

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:


Date/Time: **Tuesday, August 5, 2014, 6:30 p.m.**
(or as soon thereafter as possible)

Location: **Council Chambers, City Hall**
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order / Pledge of Allegiance / Invocation
2. Roll Call
3. Items from the Audience - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2008-140 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. 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.*
4. CONSENT CALENDAR
 - A. Minutes Approval
 - B. Approve the Agreement for Use of the Tracy Material Recovery Facility and Transfer Station Between the City of Tracy, County of San Joaquin, and Tracy Material Recovery and Solid Waste Transfer, Inc.
 - C. Acceptance of Offsite Improvements Completed by Prologis Logistics Services Incorporated, of Delaware, for Construction of Roadway Improvements on Skylark Avenue from the Prologis Park Tracy - Phase 2 Site to Grant Line Road
 - D. Approval of Seven Master Professional Services Agreements(MPSAs) With Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc., Storm Water Consulting, Inc., DF Engineering, Inc., and David W. Enke, L.S. for Professional Engineering and Land Surveying Services for Various Projects and Authorize the Mayor to Execute the Agreements

- E. Acceptance of the Larch Road Storm Water Pump Station Upgrades, Phase 2 - CIP 76054, Completed by Commercial Pump and Mechanical (CMP) of Chico, California, and Authorization for the City Clerk to File the Notice of Completion
 - F. Authorize the City of Tracy to Remain a Participant in the Urban County Consortium for the Purpose of Administering the Community Development Block Grant (CDBG) Program and Approve Amendment #1 to the Urban County CDBG and Home Investment Partnership Act (Home) Cooperative Agreement
 - G. Approval of a Master Professional Services Agreement With Renne Sloan Holtzman Sakai LLP for Special Counsel to Conduct Labor Negotiations With Multiple Employee Groups, Authorize the Mayor to Sign the Agreement, and Authorize the City Manager to Execute the Agreements for the Various Task Orders Not to Exceed \$100,000
 - H. Approve Amendment Number Four to the Professional Services Agreement With Kimley-Horn and Associates for the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report
5. Adjournment



Mayor

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

March 18, 2014, 5:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. CALL TO ORDER – Mayor Ives called the meeting to order at 5:00 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION –
 - Personnel Matter (Gov. Code, § 54957)
Public Employee Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal

Position Titles: Interim City Manager
 - Labor Negotiations (Gov. Code § 54957.6)
Designated representative(s): Interim City Manager
Unrepresented employee: Interim Assistant City Manager
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 5:01 p.m. It was seconded by Council Member Rickman. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 5:56 p.m.
7. REPORT OF FINAL ACTION – Mayor Ives reported that Maria A. Hurtado had been appointed Interim City Manager subject to the terms of a contract which would be placed on the next agenda for Council approval.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 5:58 p.m.

The above agenda was posted at City Hall on March 13, 2014. The above are action minutes.

Mayor

ATTEST:

City Clerk

April 1, 2014, 6:30 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. CALL TO ORDER – Mayor Ives called the meeting to order at 6:43 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION –
 - Personnel Matter (Gov. Code, § 54956.9(d)(2))
TRAQC v. City of Tracy
(San Joaquin Superior Court case No. 39-2009-00201854-CS-WM-STK)
 - Labor Negotiations (Gov. Code § 54957.6)
Designated representative(s): Interim City Manager
Unrepresented employee: Interim Assistant City Manager
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 6:44 p.m. It was seconded by Council Member Rickman. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:55 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 6:55 p.m.

The above agenda was posted at City Hall on March 27, 2014. The above are action minutes.

Mayor

ATTEST:

City Clerk

April 1, 2014, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was provided by Pastor Rob Krenik, Calvary Chapel of Tracy.

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel, and Mayor Ives present.

Maria A. Hurtado, Interim City Manager, presented the Employee of the Month award for April 2014, to Tanika Zuniga, Police Department.

Mayor Ives and Fire Chief Nero swore in Fire Captain Steve Bliss, and Fire Engineer Andrew Sansaver.

Mayor Ives presented a proclamation to Kathleen Serna-Halliday - Youth Outreach Program Coordinator, Women's Center – Youth & Family Services, in recognition of Sexual Assault Awareness Month.

Mayor Ives presented a proclamation to Sheila Airington, a Volunteer at the Lolly Hansen Senior Center, Grand Theatre, and Second Harvest Food Bank, in recognition of National Volunteer Week.

1. CONSENT CALENDAR - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of January 7, 2014, were approved.
 - B. Approval of the Final Subdivision Map and Subdivision Improvement Agreement for Lyon Crossroads Unit 9, Tracy 3781, and Authorization for the Mayor to Execute the Agreement - Resolution 2014-043 approved the Final Subdivision Map and Subdivision Improvement Agreement.
 - C. Approve a Real Property Purchase Agreement with Chemanoor Zachariah, in Family Living Trust, for Acquisition of Right-of-Way for the Roadway Widening of Eleventh Street West of MacArthur Drive, and Authorize the Mayor to Execute the Agreement – Resolution 2014-044 approved the agreement.
 - D. Approve Amendment No.1 to the Professional Services Agreement Between the City of Tracy and HF&H Consultants, LLC. and Approve Funding Allocation – Resolution 2014-045 approved the amendment.

- E. Authorize the Products and Services Agreement with the Active Network, Inc., of San Diego, California to Provide Implementation and Support of a Facility Reservation Solution and Authorize the Mayor to Execute the Agreement – Resolution 2014-046 approved the agreement.
 - F. Approve Task Order No. CH01-16 to Agreement CH01 with CH2MHill for the Additional Design and Permitting Services for Corral Hollow Road Sewer and Water System Upgrade and Authorize the Mayor to Execute the Amendment – Resolution 2014-047 approved the Task Order.
 - G. Adopt a Resolution Approving an Employment Agreement Between Maria Hurtado and the City of Tracy to Serve as Interim City Manager – Resolution 2014-048 approved the agreement.
2. ITEMS FROM THE AUDIENCE – A resident addressed Council noting his physical disabilities, mistrust in doctors and his youthful appearance.

Paul Miles addressed Council voicing his disappointment that his presentation given at the March 18, 2014, Council meeting was not made available to the public, and provided a copy of the presentation to the City Clerk. Mr. Miles protested Mayor Pro Tem Maciel's comments made during the March 18, 2014, City Council meeting, and provided Council with a copy of a letter dated April 1, 2014.

A group of teens addressed Council regarding Community Partnership for Families of San Joaquin, Family Resource Center, Healthy Connections. The group invited everyone to their Teen Empowerment Open House being held April 11, 2014, from 4:00 p.m. until 6:00 p.m., at 35 E. Tenth Street. The group thanked Council and the community for their continued support.

3. RECEIVE UPDATE ON CITY MANAGER RECRUITMENT AND PROVIDE DIRECTION AS TO THE TIMING OF THE RECRUITMENT – Dan Sodergren, City Attorney, provided the staff report. Mr. Sodergren stated on March 18, 2014, Council approved a Professional Services Agreement with Peckham & McKenney to conduct the City Manager Recruitment.

The fiscal impact of the recruitment process is estimated to be \$24,500 and can be absorbed in the current Human Resources budget for Fiscal Year 13/14.

Mr. Sodergren introduced Bobbie Peckham of Peckham & McKenney who discussed the recruitment process, the upcoming election and its impact on the recruitment.

Staff recommended that Council receive the update on the City Manager recruitment and provide direction as to the timing of the recruitment.

Council Member Rickman asked about the quality of the candidates and Ms. Peckham's recommendation. Ms. Peckham stated the timing of the year and the pending election could reduce the number of applicants.

Council Member Manne asked for an approximation of the number of candidates that would apply. Ms. Peckham stated a current recruitment netted 60 applicants, while recruitments previously held during an election period resulted in 32 applications.

Mayor Ives discussed the five steps proposed by Ms. Peckham indicating once step one was complete, Council could, at that time, make a decision to proceed or not.

Mayor Pro Tem Maciel discussed the pros and cons of postponing the recruitment including the demand for staff to assume multiple roles.

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

Council Member Rickman thanked Ms. Peckham for attending the meeting stating he was looking forward to working with her.

Council Member Young stated she was in favor of starting right away. Council Member Manne stated he was also in favor of starting the process sooner than later.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to direct staff to move forward with the recruitment time line as proposed. Voice vote found all in favor; passed and so ordered.

4. ACCEPTANCE OF THE CITY OF TRACY'S POLICE DEPARTMENT'S ANNUAL REPORT FOR 2013 – Police Chief Hampton provided an overview operationally, of the department's new organizational structure adopted in 2012. Police Chief Hampton reported a 3% increase in overall Part-1 Crimes reported during 2013 compared to 2012. The overall 3% increase is representative of 80 more Part-1 Crimes in 2013 compared to 2012. Of those 80 additional crimes, 73 were Property Crimes and 7 were Violent Crimes. The community experienced 28.92 Part- 1 Crimes per 1000 populous in 2013, compared to 27.65 in 2012. Of all Part-1 Crimes experienced by the community in 2013, 94% were related to the theft of personal property.

Council Member Young asked for clarification regarding personnel totals. Police Chief Hampton clarified the positions that have been authorized and what positions have been filled.

Council Member Young asked if the canine referenced in the report was a new drug dog or one that had been promoted. Chief Hampton stated a new dog was purchased with funds obtained from asset seizures.

Council Member Young asked for information regarding Volunteers in Police Service (VIPS). Chief Hampton stated VIPS were primarily involved in organizing, attending, and scheduling officers to attend neighborhood watch meetings.

Council Member Manne asked for a definition of Part 1 Crimes. Tanika Zuniga, Crime Analyst, stated Part 1 Crimes is a standard uniform crime that all states report nationally, and are the most violent or highest in cost including stolen vehicles, arsons, homicides, rapes, and larceny.

Mayor Ives asked if there were any trends specific to Tracy. Chief Hampton stated Tracy has seen a surge of door kick burglaries between 9 a.m. and 2 p.m. from individuals allegedly soliciting magazine sales. Chief Hampton stated they have also

identified local career criminals who have substance abuse issues that utilize property crimes and prey on residents to subsidize their addictions.

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

Paul Miles stated he had an encounter with Tracy Police and Tracy Fire last Friday, reporting they were professional, courteous and helpful. Mr. Miles discussed the performance of the Chief of Police, honesty, integrity and comments made. Mr. Miles provided Council with a copy of communications between himself, the California Highway Patrol, and the Tracy Police Department.

Police Chief Hampton stated he stands by his earlier statements.

Mayor Pro Tem Maciel thanked Chief Hampton and staff for the report and for their outstanding work, commitment, and dedication.

Council Member Rickman thanked Chief Hampton for his leadership adding that the statistics would not have been as good without the commitment of the police department, officers, staff, and VIPS.

Council accepted the City of Tracy's Police Department's Annual Report for 2013.

5. RECEIVE UPDATE REGARDING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (ENRA) WITH WT MITCHELL GROUP, INCORPORATED FOR THE CITY-OWNED PROPERTY LOCATED AT 729/741 CENTRAL AVENUE (WESTSIDE MARKET BUILDING) – Amie Mendes, Economic Development Analyst, provided the staff report. Ms. Mendes stated that the City purchased the Westside Market building in downtown Tracy in August 2011. The total building is approximately 11,000 square feet, which includes a large basement area. The ground level of the building encompasses approximately 8,500 square feet of the total building. The strategic objective in purchasing the property was to develop a public-private partnership for the construction of a catalyst restaurant in downtown Tracy. Additionally, the property's key location, adjacent to the Grand Theatre, and the fact that the property owner was a willing seller, provided a unique economic development opportunity for the City. Redevelopment funds were used to purchase the property prior to the State eliminating redevelopment agencies in California.

On August 20, 2014, City Council approved an Exclusive Negotiating Rights Agreement (ENRA) with WT Mitchell Group, Incorporated (the "Developer") to provide the parameters for a six month good faith negotiating period. The intent of the ENRA was to provide a period of time for the Developer to obtain a binding agreement with a restaurant tenant that was satisfactory to the City as a desired anchor for downtown and the Westside Market building.

Over the past six months, the Developer has contacted approximately 20 potential restaurateurs to garner interest for the development of the Westside Market building. The Developer has received a letter of intent from a restaurant tenant that is interested in occupying 2,000 square feet of the total building space. Unfortunately, the economics involved in the rehabilitation of the location, coupled with the tenant improvement costs, and façade improvements, do not justify the Developer moving forward with construction at this time. Essentially, additional tenant space will need to be leased before it makes

financial sense for the Developer to move forward with negotiations with the City and, ultimately, construction of the space. Initial estimates from the Developer were that it would take 9 to 12 months to obtain a binding agreement with a tenant that is satisfactory to the City. The executed ENRA was for a period of six months, with an optional four month extension. The Development Services Director recently executed the four month extension, seeing that the Developer has made sufficient progress in marketing the location to potential tenants. Additionally, with a significant number of new downtown restaurants and retailers coming on-line over the next few months, staff anticipates that there will be a renewed interest in the downtown area and more specifically, the Westside Market building.

Staff will be working closely with the Developer to further define a list of potential restaurants and retailers with whom to continue outreach efforts.

There is no impact to the General Fund as a result of extending the ENRA, aside from staff time. The City budgeted \$1 million for this Downtown restaurant/ brewpub project, of which, approximately \$950,000 is remaining in CIP 79364).

Staff recommended that Council receive the update regarding an ENRA with WT Mitchell Group for the City-owned Westside Market building.

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

Mayor Ives confirmed that there will be no additional cost to the City; just an extension of the agreement. Ms. Mendes stated that was correct.

Dan Sodergren, City Attorney, stated the Director has authority to extend the agreement and therefore no action was required of the Council.

Council received the update regarding an Exclusive Negotiating Rights Agreement with WT Mitchell Group for the City-owned Westside Market.

6. ACCEPT REPORT ON AMENDMENT NO. 3 OF THE SOUTH COUNTY FIRE AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE CITY OF TRACY AND THE TRACY RURAL FIRE DISTRICT REGARDING SUPPLEMENTAL FIRE SERVICES AND PROVIDE STAFF DIRECTION – Division Chief Bramell provided the staff report. Division Chief Bramell stated in FY 07/08, the Fire Department analyzed emergency response performance through the completion of a Standards of Response Coverage study. The study reviewed emergency response times, resource deployment, fire station locations and number of fire fighters required to address specific risks. A Standards of Cover Work team was established to review the report's findings and provide recommendations to the Tracy City Council and Tracy Rural Fire District Board of Directors.

Several areas for improvement and associated recommendations were proposed by the work team. Over several months, status reports were provided to each governing body having jurisdiction or responsibility to address improvement recommendations. One such recommendation was to add a second unit at Fire Station 91 to reduce the number of queued calls in their first-due area which at the time were occurring more frequently than industry standards. Queued calls degrade response performance because a unit from

another fire station further away must handle the call which increases response time. In addition, it was recommended to increase the number of personnel at the scene of a structure fire within the first 10 minutes to address critical tasks. By adding the additional personnel at Fire Station 91, it was expected that call queuing would decrease and critical tasking would improve. Further, a second unit in Fire Station 91 provided the opportunity to expand Advanced Life Support (ALS) or paramedic service in area 91. It was also expected that the increased staffing at Fire Station 94 would improve critical tasking in the response area to the west.

On October 21, 2008, both the City and TRFD agreed and approved Amendment No. 3 of the JPA for the South County Fire Authority. This amendment allowed the member agencies of South County Fire Authority to procure additional staffing or "supplemental services" in a manner different than that identified in the established cost sharing formula. This methodology would allow each party to pay entirely for the additional services they desired without changing the cost sharing formula percentages. The department maintains a minimum number of personnel assigned to duty each day. Historically, the department employed additional personnel above minimum staffing levels and assigned them to a relief pool. Personnel assigned to the relief pool would be used to backfill employee vacancies that typically occur through scheduled leaves such as vacation or sick leave. Use of a relief pool significantly reduces overtime expenses because relief personnel backfill the absent employee to maintain minimum staffing levels.

It was determined that it was more cost effective to use the personnel assigned to the relief pool to supply the employees necessary to staff the newly desired supplemental services. The relief pool contained 12 personnel. A total of 9 of the 12 personnel were allocated to the City of Tracy via supplemental services to staff the second unit at Fire Station 91. The remaining 3 personnel in the relief pool were allocated to TRFD via supplemental services to increase staffing at Fire Station 94, in essence eliminating the relief pool. Elimination of the relief pool meant increased overtime costs because there were no longer personnel available to fill scheduled leaves thus resulting in an overtime expense when employee leaves occurred. It was determined to be more cost effective to fund the supplemental services with current employees by absorbing the overtime impact versus hiring 12 additional personnel at the fully benefited rate and maintaining a relief pool.

Prior to FY10/11, TRFD Board of Directors had experienced budget shortfalls and decided the district could not continue to pay the additional expense of the increased staffing at Fire Station 94. Supplemental services were discontinued by TRFD beginning FY10/11. The 3 personnel that had been dedicated to TRFD Fire Station 94 were returned to the relief pool and expensed to all parties through the JPA cost sharing formula.

The City of Tracy continues to staff the second unit at Fire Station 91 through the supplemental service methodology. There are 9 personnel procured via supplemental services and assigned to Fire Station 91. Today, the department maintains a relief pool of 3 personnel. This limited relief pool provides one person per shift to cover any scheduled leaves.

Supplemental services are detailed in an Amendment No. 3 to the JPA between the City of Tracy and the Tracy Rural Fire District. Should the parties to the agreement wish to

change or modify the procurement of personnel through supplemental services, an amendment of the JPA would be required. An amendment to the JPA would require agreement and approval by the City and the TRFD.

Prior to the beginning of each fiscal year, the Fire Department in cooperation with the City's Administrative Services Department calculates the cost for service for the upcoming fiscal year for those supplemental services supplied under Amendment No. 3. The amount of supplemental services once approved, are added to the normal cost of services for those services rendered under the cost sharing agreement. The total of all costs (regular and supplemental) are paid by the City or TRFD. At present, only the City uses the supplemental services as allowed under the agreement. The estimated FY 14/15 cost to the City of Tracy for supplemental services is \$1,030,400.

If the City of Tracy were to dissolve supplemental services and procure the additional personnel at Fire Station 91 via the cost sharing formula in the JPA there would be a net increase in cost of \$594,560 to the City and TRFD would see a reduction in cost of \$395,690 for FY14/15. Additionally, the Mountain House Community Services District (MHSCD) who currently contracts with TRFD would see a reduction in cost of \$198,870 for FY14-15.

These changes in cost distribution are due to the increase of staffing allocated to the City of Tracy via the cost sharing formula; thereby reducing the overall percentage attributed to both TRFD and MHSCD. Division Chief Bramell illustrated the estimated FY14/15 cost allocation by jurisdiction should the supplemental services be discontinued and personnel procured via the JPA SCFA Agreement formula.

Staff recommended that Council accept the report. Should Council wish to dissolve the supplemental services, staff recommended additional time to thoroughly analyze the city-wide impact to the general fund. It is important to note that decisions concerning the supplemental services agreement and reallocation of costs can be made independent of the City's budget development process.

Mayor Pro Tem Maciel asked if it was safe to assume that the Rural District and Mt. House would like to dissolve the Supplemental Services Agreement. Division Chief Bramell stated that was one of the reasons the City was looking for additional time to further analyze the impacts.

Chief Nero stated the issue was not related to the number of units that are available to everyone in the service area; it was about money. Chief Nero added that the Rural District brought up the issue of the cost allocation and the additional unit that Tracy is paying less for because of the Supplemental Services Agreement.

Council Member Manne asked if it was staff's recommendation to keep the status quo. Division Chief Bramell stated the recommendation was to allow additional time to analyze impacts.

Mayor Ives stated he was not willing to eliminate the Supplemental Services Agreement.

Council Member Rickman stated he agreed with the Mayor adding safety was the highest priority.

Mayor Pro Tem Maciel asked if the City decided to dissolve the Supplemental Services Agreement the options were; 1) the City pays the difference, or 2) the City reduces the level of staffing. Division Chief Bramell stated he believed Mayor Pro Tem Maciel's understanding was correct.

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

Mayor Ives asked if the item was a budget issue for the Rural District for fiscal year 2014/15. Chief Nero stated not necessarily for 2014/15.

Council accepted the report on Amendment No. 3 of the South County Fire Authority Joint Exercise of Powers Agreement between the City of Tracy and the Tracy Rural Fire District.

7. ITEMS FROM THE AUDIENCE – None.

8. STAFF ITEMS - None.

9. COUNCIL ITEMS

A. Appoint Three Applicants to the Planning Commission - It was moved by Council Member Manne and seconded by Mayor Pro Tem Maciel to reappoint Rhodesia Ransom and Joseph Orcutt, and appoint Veronica Vargas to the Planning Commission to serve four year terms ending March 31, 2018, and place Robert Tanner, Bill Aragon and Jacy Krogh on an eligibility list. Voice vote found all in favor; passed and so ordered.

Council Member Rickman congratulated Officer Mike Reyna of the Tracy Police Department for being named Officer of the Year and Andrew Sansaver who won firefighter of the year during the American Legion Annual Law and Order event.

Council Member Manne invited everyone to the Lolly Hansen Outdoor Recreation ribbon cutting ceremony being held Tuesday April 15, 2014, at 4:00 p.m.

10. ADJOURNMENT

It was moved by Council Member Manne and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time 9:27 p.m.

The above agenda was posted at the Tracy City Hall on March 27, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

April 15, 2014, 6:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. The meeting was called to order at 6:05 p.m.
2. Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. CONDUCT A CITY COUNCIL WORKSHOP TO REVIEW THE PROPOSED FISCAL YEAR 14/15 CAPITAL IMPROVEMENT PLAN (CIP) – Jenny Haruyama, Administrative Services Director, provided the staff report. Ms. Haruyama stated the Capital Improvement Program (CIP) is comprised of current, new, and future projects. Current projects are those that have not yet been completed and were funded in FY 13/14 or in prior fiscal years. The CIP also reflects new projects proposed for FY 14/15 or projects anticipated to occur in a future year.

The CIP is organized into groups by the type of project. Groups include:

- General Government and Public Safety Facilities
- Traffic Safety
- Streets and Highways
- Wastewater Improvements
- Water Improvements
- Drainage Improvements
- Airport and Transit Improvements
- Parks and Recreation
- Miscellaneous Projects

Depending on legal requirements, CIP projects are funded by various funding sources, including the General Projects Fund (Fund 301), Special Revenue Funds, Capital Project Funds, Enterprise Funds, Internal Service Funds, and Other Sources.

The General Projects Fund, known as Fund 301, is the only fund that can be used to support any type of project. Revenue that is appropriated to this fund is General Fund revenue. A small portion of CIP projects are funded via the General Projects Fund. The majority of CIP projects are funded through funding sources that have unique limitations. For instance, the Special Revenue Fund receives gas tax, which is legally restricted for specific purposes. Gas tax must be spent on roadway and traffic safety improvements; while transit funds must be spent only for transit purposes. The Capital Projects Fund also supports a number of CIP projects, which are funded through various fees, like development impact fees. Development impact fees are collected in various areas of the City, such as the North East Industrial (NEI) or Tracy Gateway and provide funding for infrastructure improvements associated with a particular development.

These funds must be spent on the projects that were identified in establishing the fee. Enterprise Funds which support water and wastewater services can only be spent on enterprise projects.

CIP projects can also be funded through Internal Service (IS) Funds. Revenue acquired through the IS Fund is accounted for by charges to City Departments for city-wide services that support most City programs, including information technology, building maintenance, risk management, and equipment replacement. Some CIP projects are supported through Other Sources, which is comprised of developer contributions and various local, state, and federal grants.

The total proposed FY 14/15 CIP is approximately \$53.7 million. Of that amount, \$44.9 million is for current projects and \$8.7 million is for new projects.

General Projects Fund 301 is funded through General Fund revenue; however, this only occurs when the City receives unexpected one-time revenue. There currently is no ongoing, dedicated funding source to support capital projects.

As part of the upcoming FY 14/15 budget workshop, staff will discuss various General Fund reserve policy best practices, including the creation of a capital reserve for future city infrastructure and facility needs.

The Cordes Ranch and Tracy Hills community benefit contributions are estimated to be \$10 million (\$5 million each), and will likely be paid over three to five years. The first annual community benefit payment for Cordes Ranch is expected to be received in September 2015. Tracy Hills is currently being negotiated and has not yet been scheduled for Council approval.

It is anticipated that in FY 14/15, there will be approximately \$1,495,508 available for CIP projects.

For FY 14/15, approximately 44 projects requiring Fund 301 money were submitted and evaluated for consideration. Only seven new projects were recommended for funding, given the limited amount of available Fund 301 monies. Three active projects were also identified for additional funding.

Approximately \$1,495,508 is being requested from Fund 301 for FY 14/15. The total remaining unallocated funds is \$17,248. It is recommended not to completely allocate all available funding as costs associated with FY 14/15 proposed projects are subject to change, and mid-year CIP supplemental allocations may occur.

The total project budget for the Animal Shelter project was established at \$4,523,000. In February 2014, the City advertised for construction bids and received nine responses. Based on the bid submittals, including the additive alternates, the total cost for the project is estimated to exceed the available budget. Should the Council choose to award the contract with the recommended additive alternates, a supplemental appropriation of \$672,460 from General Project Fund 301, will be required. If an appropriation is made, the total project cost will be approximately \$5,195,460.

There is no fiscal impact associated with the acceptance of this report. Based on Council feedback, the proposed Five-Year FY 14/15 – FY 18/19 CIP will be presented for Council consideration and adoption in June 2014.

Staff recommended that Council conduct a CIP Workshop to review proposed FY 14/15 CIP projects and provide staff feedback.

Council Member Rickman asked if the Animal Shelter would be built on schedule and include all amenities. Kuldeep Sharma, Utilities Director, stated the project should stay on schedule unless unforeseen conditions arise during construction.

Mayor Pro Tem Maciel asked if the favorable bidding situation has ended. Mr. Sharma stated it appeared that way, at least on the building side.

Council Member Manne asked for information regarding the proposed radio tower at Fire Station 96. Gary Hampton, Interim Assistant City Manager, asked Fire Chief Nero to respond.

Al Nero, Fire Chief, explained that the project included a taller antenna that would increase coverage throughout the service area.

Mayor Ives asked if there was a fund or foundation for the Animal Shelter. Ms. Haruyama stated she was not aware of any fund as described by the Mayor. Mr. Hampton stated there was a fund managed jointly by Animal Shelter staff and donors, and was referred to as the "lucky dog" fund that is used to help animals that may not otherwise receive assistance.

Mayor Ives asked if there was any type of agreement regarding the use of those donations. Mr. Hampton stated yes.

Council Member Young asked if funds allocated for the Animal Shelter only covered Phase 1. Mr. Sharma stated the total cost of the project budget included design, construction, management, and inspection.

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

Dino Margaros, on behalf of the Tracy City Center Association (TCCA), addressed Council regarding downtown lighting. Mr. Margaros stated TCCA was willing to commit \$15,000 in order to find a permanent solution for the downtown lighting.

Anna Craig, owner of Mia Bella's, addressed Council regarding downtown lighting. Ms. Craig requested that Council consider the downtown lighting as a top priority.

Mayor Ives asked if the downtown lighting problem could be remedied right away. Ms. Haruyama stated staff has identified funding in FY14/15 to address breakage of the lights.

Mayor Ives asked if anything was currently being done regarding the lights. Ms. Haruyama stated preliminary discussions have taken place and costs identified. Ms. Haruyama further stated some action should be taken within the next couple months.

Council Member Rickman stated the Animal Shelter should be a top priority. Council Member Rickman asked what CIP category covered the repainting of the water tower. Ms. Haruyama stated it had more to do with historical preservation for the community.

Council Member Rickman stated he would like to see establishment of a general fund reserve, mentioning Legacy Fields. Ms. Haruyama stated the policy discussion will be about the purpose of the general fund reserve, how Council wants to use one-time funding, community opportunities, and use of existing reserves, etc.

Mayor Pro Tem Maciel stated he agreed with Council Member Rickman adding that the youth leagues may need assistance.

Council accepted the report.

5. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time 6:48 p.m.

The above agenda was posted at the Tracy City Hall on April 10, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

Interim City Clerk

April 15, 2014, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

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

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.

Mayor Ives presented Certificates of Appointment to Veronica Vargas and Joseph Orcutt to the Planning Commission, and a Certificate of Recognition to outgoing commissioner Alfred Johnson.

Mayor Ives presented a proclamation to Sim Singh, Sikh Coalition Volunteer Advocate, in celebration of Vaisakhi.

1. CONSENT CALENDAR - Following the removal of item 1-J by a member of the audience, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered. Council Member Manne abstained by item 1.I.
 - A. Approval of Minutes – Regular meeting minutes of January 24, 2014 were approved.
 - B. Acceptance of the Senior Center and Transit Station Miscellaneous Improvements CIPs 78136 A and 77544 A, Completed by Bockmon & Woody Electric, Incorporated of Stockton, California, and Authorization for the City Clerk to File a Notice of Completion – Resolution 2014-049 accepted the project.
 - C. Acceptance of the Transit Station Security Cameras CIP 77545, Completed by Bockmon & Woody Electric of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2014-050 accepted the project.
 - D. Acceptance of the Traffic Related Capital Improvement Projects - CIPs 72072, 72080, and 72083, Completed by Tennyson Electric of Livermore, California, and Authorize the City Clerk to File the Notice of Completion – Resolution 2014-051 accepted the project.
 - E. Adoption of the Mitigated Negative Declaration as Required per California Environmental Quality Act (CEQA) for the MacArthur Drive Widening Between Schulte Road and Valpico Road - CIP 73126, and Federal Project No. STPL-5192(033) – Resolution 2014-052 adopted the Mitigated Negative Declaration.
 - F. Authorize the Purchase of Three Large Turf Mowers from Turf Star, Inc. of Rancho Cordova, California – Resolution 2014-053 authorized the purchase.

- G. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a New Classification Specification and Salary Range for Accounting Coordinator – Resolution 2014-054 authorized the amendment.
- H. Approval of a Master Professional Services Agreement (MPSA) with SNG & Associates, Inc., to Provide Staff Support and Plan/Map Review Services in the Engineering Division of the Development Services Department for Various Projects, and Authorization for the Mayor to Execute the Agreement – Resolution 2014-055 approved the agreement.
- I. Approve a Minor Amendment to the Tracy Honda Final Development Plan for the Addition of a Car Wash Building at 3450 Auto Plaza Way - Applicant is Bryson Burns Construction and Property Owner is KBH Investments, LP Application Number D14-0002 – Resolution 2014-056 approved the amendment. Council Member Manne abstained.
- J. Authorization to Enter into an Interim Advanced Life Support Agreement with San Joaquin County and the South County Fire Authority and Authorization for the Interim City Manager to Sign the Agreement – Resolution 2014-057 authorized entering into the agreement.
- K. Adopt a Resolution Approving an Amendment to the Employment Agreement Between Gary Hampton and the City of Tracy Relating to Service as Interim Assistant City Manager – Dan Sodergren, City Attorney, provided the staff report. Mr. Sodergren stated Council recently appointed Assistant City Manager Maria Hurtado to serve as Interim City Manager. The Interim City Manager in turn has appointed Gary Hampton to serve as Interim Assistant City Manager. The proposed amendment to Mr. Hampton's employment agreement provides that his compensation shall be increased by 10% during the time he serves as Interim Assistant City Manager.

There is no fiscal impact to the General Fund as the cost associated with approval of this agreement will be taken out of cost savings from the vacant City Manager position.

Staff recommended that Council adopt a resolution approving an amendment to the employment agreement with Gary Hampton relating to service as Interim Assistant City Manager.

Paul Miles protested the amendment based on Chief Hampton's fitness for office and the extra expense to the City. Mr. Miles listed various incidents in support of his comments. Mr. Miles asked how this request was initiated and if other salaries would be augmented. Mr. Sodergren indicated City Council, at their last meeting, adopted a resolution approving a 10% increase in salary for Ms. Hurtado while she is the Interim City Manager. Mr. Sodergren stated this was standard protocol for those working out of class.

Mr. Miles stated he received notification that his previous complaints have been declared frivolous. Mr. Miles provided a handout dated April 15, 2014.

Robert Tanner stated he agreed that the Interim City Manager and Interim Assistant City Manager should receive a 10% increase in salary. Mr. Tanner asked how there could not be a fiscal impact to the general fund because of the pay increases and the severance pay for the former city manager. Maria Hurtado, Interim City Manager, stated the former city manager's severance pay is paid from a self-insured fund.

Dave Helm stated he agreed with Mr. Miles regarding previous leadership, but differs in opinion in what has occurred since Police Chief Hampton has been employed. Mr. Helm further stated a salary increase was appropriate because of the additional duties taken on by Mr. Hampton. Mr. Helm suggested the pay increase should be higher.

Mayor Pro Tem Maciel stated the 10% increase in salary is standard and a routine item.

Council Member Young stated both individuals were well worth the 10% increase.

Council Member Rickman stated Mr. Hampton was doing an excellent job and was in support of the increase in salary.

It was moved by Council Member Manne and seconded by Mayor Pro Tem Maciel to adopt Resolution 2014-058 approving an amendment to the employment agreement with Gary Hampton relating to service as Interim Assistant City Manager. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Shirley Mitchum and Cynthia Tyler invited Council and the community to an event being held on April 27, 2014, between 10:00 a.m. and 2:30 p.m., at Tracy Toyota in support of ALS (Lou Gehrig's Disease).

Dave Helm stated he had been advised that a member of the Council questioned the motivation and propriety of a gift that was given to him by members of the fire department. Mr. Helm asked Mayor Pro Tem Maciel to clarify derogatory remarks that were made against him.

Mayor Pro Tem Maciel encouraged anyone that has a question to please seek him out and to not rely on rumors.

Mayor Ives called for a recess at 7:31 p.m., reconvening at 7:35 p.m.

Mayor Ives stated items five and six were pulled from the agenda.

3. CONDUCT A PUBLIC HEARING TO ADOPT A RESOLUTION APPROVING THE UPDATED MASTER FEE SCHEDULE – Jenny Haruyama, Administrative Services Director, provided introductory remarks. Anne Bell, Management Analyst II, provided the staff report. Ms. Bell stated in May 2011, Council consolidated city-wide fees in a master schedule, centralizing fees in a single document.

The proposed schedule reflects fees charged for City services. It *does not* include the following types of fees and charges:

- Development impact fees adopted under the Mitigation Fee Act
- Mitigation fees (i.e., habitat and agricultural mitigation fees)
- Business license fees (taxes)
- Enterprise fund charges (water, sewer, storm water, airport, transit)
- Fees adopted under franchise agreements (cable franchise under TMC Chapter 8.10; franchise contractor for collection of solid and yard waste, and recycling under TMC Chapter 5.20)
- Landscape Maintenance District (special assessments)
- Fines (imposed as penalties)
- Leases of City property
- Rates established by separate agreements (i.e., Tracy Unified School District and performance artists)

New fees:

Cultural Arts

- \$180 to cover the cost of extra labor needed to install and remove the Marley dance floor - 3 staff for 2-3 hours
- New fees ranging from \$5-\$15 each for extra use of rented furniture and equipment, e.g., tables, stools, music stands, orchestra chairs
- Agreement Processing Fee

Recreation

- New adult kick ball league
- A 20% fee range was included to allow for contracted classes to increase by a 20% range to allow for negotiations with the contracted instructor and to cover instructors' new equipment or lesson plans
- Added range of \$5-\$10 for Senior Arts and Craft Project class to cover cost of materials led by volunteers

Public Works, Community Facilities Rentals

- Refundable deposit of \$250 for baseball/softball bases
- Storage Container License - \$0.40/square foot of ground space

Decreased or increased (beyond inflationary increase):

Theatre

- Marquee listings change from a "per day fee" to a per installation fee, allowing the marquee to be displayed for several days at no additional charge if there are no other shows scheduled to be displayed

Recreation

- Fee change from \$25 to \$50 for profit vendors for special event booths
- Increase for the minimum cost of special events tickets from \$30 to \$40 to include additional event hours and quantity of event/promotional items
- Increase maximum fee for Event Booth to include mobile vendor trucks and the additional space required for events

Public Works, Community Facilities Rentals

- For softball field preparations, light watering, minor field dragging—proposed increase from \$13 to \$15 to reflect true cost of preparation

Master Fee Schedule Administrative Corrections

Grand Theatre

- Rental rate reduction for non-primetime rental of studio theatre for performances and rehearsals from \$330 to \$240

Development Services, Planning

- The “Zone Change” fee was incorrectly stated as \$6,417 (beginning August 2013, when the fees took effect) and has been changed to \$2,758. A refund to the single affected applicant is being coordinated

Police, Animal Services

- The fee for animal collar identification was changed from \$24, the result of a
- typographical error, to \$2 (see Schedule, page 38)

Public Works, Community Rentals

- The inclusion of Banner fees (for installation and removal) that were previously
- approved by Council was inadvertently omitted from the prior Schedule

General Changes

- Other changes include the update of staff names and referenced reports, and
- correction of typographical and rounding errors.

The fees set forth in the Schedule represent no more than the estimated reasonable costs, or actual costs of the services or facilities provided. In many cases, the fees are significantly below the City’s costs as further explained under the fiscal impact section. When establishing new fees, time and motion assessments are conducted which factor in the hourly rates of staff that provides the service. The most recent Cost of Services Study Update was performed in 2003. Therefore, it is anticipated that a phased update will be performed during the next fiscal year. The cost of the update is estimated to be approximately \$45,000.

Automatic Cost of Living Adjustment

In keeping with Council action, the master fee Schedule has been prepared with an automatic adjustment, rounded to the nearest dollar (except where cents are already used) with the exception of fees related to: (1) recreation (2) Grand Theatre and Cultural Arts; and (3) other fees indicated by an asterisk in the attached Proposed FY 14/15 Master Fee Schedule.

Adoption of this Schedule is permitted under the California Constitution, Article XIIC, including the exceptions under Article XIIC, Section 1(e). The City has given notice of the proposed Schedule update as required by Government Code Section 66016 to interested parties who filed a written request for such notice with the City. Notice has also been given by publication, pursuant to Government Code Sections 66018 and 6062a.

Adoption of the Schedule is not subject to the California Environmental Quality Act because it is not a project that has the potential for causing a significant effect on the environment (CEQA Guidelines, 14 California Code of Regulations, §15061(b)(3)).

The annual update of the Master Fee Schedule ensures that city fees are aligned with the cost of providing services; however, it is equally important that fees continue to be reasonable and affordable to the community.

It is anticipated that the proposed adjustments to city-wide fees will have a nominal impact to users given the low CPI; it is estimated that fees would increase two cents per dollar. Based on the prior year's activity levels, the CPI adjustment is anticipated to generate approximately \$137,402 in fee revenue.

Staff recommended that the Mayor open a public hearing to receive and consider comments on the Schedule update. Staff further recommended that Council adopt the resolution approving the updated FY 14/15 Master Fee Schedule. Upon adoption, the fees will become effective on July 1, 2014.

Mayor Ives opened the public hearing.

Robert Tanner asked why the City was not using the Consumer Price Index (CPI) that the University of the Pacific provided. Ms. Haruyama stated it was her understanding that the report was not complete. Ms. Haruyama stated she would follow up with the University.

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

Council Member Rickman thanked staff for the manner in which the information was presented. Council Member Rickman stated the City was trying to recoup its costs and reduce its subsidy. Council Member Rickman asked how the City was going to close the gap when Measure E ended. Maria Hurtado, Interim City Manager, stated the City will need to begin discussing how that gap will be addressed. Ms. Hurtado outlined steps that have been taken thus far including a reduction in the workforce.

Mayor Ives asked if the fees would be updated as a component of closing the gap. Ms. Haruyama stated possibly. Ms. Haruyama further stated Council would need to determine the recovery rate, community needs, and level of subsidy. Ms. Haruyama added that a fee study has not been completed since 2003.

Council Member Young asked for an explanation of the acronyms. Ms. Haruyama explained.

Council Member Young asked if staff was looking for grants to help close the gap. Ms. Haruyama stated staff actively seeks grants where appropriate.

Council Member Young referred to a cost of services study which was estimated to be \$45,000, asking if the item would return to Council. Ms. Haruyama stated it would be part of the 14/15 budget process.

It was moved by Council Member Rickman and seconded by Council Member Manne to adopt Resolution 2014-059, approving the Master Fee Schedule. Voice vote found all in favor; passed and so ordered.

4. ACCEPT STATUS OF ANIMAL SHELTER PROJECT CIP 71064, AND CONSIDER THE OPTIONS TO EITHER AWARD THE CONSTRUCTION CONTRACT TO THE LOWEST BIDDER OR REJECT ALL BIDS AND AUTHORIZE STAFF TO RESCOPE AND REBID THE PROJECT - Kuldeep Sharma, Utilities Director, provided the staff report. Mr. Sharma stated that the City's existing Animal Shelter facility is located on Arbor Road between Holly Drive and MacArthur Drive east of the City's wastewater treatment plant. The Animal Shelter facility consists of an old stone masonry building and a modular building with minor improvements completed during the last decade for maintenance purposes.

On April 2, 2013, Council approved a Professional Services Agreement with Indigo Hammond & Playle Architects for completion of the design for the new Animal Shelter facility to be located on a 2.19 acre parcel at the south western corner of Grant Line Road and Paradise Road.

Initially a total of \$3.623 million was allocated for this project toward the cost of land, design, construction and inspection services. Prior to the start of the preliminary design, various meetings were held with the stakeholders and it was realized that the cost, based on current needs and community expectations, were much higher than the available budget. As a result, the project budget was augmented to a total of \$4.523 million during the 2013-2014 budget process. This project competed with other priority projects in the City and only a portion of the requested funds could be augmented for the Animal Shelter Project.

After completion of 50% of the design, the consultant and staff made a presentation to Council on June 18, 2013, and solicited public input for the project. Based on the available information, and after considering various options, Council directed staff to proceed with the remaining design of the project.

The consultant and staff worked very diligently to meet the basic needs of the facility and provide a cost effective and functional facility. Staff explored options to use some of the existing equipment, caging and furniture to reduce the overall cost to stay within the available budget. However, due to wear and tear and the life expectancy of such equipment, it was not practical to use such equipment or furniture in the new facility.

Recognizing the increasing cost of construction and present improvements in various sections of the construction industry, staff and consultants divided the total project into base bid and additive alternates. This would allow the City to award the construction contract for the base bid with or without additive alternates in the order of priority depending upon the availability of limited funds.

The project was advertised for construction bids on February 6 and 13, 2014. A total of 11 additive bid items, in order of priority, were listed in the contract documents in addition to the base bid as follows:

1. Add Sinks and Casework
2. Not Used

3. Add Cat Holding Cages
4. Add Eight Parking Spaces
5. Add Tubular Skylights
6. Add Concrete Wrap at Column Base
7. Add Grooming Equipment
8. Add Landscaped Areas
9. Add Dog Exercise Yards
10. Add Perimeter Irrigated Trees

The contract documents require the award of construction to be made: Either on the base bid plus additive bid items chosen in the order of priority as long as such cost is lower than the construction funding amount publically disclosed at the opening of the bids; or, on the basis of the base bid if no bid is received with cost less than the publically disclosed funding amount.

All base bid costs and additive bid item costs are higher than the publically disclosed funding amount of \$2.8 million. The lowest monetary bid is from D.G. Granade Incorporated of Shingle Springs, California. The bid analysis indicates that the low bid is responsive and the bidder is responsible. D.G. Granade Incorporated has good references and has satisfactorily completed similar projects with other public agencies.

After reviewing the cost of additive alternates and the urgency of each additive alternate, staff believes that at this time only additive alternates 1 to 3 (additive alternate 2 is not used in this bid) be added to the base bid if the project is awarded for construction. With completion of base bid with additive alternates 1 to 3 the facility will be functional. The other additive alternates include some equipment and other site improvements which can be deferred for future completion with Phase Two improvement of the facility.

D. G. Granade Incorporated of Shingle Springs is still the lowest monetary bidder for base bid with bid alternates 1 and 3. In order to complete construction of the Animal Shelter Project, staff believes that there are two options:

1. Award the construction contract to the lowest bidder for base bid and additive alternatives 1 to 3.

Council may choose this option to award the construction contract to the lowest bidder by authorizing a supplemental appropriation of \$672,460 from the General Project Fund 301 to Animal Shelter Facility Project CIP 71064.

The Animal Shelter Facility project is a Council priority project competing with other projects potentially funded from the limited amount available from the General Project Fund 301. This appropriation request will be presented to Council for its consideration in the CIP workshop scheduled on April 15, 2014, prior to the Council's regular meeting. If Council exercises this option, staff will work diligently with the construction management consultant to ensure effective use of construction contingency amounts and complete additional additive items from any saving achieved during construction.

During construction, design support and construction management services will be needed from the consultant who designed the project since staff is preoccupied by the existing work load. The consultant will be reviewing Reports for Information (RFI)

and checking shop drawings from the contractor. In addition, services will be needed for resolution of conflicts, unforeseen conditions, substitution of materials and overall construction management of the project including review of progress payments, change order and field inspections. The consultant has submitted and staff has reviewed a proposal to complete these tasks for a not to exceed amount of \$179,200 on a time and materials basis.

2. Reject all construction bids for the Animal Shelter Project CIP 71064 and authorize staff to re-scope and rebid the project.

If Council chooses this option, staff will work with the consultant to reduce the scope of work by reducing the facility size. This will require an amendment to the consultants Professional Services Agreement and the project will incur additional design costs.

Since the existing project is fully designed in terms of structure, architecture, heating, ventilation, plumbing, electrical, etc., any deletion will trigger involvement of the specialty consultant work.

Staff believes by reducing the scope of work of the project, the facility size may be reduced but it may not be able to provide effective services at the desired level. The proportionate benefit of savings in cost may not be enough to offset the reduction in level of services. However, staff has not completed any thorough study or analysis and its findings are based upon preliminary information.

If Council decides to reject the bids, there is no impact to the General Fund. If Council exercise option one, a supplemental appropriation of \$672,460 is needed from General Project Fund 301 to CIP 71064, to complete the Animal Shelter Project.

Staff recommended that Council accept the status of Animal Shelter Project CIP 71064, and consider one of the following two options:

1. Award the construction contract for Tracy Animal Shelter Project CIP 71064, to D. G. Granade, Incorporated of Shingle Springs, California in the amount of \$3,462,600, for base bid with additive alternate bid items 1 to 3, authorize approval of Amendment 1 to the Professional Services Agreement with Indigo Hammond and Playle Architects in the amount of \$179,200, authorize a supplemental appropriation in the amount of \$672,460 from the General Project Fund 301 to CIP 71064, and authorize the Mayor to execute the construction contract and the amendment to the Professional Services Agreement.
2. Reject all bids received for the Animal Shelter.

Council Member Rickman asked if the project was redesigned, would it involve additional costs. Mr. Sharma stated yes.

Mayor Pro Tem Maciel asked if the \$179,200 was in addition to the \$672,460. Mr. Sharma stated it was included.

Mayor Ives asked for confirmation that the 10% construction contingency, if any was left over, could be applied to items 1-11 that remain. Mr. Sharma stated yes.

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

Arlene Robbins addressed Council stating this project should have been completed years ago. Ms. Robbins urged Council to move forward with the project.

Ann Marie Fuller, Susan Ormonde, and Dina Robbins addressed Council in support of the Animal Shelter Project.

Mayor Pro Tem Maciel thanked staff for their due diligence stating he was committed to the project and in support of allocating the additional funding.

Council Member Manne stated he was in favor of the Animal Shelter Project and allocating the additional funds from Fund 301.

Council Member Young stated she was in favor of making the investment and adding the additional funds to bridge the deficit.

Council Member Rickman thanked those who spoke for their unwavering advocacy. Council Member Rickman stated a new Animal Shelter was a necessity.

Mayor Ives asked when the Animal Shelter would be open if Council approved Option 1. Mr. Sharma stated by December 2014. Mayor Ives stated this project only included Phase 1.

It was moved by Council Member Manne and seconded by to adopt Resolution 2014-060 accepting the status of the Animal Shelter Project CIP 71064, and awarding the construction contract to the lowest bidder D.G. Granade Inc., of Shingle Springs, California for the base bid with additive Alternates 1 to 3, approving Amendment 1 to the Professional Services Agreement with Indigo Hammon and Playle Architects, authorizing a supplemental appropriation of funds and authorizing the Mayor to execute the construction contract and Amendment 1 to the Professional Services Agreement. Voice vote found all in favor; passed and so ordered.

5. CITY COUNCIL DIRECTION RELATED TO REQUESTED CHANGES TO WATER SUPPLY FOR THE TRACY GATEWAY PROJECT LOCATED AT THE SOUTHWEST CORNER OF LAMMERS ROAD AND ELEVENTH STREET – ITEM PULLED
6. APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH WEST YOST & ASSOCIATES, INC., TO PROVIDE WATER DISTRIBUTION SERVICES ANALYSIS FOR THE TRACY GATEWAY BUSINESS PARK, AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT - ITEM PULLED
7. ITEMS FROM THE AUDIENCE - None.
8. STAFF ITEMS
 - A. Receive and Accept the Interim City Manager Update – Maria A. Hurtado, Interim City Manager, provided the report. Jenny Haruyama, Administrative Services Director, provided an update regarding the internal control work plan.

Council accepted the Interim City Manager update.

9. COUNCIL ITEMS

- A. Discuss and, if Necessary, Provide Direction on Responding to Comments Made By Members of the Public – Dan Sodergren, City Attorney, provided the staff report. Mr. Sodergren stated on February 18, 2014, Mayor Pro Tem Maciel requested that the City Council discuss responding to comments made by members of the public. On March 4, 2014, the City Council directed this item to be added to the agenda.

The Brown Act is the state's open meeting law (Government Code, §§ 54950-54963). The Brown Act provides that ". . . [e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action . . ." has been placed on an agenda pursuant to the noticing provisions of the Brown Act.. (§ 54954.3(a).)

Additionally, every notice for a special meeting must provide an opportunity for members of the public to directly address the City Council concerning any item that has been described in the notice for the meeting before or during consideration of that item. (§ 54954.3(a).)

City Council may adopt reasonable regulations to ensure that the intent of the public comment provisions of the Brown Act is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. (§ 54954.3(b).) Also, Council may not prohibit public criticism of the policies, procedures, programs, or services of the City, or of the acts or omissions of the City Council. (§ 54954.3(c).)

The Brown Act provides that no action or discussion shall be undertaken on any item not appearing on a posted agenda. (§ 54954.2(a)(2).) However, this general rule has several exceptions, including the following:

1 All statutory references are to the Government Code unless otherwise indicated.

- City Council Members or staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights;
- On their own initiative or in response to questions posed by the public, a City Council Member or staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities; and
- A City Council Member, or the City Council itself, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda. (§ 54954.2(a)(2).)

Nothing in the Brown Act requires the City to allow the public to comment on statements made by City Council Members or staff pursuant to these exceptions. Finally, it is important to keep in mind that these exceptions are intended to allow only brief statements or requests from individual City Council Members and/or staff. To the extent that such a statement or request requires, or evolves into, a discussion by a majority of the City Council, it should be placed on a future noticed meeting.

City Council has adopted a policy related to the Procedures for Preparation, Posting and Distribution of Agenda and the Conduct of Public Meeting (Resolution 2008-140) ("City Council Meeting Policy"). The City Council Meeting Policy provides that all agendas for regular meetings have two opportunities for "Items from the Audience." The first opportunity is limited to a 15-minute maximum period. The second opportunity does not have a maximum time limit. Each member of the public is allowed a maximum of five minutes for public testimony, including statements made during "Items from the Audience."

The City Council Meeting Policy also acknowledges the exceptions contained in the Brown Act by specifically providing that "[b]rief announcements, brief responses or questions for clarification, may be made to statements or questions raised on items not on the agenda."

When a member of the public raises an item at a Council meeting which requires attention, the Policy provides that the item should be referred to staff for follow-up. If the requesting member of the public is not satisfied with staff's response to his or her question, they may request a City Council Member to sponsor the item for discussion at a future City Council meeting.

Staff recommended that City Council discuss and, if necessary, provide direction on responding to comments made by members of the public.

Council Member Rickman asked if more than one Council Members comments, is that an item that should be placed on an agenda. Mr. Sodergren stated when more than one Council member discusses the item it should be placed on the agenda.

Council Member Rickman asked if more than two Council Members commented on an item if it would have to be placed on an agenda. Mr. Sodergren stated if more than two Council Members began discussing an item, he would ask that the discussion stop and Council consider placing the item for discussion on a subsequent agenda.

Mayor Pro Tem Maciel asked if the five minute time limit applies only to items from the audience. Mr. Sodergren stated reasonable time limits can be set for Items from the Audience and for items on the agenda.

Mayor Pro Tem Maciel stated his ultimate goal is for Council to exercise greater control over the meeting without compromising individual's rights to participate in the meeting. Mayor Pro Tem Maciel stated it may be worthwhile for the Council to consider placing time restrictions on agendized items. Mr. Sodergren added that public hearings have a five minute time limit.

Mayor Pro Tem Maciel further stated Council needed to be more efficient and allow more people to be included in the process.

Mayor Pro Tem Maciel asked if the Brown Act limits items from the audience that fall under Council's prevue. Mr. Sodergren stated items need to relate to the city's business, but a lot of latitude is given.

Mayor Pro Tem Maciel asked for clarification regarding one individual coming forward with an item not on the agenda on a repeated basis. Mr. Sodergren stated there must be a balance between the first amendment right and the Council's ability to conduct business. Mr. Sodergren further stated to the extent a person is disruptive the Council does not have to allow that speech. Mr. Sodergren added a person can be disruptive in a number of ways including, exceeding time limits, by being overly repetitive, and by talking about irrelevant subjects.

Council Member Rickman stated as it relates to agenda items and time limits, he disagreed. Council Member Rickman stated everyone should have an opportunity to speak their mind. Council Member Rickman further stated when time limits are imposed it is another way of restraining comments that do not want to be heard. Council Member Rickman stated he is against time limits.

Council Member Young stated there should be a reasonable time set so Council can think concisely and work through the issues. Council Member Young stated time limits allow individuals to focus on the matter and get their point across.

Mayor Ives added that some Councils limit Council Member comments as well.

Council Member Rickman stated placing a five minute time limit is not appropriate.

Council Member Manne stated he was in favor of keeping the status quo. Council Member Manne stated it was up to an individual Council member if they respond to comments. Council Member Manne further stated he wanted to be careful that any suggestions made at the meeting in no way preclude anyone from speaking to the Council.

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

Mayor Ives indicated this would be an ongoing discussion and should be done consistently and fairly.

- B. Appoint Two Applicants to the Transportation Advisory Commission – Council Member Young stated she and Council Member Rickman interviewed five applicants for the Transportation Advisory Commission.

It was moved by Council Member Young and seconded by Council Member Rickman to approve the subcommittee's recommendation and reappoint James Vaugh and appoint Jacy Krogh to the Transportation Advisory Commission to

serve four year terms beginning on May 1, 2014, and ending on April 30, 2018. Douglas Alvarez, William Hepley and Danny Vaughn were placed on the eligibility list. Voice vote found all in favor; passed and so ordered.

- C. Appoint an Applicant to the Measure E Residents' Oversight Committee From the Committee's Eligibility List – Gary Hampton, Interim Assistant City Manager, provided the staff report. Mr. Hampton stated there was one vacancy on the Measure E Residents' Oversight Committee due to Committee Member Vargas submitting her resignation from the Committee effective April 2, 2014. On April 1, 2014, Council appointed Ms. Vargas to the Planning Commission. The last time appointments were made to the Measure E Residents' Oversight Committee was March 4, 2014. At that time the subcommittee consisting of Council Member Rickman and Council Member Young nominated three applicants to fill vacancies on the Measure E Residents' Oversight Committee and recommended Brooke Fell and Larry Fragoso be placed on an eligibility list. Resolution 2004-152, includes direction on the "Selections Process for Appointee Bodies," and also states if there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that might occur in the following 12 months.

Council confirmed the subcommittee's nomination and the creation of an eligibility list. Staff contacted Ms. Fell, but due to commitments, Ms. Fell is unable to serve on the committee, but would like to remain on the eligibility list for the remainder of the 12 month period. Council can either appoint Mr. Fragoso to fill the vacancy on the Measure E Residents' Oversight Committee for a term commencing on April 16, 2014, and expiring on March 1, 2016, or direct staff to open a new recruitment. If a new recruitment is opened, Council would need to determine how to proceed with regard to Mr. Fragoso's status.

It was moved by Council Member Young and seconded by Council Member Rickman to approve the subcommittees' recommendation to appoint Larry Fragoso to the Measure E Residents' Oversight Committee to serve the remainder of a term, which will commence on April 16, 2014, and expire on March 1, 2016. Voice vote found all in favor; passed and so ordered.

Council Member Rickman stated the new recreation activity guide was out and encouraged everyone to sign up for an activity. Council Member Rickman wished everyone a Happy Easter.

Council Member Young reminded everyone that Thursday, May 1, 2014, was the National Day of Prayer and invited everyone to join her and Pastor James Young to the fountain outside of City Hall at noon on that date.

Mayor Ives requested an agenda item for Council to consider placing an item on the next election ballot changing the mayoral term from 2 years to 4 years.

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

The above agenda was posted at the Tracy City Hall on April 10, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

May 6, 2014, 6:45 p.m.

City Council Chamber, 333 Civic Center Plaza

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

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 item outlined below.
2. ROLL CALL - Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. REQUEST TO CONDUCT CLOSED SESSION -
 - A. Pending Litigation (Gov. Code, § 54956.9(d)(2))
 - City of Tracy v. California State Water Resources Board
(San Joaquin County Superior Court Case No. 39-2009-00215516-CU- WM-STK)
5. MOTION TO RECESS TO CLOSED SESSION – Mayor Pro Tem Maciel motioned to recess the meeting to closed session at 6:46 p.m. It was seconded by Council Member Rickman. Voice vote found all in favor; passed and so ordered.
6. RECONVENE TO OPEN SESSION – Mayor Ives reconvened the meeting into open session at 6:54 p.m.
7. REPORT OF FINAL ACTION – None.
8. ADJOURNMENT – It was moved by Council Member Manne and seconded by Mayor Pro Tem Maciel to adjourn the meeting. Voice vote found all in favor; passed and so ordered. Time: 6:55 p.m.

The above agenda was posted at City Hall on May 1, 2014. The above are action minutes.

Mayor

ATTEST:

City Clerk

AGENDA ITEM 4.B

REQUEST

APPROVE THE AGREEMENT FOR USE OF THE TRACY MATERIAL RECOVERY FACILITY AND TRANSFER STATION BETWEEN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, AND TRACY MATERIAL RECOVERY AND SOLID WASTE TRANSFER, INC.

EXECUTIVE SUMMARY

In August 1994, the County of San Joaquin, the City of Tracy, and Tracy Material Recovery and Solid Waste Transfer, Inc. (Company), entered into a three-way agreement to enhance the flow control of the solid waste stream within and around the City's jurisdiction. The three agencies have met to negotiate a new agreement as the existing contract will expire on August 9, 2014. The proposed contract continues the agencies' prior agreement to direct residential, industrial, and commercial waste to the Tracy Material Recovery Facility (MRF) to achieve collective waste reduction goals.

DISCUSSION

County, City and Company entered into an agreement dated August 9, 1994 ("1994 Agreement") concerning the flow control of the solid waste stream being directed to the Tracy Material Recovery Facility and Transfer Station (MRF) from the City and the unincorporated area of the County known as County Refuse Service Area F which includes Mountain House. This agreement will expire August 9, 2014.

The Company built the MRF at 30703 S. MacArthur Drive, south of the City of Tracy, which went into operation on May 1, 1995. The facility replaced the Corral Hollow Landfill as a processing site for solid waste generated in the southwestern portion of San Joaquin County in Refuse Service Area F. The MRF has served as the required transfer station for both the City and County with flow control of the municipal waste stream being directed to the MRF from within Refuse Service Area F for both the City and County.

The MRF is being used to remove recyclable, compostable, and transformable materials from the solid waste stream, thereby assisting the City and County in achieving the waste reduction goals of AB939 and AB341. The County has entered into a residential refuse collection franchise agreement which allows the County to direct where the residential waste is disposed. The deposit of such residential, industrial, and commercial waste at the MRF assists the City and County in meeting the waste disposal requirements.

The County has agreed to provide a monthly credit to the Company's account for the City's annual clean-up event per our Agreement between the City and County. Since the program has been modified, the County will provide an amount equal to 350 pounds of waste per household for 80 households per month for a total credit of 28,000 pounds of waste per month. The monthly credit will be adjusted annually on January 1 of each

year based on the number of households from which special clean-up waste is actually collected and the actual tonnage delivered to the designated County disposal site. This program is tracked and monitored by the Company for the City of Tracy.

Additionally, the Company accepts all waste from residential, commercial, and industrial collectors licensed by County, and all self-haul waste originating in Service Area F of San Joaquin County in the same manner as the waste from the City, pursuant to the contract for the Collection and Disposal of Refuse for Refuse Service Area (F) of the County of San Joaquin, by and between Tracy Delta Solid Waste Management, Incorporated, City, and the County.

The agreement is for approximately twenty (20) years and becomes effective August 9, 2014. The City is required to inform the County three (3) years prior to when the MRF reaches capacity; upon receipt of such notice, the County may terminate the Agreement with one (1) year's notice.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact to the General Fund.

RECOMMENDATION

That City Council, by resolution, approve the agreement for use of the Tracy Material Recovery Facility and Transfer Station between the City of Tracy, County of San Joaquin, and Tracy Material Recovery and Solid Waste Transfer.

Prepared by: Jennifer Cariglio, Management Analyst I, Public Works Department

Reviewed by: David Ferguson, Director of Public Works

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENTS

Exhibit A: 3-Way Agreement

A-14-250

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AGREEMENT FOR USE OF THE
TRACY MATERIAL RECOVERY FACILITY AND TRANSFER STATION

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This Agreement ("Agreement"), is made this 9th day of August, 2014, by and between the County of San Joaquin, a political subdivision of the State of California, ("County"), the City of Tracy, a municipal corporation, ("City"); and Tracy Material Recovery and Solid Waste Transfer, Inc., a California corporation, ("Company.")

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RECITALS

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WHEREAS, County and City were required, pursuant to the Integrated Waste Management Act of 1989 also known as Assembly Bill 939 ("the Act"), to divert 50% of their municipal waste stream by the year 2000, as well as other requirements; and

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WHEREAS, Assembly Bill 341 ("AB 341") (Chesbro - Mandatory Commercial Recycling) requires that California meet a statewide goal of diverting 75% of its waste from landfills by 2020, an act amending Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, adding Sections 40004, 41734.5, and 41780.01 to, adding Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and adding and repealing Section 41780.02 of, the Public Resources Code, relating to solid waste; and

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WHEREAS, County, City and Company entered into an agreement dated August 9, 1994 ("1994 Agreement") concerning the flow control of the solid waste stream being directed to the Tracy Material Recovery Facility and Transfer Station ("MRF") from the unincorporated area of the County known as County Refuse Service Area F which includes Mountain House, and from the City; and

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WHEREAS, Company built the MRF at 30703 S. MacArthur Drive, south of the City of Tracy, which went into operation on May 1, 1995, and replaced the Corral Hollow Landfill as a processing site for solid waste generated in the southwestern portion of San Joaquin County in Refuse Service Area F; and

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WHEREAS, the MRF has served as the required transfer station for both the City and County with flow control of the municipal waste stream being directed to the MRF from within Refuse Service Area F for both the City and County; and

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WHEREAS, the MRF has sufficient capacity to meet all the anticipated growth within Refuse Service Area F through the year 2035; and

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WHEREAS, City and County entered into an agreement dated June 20, 1990 (1990 Agreement) concerning solid waste disposal; and

46 WHEREAS, the MRF is being used to remove recyclable, compostable, and
47 transformable materials from the solid waste stream, thereby assisting City and County
48 in achieving the waste reduction goals of the Act; and
49

50 WHEREAS, County has entered into residential refuse collection franchise
51 agreements which allow County to direct where the residential waste must be disposed;
52 and
53

54 WHEREAS, County has designated the unincorporated area around the City of
55 Tracy as Refuse Service Area F, as defined in Paragraph 2 of this Agreement; and
56

57 WHEREAS, County, pursuant to San Joaquin County Ordinance Code Section
58 5-2702, may require licensed collectors for industrial and commercial waste within the
59 unincorporated areas of County to deposit all solid waste "...at a solid waste site as
60 designated by the Director of Public Works..."; and
61

62 WHEREAS, the deposit of such residential, industrial, and commercial waste at
63 the MRF by Company is aiding City and County in meeting its requirements under the
64 Act and AB 341; and
65

66 WHEREAS, Company is willing to accept at MRF such residential, industrial, and
67 commercial waste, and self-haul waste from Refuse Service Area F;
68

69 NOW, THEREFORE, the parties agree as follows:
70

71 1. The Board of Supervisors of County and the City Council of City find and
72 declare that no improper or illegal gift of public funds is incurred by the actions to be
73 taken in accordance with this Agreement because the County and City each receives
74 value for the consideration given by it under this Agreement.
75

76 2. Company agrees to take and receive at the MRF, and process, in the
77 same manner as is processed waste from the City, all waste from residential,
78 commercial, and industrial collectors licensed by County, and all self-haul waste
79 originating in Service Area F of San Joaquin County, as that Service Area F is defined
80 pursuant to that certain Contract for the Collection and Disposal of Refuse for Refuse
81 Service Area (F) of the County of San Joaquin, dated October 22, 2013, by and
82 between Tracy Delta Solid Waste Management, Incorporated, City, and the County, up
83 to the capacity of the MRF, but subject to the first right to use of capacity in City. City
84 shall inform County at least three (3) years prior to exhaustion of capacity. County
85 shall, upon receipt of such notice, have the right to terminate this Agreement upon one
86 (1) year's notice to the other parties.
87

88 3. To the extent permitted by State and/or Federal Law, County shall,
89 pursuant to its authority under San Joaquin County Ordinance Code Section 5-2702,
90 direct all licensed collectors for industrial and commercial waste within Refuse Service
91 Area F, and all residential collectors holding contracts, franchises, or licenses from the

92 County to collect residential waste in Refuse Service Area F, whether present or future,
93 to deposit all solid waste collected by them at the MRF. Further, to the extent permitted
94 by State and/or Federal Law, County will encourage self-haulers of solid waste
95 originating within the unincorporated areas of Refuse Service Area F to take their waste
96 to the MRF.

97
98 4. Company, County, and City agree to the following operation
99 considerations:

- 100
101 a. Policies and rules for use of MRF will be applied equally to all
102 similarly classified users of the MRF, subject to the terms of the
103 Service Agreement.
104
105 b. Company shall enforce a policy, similar to the policy at all County
106 disposal sites, requiring all incoming loads to be covered to prevent
107 littering.
108
109 c. Residential, commercial and industrial collectors, and self-haul
110 haulers, whose waste originates in the unincorporated areas of San
111 Joaquin County shall be charged a tipping fee no greater than that
112 charged for such haulers for similar waste originating in City,
113 subject to adjustment for City or governmental fees.
114
115 d. City and County shall use reasonable affirmative efforts to enforce
116 their respective ordinances (including, without limitation, the County
117 ordinance cited in Section 3) and contracts relating to the direction
118 of waste to the MRF in Section 3 and in the Service Agreement.
119

120 5. For all nonhazardous solid wastes received at MRF originating from
121 unincorporated County areas and from cities which have agreements with County to
122 provide disposal sites, City will direct Company to deliver to County landfill sites all
123 residual solid wastes. County Director of Public Works shall determine which disposal
124 sites shall be used for said waste.
125

126 6. From time to time, as needed by County and required by the Act,
127 Company shall allow County or its agents to conduct waste characterization studies at
128 the MRF. Costs of such studies shall be borne by the County.
129

130 7. The City and Company have entered into a Service Agreement ("Service
131 Agreement"), for the design, construction, and operations of the MRF. The Service
132 Agreement sets forth a formula for recovering land and construction costs, costs of
133 operations and maintenance and an operating fee for the MRF. The Service Agreement
134 expires in 2015 and the parties are currently negotiating a new successor agreement.
135 In this Agreement, the term "Service Agreement" refers to the existing Service
136 Agreement and the successor agreement (Agreement Between the City of Tracy and
137 Tracy Material Recovery and Solid Waste Transfer, Inc. for Material Acceptance,

138 Processing and Transfer Services). If there is a conflict between the terms of the
139 Service Agreement and this Agreement, the Service Agreement shall prevail.

140
141 8. City shall serve as lead agency in dealing with Company.

142
143 9. City shall be responsible for administering the Service Agreement for the
144 operation of the MRF and the transfer by Company of non-recyclable or non-
145 transformable materials to County disposal sites. City shall require Company to use
146 County disposal sites as set forth in Article 1, Section 1.4 of the 1990 Agreement. If the
147 County's landfill is closed or is sold, the City or Company may explore other options for
148 alternative disposal sites. County agrees to accept at County disposal sites all residual
149 waste hauled from the MRF at the preferred tipping fee which acknowledges that the
150 residual waste has been processed at a MRF, if and when such preferred tipping fees
151 are established by the Board of Supervisors for disposal sites utilized by the MRF. City
152 and County acknowledge and agree that their goal is to provide efficient and cost
153 effective solid waste management to all solid waste customers in Refuse Service Area
154 F.

155
156 10. The parties agree and acknowledge that the tipping fee charged by
157 County for use of County disposal sites is a cost borne by City pursuant to the Service
158 Agreement, whether actually paid directly by City, or by Company (and thereafter
159 reimbursed to Company by City), and County therefore agrees to charge tipping fees
160 which are no higher per measuring unit of waste than are charged to any other users of
161 the applicable County disposal site. While County policy generally requires an advance
162 deposit of tipping fees, if paid by Company, County agrees to waive this requirement for
163 the Company because of the Company's 19-year operation history. If City pays such
164 fees, no advance deposit will be required. Alternatively, any combination of payment
165 and/or advance deposit of partial fees acceptable to County may be utilized upon
166 agreement of the parties.

167
168 11. To the extent permitted by State and/or Federal Law, City agrees that all
169 municipal solid waste originating in the City will be taken to the MRF by City and/or its
170 licensed and franchised refuse collectors. However, if the City has the opportunity to
171 process the solid waste in a more environmentally friendly manner, the parties agree to
172 consider alternative solid waste processes.

173
174 12. Company agrees to provide County with copies of reports which in part
175 provide by source the waste stream taken to the MRF and then the final distribution of
176 all material after being processed, and other appropriate reports as required.

177
178 13. County agrees to accept special clean-up waste (as defined in that certain
179 Agreement between City and County, numbered A-90-1301, and dated 26 June 1990,
180 Section 2.6) originating within City at the designated County disposal site after being
181 processed through the MRF. This disposal will be accepted without charge, on days
182 and times approved by County, as set forth in the 1990 Agreement. County shall

183 provide to Company a monthly credit on Company's account with County in an amount
184 equal to 350 pounds of waste per household for 80 households per month for a total
185 credit of 28,000 pounds of waste per month. The monthly credit will be prospectively
186 adjusted annually on January 1 of each year based on the number of households from
187 which special clean-up waste is actually collected by and the actual tonnage delivered
188 by Company to the designated County disposal site.

189
190 14. For the benefit and protection of County and as additional consideration to
191 County, Company agrees to hold harmless and defend County, its Board of
192 Supervisors, officers, agents, and employees from and against any and all claims,
193 actions, liabilities, loss, damage or injury, including any of the foregoing by way of
194 indemnification or contribution, arising directly or indirectly out of Company's activity,
195 performance, operations, acts or omissions relating to Company's duties,
196 responsibilities and rights under the terms and conditions of this Agreement, whether or
197 not such claims, actions, liabilities, loss, damage, or injury result directly or indirectly
198 from the sole, contributory, comparative, active, passive primary or secondary
199 negligence of Company. Additionally, Company agrees to indemnify County for any
200 and all losses, including but not limited to attorneys' fees and legal costs, which County
201 may suffer by reasons of such activity, performance, operations, acts or omissions
202 under this Agreement. Company shall maintain policies of liability insurance for bodily
203 injury in an amount not less than ONE MILLION DOLLARS (\$1,000,000) for injury or
204 death to any one person arising out of any one occurrence with an aggregate of TWO
205 MILLION DOLLARS (\$2,000,000). Policies of liability insurance for property damage
206 will be maintained in an amount not less than ONE MILLION DOLLARS (\$1,000,000)
207 against any liability arising directly or indirectly out of such activity, performance,
208 operations, acts or omissions under this Agreement. Company shall also maintain
209 Workers' Compensation as required by applicable state or federal law or regulation.
210 The above mentioned policies of insurance shall include County as an additional
211 insured and the coverage of such policies shall be expressly made primary with respect
212 to any other coverage. Copies of such policies, or certificates evidencing such policies,
213 shall be first approved by the Counsel of County and filed with the County Public Works
214 Department. Failure of Company to provide and maintain on file with County such
215 copies or certificates shall cause Company to pay to County a penalty of \$50.00 per day
216 for each day of such failure. Said policies shall contain a contractual endorsement
217 recognizing the Contractual obligation of Company to County contained in this
218 paragraph. All policies shall contain a provision requiring thirty (30) days written notice
219 to be given to County prior to cancellation, modification, or reduction of limits. Failure of
220 Company to maintain required insurance policies shall subject Agreement to
221 immediately termination, at option of County.

222
223 15. Time is of the essence in this Agreement. City and County agree that any
224 provisions requiring action by the other party shall not be unduly delayed.

225
226 16. All notices required under this Agreement shall be in writing and shall
227 either be served personally or delivered by registered or certified mail, postage prepaid,

228 return receipt requested. Notices shall be deemed received at the earlier of actual
229 receipt or five (5) days following deposit in the United State mail, postage prepaid at the
230 address given below. Notices shall be directed to the parties at the following
231 addresses:

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233 With a copy to:

234
235 Director of Public Works
236 City of Tracy
237 333 Civic Center Plaza
238 Tracy, CA 95376

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

239
240 Director of Public Works
241 County of San Joaquin
242 P.O. Box 1810
243 Stockton, CA 95201

244
245 Tracy Material Recovery and
246 Solid Waste Transfer, Inc.
247 P.O. Box 93
248 Tracy, CA 95378

249
250 Each party may change its address by giving the other parties notice of change in
251 accordance with this section.

252
253 17. This Agreement is executed and intended to be performed in the State of
254 California, and the laws of California shall govern its interpretation and effect.

255
256 18. The Company, and the City and County's Public Works Directors and/or
257 City Attorney and County Counsel shall attempt to informally resolve any disputes
258 concerning the provisions of this Agreement. Should a resolution not be reached
259 through this process, both City and County shall agree to submit the dispute for
260 arbitration and submit the arbitrator's recommendation to the Board of Supervisors and
261 City Council.

262
263 19. If there is a conflict between the provisions of this Agreement and the
264 Service Agreement identified above, the provisions of the Service Agreement shall
265 control. In the event there is a dispute as to the meaning of any provisions of this
266 Agreement, the dispute shall be resolved in accordance with the dispute resolution
267 procedure established in the Service Agreement, as though that procedure were a part
268 of this Agreement.

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270 20. The parties agree to execute and acknowledge, if required, any and all
271 other documents and writing which may be necessary to carry out the purposes and
272 provisions of this Agreement. In addition, the parties agree to consider enacting
273 ordinances and resolutions necessary to implement this Agreement.

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21. Unless otherwise indicated, approved by City means approved by City Council and approved by County means approved by the Board of Supervisors.

22. This agreement shall commence on the date first above mentioned, and shall continue for twenty (20) years thereafter, unless earlier terminated as provided herein.

23. Breach of this Agreement is defined as the failure by a party to perform the term, conditions or covenants agreed to be performed by that party. Upon the breach of this Agreement by a party, the non-breaching party may, at its sole discretion, terminate this Agreement after sixty (60) days written notice given by the non-breaching party to the breaching party of the breach, provided that, if the breaching party shall cure the breach within such sixty (60) day period, no termination of the Agreement shall occur. The right of termination shall be in addition to, and not in substitution of, any and all other rights or remedies available under law or equity to either party for breach of this Agreement.

(Signatures on Following Page)

297 ATTEST: MIMI DUZENSKI
298 Clerk of the Board of Supervisors
299 of the County of San Joaquin,
300 State of California



301
302
303 By: Mimi Duzenski
304 Clerk

COUNTY OF SAN JOAQUIN, a
political subdivision of the State
of California

By: Robert V. Elliott 7/29/2014
ROBERT V. ELLIOTT
Chairman, Board of Supervisors
"County"

309 ATTEST: SANDRA EDWARDS
310 City Clerk of the City of Tracy

311
312
313 By: _____
314 City Clerk

CITY OF TRACY, a
municipal corporation of the State of
California

By: _____
BRENT H. IVES, Mayor
City of Tracy, "City"

318 APPROVED AS TO FORM:

319
320
321 By: Lawrence P. Meyers
322 LAWRENCE P. MEYERS
323 Deputy County Counsel

By: _____
DAN G. SODERGREN
City Attorney

326 RECOMMENDED FOR APPROVAL:

327
328
329 By: Thomas M. Gau
330 THOMAS M. GAU
331 County Director of Public Works

RECOMMENDED FOR APPROVAL:

By: _____
DAVID FERGUSON
City Director of Public Works

334 APPROVED AS TO FORM:
335 NEUMILLER & BEARDSLEE

336
337 By: Danessa Ciannecchini
338 for DANIEL J. SCHROEDER, Attorney for
339 Tracy Material Recovery and
340 Solid Waste Transfer, Inc.

TRACY MATERIAL RECOVERY AND
SOLID WASTE TRANSFER, INC)

By: Michael K. Repetto
MICHAEL K. REPETTO,
President

RESOLUTION _____

APPROVING THE AGREEMENT FOR USE OF THE TRACY MATERIAL RECOVERY FACILITY AND TRANSFER STATION BETWEEN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, AND TRACY MATERIAL RECOVERY AND SOLID WASTE TRANSFER, INC.

WHEREAS, San Joaquin County (County), City of Tracy (City) and Tracy Material Recovery and Solid Waste Transfer, Inc. (Company) entered into an agreement dated August 9, 1994 ("1994 Agreement") concerning the flow control of the solid waste stream being directed to the Tracy Material Recovery Facility and Transfer Station (MRF) from the unincorporated area of the County known as County Refuse Service Area F which includes Mountain House, and from the City, and

WHEREAS, This agreement will expire August 9, 2014, and

WHEREAS, The MRF is being used to remove recyclable, compostable, and transformable materials from the solid waste stream, thereby assisting the City and County in achieving the waste reduction goals of AB939 and AB341, and

WHEREAS, The Company accepts and processes all waste from residential, commercial, and industrial collectors licensed by County, and all self-haul waste originating in Service Area F of San Joaquin County in the same manner as the waste from the City pursuant to the Contract for the Collection and Disposal of Refuse for Refuse Service Area (F) of the County of San Joaquin, by and between Tracy Delta Solid Waste Management, Incorporated, City, and the County, and

WHEREAS, The agreement is for approximately twenty (20) years and becomes effective August 9, 2014, and

WHEREAS, The City is required to inform the County three (3) years prior to when the MRF reaches capacity; upon receipt of such notice, the County may terminate the Agreement with one (1) year's notice, and

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

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby approve the Agreement for Use of the Tracy Material Recovery Facility and Transfer Station between the City of Tracy, County of San Joaquin, and Tracy Material Recovery and Solid Waste Transfer, Inc.

* * * * *

Resolution 2014-_____

Page 2

The foregoing Resolution _____ was adopted by City Council on the 5th day of August 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4.C

REQUEST

ACCEPTANCE OF OFFSITE IMPROVEMENTS COMPLETED BY PROLOGIS LOGISTICS SERVICES INCORPORATED, OF DELAWARE, FOR CONSTRUCTION OF ROADWAY IMPROVEMENTS ON SKYLARK AVENUE FROM THE PROLOGIS PARK TRACY - PHASE 2 SITE TO GRANT LINE ROAD

EXECUTIVE SUMMARY

Prologis Logistics Services Incorporated, a Delaware Corporation (Developer), the Developer of the new industrial building known as the Skylark Fulfillment Center, has completed the construction of Skylark Avenue between Grant Line Road and the Skylark Fulfillment Center in accordance with the approved Roadway Construction and Reimbursement Agreement, project plans, and specifications. Staff recommends Council accept the improvements as completed to enable the City to release the developer's bonds.

DISCUSSION

On June 18, 2013, City Council approved the Roadway Construction and Reimbursement Agreement with Prologis Logistics Services, Incorporated, a Delaware Corporation, for construction of the Roadway Improvements on Skylark Avenue.

The roadway improvements on Skylark Avenue included construction of two travel lanes, signing and striping, street lights, vertical curb, gutter, and a concrete sidewalk on one side of the street. It also included the extension of the water main from Grant Line Road to Chrisman Road, and a storm drain line with catch basin and drop inlet. The street and utilities improvements on Skylark Avenue are shown on the Improvement Plans and Specifications.

The Improvement Plans and Specifications for Skylark Avenue were prepared by Keir & Wright and reviewed by the Engineering staff.

The Developer has completed all work required to be performed in accordance with the agreement and has requested acceptance of the off-site public improvements. The estimated cost of the improvements is as follows:

Item Description	Cost
Road Way	\$633,387.39
Water	\$119,190.00
Street Drainage	\$188,212.00
Curbs/gutter/sidewalk	\$121,474.00
Street Lights	\$ 48,000.00
Traffic Signal	\$240,000.00
Landscaping	\$ 26,700.40
Misc. and Contingencies	\$112,761.38
Total	\$1,489,725.17

The 3.0022 acres have been dedicated as part of the public right-of-way. The project carries a one-year warranty bond for all public improvements.

FISCAL IMPACT

There will be no fiscal impact to the General Fund. The improvements were completed by Prologis Logistics Services Incorporated.

STRATEGIC PLAN

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

RECOMMENDATION

That City Council, by resolution, accept the improvements completed by Prologis Logistics Services Incorporated for construction of Roadway Improvements on Skylark Avenue from the Prologis Park Tracy Phase 2 Site to Grant Line Road. The Development Services Department will notify the Developer when to prepare and record a Notice of Completion with San Joaquin County. The City Engineer will release all bonds in accordance with the terms of the Offsite Improvement Agreement.

Prepared by: Paul Verma, Senior Civil Engineer

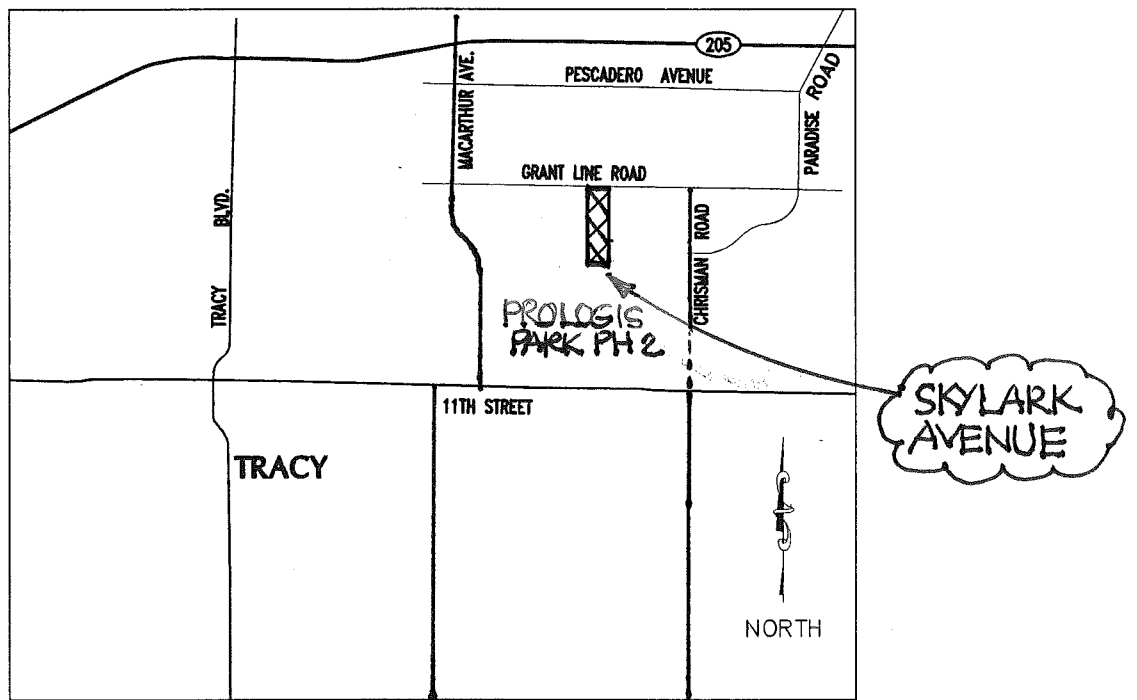
Reviewed by: Victoria Dion, City Engineer/Assistant Development Services Director
Andrew Malik, Development Services Director
Jenny Haruyama, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENT

Attachment A: Vicinity Map

ATTACHMENT A



VICINITY MAP
NO SCALE

RESOLUTION 2014 - _____

ACCEPTING OFFSITE IMPROVEMENTS COMPLETED BY PROLOGIS LOGISTICS SERVICES INCORPORATED, A DELAWARE CORPORATION, FOR CONSTRUCTION OF ROADWAY IMPROVEMENTS ON SKYLARK AVENUE FROM THE PROLOGIS PARK TRACY PHASE 2 SITE TO GRANT LINE ROAD

WHEREAS, On June 18, 2013, City Council approved the Roadway Construction and Reimbursement Agreement with Prologis Logistics Services, Incorporated, a Delaware Corporation, for construction of Roadway Improvements on Skylark Avenue, and

WHEREAS, Prologis Logistics Services Incorporated, has completed construction of Skylark Avenue between Grant Line Road and the Skylark Fulfillment Center in accordance with the approved Roadway Construction and Reimbursement Agreement, project plans, and specifications, and

WHEREAS, The estimated cost of infrastructure improvements is as follows:

Item Description	Cost
Road Way	\$633,387.39
Water	\$119,190.00
Street Drainage	\$188,212.00
Curbs/gutter/sidewalk	\$121,474.00
Street Lights	\$48,000.00
Traffic Signal	\$240,000.00
Landscaping	\$26,700.40
Misc. and Contingencies	\$112,761.38
Total	\$1,489,725.17

WHEREAS, The 3.0022 acres have been dedicated as part of the public right-of-way and the project carries a one-year warranty bond for all public improvements;

NOW, THEREFORE, BE IT RESOLVED, That City Council accepts the improvements completed by Prologis Logistics Services Incorporated, for construction of Roadway Improvements on Skylark Avenue from the Prologis Park Tracy Phase 2 Site to Grant Line Road. The Development Services Department will notify the Developer when to prepare and record a Notice of Completion with San Joaquin County and the City Engineer will release all bonds in accordance with the terms of the Offsite Improvement Agreement.

* * * * *

Resolution 2014 - _____
August 5, 2014
Page 2

The foregoing Resolution 2014-_____ was passed and adopted by the Tracy City Council on the 5th day of August 2014, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4.D

REQUEST

APPROVAL OF SEVEN MASTER PROFESSIONAL SERVICES AGREEMENTS (MPSAs) WITH KIMLEY-HORN ASSOCIATES, INC., TJKM TRANSPORTATION CONSULTANTS, WEST YOST & ASSOCIATES, INC., BLACK WATER CONSULTING ENGINEERS, INC., STORM WATER CONSULTING, INC., DF ENGINEERING, INC., AND DAVID W. ENKE, L.S. FOR PROFESSIONAL ENGINEERING AND LAND SURVEYING SERVICES FOR VARIOUS PROJECTS AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS

EXECUTIVE SUMMARY

This agenda item, with City Council approval, would authorize the City to contract with Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc., Storm Water Consulting, Inc., DF Engineering, Inc., and David W. Enke, L.S. for professional engineering and land surveying services associated with a variety of upcoming and ongoing development projects.

DISCUSSION

Development Services Department staff is working with various developers on a large number of development projects, most of which require technical engineering and land surveying expertise. Some examples include Cordes Ranch, Tracy Hills, and several other residential development projects. In consideration of the developers' timing needs, staff is tasked with expediting the completion of improvement plan review for these projects.

In April 2014, the City published a Request for Proposals (RFP) for assistance in improvement plan review and analysis from consultants specializing in traffic engineering, storm drainage engineering, water system engineering, and land surveying. On May 5, 2014, staff received 13 proposals. Staff reviewed and rated the proposals and selected seven consultants to enter into Master Professional Services Agreements. The selected consultants in the four disciplines are as follows:

Traffic Engineering Services:

- TJKM Transportation Consultants
- Kimley-Horn Associates, Inc.

Storm Drainage Engineering Services:

- Storm Water Consulting, Inc. (includes Stantec Consulting Services Inc. as a subconsultant)

Water System Engineering Services:

- West Yost & Associates, Inc.
- Black Water Consulting Engineers, Inc.

Land Surveying Document Plan Check Services:

- David W. Enke, L.S.
- DF Engineering, Inc.

As projects are submitted for review, staff will select the most appropriate consultant(s) for assistance with each project. These agreements with each of the seven consultants are for a term of two years. The City reserves the option to extend the agreement an additional two years.

STRATEGIC PLAN

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

FISCAL IMPACT

There will be no impact to the General Fund. The funding for these consultants will be through Cost Recovery Agreements executed with each developer to cover the costs of staff time and consultant work related to each project.

RECOMMENDATION

Staff recommends that City Council approve, by resolution, the Master Professional Services Agreements and Billing Rates with Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc., Storm Water Consulting, Inc., DF Engineering, Inc., and David W. Enke, L.S for technical professional engineering and land surveying assistance for various projects, and authorize the Mayor to execute the agreements. It is further recommended that individual task orders be approved by the Development Services Director with a not to exceed cumulative dollar amount of \$200,000 for DF Engineering, Inc., \$400,000 for David W. Enke, L.S. and \$600,000 for Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc. and Storm Water Consulting, Inc., provided that this is only applicable to projects for which funds are available through Cost Recovery Agreements.

Prepared by: Victoria Dion, City Engineer/Assistant Development Services Director

Reviewed by: Andrew Malik, Development Services Director
Jenny Haruyama, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENTS

Attachment A: Master Professional Services Agreement with Kimley-Horn Associates, Inc. with billing rates included

Attachment B: Master Professional Services Agreement with TJKM Transportation Consultants, with billing rates included

Agenda Item 4.D

August 5, 2014

Page 3

Attachment C: Master Professional Services Agreement with West Yost & Associates, Inc.,
with billing rates included

Attachment D: Master Professional Services Agreement with Black Water Consulting Engineers,
Inc., with billing rates included

Attachment E: Master Professional Services Agreement with Storm Water Consulting, Inc., with
billing rates included

Attachment F: Master Professional Services Agreement with DF Engineering, Inc., with billing
rates included

Attachment G: Master Professional Services Agreement with David W. Enke, L.S., with billing
rates included

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), Kimley-Horn and Associates, Inc. ("Consultant").

RECITALS

- A. CONSULTANT is a professional engineering company practicing in the field of traffic engineering.
- B. CONSULTANT services are needed to perform various technical analyses of citywide traffic issues and review proposed development projects with respect to traffic safety and impacts to the City roadway and intersection systems.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: Frederik Venter, P.E. 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 City's prior written consent.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 2 of 7

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion. Notwithstanding any other provisions of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the Client, third parties, or governmental agencies.

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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 3 of 7

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 10.2 **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.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 4 of 7

- 10.3 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.
 - 10.4 Workers’ Compensation** coverage shall be maintained as required by the State of California.
 - 10.5 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 claim.
 - 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
 - 10.6.2** 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.
 - 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
 - 10.8 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.
 - 10.9 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 days after the execution of this Agreement.
 - 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
 - 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 5 of 7

12. MISCELLANEOUS.

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

To City:
Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
Frederik Venter, P.E.
Kimley-Horn and Associates, Inc.
100 West San Fernando Street, #250
San Jose, CA 95113

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

12.3 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.

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

12.5 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.

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

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 6 of 7

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

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

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 7 of 7

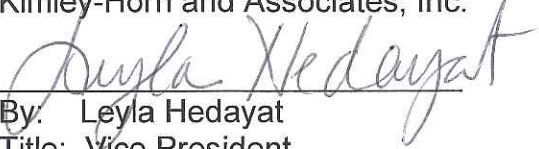
13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit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

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

City of Tracy

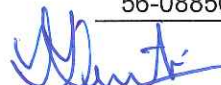
Consultant
Kimley-Horn and Associates, Inc.

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



By: Leyla Hedayat
Title: Vice President
Date: 7/10/14
Fed. Employer ID No. _____
56-0885615

Attest:



By: Carol Fleischmann
Title: Interim City Clerk
Date: _____

By: Frederick Venter, P.E. #CA64621
Title: Assistant Secretary
Date: 7/10/14

Approved As To Form:

**KHACA
03**

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review for technical accuracy of the various proposed roadway and traffic circulation plans for proposed residential, commercial and industrial projects. Consultant may be assigned to assist the CITY in the performance of the following types of traffic engineering tasks:

As part of the review of preliminary site plan and development applications, prepare a technical report that contains the results of a traffic analysis and recommendations to be incorporated in the development project conditions of approval.

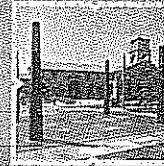
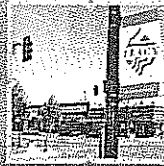
- a. Evaluate roadway and traffic circulation for Project(s) and verification of conformance to City standards the location of Project(s) access point(s), spacing of driveway, allowed turning-movements at each access point, and level of service of operation of existing intersection(s) and traffic signal(s).
- b. Perform and/or assist in Warrant Analyses to determine the timing of installing a traffic signal and/or stop sign, and other applicable improvements.
- c. Determine cost share responsibility of benefitting property(s) towards CITY program improvements.
- d. Determine roadway infrastructure assessments for adequacy in capacity and level of service.
- e. Specify specific traffic impacts and recommend mitigation measures. Also determine timing and/or trigger points for the implementation of the recommended mitigation measures based on citywide level of service goals.
- f. Determination of number of lanes, geometric configuration and turning movements of a particular intersection and roadway and right-of-way widths for consistency with the Citywide Roadway & Transportation Master Plan, relevant Specific Plans and City's Traffic Model.
- g. Determine traffic infrastructure improvements needed to serve the Projects, including infrastructure master planning for the study, a summary of findings required by the Mitigation Fee Act (AB 1600), compliance with the Impact Fee Ordinance per Title 13 of the Tracy Municipal Code, Specific Plan reimbursement calculation, preparation of supplements to City's Specific Plan for the particular area being analyzed and relevant portions of the Citywide Roadway & Transportation Master Plan, and providing input to the City's program management consultant(s) relevant to their preparation of addendums to existing Finance and Implementation Plans ("FIP") for various Projects.

As part of the review and approval of final improvement plans for improvements required of the Project(s), Consultant may assist the City in the performance of the following tasks:

- a. Review and provide comments on the signing, striping and traffic signal plans for public improvements. Several reviews may be required depending on the magnitude of the improvements, complexity of issues, and/or quality of re-submittals of improvement plans.
- b. Perform review for compliance with standards on sight distance, highway geometrics, approved specific plan area technical analyses, site specific technical analyses, State and City standards acceptable engineering practices and the Project's development conditions of approval.

PERSONNEL

Frederik Venter, P.E.
Mike Schmitt, AICP, CTP
John Pullan, P.E.
Kevin Tsoll, P.E., L.S.I.T
Prasanna Muthireddy, P.E.
Daniel Carley, P.E.
Courtney Holst, E.I.T.
Meghan Heise, E.I.T.
Claudia Garcia
Eric Biland, P.E., CSM, LEED AP, QSD/P
John Shank, P.E.
Kevin Aguigui, P.E., T.E., E.E., CSEP
Matt Wages, E.I.T.
Mike Mowery, P.E.
Ben Huie, P.E.
Corbin Skerrit, E.I.T.
Jiaxin Tong, P.E.
Fareed Pittalwala, P.E.
Matt McCormick, P.E.
Brian Sowers, P.E.
Nikita Petrov, P.E.
Brian Sager, RLA, LEED AP



Hourly Rate Schedule

Effective thru December 31, 2014

OFFICE

Analyst.....	\$100.00 - \$ 140.00
Engineer/Professional.....	\$140.00 - \$ 200.00
Senior Engineer/Senior Professional.....	\$200.00 - \$295.00
Cadd Operator/Designer.....	\$100.00 - \$170.00
Project Support.....	\$70.00 - \$130.00

Note: Billing Rates are reviewed yearly and are adjusted as necessary.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and TJKM Transportation Consultants ("Consultant").

RECITALS

- A. CONSULTANT is a professional engineering company practicing in the field of traffic engineering.
- B. CONSULTANT services are needed to perform various technical analyses of citywide traffic issues and review proposed development projects with respect to traffic safety and impacts to the City roadway and intersection systems.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: Christopher Thnay, P.E. 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 City's prior written consent.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 2 of 7

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
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 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 3 of 7

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 10.2 **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.
 - 10.3 **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.
 - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 4 of 7

- 10.5 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.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** 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.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 5 of 7

12. MISCELLANEOUS.

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

To City:

Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Christopher Thnay, P.E.
TJKM Transportation Consultants
4305 Hacienda Drive, Suite 550
Pleasanton, CA 94588-2798

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

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

12.3 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.

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

12.5 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.

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

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 6 of 7

- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS ROADWAY AND TRAFFIC CIRCULATION ANALYSES**

Page 7 of 7

13. **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 and their respective successors and assigns.


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

City of Tracy

Consultant

TJKM Transportation Consultants

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

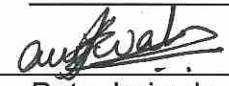


By: Chris Kinzel, P.E., T.E.
Title: Vice President
Date: July 9, 2014

Attest:

Fed. Employer ID No. _____

By: Carol Fleischmann
Title: Interim City Clerk
Date: _____



By: Ruta Jariwala, PE, TE
Title: Treasurer
Date: July 9th, 2014

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review for technical accuracy of the various proposed roadway and traffic circulation plans for proposed residential, commercial and industrial projects. Consultant may be assigned to assist the CITY in the performance of the following types of traffic engineering tasks:

As part of the review of preliminary site plan and development applications, prepare a technical report that contains the results of a traffic analysis and recommendations to be incorporated in the development project conditions of approval.

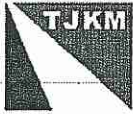
- a. Evaluate roadway and traffic circulation for Project(s) and verification of conformance to City standards the location of Project(s) access point(s), spacing of driveway, allowed turning-movements at each access point, and level of service of operation of existing intersection(s) and traffic signal(s).
- b. Perform and/or assist in Warrant Analyses to determine the timing of installing a traffic signal and/or stop sign, and other applicable improvements.
- c. Determine cost share responsibility of benefitting property(s) towards CITY program improvements.
- d. Determine roadway infrastructure assessments for adequacy in capacity and level of service.
- e. Specify specific traffic impacts and recommend mitigation measures. Also determine timing and/or trigger points for the implementation of the recommended mitigation measures based on citywide level of service goals.
- f. Determination of number of lanes, geometric configuration and turning movements of a particular intersection and roadway and right-of-way widths for consistency with the Citywide Roadway & Transportation Master Plan, relevant Specific Plans and City's Traffic Model.
- g. Determine traffic infrastructure improvements needed to serve the Projects, including infrastructure master planning for the study, a summary of findings required by the Mitigation Fee Act (AB 1600), compliance with the Impact Fee Ordinance per Title 13 of the Tracy Municipal Code, Specific Plan reimbursement calculation, preparation of supplements to City's Specific Plan for the particular area being analyzed and relevant portions of the Citywide Roadway & Transportation Master Plan, and providing input to the City's program management consultant(s) relevant to their preparation of addendums to existing Finance and Implementation Plans ("FIP") for various Projects.

As part of the review and approval of final improvement plans for improvements required of the Project(s), Consultant may assist the City in the performance of the following tasks:

- a. Review and provide comments on the signing, striping and traffic signal plans for public improvements. Several reviews may be required depending on the magnitude of the improvements, complexity of issues, and/or quality of re-submittals of improvement plans.
- b. Perform review for compliance with standards on sight distance, highway geometrics, approved specific plan area technical analyses, site specific technical analyses, State and City standards acceptable engineering practices and the Project's development conditions of approval.

PERSONNEL

Chris Kinzel, P.E., T.E.
Christopher Thnay, P.E., AICP
Nayan Amin, T.E.
Andrew Kluter, P.E.
Travis Richards, P.E.
Atul Patel, T.E., PTOE
Erik Bjorklund
Ruta Jariwala, P.E., T.E.
Vishnu Gandluru
Prashanth Dullu
Wesley Catanzaro
Jeff Lacap
Shruti Shrivastava



Vision That Moves Your Community

Transportation
Consultants

Rate Schedule

Principal	\$250/hour
Director.....	230/hour
Senior Project Manager.....	210/hour
Project Manager.....	180/hour
Senior Transportation Engineer	165/hour
Engineer	145/hour
Assistant Engineer	125/hour
Graphics Designer.....	110/hour
Technical Staff	80/hour
Technical Staff II.....	35/hour
Administrative Staff.....	80/hour
Production Staff	55/hour

Reimbursable Expenses

Plotting (per sheet)	\$18.00
Travel Cost (per mile, subject to change; based on IRS standard mileage rates)56

All outside services are billed at cost plus a ten percent margin for handling.

Expert Witness charges available upon request.

Invoices are due and payable within 30 days. Invoices paid after 30 days will be subject to separate billings of one and one half percent per month of unpaid balance. Late charges are not included in any agreement for maximum charges.

*Rates Effective January 1, 2014
Rates Subject to Change*

Pleasanton
4305 Hacienda Drive
Suite 550
Pleasanton, CA
94588-8526
925.463.0611
925.463.3690 fax

Fresno
516 W. Shaw Avenue
Suite 200
Fresno, CA
93704-2515
559.325.7530
559.221.4940 fax

Sacramento
980 Ninth Street
16th Floor
Sacramento, CA
95814-2736
916.449.9095

Santa Rosa
1400 N. Dutton Avenue
Suite 21
Santa Rosa, CA
95401-4643
707.575.5800
707.575.5888 fax

tjkm@tjkm.com
www.tjkm.com

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and West Yost & Associates, Inc. ("Consultant").

RECITALS

- A. CONSULTANT is a professional engineering company practicing in the field of water engineering.
- B. CONSULTANT services are needed to perform technical review of water infrastructure improvements related to proposed private developments within the City.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: Charles Duncan, P.E. 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 City's prior written consent.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 2 of 7

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 3 of 7

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 10.2 **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.
 - 10.3 **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.
 - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 4 of 7

- 10.5 Professional Liability** coverage shall be maintained to cover damages from negligent errors, omissions, or acts of Consultant in an amount not less than \$2,000,000 per claim and in the aggregate.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** 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.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 5 of 7

To City:

Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Charles Duncan, P.E.
West Yost & Associates, Inc.
2020 Research Park Drive, Ste. 100
Davis, CA 95618

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 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.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 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.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all applicable and non-conflicting local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES
Page 6 of 7**

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

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 7 of 7


13. 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 and their respective successors and assigns.

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

City of Tracy

Consultant
West Yost & Associates, Inc.

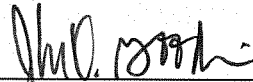
By: Brent H. Ives
Title: Mayor
Date: _____



By: Charles T. Duncan, P.E..
Title: President
Date: JULY, 10 2014
Fed. Employer ID No. 680370826

Attest:

By: Carol Fleischmann
Title: Interim City Clerk
Date: _____



By: JOHN D. GOODWIN
Title: CHIEF FINANCIAL OFFICER
Date: 7-10-14

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review for technical accuracy of the various proposed water system plans, specifications and calculations submitted by the project developer or engineer. Consultant may be asked to perform the following professional services, among others:

- a. Provide a water system hydraulic analysis of the proposed Project's water infrastructure.
- b. Use the City's existing water system model to evaluate the ability of the City's existing water infrastructure to provide minimum required pressures and flows to the Project under various demand conditions, including but not limited to a maximum day plus fire flow condition.
- c. Analyze proposed project potable water infrastructure for conformance with the 2012 Citywide Water System Master Plan.
- d. Analyze proposed project recycled water infrastructure with the 2012 Citywide Water System Master Plan.
- e. Determine and recommend Project on-site water pipeline infrastructure sizing and alignment modifications and/or other off-site system modifications to mitigate any Project design deficiencies identified above.
- f. Provide a Technical Memorandum to the City summarizing the Project water infrastructure system analysis, as well as any recommended system modifications.

PERSONNEL

Key personnel include, but are not limited to, the following:

Charles Duncan, P.E.
Elizabeth Drayer, P.E.
Amy Kwong, P.E.
Jim Connell, P.E.
Gerry Nakano, P.E.
Shannon Barcal, E.I.T.
Brian Cox, E.I.T.
Irene Suroso, P.E.

2014 Billing Rate Schedule

(Effective January 1, 2014 through December 31, 2014)*

POSITION	LABOR CHARGES (DOLLARS PER HR)
Principal/Vice President	229
Engineering Manager	218
Principal Engineer/Scientist	198
Senior Engineer/Scientist/GIS Analyst	177
Associate Engineer/Scientist	161
GIS Analyst	156
Engineer II/Scientist II	140
Engineer I/Scientist I	120
Construction Manager III	177
Construction Manager II	161
Construction Manager I	151
Resident Inspector III	133
Resident Inspector II	123
Resident Inspector I	109
Sr. Designer/Sr. CAD Operator	114
Designer/CAD Operator	102
Technical Specialist III	114
Technical Specialist II	99
Technical Specialist I	83
Engineering Aide	68
Administrative IV	104
Administrative III	94
Administrative II	78
Administrative I	62

- 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%.
- Direct Costs including general computers, system charges, telephone, fax, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses will be billed at 5% of West Yost labor charges.
- 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.

Continued on following page

2014 Billing Rate Schedule (continued)

(Effective January 1, 2014 through December 31, 2014)*

Surveying and Equipment Charges

POSITION	LABOR CHARGES (DOLLARS PER HR)
GPS, 3-Person	348
GPS, 2-Person	302
GPS, 1-Person	234
Survey Crew, 2-Person	255
Survey Crew, 1-Person	192

Equipment Charges

EQUIPMENT	BILLING RATE (DOLLARS PER DAY)	BILLING RATE (DOLLARS PER WEEK)
DO Meter	16	81
pH Meter	5	26
Automatic Sampler	128	698
Transducer/Data Logger	40	202
Hydrant Pressure Gage	11	49
Hydrant Pressure Recorder (HPR)	—	202
Hydrant Wrench	5	32
Pilot Diffuser	29	132
Well Sounder	29	132
Ultrasonic Flow Meter	—	264
Vehicle	87	437
Velocity Meter	11	64
Water Quality Multimeter	173	946
Thickness Gage	—	70

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Black Water Consulting Engineers, Inc. ("Consultant").

RECITALS

- A. CONSULTANT is a professional engineering company practicing in the field of water engineering.
- B. CONSULTANT services are needed to perform technical review of water infrastructure improvements related to proposed private developments within the City.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: Jeff Black, P.E. 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 City's prior written consent.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 2 of 7

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 3 of 7

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
- 10.1 General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 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.
- 10.3 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.
- 10.4 Workers' Compensation** coverage shall be maintained as required by the State of California.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 4 of 7

- 10.5 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.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** 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.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 5 of 7

To City:

Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Jeff Black, P.E., Principal
Black Water Consulting Engineers, Inc.
605 Standiford Avenue, Suite N
Modesto, CA 95350

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 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.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 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.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 6 of 7

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

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS WATER PRESSURE & CAPACITY ANALYSES**

Page 7 of 7

13. 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 and their respective successors and assigns.

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

City of Tracy

Consultant
Black Water Consulting Engineers, Inc.

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

Jeff Black

By: Jeff Black, P.E.
Title: President
Date: 7/14/14
Fed. Employer ID No. 46-1504431

Attest:

By: Carol Fleischmann
Title: Interim City Clerk
Date: _____

Jeff Black

By: Jeff Black, P.E.
Title: Secretary
Date: 7/14/14

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review for technical accuracy of the various proposed water system plans, specifications and calculations submitted by the project developer or engineer. Consultant may be asked to perform the following professional services, among others:

- a. Provide a water system hydraulic analysis of the proposed Project's water infrastructure.
- b. Use the City's existing water system model to evaluate the ability of the City's existing water infrastructure to provide minimum required pressures and flows to the Project under various demand conditions, including but not limited to a maximum day plus fire flow condition.
- c. Analyze proposed project potable water infrastructure for conformance with the 2012 Citywide Water System Master Plan.
- d. Analyze proposed project recycled water infrastructure with the 2012 Citywide Water System Master Plan.
- e. Determine and recommend Project on-site water pipeline infrastructure sizing and alignment modifications and/or other off-site system modifications to mitigate any Project design deficiencies identified above.
- f. Provide a Technical Memorandum to the City summarizing the Project water infrastructure system analysis, as well as any recommended system modifications.

PERSONNEL

Jeff Black, P.E.

Aja Verberg, P.E.

Alison Furuya, P.E.

Adam Hutchings, E.I.T.

BLACKWATER

CONSULTING ENGINEERS, INC.

2013-2014 Hourly Fee Schedule

	Hourly Rate
ENGINEERING:	
PRINCIPAL / PROJECT MANAGER	\$160.00
SENIOR ENGINEER	\$140.00
ASSISTANT ENGINEER	\$120.00
EIT ENGINEER	\$85.00
TECHNICAL STAFF	
SENIOR CAD TECHNICIAN	\$85.00
CAD TECHNICIAN	\$65.00
FIELD SERVICES:	
CONSTRUCTION INSPECTOR	\$95.00
CONSTRUCTION MANAGER	\$140.00
ADMINISTRATION:	
OFFICE / CLERICAL	\$65.00
EXPERT WITNESS:	\$160.00
DIRECT COSTS:	COST PLUS 10 PERCENT
SUBCONSULTANTS:	COST PLUS 10 PERCENT
MILEAGE:	IRS RATE

The above rate schedule is effective January 1, 2013 and is subject to adjustment January 1, 2015.

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Storm Water Consulting, Inc. ("Consultant").

RECITALS

- A. CONSULTANT is a professional engineering company practicing in the field of storm drainage engineering.
- B. CONSULTANT services are needed to perform various technical review of storm drainage infrastructure improvements related to proposed private developments within the City.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: James H. Nelson, P.E. 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 City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES**

Page 2 of 7

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$600,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES**

Page 3 of 7

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 10.2 **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.
 - 10.3 **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.
 - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES**

Page 4 of 7

- 10.5 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.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** 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.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES**

Page 5 of 7

To City:

Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

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

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 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.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 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.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES
Page 6 of 7**

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

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
VARIOUS HYDROLOGIC, HYDRAULIC, & STORMWATER QUALITY ANALYSES**

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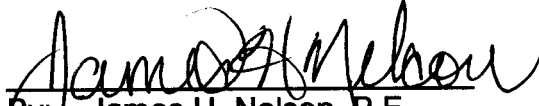
13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit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

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

City of Tracy

Consultant
Storm Water Consulting, Inc.

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

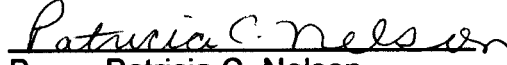


By: James H. Nelson, P.E.
Title: President
Date: 7-9-2014

Fed. Employer ID No. 52-2380404

Attest:

By: Carol Fleischmann
Title: Interim City Clerk
Date: _____



By: Patricia C. Nelson
Title: Chief Financial Officer
Date: 7/9/2014

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review of proposed storm drainage systems associated with private land developments within the CITY. The types of professional services may include:

- a. Review hydrologic reports submitted by developer to ascertain technical accuracy and conformance with the 2012 Citywide Storm Drainage Master Plan and the project Specific Plan and Tentative Map.
- b. Review stormwater drainage hydraulic calculations submitted by developer for technical accuracy and conformance with City of Tracy Design Standards.
- c. Review project for conformance with the Manual for Stormwater Quality Control Standards for New Development and Redevelopment.
- d. Review project plans and specifications for technical accuracy and conformance with the City of Tracy Design Standards, Standard Plans, and Standard Specifications.
- e. Identify potential trigger points requiring construction of offsite Stormwater Master Plan (program) capital improvements within the drainage basin and determine project's fair share of such capital improvements.
- f. Provide a Technical Memorandum to the City summarizing the Project stormwater infrastructure system analysis, as well as any recommended system modifications.

PERSONNEL

James Nelson, P.E.
Sarah McIlroy, P.E.
Davina Gonzalez, P.E.
Damin Estes, P.E.

EXHIBIT "B"

BILLING RATE SCHEDULE

<u>Position</u>	<u>Billing Rate</u> <u>(dollars per hour)</u>
Project Manager	\$180/hr
Asst. Project Manager	\$175/hr
Senior Hydraulic Engineer	\$150/hr
Senior Mechanical Engineer	\$160/hr
CAD Operator/GIS Technician	\$110/hr
Administrative	\$ 90/hr

Above rates apply to technical work, meetings, travel time, etc.

Expenses: Travel mileage at Federal Mileage Rate.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW**

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and DF Engineering, Inc. ("Consultant").

RECITALS

- A. CONSULTANT is a professional land surveying company with at least one land surveyor in responsible charge and registered to practice in the State of California.
- B. CONSULTANT services are needed to perform technical review of various land surveying documents related to proposed private developments within the City.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: Scott T. DeLaMare. 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 City's prior written consent.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW**

Page 2 of 7

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$200,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW**

Page 3 of 7

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 10.2 **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.
 - 10.3 **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.
 - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW**

Page 4 of 7

- 10.5 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.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2** 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.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's prior written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW**

Page 5 of 7

To City:

Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Scott T. DeLaMare
DF Engineering, Inc.
3421 Tully Road, Suite J
Modesto, CA 95350

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 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.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 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.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 6 of 7**

12.8 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.

(BALANCE OF PAGE LEFT INTENTIONALLY BLANK)

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 7 of 7**


13. 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 and their respective successors and assigns.

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

City of Tracy

Consultant
DF Engineering, Inc.

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

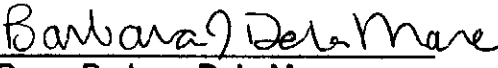


By: Scott T. DeLaMare
Title: Vice President
Date: 7/10/14

Attest:

Fed. Employer ID No. _____
94-2152639

By: Carol Fleischmann
Title: Interim City Clerk
Date: _____



By: Barbara DeLaMare
Title: Chief Financial Officer
Date: 7/10/14

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review for technical accuracy of the various land surveying documents associated with private land developments within the CITY. The types of land surveying documents may include:

- a. Tentative and Final Maps
- b. Tract and Parcel Maps
- c. Lot Line Adjustments
- d. Various land surveying exhibits as required for land acquisition and easements

Act as City Surveyor to certify necessary recordable documents associated with assigned projects.

PERSONNEL

Scott T. DeLaMare, L.S.



DF ENGINEERING, INC.

CIVIL ENGINEERING AND SURVEYING

3421 TULLY ROAD - SUITE J - MODESTO, CA 95350

TELEPHONE (209) 529-7450 - FAX (209) 529-0457

www.dfengineering.com

- SCOTT T. DELAMARE
LS 8078
- BARBARA J. DELAMARE
CPA 46482E
- DAVID J. HOBERG
PE 53311, QSD/QSP
- JEFF CAMARENA
PE 78749

PROVIDED IN SEPARATELY SEALED ENVELOPE

**CITY OF TRACY
LAND SURVEYING SERVICES
(FROM JUNE 1, 2014 TO MAY 31, 2016)
FOR
LAND SURVEYING DOCUMENT REVIEW**

**DF ENGINEERING, INC.
HOURLY RATE CHART**

SCOTT T. DELAMARE, Land Surveyor No. 8078 \$150/hour

CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and David W. Enke, L.S. ("Consultant").

RECITALS

- A. CONSULTANT is a professional land surveying company with at least one land surveyor in responsible charge and registered to practice in the State of California.
- B. CONSULTANT services are needed to perform technical review of various land surveying documents related to proposed private developments within the City.
- C. At the request of the CITY, in May 2014, 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 August 5, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-_____.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: David W. Enke. 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 City's prior written consent.
- 2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 2 of 7**

based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however, that the aggregate total of all Task Orders under this Agreement is Not to Exceed \$400,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
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

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 3 of 7**

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

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.

10. **INSURANCE.**

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

10.2 **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.

10.3 **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.

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

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 4 of 7**

- 10.5 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.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** 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.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 5 of 7**

To City:

Victoria Dion, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

David W. Enke, L.S.
Principal-in-Charge
22968 Los Ranchos Drive
Tracy, CA 95304

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 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.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 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.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW
Page 6 of 7**

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

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**CITY OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
LAND SURVEYING DOCUMENT REVIEW**

Page 7 of 7

13. **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 and their respective successors and assigns.


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

City of Tracy

Consultant

David W. Enke, L.S.

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



By: David W. Enke
Title: Owner
Date: 7/23/14

Fed. Employer ID No. 552-62-576

Attest: _____

By: Carol Fleischmann
Title: Interim City Clerk
Date: _____

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT "A"

SCOPE OF SERVICES

Services shall include review for technical accuracy of the various land surveying documents associated with private land developments within the CITY. The types of land surveying documents may include:

- a. Tentative and Final Maps
- b. Tract and Parcel Maps
- c. Lot Line Adjustments
- d. Various land surveying exhibits as required for land acquisition and easements

Act as City Surveyor to certify necessary recordable documents associated with assigned projects.

PERSONNEL

David W. Enke, L.S.
Todd A. Enke

DAVID W. ENKE, L.S.**PER DIEM FEE SCHEDULE****OFFICE, PROFESSIONAL AND TECHNICAL SERVICES**

<i>PRINCIPAL</i>	<i>\$165.00 PER HOUR</i>
<i>LAND SURVEYOR</i>	<i>\$145.00 PER HOUR</i>
<i>PROJECT SURVEYOR</i>	<i>\$125.00 PER HOUR</i>
<i>CLERICAL</i>	<i>\$60.00 PER HOUR</i>

*Court appearances/Depositions (minimum charge) - \$2000/half day, \$4000/full day:
Preparation at applicable hourly rates.*

FIELD SURVEY SERVICES

<i>Survey Party (2 Person or 1 Person with Robotic)</i>	<i>\$245.00 PER HOUR</i>
<i>3-Man Survey Party (including EDM equipment)</i>	<i>\$350.00 PER HOUR</i>

MATERIALS AND SERVICES

<i>Consultants, Special Equipment, Reproductions, Materials and Other Outside Charges</i>	<i>COST PLUS 15%</i>
<i>GPS Receivers</i>	<i>\$300/day EACH</i>
<i>Automobile Transportation</i>	<i>\$0.85 per mile</i>
<i>Insurance</i>	<i>COST PLUS 15%</i>

OVERTIME FEE IS HOURLY FEE TIMES 1.40.

*PAYMENTS ARE TO BE RECIVED WITHIN 15 DAYS OF OUR INVOICE DATE. ALL
LATE PAYMENTS ARE SUBJECT TO A LATE FEE AND A SERVICE CHARGE OF 1
1/2% PER MONTH.*

SUBJECT TO REVISION ON 06/01/2016

05/01/14

RESOLUTION 2014-_____

APPROVING MASTER PROFESSIONAL SERVICES AGREEMENTS (MPSAs) WITH KIMLEY-HORN ASSOCIATES, INC., TJKM TRANSPORTATION CONSULTANTS, WEST YOST & ASSOCIATES, INC., BLACK WATER CONSULTING ENGINEERS, INC., STORM WATER CONSULTING, INC., DF ENGINEERING, INC. AND DAVID W. ENKE, L.S. FOR PROFESSIONAL ENGINEERING AND LAND SURVEYING SERVICES FOR VARIOUS PROJECTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS

WHEREAS, Development Services staff is processing various developers on a large number of development projects, most of which require the need for technical engineering and land surveying expertise, and

WHEREAS, The project applicants expect the timely completion of the required improvement plan review and analysis, and

WHEREAS, In April 2014, the Development Services Department published a Request for Proposals (RFP) for assistance in improvement plan review and analysis from consultants specializing in traffic engineering, storm drainage engineering, water system engineering and land surveying, and

WHEREAS, On May 5, 2014, staff received 13 proposals from consulting firms, and

WHEREAS, Staff reviewed the proposals and selected Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc., Storm Water Consulting, Inc., DF Engineering, Inc., and David W. Enke, L.S. who best met the City's needs by demonstrating the competence and professional qualifications necessary to perform the needed engineering and land surveying services, and

WHEREAS, The agreements with each of the seven consultants are for a term of two years and the City reserves the option to extend each agreement an additional two years;

NOW, THEREFORE, BE IT RESOLVED, That City Council hereby approves the Master Professional Services Agreements and Billing Rates with Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc., Storm Water Consulting, Inc., DF Engineering, Inc., and David W. Enke, L.S. for technical professional engineering and land surveying assistance for various projects, authorizes the Mayor to execute the agreements and authorizes the approval of task orders by the Development Services Director with a not to exceed cumulative dollar amount of \$200,000 for DF Engineering, Inc., \$400,000 for David W. Enke, L.S., and \$600,000 for Kimley-Horn Associates, Inc., TJKM Transportation Consultants, West Yost & Associates, Inc., Black Water Consulting Engineers, Inc. and Storm Water Consulting, Inc., provided that this is only applicable to projects for which funds are available through a Cost Recovery Agreement, and authorizes the Mayor to execute the Agreements.

* * * * *

The foregoing Resolution 2014-_____ was passed and adopted by the Tracy City Council on the 5th day of August, 2014, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4.E

REQUEST

ACCEPTANCE OF THE LARCH ROAD STORM WATER PUMP STATION UPGRADES, PHASE 2 - CIP 76054, COMPLETED BY COMMERCIAL PUMP AND MECHANICAL (CMP) OF CHICO, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

EXECUTIVE SUMMARY

Commercial Pump and Mechanical (CMP) of Chico, California, the contractor, has completed construction of the Larch Road Storm Water Pump Station Upgrades, Phase 2 - CIP 76054, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends City Council accept the project and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

DISCUSSION

On November 5, 2013, City Council awarded a construction contract to Commercial Pump and Mechanical (CPM) of Chico, California in the amount of \$154,146, for the Larch Road Storm Drain Pump Station Upgrades, Phase 2 - CIP 76054.

The project included refurbishing two existing 18,000 GPM Axial Flow Storm Water Pumps and one existing 4,000 GPM pump. The scope of the project included installation of new 20 foot line shafts, 35" diameter discharge columns, and refurbishing the existing Motor Control Center Programmable Logic Controller (PLC).

Plans and specifications for this project were prepared in-house.

One change order in the amount of \$1,223.28, was issued for the project to change the Motor Control Center touch screen.

Budget and estimated project costs are as follows:

A.	Construction Contract Amount	\$154,146.00
B.	Approved Change orders	\$ 1,223.28
C.	Design, construction management, inspection, Testing, Miscellaneous Expenses including permit fees	\$ 17,237.58
D.	Project Management Charges	<u>\$ 9,770.00</u>
	Total Project Costs	\$182,376.86
	Budgeted Amount	\$200,000.00

The project has been completed within the available budget, within the time frame of the original contract plus the time extension given to the contractor.

STRATEGIC PLAN

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

FISCAL IMPACT

CIP 76054 is an approved Capital Improvement Project and there will be no fiscal impact to the General Fund. All remaining funds will be transferred to the Storm Drain Fund for future improvements.

RECOMMENDATION

That City Council, by resolution, accept construction of the Larch Road Storm Water Pump Station Upgrades, Phase 2 - CIP 76054, completed by Commercial Pump and Mechanical (CPM) of Chico, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

Reviewed by: Victoria Dion, City Engineer/Assistant Development Services Director
Andrew Malik, Development Services Director
Jenny Haruyama, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

RESOLUTION 2014- _____

ACCEPTING THE LARCH ROAD STORM WATER PUMP STATION UPGRADES, PHASE 2 - CIP 76054, COMPLETED BY COMMERCIAL PUMP AND MECHANICAL (CMP) OF CHICO, CALIFORNIA, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

WHEREAS, On November 5, 2013, City Council awarded a construction contract to Commercial Pump and Mechanical (CPM) of Chico, California in the amount of \$154,146 for the Larch Road Storm Drain Pump Station Upgrades, Phase 2 - CIP 76054 , and

WHEREAS, CPM, the contractor, has completed construction of the Larch Road Storm Water Pump Station Upgrades, Phase 2 - CIP 76054, in accordance with plans, specifications, and contract documents. Project costs are within the available budget, and

WHEREAS, One change order was received in the amount of \$1,223.28, and

WHEREAS, Status of budget and project costs are estimated to be as follows:

A.	Construction Contract Amount	\$154,146.00
B.	Approved Change orders	\$ 1,223.28
C.	Design, construction management, inspection, Testing, Miscellaneous Expenses including permit fees	\$ 17,237.58
D.	Project Management Charges	<u>\$ 9,770.00</u>
	Total Project Costs	\$182,376.86
	Budgeted Amount	\$200,000.00

WHEREAS, CIP 76054, is an approved Capital Improvement Project and there will be no fiscal impact to the General Fund. All remaining funds will be transferred to the Storm Drain Fund for future improvements;

NOW, THEREFORE BE IT RESOLVED, That City Council accepts construction of the Larch Road Storm Water Pump Station Upgrades, Phase 2 - CIP 76054, completed by Commercial Pump and Mechanical of Chico, California, and authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

* * * * *

The foregoing Resolution 2014-_____ was passed and adopted by the Tracy City Council on the 5th day of August, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 4.F

REQUEST

AUTHORIZE THE CITY OF TRACY TO REMAIN A PARTICIPANT IN THE URBAN COUNTY CONSORTIUM FOR THE PURPOSE OF ADMINISTERING THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND APPROVE AMENDMENT #1 TO THE URBAN COUNTY CDBG AND HOME INVESTMENT PARTNERSHIP ACT (HOME) COOPERATIVE AGREEMENT

EXECUTIVE SUMMARY

This staff report requests that Council authorize the City of Tracy's inclusion in the Urban County for the purposes of administering the CDBG program and approve Amendment #1 to the Urban County CDBG and HOME Cooperative Agreement.

DISCUSSION

The City of Tracy, along with the cities of Escalon, Lathrop, Lodi, Manteca, and Ripon are participants in a consortium with San Joaquin County for the purpose of administering the CDBG Program. As required by HUD, the City entered into an Urban County Cooperative Agreement (Attachment A) with San Joaquin County on July 7, 1993, which has allowed Tracy to administer the CDBG and HOME programs. These programs are used to fund a variety of Public Facility and Public Service projects in Tracy. Additionally, many local non-profit organizations rely on this funding to serve the needs of Tracy's lower income and at-risk residents.

To remain eligible for CDBG funding, every three years it is necessary for San Joaquin County to undergo a process, established by HUD, for requalification of entitlement status. The six participating jurisdictions in the Urban County have historically exercised the option to automatically renew San Joaquin County's entitlement status. The Urban County Cooperative Agreement for the 2015-2017 entitlement renewal period issued under Notice CPD-14-07, includes additional language provided by HUD (Attachment B) regarding the use of CDBG funds. Because this is a separate amendment to the Urban County Cooperative Agreement, it requires execution by an official representative from each participating jurisdiction. Prior to August 15, 2014, each of the participating jurisdictions will be bringing to their respective councils approval of Amendment #1 to the cooperative agreement.

By participating in the Urban County through a cooperative agreement, Tracy is assured an allocation of CDBG and HOME funds allocated to the County, as long as these funds remain approved by Congress. Without a cooperation agreement the City would have to compete for funding with other nationwide projects. In other words, our CDBG funds could be reduced and our HOME funds eliminated. It also adds a significant burden on staff to aggressively compete for funding. As long as the City continues as a participant in the urban county designation, funding for public service agencies in Tracy who benefit directly from these funds each year would remain available. For the 2014-2015 fiscal year, Tracy is expected to receive approximately \$429,797 of Federal CDBG funds and \$103,612 of HOME funds.

STRATEGIC PLAN:

This is a routine operational item and does not relate to one of the City Council's strategic priorities.

FISCAL IMPACT

There is no impact to the General Fund. Approximately \$429,797 of Federal CDBG funds and \$103,612 of HOME funds has been budgeted for the 2014-2015 Fiscal Year.

RECOMMENDATION

Staff recommends that City Council, by resolution, authorize the City of Tracy to remain a part of the Urban County consortium for the purpose of administering CDBG program and approve Amendment #1 to the Urban County CDBG and HOME Cooperative Agreement.

Prepared by: Barbara Harb, Management Analyst

Reviewed by: Andrew Malik, Development Services Director

Approved by: Maria Hurtado, Interim City Manager

ATTACHMENTS

Attachment A: Urban County CDBG and HOME Cooperative Agreement

Attachment B: Amendment #1 to the Urban County CDBG and HOME Cooperative Agreement

A-93-915

1 URBAN COUNTY
2 COMMUNITY DEVELOPMENT BLOCK GRANT AND
3 HOME INVESTMENT PARTNERSHIP ACT
4 COOPERATION AGREEMENT
5

6 THIS AGREEMENT is entered into this 7 day of July, 1993, by and between the City of
7 ~~TRACY~~, hereinafter referred to as **Recipient**, and the County of San Joaquin, hereinafter referred
8 to as **County**.

9 WHEREAS, the **Recipient** is a duly constituted corporation under the laws of the State of
10 California, and is empowered thereby to undertake essential community development and housing
11 assistance activities, specifically urban renewal and publicly assisted housing; and

12 WHEREAS, the **County** is duly constituted subdivision of the State of California, and is also
13 empowered by State law to undertake essential community development and housing assistance
14 activities, specifically urban renewal and publicly assisted housing; and

15 WHEREAS, Government Code Sections 6500, et seq., authorize two or more public agencies to
16 jointly exercise any power common to both; and

17 WHEREAS, the **County** shall be responsible for the application for grants available to the Urban
18 County; and

19 WHEREAS, it is mutually desired by the parties hereto to enter into a Cooperation Agreement, in
20 accord with the Housing and Community Development Act of 1974, as amended, and applicable Federal
21 rules and regulations adopted pursuant thereto, whereby the parties shall jointly undertake community
22 development and housing assistance activities financed in whole or in part by Community Development
23 Block Grant (CDBG) funds; and

24 WHEREAS, the Department of Housing and Urban Development requires the **County**, as grant
25 applicant, to enter into written agreement with recipients of Home Investment Partnership Act (HOME)
26 funds, pursuant to 24 CFR 92.504.

27 NOW, THEREFORE, BE IT RESOLVED as follows:

1 I. The parties hereto agree to cooperate to undertake, or assist in undertaking, community
2 renewal and lower income housing assistance activities, specifically urban renewal and
3 publicly assisted housing, pursuant to the Housing and Community Development Act of
4 1974, as amended, and HOME Program guidelines, 24 CFR Part 92.

5 II. The parties agree that:

6 A. CDBG Allocation

7 Annual CDBG allocations will be distributed to the **Recipient** based on the criteria
8 contained in the Urban County Allocation Agreement adopted by both the
9 **Recipient** and the **County**.

10 B. CDBG Eligible Activities

11 Each activity undertaken shall meet one of the mandated national objectives, set
12 forth in 24 CFR 570.208. Final determination's of eligibility shall be made by the
13 **County**, and provided to the **Recipient**. Eligible activities may include the
14 following:

15 1. Activities which benefit low and moderate income persons. The
16 **Recipient** shall document income limits applied, and the point in time
17 when the benefit was determined.

18 2. Activities which benefit low and moderate income persons based on the
19 area served by the activity. The **Recipient** shall document:

20 a. The boundaries of the service area; and

21 b. The income characteristics of families and unrelated individuals
22 in the service area.

23 3. Activities which benefit low and moderate income persons because the
24 activity involves a facility or service designed for use by a limited clientele
25 consisting exclusively or predominantly of low and moderate income
26 persons. The **Recipient** shall document:

- 1 a. The facility or service is designed for, and used by, senior
2 citizens, handicapped persons, battered spouses, abused
3 children, the homeless, illiterate persons, or migrant farm workers
4 (presumptive low/mod benefit); or
5 b. The nature and, if applicable, the location of the facility or service
6 and that it is used predominantly by low and moderate income
7 persons; or
8 c. The size and annual income of the family of each person
9 receiving the benefit.

10 4. Activities which benefit low and moderate income persons based on the
11 creation of jobs. The **Recipient** shall provide:

- 12 a. A copy of a written agreement from each assisted business
13 containing:
14 (1) a commitment by the business that it will make at least
15 51% of the jobs available to low and moderate income
16 persons, and will provide training for any of these jobs
17 requiring special skills or education; and
18 (2) a listing by job title of the permanent jobs to be created,
19 which jobs require special skills or education, and which
20 jobs are part-time, if any; and
21 (3) a description of actions to be taken by the **Recipient** and
22 business to ensure that low/mod income persons receive
23 first consideration for these jobs.
24 b. A listing by job title of the permanent jobs filled, and which jobs
25 of those were available to low/mod income persons, and a listing

1 of low/mod income persons interviewed for a particular job; and
2 which low and moderate income persons were hired.

3 5. Activities which benefit low and moderate income persons based on the
4 retention of jobs. The **Recipient** shall provide:

- 5 a. Evidence that, in the absence of CDBG assistance, jobs would
6 be lost; and
- 7 b. For each business assisted, a listing by job title of permanent
8 jobs retained; and
- 9 c. For each retained job claimed to be held by a low/mod income
10 person, information of the size and annual income of the
11 person's family.

12 6. Activities which aid in the prevention or elimination of slums or blight
13 based on addressing one or more of the conditions which qualified an
14 area as a slum or blighted area. The **Recipient** shall provide:

- 15 a. The boundaries of the area; and
- 16 b. A description of the conditions which qualified the area at the
17 time of its designation in sufficient detail to demonstrate how the
18 area met the slum and/or blight criteria.

19 7. Activities which meet a community development need having a particular
20 urgency. The **Recipient** shall document:

- 21 a. The nature and degree of seriousness of the condition, requiring
22 assistance; and
- 23 b. That the CDBG activity was designed to address the urgent
24 need; and
- 25 c. The timing of the development of the serious condition; and

1 d. Evidence that confirm that other financial resources to alleviate
2 the need were not available.

3 C. CDBG Eligibility Determination

4 The **Recipient** shall demonstrate that an eligibility determination was made as
5 prescribed in 24 CFR 570.201. Final determination's of eligibility shall be made
6 by the **County**, and provided to the **Recipient**.

7 D. CDBG Property Acquisition or Improvement

8 The **Recipient** shall document any real property acquisition or improvement in
9 whole or in part using CDBG funds that exceeds \$25,000. A subrecipient may
10 not change the use, or planned use, of any such property, (including the
11 beneficiaries of such use), from that for which the acquisition or improvement was
12 made, for five years after the closeout of the grant, unless the **Recipient** provides
13 affected citizens with reasonable notice of, and opportunity to comment on, any
14 such proposed change, and either:

- 15 1. The new use of such property qualifies as meeting one of the national
16 objectives, and is not a building for the general conduct of government;
17 or
18 2. The property is disposed of in a manner which results in the amount of
19 the current fair market value of the CDBG funded acquisition or im-
20 provement, and the **Recipient's** CDBG Program is reimbursed in this
21 amount.

22 E. CDBG Citizen Participation

23 The **Recipient** shall comply with the citizen participation requirements as follows:

- 24 1. Provide citizens with information concerning the amount of CDBG funds
25 expected to be available; and

- 1 2. Provide citizens with the range of activities that may be undertaken with
- 2 CDBG funds; and
- 3 3. Hold at least one public hearing to obtain citizen views on community
- 4 needs; and
- 5 4. Publish community-wide, its proposed statement of community devel-
- 6 opment objectives and projected use of CDBG funds so as to afford
- 7 affected citizens the opportunity to comment.

8 F. CDBG Subrecipient Agreements

9 The **Recipient** shall enter into agreements with all subrecipients that, at a
10 minimum, includes the requirements of this agreement, and the following:

- 11 1. Suspension or termination may occur if the subrecipient materially fails
- 12 to comply with any term of the award in accordance with 24 CFR 85.43,
- 13 and that the award may be terminated for convenience in accordance
- 14 with 24 CFR 85.44; and
- 15 2. Where applicable the subrecipient will comply with conditions pre-
- 16 scribed in 24 CFR 570.200(j) for the use of funds by religious organiza-
- 17 tions.

18 G. CDBG Recordkeeping

19 The **Recipient** shall establish and maintain sufficient records to enable The
20 Department of Housing and Urban Development (HUD), to determine whether the
21 **Recipient** has met the requirements of 24 CFR 570, Community Development
22 Block Grant Program. At a minimum, the following records are needed:

- 23 1. Records providing a full description of each activity assisted (or being
- 24 assisted) with CDBG funds including its location the amount of CDBG
- 25 funds budgeted, obligated and expended for the activity and the eligibility
- 26 provision.

1 H. CDBG Reports

2 The **Recipient** shall submit the following performance and/or evaluation reports
3 to the **County** to facilitate mandated reporting to HUD:

- 4 1. A quarterly calendar report of progress and accomplishments for all
5 funded activities, to include a quantitative list of activity beneficiary
6 type(s); and
- 7 2. An annual equal employment opportunity report (HUD/EEO-4) on
8 **Recipient** employment, containing data as of June 30th; and
- 9 3. A semi-annual Minority Business Enterprise Report by March 30th,
10 indicating contract and subcontract activity during the first half of the
11 fiscal year and, by September 30th, a report on such activity during the
12 second half of the year; and
- 13 4. The **Recipient's** may be required to submit such other reports and infor-
14 mation as HUD determines are necessary to carry out its responsibilities.

15 I. CDBG Program Income

16 The **Recipient** shall inform the **County** of any program income generated by
17 expenditure of CDBG funds. Program income earned by the **Recipient** is to be
18 returned to the **County** or retained by the **Recipient**. Where program income is
19 to be retained by the **Recipient**, program income may be used only for eligible
20 activities, subject to all applicable requirements governing the use of CDBG
21 funds. When the subrecipient retains program income, program income shall be
22 substantially disbursed before additional drawdowns of grant funds are made for
23 the same activity. Upon close-out or change in status, the **Recipient** shall return
24 to the **County** all program income on-hand and received subsequent to close-out
25 or change in status.

26 J. CDBG Administration

1 As the primary general-purpose local government unit under the Housing and
2 Community Development Act of 1974, as amended, it shall be the responsibility
3 of the **County** to apply for grants, to administer all funds received, and to
4 undertake or assist in undertaking essential community development and housing
5 assistance activities.

6 1. The **County** shall maintain records in accordance with applicable statutes
7 and regulations and with approved accounting procedures, and said
8 records shall be available for public inspection at all times; and

9 2. The **County** and the **Recipient** shall take all required actions necessary
10 to comply with:

11 a. Section 104 (b) of Title I of the Housing and Community Devel-
12 opment Act of 1974, as amended, including Title VI of the Civil
13 Rights Act of 1964, Title VIII of the Civil Rights Act of 1968,
14 Section 109 of Title I of the Housing and Community Develop-
15 ment Act of 1974, and other applicable laws, and

16 b. Provision of the National Environmental Policy Act of 1969.

17 K. CDBG Uniform Administrative Requirements

18 The **Recipient** shall comply with applicable uniform administrative requirements,
19 as described in 24 CFR 570.502 and the Urban County's certification required by
20 Section 104 (b) of Title I the Housing and Community Development Act of 1974,
21 as amended including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil
22 Rights Act of 1968, Section 109 of Title I of the Housing and Community
23 Development Act of 1975, and other applicable laws.

24 L. Reversion of CDBG Assets

1 The Recipient and any of its subrecipients shall, at the expiration of the CDBG
2 grant, transfer to the County any CDBG funds on hand at the time of expiration,
3 and any accounts receivable attributable to the use of CDBG funds.

4 M. CDBG Audit

5 Annually, the Recipient shall undertake an audit of its entire operation, by an
6 independent auditor, in accordance with generally acceptable government
7 auditing standards covering financial audits. Results of this audit shall be
8 forwarded to the County within 30 days of completion of the audit. Additionally,
9 the Recipient and any subrecipients of CDBG funds shall make available for
10 review all documentation related to the utilization of CDBG funds upon notification
11 by HUD, the County or their designated agents.

12 N. CDBG Property and Acquisition

13 Property records are to be maintained for all equipment acquired with CDBG
14 funds having an initial acquisition cost of \$5,000 or more. A copy of the property
15 record should be forwarded to the County upon receipt of the equipment.

16 O. CDBG Subrecipient Agreement

17 Pursuant to 24 CFR 570.501 (b), the Recipient is subject to the same require-
18 ments applicable to subrecipients, including the requirement of a written
19 agreement set forth in 24 CFR 570.503.

20 III. The parties further agree that:

21 A. HOME Allocation:

22 Annual HOME allocations will be distributed to the Recipient based upon the
23 formula established within the Urban County Allocation Agreement. The HOME
24 allocation will be reduced by 15% to meet HUD's Community Housing Develop-
25 ment Organization (CHDO) set-aside mandate and up to 10% to cover costs
26 related to compliance with HOME administrative requirements. An additional 5%

1 of the HOME allocation may be set-aside for CHDO administrative related
2 expenses. The net HOME allocation will be used as the basis for the Urban
3 County allocation of funds. Once the Recipient is informed of its HOME
4 allocation, the Recipient will submit a detailed listing of activities to be performed,
5 a schedule for completing the activities, and a budget.

6 B. HOME Eligible Activities:

7 HOME funds may only be used for eligible activities as reflected in 24 CFR
8 92.205. Eligible activities include:

- 9 1. Moderate Rehabilitation - construction to an existing structure where the
10 average total development cost is less than or equal to \$25,000.
- 11 2. Substantial Rehabilitation - Rehabilitation where the average total
12 development cost of the project is greater than \$25,000.
- 13 3. Conversion - Conversion of an existing structure from an alternative use
14 to affordable residential housing.
- 15 4. Reconstruction - Building a new structure on an existing foundation.
- 16 5. New Construction - Newly build residential project.
- 17 6. Tenant Based Assistance - Rental assistance to eligible tenants.
- 18 7. Acquisition of Property
- 19 8. Relocation Costs
- 20 9. Administrative Costs - Limited to 10% of annual allocation. (Reserved for
21 actual HOME program administration by the participating jurisdiction.)
- 22 10. Project Soft Costs:
 - 23 a. Finance related costs
 - 24 b. Pre-construction related costs
 - 25 c. Project audit costs
 - 26 d. Affirmative marketing and fair housing

1 C. HOME Income Targeting

2 HOME funds may only be used in pursuit of providing affordable housing for low
3 income and very low income families and individuals; 100% of HOME funds must
4 be used to benefit families and individuals whose annual income falls at or below
5 80% of the County median income.

6 1. Rental Housing -

7 a. At least 90% of HOME funds must be invested in units that are
8 occupied by families whose incomes do not exceed 60% of the
9 median family income for the area; and

10 b. The remaining funds (up to 10%) must be invested in units
11 occupied by families below 80% of median income, and if a
12 rental housing project has 3 or more units, 20% of HOME monies
13 must be spent on units occupied by families whose incomes are
14 less than or equal to 50% of the median family income for the
15 area.

16 2. Homeownership -

17 a. HOME funds must benefit first-time homebuyers, existing low-
18 income homeowners whose family incomes are at or below 80%
19 of the area median income.

20 D. Home Affordability

21 1. Rental Housing

22 a. HOME assisted unit rents must be at or below the lesser of
23 either:

24 (1) The existing Section 8 Fair Market Rent, or

1 (2) 30% of the adjusted income of a family whose income is
2 less than or equal to 80% of the median income for the
3 area (High Home Rent);

4 b. Remain affordable for the following terms based on the average
5 HOME subsidy per unit:

6 Rehabilitation of up to \$15,000 5 years

7 Rehabilitation off \$15,000 - \$40,000 10 years

8 Rehabilitation of \$40,000 + 15 years

9 New Construction (any amount) 20 years

10 c. Have at least 20% of a project's units occupied by very low-
11 income families paying not more than 30% of monthly adjusted
12 gross income for rent.

13 2. Homeownership-

14 Benefit first time homebuyer whose family income is at or below 80% of
15 the area median income, and the purchase price of the property must be
16 less than 90% of the median area purchase price.

17 3. To insure compliance with the aforementioned affordability criteria, a
18 Deed of Trust shall be recorded on the benefiting property securing the
19 HOME investment. The County of San Joaquin shall be named as
20 beneficiary on the Deed of Trust. In the event of default or prepayment,
21 and subsequent liquidation of debt, the County will credit the Recipients
22 HOME account equal to the liquidated amount.

23 E. Maximum Per Unit HOME Subsidy

24 The maximum per unit subsidy for San Joaquin County is:

25 0 Bedrooms \$54,870

26 1 Bedroom \$62,898

2 Bedrooms	\$76,483
3 Bedrooms	\$98,943
4 Bedrooms	\$108,609

F. HOME Repayments

Repayment, interest, and other return on the investment of HOME funds are to be remitted to the County to be used later by the Recipient for subsequent HOME eligible activities.

G. Uniform Administrative Requirements for HOME

The Recipient shall comply with applicable uniform administrative requirements, as described in 24 CFR Part 92.505(a).

H. HOME Housing Quality Standards

Owners of rental housing assisted with HOME funds must maintain the housing in compliance with applicable Housing Quality Standards and local code requirements for the duration of the agreement (for a period of 5-20 years, or longer if FHA insurance is used).

I. Other Federal Requirements

The Recipient shall comply with the following federal requirements when making HOME funds available:

1. Equal Opportunity - No person in the United States shall, on the grounds of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds.

a. Fair Housing Act and implementing regulations at 24 CFR part 100; E.O. 11063, as amended by E.O. 12259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR 107; and

1 Title VI of the Civil Rights Act of 1964 (Nondiscrimination in
2 Federally Assisted Programs).

3 b. Age Discrimination Act of 1975 and implementing regulations and
4 the prohibition against discrimination against handicapped
5 individuals under Sec. 504 of the Rehabilitation Act of 1973 and
6 implementing regulations.

7 c. The requirements of E.O. 11246 (Equal Opportunity Employment)
8 and implementing regulations.

9 d. The requirements of E.O. 11625 and 12432 (concerning Minority
10 Business Enterprise), and 12138 (concerning Women's Business
11 Enterprise).

12 2. Fair Housing - The **Recipient** will affirmatively further fair housing.

13 J. Affirmative Marketing

14 The **Recipient** shall establish affirmative marketing procedures and requirements
15 for HOME assisted housing containing five or more housing units.

16 K. HOME Flood Insurance

17 HOME funds may not be used with respect to acquisition, new construction or
18 rehabilitation of a project located in an area identified by FEMA as having special
19 flood hazards, unless the **Recipient's** community is participating in the National
20 Flood Insurance Program, and flood insurance is obtained as a condition of
21 approval of the commitment.

22 L. HOME Disbursements

23 Disbursement requests must be made through the **County**. Disbursements will
24 not be made until needed for payment.

25 M. HOME Subrecipient Agreement

1 The Recipient must enter into an agreement with all subrecipients of HOME
2 funds ensuring compliance with HOME Program requirements. The agreement
3 should include each of the parts stated in 24 CFR Part 92.504.

4 N. Community Housing Development Organization (CHDO)

5 This set-aside will be placed in an established fund, and will be distributed
6 annually, in a lump sum, to a qualified CHDO performing a HOME eligible activity.
7 The selection of a qualified CHDO will be conducted by a committee, consisting
8 of a representative from each Urban County jurisdiction.

9 O. HOME Matching Funds

10 The Recipient shall contribute any matching funds for rental assistance;
11 rehabilitation and substantial rehabilitation; and new construction for HOME
12 assisted projects, as required by HUD. Any matching requirement for HOME
13 funds allocated in FY 1992 is waived.

14 P. HOME Recordkeeping

15 The Recipient shall maintain the following records, subject to audit:

- 16 1. Source of funds for each project;
- 17 2. Efforts to maximize participation by the private sector in HOME funded
18 projects;
- 19 3. Description of each activity assisted with HOME funds, to include census
20 tract location, the amount of HOME funds budgeted, committed and
21 expended for the activity;
- 22 4. Documentation demonstrating compliance with match requirements;
- 23 5. For each family assisted, records that demonstrate income targeting, and
24 unit affordability;
- 25 6. Documentation of equal opportunity and fair housing compliance;

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7. Documentation and data on the steps taken to implement the Recipient outreach program to minority and female owned businesses; and

8. Records to demonstrate compliance with environmental review requirements.

Q. HOME Record Retention

Records must be retained for three years after closeout of funds, and/or three years after period of affordability expires.

R. HOME Reports

Annually, by September 15th, a report prepared by the Recipient shall be submitted to the County and shall include at a minimum:

1. Analysis of the Recipient's efforts to maximize participation by the private sector;
2. An analysis of the extent to which HOME funds were distributed among different housing categories;
3. An assessment of the Recipient's minority outreach program, including analysis of participation by minorities and women and entities owned by minorities and women; and
4. A listing of housing related activities benefiting low income persons undertaken in the Recipient's jurisdiction, assisted with federal, non-federal or private funds.

S. Reversion of HOME Assets

The Recipient and any of its subrecipients shall, at the expiration of this agreement, transfer to the County any HOME funds on hand at the time of expiration, and any accounts receivable attributable to the use of HOME funds.

T. HOME Certifications

1 The Recipient certifies to the County it is in compliance with the Certifications
2 included within Attachment 2.

3 U. Use of HOME Funds

- 4 1. HOME funds must be obligated by the Recipient to a specific project
5 within 15 months of award. CHDO set-aside must be obligated within 18
6 months of award.
- 7 2. If the Recipient determines that it cannot obligate its allocation within 15
8 months of award, a bank will be established where unobligated HOME
9 allocations will be placed for use by jurisdictions who have identified a
10 HOME eligible project(s). Any jurisdiction using a Recipient's banked
11 HOME allocation, will owe the Recipient an equal amount of subsequent
12 HOME allocations.

13 IV. Environmental Standards

14 Prior to the commencement of each HOME and CDBG funded activity, the Recipient will
15 complete all mandated environmental reviews in compliance with 24 CFR Part 58,
16 Environmental Review Procedures for Community Development Block Grants. The
17 County will determine the required environmental review procedure to be completed for
18 each activity, and provide technical assistance to facilitate compliance.

19 V. Certifications & Disclosures

20 Attachment 1 includes Grantee Certifications which are mandated by HUD. The
21 Recipient shall certify that it has adopted and will enforce policies as follows:

- 22 A. Drug free work place.
- 23 B. Prohibition of excessive use of force within Recipient's jurisdiction.
- 24 C. Enforce state laws against physically barring entrance to or exit from facilities
25 subject to non-violent civil rights demonstrations

26 The Recipient shall certify and disclose to the County accordingly.

1 VI. Term Of Agreement

2 The terms of this Agreement shall apply to activities which will be funded from Fiscal
3 Years 1994-1996 CDBG allocations and HOME allocations from Federal Fiscal Years 1992-
4 1996.

5 A. Any notice of intent to terminate or withdraw from this Agreement by either of the
6 parties hereto shall have no effect until September 30, 1996, the end of the three
7 year Urban County qualification period and such additional time that may be
8 required for the expenditure of funds, granted to the **County** for such period.

9 B. This Agreement shall remain in effect during any period that **Recipient** or any
10 subrecipients of CDBG funds have control over CDBG or HOME funds, including
11 program income.

12 C. This agreement will automatically renew at the end of the three year Urban
13 County qualification period, if no changes to the agreement are required by HUD
14 that would require the execution of a new agreement. The renewal period will
15 coincide with the period of subsequent Urban County qualification.

16 VII. Fair Housing

17 CDBG or HOME funding for activities in or in support of any cooperating unit of general
18 local government that does not affirmatively further fair housing within its own jurisdiction
19 or that impedes the **County's** actions to comply with its fair housing certification is
20 prohibited.

21 VIII. Amendments

22 As CDBG or HOME requirements change, the terms of this Agreement will change.
23 CDBG and HOME program changes affecting this Agreement shall be attached
24 unilaterally by the **County** as amendments to this Agreement. A copy of all amendments
25 shall be forwarded to the **Recipient**.

26 IX. Other Programs

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That by executing this agreement the Recipient:

- A. May not apply for grants under the Small Cities or State CDBG Programs for fiscal years in which it is a participant in the Urban County CDBG program; and
- B. May not participate in HOME consortium except through the Urban County.

IN WITNESS WHEREOF, the parties have executed the above instrument on the day and year first above written.

COUNTY

By: *William N. Sousa*
 WILLIAM N. SOUSA, Chairman
 Board of Supervisors

RECIPIENT

By: *Dan Bilbray*, Mayor *pro tem*
 City of *Tracy*

ATTEST: JORETTA J. HAYDE
 Clerk of the Board of Supervisors
 of the County San Joaquin,
 State of California

By: *Cindy Gubnitz*
 Deputy Clerk



ATTEST:

Sharon Smith, City Clerk
 City of *Tracy*

By: _____

APPROVED AS TO FORM:

JOHN F. CHEADLE
 County COUNSEL

By: *Edward R. Burroughs*
 EDWARD R. BURROUGHS
 Deputy County Counsel

APPROVED AS TO FORM
 TRACY CITY ATTORNEY
Debra E. Corbett
 Debra E. Corbett

**AMENDMENT #1
URBAN COUNTY COOPERATION AGREEMENT FOR
COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT
FISCAL YEARS 2012-2014**

Section II, Subsection J, in the Cooperation Agreement between San Joaquin County and the cities of Escalon, Lathrop, Manteca, Ripon, and Tracy for Community Development Block Grant (CDBG) Funding for Fiscal Year 2012-14, is hereby amended to include the following provision:

- 3. The grantee or unit of general local government that directly or indirectly receives CDBG funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.*

RESOLUTION 2014-_____

AUTHORIZING THE CITY OF TRACY TO REMAIN A PARTICPANT IN THE URBAN COUNTY CONSORTIUM FOR THE PURPOSE OF ADMINISTERING THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND APPROVING AMENDMENT #1 TO THE URBAN COUNTY CDBG AND HOME INVESTMENT PARTNERSHIP ACT (HOME) COOPERATIVE AGREEMENT

WHEREAS, The City of Tracy, along with the cities of Escalon, Lathrop, Lodi, Manteca, and Ripon are part of a consortium with San Joaquin County for the purpose of administering the CDBG and HOME Programs, and

WHEREAS, The City is eligible to administer its own CDBG funding as a Metropolitan City, the City elects to remain within the Urban County Consortium, and

WHEREAS, The City entered into the Urban County Cooperative Agreement on July 7, 1993, and

WHEREAS, The CDBG and HOME Programs fund a variety of Public Facility and Public Service projects serving low-moderate income and at-risk residents, and

WHEREAS, Every three years it is necessary for San Joaquin County to undergo a requalification process established by the Department of Housing and Urban Development (HUD), and

WHEREAS, HUD has added Amendment #1 to the Urban County Cooperative Agreement, which includes the following language:

The grantee or unit of general local government that directly or indirectly receives CDBG funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Ac of 1974, as amended.

WHEREAS, Authorization to remain a participant in the Urban County Consortium for the 2015-2017 qualification period and approval of Amendment #1 to the Urban County Cooperative Agreement requires execution by an official representative from each participating jurisdiction;

NOW, THEREFORE BE IT RESOLVED, That Council authorizes the City of Tracy to remain a participant of the Urban County Consortium for the purpose of administering the CDBG and HOME Programs and approves Amendment #1 to the Urban County CDBG and HOME Cooperative Agreement.

* * * * *

The foregoing Resolution 2014-_____ was adopted by the Tracy City Council on the 5th day of August, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

August 5, 2014

AGENDA ITEM 4.G

REQUEST

APPROVAL OF A MASTER PROFESSIONAL SERVICES AGREEMENT WITH RENNE SLOAN HOLTZMAN SAKAI LLP FOR SPECIAL COUNSEL TO CONDUCT LABOR NEGOTIATIONS WITH MULTIPLE EMPLOYEE GROUPS, AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENTS FOR THE VARIOUS TASK ORDERS NOT TO EXCEED \$100,000

EXECUTIVE SUMMARY

This agenda item, with City Council approval, would authorize the City to contract with Renne Sloan Holtzman Sakai LLP to conduct labor negotiations with multiple represented employee groups within the City.

DISCUSSION

The City is preparing for labor contract negotiations with 9 employee groups and 3 individual contracts. Most of these contracts will expire on June 30, 2015. The City would like to retain the services of special counsel Renne Sloan, Holtzman, Sakai, LLP to assist with labor contract negotiations with our represented labor groups.

Renne Sloan, Holtzman, Sakai LLP was selected due to its in-depth knowledge of the City's represented bargaining groups and negotiation process, as they conducted labor negotiations for the City in 2012. The firm's prior experience and knowledge of the City will enable it to efficiently navigate through labor discussions.

Due to the firm's prior experience and knowledge of the City, pursuant to Section 2.20.140 (b)(3) of the Tracy Municipal Code, the Interim City Manager has determined that it is in the best interest of the City to forego the formal request for proposal process.

STRATEGIC PLAN

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

Governance Strategy

Goal 1: Further develop an organization that attracts, motivates, develops and retains high quality, engaged, informed and high performing workforce.

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

FISCAL IMPACT

There is no additional General Fund fiscal impact as a result of approving this agreement. Approximately \$100,000 was appropriated as part of the FY2014/15 General Fund budget in anticipation of employee labor negotiations.

RECOMMENDATION

That the City Council, by resolution, authorize a Master Professional Services Agreement with Renne Sloan, Holtzman, Sakai, LLP to conduct labor negotiations with multiple represented employee groups; authorize the Mayor to sign the Agreement; authorize the City Manager to execute the agreements for the various task orders not to exceed \$100,000.

Prepared by: Judy Carlos, Human Resources Analyst

Reviewed by: Midori Lichtwardt, Senior Human Resources Analyst
Jenny Haruyama, Interim Assistant City Manager & Admin. Services Director

Approved by: Maria Hurtado, Interim City Manager

Attachment: Master Professional Services Agreement – Renne Sloan, Holtzman, Sakai, LLP

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT
RENNE SLOAN HOLTZMAN SAKAI LLP**

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and RENNE SLOAN HOLTZMAN SAKAI LLP, A California limited Liability Partnership ("Consultant").

RECITALS

- A. WHEREAS, The CITY desires to retain special counsel to conduct negotiations on behalf of the CITY with multiple employee organizations within the City of Tracy; and
- B. WHEREAS, CONSULTANT submitted a proposal to provide labor relations services; and
- C. WHEREAS, Funds for such purposes are included in the Human Resources budget.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" attached and incorporated 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: Dania Torres Wong. 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 City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
3. **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, 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. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.

5. **COMPENSATION.**
 - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order, provided however that the aggregate total of all Task Orders under this agreement is not to exceed \$100,000. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
 - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
 - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.

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

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. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's

performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

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

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

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
 - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
 - 10.2 **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.
 - 10.3 **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.
 - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
 - 10.5 **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.
 - 10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
 - 10.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
 - 10.6.2 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.

- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 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.
- 10.9 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 days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 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.

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

12. MISCELLANEOUS.

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

To City:
Maria Hurtado
Interim City Manager
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:
Dania Torres Wong
Partner
Renne Sloan Holtzman Sakai LLP
350 Sansome Street, Suite 300
San Francisco, CA 94104-1304

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 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.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 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.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT
RENNE SLOAN HOLTZMAN SAKAI LLP
Page 6 of 8

13. 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 and their respective successors and assigns.

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

City of Tracy

Consultant
RENNE SLOAN HOLTZMAN SAKAI LLP

By: Brent Ives
Title: Mayor
Date: _____

Dania Torres Wong
By: Dania Torres Wong
Title: Partner
Date: 7.25.14
Fed. Employer ID No.: 73-1700480

Attest:

By: Carole Fleischmann
Title: Interim City Clerk
Date: _____

Approved As To Form:

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

Exhibits:

- A. Scope of Services, Personnel
- B. Billing rates

EXHIBIT A

SCOPE OF SERVICES: CONSULTANT shall provide all services related to labor negotiations on behalf of the CITY with multiple employee organizations within the City of Tracy.

CONSULTANT REPRESENTATIVES: CONSULTANT services to CITY shall be performed by the representatives listed below. No substitution of Services shall be made without the written consent and approval of CITY.

- Dania Torres Wong
- Allyson Hauck
- Burke Dunphy
- Leslie Ruiz

**EXHIBIT B
BILLING RATES
RENNE SLOAN HOLTZMAN SAKAI LLP**

BILLING RATES:

- Legal Services shall be performed on a time and material basis.
- Billing shall be in minimum increments of one-tenth (1/10th) of an hour.
- Professional Hourly Rates:
 - Dania Torres Wong \$325
 - Allyson Hauck \$275
 - Burke Dunphy \$255
 - Leslie Ruiz \$125

- Itemized Costs for Any Special Service – In addition to charging for attorney and consultant time by the hour, CONSULTANT may charge separately for certain costs incurred in the representation, as well as for any disbursements to third parties made on CITY's behalf. Such costs and disbursements include for example, travel, computer-assisted research, overnight delivery and messenger services.

The total of all work performed under this Professional Agreement, including expenses, shall not exceed \$100,000.

RESOLUTION _____

AUTHORIZING A MASTER PROFESSIONAL SERVICES AGREEMENT WITH RENNE SLOAN HOLTZMAN SAKAI LLP FOR SPECIAL COUNSEL TO CONDUCT LABOR NEGOTIATIONS WITH MULTIPLE EMPLOYEE GROUPS, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS FOR THE VARIOUS TASK ORDERS NOT TO EXCEED \$100,000

WHEREAS, Multiple employee labor contracts will expire on June 30, 2015; and

WHEREAS, The City desires to retain special counsel to conduct negotiations on behalf of the City; and

WHEREAS, Renne Sloan, Holtzman Sakai LLP submitted a proposal to provide labor relations services and has previous experience with the City of Tracy labor groups.

NOW THEREFORE BE IT RESOLVED, that the City Council hereby approves the attached Master Professional Services Agreement and billing rates with Renne Sloan, Holtzman, Sakai LLP, authorizes the Mayor to execute the agreement, and authorizes the approval of task orders to be completed by the City Manager Not to exceed \$100,000.

* * * * *

The foregoing resolution _____ was adopted by the Tracy City Council the 5th day of August, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 4.H

REQUEST

APPROVE AMENDMENT NUMBER FOUR TO THE PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES FOR THE TRACY HILLS SPECIFIC PLAN AMENDMENT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

EXECUTIVE SUMMARY

Additions to the Tracy Hills Specific Plan Environmental Impact Report (EIR) analysis will require changes and additions to the scope of work for the project from what was previously anticipated. This request is to approve an amendment to the Professional Services Agreement (PSA) for Kimley-Horn and Associates (KHA) to complete the work on the EIR.

DISCUSSION

On May 7, 2013, City Council approved a Professional Services Agreement (PSA) (Resolution Number 2013-063) with KHA to prepare the Environmental Impact Report for the Tracy Hills Specific Plan Amendment project. Amendment Number One to the PSA was approved by the City Council on November 5, 2013, (Resolution Number 2013-167), and Amendment Numbers Two and Three were approved on February 18, 2014, (Resolution Numbers 2014-024 and 2014-026, respectively). Subsequently, a significant amount of additional work, primarily related to traffic analysis, has been requested for preparation of the EIR, particularly due to comments received from public agencies and private parties to the Notice of Preparation. The additional work is outlined in the PSA (Attachment A). The proposed amendment includes an additional amount not to exceed \$266,465.

STRATEGIC PLAN

This PSA amendment is a routine operational item and is not related to City Council's Strategic Plans.

FISCAL IMPACT

This PSA amendment will not impact the General Fund. The City and the project developer have a Cost Recovery Agreement through which the developer pays consultant costs and staff time to review and process the application.

RECOMMENDATION

Staff recommends that City Council approve, by resolution, the PSA Amendment Number Four to the Tracy Hills Specific Plan Amendment EIR and Technical Analysis Related to Tentative Maps in the amount of \$266,465, and authorize the Mayor to execute the Amendment.

Agenda Item 4.H
August 5, 2014
Page 2

Prepared by: Alan Bell, Senior Planner

Reviewed by: Bill Dean, Assistant Development Services Director
Andrew Malik, Development Services Director
Jenny Haruyama, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENT

Attachment A – Amendment Number Four to Professional Services Agreement

**CITY OF TRACY
AMENDMENT NO. 4 TO
PROFESSIONAL SERVICES AGREEMENT
TRACY HILLS SPECIFIC PLAN AMENDMENT ENVIRONMENTAL IMPACT REPORT
AND TECHNICAL ANALYSIS RELATED TO TENTATIVE MAPS**

This Amendment No. 4 ("Amendment") to the Professional Services Agreement for Tracy Hills Specific Plan Amendment Environmental Impact Report and Technical Analysis related to Tentative Maps is entered into between the City of Tracy, a municipal corporation ("City"), and Kimley-Horn and Associates, Inc. ("CONSULTANT").

RECITALS

- A. The City and CONSULTANT entered into a Professional Services Agreement ("Agreement") for the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report which was approved by the City Council on May 7, 2013, under Resolution No. 2013-063.
- B. The City and CONSULTANT entered into a Professional Services Agreement Amendment No. 1 approved by the City Council on November 5, 2013, under Resolution No. 2013-167; Amendment No. 2 on February 18, 2014, under Resolution No. 2014-024; and Amendment No. 3 on February 18, 2014, under Resolution No. 2014-026.
- C. After receiving comments on the Notice of Preparation from public agencies and private parties, the scope of the project has expanded, causing the Environmental Impact Report scope of work to be modified and require substantial additional work in traffic, as well as air quality, project management and others.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the Agreement, unless specifically modified by this Amendment. The terms which are not specifically modified by this Amendment shall remain in effect.
- 2. **Terms of Amendment.** Section 1, Scope of Services, is amended to include the additional work set forth in Exhibit A3, attached hereto and incorporated herein. The Development Services Director may authorize in writing, additional CONSULTANT work directly related to the preparation of the Environmental Impact Report as long as such work does not exceed the approved contingency amount.

Section 5, Compensation, is amended to increase the not-to-exceed amount from \$694,896 to \$961,361.

**CITY OF TRACY
AMENDMENT NO. 4 TO
PROFESSIONAL SERVICES AGREEMENT
TRACY HILLS SPECIFIC PLAN AMENDMENT ENVIRONMENTAL IMPACT REPORT
AND TECHNICAL ANALYSIS RELATED TO TENTATIVE MAPS
PAGE 2 of 2**

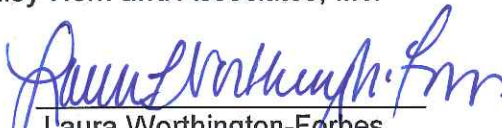
3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction,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

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

City of Tracy


Kimley-Horn and Associates, Inc.

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

By: 
Laura Worthington-Forbes
Title: Regional Vice President
Date: 7/14/14

Attest:

By: _____
Carole Fleischmann
Title: Interim City Clerk
Date: _____

By: 
~~Scott Colvin~~ Randy Gurrenberger
Title: Assistant Secretary
Date: 7/14/14

Approved as to form

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

Exhibit: A3 Scope of Services

Exhibit A3
Scope of Services

Task 1: Peer Review Urban Decay Analysis

Kimley-Horn will review the Urban Decay Analysis to be prepared by ALH Economics (to be prepared under separate contract with the City of Tracy) and incorporate the results of this study into a separate chapter of the Tracy Hills Specific Plan EIR.

Task 2: Peer Review Gas Line Report

Kimley-Horn will review the Gas Line Explosion Impact Study (to be prepared and provided by the Applicant) and incorporate the results of this study into the Tracy Hills Specific Plan EIR.

Task 3: Respond to City/Applicant Comments (2nd Revised Administrative Draft EIR)

Kimley-Horn anticipated receiving one set of consolidated comments from City staff and the Applicant on the Admin draft EIR. Given the number of reviewing parties with the City and Applicant team, we received multiple sets of comments that in many cases conflict or require further clarification/direction from City staff. We have added time to coordinate with the City to obtain additional clarification/direction and address the comments in the Screencheck EIR.

Task 4: Prepare NOP Chapter

Kimley-Horn will prepare a separate Chapter in the EIR that includes all of the comments in the NOP letters and references where and how they are addressed in the EIR.

Task 5: Freeway analysis east and west for all scenarios on I-580, I-205, 15 additional segments total: Tracy to SR 84 west in Livermore, I-580 to I-5 east and Tracy to SR 120 east

Kimley-Horn will analyze freeway segments along I-580 between the I-205/I-580 merge and I-680 (Isabel Avenue). The segments will be evaluated between each interchange where project traffic will exit/enter the freeway and exceed the local threshold (Caltrans), by direction, for AM and PM peak hour traffic. Existing, Existing plus Project, Cumulative and Cumulative Plus Project (2035) and Cumulative Plus Project Buildout, will be analyzed (5 scenarios).

Kimley-Horn will analyze freeway segments along I-205/I-5 between the I-205/I-580 merge and SR 120. The segments will be evaluated between each interchange, by direction, for AM and PM peak hour traffic. Existing, Existing plus Project, Cumulative and Cumulative Plus Project (2035), and Cumulative Plus Project Buildout, will be analyzed (5 scenarios).

Task 6: Ramp weaving and merge and metering analysis at Lammers and Corral Hollow interchanges for Cumulative and Build out Analysis

Kimley-Horn will analyze freeway ramp merge and metering at the ramps for the Corral Hollow Road and Lammers Road interchange for the AM and PM peak hours for Existing, Existing plus Project, Cumulative and Cumulative Plus Project (2035), and Cumulative Plus Project Buildout conditions (5 scenarios).

Task 7: McArthur Drive segment analysis

Kimley-Horn will analyze segments along McArthur Drive for the AM and PM peak hours for Existing, Existing plus Project, Cumulative and Cumulative Plus Project (2035), and Cumulative Plus Project Buildout conditions.

Task 8: Existing Plus Project Buildout Analysis – 37 intersections

Kimley-Horn will conduct analysis for Existing Plus Project Buildout conditions for AM and PM peak hour. Buildout trips will be extracted from the model and assigned to the existing road network.

Exhibit A3
Scope of Services

Task 9: City of Livermore's NOP Comment Letter

Kimley-Horn recommends extracting data from the Alameda County model on trip distribution for the Tracy Hills project to evaluate the potential impact of project traffic on the City of Livermore road network. Once the distribution and cumulative model volumes are evaluated, the road network described below will be refined.

Intersection Analysis: Kimley-horn will conduct analysis for Existing Plus Project Buildout conditions for AM and PM peak hour. Buildout trips will be extracted from the model and assigned to the existing road network.

1. I-580/Vasco Road EB and WB ramp terminals
2. I-580/First Street EB and WB ramp terminals
3. I-580/Isabel Avenue (SR 84) EB and WB ramp terminals
4. I-580/Hacienda Drive EB and WM ramp terminals
5. I-580/Hopyard Road EB and WB ramp terminals
6. I-580/Santa Rita Road EB and WB ramp terminals
7. Tesla Road /Greenville
8. Tesla Road/Vasco Road
9. Tesla Road/Concannon
10. Patterson Pass/Greenville Road
11. Patterson Pass/First
12. Patterson Pass/Vasco Road
13. Altamont Pass/Vasco Road
14. Altamont Pass/I-580 EB and WB ramps
15. Altamont Pass/Greenville Road

Segment Analysis: Kimley-Horn will analyze arterial roadway segments along the roads listed below. The segments will be evaluated between major intersections, for AM and PM peak hour traffic. Existing, Existing plus Project, Cumulative and Cumulative Plus Project (2035), and Cumulative Plus Project Buildout, will be analyzed.

1. Altamont Pass between Grant Line and Vasco Road (4 segments, during the AM and PM peak hour)
2. Tesla Road between I-580/Project driveway and Greenville Road (One segment)
3. Patterson Pass Road between I-580 and Greenville Road

Transit services: Kimley-Horn will evaluate the potential impact to transit services for BART and ACE. Data will be extracted from reports and no field surveys are included in the task. This evaluation will include an evaluation of the most easterly BART parking structure. Modal assignment will be extracted from the ACTA model and available documentation. Kimley Horn will attend up to three project meetings with the project team to discuss traffic matters that relate to the project.

ACTA Modeling: Data for the analysis in Livermore will be extracted from the ACTA travel demand model. No manipulation of the model is included in our services and is not anticipated.

Task 10: Project Management, Coordination and Meeting Attendance

The project schedule has been significantly extended due to additional requests by the Applicant and their attorneys. We have added time for additional meetings, internal and external team coordination, and project management. Conservatively, our assumption in preparing the budget for this task is that the schedule will be extended through

Exhibit A3
Scope of Services

March 2015. Our prior schedule (prepared in September 2013) anticipated that the project would be brought to Council for review and consideration in late Spring of 2014.

Task 11: Screencheck Draft EIR

Given the complexity and number of changes requested in the tasks identified above, we anticipate that one additional round of administrative review will be required to verify that all comments as well as additional scope items have been adequately addressed and incorporated into the Draft EIR prior to public review. Thus, we have budgeted an additional 40 hours of staff time to incorporate final edits/minor revisions that will culminate in the production of the Draft EIR.

Task 12: Additional Air Quality/GHG/Noise

RBF Consulting, as a sub-consultant to Kimley-Horn will conduct additional air quality, greenhouse gas emissions and noise modeling as a result of the additional traffic analysis included in Tasks 5 to 8 above.

The following provides the Fee Estimate for Tasks 1 through 12 as described above.

TASK	COMBINED TASK TOTAL
Task 1 – Peer Review Urban Decay Analysis	\$3,820.00
Task 2 - Peer Review Gas Line Report	\$3,000.00
Task 3 - Respond to City/Applicant Comments ¹	\$23,690.00 ¹
Task 4 - Prepare NOP Chapter	\$4,850.00
	\$18,690.00
Task 5 - Freeway analysis east and west	
Task 6 - Ramp weaving and merge and metering analysis at Lammers and Corral Hollow interchanges for Cumulative and Build out Analysis	\$5,940
Task 7- McArthur segment analysis - breakdown for all conditions	\$4,875
Task 8 - Existing Plus Project Buildout Analysis -- 37 intersections	\$13,980
Task 9 - Addressing the City of Livermore's Letter	\$147,220
Task 10 - Project Management, Coordination and Meeting Attendance	\$24,300
Task 11- Screencheck Draft EIR	\$6,500
Subtotal KHA	\$256,865.00
Task 12 - RBF Consulting (AQ/Noise/GHG Analysis)	\$9,600.00
Subtotal Sub-Consultants	\$9,600.00
Total Fee Estimate	\$266,465

1. This task also includes an additional \$3,000 for RBF Consulting to respond to multiple sets of comments.

RESOLUTION 2014-_____

APPROVING AMENDMENT NUMBER FOUR TO THE PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES FOR THE TRACY HILLS SPECIFIC PLAN AMENDMENT EIR AND TECHNICAL ANALYSIS RELATED TO TENTATIVE MAPS

WHEREAS, On May 7, 2013, the City Council approved a Professional Services Agreement (PSA) (Resolution Number 2013-063) with Kimley-Horn and Associates (KHA) to prepare the Tracy Hills Specific Plan Amendment project Environmental Impact Report (EIR), and

WHEREAS, The City Council approved Amendment Number One to the PSA (Resolution Number 2013-167) on November 5, 2013, and Amendment Numbers Two and Three on February 18, 2013, (Resolution Numbers 2014-024 and 2014-026, respectively), and

WHEREAS, A significant amount of additional work, primarily related to traffic analysis, has been requested for preparation of the EIR, particularly due to comments received from public agencies and private parties on the Notice of Preparation, and

WHEREAS, KHA submitted a proposal to complete the additional work at a cost not to exceed \$266,465, and

WHEREAS, a Cost Recovery Agreement is in place through which the developer pays consultant costs to prepare the EIR;

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves PSA Amendment Number Four to the Tracy Hills Specific Plan Amendment EIR and Technical Analysis Related to Tentative Maps in the amount of \$266,465 and authorizes the Mayor to execute the Agreement.

* * * * *

The foregoing Resolution 2014-_____ was passed and adopted by the Tracy City Council on the 5th day of August, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

CITY CLERK