an agreement with the City to construct the IWRF. The City required a sunset clause for decommissioning the IWRF to ensure completion of the permanent facility in an orderly manner backed up with guarantee assurance.

The City entered into an agreement with Angelo Tsakopoulos, Vassilis Constan Tsakopoulos and Tsakopoulos Family Partnership for design, construction, operation, maintenance and decommissioning of the IWRF and the timing of design and construction of a permanent Wastewater Reclamation Facility which was recorded with the San Joaquin County Recorder per instrument number 2003-032227, on February 12, 2003.

Due to the economic downturn and other development factors, the Tracy Hills project did not break ground during that time and the owners are now planning to development the project.

The City is in the process of finalizing the Wastewater Master Plan for all new developments. The Tracy Hills project is included in the Master Plan studies since it is not in the City's best interest to have two wastewater treatment facilities resulting in duplication of operational and maintenance efforts. In addition, the gap properties north of Tracy Hills are now also included in the Wastewater Master Plan and the cost of sewer conveyance infrastructure will be shared among these developments.

The owners of the Tracy Hills project have indicated that they do not intend to exercise the option of construction of an IWRF facility for development of the Tracy Hills project and have requested that the existing IWRF agreement with the City of Tracy be terminated. This will also free up the property previously reserved for the IWRF and will expedite planning and development of that land. Tracy Hills will be served from the expanded facility at the existing Wastewater Treatment Plan.

Staff has reviewed all of the approved documents for Tracy Hills including the Specific Plan, Environmental documents, and Wastewater Master Plans. Since construction of the IWRF was one of the various alternatives, termination of the subject agreement will have no effect on the project status. The City Attorney concurs with staff's recommendation and has reviewed the termination agreement (Attachment A).

## STRATEGIC PLAN

This is a routine agenda item and is not related to any specific Strategic Plan.

FISCAL IMPACT

There is no fiscal impact to the General Fund. Time spent by staff and City consultants on the research and review of the documents will be paid by the Tracy Hills development through the existing Reimbursement Agreement.

RECOMMENDATION

Staff recommends that the City Council approve the Termination and Release Agreement with Angelo Tsakopoulos, Vassilis Constan Tsakopoulos, Tsakopoulos Family Partnership, and the City of Tracy, for design, construction, operation, maintenance and decommissioning of the Interim Wastewater Reclamation Facility and the timing of design and construction of a Permanent Wastewater Reclamation Facility, and authorize the Mayor to execute the agreement.

Prepared by: Kuldeep Sharma, City Engineer

Reviewed by: Andrew Malik, Development Services Director

Approved by: Leon Churchill Jr., City Manager

RESOLUTION 2012-\_\_\_\_\_

APPROVING A TERMINATION AND RELEASE AGREEMENT WITH ANGELO TSAKOPOULOS, VASSILIS CONSTAN TSAKOPOULOS AND TSAKOPOULOS FAMILY PARTNERSHIP, A CALIFORNIA GENERAL PARTNERSHIP AND THE CITY OF TRACY, A CALIFORNIA MUNICIPAL CORPORATION, FOR DESIGN, CONSTRUCTION, OPERATION, MAINTENACE AND DECOMMISSIONING OF THE INTERIM WASTEWATER RECLAMATION FACILITY AND THE TIMING OF DESIGN AND CONSTRUCTION OF PERMANENT WASTEWATER RECLAMATION FACILITY RECORDED WITH THE SAN JOAQUIN COUNTY RECORDER PER INSTRUMENT NUMBER 2003-032227 ON FEBRUARY 12, 2003, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The owners of Tracy Hills Development entered into an agreement with the City to construct an Interim Wastewater Reclamation Facility (IWRf) on site until the permanent facility was constructed within the Tracy Hills area, and

WHEREAS, The Tracy Hills project did not develop during the last decade and the City has recently finalized the City-wide Wastewater Master Plan that allows Tracy Hills the use of existing WWTP facility which will be expanded for additional capacity

WHEREAS, The City is in the process of finalizing the Wastewater Master Plan for all new developments, and

WHEREAS, The Tracy Hills project is included in the Master Plan studies since it is not in the City's best interest to have two wastewater treatment facilities, and

WHEREAS, The owners of the Tracy Hills project have indicated that they do not intend to exercise the option of construction of an IWRf facility for development of the Tracy Hills project and have requested that the existing IWRf agreement with the City of Tracy be terminated, and

WHEREAS, Termination of the subject agreement will have no effect on the project status, and

WHEREAS, There is no fiscal impact to the General Fund. Time spent by staff and City consultants on the research and review of the documents will be paid by the Tracy Hills development through the existing Reimbursement Agreement;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Termination and Release Agreement with Angelo Tsakopoulos, Vassilis Constan Tsakopoulos, Tsakopoulos Family Partnership, and the City of Tracy, for design, construction, operation, maintenance and decommissioning of the Interim Wastewater Reclamation Facility and the timing of design and construction of a Permanent Wastewater Reclamation Facility, and authorizes the Mayor to execute the agreement.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

Recording Requested by  
and When Recorded Return to:

City of Tracy  
City Clerk  
333 Civic Center Drive  
Tracy, CA 95376

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(Space above line for Recorder's use only)

## TERMINATION & RELEASE AGREEMENT

THIS TERMINATION & RELEASE AGREEMENT ("Termination") is entered into as of \_\_\_\_\_, 2012 by and among **ANGELO K. TSAKOPOULOS** ("Tsakopoulos"), **VASSILIS CONSTANTSAKOPOULOS**, the **TSAKOPOULOS FAMILY PARTNERSHIP**, a **California general partnership** ("TFP") and the **CITY OF TRACY, a California municipal corporation** ("City") with reference to the following facts:

### RECITALS

A. Tsakopoulos, TFP and Vassilis Constantakopoulos ("Constantakopoulos"), collectively as "Operator", entered into that certain agreement entitled *Agreement Between the City of Tracy and Angelo K. Tsakopoulos, Vassilis Constantakopoulos and Tsakopoulos Family Partnership for Design, Construction, Operation, Maintenance, and Decommissioning of the Interim Wastewater Reclamation Facility and the Timing of Design and Construction of Permanent Wastewater Reclamation Facility* executed on or about February 5, 2003 (the "Agreement").

B. The Agreement was recorded in the Official Records of San Joaquin County, California on February 12, 2003 as Document No. 2003-032227 as an encumbrance on that certain real property located in San Joaquin County, California more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "Property").

C. Among other things, the Agreement contained certain agreements among the parties thereto with respect to the design, construction, maintenance, operation and decommissioning of certain interim and permanent waste water reclamation facilities, all as more particularly described therein.

D. Constantakopoulos' interest in the Property was subsequently conveyed to TFP pursuant to that certain Grant Deed dated June 5, 2003 and recorded in the Official Records of San Joaquin County, California on June 18, 2003 as Document No. 2003-132457.

E. The parties hereto have, since execution of the Agreement, mutually determined and agreed that the Agreement, and the various matters and undertakings contemplated thereby, are no longer necessary or desirable, and that as a result, the Agreement should be fully terminated and removed of record as a lien and encumbrance against the Property.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. Termination of Agreement.** Each of the parties hereto expressly confirms, acknowledges and agrees as follows: (i) that it is to their mutual benefit, and in their mutual interest, to terminate the Agreement; (ii) that the Agreement, together with any and all rights, benefits, undertakings and obligations, whether payment, performance or otherwise, of Tsakopoulos, TFP, Constantkopoulos and/or the City there under, are hereby fully, immediately and unconditionally terminated and released; and (iii) that the Agreement and all of its provisions shall hereafter be null and void and of no further

TracyTerminationAgmt.  
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force or effect. This Termination shall be recorded in the Official Records of San Joaquin County, California immediately after its execution by the parties.

**2. Removal from Title.** All of the parties hereto hereby agree and confirm that immediately upon the execution and recordation of this Termination in the Official Records of San Joaquin County, California, the Agreement shall automatically, fully, immediately and unconditionally terminate and be of no further force or effect and shall be permanently removed from record title as a lien, covenant and encumbrance against the Property. In connection therewith, the City hereby fully remises, releases and quitclaims to Tsakopoulos and TFP any and all rights, title, interest and claims to the Property, including, without limitation any and rights, title, interest or claims related to or arising from the Agreement. As a result of such termination, Tsakopoulos and TFP, and their successor, transferees and assigns, shall hereafter hold title to the Property free and clear of the Agreement.

**3. Acknowledgement.** Each of the parties agrees that none of the matters referenced in the Agreement were ever undertaken or started, and that from a practical matter, the provisions thereof never went into operative effect.

**4. Release.** Without in any manner limiting the generality of any of the other terms or provisions of this Termination, each of the parties hereto hereby fully and unconditionally waives any and all demands, claims and liabilities it may have against any and all the other original parties to the Agreement, and their successors and assigns, with respect to such Agreement, and releases such other parties and their successors and assigns from the same.

**5. Miscellaneous**

(a) **Interpretation.** This Termination has been executed in San Joaquin County, California, and shall be governed by and construed in accordance with the laws of the State of California. Any legal action to enforce the provisions of this Termination may be commenced only in the Superior Court of the County of San Joaquin, State of California. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(b) **Time of Essence.** Time is of the essence of this Termination and its provisions.

(c) **Attorneys' Fees.** In the event any party hereto shall commence legal proceedings, including any alternative dispute resolution proceedings, for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the prevailing party in such proceedings shall be entitled to reasonable attorneys' fees, costs and expert witness fees to be determined by the Court or referee.

(d) **Integration.** This Termination and the attached exhibits contain the complete and entire agreement of the parties hereto, and supersede any prior written or oral agreements between them concerning the subject matter contained herein.

(e) **Counterparts.** This Termination may be signed in identical counterparts.

(f) **Exhibits.** All exhibits attached to this Termination are incorporated herein by reference and made a part hereof.

(g) **Construction.** As used in this Termination, the masculine, feminine, or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context so indicates. This Termination shall be construed as a whole, the captions being for the convenience of the parties only and not intended to describe or define the provisions in the portions hereof to which they pertain. Each party hereto acknowledges and agrees that each has had independent counsel and review

and participated in the drafting and/or negotiation of this Termination, and each hereby fully waives the application of any law, statute or rule of construction or interpretation to the effect that any ambiguities are to be resolved against the drafting party (including, California Civil Code Section 1654).

IN WITNESS WHEREOF, the parties hereto have executed this Termination as of the date first above written.

\_\_\_\_\_  
ANGELO K. TSAKOPOULOS

TSAKOPOULOS FAMILY PARTNERSHIP,  
a California general partnership

By: \_\_\_\_\_,  
Katina Tsakopoulos,  
Its Managing General Partner

CITY OF TRACY,  
a California municipal corporation

By: \_\_\_\_\_,  
Mayor

ATTEST:

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

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EXHIBIT A

March 20, 1998

DESCRIPTION OF  
TRACY HILLS ANNEXATION TO THE CITY OF TRACY  
San Joaquin County, California

A portion of Sections 1, 2, 12 and 13, Township 3 South, Range 4 East, and Sections 6, 7, 8, 17, 18 and 19, Township 3 South, Range 5 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the intersection of the southwesterly line of the Delta-Mendota Canal with the east line of Corral Hollow Road (60 feet wide), said intersection being on the Tracy City Limit line; thence southerly along the east line of Corral Hollow Road, being along said City Limit line, 895 feet, more or less, to the south line of the northwest quarter of said Section 8; thence leaving said City Limit line and continuing southerly along the east line of Corral Hollow Road, 2,644 feet, more or less, to a point on the section line common to said Sections 8 and 17; thence continuing southerly along the east line of Corral Hollow Road, 777 feet, more or less, to the southwesterly line of the California Aqueduct right-of-way; thence southeasterly along said southwesterly line, 2,556 feet, more or less, to a line lying 30.00 feet northerly of and parallel with the southerly line of the northwest quarter of said Section 17; thence westerly along said parallel line, 1,758 feet, more or less, to the section line common to said Sections 17 and 18; thence South  $0^{\circ}27'28''$  West along said common section line, 1,151.41 feet to the southeasterly corner of that certain 20 acre tract of land described in deed to San Joaquin County, recorded August 8, 1947 in Volume 1071 of Official Records, at Page 71, San Joaquin County Records; thence South  $51^{\circ}18'32''$  West along the southeasterly line of said 20 acre tract, 653.93 feet to the southwesterly line of Interstate Highway Route No. 580; thence along said Highway's southwesterly line of the following three (3) courses (all bearings and distances from hereon are based on the California Coordinate System-27, Zone 3, unless otherwise noted): (1) North  $52^{\circ}06'55''$  West, 568.99 feet, (2) North  $72^{\circ}14'17''$  West, 598.99 feet and (3) South  $55^{\circ}15'46''$  West, 263.06 feet to the southeasterly line of Corral Hollow Road; thence southwesterly along the southeasterly line of Corral Hollow Road 3,815 feet, more or less, to a point that bears South  $61^{\circ}02'06''$  East from the northwest corner of said Section 19; thence, leaving the southeasterly line of Corral Hollow Road, North  $32^{\circ}43'43''$  West, 226.44 feet; thence North  $84^{\circ}24'35''$  West, 137.28 feet; thence North  $67^{\circ}10'34''$  West, 100.10 feet; thence North  $62^{\circ}34'33''$  West, 398.95 feet; thence North  $81^{\circ}29'49''$  West, 192.76 feet; thence South  $64^{\circ}37'50''$  West, 516.59 feet; thence South  $35^{\circ}36'05''$  West, 218.42 feet; thence South  $11^{\circ}25'41''$  West, 251.48 feet; thence South  $32^{\circ}39'01''$  West, 223.33 feet; thence South  $63^{\circ}24'11''$  West, 294.92 feet; thence North  $47^{\circ}29'41''$  West, 552.61 feet; thence North  $24^{\circ}55'21''$  East, 584.76 feet; thence North  $52^{\circ}45'03''$  East, 351.21 feet; thence North  $59^{\circ}10'54''$  East, 321.51 feet; thence North  $38^{\circ}54'46''$  East, 414.80 feet; thence North  $39^{\circ}05'58''$  East, 369.49 feet to a point on the north line of said Section 19, that bears North  $89^{\circ}13'50''$  West, 2,759.48 feet from the



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north one-quarter corner of said Section 19; thence North 74°42'05" East, 233.47 feet; thence North 33°15'08" East, 152.01 feet; thence North 23°34'56" East, 297.89 feet; thence North 26°13'35" East, 245.35 feet; thence North 31°42'43" East, 169.52 feet; thence North 43°45'08" East, 540.42 feet; thence North 44°45'37" East, 572.00 feet; thence North 17°15'12" West, 277.55 feet; thence South 41°52'19" West, 400.10 feet; thence South 46°08'52" West, 723.26 feet; thence South 60°29'07" West, 270.53 feet; thence South 26°56'14" West, 214.58 feet; thence South 37°15'01" West, 908.10 feet; thence South 74°16'31" West, 128.43 feet to a point on the north line of said Section 19 that bears South 89°13'50" East, 1,018.53 feet from the northwest corner of said Section 19; thence South 89°56'25" West, 294.03 feet; thence South 60°37'18" West, 184.17 feet; thence South 08°52'00" West, 260.92 feet; thence South 27°52'22" West, 113.97 feet; thence South 54°51'11" West, 139.57 feet; thence South 72°34'38" West, 163.53 feet; thence South 53°00'08" West, 257.96 feet to a point on the west line of said Section 19 that bears South 00°26'45" West, 747.45 feet from said northwest corner of Section 19; thence North 67°35'08" West, 91.49 feet; thence North 53°52'14" West, 918.37 feet; thence North 19°27'23" West, 85.89 feet; thence South 86°29'50" West, 46.95 feet; thence along a 921.00 foot radius curve to the right, through a central angle of 67°18'29", and an arc length of 1,081.94 feet; thence North 26°02'50" West, 364.68 feet; thence South 59°38'46" West, 262.44 feet; thence North 28°16'13" West, 403.22 feet; thence North 37°55'13" West, 327.23 feet; thence North 41°09'03" West, 332.87 feet; thence North 44°09'02" West, 227.78 feet; thence North 38°01'06" West, 118.29 feet; thence North 22°07'14" West, 94.16 feet; thence North 13°23'41" West, 112.23 feet; thence North 00°47'05" West, 229.37 feet; thence North 05°22'22" East, 407.17 feet; thence North 09°49'42" East, 209.52 feet; thence North 03°22'32" East, 360.12 feet; thence North 05°28'26" West, 342.08 feet; thence North 07°39'38" West, 199.20 feet; thence North 18°35'04" West, 161.45 feet; thence North 25°16'54" West, 207.07 feet to a point on the north line of said Section 13 that bears North 88°23'43" West, 3,219.12 feet from the northeast corner of said Section 13; thence North 34°16'35" West, 287.89 feet; thence North 34°24'10" West, 246.44 feet; thence North 28°23'51" West, 163.75 feet; thence North 22°16'32" West, 109.35 feet; thence North 15°09'06" West, 302.13 feet; thence North 09°05'35" West, 257.61 feet; thence North 21°40'10" West, 328.32 feet; thence North 28°05'28" West, 104.88 feet; thence North 10°41'12" West, 118.71 feet; thence North 15°51'30" East, 162.70 feet; thence North 72°57'58" West, 321.66 feet; thence North 78°35'43" West 260.79 feet; thence North 73°29'57" West, 238.21 feet; thence North 57°32'34" West, 185.62 feet; thence North 17°43'19" West, 252.76 feet; thence North 15°24'52" East, 144.97 feet; thence North 16°18'02" West, 107.32 feet; thence North 53°28'23" West, 77.09 feet; thence North 32°20'42" West, 120.34 feet; thence North 08°22'25" West, 196.02 feet; thence North 10°59'42" East, 175.33 feet; thence North 20°34'45" East, 170.92 feet; thence North 07°48'15" East, 336.20 feet; thence North 00°09'36" East, 144.59 feet; thence North 08°00'32" West, 330.77 feet; thence North 03°33'44" East, 523.83 feet; thence North 54°38'14" West, 83.61 feet; thence North 43°40'36" East, 758.85 feet; thence North 36°40'21" East, 47.79 feet to a point on the north line of said Section 12 that bears South 88°07'04" East, 792.81 feet from the northwest corner of said Section 12; thence North 36°40'21" East, 52.21 feet to the southwesterly line of Interstate Highway

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Route No. 580; thence northwesterly, along said southwesterly line, 5,353 feet, more or less, to the southerly line of the Union Pacific Railroad right-of-way, as said right-of-way is shown on Record of Survey filed in Book 33 of Surveys, at page 57, San Joaquin County Records; thence northeasterly and southeasterly along said Railroad's southerly line, 5,754.28 feet to the northeasterly line of the California Aqueduct right-of-way; thence northwesterly along said Aqueduct's northeasterly line, 1,169.69 feet to the north line of the parcel of land conveyed as PARCEL ONE to Grupe Development Associates-2 recorded in Instrument Number 92083244, Official Records of San Joaquin County; thence along said north line the following three (3) courses: (1) South 88°06'52" East, 3,523.78 feet, (2) South 50°50'18" East, 631.67 feet, and (3) South 89°41'18" East, 128.75 feet to the west line of Lammers Road (50 feet wide); thence northerly along said west line 75 feet, more or less, to the southwesterly line of the Delta-Mendota Canal; thence in a general southeasterly direction along the southwesterly line of the Delta-Mendota Canal, 9,290 feet, more or less, to the Point of Beginning.

Containing 2,725 acres, more or less.

SV-40158-11

RECOMMENDED APPROVAL AS TO DESCRIPTION BY

*J. M. Land*  
Deputy County Surveyor

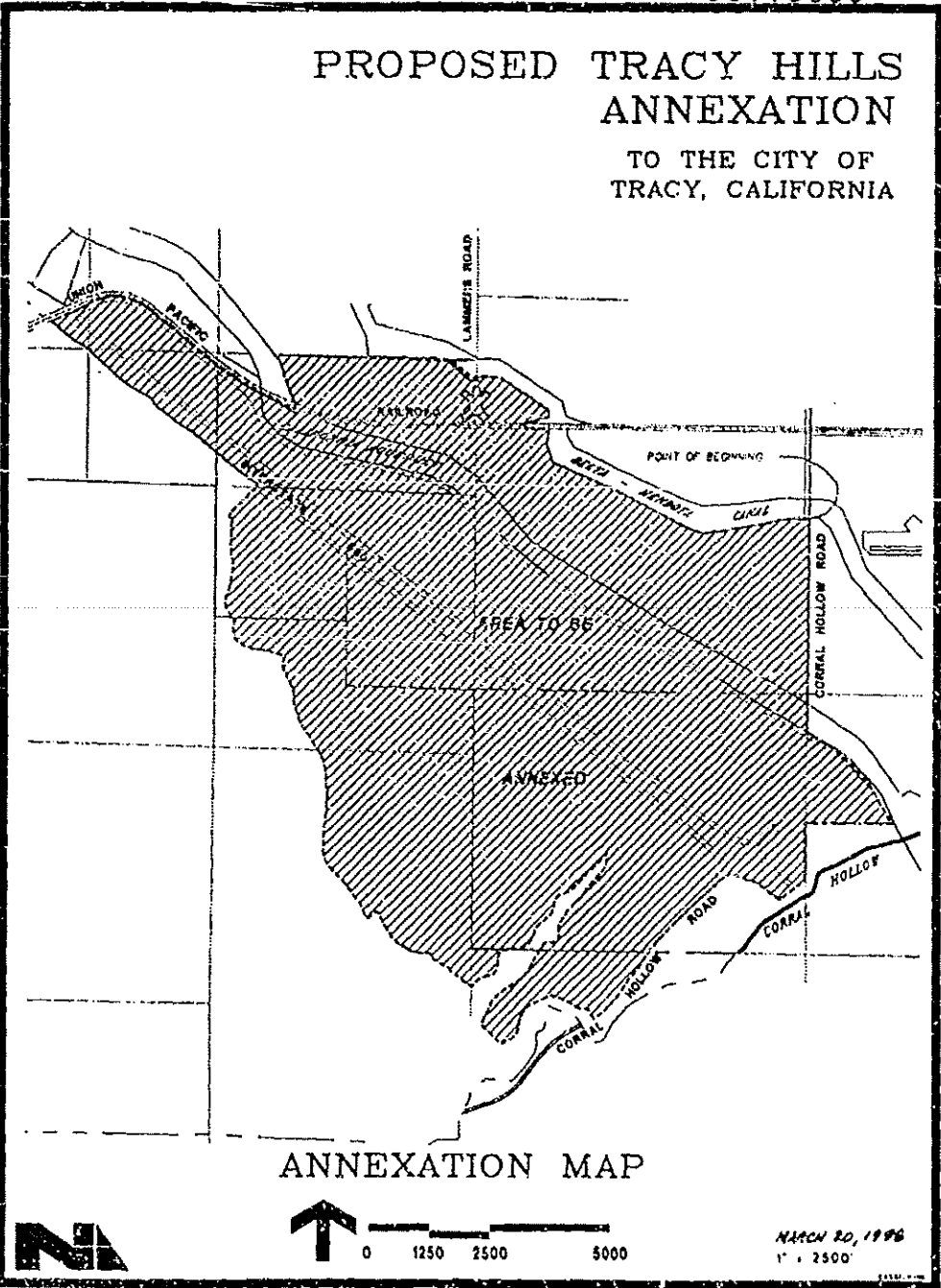
APPROVED BY

*Henry M. Theato*  
County Clerk

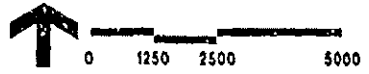


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# PROPOSED TRACY HILLS ANNEXATION TO THE CITY OF TRACY, CALIFORNIA



ANNEXATION MAP



MARCH 20, 1996  
1" = 2500'

AGENDA ITEM 1.J

REQUEST

**APPROVE AMENDMENT TWO TO THE PROFESSIONAL SERVICES AGREEMENT WITH DESIGN, COMMUNITY AND ENVIRONMENT, INC FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT, ASSISTANCE WITH THE PREPARATION OF A SPECIFIC PLAN AND ANNEXATION FOR THE CORDES RANCH SPECIFIC PLAN PROJECT**

EXECUTIVE SUMMARY

This request is to approve Amendment Two to a Professional Services Agreement with Design, Community, and Environment, Inc (DC&E) to complete the environmental review for the proposed Cordes Ranch Specific Plan, and assist with the review of the Specific Plan and annexation process through the Local Agency Formation Commission (LAFCo).

DISCUSSION

Background on the Cordes Ranch project

The City's General Plan identifies new growth areas, including Urban Reserve 6 which is known as the approximately 1,700 acre Cordes Ranch project. Property owners approached the City with plans to develop their site and participated in the update of the City's General Plan to refine the basic concepts for development. Over the last three-years, the property owners have participated in the technical analyses related to infrastructure delivery to this and other sites identified in the City's General Plan. Over the past two years property owners began the process to create a Specific Plan for the site and complete environmental review in accordance with the California Environmental Quality Act (CEQA). A Specific Plan is a comprehensive planning document that establishes the infrastructure requirements for a particular development as well as the development standards (and zoning) that will guide development as the project is phased. The City is actively working on the Cordes Ranch Specific Plan and Environmental Impact Report, as well as negotiating a Development Agreement.

Background on the Professional Services Agreement with DC&E and the Current Request for an Amendment.

After a formal Request for Proposal process, City Council approved a Professional Services Agreement with DC&E on January 18, 2011 (Resolution 2011-017). The contract was approved in the amount of \$353,402. Subsequently, the ownership group requested adjustments to the land use pattern and distribution of land uses throughout the Specific Plan area that came after significant work had been completed to model traffic impacts. The requested changes required additional work related to traffic modeling at a cost of \$32,780. Additionally, given the complexity of the project staff and the project owners requested an additional \$15,000 to be added to the contingency to cover any unforeseen costs associated with completing the environmental review and annexation work. These augmentations to the scope of work were approved with Amendment one to the PSA, approved by City Council on June 19, 2012.

The current amendment includes additional work related to changes in the Draft Specific

Plan resulting from recent City Council direction on land uses along the freeway, and owner requested changes to phase one of the project. Specifically, the work shall include a Health Risk Assessment focused on the potential for the project to result in impacts associated with proximity of employment located along the I-205 corridor and arterial roadways in the project area. This work shall include identifying mitigation measures to reduce potential air quality impacts of the project. The results of such analyses shall be incorporated into the EIR and modeling included as an Appendix to the EIR. The work involves additional traffic analysis including revising Phase 1 and Buildout trip generation totals and allocations to TAZs, revising 2035 Plus Phase 1 intersection turn movements, revising 2035 plus Phase 1 Level of Service analysis, including revisions to land configurations where appropriate, and revising Buildout roadway segment volumes and calculate v/c ratios, pivoting off the Transportation Master Plan Buildout case. Such work shall be incorporated into the EIR and included in the EIR appendix.

The costs of this work is an additional \$67,549 which includes additional contingency for the consultants to address unanticipated issues as they arise in the analyses.

#### STRATEGIC PLAN

The Cordes Ranch project is planned to be a significant jobs center for the City as it develops over time. The City's Economic Development Strategy establishes Goal 1 to "Increase the Jobs Opportunities in Tracy". Objectives 1 and 2 under that Goal are to "Increase the Quantity and Quality of jobs in Tracy" and to "Diversity Tracy's Economic Base". As a 1700 acre industrial, commercial and office project with elements of mixed-use, the Cordes Ranch project at build out over many years will accommodate tens of thousands of new jobs in Tracy.

#### FISCAL IMPACT

There will be no impact to the General Fund. On March 3, 2011 the project proponents entered into a Cost Recovery Agreement with the City to cover all costs associated with processing the project, including consultant costs.

#### RECOMMENDATION

Staff recommends that City Council, by resolution, approve Amendment Two to the Professional Services Agreement with DC&E in the amount of \$67,549 and authorize the Mayor to execute the Amendment.

Prepared by: Bill Dean, Assistant DS Director

Approved by: Andrew Malik, Development Services Director

RESOLUTION 2012-\_\_\_\_\_

APPROVING AMENDMENT 2 TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) DESIGN, COMMUNITY AND ENVIRONMENT, INC FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT, ASSISTANCE WITH THE PREPARATION OF A SPECIFIC PLAN AND ANNEXATION FOR THE CORDES RANCH SPECIFIC PLAN PROJECT

WHEREAS, The City's General Plan identifies new growth areas, including Urban Reserve 6 which is known as the approximately 1,700 acre Cordes Ranch project, and

WHEREAS, After a formal Request for Proposal process, City Council approved a Professional Services Agreement with DC&E on January 18, 2011 (Resolution 2011-017), and

WHEREAS, Subsequently, the ownership group requested adjustments to the land use pattern and distribution of land uses throughout the Specific Plan area, and

WHEREAS, Amendment one to the PSA, approved by City Council on June 19, 2012, and

WHEREAS, The current amendment includes additional work related to changes in the Draft Specific Plan resulting from recent City Council direction on land uses along the freeway, and owner requested changes to phase one of the project, and

WHEREAS, The costs of this work is an additional \$67,549 which includes additional contingency for the consultants to address unanticipated issues as they arise in the analyses, and

WHEREAS, There will be no impact to the General Fund. On March 3, 2011 the project proponents entered into a Cost Recovery Agreement with the City to cover all costs associated with processing the project, including consultant costs;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment Two to the Professional Services Agreement with DC&E in the amount of \$67,549 and authorizes the Mayor to execute the Amendment.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

**CITY OF TRACY  
AMENDMENT NO. 2 TO  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE CORDES RANCH SPECIFIC PLAN REVIEW, ANNEXATION, AND  
ENVIRONMENTAL IMPACT REPORT PROJECT**

This Amendment No. 2 (hereinafter "Amendment") to the Professional Services Agreement is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "CITY"), and DESIGN, COMMUNITY & ENVIRONMENT (hereinafter "CONSULTANT").

**RECITALS**

- A. The CITY and CONSULTANT entered into a Professional Services Agreement (hereinafter "Agreement") for the Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact Report project which was approved by the City Council on January 18, 2011, pursuant to Resolution No. 2011-017.
- B. WHEREAS, the project applicant has requested changes to the draft Specific Plan that necessitate additional traffic study and other impact analyses. The changes include additional land use changes along the I-205 Corridor, and modifying the amount and distribution of land uses for Phase 1.
- C. WHEREAS, the CITY has requested serviced by the CONSULTANT to complete the additional work.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1. **Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** Section 1 of the Agreement is amended to include additional project initiation work (Task A of Exhibit A of Agreement) related to changes in the Draft Specific Plan; such work shall include written changes to several sections of the CEQA document to ensure consistency, four additional meetings with City staff, and additional coordination with sub consultants. Section 1 of the Agreement is further amended to include additional work under Task C of the Agreement. Specifically, the work shall include a Health Risk Assessment focused on the potential for the project to result in impacts associated with proximity of employment located along the I-205 corridor and arterial roadways in the project area. This work shall include identifying mitigation measures to reduce potential air quality impacts of the project. The results of such analyses shall be incorporated into the EIR and modeling included as an Appendix to the EIR. Section 1 of the Agreement is amended to include additional traffic analysis under Task C. The



CITY OF TRACY

Amendment No. 2 to Professional Services Agreement

Cordes Ranch Specific Plan Review, Annexation, and Environmental Impact

Report Project

Page 2 of 2

additional work shall include Revise Phase 1 and Buildout trip generation totals and allocations to TAZs, Revise 2035 Plus Phase 1 intersection turn movements, Revise 2035 plus Phase 1 LOS analysis, including revisions to land configurations where appropriate, and Revise Buildout roadway segment volumes and calculate v/c ratios, pivoting off the TMP Buildout case. Such work shall be incorporated into the EIR and included in the EIR appendix. Section 1 of the Agreement is amended to include additional Task C work related to environmental analysis and includes updates to the aesthetics, land use, and population and housing sections of the Administrative Draft EIR to reflect the changes in the Specific Plan. Section 5.1 is amended to include a new Not to Exceed limit of \$468,731, which is an increase of \$67,549 which includes a contingency amount of \$14,250.

3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.

**INTENTIONALLY LEFT BLANK**


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

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

CITY OF TRACY

CONSULTANT

By: \_\_\_\_\_  
Brent H. Ives  
Title: Mayor  
Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Steve Noack, AICP  
Title: Principal  
Date: 11-14-12

Attest:

By: \_\_\_\_\_  
Sandra Edwards  
Title: City Clerk  
Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Keith McCann  
Title: Chief Executive Officer  
Date: 11/14/12

Approved as to form

By: \_\_\_\_\_  
Daniel G. Sodergren  
Title: City Attorney  
Date: \_\_\_\_\_

AGENDA ITEM 1.K

REQUEST

**APPROVE A MASTER PROFESSIONAL SERVICES AGREEMENT (MPSA) WITH ASSOCIATED RIGHT OF WAY SERVICES, INC. (AR/WS) OF PLEASANT HILL, CALIFORNIA, TO PROVIDE RIGHT OF WAY ACQUISITION SERVICES FOR VARIOUS PROJECTS, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZE THE CITY MANAGER TO EXECUTE TASK ORDER 1**

EXECUTIVE SUMMARY

Recommend that the City Council award a Master Professional Services Agreement with AR/WS to provide right-of-way acquisition services which generally include project initiation and coordination, appraisal services, acquisition and negotiation, management, escrow and title including legal support services. Approval of the MPSA will facilitate design and construction of various Capital Improvement Projects.

DISCUSSION

A number of the City's Capital Improvement Projects require acquisition of rights-of-way or easements. These projects are funded from various sources including gas tax, Development Impact Fees, and State or Federal grants.

In accordance with Tracy Municipal Code, Section 2.20.140, on September 19, 2012, a "Master Request For Proposals" for right-of-way acquisition services was solicited from four firms known to possess the necessary expertise. The Notice of Inviting Proposals was also posted on the City of Tracy's website. The Request for Proposals required services for a period of three years with a one-time extension of two years. This was necessary due to the fairly lengthy process of land acquisition, and the need for continued services on larger projects such as the I-205/Lammers Road new Interchange, MacArthur Drive realignment and expansion, Wastewater Plant Effluent Pipeline Installation, and Schulte Road Extension.

The City received proposals from six consultants on October 4, 2012. After extensive review and evaluation of the proposals, Associated Right of Way Services, Inc., (AR/WS) of Pleasant Hill, California, was found to be the most qualified consultant to provide the necessary services.

AR/WS has previously completed right of way acquisition services for the City and other agencies in a satisfactory manner and has sufficient resources to provide services for the multiple projects on an as needed basis.

AR/WS has submitted a proposal to provide the services associated with the acquisition of rights-of-ways at competitive rates and is familiar with the City's and CalTrans requirements. Staff is recommending that a Master Professional Services Agreement (MPSA) is entered into with AR/WS. Staff is further requesting that Task Order 1 to this MPSA be approved for services required for the Wastewater Treatment Plan Effluent Pipeline Project for a not to exceed amount of \$166,500 on a time and material basis.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no impact to the General Fund. The cost of services will be paid from Capital Improvement Projects which requires acquisition of rights-of-way and easements.

RECOMMENDATION

Staff recommends that City Council, by resolution, approve a Master Professional Services Agreement with Associated Right of Way Services, Inc. of Pleasant Hill, California, for providing right-of-way acquisition services for various projects and authorize the Mayor to execute the Agreement, and further authorize the City Manager to execute Task Order 1 to the MPSA.

Prepared by: Zabih Zaca, Senior Civil Engineer

Reviewed by: Kul Sharma, City Engineer

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

RESOLUTION 2012-\_\_\_\_\_

APPROVING A MASTER PROFESSIONAL SERVICES AGREEMENT (MPSA) WITH ASSOCIATED RIGHT OF WAY SERVICES, INC. (AR/WS) OF PLEASANT HILL, CALIFORNIA, TO PROVIDE RIGHT OF WAY ACQUISITION SERVICES FOR VARIOUS PROJECTS, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE TASK ORDER 1

WHEREAS, In accordance with Tracy Municipal Code, Section 2.20.140, on September 19, 2012, a "Master Request For Proposals" for right-of-way acquisition services was solicited from four firms known to possess the necessary expertise, and

WHEREAS, The City received proposals from six consultants on October 4, 2012, and

WHEREAS, Associated Right of Way Services, Inc., (AR/WS) of Pleasant Hill, California, was found to be the most qualified consultant to provide the necessary services, and

WHEREAS, AR/WS has submitted a proposal to provide the services associated with the acquisition of rights-of-ways at competitive rates and is familiar with the City's and CalTrans requirements, and

WHEREAS, Task Order 1 to this MPSA is approved for services required for the Wastewater Treatment Plan Effluent Pipeline Project for a not to exceed amount of \$166,500 on a time and material basis, and

WHEREAS, There is no impact to the General Fund. The cost of services will be paid from Capital Improvement Projects which requires acquisition of rights-of-way and easements;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves a Master Professional Services Agreement with Associated Right of Way Services, Inc. of Pleasant Hill, California, for providing right-of-way acquisition services for various projects and authorize the Mayor to execute the Agreement, and further authorize the City Manager to execute Task Order 1 to the MPSA.

\*\*\*\*\*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT  
FOR ACQUISITION OF RIGHT OF WAY SERVICES**

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 **ASSOCIATED RIGHT OF WAY SERVICES, INC.** (hereinafter "CONSULTANT").

**RECITALS**

- A. CONSULTANT is a license real estate professional and has the qualifications, skill and experience to provide required services in according to the terms of this Agreement.
- B. CONSULTANT services are needed to provide the Acquisition Right of way Services.
- C. On April 16, 2012, CITY issued a Request For Proposal (RFP) for the PROJECT. The City received six (6) proposals. After a competitive process, CONSULTANT'S proposal was determined to be the most responsive to the city's FRP. 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. On November 20, 2012 the city Council authorized the execution of this Agreement, pursuant to resolution No. 2012-\_\_\_\_\_.

**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: William Tannenbaum. 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



**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
FOR ACQUISITION OF RIGHT OF WAY SERVICES**

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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.

The term of this agreement is for a period of three (3) years and can be further extended for two (2) years.

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. Billing rates may be adjusted in an amount not to exceed (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.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
FOR ACQUISITION OF RIGHT OF WAY SERVICES**

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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, liability, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of, CONSULTANT performance of services under this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City.
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.



**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
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- 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.
- 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.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
FOR ACQUISITION OF RIGHT OF WAY SERVICES**

Page 5 of 6

**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:  
William Tannenbaum  
Associated Right of Way Services, Inc  
2300 Contra Costa Blvd., Ste 525  
Pleasant Hill, CA 94523

**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.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
FOR ACQUISITION OF RIGHT OF WAY SERVICES**

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**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.

**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  
Associated Right of Way Services, Inc.

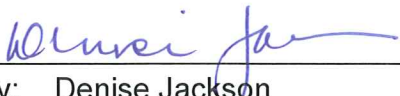
\_\_\_\_\_  
By: Brent H. Ives  
Title: Mayor  
Date: \_\_\_\_\_

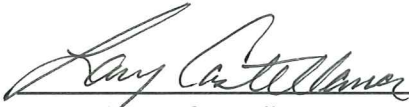
Attest:

\_\_\_\_\_  
By: Sandra Edwards  
Title: CITY CLERK  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Denise Jackson  
Title: Vice President  
Date: 11/7/12  
Fed. Employer ID No. 94 3096127

  
\_\_\_\_\_  
By: Larry Castellanos  
Title: Secretary  
Date: 11/7/12



## EXHIBIT 'A'

### SCOPE OF SERVICES

#### General Project Approach

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##### Project Managements – General Consultation

- Establish work process with City of Tracy and schedule, manage and coordinate all real estate and relocation assistance functions.
- On-going consultation, meetings and recurring project management duties.
- Coordinate with City of Tracy, subcontractors (fixtures & equipment appraiser, business goodwill appraiser, and independent review appraiser), property acquisition agent, relocation advisor and legal counsel.
- Assistance with analyzing various courses of action. Work with City of Tracy to resolve problems and recommend solutions.
- Contract management, budget monitoring and control, and project reporting.
- Implementation and compliance with Uniform Act guidelines.
- Maintaining accurate records. Monitor work plan and work flow.
- Assist with the preparation of Caltrans Right of Way Certification for City of Tracy review and approval, if needed.

##### Appraisal Services

- Appraisals to be provided as one original with two copies addressed and delivered to City of Tracy staff as directed.
- The initial appraisal budget does not include the time or expense of a damages analysis for properties that suffer a decrease in value due to the proposed acquisition and/or the construction of the project. The budget does not include a benefits study where benefits may or may not off-set some or all of the damages to a property. Should it be determined there are damages and/or benefits to properties, additional services will be billed on an hourly basis following a discussion with the City of Tracy and amendment to our agreement. Dedication requirements or other circumstances may also require a need for additional sets of data, supplemental meetings, research, analysis and/or alternative conclusions.
- Appraisals to be prepared in accordance with California Eminent Domain Law, California Government Code Section 7260 et seq., Uniform Standards of Professional Appraisal Practice requirements, except as jurisdictionally exempt. [(OR if applicable), the Caltrans Right of Way Manual, and 49 CFR, Part 24.]
- The owner or a designated representative will be invited by the appraiser to accompany him/her during the inspection of the property.

- Prepare appraisal reports in a Summary Appraisal Report format in accordance with Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2 (b).
- Appraisal is for the “Fair Market Value” of the property as per California Code of Civil Procedure, Section 1263.320.
- The appraiser will issue the necessary public acquisition informational brochure to all owners.
- The market value of the property taken will not include any increase or decrease in the value of the property that is attributable to any of the following:
  - The project for which the property is taken;
  - The eminent domain proceeding in which the property is taken;
  - Any preliminary actions of the acquiring authority relating to the taking of the property.
- Appraiser will not give consideration to, nor include in their appraisals, any allowance for relocation benefits of personal property.
- [If applicable] The appraiser will work directly with the Review Appraiser.
- The appraisal of real estate does not include business or goodwill analyses or conclusions. Any loss of goodwill valuations should be performed by others under direct contract to City of Tracy.
- Updated values when requested. (Optional Service)
- If revisions are made to the property requirements during the appraisal process or upon completion of the report appraisal time to address these revisions will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- Expert witness related services including preparation for and appearances at depositions, court, arbitrations / mediations, hearings, and testimony will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- If properties are split or added, additional appraisal reports may be required. (Optional Service)

#### Client Obligations (Appraisal)

- Adequate appraisal maps.
- Legal descriptions and plat maps.
- Design information and construction plans.
- Current title reports for each ownership.
- Legal opinions as necessary.
- Environmental reports.

#### Appraisal Review

Appraisal review required and to be performed by others under subcontractor agreement. AR/WS proposes to subcontract with a qualified independent review appraiser for these services.

- Upon receiving appraisal reports, an office review of the reports using the various standards prescribed by the Federal and State Uniform Acts, Federal Highway Administration, Caltrans appraisal procedures, Uniform Standards of Professional Appraisal Practice (USPAP) and the California Eminent Domain codes will be completed.
- A checklist identifying the various requirements of the appraisal reports will be used to ensure that the reports contain all of the prescribed requirements.
- Review appraiser will prepare a summary of the appraisal process and provide comments regarding any omissions or problems with the reports, such as lack of reasonable support for the appraisal conclusions.
- Review appraiser will make initial call to the appraiser to inform the appraiser that the reports are being reviewed. Comments will be provided to the appraiser for discussion.
- Schedule a field review and if needed schedule a meeting with the appraiser.
- Communicate with the City of Tracy to clarify potential issues, resolve problems and notify City of Tracy of progress.
- If required by City of Tracy, review comments will be provided to City of Tracy at the same time they are sent to the appraiser.
- Upon satisfactory completion of the appraisal reports, a review certificate report will be prepared.

#### Negotiations/Acquisitions

- AR/WS to prepare acquisition documents. Said documents include, but are not limited to, offer letter, appraisal summary statement and summary of the basis for just compensation, summary statement pertaining to the acquisition of real property or an interest therein, purchase agreement, deed, public acquisition brochure and goodwill information sheet (if not addressed in City of Tracy brochure).
- Per Section 102 of the California Streets and Highways code a copy of the appraisal report will be provided to the property owner.
- If non-residential lessees or tenants are in occupancy, AR/WS will prepare, if necessary, offset statements or similar documentation to attempt to identify lessor/lessee interests in improvements and relevant lease terms.
- All acquisition documents to receive City of Tracy's written approval as to form prior to use in the field. If agreement with all owners and other required interests cannot be reached, AR/WS will advise City of Tracy that negotiations have reached an impasse. The City of Tracy will consider scheduling of an action in eminent domain including the required public necessity hearing. AR/WS will provide condemnation support as needed and requested, budget allowing. AR/WS will initiate and maintain individual acquisition files.



- If settlement with owners and other required interests is reached pursuant to the City of Tracy approved appraisal or City of Tracy approved administrative settlement, AR/WS will prepare a Memorandum of Settlement for transmittal to City of Tracy. If an administrative settlement appears to be prudent, AR/WS will prepare a settlement discussion memorandum reviewing the issues. This memorandum will require City of Tracy written approval before implementation of any settlement agreement. AR/WS will establish with City of Tracy a process of coordinating escrow closings and reviewing escrow instructions. Where there are escrow closings, preparation of escrow instructions will be completed by title company. Approval of conditions of title and escrow instructions, including but not limited to, “subject to” title exceptions, will be done by City of Tracy.
- All discussions for the acquisition of property or an interest therein will be directed to result in the payment of just compensation.
- AR/WS will make every reasonable effort to acquire property on behalf of the City of Tracy expeditiously through agreement with its owner and to avoid litigation. This may necessitate greater levels of effort in the negotiations phase and, where appropriate, should continue after eminent domain has been initiated. City of Tracy will provide ongoing feedback to AR/WS as to authorization for settlements.
- Escrow and title coordination services. AR/WS to assist City of Tracy with escrow and title work, escrow monitoring and scheduling.

#### Client Obligations (Acquisition)

- Written approval of all acquisition documents in a timely manner.
- Direction as to administrative settlements, negotiating authority and condition of title acceptance.
- Providing any formats to be used by AR/WS on City of Tracy’s behalf.
- Selection of title company.
- Review and approval of title company prepared escrow instructions including acceptable condition of title.

#### Relocation Planning (If Needed)

AR/WS will prepare a Relocation Impact Study and Last Resort Housing Plan (“Plan”) and Cost Estimate for the project in accordance with state law. The Plan will be prepared as a planning tool for the City of Tracy and as an informative document for the community and project occupants. The Draft Plan will be circulated for a 30-Day Review and Comment Period as required by law. Comments to the Draft Plan will be incorporated into the Final version of the Plan that will be submitted to City of Tracy for approval prior to the initiation of relocation activities.

AR/WS staff will attempt to meet with each affected project occupant in order to determine occupant characteristics and replacement site needs. Research on available replacement sites in the area will

provide the necessary information to determine the availability of replacement sites in the area. The Plan will be developed to include the following information:

- General Project Information
- Project Occupant Characteristics
- Replacement Site Resources
- A Detailed Description of the City of Tracy’s Relocation Assistance Program
- A Budget Estimate of Relocation Costs

Relocation Assistance Services (If Needed)

AR/WS will provide the City of Tracy with a project manager and supporting staff that will implement the City of Tracy’s Relocation Program in a timely, professional manner. Relocation advisors will act as a liaison between the City of Tracy and the affected occupants. This relationship provides that relocation advisors will work closely with City of Tracy staff to implement a fair and equitable Relocation Program and, simultaneously provide affected occupants with continuing information as to their rights as displaced persons and assistance to replacement sites.

Housing Valuation Studies establish the maximum Replacement Housing Payments that are available for each household. AR/WS will research the area housing market and will develop a Housing Valuation Study to determine the cost of comparable replacement housing for each type of housing need. Housing Valuation Studies will be reviewed every 90 days to determine whether or not housing costs have fluctuated. If the cost for available, comparable replacement housing has increased, new Housing Valuation Studies will be prepared. Additional budget may be required to update or prepare new Housing Valuation Studies.

Site Searching Services are essential for the successful relocation of residential households and businesses. AR/WS staff researches housing and business replacement sites through area brokers, classified ads, driving surveys, available property database services and relationships with property management companies. Our goal is to provide continuing site availability information to each affected occupant.

Residential Relocation Assistance Services will be available to each household. These services include the following types of assistance.

- A relocation advisor will be assigned to each project household. The advisor will meet with each household to determine household characteristics, household income, special assistance needs, and replacement site needs.
- The relocation advisor will be responsible to provide each household with the following documentation when appropriate:
  - General Information Notice
  - Notice of Eligibility
  - Letter of Entitlement



→ Referrals to Replacement Sites

→ 90-Day Notice to Vacate (to be signed by the City of Tracy)

- The relocation advisor will secure necessary documentation from the household and other sources to determine household income, occupant status and replacement site needs. This information will be used to determine the maximum Replacement Housing Payment available for each household.
- The relocation advisor will meet with each household and will present the household with a relocation assistance package that includes a Letter of Entitlement, Referrals to Replacement Sites, a Relocation Assistance Handbook, and other helpful information. The advisor will explain the Relocation Assistance Program and eligibility requirements for relocation payments to each displacee and will be available throughout the project to respond to occupant questions and to provide continuing Relocation Advisory Assistance.
- The relocation advisor will prepare all claim forms and will secure all necessary documentation and signatures for the claims. The advisor will then forward completed claims and documentation to the City of Tracy for processing. The advisor will deliver payments to the households and will secure a signature to confirm payment.
- Relocation advisors will work closely with each household to identify any special needs related to health, mobility and language; and will provide additional advisory assistance, as needed, to minimize hardships.
- The relocation advisor will provide each household with information related to the City of Tracy's Appeal and Grievance Process.
- The relocation advisor will provide continuing assistance to identify and secure replacement housing.
- The relocation advisor will establish and maintain a detailed relocation file for each household in order to document specific relocation efforts. Each file will include a relocation diary to track all contact with occupants.
- The relocation advisor will inspect replacement dwellings to determine whether the properties meet Decent, Safe and Sanitary (DS&S) standards as defined in State relocation regulations.
- The relocation advisor will provide continuing information to City of Tracy staff to keep staff apprised of relocation efforts and household vacate status.
- The relocation advisor will assist in preparing a Relocation Appeal Package for a claimant in the event of appeal. (Optional Service.)

Business Relocation Assistance Services will be available to the affected business occupants. These services include:

- A relocation advisor will be assigned to each affected business. The advisor will meet with each business representative to determine the business structure, market area, personal property, and replacement site needs.
- The relocation advisor will be responsible to provide each business with the following documentation when appropriate:
  - General Information Notice
  - Notice of Eligibility
  - 90-Day Notice to Vacate (to be signed by the City of Tracy)
- The relocation advisor will work with area brokers, the City of Tracy and other resources to identify available replacement sites that might accommodate the affected businesses.
- The relocation advisor will work closely with each business in order to secure estimated relocation costs.
- The relocation advisor will prepare claims for payment and will present them to the business owners for signature. The advisor will submit all signed claims and necessary documentation to the City of Tracy for review and processing.
- The relocation advisor will establish and maintain a detailed relocation file for each business and document specific relocation efforts. Each file will include a relocation diary to track contact with occupants.
- The relocation advisor will provide continuing information to City of Tracy staff to keep staff apprised of relocation efforts and vacate status.
- The relocation advisor will assist in preparing a Relocation Appeal Package for a claimant in the event of appeal. (Optional Service.)
- Relocation services do not include negotiation/acquisition services, which include, but are not limited to real property, fixtures and equipment, or loss of business goodwill.

#### Client's Obligations (Relocation)

- The City of Tracy is responsible to provide assistance to each affected project occupant in a timely manner in accordance with applicable laws and regulations.
- AR/WS will submit documents and claims to the City of Tracy for review and approval. It is important that documents and claims be approved and processed in a timely manner in order to avoid a hardship for the affected occupants. "Rush" payments will be limited, but may be required at times during the project.
- The City of Tracy will notify AR/WS in writing if there are any changes in project scope or project schedule.

- The City of Tracy has funds available to proceed with this project and to provide Relocation Assistance to affected occupants on a timely basis.

#### Legal and Related Support Services

AR/WS will work with Legal Counsel to coordinate legal proceedings. AR/WS will provide court and/or appeals related services, including but not limited to depositions, court appearances, arbitrations / mediations, hearings, testimony, and preparation for such activities, in connection with any service provided to the City of Tracy.

#### Administrative Support

AR/WS will provide a fully staffed in-house clerical team to provide word processing, reports, project tracking and budget control for all AR/WS services.

## AR/WS Fee Schedule 2012

<u>SERVICE</u>	<u>HOURLY RATE</u>
Principal Consultant	\$185.00
Managing Consultant	\$175.00
Consultant I	\$140.00
Consultant II	\$125.00
Consultant III	\$110.00
Right of Way Technician	\$75.00
Administrative Support	\$60.00
Appraisal Reports	Lump Sum
Appraisal Services (Hourly)	\$185.00
Subcontractors	Cost + 5%
Depositions, Court Appearances, Arbitrations / Mediations, Hearings, and Testimony (including preparation)	\$275.00

*Fees include direct and indirect expenses and profit.*



## General Assumptions and Limitations

1. ARWS estimated budget assumes timely assignment by Client of all appraisals, acquisition parcels and relocation cases. Deferring or "piece meal" assignments adds to level of effort and costs.
2. Client to provide written appraisal approval. Client to sign Offers of Just Compensation as reflected in the Appraisal Summary Statement(s). Client letterhead to be used for offers and significant correspondence, including Notices of Decision to Appraise and acquisition and relocation notices. Initiation of acquisition work assumes that Client has secured any required environmental certification as well as any federal or state approvals to begin right of way services.
3. All services to be provided pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable state and federal laws, related guidelines and regulations.
4. Client to provide adequate appraisal maps, plat maps, construction plans, mitigation measures, preliminary title reports, legal descriptions and deed sheets (*for easements*).
5. Unless noted otherwise, pre-acquisition activities for soliciting Permits to Enter for soils/testing/contract work, Rights of Entry, Agreements for Possession and Use are not included.
6. Except for appraisals, which are typically charged lump sum; this is a "time charged" contract in accordance with the ARWS Fee Schedule. Material changes to the contracted Scope of Work after services begin will add to the original budget/contract amount. Material changes, for which ARWS is not responsible, include, but are not limited to, addition of new parcels, schedule changes, new and revised legislation, regulations, statutes or ordinances by any public entity or legislature, extended negotiations, multiple vestings, title complications, relocation complications, hard to house households, unrecorded claims, extended site searches, eminent domain actions, design changes, revised or updated appraisals. This Agreement is not a guarantee of property rights requested or displacements completed for a fixed budget amount. Unless otherwise agreed, preparation for or attendance at depositions, relocation appeals, expert witness testimony or court appearances are not included in the budget.
7. Budget to be reviewed periodically. ARWS may reapportion budget allocations among categories. Team composition may be adjusted by ARWS.
8. Escrow costs and title reports shall be paid by Client. Escrow instructions to be prepared by Title Company with ARWS coordination. Client to determine acceptable condition of title and what, if any, title exceptions to take "subject to". ARWS to assist and consult as requested.
9. Upon written notice from Client, ARWS will suspend, delay, or interrupt all or a part of its services. In such event, ARWS will resume services upon written notice from Client. An extension of time and added costs will be mutually agreed upon within a reasonable time following re-initiation of all or any part of services.
10. Client will give prompt notice to ARWS whenever Client observes or becomes aware of any development that affects the scope or timing of ARWS' services, or any defect in the work of ARWS.
11. Unless otherwise noted, preparation of Caltrans Right of Way Certification documents is not included in the Scope of Services.
12. ARWS understands that construction and design plans are subject to some change. ARWS will accommodate changes in the property requirements, including number or parcels, acquisitions and relocations. Changes in proposed acquisitions after appraisals have begun or negotiations/relocations have commenced will add time and expense to assignments. The parties acknowledge that such revisions may add to costs.
13. ARWS reviews and adjusts billing rates and fees from time to time, generally as of January 1<sup>st</sup> of each year, but no more than once annually. Any rate adjustments will be reflected in the ARWS monthly invoice.
14. Except for Client's obligations to pay for services rendered, no liability will attach to either ARWS or Client from delay in performance or non-performance caused by circumstances or events beyond the reasonable control of the party affected, including, but not limited to, acts of God, fire, flood, explosion, war, request or intervention of a governmental authority, court order, labor relations, accidents, unanticipated delays or inability to obtain materials, equipment, fuel or transportation.
15. Once ARWS has completed an appraisal, the fee for that appraisal is due and payable upon Client's receipt of invoice. If any formal or informal appraisal review requires additional appraisal services after ARWS has completed an appraisal, these additional appraisal services will be billed on a time-charged basis in accordance with the ARWS Fee Schedule.
16. ARWS submits invoices on a monthly basis. If ARWS is a sub-consultant to a prime consultant, that prime consultant agrees to bill its Client within thirty (30) calendar days of receipt of the ARWS monthly invoice.

**CITY OF TRACY**  
**TASK ORDER NO. 1 OF**  
**MASTER PROFESSIONAL SERVICES AGREEMENT**  
**ACQUISITION OF RIGHT OF WAY SERVICES**  
**For Wastewater Treatment Plant Pipeline Easement**  
**CIP 74083**

THIS Task Order is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and ASSOCIATED RIGHT OF WAY SERVICES, INC. (hereinafter "CONSULTANT").

**RECITALS**

- A. CONSULTANT services are needed to provide acquisition of right of way services for Wastewater Treatment Plant Pipeline Easement.
- B. As approved by the City Council on November 20, 2012, pursuant to Council Resolution No. 2012-\_\_\_\_\_. City entered into a Master Professional Services Agreement with Associated Right of Way Services for providing acquisition of right way services.
- C. At the request of the City and in compliance with the provision of the Tracy Municipal Code section 2.20, Consultant submitted a proposal to perform services described in this Task Order No. 1 as described in Exhibit A of 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 \$163,500.

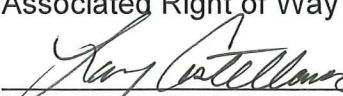
5. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the CONSULTANT and the CITY. This Task Order shall inure to the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

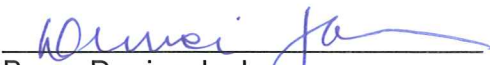
CONSULTANT  
Associated Right of Way Services, Inc.

\_\_\_\_\_  
By: Leon Churchill, Jr.  
Title: City Manager  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Larry Castellanos  
Title: Secretary  
Date: 11/7/12  
Fed. Employer ID No. 94 3096127

Attest:

\_\_\_\_\_  
By: Sandra Edwards  
Title: CITY CLERK  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Denise Jackson  
Title: Vice President  
Date: 11/7/12

Approved As To Form:

\_\_\_\_\_  
By: Daniel G. Sodergren  
Title: CITY ATTORNEY  
Date: \_\_\_\_\_



## **EXHIBIT A Scope of Work**

ASSOCIATED RIGHT OF WAY SERVICES, INC., (AR/WS) will provide right of way project management, real estate appraisal and property acquisition services for the City of Tracy. All AR/WS services will comply with pertinent sections of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Our Scope of Work and Budget Estimate is based on the following assumptions:

- There are a total of 16 parcels that are potentially affected. We have assumed the unknown and Califa properties identified on the Budget Estimate are under the same ownership. Therefore there are a total of 15 appraisals and acquisitions.
- There are no federal funds involved in this project
- The property rights include permanent and temporary construction easements
- There is no personal property that will require relocation outside of the proposed easement areas
- The acquisitions or the construction of the project do not cause damages to the remainder properties
- There are no improvements or crops affected by the proposed acquisitions

### **PROJECT MANAGEMENT – GENERAL CONSULTATION**

- Establish work process with Client and schedule, manage and coordinate all real estate appraisal and acquisition functions.
- On-going consultation, meetings and recurring project management duties.
- Coordinate with Client, any subcontractors, design engineer, surveyor and legal counsel.
- Assistance with analyzing various courses of action. Work with Client to resolve problems and recommend solutions.
- Contract management, budget monitoring and control, and project reporting.
- Implementation and compliance with Uniform Act guidelines.
- Maintaining accurate records. Monitor work plan and work flow.

### **APPRAISAL SERVICES**

- Appraisals to be provided as one original with two copies addressed and delivered to Client staff as directed. Property rights to be appraised include permanent and temporary construction easements.



- The initial appraisal budget does not include the time or expense of a damages analysis for properties that suffer a decrease in value due to the proposed acquisition and/or the construction of the project. The budget does not include a benefits study where benefits may or may not off-set some or all of the damages to a property. Should it be determined there are damages and/or benefits to properties, additional services will be billed on an hourly basis following a discussion with the Client and amendment to our agreement. Dedication requirements or other circumstances may also require a need for additional sets of data, supplemental meetings, research, analysis and/or alternative conclusions.
- Appraisals to be prepared in accordance with California Eminent Domain Law, California Government Code Section 7260 et seq., Uniform Standards of Professional Appraisal Practice requirements, except as jurisdictionally exempt.
- The owner or a designated representative will be invited by the appraiser to accompany him/her during the inspection of the property.
- Prepare appraisal reports in a Summary Appraisal Report format in accordance with Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2 (b).
- The appraisal reports will be completed within approximately 8-10 weeks upon receipt of Client's written authorization to proceed, adequate appraisal maps, preliminary title reports, and design plans.
- Appraisals are for the "Fair Market Value" of the property as per California Code of Civil Procedure, Section 1263.320.
- The market value of the property taken will not include any increase or decrease in the value of the property that is attributable to any of the following:
  - The project for which the property is taken;
  - The eminent domain proceeding in which the property is taken;
  - Any preliminary actions of the acquiring authority relating to the taking of the property.
- Appraiser will not give consideration to, nor include in their appraisals, any allowance for relocation benefits of personal property.
- The appraisal of real estate does not include business or goodwill analyses or conclusions. Any loss of goodwill valuations should be performed by others under direct contract to Client.
- Updated values when requested. (Optional Service)
- If revisions are made to the property requirements during the appraisal process or upon completion of the report appraisal time to address these revisions will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- Expert witness related services including preparation for and appearances at depositions, court, arbitrations / mediations, hearings, and testimony will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- If properties are split or added, additional appraisal reports may be required. (Optional Service)

## CLIENT OBLIGATIONS (APPRAISAL)

- Adequate appraisal maps.
- Legal descriptions and plat maps.
- Design information and construction plans.
- Current title reports for each ownership.
- Legal opinions as necessary.
- Environmental reports.

## NEGOTIATIONS / ACQUISITIONS

- AR/WS to prepare acquisition documents. Said documents include, but are not limited to, offer letter, appraisal summary statement and summary of the basis for just compensation, summary statement pertaining to the acquisition of real property or an interest therein, purchase agreement, deed, public acquisition brochure and goodwill information sheet (if not addressed in Client brochure).
- AR/WS will negotiate to acquire the identified permanent and temporary construction easementst. We are assuming there will be negotiations on up to 15 larger parcels comprised of 16 properties. Clearance of leasehold interests or negotiations for subordination or other third party releases or approvals are not included. However these services can be provided if necessary budget allowing or for additional budget, if necessary.
- All acquisition documents to receive Client's written approval as to form prior to use in the field. If agreement with all owners and other required interests cannot be reached, AR/WS will advise Client that negotiations have reached an impasse. The Client will consider scheduling of an action in eminent domain including the required public necessity hearing. AR/WS will provide condemnation support as needed and requested, budget allowing. AR/WS will initiate and maintain individual acquisition files.
- If settlement with owners and other required interests is reached pursuant to the Client approved appraisal or Client approved administrative settlement, AR/WS will prepare a Memorandum of Settlement for transmittal to Client. If an administrative settlement appears to be prudent, AR/WS will prepare a settlement discussion memorandum reviewing the issues. This memorandum will require Client written approval before implementation of any settlement agreement. AR/WS will establish with Client a process of coordinating escrow closings and reviewing escrow instructions. Where there are escrow closings, preparation of escrow instructions will be completed by title company. Approval of conditions of title and escrow instructions, including but not limited to, "subject to" title exceptions, will be done by Client.
- All discussions for the acquisition of property or an interest therein will be directed to result in the payment of just compensation.
- AR/WS will make every reasonable effort to acquire property on behalf of the Client expeditiously through agreement with its owner and to avoid litigation. This may necessitate greater levels of effort in the negotiations phase and, where appropriate,

should continue after eminent domain has been initiated. Client will provide ongoing feedback to AR/WS as to authorization for settlements.

#### **CLIENT OBLIGATIONS (ACQUISITION)**

- Written approval of all acquisition documents in a timely manner.
- Direction as to administrative settlements, negotiating authority and condition of title acceptance.
- Providing any formats to be used by AR/WS on Client's behalf.
- Selection of title company.
- Review and approval of title company prepared escrow instructions including acceptable condition of title.
- Time limit for the completion of this project is 52 weeks upon receipt of the Client's written authorization to proceed.

#### **ADDITIONAL WORK**

AR/WS will provide court and/or appeals related services, including but not limited to depositions, court appearances, arbitrations / mediations, hearings, testimony, and preparation for such activities, in connection with any service provided to the Client. These services, if requested, are not included in the AR/WS Budget Estimate and would be billed at the applicable current AR/WS hourly rate in accordance with the Fee Schedule.

#### **ADMINISTRATIVE SUPPORT**

AR/WS will provide a fully staffed in-house clerical team to provide word processing, reports, project tracking and budget control for all AR/WS services.



**EXHIBIT B  
Budget**

<b>Client:</b>	City of Tracy		
<b>Project:</b>	Tracy WWTP Pipeline Easements		
<b>Parcels:</b>	<b>APN</b>	<b>Owner</b>	<b>Easements</b> PE=Permanent Easement TCE=Temporary Construction Easement
	212-160-010	Rojas	PE TCE
	213-050-007	Riella Ranchos	TCE
	213-050-002	Pombo	TCE
	213-040-006	Bacchetti	TCE
	213-040-005	Bacchetti	TCE
	213-030-015	Pescadero Reclaim Dist.	PE TCE
	213-030-001	Bacchetti Family Tr	PE TCE
	213-020-036	Fagundes	TCE
	213-020-033	Fagundes	TCE
	213-020-020	Perry	TCE
	213-020-011	Stephen Pellegri & Sons	TCE
	213-020-003	Perry	PE TCE
	213-020-004	Alves	TCE
	213-020-022	Pescadero Reclaim Dist.	PE
	213-130-006	Unknown	PE
	213-130-006	Califia	PE TCE
<b>Assignment Summary:</b>	Provide services necessary to acquire easements as indicated above. Services include project management, real estate appraisals and property acquisition services.		

<b>Categories:</b>	<b>Scope of Services:</b>	<b>Budget</b>
1. Project Management (Time Charged)	Includes general consultation and coordination as needed and requested up to budget allocation. Work plan development and oversight. Coordination of other experts and sub consultants, if needed. Staff and project team meetings. Budget anticipates up to one project meeting per month over 12 months and additional meetings conferences and consultation as budget permits. Prepare and update status reports.	\$13,000
2. Appraisals (Lump Sum)	This scope of service includes up to 15 acquisition appraisals. It is assumed that severance damages and/or benefits are relatively minor. It is also assumed that all	\$58,500

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	parcels will be assigned simultaneously. Appraisal analysis of any other significant damages, benefits or major site improvements may require modification to the budget.	
3. Negotiations / Acquisitions (Time Charged)	It is assumed there area up to 15 individual negotiations. We have assumed there are no leasehold interests which need to be cleared. Clearance of leasehold interests or negotiations for subordination or other third party releases or approvals are not included. Budget includes negotiations for all parcels from vested owners. Condemnation assistance to legal counsel and others, pre-litigation support and legal liaison are not included in this Budget Estimate.	\$85,000
4. Administrative Support and Project Tracking (Time Charged)	Administrative support for all services listed above.	\$7,000
<b>Estimated Budget Total:</b>		<b>\$163,500.00</b>

Start Requirements:	Agreement for Professional Services ( <i>signed contract</i> ) – Notice to Proceed.
Ending:	A. Submittal of appraisal reports. B. Negotiations are concluded upon delivery of Memorandum of Settlement to Client or advisory from AR/WS to Client that negotiations have reached an impasse and eminent domain should be considered.
NOTES:	
<ol style="list-style-type: none"> <li>1. Figures are based on information provided to AR/WS as of the date of this estimate.</li> <li>2. Assumes CEQA, and if necessary, NEPA compliance has been met.</li> <li>3. Subject to AR/WS Assumptions and Limitations, contained herein.</li> <li>4. The Budget has been prepared based upon 8-month project duration. An extended or reduced project schedule will increase the estimated budget.</li> <li>5. A 20% contingency is recommended but is not included in the above figures.</li> </ol>	

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## AR/WS Fee Schedule 2012

<u>SERVICE</u>	<u>HOURLY RATE</u>
Principal Consultant	\$200.00
Managing Consultant	\$185.00
Consultant I	\$150.00
Consultant II	\$130.00
Consultant III	\$115.00
Right of Way Technician	\$80.00
Administrative Support	\$65.00
Appraisal Reports	Lump Sum
Appraisal Services (Hourly)	\$200.00
Subcontractors	Cost + 10%
Depositions, Court Appearances, Arbitrations / Mediations, Hearings, and Testimony (including preparation)	\$275.00

*Fees include direct and indirect expenses and profit.*



## General Assumptions and Limitations

1. AR/WS estimated budget assumes timely assignment by Client of all appraisals, acquisition parcels and relocation cases. Deferring or "piece meal" assignments adds to level of effort and costs.
2. Client to provide written appraisal approval. Client to sign Offers of Just Compensation as reflected in the Appraisal Summary Statement(s). Client letterhead to be used for offers and significant correspondence, including Notices of Decision to Appraise and acquisition and relocation notices. Initiation of acquisition work assumes that Client has secured any required environmental certification as well as any federal or state approvals to begin right of way services.
3. All services to be provided pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable state and federal laws, related guidelines and regulations.
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5. Unless noted otherwise, pre-acquisition activities for soliciting Permits to Enter for soils/testing/contract work, Rights of Entry, Agreements for Possession and Use are not included.
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7. Budget to be reviewed periodically. AR/WS may reapportion budget allocations among categories. Team composition may be adjusted by AR/WS.
8. Escrow costs and title reports shall be paid by Client. Escrow instructions to be prepared by Title Company with AR/WS coordination. Client to determine acceptable condition of title and what, if any, title exceptions to take "subject to". AR/WS to assist and consult as requested.
9. Upon written notice from Client, AR/WS will suspend, delay, or interrupt all or a part of its services. In such event, AR/WS will resume services upon written notice from Client. An extension of time and added costs will be mutually agreed upon within a reasonable time following re-initiation of all or any part of services.
10. Client will give prompt notice to AR/WS whenever Client observes or becomes aware of any development that affects the scope or timing of AR/WS' services, or any defect in the work of AR/WS.
11. Unless otherwise noted, preparation of Caltrans Right of Way Certification documents is not included in the Scope of Services.
12. AR/WS understands that construction and design plans are subject to some change. AR/WS will accommodate changes in the property requirements, including number or parcels, acquisitions and relocations. Changes in proposed acquisitions after appraisals have begun or negotiations/relocations have commenced will add time and expense to assignments. The parties acknowledge that such revisions may add to costs.
13. AR/WS reviews and adjusts billing rates and fees from time to time, generally as of January 1<sup>st</sup> of each year, but no more than once annually. Any rate adjustments will be reflected in the AR/WS monthly invoice.
14. Except for Client's obligations to pay for services rendered, no liability will attach to either AR/WS or Client from delay in performance or non-performance caused by circumstances or events beyond the reasonable control of the party affected, including, but not limited to, acts of God, fire, flood, explosion, war, request or intervention of a governmental authority, court order, labor relations, accidents, unanticipated delays or inability to obtain materials, equipment, fuel or transportation.
15. Once AR/WS has completed an appraisal, the fee for that appraisal is due and payable upon Client's receipt of invoice. If any formal or informal appraisal review requires additional appraisal services after AR/WS has completed an appraisal, these additional appraisal services will be billed on a time-charged basis in accordance with the AR/WS Fee Schedule.
16. AR/WS submits invoices on a monthly basis. If AR/WS is a sub-consultant to a prime consultant, that prime consultant agrees to bill its Client within thirty (30) calendar days of receipt of the AR/WS monthly invoice.

AGENDA ITEM 3

REQUEST

**AUTHORIZE STREET NAME CHANGES FOR NAGLEE ROAD TO WEST VALLEY AUTO MALL ROAD WITHIN THE CITY LIMIT AND MACARTHUR DRIVE BETWEEN I-205 AND PESCADERO AVENUE TO OUTLET CENTER DRIVE, AUTHORIZE AN APPROPRIATION OF FUNDS TO CIP 73136 TO INSTALL NEW STREET NAME SIGNS ON I-205**

EXECUTIVE SUMMARY

The Auto Mall businesses, West Valley Mall, and the Outlet Center management has been coordinating with the City to replace the existing street directional signs on I-205 with new signs identifying highway exits to the Auto Mall and Outlet Center. After extensive coordination and numerous meetings with Caltrans, it was established that it can be accomplished by changing the existing names of the streets to new street names identifying with the Auto Mall and Outlet Center. Staff held two meetings with the businesses who will be potentially impacted with the proposed street name changes. While the written responses from large establishments, i.e., West Valley Mall, the Auto Mall and Outlet Center, were supportive, there was concern from other businesses present at the meetings about the loss of clients and cost of stationary. Approval of this agenda item will expedite installation of new direction signs on I-205 for the Auto Mall and Outlet Center.

DISCUSSION

General

For the past several years, the Auto Mall businesses, West Valley Mall, and the Outlet Center management located on MacArthur Drive and Pescadero Avenue has been pursuing installation of new directional signs on I-205 identifying exits to the Auto Mall, West Valley Mall, and Outlet Center. Staff has been working very closely with these business entities and the California Department of Transportation (Caltrans) to provide such signs on I-205. The City Council established a Capital Improvement Project – 73136, to install such directional signs with funding of \$450,000 available from RSP funds in FY 2013-14.

After numerous discussions and extensive coordination with both Caltrans and proponents of new signs, it was established that the new directional signs can only be allowed on I-205 if the names of the access streets to these business establishments are changed first. After further review of traffic circulation in these areas, it was established that the following street names need to be changed to accomplish the desired goals:



<u>Change Existing Street Name From</u>	<u>To New Street Name</u>
• Naglee Road (within existing City limits only)	West Valley Auto Mall Road (within existing City limits only)
• MacArthur Drive (between I-205 and Pescadero Ave.)	Outlet Center Drive (between I-205 and Pescadero Ave.)

The name for remaining portions of Naglee Road and MacArthur Drive can remain unchanged.

In addition to the Auto Mall, West Valley Mall, and the Outlet Center, the proposed street name changes will also impact other businesses whose addresses are listed on these streets. For example, all businesses in the Home Depot Center have Naglee Road address and the existing Chevron Gas Station east of the Outlet Center has a MacArthur Drive address.

To address any concerns of the business community which may be impacted by the proposed street name changes, two meetings were held. Separate notices (hand fliers) for both the meetings were delivered to individual businesses informing them of the date, time and place of these meetings.

A total of six businesses within the Home Depot Shopping Center area and one business from MacArthur Drive east of the Outlet Center attended the first meeting held at City Hall. No one showed up to the second meeting which was scheduled at the West Valley Mall. Attached is the list of business representatives who attended the first meeting (Attachment A). During the meeting it was explained that the intent of the street name change is to provide additional visibility to key retail areas, i.e., Auto Mall, West Valley Mall and the Outlet Center. It is expected that additional signage will bring driving customers to the West Valley Mall, Auto Mall and Outlet Center will also bring new customers to the neighboring shopping centers.

Staff received a letter of support from the West Valley Mall representing all businesses within the Mall area and a telephone message for support was received from the Outlet Center representing multiple businesses. A total of four letters of opposition including one from Home Depot were received from businesses around the Naglee Road area (Attachment B). In addition, all of the businesses present at the first meeting were against the proposed street name changes due to possible loss of customers and the cost of printing new stationary, business cards, etc.

At present, the Council of Governments (COG) is completing the I-205 auxiliary lane improvements for Caltrans from MacArthur Drive to Mountain House Parkway. The new directional signs identifying the proposed street name can be installed within the on-going I-205 auxiliary lane project areas. It is cost effective and expeditious to construct and install these signs under the existing construction contract for I-205 auxiliary lanes. The new signs, if constructed and installed later, will be more expensive and may require rigorous scrutiny and coordination from Caltrans if installed under a separate project.

The cost quoted by the I-205 auxiliary lane contractor for COG for these signs is well within the allocated funding for this project.

In order to accomplish installation of the new directional signs on I-205 for the City's Auto Mall, West Valley Mall, and the Outlet Center, City Council needs to approve the street name changes by resolution and authorize an appropriation of \$450,000 from the RSP Fund.

All business representatives who attended previous meetings held by staff have been notified of this agenda item and may be present at the City Council meeting to address their concerns.

#### Status of RSP Funds and its Impact to the Project

Previously the City Council has received presentation on a "way finding" and other directional signing program. Such a signage program can consist of two elements, small decorative type of signs placed on City street locations to direct people to places like "historical downtown" and "Grand Theatre Center for the Arts", and large freeway signs (i.e. Cal Trans green signs) directing people off the freeway. The smaller way finding signs are included in an approved CIP for \$435,000. An additional cost of \$450,000 has been identified for the large freeway signs but this amount was not included in the adopted CIP for FY 12/13. The project was however listed for FY 13/14 anticipating there would still remain several million in RSP funds that could be used for this purpose.

Since adoption of the FY 12/13 CIP, the City Council has taken two actions that have utilized RSP funds. The City Council appropriated \$1.2 million in CIP funds to put in a roadway in the Northeast Industrial Area (NEI) and the City Council has authorized an RFP for possible uses of the Schulte Road property ("Antenna Farm") should the City decided to acquire this property from the federal government. The City has received a 6 month extension to finalize this decision. However, until such a time, RSP funds in the amount of \$1,105,250 must be reserved for this purpose. After these actions there remains approximately \$700,000 in the RSP fund.

As such, should Council desire to appropriate funds in the amount of \$450,000 for the freeway directional signs, there will only be \$250,000 remaining in the RSP fund. Because of the subsequent actions regarding the NEI access road and the possible purchase of the Schulte Road property from the federal government, it is appropriate to ascertain from the City Council whether freeway directional signs should be funded at this time.

By early Spring, 2013, the Council should have responses to the RFP for possible alternative energy proposals for the Schulte Road property. It is possible that the selected proposer could upfront the acquisition costs of the property thereby releasing the RSP funds that have been reserved. It is also possible that a selected proposer could want the City acquire the property up front with the selected proposer paying the capital cost of the land through a lease on the property over a number of years. City Council has also directed the sale of the Chrisman Road site (see related Agenda Item)

and it is possible that City Council upon the sale of this property could direct the sale proceeds to the RSP fund. Sale of this property is likely over a year away.

Given the above, there are 3 options for the City Council to consider:

Option 1: Appropriate \$450,000 for freeway directional signs resulting in a balance of \$250,000 in the RSP fund

Option 2: Defer the decision to fund the freeway direction signs until adoption of the FY 13/14 CIP at which time a decision on the Schulte Road property acquisition will have been made.

Option 3: Eliminate the freeway directional signs as a CIP because the City Council does not desire to rename the necessary street segments to accomplish the new signage.

### STRATEGIC PLAN

This agenda item is consistent with the Council's approved Economic Development Strategy to achieve the following goals:

- Increase the employment opportunities and sales tax base in Tracy
- Ensure physical infrastructure and systems

### FISCAL IMPACT

There is no fiscal impact to the General Fund. Option 1 would appropriate \$450,000 from the RSP fund. Option 2 and 3 would not have any fiscal impact and there would be no expenditure of funds at this time. It should also be noted that the \$450,000 is the maximum costs of the freeway signs, it is anticipated that this cost could be less depending upon negotiations with Cal Trans.

### RECOMMENDATION

Staff recommends that City Council:

- 1) Select Option 1 and authorize an appropriation of \$450,000 from the RSP Fund to CIP 73136 to complete the street name change signs on I-205.
- 2) Authorize street name changes for Naglee Road to West Valley Auto Mall Road within the City limit, and Macarthur Drive between I-205 and Pescadero Avenue to Outlet Center Drive.

Prepared by: Kul Sharma, City Engineer  
Reviewed by: Andrew Malik, Development Services Director  
Approved by: Leon Churchill, Jr., City Manager

Attachments:

- A - List of businesses who attended the first meeting
- B - Letters of support
- C - Sketch showing the limits of the street name changes



**Ripon Bhatia**

---

**From:** Donaghy, Mike J. <Mike.Donaghy@rouseproperties.com>  
**Sent:** Thursday, March 29, 2012 1:46 PM  
**To:** Ripon Bhatia  
**Subject:** Naglee Road Name Change

March 29, 2012

Development & Engineering Services Dept.  
Attn: Ripon Bhatia

I am sorry that I will be unable to attend tonight meeting for public comment on the Naglee Road name change within the City Limits. I would however, like to endorse the change. West Valley Mall support changing Naglee Road to West Valley Auto Mall Road.

Thank you.

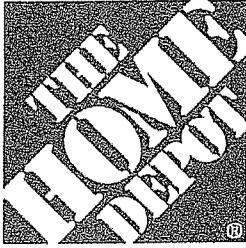
Mike Donaghy  
General Manager  
West Valley Mall  
3200 North Naglee Road  
Tracy, CA 95304  
[www.westvalleymall.com](http://www.westvalleymall.com)

Phone (209) 836-4091  
Fax (209) 836-4194  
[mike.donaghy@rouseproperties.com](mailto:mike.donaghy@rouseproperties.com)

[www.rouseproperties.com](http://www.rouseproperties.com)

**ROUSEPROPERTIES**

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3800 West Chapman Avenue • Orange, CA 92868  
(714)940-3500 • Fax: (714)940-3632

March 26, 2012

*Via Overnight Mail*

City of Tracy  
Development & Engineering Services  
333 City Center Plaza  
Tracy, CA 95376

Re: **Home Depot # 1020 Tracy, CA**  
**STREET NAME CHANGE NOTICE**

TO WHOM IT MAY CONCERN:

As you are well aware, The Home Depot has been a part of the Tracy community since 2002. We value and appreciate our role in the community and were disappointed to learn about the effort to change the address of our existing store without our input. Our investment in this community expanded in 2008 when we opened a Regional Distribution Center with over 364 new jobs in the local community.

We respectfully request that, if the street needs to be renamed kindly, consider renaming it as "HOME DEPOT WAY." As you know, the auto dealerships already have recognition with the surrounding streets being "AUTO PLAZA DRIVE" and "AUTO PLAZA WAY" however there is no recognition to any retailers in the area.

We are proud to call Tracy home and thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Erika M. Strawn".

Erika M. Strawn  
Counsel

5/13/12

TO RIDDHI BHATIA  
THIS IS REFERENCE TO YOUR LETTER RECEIVED  
RECENTLY RE: STREET NAME CHANGE - MAPLE RD.

AS YOU MIGHT KNOW, WE OPENED A NEW BUSINESS  
ON 2633 MAPLE RD. KNOWN AS RID CASH FOR CLOTHES.  
WE'VE WORKING MORE THAN 3 MONTHS TO BRING EVERYTHING  
TO COME INCLUDING BUT NOT LIMITED TO: LICENSES,  
NEW WALL WITH BULLET PROOF WINDOW 6x4 FT & BULLET  
PROOF WALLS, EQUIPMENT, MATERIALS, OUTDOOR SIGNS  
& MUCH MUCH MORE. OUR COST TO DO ALL WAS  
VERY HIGH & OUR ADS IN NEWSPAPERS & ALL OUR  
CARDS ARE ALL UNDER 2633 MAPLE RD. TO CHANGE  
ALL OF THESE IT WILL ADD ANOTHER BURDEN ON US  
& WE JUST OPENED ON 4/26/12.

BASED ON THESE FACTS I'M AGAINST CHANGING THE  
STREET NAME.

MY BEST REGARDS

VICTOR SAYEGIS  
(OWNER)

RECEIVED

MAY 17 2012

CITY OF TRACY  
D.E.S.



**Ripon Bhatia**

---

**From:** Anthony Parisek, D.D.S. <dds@dentistryrocks.com>  
**Sent:** Tuesday, March 27, 2012 12:55 PM  
**To:** Ripon Bhatia  
**Subject:** Naglee Road name change

Dear Ripon,

Re: Naglee Road name change

I am a dentist and have had a dental practice on Naglee Road for almost five (5) years. Please be advised that I **OPPOSE the Naglee Road name change** because it would create undue hardship on all of the businesses on Naglee because all of the work that has gone into building up online and offline brand awareness would be forfeited.

A road name change doesn't just mean that our business cards would have to be changed; that's easy. The problem with a road name change is that it could take years for the Internet to catch up with that change: right now Google shows my office on Naglee Road and all of my reviews and online identity are tied to that. Changing a few sign posts is not going to make me and my business's online identity suddenly show up on a different road. And Google is not the only company that has my online identity in their database; hundreds of other internet companies and search directories also have my address as being on Naglee Road.

Be aware that changing the name of Naglee Road would cause undue hardship for all businesses on Naglee in this already difficult economy and the businesses would likely go belly-up.

Sincerely,

Anthony Parisek, D.D.S.

---

**Anthony Parisek, D.D.S.**  
2750 Naglee Rd.  
Tracy, CA 95304  
Tel. (209) 833-0020  
Cell (209) 834-6863  
[www.dentistryrocks.com](http://www.dentistryrocks.com)



**A referral is the greatest compliment!**

If being a patient at Dr. Parisek's office has been a positive experience for you and you feel that a family member, friend or coworker would benefit from our services, we would appreciate a referral! Invite them to visit our website!

---

**Privilege and Confidentiality Notice:** This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. The foregoing applies even if this notice is embedded in a message that is forwarded or attached.

If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Ripon Bhatia

---

**From:** Nelson HU <drnelsonhu@sbcglobal.net>  
**Sent:** Tuesday, March 06, 2012 5:36 PM  
**To:** Ripon Bhatia  
**Subject:** Street Name Change - Naglee Rd

Dear Mr Bhatia,

I **strongly oppose** the Street Name Change for Naglee Rd.  
This will cause a lot of inconvenience for me and other businesses located on Naglee Road. My office is located on 2435 Naglee Rd.  
Some of the inconvenience to name a few would be to change all my stationary, my website and yellow page advertisement to a new address. With the economy as is this would incur additional cost plus other unforeseen issues I may not know about yet.

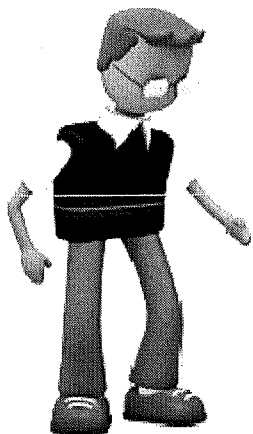
I am also curious to know why a name change is being proposed??

I hope logic and the understanding prevails and there is no change in the name to Naglee Road .

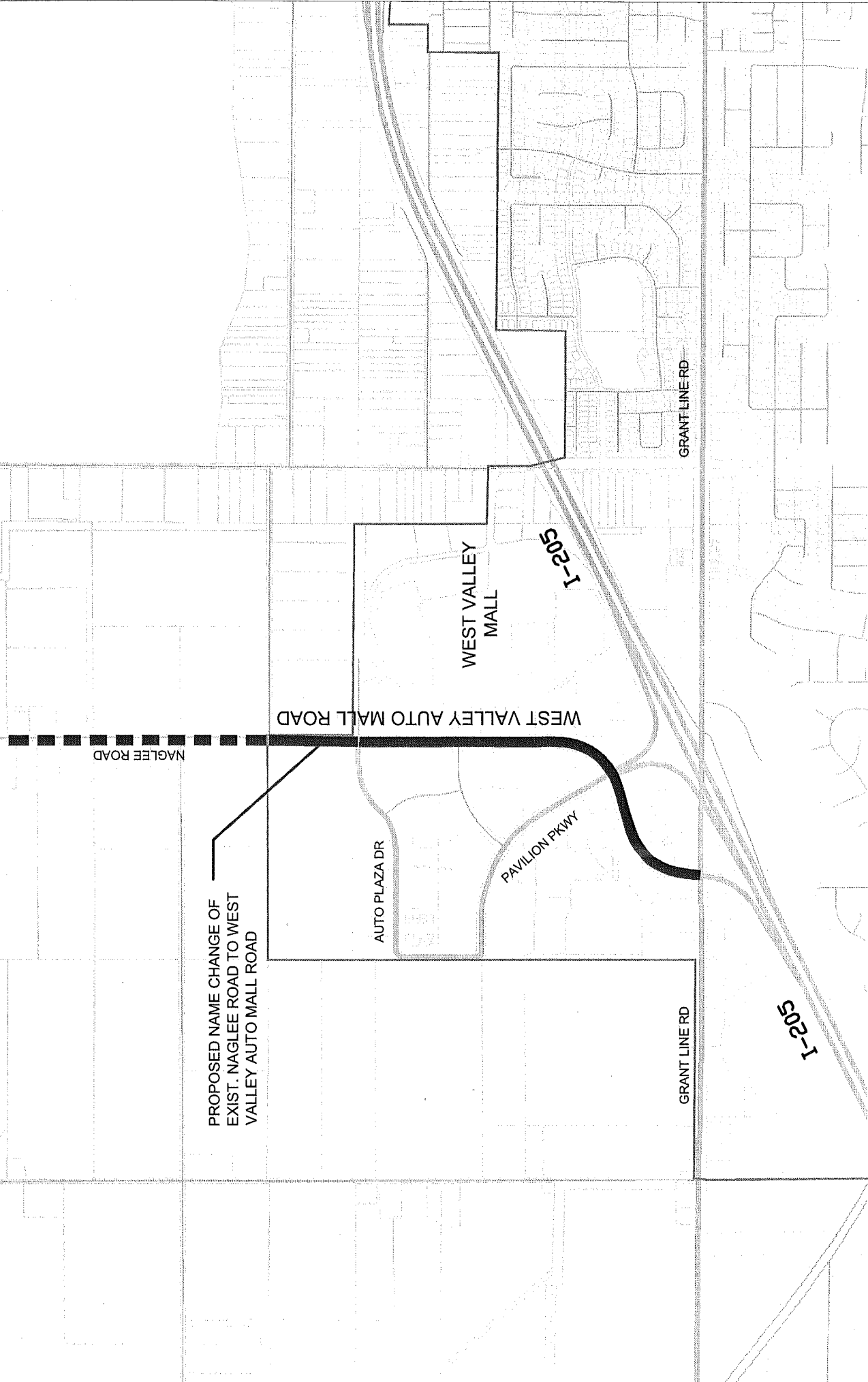
If there is anything I can do or email to anyone else in the city to oppose this plz let me know.

Thanks,

Nelson HU DDS  
New Smile Orthodontics  
Diplomate American Board of Orthodontics



# PROPOSED: WEST VALLEY AUTO MALL ROAD



NAGLEE ROAD

PROPOSED NAME CHANGE OF  
EXIST. NAGLEE ROAD TO WEST  
VALLEY AUTO MALL ROAD

WEST VALLEY AUTO MALL ROAD

WEST VALLEY  
MALL

AUTO PLAZA DR

PAVILION PKWY

GRANT LINE RD

GRANT LINE RD

I-205

I-205

# PROPOSED: OUTLET CENTER DRIVE

PROPOSED NAME CHANGE OF EXIST.  
MAC ARTHUR DRIVE TO OUTLET  
CENTER DRIVE

MAC ARTHUR DRIVE

I-205

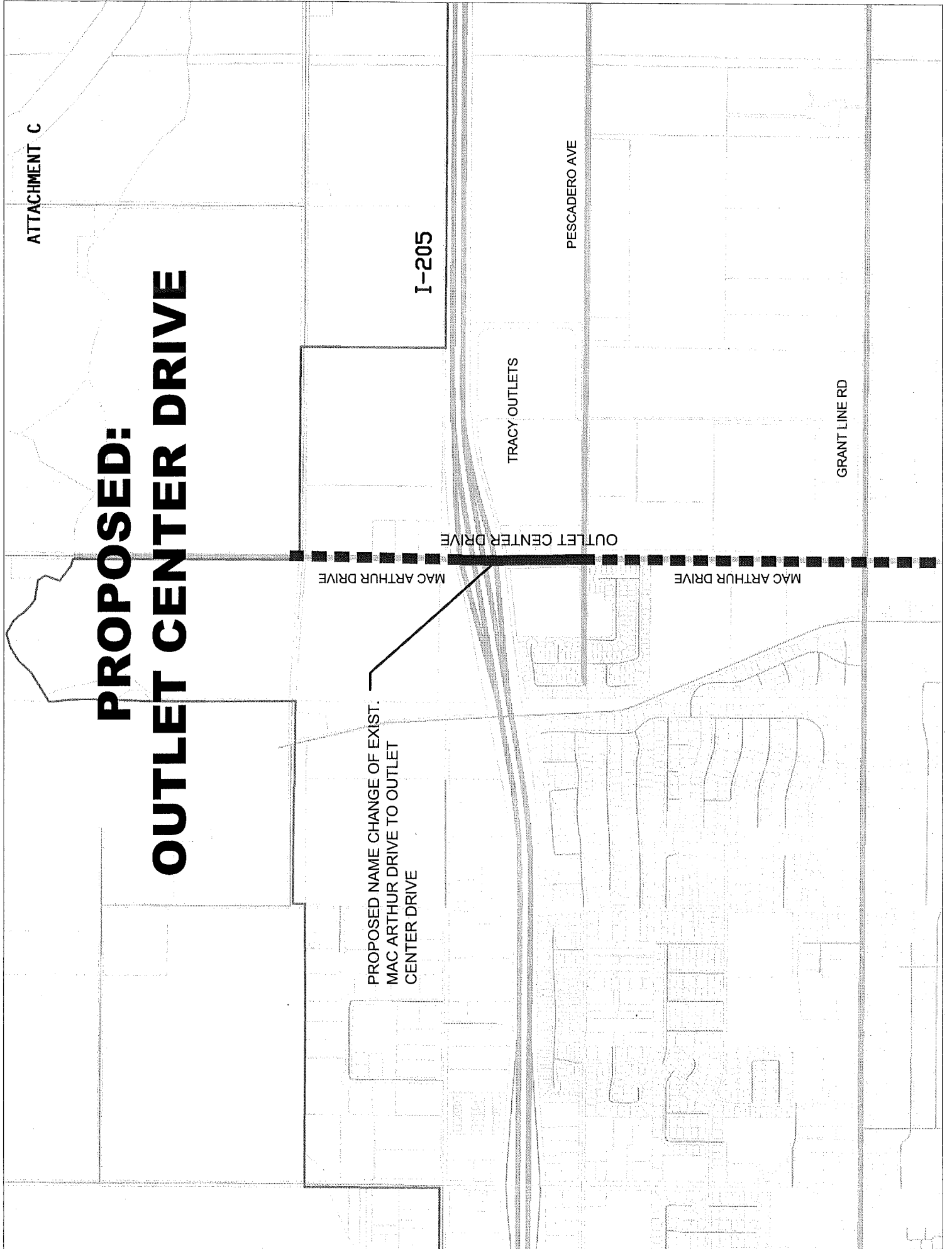
OUTLET CENTER DRIVE

TRACY OUTLETS

PESCADERO AVE

MAC ARTHUR DRIVE

GRANT LINE RD



RESOLUTION 2012-\_\_\_\_\_

AUTHORIZING STREET NAME CHANGES FOR NAGLEE ROAD TO WEST VALLEY AUTO MALL ROAD WITHIN THE CITY LIMIT AND MACARTHUR DRIVE BETWEEN I-205 AND PESCADERO AVENUE TO OUTLET CENTER DRIVE, AUTHORIZING AN APPROPRIATION OF FUNDS TO CIP 73136 TO INSTALL NEW STREET NAME SIGNS ON I-205

WHEREAS, The Auto Mall businesses, West Valley Mall, and the Outlet Center management located on MacArthur Drive and Pescadero Avenue has been pursuing installation of new directional signs on I-205 identifying exits to the Auto Mall, West Valley Mall, and Outlet Center, and

WHEREAS, City Council established a Capital Improvement Project – 73136, to install such directional signs with funding of \$450,000 available from RSP funds in FY 2013-14, and

WHEREAS, It was established that the new directional signs can only be allowed on I-205 if the names of the access streets to these business establishments are changed first, and

WHEREAS, It was established that the following street names need to be changed to accomplish the desired goals:

<u>Change Existing Street</u>	<u>To New Street Name</u>
<u>Name From</u>	
<ul style="list-style-type: none"> <li>• Naglee Road (within existing City limits only)</li> <li>• MacArthur Drive (between I-205 and Pescadero Ave.)</li> </ul>	<ul style="list-style-type: none"> <li>West Valley Auto Mall Road (within existing City limits only)</li> <li>Outlet Center Drive (between I-205 and Pescadero Ave.)</li> </ul>

WHEREAS, It is cost effective and expeditious to construct and install these signs under the existing construction contract for I-205 auxiliary lanes, and

WHEREAS, There is no fiscal impact to the General Fund. Option 1 would appropriate \$450,000 from the RSP fund. Option 2 and 3 would not have any fiscal impact and there would be no expenditure of funds at this time;

NOW, THEREFORE, BE IT RESOLVED, That City Council:

- 1) Selects Option 1 and authorizes an appropriation of \$450,000 from the RSP Fund to CIP 73136 to complete the street name change signs on I-205; and
- 2) Authorizes street name changes for Naglee Road to West Valley Auto Mall Road within the City limit, and Macarthur Drive between I-205 and Pescadero Avenue to Outlet Center Drive.

\* \* \* \* \*

The foregoing Resolution was adopted by the Tracy City Council on the 20<sup>th</sup> day of November 2012 by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

AGENDA ITEM 4

REQUEST

**COUNCIL DISCUSSION AND DIRECTION RELATIVE TO THE SALE AND DISPOSITION OF THE CHRISMAN ROAD PROPERTY**

EXECUTIVE SUMMARY

On September 18, 2012, Council directed staff to proceed with the sale of the Chrisman Road property. In order to proceed with the sale of the property, staff has identified three options for Council consideration relative to how to approach the sale. The various options will have an impact on the value of the property, the potential timing for completing the sale, and potential impacts to the City's General Fund. Staff recommends that Council consider Option 2, which would maximize the sales proceeds and have a minimal impact to the City's General Fund.

DISCUSSION

On September 18, 2012, Council directed staff to proceed with the sale of the Chrisman Road property. In order to proceed with the sale of the property, staff has identified three options for Council consideration relative to how to approach the sale.

*Site Information/Background*

The Chrisman Road property is located near the northeast corner of Chrisman Road and Eleventh Street. The property is bounded by Chrisman Road to the west, Bischette Road to the north and Eleventh Street to the South. The property is approximately 108 acres.

The property is currently designated as Public Facilities and as an Area of Special Consideration within the Land Use Element of the City's General Plan (GP). Under those GP designations, the property was envisioned to develop as a public-private educational focused project with mixed use commercial, public and private educational facilities, recreational, hospitality, and office elements enhancing and complementing the educational experience. The current zoning for the property is Agricultural (AG). It was envisioned that a master developer for the site would have entitled the property, which would have included a GP Amendment, rezone, etc.

*Recent History*

In 2007 the City pursued the sale and or lease of the property by selecting a Master Developer to entitle and assist in the recruitment of Educational and Commercial uses. During that time period, there were a few regional educational institutions interested in pursuing development on the location. The development model was structured such that the Master Developer would pay for all site entitlements and would construct educational facilities to then be leased back to various educational entities. By 2009, the national economy was in free fall; even today economic conditions remain weak. As such, prospects for new commercial or educational facilities on the site disappeared.

In 2010, the local charter school, Tracy Learning Center (TLC), engaged the City to see if they could develop 25 of the 108 acres for a new charter school facility. After lengthy negotiations for bond funds and site approval with Tracy Unified School District (TUSD), TLC is no longer interested in the location and is currently analyzing other site options.

*Entitlement Steps Necessary to Develop the Property*

In order maximize the property value, there are certain entitlement steps that would need to be completed before the property could be sold or developed, beyond the currently approved AG uses. Those steps include:

- General Plan Amendment / Rezone
- Infrastructure Analyses (wastewater, water, roadways, storm drainage) site specific
- Environmental Review (including project description and infrastructure analyses)
- Adopt a Finance and Implementation Plan (FIP) and Impact Fee Adoption
- Approve Development Review (site plan, architecture) for specific users
- Building permits

*Council Option for sale of Property*

Option 1: Sell the property with land use designation and zoning

This approach would provide for a quick sale but would result in the least amount of sales proceeds. Given the current market for AG land, this option may result in a sales price of \$2,000,000. The estimated time frame to complete a sale under this option would be approximately 6–7 months.

Option 2: Release a Request for Proposals (RFP) to entitle and sell the property

Under this option, the City would send out an RFP to potential developers (industrial, commercial, office etc.). Once the City identifies an interested party, the City would work with the developer to entitle the property. This option would require the developer to pay all of the entitlement costs (GPA, Rezone, Environmental, Infrastructure analyses etc.). Once these steps are complete, the City could then sell the property at Fair Market Value to the developer. This option would very likely result in a greater sales price, but would take longer to complete the sales transaction since all Environmental work would need to be complete before the City could sell the land. The estimated time to complete the sale under this option would be approximately 14-16 months.



Option 3: City spends General Fund monies to Entitle Property for Future Sale

In this option, the City would pay the up-front entitlement work and would then sell the property once those steps are complete. This option would require the City to pay to entitle the property which is estimated at approximately \$300,000. There would be some risk in this option in that we don't know what interest there is for development of the site, i.e., industrial, commercial, retail, or any combination. It is unclear whether this option would result in any greater net sales price compared to Option 2. The timing to complete the sale could be accelerated in that the City would be driving the entitlement process without negotiating with a development partner, i.e., ENRAs, MOUs etc. The estimated time to complete the sale under this option is estimated at approximately 7 – 10 months.

Summary Matrix of Options

	<u>Sale Timeline</u>	<u>Est. Proceeds</u>	<u>General Fund Impact</u>
Option 1	6-7 months	Low	NA (staff time)
Option 2	14-16 months	Higher	NA (staff time)
Option 3	7-10 months	Higher	High (\$300,000 entitlement)

STRATEGIC PLAN

This agenda item relates to the City's Economic Development Strategic plan; specifically, to attract investment and develop job creation opportunities in the community.

FISCAL IMPACT

There will not be an impact to the General Fund as it relates to the amount of staff time spent on any of the three options identified. Option 3 will have an impact on the City's General Fund by approximately \$300,000 for the advanced entitlement work.

RECOMMENDATION

It is recommended that the City Council direct staff to pursue option 2 as it will maximize the land value of the property and would not require the City to spend General Fund money in advance of selling the property.

Prepared by: Andrew Malik, Development Services Director

Approved by: Leon Churchill Jr., City Manager

AGENDA ITEM 5

REQUEST

**SECOND READING AND ADOPTION OF ORDINANCE 1176 AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44, BOARD OF APPEALS, AND DELETING SECTION 9.44.050, OF THE TRACY MUNICIPAL CODE**

EXECUTIVE SUMMARY

Ordinance 1176 was introduced at the Council meeting held on October 16, 2012. Ordinance 1176 is before Council for a second reading and adoption.

DISCUSSION

The Building Board of Appeals was established in 1984 to hear appeals by anyone aggrieved by any administrative decision in the application of the California Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, Historical Building, Energy, Existing Building and Fire Codes. Even though established, the members appointed have never had a matter appealed to it. Ordinance 1176 was introduced at the Council meeting held on October 16, 2012, to revise the ordinance that created the Building Board of Appeals to provide that the Board will be appointed and convene only when necessary due to filing of an appeal. Under the proposed change, the City Clerk would maintain a list of potentially interested and qualified candidates. Ordinance 1176 will amend Section 9.02.050 (Renaming to Board of Appeals), Section 9.06.050 (Appeals), Chapter 9.44, and delete Section 9.44.050, Bylaws, as Bylaws are not usually a part of the Municipal Code.

Ordinance 1176 is before Council for a second reading and adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopts Ordinance 1176 following its second reading.

Attachment

Prepared by: Adrienne Richardson, Deputy City Clerk  
Reviewed by: Carole Fleischmann, Assistant City Clerk  
Approved by: Leon Churchill, Jr., City Manager

## ORDINANCE 1176

### AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44, BOARD OF APPEALS, AND DELETING SECTION 9.44.050, OF THE TRACY MUNICIPAL CODE

WHEREAS, the City long ago established a Building Board of Appeals, as required by the California Building Codes and Fire Code.

WHEREAS, though established, and members appointed, the Building Board of Appeals has never had a matter appealed to it. There is some administrative burden for both City staff and Board members in maintaining an ongoing board, with required re-appointments and annual disclosure statements.

WHEREAS, City staff is recommending that the ordinance creating the Building Board of Appeals be revised to provide for appointment only at the time of an appeal, when the Board is needed. The City Clerk would maintain a list of potentially interested and qualified candidates.

NOW, THEREFORE, the Tracy City Council hereby ordains as follows:

SECTION 1: Section 9.02.050, Building Board of Appeals, of the Tracy Municipal Code is renamed "Board of Appeals."

SECTION 2: Section 9.06.050, Appeals [for Fire Protection and Prevention] of the Tracy Municipal Code, is amended to read as follows:

**"9.06.050 Appeals.**

Any person aggrieved by any decision or action of the Chief, may appeal to the Board of Appeals, by filing a written notice of appeal with the City Clerk within 30 from the date the decision or action was taken."

SECTION 3. Chapter 9.44, Building Board of Appeals, of the Tracy Municipal Code is renamed and amended to read as follows:

### **"BOARD OF APPEALS**

**9.44.010 - Name and purpose.**

The Board of Appeals is created in order to hear appeals by persons aggrieved by any administrative decisions in the City's application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, Historical Building Code, Energy Code, Existing Building Code and Fire Codes, or regulations adopted under them. (See TMC Chapter 9; and TMC §§9.02.050 and 9.06.050.) It will also serve as the appeal board when determinations are made regarding special conditions for persons with disabilities, under California Building Code section 1.9.1.5 or California Health and Safety Code section 19957.5.

**9.44.020 - Definitions.**

In this chapter, unless otherwise apparent from the context:

"Board" means the Board of Appeals.

"Building Official" means the Chief Building Official or his or her designee.

"Member" means a member of the Board of Appeals.

**9.44.030 - Organization and membership.**

(a) Time of appointment; Term. The Board will be appointed promptly whenever the city receives an appeal requiring a hearing by the Board. The Board shall be comprised of five members appointed by the Mayor with the advice and consent of the Council. Members shall serve only until the matter appealed has been concluded and the Board's participation is no longer required.

(b) Qualifications. The Board will be appointed from a list of potentially interested and qualified candidates maintained by the City Clerk. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction (such as licensed contractors, engineers and architects). When the appeal concerns the Fire Code, at least two of the members shall be qualified by experience with the Fire Code. When the appeal concerns access for persons with disabilities, at least two members shall be disabled individuals.

A member may not be an employee or elected officer of the City, but may be a member of another City board or commission. A member need not be a resident of the City. A member may not have any interest in property which is the subject of the appeal to the Board.

(c) Officers; Procedures. Once appointed, the Board shall meet to elect a chair and vice-chair, and to set the time and place of its meetings. The Board shall function in accordance with the standard commission by-laws which apply to other city commissions and boards.

(d) Secretary; Ex officio members. The Chief Building Official shall be the ex officio Secretary of the Board but shall not vote. When an appeal is heard regarding the Fire Code, the Fire Chief or his or her designee shall sit as an ex officio member."

**9.44.040 - Powers and duties.**

(a) Functions. The functions of the Board shall be as follows:

(1) To hear appeals of administrative decisions regarding the use of alternative materials, interpretations pertaining to the enforcement of any of the Codes and related regulations listed in TMC Section 9.44.010; and

(2) To hear appeals of administrative decisions in the application of the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous

Buildings, and related sections of this Code in actions declaring certain building structures or conditions therein substandard, unsanitary, or hazardous and requiring their consideration, rehabilitation, reconstruction, correction, or abatement as applicable.

- (b) Limitation on appeals. An application for appeal must be based on a claim that:
- (1) the true intent of the applicable code or the related regulations has been incorrectly interpreted;
  - (2) the provisions of the applicable code do not fully apply;
  - (3) an equally good or better form of construction is proposed.

The Board does not have the authority to waive requirements of the code. (California Building Code Section 113.2.)

(c) Conduct of appeals.

- (1) The Board shall exercise its powers in such a manner that substantial justice is done most nearly in accord with the intent and purpose of this Code.
- (2) The Board shall follow fair procedural rules, including giving adequate notice of hearings to all parties, providing hearings open to the public, assuring that the hearing is commenced within 60 days after the date of the filing of the petition for an appeal, recording minutes of its proceedings, and providing copies of minutes for inspection as a public record.

(d) Procedure of petitions for hearing of appeals. Upon the filing of a petition and appointment of the Board under Section 9.44.030, the secretary shall set the matter on the Board's agenda for consideration. The secretary shall give written notice of at least seven days to the applicant or petitioner, specifying the time and place of the hearing. At the hearing, the petitioner shall be given an opportunity to be heard and present any evidence to support the request. If necessary, the hearing may be continued.

(e) Decisions. In rendering its decision, the Board has no authority to waive requirements of any code. (California Building Code Section 113.2.) No later than 10 days after the close of the hearing(s) the Board shall formally report its decision in writing, including its findings of fact and reasons for the decision. The report shall either approve, approve with modifications or deny the appeal, and shall specify any conditions or limitations imposed. A copy of the report shall be forwarded to the petitioner or his or her representative at the address shown on the petition within 10 days after the decision. The secretary shall provide a copy of the report to the administrative office whose decision was appealed, and shall maintain a copy in the Board's permanent records.

(f) Appeals to the Council. The decision of the Board in granting or denying an appeal shall become final and effective unless timely appealed to the City Council under section 1.12.020. Upon the receipt of a written appeal filed with the Council, the

secretary of the Board shall transmit to the Council the Board's complete record of the case.

Within 10 days after the council adopts a resolution ordering that an appeal be granted or denied, or modified subject to conditions, the secretary shall mail a copy of the resolution to the appellant, and one copy shall be attached to the Board's file of the case.”

SECTION 3. Section 9.44.050, Bylaws, of Chapter 9.44 (Building Board of Appeals) of Title 9 (Building Regulations) of the Tracy Municipal Code is deleted.

SECTION 4. Because of the unique circumstances, the Board of Appeals is not subject to Council Resolution 2004-152 (or any successor resolution) Establishing the Council Selection Process and Defining Residence Requirements, for Appointee Bodies.

SECTION 5. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 6 . This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

\* \* \* \* \*

The foregoing Ordinance 1176 was introduced at a regular meeting of the Tracy City Council on the 16th day of October, 2012, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

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

November 20, 2012

AGENDA ITEM 7.A

REQUEST

**APPOINT CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANT(S) FOR ONE VACANCY ON THE SAN JOAQUIN COUNTY MOSQUITO ABATEMENT DISTRICT BOARD**

EXECUTIVE SUMMARY

Appoint subcommittee to interview applicant(s) for a vacancy on the Mosquito Abatement District Board.

DISCUSSION

There will be one vacancy on the San Joaquin County Mosquito Abatement District Board due to a term that will expire on December 31, 2012. The vacancy has been advertised and the five week recruitment period will close on November 20, 2012. To date only one application has been received from the incumbent.

In accordance with Resolution 2004-152, a two-member subcommittee needs to be appointed to interview the applicant(s) and make a recommendation to the full Council.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoints a two-member subcommittee to interview applicant(s) for the vacancy on the Mosquito Abatement District Board.

Prepared by: Carole Fleischmann, Assistant City Clerk  
Reviewed by: Maria Hurtado, Assistant City Manager  
Approved by: Leon Churchill, Jr., City Manager