

**Tuesday, June 3, 2014, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

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

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

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

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

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

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

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS – Employee of the Month

- Swearing in 4 Fire Fighters
- Proclamation Crime Stoppers Month
- Certification of Recognition – Bulldog Project
- Drowning Prevention Presentation

1. CONSENT CALENDAR

- A. Approval of Minutes
- B. Adopt Resolutions Regarding the Election Process, General Municipal Election to be Held on November 4, 2014
- C. Approve Professional Services Agreements (PSA) With Eleven Companies for Plan Review and/or Inspection Services and Authorize the Mayor to Execute the Agreements
- D. Award a Construction Contract to Trident Contractors Inc. of Daly City, California, for Sidewalk, Curb and Gutter Replacement Fiscal Year 2013 – 2014 (FY/13/14) Project CIP 73139 and Authorize the Mayor to Execute the Contract
- E. Acceptance of the Storm Drainage Improvement Robert Gabriel Drive and Gonzales Street CIP 76062, completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File the Notice of Completion and the City Engineer, in Accordance With the Terms of the Construction Contract, will Release the Bonds and Retention Payment
- F. Approve Master Professional Services Agreements (MPSAs) with GDR Engineering, Inc. (GDR), and Mid Valley Engineering, Inc. (MVE) to Provide Land Surveying Services for Multiple Capital Improvement Projects, Authorize the Mayor to Execute the Agreements and Authorize the Development Services Director to Sign Task Order No. 1 to the MPSA with MVE, Inc., and Future Task Orders Related to the MPSAs With GDR, Inc., and MVE, Inc. Cumulatively Not To Exceed \$200,000 For Each Consultant
- G. Award a Construction Contract to Modesto Sand and Gravel, Inc. of Modesto, California, for the Bessie Avenue Building Demolition Project CIP 78142, Authorize a Contingency Amount of \$3,750, Authorize the Mayor to Execute the Contract and Authorize the Transfer of \$85,000 from CIP 78142 to Emergency Repairs to Lammersville School House Project, CIP 78151
- H. Amendment of Two Holly Sugar Ranch Leases with the Arnaudo Bros. (Holly Ranch), a Partnership, and the Arnaudo Bros., LLC and Authorization for the Mayor to Execute the Amendments

- I. Approve Amendment 1 to the Memorandum of Understanding Between the City of Tracy and the Tracy African American Association to Waive Administrative Processing and Banner Hanging Fees and Authorize the Mayor to Execute the Amendment
- J. Adoption of the Appropriations Limit for Fiscal Year 2014/15 for the City of Tracy
  
- 2. ITEMS FROM THE AUDIENCE
  
- 3. RECEIVE PRESENTATION ON UPDATED AIRPORT LAYOUT PLAN, PROVIDE INPUT, AND AUTHORIZE SUBMITTAL TO THE FEDERAL AVIATION ADMINISTRATION
  
- 4. CONDUCT A PUBLIC HEARING TO AUTHORIZE THE ACCEPTANCE AND APPROVE THE APPROPRIATION OF \$11,421 FROM THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR THE PURCHASE OF EQUIPMENT FOR THE TRACY POLICE DEPARTMENT'S LAW ENFORCEMENT PROGRAMS
  
- 5. SECOND READING AND ADOPTION OF ORDINANCE 1194 AN ORDINANCE OF THE CITY OF TRACY APPROVING FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002
  
- 6. ITEMS FROM THE AUDIENCE
  
- 7. COUNCIL ITEMS
  
- 8. ADJOURNMENT

**February 18, 2014, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

Pastor Tim Heinrich, Crossroads Baptist Church, provided the invocation.

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

Mayor Ives and Police Chief Hampton swore in Police Lieutenants Kami Ysit, Luis Mejia and Alex Neicu, and Police Sergeants Tim Bauer and Trevin Freitas.

Mayor Ives congratulated students from George Kelly, Wanda Hirsh, and Art Freiler Elementary Schools in recognition of their D.A.R.E. graduation.

Bridgette Hall, Chairperson, and Althea Elmore, Commissioner, presented the Youth Advisory Commission annual report.

Mayor Ives thanked the representatives for what they provide to the younger community and for their input. Mayor Ives also thanked the adult members of the Commission for their commitment.

1. CONSENT CALENDAR - Following the removal of items 1-A by a member of the audience and 1-B by Mayor Pro Tem Maciel, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
  - C. Acceptance of the Installation of Fiber Optics from City Hall to the Transit Station - CIP 77543, Completed by Kertel Communication Incorporated (dba Sebastian) of Fresno, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2014-021 accepted the project.
  - D. Acceptance of Muirfield 7 – Phase Four, Tract 3779, for Standard Pacific Corporation - Resolution 2014-022 accepted the project.
  - E. Acceptance of the Police Firearms Practice Range Restroom Building - CIP 71072C, Completed by Southland Construction of Pleasanton, California, and Authorization for the City Clerk to File the Notice of Completion - Resolution 2014-023 accepted the project.
  - F. Approve Various Amendments to the Professional Services Agreements with Kimley-Horn and Associates for Completion of Roadway Analysis for Cordes Ranch and Tracy Hills Developments, and Authorize the Mayor to Execute the Agreements - Resolution 2014-024 approved the amendments.

- G. Approve Various Professional Services Agreements with West Yost and Associates Related to Water Analysis for Cordes Ranch and Tracy Hills Developments and Authorize the Mayor to Execute the Agreements - Resolution 2014-025 approved the agreements.
- H. Approve Amendment Number Three to the Professional Services Agreement with Kimley-Horn and Associates, for the Tracy Hills Specific Plan Amendment Subsequent Environmental Impact Report and Authorize the Mayor to Execute the Amendment - Resolution 2014-026 approved amendment three.
- I. Approval of Four Master Professional Services Agreements with Kimley-Horn, First Carbon Solutions, Ascent Environmental, and De Novo Planning Group for Environmental Analysis (CEQA) Services and Planning Assistance for Various Projects and Authorize the Mayor to Execute the Agreements - Resolution 2014-027 approved the four agreements.
- A. Approval of Minutes – Paul Miles stated the minutes of December 17, 2013, fairly reflected the discussion. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to approve the regular meeting minutes of December 17, 2013. Voice vote found all in favor; passed and so ordered.
- B. Acceptance of the Downtown Plaza Project CIP - 78117, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Mayor Pro Tem Maciel indicated he pulled the item from consent because it was a significant accomplishment and one of the many positive things that have happened in Tracy. Mayor Pro Tem Maciel stated staff was able to utilize monies that would have otherwise been lost to the State when the Redevelopment Agency was dissolved. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2014-028 accepting the project. Voice vote found all in favor; passed and so ordered.
2. ITEMS FROM THE AUDIENCE – Steve Nicolaou addressed Council regarding the upcoming election asking that Council discuss and enact a local ordinance mandating that campaign contributions totaling \$50 or more be disclosed on a candidate's campaign disclosure form. Mr. Nicolaou asked that each Council member running for re-election as well as other candidates running for office voluntarily pledge themselves to disclosing all donors when the \$50 threshold is met.

Paul Miles addressed Council regarding misuse of the City issued credit card by Leon Churchill, Jr., City Manager, previous complaints of police misconduct, criminal violations of law, and dishonesty. Mr. Miles stated the Council has failed to act and has left the City without a functioning government. Mr. Miles further stated he disagrees with the position of some that it is time to leave Mr. Churchill alone.

Dave Helm addressed Council stating he was disturbed that he has heard from Mayor Ives and Mayor Pro Tem Maciel regarding Mr. Churchill's behavior, but not from other Council members. Mr. Helm discussed various expense reports submitted by Mayor Ives seeking mileage reimbursement. Mr. Helm stated there was no back up or explanation provided for Mayor Ives to seek mileage

reimbursement from Livermore to Stockton. Mr. Helm stated this subject needed to be discussed publically.

Mayor Ives stated Mr. Helm never called and asked for an explanation of the expense. Mayor Ives explained that mileage is a reimbursable expense and that Livermore is where his place of employment is located. Mayor Ives further explained that at least three times per month he is required to attend various City meetings in Stockton including the San Joaquin Council of Governments, the Rail Commission and the Partnership for Economic Development.

Mayor Pro Tem Maciel stated the Brown Act prohibits Council from taking action on an item from the audience, but does allow Council Members to make clarifying statements. Mayor Pro Tem Maciel stated while some members of the public may disagree with the action that was taken, Mr. Churchill had been held accountable.

Wesley Huffman thanked Council for their unstinting support of the Youth Advisory Commission and added he enjoys wearing the YAC hat.

2. ACCEPT CONSULTANT FINAL REPORT ON CITY COST ALLOCATION PLAN AND CONSIDER NEW SINGLE HOURLY BILLING RATE METHODOLOGY AND MODIFICATION OF COST RECOVERY AGREEMENT (CRA) OVERHEAD RECOVERY LEVELS – Jenny Haruyama, Administrative Services Director, provided the staff report. In August 2013, Management Partners presented a status update to Council regarding its evaluation of the City's cost allocation methodology and practices. Management Partners indicated that the City's cost allocation methodology was reasonable and within industry standards. Management Partners also met with members of the development community to review the City's current cost allocation practices. The consultants reported that developers were less concerned about the overhead methodology and more focused on the City's policy to recover full overhead costs. It was also determined that the City's presentation of its overhead charges would benefit from further clarification on customer invoices. Management Partners has recommended that the City's invoices be reformatted to ensure clarity and transparency for its customers.

Ms. Haruyama introduced Andy Belknap of Management Partners who provided the report. Mr. Belknap stated the City currently uses a multiplier methodology that is applied to engineering and planning hourly rates to recover indirect costs associated with planning and engineering services. This is what has been historically known as the "150%." Following Council direction, staff developed a single hourly billing rate methodology with guidance from Management Partners. Like the City's current practice, the proposed methodology is designed to recover planning and engineering's share of indirect costs through Cost Recovery Agreements (CRAs) and capital projects.

The single hourly billing rate model reflects four indirect costs categories: Divisional Indirect; Development Services (DS) Administration; Internal Services; and City-Wide Services.

1. **Divisional Indirect.** This category reflects the divisions' operating budget, less direct salary and benefits, and billed contracts, DS administration, and internal service fund charges.
2. **DS Administration.** This category represents support from executive administrative staff and department senior leadership support (Department Head, City Engineer).
3. **Internal Services.** This category represents support from internal service funds which include workers' compensation, building maintenance, vehicle operation, maintenance, and replacement, vehicle fuel, information technology, general equipment, and general insurance.
4. **City-Wide Services.** This category represents support from central services departments, including the City Manager, City Clerk and City Attorney, and Administrative Services Department (Finance and HR).

**Cost Recovery Agreements (CRAs)** - Staff met several times with the development community to discuss the proposed new methodology and received positive feedback. In response to Council direction, staff also discussed the different indirect cost categories and corresponding rates in the context of CRAs. Overhead recovered through CRAs is difficult to predict because it is based on activity level. After reviewing FY 12/13 General Fund year-end actuals, the City recovered approximately \$200,000 in indirect costs through CRAs. However, it is anticipated that there will be fewer CRAs over time as they are typically associated with larger development projects.

Staff compared the proposed rates to private sector charges for engineering and planning services and determined that the *Internal Services* rates were the most competitive. Under this scenario, it is estimated that the City would recover between 70-75% of its total indirect costs. Using FY 12/13 CRA overhead as an example, the City would recover \$140,000-\$150,000 of the \$200,000 using the Internal Services rates.

While the development community acknowledged that the *Internal Services* rates may be comparable to the private sector, they emphasized that the rates do not take into account additional cost associated with the time for the City to review, process, and approve various planning/engineering activities. Given this, the majority of developers expressed interest in having the *DS Administration* rates apply to CRAs. Under this scenario, the City would recover an estimated 65% of its total indirect costs, or \$130,000 based on FY 12/13 CRA overhead actuals.

### **Capital Projects**

Indirect costs are also recovered through capital projects and significantly exceed what is collected via CRAs. In prior years, annual overhead recovered through CIPs has been \$2-\$2.2 million. However, after calculating year-end actuals for FY 12/13, the amount recovered was approximately \$2.3 million. It is expected that the City would continue to recover this amount using the new allocation model and City Wide Service rate.

### **Policy Considerations**

Determining the level of cost recovery is a policy decision.

1. **Implement a Single Hourly Billing Rate.** Staff proposed that Council consider transitioning from a multiplier methodology to a single hourly billing rate to recover indirect costs. A single hourly billing rate provides the transparency requested by Council and the development community and is a more precise way of calculating and capturing applicable expenses.
2. **Consider modifying the City's Current Cost Recovery Practice.** The City's current practice is to fully recover all of its indirect costs. Council requested that staff explore recovery alternatives with respect to CRAs, which would impact general fund expenditures. Should Council choose not to fully recover overhead costs with respect to CRAs, staff recommended that the *Internal Services* rates apply.

Should Council adopt the new methodology and/or adjust overhead cost recovery levels for CRAs, staff recommended that the change be effective the date of the Council action. Adopting a single hourly billing rate cost allocation methodology based on a full cost recovery model will maximize the recovery of overhead, reducing the fiscal impact to the General Fund, assuming the application of City Wide Services rates. Using a rate other than the City Wide Services rate will reduce overhead recovery levels, and potentially increase expenses to the General Fund.

Staff recommended that Council take the following actions:

1. Accept Management Partners final cost allocation report.
2. Consider Single Hourly Billing Rate Cost Allocation Methodology to recover City Indirect costs.
3. Provide direction to staff regarding cost recovery levels for CRAs.
4. Maintain full cost recovery for indirect costs related to capital projects.

Kuldeep Sharma, City Engineer, provided information regarding Capital Improvement Project (CIP) soft costs.

Andrew Malik, Development Services Director, provided an example of CIPs that receive 100% funding (cost recovery).

Mayor Pro Tem Maciel stated he needed further clarification regarding Central Services which he believed was a fixed cost.

Ms. Haruyama stated there were a number allocation factors that were included in the City Wide overhead rate. Mr. Haruyama asked Ray Durant of Management Partners to further explain.

Mr. Durant explained the process for calculating the Central Services rate.

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

Council Member Manne asked if a comparative analysis was done against the current cost recovery plan. Ms. Haruyama stated the two methodologies were very different, but that they did attempt that comparison. Mr. Durant added a comparison was completed between the proposed rates and the old methodology and explained the differences.

Council Member Manne asked when comparing the two, which methodology was fairer. Mr. Durant stated in his opinion the hourly billing rate that was being proposed was fair and explained his reasoning. Mr. Durant stated it was a Council decision.

Council Member Manne asked if it was fair to say that in the past the City has not overcharged. Ms. Haruyama stated it was fair to say that the City was not fully recovering its costs.

Council Member Manne stated there were two goals; recover costs and to be fair with the development community. Council Member Manne stated a comparative analysis would have been helpful.

Council Member Young discussed overhead costs and the difficulty of determining when a project triggers the assignment of those costs. Council Member Young stated she would like to achieve a level where the City is being fair to the development community and the City is recovering its costs. Ms. Haruyama indicated Council chooses what they believe is appropriate.

Council Member Rickman referred to CIPs asking if the City was charging itself a fee by taking it from the CIP and placing it in the General Fund. Ms. Haruyama stated the City is recovering overhead where it is appropriate and recovering the overhead needed to move the project forward. Mr. Sharma explained the difference between CIPs and development programs.

Council Member Rickman asked if the City was charging itself. Mr. Malik stated overhead was a component of the costs. Ms. Haruyama stated the City is reimbursing itself for direct and indirect charges, and that Council Member Rickman's understanding was correct.

Council Member Rickman discussed items such as lights, desks and computers that are not project activated, asking if those costs were included in the fees. Ms. Haruyama stated yes.

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

Steve Nicolaou asked if the City ever considered privatizing Development Services and having a skeletal crew to oversee it.

Mayor Ives stated in his experience, the City has not looked at those specific functions.

Michel Bazinet stated overhead allocation is an arbitrary process and that many assumptions go into the calculations. Mr. Bazinet stated full cost recovery should not be an objective of the City and the City should charge development for a fair share of their consumption.

Veronica Vargas addressed Council stating entitlement projects have entitlement fees which developers are charged to cover the project. Ms. Vargas stated it sounds like the City was looking for a raise.

Council Member Rickman stated the single hour billing rate seemed easier to understand and more transparent. Council Member Rickman added he still struggles with Indirect Costs. Leon Churchill, Jr., City Manager, clarified that if you see City Wide overhead as a fixed cost, then there is logic to not recover that cost. However, allocating overhead is appropriate where a beneficiary can be identified.

Mayor Ives referred to Attachment 1 to the staff report and asked Council to focus on the column titled "City Wide Services" which appears to be the item Council is taking exception to.

Council Member Young stated she struggles with Internal Service Charges.

Council Member Rickman stated he agreed with Council Member Young regarding Internal Service Charges.

Ms. Haruyama recapped what she believed Council had concerns with charging including City Wide Overhead and Internal Service charges, which leaves Development Services charges.

Mayor Pro Tem Maciel stated an argument could be made for attempting to recover Internal Service Charges.

Council Member Rickman asked if small businesses use Cost Recovery Agreements. Mr. Malik stated not typically.

Council Member Young discussed the idea Mr. Churchill raised regarding identifying a beneficiary. Ms. Haruyama stated whatever choice is made, it should be consistent.

A discussion ensued regarding eliminating some of the items (Indirect Costs/City Wide Services) from the equation and establishing a percentage rate.

Mr. Durant discussed the pros and cons of eliminating Indirect Costs and City Wide Services from the equation.

Mayor Ives stated it was hard to say that there are no reasonable costs in each category, and that he had a problem eliminating all of them. Mayor Ives stated he prefers to have this as a policy. Mayor Ives stated he would like to see City Wide Services fees reduced.

Mayor Pro Tem Maciel stated it seemed the two areas in question are City Wide Services and Internal Services, suggesting staff come back with proposed reductions in each area.

Mr. Churchill stated he heard that City Wide Service Charges are not desired and the debate is focused on Internal Services.

Ms. Haruyama summarized that annual revenue from Cost Recovery Agreements totaled approximately \$200,000. If the City did not charge for City Wide Services, it would reduce that revenue by \$50,000; if the City did not collect Internal Services

Charges, it would be further reduced by \$70,000. In summary, the City would be collecting \$130,000 versus \$200,000.

Mayor Ives stated in some circumstances those fees could be negotiated. Ms. Haruyama stated the suggestion was inefficient and advised against the approach.

Council Member Rickman asked if the revenue was inconsistent. Ms. Haruyama stated yes, and was based on development.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to accept the Management Partners report.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to accept the Single Hourly Billing Rate Cost Allocation Methodology without specific numbers attached at this time. Voice vote found Council Members Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Manne opposed.

It was moved by Mayor Ives and seconded by Council Member Manne, to direct staff to return with an item regarding the cost recovery level for Cost Recovery Agreements with options. Voice vote found all in favor; passed and so ordered.

Council agreed more options were needed regarding CIPs.

Mayor Ives called for a recess at 9:29 p.m., reconvening at 9:35 p.m.

4. **FISCAL YEAR 13/14 GENERAL FUND MID-YEAR BUDGET PERFORMANCE REPORT** - Jenny Haruyama, Administrative Services Director, provided the staff report. Mid-year trends indicate that General Fund operating revenue will exceed adopted budget levels. Expected increases in FY 13/14 revenue are based on continued economic growth and recovery. Current operating expense projections anticipate year-end savings due to vacancies, reprioritization of projects, and current and prior year expense trends. It is projected that the City will realize \$2.9 million at year-end.

Property tax trends continue to show signs of recovery. In the City of Tracy, property tax revenue is transitioning from a negative decline to steady growth. This is due to a reduction in foreclosures and turnover in homes and/or property reassessments. Given that property tax revenue projections for year-end are anticipated to be higher than adopted levels, a budget adjustment of \$1,228,820 was recommended.

The FY 13/14 adopted budget for sales tax was \$14.5 million; however, based on 2013 third quarter projections from the City's sales tax consultant, Muni-Services, FY 13/14 year-end sales tax revenue is expected to be higher. A budget adjustment of \$636,000 was recommended.

The increase in sales tax is due to changes in the City's top three key economic categories. According to Muni-Services' 2013 Third Quarter Sales Tax Report, the strongest categories are transportation, general retail, and food products. New auto sales are expected to continue through FY 14/15 and level out in subsequent years.

In November 2010, Tracy voters approved Measure E, a new half-cent temporary sales tax applicable to physical purchases made in the City of Tracy and online sales to Tracy customers. The tax began in April 2011, and will expire in March 2016. The FY 13/14 General Fund Adopted Budget assumes \$5.9 million in Measure E taxes; however, current projections indicate that the amount may be closer to \$6.6 million.

Franchise fees are currently received from gas and electric, cable television, and solid waste collection service providers. Franchise fee revenue currently represents approximately 5% of the General Fund budget. The FY 13/14 General Fund Adopted Budget assumed \$2.5 million in franchise fee revenue based on the prior year's estimated year-end figures. Conservative projections anticipate no change to the adopted amount.

The Other Taxes revenue category includes several tax sources, the most significant of which are Transient Occupancy Tax (TOT) and Business License Tax. The City levies TOT on all hotel and motel rooms within Tracy city limits. The City also requires all businesses located within the City of Tracy, or those that operate within Tracy to obtain a business license. Revenue received from the Other Taxes category is on target and is expected to be in alignment with adopted levels of \$1.6 million at the end of FY 13/14.

Revenue received from the Use of Money & Property category includes investment earnings and rental income from City property. The City earns interest income by investing monies not immediately required for daily operations in a number of money market instruments. While the General Fund reserve is not declining, capital fund balances fluctuate from year- to-year depending on the number of projects; therefore, FY 13/14 year-end projections are estimated to be approximately \$426,000 (\$344,000 lower than adopted levels).

Department expenditures are trending at or below the expected 50% budget level. Operating expense projections anticipate that the City may experience budget savings due to vacancies, reprioritization of projects, and current and prior year expense trends. The City could realize up to \$1.1 million in savings at year-end.

The FY 13/14 mid-year report reflects several proposed revenue and expenditure adjustments. Proposed adjustments would impact the General Fund and other non-general fund sources.

An expense adjustment in the amount of \$39,771 to the General Fund is requested to cover the cost of unanticipated street tree emergency removal services due to a storm in October 2013. This expense would be funded through anticipated excess revenue and year-end savings.

An expense adjustment in the amount of \$100,000 is requested to address airport fuel system repairs required by the San Joaquin County Environmental Health Department. This expense would be funded through anticipated excess revenue and year-end savings.

An expense adjustment in the amount of \$176,000 to the Non-General Fund is requested to cover increased operating costs as a result of purchasing a portion of the City of Lathrop's South San Joaquin Irrigation District (SSJID) capacity. This purchase

was authorized by Council in August 2013 and increased costs were expected at the time of the purchase. Supplemental funding is available via the Water Fund.

An expense adjustment in the amount of \$4,300 is requested to fund temporary work hours to assist with water conservation including, but not limited to, responding to requests for information, field inspections, and implementation of water conservation measures. Supplemental funding is available via the Water Fund.

An expense adjustment in the amount of \$102,000 is requested to fund an Accounting Coordinator position from development-related fees to coordinate all existing and new development reporting, including but not limited to: AB 1600 development impact fee reporting and fee revenue data for Finance and Implementation Plan (FIPs).

The Governor's FY 14/15 budget does not propose any fiscal or legislative changes that would impact local government or local control.

As of June 30, 2013, the General Fund has a reserve balance of \$28.9 million; approximately \$27.5 million is designated as unrestricted. The total unrestricted fund balance represented over 56% of total general fund expenditures for FY 13/14. Of the \$27.5 million in reserves, approximately \$12 million is allocated to the Reserve for Economic Uncertainty.

In January 2014, staff began strategic budget development discussions anticipating the need to maintain service levels and prioritize any recommended budget augmentations given the timing of future revenue and anticipated expiration of Measure E in FY 15/16. To date, the City has implemented nearly \$5 million in budget reductions due to targeted early retirements, vacancy eliminations, and consolidation of departments and executive management positions. Another \$3 million in savings will occur incrementally over the next three fiscal years (starting in FY 12/13) as employees begin to pay their share of PERS costs. Employees will pay their full share of employee PERS by FY 15/16. Also included in the FY 14/15 budget development process is the Capital Improvement Program (CIP) budget.

The mid-year budget analysis indicates that overall, assumptions for revenues and expenditures have not changed significantly, with exception of property tax and sales tax revenue. Several general fund and non-general fund expense adjustments have also been proposed.

The FY 13/14 General Fund Adopted Budget reflects \$14,410,000 in property tax and 14,502,900 in sales tax revenue. Based on current economic trends and projections provided by Muni-Services, both property and sales tax revenue are expected to be higher than the FY 13/14 adopted amounts. Authorization of revenue adjustments would increase the FY 13/14 adopted property and sales tax revenue to \$1,228,820 and \$636,000 respectively. Proposed general fund expenditure adjustments would increase the expenditure budget by \$137,371. This amount would be covered by anticipated FY 13/14 year-end savings and excess revenue. The proposed non-general fund expenses, which total \$282,300, would be funded through applicable sources, including the Water Fund and development-related fees.

Staff recommended that City Council accept the FY 13/14 General Fund Mid-Year Performance Report, and adopt a resolution authorizing a FY 13/14 Budget Adjustment.

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

Paul Miles urged caution in looking at the budget and consider that the City is still running approximately a \$3 million deficient if Measure E were not in place.

Michel Bazinet, Measure E Committee Member, stated the budget numbers are very good and that the City should be proud of its performance. Mr. Bazinet stated the Measure E Committee would like to see what the City's position is without Measure E.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2014-029 authorizing Fiscal Year 2013/2014 Operating Budget Adjustments. Voice vote found all in favor; passed and so ordered.

5. DISCUSS AND PROVIDE DIRECTION ON A COUNCIL COMMUNICATION POLICY – Mayor Ives stated he would like Council to consider the City of Menlo Park's policy and excused himself for the duration of the meeting at 9:54 p.m.

Leon Churchill, Jr., City Manager, provided the staff report. On July 17, 2012, Council discussed the establishment of a City Council procedure and protocol manual, a City Council communications Policy, and a City Council code of conduct guidelines. Council determined that additional information on a communication policy should be brought back for Council consideration.

On February 21, and 22, 2013, during the Council retreat, Council briefly discussed the development of a communication policy, a code of conduct policy, and the future compilation of a manual that contains all Council related procedures and policies for current and future Council members.

Mr. Churchill presented a sample Communication Policy for Council for Council consideration. Once the Communication Policy is adopted by Council, staff proposes to return to Council with a code of conduct agenda item for Council discussion, followed by a discussion on the development of a manual containing all Council related policies for easier future reference.

Council expressed interest in clarifying how communications to, from, and between City Council Members take place. Mr. Churchill referred to a draft communication policy which was attached to the staff report which addresses how written Council-related communication is handled and is largely based on current practices and City Council policies as well as state law requirements.

The Communications Policy is divided into three sections: The first section describes how communications to the City Council are distributed.

The second section describes how communication from the City Council is recommended. Particular attention is focused on the difference between Council members' representation of the City Council's official positions or actions versus individual Council member's views as residents and how these differences should be

differentiated when speaking to groups or individuals related to various issues. This section also clarifies the use of City Letterhead and other resources, as well as how confidential information is handled.

The last section of the draft Communications policy focuses on communications between City Council members and the importance of understanding City Council parameters bounded by the Brown Act.

Staff recommended that Council review and discuss the policy and provide direction.

Mayor Pro Tem Maciel asked if Council should consider restricting the use of texting during Council meetings.

Mayor Pro Tem Maciel invited members of the public to address Council on the item.

Paul Miles discussed the ability to receive communication during a meeting, attorney client privileged communication, a time limit for items on the agenda, currently policy regarding closed action minute reporting, and the possibility of a Council Member having a proxy when they cannot attend a meeting.

Dan Sodergren, City Attorney, stated attorney-client privilege is governed by State Evidence Code and the privilege does lie with the Council. Mr. Sodergren stated the composition of the Council is governed by State law and the City of Tracy, being a general law city, does not have that flexibility.

Mayor Pro Tem Maciel asked for clarification regarding time limits for items on the agenda. Mr. Sodergren stated Council does have the discretion to set time limits.

Robert Tanner stated the audience is expected to turn off their cell phones and if Council Members have their cell phones on, it is disrespectful to the citizens.

Council Member Young stated cell phones were part of technology and a resource for the Council. Council Member Young further stated as adults, Council should have sense of what is respectful while still giving attention to speakers.

Mr. Sodergren provided legal background information on cell phone usage during Council meetings.

Council Member Manne, referring to cell phone usage, stated it is appropriate to silence cells phones, but he would not turn his cell phone off during Council meetings for emergency reasons.

Mayor Pro Tem Maciel stated his concern was if Council was going to receive communication during open session, it should be open. Mayor Pro Tem Maciel stated there have been instances in the past when something was brought to one Council Member's attention and no one else was privy to that information. Mayor Pro Tem Maciel added that you cannot believe everything you read on the internet and that Council needs to rely on the accuracy of information provided by staff.

Mr. Churchill asked Council if there was any consensus on what should be added or deleted from a policy. Mr. Sodergren stated if Council chooses to adopt a policy, staff would make the changes and bring the item back on a future Consent Calendar for adoption.

Mayor Pro Tem Maciel asked for clarification regarding documents being presented during a meeting. Mr. Sodergren stated it would be better to qualify it within the existing policy.

Council Member Manne stated he was not in favor of adding any policy or rules and was in favor of the status quo.

Council Member Young stated the policy regarding presentations being received 24 hours in advance was pointless.

Mayor Pro Tem Maciel stated there was no Council consensus on this point.

Mayor Pro Tem Maciel asked if there was consensus on whether or not Council should be going on-line for information.

Council Member Rickman asked if it was against any State law to review or look up items on-line. Mr. Sodergren stated when Council is acting in a quasi-judicial role, they should only rely on evidence available to the public.

Council Member Rickman stated he has no concerns with the internet. Council Member Manne stated he agreed, adding technology should to be used appropriately.

Mayor Pro Tem Maciel stated there was no Council consensus on this point.

Mayor Pro Tem Maciel asked if there was consensus on sending or receiving texts excluding being notified of personal emergencies.

Council Member Rickman asked if there were any legal implications other than quasi-judicial reasons. Mr. Sodergren stated there could be an appearance of a Brown Act violation.

Mr. Sodergren stated he understood there was Council consensus to bring back a policy regarding communication.

Council Member Rickman stated he wanted to make sure the communication policy does not restrict Council contacting people on the outside or meeting with citizens.

Mayor Pro Tem Maciel stated if someone brings an item or information to his attention, he forwards it to the appropriate Department Head and copies the City Manager, provides contact information and a brief description of situation. Mr. Churchill stated he appreciated the practice.

It was moved by Council Member Young and seconded by Mayor Pro Tem Maciel to direct staff to bring back a communication policy for adoption based on information

presented to Council. Voice vote found Council Members Manne, Rickman, Young and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

6. SECOND READING AND ADOPTION OF ORDINANCE 1193 AN ORDINANCE OF THE CITY OF TRACY REZONING ASSESSOR'S PARCEL NUMBERS 235-070-64 & 66 FROM LIGHT INDUSTRIAL (M-1) TO MEDIUM DENSITY RESIDENTIAL (MDR). THE APPLICANT IS ANDRE STAMBUK AND THE PROPERTY OWNERS ARE JAVIER AND JUANA DIAZ. APPLICATION NUMBER R13-0001 - The Clerk read the title of proposed Ordinance 1193.

It was moved by Council Member Manne and seconded by Council Member Rickman to waive the reading of the text. Voice vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

It was moved by Council Member Manne and seconded by Council Member Rickman to adopt Ordinance 1193. Roll call vote found Council Members Manne, Rickman, Young, and Mayor Pro Tem Maciel in favor; Mayor Ives absent.

7. ITEMS FROM THE AUDIENCE – Paul Miles responded to Mayor Pro Tem Maciel's previous comments regarding the community's belief that Council did not address the misconduct of Mr. Churchill.

George Riddle commended Council for acting quickly to approve funds to address airport fuel concerns.

Mayor Pro Tem Maciel asked if it was known how long those repairs would take. Mr. Churchill stated between six and eight weeks.

8. STAFF ITEMS

- A. Receive and Accept the City Manager Informational Update – Leon Churchill, Jr., City Manager, provided the staff report.

Mayor Pro Tem Maciel asked what would happen to the former fire facility at Pescadero Park when the new fire stations were occupied. Mr. Churchill stated plans are underway and information will return for Council.

Council accepted the City Manager's informational update.

9. COUNCIL ITEMS – Council Member Young stated she would like to sponsor an agenda regarding options to address infrastructure issues in the Mount Oso, C Street, Mount Diablo area.

Council Member Young reminded everyone of upcoming events being held in honor of National Black History Month including an event at the Tracy Museum on February 19, 2014, at 7:00 p.m. titled Being Black in Tracy; Thursday February 20, 2014, at 6:00 p.m., Freedom Riders being held at the Grand Theatre, and February 28, 2014, at 6:00 p.m. at Merrill F. West High School, titled Shades of Black.

Mayor Pro Tem Maciel requested a Council discussion or workshop regarding ways the City can restore confidence from the community including how the City presents its financial information, enhancing transparency, enhancing accessibility and a review of credit card and purchasing policies with the intent to rehabilitate the image of civic government.

Maria Hurtado, Assistant City Manager, stated the senior leadership team contemplated an agenda item on March 4, 2014, with a plan to assess policies and procedures on internal controls.

Dan Sodergren, City Attorney, stated Mayor Pro Tem Maciel's item will be placed on the agenda as a sponsored item.

Council Member Rickman voiced concern regarding a discussion in a public forum on the topic. Mayor Pro Tem Maciel clarified that he was talking in general terms.

Council Member Rickman stated the people's trust and confidence is strained and that Council needs to hear from the people.

Mayor Pro Tem Maciel stated Council has taken action regarding Mr. Churchill.

Council Member Rickman stated the purpose of a closed session was to discuss public trust and confidence.

Council Member Manne stated he would like to have a closed session to ensure that Council Members are prepared to offer statements that are legal while also protecting the employee.

Mr. Sodergren stated a closed session would be appropriate if Council was discussing employee performance, and not appropriate if discussing policy.

Council Member Young stated there were two different issues. Council Member Young added that residents need to be able to air their concerns.

Council Member Manne stated individuals have valid concerns that need to be addressed and that Council should be prepared to have that conversation.

Mayor Pro Tem Maciel stated there was Council consensus to have an item on a future agenda regarding restoring confidence in city government.

Mr. Sodergren stated he heard Council consensus to have a staff item dealing with some of the issues Ms. Hurtado added as well as an item sponsored by Mayor Pro Tem Maciel. Mr. Sodergren stated the Mayor or three Council Members can call for an acceptable Brown Act closed session regarding employee performance. Mr. Sodergren stated he could send an attorney-client privileged memo offering legal advice.

Mayor Pro Tem Maciel stated he liked the offer by the City Attorney to offer an opinion under the attorney-client relationship.

It was moved by Council Member Rickman to have a closed session regarding Mr. Churchill's employee performance. Council Member Manne seconded the motion. Voice vote found Council Members Manne, Rickman and Young in favor; Mayor Pro Tem Maciel opposed; Mayor Ives absent.

Mr. Sodergren summarized the items to return on the next agenda: 1) A closed session; 2) A staff item; 3) An item sponsored by Mayor Pro Tem Maciel.

10. ADJOURNMENT - It was moved by Council Member Manne and seconded by Council Member Rickman to adjourn. Voice vote found Council Members Manne, Rickman, Young and Mayor Pro Tem Maciel in favor; Mayor Ives absent. Time: 11:37 p.m.

The above agenda was posted at the Tracy City Hall on February 13, 2014. The above are summary minutes. A recording is available at the office of the City Clerk.

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Mayor

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City Clerk

**March 4, 2014, 7:00 p.m.**

City Council Chambers, 333 Civic Center Plaza

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

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

The invocation was offered by Pastor Kevin James, New Creation Bible Fellowship.

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

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for March to Stephanie Reyna-Hiestand, Public Works.

Mayor Ives presented a proclamation to Liza Cruz, Regional Manager, San Joaquin American Red Cross, in recognition of American Red Cross Month.

Mayor Ives recognized students from Jefferson, Tom Hawkins, and Anthony Traina Elementary Schools, for their D.A.R.E. graduation.

1. CONSENT CALENDAR - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
  - A. Approval of Minutes –Closed session minutes of January 7, and January 21, 2014, were approved.
  - B. Acceptance of the Sidewalk Repair Fiscal Year 2013 – 2014, Phase One, A Street and Eleventh Street Sidewalk Improvement – CIP 73139, completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File a Notice of Completion – Resolution 2014-030 accepted the project.
  - C. Approve Professional Services Agreement (PSAs) with TJKM Transportation Consultants (Traffic), and West Yost and Associates (Water), Task Order No. 6 to Master PSA (MPSA) with Storm Water Consulting, Incorporated (Storm Drainage), MPSA (CH-2014) and Task Order No. 1 to MPSA (CH-2014-01) with CH2MHill (Wastewater), and Task Order No. 2 to MPSA (HA13-01) with Harris and Associates (Program Management) for Completion of Various Technical Analyses Related to the Industrial Development of I-205 Parcels M1 and M2, and Authorize the Mayor to Sign the Agreements – Resolution 2014-031 approved the agreements.
2. ITEMS FROM THE AUDIENCE - Benjamin Rose addressed Council expressing support for the City Manager, asking that Council allow him to continue to lead the City.

Ray Morelos addressed Council regarding morals, ethics, and accountability. Mr. Morelos indicated failure of the Council to enforce policies results in public mistrust.

Don Cose addressed Council stating Mr. Churchill has been the best City Manager in Tracy's history and asked that Council give Mr. Churchill their vote of confidence.

Mercedes Silveira addressed Council asking for an update regarding the Spirit of California project. Mayor Ives asked staff to contact Ms. Silveira.

Paul Miles addressed Council stating this was not the first ethical lapse of Mr. Churchill and provided a brief history of events. Mr. Miles stated Council needed to go back to the District Attorney with complete information regarding multiple issues.

Dave Helm addressed Council regarding the personal use of a City credit card by Mr. Churchill. Mr. Helm stated he did not understand how Council can hold one group to a standard and not hold the leader to the same standard.

3. PUBLIC HEARING TO CONSIDER THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS FOR FISCAL YEAR 2014-2015 – Mayor Pro Tem Maciel excused himself from consideration of the item stating his wife served on the Tracy Interfaith Ministries Board, which group was being considered for funding. Council Member Young stated she was a member of the Sow A Seed Foundation, but that she did not have to excuse herself from the discussion.

Barbara Harb, Management Analyst, provided the staff report. Ms. Harb stated that Community Development Block Grant (CDBG) funds are allocated to cities and counties by the United States Department of Housing and Urban Development (HUD) for use in projects, programs, and services that demonstrate a benefit to low and moderate income individuals and families. Applicants must meet one of HUD's National objectives and criteria for eligibility.

During FY 2008-2009, Council directed staff to revise the CDBG process so that those eligible applications that best address the local needs of the Tracy community would receive priority for funding. In order to encourage meaningful citizen involvement, public examination, and appraisal of the process, as well as enhance program accountability, a subcommittee of the Parks and Community Services Commission was established to evaluate the CDBG applications and make funding allocation recommendations.

The estimated amount of CDBG funds allocated to the City of Tracy, as a sub-recipient of San Joaquin County, is \$457,746 for FY 2014-2015. HUD regulations state that funding for activities in the Public Services category cannot exceed 15% of the City's annual CDBG allocation. Therefore, the Public Services category is limited to an estimated maximum allocation of \$68,661, leaving a balance of \$389,085 to be allocated in the Public Facilities and Economic Development categories for FY 2014-2015. Additionally, the City is also estimated to receive \$65,648 in federal Home Investment Partnership Program (HOME) funds, which are intended for general housing activity types to include: homeowner and rental construction and/or rehabilitation and first-time homebuyer assistance.

CDBG and HOME applications for FY 2014-2015 were made available on December 18, 2013, with a submittal deadline of January 15, 2014. Staff held a public meeting on January 8, 2014, to answer questions regarding the application requirements. The City received 11 applications in the CDBG – Public Services category, three applications in the CDBG - Public Facilities category, two applications in the CDBG – Economic Development category, and one application in the HOME funds category.

The CDBG subcommittee conducted a public meeting on Thursday, January 23, 2014, to consider the applications and make funding allocation recommendations. The Parks and Community Services Commission conducted a public meeting on Thursday, February 6, 2014, to consider the recommendations made by the CDBG subcommittee.

The CDBG Subcommittee initially recommended fully funding The Coalition of Tracy Citizens to Assist the Homeless Emerson House Renovation/Repair project using HOME Funds in order to maximize funding to as many applicants as possible. Unfortunately, after the CDBG Subcommittee meeting on January 23, 2014, the project was determined to be ineligible for HOME funding. As a result, the application was placed for consideration in the CDBG – Public Facilities category. The application was being reviewed for CDBG funding eligibility by HUD at the time of the Parks and Community Services Commission meeting on February 6, 2014. On February 10, 2014, the County informed the City that the project would be eligible for funding should the applicant secure a 15-year lease prior to the March 4, 2014, Council meeting. The City has received confirmation that a 15-year lease has been secured by the applicant making it eligible for CDBG funding.

The Tri-Valley Housing Opportunity project is a duplication of services already provided by Visionary Home Builders (administered by the County). The County has informed City staff that CDBG funds are not to be used for duplicate services. Therefore, the Parks and Community Services Commission recommend allocating the \$65,648 in HOME Funds to the City of Tracy Down Payment Assistance Program.

There will be no impact to the General Fund. The City of Tracy, as a sub-recipient of San Joaquin County, will be allocated an estimated \$457,746 in CDBG funds for FY 2014-2015. The City will also be allocated an estimated \$65,648 in HOME funds.

Staff recommended that Council allocate \$457,746 in Community Development Block Grant funds and \$65,648 in HOME funds for FY 2014-2015 pursuant to the recommendations listed in the resolution and authorize the Development Services Director to execute the Form Agreements on behalf of the City.

Ms. Harb added that since the Parks and Community Service Commission meeting, the Emerson House Renovation/Repair project did obtain the 15-year lease and therefore was eligible for funding. Ms. Harb stated staff supported the request and asked that Council allocate \$56,219 to the Coalition's Emerson House renovation project and reduce the City's ADA door modification project to \$211,028.

Mayor Ives asked if the new resolution included the changes outlined. Ms. Harb stated yes.

Mayor Ives opened the public hearing.

Kate Macek, Women's Center Youth and Family Services, thanked Council and staff for their diligence and support for their programs in Tracy for the past 10 years.

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

It was moved by Council Member Rickman and seconded by Council Member Young to adopt Resolution 2014-032 allocating Community Development Block Grant and Home Investment Partnership Program funds for Fiscal Year 2014-2015. Voice vote found Council Members Manne, Rickman, Young and Mayor Ives in favor; Mayor Pro Tem Maciel abstained.

4. AUTHORIZE THE ESTABLISHMENT OF PREFERENTIAL PARKING ON TWELFTH STREET AND BERVERDOR AVENUE BETWEEN MAE AVENUE AND EAST STREET AS A PILOT PROGRAM – Andrew Malik, Development Services Director, introduced Victoria Dion, City Engineer. Mr. Malik stated staff has met with the school district, who would like to make a presentation. Ripon Bhatia, Senior Civil Engineer, provided the staff report. Mr. Bhatia stated on January 21, 2014, staff introduced an ordinance adding a chapter to the City of Tracy Municipal Code governing preferential parking. Council, after reviewing the parking issues on these streets, did not pursue the introduction of the proposed ordinance and directed staff to implement preferential parking as a pilot program on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street through the school year ending in June 2015. Furthermore, Council directed that associated costs for establishing this pilot program, including installation of signs, issuance of permits and enforcement of preferential parking zones shall be borne by the City.

Engineering and Police Department staff have been working together to finalize the logistics to implement the Council directive and recommend establishing preferential parking between the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. The procedures for issuance of the parking permits, revocations, exemptions and violations of the permit parking are recommended to apply as follows:

Issuance of Parking Permits, Fees, Revocation - Within 30 days after the designation of a preferential parking area, the Chief of Police shall begin issuing parking permits to any residents of the area.

Each resident is entitled to:

1. One permit for each vehicle registered to the resident's address, up to a maximum of two permits. The resident shall affix the permit to the vehicle.
2. One guest permit although the City may issue an additional guest permit to a property owner who is not a resident
3. Up to ten one-day guest permits for each special event held at a residence.
4. The permit does not entitle the permittee to violate other parking regulations, guarantee a parking space at any particular location, or permit parking for more than 72 hours. There is no fee for the annual parking permit.

The Chief may revoke the parking permit of any person or for any vehicle no longer eligible for a permit, and shall notify the resident in writing of the reason for the revocation.

Parking Permit Exemptions - The following vehicles are not subject to the parking permit requirement in a designated preferential parking area:

- a. An emergency vehicle (See Vehicle Code section 165).
- b. A delivery, utility or service vehicle providing service to a resident or facility in the preferred parking area.
- c. A vehicle used by a disabled individual meeting the requirements of Vehicle Code section 22511.5 and displaying a handicap plate or placard.

Violations - Within a preferred parking area, no person may:

- a. Park a motor vehicle during the limited times without a valid permit properly displayed. The Police Department is authorized to issue a parking citation for a violation.
- b. Falsely represent himself or herself as eligible for a parking permit, or furnish false information in a permit application
- c. Allow the use of a parking permit on a vehicle other than that for which the permit was issued,
- d. Copy or produce a counterfeit parking permit, or display a counterfeit permit, or
- e. Sell, give or exchange a permit to another person.

Police Department staff has determined the parking violation fine for permit parking to be \$50 per violation.

During the items from the audience segment of the February 4, 2014, Council meeting, students from Tracy High School spoke for the need of additional student parking in and around the school to mitigate concerns of the neighboring residents. They further stated that the interim solution being implemented by the City would not resolve the issue and parking issues will spill over to the adjoining neighborhoods.

The City also received two letters, one from a resident on Highland Street and the other from Franklin Street, requesting that the radius for the preferential parking be extended to their streets as well. They were concerned that their streets had been intentionally excluded from the proposed preferential parking areas.

Staff has been working with the neighborhood groups, including Highland Street, for the last several years. However, feedback from Highland residents indicated they were not in favor of preferential parking on their street. There was only an isolated traffic improvement request from Franklin Street, which was followed up with no parking restrictions on a stretch of street which had been already approved and installed.

After reviewing concerns from the residents and students, staff believes that the Council direction to implement the pilot program for preferential parking on Twelfth Street and Berverdor Avenue will mitigate immediate concerns and will allow staff to evaluate its effectiveness and its impacts on the neighboring areas.

It is anticipated that the implementation of the Preferential Parking Pilot Program will have a minimal impact on the Police Department budget; no additional funding is

requested. Required signage will be installed by Public Works Department and parking permits will be issued by Police Department staff.

Council Member Young referred to issuance of parking permit fees, number 4, and the restriction that cars have to move after 72 hours. Mr. Bhatia stated the Tracy Municipal Code (TMC) currently prohibits cars from parking longer than 72 hours.

Council Member Young asked for clarification regarding disabled placards being exempt. Mr. Bhatia stated State code overrides the requirement.

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

Casey Goodall addressed Council on behalf of the Tracy Unified School District (TUSD). Mr. Goodall stated a student made a presentation to the School Board and it was agreed that several members of the Board would work with students to attempt to resolve the issue. Mr. Goodall stated the problem, as understood by the School District, is that there are 2,000 students, 250 student parking spaces, eight handicapped spaces which will increase to 16, three motorcycle spots and more to come upon the completion of construction currently underway.

A Tracy High School student outlined various options explored including: carpooling, park and ride with a shuttle to campus, and a good neighbor program to restore relationships with the neighborhood. The High School student proposed the creation of a committee to come up with long term and short term solutions. The student asked that Council postpone the decision until the committee has an opportunity to meet on March 27, 2014.

A group of students indicated a parking permit will not fix the majority of the issues the neighbors have and apologized for any issues they have incurred. The group asked that Council wait until the end of the school year so they can come up with a solution.

Steve Nicolaou asked Council to give the kids a chance to find a solution without involving government.

Douglas Palmer stated the First Presbyterian Church has similar parking problems.

A resident of Twelfth Street stated the issue is not just with students littering, it includes those attending football games. The resident stated it was unfair that residents have to go to City Hall so visitors can come to their home. Mr. Bhatia stated each resident will be issued one guest permit.

Mayor Pro Tem Maciel asked if the guest permit is issued to the household so they can allow a variety of visitors to use the permit. Mr. Bhatia stated the guest permit is not for any particular vehicle, and can be displayed in any car for any visitor.

As there was no one further wishing to address Council on the matter, the public comment portion of the item was closed.

Mayor Pro Tem Maciel stated the students should be credited for their involvement in the matter; that they are part of the solution. Mayor Pro Tem Maciel stated a parking permit was only part of the answer.

Mayor Ives asked Mr. Goodall if there were continued discussion with staff and students on the issue. Mr. Goodall stated staff intends to meet with the students and no options have been dismissed. Mr. Goodall further stated that regardless of a Council decision, the School District intends to address parking concerns.

Council Member Young commended the students for presenting their ideas and solutions. Council Member Young stated she was in support of postponing a decision so the students have an opportunity to come up with potential solutions.

Council Member Manne also commended the students for addressing Council, stating the permit parking was a bandaid solution. Council Member Manne stated he was in favor of postponing a decision in order to give the students and residents an opportunity to resolve the issue.

Mayor Pro Tem Maciel asked Mr. Goodall how much time they needed. Mr. Goodall stated they would be prepared to return to Council within 30-45 days, but that a long term solution would take longer.

Council Member Manne asked if the School District intended to include residents of the neighborhood. Mr. Goodall stated they have not considered that option, but indicated they do need to engage the residents to solve the problem.

Council Member Rickman stated the students did a good job.

Mayor Ives stated the issue was a school impact and theirs to mitigate. Mayor Ives stated the difference now is that there is an action plan and they are engaged. Mayor Ives added it was a wonderful idea to engage the residents. Mayor Ives stated he was willing to wait and was not sure he was in favor of a permit situation.

It was Council consensus to postpone taking action on the establishment of preferential parking on Twelfth Street and Berverdor Avenue between Mae Avenue and East Street for 60 days.

Mayor Ives called for a recess at 8:35, reconvening at 8:44 p.m.

5. **ACCEPT REPORT REGARDING THE CITY'S FINANCIAL CONTROLS AND REPORTING PRACTICES** – Jenny Haruyama, Administrative Services Director, provided the staff report. Ms. Haruyama stated staff has recently received several Public Records Act requests related to credit card use by City employees as well as travel expenses and reimbursements.

The City has several policies and procedures related to financial reporting, budget practices, and internal controls. The City's financial and budget policies address issues such as reserves, capital projects, use of one-time resources, and debt issuance. Examples of administrative and internal control policies include cell phone use and

stipends, credit card issuance, travel expense and reimbursement, petty cash handling, and purchasing practices.

The Tracy Municipal Code requires that all funds, accounts, and financial transactions of the City be subject to an annual audit by an independent certified public accountant that is selected by the Council. The audit is performed in compliance with auditing standards generally accepted in the United States and standards applicable to financial audits contained in the Government Auditing Standards, issued by the Comptroller General of the United States.

The Municipal Code further specifies that after the close of the fiscal year, an annual financial report covering all funds and financial operations shall be prepared and submitted to Council.

The City's audit process is comprised of three phases; the first two involve an audit of the City's financial statements and internal controls. The third phase is a single audit or federal program compliance audit. The fourth, or last phase, involves the reporting of the audit results, findings, and management action plan.

During the first phase of the financial statement audit, the auditors perform an interim audit, known as a preliminary survey, prior to the close of the fiscal year (May or June). The auditors evaluate potential risks to the City's financial system and documents existing internal controls. This process determines if the City's established policies and procedures are reliable and are being implemented correctly. The results of the testing determine the scope of the audited transactions that occur in phase two.

The second phase of the financial statement audit involves a field audit, which is performed shortly after the end of the fiscal year (July and August). During this phase, the auditors perform extensive testing of all financial transactions; the objective of the auditors is to ensure that the financial record keeping and internal processes are done accurately and in accordance with federal auditing standards. This phase also includes a more involved review of financial transactions and procedures regarding cash handling, purchase orders, travel reimbursements, and credit card purchases.

The third phase is a compliance audit of federal programs. This audit involves further transaction testing in accordance with the Office of Management and Budget (OMB) Circular A-133 and is conducted in January following the close of the fiscal year and issuance of the CAFR. The OMB Circular A-133 establishes auditing standards for federal programs used by local government. In addition to this audit, the City undergoes several other specialty audits, which include a review of transit funding, gas tax, and state grants.

In the final phase, the audit results, findings, and management action plan is compiled into a report and is distributed to applicable executive management and Council. Although follow-up is considered a separate process, it is an integral part of audit work. If a significant finding (correction) is made, it must be addressed by a target date as provided in the management action plan.

Although City auditors have indicated that the City's financial statements are presented fairly and comply with generally accepted accounting principles, staff will explore options

to further enhance its financial processes and informational transparency practices, which include the following:

1. Best Practice Review of City Internal Control Policies - A best practices review of the City's administrative and financial policies is already underway. This policy research will include, but is not limited to policies and procedures related to credit card issuance, travel expense and reimbursement, cell phone use, issuance and stipends, petty cash handling, and purchasing practices. The City's policies will be updated as needed to reflect best practice approaches to administrative and financial processes. Employee training will be provided on these policies and/or procedures. Staff is also considering an external, independent audit to review selected processes, and identify suggested improvements.
2. Improving Informational Transparency and Accessibility - The Council adopted a Governance Strategy that promotes communication and civic engagement, financial transparency, and fiscal stewardship. Over the past several months, the City has been in the process of implementing an open government financial software to improve public access, promote understanding, and build trust regarding its financial reporting practices.

Additionally, as part of the FY 13/14 CIP budget, Council approved the upgrade of a new financial and human resource system. This upgrade will improve the City's overall financial reporting and tracking capabilities, particularly transactions related to internal control items such as credit card charges and travel expenses and reimbursements.

Staff is also exploring ways to broaden the financial data posted on the City's website to include key administrative and financial policies related to the City's investment practices, reserves, and credit cards.

Staff recommended that Council accept the report regarding the City's financial controls and reporting practices.

Council Member Rickman asked if the new program would allow individuals to look online and see credit card purchases. Ms. Haruyama stated staff would be able to drill down to get the information which can be compiled in a report and made available.

Council Member Rickman asked if the public can access the information from the website. Ms. Haruyama stated she was not sure and would have more information on April 1, 2014.

Mayor Pro Tem Maciel stated he would like to see the City's financial business publically accessible. Mayor Pro Tem Maciel further stated the system should be designed so that a layperson can successfully navigate through it.

Council Member Manne asked how long Moss Levy & Hartzman has worked for the City. Ms. Haruyama stated approximately ten years. Ms. Haruyama stated typically after five years a city would send out an RFP for the services, however, it would be a good idea to keep Moss Levy & Hartzman on board while the City go through the finance upgrade.

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

Steve Nicolaou applauded Ms. Haruyama for bringing the City into the 21<sup>st</sup> Century. Mr. Nicolaou stated this effort was not just about dollars and cents, but about people having faith in their government. Mr. Nicolaou stated the rules need to apply to everyone, indicating expense reimbursement for elected officials, board members, and commissioners should be included.

Mayor Pro Tem Maciel asked Ms. Haruyama if there was anything that exempted elected officials. Ms. Haruyama stated no.

Mr. Nicolaou suggested Council consider a position of ombudsman under the Finance Director.

Bill Durban addressed Council in support of the idea of an ombudsman. Mr. Durban thanked Police Chief Hampton for bringing integrity back to the police force.

Linda Jiminez, addressed Council regarding travel expenses asking why it took an audit to find problems. Ms. Jiminez asked if the new system will check for errors. Ms. Haruyama stated automation does not mean authorization. Ms. Haruyama further stated parameters would be set up through the system. Ms. Haruyama stated there were several staff members who perform due diligence on expense reports before they are submitted to her and that the process will carry forward electronically.

Dave Helm asked how many credit cards were issued to City staff. Ms. Haruyama stated approximately 50 cal cards and 99 store cards. Mr. Helm asked why a notation was not made in the CAFR report. Ms. Haruyama stated the auditors rendered a decision because the receivable was paid off within the month and they were able to close the books.

Michele Bazinet asked if there was a change in policy that allows staff to answer questions raised by the public. Mayor Ives stated there was a difference in Items from the Audience and an item that has been placed on the agenda.

Mr. Bazinet stated the City was taking a step in the right direction by looking at internal controls and checks and balances. Mr. Bazinet further stated we learn from our mistakes and move forward.

Mr. Durban asked where he could find the \$68 million in intangibles listed in the audit. Ms. Haruyama stated she would work offline to answer Mr. Durban's questions.

Paul Miles discussed an open source system, intent to defraud, and the lack of respect for critics.

Council Member Young asked if Council would receive an update on what policies have been updated or changed. Ms. Haruyama stated the Council Policies will return and an informational report would be provided regarding Administrative Policies.

Council Member Young stated she was concerned with travel and entertainment policies, indicating there appears to be room for improvement. Ms. Haruyama asked if

Council Member Young was referring to employee administrative policies or Council adopted travel expense policies. Council Member Young stated both.

Council Member Young stated it was important that residents are aware of the time that is spent on public records act requests. Council Member Young stated Council works for the community and serves the community because they care for the community.

Maria Hurtado, Assistant City Manager, asked if Council Member Young was requesting that staff bring back a public records act request log as part of the two step process. Council Member Young stated yes.

Mayor Pro Tem Maciel asked if there was system for tracking public records act requests. Ms. Hurtado stated a log is kept on all public records act requests.

Council Member Manne thanked staff for the agenda item and suggested it was time to recycle the City's auditor.

Mayor Ives asked what the CAFR is supposed to do for a government. Ms. Haruyama stated a CAFR is a snapshot in time of what the transactions were for a fiscal year, as well as an overview of the City's fiscal health.

Council accepted the report regarding the City's financial controls and reporting practices.

6. CONSIDER A REQUEST BY CITY COUNCIL TO DISCUSS COMPLAINTS BY BRIAN VAN LEHN REGARDING THEIR CONCERNS RELATIVE TO NOISE EMISSIONS FROM THE LEPRINO FOODS PROCESSING PLANT AT 2401 NORTH MACARTHUR DRIVE – Ana Contreras, Code Enforcement Manager, provided the staff report. Ms. Contreras stated that City staff, Leprino, and the Van Lehn's have worked together to address certain noise issues related to operations at the Leprino facility since December 2, 2008. The outcome of those early discussions resulted in Leprino constructing noise barriers near the refrigerated rail cars adjacent to the residential neighborhood on the west side of their facility located at 2401 North MacArthur Drive. The rail car barriers were installed based on a recommendation by an acoustical engineer hired by Leprino Foods to analyze and make a recommendation as to the best way to reduce noise levels. Noise readings conducted after the barriers were constructed concluded that Leprino was not in violation of their 1994 Noise Exemption.

Ms. Contreras provided a brief case history of the actions taken to date to address the Van Lehn complaint:

Staff recommended Council provide Brian Van Lehn an opportunity to discuss the issue of noise from the Leprino Foods plant as agreed to at its City Council meeting of January 7, 2014.

Andrew Malik, Development Services Director, added should Council direct staff to make changes to the noise ordinance Leprino would be grandfathered into any change.

Mayor Pro Tem Maciel asked if the current ordinance addresses noise in decibels. Ms. Contreras stated yes. Mayor Pro Tem Maciel asked if there was a different metric that

noise could be measured and if so, do current ordinances encompass it. Alan Bell, Senior Planner, stated the City ordinance measures sound in A-weighted decibels; a measure of noise frequency that is recognized as audible to people.

A discussion ensued regarding Leprino Foods, their application and approval for a noise exemption, sound limits for residential and commercial uses, noise levels, land uses, and the current noise ordinance.

Council Member Young discussed the Leprino expansion and vibrations. Council Member Young indicated she wanted to hear from the Van Lehn's and hoped that Council could help resolve the issue. Council Member Young stated Leprino should not be grandfathered in. Mr. Bell added that there was no question that the character, quality and duration of the noise had changed, however, at no time has Leprino exceeded the allowed 67 decibel level.

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

Brian Van Lehn thanked Council Member Young for bringing this item to Council. Mr. Van Lehn asked that Council hear the new evidence and re-consider their position on the noise issue. Mr. Van Lehn stated the noise that is most offensive has not been captured.

Derek Watry, an acoustical engineer hired by the Van Lehn's, provided Council with information regarding low frequency tonal noise experienced by the Van Lehn's. Mr. Watry discussed low frequencies, wave lengths, vibrations and the shaking of the Van Lehn's house because of sound waves. Mr. Watry stated all noise readings conducted by the City missed this low frequency. Mr. Watry further stated the problem is not a noise ordinance issue and needed to be dealt with outside the noise ordinance. Mr. Watry stated he has met with Leprino Foods and they have committed to work with him. Mr. Watry indicated the Van Lehn's will track when this phenomenon occurs and once the issue is isolated, Leprino will work to fix it.

Mayor Ives stated it was refreshing to find the source of the issue and was encouraged by the fact that Leprino is working to isolate the source.

Mayor Pro Tem Maciel stated no one doubted the Van Lehn's had an issue, the question was, is it in the Council's purview to correct the issue. Mayor Pro Tem Maciel stated since Leprino is working with the Van Lehn's, it may be premature for the City to get involved.

Mr. Van Lehn asked Council to acknowledge that there was a true noise issue in his neighborhood and to encourage Leprino to identify the problem.

Paul Miles stated maybe noise is not the correct metric but was in fact a public nuisance. Mr. Miles recommended that Council not act until something is identified and to keep an open mind.

Mayor Ives stated staff might contact Leprino and thank them for being willing to look at their equipment and allow access from Mr. Watry.

Council Member Young asked if the City had a good neighbor policy. Leon Churchill, Jr., City Manager, stated a good neighbor policy would originate from the corporation and not from the City. Mr. Malik added that staff met with Leprino Foods this morning and had a good dialogue with them.

7. ITEMS FROM THE AUDIENCE – Rhodesia Ransom addressed Council commending Council on the work they have done. Ms. Ransom encouraged Council to find a way to move forward and get back to the business of Tracy including economic development and quality of life.

Sandy Taylor thanked Council for all they have done to lead the City into the future. Ms. Taylor stated based on all the good things the residents are experiencing, the record for positive progress speaks for itself. Ms. Taylor stated the negative comments are harmful to the City.

Paul Miles, responding to the “enough is enough” remark, stated he has reported explicit violations of criminal law which have not been dealt with. Mr. Miles stated this situation will not go away; it needs to be addressed openly and honestly.

Marsha McCray addressed Council regarding negative comments made at Council meetings and in letters to the editor. Ms. McCray stated good things do not happen in a city despite leadership, they happen because of the leadership. Ms. McCray stated she believes Council is working for the greater good of the community.

Linda Jiminez addressed Council stating every citizen should be able to come forward and speak their mind whether we agree or disagree. Ms. Jiminez stated everyone should be respected.

8. STAFF ITEMS – None.

9. COUNCIL ITEMS

- A. Determine Whether to Direct Staff to Place an Item on a Future Council Agenda Regarding Options to Address Infrastructure Issues in the Mount Oso, C Street and Mount Diablo Area - Maria Hurtado, Assistant City Manager, provided the staff report. Ms. Hurtado stated at the City Council meeting held on February 18, 2014, Council Member Young referenced the various code enforcement, public works and infrastructure issues Lisa De Pasquale’s raised at a previous Council meeting and stated she would like to sponsor an agenda item related to the infrastructure issues in that area. Councilmember Young would like Council to consider a future Council agenda regarding options to address infrastructure issues in the Mount Oso, C Street, and Mount Diablo area.

Approval of Council Member Young’s request would result in an agenda item being placed on a future Council agenda allowing Council to discuss the item and determine any action related to the item.

It was Council consensus to place an item on a future Council agenda regarding options to address infrastructure issues in the Mount Oso, C Street, and Mount Diablo area.

Mayor Ives asked how long it would take for an item to return to Council on the matter. Leon Churchill Jr., City Manager, stated May 6, 2014. Mr. Churchill outlined some of the issues in the area stating there are fairness issues and if the City wants to pursue infrastructure there could be an \$80 million exposure.

Mayor Pro Tem Maciel stated the more options Council has to consider the better.

Mayor Ives stated a history of the area would be helpful.

Lisa DiPasquale thanked Council Member Young for sponsoring her item. Ms. DiPasquale encouraged Council and staff to see what other cities are doing regarding a beautification ordinance.

- B. Determine Whether to Direct Staff to Place an Item on a Future Council Agenda to Discuss How Best to Respond to Items From the Audience - Maria Hurtado, Assistant City Manager, provided the staff report. Ms. Hurtado stated at the City Council meeting held on February 18, 2014, Council Member Maciel requested that Council consider placing an item on the agenda to discuss how best to respond to items from the audience when inaccurate information is presented by members of the public and additional factual information can provide further clarity. If Council or staff does not have the factual information readily available, Council can discuss a practice that provides flexibility to bring the factual information back at a future Council meeting.

Approval of Council Member Maciel's request would result in an agenda item placed on a future Council agenda allowing Council to discuss the item and determine any action related to the item.

Mayor Pro Tem Maciel clarified that his intent was to cover items from the audience as well as items on the agenda.

Mayor Ives asked if this item would reside with the City Attorney. Dan Sodergren, City Attorney, stated he could provide a report of what the Brown Act provides.

It was Council consensus to have an item placed on a future agenda addressing Mayor Pro Tem Maciel's request.

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

Paul Miles stated he would welcome Mr. Sodergren coming back with an exposition of what the Brown Act does and does not allow. Mr. Miles stated he has disagreed with some of the responses by Council that have effectively accused members of the public of being dishonest and then not allowing the

public to respond in a timely manner. Mr. Miles added that the agenda item Mayor Pro Tem Maciel requested at the last meeting centered on restoring confidence and not responding to members of the audience.

Mayor Pro Tem Maciel stated the agenda item presented by staff dealing with financial information would have been part of what he originally would have proposed and since then, the topic has been narrowed.

Linda Jiminez stated she fully supports the item because the Parks and Community Services Commission encounters the same issue.

Michel Bazinet stated there was a broader issue which related to free speech and provided several examples.

Council Member Young commented on Mayor Pro Tem Maciel's original request and how Mayor Pro Tem Maciel was able to articulate the crux of his request and how this item came about.

Leon Churchill, Jr., City Manager, suggested the agenda item return to Council on April 15, 2014.

- C. Appoint Applicants to the Measure E Residents' Oversight Committee – It was moved by Council Member Rickman and seconded by Council Member to appoint John Ferguson, Kevin Tobeck and Teresa Kandes to the Measure E Residents' Oversight Committee to serve three year terms which will expire on March 1, 2017. Council Member Rickman stated Larry Fragoso and Brooke Fell were placed on an eligibility list.
- D. Appointment of City Council Subcommittee to Interview Applicants for Vacancies on the Planning Commission - Mayor Pro Tem Maciel and Council Member Manne were appointed to interview applicants to fill three upcoming term expirations on the Planning Commission.

Council Member Young asked for an update on previous requests regarding: 1) A citizens committee to address complaints; 2) Individuals being recorded in their home; and 3) Findings from the Senior Steering Committee. Council Member Young requested that the Steering Committee be utilized in putting the information together.

Mayor Ives asked if the items raised by Council Member Young were being worked on. Leon Churchill, Jr., City Manager, stated an item regarding a citizen committee was scheduled for March 18, 2014. Regarding individuals being recorded in their homes, Police Chief Hampton provided Council with the policy and asked Council to determine if the item requires any additional visibility. Regarding the Senior Steering Committee, Mr. Churchill asked if the Council needed additional information. Mr. Churchill indicated the report has been referred to the Parks Commission for action.

Council Member Young asked if it was possible for the steering committee to help in the process. Mr. Churchill encouraged those members to contribute and participate in the Parks Commission discussion and again when it comes back to Council at a joint meeting.

Mayor Ives stated Council did get a report on recording individuals in their homes.

Council Member Young stated she may need further clarification. Mr. Hampton availed himself to further discuss the policy with Council Member Young.

Council Member Rickman wished his daughter Allison a Happy Birthday.

Mayor Ives indicated Council would recess to the adjourned closed session meeting.

10. ADJOURNMENT - It was moved by Council Member Manne and seconded by Council Member Young to adjourn. Voice vote found all in favor; passed and so ordered. Time: 11:15 p.m.

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

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Mayor

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City Clerk

June 3, 2014

AGENDA ITEM 1.B

REQUEST

**ADOPT RESOLUTIONS REGARDING THE ELECTION PROCESS, GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014**

EXECUTIVE SUMMARY

The City's General Municipal Election will be held on November 4, 2014. At this time the Council needs to take certain actions to announce the election and to request consolidation with the County.

DISCUSSION

Two Council actions are required at this time relative to the City's upcoming General Municipal Election:

1. Adopt a resolution calling for the election of the Mayor and two Council Members.
2. Adopt a resolution requesting consolidation of the City's General Municipal Election of November 4, 2014, with the Statewide General Election by the County of San Joaquin.

STRATEGIC PLAN

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

FISCAL IMPACT

All costs associated with the consolidated General Election have been included in the FY 14-15 budget.

RECOMMENDATION

That the City Council adopt the attached resolutions calling for and giving notice of holding a General Municipal Election on Tuesday, November 4, 2014, and requesting the San Joaquin County Board of Supervisors to consolidate the City election with the Statewide General Election to be held November 4, 2014.

Attachments

Prepared by: Carole Fleischmann, Interim City Clerk  
Reviewed by: Gary Hampton, Interim Assistant City Manager  
Approved by: Maria Hurtado, Interim City Manager

RESOLUTION 2014-

CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY STATE LAW RELATING TO GENERAL LAW CITIES

WHEREAS, Under the provisions of state law relating to general law cities, a General Municipal Election shall be held on November 4, 2014, for the election of municipal officers.

NOW, THEREFORE, the City Council of the City of Tracy, California, does resolve, declare, determine, and order as follows:

Section 1: Pursuant to the requirements of the laws of the State of California relating to general law cities there is called and ordered to be held in the City of Tracy, California, on Tuesday, November 4, 2014, a General Municipal Election for the purpose of electing a Mayor for the full term of two years and two members of the City Council for full terms of four years.

Section 2: The ballots to be used at the election shall be in form and content as required by law.

Section 3: The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 10242, except as provided in Section 14401, of the Elections Code of the State of California.

Section 4: In all particulars not recited in this resolution, the elections shall be held and conducted as provided by law for holding municipal elections.

Section 5: Notice of the time and place of holding the election is given and the County Elections Department is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

\* \* \* \* \*

The foregoing Resolution 2014-      was passed and adopted by the Tracy City Council on the 3rd day of June 2014, by the following vote:

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

\_\_\_\_\_  
Mayor

ATTEST:

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

RESOLUTION 2014-

REQUESTING THE BOARD OF SUPERVISORS OF SAN JOAQUIN COUNTY  
PROVIDE FOR THE CONSOLIDATION OF THE GENERAL MUNICIPAL ELECTION  
TO BE HELD WITH THE STATEWIDE GENERAL ELECTION  
TO BE HELD ON NOVEMBER 4, 2014

WHEREAS, The City Council of the City of Tracy called a General Municipal Election to be held on November 4, 2014, for the purpose of the election of a Mayor for the full term of two years and two members of the City Council for full terms of four years; and

WHEREAS, It is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the County Elections Department of the County of San Joaquin canvass the returns of the General Municipal Election, and that the election be held in all respects as if it were only one election.

NOW, THEREFORE, the City Council of the City of Tracy, California, does resolve, declare, determine, and order as follows:

Section 1: Pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of San Joaquin is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday November 4, 2014, for the purpose of the election of a Mayor for the full term of two years and two members of the City Council for full terms of four years.

Section 2: The County Elections Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 3: The Board of Supervisors is requested to issue instructions to the County Elections Department to take any and all steps necessary for holding of the consolidated election.

Section 4: The City of Tracy recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

Section 5: The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County Elections Department of the County of San Joaquin.

\* \* \* \* \*

The foregoing Resolution 2014-        was passed and adopted by the Tracy City Council on the 3rd day of June 2014, by the following vote:

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

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Mayor

ATTEST:

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Interim City Clerk

AGENDA ITEM 1.C

REQUEST

**APPROVE PROFESSIONAL SERVICES AGREEMENTS (PSA) WITH ELEVEN COMPANIES FOR PLAN REVIEW AND/OR INSPECTION SERVICES AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS**

EXECUTIVE SUMMARY

With limited full-time staff in the City's Building Safety and Fire Prevention Division, the City depends upon consultants to complement staff's efforts to meet published performance objectives and provide expanded services as they relate to State-mandated plan review and inspection services of construction projects. Consultant services are particularly useful during peak demand periods or when resources are mobilized to expedite key economic development projects.

DISCUSSION

The City has contracted for plan review and inspection services for review of construction plans and inspection of construction projects. This is to help ensure that each building project conforms to State-mandated construction codes through the plan review and inspection processes. These efforts greatly assist the construction industry in building safe structures.

Currently, the City uses four plan review and inspection firms. Whenever staff shortages, peak workloads, or the complexity of a project mandates external assistance; consultants have been called upon to perform review and/or inspection work to meet the City's published turn-around timelines for review and inspection requests. Staff proposes to expand this list. Expanding this list enables increased customer satisfaction as customers will be able to open their businesses more quickly. It will also give staff additional flexibility in handling seasonal peaks or special customer needs; such as expedited review services or weekend/holiday inspection requests. In addition, if one or more firms are not able to deliver timely or quality services, an expanded list of approved consultants will help ensure that these services can be delivered.

The City has worked diligently to maintain that a good measure of the plan review work be accomplished internally. However, with the continuing and significant expansion of work that the City is currently experiencing, the need for expanded staff in the form of consultant services is needed more than ever.

City Council last approved this request approximately three years ago and the Professional Services Agreements (PSAs) that the City secured with various consultants are now expiring. Therefore, staff recently published a Request for Proposals on February 28, 2014, for Building and Fire Inspection and Plan Review Services through April 30, 2017. Staff has reviewed all the proposals received and eleven outside plan review and inspection agencies were selected based on the following factors:

- The experience and past performance of the firm, its agents and employees in completing projects of various type, size and complexity

- The firm's ability to provide timely and accurate reviews/inspections
- The flexibility of the proposal based upon the performance and cost schedules and methodologies used by the firm to complete projects
- The firm's understanding of the work to be completed based upon the clarity of the proposal and responsiveness to the Request for Proposal

The proposed PSAs specify that the City may allocate work to each firm selected based on the City's budget, the required services needed at the time, and the competitiveness and quality of each PSA so as to most efficiently and economically satisfy the City's needs for specified services.

Staff recommends entering into PSAs with the firms noted below:

1. Structech Engineering
2. 4Leaf, Inc.
3. Engineered Fire Systems, Inc.
4. Interwest Consulting Group
5. Bureau Veritas
6. CSG Consultants, Inc.
7. EsGil Corporation
8. West Coast Code Consultants, Inc.
9. Willdan Engineering
10. TRB & Associates
11. Shums Coda Associates

### STRATEGIC PLAN

This agenda item supports both the Governance and Economic Development Strategy and specifically implements the following goals:

- Goal 2 of the Governance Strategy: Ensure continued fiscal sustainability through financial and budgetary stewardship
- Goal 2 of the Economic Strategy: Attract retail and entertainment uses that offer residents quality dining, shopping and entertainment experiences
- Goal 4 of the Economic Strategy: Position Tracy as the preferred location for start-up companies and entrepreneurial investments

### FISCAL IMPACT

Funding consultants for plan review and inspection services will come from the General Fund. However, these funds will be recovered through the collection of corresponding plan review and permit fees paid by the respective project applicant for all projects.

### RECOMMENDATION

Staff recommends that City Council, by resolution, approve the Professional Service Agreements for supplementary plan review and/or inspection services with the above noted firms for plan review and inspection services of construction projects through April 30, 2017, and authorize the Mayor to execute the agreements.

Agenda Item 1.C

June 3, 2014

Page 3

Prepared by: Kevin Jorgensen, Chief Building Official, Fire Code Official

Reviewed by: Andrew Malik, Development Services Department Director  
Gary Hampton, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENTS:

Attachment A: Structech Engineering, PSA

Attachment B: 4Leaf, Inc. PSA

Attachment C: Engineered Fire Systems, Inc., PSA

Attachment D: Interwest Consulting Group, PSA

Attachment E: Bureau Veritas, PSA

Attachment F: CSG Consultants, Inc., PSA

Attachment G: EsGil Corporation, PSA

Attachment H: West Coast Code Consultants, Inc., PSA

Attachment I: Willdan Engineering, PSA

Attachment J: TRB & Associates, PSA

Attachment K: Shums Coda Associates, PSA

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES**  
**[MAY 1, 2014 TO APRIL 30, 2017]**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Structech Engineering, a sole proprietor (“Consultant”).

**RECITALS**

- A.** Consultant services are needed related to Building and Fire Inspection and Plan Review Services.
- B.** At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Hamid Pouya, P.E.** Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
- 2. TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
PLAN REVIEW SERVICES, MAY 1, 2014 TO APRIL 30, 2017**

Page 2 of 6

Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
PLAN REVIEW SERVICES, MAY 1, 2014 TO APRIL 30, 2017**

**Page 3 of 6**

subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

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

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

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

10. **INSURANCE.**

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

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

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

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

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

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

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
PLAN REVIEW SERVICES, MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

- 10.7 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Hamid Pouya, P.E.  
Structech Engineering  
5632 Ravenna Court  
San Jose, CA 95118

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
PLAN REVIEW SERVICES, MAY 1, 2014 TO APRIL 30, 2017**

**Page 5 of 6**

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
PLAN REVIEW SERVICES, MAY 1, 2014 TO APRIL 30, 2017**

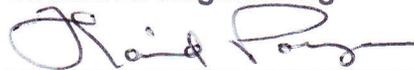
Page 6 of 6

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

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

City of Tracy

Consultant  
**Structech Engineering**



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

\_\_\_\_\_  
By: Hamid Pouya  
Title: President  
Date: APRIL 29, 2014  
Fed. Employer ID No. 463-98-9266

Attest:

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

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

#### **SCOPE OF SERVICES**

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

#### **PLAN PROCESSING REQUIREMENTS**

All plans are submitted directly to the CITY. The CITY will transmit all plans and corresponding project documentation directly to the Consultant for review and approval. The Consultant is required to develop and furnish the CITY's Building Official/Fire Code Official and applicant with a complete and legible written list of all corrections for each plan review performed. Consultant shall also receive from the City any subsequent resubmittal, and shall also provide notice to CITY as to when Consultant receives the resubmittal directly from the applicant, if such were to occur. When the plan check and recheck processes are complete and the plans are deemed in full code compliance, the Consultant shall sign and stamp two sets of plans and corresponding documents. The stamp shall include the company identification, a mark "approved", and each page of both sets of plans must be so stamped. The Consultant shall then return all documents completely and appropriately assembled to the CITY. CITY shall not accept construction documents from Consultant that need to be sorted and/or assembled. Consultant shall complete the insertion of revisions to both sets of plans prior to submitting finalized construction documents to CITY. All reviewers performing accessibility review shall be currently certified as a CASp member. All other reviewers shall possess all necessary and current certifications required by state law to conduct such reviews.

#### **TIME OF PERFORMANCE**

The Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. The CITY's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

The Consultant shall complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by the Consultant. The CITY's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

### TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

### PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

### COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

Complete Plan Review	\$145 / hr.
Structural Only	\$175 / hr.

### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

## PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

## NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

The CITY reserves the right to contract with other plan review service firms during the Professional Service Agreement term. The CITY further reserves the right to, at its sole discretion, allocate the number of plans provided by each plan review service firm so as to most efficiently and economically satisfy the CITY's plan review needs.

**CITY OF TRACY  
PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and 4LEAF, Inc., a California Corporation (“Consultant”).

**RECITALS**

- A.** Consultant services are needed related to Building and Fire Inspection and Plan Review Services
- B.** At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Craig Tole**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
- 2. TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 2 of 6

Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 3 of 6

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

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

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

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

10. **INSURANCE.**

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

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

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

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

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

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

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

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**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

**11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**12. MISCELLANEOUS.**

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

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
4LEAF, Inc.  
Craig Tole  
2110 Rheem Drive, Ste. A  
Pleasanton, CA 94588

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**  
Page 5 of 6

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

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

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

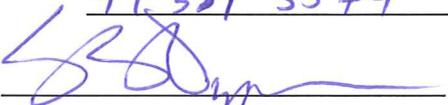
City of Tracy

Consultant

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

\_\_\_\_\_  
  
By: Kevin Duggan  
Title: President  
Date: 4/5/2014  
Fed. Employer ID No. \_\_\_\_\_

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

94-339 3574  
\_\_\_\_\_  
  
By: Kevin Duggan  
Title: Secretary  
Date: 4/5/2014

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

#### SCOPE OF SERVICES

Consultant shall provide combination building and fire inspections to verify compliance with the CITY's Tracy Municipal Codes as may be amended or updated from time to time and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

Combination field inspection shall include site inspections, writing legible and understandable correction and violation notices and field reports, holding office hours and answering in-person or telephone inquiries.

#### MISCELLANEOUS REQUIREMENTS

All inspectors provided by Consultant for performing inspection services for the CITY shall be equipped with all necessary tools, equipment and current code books by Consultant in order to facilitate the inspection process. All inspectors provided by Consultant for performing inspection services for CITY shall continue to receive State-mandated continuing education and complete forty-five hours of continuing education for every three-year period. Such education is to be provided by Consultant at Consultant's sole cost including, but not limited to, any hourly costs associated with sending inspectors to such continuing education. When requested by CITY, Consultant shall provide evidence of said education within seven working days of request. The Consultant will credit the CITY for any inspectors provided by Consultant that receive regular technical training provided by CITY on an hour for hour basis. Currently, this training is provided for up to two hours per week. Notification of such training and the corresponding inspection or plan check staff attendance record may be forwarded to Consultant on a monthly basis. All inspectors performing inspections related to disabled access shall be currently certified as a CASp member. All other inspectors shall possess all necessary and current certifications required by state law to conduct such inspections.

## COMPENSATION

As compensation for the above services, the following fee schedule shall apply:

<u>Position</u>	<u>Billing Rate</u>
Building Inspector I	\$ 75 per hour
Building Inspector II	\$ 85 per hour
Building Inspector III	\$ 95 per hour
Inspector of Record Services	\$105 per hour
Specialty Inspections (ADA, CASp, etc.)	\$175 per hour

For overtime work (after hours, weekend or holidays) authorized by the CITY, Consultant shall be paid as follows:

- Regular time (work begun after 5AM or before 4PM) 1 x hourly rate
- Night Time (work begun after 4PM or before 5AM) 1.125 x hourly rate
- Overtime (over 8 hours M-F or Saturdays) 1.5 x hourly rate
- Overtime (over 8 hours Sat or 1<sup>st</sup> 8 hour Sun) 2 x hourly rate
- Overtime (over 8 hours Sun or Holidays) 3 x hourly rate

## PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of this Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

## NON-EXCLUSIVE PERFORMANCE SERVICE AGREEMENT

The CITY reserves the right to contract with other inspection service firms during the term of this Professional Services Agreement. The CITY further reserves the right to, at its sole discretion, allocate the number of hours of work among the personnel provided by each inspection service firm so as to most efficiently and economically satisfy the CITY's inspection needs.

### **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

#### SCOPE OF SERVICES

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

#### PLAN PROCESSING REQUIREMENTS

All plans are submitted directly to the CITY. The CITY will transmit all plans and corresponding project documentation directly to the Consultant for review and approval. The Consultant is required to develop and furnish the CITY's Building Official/Fire Code Official and applicant with a complete and legible written list of all corrections for each plan review performed. Consultant shall also receive from the City any subsequent resubmittal, and shall also provide notice to CITY as to when Consultant receives the resubmittal directly from the applicant, if such were to occur. When the plan check and recheck processes are complete and the plans are deemed in full code compliance, the Consultant shall sign and stamp two sets of plans and corresponding documents. The stamp shall include the company identification, a mark "approved", and each page of both sets of plans must be so stamped. The Consultant shall then return all documents completely and appropriately assembled to the CITY. CITY shall not accept construction documents from Consultant that need to be sorted and/or assembled. Consultant shall complete the insertion of revisions to both sets of plans prior to submitting finalized construction documents to CITY. All reviewers performing accessibility review shall be currently certified as a CASp member. All other reviewers shall possess all necessary and current certifications required by state law to conduct such reviews.

## TIME OF PERFORMANCE

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## TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

## PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

## COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for CONSULTANT's services including expedited review services shall be as follows:

### Position

### Billing Rate

Staff Augmentation  
Outside Services

QOR  
65% city fees

## LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for

up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

#### PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

#### NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

The CITY reserves the right to contract with other plan review service firms during the Professional Service Agreement term. The CITY further reserves the right to, at its sole discretion, allocate the number of plans provided by each plan review service firm so as to most efficiently and economically satisfy the CITY's plan review needs.

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Engineered Fire Systems, Inc., a California corporation (“Consultant”).

**RECITALS**

- A. Consultant services are needed related to Building and Fire Inspection and Plan Review Services.
- B. At the request of the CITY, CONSULTANT submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the CONSULTANT have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Eric Price. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 2 of 6

Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 3 of 6

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

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

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

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
  - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
  - 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
  - 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.
  - 10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - 10.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
    - 10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

**11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**12. MISCELLANEOUS.**

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

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Engineered Fire System, Inc.  
Eric Price  
11832 Tammy Way  
Grass Valley, CA 95949

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 5 of 6

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

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

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

City of Tracy

Consultant

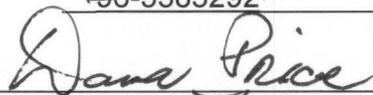
\_\_\_\_\_  
By: Brent H. Ives  
Title: Mayor  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Eric Price  
Title: President  
Date: 5-23-14

Fed. Employer ID No.  
94-3013989  
~~96-5383292~~

Attest:

\_\_\_\_\_  
By: Carole Fleischmann  
Title: Interim City Clerk  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: DANA PRICE  
Title: VP  
Date: 5-23-14

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

#### **SCOPE OF SERVICES**

Consultant shall perform plan reviews as required by City. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on City's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

#### **PLAN PROCESSING REQUIREMENTS**

All plans are submitted directly to City. City will transmit all plans and corresponding project documentation directly to Consultant for review and approval. Consultant is required to develop and furnish City's Building Official/Fire Code Official and applicant with a complete and legible written list of all corrections for each plan review performed. Consultant shall also receive from City any subsequent resubmittal, and shall also provide notice to City as to when Consultant receives the resubmittal directly from the applicant, if such were to occur. When the plan check and recheck processes are complete and the plans are deemed in full code compliance, Consultant shall sign and stamp two sets of plans and corresponding documents. The stamp shall include the company identification, a mark "approved", and each page of both sets of plans must be so stamped. Consultant shall then return all documents completely and appropriately assembled to City. City shall not accept construction documents from Consultant that need to be sorted and/or assembled. Consultant shall complete the insertion of revisions to both sets of plans prior to submitting finalized construction documents to City. All reviewers performing accessibility review shall be currently certified as a CASp member. All other reviewers shall possess all necessary and current certifications required by state law to conduct such reviews.

#### **TIME OF PERFORMANCE**

Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. City's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion. Consultant shall

complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by Consultant. City's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

### TECHNICAL SUPPORT

Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with City staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

### PLAN CONVEYANCE

City will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. Consultant shall return to City all plans and corresponding documents by the same system at Consultant's expense.

### COMPENSATION

**Please note that the maximum limit for plan review fees paid to Consultant by City shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the City and Consultant will negotiate for an appropriate fee. Subject to the limitations set forth above, Consultant's fees for services, including expedited review services, are as follows:

**\$100.00 per hour**

### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon Consultant at the discretion of the City for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon Consultant at the discretion of the City for up to 50% of the plan review fee charged to the permit applicant.

## PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and run through April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the City determines that Consultant has satisfactorily performed all obligations under this Agreement, and the City Council has appropriated sufficient funds for the proposed services. The fees agreed to by Consultant in this Agreement shall remain unchanged for the entire term of the Agreement and any extensions of same.

## NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

City reserves the right to contract with other plan review service firms during the Agreement term. The City further reserves the right to, at its sole discretion, allocate the number of plans provided by each plan review service firm so as to most efficiently and economically satisfy the City's plan review needs.

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Interwest Consulting Group, a Colorado Corporation (“Consultant”).

**RECITALS**

- A.** Consultant services are needed related to Building and Fire Inspection and Plan Review Services
- B.** At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Ron Beehler, SE, CBO**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
- 2. TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 2 of 6

Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 3 of 6

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

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

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

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.
- 10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

- 10.7 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Interwest Consulting Group  
Ron Beehler, S.E.  
6280 W. Las Positas Blvd., Ste. 220  
Pleasanton, CA 94588

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 5 of 6

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

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

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

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

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

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

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017  
Page 6 of 6**

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

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

City of Tracy

Consultant  
**Interwest Consulting Group**

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

Attest:

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

\_\_\_\_\_  
By: Terry Rodrigue  
Title: President  
Date: 5/6/2014  
Fed. Employer ID No. \_\_\_\_\_

73-1630909  
\_\_\_\_\_  
By: Debbie Thorson  
Title: Chief Financial Officer  
Date: 5/6/14

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

#### **SCOPE OF SERVICES**

Consultant shall provide combination building and fire inspections to verify compliance with the CITY's Tracy Municipal Codes as may be amended or updated from time to time and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

Combination field inspection shall include site inspections, writing legible and understandable correction and violation notices and field reports, holding office hours and answering in-person or telephone inquiries.

#### **MISCELLANEOUS REQUIREMENTS**

All inspectors provided by Consultant for performing inspection services for the CITY shall be equipped with all necessary tools, equipment and current code books by Consultant in order to facilitate the inspection process. All inspectors provided by Consultant for performing inspection services for CITY shall continue to receive State-mandated continuing education and complete forty-five hours of continuing education for every three-year period. Such education is to be provided by Consultant at Consultant's sole cost including, but not limited to, any hourly costs associated with sending inspectors to such continuing education. When requested by CITY, Consultant shall provide evidence of said education within seven working days of request. The Consultant will credit the CITY for any inspectors provided by Consultant that receive regular technical training provided by CITY on an hour for hour basis. Currently, this training is provided for up to two hours per week. Notification of such training and the corresponding inspection or plan check staff attendance record may be forwarded to Consultant on a monthly basis. All inspectors performing inspections related to disabled access shall be currently certified as a CASp member. All other inspectors shall possess all necessary and current certifications required by state law to conduct such inspections.

## COMPENSATION

As compensation for the above services, the following fee schedule shall apply:

<u>Classification</u>	<u>Hourly Rate</u>
Fire Inspector	\$90
Building Inspector	\$75 to \$85
Permit Technician	\$55

For overtime work (after hours, weekend or holidays) authorized by the CITY, CONSULTANT shall be paid as follows:

1.5 x Hourly Rate

## PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of this Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

## NON-EXCLUSIVE PERFORMANCE SERVICE AGREEMENT

The CITY reserves the right to contract with other inspection service firms during the term of this Professional Services Agreement. The CITY further reserves the right to, at its sole discretion, allocate the number of hours of work among the personnel provided by each inspection service firm so as to most efficiently and economically satisfy the CITY's inspection needs.

## **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

### **SCOPE OF SERVICES**

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

### **PLAN PROCESSING REQUIREMENTS**

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### **TIME OF PERFORMANCE**

The Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. The CITY's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion. The Consultant shall complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by the Consultant. The CITY's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

## TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

## PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

## COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

<u>Classification</u>	<u>Hourly Rate</u>
Senior Plan Review Engineer	\$125
Plans Examiner	\$90
Fire Plans Examiner	\$90

Expedited Plan Review Fees will be charged at a rate of 1.25 times the rate specified for typical plan reviews as noted above.

## LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

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**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and Bureau Veritas North America, Inc., A Delaware Corporation (“Consultant”).

**RECITALS**

- A.** Consultant services are needed related to Building and Fire Inspection and Plan Review Services
- B.** At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Michael Vieira**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
- 2. TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

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Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

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

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

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

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
  - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
  - 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
  - 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.
  - 10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - 10.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
    - 10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

**11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**12. MISCELLANEOUS.**

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

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Bureau Veritas North America, Inc.  
Attn: Michael Vieira, CBO  
180 Promenade Cr., Ste. 150  
Sacramento, CA 95834

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**  
Page 5 of 6

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

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

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

City of Tracy

Consultant  
**Bureau Veritas North America, Inc.**

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

  
\_\_\_\_\_  
By: Isam Hasenin  
Title: Vice President  
Date: May 5, 2014  
Fed. Employer ID No. \_\_\_\_\_  
06-1689244

Attest:

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

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

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#### **COMPENSATION**

As compensation for the above services, the following fee schedule shall apply:

**Staff Level Classifications**

**2013-2014\***

Fire Inspector	\$95
Building Inspector II	\$75
Building Inspector I	\$70

\*Reimbursement for daily job miles will be charged at the current IRS per mile rate.

For overtime work (after hours, weekend or holidays) authorized by the CITY, CONSULTANT shall be paid as follows:

Overtime will be 125% of the fees shown above. No overtime will be charged without approval from the City.

**PROFESSIONAL SERVICE AGREEMENT TERM**

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CASp	\$105
Fire Plans Examiner	\$95
ICC Certified Plans Examiner	\$85
Permit Technician	\$60
Clerical Support	\$55

\*Expedite Plan Review will be 125% of the fees shown above.

\*Reimbursement for daily job miles will be charged at the current IRS per mile rate.

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**MAY 1, 2014 TO APRIL 30, 2017**

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

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Crickett Brinkman**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
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Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

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

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

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

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

10. **INSURANCE.**

- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.
- 10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any

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insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Crickett Brinkman, Manager  
CSG Consultants, Inc.  
1247 Main Street  
Newman, CA 95360

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With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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

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

City of Tracy

Consultant  
**CSG CONSULTANTS, INC.**

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

\_\_\_\_\_  
By: Cyrus Kianpour  
Title: President  
Date: 5-2-14

Fed. Employer ID No. \_\_\_\_\_

91-2053749

Attest:

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

\_\_\_\_\_  
By: Dave Gottlieb  
Title: Chief Financial Officer  
Date: 4-29-14

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

#### **SCOPE OF SERVICES**

Consultant shall provide combination building and fire inspections to verify compliance with the CITY's Tracy Municipal Codes as may be amended or updated from time to time and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

Combination field inspection shall include site inspections, writing legible and understandable correction and violation notices and field reports, holding office hours and answering in-person or telephone inquiries.

#### **MISCELLANEOUS REQUIREMENTS**

All inspectors provided by Consultant for performing inspection services for the CITY shall be equipped with all necessary tools, equipment and current code books by Consultant in order to facilitate the inspection process. All inspectors provided by Consultant for performing inspection services for CITY shall continue to receive State-mandated continuing education and complete forty-five hours of continuing education for every three-year period. Such education is to be provided by Consultant at Consultant's sole cost including, but not limited to, any hourly costs associated with sending inspectors to such continuing education. When requested by CITY, Consultant shall provide evidence of said education within seven working days of request. The Consultant will credit the CITY for any inspectors provided by Consultant that receive regular technical training provided by CITY on an hour for hour basis. Currently, this training is provided for up to two hours per week. Notification of such training and the corresponding inspection or plan check staff attendance record may be forwarded to Consultant on a monthly basis. All inspectors performing inspections related to disabled access shall be currently certified as a CASp member. All other inspectors shall possess all necessary and current certifications required by state law to conduct such inspections.

#### **COMPENSATION**

As compensation for the above services, the following fee schedule shall apply:

**Personnel**

**All Inclusive Hourly Rate**

Certified Commercial Building Inspector	\$85
Fire Plan Review Inspector	\$90
Certified Building Inspector	\$75
CASp Inspection	\$125

For overtime work (after hours, weekend or holidays) authorized by the CITY, CONSULTANT shall be paid as follows:

1.5 x Hourly Rate

**PROFESSIONAL SERVICE AGREEMENT TERM**

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of this Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

**NON-EXCLUSIVE PERFORMANCE SERVICE AGREEMENT**

The CITY reserves the right to contract with other inspection service firms during the term of this Professional Services Agreement. The CITY further reserves the right to, at its sole discretion, allocate the number of hours of work among the personnel provided by each inspection service firm so as to most efficiently and economically satisfy the CITY's inspection needs.

## **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

### SCOPE OF SERVICES

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

### PLAN PROCESSING REQUIREMENTS

All plans are submitted directly to the CITY. The CITY will transmit all plans and corresponding project documentation directly to the Consultant for review and approval. The Consultant is required to develop and furnish the CITY's Building Official/Fire Code Official and applicant with a complete and legible written list of all corrections for each plan review performed. Consultant shall also receive from the City any subsequent resubmittal, and shall also provide notice to CITY as to when Consultant receives the resubmittal directly from the applicant, if such were to occur. When the plan check and recheck processes are complete and the plans are deemed in full code compliance, the Consultant shall sign and stamp two sets of plans and corresponding documents. The stamp shall include the company identification, a mark "approved", and each page of both sets of plans must be so stamped. The Consultant shall then return all documents completely and appropriately assembled to the CITY. CITY shall not accept construction documents from Consultant that need to be sorted and/or assembled. Consultant shall complete the insertion of revisions to both sets of plans prior to submitting finalized construction documents to CITY. All reviewers performing accessibility review shall be currently certified as a CASp member. All other reviewers shall possess all necessary and current certifications required by state law to conduct such reviews.

### TIME OF PERFORMANCE

The Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. The CITY's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion. The Consultant shall complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by the Consultant. The CITY's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

## TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

## PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

## COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

Fee includes initial review and 2 subsequent reviews at 65% of fees collected by the City. If necessary, additional reviews will incur hourly fees. (Fee for expedited plan review will be charged at 85%)

### Personnel

### All Inclusive Hourly Rate

Certified Plan Review / Bldg & Fire Life Safety	\$85
CASp Consultation	\$125
Structural Plan Review / Professional Engineer	\$125
Structural Plan Review / Structural Engineer	\$150
Permit Technician	\$60

For overtime work (after hours, weekend or holidays) authorized by the CITY, CONSULTANT shall be paid as follows:

1.5 x Hourly Rate

### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

### PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

### NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

The CITY reserves the right to contract with other plan review service firms during the Professional Service Agreement term. The CITY further reserves the right to, at its sole discretion, allocate the number of plans provided by each plan review service firm so as to most efficiently and economically satisfy the CITY's plan review needs.

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and EsGil Corporation, a California Corporation (“Consultant”).

**RECITALS**

- A. Consultant services are needed related to Building and Fire Inspection and Plan Review Services
- B. At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Kurt Culver**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

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  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
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6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

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

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

9. **BUSINESS LICENSE.** Before beginning work under this Agreement, Consultant shall obtain a City of Tracy Business License.
  
10. **INSURANCE.**
  - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
  - 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.
  - 10.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.
  - 10.6 **Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
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- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
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- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
EsGil Corporation  
Kurt Culver, President  
9320 Chesapeake Drive, Ste 208  
San Diego, CA 92123

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City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

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

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

City of Tracy

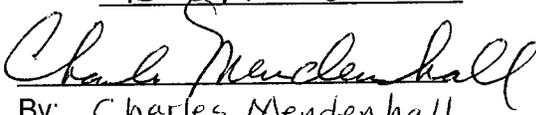
Consultant

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

Attest:

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

  
\_\_\_\_\_  
By: Kurt Culver  
Title: President  
Date: 5/5/14  
Fed. Employer ID No. \_\_\_\_\_  
95-3444018

  
By: Charles Mendenhall  
Title: Board Secretary  
Date: 5/5/14

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

#### **SCOPE OF SERVICES**

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

#### **PLAN PROCESSING REQUIREMENTS**

All plans are submitted directly to the CITY. The CITY will transmit all plans and corresponding project documentation directly to the Consultant for review and approval. The Consultant is required to develop and furnish the CITY's Building Official/Fire Code Official and applicant with a complete and legible written list of all corrections for each plan review performed. Consultant shall also receive from the City any subsequent resubmittal, and shall also provide notice to CITY as to when Consultant receives the resubmittal directly from the applicant, if such were to occur. When the plan check and recheck processes are complete and the plans are deemed in full code compliance, the Consultant shall sign and stamp two sets of plans and corresponding documents. The stamp shall include the company identification, a mark "approved", and each page of both sets of plans must be so stamped. The Consultant shall then return all documents completely and appropriately assembled to the CITY. CITY shall not accept construction documents from Consultant that need to be sorted and/or assembled. Consultant shall complete the insertion of revisions to both sets of plans prior to submitting finalized construction documents to CITY. All reviewers performing accessibility review shall be currently certified as a CASp member. All other reviewers shall possess all necessary and current certifications required by state law to conduct such reviews.

#### **TIME OF PERFORMANCE**

The Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. The CITY's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

The Consultant shall complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by the Consultant. The CITY's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

#### TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

#### PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

#### COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

<u>POSITION</u>	<u>RATE</u>
Supervising Structural Engineer	\$135.00
Structural Engineer	\$120.00
Civil Engineer	\$105.00
Electrical Engineer	\$105.00
Mechanical Engineer	\$105.00
I.C.C. Plans Examiner	\$ 90.00

#### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as

determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

#### PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

#### NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

The CITY reserves the right to contract with other plan review service firms during the Professional Service Agreement term. The CITY further reserves the right to, at its sole discretion, allocate the number of plans provided by each plan review service firm so as to most efficiently and economically satisfy the CITY's plan review needs.

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and West Coast Code Consultants, Inc., a California Corporation ("Consultant").

**RECITALS**

- A. Consultant services are needed related to Building and Fire Inspection and Plan Review Services.
- B. At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**  
**Page 2 of 6**

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

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

5. **COMPENSATION.**

5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.

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

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

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

7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**

**MAY 1, 2014 TO APRIL 30, 2017**

**Page 3 of 6**

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

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

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

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

10. **INSURANCE.**

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

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

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

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

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

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

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

10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Giyen Senaratne  
West Coast Code Consultants  
2400 Camino Ramon, Ste. 240  
San Ramon, CA 94583

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 5 of 6

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

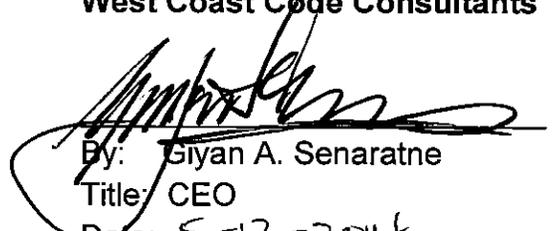
**13. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit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

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

City of Tracy

Consultant  
West Coast Code Consultants

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

  
By: Gyan A. Senaratne  
Title: CEO  
Date: 5-12-2014  
Fed. Employer ID No. \_\_\_\_\_  
20-4707579

Attest:

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

  
By: Cheryl Gentry  
Title: Ex Assistant  
Date: 5-12-2014

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

#### **SCOPE OF SERVICES**

Consultant shall provide combination building and fire inspections to verify compliance with the CITY's Tracy Municipal Codes as may be amended or updated from time to time and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

Combination field inspection shall include site inspections, writing legible and understandable correction and violation notices and field reports, holding office hours and answering in-person or telephone inquiries.

#### **MISCELLANEOUS REQUIREMENTS**

All inspectors provided by Consultant for performing inspection services for the CITY shall be equipped with all necessary tools, equipment and current code books by Consultant in order to facilitate the inspection process. All inspectors provided by Consultant for performing inspection services for CITY shall continue to receive State-mandated continuing education and complete forty-five hours of continuing education for every three-year period. Such education is to be provided by Consultant at Consultant's sole cost including, but not limited to, any hourly costs associated with sending inspectors to such continuing education. When requested by CITY, Consultant shall provide evidence of said education within seven working days of request. The Consultant will credit the CITY for any inspectors provided by Consultant that receive regular technical training provided by CITY on an hour for hour basis. Currently, this training is provided for up to two hours per week. Notification of such training and the corresponding inspection or plan check staff attendance record may be forwarded to Consultant on a monthly basis. All inspectors performing inspections related to disabled access shall be currently certified as a CASp member. All other inspectors shall possess all necessary and current certifications required by state law to conduct such inspections.

COMPENSATION

As compensation for the above services, the following fee schedule shall apply:

<u>Classification</u>	<u>Hourly Billing Rate</u>
Fire Inspector	\$85.00
Inspector II (Commercial)	\$80.00
Inspector I (Residential)	\$70.00
Mileage.....	current IRS Rate

For overtime work (after hours, weekend or holidays) authorized by the CITY, Consultant shall be paid as follows:

150% of above hourly rate

PROFESSIONAL SERVICE AGREEMENT TERM

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NON-EXCLUSIVE PERFORMANCE SERVICE AGREEMENT

The CITY reserves the right to contract with other inspection service firms during the term of this Professional Services Agreement. The CITY further reserves the right to, at its sole discretion, allocate the number of hours of work among the personnel provided by each inspection service firm so as to most efficiently and economically satisfy the CITY's inspection needs.

## **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

### **SCOPE OF SERVICES**

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

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### **TIME OF PERFORMANCE**

The Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. The CITY's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion. The Consultant shall complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by

the Consultant. The CITY's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

### TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

### PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

### COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

<u>Classification</u>	<u>Hourly Billing Rate</u>
Senior Structural Engineer	\$125
Plan Review Engineer/Architect	\$110
On0Call Building Official	\$110
Fire Plan Review Engineer	\$120
Fire Plan Reviewer	\$100

### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

### PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

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**CITY OF TRACY  
PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Willdan Engineering, a California Corporation ("Consultant").

**RECITALS**

- A. Consultant services are needed related to Building and Fire Inspection and Plan Review Services.
- B. At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: **Annette Chavez, CBO**. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractors or subconsultants, without City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
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**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 2 of 6

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  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

**Page 3 of 6**

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

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

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

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

10. **INSURANCE.**

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

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

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

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

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

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

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

10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

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insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Willdan Engineering  
Annette Chavez, CBO  
2240 Douglas Blvd., Ste. 270  
Roseville, CA 95661

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
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With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

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

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

City of Tracy

Consultant  
**Willdan Engineering**

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

\_\_\_\_\_  
By: Daniel Chow  
Title: President  
Date: 5/11/2014  
Fed. Employer ID No. 95-2295858

Attest:

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

\_\_\_\_\_  
By: Stacy McLaughlin  
Title: Treasurer  
Date: 5/8/14

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

#### **SCOPE OF SERVICES**

Consultant shall provide combination building and fire inspections to verify compliance with the CITY's Tracy Municipal Codes as may be amended or updated from time to time and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

Combination field inspection shall include site inspections, writing legible and understandable correction and violation notices and field reports, holding office hours and answering in-person or telephone inquiries.

#### **MISCELLANEOUS REQUIREMENTS**

All inspectors provided by Consultant for performing inspection services for the CITY shall be equipped with all necessary tools, equipment and current code books by Consultant in order to facilitate the inspection process. All inspectors provided by Consultant for performing inspection services for CITY shall continue to receive State-mandated continuing education and complete forty-five hours of continuing education for every three-year period. Such education is to be provided by Consultant at Consultant's sole cost including, but not limited to, any hourly costs associated with sending inspectors to such continuing education. When requested by CITY, Consultant shall provide evidence of said education within seven working days of request. The Consultant will credit the CITY for any inspectors provided by Consultant that receive regular technical training provided by CITY on an hour for hour basis. Currently, this training is provided for up to two hours per week. Notification of such training and the corresponding inspection or plan check staff attendance record may be forwarded to Consultant on a monthly basis. All inspectors performing inspections related to disabled access shall be currently certified as a CASp member. All other inspectors shall possess all necessary and current certifications required by state law to conduct such inspections.

COMPENSATION

As compensation for the above services, the following fee schedule shall apply:

<u>INSPECTION TYPE</u>	<u>FEE TYPE</u>
Inspection Package "H" (Hourly fee for commercial building inspection services covering building, plumbing, fire, mechanical and electrical trades)	\$85 / hour
Inspection Package "I" (Hourly fee for residential building inspections covering building, plumbing, fire, mechanical and electrical trades)	\$75 hour

For overtime work (after hours, weekend or holidays) authorized by the CITY, CONSULTANT shall be paid as follows:

1.5 x Hourly Rate

PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of this Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

## NON-EXCLUSIVE PERFORMANCE SERVICE AGREEMENT

The CITY reserves the right to contract with other inspection service firms during the term of this Professional Services Agreement. The CITY further reserves the right to, at its sole discretion, allocate the number of hours of work among the personnel provided by each inspection service firm so as to most efficiently and economically satisfy the CITY's inspection needs.

### **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

#### SCOPE OF SERVICES

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

#### PLAN PROCESSING REQUIREMENTS

All plans are submitted directly to the CITY. The CITY will transmit all plans and corresponding project documentation directly to the Consultant for review and approval. The Consultant is required to develop and furnish the CITY's Building Official/Fire Code Official and applicant with a complete and legible written list of all corrections for each plan review performed. Consultant shall also receive from the City any subsequent resubmittal, and shall also provide notice to CITY as to when Consultant receives the resubmittal directly from the applicant, if such were to occur. When the plan check and recheck processes are complete and the plans are deemed in full code compliance, the Consultant shall sign and stamp two sets of plans and corresponding documents. The stamp shall include the company identification, a mark "approved", and each page of both sets of plans must be so stamped. The Consultant shall then return all documents completely and appropriately assembled to the CITY. CITY shall not accept construction documents from Consultant that need to be sorted and/or assembled. Consultant shall complete the insertion of revisions to both sets of plans prior to submitting finalized construction documents to CITY. All reviewers performing accessibility review shall be currently certified as a CASp member. All other reviewers shall possess all necessary and current certifications required by state law to conduct such reviews.

### TIME OF PERFORMANCE

The Consultant shall complete the initial plan review and return plans or corrections within seventeen working days from the date the plans are received by the Consultant. The CITY's Building Official/Fire Code Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion. The Consultant shall complete any subsequent plan recheck and return plans or corrections within seven working days from the date the plans are received by the Consultant. The CITY's Building Official may, upon demonstration of good cause, extend this time frame at his or her sole discretion.

### TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

### PLAN CONVEYANCE

The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

### COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

<u>PLAN CHECK TYPE</u>	<u>FEE TYPE</u>
*Plan Check Packages "A through E"	Sixty five percent (65%) of City Fee Collected
*Partial/Non-structural Plan Check Packages "A through E"	Fifty percent (50%) of City Fee Collected
*Non-Structural Plan Check Package "F"	\$100 / hour

**\*Structural Plan Check Package "G"** \$120 / hour

**\*Plan Check Package "J"** \$100 / hour

**\*Plan Check "Packages"**

- A. Complete structural and nonstructural commercial building plan review including CBC, CMC, CPC, CFC, CEC (California Electrical Code), California Energy Code (California Energy Efficiency Standards), Accessibility, Historical, Existing Buildings, and City specific regulations and policies.
- B. Complete nonstructural commercial building plan review including CBC, CMC, CPC, CFC, CEC (California Electrical Code), California Energy Code (California Energy Efficiency Standards), Accessibility, Historical, Existing Buildings, and City specific regulations and policies.
- C. Complete structural commercial building plan review including, CBC and City specific regulations and policies.
- D. Complete residential building plan review including structural and nonstructural CBC, CMC, CPC, CFC, CEC (California Electrical Code), California Energy Code (California Energy Efficiency Standards), Accessibility, Historical, Existing Buildings, and City specific regulations and policies.
- E. Complete structural residential building plan review including CBC and City specific regulations and policies.
- F. Nonstructural plan review services.
- G. Structural plan review services.
- J. In-house plan check services.

These fees cover initial plan check and two subsequent rechecks. If the plans cannot be approved by the third plan check, subsequent reviews will be provided at an hourly rate as shown above for Plan Check Packages "F" and "G".

Expedited plan reviews are provided as-needed upon request of the City Building Official. Expedited plan reviews are performed in one-half the time for twice the amount of the plan check fee as noted above.

### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

### PROFESSIONAL SERVICE AGREEMENT TERM

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of the Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

### NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT

The CITY reserves the right to contract with other plan review service firms during the Professional Service Agreement term. The CITY further reserves the right to, at its sole discretion, allocate the number of plans provided by each plan review service firm so as to most efficiently and economically satisfy the CITY's plan review needs.

**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and TRB and Associates, a California Corporation (“Consultant”).

**RECITALS**

- A.** Consultant services are needed related to Building and Fire Inspection and Plan Review Services.
- B.** At the request of the CITY, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. The CITY and the Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

- 1. SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Todd Bailey, P.E.** Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractors or subconsultants, without City’s prior written consent.
- 2. TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
- 3. INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s employee and

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

**Page 2 of 6**

Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
  
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
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7. **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.
  
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

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

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

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

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

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

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**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

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- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
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To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
TRB and Associates  
Todd Bailey, P.E.  
3180 Crow Canyon Pl., Ste 216  
San Ramon, CA 94583

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

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With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

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

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

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

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

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

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

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

City of Tracy

Consultant  
TRB and Associates

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

\_\_\_\_\_  
By: Todd R. Bailey  
Title: President  
Date: MAY 1, 2014  
Fed. Employer ID No. 20-5865052

Attest:

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

\_\_\_\_\_  
By: Todd R. Bailey  
Title: Secretary  
Date: \_\_\_\_\_

Approved As To Form:

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

## **EXHIBIT "A"**

### **BUILDING AND FIRE INSPECTION SERVICES**

#### **SCOPE OF SERVICES**

Consultant shall provide combination building and fire inspections to verify compliance with the CITY's Tracy Municipal Codes as may be amended or updated from time to time and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

Combination field inspection shall include site inspections, writing legible and understandable correction and violation notices and field reports, holding office hours and answering in-person or telephone inquiries.

#### **MISCELLANEOUS REQUIREMENTS**

All inspectors provided by Consultant for performing inspection services for the CITY shall be equipped with all necessary tools, equipment and current code books by Consultant in order to facilitate the inspection process. All inspectors provided by Consultant for performing inspection services for CITY shall continue to receive State-mandated continuing education and complete forty-five hours of continuing education for every three-year period. Such education is to be provided by Consultant at Consultant's sole cost including, but not limited to, any hourly costs associated with sending inspectors to such continuing education. When requested by CITY, Consultant shall provide evidence of said education within seven working days of request. The Consultant will credit the CITY for any inspectors provided by Consultant that receive regular technical training provided by CITY on an hour for hour basis. Currently, this training is provided for up to two hours per week. Notification of such training and the corresponding inspection or plan check staff attendance record may be forwarded to Consultant on a monthly basis. All inspectors performing inspections related to disabled access shall be currently certified as a CASp member. All other inspectors shall possess all necessary and current certifications required by state law to conduct such inspections.

**COMPENSATION**

As compensation for the above services, the following fee schedule shall apply:

<b><u>POSITION</u></b>	<b><u>RATE</u></b>
CASp Certified Inspector	\$110.00
Supervising Inspector	\$95.00
Senior Inspector	\$84.00
Inspector	\$69.00
Intern Inspector	\$45.00
Emergency/After-Hours Inspections	Above rates plus 25%

Reimbursement for employee-owned vehicles used in connection with the work will be at the rate of \$0.60 per mile.

For overtime work (after hours, weekend or holidays) authorized by the CITY, Consultant shall be paid as follows:

Overtime is billed at the rates shown above plus an additional 25 percent (Note that no overtime will be charged without client authorization)

**PROFESSIONAL SERVICE AGREEMENT TERM**

This Professional Services Agreement shall commence on May 1, 2014 and terminate on April 30, 2017, provided, however, that payment of any funds under this Agreement shall be subject to the City of Tracy City Council's annual appropriation of funds for the services provided under the Professional Services Agreement. In the event the City of Tracy City Council does not appropriate funds for the payment obligations under this Professional Services Agreement, this Agreement shall terminate. Any such termination of this Agreement due to failure of the City of Tracy City Council to appropriate funds for payment for services under this Agreement shall not be a breach of this Agreement. This Agreement may be extended for one additional two-year term provided Consultant makes a written request for extension (no later than 60 days prior to expiration of the Agreement), the CITY determines that Consultant has satisfactorily performed all obligations under the Professional Services Agreement, and the CITY Council has appropriated sufficient funds for the proposed services. The fees proposed by the Consultant shall remain unchanged for the entire term of the Professional Services Agreement and any extensions of same.

## NON-EXCLUSIVE PERFORMANCE SERVICE AGREEMENT

The CITY reserves the right to contract with other inspection service firms during the term of this Professional Services Agreement. The CITY further reserves the right to, at its sole discretion, allocate the number of hours of work among the personnel provided by each inspection service firm so as to most efficiently and economically satisfy the CITY's inspection needs.

### **BUILDING AND FIRE DOCUMENT/PLAN REVIEW**

#### SCOPE OF SERVICES

Consultant shall perform plan reviews as required by the CITY. Said plan reviews will range from small projects, such as a simple retaining wall which requires a structural plan review, to a complete commercial/industrial plan review based on the CITY's latest adopted and amended Tracy Municipal Codes and Title 24 California Building Codes, parts 1, 2, 2.5, 3, 4, 5, 6, 8, 9, 10, 11 and 12 covering structural, fire prevention, life safety, disabled access, energy conservation, green building, plumbing, mechanical and electrical installations in residential, commercial, industrial, existing and historical buildings.

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## TIME OF PERFORMANCE

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## TECHNICAL SUPPORT

The Consultant shall be available for technical support on an as-needed basis. This may include but not be limited to pre-design, post plan review, pre-construction or site meetings with CITY staff and/or permit holders, designers or other interested parties. Also, Consultant shall provide field staff for inspection purposes on an as-needed basis.

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The CITY will deliver all plans and corresponding documents to be reviewed by Consultant to Consultant's office by U.S. Mail service or other delivery system. The Consultant shall return to the CITY all plans and corresponding documents by the same system at Consultant's expense.

## COMPENSATION

**Please note that the maximum limit for plan review fees shall be 65% of the plan review fee charged to a permit applicant.** Additionally, for repetitive elements within or part of a structure and/or repetitive buildings for a single project, the CITY and Consultant will negotiate for an appropriate fee. Fees for Consultant's services including expedited review services shall be as follows:

<u>POSITION</u>	<u>RATE</u>
Fire Protection Engineer	\$140.00
Principal / Project Manager	\$130.00
Building Official	\$120.00
Senior Plan Review Engineer/Architect	\$120.00
CASp Certified Examiner	\$110.00
Plan Review Engineer/Architect	\$105.00
Plans Examiner (Building & Fire)	\$ 90.00
Permit Technician	\$ 60.00
Clerical/Admin	\$ 45.00

Emergency/After-Hours Inspections

Above rates plus 25%

- Reimbursement for direct expenses, incurred in connection with the work, will be at cost plus fifteen percent.
- Reimbursement for employee-owned vehicles used in connection with the work will be at the rate of \$0.60 per mile.
- Other in-house charges for prints, reproductions and equipment use, etc. will be at standard company rates.

For overtime work (after hours, weekend or holidays) authorized by the CITY, Consultant shall be paid as follows:

Overtime is billed at the rates shown above plus an additional 25 percent (Note that no overtime will be charged without client authorization)

#### LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the CITY for up to 50% of the plan review fee charged to the permit applicant.

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unchanged for the entire term of the Professional Services Agreement and any extensions of same.

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**CITY OF TRACY**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

This Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and Shums Coda Associates, a California corporation ("Consultant").

**RECITALS**

- A.** Consultant services are needed related to Building and Fire Inspection and Plan Review Services
- B.** At the request of City, Consultant submitted its proposal to perform the services described by the Professional Services Agreement. City and Consultant have reached an agreement for the performance of services in accordance with the terms set forth in the Professional Services Agreement. On June 3, 2014 the City Council authorized the execution of this Professional Services Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

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

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 2 of 6

Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City. Consultant is not entitled to City benefits.

4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.
5. **COMPENSATION.**
  - 5.1 **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "A," attached and incorporated by reference. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement.
  - 5.2 **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement, 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.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 3 of 6

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

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

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

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

10. **INSURANCE.**

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

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

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

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

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

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

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

10.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**

Page 4 of 6

- insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify 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.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the City's written consent. Any attempt to assign or delegate this Agreement without the City's written consent shall be void and of no effect. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To City:  
City of Tracy  
Kevin Jorgensen  
Chief Building Official and Fire Code Official  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
Shums Coda Associates  
David Basinger  
5776 Stoneridge Mall Rd., Ste 150  
Pleasanton, CA 94588

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT**  
**BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:**  
**MAY 1, 2014 TO APRIL 30, 2017**  
Page 5 of 6

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

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**CITY OF TRACY -- PROFESSIONAL SERVICES AGREEMENT  
BUILDING AND FIRE INSPECTION AND PLAN REVIEW SERVICES:  
MAY 1, 2014 TO APRIL 30, 2017**

Page 6 of 6

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

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

City of Tracy

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

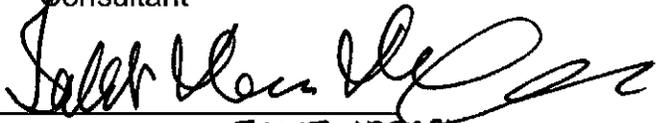
Attest:

\_\_\_\_\_  
By: Carole Fleischmann  
Title: Interim City Clerk  
Date: \_\_\_\_\_

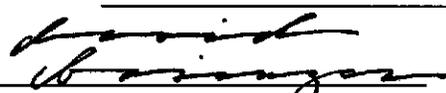
Approved As To Form:

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

Consultant

  
\_\_\_\_\_  
By: ~~RESERVED~~ TALAT ABBASI  
Title: ~~Chief Financial Officer~~ TREASURER  
Date: 5.23.14

Fed. Employer ID No. 20-4574991

  
\_\_\_\_\_  
By: DAVID BASINGER  
Title: PRESIDENT  
Date: 5.23.14

## **EXHIBIT "A"**

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#### **SCOPE OF SERVICES**

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#### **COMPENSATION**

As compensation for the above services, the following fee schedule shall apply:

Senior Inspection (Combination Certified)	\$90
Inspector II	\$80
Inspector I	\$70

Reimbursable Expenses

Reimbursable expenses shall include, but not be limited to, the following:

Mileage	Per current IRS rate
Other Direct Project Expenses	(at cost plus 15% including:)

- Printing, graphics, photography, and reproduction
- Rental or purchase of special equipment and materials

For overtime work (after hours, weekend or holidays) authorized by the City, Consultant shall be paid as follows:

150% of the standard hourly rates

PROFESSIONAL SERVICE AGREEMENT TERM

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In-House/Counter Plan Review Engineer/Architect	\$100
Senior Plan Review Engineer/Architect	\$120
Plan Review Engineer/Architect	\$100
Senior Plans Examiner	\$ 85
Plans Examiner	\$ 75
Permit Technician	\$ 55
Clerical Support	\$ 45

## LIQUIDATED DAMAGES

Consultant shall perform quality plan reviews. When Consultant omits a significant item or items in the completed plan review process, liquidated damages may be imposed upon the Consultant at the discretion of the City for up to 50% of the plan review fee charged to the permit applicant. Additionally, for every day that the plan review performed by the Consultant is tardy as determined by the time of performance schedule noted above, liquidated damages may be imposed upon the Consultant at the discretion of the City for up to 50% of the plan review fee charged to the permit applicant.

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RESOLUTION 2014-\_\_\_\_\_

APPROVING PROFESSIONAL SERVICES AGREEMENTS (PSAs) WITH ELEVEN COMPANIES FOR PLAN REVIEW AND/OR INSPECTION SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS

WHEREAS, With limited full-time staff in the City's Building Safety and Fire Prevention Division, the City depends upon consultants to complement staff's efforts to meet published performance objectives and provide expanded services as they relate to State-Mandated plan review and inspection services of construction projects, and

WHEREAS, Consultant services are necessary during peak demand periods or when resources need to be mobilized to expedite key economic development projects, and

WHEREAS, The City has historically contracted for plan review and inspection services for review of construction plans and inspection of construction projects to ensure that each building project conforms to State-Mandated construction codes through the plan review and inspection processes, and

WHEREAS, City Council last approved this request approximately three years ago and the Professional Services Agreements (PSAs) that the City secured with various consultants are now expiring, and

WHEREAS, Staff recently advertised a Request for Proposals on February 28, 2014, for Building and Fire Inspection and Plan Review Services through April 30, 2017, and

WHEREAS, Staff has reviewed all the proposals received and selected eleven outside plan review and inspection agencies, and

WHEREAS, The PSAs specify that the City may allocate work to each firm selected based on the City's budget, the required services needed at the time, and the competitiveness and quality of each PSA so as to most efficiently and economically satisfy the City's needs for specified services, and

WHEREAS, Staff recommends entering into PSAs with the firms noted below:

1. Structech Engineering
2. 4Leaf, Inc.
3. Engineered Fire Systems, Inc.
4. Interwest Consulting Group
5. Bureau Veritas
6. CSG Consultants, Inc.
7. EsGil Corporation
8. West Coast Code Consultants, Inc.
9. Willdan Engineering
10. TRB & Associates,
11. Shums Coda Associates

WHEREAS, Funding consultants for plan review and inspection services will come from the General Fund and all of these funds will be fully recovered through the collection of corresponding plan review and permit fees paid by the respective project applicant for all

projects with the exception of specific Fire Prevention reviews and inspections that the City's fee schedule does not include;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves the Professional Service Agreements for plan review and/or inspection services with the above noted firms for services through April 30, 2017.

\* \* \* \* \*

The foregoing Resolution 2014-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of June, 2014 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST

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

AGENDA ITEM 1.D

REQUEST

**AWARD A CONSTRUCTION CONTRACT TO TRIDENT CONTRACTORS INC. OF DALY CITY, CALIFORNIA, FOR SIDEWALK, CURB AND GUTTER REPLACEMENT FISCAL YEAR 2013 – 2014 (FY/13/14) PROJECT CIP 73139 AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT**

EXECUTIVE SUMMARY

City Council is requested to award a sidewalk, curb and gutter repair project due to potential tripping hazards and non-ADA compliance. The project generally includes the following work to be done: replacement of approximately 15,000 square feet of concrete sidewalk including ADA curb ramps at Adams Street, Berverdor Street, Highland Street, El Portal Street, Mae Street, E Street, F Street, Sixth Street and Twelfth Street.

DISCUSSION

The project involves replacing sections of sidewalks on Adams Street, Berverdor Street, Highland Street, El Portal Street, Mae Street, E Street, F Street, Sixth Street and Twelfth Street that have been identified by Public Works to be in need of replacement due to potential tripping hazards and non-ADA compliance.

The project plans and specifications were prepared in-house by engineering staff. The project was advertised for competitive bids on February 28, 2014. Four bids were received and publicly opened at 2:00 p.m. on Wednesday, April 2, 2014, with the following results:

<u>Contractor</u>	<u>Base Bid</u>	<u>Additive Bid Item</u>	<u>Total</u>
Trident Contractors	\$198,550	\$29,900	\$228,450
FBD Vanguard Construction	\$293,420	\$55,000	\$348,420
JJR Construction	\$373,500	\$75,000	\$448,500
American Asphalt Repair and Resurfacing Company	\$379,560	\$85,000	\$464,560

Trident Contractors Inc., of Daly City, California is the lowest monetary bidder. A bid analysis indicates the lowest bid is responsive and the bidder is responsible. Trident Contractors Inc., has the appropriate contractor's license in active standing and has completed similar projects for other public agencies.

Based upon available funds, it is recommended that the construction contract be awarded for the Base Bid and Additive Bid amounts. The total recommended construction cost of this project, if awarded to Trident Contractors Inc., is as follows:

<u>Description</u>	<u>Base Bid</u>
Construction Bid Including Additive Bid Item	\$228,450
Construction Testing & Inspection	\$ 11,500
Design Support during Construction	\$ 11,500
Project Management	\$ 34,000
Contingency	<u>\$ 35,000</u>
Total Construction Cost	\$320,450

The Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council. The recommended contingency amount for this project is \$35,000.

### STRATEGIC PLAN

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

### FISCAL IMPACT

The project is an approved Capital Improvement Project CIP 73139 for Fiscal Year 2013-14 and sufficient funds are available to construct the project. The General Fund, CDBG, Gas Tax and Prop K Transportation Fund are contributing toward this project.

### RECOMMENDATION

That the City Council, by resolution, award a construction contract to Trident Contractors Inc., of Daly City, California, for the Sidewalk, Curb and Gutter Replacement Fiscal Year 2013 – 14, CIP 73139, in the amount of \$228,450, authorize a contingency amount of \$35,000, and authorize the Mayor to execute the construction contract.

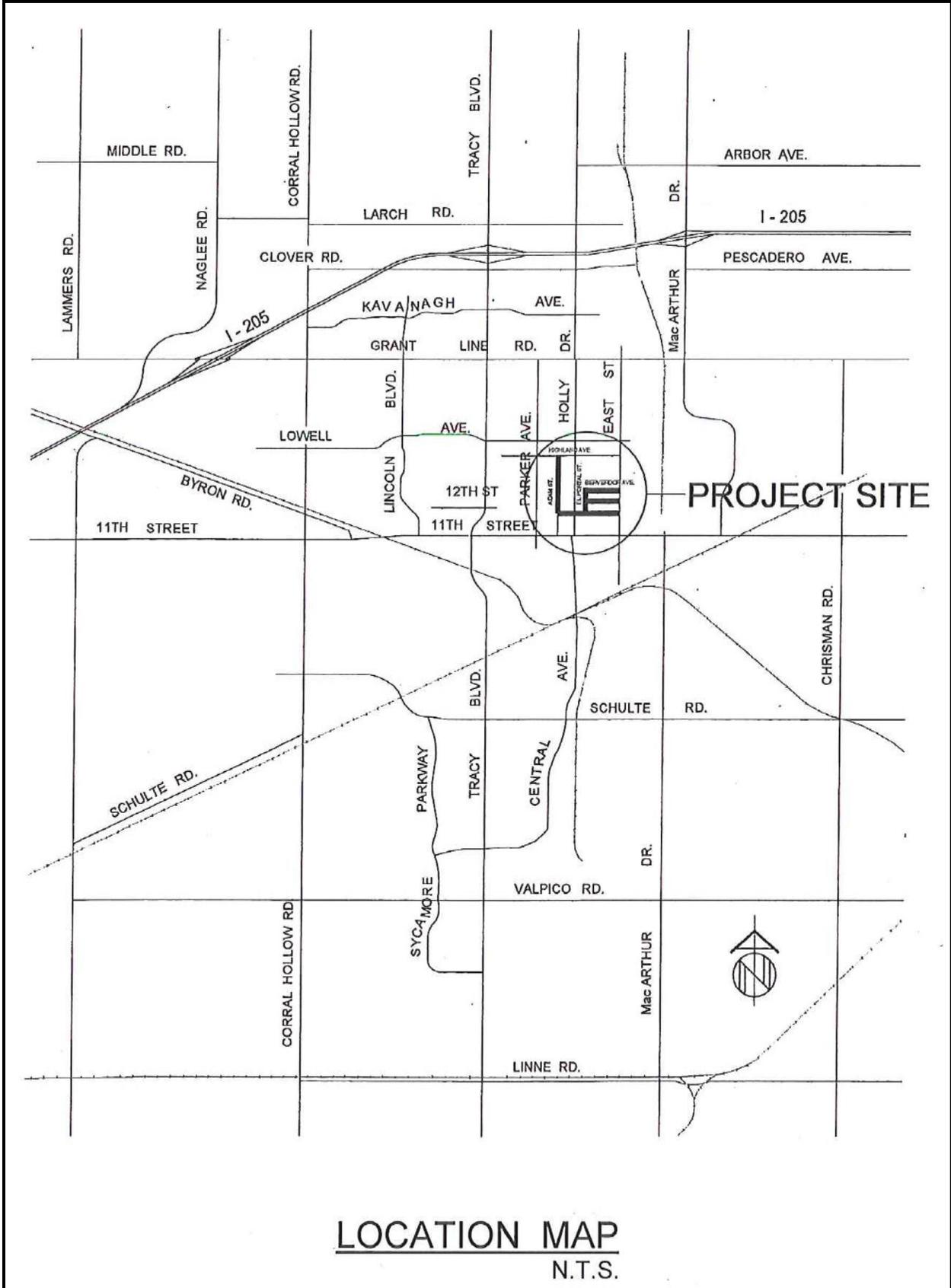
Prepared by: Binh Nguyen, Associate Civil Engineer  
Zabih Zaca, Senior Civil Engineer

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

Approved by: Maria A. Hurtado, Interim City Manager

### ATTACHMENT

Attachment A: Location Map



RESOLUTION 2014 - \_\_\_\_\_

AWARDING A CONSTRUCTION CONTRACT TO TRIDENT CONTRACTORS INC. OF DALY CITY, CALIFORNIA, FOR THE SIDEWALK, CURB AND GUTTER REPLACEMENT FISCAL YEAR 2013 – 2014 PROJECT CIP 73139, AUTHORIZING A CONTINGENCY AMOUNT OF \$35,000 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT

WHEREAS, This project is part of the City’s ongoing commitment to maintain safe and accessible sidewalks, and

WHEREAS, Areas for sidewalk replacement are based on recommendations from the City’s Public Works Department due to the lack of curb ramps and presence of tripping hazards, and

WHEREAS, The project was advertised for competitive bids on February 28 and March 7, 2014, and four bids were received and publicly opened at 2:00 p.m., on April 2, 2014, and

WHEREAS, Trident Contractors, Inc., was the lowest monetary bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, The Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$35,000, and

WHEREAS, This is an approved Capital Improvement Project. The General Fund, CDBG, Gas Tax and Prop K Transportation Fund are contributing \$320,450 toward this project;

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Trident Contractors, Inc., of Daly City, California, for the Sidewalk, Curb and Gutter Replacement Fiscal Year 2013-2014 Project CIP 73139, in the amount of \$228,450, authorizes a contingency amount of \$35,000, and authorizes the Mayor to execute the construction contract.

\* \* \* \* \*

The foregoing Resolution 2014 - \_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of June 2014, 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

**ACCEPTANCE OF THE STORM DRAINAGE IMPROVEMENT ROBERT GABRIEL DRIVE AND GONZALES STREET CIP 76062, COMPLETED BY EXTREME EXCAVATION OF TRACY, CALIFORNIA, AND AUTHORIZATION FOR THE CITY CLERK TO FILE THE NOTICE OF COMPLETION AND THE CITY ENGINEER, IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, WILL RELEASE THE BONDS AND RETENTION PAYMENT**

EXECUTIVE SUMMARY

The contractor has completed the construction of Storm Drain Improvements Robert Gabriel Drive and Gonzales Street CIP 76062, in accordance with plans, specifications, and contract documents. Project costs are within the available budget. Staff recommends City Council accept the project, authorize the City Clerk to file notice of completion and enable the City Engineer to release the contractor's bonds and retention.

DISCUSSION

The scope of work at Robert Gabriel Street included installation of two catch basins and 42 linear feet of eight foot storm drain line including trenching and paving and replacement of approximately 40 square feet of sidewalk. The scope of work at Gonzales Street included removal and installation of approximately 330 linear feet of curb and gutter. Project plans and specifications were prepared in-house by engineering staff.

Public Contract Code Section 22032 and 22036 allows a public agency to procure informal bids for projects with an anticipated cost less than \$50,000. Since this project falls under this category, it was advertised for informal bids on the City of Tracy website and Builder's Exchanges on June 21, 2013. Two bids were received on July 10, 2013.

On February 13, 2014, the City Manager, in accordance with TMC 2.20.260 executed an agreement with the lowest monetary bidder, Extreme Excavation of Tracy, California, in the amount of \$48,180 for the Storm Drain Improvements-Robert Gabriel Drive and Gonzales Street CIP 76062.

No change orders were issued in the project.

Status of budget and project cost is as follows:

A. Construction Contract Amount	\$ 48,180
B. Change order	\$ 0
C. Design, Construction Inspections (Estimated)	\$ 2,000
D. Citywide Project Management (Estimated)	<u>\$ 3,000</u>
Total Project Costs	\$ 53,180
 Budgeted Amount	 \$ 55,000

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

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

CIP 76062 is an approved Capital Improvement Project with \$203,000 funding to cover the annual Storm Drain Replacement projects. Robert Gabriel Drive and Gonzales Street are part of the annual Storm Drain Replacement projects. Remaining funds will be used for other storm drainage improvements.

#### RECOMMENDATION

That City Council accept, by resolution, the Storm Drain Improvement Robert Gabriel Drive and Gonzales Street CIP 76062 completed by Extreme Excavation of Tracy, California, and authorize the City Clerk to record the Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

Prepared by: Paul Verma, Senior Civil Engineer

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

Approved by: Maria A. Hurtado, Interim City Manager

RESOLUTION 2014- \_\_\_\_\_

ACCEPTING THE STORM DRAINAGE IMPROVEMENTS ROBERT GABRIEL DRIVE AND GONZALES STREET CIP 76062, COMPLETED BY EXTREME EXCAVATION OF TRACY, CALIFORNIA, AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION AND THE CITY ENGINEER, IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT, TO RELEASE THE BONDS AND RETENTION PAYMENT

WHEREAS, On February 13, 2014, the City Manager, in accordance with TMC 2.20.260 executed an agreement with the lowest monetary bidder, Extreme Excavation of Tracy, California, in the amount of \$48,180 for the Storm Drain Improvements Robert Gabriel Drive and Gonzales Street CIP 76062, and

WHEREAS, The contractor has completed the construction of Storm Drain Improvements Robert Gabriel Drive and Gonzales Street CIP 76062, in accordance with plans, specifications, and contract documents. Project costs are within the available budget, and

WHEREAS, No change orders were received, and

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

A. Construction Contract Amount	\$ 48,180
B. Change orders	\$ 0
C. Design, Construction Inspections (Estimated)	\$ 2,000
D. Citywide Project Management (Estimated)	<u>\$ 3,000</u>
Total Project Costs	\$ 53,180
 Budgeted Amount	 \$ 55,000

WHEREAS, CIP 76062 is an approved Capital Improvement Project with \$203,000 funding to cover the annual Storm Drain Replacement. Robert Gabriel Drive and Gonzales Street are part of the annual Storm Drain replacement projects. Remaining funds will be used for other storm drainage improvements;

NOW, THEREFORE BE IT RESOLVED, That City Council accepts the Storm Drain Improvements Robert Gabriel Drive and Gonzales Street CIP 76062 completed by Extreme Excavation of Tracy, California, and authorizes the City Clerk to record a Notice of Completion with the San Joaquin County Recorder. The City Engineer, in accordance with the terms of the construction contract, will release the bonds and retention payment.

\* \* \* \* \*

The foregoing Resolution 2014 - \_\_\_\_\_ was adopted by the Tracy City Council on the 3rd day of June, 2014, 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

**APPROVE MASTER PROFESSIONAL SERVICES AGREEMENTS (MPSAs) WITH GDR ENGINEERING, INC. (GDR), AND MID VALLEY ENGINEERING, INC. (MVE) TO PROVIDE LAND SURVEYING SERVICES FOR MULTIPLE CAPITAL IMPROVEMENT PROJECTS, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS AND AUTHORIZE THE DEVELOPMENT SERVICES DIRECTOR TO SIGN TASK ORDER NO. 1 TO THE MPSA WITH MVE, INC., AND FUTURE TASK ORDERS RELATED TO THE MPSAs WITH GDR, INC., AND MVE, INC. CUMULATIVELY NOT TO EXCEED \$200,000 FOR EACH CONSULTANT**

EXECUTIVE SUMMARY

A number of the City's Capital Improvement Projects require land surveying services which includes topographic, construction and boundary surveying. The City of Tracy does not have the necessary staff or equipment to perform these tasks in-house and is recommending that the City contract out these services. Staff is recommending that City Council award Master Professional Services Agreements to GDR and MVE to provide the needed land surveying services.

DISCUSSION

The City is working on several large capital improvement projects that require surveying services. Projects include MacArthur Drive widening between Schulte Road and Valpico Road, Corral Hollow Road widening and reconstruction between Parkside Drive and possibly I-580, reconstruction of Larch Road between Tracy Boulevard and the Waste Water Treatment Plant, and many others. These projects require land surveying services which include topographic, construction and boundary surveying. The City of Tracy does not have the necessary staff or equipment to perform these tasks in-house and is recommending that the City contract out these services.

In accordance with the Tracy Municipal Code, Section 2.20.140, a Request For Proposals for Land Surveying Services Notice Inviting Proposals was posted on the City of Tracy's website on February 14, 2014. The City received proposals from 11 consultants on March 3, 2014.

After extensive review and evaluation of the proposals, GDR Engineering, Inc. of Ceres, California, and MVE, Inc. of Modesto, California, were found to be the most qualified consultants to provide the necessary services. Due to the large amount of time required to complete certain land surveying tasks, especially boundary surveying for some of our larger projects, staff is requesting that City Council approve Master Professional Services Agreements with these two firms.

GDR, Engineering, Inc., has successfully completed land surveying services for the City and other agencies, and has sufficient resources to provide services for the multiple projects on an as needed basis. MVE, Inc., has good references and has successfully completed similar services for other agencies, and also has the capacity to perform the required services as needed.

The City is in need of immediate survey services for the MacArthur Drive widening and reconstruction project between Schulte Road and Valpico Road. These services were described in the Request for Proposals as Task Order No 1. After review of proposals from both consultants for Task Order No. 1, it is recommended to award Task Order No. 1 of the Master Professional Services Agreement to MVE, Inc., in an amount not to exceed \$33,696.

The term of these agreements is for a period of two years and can be extended for an additional year. These agreements shall commence on June 15, 2014, and will terminate on June 14, 2016, if not extended. Future Task Orders will be awarded to either GDR, Inc. or MVE, Inc., based upon the review of cost of the services and availability of staff.

### STRATEGIC PLAN

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

### FISCAL IMPACT

There is no impact to the General Fund. Cost of required services for Task Order No. 1 is to be paid from funds from the Transportation Enhancement Activities (TEA) Grant, and future Task Orders will be paid from the Capital Improvement Projects Fund associated with each respective project.

### RECOMMENDATION

Staff recommends that City Council, by resolution, authorize the Mayor to execute the Master Professional Services Agreements between two consulting firms and the City of Tracy, for providing land surveying services, and authorize the Director of Development Services to execute Task Order No. 1 to MPSA with MVE, Inc. in an amount not to exceed \$33,696 and future Task Orders related to the Master PSA with GDR, Engineering, Inc., and MVE, Inc. cumulatively not to exceed \$200,000 for each consultant.

Prepared by: Zabih Zaca, Senior Civil Engineer  
Binh Nguyen, Associate Civil Engineer

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

Approved by: Maria A. Hurtado, Interim City Manager

### ATTACHMENTS

Attachment A: Master Professional Services Agreement with GDR Engineering, Inc.  
Attachment B: Master Professional Services Agreement and Task Order No. 1 with Mid Valley Engineering, Inc.

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT  
FOR  
LAND SURVEYING SERVICES**

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

**RECITALS**

- A. CONSULTANT is a licensed professional land surveyor.
- B. CONSULTANT services are needed for preparation of topographic maps, plat maps, legal descriptions, and a wide range of other surveying tasks on an on-call basis, for the June 30, 2014 to June 30, 2016 period, for the construction of various Capital Improvement Projects located in the City of Tracy, hereinafter ("PROJECT").
- C. On February 14, 2014 CITY issued a Request for Proposals for Master Agreement for Land Surveying Services (6/14 – 6/16). On March 3, 2014, staff received proposals from 11 surveying firms. Staff evaluated the 11 proposals, including a proposal submitted by CONSULTANT's Authorized Representative, Max M. Garcia. The CONSULTANT proposal was the most responsive to the City's RFP. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement. On June 3, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit "A" (but not limited to topographic surveying, construction surveying and boundary surveying including preparation of plat maps and legal descriptions) attached and incorporated by reference. Consultant's specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Max M. Garcia. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit "A," nor shall Consultant use any subcontractor or subconsultant, without the City's prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT FOR**  
**LAND SURVEYING SERVICES**  
Page 2 of 7

adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
  - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
  - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT FOR  
LAND SURVEYING SERVICES**

Page 3 of 7

satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.
8. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

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

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

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

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
  - 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
  - 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

**CITY OF TRACY**  
**MASTER PROFESSIONAL SERVICES AGREEMENT FOR**  
**LAND SURVEYING SERVICES**  
Page 4 of 7

- 10.3 Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 10.5 Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant’s Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT FOR  
LAND SURVEYING SERVICES  
Page 5 of 7

**12. MISCELLANEOUS.**

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

To City:  
City of Tracy  
Attn: Zabih Zaca  
Senior Engineer, DS  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:  
GDR Engineering, Inc.  
Attn: Max M. Garcia  
3525 Mitchell Rd., Suite G  
Ceres, CA 95307

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

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

**CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT FOR  
LAND SURVEYING SERVICES**  
Page 6 of 7

- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.
- 12.7 Compliance with the Law.** Consultant shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 12.8 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by licensed professionals performing in the same or similar time and locality, and under the same or similar circumstances.

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CITY OF TRACY  
MASTER PROFESSIONAL SERVICES AGREEMENT FOR  
LAND SURVEYING SERVICES  
Page 7 of 7

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

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

City of Tracy

Consultant  
GDR ENGINEERING, INC

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

  
\_\_\_\_\_  
By: Richard L. Ringler  
Title: President  
Date: 5/22/14

Fed. Employer ID No. \_\_\_\_\_

Attest:

\_\_\_\_\_  
94-2666895

\_\_\_\_\_  
By: Carole Fleischmann  
Title: Interim City Clerk  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
By: Max M. Garcia  
Title: Secretary/Treasurer  
Date: 5/22/14

Approved As To Form:

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

Exhibits:

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

## EXHIBIT "A"

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

Max M. Garcia, Principal in Charge of Surveying  
Sean Harp, Office Surveyor  
Josh Jantz, Survey Technician III  
Edward Badal, Field Survey Crew Chief  
Gilbert Younan, Field Survey Technician

**EXHIBIT "B"**

**FEE SCHEDULE**

The billing rate schedule for this Project is as depicted below:

Principal in Charge of Surveying	\$130.00/hour
Office Surveyor	\$100.00/hour
Survey Technician III	\$80.00/hour
*One Person Survey Crew	\$120.00/hour
* Two Person Survey Crew	\$190.00/hour

\*Includes Prevailing Wage Rates

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

This Master Professional Services Agreement (“Agreement”) is entered into between the City of Tracy, a municipal corporation (“City”), and MVE, Inc. (“Consultant”).

**RECITALS**

- A.** CONSULTANT is a licensed professional land surveyor.
- B.** CONSULTANT services are needed for preparation of topographic maps, plat maps, legal descriptions, and a wide range of other surveying tasks on an on-call basis, for the June 30, 2014 to June 30, 2016 period, for the construction of various Capital Improvement Projects located in the City Of Tracy, hereinafter (“PROJECT”).
- C.** On February 14, 2014 CITY issued a Request for Proposals for Master Agreement for Land Surveying Services (6/14 – 6/16). On March 3, 2014, staff received proposals from 11 surveying firms. Staff evaluated the 11 proposals, including a proposal submitted by CONSULTANT’s Authorized Representative, Sean Tobin. The CONSULTANT proposal was the most responsive to the City’s RFP. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement. On June 3, 2014, the City Council authorized the execution of this Agreement, pursuant to Resolution No. 2014-\_\_\_\_\_.

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

1. **SCOPE OF SERVICES.** Consultant shall perform the services generally described in Exhibit “A” (but not limited to topographic surveying, construction surveying and boundary surveying including preparation of plat maps and legal descriptions) attached and incorporated by reference. Consultant’s specific scope of services shall be more particularly described in individual Task Orders subject to the written approval of the City and Consultant. The terms of this Agreement shall be incorporated by reference into each Task Order. The services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: **Sean Tobin.** Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit “A,” nor shall Consultant use any subcontractor or subconsultant, without the City’s prior written consent.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth here shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner

**City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT**  
**LAND SURVEYING SERVICES**  
Page 2 of 7

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

3. **INDEPENDENT CONTRACTOR STATUS.** Consultant is an independent contractor and is solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization to Consultant.
4. **CONFLICTS OF INTEREST.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. City may terminate this Agreement if Consultant maintains or acquires such a conflicting interest.
5. **COMPENSATION.**
  - 5.1. **General.** For services performed by Consultant under this Agreement, City shall pay Consultant on a time and expense basis, at the billing rate amounts set forth in Exhibit "B," and Not to Exceed the amount set forth in each individual Task Order. Billing rates may be adjusted in an amount not to exceed three and a half percent per year, upon City's receipt of written notice from the Consultant. Consultant's billing rates, and Not to Exceed amount, shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Not to Exceed amount without City's prior written approval.
  - 5.2. **Invoices.** Consultant shall submit monthly invoices to the City describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3. **Payment.** Within 30 days after the City's receipt of invoice, City shall make payment to the Consultant based upon the services described on the invoice and approved by the City.
6. **TERMINATION.** The City may terminate this Agreement by giving ten days written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents prepared by Consultant for this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by Consultant for this Agreement are the property of the City, and shall be given to the City at the

**City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT**  
**LAND SURVEYING SERVICES**  
Page 3 of 7

completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the prior written consent of City.

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

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

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

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

9. **BUSINESS LICENSE.** Before beginning any work under this Agreement, Consultant shall obtain a City of Tracy Business License.
10. **INSURANCE.**
- 10.1 **General.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- 10.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 10.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 10.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

**City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES**

Page 4 of 7

- 10.5 Professional Liability** coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per occurrence.
- 10.6 Endorsements.** Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 10.6.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”
- 10.6.2** For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.
- 10.7 Notice of Cancellation.** Consultant shall notify City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy is considered a cancellation. Consultant shall immediately obtain a replacement policy.
- 10.8 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 10.9 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, no later than five days after the execution of this Agreement.
- 10.10 Substitute Certificates.** No later than 30 days before the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance.
- 10.11 Consultant’s Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.
- 11. ASSIGNMENT AND DELEGATION.** This Agreement and any portion of it shall not be assigned or transferred, nor shall any of the Consultant’s duties be delegated, without the City’s prior written consent. Any attempt to assign or delegate this Agreement without the City’s written consent shall be void and of no effect. City’s consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 12. MISCELLANEOUS.**
- 12.1 Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

**City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES  
Page 5 of 7**

To City:

City of Tracy  
Attn: Zabih Zaca  
333 Civic Center Plaza  
Tracy, CA 95376

To Consultant:

MVE, Inc.  
Attn: Sean Tobin  
1117 L Street  
Modesto, CA 95354

With a copy to:

City Attorney  
333 Civic Center Plaza  
Tracy, CA 95376

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

- 12.2 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 12.3 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 12.4 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 12.5 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 12.6 Entire Agreement.** This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements.

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

**(BALANCE OF PAGE LEFT INTENTIONALLY BLANK)**

**City OF TRACY – MASTER PROFESSIONAL SERVICES AGREEMENT**  
**LAND SURVEYING SERVICES**  
Page 7 of 7

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

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

City of Tracy

Consultant  
**MVE, Inc.**

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

  
\_\_\_\_\_  
By: Kirk DeLaMare  
Title: President/CEO  
Date: \_\_\_\_\_

Fed. Employer ID No. 20-2037070  
\_\_\_\_\_

Attest:

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

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As To Form:

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

**CITY OF TRACY  
TASK ORDER NO. 1 OF  
MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES  
MACARTHUR DRIVE WIDENING (SCHULTE ROAD TO VALPICO ROAD)  
CIP 73126**

THIS Task Order is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "CITY"), and MVE, Inc., a California Corporation (hereinafter "CONSULTANT").

**RECITALS**

- A. CONSULTANT surveyor services are needed related to preparing plat maps, legal descriptions, right-of-way calculations for road widening of MacArthur Drive from Schulte Road to Valpico Road.
- B. As approved by the City Council on June 3, 2014, Resolution No. 2014-\_\_\_\_, CITY entered into a Master Agreement with the CONSULTANT for Professional Consulting Services.
- C. At the request of CITY, on March 3, 2014, CONSULTANT submitted a proposal to perform surveying services described in this Task Order. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services with the terms set forth in this Task Order.

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

- 1. **INCORPORATION OF MASTER AGREEMENT.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Master Agreement for this project, unless specifically modified by this Task Order.
- 2. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit "A" attached hereto and incorporated herein by reference.
- 3. **TIME OF PERFORMANCE.** CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A."
- 4. **COMPENSATION.** For services performed by CONSULTANT in accordance with this Task Order, CITY shall pay CONSULTANT on a time and expense basis, at the billing rates set forth in Exhibit "B," attached hereto and incorporated herein by reference. CONSULTANT's fee for this Task Order is Not To Exceed Thirty Three Thousand Six Hundred Ninety Six (\$33,696.00) Dollars.

**CITY OF TRACY  
TASK ORDER NO. 1 OF MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES, MACARTHUR DRIVE WIDENING  
(SCHULTE ROAD TO VALPICO ROAD), CIP 73126  
PAGE 2 of 6**

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

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

CITY OF TRACY

CONSULTANT  
MVE, Inc.

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

  
\_\_\_\_\_  
By: Kirk DeLaMare  
Title: President / CEO  
Date: \_\_\_\_\_

Fed. Employer ID No. 20-2037070  
\_\_\_\_\_

Attest:

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

Approved As To Form:

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

## EXHIBIT "A"

### SCOPE OF SERVICES

#### **TASK 1 SERVICES: Right of Way Survey**

Consultant will perform a right of way survey of MacArthur Drive between Valpico Road and Schulte Road. The survey will locate the Section Line, Right of Way monuments and property boundary monuments of those parcels involved in right of way acquisition. Coordinates shall be based upon the City of Tracy Geodetic Control Network, California State Plane Coordinate System, Zone 3, NAD 83 (Epoch 2004.0).

**Total Estimated Fee for Task 1 Services = \$3,600.00**

#### **TASK 2 SERVICES: Right of Way Calculations**

Consultant will utilize preliminary title reports on the proposed parcels (furnished by the City of Tracy), as well as road design information (furnished by the City of Tracy), to research record maps, City and County right of way records, and individual property deeds. Consultant will prepare the existing conditions right of way mapping and indicate discrepancies between surveys and record information and identify areas of right of way takes, including any temporary construction easements, to be acquired.

**Total Estimated Fee for Task 2 Services = \$4,660.00**

#### **TASK 3 SERVICES: Pre-Construction Record of Survey**

In consideration of monument preservation, Consultant will prepare and file a Record of Survey (or Corner Record) identifying the location of such property corners and other survey monuments that have the potential to be disturbed or destroyed by construction.

**Total Estimated Fee for Task 3 Services = \$5,760.00**

#### **TASK 4 SERVICES: Right of Way Exhibits**

Consultant will prepare Legal Descriptions (marked as Exhibit "A") and Right of Way Plat Maps (marked as Exhibit "B") for each parcel involved in right of way acquisition. Exhibits shall be used for attachment to acquisition documents prepared by others and suitable for recording with the County Recorder. The following number of packages are anticipated to be required for the project:

**CITY OF TRACY  
TASK ORDER NO. 1 OF MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES, MACARTHUR DRIVE WIDENING  
(SCHULTE ROAD TO VALPICO ROAD), CIP 73126  
PAGE 4 of 6**

1. 15 permanent right of way takes (Exhibit A and Exhibit B for each).
2. 15 temporary construction easements (Exhibit A and Exhibit B for each).

**Total Estimated Fee for Task 4 Services = \$6,500.00**

**TASK 5 SERVICES: Right of Way Monumentation/Record of Survey**

Upon completion of construction, Consultant will place right of way monuments to perpetuate the location of acquired right of way, and prepare and file a Record of Survey of such monumentation.

**Total Estimated Fee for Task 5 Services = \$8,060.00**

**Total Estimated Reimbursable Fee = \$5,116.00**

**Total Estimated Fee all Services = \$33,696.00**

**CITY OF TRACY  
TASK ORDER NO. 1 OF MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES, MACARTHUR DRIVE WIDENING  
(SCHULTE ROAD TO VALPICO ROAD), CIP 73126  
PAGE 5 of 6**

**COMPLETION OF THE SCOPE OF SERVICES.** CONSULTANT shall complete the services identified as Task 1- 4 in this Exhibit "A" within 60 working days of receipt of authorization to proceed from the CITY. Task 5 shall be completed within 20 working days after notice of completion of construction.

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

Sean Tobin, Sr. Vice President  
Odle Towe, Project Manager  
Jim Landrum, Senior Land Surveyor  
Tony Ozanich, Senior Civil Engineer  
Chris Shepherd, Sr. Director of Survey  
Aaron Zimny, Assistant Survey/Project Manager  
Derek Martis, Civil Engineer

**CITY OF TRACY  
TASK ORDER NO. 1 OF MASTER PROFESSIONAL SERVICES AGREEMENT  
LAND SURVEYING SERVICES, MACARTHUR DRIVE WIDENING  
(SCHULTE ROAD TO VALPICO ROAD), CIP 73126  
Page 6 of 6**

**EXHIBIT "B"**

**FEE SCHEDULE**

The billing rate schedule for this Project is as depicted below:

Associate (Sr. Vice President)	\$160/hr
Project Manager	\$150/hr
Senior Land Surveyor	\$160/hr
Senior Civil Engineer	\$160/hr
Sr. Director of Survey	\$160/hr
Assistant Survey/Project Manager	\$135/hr
Civil Engineer	\$150/hr
2-Man Survey Crew	\$195/hr
1-Man Survey Crew	\$135/hr.
Admin	\$ 55/hr

RESOLUTION 2014-\_\_\_\_\_

APPROVING MASTER PROFESSIONAL SERVICE AGREEMENTS (MPSAs) WITH GDR ENGINEERING, INC. (GDR), AND MID VALLEY ENGINEERING, INC. (MVE) TO PROVIDE LAND SURVEYING SERVICES FOR MULTIPLE CAPITAL IMPROVEMENT PROJECTS, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND AUTHORIZING THE DEVELOPMENT SERVICES DIRECTOR TO EXECUTE TASK ORDER NO. 1 TO THE MPSA WITH MVE, INC., AND FUTURE TASK ORDERS WITH GDR, INC., AND MVE, INC., WITH CUMULATIVE CHARGES NOT TO EXCEED \$200,000 FOR EACH CONSULTANT

WHEREAS, A number of the City's Capital Improvement Projects require land surveying services which includes topographic, construction and boundary surveying, and

WHEREAS, The City of Tracy does not have the necessary staff or equipment to perform these tasks in-house and is recommending that we contract out these services, and

WHEREAS, In accordance with Tracy Municipal Code, Section 2.20 a Request For Proposals for land surveying was posted on the City's website, and

WHEREAS, The City received 11 proposals from known firms to provide required services, and after extensive review staff selected two firms to enter into agreements to provide required services, and

WHEREAS, The terms for these agreements are for a period of two years and can be extended for an additional year, and

WHEREAS, GDR, Inc., of Ceres, California, and Mid Valley Engineering, Inc., of Modesto, California, were found to be the most qualified consultants, and

WHEREAS, Staff is in need of immediate services for the MacArthur Drive Widening and Reconstruction Project between Schulte Road and Valpico Road as was described in the Request for Proposals, and it is recommended to approve Task Order No. 1 with MVE, Inc., for the amount of \$33,696, and

WHEREAS, There is no impact to the General Fund. Cost of required services will be paid from a Capital Improvement Project which has funded by the Federal Grant of Transportation Enhancement Activities (TEA);

NOW, THEREFORE, BE IT RESOLVED, That City Council, authorizes the Mayor to execute the Master Professional Services Agreements between two consulting firms (GDR Engineering, Inc., and Mid Valley Engineering, Inc.), and the City of Tracy, for providing land surveying services, and authorizes the Development Services Director to execute Task Order No. 1 to MPSA with MVE, Inc. in an amount not to exceed \$33,696, and future Task Orders related to land surveying services to the MPSA with GDR Engineering, Inc., and MVE, Inc., with cumulative charges not to exceed \$200,000 for each consultant.

\* \* \* \* \*

The foregoing Resolution 2014 \_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of June, 2014, by the following vote:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

AGENDA ITEM 1.G

REQUEST

**AWARD A CONSTRUCTION CONTRACT TO MODESTO SAND AND GRAVEL, INC. OF MODESTO, CALIFORNIA, FOR THE BESSIE AVENUE BUILDING DEMOLITION PROJECT CIP 78142, AUTHORIZE A CONTINGENCY AMOUNT OF \$3,750, AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT AND AUTHORIZE THE TRANSFER OF \$85,000 FROM CIP 78142 TO EMERGENCY REPAIRS TO LAMMERSVILLE SCHOOL HOUSE PROJECT, CIP 78151**

EXECUTIVE SUMMARY

As part of the City's ongoing commitment to maintain safe facilities and building structures, City Council is requested to award a contract for the demolition of the building at 2302 Bessie Avenue for the Bessie Avenue Building Demolition Project CIP 78142 on the corner of Bessie Avenue and Twenty Second Street.

DISCUSSION

During the past five years, the City has made repeated attempts to maintain and repair the building at 2302 Bessie Avenue to keep it operating as a Teen Center. The cost of maintaining the facility has increased and there is the presence of hazardous material, such as asbestos and lead paint which will require major renovation work in order to keep the building in safe condition for use by the public. Consequently, the Parks and Recreation Services Division has deemed the building at 2302 Bessie Avenue uninhabitable and recommended it be demolished and sold as an open parcel.

In general, the scope of work for this project includes the demolition of the building at 2302 Bessie Avenue, asbestos and lead paint abatement, removal of the top 30 inches of the basement walls, backfilling the basement with native soil, and removal of underground utility lines.

The Engineering staff has subsequently obtained required lead and asbestos assessments of the residential structure, prepared the specifications for the project, advertised on March 28 and April 4, 2014, and opened bids on April 29, 2014. The bids included two base bid options: Option I (Building Demolition) and Option II (Building Demolition and Salvage of Roof Beams). The base bid option of salvaging the roof beams is an attempt by staff to be environmentally responsive by donating the wood to non-profit organizations for the purpose of reducing waste.

The following five bids were received and publicly opened at 2:00 p.m., on April 29, 2014:

<b>Contractor</b>	<b>Option I Base Bid</b>	<b>Option II Base Bid</b>
Modesto Sand and Gravel, Inc.	\$24,950	None
P&P Building Wrecking, Inc.	\$45,400	\$57,900
Pantano Demolition	\$45,600	\$63,755

PARC Services, Inc.	\$46,000	\$67,000
Joe Heim, Inc.	\$85,647	\$115,647

Modesto Sand and Gravel, Inc., of Modesto, California, is the lowest monetary bidder for Option I. The project specifications do not require prospective bidders to bid on both base bid options. The big gap in the base bids for Option I between the lowest monetary bid and the three following bids appears to be due to the fact that the bidder is interested in salvaging parts of the structure for profit. Based on the received bids, salvaging the roof beams will cost the City approximately \$33,000. Since the roof beams are not worth the salvage cost, staff recommends awarding the contract based on Option I Base Bid of \$24,950 without salvaging the roof beams.

The bid analysis indicates the lowest monetary bid is responsive and the bidder is responsible. Modesto Sand and Gravel, Inc. have the appropriate contractor's license in current and active standing with the State of California, and have completed numerous similar projects for the City of Tracy and other public agencies.

The total estimated cost of this project, if awarded to Modesto Sand and Gravel, Inc., is as follows:

<u>Project Cost</u>	<u>Base Bid</u>
Contractor's Bid for Construction	\$24,950
Design	\$ 3,000
Design Support During Construction	\$ 1,500
Inspection (5%)	\$ 1,500
Contingency @ 15%	\$ 3,750
Citywide Project Management	<u>\$ 9,000</u>
Total Project Cost	\$43,700

If the project is awarded to Modesto Sand and Gravel, Inc., staff anticipates that the work will be completed within fifteen calendar days after the issuance of the notice to proceed. Hence, the completion of construction is expected by late July 2014.

The Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council. The recommended contingency amount for this project is \$3,750.

### STRATEGIC PLAN

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

### FISCAL IMPACT

The Bessie Avenue building demolition is an approved CIP project. Approximately \$140,000 of General Fund money was budgeted for this project and only \$43,700 is

needed to complete it. Staff recommends that \$85,000 of the unspent funds be transferred to the Emergency Repairs to Lammersville School House Project, CIP 78151. This CIP was recently created to repair the fire damage that occurred at the school house on Feb 13, 2014. Staff will return to Council to award a construction contract for the Emergency Repairs to Lammersville School House Project in mid-August. The estimated costs associated with the repairs of the Lammersville School House total \$85,000. The City has filed a property loss insurance claim with our Central San Joaquin Risk Management Authority for the damages. The City will be reimbursed for any project costs beyond our property insurance deductible of \$25,000. The reimbursement funds will be returned to the General Fund Projects Account 301.

#### RECOMMENDATION

That City Council, by resolution, award a construction contract to Modesto Sand and Gravel, Inc., of Modesto, California, for the Bessie Avenue Building Demolition Project CIP 78142, in the amount of \$24,950, authorize a contingency amount of \$3,750, authorize the Mayor to execute the construction contract and authorize the transfer of \$85,000 from CIP 78142 to the Emergency Repairs to Lammersville School House Project, CIP 78151

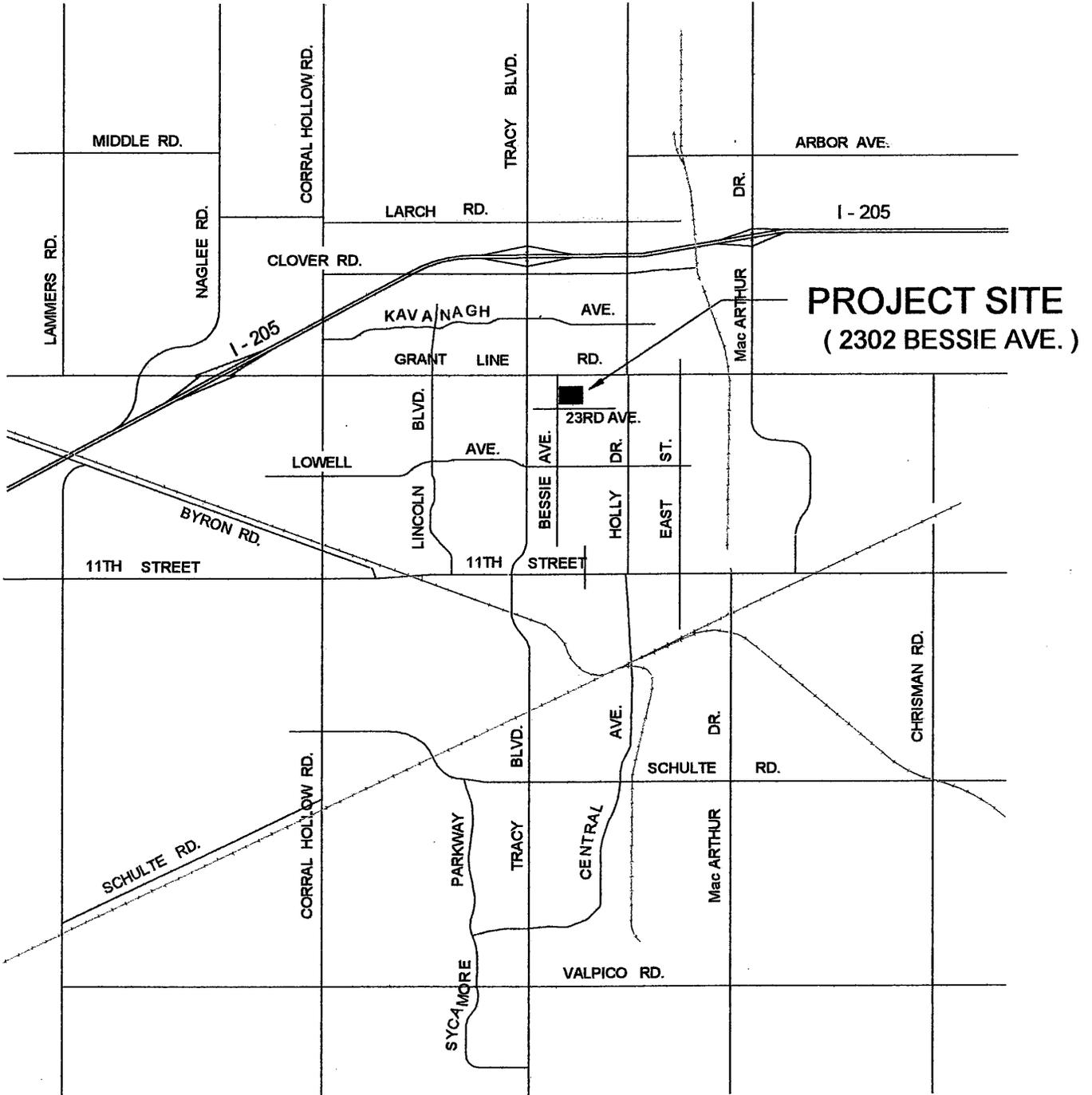
Prepared by: Khoder Baydoun, Associate Civil Engineer  
Zabih Zaca, Senior Civil Engineer

Reviewed by: Victoria Dion, City Engineer/Assistant Director of Development Services  
Andrew Malik, Development Services Director  
Gary Hampton, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

#### ATTACHMENT:

Attachment A: Location Map



**LOCATION MAP**  
N.T.S.



RESOLUTION 2014-\_\_\_\_\_

AWARDING A CONSTRUCTION CONTRACT TO MODESTO SAND AND GRAVEL, INC., OF MODESTO, CALIFORNIA, FOR THE BESSIE AVENUE BUILDING DEMOLITION PROJECT CIP 78142, AUTHORIZING A CONTINGENCY AMOUNT OF \$3,750, AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT AND AUTHORIZING THE TRANSFER OF \$85,000 FROM CIP 78142 TO EMERGENCY REPAIRS TO LAMMERSVILLE SCHOOL HOUSE PROJECT CIP 78151

WHEREAS, This project is part of the City's ongoing commitment to maintain safe facilities and building structures, and

WHEREAS, Building demolition of the structure at 2302 Bessie Avenue is needed based on recommendations from the City's Public Works staff due to the high maintenance cost and the presence of hazardous material, such as asbestos and lead paint, and

WHEREAS, The project was advertised for competitive bids on March 28 and April 4, 2014, and five bids were received and publicly opened at 2:00 p.m., on April 29, 2014, and

WHEREAS, Modesto Sand and Gravel, Inc., is the lowest monetary bidder, bid analysis indicates their bid is responsive and the bidder is responsible, and

WHEREAS, The Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council, and

WHEREAS, The recommended contingency amount for this project is \$3,750, and

WHEREAS, This is an approved Capital Improvement Project and \$140,000 of General Fund money was budgeted for this project but only \$43,700 is needed to complete the project, and

WHEREAS, It is recommended that \$85,000 of the unspent funds be transferred to the Emergency Repairs to Lammersville School House Project, CIP 78151, and

NOW, THEREFORE BE IT RESOLVED, That City Council awards a construction contract to Modesto Sand and Gravel, Inc., of Modesto, California, for the Bessie Avenue Building Demolition Project CIP 78142, in the amount of \$24,950, authorizes a contingency amount of \$3,750, authorizes the Mayor to execute the construction contract and authorizes the transfer of \$85,000 from CIP 78142 to Emergency Repairs to Lammersville School House Project, CIP 78151.

\* \* \* \* \*

The foregoing Resolution 2014-\_\_\_\_\_ was adopted by the Tracy City Council on the 3<sup>rd</sup> day of June 2014, 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

**AMENDMENT OF TWO HOLLY SUGAR RANCH LEASES WITH THE ARNAUDO BROS. (HOLLY RANCH), A PARTNERSHIP, AND THE ARNAUDO BROS., LLC AND AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AMENDMENTS**

EXECUTIVE SUMMARY

The City currently leases agricultural farm fields and a paved drying bed to the Arnaudo Bros., (Holly Ranch), a partnership, and Arnaudo Bros., LLC. These amendments will extend the term of these leases, and adjust the rent received from the agricultural farm fields.

DISCUSSION

The Holly Sugar Ranch is City owned and is located immediately north of Tracy adjacent to the northwest corner of the Wastewater Treatment Plant, between Holly Drive and Corral Hollow Road. The property consists of approximately 1,100 acres with approximately 540.2 acres currently useable for agricultural production. A portion of the property is Sugar Cut and as such is under water. A portion of the property is Legacy Fields. The property contains two 40 acre, paved sugar beet drying beds.

In 2004, staff issued a Request for Proposals (RFP) to lease the agricultural lands to a contract farmer. The RFP was advertised in the newspaper and mailed to local irrigation districts. Interest was very limited and two proposals were received. Staff evaluated the proposals and determined that the proposal received from the Arnaudo Bros. (Holly Ranch), a partnership, (Arnaudo Bros.) provided the greatest benefit to the City. The Arnaudo Bros. has farmed the property for more than fifteen years for both Holly Sugar and is currently farming the property for the City. The Holly Sugar Ranch property is adjacent to the Arnaudo Bros. ranch which provides an efficient agricultural operation.

During the past ten years the Arnaudo Bros. have accomplished the following:

- Constructed the needed water pumping facilities
- Installed the needed water conveyance pipelines
- Laser leveled the fields
- Lowered the drain ditches to promote good drainage, and
- Farmed the leased area using good agronomic practices and ample irrigation with fresh water to increase the productivity of the land.

The term of the existing lease is ten years with a 120-day termination clause, and is scheduled to expire on December 31, 2014. For the Arnaudo Bros. to plan for future agricultural operations, it is desirable to extend the lease at this time. It is desirable from the City perspective to renew the lease at this time to provide for water supply to Legacy Fields, and the continued high quality farm operation as conducted by the Arnaudo Bros. Additionally, the reduction in farmable acreage caused by construction of Legacy Fields warrants amendment of the lease agreement. Amendment 1 to Lease Agreement between Arnaudo Bros. and the City of Tracy will extend the lease for ten years through December 31, 2024, update the lease to reflect current farmable acreage, adjust the rent paid to the City, and provide for provision of irrigation water to Legacy Fields.

The paved drying beds were not included in the farm lease area and were subsequently leased for a variety of uses. The northerly 40 acre drying bed has been leased to Arnaudo Bros., LLC, since 2008 for the preparation and storage of silage. This lease was updated in 2011, contains a six-month termination clause and is scheduled to expire on June 30, 2014. Amendment 1 to Lease Agreement will extend the term of the lease for five years until June 30, 2019. The silage operation provides a service to the agricultural community and provides the City with rental income.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

There is no fiscal impact to the General Fund. As the property was purchased for wastewater purposes using the wastewater funds, all revenue will be deposited in the Wastewater Fund. The agricultural lease is paid up through the end of the calendar year. Staff anticipates revenue of \$82,473.60 per year from the agricultural lease and over the 10 year term a total of \$824,736, and \$50,400 per year from the drying bed lease for a total over the 5 year term of the lease of \$252,000.

#### RECOMMENDATION

That the City Council, by resolution:

1. Approve Amendment 1 to the Lease Agreement with Arnaudo Bros. (Holly Ranch), a partnership, for the farm fields,
2. Approve Amendment 1 to the Lease Agreement with Arnaudo Bros., LLC for the northerly paved drying bed,
3. Authorize the Mayor to execute the amendments.

Agenda Item 1.H  
June 3, 2014  
Page 3

Prepared by: Steve Bayley, Public Works

Reviewed by: Kuldeep Sharma, Director of Public Works  
Gary Hampton, Interim Assistant City Manager

Approved by: Mary A. Hurtado, Interim City Manager

ATTACHMENTS

Attachments: A – Amendment 1 to Lease Agreement with Arnaudo Bros. (Holly Ranch), a partnership.  
B – Amendment 1 to Lease Agreement with Arnaudo Bros., LLC, for the northerly paved dying bed.

**CITY OF TRACY  
AMENDMENT 1 TO  
LEASE AGREEMENT  
BETWEEN ARNAUDO BROS. (HOLLY RANCH)  
AND THE CITY OF TRACY**

This Amendment 1 ("Amendment") to the Lease Agreement between Arnaudo Bros. (Holly Sugar) and the City of Tracy is made and entered into by and between the City of Tracy, a municipal corporation ("City"), and Arnaudo Bros. (Holly Sugar), a partnership (hereinafter "LESSEE").

**RECITALS**

- A. The CITY and LESSEE entered into a Lease Agreement ("Agreement") for the use of real property including approximately 868 acres of farmable fields and two farm residential housing units. The Lease Agreement was approved by the City Council on July 20, 2004, under Resolution No. 2004-219.
- B. The CITY has removed farm fields from the lease area for construction of the Legacy Fields sports complex and the Lease Agreement is amended to reflect current needs and conditions.

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

- 1. **Incorporation by Reference.** All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Amendment.** Recital A, of the Agreement is amended to include a revised Exhibit A depicting the leased area described as PREMISES in the Agreement.
- 3. **Amendment.** Section 2, Term of Agreement, is amended as follows:

**"2. Term of Agreement.** This Amendment to the Agreement shall commence when signed by both parties and shall extend the term of the Agreement by 10 years (to December 31, 2024) except as provided in section 18 (Termination)."

- 4. **Amendment.** Section 3, Rent, is amended to read as follows:

**"3. Rent.** LESSEE shall pay CITY the sum of One Hundred Forty Two (\$142.00) dollars per acre per year for the 580.8 acre PREMISES, which totals Eighty Two Thousand Four Hundred Seventy Three and 60/100 (\$82,473.60) dollars per year ("Rent"). Rent shall be payable: one-half on the first day of January, and one-half on the first day of July of each year to the City of Tracy at the CITY's address specified in Paragraph 3.1 below.

3.1 Payment shall be sent to: Finance Department  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376"

**5. Amendment.** Section 9, Water – Independent Mutual Water District (IMWD), is amended to read as follows:

**“9. Water – Naglee Burk Irrigation District (NBID).** CITY shall pay the NBID drainage and water fees/assessments for the PREMISES. LESSEE shall order water from the NBID to irrigate the portion of the PREMISES within the NBID boundary.

9.1 Water for Legacy Fields. LESSEE shall furnish irrigation water to Legacy Fields from the existing water distribution facilities located on the PREMISES to the pond at Legacy Fields. The quantity of water shall be measured and billed to the CITY every six months. The CITY will pay LESSEE Sixty (\$60.00) dollars per acre-foot for the furnished irrigation water.”

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

**5. Recording.** Pursuant to Government code section 37393, this Amendment shall be recorded in the Office of the County Recorder, County of San Joaquin, State of California. To facilitate such recording each signatory shall have his or her signature notarized.

**6. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of Arnaudo Bros. (Holly Sugar) and the City.

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

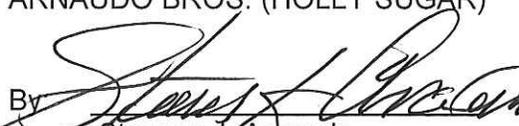
CITY OF TRACY

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

Attest:

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

ARNAUDO BROS. (HOLLY SUGAR)

By:   
Stevens J. Arnaudo  
Title: Partner  
Date: 5-23-14

By:   
Franklin B. Arnaudo  
Title: Partner  
Date: 5-22-14

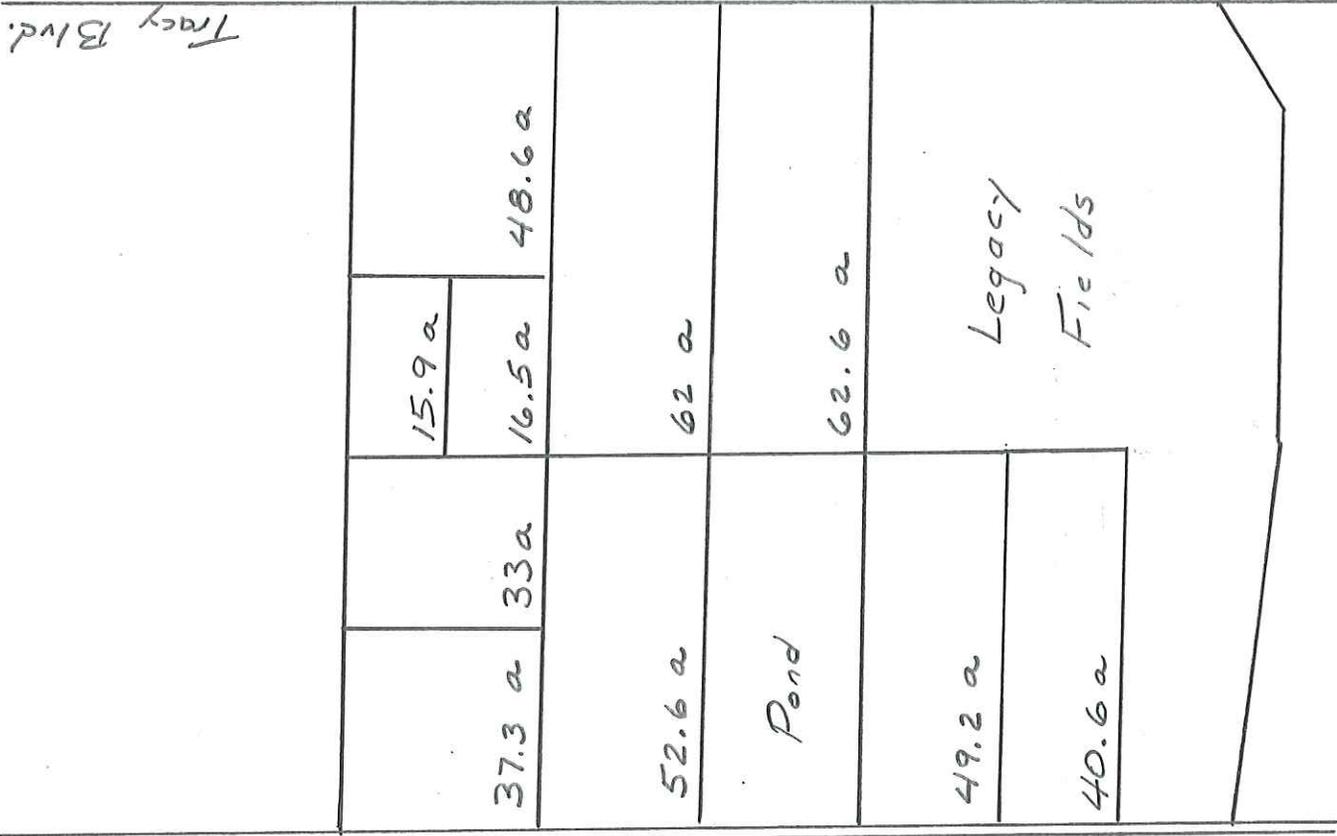
Approved as to form

(Notarization Required)

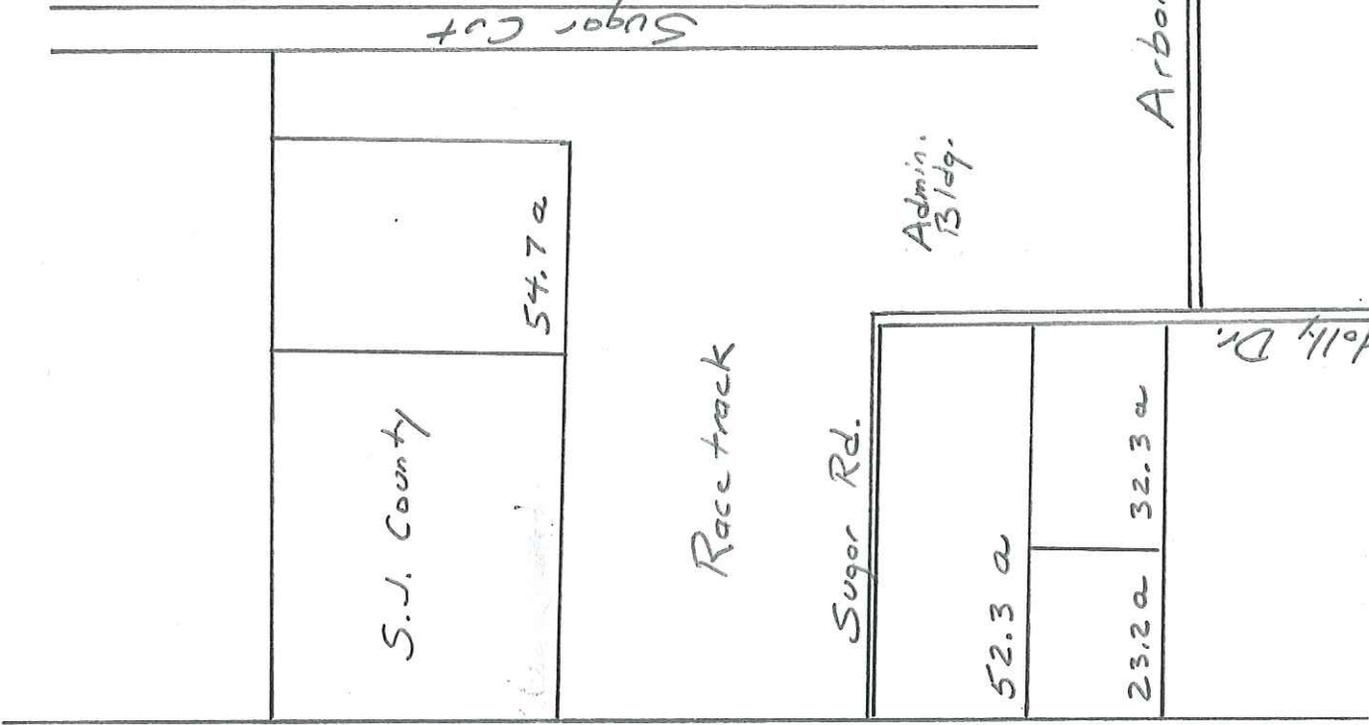
By: \_\_\_\_\_  
Daniel G. Sodergren  
Title: City Attorney  
Date: \_\_\_\_\_

Corral Hollow Rd.

Tracy Blvd.



580.8 a farmable



Sugar Cut

Arbor Ave

Holly Dr.

Race track

Sugar Rd.

Admin. Bldg.

Holly Sugar Ranch 4/14/14

No Scale

Exhibit A

12

**CITY OF TRACY  
AMENDMENT 1 TO  
LEASE AGREEMENT**

This Amendment 1 ("Amendment") to the Lease Agreement between is made and entered into by and between the CITY OF TRACY, a municipal corporation (hereinafter "City"), and Arnaudo Bros., LLC, a California Limited Liability Company (hereinafter "Lessee").

**RECITALS**

- A. The CITY and LESSEE entered into a Lease Agreement ("Agreement") for the use of real property including approximately 40 acres of paved drying bed. The Lease Agreement was approved by the City Council on June 21, 2011, under Resolution No. 2011-123.
- B. City and Lessee desire to amend the lease to extend the term, which is the subject of this Amendment.

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

- 1. Incorporation by Reference.** All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. Amendment.** Section 1, Term, is amended as follows:

"1. **Term:** This Lease Agreement will commence on July 1, 2011, and will run through June 30, 2019, unless terminated by either City or Lessee. City or Lessee may terminate this Agreement upon six months written notice to the other."

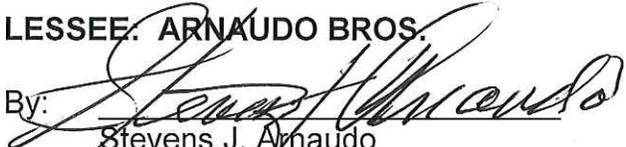
- 3. Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
- 4. Recordation.** Pursuant to Government Code section 37393, this Amendment may be recorded in the Office of the County Recorder, County of San Joaquin, State of California.

THIS AREA INTENTIONALLY LEFT BLANK

**5. Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of Arnaudo Bros. and the City.

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

**LESSEE: ARNAUDO BROS.**

By:   
Stevens J. Arnaudo  
Managing Member  
Date: 5-23-14

By:   
Managing Member

**LESSOR: CITY OF TRACY**

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

Attest: \_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

RESOLUTION \_\_\_\_\_

APPROVING AMENDMENT OF TWO HOLLY SUGAR RANCH LEASE AGREEMENTS WITH ARNAUDO BROS. (HOLLY RANCH), A PARTNERSHIP, AND WITH ARNAUDO BROS., LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENTS

WHEREAS, The City of Tracy currently leases a portion of the Holly Sugar Ranch to Arnaudo Bros. (Holly Ranch), a partnership, LLC, for farming, and

WHEREAS, The current lease is set to expire on December 31, 2014, and

WHEREAS, The City of Tracy also currently leases a drying bed on the Holly Sugar Ranch to the Arnaudo Brothers, LLC, for the preparation and storage of silage, and

Whereas, The current lease is set to expire on June 30, 2014;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council approves Amendment 1 to the Lease Agreement with Arnaudo Bros. (Holly Ranch), a partnership, and the City of Tracy, for the farming lease,
2. The City Council approves Amendment 1 to the Lease Agreement with Arnaudo Bros., LLC, for the northerly paved drying bed,
3. The City Council authorizes the Mayor to execute the amendments.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 3<sup>rd</sup> day of June, 2014, 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

**APPROVE AMENDMENT 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY AFRICAN AMERICAN ASSOCIATION TO WAIVE ADMINISTRATIVE PROCESSING AND BANNER HANGING FEES AND AUTHORIZE THE MAYOR TO EXECUTE THE AMENDMENT**

EXECUTIVE SUMMARY

On January 8, 2014, the City Council waived administrative processing and banner hanging fees for the Tracy African American Association (TAAA) annual Juneteenth event held at Lincoln Park. This item is to formalize that action by way of an amendment to the operative Memorandum of Understanding.

DISCUSSION

In 2006, City Council approved a Memorandum of Understanding (MOU) with the Tracy African American Association (TAAA), a non-profit organization. The TAAA provides support and educational opportunities for youth and sponsors cultural and social activities that foster awareness, diversity, and cooperation to unite the Tracy community.

On April 14, 2013, the TAAA submitted a letter to the City requesting a waiver of the Special Event Permit application fee in the amount of \$35 and the banner hanging fee in the amount of \$200. On January 8, 2014, City Council directed staff to amend the MOU between the City of Tracy and TAAA to waive such fees.

STRATEGIC PLAN

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

FISCAL IMPACT

Approval of this Amendment to the MOU will have a fiscal impact to the General Fund in the amount of \$235 in fee revenue, which covers the cost of processing special events permits and hanging banners. These expenses will not be collected and will be absorbed within existing budgets.

RECOMMENDATION

That City Council, by resolution, approve Amendment 1 to the Memorandum of Understanding (MOU) between the City of Tracy and the Tracy African American Association and authorize the Mayor to execute the agreement.

Agenda Item 1.I  
June 3, 2014  
Page 2

Prepared by: Brian MacDonald, Management Analyst II

Reviewed by: David Ferguson, Director of Public Works  
Gary Hampton, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENTS

Attachment: A – Amendment 1 to the Memorandum of Understanding between the City of Tracy and the Tracy African American Association (TAAA)

**AMENDMENT 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY AFRICAN AMERICAN ASSOCIATION**

**RECITALS**

- A. This Amendment 1 (hereinafter "AMENDMENT") to the Memorandum of Understanding (hereinafter "MOU") is made by and between the City of Tracy (hereinafter "CITY"), a municipal corporation, and Tracy African American Association (hereinafter "TAAA"), a non-profit public benefit California Corporation.
- B. TAAA was formed in 1992. The organization is dedicated to provide support and educational opportunities for youth, to sponsor and promote educational, cultural and social activities that foster awareness, diversity and create a cooperative environment that unites the Tracy community.

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

- 1. **Incorporation by Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the MOU, unless specifically modified by this Amendment. All terms and conditions set forth in the MOU which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. **Terms of Amendment.** The following language is hereby added to the MOU under Section No. III.A.4: *"Waive the permit application fee and banner hanging fee for TAAA's annual Juneteenth event."*
- 3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the MOU.
- 4. **Signatures.** The individuals executing this MOU represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective legal entities of TAAA and the CITY. This MOU shall inure to the benefit of and be binding upon the parties thereto and their respective successors and assigns.

**CITY OF TRACY**

**TRACY AFRICAN AMERICAN ASSOCIATION**

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

Brent H. Ives

Title: Mayor

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

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

James Young, Sr.

Title: President

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

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

LaRonica Fisher

Title: Treasurer

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

City of Tracy Memorandum of Understanding  
Tracy African American Association  
Page 2

ATTEST:

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

Carole Fleischmann

Title: Interim City Clerk

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

APPROVED AS TO FORM:

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

Bill Sartor, Assistant City Attorney

RESOLUTION \_\_\_\_\_

APPROVING AMENDMENT 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TRACY AND THE TRACY AFRICAN AMERICAN ASSOCIATION TO WAIVE ADMINISTRATIVE PROCESSING AND BANNER HANGING FEES AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT

WHEREAS, On March 15, 2005, the City Council adopted "Guidelines: Agreement with External Organizations" which established policies and procedures for local organizations to enter into a Memorandum of Understanding with the City, and

WHEREAS, The Tracy African American Association (TAAA) submitted a request to enter into a Memorandum of Understanding (MOU) with the City which the City Council approved on July 1, 2006, and

WHEREAS, On April 14, 2013, the TAAA submitted a letter to the former Director of Parks and Community Services requesting a waiver of the permit application fee and the banner hanging fee, and

WHEREAS, On January 8, 2014, City Council granted TAAA's request and directed staff to amend the MOU between the City of Tracy and TAAA to waive such fees;

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment 1 to the MOU between the City of Tracy and the Tracy African American Association to waive administrative processing and banner hanging fees, and authorizes the Mayor to execute the Amendment.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by City Council on the 3<sup>rd</sup> day of June, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

AGENDA ITEM 1.J

REQUEST

**ADOPTION OF THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2014/15 FOR THE CITY OF TRACY**

EXECUTIVE SUMMARY

The City Council is required by the State constitution to establish and adopt an appropriations limit pertaining to the proceeds of taxes. The Administrative Services Department has done the necessary calculations to determine the limit for FY 2014/15.

DISCUSSION

On November 6, 1979, California voters approved Proposition 4, commonly known as the Gann Spending Limitation Initiative, establishing Article XIIB of the California State Constitution. This proposition, which became effective in FY 1980/81, mandated an appropriations (spending) limit on the amount of tax proceeds that the State and most local government jurisdictions may appropriate within a fiscal year. Charges for services, fees, grants, loans, donations and other non-tax proceeds are excluded. Exemptions are also made for voter - approved debt prior to January 1, 1979 and the cost of court- related or Federal government mandates.

The initiative was later modified by two propositions - Proposition 98 in 1988 and Proposition 111 in 1990. Proposition 98 established the return of tax revenues exceeding appropriation limit levels to the State or citizens through a process of refunds, rebates, or other means. Proposition 111 allowed more flexibility in the appropriation calculation factors.

Attached for Council consideration is a resolution establishing an appropriations limit for FY 2014/15. The appropriations limit is based on population and per capita income data provided by the State of California Finance Department. In alignment with State guidelines, the appropriation limit for FY 2014/15 was calculated using a factor comprised of the change in County or City population (whichever is higher) and the change in California per capita personal income. Calculation of the FY 2014/15 Gann Appropriations Limit is as follows:

FY 2014/15 Calculation								
<u>% Increase in City Population</u>		<u>Change in Per Capita Income</u>		<u>Appropriation Factor</u>		<u>2013/14 Appropriation Limit</u>		<u>2014/15 Appropriation Limit</u>
1.0081	X	0.9977	=	1.0058	X	\$52,356,071	=	\$52,658,761

The appropriation limit is the total amount of money that can be appropriated by the City in FY 2014/15. The proposed FY 2014/15 budget anticipated \$46,139,960 in taxes.

This figure can be adjusted to an "appropriations subject to the limit" of \$42,463,550 because of budgeted debt service (\$1,204,410) and \$2,472,410 of tax proceeds that are budgeted or reserved for capital outlay.

The appropriations, subject to the limit based upon the proposed FY 2014/15 budget are \$42,463,550, which is \$10,195,211 less than the appropriation limit of \$52,658,761.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

There is no fiscal impact associated with this report. The City's estimated taxes for FY 2014/15 are within the appropriation limit.

#### RECOMMENDATION

Staff recommends that the City Council of the City of Tracy adopt a resolution establishing the Appropriations Limit for FY 14-15.

Prepared by: Allan J. Borwick, Budget Officer

Reviewed by: Jenny Haruyama, Administrative Services Director  
Gary Hampton, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

Attachments: Resolution Establishing the FY 2014/15 Appropriation Limit for the City of Tracy

RESOLUTION\_\_\_\_\_

ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE CITY  
OF TRACY FOR FISCAL YEAR 2014-2015

WHEREAS, Article XIII B of the State Constitution (Limitation of Government Appropriations) was passed by the California electorate on November 6, 1979, and became effective on July 1, 1980, and

WHEREAS, Chapter 1205, Statute of 1980, Section 7900 of the California Government Code formally implements methods for governmental entities to establish and define annual appropriations limits, and

WHEREAS, The growth factors used to calculate the Annual Appropriations Limit are County or City population change and the increase in the California per capita income;

NOW, THEREFORE, BE IT RESOLVED That the Annual Appropriations Limit for the City of Tracy for FY 14-15 is \$52,658,761 as reflected in Exhibit A.

\*\*\*\*\*

The foregoing Resolution \_\_\_\_\_ was adopted by the Tracy City Council on the 3rd day of June, 2014, by the following vote:

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

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROPRIATION LIMIT FACTORS

For YE June 30	Beginning Appropriation Limit	City Population Factor	Per Capita Income	Factor	Ending Appropriation Limit	% Limit Increase
2005	32,024,361	1.0685	1.0328	1.1035	35,340,381	10.35 %
2006	35,341,704	1.0499	1.0526	1.1051	39,056,991	10.51 %
2007	39,056,991	1.0250	1.0396	1.0656	41,618,739	6.56 %
2008	41,618,739	1.0078	1.0442	1.0523	43,797,262	5.23 %
2009	43,797,262	1.0054	1.0429	1.0485	45,922,816	4.85 %
2010	45,922,816	1.0020	1.0062	1.0082	46,299,953	0.82 %
2011	46,301,339	1.0163	0.9746	0.9905	45,860,827	-0.95 %
2012	45,860,827	1.0069	1.0251	1.0322	47,336,316	3.22 %
2013	47,336,316	1.0079	1.0377	1.0459	49,508,950	4.59 %
2014	49,508,950	1.0060	1.0512	1.0575	52,356,071	5.75 %
2015	52,356,071	1.0081	0.9977	1.0058	52,658,761	0.58 %

FY 2014/15 Calculation

% Increase in City Population		Change in Per Capita Income	=	Appropriation Factor	X	2013/14 Appropriation Limit	=	2014/15 Appropriation Limit
1.0081	X	0.9977	=	1.0058	X	\$ 52,356,071	=	\$ 52,658,761

Percentage of Appropriation

2014/15 Tax Revenues	/	2014/15 Appropriation Limit	=	Percentage of Limit
\$ 42,463,550	/	\$ 52,658,761	=	81%

AGENDA ITEM 3

REQUEST

**RECEIVE PRESENTATION ON UPDATED AIRPORT LAYOUT PLAN, PROVIDE INPUT, AND AUTHORIZE SUBMITTAL TO THE FEDERAL AVIATION ADMINISTRATION**

EXECUTIVE SUMMARY

On April 2, 2013, City Council approved the City's Airport Consultant, Reinard W. Brandley, to begin the design and engineering necessary for implementation of a Federal Aviation Administration (FAA) grant for the reconstruction of pavement at the Tracy Municipal Airport. Through this process, the FAA has indicated that due to the extensive changes that were going to take place with the reconstruction of the runways and taxiways that the Airport Layout Plan (ALP) for the Tracy Municipal Airport would need to be updated prior to any construction. On August 6, 2013, the City Council authorized Task Order No. 3 with Reinard W. Brandley for an update of the ALP. The final step before submittal of the ALP to the FAA is to receive input from Council and the public on the update.

DISCUSSION

The Tracy Municipal Airport is in need of pavement reconstruction. A Pavement Maintenance and Management Plan (PMMP) completed in March 2013, showed the deteriorated conditions of the existing pavement throughout the airport. On April 2, 2013, City Council approved the City's Airport Consultant, Reinard W. Brandley, to begin the design and engineering necessary for implementation of a Federal Aviation Administration (FAA) grant for the reconstruction of pavement at the Tracy Municipal Airport. Through this process, the FAA has indicated that due to the extensive changes that were going to take place with the reconstruction of the runways and taxiways that the ALP for the Tracy Municipal Airport would need to be updated prior to any construction. On August 6, 2013, the City Council authorized Task Order No. 3 with Reinard W. Brandley for an update of the Airport Layout Plan.

The current runway/taxiway system consists of marking the old 300-foot wide World War II military landing strip to identify a 100-foot wide runway on one side of the landing strip and a 50-foot wide taxiway on the other side of the strip. An asphalt overlay was placed on the existing pavement in the runway and taxiway section in the 1970 to 1980 period. This runway configuration, the apron, Fixed Base Operator (FBO), and hangar layout are shown on the existing approved Airport Layout Plan.

The FAA has developed new standards for different types of airports. The Tracy Municipal Airport classifies as an Airport Design Group B II. The FAA requirements for this classification airport are specific and have been used in the development of the updated ALP. Attached as Exhibit A, is a draft copy of the updated ALP. The following are the major modifications that were made to the ALP to conform to the new FAA

requirements and to provide necessary facilities to accommodate the aircraft currently using the airport and forecast to use the airport over the next 20 years:

1. The centerline spacing between the runway centerline and the taxiway centerline has been increased from 220 feet to 240 feet.
2. The runway width has been decreased from 100 feet to 75 feet. The taxiway width has been decreased from 50 feet to 35 feet.
3. The central operations area of the airport has been modified to include the following:
  - a. Area for the development of large corporate hangars, which can either be built and owned by the City or built by individuals or companies on leased ground.
  - b. Addition of possible future fixed base operator plots.
  - c. Development of an Airport Administration Building, which could include a restaurant as well as airport offices and pilot lounges.
  - d. Relocation of the fueling island, which involves moving the fuel dispensers and controls from the existing island to a new facility at the current location of the fuel tanks.
  - e. Potential expansion of the general aviation tie down apron if and when required.
4. Space has been provided for expansion of tee hangar aircraft storage facilities on the west side of Runway 12-30.

Following any input from the City Council, the updated ALP would then be finalized and sent to the FAA for approval. Approval of the updated ALP would take approximately 3-4 months. Approval of the updated ALP is a necessary step to receive grants from the FAA for the reconstruction of the pavement at the Tracy Municipal Airport.

#### STRATEGIC PLAN

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

#### FISCAL IMPACT

There is no impact to the General Fund or Airport Fund for this item. All work done relating to updating the ALP was previously approved by City Council and is part of CIP 77PP-081.

RECOMMENDATION

That City Council provide input on the updated Airport Layout Plan and approve its submittal to the Federal Aviation Administration.

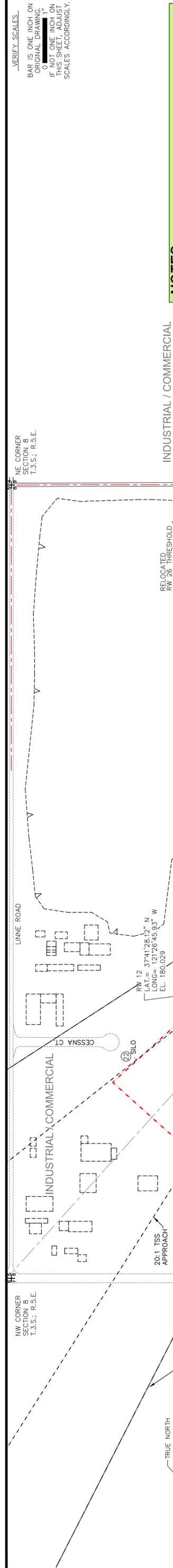
Prepared by: Ed Lovell, Management Analyst II

Reviewed by: David Ferguson, Director of Public Works  
Gary Hampton, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENTS

Exhibit: A – Updated Airport Layout Plan for Tracy Municipal Airport



**NOTES:**

1. ALL COORDINATES BASED ON NORTH AMERICAN DATUM (NAD 83)
2. ALL ELEVATIONS BASED ON NAVD 88. REFERENCE NGS BENCH MARK U 792, PID #HS0187.
3. WIND DATA FROM AWOS ON SITE 1/1/1973 TO 12/31/1973.
4. THIS DRAWING IS FOR PLANNING PURPOSES ONLY AND IS NOT INTENDED FOR CONSTRUCTION OR NAVIGATIONAL PURPOSES.
5. RUNWAY RSA, ROFA AND ROFZ, TAXIWAY TSA AND TOFA SHOWN ON EXPANDED SECTION FOR CLARIFICATION
6. EXISTING CROSS TAXIWAY F AND A TO BE PHASED OUT AND REALIGNED WITH EXISTING RUNWAY 8 AND 26 THRESHOLDS.

INDUSTRIAL / COMMERCIAL

RELOCATED RW 8 THRESHOLD  
LAT = 37°41'25.987" N  
LONG = 121°26'11.037" W  
EL. 172.020

UNIMPROVED RETENTION BASIN  
(AIRPORT DRAINAGE EASEMENT IN PERPETUITY)

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**LEGEND**

GROUND CONTOUR	EXISTING	FUTURE
AIRPORT PROPERTY LINE	100'	
RUNWAY SAFETY AREA (RSA)	— RSA —	
RUNWAY OBJECT FREE AREA (ROFA)	— ROFA —	
RUNWAY OBJECT FREE ZONE (ROFZ)	— ROFZ —	
BUILDING RESTRICTION LINE (BRL)	— BRL —	
RUNWAY PROTECTION ZONE	— RPZ —	
THRESHOLD SITING SURFACE	— TS —	
TAXIWAY SAFETY AREA (TSA)	— TSA —	
TAXIWAY OBJECT FREE AREA (TOFA)	— TOFA —	
AIRFIELD PAVEMENT	AC	
AIRCRAFT MOVEMENT AREA	AC	
FACILITIES		
ROAD (PAVED)		
DIRT/GRAVEL ROAD		
FENCE	6" CHAINLINK	
RUNWAY THRESHOLD LIGHT	35' 36" 2' 1'	
SUPPLEMENTAL WINDCONE		
SECTION CORNER		
AIRPORT REFERENCE POINT		

AGGREGATE PIT  
BOTTOM ELEVATION 75 +/-

DISPLACED RW 30 THRESHOLD  
LAT = 37°41'03.604" N  
LONG = 121°26'11.009" W  
EL. 192.500

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**INVENTORY**

No.	FACILITY	TOP ELEV.
1	EXISTING ELECTRICAL VAULT	
2	EXISTING FBO	
3	EXISTING AIRPORT OFFICE	
4	EXISTING FUEL ISLAND	
5	AIRPORT FUEL STORAGE TANKS AND FUTURE DISPENSARY	
6	EXISTING WIND CONE AND SEGMENTED CIRCLE	
7	EXISTING TETRAHEDRON	
8	EXISTING AWOS TOWER	
9	EXISTING P.A.P.I.	
10	EXISTING 2-BOX V.A.S.I.	
11	EXISTING SUPPLEMENTAL WINDCONES	218.5
12	EXISTING N.D.B. TOWERS	
13	EXISTING HANGARS	
14	EXISTING SUPPLEMENTAL WINDCONE	
15	FUTURE HANGARS	
16	FUTURE FBO EXPANSION	
17	FUTURE PAPI	
18	FUTURE APRON EXPANSION	
19	FUTURE TETRAHEDRON LOCATION	
20	FUTURE REIL	
21	NGS BENCHMARK U 792 HS0187 NAVD 88 DATUM	234.56
22	EXISTING GRAIN SILO	196.66
23	EXISTING POWER POLE	

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RESOLUTION \_\_\_\_\_

AUTHORIZING THE SUBMISSION OF THE UPDATED AIRPORT LAYOUT PLAN TO THE  
FEDERAL AVIATION ADMINISTRATION

WHEREAS, The Federal Aviation Administration has required that an update to the Airport Layout Plan for Tracy Municipal Airport be completed prior to any pavement reconstruction at the airport, and

WHEREAS, On August 6, 2013, the City Council authorized Reinard W. Brandley to begin work on updating the City's Airport Layout Plan, and

WHEREAS, The City Council has been presented the updated Airport Layout Plan and provided their input;

NOW, THEREFORE, BE IT RESOLVED, That City Council authorizes the submission of the updated Airport Layout Plan to the Federal Aviation Administration.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was adopted by Tracy City Council on the 3<sup>rd</sup> day of June, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

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

AGENDA ITEM 4

REQUEST

**CONDUCT A PUBLIC HEARING TO AUTHORIZE THE ACCEPTANCE AND APPROVE THE APPROPRIATION OF \$11,421 FROM THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR THE PURCHASE OF EQUIPMENT FOR THE TRACY POLICE DEPARTMENT'S LAW ENFORCEMENT PROGRAMS**

EXECUTIVE SUMMARY

The City of Tracy has been awarded \$11,421 from a Federal Justice Assistance Grant (JAG) Program for the purchase of equipment to enhance frontline law enforcement. The City of Tracy may accept the grant and authorize an appropriation of \$11,421 to the Police Department budget for FY 14-15.

DISCUSSION

The Edward Byrne Justice 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 a broad range of activities to prevent and control crime based upon their local needs and conditions. The Tracy Police Department has determined the most appropriate use of this grant is to purchase technology equipment and training gear for the officers to enhance the safety of citizens.

The Tracy Police Department intends to purchase the following equipment: Crime Scene documentation equipment; digital cameras and video recorder, DeTAC training suits, prisoner WRAPS, CPR Prompt Kits for CPR and AED training, Less-Than-Lethal training rounds, and breaching tools for SWAT:

Proposed JAG Grant Expenses	
Equipment	Cost
Crime Scene Documentation Equipment; Digital Cameras and Video Recorder	\$2,001
De TAC Training Suits for defensive tactics	\$1,500
WRAPS to restrain combative individuals	\$2,000
CPR Prompt Kits for CPR and AED training	\$1,220
Less-Than-Lethal Training Rounds	\$2,500
Breaching Tools for SWAT	\$2,200
<b>Total</b>	<b>\$11,421</b>

STRATEGIC PLAN

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

FISCAL IMPACT

The City of Tracy will receive \$11,421 from the 2014 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 \$11,421 added to the Police Department's Operating Budget.

RECOMMENDATION

That City Council, by resolution, conduct a public hearing to authorize the acceptance of the grant and the appropriation of \$11,421 from the 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) Program for the purchase of equipment for the Tracy Police Department's Law Enforcement Programs

Prepared by: Lani Smith, Support Operations Division Manager  
Reviewed by: Gary R. Hampton, Interim Assistant City Manager  
Jenny Haruyama, Administrative Services Director  
Approved by: Maria Hurtado, Interim City Manager

RESOLUTION \_\_\_\_\_

**AUTHORIZING THE ACCEPTANCE AND APPROVING THE APPROPRIATION OF \$11,421 FROM THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR THE PURCHASE OF EQUIPMENT FOR THE TRACY POLICE DEPARTMENT'S LAW ENFORCEMENT PROGRAMS**

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 \$11,421 for calendar year 2014 under a pre-designated grant formula, and

WHEREAS, The Tracy Police Department intends to use the appropriation of \$11,421 to purchase Crime Scene documentation equipment; digital cameras and a video recorder, De TAC training suits, prisoner WRAPS, CPR Prompt Kits, Less-Than-Lethal training rounds, and breaching tools for SWAT;

NOW, THEREFORE BE IT RESOLVED, That City Council hereby authorizes the appropriation of \$11,421 from the 2014 Edward Byrne Memorial Justice Grant (JAG) Program for the purchase of digital cameras and a video recorder, De TAC training suits, prisoner WRAPS, CPR Prompt Kits, Less-Than-Lethal training rounds, and breaching tools to improve and enhance the Tracy Police Department's Law Enforcement Programs.

\* \* \* \* \*

The foregoing Resolution \_\_\_\_\_ was passed and adopted by the Tracy City Council on the 3<sup>rd</sup> day of June \_\_\_\_\_, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor

ATTEST:

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

AGENDA ITEM 5

REQUEST

**SECOND READING AND ADOPTION OF ORDINANCE 1194 AN ORDINANCE OF THE CITY OF TRACY APPROVING FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002**

EXECUTIVE SUMMARY

Ordinance 1194 was introduced at the Council meeting held on May 20, 2014. Ordinance 1194 is before Council for a second reading and adoption.

DISCUSSION

Ordinance 1194 was introduced at the Council meeting held on May 20, 2014, to amend the Development Agreement (DA) with Surland Communities (Surland). The DA provides for the offer to dedicate by Surland of 16 acres of land and the contribution of \$10 million towards the cost of construction of the swim center for the benefit of the greater Tracy Community. The first payment of \$2 million was due on September 15, 2013. The proposed amendment to the DA will extend the date for payment of the Owner's First Swim Center Payment of \$2 million to no later than September, 15, 2014, and extend the time in which the City may accept the Land Dedication Offer to September 15, 2015.

Ordinance 1194 is before Council for a second reading and adoption.

STRATEGIC PLAN

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

FISCAL IMPACT

None.

RECOMMENDATION

That Council adopt Ordinance 1194 following its second reading.

Prepared by: Adrienne Richardson, Deputy City Clerk

Reviewed by: Carole Fleischmann, Interim City Clerk  
Gary Hampton, Interim Assistant City Manager

Approved by: Maria A. Hurtado, Interim City Manager

ATTACHMENTS:

Attachment A – Ordinance 1194

ORDINANCE 1194

AN ORDINANCE OF THE CITY OF TRACY APPROVING FIRST AMENDMENT TO  
AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH  
THE SURLAND COMMUNITIES, LLC APPLICATION DA11-0002

WHEREAS, on April 18, 2013, the City and Surland Communities, LLC (“Surland”) entered into an Amended and Restated Development Agreement (“Development Agreement”); and

WHEREAS, the Development Agreement provides for the offer to dedicate by Surland of sixteen (16) acres of land and the contribution of \$10,000,000 (the “Owner’s Swim Center Contribution”) towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner’s Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (3 years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within thirty (30) days after the Annexation Effective Date, as defined in the Development Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013; and

WHEREAS, the parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners’ First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015; and

WHEREAS, on April 23, 2014, the Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of the First Amendment to the Development Agreement (“First Amendment”) to the City Council.

The City Council of the City of Tracy does ordain as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein as findings.

2. Compliance with CEQA. On January 22, 2013, the City of Tracy certified the Modified Ellis Project Draft Environmental Impact Report (EIR) (SCH # 2012022023) for the Ellis project, including the Development Agreement. City staff has evaluated the proposed First Amendment to the Development Agreement (“First Amendment”) and determined that it does not propose new significant changes to the environment that were not analyzed in the EIR, and would not require major revisions to the EIR. Therefore, under Section 15162 of the California Environmental Quality Act (“CEQA”) implementing regulations (the “CEQA Guidelines”), no subsequent or supplemental environmental review is required for the proposed First Amendment. In addition, City staff has determined that the proposed First Amendment is exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the proposed First Amendment may have a significant effect on the environment. Therefore, no further documentation is needed.

3. Findings regarding Development Agreement. The City Council finds that the proposed First Amendment:

a. is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and any applicable community and specific plan;

b. is in conformity with public convenience, general welfare, and good land use practices;

c. will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;

d. will not adversely affect the orderly development of property or the preservation of property values; and

e. is consistent with the provisions of Government Code Sections 65864 *et seq.*

4. First Amendment Approval. The City Council approves the First Amendment attached hereto as Exhibit "1".

5. Effective Date. This Ordinance takes effect 30 days after its final passage and adoption.

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

\* \* \* \* \*

The foregoing Ordinance 1194 was introduced at a regular meeting of the Tracy City Council on the 20th day of May, 2014, and finally adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK (INTERIM)

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

The City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Space above this line for Recorder's use.

**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT  
AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND  
SURLAND COMMUNITIES, LLC**

This FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "First Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("Owner"), pursuant to Government Code sections 65864 et seq. and City Resolution No. 2004-368 which establishes the rules, regulations and procedures for the approval, operation and modification of development agreements and the provisions of that certain Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 as Document No. 2013-119548 Official Records of San Joaquin County, California (the "Development Agreement").

**RECITALS**

A. The City and Owner entered into the Development Agreement in order to strengthen the public planning process and encourage private participation and the funding of community benefits and amenities that could not otherwise be required under controlling law. Specifically, the Development Agreement provides for the offer to dedicate by Owner of sixteen (16) acres of land and the contribution of \$10,000,000 (the "Owner's Swim Center Contribution") towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner's Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (3 years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within thirty (30) days after the Annexation Effective Date, as defined in the Development

Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013.

B. The parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners' First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015.

C. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and the provisions of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this First Amendment. By entering into and executing this First Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

D. On April 23, 2014, the City Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of this First Amendment. On June 3, 2014, the City Council, following a noticed public hearing which was held on May 20, 2014, adopted Ordinance No. 1194 approving this First Amendment and authorizing its execution. That Ordinance took effect on July 3, 2014, the Effective Date of the First Amendment.

NOW, THEREFORE, the parties hereto agree as follows:

1. Incorporation of Recitals: The recitals set forth above are incorporated into this First Amendment as though set forth in full herein.

2. Subsection 1.01(a), The Swim Center Obligations, shall be amended to read as follows:

1.01 **The Swim Center Obligations.**

(a) Owner hereby commits to provide ten million dollars (\$10,000,000.00) ("Owner Swim Center Contribution") to the City, as set forth in this Section 1.01(a), to fund the design, construction, operation and maintenance of a swim center. Owner shall deposit into a segregated and interest-bearing City account the Owner Swim Center Contribution, for use by the City for the construction and operation of a swim center as provided herein. Upon completion of the Owner Swim Center Contribution, Owner shall be deemed to have satisfied any and all fees applicable to the Property or the Ellis Project for a swim center or pool.

(1) Not later than September 15, 2014, Owner shall deposit into a segregated and interest-bearing account designated by the City (the "Swim Center Funds Account") two million dollars (\$2,000,000.00) ("Owner's First Swim Center

Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(2) Not later than two (2) years following the date of Owner’s First Swim Center Payment, Owner shall deposit into the Swim Center Funds Account eight million dollars (\$8,000,000.00) (“Owner’s Second Swim Center Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(3) Owner’s obligations under this section are separate and independent of Owner’s obligations under Subsection (b), and are binding upon Owner regardless of whether or not City accepts Owner’s Dedication Offer as provided in Subsection (b).

(4) In addition to any other remedies available to the City under this Agreement, and any and all other provisions of this Agreement or the City’s Growth Management Ordinance and Guidelines to the contrary notwithstanding, Owner fails to make either or both of the two non-refundable payments as required by Sections 1.01(a)(1) and (2) above, then the City may, in its sole and exclusive discretion, withhold from Owner such Residential Growth Allotments or building permits as Owner would otherwise be entitled to receive under this Agreement or the City’s Growth Management Ordinance or Guidelines, and may continue to withhold the issuance of such Residential Growth Allotments or building permits until all such overdue payment or payments due under this Agreement have been made in full.

3. Subsection 1.01(b)(1) shall be amended to read as follows:

(b) Owner shall offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the Revised EIR and the Ellis Specific Plan as the location of the “Potential Swim Center” (the “Ellis Swim Center Site”), subject to the following:

(1) Not later than September 15, 2014, Owner shall offer to dedicate to the City at no cost to the City, the Ellis Swim Center Site (“Land Dedication Offer”). City shall have until September 15, 2015 to accept the Land Dedication Offer (“Dedication Acceptance Period”), subject to such extensions as may be mutually agreed by the Parties. If City does not accept the Land Dedication Offer within the Dedication Acceptance Period, then one day after the conclusion of the Dedication Acceptance Period, the Land Dedication Offer shall be considered rejected by the City and shall expire without any further action of the Parties.

Thereafter, the Ellis Swim Center Site shall be available for development by Owner pursuant to the 2013 Ellis Specific Plan. Additionally, at any time prior to the end of the Dedication Acceptance Period, City may, by resolution of the City Council, reject the Land Dedication Offer and upon such City rejection, the Ellis Swim Center Site shall be available to Owner for development pursuant to the 2013 Ellis Specific Plan.

4. This First Amendment shall become effective upon the Effective Date which is deemed to be thirty (30) days after the adoption of the Ordinance approving this First Amendment, which Effective Date shall then be inserted into this First Amendment.

5. Recordation: Pursuant to the provisions of Government Code section 65868.5, the duly executed and notarial acknowledged copy of this First Amendment shall be recorded in the Official Records of San Joaquin County, California, no later than ten (10) days following its Effective Date and the burdens and benefits conferred herein will constitute covenants running with the land binding on successors and assigns.

6. Continued Effectiveness of Development Agreement: Except as expressly modified herein, the Development Agreement shall remain in full force and effect. The provisions of this First Amendment are several and separate and should a legal challenge be brought challenging the First Amendment, such challenge shall in no way affect or impact the continued validity and existence of the Development Agreement.

[Signatures on following page]

Executed on the date indicated below.

**"City"**

**CITY OF TRACY**, a municipal corporation

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

Attest:

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

Approved As To Form:

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

**"Owner"**

**SURLAND COMMUNITIES, LLC**, a California limited liability company

  
\_\_\_\_\_  
Les Serpa, Managing Member  
Title: Managing Member  
Date: \_\_\_\_\_

STATE OF CALIFORNIA )  
COUNTY OF San Joaquin )

ss.

On May 28th, 2014 before me, Kirstie L. McKenzie, Notary Public, personally appeared Les Serpa, 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.

Kirstie McKenzie  
Notary Public



STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)            ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)            ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public