

January 17, 2006

TO: Mayor and City Council

FROM: Steve Pinkerton, Director, Redevelopment Department

SUBJECT: **RESOLUTION: APPROVAL OF AN ALL-INCLUSIVE SETTLEMENT AGREEMENT WITH OWNERS OF EIGHT PROPERTIES ADJACENT TO BEAR CREEK FOR THE TRINITY PARKWAY/AKSLAND AVENUE EXTENSION AND BRIDGE OVER BEAR CREEK PROJECT**

### RECOMMENDATION

It is recommended that the City Council adopt a resolution approving an All-Inclusive Settlement Agreement with the owners of eight properties adjacent to Bear Creek for the Trinity Parkway/Aksland Avenue Extension and Bridge Over Bear Creek Project. It is further recommended that the resolution authorize the City Manager to take those actions necessary to reconvey security instruments in the future to clear title to the subject properties.

### SUMMARY

Council recently approved a contract for final design work required for the Trinity Parkway/Aksland Avenue Extension and Bridge Over Bear Creek Project. It is intended that construction of this road extension and bridge will begin in the 2006 construction season. Staff is presently obtaining various permits and approvals required for that work to start. Owners of the eight properties along the south bank of Bear Creek between the proposed bridge location and the existing Interstate Highway 5 (I-5) bridge own property rights into Bear Creek. Some of these owners have constructed boat docks or intend to do so in the future. Construction of a bridge over Bear Creek at this location will affect the ability of certain boats to reach these properties. The proposed All-Inclusive Settlement Agreement provides compensation to these owners in recognition of the reduction in value they may experience as the result of the City's project. The agreement provides for a total payment of \$640,000 to be divided equally among each of the eight ownerships.

### DISCUSSION

#### Background

The Trinity Parkway/Aksland Avenue Extension and Bridge Over Bear Creek Project consists of the construction of a bridge over Bear Creek, downstream from the existing I-5 bridge, and construction of the roadway extensions to connect with Trinity Parkway at McAuliffe Road to the north, and with Aksland Avenue at Otto Drive to the south. On February 12, 2002, the City Council authorized a contract for design services to undertake phase 1 design work for this project. Following commencement of

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preliminary design, the project grew in scope and complexity due to the involvement of the United States Coast Guard (USCG) and National Environmental Policy Act (NEPA) requirements. The original project involved a low profile bridge which would allow for smaller boat traffic. The estimated construction cost of this bridge was approximately \$3 million. At that time, the City expected the environmental clearance to involve only the approval of the California Environmental Quality Act (CEQA) documents with advance approval from USCG. However, due to the concerns received from adjacent property homeowners, the USCG's preliminary recommendation was that the proposed bridge should have an elevation of 28 feet above the Mean High Water (MHW), which was approximately 10 feet higher than the elevation of the existing I-5 bridge (immediately upstream of the project site). The City's consulting engineer researched available options and produced four (4) design alternatives of varying bridge heights and cost scenarios. On November 26, 2002, the City requested the USCG to reconsider their recommended bridge clearance. This request included public input received during an open house and a public meeting conducted by the City in September 2002, wherein the City presented the project and alternative bridge heights to the affected community. In response, the USCG indicated that they would be prepared to consider a bridge elevation matching the elevation of the existing I-5 bridge.

On September 16, 2003, staff presented two (2) bridge design alternatives for Council consideration and possible adoption. Alternative 1 (Minimum Flood Control Elevation) provided a bridge clearance of 9.3 feet above the MHW. Alternative 2 provided a bridge clearance of 17.7 feet above the MHW which matched the I-5 bridge height immediately upstream of the project site. Staff recommended the approval of Alternative 2 (I-5 Bridge Match Elevation) which maintained access for the existing boat docks as previously recommended by the USCG. The City Council, with direct input from the citizens, selected Alternative 1 (Minimum Flood Control Elevation) with added mitigation measures in order to address concerns received from citizens and/or residents. In addition, at this meeting the City Council also approved the project's Final Mitigated Negative Declaration/Expanded Initial Study (IS 14-03).

Staff met with the USCG on December 8, 2003 to discuss Council adoption of bridge Alternative 1 (Minimum Flood Control Elevation) which provided 9.3 feet clearance above MHW. Once again, the USCG expressed navigability concerns with the selected lower bridge alternative. In an effort to offset these concerns, the City offered to monitor the boat activity in the vicinity of the affected area during the boating season. On February 4, 2004, the City submitted the permit application for the lower bridge alternative, noting that this alternative was put together considering the direct input City Council received from the citizens. The USCG responded to the City's permit application on June 3, 2004, stating that the appropriate clearance for the proposed bridge should be approximately 17.7 feet above the MHW elevation (same elevation as

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the I-5 bridge). The City requested the USCG to reconsider their required clearance for the bridge, and provided the USCG with a time lapsed video and corresponding monitoring report of boat activity in the vicinity of the proposed bridge area on October 14, 2004. On November 5, 2004, the USCG stated they may issue a permit for the lower bridge alternative if reasonable accommodation to the navigational needs of the affected dock owners/mariners were implemented.

On November 22, 2004, the City met with USCG representatives, property/dock owners, and mariners to collect information on current and anticipated navigational needs from affected property owners. During the meeting the property/dock owner's agreed that a 52 feet long and 13 feet high houseboat would satisfy their navigational needs. Consequently, the design team came up with a "houseboat bridge alternative" with a clearance of 10.2 feet above the MHW elevation (13.6 feet above the Mean Low Water). This alternative would require houseboat vessels to pass under the bridge during low tide periods which normally occurs twice a day (morning and afternoon/evening). Based on this information, the USCG indicated that they would permit the houseboat bridge alternative if reasonable compensation and access for dock construction and maintenance equipment was provided. On May 26, 2005, the City provided the USCG with supporting documentation assuring that the proposed houseboat bridge alternative would provide access for pile-driving and maintenance equipment for future dock maintenance. The City Council's approved alternative of 9.3 feet above the MHW has been modified to the houseboat alternative of 10.2 feet above the MHW (13.6 feet above the Mean Low Water) to satisfy the navigational needs of the affected property owners / mariners and to address the concerns of the USCG.

The City resubmitted the bridge permit application to the USCG for the houseboat alternative on September 12, 2005. On October 6, 2005, the USCG requested additional information and changes that would ensure expeditious processing of the permit. The requested information and changes were provided on November 9, 2005. After their review of all information provided, the USCG issued a Public Notice for the bridge permit dated December 2, 2005. The public comment period ended on January 3, 2006 and according to the USCG, no negative comments were received during this comment period. The next step, which is currently underway, will be to obtain regulatory permits from the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NFS).

Present Situation

Staff has negotiated an all-inclusive settlement agreement with the affected property owners to compensate them for potential reduction in market value to their properties due to the construction of the proposed houseboat alternative bridge. The owners of

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the eight affected properties have accepted a financial compensation package which consists of a total payment of \$640,000. The agreement provides that each of the eight ownerships will be paid a total of \$80,000 with \$10,000 paid upon approval of this agreement and the remaining \$70,000 paid upon the City's receipt of all permits and approvals necessary to construct the bridge. In the event these approvals are not obtained, the owners are required to repay the \$10,000 being advanced at this time. That repayment will be secured by a forgivable promissory note and a deed of trust recorded against each of the eight properties. At such time in the future that the required permits and approvals are obtained, the note will be forgiven and the deed of trust reconveyed.

The proposed agreement provides for settlement of any and all claims, past, present and/or future, concerning the limitations of ingress and egress of boat travel on Bear Creek from and to the owners' properties and any other damage claims related to the construction of the proposed "houseboat alternative" bridge over Bear Creek. The owners are required to provide a letter that will be used by the City to assist in obtaining a permit from USCG. In addition, the proposed compensation includes compensation for a Temporary Construction Easement over a portion of owners' properties for activities related to bridge construction.

It is anticipated that design of the project will be completed in March 2006, and that the construction contract for this project will be presented to the City Council for consideration in June 2006. It is also anticipated that project construction will take approximately one year.

#### ENVIRONMENTAL CLEARANCE

An addendum to the Final Mitigated Negative Declaration/Expanded Initial Study (IS 14-03) was developed and placed in the project's file to reflect the minor technical change to the bridge vertical clearance and legally complete the CEQA required documentation. NEPA clearance will be completed during the final design phase and prior to construction of the project.

#### FINANCIAL SUMMARY

The construction estimate for the houseboat alternative is approximately \$8.1 million. The subject all-inclusive settlement agreement will require a total payment of \$640,000.00. Of that amount \$80,000.00 will be paid upon approval of the settlement agreement and the balance of \$560,000.00 will be paid when all required permits and

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approvals for construction of the bridge are obtained. As of January 4, 2006, there was an unencumbered balance in the multi-funded Account 9992 of \$8,017,000 which is sufficient funding for the proposed settlement agreement.

Respectfully submitted,

Approved By:

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Steve Carrigan, Director

STEVEN J. PINKERTON, DIRECTOR  
REDEVELOPMENT DEPARTMENT

APPROVED BY THE CITY MANAGER:

SJP:RLP:slw

Attachment

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MARK LEWIS, CITY MANAGER