

Agenda Item 1.H

RECOMMENDATION

The Tracy Homelessness Advisory Committee recommend that the City Council adopt a Resolution to (1) approve the Professional Services Agreement with Roebbelen Construction Management Services, Inc. for construction management services for Phase II Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, located at 370 W. Arbor Avenue, with a total not-to-exceed amount of \$450,185.

EXECUTIVE SUMMARY

Construction management is critical and a required service for all City capital improvement projects (CIP). Such management services includes the effective management of the project's schedule, cost, quality, safety, scope, and function amongst other things.

The Phase II-Site Improvements and the Sprung Structure CIP 71112, located at 370 W. Arbor Avenue builds upon completed site work and will provide a 6,300 square foot sprung structure and ancillary buildings which provide a commercial kitchen, restrooms, showers, laundry, and storage facilities (Project). Due to the urgency and complexity of the Project, staff recommends retaining services of a construction management firm, specifically Roebbelen Construction Management Services, Inc. (Consultant).

On July 28, 2023, staff issued a Request for Proposal (RFP) seeking proposals from qualified construction management experts for the Project. The goal of the RFP was to find a construction management firm that had the depth and breadth of knowledge that the City could depend on for risk management and to help guide the overall construction for this Project. The City received three (3) proposals prior to the submittal deadline. Staff from multiple City departments completed a detailed analysis of all the proposals and invited each of the firms in for an in-person interview. After a comprehensive evaluation, Consultant was the firm that best met the needs of the City and demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required services.

The scope of the services that would be carried out by Consultant includes four (4) phases: construction, project close-out, public outreach, and project assessment (Services). The negotiated fee for the Services is a total not-to-exceed amount of \$450,185, which includes a contingency of \$20,000 to cover additional services if unforeseen delays were to occur during construction.

Staff recommends that the Tracy Homelessness Advisory Committee (THAC) recommend that the City Council approve a Professional Services Agreement with Consultant with a total not-to-exceed amount of \$450,185 for the Services at the Project and adopt a resolution approving said agreement.

The Tracy Homelessness Advisory Committee heard this item on September 26, 2023 and recommended that the City Council adopt the proposed Resolution.

BACKGROUND AND LEGISLATIVE HISTORY

On September 1, 2020, City Council (Resolution 2020-163) authorized the creation of a CIP for the Temporary Emergency Housing Facility (TEHF) project on Arbor Avenue, CIP 71112, to

create a safe and dignified facility for residents experiencing homelessness. Subsequently, on August 16, 2022, the City Council (Resolution 2022-121) re-affirmed the declaration of a shelter emergency which authorized the City to provide emergency shelter solutions to the most vulnerable residents.

The TEHF is the first emergency housing shelter in the City. The Project is located on 4.8 acres at 370 W. Arbor Avenue, Tracy, CA, 95304 and is broken out in four (4) phases:

- **Phase I – Site Preparation and Underground Utilities:** Completed in October 2022 and resulted with the completion of the below ground construction;
- **Phase II – Site Improvements and Sprung Structure:** Includes a 6,300 square foot sprung structure and ancillary buildings, which provides a commercial kitchen, restrooms, showers, laundry, and storage facilities;
- **Phase III – Modularity:** Currently in-service, which includes four (4) dormitory buildings with capacity to house up to forty-eight (48) individuals in a non-congregate setting. Additionally, this phase includes an administrative building to provide meals and supportive services; and
- **Phase IV – Custom Containers:** Anticipates eight (8) additional custom containers that have been purchased, which will increase the bed capacity with an additional thirty-eight (38) beds for individuals to receive housing.

ANALYSIS

Construction management is critical and a required service for all City CIPs that provides effective management of the project's schedule, cost, quality, safety, scope, and other aspects of the project. Due to the complexity and urgency of the Project, staff recommends retaining services of Consultant. Many public projects utilize outside consultants for construction management services, which allows the City to rely on industry experts.

The total estimated Project cost is \$450,185 and will be funded by CIP 71112, the TEHF, which has an available budget of \$15,069,697. This budget includes the construction of a 6,300 square foot sprung structure and ancillary buildings, which will provide a commercial kitchen, restrooms, showers, laundry, and storage facilities. Hiring a qualified consultant, with extensive related experience is the desired approach for construction management. The consultant will ensure the necessary and critical oversight of the architect, assure successful permitting of the Project, and to ensure there are dedicated full-time staff on-site for the duration of the Project for quality assurance and quality control amongst a myriad of other benefits.

On July 28, 2023, staff issued an RFP, which was advertised for three (3) weeks, seeking proposals from qualified construction management experts. The City received three (3) proposals prior to the submittal deadline. The proposals received were from Griffin Structures, Consultant, and SJ Construction Management. Staff from multiple City departments completed a detailed analysis of the proposals and invited each firm for an in-person interview. The composition of the screening/interviewing panel consisted of staff representatives from the following departments: City Manager, Mobility and Housing, Development Services, and Operations and Utilities.

After the in-person interviews, the panel determined that Consultant best met the needs of the City and demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required Services. During the interview process, it became evident that Consultant was best equipped with the necessary resources, qualifications,

relevant experience, and professionalism essential for the Project. Consultant has been managing construction projects for over 60 years, with their primary clients being government agencies. In the last ten (10) years, they managed over \$2 billion in construction projects for government agencies, including navigations centers, school/college buildings, city halls, senior centers, fire training centers, and aquatic centers.

Staff negotiated a scope of professional services that entails four (4) phases including, construction, project close-out, public outreach, and project assessment. Each phase is unique and entails several components, outlined in the Professional Services Agreement (Agreement) (attached to this report as Attachment A). If the City enters into the Agreement, Consultant would be issued a Notice to Proceed for each phase, which allows the City to better control costs based on how the Project progresses.

A summary of the services to be provided is listed below:

Phase 1 – Construction

- Pre-Construction Conference(s);
- Contract Administration;
- Submittal Procedures;
- Meetings;
- Quality Assurance/Quality Control (QA/QC);
- Coordination of Technical Inspection and Testing;
- Construction Observation;
- Non-Conforming Work;
- Exercise of Contract Prerogatives;
- Endorsement of Insurance; Performance and Payment Bonds;
- Progress Review;
- Maintain On-Site Records;
- Schedule of Values and Processing of Payments;
- Evaluate Change Order Proposal Costs;
- Change Order Reports;
- Contractor Claims;
- Project Status Reports;
- Equipment Instruction Manuals, Warranties, and Releases;
- Completion of Contracts and Project;
- As-Built Documents;
- Training Sessions;
- Accounting Records;
- Permits;
- Initial Start-Up and Testing;
- Storm Water Pollution Plan;
- Grant Coordination, Management, and Reporting; and
- Additional Services as needed

Phase 2 – Project Closeout and Post-Construction

- Relocation;
- User Training;
- Punch Lists;
- Project As-Built, Close Out, and Warranties;
- Final Claims Releases;
- Final Project Report and Payment;
- User Complaints; and
- Year-End Walk Through

Phase 3 – Public Outreach

- Public Relations Activities; and
- Digital / Online Outreach

Phase 4 – Project Assessment

- Detail assessment of each phase of the TEHF (Phase I, II, and IV)

Construction management services are critical to provide expert level oversight to ensure the City receives a high-quality facility when construction is complete. In addition, Consultant can provide the necessary support required of a project of this magnitude to the City project team.

Consultant has demonstrated their technical expertise, overall professionalism, and teamwork mindset which will be a great asset on this complex and time sensitive Project. Consultant anticipates having at least one (1) dedicated employee on-site daily ensuring quality control, specifications, and benchmarks are being met throughout construction.

The negotiated fee for construction management services is \$450,185 which includes the following:

Task	Fee
Pre-Construction / Construction	\$405,116
Project Close-Out and Post Construction	\$25,069
Public Outreach	Included
Project Assessment	Included
Sub-Total	\$430,185
Contingency*	\$20,000
Total Not-To-Exceed Amount	\$450,185

*Staff is recommending a contingency of \$20,000. This contingency will ensure funding is in place to cover additional construction management services as required in case of construction delays without causing an interruption in service. As with every project, the goal is to keep the project on schedule.

FISCAL IMPACT

The total estimated Project cost is \$450,185 and will be funded by the TEHF, CIP 71112. The CIP 71112 has a current available budget of \$15,069,697 as follows:

Staff has structured the Agreement with Consultant in such a way that a Notice to Proceed is required to start each phase of work, providing critical cost control for this service.

COORDINATION

The City Manager's Office coordinated with Mobility and Housing, Parks and Recreation, Operations and Utilities, and Development Services Departments.

CEQA DETERMINATION

Government Code section 8698.4 exempts the application of the California Environmental Quality Act (CEQA) to various actions taken by public agencies to implement the construction of a homeless shelter in response to a declared shelter crisis. In addition, the interim solutions taken thus far are in furtherance of and related to the permanent solution that will be implemented, referred to as the Temporary Emergency Housing Project on Arbor Avenue (CIP 71112). A Notice of Exemption was issued on October 16, 2020, for the Temporary Emergency Housing site at 500 Arbor Avenue in accordance with Government Code sections 65660-65662 for Low Barrier Navigation Centers and Section 15269(c) of the CEQA Guidelines (14 Cal. Code Regs. 15269(c)) for Emergency Projects. No environmental impacts beyond those already analyzed for the CIP exist; accordingly, no further CEQA analysis is needed.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Public Safety Strategic Priority, and specifically implements Goal 2: Implement the adopted homelessness strategic plan.

ACTION REQUESTED OF THE CITY COUNCIL

The Tracy Homelessness Advisory Committee recommend that the City Council adopt a Resolution to (1) approve the Professional Services Agreement with Roebbelen Construction Management Services, Inc. for construction management services for Phase II Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, located at 370 W. Arbor Avenue, with a total not-to-exceed amount of \$450,185.

Prepared by: Nilo Velazquez, Management Analyst II

Reviewed by: Sara Cowell, Director of Finance
Bijal Patel, City Attorney
Brian MacDonald, Interim Assistant City Manager

Approved by: Midori Lichtwardt, Interim City Manager

Attachments:

Attachment A – Professional Services Agreement with Roebbelen Construction Management Services, Inc.

**CITY OF TRACY
CITY MANAGERS OFFICE
PROFESSIONAL SERVICES AGREEMENT WITH
ROEBBELEN CONSTRUCTION MANAGEMENT SERVICES, INC.
FOR TEMPORARY EMERGENCY HOUSING FACILITY (CIP 71112)**

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

Recitals

- A. City desires to retain Consultant for construction management services for the Temporary Emergency Housing Facility (Project); and
- B. On July 28, 2023, the City issued a Request for Proposals (RFP) for construction management services for the Project. On August 18, 2023, proposals were due, and the Consultant submitted their proposal for the Project in accordance with all requirements outlined in the RFP. City has determined that Consultant possesses the skills, experience, and certifications required for the Project.
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement is being executed pursuant to Resolution No. _____ approved by Tracy City Council on October 3, 2023.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Consultant shall perform construction management services for the Project, which includes the services described in Exhibit "A" attached and incorporated by reference (Services). The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Victor Lopez. Consultant shall not, without City's prior written consent, replace its Authorized Representative, replace any of the personnel listed in Exhibit "A," or use or replace any subcontractor or sub-consultant. The City may terminate this Agreement if Consultant makes any such change or replacement in personnel or subcontractor/subconsultant without such 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." As set forth in Exhibit A, the Services will be performed in four (4) different phases. Consultant shall not proceed from one phase to the next unless and until City issues a Notice to Proceed. Any Services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall begin after receipt of an initial Notice to Proceed by Consultant from the City and end twelve (12) months after formal City Council acceptance of Project, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement shall not exceed \$450,185. Consultant's billing rates are on a time and materials basis and shall cover all costs and expenses for Consultant's performance of the Services. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe the Services performed, including the times, dates, and names of persons performing the Services.

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

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

3.4 The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the services performed by Consultant, its employees, subcontractors, agents and subconsultants.

3.5 Consultant agrees to maintain books, accounts, payroll records and other information relating to the performance of Consultant's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Consultant in the performance of Consultant's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement.

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

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

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.) Consultant shall assume no design liability under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Termination The City may terminate this Agreement in its sole an absolute discretion by giving ten (10) days' written notice to Consultant. Within five (5) days of such a termination, Consultant shall give the City all original documents relating to the Project in Consultant's possession or control, including, without limitation, preliminary drafts, contract documents, supporting documents, and any other documents prepared by Consultant pursuant to this Agreement. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

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

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

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

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

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

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

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

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

9. **Independent Contractor Status** Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits. Consultant shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

9.1 **Non-Exclusive Professional Services Agreement** The City reserves the right to contract with other firms and/or consultants during the term of this Agreement to provide the City the same or similar services described in Exhibit A. Nothing contained in this Agreement guarantees Consultant a certain amount of work, and the City may, in its sole and absolute discretion, allocate and/or delegate work relating to the Project to other consultants.

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

11. **Rebates, Kickbacks, or Other Unlawful Consideration** Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration

either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

12. Notices All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Tracy
Attn: Parks and Recreation
333 Civic Center Plaza
Tracy, CA 95376

To Consultant:

Roebbelen Construction Management Services, Inc.
Attn: Victor Lopez
1241 Hawks Flight Court
El Dorado Hills, CA 95762

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

13. Miscellaneous

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

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

13.3 Waivers Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.

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

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

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

13.6.1 Prevailing Wage Laws Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage

Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

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

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

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

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

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

13.14 Counterparts. City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

13.15 Expenses for Enforcement. Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

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

[SIGNATURES ON FOLLOWING PAGE]

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

**City of Tracy
Municipal Corporation**

By: Nancy D. Young
Title: Mayor
Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

Roebbelen Construction Management
Services, Inc.
California Corporation



By: Robert J. Krome
Title: Executive Vice President
Date: 9/08/2023

Federal Employer Tax ID No. 68-0208287



By: Robert McLean
Title: Executive Vice President
Date: 9/08/2023

Exhibits:

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

EXHIBIT A - Scope of Work

The Roebbelen Construction Management Services, Inc., a California Corporation (CM) is required to perform the work specified herein:

a. Construction Phase

1. Pre-Construction Conference(s): Conduct, in conjunction with the City and Architect, pre-construction orientation conference(s) for the benefit of the successful contractors and orient the contractors to the various reporting procedures and site rules prior to the commencement of actual construction.
2. Contract Administration: In cooperation with the Architect, administer the construction contracts. Coordinate the preparation of construction staging areas on-site for the Project and coordinate the preparation of the site for construction, including, but not limited to, coordinating fencing, barricades, or other items reasonably necessary for efficient construction. Coordinate the mobilization of all contractors and shall coordinate construction sequencing. In addition, provide management and related services as required to coordinate work of the contractors with each other and the activities and responsibilities of the Architect and City to complete the Project in accordance with the contract documents.
3. Submittal Procedures: Establish and implement procedures with the City and Architect to coordinate and review shop drawing submittals, requests for information, samples, product data, change orders, payment requests, material delivery dates and other procedures. Maintain logs, files and other necessary documentation. Establish a procedure for and collect certified payroll from the contractors for the Project.
4. Meetings: Coordinate and conduct construction and weekly job-site progress meetings with the contractors, Architect and City. Record, transcribe, and distribute meeting minutes to all attendees, the City, and all other appropriate parties. Assist in the resolution of any technical construction issues.
5. Quality Assurance/Quality Control (QA/QC): Establish and implement a QA/QC management plan for the Project which includes steps to observe, verify, and document the specified level of construction quality.
6. Coordination of Technical Inspection and Testing: Coordinate all testing required by the Contract Documents, Architect, or other third parties. If requested, assist the City in selecting any special consultants or testing laboratories.
7. Construction Observation: Ensure the construction conforms to the approved plans and specifications. Observe that the materials and equipment being incorporated into the work are handled, stored, and installed properly and adequately and are in compliance with the contract documents for the Project. Guard against defects and deficiencies and advise the City of any deviations, defects, or deficiencies observed in the work.
8. Non-Conforming Work: Review contractor's recommendations for corrective action on observed nonconforming work. Make recommendations to the City and Architect in instances where the CM observes work that is defective or not in conformance with the contract documents. Observe the contractor's work to verify that all authorized changes are properly incorporated in the Project.
9. Exercise of Contract Prerogatives: Advise the City and make recommendations for exercising the City's Contract prerogatives, such as giving the contractor notice to accelerate the progress when the schedule goals are in jeopardy due to contractor failings, withholding payment for cause, and other prerogatives when required in an effort to achieve Contract compliance.
10. Endorsements of Insurance; Performance and Payment Bonds: Prior to contractors commencing any work on the Project, the CM shall obtain from the contractors and review for

compliance with the contract documents the required insurance policy endorsements, including additional insured endorsements, the certificates of liability insurance and the faithful performance and payment bonds and after review and correction of any deficiencies in these documents forward them to the City and the Architect. Further, the CM shall insure that contractors maintain in effect the required insurance and bonds during their work on the Project and shall review any subsequent renewals or changes in insurance or bonds.

11. Progress Review: Keep a daily log containing a record of weather, the contractors working on the site, number of workers, work accomplished, problems encountered, and other relevant data or such additional data as the City may require. Activities shall be assigned percentage-complete values. The report shall reflect actual progress as compared to scheduled progress and note any variances. The CM shall identify problems encountered in accomplishing the work and recommend appropriate action to the City to resolve these problems with a minimum effect on the timely completion of the Project. If requested by the City, the CM shall assist the contractor(s) in preparing a recovery schedule. The recovery schedule shall reflect the corrective action costs (if any) and efforts to be undertaken by the contractor(s) to recapture lost time. This recovery schedule shall be distributed to the contractor(s), the City, Architect, and other appropriate parties. The report shall be delivered to the City upon completion of the Project.
12. Maintain On-Site Records: Develop and implement a comprehensive document management program. Ensure that records are maintained by the contractor at the Project site, on a current basis: a record copy of all contracts, drawings, specifications, addenda, change orders, and other modifications, in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; and applicable handbooks and are ready for review by Architect; Titles 21 and 24 of the California Code of Regulations; the California Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the contracts. Maintain records in duplicate of principal building layout lines, elevations for the bottom of footings, floor levels and key site elevations. At the completion of the Project, deliver all such records to the Architect so the Architect may review the record as-built drawings, after which the as-built drawings shall be delivered to the City.
13. Schedule of Values and Processing of Payments: Review and recommend the Contractor's schedule of values for each of the activities included in that contractor's schedule of events. Review with the Architect and make recommendations to the City pertaining to payments to the contractors.
14. Evaluate Change Order Proposal Costs: Evaluate contractors' costs for proposed change orders and make a recommendation to the City regarding the acceptance of any proposals for a change order. The City and the Architect will assist the CM in negotiating any change order costs and time extensions.
15. Change Order Reports: Ensure that all changes to any of the Contracts between the City and a contractor shall be by change order executed by the City. Prepare and distribute change order reports on a monthly basis. Identify their effect on the contract price and Master Project Schedule.
16. Contractor Claims: Review with City and Architect all notices of claims and claims submitted by contractors against the City for any alleged cause. Perform an evaluation of the contents of such claim and make recommendations to the City before the time period established by law for City response to such claims has lapsed. If requested by the City, prepare estimates and alternate estimates based on varying scenarios of the claim cause. These estimates shall be transferred to the City and shall be used in claim rulings and negotiations. If requested by the City, negotiate claims with the contractor(s) on behalf of the City.

17. Project Status Reports: Prepare and distribute monthly a Project Status Report that shall include a report and update of all key items required to adequately manage the Project. A monthly construction summary shall be incorporated into the dedicated Project website.
18. Equipment Instruction Manuals, Warranties, and Releases: Obtain all written material such as operations and maintenance manuals, warranties, affidavits, releases, bonds, waivers, and guarantees for all equipment installed in the Project. All such materials, including equipment instruction material, keys, and documents shall be reviewed and delivered to appropriate City personnel.
19. Completion of Contracts and Project: Notify and assist Architect in preparing a list of incomplete or unsatisfactory items ("Punch-list") and prepare a schedule for their completion. Assist the Architect in determining when the Project or a designated portion thereof is complete. Prepare a summary of the status of the work of each contractor, listing changes in the previously issued Punch-list and recommending the times within which contractors shall complete the uncompleted items on the Punch-list.
20. As-Built Documents: Coordinate and expedite functions in connection with the contractor's obligation to provide "as-built" documents and make recommendations for adequate withholding of retention in the event that a contractor fails to provide acceptable "as-built" documents.
21. Training Sessions: Coordinate and schedule training sessions, if necessary, for the City's personnel and require that the contractor's obligation in providing this training is fulfilled.
22. Accounting Records: Establish and administer an appropriate Project accounting system in conjunction with the City and maintain cost accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
23. Permits: Assist the City in obtaining all necessary permits for the Project, including without limitation, building, grading, and occupancy permits.
24. Initial Start-up and Testing: With the Architect and the City's maintenance personnel, observe the contractors' proper installation of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing for the Project. Coordinate and assist City in the move-in for the Project.
25. Storm Water Pollution Plan: As required, review and recommend to the City which Contractors should prepare and implement Storm Water Pollution Plans, include such requirements in the appropriate bid packages, coordinate the required work and monitor that the work is implemented in the field. Achieve satisfactory performance from the contractor(s) responsible for the installation and maintenance of this requirement. Recommend a course of action to the City when requirements of a contractor are not being fulfilled or promptly corrected.
26. Grant Coordination, Management and Reporting: The City is pursuing grant (Federal) funding for this project. It has not yet been determined if any grant funding will be awarded to this project, however the CM shall carry an allowance to manage grant coordination, management, and reporting if such funds were to be awarded to the City.

b. Project Close-Out and Post Construction Phase

1. Relocation: Assist the City to coordinate the arrival and installation of City furnished materials and FF&E's. Coordinate schedules for City user relocations and occupancy.
2. User Training: The CM shall schedule and document all City training sessions, and arrange for supplementary information where needed, and arrange for manufacturers to provide training for maintenance and operations personnel.
3. Punch Lists: In conjunction with Architect and City, develop, schedule, and verify completion of any outstanding punch-list of incomplete or non-conforming work.

4. Project As-Builts, Close Out, and Warranties: Review contractual requirements for as-builts, close out documentation and warranties, and obtain and compile all required documentation for delivery to the City.
5. Final Claims Releases: Obtain final claim releases, including release of any stop notices, from the contractors as required by the contracts and State law.
6. Final Project Report and Payment: Prepare the final payment documentation for prime contractors, and provide a final report to the City that includes:
 - a. A financial summary of all construction contracting, change orders, construction manager, consultant services, FF&E, and other costs associated with the Project.
 - b. A construction summary with final schedule review and update.
 - c. A final acceptance summary with signed receipts from City staff of all close out document submittals.
 - d. A final acceptance of receipt of all FF&E.
7. User Complaints: Assist with response to initial post-occupancy complaints about missing or malfunctioning building components and equipment, and contractor/vendor warranty items.
8. Year-End Walk Through: Conduct a year-end walk through immediately prior to the expiration of the warranty period and ensure completion of noted items at no additional cost to the City.

c. Public Outreach

1. Public Relations Activities: Assist the City in public relations including, but not limited to, preparation of Project information and attending internal and public meetings as required, including site meetings. The CM shall be the Point of Contact for the community during all phases in regard to any complaints, questions, safety issues, noise problems, dust problems, and similar matters.
2. Digital / Online Outreach: Develop and maintain a Project-specific website page, developing and maintaining Project related social media, community outreach, coordination of community engagement events and presentations, Project branding and graphic design, maintaining community engagement and interested parties database.

d. Project Assessment

1. Phase I: Provide a detail assessment, and if areas of improvement are identified, include recommendations and solutions for immediate implementation.
2. Phase III: Provide a detail assessment, and if areas of improvement are identified, include recommendations and solutions for immediate implementation.
3. Phase IV: Provide a detail assessment, and if areas of improvement are identified, include recommendations and solutions for immediate implementation.

Time of Performance:

- Start – October 2023 (Tentative, based on receipt of Notice to Proceed)
- End – September 2024

Personnel:

- Victor Lopez, Director of Construction Management
- Rich Miller, Senior Construction Manager
- Karmjeet (Kirk) Bhachu, Project Engineer

EXHIBIT B - Compensation

CITY OF TRACY - MOBILITY AND HOUSING DEPARTMENT		2023												Subtotal	
Temporary Emergency Housing Facility		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Hours	Fee
Phase II - Site Improvements & Sprung Structure															
September 6, 2023															
Cost to Complete \$430,185															
Contract Value:	\$0														
Billed to Date:	\$0														
Actual Fee Remaining:	\$0														
Projected Fee Remaining:	\$430,185														
Variance:	\$430,185														
Position Description	Name	Bill Rate													
Director	Victor C. Lopez	\$195									22	22	21	65	12,675
Project Manager	Rich Miller	\$175									22	44	42	108	18,900
Project Engineer	Karmjeet Bhachu	\$140									44	44	42	130	18,200
Admin/Accounting	Admin Support	\$115									8	9	8	25	2,864
In-House Support Services		Bill Rate													
Constructability	Craig Fernandez	\$160											9	9	1,512
Estimating	Steve Connor	\$160											21	21	3,360
Scheduling	Joel Galleon	\$160											9	9	1,512
Labor/Month			0	0	0	0	0	0	0	0	96	119	153	0.0	59,023
Labor Cost/Month			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,186	\$19,162	\$24,675		
Reimbursable Expenses (Not Used)			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
Proposed Fee: Cumulative Effect			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,186	\$34,348	\$59,023		

Note: Rates are subject to an annual inflation increase of 3%, beginning January 2025

Weekly meetings with City Staff included throughout the life of the Project (CM, ACM and PE)

PROJECT TASKS: Outreach, Construction & Closeout

Prep/Precon and NTP

CITY OF TRACY - MOBILITY AND HOUSING DEPARTMENT		2024												Subtotal		GRAND TOTAL	
Temporary Emergency Housing Facility		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Hours	Fee	Hours	Fee
Phase II - Site Improvements & Sprung Structure																	
September 6, 2023																	
Cost to Complete \$430,185																	
Contract Value:	\$0																
Billed to Date:	\$0																
Actual Fee Remaining:	\$0																
Projected Fee Remaining:	\$430,185																
Variance:	\$430,185																
Position Description	Name	Bill Rate															
Director	Victor C. Lopez	\$195	23	21	21	22	23	20	23	0	0			153	29,835	218	42,510
Project Manager	Rich Miller	\$175	184	168	168	176	184	160	184	0	0			1,224	214,200	1,322	231,100
Project Engineer	Karmjeet Bhachu	\$140	92	84	84	88	92	80	92	88	84			784	109,760	914	127,960
Admin/Accounting	Admin Support	\$115	12	11	11	11	12	10	12	4	4			85	9,787	110	12,650
In-House Support Services		Bill Rate															
Constructability	Craig Fernandez	\$160	6											6	1,030	16	2,542
Estimating	Steve Connor	\$160	23						12					35	5,520	56	8,880
Scheduling	Joel Galleon	\$160							6					6	1,030	16	2,542
Labor/Month			340	284	284	297	311	270	328	92	88	0	0	0.0	371,162	2,661	
Labor Cost/Month			\$55,598	\$46,463	\$46,463	\$48,675	\$50,888	\$44,250	\$53,758	\$12,826	\$12,243	\$0	\$0				430,185
Reimbursable Expenses (Not Used)			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0				0
Proposed Fee: Cumulative Effect			\$114,620	\$161,083	\$207,545	\$256,220	\$307,108	\$351,358	\$405,116	\$417,942	\$430,185	\$430,185	\$430,185				\$430,185

Note: Rates are subject to an annual inflation increase of 3%, beginning January 2025

Weekly meetings with City Staff included throughout the life of the Project (CM, ACM and PE)

Construction Start: January 2024

Closeout

PROJECT TASKS: Outreach, Construction & Closeout

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

RESOLUTION TO APPROVE THE PROFESSIONAL SERVICES AGREEMENT WITH ROEBBELEN CONSTRUCTION MANAGEMENT SERVICES, INC. FOR CONSTRUCTION MANAGEMENT SERVICES FOR PHASE II SITE IMPROVEMENTS AT THE TEMPORARY EMERGENCY HOUSING FACILITY, CIP 71112, LOCATED AT 370 W. ARBOR AVENUE, WITH A TOTAL NOT-TO-EXCEED AMOUNT OF \$450,185

WHEREAS, The Temporary Emergency Housing Facility (TEHF), Phase II (CIP 71112) is a 6,300 square foot sprung structure with ancillary buildings which provide a commercial kitchen, restrooms, showers, laundry, and storage facilities (Project); and

WHEREAS, Due to the urgency and complexity of the Project, seeks to engage the services of a construction management firm to oversee the four (4) phases of the Project: construction, project closeout and post-construction, public outreach, and project assessment (Services); and

WHEREAS, On September 1, 2020, the City Council authorized the creation of CIP 71112 for the TEHF (Resolution 2020-163); and

WHEREAS, On August 16, 2022, the City Council re-affirmed the declaration of a shelter emergency which authorized the City to provide emergency shelter solutions to the most vulnerable residents (Resolution 2022-121); and

WHEREAS, The City Council appropriated various amounts totaling \$15,069 million for the Project; and

WHEREAS, On July 28, 2023, staff issued a Request for Proposal (RFP), which was advertised for three (3) weeks, seeking proposals from qualified construction management experts to provide the Service. The City received three (3) proposals prior to the submittal deadline. The proposals received were from Griffin Structures, Roebbelen Construction Management Services Inc. (Consultant), and SJ Construction Management; and

WHEREAS, Staff from multiple City departments completed a detailed analysis of the proposals and invited each firm for an in-person interview. The composition of the screening/interviewing panel consisted of staff representatives from the following departments: City Manager, Mobility and Housing, Development Services, and Operations and Utilities; and

WHEREAS, After the in-person interviews, the panel determined that Consultant met the needs of the City and demonstrated the competence and professional qualifications necessary for the satisfactory performance of the required Services. During the interview process, it became evident that Consultant was best equipped with the necessary resources, qualifications, relevant experience, and professionalism essential for the Project and to provide the Services; and

WHEREAS, Staff has negotiated a Professional Services Agreement (Agreement) with Consultant that includes, in part, a “Not to Exceed” amount of \$450,185. As set forth in the Agreement, the scope of work will include the Services; and

WHEREAS, the fee for the Services includes the following costs:

Task	Fee
Pre-Construction / Construction	\$405,116
Project Close-Out and Post Construction	\$25,069
Public Outreach	Included
Project Assessment	Included
Sub-Total	\$430,185
Contingency	\$20,000
Total Not-To-Exceed Amount	\$450,185

WHEREAS, The City seeks to enter into the Agreement; and

WHEREAS, The Tracy Homelessness Advisory Committee heard this item on September 26, 2023 and recommended that the City Council adopt this proposed Resolution; and

NOW, THEREFORE, be it resolved as follows:

RESOLVED: That the above recitals are true and correct; and be it,

FURTHER RESOLVED: That the City Council of the City of Tracy hereby approves the Agreement to provide the Services relating to the Project. The City, after review and approval by the City Attorney’s office, may execute the Agreement and take any and all further actions to effectuate the purposes of this Resolution; and be it.

FURTHER RESOLVED: That this resolution takes effect immediately upon its adoption.

The foregoing Resolution 2023-_____ was adopted by the Tracy City Council on October 3, 2023, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

NANCY D. YOUNG
Mayor of the City of Tracy, California

ATTEST: _____
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of the
City of Tracy, California