

Tuesday, September 3, 2019, 7:00 PM

City Council Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

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

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

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

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

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed, including those distributed within 72 hours of a regular City Council meeting, to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

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

CALL TO ORDER
PLEDGE OF ALLEGIANCE
INVOCATION
ROLL CALL
PRESENTATIONS

1. Employee of the Month
2. Life Saving Medal Presentation

1. CONSENT CALENDAR

- 1.A. APPROVAL OF AUGUST 13, 2019, SPECIAL MEETING MINUTES, AND AUGUST 20, 2019, CLOSED SESSION AND REGULAR MEETING MINUTES
- 1.B. ACCEPT THE SUPPORT SERVICES MODULAR BUILDING PROJECT, CIP 71082, COMPLETED BY SILVA ELECTRIC OF TRACY, CALIFORNIA, AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AUTHORIZE THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND AUTHORIZE THE FINANCE DEPARTMENT TO CLOSE THE PROJECT
- 1.C. APPROVE A CHANGE ORDER IN THE AMOUNT OF \$44,000 TO ROYAL ELECTRIC COMPANY OF SACRAMENTO, CALIFORNIA FOR THE TRACY MUNICIPAL AIRPORT REPLACEMENT OF THE EXISTING AUTOMATE WEATHER OBSERVATION SYSTEM (AWOS) III EQUIPMENT ON EXISTING TOWER AND FOUNDATIONS PROJECT, CIP 77552, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE CHANGE ORDER
- 1.D. APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3857, PLAN "C" / SMPA - ELISSAGARAY (SIC) INFILL AND AUTHORIZE THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER
- 1.E. WAIVE SECOND READING AND ADOPT ORDINANCE 1271, AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING SECTION 2.28.470 OF THE TRACY MUNICIPAL CODE REGARDING LEASES OF CITY-OWNED AIRPORT HANGARS AND GROUND LEASES AT TRACY MUNICIPAL AIRPORT AND NEW JERUSALEM AIRPORT
- 1.F. ADOPT RESOLUTION APPROVING GRANT AGREEMENT AIP #3-06-0259-020-2019 IN THE AMOUNT OF \$217,080 WITH THE FEDERAL AVIATION ADMINISTRATION FOR THE PLANNING AND DESIGN OF THE AIRPORT LAYOUT PLAN/AIRPORT GEOSPATIAL INFORMATION SYSTEM WITH OBSTRUCTION MITIGATION PLAN AT THE TRACY MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO SIGN TERMS AND CONDITIONS OF ACCEPTING AIRPORT IMPROVEMENT PROGRAM GRANTS AND APPROVE A NEW CAPITAL IMPROVEMENT PROJECT (CIP) FOR THE PLANNING AND DESIGN OF THE AIRPORT LAYOUT PLAN/AIRPORT GEOSPATIAL INFORMATION SYSTEM WITH OBSTRUCTION MITIGATION PLAN AT THE TRACY MUNICIPAL AIRPORT WITH A NOT TO EXCEED BUDGET OF \$241,200

- 1.G. APPROVE SIDE LETTER AGREEMENTS BETWEEN THE CITY OF TRACY AND THE TRACY POLICE OFFICERS ASSOCIATION (TPOA) AND THE TRACY TECHNICAL SERVICES EMPLOYEE ASSOCIATION (TTSSEA) CLARIFYING EXISTING CONTRACT LANGUAGE; AND AUTHORIZE THE CITY MANAGER TO APPROVE SIDE LETTER AGREEMENTS THAT MAKE MINOR MODIFICATIONS TO EXISTING LANGUAGE AND HAVE MINIMAL FISCAL IMPACT
- 1.H. APPROVE A GENERAL SERVICES AGREEMENT WITH DILLARD ENVIRONMENTAL FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2019-20
- 1.I. REJECT BID PROTEST, AWARD CONSTRUCTION CONTRACT TO MOZINGO CONSTRUCTION INC., OF OAKDALE, CALIFORNIA, FOR THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT (CIP 74083), AND APPROVE A CONTINGENCY AMOUNT FOR THE PROJECT; APPROVE PROFESSIONAL SERVICES AGREEMENTS WITH JACOBS PROJECT MANAGEMENT COMPANY AND CH2M HILL INC., TO PROVIDE SERVICES FOR THE PROJECT; AND DECLARE INTENTION TO REIMBURSE EXPENDITURES FROM BOND PROCEEDS TO BE ISSUED BY THE CITY AND DIRECTING CERTAIN ACTIONS
2. ITEMS FROM THE AUDIENCE
3. REGULAR AGENDA
 - 3.A. CONDUCT A PUBLIC HEARING TO AUTHORIZE THE ACCEPTANCE OF \$11,665 FROM THE 2019 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, AND COUNSELING TO LAW ENFORCEMENT OFFICERS AND APPROVE THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 19/20
 - 3.B. DISCUSS THE CITY'S SIGN REGULATIONS RELATED TO ELECTRONIC READERBOARDS/DIGITAL BILLBOARDS AND PROVIDE DIRECTION TO STAFF
 - 3.C. DISCUSS PROJECT LABOR AGREEMENTS FOR CITY CONSTRUCTION PROJECTS AND PROVIDE DIRECTION TO STAFF
4. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
 - 6.A. APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL TWO VACANCIES ON THE PLANNING COMMISSION
 - 6.B. ADOPT A RESOLUTION FORMALLY ESTABLISHING THE TRACY HOMELESSNESS STRATEGIC PLAN DEVELOPMENT AD HOC COMMITTEE AND DISCUSS AND PROVIDE DIRECTION REGARDING EXPANDING THE COMMITTEE'S SCOPE TO INCLUDE EXPLORATION OF A TEMPORARY HOMELESS SHELTER IN TRACY

- 6.C. RECEIVE UPDATE REGARDING CITY OF BOISE'S REQUEST FOR REVIEW BY THE U.S. SUPREME COURT OF THE NINTH CIRCUIT'S DECISION ON MARTIN V. CITY OF BOISE

- 7. ADJOURNMENT

August 13, 2019, 6:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Mayor Rickman called the meeting to order at 6:04 p.m.
2. Roll call found Council Member Ransom, Mayor Pro Tem Young, and Mayor Rickman present. Council Member Vargas absent. Council Member Arriola arrived at 6:05 p.m.
3. Items from the Audience – None
4. **WORKSHOP TO DISCUSS POTENTIAL REGULATIONS FOR COMMERCIAL CANNABIS ACTIVITY AND PROVIDE DIRECTION TO STAFF**

Jenny Haruyama, City Manager provided an outline of the presentation, Karin Schnaider, Finance Director provided background and policy information, Leticia Ramirez, Interim City Attorney provided information regarding proposed cannabis regulatory framework, Bill Dean, Assistant Development Services Director provided information regarding land use.

Mark Ponticelli, representing the People's Remedy in Modesto invited Council to visit their location.

Cole Fogert thanked Council for moving forward with furthering the industry in Tracy.

Robert Tanner requested population rate of 80,000 per store, and suggested a 1200 feet buffer to schools and youth centers.

Doug Morrow spoke about the black market effect on the cannabis industry, supported locating the "like for like" business types, and suggested three or four cannabis retail locations for Tracy.

Jennifer Noska shared her story about medicinal cannabis use, and added she would like to see storefront boutiques, educating residents, and health and wellness for Tracy.

Deana Garcia, owner of Riverbank and Modesto Cannabis Collective invited Council and staff to visit their medical cannabis dispensary, and supported dispensaries in retail and downtown areas.

Abdul Wahid spoke about identification on cannabis delivery vehicles, buffer distance being more than 600 feet from schools, cultivation, and the City having regulations in place before approving dispensaries.

Andrea Answorth, representing Other People's Remedy asked Council to remember those who are impacted by war on drugs, and invited Council to their retail locations.

Anthony Wench shared his education and experience regarding cannabis and suggested tours of indoor growing to educate and generate business, hydroponics, a laboratory, boutique arrangement, and stated he would like to be a consultant for City.

Denise Vincent described the dispensaries as clean businesses that the City should be getting taxes from.

Alex Monceaux spoke about the following: putting a smart policy in place, prioritizing participation of local residents, green houses as they are more sustainable, does not support indoor growing, and shared positive revenue points.

Alan Monceaux spoke in favor of labs and B to B distribution, and added it is time to bring the industry into the forefront.

City Council questions and comments followed.

It was City Council consensus to include the following in developing cannabis zoning requirements:

- o Retail in industrial and commercial areas
- o Allow indoor cultivation
- o Prohibit outdoor cultivation
- o Limit buffers to state law minimums
- o All cannabis land uses would require CUP

Further discussion needed on number of dispensaries, including phasing.

Next steps:

- Look into how other cities define youth centers
- Create close-up map showing Legacy Fields, Placencia Fields and “major” schools with buffers to help determine if 600 feet or 1000 feet should be applied to these areas.

5. ADJOURNMENT – Time: 8:00 p.m.

ACTION: Motion was made by Council Member Ransom and seconded by Council Member Arriola to adjourn. Roll call vote found all in favor; passed and so ordered. Council Member Vargas absent.

The above agenda was posted at the Tracy City Hall on August 8, 2019. The above are action minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

August 20, 2019, 6:30 p.m.

Council Chambers, 333 Civic Center Plaza, Tracy

1. CALL TO ORDER – Mayor Rickman called the meeting to order at 6:30 p.m. for the purpose of a closed session to discuss the items outlined below.
2. ROLL CALL – Roll call found Council Member Vargas, Mayor Pro Tem Young, and Mayor Rickman present. Council Members Arriola and Ransom absent.
3. ITEMS FROM THE AUDIENCE – None.
4. CLOSED SESSION
 - A. Conference with Legal Counsel – Existing Litigation (Gov. Code § 54954.5(d)(1))
Tracy Rural County Fire Protection District v. LAFCo of San Joaquin (City of Tracy, Real Party in Interest) (San Joaquin County Superior Court Case No. STK-CV-UWM-2019-9687)
5. RECESS TO CLOSED SESSION - Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to recess the meeting to closed session at 6:31 p.m. Roll call vote found Council Member Vargas, Mayor Pro Tem Young and Mayor Rickman in favor; passed and so ordered. Council Members Arriola and Ransom absent.

Council Member Ransom arrived at 6:34 p.m.

Council Member Arriola arrived at 6:39 p.m.
6. RECONVENE TO OPEN SESSION – The meeting reconvened to open session at 7:01 p.m.
7. REPORT OF FINAL ACTION – Unanimous support to file an answer in the existing litigation.
8. ADJOURNMENT – Motion was made by Council Member Vargas and seconded by Council Member Ransom to adjourn. Roll call vote found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young, and Mayor Rickman in favor; passed and so ordered. Time: 7:01 p.m.

The agenda was posted at City Hall on August 15, 2019. The above are action minutes.

ATTEST:

Mayor

City Clerk

August 20, 2019, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

Mayor Rickman called the meeting to order at 7:01 p.m.

Mayor Rickman led the Pledge of Allegiance.

Pastor Scott McFarland, Journey Christian Church offered the invocation.

Roll call found Council Members Arriola, Ransom, Vargas, Mayor Pro Tem Young and Mayor Rickman present.

Mayor Rickman introduced Akira Teshima, Mayor of Memuro Town, Japan and his wife Atsuko Teshima, Yutaka Sanae, President of Memuro Town Council, and his wife Satomi Sanae, Eiko Fukui, President of the Sister City Exchange Association in Memuro Town, Midori Sugimoto and Naomi Fukuda Association members, Masaki Nishida Memuro Town office staff, and presented a Certificate of Recognition in commemoration of the 30-Year Sister City relationship between Memuro, Japan and the City of Tracy.

Mayor Rickman presented Certificates of Appointment to incoming Youth Advisory Commissioners: Kritika Singh, Nicole Hamilton, Meredith Hagler, Lesli Licea, Reyva Dhillon, Dalton Young, Hannah Green, Philip Ha, Laasya Gadamsetti, Alondra Camarena, Adriana Delapza, and Wes Huffman, and Certificates of Recognition outgoing commissioners Alex Klassen, Josjot Kaur and Richard Smith

Mayor Rickman presented Certificates of Recognition to Tracy Heat 14U Baseball Team, 2019 All World Series Champions – Players: Christian Montoya, Joshua Celestine Jr., Brandon Garcia, Trevor Jennings, A.J. Vasquez, Julian Mejia, Anthony Vasquez, Diego Ruiz, Aidan Terry, William Palacios, Alexzander Murrietta, Preston Carrillo, Chris Voss, Jacob Jones, and Coaches: Adam DeHaro, Joshua Celestine, Raul (Rudy) Garcia

Jenny Haruyama, City Manager presented Employee of the Month award for August 2019 to Walter Hayley, Public Works.

1. CONSENT CALENDAR – Following the removal of consent item 1.D by staff motion was made by Mayor Pro Tem Young and seconded by Council Member Ransom to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - 1.A ADOPTION OF JULY 16, 2019 CLOSED SESSION AND REGULAR MEETING MINUTES - Minutes were adopted.
 - 1.B ACCEPT THE WATER FILTER MEDIA REPLACEMENT PROJECT AT THE JOHN JONES WATER TREATMENT PLANT (CIP 75126) COMPLETED BY CALGON CARBON CORPORATION, AUTHORIZE THE FINANCE DEPARTMENT TO CLOSE CIP 75126, AND AUTHORIZE THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE COUNTY– Resolution 2019-165 accepted the project.

- 1.C APPROVE AMENDMENT NO.1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH WOOD RODGERS, INC. FOR THE CITYWIDE STORM DRAIN MASTER PLAN UPDATE, CIP 76086, FOR A NOT-TO-EXCEED AMOUNT OF \$130,000 – **Resolution 2019-166 approved Amendment No. 1 to the Professional Services Agreement.**
- 1.E APPROVE AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH RUGGERI JENSEN AZAR FOR DESIGN OF CORRAL HOLLOW ROAD WIDENING (WEST SCHULTE/PARKSIDE DRIVE TO LINNE ROAD) PROJECT, CIP 73144 WITH A TOTAL REVISED NOT TO EXCEED AMOUNT OF \$1,219,500 – **Resolution 2019-167 approved the Amendment No. 1 to the Professional Services Agreement.**
- 1.F ACCEPT CONSTRUCTION OF THE TRACY HILLS BOOSTER PUMP STATION AT THE JOHN JONES WATER TREATMENT PLANT CIP 75158 (75121B), PROJECT COMPLETED BY STEVE P. RADOS, INC., OF SANTA ANA CALIFORNIA, AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AND AUTHORIZE THE UTILITIES DIRECTOR TO RELEASE THE BONDS AND RETENTION PAYMENT – **Resolution 2019-168 accepted the project.**
- 1.G DECLARE CERTAIN EQUIPMENT AS SURPLUS AND APPROVE THEIR SALE AND/OR DISPOSAL - **Resolution 2019-169 declared certain equipment surplus and their sale and/or disposal.**
- 1.H APPROVE AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF TRACY AND TOWNSEND PUBLIC AFFAIRS, INC., FOR THE PERFORMANCE OF GOVERNMENT RELATIONS AND STATE LOBBYING SERVICES TO INCLUDE GRANT WRITING AND FUNDING APPLICATION REVIEW SERVICES, TO EXTEND THE TERM OF THE AGREEMENT, AND PROVIDE FOR AN ANNUAL INFLATIONARY FEE ADJUSTMENT; AND AUTHORIZE THE CITY MANAGER OR FINANCE DIRECTOR TO EXECUTE EXTENSIONS AND ANY MINOR AMENDMENTS TO THE AGREEMENT – **Resolution 2019-170 approved the Amendment No. 1 to the Professional Services Agreement.**
- 1.I APPROVE AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH RIDE RIGHT, LLC TO INCREASE THE NOT TO EXCEED AMOUNT FOR FY18/19 TO \$2,649,456 – **Resolution 2019-171 approved Amendment No. 2 to the Professional Services Agreement.**
- 1.J DECLARE CERTAIN VEHICLES AND EQUIPMENT AS SURPLUS AND APPROVE THEIR SALE AND AUTHORIZE THE PURCHASE OF MULTIPLE VEHICLES AND EQUIPMENT IN THE AMOUNT OF \$905,808.13 – **Resolution 2019-172 approved the sale of vehicles and equipment. Resolution 2019-173 authorized the purchase of multiple vehicles and equipment.**
- 1.K APPROVE AN IMPROVEMENT AND INSPECTION AGREEMENT AND AN AGREEMENT REGARDING COMMUNITY FACILITIES DISTRICT ANNEXATION AND PARCELS A (EMERGENCY VEHICLE ACCESS) AND B (PRIVATE OPEN SPACE AREA) FOR TRACT 3856, BERG ROAD

PROPERTIES – Resolution 2019-174 approved an Improvement and Inspection Agreement.

- 1.D AUTHORIZE A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF TRACY (CITY), ACTING AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY (AGENCY), AND MANTECA HOSPITALITY, INC., AND AUTHORIZE THE MAYOR ON BEHALF OF THE CITY AND THE CHAIRMAN ON BEHALF OF THE SUCCESSOR AGENCY TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS – **This item was pulled from the agenda.**
2. ITEMS FROM THE AUDIENCE – Ted Guzman, Tracy United Way Community Council and Kristin Birtwhistle, CEO and President of San Joaquin United Way invited Council to a dinner on September 27, 2019 at City Hall to showcase local nonprofits and produce grown in Tracy. Mr. Guzman submitted a United Way packet to the Clerk for City Council.
- Carolyn Grayson expressed her concerns regarding Animal Shelter processes and euthanasia of dogs. Ms. Grayson read an email into the record regarding Diesel.
- Robyn Krock, Sacramento–San Joaquin Delta Conservancy provided information regarding a Community Economic Enhancement Program. Ms. Krock also spoke about a nutria problem in the delta.
- Bernel Scholl expressed her concerns about landscaping maintenance issues in Tracy.
- Susan Bryant also expressed concerns about landscaping maintenance, and indicated there are dead trees on Tracy Blvd between Raley's and Central Ave.
- Alice English thanked Parks and Public Works for cutting trees and bushes at Adams Park. Ms. English asked about the return of \$10,000 appropriated from the General Fund in January 19, 2016, for initial funds in the City of Tracy fund within the CFOSJ, which was to be returned to the General Fund when charitable funds for the City reach \$50,000.
- Lisa Parker spoke about the safety issues due to lack of a sidewalk on MacArthur by the cemetery.
- Mark Jobe requested a four way stop at the intersection of Reids Way and Brookview Drive.
3. REGULAR AGENDA
- 3.A CONSIDER AND INTRODUCE AN ORDINANCE AMENDING SECTION 2.28.470 OF THE TRACY MUNICIPAL CODE REGARDING LEASES OF CITY-OWNED AIRPORT HANGARS AND GROUND LEASES AT THE TRACY MUNICIPAL AIRPORT AND NEW JERUSALEM AIRPORT

Paula Jessup, Airport Manager provided the staff report.

Tim Silva shared his support for the item.

There were no comments for City Council.

Adrienne Richardson, City Clerk read the title of the proposed ordinance.

ACTION: Motion was made by Council Member Ransom and seconded by Council Member Arriola to waive the reading of the full text and introduce **Ordinance 1271**. Roll call found all in favor; passed and so ordered.

3.B ACCEPT PRESENTATION BY EAST BAY COMMUNITY ENERGY (EBCE) AUTHORITY AND PROVIDE DIRECTION WHETHER TO PARTICIPATE IN EBCE, A COMMUNITY CHOICE AGGREGATION (CCA) ENERGY PROGRAM

Kul Sharma, Utilities Director provided the staff report.

Alex Digiorgio, Public Engagement Manager for East Bay Community Energy provided a presentation and responded to questions regarding East Bay Community Energy (EBCE), Alameda County's local power supplier.

Robert Tanner asked if the City opts out of the program, will they be able to return in the future.

City Council comments and questions followed.

ACTION: Motion was made by Council Member Arriola and seconded by Council Member Ransom to participate in the EBCE Community Choice Aggregation Program. Roll call found all in favor; passed and so ordered.

3.C ADOPT THE CITY OF TRACY SHORT RANGE TRANSIT PLAN

Ed Lovell, Management Analyst provided the staff report.

Jacob Hunter, Transportation Advisory Commissioner supported the plan and stated there will be check points for Council between each change of service.

Cindy Gustafson, Tracy Seniors Association requested Larch, Clover and Chrisman Roads be included in the pilot program, and to consider a low income program.

Alice English supported the plan and added the discontinuation of Route D will be evaluated each year.

Tim Silva supported the proposed plan and explained micro and macro transit system routes.

Shirley Rodriguez asked for support for seniors and disabled people and requested a half day service on Sundays.

City Council questions and comments followed.

Mayor Rickman requested more information/update regarding the RTD VanGo service.

ACTION: Motion was made by Council Member Vargas and seconded by Council Member Arriola to adopt **Resolution 2019-175** approving the Short Range Transit Plan. Roll call vote found all in favor; passed and so ordered.

3.D RECEIVE REPORT ON ANIMAL SERVICES PROGRAM COMPREHENSIVE ASSESSMENT AND PROVIDE DIRECTION ON RECOMMENDED POLICY CHANGES

Alex Neicu, Interim Police Chief provided the staff report.

Sharie Hollister shared her concerns regarding mismanagement and conditions of the Animal Shelter.

Robert Tanner requested a bar chart indicating the percentages of animal intake and euthanasia.

Christine McGovern shared her story regarding her dog that was euthanized, and expressed concerns regarding the Animal Shelter.

Sarah Henrich read information from a records requests, and shared her frustrations regarding dogs being euthanized for no reason.

Michelle Jimmerson spoke in support of the Animal Shelter staff, shared negative social media posts, and provided a handout to the Clerk.

Sheri Savage, East of Eden stated they have no control over social media comments, spoke about their role as one of the major stakeholders as far as rescuing animals, and shared experiences with the Animal Shelter.

City Council questions and comments followed.

Cynthia Karsten, Outreach Veterinarian for U.C. Davis responded to questions.

It was City Council's consensus to approve the following:

1. Upgrade the supervisor position to Animal Services Manager
2. Animal Services to provide preventative medical care
3. Animal Services to provide ongoing veterinarian care
4. Animal intake approach be modified to "managed admission"
5. Return to Field Program for cats to be implemented

4. ITEMS FROM THE AUDIENCE – Robert Tanner stated Measure V funding can be used anywhere.
5. STAFF ITEMS – There were no staff items.
6. COUNCIL ITEMS

6.A DISCUSS PROPOSED AMENDMENTS TO THE COUNCIL POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES AND PROVIDE DIRECTION TO STAFF

Leticia Ramirez, Interim City Attorney provided the staff report.

Robert Tanner stated as requested at a previous meeting the Merchant Marine flag should also be displayed.

City Council questions and comments followed.

Staff will check into the possibility of flying the military flags at the war memorial, and work with the VFW and American Legion to explore options.

City Council agreed with the proposed changes to the flag policy.

Council Member Arriola announced he was struck by a vehicle on July 26, 2019, and thanked the community for their concern.

Council Member Ransom asked about the status of the homeless policy update. Council Member Ransom referred to a resident's question about using staff instead of contractors for landscape maintenance. Jenny Haruyama, City Manager responded staff will look into service issues and how it is funded, and connecting with residents.

Mayor Pro Tem Young requested looking at landscaping maintenance zones, out sourcing, funding gaps, taxes, drought restrictions. Council Member Vargas seconded the request.

Mayor Pro Tem Young provided an ACE train update including Saturday service coming in Fall 2019, bringing two daily round trips from Stockton to San Jose, reduction of delays due to positive train control upgrades, and addressed the train horn noise complaint stating decibel levels are meeting the standards.

Council Member Vargas added to the landscaping maintenance request to look into removal and replacement of dead trees. Council Member Vargas also requested an item to discuss bike path connectivity by implementing a continuous bike path, and an update on painting the bike paths green for visibility. Council Member Arriola seconded the request.

Mayor Rickman thanked staff for representing the City during the Memuro, Japan Sister City visit to Tracy. Mayor Rickman requested everyone slow down in school zones, and an agenda item regarding an update on the 9th Circuit Court of Appeals decision related to the Idaho case Martin v. City of Boise. Mayor Pro Tem Young seconded the request.

7. ADJOURNMENT – Time: 11:25 p.m.

ACTION: Motion was made by Council Member Vargas and seconded by Mayor Pro Tem Young to adjourn. Roll call vote found all in favor; passed and so ordered.

ATTEST:

Mayor

City Clerk

AGENDA ITEM 1.B

REQUEST

ACCEPT THE SUPPORT SERVICES MODULAR BUILDING PROJECT, CIP 71082, COMPLETED BY SILVA ELECTRIC OF TRACY, CALIFORNIA, AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AUTHORIZE THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND AUTHORIZE THE FINANCE DEPARTMENT TO CLOSE THE PROJECT

EXECUTIVE SUMMARY

The contractor has completed the work for installation of electrical and fiber optics for the Support Services Modular Building Project, CIP 71082 (Project). The Project was completed in accordance with project plans, specifications, and contract documents.

Project costs are within the available budget. Staff recommends Council accept the Project to enable the City Engineer to release the contractor's bonds and retention payment.

DISCUSSION

The Project's scope included installation of electrical and fiber optics cables for the Support Services Modular Building.

Engineering staff prepared the plans and specifications in-house and released an informal bid for the installation of electrical and fiber optics for the Support Services Modular Building Project. Staff received three bids and the bid from Silva Electric was the lowest and responsive in accordance to the specifications and the plans provided by City staff. The City Manager, in accordance with Tracy Municipal Code section 2.20.260, executed the agreement with Silva Electric for \$28,587 on January 3, 2018.

One change order for \$5,809 was issued for the Project, which included furnishing and installation of electrical panel with breakers, addition of six fiber optics cables, and installation of lights around the Modular Building.

Project costs are as follows:

A.	Construction Contract Amount	\$	28,587
B.	Approved Change orders	\$	5,809
C.	Design, construction management, inspection, Testing & miscellaneous project management Expenses	\$	3,976
	Total Project Costs	\$	38,372
	Total Budget Available	\$	61,994
	Budget Remaining	\$	23,622

Project has been completed within the available budget, is on schedule, and is consistent with plans, specifications, and City of Tracy standards.

STRATEGIC PLAN

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

FISCAL IMPACT

The Support Services Modular Building Project, CIP 71082, is an approved Capital Improvement Project with available funding in the amount of \$61,994 from General Projects Fund (F301). The Project was completed within the available budget for the cost of \$38,372. The remaining funds of \$23,622 will be released back into the fund balance and will be used for future General Fund Capital Improvement Projects.

RECOMMENDATION

Staff recommends that City Council, by resolution, accept the Support Services Modular Building Project, CIP 71082, completed by Silva Electric of Tracy, California, authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder, authorize the City Engineer to release the contractor's bonds and retention payment, and authorize the Finance Department to close the Project.

Prepared by: Paul Verma, PE, Senior Civil Engineer

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

RESOLUTION 2019-_____

ACCEPTING THE SUPPORT SERVICES MODULAR BUILDING PROJECT, CIP 71082, COMPLETED BY SILVA ELECTRIC OF TRACY, CALIFORNIA, AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION, AUTHORIZING THE CITY ENGINEER TO RELEASE THE BONDS AND RETENTION PAYMENT, AND AUTHORIZING THE FINANCE DEPARTMENT TO CLOSE THE PROJECT

WHEREAS, On March 3, 2018, the City Manager, in accordance with Tracy Municipal Code section 2.20.260, executed the Agreement with the lowest responsible bidder, Silva Electric of Tracy, California, for \$28,587 for the Support Services Modular Building Project, CIP 71082, and

WHEREAS, The Project scope included installation of electrical and fiber optics cables for the Support Services Modular Building, and

WHEREAS, One change order for \$5,809 was issued for the Project, which included furnishing and installation of electrical panel with breakers, addition of six fiber optics cables, and installation of lights around the Modular Building, and

WHEREAS The status of budget costs is as follows:

A.	Construction Contract Amount	\$	28,587
B.	Approved Change orders	\$	5,809
C.	Design, construction management, inspection, Testing & miscellaneous project management Expenses	\$	3,976
	Total Project Costs	\$	38,372
	Total Budget Available	\$	61,994
	Budget Remaining	\$	23,622

WHEREAS, The Project has been completed within the available budget, is on schedule, and is consistent with plans, specifications, and City of Tracy standards, and

WHEREAS, The Support Services Modular Building Project, CIP 71082, is an approved Capital Improvement Project with available funding in the amount of \$61,994 from General Projects Fund (F301). The Project was completed within the available budget for the cost of \$38,372. The remaining funds of \$23,622 will be released back into fund balance and will be used for future General Fund Capital Improvement Projects;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby accepts the Support Services Modular Building Project, CIP 71082, completed by Silva Electric of Tracy, California, authorizes the City Clerk to record the Notice of Completion with the San Joaquin County Recorder, authorizes the City Engineer to release the contractor's bonds and retention payment, and authorizes the Finance Department to close the Project.

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 3rd day of September 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.C

REQUEST

APPROVE A CHANGE ORDER IN THE AMOUNT OF \$44,000 TO ROYAL ELECTRIC COMPANY OF SACRAMENTO, CALIFORNIA FOR THE TRACY MUNICIPAL AIRPORT REPLACEMENT OF THE EXISTING AUTOMATE WEATHER OBSERVATION SYSTEM (AWOS) III EQUIPMENT ON EXISTING TOWER AND FOUNDATIONS PROJECT, CIP 77552, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE CHANGE ORDER

EXECUTIVE SUMMARY

City staff requests that City Council approve a change order in the amount of \$44,000 to Royal Electric to address unforeseen conditions discovered during construction of the Tracy Municipal Airport Replace Existing Automate Weather Observation System (AWOS) III Equipment on Existing Tower and Foundations Project, CIP 77552.

DISCUSSION

On September 19, 2017, City Council awarded a construction contract to Vellutini Corp, dba Royal Electric Company, of Sacramento, California, in the amount of \$121,300 for the Tracy Municipal Airport Replace Existing AWOS III Equipment on Existing Tower and Foundations Project, CIP 77552.

This Project is an approved Capital Improvement Project of which 90% is funded by the Federal Aviation Administration (FAA) thru an Airport Improvement Program (AIP) grant. The Project scope included replacement of the existing Automate Weather Observation System (AWOS) III with new AWOS III gauges, instruments and power control equipment. The Project scope did not include any replacement or modification of the existing AWOS III homerun cables. Project plans and specifications were prepared by Reinard W. Brandley Consulting Airport Engineers of Loomis, California and approved by the FAA.

All of the electrical circuits at Tracy Municipal Airport were replaced with new cable as part of the Reconstruct Runways and Taxiways Project in 2015 with the exception of the Runway 8-26 PAPI & AWOS circuits. The majority of the AWOS circuit was installed in 1993 and is currently 25 years old. The majority of the 8-26 PAPI circuit was installed in 1977 and relocated to new duct in 1993 and is 41 years old.

In 2017 FAA issued a grant for two separate Projects, new 2-Box PAPI R/W 30 Power Upgrades for PAPIs R/Ws 12, 8 & 26 (PAPI Project) and Replace Existing AWOS III Equipment on Existing Tower and Foundations (AWOS Project) combined into one FAA grant. Both Projects were awarded to Vellutini Corp, dba Royal Electric. It was desired to replace these cables due to their age despite the fact that they were functioning satisfactorily. However, FAA funding available at the time did not allow replacement of these old cables. As a result it was decided to leave them in place due to funding

restrictions. However, recently, these old cables were tested and are now measured to be near failure. And so, staff recommends replacing this infrastructure.

Current Project costs are as follows:

Construction Contract	\$	254,622
Change Orders	\$	6,300
Design support, construction management, inspection, testing, & miscellaneous expenses		
	\$	119,240
<hr/> Current Project Costs	\$	380,162
 Total Project Budget	 \$	 478,794
 Budget Remaining	 \$	 98,632

The cost to replace the sections of homerun cable included in this Change Order No. 2 is \$44,000. Adequate funding is available in the approved Capital Improvement Project CIP 77552. The change order amount is beyond the available construction contingency and requires City Council approval, as it exceeds the City Manager's authority.

City staff, in conjunction with the design engineer, has also reviewed the contractor's proposal and conducted an independent fee analysis and have reached the conclusion that proposed construction costs are considered reasonable.

STRATEGIC PLAN

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

FISCAL IMPACT

Tracy Municipal Airport Replace Existing AWOS III Equipment on Existing Tower and Foundations Project, CIP 77552, is an approved Capital Improvement Project with a budget of \$478,794. There are sufficient funds available within the Project for the change order amount of \$44,000 and no additional appropriations are needed.

RECOMMENDATION

That City Council, by resolution, approve the change order in the amount of \$44,000 to Royal Electric of Sacramento, California for the Tracy Municipal Airport Replace Existing AWOS III Equipment on Existing Tower and Foundations Project, CIP 77552, and authorize the City Manager to execute the change order.

Prepared by: Melissa Brandley, PE, Senior Civil Engineer, Brandley Engineering
Paul Verma, PE, Senior Civil Engineer

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – Change Order No. 2 with Royal Electric Company

City of Tracy - DES Department - Construction Management
CHANGE ORDER 2

Royal Electric Company
 8481 Carbide Court
 Sacramento, CA 95828

DATE:
Project Name: Tracy Municipal Airport - Replace Existing AWOS III
Equipment on Existing Tower and Foundations
CIP NO. 77552

You are hereby instructed that the above contract is modified as herein specifically set forth,
 but that in all other respects, the contract remains unaltered.
 NOTE: This change order is not effective until approved by the city.
 Requested By: Paul Verma

Description of Work:

Item No.	Description	Unit	Quantity	Unit Price	Cost
CO 2-1	Mobilization	L.S.	L.S.	L.S.	\$ 6,000.00
CO 2-2	New No. 8 5 KV Cable	Ln. Ft.	11,500.0	\$ 3.00	\$ 34,500.00
CO 2-3	New No. 6 Cu Gnd	Ln. Ft.	3,500.0	\$ 1.00	\$ 3,500.00

TOTAL COST: Decrease \$ or Increase \$ 44,000.00

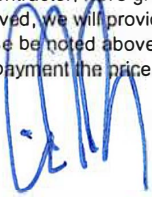
*** Per Council Resolution 2017-202, City Manager is authorized to execute the change order up to project contingency amount (10% of construction contract=\$12,130.00)**

By reason of this order, the time of completion will be adjusted as follows: 7 days

Recommended By: **Reviewed By:** **Approved By:**

Melissa S. Brandley 7/24/19 _____ _____
 Resident Engineer, Melissa S. Brandley, P.E. City Engineer Date *City Manager Date

We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved, we will provide all equipment, furnish all labor and materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment the prices shown above.

Accepted By: 

Date: 7/26/19
Title: VP of Horizontal Gr

Distribution:

____ Finance Director ____ Project File*
 ____ City Clerk (Orig.) ____ Project Engineer ____ Contractor

CONTRACT CHANGE ORDER WORK SHEET:

(To be filled out prior to execution of each change order)

CHANGE ORDER 2

PROJECT STATUS:

1 Budget Amount:	\$ 133,430.00
2 Original Contract Amount:	\$ 121,300.00
3 Original Contingency Amount:	\$ 12,130.00
4 Supplemental Contingency Amount:	
5 Total Approved Change Orders to Date:	<u>\$6,300.00</u>
6 Current Contract Amount (2+5)	\$ 127,600.00
7 Remaining Contingency (3+4-5):	\$ 5,830.00 *

PROPOSED CHANGE ORDER # 2

8. Amount:	\$ 44,000.00
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CITY COUNCIL NOTIFICATION:

9. Total Change Orders including proposed (5+8):	\$ 50,300.00
--------------------------------------------------	---------------------

* City Council approval will be required for additional contingency

RESOLUTION 2019-_____

APPROVING A CHANGE ORDER IN THE AMOUNT OF \$44,000 TO ROYAL ELECTRIC COMPANY OF SACRAMENTO, CALIFORNIA FOR THE TRACY MUNICIPAL AIRPORT REPLACEMENT OF THE EXISTING AWOS III EQUIPMENT ON EXISTING TOWER AND FOUNDATIONS PROJECT, CIP 77552, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER

WHEREAS, The Tracy Municipal Airport Replace Existing AWOS III Equipment on Existing Tower and Foundations Project (CIP 77552) involves replacement of the existing Automate Weather Observation System (AWOS) III with new AWOS III gauges, instruments and power control equipment, and

WHEREAS, The Project construction is complete and during construction it was discovered that the existing PAPI and AWOS homerun cables are severely compromised, and

WHEREAS, The Airport consultant has explored options to find the most cost effective method to restore integrity to the AWOS system, and

WHEREAS, The cost to replace the section of 25-year-old homerun cable included in this Change Order No. 2 is \$44,000, and

WHEREAS, The status of the budget costs is as follows, and

Construction Contract	\$	254,622
Change Orders	\$	6,300
Design support, construction management, inspection, testing, & miscellaneous expenses		
	\$	119,240
<hr/> Current Project Costs	\$	380,162
 Total Project Budget	 \$	 478,794
 Budget Remaining	 \$	 98,632

WHEREAS, Adequate funding is available in the approved Capital Improvement Project, CIP 77552. The change order amount is beyond the available construction contingency and required City Council approval as it exceeds the City Manager's authority, and

WHEREAS, Tracy Municipal Airport Replace Existing AWOS III Equipment on Existing Tower and Foundations Project, CIP 77552 is an approved Capital Improvement Project and adequate funding is available in the Project to pay for the change order;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a change order in the amount of \$44,000 to Royal Electric of Sacramento, California for the Tracy Municipal Airport Replacement of the Existing AWOS III Equipment on Existing Tower and Foundations Project, CIP 77552, and authorizes the City Manager to execute the change order.

* * * * *

The foregoing Resolution 2019-_____ was adopted by the Tracy City Council on the 3rd day of September, 2019 by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.D

REQUEST

APPROVE THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3857, PLAN “C” / SMPA - ELISSAGARAY (SIC) INFILL AND AUTHORIZE THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

EXECUTIVE SUMMARY

City staff requests that the City Council approve the First Amendment to the Subdivision Improvement Agreement for Tract 3857, Plan “C” / SMP – Elissagaray (sic) (Amendment) for Tract 3857. Approval and recordation of the Amendment will result in Ponderosa Homes III, Inc. (“Assignor”), as Subdivider under the original Subdivision Improvement Agreement (SIA), assigning and transferring all of its rights and obligations pursuant to terms and conditions of the SIA to Ponderosa Homes II, Inc. (“Assignee”). Under the terms of the Amendment, the Assignee will furnish to the City the required improvement security to replace the security furnished by the Assignor pursuant to the SIA. Following the Assignee’s furnishing of such replacement security, the City will return the security provided by the Assignor.

DISCUSSION

On July 10, 2018, City Council approved the execution and recordation of the SIA for Tract 3857 pursuant to Resolution No. 2018-093. The SIA is filed with the Office of the San Joaquin County Recorder as Instrument No. 2018-075931. Since the Assignor executed the SIA, Assignor agreed to furnish, construct, and install all public improvements associated with Tract 3857.

On June 27, 2018, the Final Subdivision Map was recorded in the Office of the San Joaquin County Recorder. Subsequent to the recordation of said map, and by virtue of the Grant Deed recorded May 15, 2019, San Joaquin County Records, and the Assignor conveyed title to all of the lots comprising Tract 3857 to the Assignee.

Assignor now desires to assign and transfer to Assignee, and Assignee wishes to assume from Assignor, all of Assignor’s rights and obligations pursuant to the SIA, and the City wishes to consent to such assignment.

Consistent with the California Subdivision Map Act and Tracy Municipal Code, the Assignee will furnish to the City the improvement security to replace the security furnished by the Assignor pursuant to the SIA. Subsequent to the furnishing of such replacement security by the Assignee, the City will return the security originally provided by the Assignor.

Upon the recordation of the Amendment, the Assignor will be released by the City from any and all obligations under the SIA, except as otherwise set forth in the Amendment.

FISCAL IMPACT

The Assignor has paid the applicable engineering review fees, which include the cost of review and processing of the Amendment.

STRATEGIC PLAN

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

RECOMMENDATION

That the Tracy City Council, by resolution, approve the First Amendment to the Subdivision Improvement Agreements for Tract 3857, Plan "C" / SMPA - Elissagaray (sic) Infill, and authorize the City Clerk to file the First Amendment with the Office of the San Joaquin County Recorder.

Prepared by: Al Gali, Associate Civil Engineer

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Development Services Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – First Amendment to SIA for Tract 3857, Plan "C" / SMPA – Elissagaray (sic) Infill

Attachment A

RECORDING REQUESTED BY:

CITY OF TRACY
Development Services
333 Civic Center Plaza
Tracy, CA 95376

AND WHEN RECORDED MAIL TO:

CITY OF TRACY
Office Of The City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(Space Above For Recorder's Use)

**FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT
TRACT 3857, PLAN "C" / SMPA – ELISSAGARY INFILL**

This **FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT** (hereinafter "First Amendment to SIA") is made and entered into as of July 22 2019, by and between **PONDEROSA HOMES III, INC.**, a California corporation (hereinafter, "Assignor"), **PONDEROSA HOMES II, INC.**, a California corporation (hereinafter, "Assignee"), and the **CITY OF TRACY**, a municipal corporation (hereinafter "City").

RECITALS

A. The City of Tracy ("City") and Assignor entered into that certain Subdivision Improvement Agreement for Final Subdivision Map for Tract 3857, Elissagary Infill Subdivision, recorded in the Official Records of San Joaquin County, California, on July 10, 2018, as Instrument No. 2018-075931 (the "SIA"). Pursuant to the SIA, Subdivider agreed to furnish, construct, and install all public improvements referred to in the SIA as the "Work" or "Scope of Work."

B. Assignor conveyed to Assignee certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter "Property"), said Property comprising the subject Final Subdivision Map for Tract 3857, Elissagary Infill.

C. Pursuant to Section 19 of the SIA, the SIA shall not be assigned or transferred, without the written consent of the City.

D. Assignor now desires to assign and transfer to Assignee, and Assignee wishes to acquire from Assignor, all of Assignor's rights and obligations pursuant to the SIA and the City wishes to consent to the assignment.

E. Consistent with Subdivision Map Act (including Government Code sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, Assignee desires to furnish to the City security to replace the security furnished by Assignor pursuant to Section 5 of the SIA ("Assignor's

Security”), and Assignor desires that, following Assignee’s furnishing of such replacement security, the City return Assignor’s Security to Assignor.

AGREEMENT

NOW, THEREFORE, Assignor, Assignee, and City hereby agree as follows:

1. Assignment. As of the Effective Date (as defined below), Assignor grants, assigns, transfers, and delivers to Assignee all of Assignor’s rights, title and interest under the SIA to Assignee.
2. Assumption. As of the Effective Date, Assignee agrees to assume all of Assignor’s duties and obligations under the SIA.
3. Replacement of Security. Pursuant to Section 5 of the SIA, Assignor has furnished the City security in the form noted below. Assignee shall post replacement security for all of the items noted below and for purposes of this First Amendment to SIA, such security posted by Assignee shall hereinafter be referred to as “Replacement Security.”
 - 3.1. Faithful Performance security in the amount of \$ 853,462.00 in accordance with the cost estimates approved by City to secure faithful performance of the SIA (until the date on which the City Council accepts the work as complete).
 - 3.2. Labor and Material security in the amount of \$853,462.00 in accordance with the cost estimates approved by City to secure payment by the Assignor to laborers and materialmen (until the date on which claims are required to be made by laborers and materialmen).
 - 3.3. Warranty security in the amount of \$85,346.00 in accordance with the cost estimates approved by City to secure faithful performance of the SIA (from the date on which the City Council accepts the work as complete until one year thereafter).
 - 3.4. Monumentation security in the amount of \$7,500.00 to secure faithful performance of setting monuments as described in the Final Map for Tract 3857, Elissagray Infill within one year from the date of the SIA pursuant to Government Code section 66496.

City hereby acknowledges that it has reviewed the Replacement Security and determined it is in full compliance with the terms and conditions stated in the SIA for such security.

4. Insurance. Assignor, Assignee and City agree Assignor’s insurance, previously provided to City, shall remain in full force and effect in accordance with the insurance requirements of the SIA.
5. Return of Assignor’s Security. Within five (5) business days of the later of (i) receipt by the City of the Replacement Security from Assignee and (ii) the Effective Date, the City shall return Assignor’s Security.
6. Consent of City. City hereby consents to the assignment of the SIA from the Assignor to the Assignee, as set forth in this First Amendment to SIA.

7. Release of Assignor. From and after the Effective Date, City releases Assignor from any and all obligations under the SIA, except for Assignor's continuing obligation to provide insurance as described in Section 4 above.
8. Effective Date. For purposes of this First Amendment to SIA upon execution by Assignor, Assignee and the City, the Effective Date shall be deemed to be the recordation date of this Amendment in the Official Records of San Joaquin County, California.
9. Binding Effect. This First Amendment to SIA shall be binding upon and inure to the benefit of the successors, permitted assigns, personal representatives, heirs and legatees of the respective parties hereto. Notwithstanding the foregoing or anything to the contrary in the SIA, the SIA and this Agreement shall automatically terminate and be of no further force or effect with respect to any portion of the Property: (a) containing a completed residence for which a certificate of occupancy has been issued; and/or (b) conveyed to a homeowner's association, public utility company, or public agency.
10. No Oral Modifications. This First Amendment to SIA may not be amended or modified except in writing executed by all of the parties hereto.
11. Severability. The invalidity, illegality or unenforceability of any provision of this First Amendment to SIA shall not affect the enforceability of any other provision of this Assignment, all of which shall remain in full force and effect.
12. Time of the Essence. Time is of the essence of this First Amendment to SIA and of the obligations required hereunder.
13. Non-Waiver. No delay or failure by any party to exercise any right hereunder, and no partial or single exercise of such right, shall constitute a waiver of that or any other right. unless otherwise expressly provided herein,
14. Further Assurances. The parties agree to execute all documents and instruments reasonably required in order to effect and implement the terms of this SIA and/or this First Amendment to SIA.
15. Counterpart Originals. This First Amendment to SIA may be executed in several duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this First Amendment to SIA, which, with all attached signature pages, shall be deemed to be an original agreement.
16. Recordation. This First Amendment to SIA shall be recorded in the official records of the County of San Joaquin Recorder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first written above.

“ASSIGNOR”

PONDEROSA HOMES III, INC.,
a California corporation

By: Jeffrey C. Schweseda
Name: Jeffrey C. Schweseda
Its: Senior V.P.

“ASSIGNEE”

PONDEROSA HOMES II, INC.,
a California corporation

By: Linda Morasch
Name: LINDA F. MORASCH
Its: CFO

“CITY”

CITY OF TRACY,
a municipal corporation

By: _____
Name: _____
Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Alameda

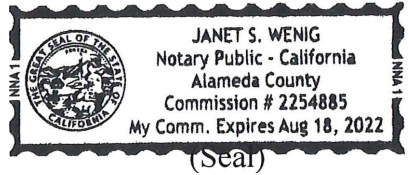
On July 22, 2019, before me, Janet S. Wenig,
(insert name of notary)

Notary Public, personally appeared LINDA F. MORASCH,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same
in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Janet S. Wenig



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Alameda

On July 22, 2019, before me, Janet S. Wenig,
(insert name of notary)

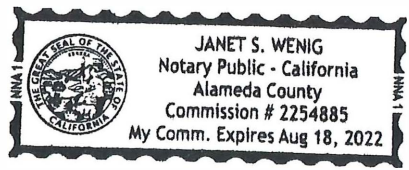
Notary Public, personally appeared LINDA F. MORASCH,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same
in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Janet S. Wenig

(Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[ATTACHED]

LEGAL DESCRIPTION

Real property in the City of Tracy , County of San Joaquin, State of California, described as follows:

LOTS 1 THROUGH 47 INCLUSIVE AS SHOWN ON MAP ENTITLED "TRACT NO. 3857 ELISSAGARAY INFILL", FILED FOR RECORD JUNE 27, 2018 IN BOOK 43 OF MAPS AND PLATS AT PAGE 39, SAN JOAQUIN COUNTY RECORDS.

APN: 252-050-240-000 and 252-260-010-000 (Affects this and other properties)

RESOLUTION 2019-_____

APPROVING THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3857, PLAN "C" / SMPA - ELISSAGARAY (SIC) INFILL, AND AUTHORIZING THE CITY CLERK TO FILE THE FIRST AMENDMENT WITH THE OFFICE OF THE SAN JOAQUIN COUNTY RECORDER

WHEREAS, The Subdivision Improvement Agreement for Tract 3857, Elissagaray Infill ("SIA"), by and between the City of Tracy ("City") and Ponderosa Homes III, Inc. ("Assignor"), was approved by the City Council on July 10, 2018, and was recorded in the Office of the San Joaquin County Recorder, and

WHEREAS, Pursuant to the SIA, Assignor agreed to furnish, construct and install all public improvements associated with Tract 3857, and

WHEREAS, The Final Subdivision Map for Tract 3857 was executed by the Assignor and was recorded on June 27, 2018, and

WHEREAS, Subsequent to the recordation of said map the Assignor conveyed title to all of the lots comprising Tract 3857 to Ponderosa Homes, II, Inc. ("Assignee"), and

WHEREAS, Assignor now desires to assign and transfer to Assignee, and Assignee wishes to assume from Assignor, all of Assignor's rights and obligations pursuant to the SIA and the City wishes to consent to such assignment, and

WHEREAS, The Assignee will furnish to the City the improvement security to replace the security furnished by the Assignor pursuant to the SIA and, subsequent to the furnishing of such replacement security by the Assignee, the City will return the security originally provided by the Assignor, and

WHEREAS, In furtherance of the statements and desires set forth above, City, Assignor and Assignee each consent to the execution and recordation of the First Amendment to the Subdivision Improvement Agreement for Tract 3857, Plan "C" / SMPA - Elissagaray (sic) Infill ("First Amendment"), and

WHEREAS, Upon the recordation of the First Amendment, the Assignor will be released by the City from any and all obligations under the SIA, except as otherwise set forth in the First Amendment, and

WHEREAS, The Assignor has paid the cost of engineering, plan review and processing of the SIA and First Amendment;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the First Amendment to the Subdivision Improvement Agreement for Tract 3857, Plan "C" / SMPA - Elissagaray (sic) Infill, and authorizes the City Clerk to file the First Amendment with the Office of the San Joaquin County Recorder.

The foregoing Resolution 2019-_____ was passed and adopted by the Tracy City Council on the 3rd day of September 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.E

REQUEST

WAIVE SECOND READING AND ADOPT ORDINANCE 1271, AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING SECTION 2.28.470 OF THE TRACY MUNICIPAL CODE REGARDING LEASES OF CITY-OWNED AIRPORT HANGARS AND GROUND LEASES AT TRACY MUNICIPAL AIRPORT AND NEW JERUSALEM AIRPORT

EXECUTIVE SUMMARY

Ordinance 1271 was introduced at the regular Council meeting held on August 20, 2019. Ordinance 1271 is before Council for adoption.

DISCUSSION

Section 2.28.470 of the Tracy Municipal Code, which regulates the Tracy Municipal Airport and New Jerusalem Airport, requires an amendment that will clarify the authority to execute City-owned hangar rental agreements and authority to execute ground leases at City airports for privately owned hangars. The current language only allows the City Manager to execute City-owned hangar rental agreements. Ordinance 1271 was introduced at the August 20, 2019 Council meeting to amend Section 2.28.470 of the Tracy Municipal Code to allow the "City Manager or designee" to execute these agreements. Also, the amendment will authorize the City Manager to execute ground leases at the airports for privately owned hangars. The amendment will allow for greater flexibility in the day-to-day administration of both airports.

Ordinance 1271 is before City Council for adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

That City Council adopt Ordinance 1271.

Prepared by: Adrienne Richardson, City Clerk
Reviewed by: Andrew Malik, Assistant City Manager
Approved by: Jenny Haruyama, City Manager

ORDINANCE 1271

AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA, AMENDING SECTION 2.28.470 OF THE TRACY MUNICIPAL CODE REGARDING LEASES OF CITY-OWNED AIRPORT HANGARS AND GROUND LEASES AT TRACY MUNICIPAL AIRPORT AND NEW JERUSALEM AIRPORT

WHEREAS, Section 2.28.470 of the Tracy Municipal Code, which regulates the Tracy Municipal Airport and New Jerusalem Airport, requires an amendment that will clarify the authority to execute City-owned hangar rental agreements and ground leases for privately owned hangars at the airports, and

WHEREAS, The City Council desires to update its ordinance to delegate authority to execute City-owned hangar rental agreements to the City Manager or designee and to delegate authority to the City Manager to execute ground leases for privately owned hangars at the airports;

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

SECTION 1: Amendment of the Tracy Municipal Code. Section 2.28.470 of Article 6 of Chapter 2.28 of Title 2 is amended to read as follows:

Chapter 2.28 – TRACY MUNICIPAL AIRPORT AND NEW JERUSALEM AIRPORT

Article 6- Hangars

2.28.470

(a) City-owned hangars at its airports may be leased pursuant to a lease agreement. Leases of hangar space shall be issued using a City form provided. The City Manager or designee may execute leases of hangar space and at his/her discretion may include in the lease a charge, in addition to any applicable rates and charges set by this chapter. Tenants who have entered into a lease with the City shall abide by its terms and this chapter, as it may be amended from time to time. Leases shall be issued on a month-to-month basis and shall be subject to termination as specified in the lease. Tenants shall provide adequate insurance as specified by the City's Risk Management, and shall be subject to all applicable federal, state, and local laws, policies, and regulations.

(b) Land at City airports may be leased pursuant to a ground lease agreement for privately owned hangars using the City form provided. Notwithstanding any provision in subsection (a) of Section 2.20.280 of this Code, the City Manager may execute ground leases at the City's airports for privately owned hangars in accordance with Government Code Section 37389 and FAA regulations. At the City Manager's discretion, he/she may include in the lease a charge, in addition to any applicable rates and charges set by this chapter. Tenants who have entered into a lease with the City shall abide by its terms and this chapter, as it may be amended from time to time. Leases shall be subject to termination as stated in the agreement. Tenants shall provide adequate insurance as specified by the City's Risk Management, and shall be subject to all applicable, federal, state, and local laws, policies, and regulations.

SECTION 2: Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 3: Except as herein added or changed, the remaining sections of the Tracy Municipal Code not set forth above, shall remain in full force.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

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

SECTION 6: This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the Ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the Ordinance. (Govt. Code § 36933).

The foregoing Ordinance 1271 was introduced at a regular meeting of the Tracy City Council on the 20th day of August, 2019, and finally adopted on the 3rd day of September, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 1.F

REQUEST

ADOPT RESOLUTION APPROVING GRANT AGREEMENT AIP #3-06-0259-020-2019 IN THE AMOUNT OF \$217,080 WITH THE FEDERAL AVIATION ADMINISTRATION FOR THE PLANNING AND DESIGN OF THE AIRPORT LAYOUT PLAN/AIRPORT GEOSPATIAL INFORMATION SYSTEM WITH OBSTRUCTION MITIGATION PLAN AT THE TRACY MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO SIGN TERMS AND CONDITIONS OF ACCEPTING AIRPORT IMPROVEMENT PROGRAM GRANTS AND APPROVE A NEW CAPITAL IMPROVEMENT PROJECT (CIP) FOR THE PLANNING AND DESIGN OF THE AIRPORT LAYOUT PLAN/AIRPORT GEOSPATIAL INFORMATION SYSTEM WITH OBSTRUCTION MITIGATION PLAN AT THE TRACY MUNICIPAL AIRPORT WITH A NOT TO EXCEED BUDGET OF \$241,200

EXECUTIVE SUMMARY

The City has submitted a grant application to the Federal Aviation Administration (FAA) requesting funds for the planning and design for the Airport Layout Plan/Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport. The FAA will pay for 90% (\$217,080) of grant eligible project costs through the Airport Improvement Program (AIP). The City and the State of California Division of Aeronautics will supply \$24,120 in matching funds to fulfill the grant obligation.

DISCUSSION

The FAA classifies the City as the “sponsor” of the Tracy Municipal Airport. As an airport sponsor, the City applies for and administers airport grants and contracts. Per the FAA Airport Improvement Handbook, 49 USC § 47107(a)(16) requires that the sponsor must maintain a current airport layout plan (ALP). Without it, the airport will not receive any grant funding for projects. The Airport Layout Plan shows in detail all proposed changes to the airport over the next ten years. All airports conducting ALP projects this year are being required to also complete an Airport Geospatial Information System with Obstruction Mitigation Plan by the FAA. The Airport Geospatial Information System with Obstruction Mitigation Plan will consist of aerial and land surveys around the airport to identify any possible obstructions and a plan that explains how the airport will alleviate those obstructions. The FAA has awarded the City of Tracy a grant of \$217,080 for the planning and design of the ALP and Airport Geospatial Information System with Obstruction Mitigation Plan.

The FAA Airport Improvement Program (AIP) currently funds approved projects at ninety percent on a reimbursable basis. The FAA will award \$217,080 to the City for the project. As the City completes the work, it requests, reimbursement from the FAA for 90% of the funds spent on the work. The City and the State of California Division of Aeronautics will commit the remaining 10% match for this project, estimated at \$24,120. The total project cost is \$241,200.

Each August, the FAA San Francisco Airport District Office receives the approved grant awards from Washington DC and sends to all airport sponsors for signatures. In order to execute the grant and receive the grant funds from the FAA, the City needs to sign the Terms and Conditions of Accepting Airport Improvement Program Grants and return the grant offer to the FAA by September 9, 2019.

The funding breakdown for this project is as follows:

FAA Participation	\$ 217,080
State Matching Grant	\$ 10,854
Airport Operating (F561)	<u>\$ 13,266</u>
	\$ 241,200

STRATEGIC PLAN

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

FISCAL IMPACT

Staff is requesting a new CIP for the planning and design for the Airport Layout Plan/Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport with a not to exceed budget of \$241,200. Primary funding will be from the FAA Grant (90%) \$217,080, \$10,854 from the State of California Division of Aeronautics, and \$13,266 from the Airport Operating (F561) Budget.

RECOMMENDATION

That the City Council adopt a resolution approving grant agreement AIP #3-06-0259-020-2019 in the amount of \$217,080 with the Federal Aviation Administration for reimbursement and approve a new Capital Improvement Project for the planning and design of the Airport Layout Plan/ Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport and authorizing the Mayor to sign terms and conditions of accepting airport improvement program grants and approve a new CIP with a not to exceed budget of \$241,200.

Prepared by: Paula Jessup, Airport Manager

Reviewed by: Brian MacDonald, Parks & Recreation Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jennifer D. Haruyama, City Manager

ATTACHMENTS:

Attachment A: Grant Agreement



U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer	August 8, 2019
Airport/Planning Area	Tracy Municipal
AIP Grant Number	3-06-0259-021-2019
DUNS Number	074640111
TO:	City of Tracy
	(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated February 7, 2019, for a grant of Federal funds for a project at or associated with the Tracy Municipal Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Tracy Municipal Airport (herein called the "Project") consisting of the following:

Update Airport Master Plan Study

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, as applied and interpreted consistent with the FAA Reauthorization Act of 2018 (see 2018 FAA Reauthorization grant condition.), (b) and the Sponsor's acceptance of this Offer; and, (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

- 1. Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$217,080. The following amounts represent a breakdown of the maximum obligation for the purpose of establishing

allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$217,080 for planning

\$0 airport development or noise program implementation; and,

\$0 for land acquisition.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR §200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR §200.343).

The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies, and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the assurances which are part of this agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 9, 2019, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the

Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

- 10. United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
- 11. System for Award Management (SAM) Registration And Universal Identifier.**
- A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - B. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5771) or on the web (currently at <http://fedgov.dnb.com/webform>).
- 12. Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
- 13. Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
- 14. Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this agreement.
- 15. Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
- 16. Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.
- 17. Maximum Obligation Increase For Nonprimary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

- A. May not be increased for a planning project;
- B. May be increased by not more than 15 percent for development projects;
- C. May be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.

18. Audits for Public Sponsors. The Sponsor must provide for a Single Audit or program specific audit in accordance with 2 CFR part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Provide one copy of the completed audit to the FAA if requested.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR §180.200, the Sponsor must:

- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 - 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- B. Require prime contractors to comply with 2 CFR §180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- C. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.

20. Ban on Texting While Driving.

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

21. AIP Funded Work Included in a PFC Application.

Within 90 days of acceptance of this award, Sponsor must submit to the Federal Aviation Administration an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this grant award. The airport sponsor may not make any expenditure under this

award until project work addressed under this award is removed from an approved PFC application by amendment.

22. Exhibit "A" Property Map. The Exhibit "A" Property Map dated May 23, 2014, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.

23. Employee Protection from Reprisal.

A. Prohibition of Reprisals –

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal office or employee responsible for oversight of a grant program;
 - v. A court or grand jury;
 - vi. A management office of the grantee or subgrantee; or
 - vii. A Federal or State regulatory enforcement agency.
3. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b)
6. Assumption of Rights to Civil Remedy - Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

24. 2018 FAA Reauthorization. This grant agreement is subject to the terms and conditions contained herein including the terms known as the Grant Assurances as they were published in the Federal Register on April 3, 2014. On October 5, 2018, the FAA Reauthorization Act of 2018 made certain amendments to 49 U.S.C. chapter 471. The Reauthorization Act will require FAA to make certain amendments to the assurances in order to best achieve consistency with the statute. Federal law requires that FAA publish any amendments to the assurances in the Federal Register along with an opportunity to comment. In order not to delay the offer of this grant, the existing assurances are attached herein; however, FAA shall interpret and apply these assurances consistent with the Reauthorization Act. To the extent there is a conflict between the assurances and Federal statutes, the statutes shall apply. The full text of the Act is at <https://www.congress.gov/bill/115th-congress/house-bill/302/text>.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



(Signature)

Laurie J. Suttmeier

(Typed Name)

Manager

(Title of FAA Official)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this _____ day of _____, _____.

City of Tracy

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By:

(Typed Name of Sponsor's Authorized Official)

Title:

(Title of Sponsor's Authorized Official)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of _____. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ (location) this _____ day of _____, _____.

By:

(Signature of Sponsor's Attorney)

¹Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

PLANNING AGENCY SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act - 5 U.S.C. 1501, et seq.²
- d. Rehabilitation Act of 1973 - 29 U.S.C. 794
- e. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin)
- f. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability
- g. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- h. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- i. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

EXECUTIVE ORDERS

- a. Executive Order 12372 - Intergovernmental Review of Federal Programs

FEDERAL REGULATIONS

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures
- e. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- g. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- h. 49 CFR Part 20 - New restrictions on lobbying.
- i. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- j. 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- k. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- l. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- m. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- n. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- q. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252).

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary

5. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.

6. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any

books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

7. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

8. Reports and Inspections.

It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

9. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

- 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
- 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 4) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 5) So long as the sponsor retains ownership or possession of the property.

a.) Required Solicitation Language.

b.) It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The City of Tracy, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

d. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by

the sponsor with other parties:

- a.) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b.) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- e. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

10. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

11. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

12. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.

13. Disadvantaged Business Enterprises.

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Parts 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. § 3801).



**FAA
Airports**

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

Updated: 4/18/2019

View the most current versions of these ACs and any associated changes at:

http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars/

NUMBER	TITLE
70/7460-1L Change 2	Obstruction Marking and Lighting
150/5000-9A	Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations
150/5000-17	Critical Aircraft and Regular Use Determination
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Changes 1- 2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Nonprimary Airports
150/5200-28F	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30D Change 1	Airport Field Condition Assessments and Winter Operations Safety
150/5200-31C Changes 1-2	Airport Emergency Plan
150/5210-5D	Painting, Marking, and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications

NUMBER	TITLE
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Aircraft Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVS)
150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16E Changes 1	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26 Changes 1-2	Airport Ground Vehicle Automatic Dependent Surveillance - Broadcast (ADS-B) Out Squitter Equipment
150/5300-13A Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C Change 1	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards

NUMBER	TITLE
150/5320-5D	Airport Drainage Design
150/5320-6F	Airport Pavement Design and Evaluation
150/5320-12C Changes 1-8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5235-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength - PCN
150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30J	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification For L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retro reflective Markers
150/5345-42H	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43H	Specification for Obstruction Lighting Equipment

NUMBER	TITLE
150/5345-44K	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46E	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49D	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flashing Light Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing and Graphics
150/5360-13A	Airport Terminal Planning
150/5360-14A	Access to Airports By Individuals With Disabilities
150/5370-2G	Operational Safety on Airports During Construction
150/5370-10H	Standards for Specifying Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5390-2C	Heliport Design

NUMBER	TITLE
150/5395-1A	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

Updated: 3/22/2019

NUMBER	TITLE
150/5100-14E Change 1	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-17 Changes 1 - 7	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5300-15A	Use of Value Engineering for Engineering Design of Airport Grant Projects
150/5320-17A	Airfield Pavement Surface Evaluation and Rating Manuals
150/5370-12B	Quality Management for Federally Funded Airport Construction Projects
150/5380-6C	Guidelines and Procedures for Maintenance of Airport Pavements
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness

RESOLUTION 2019-_____

APPROVING GRANT AGREEMENT AIP #3-06-0259-020-2019 IN THE AMOUNT OF \$217,080 WITH THE FEDERAL AVIATION ADMINISTRATION FOR THE PLANNING AND DESIGN OF THE AIRPORT LAYOUT PLAN/AIRPORT GEOSPATIAL INFORMATION SYSTEM WITH OBSTRUCTION MITIGATION PLAN AT THE TRACY MUNICIPAL AIRPORT AND AUTHORIZING THE MAYOR TO SIGN TERMS AND CONDITIONS OF ACCEPTING AIRPORT IMPROVEMENT PROGRAM GRANTS AND APPROVING A NEW CAPITAL IMPROVEMENT PROJECT (CIP) FOR THE PLANNING AND DESIGN OF THE AIRPORT LAYOUT PLAN/AIRPORT GEOSPATIAL INFORMATION SYSTEM WITH OBSTRUCTION MITIGATION PLAN AT THE TRACY MUNICIPAL AIRPORT WITH A NOT TO EXCEED BUDGET OF \$241,200

WHEREAS, The Federal Aviation Administration of the United States of America (FAA) classifies the City of Tracy (the "City") as the "sponsor" of the Tracy Municipal Airport and as such, the City is responsible for applying for and administering airport grants and contracts, and

WHEREAS, the FAA Airport Improvement Program currently funds approved and eligible projects at ninety percent, and

WHEREAS, the City is pursuing funding in the amount of \$217,080 with the FAA for reimbursement for the planning and design of the Airport Layout Plan/Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport, and

WHEREAS, The City and the State of California Division of Aeronautics will provide the 10% matching funds of up to \$24,120 for the sponsor share with \$10,854 from the State and \$13,266 from the Airport Operating Budget (F561);

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy approves grant agreement AIP #3-06-0259-020-2019 in the amount of \$217,080 with the Federal Aviation Administration Project for the planning and design of the Airport Layout Plan/ Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport and authorizes the Mayor to sign terms and conditions of accepting airport improvement program grants and approves a new Capital Improvement Project for the planning and design of the Airport Layout Plan/ Airport Geospatial Information System with Obstruction Mitigation Plan at the Tracy Municipal Airport with a not to exceed budget of \$241,200.

The foregoing Resolution 2019-_____ was adopted by the City Council of the City of Tracy on the 3rd day of September, 2019, by the following vote

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

Mayor

City Clerk

AGENDA ITEM 1.G

REQUEST

APPROVE SIDE LETTER AGREEMENTS BETWEEN THE CITY OF TRACY AND THE TRACY POLICE OFFICERS ASSOCIATION (TPOA) AND THE TRACY TECHNICAL SERVICES EMPLOYEE ASSOCIATION (TTSSEA) CLARIFYING EXISTING CONTRACT LANGUAGE; AND AUTHORIZE THE CITY MANAGER TO APPROVE SIDE LETTER AGREEMENTS THAT MAKE MINOR MODIFICATIONS TO EXISTING LANGUAGE AND HAVE MINIMAL FISCAL IMPACT

EXECUTIVE SUMMARY

Staff requests approval of side letter agreements with Tracy Police Officers' Association (TPOA) and Tracy Technical Services Employee Association (TTSSEA) to clarify existing language in their respective Memoranda of Understanding (MOUs). The side letter for TPOA clarifies the retirement benefits, short-term disability benefits, workweek/FLSA work period designations and uniforms for the non-sworn classification of Police Officer Trainee. The Side Letter for TTSSEA clarifies the pay practice on designated holidays for employees working a 9/80 or 4/10 schedule. In addition to the Side Letters, staff recommends City Council authorize the City Manager to approve and execute side letter agreements which amend existing MOU language with minor modifications and minimal fiscal impact.

DISCUSSION

The TPOA includes Police Officers, Corporals and Sergeants as well as non-sworn Police Officer Trainees. Police Officer Trainees are employed full-time while attending the State of California POST certified Police Academy and are sworn in as a probationary Police Officer following completion of the Academy. The language in the current MOU outlines terms, conditions and benefits for sworn officers omitting those for non-sworn personnel. The attached side letter agreement clarifies the appropriate CalPERS retirement benefit formulas, short term disability insurance and uniforms, as well as designating the FLSA work period for non-sworn Police Officer Trainees attending the Academy (Exhibit A).

The existing TTSSEA Memorandum of Understanding does not reflect the existing 4/10 work schedule and related conditions for those assigned to this work schedule. The attached side letter agreement memorializes the 4/10 work schedule and existing pay practice for providing holiday pay on designated holidays for employees working a 9/80 or 4/10 schedule (Exhibit B).

In addition, staff recommends City Council grant authorization to the City Manager to approve and execute side letter agreements amending existing MOU language with

minor modifications and minimal fiscal impact during the term of the MOU. During the term of the contract, issues related to omitted or confusing contract language or statutory changes may require meeting and conferring with the bargaining unit and creating a side letter agreement to memorialize new or modified contract language. Authorizing the City Manager to approve side letter agreements with minor modifications and minimal fiscal impact will create efficiencies in the approval process and expedite the implementation of updated contract language. Minor modifications or minimal fiscal impact can be defined as those impacts that are operational in nature and whose fiscal impact can be absorbed within the existing budget.

STRATEGIC PLAN

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

FISCAL IMPACT

The impact to the General Fund as a result of approving this procedure will be absorbed by approved department budgets.

RECOMMENDATION

Staff recommends that City Council approve, by resolution, side letter agreements with Tracy Police Officers' Association and Tracy Technical Services Employee Association to clarify existing contract language, and authorize the City Manager to approve side letters of agreements that make minor modifications to existing language and have minimal fiscal impact.

Prepared by: Judy Carlos, Human Resources Analyst II

Reviewed by: Kimberly Murdaugh, Human Resources Director
Karin Schnaider, Finance Director
Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Exhibit A – Side Letter of Agreement between the City of Tracy and the Tracy Police Officers Association (TPOA)

Exhibit B – Side Letter of Agreement between the City of Tracy and the Tracy Technical Services Employee Association (TTSSEA)

**SIDE LETTER OF AGREEMENT BETWEEN THE CITY OF TRACY AND
TRACY POLICE OFFICERS ASSOCIATION
NON-SWORN POLICE OFFICER TRAINEE**

The City of Tracy and Tracy Police Officers Association (TPOA) agree to enter into this side letter to update the language set forth in section 5.,8 6.1, 9.1 and 14 of the parties' Memorandum of Understanding (the "MOU"), which runs through June 30, 2021. The revised language in these sections of the MOU is effective May 16, 2019 and shall read as follows:

5.8 Retirement Benefits

Sworn – Police Officer, Police Corporal, Police Sergeant

Employees hired by the City of Tracy on or before July, 1, 2010 and covered by this agreement shall receive CalPERS three percent at age 50 (3% at 50) and "single highest year" formula. Employees hired by the City of Tracy on or after July 2, 2010 through December 31, 2012 and covered by this agreement shall receive CalPERS three percent at age 55 (3% at 55) and "single highest year" formula.

Employees hired by the City of Tracy on or after January 1, 2013 meeting the definition of "new member" under the Public Employees' Pension Reform Act (PEPRA) shall be subject to all the provisions of the law, including, but not limited to the two point seven percent at age 57 (2.7% @ 57) retirement formula with a "three year" compensation period.

Employees who receive the CalPERS retirement formula of 3% @ 50, or 3% @ 55 shall pay the 9% of salary of employee contribution towards employee statutory share of CalPERS retirement. Employees who receive the CalPERS retirement formula of 2.7% @ 57 shall pay the employee contribution required by PEPRA, currently calculated at fifty percent (50%) of normal cost.

Employee payments of the employee share of the CalPERS retirement benefit cost shall be made as a payroll deduction on a pre-tax basis to the extent allowed by law.

In accordance with CalPERS Section 20516 contract amendment process requirements, each employee in this unit shall pay 3% towards the employer's share of CalPERS pension regardless of what CalPERS pension formula is applicable to the employee.

Non-Sworn – Police Officer Trainee

Miscellaneous employees hired on or before December 16, 2010 shall receive the single highest year and 2.5% at 55 benefit formula provide through the California Public Employees' Retirement System (CalPERS). Employees hired under the first tier CalPERS retirement formula (2.5 % @ 55) shall pay eight percent (8%) of employee salary contribution towards employee statutory share of CalPERS retirement.

Miscellaneous employees hired after December 16, 2010 and on or before December 31, 2012 shall receive average of three (3) consecutive highest years and 2% at 55 benefit formula provided through California Public Employees' Retirement System (CalPERS). Employees hired under 2nd tier CalPERS retirement formula (2% @ 55) shall pay the seven percent (7%) of employee salary contribution towards employee statutory share of CalPERS retirement.

Miscellaneous employees hired on or after January 1, 2013 and who qualify as "new employees" under the Public Employees' Pension Reform Act shall receive average of three (3) consecutive highest years and 2% at 62 benefit formula provided through the California Public Employees' Retirement System (CalPERS). Employees who receive the CalPERS retirement formula of 2% at 62 shall pay the employee contribution required by the Public Employees' Pension Reform Act, currently calculated at fifty percent (50%) of the normal cost.

Employee payments of the employee share of the CalPERS retirement benefit cost shall be made as a payroll deduction on a pre-tax basis to the extent allowed by law.

In accordance with CalPERS Section 20516 contract amendment process requirements, each employee in this unit shall pay 3% towards the employer's share of CalPERS pension regardless of what CalPERS pension formula is applicable to the employee.

Retirement Payment

Upon completion of thirteen (13) years of continuous employment with the Tracy Police Department, Police Officers, Corporals, and Sergeants shall be eligible for one (1) month of pay to be paid at the time of retirement from the City of Tracy or upon promotion to a position elsewhere in the City. Employees who terminate employment for other reasons shall not be entitled to the retirement payment.

6.1 Workweek & FLSA Work Period

Police Officer Trainee

Unless otherwise designated by the Police Chief, all Police Officer Trainees shall be designated a 5/40 schedule. The workweek shall be from Sunday 12:00 a.m. through the following Saturday 11:59 pm while on the 5/40 schedule. The designated workweek shall remain permanent and may be changed only as a result of major changes in operations, payroll procedures, or as otherwise necessary in order to deliver services as efficiently and economically as possible.

Police Officer, Police Corporal, Police Sergeant

Unless otherwise designated by the Police Chief, or for employees assigned to a 4-11 schedule as detailed below, the workweek for all Sworn Police Unit employees shall be from Sunday 12:00 am through the following Saturday 11:59 pm if on a 4-10 workweek. If on a 9/80, the workweek will be 12:00 pm on Friday through 11:59 am the following Friday. The designated workweek shall remain permanent and may be changed only as a result of major changes in operations, payroll procedures, or as otherwise necessary in order to deliver services as efficiently and economically as possible.

4-11 Alternative Work Schedule

1. Description:

For employees working the 4-11 schedule shall be subject to the 7K exemption of the Fair Labor Standards Act (Exemption – 40 hour per week employees). The employees will be entitled to overtime when they work 171 hours in a 28-day period. The designated work schedule shall remain permanent and may be changed only as a result of major changes in operations, payroll procedures, or as otherwise necessary in order to deliver services as efficiently as economically as possible. The 4-11 work schedule is a 4-day workweek with 11-hour shifts, applied to the Patrol Unit within the Field Operations Division. Personnel are assigned to one of two teams; “A-Team” or “B-Team” and will remain with the same team the entire year. Each team will have three squads: days, swings, and graves. The start and end times for each of these squads shall be determined based upon the needs of the Department, as determined by the Chief of Police. Days off are rotating.

Employees assigned to the 4-11 work schedules shall have a regular work schedule not to exceed 171 hours within a 28-day work period. The work schedule rotation is based on an 8-day cycle with each employee working 4 consecutive days of 11-hour work shifts followed by 4 consecutive days off. The 8-day cycle will advance the employee’s workday and days off one day for every cycle. The cycle will repeat every 8 weeks. There are 13, 28-day FLSA work periods (one year).

One team will work 183 11-hour regular patrol shifts totaling 2013 hours during the year. Employees shall work an additional 67 hours during the 13, 28-day FLSA work periods for a total work year of 2080 hours, The 67 hours will be scheduled as 6, 10-hour training days and the remaining 7 hours as special event sign up, further detailed under “Make-up Work Hours”.

The other team will work 182 11-hour regular patrol shifts totaling 2002 hours. Employees shall work an additional 78 hours during the 13 28-day FLSA work periods for a total work year of 2080 hours. The 78 hours will be scheduled as 6, 10-hour training days and 7 hours as special event sign up, further detailed under “Make-up Work Hours”. The remaining 11 hours will be added to their payback hours. Employees will be able to pay back these hours by working an extra 11-hour shift or by workday extensions until all owed hours are worked.

Employees shall be scheduled to work “Make-up Work Hours”, without exceeding 171 hours in the 28-day FLSA work period to avoid overtime payment.

2. Make-up Work Hours:

As detailed above, employees assigned to the 4-11 work schedule shall be scheduled to work 67 hours or 78 hours per year in addition to their scheduled workdays to attain 2080 work hours within a calendar year. These hours will not receive additional compensation and are “Make-up Work Hours”

already factored into the pay rate calculated for 2080 work hours annually. "Make-up Work Hours" will be scheduled on the employees' days off as follows:

- 6, 10-hour training days each calendar year totaling 60 hours. The training days shall be pre-scheduled for all employees at the beginning of the calendar year.
- 1, 7-hour pre-scheduled work shift to staff special events.
- 11 hours will be added to the pay back hours of employees working the team with 182 11-hour patrol shifts. These hours can be paid back by working an extra 11-hour shift or workday extensions.

"Make-up Work Hours" shall be scheduled so they do not result in an employee exceeding 171 hours in the 28-day FLSA work period. To achieve this, employees' shall not be scheduled for more than one 10-hour training day within a 28-day work period.

Make-up Work Hours will be recorded and tracked through an added code to the time sheet. If an Employee calls in sick on their scheduled Make-up Work day, sick leave shall not be used to make-up any part of the hours. An employee calling in sick for scheduled Make-up Work Hours shall be rescheduled based upon the needs of the Department.

On or about August 31 of each calendar year, the Field Operations Division Commander will audit outstanding "make-up work hours" owed by each employee, ensuring remaining hours owed by individual employees have been scheduled. If an employee is unable to pay back the hours by December 31 of that year, the hours will be deducted from his or her accrued vacation or compensatory time off banks or from his or her last paycheck of that year, to the extent permitted by law.

3. Implementation:

The 4-11 work schedule will be implemented on January 1st of each calendar year.

Employees assigned to the 4-11 work schedule shall select their team and squads in accordance with the *Patrol Officer, Corporal, and Patrol Sergeant Shift Selection Process* adopted in the ASSOCIATION Memorandum of Understanding.

The 4-11 work schedule may, or may not, have implications on compensable time listed hereafter and are addressed as follows:

- a. Training – Officers assigned as Canine Handlers and to the Crisis Response Unit may be subject to training on their days off and shall be compensated with overtime pay if required to work on a scheduled day off. This determination shall be based upon the needs of the department, at the discretion of the Chief of Police.
- b. Overtime and Overtime Call-Back – Overtime is work which is in excess of the regularly scheduled 11 hour work shift or in excess of 171 hours worked per 28-day cycle, which has the approval of the Police Chief or his/her designated representative. Employees who are called to work prior to their normal work schedule but continuous with their normal work schedule shall receive overtime for hours worked before their normal work schedule begins.
- c. Sick Leave Accrual and Usage – Sick leave may not be utilized to make-up any part of the payback hours outlined in the “Make-up Work Hours”. Employees who report sick and are unable to work scheduled “make-up” work hours may be required to present a doctor’s note certifying the inability to report to work, to the extent permitted by law.

4. Alternative Schedules:

All employees not working in the Patrol Division who are currently working a 4-10 schedule will remain doing so.

9.1 Uniforms – Sworn Personnel

Non-Sworn Personnel

The City shall provide required uniforms to all non-sworn personnel in this unit.

Sworn Personnel

The City shall provide a uniform allowance for new employees and an annual maintenance allowance of nine hundred dollars (\$900.00).

The City shall provide newly assigned motorcycle officers with one new helmet, one leather uniform jacket, one pair of motorcycle boots, two pairs of breeches, two pairs of safety glasses (one clear and one tinted), and one pair of leather riding gloves, in addition to the annual maintenance allowance.

The uniform allowance shall be paid on the regular payday for the pay period that includes June 30, by a separate check.

Section 14. Long Term Disability Insurance

Sworn Personnel

The City of Tracy will provide PORAC Long Term Disability at \$19.50 to all members of the Tracy Police Officers Association. These members must be actively working and members of PORAC. Any additional costs will be deducted from the employee's checks on an after tax basis.

Non-Sworn Personnel

Participation in the City's STD insurance plan is mandatory. The City shall deduct .83% of the employee's earnings, prior to applying taxes, each pay period to pay the premiums for this plan.

Short Term Disability Insurance payments are available to employees who cannot work because of sickness or non-work related injury. STD payments shall be integrated with accumulated sick and vacation leave balances unless the employee elects in writing, at the time of disability, to retain STD payments and receive no supplemental income (paid leave) from the City.

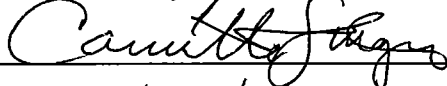
To the extent accumulated sick leave or vacation leave are available, the employee will continue to receive normal paychecks. Payments received from the insurance carrier shall be turned in to the City. When sick checks are received by the City, a portion of the employee's next paycheck, equal to the amount turned in, shall be recorded as nontaxable pay and sick leave shall be charged only for the amount of the City's share of the paycheck.

In no case may an employee receive more income than the amount of their normal pay. Employees must turn in checks received from the insurance carrier for the City, unless the employee elected in writing at the time of disability, of the employee's choice not to receive paid leave.

FOR THE City of Tracy

Date: _____
Jennifer D. Haruyama
City Manager

FOR THE Tracy Police Officers Association



Date: 06/05/2019
Camillo Swiger
President of TPOA

**SIDE LETTER OF AGREEMENT BETWEEN THE CITY OF TRACY AND
TRACY TECHNICAL AND SUPPORT SERVICES EMPLOYEE ASSOCIATION City of Tracy
-Counter Proposal to Technical Support Services Employee Association
Holiday Pay and Work Schedules**

The City of Tracy and the Technical and Support Services Employee Association (TTSSEA) agree to enter into this side letter to update the language set forth in Section 5 of the parties' Memorandum of Understanding (the "MOU"), which runs through June 30, 2021. The revised language in this section of the MOU effective July 1, 2019 shall read as follows:

Date: July 18, 2019

Counter Proposal Number: 1

MOU Article 5: Hours of Work

Subject: ~~Holidays and Alternative Work Schedules~~

Proposal: The City and TTSSEA agree to modify the current MOU to address ~~Alternative work Schedules and Holidays~~

MOU Language:

Section 5. Hours of Work

A. Work Week

Unless otherwise designated by the Department Head, the work week for TTSSEA employees on a 5/8 schedule (eight hours a day for five days), ~~or a 4/10 schedule (10 hours a day for four days), or 9/80 schedule (nine hours Monday through Thursday, eight hours alternate Friday, and alternate Fridays closed)~~ shall be from Sunday through the following Saturday; ~~for City employees on a 9/80 schedule (nine hours Monday through Thursday, eight hours alternate Friday, and alternate Fridays closed) shall be Friday halfway through the work day through the following Friday halfway through the work day.~~ These designated workweeks may be changed only as a result of major changes in operations, payroll procedures or as otherwise necessary in order to deliver services as efficiently and economically as possible.

B. Overtime and Compensatory Time

Employees are non-exempt from the provisions of the Fair Labor Standards Act (FLSA) with regard to compensation for overtime worked. With the approval of their supervisor and the Department Head, the employee will earn overtime or compensatory time for additional hours worked as assigned (recorded in 15-minute increments). Overtime shall be compensated at the base hourly rate plus incentives multiplied by one and one-half (1.5). Compensatory time

accrual shall not exceed 120 hours. Employees shall receive pay for overtime hours worked in excess of the 120 hour compensatory time maximum accrual.

~~Overtime shall be compensated at the rate of one and one-half (1½) times the base rate of pay; except for holiday overtime, which shall be computed at the rate of three (3) times the base rate of pay.~~

Overtime is defined as hours worked in excess of the employee's regular work shift that has the prior approval of the Department Head or designee.

C. Pay Days

Employees shall be paid biweekly, every other Friday beginning on Friday, April 19, 2019. If payday falls on a banking holiday, then payday is the preceding business day. ~~twice monthly.~~ Routine paychecks shall be for the purpose of compensating for regular and overtime hours including but not limited to vacation and sick leave usage. Other compensation or reimbursement shall be separately identified and shall not include withholding for tax purposes, except as required by law.

All exceptions to pay, such as overtime, vacation, and sick leave usage, shall be processed and paid or reported on the subsequent paycheck.

During the term of this agreement, the City may change the pay dates to 26 pay periods a year after meeting with the Union regarding the impact of the decision and the implementation dates for such change.

D. Probationary Period

Any person appointed to a position in the Competitive Service, shall be placed on probation for a period of six (6) months unless otherwise specified in a Council approved resolution. The probationary period for all promoted employees shall be six (6) months. With the approval of the Human Resources Director and upon written notice to the probationer, the probationary period may be extended up to six (6) months for those on a six-month probation period. The probationary period shall be considered a part of the recruitment, examination and selection process and shall not include the time served under any limited service or provisional appointment, but shall date from the time of appointment to a regular position after certification. The Department head may extend the probationary period for the same period if a leave of absence occurs during the probationary period. During the probation period, the employee may be rejected by the Department Head in consultation with the Human Resources Director at any time without cause and without right of appeal or hearing.

E. Holiday Pay and Accruals

- A. If a Holiday (referenced in Section 7(B)) falls on an employee's regularly scheduled day off, ~~said~~ employee shall be compensated in the following manner:
- 1) An employee working a 4/10 schedule shall receive 8 hours of holiday vacation leave credited to their vacation leave bank.

2) An employee working a 9/80 schedule shall receive 8 hours of holiday ~~vacation~~ credited to their vacation leave bank. ~~n leave~~

B. If an employee works an ~~alternative work schedule (ie 4/10 or 9/80) schedule~~ and a Holiday (referenced in Section 7(B)) falls on their regularly scheduled work day ~~day off~~ and the employee elects to take the day off, ~~said employee,~~ employee shall be compensated in the following manner:

1) ~~An An employee working a 4/10 schedule working an alternative work schedule shall receive 8 hours of holiday pay vacation leave and shall use 2 hours of vacation or compensatory time to make up the additional two hours be paid 8 hours.~~

2) An employee working a 9/80 schedule shall receive 8 hours of holiday pay and shall use 1 hour of vacation or compensatory time to make up the additional hour when the holiday lands on a 9 hour work day.

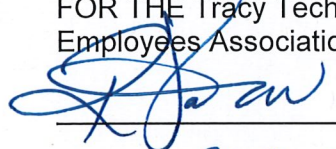
1) ~~plus 1½ times their current pay level for each Holiday that falls on a regularly scheduled nonwork day.~~

C. If an employee works a 4/10 or 9/80 schedule ~~alternative work schedule~~ and a Holiday (referenced in Section 7(B)) falls on their regularly scheduled work day ~~which the employee is required to work,~~ said employee shall be compensated in the following manner:

1) An employee working an alternative schedule shall receive 8 hours of holiday ~~vacation leave~~ credited to their vacation leave bank and shall be paid at the overtime rate as provided in Section 5 (B) ~~3 times their current pay level for each regularly scheduled hour worked on the holiday.~~ and each hour of overtime worked.

FOR THE City of Tracy

FOR THE Tracy Technical Support Services Employees Association



Date: _____
Jenny Haruyama
City Manager

Date: 8-8-19
Raquel Votaw
President of TTSSEA

RESOLUTION 2019 - _____

APPROVE SIDE LETTER OF AGREEMENTS BETWEEN THE CITY OF TRACY AND THE TRACY POLICE OFFICERS ASSOCIATION AND THE TRACY TECHNICAL SERVICES EMPLOYEE ASSOCIATION CLARIFYING EXISTING CONTRACT LANGUAGE; AND AUTHORIZE THE CITY MANAGER TO APPROVE SIDE LETTER AGREEMENTS THAT MAKE MINOR MODIFICATIONS TO EXISTING LANGUAGE AND HAVE MINIMAL FISCAL IMPACT

WHEREAS, The City desires to clarify language in the memorandum of understanding for the Tracy Police Officers Association (TPOA) and Tracy Technical Services Employee Association (TTSSEA), and

WHEREAS, The City has met and conferred with both associations regarding the contents of the side letters, and

WHEREAS, The City desires to grant authority to the City Manager to approve side letters agreement that make minor modifications to existing language and have minimal fiscal impact;

NOW, THEREFORE, BE IT RESOLVED, That City Council of the City of Tracy hereby approves the Side Letters attached as Exhibit A between the City of Tracy and the Tracy Police Officers' Association, Exhibit B between the City of Tracy and the Tracy Technical Services Employee Association, and authorizes the City Manager to approve side letters agreements that make minor modifications and have minimal fiscal impact.

The foregoing Resolution 2019 - _____ was adopted by the Tracy City Council on the 3rd day of September, 2019 by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.H

REQUEST

APPROVE A GENERAL SERVICES AGREEMENT WITH DILLARD ENVIRONMENTAL FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2019-20

EXECUTIVE SUMMARY

The City of Tracy generates municipal biosolids, a nutrient rich organic material, at the Wastewater Treatment Plant as a by-product of the wastewater treatment. The City engages the services of qualified haulers (vendors) to remove and dispose of this material out of San Joaquin County annually in accordance with all applicable Federal, State and local regulations. The work includes removing these biosolids from drying beds and stockpiles; loading, hauling, and disposing out of San Joaquin County as required. This agenda item requests authorization to enter into a General Services Agreement with the lowest monetary proposer from Dillard Trucking dba Dillard Environmental Inc., to provide such services for a not to exceed amount of \$65.53 per ton.

DISCUSSION

The City engages the services of qualified haulers to remove, load, haul and dispose biosolids from the drying beds stockpiled at the Wastewater Treatment Plant located at 3900 Holly Drive. These biosolids are a by-product of wastewater treatment. The material is disposed of outside San Joaquin County in accordance with the local, state and federal requirements. Such services are acquired every year from qualified entities to complete this work in a cost effective manner. The scope of work also requires the qualified entity to provide certified mobile scales to weigh the trucks before leaving the plant site to determine the tonnage of biosolids hauled, or each truck may be weighed at a certified scale. The work shall be completed in accordance with all applicable laws, rules, and regulations in performing this work.

All work shall be completed within sixty days of the Notice to Proceed unless an extension is authorized in writing from the City.

On June 21, 2019, a Request for Proposals was posted on the City's website. One proposal was received and opened at 2:00 p.m. on July 17, 2019, as follows:

<u>Vendor Name</u>	<u>Price/Ton</u>
Dillard Environmental	\$65.53/ton

Only one proposal from Dillard Environmental, Inc. a California corporation, has been submitted to provide services on a per ton basis. Dillard Environmental, Inc. has good references and has completed such work with other agencies in a satisfactory manner.

The lack of interest from other contractors/vendors is the nature of the specialty of such work and compliance of stringent regulatory requirements. A total of \$200,000 is available and estimated to be used in the Utilities wastewater operating budget for this service in FY 2019-20. However, this amount may vary depending upon the sewer strength and tons of biosolids required for disposal. Additional funding will be appropriated if needed.

STRATEGIC PLAN

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

FISCAL IMPACT

A total of \$200,000 is budgeted in the Utilities – Wastewater Fund (F521) operating budget for the removal of biosolids in Fiscal Year 2019-20. This amount will vary based upon the sewer strength and tons of biosolids required for disposal. Funding for the disposal of the wastewater treatment biosolids is collected through the wastewater rates charged to customers of the wastewater enterprise.

RECOMMENDATION

That the City Council, by resolution, approve a General Services Agreement with Dillard Environmental, Inc. for the purposes of loading, hauling, and disposing of wastewater treatment biosolids for a not to exceed amount of \$65.53 per ton for Fiscal Year 2019-20.

Prepared by: Dale Klever, Wastewater Treatment Plant Operations Superintendent

Reviewed by: Kuldeep Sharma, Utilities Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A: General Services Agreement Dillard Environmental, Inc.

CITY OF TRACY
GENERAL SERVICES AGREEMENT WITH
Dillard Environmental Services
Loading, Hauling and Disposing of Wastewater Treatment Plant Biosolids

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Dillard Trucking, Inc., dba Dillard Environmental Services, a California Corporation (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

- A. City desires to retain Contractor to perform loading, hauling and disposing of Wastewater Treatment Plant Biosolids; and
- B. On June 21, 2019, the City issued a Request for Proposals (RFP) for the Loading, Hauling and Disposing of Wastewater Treatment Biosolids (**Project**).
- C. On July 17, 2019, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the services.
- D. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- E. This Agreement is being executed pursuant to Resolution No. 2019-____ approved by Tracy City Council on September 3, 2019.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: Melissa Roach. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor shall begin performance, and shall complete all required services within 60 calendar days from the date of the City's issuance of a Notice to Proceed. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions 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.

2.1 Term. The term of this Agreement shall begin on the date of issuance of a Notice to Proceed and end within 60 days after issuance of the Notice to Proceed, unless terminated in accordance with Section 6.

3. Compensation. City shall pay Contractor on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$65.53 per ton. Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

3.2 Invoices. Contractor shall submit monthly invoices to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Contractor.

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

4. Indemnification. Contractor 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 Contractor'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; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

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

5. Insurance. Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

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

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

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

5.5 Endorsements. Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

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

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

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

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

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

5.9 Substitute Certificates. Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Contractor's Obligation. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

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

7. Dispute Resolution. If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:

7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

8 Labor Code Compliance. Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified

payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on “public works” and “maintenance” projects. The services being performed under this Agreement are part of a “public works” or “maintenance” project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

8.2 Registration with DIR. Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5.

8.3 Monitoring. This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.

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

10. Independent Contractor Status. Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City’s employee and Contractor 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. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.

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

12. Rebates, Kickbacks, or Other Unlawful Consideration. Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

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

To City:

Kuldeep Sharma
Director of Utilities
3900 Holly Drive
Tracy, CA 94514

To Contractor:

Melissa Roach, Vice President
Dillard Environmental Services
P.O. Box 579
Byron, CA 94514

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. Miscellaneous.

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

14.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

14.3 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.

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

14.5 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.

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

14.6.1 Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

14.6.2 Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

14.7 Business Entity Status. Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

14.8 Business License. Before the City signs this Agreement, Contractor shall obtain a City of Tracy Business License. Contractor shall maintain an active City of Tracy Business License during the term of this Agreement.

14.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

14.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

14.11 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.

14.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.

14.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

15. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

By: Robert Rickman
Title: Mayor
Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:


Leticia Ramirez, Interim City Attorney

Contractor
Dillard Trucking Inc., dba Dillard Environmental
Services



By: Patricia Dillard
Title: Chief Executive Officer
Date: 8/22/19

Federal Employer Tax ID No. 943082978



By: Melissa Roach
Title: Chief Financial Officer
Date: 8/22/19

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

EXHIBIT A - Scope of Work

The Scope of Work consists of loading, hauling and disposing of Wastewater Treatment Plant Biosolids out of San Joaquin County, in accordance with all applicable Federal, State and local regulations.

The Contractor shall provide certified mobile scales to weigh the truck before leaving the plant site to determine the tonnage of biosolids loaded for disposal. The Contractor may have each truck weighed at a certified scale to provide the proof.

Information To Report

The contractor is required to provide the following information to the City:

- A. Name and location of the site(s) for final disposal of the biosolids,
- B. Letter(s) of acceptance from the owner/manager of disposal site(s) that receive(s) the biosolids,
- C. WDR number(s) of the site(s) by Regional Water Quality Control Board, if applicable,
- D. Copies of weight tags by mobile scales or c from certified scales,
- E. Subsequent use(s) of the land,
- F. Solids application rate(s) in pounds/year (specify wet or dry)

*NOTE: Items A through D must be submitted to begin the process of payment(s).

Time of completion

All work shall be completed by the Contractor within 60 days of the Notice to Proceed unless the Contractor receives an extension from the City of Tracy. The Contractor can request an extension of the time of completion due to inclement weather. The City may authorize an extension of time of completion at its discretion.

EXHIBIT B - Compensation

Billing Rate

The payment for the scope of services completed shall be based upon \$65.53/ton of biosolids loaded, hauled and disposed of in accordance with the prevailing Federal, State and local laws.

RESOLUTION 2019-_____

APPROVING A GENERAL SERVICES AGREEMENT WITH DILLARD ENVIRONMENTAL FOR THE PURPOSES OF LOADING, HAULING AND DISPOSING OF WASTEWATER TREATMENT BIOSOLIDS FOR FISCAL YEAR 2019-20

WHEREAS, The City of Tracy generates municipal biosolids, a nutrient rich organic material, at the Wastewater Treatment Plant as a by-product of the wastewater treatment, and

WHEREAS, The City engages the services of qualified haulers (vendors) to remove and dispose of this material out of San Joaquin County annually in accordance with all applicable Federal, State and local regulations, and

WHEREAS, On June 21, 2019, a Request for Proposals was posted on the City's website. One proposal was received and opened at 2:00 p.m. on July 17, 2019, and

WHEREAS, Only one proposal from Dillard Environmental, Inc. a California corporation, has been submitted to provide services for \$65.53/ton on a per ton basis, and

WHEREAS, A total of \$200,000 is available and estimated to be used in the Utilities wastewater operating budget for this service in FY 2019-20, and

WHEREAS, The Project has been completed in accordance with the plans, specifications, and City of Tracy standards, and

WHEREAS, This amount may vary depending upon the sewer strength and tons of biosolids required for disposal. Additional funding will be appropriated if needed;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a General Services Agreement with Dillard Environmental for the purposes of Loading, Hauling and Disposing of Wastewater Treatment Biosolids for FY 2019-20.

The foregoing Resolution 2019-_____ was adopted by Tracy City Council on the 3rd day of September, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 1.I

REQUEST

REJECT BID PROTEST, AWARD CONSTRUCTION CONTRACT TO MOZINGO CONSTRUCTION INC., OF OAKDALE, CALIFORNIA, FOR THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT (CIP 74083), AND APPROVE A CONTINGENCY AMOUNT FOR THE PROJECT; APPROVE PROFESSIONAL SERVICES AGREEMENTS WITH JACOBS PROJECT MANAGEMENT COMPANY AND CH2M HILL INC., TO PROVIDE SERVICES FOR THE PROJECT; AND DECLARE INTENTION TO REIMBURSE EXPENDITURES FROM BOND PROCEEDS TO BE ISSUED BY THE CITY AND DIRECTING CERTAIN ACTIONS

EXECUTIVE SUMMARY

Staff requests that City Council (1) reject the bid protest filed by Mountain Cascade Inc.(MCI); (2) award a construction contract to Mozingo Construction in the amount of \$25,920,000 and (3) approve a contingency amount of \$3,000,000 for construction of the Wastewater Treatment Plant (WWTP) Effluent Outfall Pipeline, CIP 74083 (Project). It is also requested that Council approve Professional Services Agreements (PSAs) with CH2M Hill, Inc., for design support services and with Jacobs Project Management Company (Jacobs) for construction management services.

Due to the extensive scope and high cost of the Project, City intends to issue wastewater bonds to pay for costs of the land acquisition and construction. It is the City's intent to reimburse certain costs incurred prior to issuance of bonds from the future bond proceeds.

DISCUSSION

The Wastewater Effluent Outfall Pipeline Project involves installation of a 42-inch diameter wastewater effluent pipeline from the existing WWTP to the Old River. The existing, 40-year-old, 33-inch diameter wastewater effluent pipe comprised of asbestos cement is aged, deteriorated, and is prone to cracking due to its brittle material. This Project is an approved Capital Improvement Project (CIP) 74083 and is consistent with the City's Wastewater Master Plan and will meet the National Pollution Discharge Elimination System (NPDES) Permit requirements.

The new 42-inch diameter pipe runs approximately 3.5 miles and crosses under the Tom Paine Slough and Paradise Cut and will have discharge capacity of 16 million gallons per day (mgd). The City's existing permit from the Water Quality Control Board allows 16 mgd outfall discharge at the Old River.

The City designed the Project to minimize impacts to private properties and farmlands. A portion of the pipe is located within the San Joaquin County right-of-way and a small portion is located within the City's street right-of-way. The remaining portion of the pipeline is located within the permanent easements or portions of properties already acquired by the City. The pipeline will be generally constructed underground except for certain appurtenances which will be located above ground.

Construction Contract

The Project plans and specifications were prepared by CH2M Hill, Inc. The Project was advertised for competitive bids on October 12 and October 19, 2018. The following bids were received and publicly opened on May 15, 2019:

Contractor	City	Bid Amount
Mozingo Construction	Oakdale, Ca	\$ 25,920,000
Mountain Cascade Inc	Livermore, CA	\$ 26,455,000
Steve P Rados Inc	Santa Ana, CA	\$ 31,961,000
Preston Pipelines	Milpitas, CA	\$ 34,388,018
Garney Construction	Tracy, CA	\$ 34,422,000
WA Rasic Construction	Long Beach, CA	\$ 34,850,000

Mozingo Construction Inc., is the lowest responsible bidder. The contractor has good references and has completed similar projects for the City and other public agencies.

A bid protest was filed by Mountain Cascade Inc. (MCI) (Attachment 1 – MCI Bid Protest Letter dated May 17, 2019) on the basis that the bid proposal submitted by Mozingo Construction lacked references of comparable work within the last three years and that Mozingo's bid selected a pipe material that was allegedly not available at bid time. Mountain Cascade submitted a second letter reiterating their bid protest (Attachment 2 - MCI Bid Protest Letter dated August 15, 2019). Mozingo submitted a letter in response to MCI's bid protest (Attachment 3- Mozingo Response dated May 23, 2019).

The City's bid protest procedures state that the City is not required to hold an administrative hearing to consider any protest, but may do so at its option. The procedures further state that the City Council shall consider the merits of any timely protests at the time it considers award of the contract. An administrative hearing for MCI's bid protest was held on August 22, 2019 before a hearing officer (Deidre Joan Cox, a partner with the law firm of Burke, Williams, & Sorensen LLP). Representatives from MCI and Mozingo attended the hearing and both were accompanied by legal counsel. Both representatives and their counsel had the opportunity to present evidence and oral argument, and cross-examine witness(es). On August 27, 2019, the hearing officer issued a ten-page determination with findings and conclusions (Attachment 4- Hearing Officer Determination). The hearing officer rejected MCI's bid

protest on the grounds MCI did not provide adequate evidence to demonstrate that Mozingo's bid was non-responsive or non-responsible pursuant to state law.

Staff has reviewed the bid protest and the hearing officer's determination and also recommends that Council reject the bid protest and find that Mozingo Construction is the lowest responsible bidder because the Contractor submitted references of similar work experience for installation of pipelines and listed subcontractors for specialized work in wet work within the river and other specialized work like micro-tunneling, shaft work, and sheet piling.

Due to complexity of the project and requirements from the several Federal, State, and local regulatory agencies, it is recommended that an 11.5% contingency amount be approved for this Project. The construction contingency amount for this Project is estimated to be \$3,000,000. Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve construction change orders up to the contingency amount approved by the City Council. It is therefore requested that Council approve a contingency amount of \$3,000,000.

If City Council awards the construction contract as recommended, the estimated cost to complete the Project is as follows:

Contractor's Bid for Construction	\$ 25,920,000
Design Costs (Already Incurred)	\$ 4,500,000
Design Support During Construction	\$ 1,898,000
Construction Management	\$ 1,700,000
Environmental Mitigation and Monitoring (Estimated)	\$ 1,375,000
Material Testing & special inspections (Estimated)	\$ 800,000
Project Management (Staff)	\$ 450,000
Construction Contingency (11.5%)	\$ 3,000,400
Startup and Preparation of Operation/Maintenance Manual	\$ 350,000
Total Construction Cost	\$ 39,993,400

Due to the involvement with various regulatory agencies, multiple permits and constraints to work in various segments only during certain months of the year, the Project will be completed in three years. Staff anticipates construction to be completed by August 2022.

1. Construction Management Services including Construction Inspection Services
 This Project involves extensive construction management, inspection, and day-to-day coordination with operating staff to ensure smooth functioning of both the Project construction and the operations of the WWTP. The pipeline alignment passes through several State of California, Federal, and State water bodies. As a result, the work requires micro-tunneling operations, coffer dam and sheet piles to meet stringent requirements. The welded steel pipe being used for this Project also requires special inspections. The Project needs to follow strict guidelines and procedures specified in various permits from Federal and State agencies. Services

of an experienced consultant are needed to provide inspection and construction management services during construction of this Project.

A Request for Proposals (RFP) was sent to various consultants and posted on the City's website on October 24, 2018. A total of four proposals were received on November 15, 2018. These proposals were reviewed and evaluated on a qualification based selection process. The two short-listed consultants were interviewed. Jacobs was found to be a well-qualified firm to provide construction management and inspection services for this Project. Jacobs' proposal was also cost effective and will provide services for a not-to-exceed total amount of \$1,700,000 on a time and material basis for the Project.

2. Design Support during Construction

Due to the complexity of the work and changing compliance requirements, design support services are needed to complete the Project. These services include responding to requests for information (RFI) from the contractor, submittal reviews, review of change order requests and providing any technical support needed to the construction management consultant. CH2M Hill, Inc., is the design consultant for the Project. Design support services were not part of the original agreement, since timing of the Project construction was uncertain at that time. The project design was performed as task order CH-013 approved by Council on September 21, 2010 (Resolution Number 2010-161) to Master Professional Services Agreement (Resolution No. 2008-041).

Staff recommends approving a PSA with CH2M Hill, Inc., to provide design services during construction for an additional not-to-exceed amount of \$1,898,000.

Additional environmental mitigation and monitoring, and material testing including special inspection work are needed during construction of this Project. Staff is working to finalize the scopes and selection of the consultants for these two tasks and will recommend approval by Council at its September meeting. The estimated cost for these two tasks are included in the total Project costs.

STRATEGIC PLAN

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

FISCAL IMPACT

The total cost of this Project is estimated at \$39.9 million. The Project is partially funded from the existing rate payers and partially funded by new developments in the ratio of their fair share responsibilities to the new capacities provided by this Project listed below. Out of the 16 million gallons per day (mgd) capacity of the pipeline, the existing rate payers will continue using 9 mgd and the remaining 6 mgd capacity is available for new developments in accordance with the City's existing Wastewater Master Plan. Subsequently, existing rate payers and new developments pay their fair share costs.

	Fair Share	Costs	<u>Fund</u>
Existing Rate Payers	56%	\$22.3M	WW Bond proceeds
New Development	44%	\$17.6M	TIMP Wastewater Fund

The Project has been bid in its entirety to realize economies of scope and scale in order to maximize the return to current and future rate payers. A phased approach may have warranted higher total project costs. This Project will take cash flow priority if debt financing becomes unavailable at any point in the project.

Due to the costs and scope of this Project, the City intends to issue wastewater bonds to pay for the costs of land acquisition and construction. Staff expects to pay certain costs prior to the date of the future debt issuance and to use a portion of the proceeds for reimbursement of expenditures for CIP 74083 that are paid before the date of issuance of the wastewater bonds. Thus, Council must declare its intention to use bond proceeds via resolution.

RECOMMENDATION

That City Council, by resolution:

1. Reject the bid protest filed by Mountain Cascade Inc., award a construction contract to Mazingo Construction of Oakdale, California in the amount of \$25,920,000 for construction of the Wastewater Effluent Pipeline Project, CIP 74083, and approve a contingency amount of \$3,000,000,
2. Approve a PSA with CH2M Hill, Inc., for design support services in the amount of \$1,898,000, and approve a PSA with Jacobs Project Management Company for construction management services in the amount of \$1,700,000,
3. Declare the intention to reimburse expenditures from the proceeds of the obligations to be issued by the City.

Prepared by: Ripon Bhatia, Senior Civil Engineer

Reviewed by: Kul Sharma, Utilities Director
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

- Attachment 1 – Bid Protest Letter from Mountain Cascade, Inc. dated May 17, 2019
- Attachment 2 – Bid Protest Letter from Mountain Cascade, Inc. dated August 15, 2019
- Attachment 3 - Response letter from Mazingo Construction, Inc. dated May 23, 2019
- Attachment 4 – Hearing Officer Determination dated August 27, 2019
- Attachment 5 – PSA – CH2M Hill, Inc. – Design support services during construction
- Attachment 6 – PSA – Jacobs – Construction Inspection and Management Services



P.O. Box 5050
Livermore, CA 94551 (925) 373-8370

Attachment 1

RECEIVED
CITY CLERK'S OFFICE

2019 MAY 17 PM 1:34

CITY OF TRACY
TRACY, CA

May 17, 2019

City of Tracy Ca.
City Clerk
333 Civic Center Plaza Drive
Tracy, Ca. 95376

Re: Tracy Effluent Outfall Pipeline Project. Bid date – May 15, 2019

Dear Clerk,

Please accept this letter as the formal protest of the bid and therefore any subsequent award to Mozingo Construction Inc. ("Mozingo") for the referenced project, in accordance with the Bidding & Contract Requirements, Technical Provisions, Specification General Provisions, Section 2.14, Bid Protest Procedures, for the reasons herein stated. Mozingo has submitted a non-responsible, non-responsive bid on multiple fronts, and as the lowest responsible, responsive bidder, Mountain Cascade, Inc. (M.C.I.) should be the recipient of the contract award for this project and hereby demands such.

Mozingo grossly fails to meet whereas M.C.I. has fully met the clearly defined requirements (at the top of Bid Schedule, page P-11), "Bidders Reference", the first sentence of which calls for a "List of 3 major projects which the Bidder has performed **comparable work** for a Governmental Agency or Developer within the last (3) three years. Providing a contact person and description of the project, or other such information **that will demonstrate the ability to vigorously prosecute the work**" (emphasis in bold added). Furthermore, and relating to this, General Provisions Section 3.02, Determination of Lowest Responsible Bidder, requires "Successful completion of projects of **similar scope and size**" (emphasis in bold added).

It can be presumed that the listing of "(3) projects over the last (3) years" as required by the Bid Schedule, page P-11, Bidder's Reference, was given both due and careful consideration by the City, as well it should and furthermore was incorporated into the bidding documents from the outset in order to (1) assure itself of the capabilities of all bidding contractors, (2) mitigate potential risk due to the projects high profile and complex size and dollar magnitude & (3) obtain an "in advance" comfort level given the overall project importance including agencies involved and interaction with local residents & property owners. All very valid points. In light of this, Mozingo's three referenced projects should serve as a dire warning to the City as none even remotely comes close on any point of comparison to the "Outfall Pipeline" which is 50% longer with 75% bigger pipe and of a different pipe material than any project listed. Furthermore, M.C.I. has successfully completed multiple public projects ranging from \$20 - \$63 million in size involving most all of the same dynamics as the "Outfall Pipeline" including but not limited to – 40' – 60' deep secant pile shafts, sheet-pile cofferdams constructed in the wet, river crossings & diffusers, deep micro-tunneling and tens of thousands of lineal feet of 42" – 78" steel water & force-mains in similar ground conditions, whereas Mozingo has not.

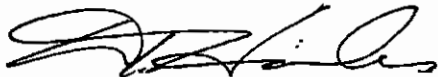
In addition, on the Bid Schedule form, Bid Item No. 4, Mozingo circled "Contractor's Proposed Pipe Material" as "Welded Steel Pipe" – an option that was unavailable at bid time. This is a material

deficiency that cannot be waived by the City because Mozingo cannot deliver what it promised and furthermore gives it an unfair competitive advantage over other bidders by either allowing the withdrawal of its bid under the code or the shopping of its bid for better prices thereby additionally creating a financial opportunity not afforded other bidders nor one that the City of Tracy will be participating in. Mozingo's abject failure to meet specified baseline bidding requirements renders submittal of its bid a non-responsible, non-responsive act by an unqualified contractor.

It is hereby M.C.I.'s stated position that in the face of the outlined glaring, not to mention fatal flaws as compared to the clearly defined original intent of the specification requirements, it is incumbent upon the City to swiftly reject the non-responsible, non-responsive bid submitted by Mozingo Construction and award the project to Mountain Cascade Inc.

M.C.I. hereby requests that all future correspondence and any hearing or meeting notices regarding this matter be directed to my attention. Additionally, I can be reached at our offices at 925-373-8370, by cell-phone at 925-525-2400 or by e-mail at davidh@mountaincascade.com. Please be advised that Mozingo Construction, Inc. is subsequently being sent a copy of this letter via e-mail & certified mail.

Very truly yours,



David T. Hicks
Vice President of Estimating & Corporate Secretary
Mountain Cascade, Inc.



MOUNTAIN CASCADE INC.

P.O. Box 5050
Livermore, CA 94551
(925) 373-8370 FAX (925) 373-0940

August 15, 2019

City of Tracy
City Clerk
333 Civic Center Plaza Drive
Tracy, Ca. 95376

Re: Tracy Effluent Outfall Pipeline Project – 1) Mountain Cascade, Inc. (M.C.I.) May 17th protest letter (see attached). (2) Staff forthcoming recommendation to award the project to Mozingo Construction, Inc. (Mozingo).

Dear Clerk,

It is incumbent upon the City of Tracy Council to ultimately enforce its own carefully crafted guidelines and go against staff recommendation. In essence, M.C.I. submitted a bid that met all requirements whereas Mozingo did not. In the attached original protest letter, M.C.I. made an air tight case for being the recipient of the contract award and again hereby demands such. The fatal flaws in Mozingo's bid clearly outlined in the letter must be rectified before award by the Council. Here, that's impossible because (i) Mozingo simply lacks the required experience and (ii) they manipulated the process by committing to a pipe material option that cannot be delivered. To award the project to Mozingo in the face of the glaring shortfalls would be to now pretend the bidding requirements never existed. Should the Council proceed with staff recommendation, they will be rewarding an unqualified, non-responsible, non-responsive Contractor who ignored the rules and punishing a deserving contractor that followed them without exception. Words mean things and the bidding requirements were crystal clear. Awarding to Mozingo strictly on price is prejudicial to M.C.I.'s far superior bid. M.C.I. relies heavily on the credibility of the requirements outlined in bid documents when selecting projects to bid and wants to be able to rely on The City's enforcement of them. Ignoring requirements in favor of price is to incentivize and give license to the further participation of unqualified Contractors moving forward. M.C.I. invested considerable time, expense, resources and effort in delivering a responsible, responsive bid that remains the best value for The City. M.C.I. therefore respectfully requests that the City choose the path of adherence to its own requirements and award the project to us.

Very truly yours,

David T. Hicks
Vice President of Estimating & Corporate Secretary
Mountain Cascade, Inc.



205 East River Park Circle
Suite 110
Fresno, CA 93720
T: 559.418.0333
F: 559.418.0330
quallcardot.com

Matthew W. Quall
Attorney at Law
mquall@quallcardot.com

VIA E-MAIL and U.S. MAIL

May 23, 2019

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

Re: City of Tracy Wastewater Treatment Plant/Effluent Outfall Pipeline
Improvements Project
Mozingo Construction, Inc. Response to Bid Protest by Mountain Cascade, Inc.

Dear City Clerk,

This law firm represents Mozingo Construction, Inc. ("Mozingo") relating to the bidding on and award of the City of Tracy Wastewater Treatment Plant/Effluent Outfall Pipeline Improvements Project (the "Project"), for which bids were opened by the City of Tracy (Public Works Department) (the "City") on May 15, 2019. As you know, Mozingo was the apparent low bidder on the Project.

Mozingo has received and reviewed the "formal protest" letter dated May 17, 2019, submitted by disgruntled bidder Mountain Cascade, Inc. ("MCI"). As reflected in the bid submitted by Mozingo, and as further detailed herein, Mozingo's bid met the requirements of the Invitation to Bid and Bidding Documents issued by the City ("Bid Solicitation"). As the lowest responsive and responsible bidder, the Project must be awarded to Mozingo.

The protest by MCI lacks merit and should be summarily denied.

Summary of Mountain Bid Protest

MCI's protest is based, in part, upon its unfounded assertion that Mozingo does not have the requisite experience or qualifications to perform the work necessary to successfully complete the Project. As detailed herein, and as supported by the documentation submitted at bid time, Mozingo has the requisite experience and qualifications to successfully complete the Project. It met the requirements of the Bid Solicitation and is a responsible bidder.



MCI likewise protests Mozingo's bid on the unsupported and unfounded grounds that Mozingo's designation of pipe to be installed on the Project was a "material deficiency that cannot be waived." There was no mistake, no deficiency, and no failure to meet the bidding requirements. To the contrary, Mozingo strictly adhered to the bidding requirements and submitted a responsive bid.

a. Mozingo is a Responsible Bidder

Responsibility refers to the bidder. Public Contract Code section 1103 defines "responsible bidder" to mean "a bidder who has demonstrated the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract." A bidder is "responsible" if it can perform the contract as promised. Thus, the concept of responsibility focuses on the contractor's trustworthiness, quality, fitness and capacity to satisfactorily perform. See City Of Inglewood-Los Angeles Civic Center Auth. v. Superior Court (1972) 7 Cal.3d 861.

The City defines a responsible bidder in Section 3 (AWARD AND EXECUTION OF CONTRACT) of the Bid Solicitation as follows:

The term "responsible" is defined by California law, but generally means that the Bidder is able to demonstrate that it possesses: (1) the capacity to perform the work required by the Contract Documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the Contract Documents.

Having been in business for over 29 years, and successfully completed hundreds of public and private commercial construction projects, Mozingo has earned an excellent reputation. It has constructed numerous pipeline projects involving complex installation and utilizing a vast array of pipe types, including the type of pipeline to be installed on this Project. Mozingo epitomizes the attributes set forth in section 1103 and Section 3 for trustworthiness, quality, experience and capacity. It has the capacity to perform the work required by the Contract Documents as well as the financial strength, resources, and experience. As reflected in the excellent work and services Mozingo has provided throughout the San Joaquin Valley, and specifically to the City, Mozingo is clearly a responsible bidder and more than capable of successfully completing the Project.

Although its bid is \$535,000 higher than the bid submitted by Mozingo, MCI promotes itself as "more qualified" by disparaging Mozingo's experience and qualifications, asserting it "grossly fails to meet" the Bidder's Reference requirements set forth on P-11 of the Bid Solicitation. Contrary to MCI's assertion, the Bidder's Reference

of listing “major” projects wherein Mozingo performed “comparable work” with a “description of the project” or other information that will “demonstrate the ability to vigorously prosecute the work” is precisely what Mozingo provided. It listed 3 comparable projects performed for a Governmental Agency or Developer within the last three (3) years (two of which Mozingo successfully completed for the City). Each of the listed projects entailed public works and the installation of pipeline and attendant work comparable to the Project. Nothing in the Bid Solicitation required the bidder to provide references of identical projects in scope and breadth. Had the City so required, it would have provided as such in the solicitation. Instead, it requested comparable references, which were provided.

MCI’s attempt to compare and contrast its own experience with that of Mozingo as being “more qualified” that Mozingo is unavailing. This argument has been routinely rejected by the courts.

Government Code § 25454 (now Public Contract Code § 10180) requires that the contract be awarded to the lowest responsible bidder. The authority did not find that Argo was not responsible, just that Argo was less qualified to do the work. To permit a public body to reject the bid of a qualified and responsible bidder in favor of a higher bidder deemed more qualified and more responsible frustrates the very purpose of competitive bidding laws, and violates the interest of the public in having public projects awarded without favoritism. See Charles L. Harney, Inc. v. Durkee (1951) 107 Cal. App. 2d 570 (if the public body deems it to be against the public interest to accept the low bid, it should reject all bids and readvertise).

Responsibility is a pass-fail test, not a test of the relative superiority of one bidder over another. (City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court (1972) 7 Cal.3d 861, 867, n.5.)

Even if the City were to find that Mozingo’s submission of experience and qualifications did not strictly comply with the requirements of the Bid Solicitation, the City has the inherent discretion to waive any irregularities.

The City shall have the right to waive irregularities in a bid, and to award the Contract to the Lowest Responsible Bidder (as determined by the City), only if the irregularities are non-material and inconsequential.

(Section 3.01, Bid Solicitation)

Courts have repeatedly affirmed a public entity's reservation of rights to waive irregularities it considers to be in its best interest. "A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted. [Citations.] However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential. [Citations.] [Citations.]" (Ghilotti, *supra*, 45 Cal.App.4th at pp. 904-905; Valley Crest Landscape, Inc. v. City Council, *supra*, 41 Cal.App.4th 1432, 1435, 1438.) To merit setting aside, "the deviation must be capable of facilitating corruption or extravagance, or likely to affect the amount of bids or the response of potential bidders. [Citations.]" (Ghilotti, at p. 908.) As such, the rule of strict compliance does not preclude the contracting entity from waiving what are considered to be "inconsequential deviations." See MCM Const., Inc. *supra*, 66 Cal.App.4th 359, 373-374.

As such, even if MCI was correct (which it is not) that the projects listed by Mozingo were not "comparable" to the Project to be constructed and therefore Mozingo did not *strictly* respond to the Bid Solicitation (rendering Mozingo either a non-responsive or non-responsible bidder), the City has the discretion and authority to waive the irregularity and award the contract to Mozingo (See Section 3.01, *supra*).

Moreover, the City has the discretion, during the bid review process, to request additional information from the apparent low bidder in support of its experience and qualifications:

The City will make its determination of responsibility based upon information submitted by Bidders contained in the Bidders Qualifications and Bidders References included in the Bid Forms and, if necessary, through interviews with previous cities, clients, design professionals, or subcontractors with whom the Bidder has worked. In determining whether or not a Bidder is responsible, the City may consider the following factors in relation to the work to be performed for this Project:

- (a) Demonstrated financial strength including, but not limited to, resources available, bonding capacity, and available insurance.
- (b) Demonstrated safety record including, but not limited to, Experience Modification Rate.



- (c) Successful completion of projects of similar scope and size. In reviewing this factor, the City may consider elements including, but not limited to, contract amount of completed projects, experience on public works projects, experience implementing prevailing wage certified payroll requirements, timeliness of performance and, if necessary, evaluation of the Bidder's work by previous cities, clients, design professionals, or subcontractors.
- (d) Sufficiency of contract administration and construction management systems including, but not limited to, proposed scheduling tools, proposed subcontract forms, proposed progress payment applications, and proposed certification of payroll documents.
- (e) History of claims, litigation, termination or disqualification from projects.

(Section 3.02, Bid Solicitation)¹

If the City requests additional information regarding projects undertaken by Mozingo over the past three years which further exemplify Mozingo's qualifications to successfully complete the Project, Mozingo will provide the information forthwith. Additionally, Mozingo invites the City to contact previous cities, clients, design professionals, or subcontractors with whom Mozingo has worked. It is confident the City will receive glowing recommendations in support of Mozingo. If, however, the City is inclined to determine Mozingo as non-responsible, Mozingo respectfully will request a hearing to establish itself as a responsible bidder.

b. Mozingo's Bid was Responsive to the Bid Solicitation

A "responsive" bid is a bid that is in strict and full accordance with all material terms of the bid package (e.g., the bidder has used the correct bid forms, has fully completed all questionnaires, has submitted all requisite enclosures, and has provided a proper bid bond when security is required). Responsiveness is generally determined from the face of the bid, without outside investigation or information.

¹ In fact, before a bidder can be rejected as not responsible, it must be afforded a due process hearing where it can contest evidence offered to show it is not responsible and can provide its own evidence of responsibility. (City of Inglewood, 7 Cal.3d at 871.)



For a bid to be responsive, it must constitute a definite and unqualified offer to meet the material terms of the solicitation. "Material terms" are those which (1) could affect price, quantity, quality, or delivery, or (2) are clearly identified by the solicitation, and which, for reasons of public policy, must be complied with at the risk of bid rejection for nonresponsiveness. (Construction Bidding Law, Cushman and Doyle (1990) §1.8, p. 11.) The causes which make a bid nonresponsive may be placed into one of three categories: (1) reservation of rights, (2) "two bites at the apple," and (3) failure to meet specified requirements. (Construction Bidding Law, Cushman and Doyle (1990) § 1.8, p. 11, and cases cited therein.) The competitive bidding statutes are not intended to be for the benefit of bidders, but for the benefit and protection of the public. (Universal By-Prod., Inc. v. Modesto (1974) 43 Cal.App.3d 145, 152; Rubino v. Lolli (1970) 10 Cal.App.3d 1059, 1062.)

Here, Mozingo's bid strictly complied with the Bid Solicitation and constitutes a definite and unqualified offer to meet the material terms of the solicitation. MCI's *arguments* to the contrary are unfounded and unsupported. Namely, its assertion that Mozingo's selection of "Welded Steel Pipe" on the Bid Proposal is a material deviation from the Bid Solicitation is a fallacy. In fact, Mozingo strictly complied with the bidding documents in its selection of the pipe to be installed on the project. The assertion by MCI that welded steel pipe was "an option that was unavailable at bid time" is unsupported and immaterial. There is no evidence to support the self-serving and unsupported statement that "Mozingo cannot deliver what it promised." Mozingo has fully committed to the City and will deliver a successful project, as bid and as promised. In any event, Mozingo has provided a performance bond to the City, which secures the City and ensures full performance of the Project by Mozingo.

Additionally, the assertions that Mozingo was afforded an unfair competitive advantage over the other bidders "by either allowing the withdrawal of its bid under the code" or the "shopping of its bid for better prices," lack merit and are not applicable.

Under Public Contract Code §§ 5100 to 5110, which applies to all public entities, in order for a bidder to withdraw its bid, the bidder must establish that a mistake was made; that the bidder gave notice to the public entity within five working days after the bid opening, specifying in detail how the mistake occurred; that the mistake was material and not due to an error in judgment or to carelessness in inspecting the site or in reading the plans and specifications.

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There was no mistake. Mozingo has not requested relief from its bid and remains committed to perform as bid, in strict compliance with its bid, as submitted.²

The Project Should be Awarded to Mozingo, the Low Responsive and Responsible Bidder

While the City may reject all bids and re-advertise in its discretion and if it so chooses, it is not allowed to award the contract to a bidder who has not submitted the lowest responsive and responsible bid. In this situation, rebidding the Project should not be necessary, as Mozingo's bid is completely responsive to the bid solicitation in all regards.

As the lowest responsive and responsible bidder, the City is obligated to award the Project to Mozingo; not only pursuant to the Public Contract Code, but in accordance with the City's own Bid Solicitation. Mozingo's bid conformed in all material respects to the requirements of the Bid Solicitation, and it represents an unqualified and unconditional offer to perform such requirements in accordance with the material terms and conditions of the specifications.

Should the City fail to appropriately make the award to Mozingo (or to no one at all), notice is hereby given that a writ of mandate may issue from the superior court to compel the City to act in accordance with the law and its own written guidelines.

I look forward to hearing from you as soon as possible. In the interim, please feel free to call me if you have any questions or require further information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Matthew W. Quall'.

Matthew W. Quall

cc: Mozingo Construction, Inc.
Mountain Cascade, Inc.

² Additionally, there is no bid shopping for "better prices". None of the bidders were required to list their respective suppliers. The Subletting and Subcontracting Fair Practices Act has no application to the protest, as framed by MCI. On its face, the bid protest by MCI conflates a multitude of inapplicable and baseless "issues" none of which have any bearing on the responsiveness of Mozingo's bid or its responsibility to complete the Project as bid.

August 27, 2019

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Re: City of Tracy Effluent Outfall Pipeline Project

Dear Ms. Ramirez and Messrs. Busby and Dardenne:

This letter sets forth my Findings and Conclusions following the hearing that was conducted on Thursday, August 22, 2019.

BACKGROUND

Bids for the City of Tracy Effluent Outfall Pipeline Project ("Project") were opened by the City of Tracy (hereinafter "Agency") on May 15, 2019. Mozingo Construction, Inc. (hereinafter "Mozingo") was the apparent low bidder. Mountain Cascade, Inc. (hereinafter "MCI") was the apparent second low bidder. By way of letters dated May 17, 2019 and August 15, 2019, MCI protested the Mozingo bid and any subsequent award by Agency to Mozingo for the Project. As a result of MCI's protest, I was asked to serve as a hearing officer and issue a written decision on MCI's bid protest. A hearing was conducted on Thursday, August 22, 2019. The hearing commenced at 10:00 a.m. and I declared the hearings closed at 12:02 p.m. after receiving and admitting all oral and documentary evidence. At the hearing, opening statements were made by all parties, oral testimony was presented by Mozingo and MCI, documentary evidence was presented by all parties, and closing statements were made by Mozingo and MCI.

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FINDINGS

The facts are generally not in dispute.

1. In October 2018, Agency issued its Notice Inviting Bids for the Construction of the Project.
2. The Bidding Requirements contained on page P-2 of the Agency's Bid Proposal document required:

For each of the various contract items of work designated on the Bid Schedule, the bidder shall set forth a unit or lump sum price which the bidder shall then use to calculate and designate a total cost for each item of work based upon the designated estimate of the quantities of work to be done, all in clearly legible figures in the respective spaces of the Bid Schedule provided for this purpose.

The bidder shall include in the unit or lump sum prices paid for the various contract items of work full compensation for conforming to the requirements of the Contract Documents and for completing all of the work required. No additional compensation shall be granted for any additional items unless categorized and approved as extra work under the terms of the agreement.

3. The Bidder's Reference contained on page P-11 of the Agency's Bid Proposal document required:

List three (3) major projects which the Bidder has performed comparable work for a Governmental Agency or Developer within the last three (3) years. Providing a contact person and description of the project, or such other information that will demonstrate the ability to vigorously prosecute the work.

4. The Bid Schedule at Base Bid Item No. 4 required "per Drawing Sheet G-07" the Contractor to circle its Proposed Pipe Material for the Project's conveyance piping. The four options were: Welded Steel Pipe; Ductile Iron Pipe; Bar Wrapped Concrete Cylinder Pipe; and HDPE Pressure Pipe.

5. Drawing Sheet G-07 stated the following under Note 1 of the Conveyance Piping Notes:

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1. Except where WSP and HDPE are specifically called out in the profile of the plan and profile drawings as the required pipe material, Contractor shall choose from the following options for the 42" effluent pipeline pipe material:
 - a. 42" DIA 0.250" Thick WSP
 - b. 42" Dia Pressure Class 150 DIP
 - c. 42" Dia HDPE, SDR 26
 - d. 42" Dia CCP

Only one of these materials is allowed in addition to the WSP and HDPE in certain reeieas. The class/thickness of each pipe listed above applies to the entire length of pipe on a given drawing unless otherwise noted at specific locations along the alignment.

6. Section 3.02 of the General Provisions provides in pertinent part:

3.02 Determination of Lowest Responsible Bidder - City shall determine the "Lowest Monetary Bidder" on the basis of the Engineer's approximate estimate of the quantities of work to be done as set forth in the Bid Schedule, in accordance with the calculation criteria set forth on the bid.

After the Lowest Monetary Bidder has been determined, the Engineer shall review that Bidder's bid in order to determine whether or not that Bidder is the "Lowest Responsible Bidder." The term Lowest Responsible Bidder shall mean the Lowest Monetary Bidder whose bid is responsive, and who is responsible to perform the work, as required by the Contract Documents.

The term "responsive" is defined by California law, but generally means that the bid has been prepared and submitted in accordance with the requirements of the Bidding Requirements.

The term "responsible" is defined by California law, but generally means that the Bidder is able to demonstrate that it possesses: (1) the capacity to perform the work required by the Contract Documents with respect to financial strength, resources available, and experience; and (2) the integrity and trustworthiness to complete performance of the work in accordance with the Contract Documents.

The City will make its determination of responsibility based upon information submitted by Bidders contained in the Bidders Qualifications and Bidders References included in the Bid Forms and, if necessary, through interviews with previous cities, clients, design professionals, or subcontractors with whom the Bidder has worked. In determining whether or not a Bidder is

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responsible, the City may consider the following factors in relation to the work to be performed for this Project:

- (a) Demonstrated financial strength including, but not limited to, resources available, bonding capacity, and available insurance.
- (b) Demonstrated safety record including, but not limited to, Experience Modification Rate.
- (c) Successful completion of projects of similar scope and size. In reviewing this factor, the City may consider elements including, but not limited to, contract amount of completed projects, experience on public works projects, experience implementing prevailing wage certified payroll requirements, timeliness of performance and, if necessary, evaluation of the Bidder's work by previous cities, clients, design professionals, or subcontractors.
- (d) Sufficiency of contract administration and construction management systems including, but not limited to, proposed scheduling tools, proposed subcontract forms, proposed progress payment applications, and proposed certification of payroll documents.
- (e) History of claims, litigation, termination or disqualification from projects.

If the Engineer finds that the Lowest Monetary Bidder submitted a responsive Bid and that the Bidder is responsible, then that Bidder shall be deemed the apparent "Lowest Responsible Bidder," and the Engineer shall report the findings to the City Council.

If the Engineer finds that the Lowest Monetary Bidder's bid is not responsive, or that the Lowest Monetary Bidder is not responsible, then the Engineer may review the responsiveness and responsibility of the next Lowest Monetary Bidder. If the Engineer finds that the next Lowest Monetary Bidder is responsive and responsible, then that next lowest Bidder shall be deemed the apparent "Lowest Responsible Bidder," and Engineer shall report its findings as recommendations to the City Council. This process may continue until the Engineer finds the Lowest Monetary Bidder which is also responsive and responsible.

In the event that one or more Low Monetary Bidders are found by the Engineer to be nonresponsive or non-responsible, those Bidders will be given notice and a reasonable opportunity to present additional relevant evidence to the Engineer for consideration, within five (5) working days after the Bidder receives the notice.

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The City may investigate the responsibility and qualifications of all Bidders to whom the award is contemplated for a period not to exceed ninety (90) calendar days after the Bid opening, during which time no bid shall be withdrawn by the Bidders. The ninety (90) day review period may be extended upon the written request by the Engineer and written approval by the affected Bidder.

7. Five addenda were issued, none of which revised provisions relevant to the subject matter of MCI's protest.
8. Bids were opened at 3:00 p.m. on May 15, 2019.
9. Mozingo, MCI, and four other bidders (not relevant here) submitted bids to the Agency on May 15, 2019. Mozingo was the apparent low bidder. MCI was the apparent second low bidder.
10. By way of letters from its attorneys dated May 17, 2019 and August 15, 2019, MCI protested the Mozingo bid and any subsequent award by Agency to Mozingo for the Project on the grounds that Mozingo submitted a non-responsible, non-responsive bid.
11. Mozingo responded to MCI's bid protest with correspondence dated May 23, 2019, asserting that Mozingo's bid was both responsive and responsible.
12. As a preliminary procedural matter, Mr. Busby on behalf of MCI stated that MCI was told by the City Clerk that this hearing would just involve MCI and suggested that more notice would have allowed MCI more due process. However, Mr. Busby stated that MCI would not seek a continuance and was prepared to present evidence at the protest hearing. Accordingly, it was decided that the protest hearing would proceed as noticed.

CONCLUSIONS

After carefully considering the oral testimony and reviewing the evidence and Findings, I conclude as follows:

13. The two issues to be decided are:
 - a. Did the selection by Mozingo of Welded Steel Pipe as its Proposed Pipe Material on the Bid Schedule render Mozingo's Bid nonresponsive?

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b. Was Mozingo's Bid "responsible" as that term is described in the Agency's Bid Documents and as defined by California law?

Regarding Whether Mozingo's Bid Was Responsive:

14. MCI's May 17, 2019 protest letter asserts that the Welded Steel Pipe option selected by Mozingo was unavailable at bid time. MCI's August 15, 2019 letter asserts that Mozingo manipulated the process by committing to a pipe material option that cannot be delivered. Neither of MCI's letters provides evidence to support its assertions. At the hearing, the Agency provided correspondence from Michael DeMascio, a Sales Engineer for Northwest Pipe, stating that "Northwest Pipe provides Welded Steel Pipe and Concrete Cylinder Pipe from our Tracy plant." Dave Hicks testified on behalf of MCI that MCI obtained a quote from Northwest Pipe for Bar Wrapped Concrete Cylinder Pipe and that MCI did not ask for a quote for Welded Steel Pipe. Mr. Hicks further testified that he had not seen any quotes provided to Mozingo by Northwest Pipe. Mr. Gianfortone testified on behalf of Mozingo that Mozingo received more than one Welded Steel Pipe quote for the Agency's Project. Mr. Gianfortone declined to answer questions regarding when he received the quotes for the Welded Steel Pipe, although he acknowledged that Mozingo obtained a Welded Steel Pipe quote from Northwest Pipe after the bid opening. Mozingo's May 23, 2019 correspondence states that Mozingo has not requested relief from its bid and remains committed to perform as bid, in strict compliance with its bid, as submitted.

15. During the hearing, MCI accused Mozingo of submitting a bid that will allow Mozingo to "bid shop," in contravention of California's Subletting and Subcontracting Fair Practices Act (the "Act"). The Legislature's intent in adopting the Act was to prevent a prime contractor on a public works project from using a subcontractor's bid to prepare its bid, and then chopping that bid to get a lower price. *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1439-1440. The Act has no application here, however, as neither the Act nor the Agency's bid documents mandated that any of the bidders were required to list their respective suppliers, upon which MCI's contentions are based. Moreover, even if the Act applied, Mozingo has not requested relief from its bid and has represented that it remains committed to perform its bid as submitted.

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16. Therefore, I conclude that the selection by Mzingo of Welded Steel Pipe as its Proposed Pipe Material on the Bid Schedule did not render Mzingo's Bid nonresponsive.

Regarding Whether Mzingo's Bid Was Responsible:

17. MCI's May 17, 2019 correspondence asserts that Mzingo grossly fails to meet the clearly defined requirement to list three major projects which the Bidder has performed comparable work for a Governmental Agency or Developer within the last three years providing a contact person and description of the project, or other such information that will demonstrate the ability to vigorously prosecute the work.

18. Pursuant to the Agency's General Provisions, responsibility is measured by:

(a) Demonstrated financial strength including, but not limited to, resources available, bonding capacity, and available insurance.

(b) Demonstrated safety record including, but not limited to, Experience Modification Rate.

(c) Successful completion of projects of similar scope and size. In reviewing this factor, the City may consider elements including, but not limited to, contract amount of completed projects, experience on public works projects, experience implementing prevailing wage certified payroll requirements, timeliness of performance and, if necessary, evaluation of the Bidder's work by previous cities, clients, design professionals, or subcontractors.

(d) Sufficiency of contract administration and construction management systems including, but not limited to, proposed scheduling tools, proposed subcontract forms, proposed progress payment applications, and proposed certification of payroll documents.

(e) History of claims, litigation, termination or disqualification from projects.

Mzingo's bid provided the required information regarding its financial qualifications, its 29+ years of experience, and its excellent safety record, which was acknowledged by

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MCI. No challenges were raised by MCI regarding any of the Agency's measures of responsibility except for Mozingo's experience with projects of similar scope and size.

19. During the protest hearing, Mr. Hicks on behalf of MCI stated that to his knowledge, Mozingo does not have the requisite experience to perform the work of the Agency's Project. In support of his assertion, Mr. Hicks stated that currently, on a City of Tracy job in the Tracy Hills, Mozingo has encountered a failed beam and plate shored excavation that is thirty feet deep in way easier ground conditions than those that will be encountered in the Agency's Project. Mr. Hicks testified that the Agency's Project has biological risks, environmental risks and extreme safety risks.

20. Evidence was presented that Mozingo has 29+ years of experience, much of that within Alameda County and the City of Tracy. Mr. Gianfortone testified on behalf of Mozingo that Mozingo has experience working with the various agencies that it will interact with for the Agency's Project including Fish and Game, Army Corps of Engineers, Department of Water Resources, and Yosemite. He testified that Mozingo has an outstanding environmental record and safety record. Mr. Gianfortone acknowledged that the components of the Agency's Project present some challenges for which Mozingo has drawn in some subcontractors, including Drill Tech, which has expertise with secant shafts; Blue Iron, which has experience with sheet piling and vast experience with dams; Fox Loomis for dewatering; and Nada Pacific for microtunneling. He noted that Mozingo listed more subcontractors than MCI. He testified that all of Mozingo's work has been underground, that he personally has experience with coffer dams in a river, and that Mozingo has worked on hundreds, if not thousands, of projects in water, in rivers, involving shoring and a vast array of underground work. MCI objects that Mozingo is relying on subcontractors to install the deep shafts and dangerous shoring in the river. But the use of subcontractors is not determinative of a contractor's responsibility.

21. Mr. Hicks testified at length and provided numerous photographs regarding MCI's experience, qualifications, and ability to perform the work of the Agency's Project. MCI's counsel stated MCI's experience cannot be outdone on this type of work.

22. However, the question for me to resolve is not whether MCI is more qualified than Mozingo to perform the work of the Agency's Project, but rather whether Mozingo is a responsible bidder. Public Contract Code Section 1103 defines "responsible bidder" to

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mean “a bidder who has demonstrated the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.” A bidder is “responsible” if it can perform the contract as promised. The concept of responsibility focuses on the contractor’s trustworthiness, quality, fitness and capacity to satisfactorily perform. (*City of Inglewood-L.A. County Civic Center Auth. v. Superior Court* (1972) 7 Cal.3d 861.)

23. Thus, while it may well be true that MCI has more experience than Mozingo at performing the specific types of work required by the Agency’s Project, where the statute, as here, requires the City to award a contract to the lowest responsible bidder, California courts have been vigilant in not excusing attempts by public entities to circumvent that requirement. (See, e.g., *City of Inglewood-L.A. County Civic Center Auth. v. Superior Court* (1972) 7 Cal.3d 861, 867 [because statute required award to lowest responsible bidder, county had no authority to select a bidder that the city thought was “superior” where both bidders were still responsible] and [responsibility is a pass-fail test, not a test of the relative superiority of one bidder over another]; See also *Great West Contractors, Inc. v. Irvine Unified School District*, 187 Cal.App.4th 1425, 1447 citing to *East Bay Garbage v. Washington Township Sanitation Co.* (1959) 52 Cal.2d 708 [because lowest responsible bidder statute applied, city could not prefer second-to-lowest bidder]; See also League of Cal. Cities, The Cal. Municipal Law Handbook , (2013), § 7.15, p. 721 [“If the lowest monetary bidder is responsible and submits a responsive bid, the contract must be awarded to the lowest monetary bidder even if another bidder is more responsible”].)

24. There was no testimony or evidence presented regarding Mozingo’s lack of trustworthiness or truthfulness. There was no testimony or evidence presented regarding a lack of quality of Mozingo’s work on prior projects; the only testimony concerned challenges Mozingo has encountered on a current project for the City of Tracy. There was no testimony or evidence presented regarding the fitness and capacity of Mozingo’s various subcontractors to perform the Project scope for which they were listed. Rather, the evidence and testimony presented at the protest hearing focused on MCI’s experience compared to Mozingo’s experience.

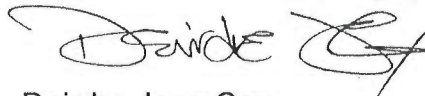
25. In reviewing all of the evidence and testimony in this matter, I find that Mozingo has adequately demonstrated the requisite experience and qualifications to successfully complete the Agency’s Project, that Mozingo has met the requirements of the Bid

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Solicitation and is a responsible bidder. While not identical to the work of the Agency's Project, I find that the Agency could reasonably find that the three projects listed by Mozingo on its Bid Form described comparable work to that of the Project. Each of the listed projects entailed public works and the installation of pipeline and attendant work comparable to the Project. Two of the listed projects were performed for the Agency. Mozingo provided testimony regarding its comprehensive environmental experience, outstanding safety record, and vast array of underground work. Mozingo further provided testimony of its justifiable reliance on experienced subcontractors to perform some of the more challenging work of the Project. Moreover, the Agency's bid documents reserved to the Agency the opportunity following receipt of bids to conduct its own investigation and reference checks to satisfy itself regarding the adequacy of Mozingo's qualifications and experience.

26. Because MCI has not provided adequate evidence to demonstrate that Mozingo's bid was nonresponsive or non-responsible, I deny MCI's bid protest. Agency may award the contract to Mozingo.

Sincerely,



Deirdre Joan Cox
Hearing Officer

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
CH2M HILL FOR DESIGN SUPPORT SERVICES DURING CONSTRUCTION OF CITY OF TRACY
WWTP EFFLUENT OUTFALL PIPELINE IMPROVEMENTS
(CIP 74083)**

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and CH2M HILL, a Florida Corporation (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** CONSULTANT is a registered professional engineer.
- B.** The City and CONSULTANT entered into a Master Professional Services Agreement (Agreement) (Resolution No. 2008-041) and completed the design of the Outfall Effluent Pipeline Project (Project) as Task Order CH-13, which was approved by the City Council on September 21, 2010, under Resolution No. 2010-161.
- C.** Consultant services are needed related to design support during construction for the Project. Therefore, at the request of the City, in July 2019, 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 performance of services in accordance with the terms set forth in this agreement.
- D.** On September 3, 2019, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2019-_____.

Now therefore, the Parties mutually agree as follows:

- 1. Scope of Work.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Vijay Kumar. Consultant shall not replace its Authorized Representative without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.
- 2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for time extensions 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.
 - 2.1 Term.** The term of this Agreement shall begin after receipt of Notice to Proceed by Consultant and end based on Time of Performance referenced in Exhibit A, unless terminated in accordance with Section 6.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Consultant’s total compensation under this Agreement shall not exceed \$1,898,000 as shown on Exhibit “B”. Consultant’s Fee and billing rates shall cover all costs and expenses for Consultant’s performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City’s prior written approval.

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

3.2.1 If Consultant is providing services in response to a development application, separate invoices must be issued for each application and each invoice shall contain the City’s designated development application number.

3.2.2 Consultant’s failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Consultant.

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

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

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

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

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

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

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

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

5.3 Workers’ Compensation coverage shall be maintained as required by the State of California.

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

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

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

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

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

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

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

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

5.10 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. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

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. Dispute Resolution. If any dispute arises between the City and Consultant that cannot be settled after engaging in good faith negotiations, City and Consultant agree to resolve the dispute in accordance with the following:

7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

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

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

10. 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. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

11. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

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

To City:

Mr. Kuldeep Sharma
Utilities Director
3900 Holly Drive
Tracy, CA 95376

To Consultant:

Mr. Vijay Kumar, P.E., PgMP
Vice President
CH2M HILL
2485 Natomas Park Dr, Ste 600
Sacramento, CA 95833

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

13. Miscellaneous.

13.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable

professionals performing in the same or similar time and locality, and under the same or similar circumstances.

13.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3 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.

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

13.5 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.

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

13.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

13.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

13.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

13.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

13.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

13.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

13.11 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.

13.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's proposal (if any), the Agreement shall control. In

the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

13.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

14. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

Consultant

By: Robert Rickman
Title: Mayor
Date: _____



By: Vijay Kumar, P.E., PgMP
Title: Vice President
Date: _____

Attest:

Adrienne Richardson, City Clerk

City Business License No. 81986

Approved as to form:

By: _____
Title: _____
Date: _____

Leticia Ramirez, Interim City Attorney

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

EXHIBIT A - Scope of Work

DESIGN SUPPORT SERVICES DURING CONSTRUCTION OF CITY OF TRACY WWTP EFFLUENT OUTFALL PIPELINE IMPROVEMENTS (CIP 74083)

Introduction

This scope of work describes the services during construction (SDCs) that Consultant shall provide for the City of Tracy's installation of a 42-inch diameter effluent outfall pipeline from the City of Tracy Wastewater Treatment Plant to a diffuser in the Old River and includes about 18,000 feet of 42-inch pipeline and 36-inch, 20-inch, 14-inch, 12-inch and 8-inch yard piping, a new pipeline diffuser system, new pumps and mechanical piping, a flowmeter vault, pond 3 pump station upgrade, miscellaneous appurtenances and electrical and communications conduits and integration. These SDCs are based on a thirty (**33**) month construction duration. Any additional time beyond 33 months from the pre- construction meeting expected to start in September 2019 is considered out of scope and amendment to this Agreement is required. The consultant shall provide design support during construction that includes reviewing routine, minor and major submittals, requests for information, field visits and change orders. Consultant shall coordinate with City's Construction management team, inspection services, environmental monitoring, and compliance team to process such requests.

Scope of Work

Task 1. Attend Pre-construction Meeting

Consultant will attend the preconstruction meeting set up by City staff and Contractor. Consultant will discuss project logistics and the contractor's operating plan. This will include procedures for processing submittals, requests for information, field changes.

Assumptions:

- City will provide facilities for the meeting;

Task 2. Respond to Request for Information

During the construction period Consultant will review and evaluate contractor requests for technical clarification based on varying field conditions or contract documents/drawings and provide recommendations and responses to RFIs that resolve the issue fairly, equitably, and expeditiously. All RFIs will be submitted in electronic form based on standard template provided by Consultant. All attachments will be included in the first submittal.

Assumptions:

- A maximum of 200 major requests for information will be processed for this project (includes engineering and document processing).

Deliverables:

- Responses to RFIs.

Task 3. Provide Shop Drawing and Submittal Review

Consultant will review Contractor submittals, consisting of shop drawings, diagrams, illustrations, pipeline lay plans, catalog data, schedules and samples, the results of tests and inspections, and

other data that the Contractor is required to submit for the Project. Submittal review will be for general conformance with the design concept and general compliance with the information in the plans and specifications. Consultant's review will not relieve the Contractor from the responsibility of meeting the requirements of the contract documents. Consultant will also provide a submittal-tracking log, which will be coordinated with City staff and Construction Management Consultant.

Assumptions:

- A maximum of 120 major project submittals will be prepared for this project (includes engineering and document processing).

Deliverables:

- A submittal-tracking log will be prepared.

Task 4. Respond to Change Requests and Substitution Requests

Consultant will review and assist City with contractor-requested design or specification changes and substitution requests.

Assumptions:

- A maximum of 25 major change requests will be processed for this project.

Deliverables:

- Response change and substitution requests.

Task 5. Conduct Periodic Field Site Visits

Consultant will conduct periodic site visits to the Tracy WWTP Pump Station to review the progress of construction and address any ongoing issues while onsite.

Assumptions:

- A maximum of 50 major site visits will be conducted for this project.

Task 6 Microtunneling Technical Services

Due to specialized nature of the Microtunneling construction under Paradise Cut, additional technical services are required during construction. Consultant will review Contractor submittals, consisting of shop drawings, diagrams, illustrations, microtunneling technique, proposed shoring for jacking and receiving pits, pipeline lay plans, catalog data, schedules and samples, the results of tests and inspections, and other data that the Contractor is required to submit for the Project. Submittal review will be for general conformance with the design concept and general compliance with the information in the plans and specifications. Consultant's review will not relieve the Contractor from the responsibility of meeting the requirements of the contract documents.

Task 7. I & C Factory Testing, Startup Assistance

Consultant will review Factory Testing conducted by the Systems Integrator or I & C subcontractor. The purpose of this testing is to verify Instrumentation and Control systems have been designed, fabricated and tested in compliance with the contract documents and approved shop drawings. Typically, this kind of testing is done at the I & C manufacturer's testing facility.

Consultant will witness factory testing of I & C systems including witnessing results displayed by the I & C system and verify I & C vendor complete test records shown in the contract documents.

After installation of I & C equipment and start up, Consultant will review Performance Acceptance Testing (PAT). Consultant will review preliminary test procedures, final test procedures and documentation provided by the vendor.

Task 8. Prepare Record Drawings

After substantial completion of the project, obtain redline drawings from the Construction Manager or Contractor and incorporate changes authorized during the construction of the project. Consultant will update both plans and specifications and label it as Record Drawings for future use.

Task 9. Prepare Electronic O & M Manual

There is a sophisticated Electronic Operations and Maintenance Manual at Tracy WWTP. This system provides an efficient and user-friendly option to access all record drawings, Operation and maintenance manual for all processes and equipment. Consultant will develop Standard Operating Procedures for the proposed Effluent Pipeline operation. In addition, a trouble shooting section will be developed to assist the WWTP staff to troubleshoot an issue. Consultant will also integrate the new operations and maintenance manual prepared for the Effluent Outfall project with the existing Electronic O & M system and add record drawings to the Electronic O & M system.

Task 10. SDC Services Project Management, Billing and Invoices

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

Deliverables

- Monthly progress reports that include a summary of completed and ongoing work, budget and schedule updates, and major coordination and action items

Assumptions

The project duration is assumed as 33 months. Extensions to the project schedule, caused by circumstances beyond the Consultant's control, may require a scope and fee amendment.

Time of Performance:

Start – September 2019

End – 33 months after start. Consultant has no control over the project construction schedule that is governed by City and Contractor.

EXHIBIT B – Compensation

City of Tracy - Effluent Outfall Pipeline Improvements Engineering Services During Construction																									
	Billing Rates	Classification	Principal Technologist/Principal Project Manager	Sr. Technologist/Sr. Project Manager	Engineer Specialist/Project Manager	Project Engineer*/Associate Project Manager	Engineering/Environmental Tech 5	Associate Engineer*	Staff Engineer 2* or Engineering/Environmental Tech 4	Staff Engineer 1* or Engineering/Environmental Tech 3	Office/Clerical/Accounting	Engineering/Environmental Tech 2	Engineering/Environmental Tech 1	Intern											
		2019	\$315	\$282	\$258	\$228	\$193	\$186	\$165	\$143	\$110	\$107	\$94	\$75											
		2020	\$324	\$290	\$266	\$235	\$199	\$192	\$170	\$147	\$113	\$110	\$97	\$77											
		2021	\$334	\$299	\$274	\$242	\$205	\$197	\$175	\$152	\$117	\$114	\$100	\$79											
		2022	\$344	\$308	\$282	\$249	\$211	\$203	\$180	\$156	\$120	\$117	\$103	\$82											
Task	Description														Total (hrs)	Labor (\$)	Expenses (\$)	Total Fee (\$)							
1	Pre-construction Meeting	2019	16							0	8	16			40	\$ 7,640	\$ 611	\$ 8,251							
2	Review & Respond to RFI's	2019	40	40	4	8	16	4	8	4	8	40	8		180	\$ 38,380	\$ 3,070	\$ 41,450							
		2020	80	32	8	16	32	40	16	8	16	80	16	160	504	\$ 83,560	\$ 6,685	\$ 90,245							
		2021	80	16	16	32	64	16	32	16	32	120	32	160	616	\$ 101,120	\$ 8,090	\$ 109,210							
		2022	80	12	12	24	48	12	24	12	24	80	24	40	392	\$ 77,350	\$ 6,188	\$ 83,538							
3	Review & Respond to Submittals	2019	80	40	40	40	16	4	8	4	8	40	8		288	\$ 67,560	\$ 5,405	\$ 72,965							
		2020	80	40	80	80	32	8	16	8	16	80	16	160	616	\$ 113,920	\$ 9,114	\$ 123,034							
		2021	48	16	120	120	64	16	32	16	32	120	32	140	756	\$ 138,600	\$ 11,088	\$ 149,688							
		2022	36	12	80	80	48	12	24	12	24	80	24	32	464	\$ 94,670	\$ 7,574	\$ 102,244							
4	Respond to Change Orders and Design Clarifications	2019	40	4	4	8		4	8		8	40	8		124	\$ 24,560	\$ 1,965	\$ 26,525							
		2020	80	8	8	16		8	16		16	80	16		248	\$ 50,600	\$ 4,048	\$ 54,648							
		2021	80	16	16	32		16	32		32	120	32		376	\$ 72,950	\$ 5,836	\$ 78,786							
		2022	40	12	12	24		12	24		24	80	24		252	\$ 48,300	\$ 3,864	\$ 52,164							
5	Field Site Visits	2019	80	40	4	8		4	8		8		8		160	\$ 43,040	\$ 3,443	\$ 46,483							
		2020	160	80	32	16		8	16		16		16		344	\$ 95,030	\$ 7,602	\$ 102,632							
		2021	160	16	24	26		16	32		32		32		338	\$ 86,800	\$ 6,944	\$ 93,744							
		2022	40	12	12	24		12	24		24		24		172	\$ 38,950	\$ 3,116	\$ 42,066							
6	Microtunneling Tech Services	2019	40								8				48	\$ 13,480	\$ 1,078	\$ 14,558							
		2020	160	120	40						80				400	\$ 106,470	\$ 8,518	\$ 114,988							
		2021	16	40							24				80	\$ 20,120	\$ 1,610	\$ 21,730							
		2022													0	\$ -	\$ -	\$ -							
7	I & C Factory Testing, Start up Assistance	2019													0	\$ -	\$ -	\$ -							
		2020	24			16			16		8				64	\$ 15,170	\$ 1,214	\$ 16,384							
		2021	24			32			40		24				120	\$ 25,570	\$ 2,046	\$ 27,616							
		2022	24			24			60		32				140	\$ 28,910	\$ 2,313	\$ 31,223							
8	Record Drawings	2022	34	12	12	24		12	24		24	80	24	40	286	\$ 49,520	\$ 3,962	\$ 53,482							
9	Preparation of Electronic O & M Manual	2022	40	36	40	24		24	24		60	160	24	40	472	\$ 82,990	\$ 6,639	\$ 89,629							
10	SDC Services Project Management	2019	40	4	4	8	16	4	8	4	8	40	8		144	\$ 28,220	\$ 2,258	\$ 30,478							
		2020	24	8	8	16	32	8	16	8	15	80	16	160	391	\$ 52,180	\$ 4,174	\$ 56,354							
		2021	48	16	16	32	64	16	32	16	32	120	32	160	584	\$ 90,430	\$ 7,234	\$ 97,664							
		2022	36	12	12	24	48	12	24	12	24	80	16	40	340	\$ 61,380	\$ 4,842	\$ 66,222							
	Subtotal		1730	644	604	754	480	268	564	120	667	1536	440	1132	8939	\$1,757,470	\$ 140,530	\$ 1,898,000							

**CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
JACOBS PROJECT MANAGEMENT COMPANY FOR CONSTRUCTION MANAGEMENT SERVICES
FOR CITY OF TRACY WWTP EFFLUENT OUTFALL PIPELINE IMPROVEMENTS (CIP 74083)**

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Jacobs Project Management Company (JPMC), a Texas Corporation (**Consultant**). City and Consultant are referred to individually as “Party” and collectively as “Parties.”

Recitals

- A.** City desires to retain Consultant to perform construction management services for the Effluent Outfall Pipeline Improvement project; and
- B.** In October 2018, City of Tracy requested proposals from qualified consulting firms to provide construction management services during construction of the Effluent Outfall Pipeline Improvements Project. City received four proposals on November 15, 2018. After review of proposals, City invited two firms for interviews. Based on the information presented in proposal and interview, Consultant was selected.
- C.** Consultant represents it has the qualifications, skills and experience to provide these services and is willing to provide services according to the terms of this Agreement. After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** On September 3, 2019, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2019-_____.

Now therefore, the Parties mutually agree as follows:

- 1. Scope of Work.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Mike DiNapoli. Consultant shall not replace its Authorized Representative without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.
- 2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for time extensions 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.

2.1 Term. The term of this Agreement shall begin after receipt of Notice to Proceed by Consultant and end based on Time of Performance referenced in above item 2.0, unless terminated in

accordance with Section 6. This Agreement may be extended for the project duration if the project duration is extended or changed by City.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Consultant’s total compensation under this Agreement shall not exceed \$1,700,000 as shown on Exhibit “B”. Consultant’s Fee and billing rates shall cover all costs and expenses for Consultant’s performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City’s prior written approval.

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

3.2.1 If Consultant is providing services in response to a development application, separate invoices must be issued for each application and each invoice shall contain the City’s designated development application number.

3.2.2 Consultant’s failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Consultant.

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

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

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

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

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

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

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

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

5.3 Workers’ Compensation coverage shall be maintained as required by the State of California.

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

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

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

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

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

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

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

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7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

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

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

10. 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. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

11. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

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

To City:

Mr. Kuldeep Sharma
Tracy WWTP
3900 Holly Dr
Tracy, CA 95304

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

To Consultant:

Mr. Tyler Sheldon, P.E.
Divisional Vice President
Jacobs; Project Management Co. (JPMC)
300 Frank H. Ogawa Plaza, Suite 600,
Oakland, CA 94612

13. Miscellaneous.

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

13.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

13.3 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.

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

13.5 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.

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

13.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

13.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

13.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

13.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

13.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

13.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

13.11 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.

13.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

13.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

14. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.


[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

Consultant

By: Robert Rickman
Title: Mayor
Date: _____



By: Tyler Sheldon
Title: Division Vice President
Date: 8/14/2019

Federal Employer Tax ID No. 35-2321289

Attest:

Adrienne Richardson, City Clerk

By: _____
Title: _____
Date: _____

Approved as to form:

Leticia Ramirez, Interim City Attorney

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

EXHIBIT A - Scope of Work

Scope of Construction Management Services City of Tracy WWTP Effluent Outfall Pipeline Improvements (CIP 74083)

1. PROJECT MANAGEMENT

Perform project management duties including supervision of project staff and coordination with design engineers and other consultants, communications with the City of Tracy (City), project status monitoring, and budget control. Prepare a Monthly Progress Report including a description of the work performed, activities, photos, milestones achieved, accomplishments, progress relative to approved schedule, and any problems encountered in the performance of the work during the reporting period. Submit the Monthly Progress Report to the City of Tracy for submission to the State, following approval of the format by the City. Review and recommend approval of monthly progress payment requests from the contractor.

2. PRECONSTRUCTION SERVICES

Pre-construction Conference

Following the Notice to proceed to the Contractor by the City, conduct a pre-construction conference. The preconstruction conference attendees will include the City, Contractor, major subcontractors, Design Engineers, and other stakeholders. The purpose of the pre-construction conference is to explain construction administration procedures and to delineate project requirements and constraints. Develop the agenda and prepare and distribute minutes of the conference.

Construction Administration Manual

Prepare a construction administration manual to describe the procedures to be followed by the Construction Manager, Contractor, and City throughout the project. The manual will include the following:

- General description of the project.
- Project organization.
- Directory of key team members (including after-hours, emergency telephone numbers).
- Communications protocol.
- Correspondence procedures.
- Procedures for handling Requests for Information (RFI's)
- Submittal handling procedures.
- Progress payment application procedures.
- Procedures for processing change orders.
- Hazard Assessment and Safety Action Plan (HASAP)
- Site security measures and procedures.

Update and modify the manual as the project progresses to streamline the work. Distribute the manual to project team members.

3. PROJECT MEETINGS

Conduct regular bi-weekly job meetings with the Contractor, City, and others (as necessary) to review safety, RFI status, submittal status, changes, completed and ongoing activities, planned work schedules, and to discuss key issues. Conduct other job meetings as required to coordinate construction activities with other agencies. Record and prepare minutes of all project meetings and distribute the minutes to all parties within two business days following meeting.

4. CONTRACTOR SCHEDULE

Review the Contractor's initial computer-based, cost-loaded, critical path method (CPM) construction schedule to ensure that the activities are comprehensive, that workflow is logical, that the schedule is not front-end loaded, and that the costs for activities are reasonably distributed. Monitor the Contractor's progress. Conduct monthly schedule update meetings with the Contractor to review progress. The cost-loaded schedule will be the basis of progress payments to the Contractor.

5. CONSTRUCTION QUALITY ASSURANCE

Provide qualified inspection staff to observe materials, equipment, work in progress, and completed work to ascertain compliance with the plans and specifications, subsequent contract modifications, and approved submittals. Provide specialty inspectors on an as-needed basis for instrumentation, electrical, civil, structural, mechanical, and coatings work. Notify the Contractor in writing of any observed noncompliance or variances from the contract requirements.

Prepare daily field reports of the status of the work, daily activities, manpower, equipment (including idle equipment), weather, and other pertinent observations. Make daily reports available to the Owner for review/reference at all times and submit all reports with other project records at the completion of the project. Maintain a continuous log of deviations throughout the project to reflect Contract change orders and field changes. Maintain a record of construction progress through photographic documentation. Accompany visitors representing public or other agencies and record the visits in the daily log.

Observe the Contractor's compliance for SWPPP, documentation of erosion control efforts and perform and document inspections of erosion control devices on a weekly basis, or as needed following rainfall events. Report significant erosion control problems to the City.

Verify that the contractor has developed and received approval for its dewatering plan for discharging to City's ponds and other areas as designated in the construction plans.

Monitor pipeline crossings at drainage ditches to ensure proper pipeline placement.

Review the contractor's plans and protocols for road closures and traffic control as defined in contract documents and ensure that the contractor provides proper notifications per contract to affected property owners, fire and emergency personnel.

Discuss, observe and document pot-holing operations for utilities in advance of the pipeline installation to identify conflicts and mitigate alignment changes as necessary to prevent costly delays and construction impacts. The City acknowledges that ultimate responsibility for any deficiencies in materials or completed work, and for compliance with plans and specifications and approved submittals, shall be attributable solely to the Contractor, notwithstanding Construction Manager's observations and inspections hereunder.

If Consultant is called on to observe the work of the City's Construction Contractor(s) for the detection of defects or deficiencies in such work, Consultant will not bear any responsibility or liability for such defects or deficiencies or for the failure to so detect. The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of each of the Contractors since these are solely the Contractor's responsibility under the contract for construction between the City and the Contractor. Consultant does not assume any responsibility or liability for the safety of persons or property as may be affected by construction Work, or for compliance with federal, state, or local statutes, rules, regulations and codes applicable to the conduct of the construction Work. The Contractor(s) will remain solely responsible for construction safety.

6. CONTRACTOR'S SUBMITTALS

Receive, track, and distribute Contractor's submittals on materials, equipment, and methods. Technical submittals will be reviewed by the Design Engineers. Develop and maintain a log of all submittals to indicate the date received, review status, and date returned to the Contractor.

7. PROGRESS PAYMENTS

Review applications for payment with the Contractor for compliance with the established procedures for their submission, noting particularly the relationship of the payment requested to the schedule of values based on the

cost loaded CPM schedule. Confirm that the Contractor submits required certified payroll information. Forward reviewed payment application to the City with recommendation for payment. Assist the City as necessary in submitting reimbursement requests to the State. Maintain reliable project cost records, including monthly payments and change orders.

8. REQUESTS FOR INFORMATION (RFI's)

Receive RFI's from the Contractor and forward to the appropriate Design Engineer for review and response. RFIs for divisions 0 & 1 will be addressed by the CM and all design technical questions will be addressed by the Design team. Forward the RFI response to the Contractor. Develop and maintain a computerized log to track all RFI's, indicating subject of request, date of request, originator of request, person responsible for response, and date of response. Facilitate and expedite responses to the maximum extent possible, confirming that the appropriate party is resolving outstanding issues.

9. PROPOSED CHANGES TO THE WORK

Review all proposed changes to the work requested by the Contractor to ascertain the need and to check for cost-effectiveness. Prepare Requests for Proposal (RFP's) for City or Engineer-generated requests for changes. Lead change order negotiations with the Contractor to evaluate the requested cost and/or time extensions. Prepare change orders and make recommendations to the City regarding acceptance of change orders. Maintain a computerized log to track the status of potential and executed change orders.

10. MATERIAL TESTING

Coordinate material testing requirements with the Contractor and the City's material testing consultant. Review material test results and address any issues with the Contractor.

11. COORDINATION

Coordinate construction activities with the City, Design Engineers, environmental mitigation consultants, the San Joaquin County Public Works encroachment permit inspection staff, State water board, local irrigation districts, land owners and other agencies. Assist the City in maintaining good relationships with residents, churches, farmers, and commercial businesses in the project area. Attending community meetings is excluded from this scope of work.

12. PROJECT FILES AND RECORDS

Maintain a current set of project correspondence, job files, change order documentation, approved shop drawings, contract documents, erosion control inspection reports, and other records required by the specifications. Files and records may be hard copy or electronic. Develop and maintain a document tracking system to facilitate retrieval and archival needs. Transmit all files to the City upon completion of the project.

13. OPERATIONAL TESTING AND START-UP

Review the Start-up Plan prepared by the Contractor and verify the roles and responsibilities during project start-up. Review the Contractor's proposed procedures for operational testing and start-up of the new facilities and equipment. Verify that tests and equipment and systems startups are conducted in the presence of appropriate personnel, and that the Contractor maintains adequate records of the testing. Attend operation checkouts and start-up testing of each major equipment item or system. Coordinate start-up/testing schedule with the City.

14. INTERIM AND FINAL INSPECTIONS

Perform an inspection of the Work in conjunction with the City prior to substantial completion. Prepare and distribute a punch list of observed deficiencies and/or incomplete items and provide follow-up inspections of punch list items to confirm satisfactory completion by Contractor. Perform a final inspection of the Work in conjunction with the City to confirm that all items are complete.

15. CERTIFIED PAYROLLS

Provide certified payrolls and associated documentation to comply with the Labor Code Section 1720.

16. OPERATIONS TRAINING

Conduct a planning meeting with the Contractor and the City to discuss the required procedures for vendor training sessions, including lesson plan requirements, scheduling restrictions, audiovisual needs, and other related issues. Coordinate the specified vendor training with the Contractor and City staff. Maintain a record of the duration of each session for comparison to the specified requirements.

17. RECORD DRAWINGS

Review the record drawings compiled by the Contractor on a regular, periodic basis (at least monthly) during the life of the project. Review the final record drawing information submitted by the Contractor and supplement with any additional information gathered during inspection activities. Forward the record drawings to the Design Engineer for developing final as-built contract documents for the City.

Time of Performance:

Start – September 2019

End – 33 months after start

EXHIBIT B - Compensation

Jacobs Construction Management Services I					
City of Tracy - Effluent Outfall Pipeline					
Description	2019	2020	2021	Total	
	Bill Rate	Bill Rate	Bill Rate	Hours	Cost
	\$ / Hour	\$ / Hour	\$ / Hour		
Construction Management					
Construction Manager	\$ 216.00	\$ 223.00	\$ 229.00	2040	\$456,590
Tunnel/Outfall RE	\$ 170.00	\$ 175.00	\$ 180.00	720	\$127,200
Civil/Pipeline/Struct. Insp	\$ 152.00	\$ 156.00	\$ 160.00	3200	\$501,760
Pipeline/Mechanical Inspector	\$ 154.00	\$ 158.00	\$ 162.00	261	\$42,118
Electrical/I&C Inspector	\$ 150.00	\$ 155.00	\$ 160.00	340	\$54,000
Subtotal				6561	\$1,181,668
Pre Construction					
Construction Manager	\$ 216.00			120	\$25,920
PIC	\$ 315.00			40	\$12,600
Project Engineer	\$ 120.00			120	\$14,400
Technical Advisor	\$ 240.00			20	\$4,800
Safety Manager	\$ 152.00			4	\$608
Scheduler/Cost Estimator	\$ 152.00			12	\$1,824
Subtotal				316	\$60,152
Contract Administration					
PIC	\$ 315.00	\$ 324.00	\$ 335.00	306	\$99,568
Project Engineer	\$ 120.00	\$ 124.00	\$ 128.00	2071	\$258,848
Technical Advisor	\$ 240.00	\$ 247.00	\$ 254.00	63	\$15,610
Safety Manager	\$ 152.00	\$ 157.00	\$ 162.00	40	\$6,330
Scheduler/Cost Estimator	\$ 152.00	\$ 157.00	\$ 162.00	120	\$18,960
Subtotal				2600	\$399,316
Post Construction					
Construction Manager			\$ 229.00	100	\$22,900
PIC			\$ 335.00	24	\$8,040
Project Engineer			\$ 128.00	80	\$10,240
Civil/Pipeline/Struct. Insp			\$ 160.00	81	\$12,960
I&C / Commissioning			\$ 160.00	20	\$3,200
Technical Advisor			\$ 254.00	6	\$1,524
Subtotal				311	\$58,864
Total Fee				9788	\$1,700,000
Notes:					
1. This does not include overtime and Direct expenses are included in the billing rates.					
2. Costs are based on a 33-month project duration.					
3. Construction contractor will provide CM office space.					
4. For positions not shown on the table above, bill rate will be raw salary X 2.50.					

RESOLUTION 2019-_____

REJECTING THE BID PROTEST FILED BY MOUNTAIN CASCADE INC., AWARDING A CONSTRUCTION CONTRACT TO MOZINGO CONSTRUCTION INC., OF OAKDALE, CALIFORNIA FOR THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT (CIP 74083) , AND APPROVING A CONTINGENCY AMOUNT FOR THE PROJECT

WHEREAS, The Wastewater Effluent Outfall Pipeline Project involves installation of a 42-inch diameter wastewater effluent pipeline from the existing WWTP to the Old River, and

WHEREAS, The Project was advertised for competitive bids on October 12 and October 19, 2018, and

WHEREAS, Six bids were received and publicly opened on May 15, 2019, and

WHEREAS, Mozingo Construction Inc., is the lowest monetary responsible bidder. The contractor has good references and has completed similar projects for the City and other public agencies, and

WHEREAS, A bid protest was filed by Mountain Cascade Inc. (MCI), on the basis that the bid proposal submitted by Mozingo Construction did not list the references of comparable work within the last three years and that Mozingo's bid selected a pipe material that was allegedly not available at bid time, and

WHEREAS, An administrative hearing for MCI's bid protest was held on August 22, 2019 before a hearing officer (Deidre Joan Cox, a partner with the law firm of Burke, Williams, & Sorensen LLP), and

WHEREAS, The hearing officer rejected MCI's bid protest on the grounds MCI did not provide adequate evidence to demonstrate that Mozingo's bid was non-responsive or non-responsible pursuant state law, and

WHEREAS, Staff has reviewed the bid protest and also recommends that Council reject the protest and find that Mozingo Constructions is the lowest responsive and responsible bidder, and

WHEREAS, Due to the involvement with various regulatory agencies, multiple permits and constraints to work in various segments only during certain months of the year, the Project will be completed in three years, and

WHEREAS, Due to the financial size and scope of this Project the City intends to issue wastewater bonds to pay for the costs of acquisition and construction of CIP 74083, and

WHEREAS, Due to complexity of the project and requirements from the several Federal, State, and local regulatory agencies; it is recommended that an 11.5% contingency amount be approved for this Project;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby rejects the bid protest filed by Mountain Cascade inc., awards a construction contract to

Mozingo Construction Inc., of Oakdale, California, in the amount of \$25,920,000, and approves a contingency amount of \$3,000,000.

* * * * *

The foregoing Resolution 2019-_____ was adopted by Tracy City Council on the 3rd day of September, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

RESOLUTION 2019-_____

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CH2M HILL INC., TO PROVIDE DESIGN SUPPORT SERVICES DURING CONSTRUCTION OF THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT, CIP 74083

WHEREAS, The Wastewater Effluent Outfall Pipeline Project involves installation of a 42-inch diameter wastewater effluent pipeline from the existing WWTP to the Old River, and

WHEREAS, Due to the complexity of the work and changing compliance requirements, design support services are needed to complete the Project, and

WHEREAS, The design consultant was selected through the qualification based RFP process, and

WHEREAS, These services include responding to requests for information (RFI) from the contractor, submittal reviews, review of change order requests and providing any technical support needed to the construction management consultant, and

WHEREAS, Design support services were not part of the original agreement, since timing of the Project construction was uncertain at that time, and

WHEREAS, Due to the financial size and scope of this Project the City intends to issue wastewater bonds to pay for the costs of acquisition and construction of CIP 74083;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a Professional Services Agreement with CH2M Hill, Inc., to provide Design Support in the amount of \$1,898,000, during construction of the Wastewater Effluent Outfall Pipeline Project, CIP 74083.

* * * * *

The foregoing Resolution 2019-_____ was adopted by Tracy City Council on the 3rd day of September, 2019, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

RESOLUTION 2019-_____

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH JACOBS PROJECT MANAGEMENT COMPANY, A TEXAS CORPORATION TO PROVIDE CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE WASTEWATER EFFLUENT OUTFALL PIPELINE PROJECT, CIP 74083

WHEREAS, The Wastewater Effluent Outfall Pipeline Project involves installation of a 42-inch diameter wastewater effluent pipeline from the existing WWTP to the Old River, and

WHEREAS, This Project involves extensive construction management, inspection, and day-to-day coordination with operating staff to ensure smooth functioning of both the Project construction and the operations of the WWTP, and

WHEREAS, The pipeline alignment passes through several State of California, Federal, and State water bodies, and

WHEREAS, The work requires micro tunneling operations, coffer dam and sheet piles to meet stringent requirements, and

WHEREAS, Services of an experienced consultant are needed to provide inspection and construction management services during construction of this Project, and

WHEREAS, A Request for Proposals (RFP) was sent to various consultants and posted on the City's website on October 24, 2018, and

WHEREAS, A total of four proposals were received on November 15, 2018, and

WHEREAS, The proposals were reviewed and evaluated on a qualification based selection process, and

WHEREAS, Jacobs was found to be a well-qualified firm to provide construction management and inspection services for this Project, and

WHEREAS, Due to the financial size and scope of this Project the City intends to issue wastewater bonds to pay for the costs of acquisition and construction of CIP 74083;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a Professional Services Agreement with Jacobs Project Management Company, a Texas Corporation to provide Construction Management and Inspection Services in the amount of \$1,700,000, for the Wastewater Effluent Outfall Pipeline Project, CIP 74083.

The foregoing Resolution 2019-_____ was adopted by Tracy City Council on the 3rd day of September, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

RESOLUTION 2019-__

A RESOLUTION DECLARING INTENTION TO REIMBURSE
EXPENDITURES FROM THE PROCEEDS OF OBLIGATIONS
TO BE ISSUED BY THE CITY AND DIRECTING CERTAIN ACTIONS

RESOLVED, by the City Council (the "Council") of the City of Tracy (the "City"), State of California that:

WHEREAS, the City proposes to undertake the project referenced below, to issue debt for such project and to use a portion of the proceeds of such debt to reimburse expenditures made for the project prior to the issuance of the debt, and

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure, and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse the expenditures referenced herein.

NOW THEREFORE BE IT RESOLVED as follows:

1. The City intends to issue obligations (the "Obligations") for the purpose of paying the costs of acquisition and construction of the Tracy Wastewater Treatment Plant Effluent Outfall Pipeline Improvements CIP 74083 (the "Project").
2. The City hereby declares that it reasonably expects (i) to pay certain costs of the Project prior to the date of issuance of the Obligations and (ii) to use a portion of the proceeds of the Obligations for reimbursement of expenditures for the Project that are paid before the date of issuance of the Obligations.
3. The maximum principal amount of the Obligations is \$25,000,000.

* * * * *

The foregoing Resolution 2019-_____ was adopted by the Tracy City Council on the 3rd day of September, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 3.A

REQUEST

CONDUCT A PUBLIC HEARING TO AUTHORIZE THE ACCEPTANCE OF \$11,665 FROM THE 2019 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, AND COUNSELING TO LAW ENFORCEMENT OFFICERS AND APPROVE THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 19/20

EXECUTIVE SUMMARY

The City of Tracy has been awarded \$11,655 from the Federal Justice Assistance Grant (JAG) Program for funding health and wellness related training, services, and counseling to law enforcement officers. This report recommends that the City of Tracy accept the grant and authorize an appropriation of \$11,655 to the Police Department budget for FY 19/20.

DISCUSSION

The Edward Byrne Justice Assistance Grant (JAG) Program (42 U.S.C. 3751(a)) is the primary provider of Federal criminal justice funding to State and local jurisdictions. JAG funds support all components of the criminal justice system by improving the effectiveness and efficiency of criminal justice systems, processes and procedures.

Agencies are allowed to use this grant to support Officer Safety and Wellness to assist with keeping officers physically and mentally well in order to perform, survive, and be resilient in the face of the demanding duties of the profession. The Tracy Police Department has determined the most appropriate use of this grant is to acquire professional services to provide officers with advanced health and wellness training including Basic Group Crisis Intervention, Individual Crisis Intervention, professional services for critical incident debriefings, onsite support, and individual crisis intervention counseling services. In addition, 32 hours of on-site training will be provided to the Tracy Police Department's Peer Support Team. The Peer Support Team is an internal team comprised of members of the organization, sworn and non-sworn, who provide on-going support and intervention to all members of the department in times of need.

In addition, per the requirements set forth by the JAG program, 3% of the award will be set aside and dedicated to the department achieving National Incident Based Reporting System compliance by 2021. Currently, Tracy Police Department reports crime statistics to the FBI using the Uniform Crime Reporting (UCR) reporting system; however by 2021 all agencies must comply and transition to the National Incident Based Reporting System (NIBRS).

Proposed JAG Grant Expenses	
Officer Safety, Health, and Wellness Training and Services	Cost
Professional health and wellness training, services and counseling to include, critical incident stress debriefings, crisis management briefings, on-site response, crisis intervention, peer support training, and individual crisis intervention counseling services.	\$11,315
JAG Grant requirement – 3% set aside for NIBRS compliance.	\$350
Total	\$11,665

STRATEGIC PLAN

This agenda item does relate to the Council's Strategic Plan in the area of Safety.

FISCAL IMPACT

The City of Tracy will receive \$11,665 from the 2019 Federal JAG Program. There is no negative impact to the current fiscal budget as no City match is required. Accepting this grant funding requires the funds to be appropriated from the Federal JAG Program and \$11,665 added to the Police Department's Operating Budget.

RECOMMENDATION

That City Council conduct a public hearing, and adopt a resolution to authorize the acceptance of the 2019 Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$11,655 for funding health and wellness related training, services, and counseling to law enforcement officers and approve the appropriation of \$11,655 to the Police Department's Operating Budget for FY 19/20.

Prepared by: Beth Lyons, Support Operations Division Manager

Reviewed by: Alex Neicu, Interim Chief of Police
Karin Schnaider, Finance Director

Approved by: Jenny Haruyama, City Manager

RESOLUTION _____

AUTHORIZING THE ACCEPTANCE OF \$11,665 FROM THE 2019 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FUNDING HEALTH AND WELLNESS RELATED TRAINING, SERVICES, AND COUNSELING TO LAW ENFORCEMENT OFFICERS AND APPROVING THE APPROPRIATION TO THE POLICE DEPARTMENT BUDGET FOR FISCAL YEAR 19/20

WHEREAS, The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance coordinates the annual Edward Byrne Justice Assistance Grant (JAG) Program that makes available federal public safety funds to local jurisdictions, and

WHEREAS, The City of Tracy is eligible to receive \$11,655 for calendar year 2019 under a pre-designated grant formula, and

WHEREAS, The Tracy Police Department intends to use the appropriation of \$11,655 to acquire professional services to provide officers with advanced health and wellness training and set aside 3% of awarded funds dedicated to achieving National Incident Based Reporting System compliance, and

WHEREAS, City Council held the required public hearing, during a regularly scheduled meeting on September 3, 2019 and provided the public an opportunity to comment;

NOW THEREFORE BE IT RESOLVED, That the City Council of the City of Tracy hereby accepts the \$11,665 grant award from the 2019 Edward Byrne Memorial Justice Assistance Grant (JAG) Program for the funding of health and wellness related training, services, and counseling to law enforcement officers and authorizes the appropriation of \$11,655 to the Police Department budget for fiscal year 19/20.

* * * * *

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the 3rd day of September, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

AGENDA ITEM 3.B

REQUEST

**DISCUSS THE CITY'S SIGN REGULATIONS RELATED TO ELECTRONIC
READERBOARDS/DIGITAL BILLBOARDS AND PROVIDE DIRECTION TO STAFF**

EXECUTIVE SUMMARY

The City has received an inquiry related to locating an electronic readerboard sign at Northgate Village. Such a sign type, with changeable copy, is currently prohibited (except on the property of private schools). This inquiry raises several policy issues for City Council consideration. This agenda item allows for a policy discussion about whether such a sign type should be permitted in Tracy.

DISCUSSION

The City's sign code (Tracy Municipal Code Section 10.08.4430 et.- seq.) regulates the location, size, and type of signs allowed throughout the City. Periodically, the sign ordinance is amended by City Council in response to requests, usually related to increasing allowable sign sizes or sign types. Tracy Municipal Code (TMC) Section 10.08.4510(i) prohibits any sign that "flashes, blinks, moves, changes color, appears to change color, changes intensity, or contains any part of an attachment which does the same..." with few exceptions. The City Council has evaluated these sign types in the past and allowed a narrow exception to the prohibition on this sign type, described below.

In 2011, the City Council discussed electronic readerboard signs (also known as digital billboards) in response to requests from Tracy's auto dealers and the then "Tracy Blast" (also formerly called "Spirit of California") proponents. The proponents requested an electronic readerboard sign along the freeway. At that time, the City Council chose not to amend the TMC to allow electronic readerboard signs in Tracy along the freeway.

In 2012, several private schools requested that the City allow the use of electronic readerboard signs on their properties. This was, in part, due to the fact that public schools often use electronic readerboard signs; their use at public schools is allowed because public schools are exempt from City zoning (including signage) regulations when the signs are used for educational purposes. In response, the City Council enacted an ordinance providing a narrow exception for private schools that meet certain site characteristics to erect electronic readerboard signs upon issuance of a conditional use permit, to provide parity on sign types between certain private schools and public schools.

Purpose of Sign Codes

Signs are intended to identify businesses and direct people to goods and services. They can also be important in promoting businesses through name recognition. Section 10.08.4430 of the TMC describes the purpose of signs in Tracy, and states the following:

“Signs have an obvious impact on the character and quality of the City. As a prominent part of the scenery they attract or repel the viewing public, affect the safety of vehicular traffic, and their suitability or appropriateness help to set the tone of the neighborhood. In view of these facts, the City adopts the policy that the sign should serve primarily to identify the general nature of an establishment or to direct attention to a product, activity, place, person, organization, or enterprise. As identification devices, signs shall not subject the citizens of the City to excessive competition for their visual attention.”

Electronic Readerboard / Digital Billboards Sign Request

The owners of the Northgate Village shopping center (former Outlet Mall) have expressed interest in placing an electronic readerboard/digital billboard on the shopping center property. The proposed electronic readerboard sign would either be a re-facing of the existing freeway sign or a new sign. The sign proponents have stated that they intend only to advertise tenants of Northgate Village shopping center. Limitations on the City’s ability to regulate the content (i.e messages) are discussed below.

Electronic readerboard signs are lighted billboard displays with changing text and images. With these signs becoming more common, there have been numerous discussions statewide on these signs and the potential safety hazards and aesthetic impacts they can present. Many cities do not allow LED or digital display signs; others do. Some cities prohibit them along freeways or highly traveled roads because of traffic safety concerns, aesthetic concerns, or concerns about the appropriateness in maintaining community character. Other cities view them as an integral part of business friendliness, and therefore permit them.

These signs when utilized for both on-site and off-site advertising can be highly desirable to property owners. On-site signs direct attention to a business, commodity, or other activity which is sold, offered, or conducted on the premises upon which the sign is located. Off-site signs direct attention to a business, commodity, or other activity that is sold, offered, or otherwise conducted elsewhere than on the premises upon which the sign is located. Electronic readerboards often serve both functions and are utilized to advertise on-site business or activity, and also provide an additional source of income for the property owner in the form of rents paid by off-site interests to advertise on the signs. The City’s Sign code generally prohibits off-site signs unless an exception applies.

Any potential sign regulations must comply with the First Amendment requirements including the prohibition against regulating signs based on their content (i.e. content-based regulations). Permissible content-neutral sign regulations include restrictions on size, building materials, lighting, moving parts, portability, and location, and distinctions between on-site and off-site advertising. Restrictions imposed on different categories of signs based on the topic discussed or the idea or message expressed are subject to legal challenge and place a high burden on governments to show that such restrictions are narrowly tailored to meet a compelling governmental interest. However, sign ordinances that prohibit off-site advertising (commercial speech) have been viewed by the courts as content-neutral and found to be valid. In contrast, restrictions on non-commercial speech (such as political, ideological, or religious messages) are typically

considered to be content-based regulations. These regulations are thus subject to higher scrutiny by the courts and are often invalidated.

The California Department of Transportation (Caltrans) regulates the location of these signs by placing limits on their proximity to one another and the freeways and other State roadways they abut. These regulations are in addition to any regulations (if any) that jurisdictions throughout California may impose through local sign ordinances.

Absent clear locational requirements, it is possible that one or more of these signs could be located on City-owned property, should they become a permitted sign type. Some nearby areas that have a number of electronic readerboard signs include the I-880 corridor through Fremont, Newark, Union City and Hayward, and the Sacramento and Roseville area along Interstates 5 and 80.

The City's sign ordinance currently prohibits these signs through several provisions in the sign code, as follows, all of which would have to be amended to permit this sign type:

1. No off-site advertising is allowed in Tracy. TMC Section 10.08.4450(c) states, "All signs, except those stated by this article, shall be erected upon the premises occupied by the person or business sought to be identified by such sign." Exceptions include: residential subdivision flag signs, real estate open house signs for directional purposes, off-site kiosk directional subdivision sign, and off-site downtown directional sign, and the two "grandfathered" in billboards.
2. Billboards are not allowed within the City limits.
3. Any signs that "flashes, blinks, moves, changes color, appears to change color, changes intensity, or contains any part of an attachment which does the same (except barber pole signs and time and temperature signs, and readerboards on school sites, mentioned above)" is prohibited.

Policy Considerations

In order to proceed with the requests in a coordinated manner, policy consideration is necessary.

By permitting a sign type that is capable of changing messages, awareness of the content of possible messages is important. With electronic readerboards there is potential that the owner of the sign would be faced with interested parties desiring to participate in the marketplace for message space created by such a sign(s) and as stated above, the First Amendment limits the City's ability to regulate the content of those messages.

Policy Questions

In order to proceed, staff is seeking policy direction on the following questions:

1. Should the City's sign regulations be amended to allow electronic readerboards/electronic billboards as a sign type?

2. If City Council desires to have this type of sign,
 - a) Are there limits to where these signs should be permitted, e.g. solely along freeway?
 - b) What restrictions or regulations should be adopted, e.g. height limitations, size restrictions, distance between signs, off-site advertising?
 - c) Should the City limit the number of these signs?

FISCAL IMPACT

Amending the sign ordinance to permit electronic readerboard / electronic billboard signage could require an additional series of discussions with City Council to arrive at desired sign regulations.

Should the City own and operate the sign, the City could generate lease revenues for the General Fund. In addition, some cities have annual permit fees for privately owned/operated readerboards.

STRATEGIC PLAN

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

RECOMMENDATIONS

Staff recommends that the City Council discuss sign regulations regarding electronic readerboards/digital billboards and provide direction to staff.

Prepared by: Bill Dean, Assistant Director of Development Services

Reviewed by: Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

AGENDA ITEM 3.C

REQUEST

DISCUSS PROJECT LABOR AGREEMENTS FOR CITY CONSTRUCTION PROJECTS AND PROVIDE DIRECTION TO STAFF

EXECUTIVE SUMMARY

Various Council members have requested information about Project Labor Agreements (PLAs) and local preference hiring on City construction projects (i.e. capital improvement projects). This item provides Council with background information about PLAs and requests Council direction on next steps including desired outcomes, additional further analysis, and engaging potential stakeholders.

DISCUSSION

Background

A Project Labor Agreement (PLA) is a pre-hire labor agreement between one or more construction unions and public or private entities that establish terms and conditions of employment for a specific construction project, such as wage rates and benefits. PLAs are typically project-specific, however, "Master PLAs" that apply to a category of publicly funded construction projects that meet specified criteria such as bid thresholds are also common. PLAs are also known as "Project Stabilization Agreements" or "Community Workforce and Training Agreements."

Various public entities throughout the country, including in California, have entered into Master PLAs. (Attachment A- Sample Agreements). These public entities include a requirement in their project bid specifications that contractors or subcontractors awarded a construction contract must agree to be bound to the terms of a PLA for the duration of the project. PLAs typically contain provisions prohibiting work stoppages, picketing, or lockouts; holiday schedules; recognizing a union(s) as an exclusive collective bargaining agent for workers; requiring payment of union dues; establishing a dispute resolution process; and setting targeted or preferred hiring goals such as local resident or veterans hiring; and apprenticeships programs.

Trade unions and workforce development advocates support the increased use of PLAs on publicly funded construction projects because these agreements further their policy goals. Public entities who enter into these agreements often cite their benefits, which can include, having performance objectives met on complex projects; timely project completion due to lack of work disruptions or delays; and meeting local hiring goals. Critics of PLAs argue that they stifle competition, lead to increased construction costs and fail to achieve their targeted hiring goals.

Legal Considerations

As a general law city, the City of Tracy is subject to various state law requirements for “public works projects” or construction projects. Under the Public Contract Code, contracts for construction projects with expenditures of \$5,000 or more must be competitively bid and awarded to the lowest responsible bidder. Under the Labor Code, public works projects with expenditures over \$1,000 must pay prevailing wages and comply with various payroll reporting, apprenticeship, and other requirements.

Federal law specifically authorizes the use of PLAs in the construction industry. California case law has established that PLAs do not violate state laws regarding public bidding. However, those cases dealt with project-specific PLAs and Master PLAs have not been subject to a legal challenge so it is unclear whether they would withstand judicial review. Senate Bill 922, enacted in 2011 and codified as Chapter 2.8 of the Public Contract Code, authorizes public entities to enter into PLAs only if certain taxpayer protection provisions are included, such as non-discrimination requirements, agreed-upon protocols for drug-testing workers, and the use of neutral arbitration to resolve disputes (Attachment B).

As the City Attorney’s Office has previously advised, the U.S. Constitution and California Constitution constrain the City’s ability to adopt policies that mandate a contractor or business hire local residents or certain subset of the population. Because of these legal limitations, local preference hiring policies typically require that contractors or businesses exercise good faith efforts in recruiting and employing targeted populations and therefore are not considered mandates. (See Pages 15 and 37 of Attachment A)

Policy Considerations and Next Steps

If Council directs the development of a PLA, Council should consider providing direction regarding the following items:

- Eligibility criteria (e.g. bid threshold)
- Scope of targeted hiring
- Term of agreement (e.g. pilot project)
- Accountability measures
- Cost-benefit analysis, including fiscal impact on project budgets

Prior to the development of a PLA, staff will also need to reach out to key stakeholders, including local trade unions, trade councils, and contractors. It is anticipated that a draft agreement could be presented to Council for consideration in December 2019.

STRATEGIC PLAN

This agenda item is consistent with the City’s economic development strategy to enhance the competitiveness of the City while further developing a strong and diverse economic base.

FISCAL IMPACT

Staff time and any consultant or outside counsel assistance will be incorporated into existing operational budgets for the City Manager's Office, Development Services Department, and City Attorney's Office.

RECOMMENDATION

That City Council discuss project labor agreements for City construction projects and provide direction to staff.

Prepared by: Jenny Haruyama, City Manager
Leticia Ramirez, Interim City Attorney

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Director of Development Services
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

- A – Sample Agreements
- B – Public Contract Code Section 2500

COMMUNITY WORKFORCE AND TRAINING AGREEMENT FOR THE CITY OF STOCKTON

INTRODUCTION/FINDINGS

The purpose of this Agreement is to promote efficiency of construction operations performed for and within the City of Stockton and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects subject to this Agreement, and to support the efforts of the City to increase employment opportunities for workers who reside in Stockton, to help increase training and employment opportunities for the City's students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the City's schools.

WHEREAS, the City adopts a five-year Capital Improvement Plan that identifies the public projects necessary to maintain and improve the physical properties of the City, including buildings, parks, entertainment venues, golf courses, utility systems, the transportation system and other facilities; and

WHEREAS, the City undertakes and anticipates undertaking many of the projects identified in the current and proposed Capital Improvement Plan and other City public works projects that involve significant construction costs in excess of threshold set forth in this Agreement; and

WHEREAS, the City Council has determined that the successful and cost-effective completion of these Capital Improvement Plan projects and other major City public works projects is of the utmost importance to the City and its taxpayers and the residents it serves; and

WHEREAS, the City has determined that applying the same Agreement to the Capital Improvement Plan and other public works construction projects that exceed the threshold set forth in this Agreement during the term of this Agreement will provide efficiencies for the City and its contractors; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those workers represented by Unions affiliated with the San Joaquin Building and Construction Trades Council ("the Council") and employed by contractors and subcontractors who are signatory to agreements with said labor organizations; and

WHEREAS, it is recognized that projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

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WHEREAS, the interests of the general public, the City and the Contractor(s)/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption due to labor disputes; and

WHEREAS, the Contractor(s)/Employer(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the construction projects subject to this Agreement in order to promote a satisfactory, continuous and harmonious relationship among the parties to this Agreement; and

WHEREAS, unemployment rates in Stockton have been consistently higher than in California as a whole and statistics indicate that the higher unemployment level in Stockton correlates to a higher number of families living in poverty and to a higher crime rate; and

WHEREAS, due to the lack of jobs, much of the work force residing in Stockton is forced to commute long distances to find work, causing increased traffic, increased pollution, and other serious environmental impacts; and

WHEREAS, because of the shortage of local jobs, many residents of Stockton must leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the day; and

WHEREAS, absentee parents and unsupervised youth can result in increased problems for families, communities, and the City as a whole; and

WHEREAS, the contracts for the construction of the projects will be awarded in accordance with the applicable provisions of the California State Public Contract Code and state, local and federal laws and regulations; and

WHEREAS, the City has the absolute right to select the lowest responsive and responsible bidder for the award of construction contracts on the projects; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory completion of the Capital Improvement Plan projects and other major City public works projects that will be subject to this Agreement; and

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I
DEFINITIONS

- 1.1 "Agreement" means this Community Workforce and Training Agreement.
- 1.2 "City" means the City of Stockton and its public employees, including managerial personnel.

1.3 "Contractor(s)/Employer(s)" or "Contractor" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise and has entered into a contract with the City or Project Manager or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Project under contract terms and conditions approved by the City and which incorporate this Agreement.

1.4 "Construction Contract" means a contract awarded by the City for public work within the meaning of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.

1.5 "Project" means any construction project of the City whose value as determined by the higher of the engineer's estimate of the total cost of the project or the actual cumulative bid amounts submitted by the contractor or contractors awarded the Construction Contracts for the Project, exceeds one million dollars (\$1,000,000). By mutual consent of the City and the Council, this threshold amount may be reduced to an amount not below two hundred and fifty thousand dollars (\$250,000) after one year from the effective date of this Agreement.

1.6 "Union" or "Unions" means the San Joaquin Building and Construction Trades Council, AFL-CIO ("the Council") and any other labor organization, including those affiliated with the Council, signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organization whose names are subscribed hereto and who have through their officers executed this Agreement ("Local Unions").

1.7 "Stockton Resident" means a resident of the City of Stockton as defined by Stockton Municipal Code Section 3.68.095(I)(3).

1.8 "Local Area Resident" means any Stockton Resident or any individual domiciled within the boundaries of San Joaquin County according to the criteria set forth in Stockton Municipal Code Section 3.68.095(I)(3) for Stockton Residents.

1.9 "Project Manager" means the business entity or City employee designated by the City to oversee all phases of construction on the Project.

1.10 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft union signatory hereto, which shall be on file with the City.

1.11 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. "Punch List" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Project may be completed in phases and Completion of any such phase may occur prior to Completion of the Project.

ARTICLE II
SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply and is limited to the City and all Contractor(s)/Employer(s) performing construction contracts on the Project, including surveying and on-site testing and inspection where such work is traditionally covered by a Master Agreement with a Union, and the Council and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 Project Description: The Agreement shall govern the award of all Construction Contracts identified by the City as part of the Project. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Project. Should the City suspend or remove any individual contract from the Project and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.11 of this Agreement.

2.3 Covered Work: This Agreement covers, without limitation, all site preparation, surveying, on-site construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures, modular furniture installations, and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and that is part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, on-site soils and material inspection and testing, and demolition of any existing structures required to be performed to complete the Project. This Agreement shall apply to any start-up, calibration, commissioning, performance testing repair, and operational revisions to systems and/or subsystems for the Project performed after completion, unless it is performed by City employees. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This Agreement covers all onsite fabrication work over which the City or any Contractor(s)/Employer(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.) This Agreement also covers all off-site work, including fabrication traditionally performed by the Unions, that is part of the Project, provided such off-site work is covered by a current "Master Agreement" or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement. The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be considered Covered Work; however, the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud shall be covered by the terms and conditions of this Agreement. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of a written request or as required by bid specifications.

2.4 Exclusions from Covered Work

2.4.1 The Agreement shall be limited to construction work on the Project and is not intended to, and shall not affect or govern the award of public works contracts by the City which are not a part of the Project.

2.4.2 The Agreement shall not apply to a Contractor's/Employer's non-construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Agreements), staff engineers or other professional engineers, administrative and management personnel.

2.4.3 This Agreement shall not apply to work by employees of the City.

2.4.4 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, City or other governmental bodies or their contractors; or by public or private utilities or their contractors that is not part of the Project.

2.4.5 This Agreement shall not apply to the Project where the Agreement is prohibited by state or federal law or where the express conditions for the receipt of non-de minimis state or federal funding prohibit the City from applying this Agreement to the Project.

2.5 Project Labor Disputes: All Project labor disputes involving the application or interpretation of the Master Agreement to which a signatory Contractor(s)/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement shall be subject to resolution by the Grievance Committee and the Grievance and Arbitration Procedure set forth in Article XII.

2.6 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge ("NTL") Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XII, XIII of this Agreement shall apply to such work.

2.7 Award of Contracts. It is understood and agreed that the City has the absolute right to select any qualified bidder for the award of contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement.

ARTICLE III
EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 This Agreement shall be included as a condition of the award of Construction Contracts for the Project. By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, the Contractor(s)/Employer(s) agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.3 At the time that any Contractor(s)/Employer(s) enters into a subcontract with any subcontractor providing for the performance of a Construction Contract, the Contractor(s)/Employer(s) shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing, to be bound by each and every provision of this Agreement prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.4 This Agreement shall only be binding on the signatory parties hereto, their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between the Union(s) and the Contractor(s) respecting compliance with the terms of the Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Master Agreements of the Local Unions having jurisdiction over the work on the Project, incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Master Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Master Agreement shall prevail.

ARTICLE IV
WORK STOPPAGES, STRIKES, SYMPATHY
STRIKES AND LOCKOUTS

4.1 The Unions, City and Contractor(s)/Employer(s) agree that for the duration of the Project:

(1) There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Nor shall the Unions or any employees employed on the Project participate in any strikes, sympathy strikes, work stoppages, picketing, hand billing, slowdowns, or otherwise advising the public that a labor dispute exists at the jobsite of the Project because of a dispute between Unions and Contractor(s)/Employer(s) on any other project. It shall not be considered a violation of this Article if labor is withheld by a Union due to lack of payments to a Trust Fund or failure to make payroll on the Project. Nothing stated in this Agreement shall prevent Unions from participating in the actions mentioned in this section on jobsites other than the Project jobsite because of disputes between the Unions and Contractor(s)/Employer(s) on projects other than the Project.

(2) As to employees employed on the Project, there shall be no lockout of any kind by a Contractor(s)/Employer(s) covered by the Agreement.

(3) If a Master Agreement between a Contractor(s)/Employer(s) and the Union expires before the Contractor(s)/Employer(s) completes the performance of a Construction Contract for work covered under this Agreement and the Union or Contractor(s)/Employer(s) gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike the Contractor(s)/Employer(s) on said contract for work covered under this Agreement and the Union and the Contractor(s)/Employer(s) agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached between the Union and Contractor(s)/Employer(s). If the new or modified Master Agreement reached between the Union and Contractor(s)/Employer(s) provides that any terms of the Master Agreement shall be retroactive, the Contractor(s)/Employer(s) agrees to comply with any retroactive terms of the new or modified Master Agreement which is applicable to employees employed on the Project within seven (7) days after the effective date of the new or modified Master Agreement.

4.1.1. Notification: If the City contends that any Union has violated this Article, it will notify in writing (including email) the Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Senior Executive of Council will immediately use his/her best efforts to cause the cessation of any violation of this Article. The Senior Executive of the Union will immediately inform the membership of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

(1) A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or, William Riker, as the alternate under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article XII. Notice to the arbitrator shall be

by the most expeditious means available, with notices by facsimile, electronic mail or telephone to the party alleged to be in violation, to the City, to the Council and to the involved Local Union if a Union is alleged to be in violation.

(2) Upon receipt of said notice, the City will contact the designated arbitrator named above or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

(3) The arbitrator shall notify the parties by facsimile or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(4) The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

(5) Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2 of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex-parte*. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

(6) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

(7) The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

ARTICLE V
PRE-CONSTRUCTION CONFERENCE

5.1 The Project Manager shall convene a pre-construction conference to be held at least fourteen (14) days prior to the commencement of each construction phase, at a time and location mutually agreeable to the Council. Such conference shall be attended by a representative each from the participating Contractor(s)/Employer(s) and Union(s) and the Project Manager.

5.2 Review Meetings: In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the City, the Unions, and the Contractors are addressed, the Project Manager, General Contractor and Senior Executive of the Council or designated representatives thereof shall meet on a periodic basis during the term of construction. The City and the Council shall have the right to call a meeting of the appropriate parties to ensure the terms of this Agreement are being fulfilled.

ARTICLE VI
NO DISCRIMINATION

6.1 The Contractor(s)/Employer(s) and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII
UNION SECURITY

7.1 The Contractor(s)/Employer(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees performing work covered by this Agreement shall, as a condition of employment on or before the eighth (8th) cumulative day of employment on the Project, be responsible for the payment of the applicable periodic working dues and fees uniformly required for union membership in the Local Union that is a signatory to this Agreement for the duration of his or her employment on the Project. Nothing in this Agreement is intended to prevent any non-union employees from joining the Local Union.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII
REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Local Unions ("Job Referral System"). Such Job Referral System shall be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require

equal employment opportunities and non-discrimination. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 The Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s)/Employer(s) for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor(s)/Employer(s), the Contractor(s)/Employer(s) shall be free to obtain work persons from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s)/Employer(s). Recognizing the special needs of the Project and the acute shortage of skilled craftspeople, the Unions shall consider a Contractor's request to transfer key employees to work on this Project in a manner consistent with the Union's referral procedures.

8.5 The parties to this Agreement support the development of increased numbers of skilled construction workers from the City of Stockton and San Joaquin County. To the extent allowed by law, and consistent with the Local Union's hiring hall provisions, and as long as they possess the requisite skills and qualifications, Local Area Residents, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

ARTICLE IX WAGES AND BENEFITS

9.1 All Contractors/Employers agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate Local Unions.

9.2 By signing this Agreement, the Contractor(s)/Employer(s) adopts and agrees to be bound by the written terms of the legally established Trust Agreements, as described in section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds established by such appropriate local agreements. The Contractor(s)/Employer(s) authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s)/Employer(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, copies of which shall be on file with the City to the extent such Master

Agreement is not inconsistent with this Agreement. All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales contained in the appropriate local agreements which have been negotiated by the historically recognized bargaining entity and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.

9.4 During the period of construction on this Project, the Contractor(s)/Employer(s) agrees to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining entity on the effective date as set forth in the applicable agreement. The Unions shall notify the Contractor(s)/Employer(s) in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.

9.5 Holidays: Holidays shall be in compliance with the applicable Schedule A agreement.

ARTICLE X
EMPLOYEE GRIEVANCE PROCEDURE

10.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

ARTICLE XI
COMPLIANCE

11.1 It shall be the responsibility of the Contractor(s)/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Employers on the Project. The City shall monitor and enforce compliance with the prevailing wage requirements of the state and Contractors'/Employers' compliance with this Agreement.

ARTICLE XII
GRIEVANCE ARBITRATION PROCEDURE

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or City on its own behalf, or on behalf of an employee whom it represents, or a contractor on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within five (5) days after becoming aware of the dispute but in no event more than thirty (30) days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in this Section 12.1 may be extended by mutual written agreement of the parties.

12.2 Grievances shall be settled according to the following procedures:

- Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or City, or his/her designee, or the representative of the employee, and the representative of the involved Contractor(s)/Employer(s) shall confer and attempt to resolve the grievance.
- Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after the meeting to resolve the dispute in Step 1, the International Union Representative and the Contractor(s)/Employer(s) involved shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. In the event that these representatives are unable to resolve the dispute after its referral to Step 2, either involved party may submit it within three (3) business days to the Grievance Committee, which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Grievance Committee), to confer in an attempt to resolve the grievance. The Grievance Committee shall be comprised of two (2) representatives of the City; and one (1) representative of the Project Manager, and three (3) representatives of the San Joaquin Building & Construction Trades Council. If the dispute is not resolved within such time (five (5) business days after its referral or such longer time as mutually agreed upon) it may be referred within five (5) business days by either party to Step 3.
- Step 3: If the grievance is not settled in Step 2 within five (5) business days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties are unable to agree on an arbitrator, an arbitrator shall be selected by the alternate striking method from the list of five (5) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. If any of the arbitrators listed below or in Article 4 is no longer working as a labor arbitrator at the time of selection, the City and the Council shall mutually agree to a replacement. In addition, the City and the Council may mutually agree to add additional arbitrators to those listed below.

1. William Riker
2. Barry Winogard
3. Thomas Angelo
4. Robert Hirsch
5. William Engler

12.3 The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator. The decision of the Arbitrator shall be

final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

12.4 The time limits specified in any step of the Grievance Procedure set forth in Section 12.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE XIII
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

13.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

13.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and City will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

**ARTICLE XIV MANAGEMENT
RIGHTS**

14.1 The Contractor(s)/Employer(s) shall retain full and, exclusive authority for the management of their operations, including the right to direct their workforce in their sole discretion. Except as provided by Section 2.3 and by the lawful manning provisions in the applicable Master Agreement, no rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees.

**ARTICLE XV
HELMETS TO HARDHATS**

15.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

15.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans and members of the National Guard and Reserves interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

15.3 Nothing in this Article shall be interpreted to preclude any Contractor(s)/Employer(s) that is not signatory to a Master Agreement to utilize an alternative plan or program for recruiting, training and facilitating construction industry employment opportunities for military veterans and members of the National Guard and Reserves. Before utilizing such alternative program on the Project, such Contractor(s)/Employer(s) shall provide the City with a description of such plan or program.

**ARTICLE XVI
DRUG & ALCOHOL TESTING**

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 The Parties agree to recognize and use the Substance Abuse Program contained in each applicable Union's Schedule A.

ARTICLE XVII
TERM SAVINGS CLAUSE

17.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or work in question.

17.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of its provisions and the City accordingly determines that the Agreement will not be required as part of an award to a Contractor(s)/Employer(s), the unions will no longer be bound by the provisions of Article IV.

ARTICLE XVIII
LOCAL HIRE, PRIORITY APPRENTICE AND WORKFORCE
DEVELOPMENT PROGRAM

18.1 The objective of the City in creating this Local Hire, Priority Apprentice and Workforce Development Program is to enhance and encourage employment opportunities for Stockton residents and to enable effective construction career pathways for Local Area Residents through California State approved Joint Apprenticeship Programs. To that end, as part of the Agreement, the City establishes goals for the hiring, training and retention of Local Area Residents.

18.2 Local Hire. The City establishes the following Local Hire goals and commitments:

18.2.1 The parties agree to make a good faith effort to refer on a priority basis, consistent with the non-discriminatory referral procedures of the applicable Union, qualified and available, Local Area Residents for Project work. The parties agree to a goal that Stockton residents shall perform a minimum of 50% of the hours worked on the Project by the Contractors' total construction workforce. In the event that a sufficient number of Stockton residents are not available to fulfill the 50% local hire requirement, the next tier of residents shall come from anywhere in San Joaquin County. The Contractor(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall exercise their best efforts in their recruiting and training of Stockton resident workers and in utilizing their hiring hall procedures to facilitate this 50% goal.

18.2.2 The parties also recognize and support the City's commitment to provide opportunities for participation on the Project to Stockton businesses through the City's Local Business Preference Ordinance. In furtherance of this commitment, the parties agree that such

Stockton contractors and subcontractors awarded work on the Project may request by name, and the Local Union will honor, referral of persons who have applied to the Local Union for Project work, and who demonstrate the following qualifications:

- (1) possess any license required by state or federal law for the Project work to be performed;
 - (2) have worked a total of at least two thousand (2,000) hours in the construction craft during the prior two (2) years;
 - (3) were on the Contractor's active payroll for at least ninety (90) out of the one hundred and twenty (120) calendar days prior to the contract award;
 - (4) have the ability to perform safely the basic functions of the applicable trade;
- and
- (5) are Stockton residents.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

18.2.3 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall and comply with Article VII before commencing Project work. If there is any question regarding an employee's eligibility under Section 18.2, the City, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

18.3 Priority Apprenticeship and Workforce Development

18.3.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor(s)/Employer(s) shall employ apprentices of a California State approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

18.3.2 The parties agree to a goal that 50% of apprentices employed on the Project shall be residents of the City of Stockton or other Local Area Residents. In achieving this goal, at-risk youth who reside in the following zip codes within the City of Stockton, shall be given priority in the apprenticeship recruitment process: 95202, 95203, 95204, 95205, and 95206. If sufficient numbers of Stockton residents are not available, then a good faith effort will be made by the Unions to utilize residents of San Joaquin County. All apprentices referred to Contractors under this

Agreement shall be enrolled in State of California approved Joint Apprenticeship Programs. Subject to any legal restrictions, the parties agree to a goal that apprentices will perform twenty percent (20%) of the total craft hours worked on the Project unless an applicable Master Agreement provides for a greater percentage. The Unions agree to cooperate with the Contractors in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with the provisions of the applicable Master Agreement.

18.3.3 The Contractors and Unions shall make good faith efforts to reach the apprenticeship goals set forth in this Section 18.3 through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs. The Unions are committed to working with the Contractors and community based organizations to achieve these goals. At least annually, the Unions and the City will each conduct a Community Career Fair to provide at-risk youth, veterans and others an opportunity to learn about each craft and the process for entering their apprenticeship program.

18.4 Good Faith Efforts. A Contractor or subcontractor must take the following good faith steps to demonstrate that it has made every effort to reach the Local Hire, Priority Apprenticeship and Workforce Development Program goals of the City. The Contractor or subcontractor shall attend scheduled Pre-Job meetings held under this Agreement and shall submit written workforce projections and projected work hours on a craft-by-craft basis.

18.4.1 Within seven (7) calendar days after Notice to Proceed, the Contractor or subcontractor shall meet with the Unions and the City to present its plan for reaching the Local Hire, Priority Apprenticeship and Workforce Development Program goals.

18.4.2 The Contractor or subcontractor shall notify the Project Manager of the City by U.S. Mail or electronic mail if a Union hiring hall cannot, upon request by the Contractor or subcontractor, dispatch Local Area Residents to the Project. It shall be the responsibility of the Contractor or subcontractor to retain all evidence of such good faith efforts.

18.4.3 The Contractor or subcontractor may use the "Name Call", "Rehire" or other available hiring hall procedures to reach the goals of this Article XVIII.

18.5 Enforcement, Compliance and Reporting

18.5.1 Contractors will be required to submit Certified Weekly Payrolls to the City along with monthly workforce utilization reports documenting the Contractor's compliance with the requirements described in this Article. At a minimum, the monthly reports must include: 1) data on Stockton and Local Area Residents work hour utilization on the Project and Local Area Residents; and 2) documentation showing any requests made to the Union dispatchers for Stockton residents and the Union's response to the request.

18.5.2 The City staff shall monitor the operation of the Local Hire, Priority Apprenticeship and Workforce Development Program and shall consider allegations of non-compliance with the goals stated in this Article. If there is a determination by the City that a Contractor or subcontractor has not complied with the goals or demonstrated good faith efforts to

Attachment A

do so, the City and the Contractor or subcontractor shall meet and confer in order to identify necessary actions to resolve the issue and ensure a good faith effort to achieve the objectives of this Article.

18.5.3 For any Project subject to this Agreement, the Local Hire, Priority Apprentice and Workforce Development Program requirements of this Article shall apply in lieu of the requirements of Stockton Municipal Code Section 3.68.095 and no separate compliance with Section 3.68.095 will be required of the Contractors/Employers working on the Project.

**ARTICLE
XIX TERM**

19.1 This Agreement shall become effective 30 days after the day the City Council takes action to authorize its execution, and it shall continue in full force and effect for a period of three (3) years, at which time this Agreement may be considered for extension or renewal. The terms of this Agreement shall apply to any Project that is bid or solicited after the effective date and before the expiration of this Agreement. The Agreement shall continue to apply to any Project subject to this Agreement until the completion of all Covered Work on the Project.

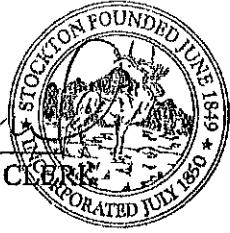
CITY OF STOCKTON

[Signature]
Name: KURT O. WILSON
Title: CITY MANAGER

Date: 8/24/16

ATTEST:

By: [Signature]
BONNIE PAIGE, CITY CLERK



APPROVED AS TO FORM

By: [Signature]
JOHN M. LUEBBERKE
CITY ATTORNEY

APPROVED AS TO FORM

By: [Signature]
DANIEL CARDOZO

Title: ATTORNEY FOR SAN JOAQUIN BTC

SAN JOAQUIN BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO COUNCIL

Name: _____
Title: _____
Date: _____

do so, the City and the Contractor or subcontractor shall meet and confer in order to identify necessary actions to resolve the issue and ensure a good faith effort to achieve the objectives of this Article.

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CITY OF STOCKTON

Name: KURT O. WILSON
Title: CITY MANAGER

Date: _____

ATTEST:

APPROVED AS TO FORM

By: _____
BONNIE PAIGE, CITY CLERK

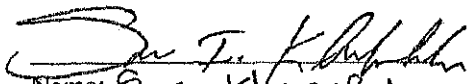
By: _____
JOHN M. LUEBBERKE
CITY ATTORNEY

APPROVED AS TO FORM

By: _____
DANIEL CARDOZO

Title: _____

SAN JOAQUIN BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO COUNCIL


Name: Sam Kharoufeh
Title: Secretary/Treasurer

Date: 8/24/16

Attachment A

UNIONS

Daniel P. Chovello

Electrical Workers # 595.

Pat

Sheet Metal Workers # 104

[Signature]

MAC #3

Mark L. Sloan

Boilermakers # 549

[Signature]

Cement Masons # 400

[Signature]

District Council # 16

Chris Gray

Heat & Frost Insulators & Asbestos # 16

[Signature]

Iron Workers # 378

Miguel Siqueira

Underground Utility/Landscape #355

Joseph B. Torack

Sign & Display # 510

James Quinn

Operating Engineers # 3

Pat Bell

Northern California Carpenters Regional Council on behalf of itself and its affiliated local Unions

Keith Smith

Plasterers and Cement Masons # 300

William T. [Signature]

Plumbers and Pipefitters # 442

ON BEHALF OF BUSINESS MANAGER SHAWN SAGEBACH, BUSINESS AGENT Mark Water Road Sprinkler Fitters # 669

[Signature]

Roofers and Water proofers # 81

Karl [Signature]

Iron Workers # 118

[Signature]

Laborers #73

[Signature]

Teamsters #439

Addendum A

CITY OF STOCKTON COMMUNITY WORKFORCE AND TRAINING AGREEMENT

AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor, including construction material trucking company/entity, (CONTRACTOR) on the City of Stockton Project, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this Community Workforce and Training Agreement (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

(1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto:

(2) The CONTRACTOR agrees to be bound by the legally established local trust agreements designated in the applicable Schedule A as set forth in Article IV of this AGREEMENT.

(3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;

(4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.

(5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

(6) This Agreement to be Bound constitutes a subscription agreement to the extent of its terms. However, the undersigned agrees to execute a separate Subscription Agreement(s) or contributing employer agreement for Trust Funds when such Trust Fund(s) requires such document(s).

Date: _____

Name of Contractor

(Name of Contractor Representative)

(Authorized Officer & Title)

CSLB # or Motor Carrier Permit

**COMMUNITY WORKFORCE AND TRAINING AGREEMENT
CITY OF SACRAMENTO**

INTRODUCTION/FINDINGS

The purpose of this Community Workforce and Training Agreement is to promote efficiency of construction operations in the construction of major projects set forth in the City of Sacramento's Capital Improvement Plan and other public works projects that are subject to this Agreement, thereby promoting the public interest in assuring the timely and cost-effective completion of such projects, and supporting the efforts of the City to increase employment opportunities for workers who are local area residents, and to provide construction career training and employment opportunities for the City's at-risk youth, military veterans, women and other disadvantaged residents through local apprenticeship and pre-apprentice programs.

- A.** The City adopts a five-year Capital Improvement Plan that identifies the public projects necessary to maintain and improve the physical properties of the City, including construction or repair of City buildings and facilities, such as streets, roads, storm drains, traffic signals, parks, and community centers.
- B.** The City undertakes and anticipates undertaking projects identified in the Capital Improvement Plan and other City public works projects that involve significant construction costs in excess of the threshold set forth in this Agreement.
- C.** The City Council has determined that the successful and cost-effective completion of these Capital Improvement Plan projects and other major City public works projects is of the utmost importance to the City and its taxpayers and the residents it serves.
- D.** The City has determined that applying a uniform workforce agreement to the Capital Improvement Plan and other public works construction projects that exceed the threshold set forth in this Agreement during the term of this Agreement will provide efficiencies for the City and its contractors.
- E.** Community workforce and training agreements and similar workforce agreements have been used successfully to achieve the goals and objectives set forth in this Agreement by other public agencies and private entities on major construction projects in the region, including on the Golden 1 Center project.
- F.** Large numbers of workers of various skills will be required in the performance of the construction work, including those workers represented by the Local Unions signatory to this Agreement and employed by contractors and subcontractors who are signatory to this Agreement.
- G.** The use of skilled labor on construction work increases the safety of construction operations and the quality of completed work.

- H.** Major projects subject to this Agreement will require multiple contractors and bargaining units to be on the job site at the same time over an extended period of time, increasing the potential for work disruption in the absence of an overriding commitment to maintain continuity of work.
- I.** The interests of the general public and taxpayers, the City, the Contractor(s) and the Unions would be best served if the construction work proceeded in an orderly manner without disruption and delay.
- J.** The Contractor(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the construction projects subject to this Agreement in order to promote a satisfactory, continuous and harmonious relationship among the parties to this Agreement.
- K.** This Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor(s) and the affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail.
- L.** The contracts for the construction of the Project will be awarded in accordance with the applicable provisions of the Sacramento City Code, the California State Public Contract Code and other applicable state, local and federal laws.
- M.** The City has the right and is legally obligated, subject to certain exceptions, to select the lowest responsive and responsible bidder for the award of construction contracts on the Project or to reject all bids.
- N.** The City places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and military veterans, and also recognizes the ability of local apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry.
- O.** The parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory completion of the Capital Improvement Plan projects and other major City public works projects subject to this Agreement.

**NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES
HERETO, AS FOLLOWS:**

ARTICLE I
DEFINITIONS

- 1.1 "Agreement" means this Community Workforce and Training Agreement.
- 1.2 "Agreement to be Bound" means the agreement (attached hereto and incorporated herein as Addendum A) required to be executed by any Contractor(s) working on the Project as a precondition to performing Covered Work on the Project.
- 1.3 "City" means the City of Sacramento.
- 1.4 "Completion" means the point at which there is Final Acceptance by the City, which occurs when the City determines that the entire project is complete in accordance with the City's Standard Specifications. The date of completion of the entire Project shall be specified in any Notice of Completion filed pursuant to Civil Code Section 3093.
- 1.5 "Construction Contract" means all public works contracts approved by the City for a Project, including design-bid, design-build, lease-leaseback or other contracts under which Covered Work is performed.
- 1.6 "Contractor "or "Contractor(s)" means any person, firm, corporation, or other entity, or any combination thereof, including joint ventures, and any successor or assigns of such persons or entities, that has entered into a contract with the City, or with any other person or entity contracting for work on the Project on behalf of the City (whether by design-bid, design-build, lease-leaseback or other means), with respect to the construction of any part of the Project under contract terms and conditions approved by the City, and any of its contractors or subcontractors of any tier.
- 1.7 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft union signatory hereto, copies of which shall be provided to the City.
- 1.8 "Project" means any City public works project where either the engineer's estimate of the total construction cost of the project or the actual cumulative bid amounts submitted by the contractor or contractors awarded the Construction Contracts for the Project exceeds One Million Dollars (\$1,000,000). All Construction Contracts required to complete an integrated City construction project shall be considered in determining the threshold value of the Project.
- 1.9 "Project Manager" means the person or business entity designated by, or under contract with the City to oversee all phases of construction on the Project.
- 1.10 "Trades Council" means the Sacramento-Sierra Building and Construction Trades Council, AFL-CIO.
- 1.11 "Union" or "Unions" means the labor organizations that are signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and

member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Local Unions"). The Trades Council and the Unions are collectively referred to herein as the "Unions.

ARTICLE II
SCOPE OF AGREEMENT

- 2.1 Parties. This Agreement applies and is limited to all Contractor(s), performing Construction Contracts on the Project, the City, the Trades Council and the Local Unions that are signatory to this Agreement.
- 2.2 Applicability. This Agreement governs all Construction Contracts awarded on the City Projects subject to this Agreement. For purposes of this Agreement, a Construction Contract is considered completed as described in Section 1.4, except when the City's authorized representative directs a Contractor to engage in repairs, warranty work, or modifications as required under the original Construction Contract with the City.
- 2.2.1 Covered Work. This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, and modular furniture installation. On-site work includes work done solely for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.
- 2.2.2 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance or operational revisions to systems and/or subsystems for the Project that are part of the original Construction Contract, including when performed after Completion, unless it is performed by City employees.
- 2.2.3 This Agreement covers all on-site fabrication work over which the City, Contractor(s) or their subcontractors possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site fabrication work necessary for the Project that is traditionally performed by any of the Unions and that is covered by a Master Agreement or local addenda to a National Agreement of the applicable Union(s) in effect as of the execution date of this Agreement.
- 2.2.4 The furnishing of supplies, equipment or materials that are stockpiled for later use are not covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand, or other fill or material that is incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement to the fullest extent allowed by law.

Contractor(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) calendar days of written request or as required by the Construction Contract.

2.2.5 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XIV and XV of this Agreement shall apply to such work.

2.3 Exclusions from Covered Work

2.3.1 The Agreement is limited to construction work on a Project and is not intended to and shall not affect or govern the award of construction contracts by the City which are not a part of a Project.

2.3.2 The Agreement does not apply to a Contractor(s)' non-construction craft employees, including but not limited to executives, managerial employees, contract and/or construction managers, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Agreements), staff engineers or other professional engineers, administrative, management, office, professional, and clerical employees.

2.3.3 The Agreement does not apply to work by employees of the City.

2.3.4 The Agreement does not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.3.5 The Agreement does not apply to work performed by employees of an Original Equipment Manufacturer ("OEM") or vendor on the OEM's or vendor's equipment if required by the warranty agreement between the OEM or vendor and the City in order to maintain the warranty or guarantee on such equipment, and provided that the warranty agreement is the OEM's or vendor's usual and customary warranty agreement for such equipment.

2.3.6 The Agreement does not apply to specialized or technical work requiring specialized training, unique skills, and/or a level of specific technical experience that the Unions do not possess, including the use of specialty equipment and tools. Before any Contractor subcontracts any work subject to this exception, such Contractor shall give the Trades Council at least three (3) days advance notice. Any specialized or technical work subject to this Section anticipated by the Project Manager or any Contractor shall be discussed at the Pre-Job Conference held pursuant to Article V. Any disputes regarding the application of this Section shall be resolved by the parties through the expedited arbitration process in Section 4.2 to determine whether any violation of this section has occurred.

- 2.3.7 The Agreement does not apply to laboratory work for specialty testing or inspections and all testing or inspections not covered by the Master Agreement of one of the signatory Unions.
- 2.3.8 The Agreement does not apply to any work performed on, near, or leading to the Project and undertaken by state, county, or other governmental bodies or their contractors, or public utilities or their contractors.
- 2.3.9 The Agreement does not apply to any work related to the creation or installation of any Art Work by an individual Artist as part of the City's Art in Public Places requirement. For purposes of this Agreement, "Art Work" is a unique, one-of-a-kind decorative element to be incorporated into the building or site, the design, illustration, and detailing of which can only be fully completed in the field and can only be performed by the individual Artist. An "Artist" is an individual that is engaged by the City or the Primary Employer to create and install Art Work. The Artist shall perform all final adjustments, finishing touches, and final painting of any Art Work.
- 2.3.10 The Agreement does not apply to work on any housing or residential component of a Project that is otherwise covered by this Agreement.
- 2.3.11 Award and Enforcement of Construction Contracts. Notwithstanding any other provision of this Agreement, the City has the absolute right to select any qualified bidder for the award of Construction Contracts and to enforce all provisions of its Construction Contracts. The bidder need only be willing, ready and able to execute the Addendum A Agreement to be Bound and comply with this Agreement. This Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement.

ARTICLE III
EFFECT OF AGREEMENT

- 3.1 By executing the Agreement, the Unions and the City agree to be bound by the terms and conditions of the Agreement.
- 3.2 By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, the Contractor(s) agrees to be bound by each and every provision of the Agreement, and agrees that it will evidence its acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.
- 3.3 At the time that any Contractor(s) enters into a subcontract with any subcontractor providing for the performance of a Construction Contract, the Contractor(s) shall provide a copy of this Agreement to such subcontractor, and shall require their subcontractor, as a condition to accepting an award of a construction subcontract, to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.
- 3.4 This Agreement is only binding on the signatories and their successors and assigns, and does not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor and subcontractor is alone liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Schedule A. Any dispute between the Union(s) and the Contractor(s) respecting compliance with the terms of the Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s) party to this Agreement. Any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union does not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.
- 3.5 The provisions of this Agreement, including the Master Agreements of the Local Unions having jurisdiction over the work on the Project, incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Master Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Master Agreement and is not covered by this Agreement, the provisions of the Master Agreement shall prevail.

ARTICLE IV

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

- 4.1 The Unions, City and Contractor(s) covered by the Agreement agree that for the duration of the Project:
- 4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Disputes arising between the Unions and Contractor(s) on other City projects are not governed by the terms of the Agreement or this Article.
 - 4.1.2 There shall be no lockout of any kind by a Contractor of workers employed on the Project.
 - 4.1.3 If a Master Agreement expires before the Contractor completes the performance of work under the Construction Contract and the Union or Contractor gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike on work covered under this Agreement and the Union and the Contractor agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached.
 - 4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the City and the Contractor(s) three (3) business days' notice when nonpayment of trust fund contributions has occurred and one (1) business days' notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor(s) or their subcontractor's workforce, during which time the Contractor shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.
 - 4.1.5 If the City contends that any Union has violated this Article, it will notify in writing (including email) the Senior Executive of the Trades Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Senior Executive of the Trades Council will immediately use his/her best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the membership of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

- 4.2 Expedited Arbitration. Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:
- 4.2.1 A party invoking this procedure shall notify Barry Winograd, as the permanent arbitrator, or John Kagel, as the alternate arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators as set forth in Section 14.2. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the City and the party alleged to be in violation, and to the Trades Council and involved Local Union if a Union is alleged to be in violation.
 - 4.2.2 Upon receipt of said notice, the City will contact the designated arbitrator named above or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.
 - 4.2.3 The arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. The hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend such hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.
 - 4.2.4 The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.
 - 4.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.
 - 4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings and the party alleged to be in breach of its obligation under this Article.

ARTICLE V
JOINT LABOR/MANAGEMENT MEETINGS AND PRE-JOB
CONFERENCES

- 5.1 Joint Labor/Management Meetings. During the period of any work performed under this Agreement, joint Labor/Management meetings between the City, the Project Manager, the Contractor(s) and the Unions shall be held on a periodic basis to be determined by the parties. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craft workers and contractors performing work at the Project. These meetings will include a discussion of safety, craft resource requirements, scheduling and productivity of work performed at the Project.
- 5.2 Pre-Job Conferences. The Project Manager shall convene and conduct a Pre-Job Conference with representatives of all involved Contractor(s) and the Unions at least twenty-one (21) calendar days prior to the commencement of any Covered Work on the Project and prior to the commencement of any Covered Work on each subsequently awarded Construction Contract or phase of the Project. The conference shall be attended by a representative of each participating Contractor and each affected Union. The Trades Council and City may attend at their discretion. The Project Manager and the Contractor(s) shall be prepared to discuss in detail: (i) the scope of work for each Contractor; (ii) craft assignments; (iii) estimated number of craft workers required to perform the work; (iv) transportation arrangements; (v) estimated start and completion dates of the work; and (vi) planned use of pre-fabricated materials. The meeting shall be held at a location mutually agreeable to the parties.

ARTICLE VI
NO DISCRIMINATION

- 6.1 The Contractor(s) and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII

UNION SECURITY

- 7.1 The Contractor(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.
- 7.2 All employees performing work covered by this Agreement shall, as a condition of employment on or before the eighth (8th) day of consecutive or cumulative employment on the Project, be responsible for the payment of the applicable periodic working dues and any associated fees uniformly required for union membership in the Local Union that is signatory to this Agreement for the duration of his or her employment on the Project. Nothing in this Agreement is intended to prevent any non-union employees from joining the Local Union.
- 7.3 Authorized representatives of the Unions shall have reasonable access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project. All authorized representatives of the Union(s) must comply with the required check-in procedure prior to visiting the work area.

ARTICLE VIII
REFERRAL

- 8.1 Contractor(s) performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Local Unions (“Job Referral System”). Such Job Referral System shall be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require equal employment opportunities and non-discrimination. The Contractor(s) shall have the right to reject any applicant referred by the Union(s) in accordance with this Article VIII.
- 8.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s) consistent with Section 2.3.2 of this Agreement.
- 8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain work persons from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

ARTICLE IX
LOCAL HIRE, APPRENTICESHIP AND WORKFORCE DEVELOPMENT

- 9.1 Local Hire. It is in the interest of the parties to this Agreement to facilitate employment of City of Sacramento and Sacramento County residents and to develop increased numbers of local skilled construction workers to meet the requirements of the regional construction economy. The “Local Area” is defined as the City of Sacramento, Sacramento County, and the additional nine counties in section 9.1.3 below. It is the objective of the parties that not less than fifty percent (50%) of the combined journey-level and apprentice hours worked on the Project, on a craft by craft basis, be worked by residents of the Local Area. The Unions agree that residents of the Local Area shall be first referred for Project Work, including journey-level workers and apprentices covered by this Agreement, in the following order of priority:
- 9.1.1 Priority 1: Residents of the City of Sacramento.
- 9.1.2 Priority 2: Residents of Sacramento County outside of the City of Sacramento.
- 9.1.3 Priority 3: Residents of the Counties of Yolo, Placer, El Dorado, Amador, Sutter, Yuba, Nevada, Sierra and San Joaquin.
- 9.2 The Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons and apprentices to fulfill the requirements of the contractor and to meet the Local Area resident hiring objectives of this Agreement, and will provide, at the time of referral, information to the City and its representatives regarding the zip code where each skilled craft persons and apprentices referred for Project Work resides. The Local Area residents referred by the Unions must possess the requisite skills and qualifications required for the position to be filled and such referrals shall be in accordance with law and consistent with the Local Union’s hiring hall rules and procedures.
- 9.3 The parties also recognize and support the City’s commitment to provide opportunities for participation of City of Sacramento businesses on Projects covered by this Agreement. In furtherance of this commitment and the local hire objectives of this Agreement, the parties agree that such City of Sacramento contractors and subcontractors awarded work on the Project may request by name, and the Local Union will honor, referral of such Contractor’s “core” employees who have applied to the Local Union for Project work, and who demonstrate the following qualifications:
- (1) possess any license required by state or federal law for the Project work to be performed;
 - (2) have worked a total of at least two thousand (2,000) hours in the construction craft during the prior two (2) years;

- (3) were on the Contractor's active payroll for at least ninety (90) out of the one hundred and twenty (120) calendar days prior to the contract award;
- (4) have the ability to perform safely the basic functions of the applicable trade; and
- (5) are City of Sacramento residents.

For purposes of this Section 9.3, a City of Sacramento contractor or subcontractor is any construction contractor that maintains its principal place of business in the City of Sacramento. A City of Sacramento resident is any individual who six (6) months prior to the award of the Construction Contract to the Contractor can certify through a utility bill or other similar means acceptable to the parties that the individual resides within the municipal boundaries of the City of Sacramento.

9.4 The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired four (4) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

9.5 The work hours performed by any out-of-state residents shall not be included in the total work hours on the Project in calculating the percentage of total work hours worked by Local Area residents.

9.6 Apprenticeship and Workforce Development.

9.6.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor(s) shall employ apprentices of a California State- approved Joint Apprenticeship Training Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The apprentice ratios will comply with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination. Consistent with the Master Agreements and state law, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

9.6.2 It is an objective of the parties that not less than twenty percent (20%) of all apprentice hours worked on the Project, on a craft by craft basis, shall be worked by "Priority Apprentices." Priority Apprentices shall reside in one of the economically disadvantaged zip codes listed in section 9.6.2.1 and meet one additional Priority Apprentice criteria in section 9.6.2.2 below. Contractors

shall reach this goal through utilization of the normal hiring hall procedures. The Unions are committed to working with the Contractors to achieve these goals. All apprentices referred to Contractors under this Agreement shall be enrolled in State of California approved Joint Apprenticeship Training Programs.

9.6.2.1 To qualify as a Priority Apprentice, an apprentice must reside in one of the following economically disadvantaged zip codes: 95652, 95660, 95811, 95814, 95815, 95817, 95820, 95823, 95824, 95832, 95838.

9.6.2.2 In addition to residing in one of the economically disadvantaged zip codes, to qualify as a Priority Apprentice, an apprentice must satisfy one of the eligibility criteria maintained and enforced by the Sacramento Employment and Training Agency (“SETA”), including criteria for: veterans; prior offenders; public assistance recipients; foster youth; homeless; and/or women interested in joining the trades. Determination of an individual’s satisfaction of the Priority Apprentice criteria shall be made in a manner consistent with historic eligibility determination policies and practices. The individual must also meet eligibility criteria and application requirements for applicable Union apprenticeship programs.

9.6.2.3 In the event that an insufficient number of apprentices have been identified to meet the Priority Apprentice work hour objectives of this Agreement from the economically disadvantaged zip code specified in Section 9.6.2.1 after a good faith effort to identify eligible residents, the Priority Apprentice goals may be satisfied by identifying apprentices that satisfy one of the SETA criteria described in Section 9.6.2.2 and who also are residents of the Local Area in the order of priority set forth in Section 9.1.

9.6.3 The Trades Council and Unions will determine the admission and training of Priority Apprentices placed into applicable apprenticeship programs. Upon request from a Contractor, the Unions shall timely dispatch available apprentices who satisfy specified Priority Apprentice criteria, the requirements of a specific job and such other applicable bona fide qualifications.

9.7 The Contractor and Unions shall make good faith efforts to reach the local hire, and Priority Apprentice goals set forth in Section 9 through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprenticeship programs. The Unions are committed to working with the Contractor(s) and community-based organizations to achieve these goals. At least annually, the Unions and the City will conduct a Community Career Fair to provide at-risk youth, veterans, and others an opportunity to learn about each craft and the process for entering their apprenticeship programs.

9.7.1 To assess compliance with the local hire and Priority Apprentice goals of the CWTA, Contractor shall provide monthly workforce reports at the regular Joint

Labor/Management meetings required by the CWTA. The workforce reports shall include information regarding the number of: (i) journey-level workers that are Local Area Residents; (ii) Apprentices that are Local Area Residents and satisfy the other Priority Apprentice criteria, including a breakdown of apprentices that reside within the targeted zip codes. The Contractor(s) and the Unions agree to furnish all information required to prepare these reports.

- 9.7.2 In the event that the workforce reports indicate that the local hire and apprenticeship goals of the CWTA are not being met, the Project Manager or his or her designee shall explore with the Contractors and subcontractors and the Unions additional actions and measures that may be taken to ensure compliance with such goals.
- 9.7.3 The Contractor(s) will describe the requirements, performance and enforcement mechanisms of this CWTA including this Apprenticeship Program in each subcontract. Any Contractor or subcontractor who fails to employ without just cause Apprentice(s) dispatched by an Apprenticeship Program thereby jeopardizing its opportunity to achieve the apprenticeship goals described above shall, upon receipt of written notice from the Project Manager or his or her designee, be given thirty (30) days to promptly employ such number of dispatched Apprentices as may be required to meet the stated apprentice goals available under that certain Subcontractor's subcontract. In the event of a second written notice of failure to employ without just cause dispatched Apprentices from the Unions to a Contractor or subcontractor, the Project Manager or his or her designee shall take such actions as it deems appropriate to the circumstances and necessary to achieve the purposes of the CWTA, bid documents, and the subcontractor's subcontract.
- 9.8 Student Internship Opportunities. All Contractors awarded Construction Contracts to perform Covered Work on the Project shall make a good faith effort to provide paid internship opportunities to eligible students. Such opportunities may include engineering, design, and/or construction management work associated with the implementation and administration of the Project.
- 9.9 Good Faith Efforts. A Contractor must take the following good faith steps to demonstrate that it has made every effort to reach the Local Hire, Priority Apprentice, and Student Internship goals of this Agreement. The Contractor shall attend scheduled Pre-Job meetings held under this Agreement and shall submit written workforce projections and projected work hours on a craft-by-craft basis.
- 9.9.1 Within seven (7) calendar days after Notice to Proceed, the Contractor shall meet with the Unions and the City to present its plan for reaching the Local Hire, Priority Apprentice and Student Internship goals.
- 9.9.2 The Contractor or subcontractor shall notify the Project Manager by U.S. Mail or electronic mail if a Union hiring hall cannot, upon request by the Contractor or subcontractor, dispatch Local Area residents and/or Priority Apprentices to the Project. It shall be the responsibility of the Contractor to retain all evidence of such good faith efforts.

9.10 Enforcement, Compliance and Reporting.

9.10.1 Contractors will be required to submit Certified Weekly Payrolls to the City along with monthly workforce utilization reports, described in section 9.7.1 above, documenting the Contractor's compliance with the requirements described in this Article. At a minimum, the monthly reports must include: 1) data on Local Area residents, Priority Apprentice, and Student Internship work hour utilization on the Project; and 2) documentation showing any requests made to the Union dispatchers for Local Area residents and Priority Apprentices and the Union's response to the request.

9.10.2 The City staff shall monitor the operation of the Local Hire, Priority Apprentice and Student Internship programs and shall consider allegations of non-compliance with the goals stated in this Article. If there is a determination by the City that a Contractor has not complied with the goals or demonstrated good faith efforts to do so, the City and the Contractor shall meet and confer in order to identify necessary actions to resolve the issue and ensure a good faith effort to achieve the objectives of this Article.

ARTICLE X

HELMETS TO HARDHATS

- 10.1 The Contractor(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractor(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center), a joint Labor- Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

- 10.2 The Unions and Contractor(s) agree to coordinate with the Center to participate in an integrated database of veterans and members of the National Guard and Reserves interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XI

WAGES AND BENEFITS

- 11.1 All Contractor(s) agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate Local Unions.
- 11.2 By signing this Agreement, the Contractor(s) adopts and agrees to be bound by the written terms of the legally established Trust Agreements, as described in Section 11.1, which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractor(s) authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). The Contractor(s) agrees to execute a separate Subscription Agreement(s) for a Trust Fund(s) when required by such Trust Fund(s).
- 11.3 Wages, Hours, Terms and Conditions of Employment. The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts to the extent such Master Agreement is not inconsistent with this Agreement. All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales contained in the appropriate local agreements which have been negotiated by the historically recognized bargaining entity and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.
- 11.4 During the period of construction on this Project, the Contractor(s) agrees to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining entity on the effective date as set forth in the applicable agreement. The Unions shall notify the Contractor(s) in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.
- 11.5 Holidays. Holidays shall be in compliance with the applicable Schedule A agreement.

ARTICLE XII
COMPLIANCE

- 12.1 It shall be the responsibility of the Contractor(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article XI. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Employers on the Project. The City shall monitor and enforce the Contractor(s)' compliance with this Agreement and with the prevailing wage requirements of the State to the extent required by law.

ARTICLE XIII
EMPLOYEE GRIEVANCE PROCEDURE

- 13.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

ARTICLE XIV
GENERAL GRIEVANCE PROCEDURE

- 14.1 Project Labor Disputes. All disputes involving the application or interpretation of the Master Agreement to which a signatory Contractor and a signatory Union are parties shall be resolved pursuant to the resolution procedures of that Master Agreement. All disputes relating to the interpretation or application of this Agreement, excluding work stoppages, strikes, sympathy strikes, and lockouts subject to Article IV, shall be subject to resolution by the grievance arbitration procedures set forth in this Article XIV.
- 14.2 No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual written agreement of the parties.

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, or the representative of the employee, and the representative of the involved Contractor shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days of the Step 1 meeting, within five (5) business days thereafter, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Contractor(s) or the Manager's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance proceeding, prior to a Step 2 meeting, the Union(s) shall notify its International Union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting. The Project Manager and the Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not settled in Step 2 within five (5) business days, within five (5) business days thereafter, either party may request the dispute be submitted to an Arbitrator for final and binding arbitration. The request for arbitration must be in writing with a copy to Project Manager. Should the parties be unable to mutually agree on the selection of an Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. The Project Manager shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to strike a name first. The decision of

the Arbitrator shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

The time limits specified in any step of the Grievance Procedure set forth in Section 14.2 may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

- 14.3 Retention. At the time a grievance is submitted under this Agreement or any Master Agreement, the Union(s) may request that the City withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed sufficient to cover the damages alleged in the grievance should the Union(s) prevail. The amount shall be retained by the City until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

ARTICLE XV
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

- 15.1 The assignment of Covered Work will be solely the responsibility of the Contractor(s) performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- 15.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Contractor(s) subject to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Contractor(s) subject to this Agreement.
- 15.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.
- 15.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor(s)' assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Contractor will conduct a pre-job conference with the Unions in accordance with Section 5.2 of this Agreement.

ARTICLE XVI
MANAGEMENT RIGHTS

- 16.1 The City and Contractor(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their workforce in their sole discretion. Except as provided by Section 2.2.3 and by the lawful manning provisions in the applicable Master Agreement, no rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees.

ARTICLE XVII
DRUG & ALCOHOL TESTING

- 17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.
- 17.2 The parties agree to recognize and use the Substance Abuse Program contained in each applicable Local Union's Master Agreement, except as it may conflict with the City's Drug-Free Workplace Policy. In the event of a conflict, the City's policy shall prevail.

ARTICLE XVIII
SAVINGS CLAUSE

- 18.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.
- 18.2 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of its provisions and the City accordingly determines that the Agreement will not be required as part of an award to a Contractor(s), the Unions will no longer be bound by the provisions of Article IV.
- 18.3 The parties agree that should any Project subject to this Agreement receive a non-de minimis allocation of federal funds for construction of the Project, and such federal funding allocation, whether or not allocated through the state, includes a condition to receipt of the federal funds that prohibits the City from applying any local hiring preference in any contracts for construction of the Project, or that prohibits application of any other provision or provisions of this Agreement, the local resident hiring provisions contained in Article IX , or any other provision or provisions of this Agreement prohibited by such condition to receipt of federal funds for Project construction, shall not be applied to the Project, but all other terms and conditions of this Agreement shall remain in full force and effect.

ARTICLE XIX
AMENDMENT/COUNTERPARTS/AUTHORITY

- 19.1 Any substantive modification of any provision or addendum to this Agreement must be reduced to writing and signed by the City, Trades Council and Unions to be effective.
- 19.2 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Facsimile or scanned signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures.
- 19.3 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

ARTICLE XX
TERM

20.1 This Agreement shall remain in full force and effect for a period of five (5) years from the date it becomes effective. Prior to the expiration of this Agreement, the City and the Trades Council agree to meet and confer regarding the status of and experience with Projects covered by the Agreement. The parties may agree to extend the term of this Agreement, or enter into a new agreement incorporating any substantive changes based on the status of and experience with Projects covered by the Agreement.

CITY OF SACRAMENTO

Name: _____ Date: _____

Title:

Approved as to form:

City Attorney _____ Date: _____

Attested to by:

City Clerk _____ Date: _____

SACRAMENTO BUILDING AND CONSTRUCTION TRADES COUNCIL,
AFL-CIO COUNCIL

Name: _____ Date: _____

Title:

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council on behalf of itself and its affiliated Local Unions

UA of Journeymen & Apprentices of the Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

Asbestos, Lead and Mold Laborers
Local #67

Addendum A

**COMMUNITY WORKFORCE AND TRAINING AGREEMENT
CITY OF SACRAMENTO**

AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor, including construction material trucking company/entity, (CONTRACTOR) on the City of Sacramento Project, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this Community Workforce and Training Agreement (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto.
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements designated in the applicable Master Agreement as described in Article XI of this AGREEMENT.
- (3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR.
- (4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.
- (5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.
- (6) This Agreement to be Bound constitutes a subscription agreement to the extent of its terms. However, the undersigned agrees to execute a separate Subscription Agreement(s) or contributing employer agreement for Trust Funds when such Trust Fund(s) requires such document(s).

Date: _____

Name of Contractor

(Name of Contractor Representative)

(Authorized Officer & Title)

CSLB # or Motor Carrier Permit

State of California

PUBLIC CONTRACT CODE

Section 2500

2500. (a) A public entity may use, enter into, or require contractors to enter into, a project labor agreement for a construction project only if the agreement includes all of the following taxpayer protection provisions:

(1) The agreement prohibits discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.

(2) The agreement permits all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements.

(3) The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project.

(4) The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.

(5) The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator.

(b) For purposes of this chapter, both of the following definitions apply:

(1) "Project labor agreement" means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.

(2) "Public entity" means a public entity as defined in Section 1100.

(Added by Stats. 2011, Ch. 431, Sec. 2. (SB 922) Effective January 1, 2012.)

September 3, 2019

AGENDA ITEM 6.A

REQUEST

APPOINTMENT OF CITY COUNCIL SUBCOMMITTEE TO INTERVIEW APPLICANTS TO FILL TWO VACANCIES ON THE PLANNING COMMISSION

EXECUTIVE SUMMARY

This item requests that Council appoint members to a subcommittee to interview applicants to fill two vacancies on the Planning Commission.

DISCUSSION

There are currently two vacancies on the Planning Commission. The vacancy was advertised on August 7, 2019, and will close on September 4, 2019. At this time nine applications have been received by the City Clerk's office.

In accordance with Resolution No. 2004-152, a two-member subcommittee needs to be appointed to interview the applicants and make a recommendation to the full Council (Attachment A).

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council appoint a two-member subcommittee to interview applicants to fill two vacancies on the Planning Commission.

Prepared by: Adrienne Richardson, City Clerk

Reviewed by: Midori Lichtwardt, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENT

A – Resolution No. 2004-152

RESOLUTION 2004-152

REVISING RESOLUTION NO. 2004-089 ESTABLISHING THE COUNCIL SELECTION PROCESS, AND DEFINING RESIDENCY REQUIREMENTS, FOR APPOINTEE BODIES (GOVERNMENT CODE §54970 ET SEQ. LOCAL APPOINTEE OFFICERS)

WHEREAS, Council Policy D-5 was adopted by Resolution 2002-434 on October 15, 2002, which established a selection process for appointee bodies, and

WHEREAS, A variety of terms are used to define residency for the purposes of eligibility for appointment to various Appointee bodies and a method to verify residency has not been established, and

WHEREAS, Council wishes to define the terms and identify methods by which to verify residency and to incorporate those definitions into the selection process, and

WHEREAS, The definitions established herein shall apply to all boards and commissions to which the City Council appoints members unless the Bylaws of the board or commission specifically define otherwise, and

WHEREAS, Revisions to Resolution No. 2004-089 were considered and approved by the City Council on May 18, 2004 as set forth below.

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

A. SELECTION PROCESS FOR APPOINTEE BODIES:

1. On or before December 31st of each year, the clerk shall prepare an appointment list of all regular and ongoing boards, commissions and committees that are appointed by the City Council of the City of Tracy. The list shall contain the following information:
 - a. A list of all appointee terms which will expire during the next calendar year, with the name of the incumbent appointee, the date of the appointment, the date the term expires and the necessary qualifications for the position.
 - b. A list of all boards, commissions and committees whose members serve at the pleasure of the Council and the necessary qualifications of each position.
 - c. The list of appointments shall be made available to the public for a reasonable fee that shall not exceed actual cost of production. The Tracy Public Library shall receive a copy of the list.
2. Whenever a vacancy occurs in any board, commission or committee, whether due to expiration of an appointee's term, resignation, death, termination or other causes, a special notice shall be posted in the office of the City Clerk, The Tracy Public Library, the City website, and in other places as directed within twenty (20) days after the vacancy occurs. Final

appointment to the board, commission or committee shall not be made by the City Council for at least ten (10) working days after the posting of the notice in the Clerk's office. If Council finds an emergency exists, the Council may fill the unscheduled vacancy immediately.

3. Appointments shall be made for the remainder of the term created by the vacancy except as follows:
 - a. If appointee will fill an un-expired term with six months or less remaining, the appointment shall be deemed to be for the new term.
 - b. If the vacancy is filled by an emergency appointment the appointee shall serve only on an acting basis until the final appointment is made pursuant to section 3.
4. The council shall use the following selection process to provide an equal opportunity for appointment to a board, commission or committee:
 - a. Mayor (or designee) and a selected Council member will review applications, interview applicants and recommend a candidate for appointment to the board, commission or committee.
 - b. If the interview subcommittee determines there are multiple qualified candidates, the subcommittee can recommend the Council establish an eligibility list that can be used to fill vacancies that occur in the following twelve (12) months.
 - c. At the interview subcommittee's discretion, the chair (or designee) of the board, committee or commission for which a member will be appointed, can participate in the interviews.
5. In the event there are not two or more applicants than vacancies on any board, commission or committee, the filing deadline may be extended by staff.
6. An individual already serving on a City of Tracy board, committee or commission may not be appointed to serve on an additional City of Tracy board, committee, or commission concurrently.

B. DEFINITION OF RESIDENCY REQUIREMENTS:

1. The following definitions shall be used to determine whether residency requirements are met for boards and commissions to which the Tracy City Council appoints members:
 - a. Tracy Planning Area means the geographical area defined in the City of Tracy General Plan and any amendments thereto.
 - b. City of Tracy means within the city limits of the City of Tracy.

- c. Citizen means a resident of the City of Tracy.
 - d. Tracy School District means the geographical area served by the Tracy Unified School District.
 - e. Sphere of Influence shall be the geographical area approved by the Local Agency Formation Commission (LAFCo) of San Joaquin County and any amendments thereto.
2. Residency, as defined above and as set forth in the applicable bylaws for each board or commission, shall be verified annually by the City Clerk. The residency must be verifiable by any of the following means:
- a. Voter registration,
 - b. Current California Driver's License or Identification,
 - c. Utility bill information (phone, water, cable, etc.),
 - d. Federal or State tax returns.
3. Members of boards or commissions shall notify the City Clerk in writing within thirty (30) days of any change in residency. If the change in residency results in the board member or commissioner no longer meeting the residency requirements, the member shall tender their resignation to the City Clerk who shall forward it to the City Council.


The foregoing Resolution 2004-152 was passed and adopted by the Tracy City Council on the 18th day of May, 2004, by the following vote:

AYES: COUNCIL MEMBERS: HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE



Mayor

ATTEST:



City Clerk

September 3, 2019

AGENDA ITEM 6.B

REQUEST

ADOPT A RESOLUTION FORMALLY ESTABLISHING THE TRACY HOMELESSNESS STRATEGIC PLAN DEVELOPMENT AD HOC COMMITTEE AND DISCUSS AND PROVIDE DIRECTION REGARDING EXPANDING THE COMMITTEE'S SCOPE TO INCLUDE EXPLORATION OF A TEMPORARY HOMELESS SHELTER IN TRACY

EXECUTIVE SUMMARY

On April 16, 2019, Council established an ad hoc committee to draft a strategic plan to address homelessness in Tracy. On June 18, 2019, the ad hoc committee provided an update to Council, and Council provided direction to staff to pursue Technical Assistance grant opportunities to develop the plan.

This agenda item requests that the Council adopt a resolution formally establishing the "Tracy Homelessness Strategic Plan Development Ad Hoc Committee" and consider broadening the scope of the ad hoc committee to include exploring the establishment of a temporary homeless shelter in Tracy.

DISCUSSION

Earlier this year, City Council established an ad hoc committee whose purpose is to develop a strategic plan to address homelessness in Tracy. Council members Rhodesia Ransom and Dan Arriola were selected to represent Council on the ad hoc committee.

The ad hoc committee recently met to discuss progress on the establishment of the strategic plan. Staff has secured technical assistance through the Technical Assistance Collaborative (TAC), a firm retained by the California Department of Housing and Community Development, to work with cities on capacity building. Staff and TAC are in the preliminary planning stages to conduct on site meetings with community stakeholders to appropriately address Tracy's homelessness needs.

During the ad hoc committee's recent discussions, the topic of temporary homeless shelters in Tracy emerged. Because the current scope of the ad hoc committee is limited to the development of a strategic plan, staff is requesting Council discuss and provide direction on expanding the ad hoc committee's scope to include exploring having a temporary homeless shelter in Tracy. Such exploration may include assessing the financial and logistical feasibility of establishing a temporary homeless shelter in Tracy. The ad hoc committee would return to Council with its findings and recommendations for further consideration.

Additionally, as a matter of practice, staff is recommending that Council formally establish the Tracy Homelessness Strategic Plan Development Ad Hoc Committee by adopting a resolution to clearly define the duration and scope of the committee.

FISCAL IMPACT

None

STRATEGIC PLAN

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

RECOMMENDATION

Staff recommends Council:

1. Adopt a resolution to formally establish the Tracy Homelessness Strategic Plan Development Ad Hoc Committee, and
2. Provide direction to staff regarding expanding the scope of the committee to include exploration of a temporary homeless shelter in Tracy.

Prepared by: Jenny Haruyama, City Manager

Approved by: Jenny Haruyama, City Manager

RESOLUTION 2019-_____

ESTABLISHING THE TRACY HOMELESSNESS STRATEGIC PLAN DEVELOPMENT
AD HOC COMMITTEE

WHEREAS, The City Council may establish advisory committees to address an explicit purpose or need, and

WHEREAS, Advisory committees that are of limited duration (typically no more than a year), and are comprised of less than three members are known as "ad hoc" committees and are not subject to the Ralph G. Brown Act's requirements, and

WHEREAS, Council desires to establish the Tracy Homelessness Strategic Plan Development Ad Hoc Committee effective April 16, 2019 through December 31, 2019, and

WHEREAS, The ad hoc committee will be comprised of two members of the City Council, and

WHEREAS, The purpose of the Tracy Homelessness Strategic Plan Development Ad Hoc Committee is to develop a strategic plan to address homelessness in Tracy;

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby establishes the Tracy Homelessness Strategic Plan Development Ad Hoc Committee for the purpose of developing a strategic plan to address homelessness in Tracy for City Council consideration by December 31, 2019.

The Tracy City Council adopted the foregoing Resolution 2019- _____ on the 3rd day of September, 2019, by the following votes:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK

AGENDA ITEM 6.C

REQUEST

**RECEIVE UPDATE REGARDING CITY OF BOISE'S REQUEST FOR REVIEW
BY THE U.S. SUPREME COURT OF THE NINTH CIRCUIT'S DECISION ON
*MARTIN V. CITY OF BOISE***

EXECUTIVE SUMMARY

At the August 20th Council meeting, Mayor Robert Rickman, seconded by Mayor Pro Tem Nancy Young, requested an update on recent developments regarding the United States Ninth Circuit Court of Appeals' decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (*Martin*). The City of Boise has filed a petition seeking review of *Martin* by the Supreme Court.

DISCUSSION

The *Martin* case has a long procedural history in federal courts, including various appeals to the Ninth Circuit. In 2009, six homeless individuals sued the City of Boise, challenging the constitutionality of two of its ordinances. The first ordinance made it a misdemeanor, to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.” The second ordinance criminalized “[o]ccupying, lodging, or sleeping in any building, structure, or place, whether public or private” without permission from the owner or person entitled to possess or control the property. Following amendments to the City of Boise's ordinances and practices, the lower court denied the plaintiffs' claims, however they appealed to the Ninth Circuit. That commenced a series of lower court decisions and appeals.

On September 4, 2018, a panel of three Ninth Circuit judges released their decision in *Martin* which held that enforcing public camping and public sleeping ordinances against homeless individuals when no sleeping space is “practically available” violates the Eighth Amendment to the U.S. Constitution. The holding in *Martin* is binding on federal courts within the Ninth Circuit's jurisdiction, which includes California.

In April 2019, the Ninth Circuit denied the City of Boise's request for a rehearing *en banc* meaning a rehearing before the entire panel of Ninth Circuit judges. On August 22, 2019, the City of Boise filed a petition seeking review of the Ninth Circuit's decision in the United States Supreme Court. Various California jurisdictions have formed a coalition to file an *amici curiae* brief (a friend of the court) in support of Boise's petition requesting that the Supreme Court review the decision, including the City of Lodi and City of Manteca. An *amicus curiae* brief seek to assist the court in making a decision in various ways such as providing information or a different perspective, and highlighting specific policy issues.

FISCAL IMPACT

This item is informational only. The fiscal impacts of this court decision will continue to be evaluated and reported to the City Council as they become known.

STRATEGIC PLAN

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

RECOMMENDATION

That Council receive an update on the City of Boise's request for review by the U.S. Supreme Court of the Ninth Circuit's decision on *Martin v. City of Boise*.

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