DATE: TUESDAY, OCTOBER 19, 2010

LOCATION/TIME: COUNCIL CHAMBERS, CITY HALL, SECOND FLOOR, 4:00 P.M.

C-1. CC/RD CALL TO ORDER / ROLL CALL
C-2. CC/RD ANNOUNCEMENT OF CLOSED SESSION
C-2.01) CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representatives:
Bob Deis; Dianna Garcia

Employee Organizations; Unrepresented Units:
Stockton City Employees' Association; Operating Engineer's Local 3; Mid-Management/Supervisory Level Unit; Unrepresented Management/Confidential; Law Department; Stockton Police Management Association; Stockton Firefighters Local 456 International Association of Firefighters; Stockton Fire Management, Stockton Police Officers’ Association (SPOA)

This Closed Session is authorized pursuant to Section 54957.6(a) of the Government Code.
C-2.02) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Number of Cases: One

Name of Case: Derek Bobo v. City of Stockton, et al.
(U.S. District Court Case No. 2:09-cv-00753 WBS KJN)

This Closed Session is authorized pursuant to Section 54956.9(a) of the Government Code.

C-3. CC/RD PUBLIC COMMENT

C-4. CC/RD ADJOURN TO CLOSED SESSION
CITY OF STOCKTON

CITY COUNCIL-REDEVELOPMENT AGENCY MEMBERS
Elbert H. Holman, Jr., District 1
Leslie Baranco Martin, District 3
Diana Lowery, District 4

MAYOR/CHAIR
ANN JOHNSTON

Vice Mayor/Vice Chair
Katherine M. Miller, District 2

CITY COUNCIL-REDEVELOPMENT AGENCY MEMBERS
Susan Talamantes Eggman, District 5
Dale C. Fritchen, District 6

APPOINTED OFFICIALS
City Manager/Agency Executive Director – Bob Deis
City Attorney/Agency Counsel - John M. Luebbenke
City Clerk/Agency Secretary - Katherine Gong Meissner
City Auditor - F. Michael Taylor

CITY COUNCIL/REDEVELOPMENT AGENCY CONCURRENT AGENDA

DATE: TUESDAY, OCTOBER 19, 2010

LOCATION/TIME: COUNCIL CHAMBERS, CITY HALL, SECOND FLOOR, 5:30 P.M.

1. CC/RD CALL TO ORDER/ROLL CALL

2. CC/RD REPORT OF ACTION TAKEN IN CLOSED SESSION

3. INVOCATION/PLEDGE TO FLAG

4. PROCLAMATIONS/COMMENDATIONS/CITY ANNOUNCEMENTS OR INVITATIONS

4.01) AWARD: HELEN PUTNAM AWARD

RECIPIENT: Mayor Johnston & Council

4.02) AWARD: 2010 CITIES COUNTIES SCHOOLS PARTNERSHIP AWARD

RECIPIENT: Stockton’s Operation Peacekeeper Program

5. CITIZENS’ COMMENTS, ANNOUNCEMENTS OR INVITATIONS*

Regular Meeting (Page - 1)
6. CC/RD  CONSENT AGENDA

6.01) CC
REFUND OF FEES TO ROY FOWLER

Resolution authorizing the refund of Building Permit Fees collected on Permit No. 06-6211 issued to Roy Fowler in the amount of $102,306.47 to be applied to the outstanding fee deferral associated with that permit and authorizing the Administrative Services Department to nullify the original nonresidential fee deferral, subject to Mr. Fowler paying the remaining $94,490.01.
(CD)

6.02) CC
2010 CONFLICT OF INTEREST CODE AMENDMENT

Resolution to amend the City's Conflict of Interest Code by adding and deleting certain designated positions.
(CLK)

6.03) CC
OPTION TO EXTEND THE 2009 TEAM LEASE WITH TEAM COUGARS FC, LCC, AND EXECUTE THE FIRST AMENDMENT TO 2009 TEAM LEASE

Resolution authorizing the City Manager to exercise a one year option to renew the 2009 Team Lease with Team Cougars FC LLC to lease the Stockton Arena for team events; and execute an amendment to the 2009 Lease to modify some of its terms.
(CM)

6.04) CC
AGREEMENT WITH THE BOARD OF DIRECTORS OF THE CHILDREN'S MUSEUM OF STOCKTON

Resolution authorizing an agreement with the Board of Directors of the Children's Museum of Stockton, to operate the Children's Museum
(CS)

6.05) CC
AUTHORIZE ACQUISITION OF A PERMANENT WATERLINE EASEMENT FOR THE DELTA WATER SUPPLY PROJECT

Resolution authorizing the acquisition of a permanent waterline easement for the Delta Water Supply Project located adjacent to Davis Road at a total cost of $1,000.
(ED)
6.06) CC
APPROVE A NEIGHBORHOOD STABILIZATION PROGRAM LOAN TO NEW GENESIS HOUSING DEVELOPMENT CORPORATION

Resolution approving a $207,542 Neighborhood Stabilization Program loan to New Genesis Housing Development Corporation for the acquisition and rehabilitation of the property at 3154 Jade Court.
(ED)

6.07) CC
AUTHORIZE ACQUISITION FOR THE SPERRY ROAD EXTENSION PROJECT

Resolution authorizing the acquisition of two permanent street and highway easements as follows: 1) property located at 6006 South French Camp Road from Stephen R. Lima and Paulette C. Lima; and Lanny Bowden and Sally Bowden in the amount of $1,575,000; and 2) property located at 5641 S. El Dorado Street from Alice J. Bordenave, Trustee in the amount of $325,700 for the Sperry Road Extension Project.
(ED)

6.08) CC
ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT CONTRACT AWARDS FROM THE DEPARTMENT OF ENERGY

Resolution authorizing the City Manager to award three separate contracts for energy efficiency and conservation conversions for the City of Stockton’s high rise office building located at 400 East Main Street.
(ED)

6.09) CC
RESOLUTION AUTHORIZING THE SIXTH EXTENSION OF MILITARY LEAVE WITH SUPPLEMENTAL PAY AND BENEFITS

Resolution authorizing the following: the sixth extension of military leave with supplemental pay and benefits for up to 12 additional months, following depletion of the initial 30-day military leave allotment, and exhaustion of the benefits provided under Council Resolution 05-0204, or until completion of the employee’s mobilization, whichever occurs first. This authorization is for City employees ordered to active duty as part of Operations Noble Eagle, Enduring Freedom, Iraqi Freedom (which changed to Operation New Dawn on September 1, 2010), or any other military mobilization as a result of terrorist attacks on the United States of America.
(HR)
6.10) CC
MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES
PROJECT (PROJECT M10013)

Resolution approving specifications, addendum and all environmental findings; and
authorizing the City Manager to execute a maintenance contract with Storm Water
Inspection & Maintenance Services, Inc. of Byron, in the amount of $146,370 for
the two Fiscal Years 2010-2011 and 2011-2012, with three possible one-year
extensions for the Maintenance of Stormwater Underground Treatment Devices
Project (Project M10013).
(MUD)

6.11) CC
PARTS ACQUISITION – FLEET

a) Resolution rejecting all proposals received for the outsourcing of Fleet parts
acquisition;

b) Resolution reinstating position allocation for Materials Specialist and adding a
part-time position in the Administrative Services Department.
(PW)

6.12) CC/ RD
APPROVE MINUTES OF THE CONCURRENT CITY COUNCIL /
REDEVELOPMENT AGENCY

Closed session meeting of June 22, 2010 and August 24, 2010; and the regular
session meeting of June 22, 2010 and August 24, 2010.
(CLK)

7. UNFINISHED BUSINESS

8. NEW BUSINESS

8.01) CC
PUBLIC MEETING: STOCKTON TOURISM BUSINESS IMPROVEMENT
DISTRICT

a) Resolution of intention to disestablish the Stockton Tourism Business
Improvement District formed under the Parking and Business Improvement
Area Law of 1989;

b) Resolution of intention to establish the Stockton Tourism Business
Improvement District under the Property and Business Improvement District
Law of 1994 and to levy an assessment on lodging businesses within the
district and setting the time and place for a public hearing on
December 7, 2010.
(CM)
8.02) CC
NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT PROJECT

a) Resolution accepting the request made by Viking Construction Company/Bay Cities Construction to withdraw their bid from consideration.

b) Resolution approving plans and specifications, and award a Construction Contract in the amount of $38,747,806.79 to RGW Construction, Inc. of Livermore, for the construction of the North Stockton Railroad Grade Separations and Bridge Replacement, Project No. 05-17.

c) Resolution authorizing an Amendment to the Professional Services Master Contract with Psomas of Roseville, for construction management, inspection, and materials testing services in the amount of $3,250,000.

d) Resolution authorizing an Amendment to the Professional Services Master Contract with Mark Thomas and Company of Sacramento, for construction staking in the amount of $880,346.

(PW)

9. PUBLIC HEARINGS**

9.01) CC
Hearing to consider public comments/testimony regarding

FAYE SPANOS, TRUST, ET AL., REQUEST FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

At the conclusion of the public hearing it is recommended that:

a) Resolution certifying an Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) and adopting the amended California Environmental Quality Act “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project,” dated August, 2010;

b) Resolution approving a General Plan Amendment to amend portions of the project area from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations; and

c) Ordinance approving a Rezoning of portions of Residential, Low Density (RL), Residential, Medium Density (RM), Open Space (OS), and Public Facilities (PF) to Residential, Low Density (RL), Residential, Medium Density (RM), Residential, High Density (RH), Commercial, Neighborhood (CN), Open Space (OS) and Public Facilities (PF) for the project.

(CD)
10. **COUNCIL/REDEVELOPMENT AGENCY COMMENTS AND COMMITTEE REPORTS**

11. **ADJOURNMENT**

**ATTACHMENTS TO AGENDA: WRITTEN COMMUNICATIONS**

*Citizens may comment on any subject within the jurisdiction of the City Council/Redevelopment Agency, including items on the Agenda. Each speaker is limited to five minutes. Speakers must submit "Request to Speak" cards to the City Clerk, and be prepared to speak when called. No speaker cards will be received after the close of the Citizen’s Comments portion of the meeting.

**Speakers should hold comments on items listed as a Public Hearing until the Hearing is opened. If a large number of people desire to speak at a Public Hearing, the Mayor/Chair may reduce the amount of time allocated to each speaker to three (3) minutes.

All proceedings before the City Council/Redevelopment Agency are conducted in English. The City of Stockton does not furnish interpreters and, if one is needed, it shall be the responsibility of the person needing one. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the City Council/Redevelopment Agency, please contact the Office of the City Clerk at (209) 937-8459 at least 48 hours prior to the meeting to enable the City/Agency to make reasonable arrangements to ensure accessibility.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the Office of the City Clerk located at 425 North El Dorado Street, Stockton, California 95202 during normal business hours or by calling (209) 937-8459.

The Agenda is available on the City of Stockton Website: [www.stocktongov.com](http://www.stocktongov.com)

**CHALLENGING CITY DECISIONS:**

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Stockton, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.
<table>
<thead>
<tr>
<th>Weekday</th>
<th>Date</th>
<th>A.M. Appointments</th>
<th>P.M. Appointments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saturday</td>
<td>16</td>
<td>11:00 a.m. Multi-Cultural Fair Multi-Cultural Fair - CPFF West Lane Oaks 7908 N West Lane (Corner of West Lane/Hammer Lane) – (Miller, Holman)</td>
<td>12:30 p.m. Day of Inspiration- McNair High School (Holman) 5:00 p.m. -1st Black History Bee, San Joaquin County Office of Education, Burwood Room - 2707 Transworld Drive (Holman)</td>
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<tr>
<td>Sunday</td>
<td>17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monday</td>
<td>18</td>
<td></td>
<td>5:00 p.m. Special Closed Session – Performance Evaluations</td>
</tr>
<tr>
<td>Tuesday</td>
<td>19</td>
<td>7:00 a.m. Rio Calaveras Elementary Award Ceremony (1819 Bianchi Road) – Johnston 8:30 a.m. Mayor’s Economic Summit (WorkNet) – Johnston, Lowery</td>
<td>2:30 p.m. Aspire Port City Academ Ribbon Cutting (2050 Wet Lane) – Johnston, Lowery, Holman 4:00 Closed Session; 5:30 Regular City Council meeting</td>
</tr>
<tr>
<td>Wednesday</td>
<td>20</td>
<td>8:30 a.m. Mayor’s Quarterly Clergy Meeting (St. Mary’s Interfaith Dining Hall) – Johnston 9:30 a.m. Mayor’s Book Club Reading (Creative Child Care) – Johnston 11:00 a.m. Mayor’s Task Force for Persons with Disabilities (RTD Board Room) - Johnston</td>
<td>1:00 p.m. Advisory Water Commission, Public Health Conference Room, 1601 E. Hazelton Avenue -Lowery</td>
</tr>
<tr>
<td>Thursday</td>
<td>21</td>
<td>8:00 a.m. Air Pollution control Board (Modesto) - johnston</td>
<td>5:00 p.m. Children’s Museum Reception – Lowery 6:00 p.m. 2010 Peacekeeper of the Year Awards, DeRosa University Center Ballroom - Eggman</td>
</tr>
<tr>
<td>Friday</td>
<td>22</td>
<td>CITY HALL CLOSED</td>
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<tr>
<td>Saturday</td>
<td>23</td>
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</table>
CITY MANAGER’S AGENDA REPORT FOR
CITY COUNCIL/REDEVELOPMENT AGENCY CONCURRENT MEETING
TO: Mayor and City Council

FROM: Michael M. Niblock, Director
Community Development Department

SUBJECT: REFUND OF FEES TO ROY FOWLER

RECOMMENDATION

Adopt a resolution authorizing the refund of Building Permit Fees collected on Permit No. 06-6211 issued to Roy Fowler in the amount of $102,306.47 to be applied to the outstanding fee deferral associated with that permit and authorizing the Administrative Services Department to nullify the original nonresidential fee deferral, subject to Mr. Fowler paying the remaining $94,490.01.

Summary

Roy Fowler was issued a building permit on a 32,757 square foot office building to be located at 603 San Juan Avenue. Subsequently, Mr. Fowler was not able to find a tenant for that size building, but was successful in finding a tenant for a smaller sized building. Mr. Fowler has been issued a permit for the smaller building and is eligible for a refund of overpaid fees. Mr. Fowler would like to apply the refund to the outstanding fee deferral associated with the original permit. He has also that interest that would have been due on the deferral be cancelled since the original building that the fee deferral was based on was never built. Mr. Fowler will pay the remaining balance of $94,490.01 in full.

DISCUSSION

Background

On December 1, 2008, building permit fees were paid for Permit No. 06-6211 to construct a 32,757 square foot office building. Mr. Fowler has scaled down the project, due to current economic conditions, and has requested a refund of the overpaid permit fees.

Exhibit “A” details the payments and refunds due. The total amount of fees paid on Permit No. 06-6211 was $353,853.30. At that time, Mr. Fowler entered into a nonresidential fee deferral for $196,796.48 and paid $157,056.82, as required by the program. Mr. Fowler was not successful in finding a tenant for his original 32,757 square foot building, and did not begin construction of the building; however, site and foundation work were started. He was successful in finding a tenant for a 22,798
RESOLUTION AUTHORIZING THE PARTIAL REFUND OF BUILDING PERMIT FEES TO ROY FOWLER IN THE AMOUNT OF $102,306.47

(Page 2)

Fees for the smaller building totaled $251,546.83. Since he paid fees based on the larger building, he is requesting a refund credit to be applied to his existing nonresidential fee deferral in the amount of $102,306.47. If approved, Mr. Fowler will pay $94,490.01 toward the deferral, so the original $196,796.48 of deferred principal will be completely paid. Mr. Fowler has requested that the City nullify the original nonresidential fee deferral, since the original building was not built, and not accrue the interest, accepting the payment of the original deferred principal, as well as his additional payment of $94,490.01 as payment in full.

Present Situation

It is recommended that the City Council adopt a resolution authorizing the refund of Building Permit Fees collected on Permit No. 06-6211 issued to Roy Fowler in the amount of $102,306.47 to be applied to the outstanding fee deferral and authorizing the Administrative Services Department to nullify the original nonresidential fee deferral, accepting the credit and Mr. Fowler’s additional payment of $94,490.01 as payment in full.

FINANCIAL SUMMARY

The refund will be paid from revenues already received, and credited to the outstanding nonresidential fee deferral, so there is no cash outlay by the City. If approved, Mr. Fowler will be paying the total principal on the deferred fees, so the City will not be financing any of his fees.

Respectfully submitted,

MICHAEL M. NIBLOCK, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT

APPROVED BY
BOB DEIS
CITY MANAGER

MMN:GF:sis
RESOLUTION AUTHORIZING THE REFUND OF OVERPAID BUILDING PERMIT FEES, IN THE AMOUNT OF $102,306.47, COLLECTED ON PERMIT NO. 06-6211 ISSUED TO ROY FOWLER

On December 1, 2008, building permit fees were paid for Permit No. 06-6211 to construct a 32,757 square foot office building. Roy Fowler has scaled down the project, due to current economic conditions, and has requested a refund of the overpaid permit fees. Mr. Fowler would like to apply the refund to the outstanding fee deferral and has asked that interest charges not apply since the original building that the fee deferral was based on was never built. Mr. Fowler will pay the remaining balance in full; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is authorized to refund the sum of $102,306.47 to Roy Fowler and apply it toward the outstanding non-residential fee deferral.
2. With the remaining payment of $94,490.01 by Mr. Fowler, the outstanding fee deferral is considered null and void and will not have accrued any interest.
3. The City Manager is authorized to take such other actions as are appropriate to carry out the intent of this resolution.

PASSED, APPROVED and ADOPTED ________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER, City Clerk
of the City of Stockton

ODMA\GRP\WSD\COS-HRD-HRD_LIBRARY.103380.1
## Exhibit "A"

<table>
<thead>
<tr>
<th></th>
<th>Original Building</th>
<th>New Building</th>
<th>Refund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Fees Due</td>
<td>$ 353,853.30</td>
<td>$ 251,546.83</td>
<td>$ (102,306.47)</td>
</tr>
<tr>
<td>Down payment</td>
<td>$ 157,056.82</td>
<td>$ 157,056.82</td>
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</tr>
<tr>
<td>Additional payment</td>
<td></td>
<td>$ 94,490.01</td>
<td></td>
</tr>
<tr>
<td>Total payments</td>
<td>$ 157,056.82</td>
<td>$ 251,546.83</td>
<td></td>
</tr>
<tr>
<td>Deferred</td>
<td>$ 196,796.48</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refund (applied to deferral)</td>
<td>$ (102,306.47)</td>
<td></td>
<td></td>
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<tr>
<td>Deferral Less Refund</td>
<td>$ 94,490.01</td>
<td></td>
<td></td>
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<tr>
<td>Additional payment</td>
<td>$ 94,490.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principal remaining on deferral</td>
<td>$0.00</td>
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</tr>
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</table>
TO: MAYOR AND THE CITY COUNCIL

FROM: KATHERINE GONG MEISSNER, CITY CLERK

SUBJECT: 2010 CONFLICT OF INTEREST CODE AMENDMENT

RECOMMENDATION

It is recommended that the City Council adopt a resolution to amend the City's Conflict of Interest Code by adding and deleting certain designated positions.

Summary

This is the Biennial Review and amendment to the City’s Conflict of Interest (COI) Code as required by the Fair Political Practices Commission (FPPC). In June 2010, all Department heads were notified of the review and were requested to submit any changes to their department's designated positions as reflected in the Conflict of Interest Code. The amendments to the Conflict of Interest Code were made as indicated in Attachment "A" as strike-out text and red underlined text, and the Disclosure Categories and department amendments have been reviewed and approved by the City Attorney's office.

DISCUSSION

Background

The Political Reform Act (Cal. Gov. Code § 87100, et seq.) ("the Act") requires every city to adopt a Conflict of Interest Code that identifies designated officials and employees in the agency who must file a financial disclosure statement. This section of the Act was established to ensure that:

"No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest". (Cal. Gov. Code § 87100)

Section 87200 of the Act requires certain public officials, including City Mayors and Councilmembers, Planning Commissioners, Redevelopment Agency Members, City Managers, City Attorneys, and City Treasurers, to file an annual statement fully disclosing economic interests. The Act specifically excludes designation of positions in conflict of interest codes that are covered under section 87200, and therefore, those
positions are not included in this review. Statements completed by officials holding these positions are filed with the Fair Political Practices Commission through the City Clerk.

Government Code section 91013 authorizes the City Clerk, as the Filing Official for the City of Stockton, to impose a late filing penalty in the form of a fine of $10 per day for each day a statement is late up to a maximum of $100.

Present Situation

The Act requires agencies to amend their code "... when change is necessitated by changed circumstances, including the creation of new positions which must be designated ..." (Cal. Gov. Code § 87306). The changes recommended by staff are displayed in Attachment "A". Newly designated positions are red underlined. Previously designated positions recommended for deletion are lined through and all departments were reorganized in alphabetical order. Disclosure categories have been amended.

FINANCIAL SUMMARY

There is no financial impact to the City as a result of these amendments.

Respectfully Submitted,

KATHERINE GONG MEISSNER
CITY CLERK

Attachments

APPROVED BY

BOB DEIS
CITY MANAGER
# APPENDIX A - DEPARTMENTS

## CITY OF STOCKTON CONFLICT OF INTEREST CODE

### ADMINISTRATIVE SERVICES DEPARTMENT

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Officer</td>
<td>5</td>
</tr>
<tr>
<td>Revenue Officer</td>
<td>5</td>
</tr>
<tr>
<td>Accounting Manager</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>5</td>
</tr>
<tr>
<td>Purchasing Agent</td>
<td>3</td>
</tr>
<tr>
<td>Sr. Administrative Analyst</td>
<td>5</td>
</tr>
<tr>
<td>Buyer I/II/Senior</td>
<td>3</td>
</tr>
<tr>
<td>Reprographics Supervisor</td>
<td>5</td>
</tr>
<tr>
<td>Materials Supervisor</td>
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<tr>
<td>Warehouse Assistant</td>
<td>5</td>
</tr>
<tr>
<td>*Budget Officer</td>
<td>1</td>
</tr>
<tr>
<td>*Administrative Analyst I/II/Senior</td>
<td>1</td>
</tr>
<tr>
<td>*Program Manager I/II</td>
<td>1</td>
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</table>

*Positions anticipated to move from City Manager’s Department to Administrative Services Department within the next year and, therefore, listed in both departments until the actual move is made.

### Information Technology Services

<table>
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<tr>
<td>Deputy Information Technology Director</td>
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<tr>
<td>Program Manager I/II</td>
<td>5</td>
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<tr>
<td>Consultants</td>
<td>Consultants</td>
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</table>

### CITY ATTORNEY

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<tbody>
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<td>Assistant City Attorney</td>
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<tr>
<td>Deputy City Attorney</td>
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*Deleted: Liability Claims Investigator 1*
### CITY AUDITOR

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<tr>
<td>Assistant City Auditor</td>
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</tr>
<tr>
<td>Sr. Deputy City Auditor</td>
<td>1</td>
</tr>
<tr>
<td>Deputy City Auditor I/II</td>
<td>1</td>
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</table>

### CITY CLERK

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<th>Designated Positions</th>
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<tbody>
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<td>City Clerk</td>
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<tr>
<td>Assistant City Clerk I/II</td>
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<tr>
<td>Supervising Deputy City Clerk</td>
<td>1</td>
</tr>
<tr>
<td>Senior Deputy City Clerk</td>
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</table>

### CITY MANAGER

<table>
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<th>Designated Positions</th>
<th>Disclosure Categories</th>
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</thead>
<tbody>
<tr>
<td>Deputy City Manager</td>
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<td>*Budget Officer</td>
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<tr>
<td>Principal Administrative Analyst</td>
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<td>*Administrative Analyst I/II/Senior</td>
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<td>Program Manager III</td>
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<tr>
<td>*Program Manager I/II</td>
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<tr>
<td>Public Information Officer</td>
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<tr>
<td>Assistant to the City Manager</td>
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</table>

*Positions anticipated to move from City Manager's Department to Administrative Services Department within the next year and, therefore, listed in both departments until the actual move is made.

### COMMUNITY DEVELOPMENT DEPARTMENT

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Operations &amp; Customer Services</td>
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<tr>
<td>Director of Community Development</td>
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**Deleted:** Administration

**Deleted:** 4
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<thead>
<tr>
<th>Program Manager III</th>
<th>4</th>
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<tbody>
<tr>
<td>Senior Administrative Analyst</td>
<td>4</td>
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**Building and Life Safety**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Supervising Combination Inspector</td>
<td>4</td>
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<tr>
<td>Combination Inspector I/II</td>
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</tr>
<tr>
<td>Supervising Plan Check/Structural Engineer</td>
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<tr>
<td>Plan Check Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Plan Checker I/II/Senior</td>
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**COMMUNITY DEVELOPMENT DEPARTMENT**

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**Planning and Engineering Services**

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<td>Associate Planner</td>
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</tr>
<tr>
<td>Senior Planner</td>
<td>4</td>
</tr>
<tr>
<td>Planning Manager</td>
<td>4</td>
</tr>
<tr>
<td>Parks Facility Planner/Landscape Architect</td>
<td>4</td>
</tr>
<tr>
<td>Associate Civil Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Associate Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Engineering Technician I/II/Senior</td>
<td>4</td>
</tr>
<tr>
<td>Junior Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Public Works Inspector</td>
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</tr>
<tr>
<td>Senior Civil Engineer</td>
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<tr>
<td>Supervising Public Works Inspector</td>
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**COMMUNITY SERVICES**

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<tr>
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<tr>
<td>Administrative Analyst I/II</td>
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### Executive Assistant 3, 5

### Recreation
- Recreation Supervisor 5
- Sports Commission Director 5
- Golf Manager 5

### Library Services
- Deputy Director of Community Services-City Librarian 3
- Supervising Librarian 3

### ECONOMIC DEVELOPMENT DEPARTMENT

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<td>Economic Development Deputy Director 1</td>
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<td>Economic Development Analyst 4</td>
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</tr>
<tr>
<td>Administrative Analyst I/II/Senior 4</td>
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<table>
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<th>Consultants</th>
<th>Consultants</th>
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<tr>
<td>Program Manager III 4</td>
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</tr>
<tr>
<td>Program Manager I/II 4</td>
<td></td>
</tr>
<tr>
<td>Principal Administrative Analyst 4</td>
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<tr>
<td>Administrative Analyst I/II/Senior 4</td>
<td></td>
</tr>
<tr>
<td>Senior Housing Rehabilitation Counselor 4</td>
<td></td>
</tr>
<tr>
<td>Housing Rehabilitation Counselor I/II 4</td>
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</tr>
<tr>
<td>Senior Housing and Financial Advisor 4</td>
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</tr>
<tr>
<td>Housing and Financial Advisor I/II 4</td>
<td></td>
</tr>
<tr>
<td>Administrative Intern 4</td>
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</tr>
</tbody>
</table>

### Consultants
- Redevelopment
  - Redevelopment Director 1
| Program Manager III              | 4 |
| Program Manager I/II            | 4 |
| Principal Economic Development Analyst | 4 |
| Senior Economic Development Analyst | 4 |
| Economic Development Analyst     | 4 |
| Administrative Analyst Principal | 4 |
| Administrative Analyst I/II/Senior | 4 |
| Planner Assistant/Associate      | 4 |
| Consultants                      |   |

### ECONOMIC DEVELOPMENT DEPARTMENT

<table>
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</tr>
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<tr>
<td>Real Property Agent I/II/Senior</td>
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</tr>
<tr>
<td>Central Parking District</td>
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<tr>
<td>Parking Facilities Supervisor</td>
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<tr>
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### FIRE DEPARTMENT

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<td>Fire Chief</td>
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<tr>
<td>Fire Marshall</td>
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</tr>
<tr>
<td>Division Chief</td>
<td>5</td>
</tr>
<tr>
<td>Administrative Captain/Office of Emergency Services</td>
<td>5</td>
</tr>
<tr>
<td>Project Manager III</td>
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</tr>
<tr>
<td>Administrative Captain/Resources</td>
<td>5</td>
</tr>
<tr>
<td>Captain/Fire Inspector</td>
<td>5</td>
</tr>
<tr>
<td>Fire Protection Specialist</td>
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<tr>
<td>Plan Checker I/II</td>
<td>5</td>
</tr>
<tr>
<td>Fire Prevention Inspector I/II</td>
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### HUMAN RESOURCES DEPARTMENT

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<td>Deputy Director of Human Resources</td>
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<tr>
<td>Risk Manager</td>
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<td>Liability Claims Investigator I/II</td>
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<tr>
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<td>Consultants</td>
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### MUNICIPAL UTILITIES DEPARTMENT

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<th>Designated Positions</th>
<th>Disclosure Categories</th>
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<tbody>
<tr>
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<tr>
<td>Assistant Director of Municipal Utilities/Engineering Manager</td>
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<tr>
<td>Deputy Director/Wastewater</td>
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</tr>
<tr>
<td>Deputy Director/Collection Systems &amp; Maintenance</td>
<td>5</td>
</tr>
<tr>
<td>Deputy Director/Water Resources</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager I/II</td>
<td>5</td>
</tr>
<tr>
<td>Sr. Civil Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Associate Civil Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Assistant Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Regulatory Compliance Officer</td>
<td>5</td>
</tr>
<tr>
<td>Technical Services Supervisor</td>
<td>5</td>
</tr>
<tr>
<td>Environmental Control Officer Senior</td>
<td>5</td>
</tr>
<tr>
<td>Public Works Inspector</td>
<td>5</td>
</tr>
<tr>
<td>Buyer I/II/Senior</td>
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### POLICE DEPARTMENT
<table>
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<tbody>
<tr>
<td>Chief of Police</td>
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<tr>
<td>Deputy Chief of Police I</td>
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<tr>
<td>Deputy Chief of Police II</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager I/II</td>
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</table>

**Neighborhood Services Section**

<p>| Program Manager III          | 5                     |
| Program Manager I/II         | 5                     |</p>
<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
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</thead>
<tbody>
<tr>
<td>Public Works Director</td>
<td>1</td>
</tr>
<tr>
<td>Deputy Public Works Director/City Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Deputy Public Works Director/Operations &amp; Maintenance</td>
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</tr>
<tr>
<td>Engineering Services Manager</td>
<td>5</td>
</tr>
<tr>
<td>Solid Waste Manager</td>
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</tr>
<tr>
<td>Assistant Solid Waste Manager</td>
<td>5</td>
</tr>
<tr>
<td>City Traffic Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager I/II</td>
<td>5</td>
</tr>
<tr>
<td>Sr. Civil Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Assistant City Traffic Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Principal Administrative Analyst</td>
<td>5</td>
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<tr>
<td>Fleet Manager</td>
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</tr>
<tr>
<td>Associate Civil Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Associate Traffic Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Assistant Civil Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Associate Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Assistant Engineer</td>
<td>5</td>
</tr>
<tr>
<td>Sr. Administrative Analyst</td>
<td>5</td>
</tr>
<tr>
<td>Sr. Public Works Supervisor Electrical (Traffic)</td>
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<tr>
<td>Sr. Public Works Supervisor/Streets</td>
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<tr>
<td>Project Manager I/II/III</td>
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<tr>
<td>Junior Engineer</td>
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</tr>
<tr>
<td>Sr. Facilities Maintenance Supervisor</td>
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<tr>
<td>Administrative Analyst</td>
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</tr>
<tr>
<td>Supervising Mechanic</td>
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</tr>
<tr>
<td>Parks Superintendent</td>
<td>5</td>
</tr>
<tr>
<td>Senior Parks Supervisor</td>
<td>5</td>
</tr>
<tr>
<td>Parks Supervisor</td>
<td>5</td>
</tr>
<tr>
<td>Sr. Engineering Technician</td>
<td>5</td>
</tr>
<tr>
<td>Public Works Safety/Training Officer</td>
<td>5</td>
</tr>
<tr>
<td>Sr. Maintenance Repair Technician</td>
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</tr>
<tr>
<td>Engineering Technician I/II</td>
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</tbody>
</table>
## APPENDIX B – DESIGNATED BOARDS, COMMISSIONS, COMMITTEES

### CITY OF STOCKTON CONFLICT OF INTEREST CODE

### BUILDING-HOUSING BOARD OF APPEALS

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson &amp; all Board Members</td>
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### CENTRAL PARKING DISTRICT ADVISORY BOARD

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Director &amp; all Board Members</td>
<td>2</td>
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### CITY COUNCIL SALARY SETTING COMMISSION

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<thead>
<tr>
<th>Designated Positions</th>
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### CIVIL SERVICE COMMISSION

<table>
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### CLIMATE ACTION PLAN ADVISORY COMMITTEE

<table>
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### COUNCIL WATER ADVISORY GROUP

<table>
<thead>
<tr>
<th>Designated Positions</th>
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### DEVELOPMENT OVERSIGHT COMMISSION

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<thead>
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<tr>
<td>HANDICAPPED ACCESS BOARD OF APPEALS</td>
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<tr>
<td>-------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Designated Positions</td>
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<td>Disclosure Categories</td>
<td></td>
</tr>
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<table>
<thead>
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<th>PUBLIC ARTS ADVISORY COMMITTEE</th>
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<td>Disclosure Categories</td>
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<td>Chairperson &amp; all Committee Members</td>
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<table>
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<th>PUBLIC FINANCING AUTHORITY</th>
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<tr>
<td>Executive Director</td>
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<tr>
<td>Treasurer</td>
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<tr>
<td>Legal Advisor</td>
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<td>Disclosure Categories</td>
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<table>
<thead>
<tr>
<th>REDEVELOPMENT COMMISSION/RELOCATION APPEALS BOARD</th>
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<tbody>
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<td>Disclosure Categories</td>
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<td>Chairperson &amp; all Commission Members</td>
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<table>
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<th>STOCKTON ARTS COMMISSION</th>
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<td>Designated Positions</td>
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<td>Disclosure Categories</td>
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<td>Chairperson &amp; all Commission Members</td>
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<th>STOCKTON COMMUNITY DEVELOPMENT COMMITTEE</th>
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<td>Disclosure Categories</td>
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<tr>
<td>Chairperson &amp; all Committee Members</td>
</tr>
<tr>
<td>Designated Positions</td>
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<tr>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Chairperson &amp; all Commission Members</td>
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<table>
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<table>
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<tbody>
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<td>Chairperson &amp; all Commission Members</td>
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</tbody>
</table>
APPENDIX C – DISCLOSURE CATEGORIES

CITY OF STOCKTON CONFLICT OF INTEREST CODE

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee’s position.

DISCLOSURE CATEGORY 1

a. Investments and business positions in any business entity located in, doing business or planning to do business in the City of Stockton. (See FPPC Form 700 Schedules A-1 and A-1 Instructions)

b. Income, including loans, gifts, and travel payments from all sources, regardless of the jurisdiction. (See FPPC Form 700 Schedules C and D Instructions)

c. Financial interests in real property (See FPPC Form 700 Schedule B Instructions):
   1) within the boundaries of the City of Stockton, or
   2) within a two mile radius of any property owned or used by the City of Stockton; or
   3) subject to the jurisdiction of the City of Stockton.
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 2

CENTRAL PARKING DISTRICT

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee’s position.

a. Investments and business positions in any business entity located in, doing business or planning to do business in the Central Parking District. (See FPPC Form 700 Schedules A-1 and A-2 Instructions)

b. Income, including loans, gifts, and travel payments from sources, within the Central Parking District. (See FPPC Form 700 Schedules D and E Instructions)

c. Financial interests in real property (See FPPC Form 700 Schedule B Instructions):
1) within the boundaries of the Central Parking District, or
2) within a two mile radius of any property owned or used by the Central Parking District; or
3) subject to the jurisdiction of the Central Parking District.
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 3

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

a. All investments within the boundaries of the City of Stockton or within a two mile radius of the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

b. All investments in business entities which, within the last two years, have contracted, or in the future may contract with the City of Stockton to provide services, supplies, materials, machinery or equipment (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

c. All investments in business entities in the construction or building industry within the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

d. All interests in real property within the City of Stockton (See FPPC Form 700 Schedule B Instructions);

e. All sources of personal income (See FPPC Form 700 Schedule C Instructions);

f. The name of each business entity not specified above in which he or she is a director, officer, partner, trustee, employee, or is holding any position of management. (See FPPC Form 700 Schedule A-2 Instructions)

g. Income, including loans, gifts, and travel payments from all sources, regardless of the jurisdiction. (See FPPC Form 700 Schedules C, D and E Instructions).
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 4
An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

a. All investments, income or real property interest (See FPPC Form 700 Schedules A-1 and A-2 Instructions):
   1) within the boundaries of the City of Stockton;
   2) within a two mile radius of the City of Stockton;
   3) in business entities which, within the last two years, have contracted, or in the future may contract with the City of Stockton to provide services, supplies, materials, machinery or equipment;
   4) in business entities in the construction or building industry within the City of Stockton;
   5) from business entities engaged in building construction or design including contractors and subcontractors located or doing business in the City of Stockton;

b. The name of each business entity not specified above in which he or she is a director, officer, partner, trustee, employee, or is holding any position of management (See FPPC Form 700 Schedule A-2 Instructions);

c. Investments in or income from persons or business entities engaged in the acquisition or disposal of real property within the City of Stockton (See FPPC Form 700 Schedule B Instructions);

d. Income, including loans, gifts, and travel payments from all sources, regardless of the jurisdiction. (See FPPC Form 700 Schedules C, D and E Instructions).
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 5

a. Investments and business positions in any business entity that manufacture or sell supplies, books, machinery or equipment of the type utilized by the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

b. Investments in or income from business entities that are contractors or subcontractors and are, or have been, within the previous two year period, doing business in the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

c. Income, including loans, gifts, and travel payments from sources that:
   1) manufacture, sell, or provide goods, equipment, vehicles, machinery or services, including training or consulting services;
   2) provide leased facilities to the City of Stockton;
   3) are subject to the regulatory, permit, or licensing authority of, or have an application for a license or permit pending before the City of Stockton; and
   4) engage in land development, construction or the acquisition or sale of real property.

(See FPPC Form 700 Schedules C, D and E)

Deleted: agency

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Deleted: APPENDIX C: Page 6 of 6
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY: CONSULTANTS

Consultants (the individual representing the firm) shall be included in the listing of designated employees and shall disclose pursuant to Disclosure Category 1, subject to the following limitation: The City Manager may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and, thus, is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties, and based upon that description, a statement of the extent of disclosure requirements. The City Manager’s determination is a public record, and shall be retained for public inspection in the same manner and location as this conflict of interest code.

DATE: ____________________

TO: CITY CLERK, CITY OF STOCKTON

FROM: ____________________ DEPARTMENT: ____________________

SUBJECT: CONFLICT OF INTEREST DISCLOSURE CATEGORIES FOR NEW CONSULTANT POSITION

The following Consultant, ____________________ was hired on ___/___/____ and will be performing the following duties:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

The following Disclosure Categories apply to this position:

___ Category 1 ___ Category 4
___ Category 2 ___ Category 5
___ Category 3

__________________________________________  _________________________
Chair/Director/Department Head            Date
# APPENDIX A – DEPARTMENTS

## CITY OF STOCKTON CONFLICT OF INTEREST CODE

### HOUSING AND REDEVELOPMENT DEPARTMENT

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing and Redevelopment Director</td>
<td>4</td>
</tr>
<tr>
<td><strong>Housing Department</strong></td>
<td></td>
</tr>
<tr>
<td>Housing Director</td>
<td>4</td>
</tr>
<tr>
<td>Deputy Housing Director</td>
<td>4</td>
</tr>
<tr>
<td>Program Manager I/II/III</td>
<td>4</td>
</tr>
<tr>
<td>Housing Programs Supervisor</td>
<td>4</td>
</tr>
<tr>
<td>Administrative Analyst I/II/Senior/Principal</td>
<td>4</td>
</tr>
<tr>
<td>Housing Rehabilitation Counselor I/II/Senior</td>
<td>4</td>
</tr>
<tr>
<td>Housing and Financial Advisor I/II/Senior</td>
<td>4</td>
</tr>
<tr>
<td>Administrative Intern</td>
<td>4</td>
</tr>
<tr>
<td>Consultants</td>
<td>Consultants</td>
</tr>
<tr>
<td><strong>Redevelopment Department</strong></td>
<td></td>
</tr>
<tr>
<td>Redevelopment Director</td>
<td>4</td>
</tr>
<tr>
<td>Deputy Redevelopment Director</td>
<td>4</td>
</tr>
<tr>
<td>Redevelopment Manager</td>
<td>4</td>
</tr>
<tr>
<td>Supervising Real Property Agent</td>
<td>4</td>
</tr>
<tr>
<td>Real Property Agent I/II/Senior</td>
<td>4</td>
</tr>
<tr>
<td>Program Manager I/II/III</td>
<td>4</td>
</tr>
<tr>
<td>Project Manager I/II/III</td>
<td>4</td>
</tr>
<tr>
<td>Economic Development Analyst/Senior/Principal</td>
<td>4</td>
</tr>
<tr>
<td>Administrative Analyst I/II/Senior/Principal</td>
<td>4</td>
</tr>
<tr>
<td>Public Works Inspector</td>
<td>4</td>
</tr>
<tr>
<td>Assistant/Associate Planner</td>
<td>4</td>
</tr>
<tr>
<td>Consultants</td>
<td>Consultants</td>
</tr>
<tr>
<td><strong>Central Parking District</strong></td>
<td></td>
</tr>
<tr>
<td>Parking Facilities Manager</td>
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</tr>
<tr>
<td>Consultants</td>
<td>Consultants</td>
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</tbody>
</table>
APPENDIX A – DEPARTMENTS
CITY OF STOCKTON CONFLICT OF INTEREST CODE

INFORMATION TECHNOLOGY SERVICES

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
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<tbody>
<tr>
<td>Information Technology Director</td>
<td>5</td>
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<tr>
<td>Deputy Information Technology Director</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager I/II</td>
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<td>Consultants</td>
<td>Consultants</td>
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LIBRARY SERVICES

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
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</thead>
<tbody>
<tr>
<td>Director of Library Services</td>
<td>3</td>
</tr>
<tr>
<td>Deputy Director of Library Services</td>
<td>3</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>3</td>
</tr>
<tr>
<td>Library Division Manager</td>
<td>3</td>
</tr>
<tr>
<td>Executive Assistant</td>
<td>3</td>
</tr>
<tr>
<td>Supervising Librarian</td>
<td>3</td>
</tr>
<tr>
<td>Administrative Analyst I/II</td>
<td>3</td>
</tr>
</tbody>
</table>
RESOLUTION AMENDING THE CITY OF STOCKTON’S 2010 CONFLICT OF INTEREST CODE BY ADDING AND DELETING CERTAIN POSITIONS

Title 2, California Code of Regulations, section 18000, et seq., requires the periodic review of Conflict of Interest Codes as adopted by the City of Stockton; and

Amendments to the Political Reform Act, Government Code section 81000, et seq., require conforming amendments to Conflict of Interest Codes adopted and promulgated pursuant to its provisions; and

The Fair Political Practices Commission has adopted section 18730 of Title 2, California Code of Regulations, a model Conflict of Interest Code, which may be incorporated by reference and amended to conform to amendments of the Political Reform Act after public notice and hearings conducted by the Fair Political Practices Commission, pursuant to Government Code section 11370, et seq.; and

Incorporation by reference of the model Conflict of Interest Code and its subsequent amendments will save this body time and money by minimizing the actions required of this body to maintain conformity with the Political Reform Act; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. All previously adopted resolutions approving or amending the City's Conflict of Interest Codes are hereby rescinded.

2. The model Conflict of Interest Code, Title 2, California Code of Regulations section 18730 and its subsequent amendments are hereby adopted by reference together with Appendices A – C, attached and incorporated by this reference, designating officials and employees and disclosure categories, all of which constitute the Conflict of Interest Codes for the following departments and agencies:

City Atty: [Signature]  
Review Date: October 12, 2010  

A. PUBLIC OFFICIALS

(1) Mayor and City Councilmembers
(2) Planning Commissioners
(3) City Manager
(4) City Attorney
(5) Director of Administrative Services/City Treasurer

The officials named in section 2A of this resolution are not part of the City's Conflict of Interest Code and are required to file a statement of economic interests in accordance with Government Code section 87200.

B. DESIGNATED FILERS

1. Persons holding designated positions shall file statements of economic interests pursuant to subsection (b) (5) of section 18730 of Title 2, California Code of Regulations, the model Conflict of Interest Code.

2. Government Code section 91013 authorizes the City Clerk, as the Filing Official for the City of Stockton, to impose a late filing penalty upon late filers, in the form of a fine of $10 per day for each day a statement is late up to a maximum of $100.

APPENDIX A - DEPARTMENTS OF THE CITY OF STOCKTON:

(1) Administrative Services
(2) City Attorney
(3) City Auditor
(4) City Clerk
(5) City Manager
(6) Community Development
(7) Community Services
(8) Economic Development
(9) Fire
(10) Human Resources
(11) Municipal Utilities
(12) Police
(13) Public Works
APPENDIX B - BOARDS AND COMMISSIONS OF THE CITY OF STOCKTON

(1) Building-Housing Board of Appeals
(2) Central Parking District Advisory Board
(3) City Council Salary Setting Commission
(4) Civil Service Commission
(5) Climate Action Plan Advisory Committee
(6) Council Water Advisory Group
(7) Development Oversight Commission
(8) Handicapped Access Board of Appeals
(9) Public Arts Advisory Committee
(10) Public Financing Authority
(11) Redevelopment Commission/Relocation Appeals Board
(12) Redevelopment Agency
(13) Stockton Arts Commission
(14) Stockton Community Development Committee
(15) Stockton Measure W Oversight Committee
(16) Stockton Parks and Recreation Commission
(17) Stockton Sports Commission
(18) Stockton Tourism Business Improvement District Advisory Board

APPENDIX C - DISCLOSURE CATEGORIES

(1) Disclosure Category 1
(2) Disclosure Category 2 - Central Parking District
(3) Disclosure Category 3
(4) Disclosure Category 4
(5) Disclosure Category 5
(6) Disclosure Category 6 - Consultants

PASSED, APPROVED and ADOPTED ____________________

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
APPENDIX A – DEPARTMENTS
CITY OF STOCKTON CONFLICT OF INTEREST CODE

ADMINISTRATIVE SERVICES DEPARTMENT

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Officer</td>
<td>5</td>
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<tr>
<td>Revenue Officer</td>
<td>5</td>
</tr>
<tr>
<td>Accounting Manager</td>
<td>5</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>5</td>
</tr>
<tr>
<td>Purchasing Agent</td>
<td>3</td>
</tr>
<tr>
<td>Sr. Administrative Analyst</td>
<td>5</td>
</tr>
<tr>
<td>Buyer I/II/Senior</td>
<td>3</td>
</tr>
<tr>
<td>Reprographics Supervisor</td>
<td>5</td>
</tr>
<tr>
<td>Materials Supervisor</td>
<td>5</td>
</tr>
<tr>
<td>Warehouse Assistant</td>
<td>5</td>
</tr>
<tr>
<td>*Budget Officer</td>
<td>1</td>
</tr>
<tr>
<td>*Administrative Analyst I/II/Senior</td>
<td>1</td>
</tr>
<tr>
<td>*Program Manager I/II</td>
<td>1</td>
</tr>
</tbody>
</table>

*Positions anticipated to move from City Manager’s Department to Administrative Services Department within the next year and, therefore, listed in both departments until the actual move is made.

Information Technology Services

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Technology Director</td>
<td>1</td>
</tr>
<tr>
<td>Deputy Information Technology Director</td>
<td>1</td>
</tr>
<tr>
<td>Program Manager I/II</td>
<td>5</td>
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<tr>
<td>Consultants</td>
<td>Consultants</td>
</tr>
</tbody>
</table>

CITY ATTORNEY

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant City Attorney</td>
<td>1</td>
</tr>
<tr>
<td>Deputy City Attorney</td>
<td>1</td>
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</table>
### CITY AUDITOR

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Auditor</td>
<td>1</td>
</tr>
<tr>
<td>Assistant City Auditor</td>
<td>1</td>
</tr>
<tr>
<td>Sr. Deputy City Auditor</td>
<td>1</td>
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<tr>
<td>Deputy City Auditor I/II</td>
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</table>

### CITY CLERK

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
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</thead>
<tbody>
<tr>
<td>City Clerk</td>
<td>1</td>
</tr>
<tr>
<td>Assistant City Clerk I/II</td>
<td>1</td>
</tr>
<tr>
<td>Supervising Deputy City Clerk</td>
<td>1</td>
</tr>
<tr>
<td>Senior Deputy City Clerk</td>
<td>1</td>
</tr>
</tbody>
</table>

### CITY MANAGER

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy City Manager</td>
<td>1</td>
</tr>
<tr>
<td>*Budget Officer</td>
<td>1</td>
</tr>
<tr>
<td>Principal Administrative Analyst</td>
<td>1</td>
</tr>
<tr>
<td>*Administrative Analyst I/II/Senior</td>
<td>1</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>1</td>
</tr>
<tr>
<td>*Program Manager I/II</td>
<td>1</td>
</tr>
<tr>
<td>Public Information Officer</td>
<td>1</td>
</tr>
<tr>
<td>Assistant to the City Manager</td>
<td>1</td>
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</tbody>
</table>

*Positions anticipated to move from City Manager’s Department to Administrative Services Department within the next year and, therefore, listed in both departments until the actual move is made.

### COMMUNITY DEVELOPMENT DEPARTMENT

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Operations &amp; Customer Services</td>
<td></td>
</tr>
<tr>
<td>Director of Community Development</td>
<td>1</td>
</tr>
<tr>
<td>Program Manager III</td>
<td>4</td>
</tr>
<tr>
<td>Senior Administrative Analyst</td>
<td>4</td>
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</tbody>
</table>
### Building and Life Safety

<table>
<thead>
<tr>
<th>Position</th>
<th>Category</th>
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</thead>
<tbody>
<tr>
<td>Deputy Director/Building</td>
<td>1</td>
</tr>
<tr>
<td>Supervising Combination Inspector</td>
<td>4</td>
</tr>
<tr>
<td>Combination Inspector I/II</td>
<td>4</td>
</tr>
<tr>
<td>Supervising Plan Check/Structural Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Plan Check Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Plan Checker I/II/Senior</td>
<td>4</td>
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</tbody>
</table>

### COMMUNITY DEVELOPMENT DEPARTMENT

<table>
<thead>
<tr>
<th>Designated Positions</th>
<th>Disclosure Categories</th>
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</thead>
<tbody>
<tr>
<td><strong>Planning and Engineering Services</strong></td>
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<tr>
<td>Deputy Director/Planning and Engineering Services</td>
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<tr>
<td>Assistant Planner</td>
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<tr>
<td>Associate Planner</td>
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</tr>
<tr>
<td>Senior Planner</td>
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</tr>
<tr>
<td>Planning Manager</td>
<td>4</td>
</tr>
<tr>
<td>Parks Facility Planner/Landscape Architect</td>
<td>4</td>
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<tr>
<td>Associate Civil Engineer</td>
<td>4</td>
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<tr>
<td>Associate Engineer</td>
<td>4</td>
</tr>
<tr>
<td>Engineering Technician I/II/Senior</td>
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</tr>
<tr>
<td>Junior Engineer</td>
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<tr>
<td>Public Works Inspector</td>
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<tr>
<td>Senior Civil Engineer</td>
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<tr>
<td>Supervising Public Works Inspector</td>
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### COMMUNITY SERVICES

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<td>Deputy Director of Community Services/Recreation</td>
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<td>Administrative Analyst I/II</td>
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<tr>
<td><strong>Recreation</strong></td>
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<td>Recreation Supervisor</td>
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APPENDIX A: Page 3 of 7
<table>
<thead>
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<td>Economic Development Deputy Director</td>
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<td>Principal Administrative Analyst</td>
<td>4</td>
</tr>
<tr>
<td>Administrative Analyst I/II/Senior</td>
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<tr>
<td><strong>Consultants</strong></td>
<td>Consultants</td>
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<tr>
<td><strong>Housing</strong></td>
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<tr>
<td>Program Manager III</td>
<td>4</td>
</tr>
<tr>
<td>Program Manager I/II</td>
<td>4</td>
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<tr>
<td>Principal Administrative Analyst</td>
<td>4</td>
</tr>
<tr>
<td>Administrative Analyst I/II/Senior</td>
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<tr>
<td>Senior Housing Rehabilitation Counselor</td>
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<tr>
<td>Housing Rehabilitation Counselor I/II</td>
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<tr>
<td>Senior Housing and Financial Advisor</td>
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<tr>
<td>Housing and Financial Advisor I/II</td>
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<td>Administrative Intern</td>
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<td><strong>Consultants</strong></td>
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</tr>
<tr>
<td><strong>Redevelopment</strong></td>
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<td>Redevelopment Director</td>
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<td>Program Manager III</td>
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<tr>
<td>Program Manager I/II</td>
<td>4</td>
</tr>
<tr>
<td>Principal Economic Development Analyst</td>
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<tr>
<td>Senior Economic Development Analyst</td>
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<tr>
<td>Economic Development Analyst</td>
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</tr>
<tr>
<td>Administrative Analyst Principal</td>
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</tbody>
</table>
Administrative Analyst I/II/Senior 4
Planner Assistant/Associate 4
Consultants Consultants

**Real Property**
Supervising Real Property Agent 4
Real Property Agent I/II/Senior 4

**Central Parking District**
Parking Facilities Supervisor 4
Consultants Consultants

**FIRE DEPARTMENT**

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<tbody>
<tr>
<td>Fire Chief</td>
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<tr>
<td>Deputy Fire Chief I/II</td>
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<tr>
<td>Fire Marshall</td>
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<tr>
<td>Division Chief</td>
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</tr>
<tr>
<td>Administrative Captain/Office of Emergency Services</td>
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</tr>
<tr>
<td>Project Manager III</td>
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</tr>
<tr>
<td>Administrative Captain/Resources</td>
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<tr>
<td>Captain/Fire Inspector</td>
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<tr>
<td>Fire Protection Specialist</td>
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</tr>
<tr>
<td>Plan Checker I/II</td>
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<tr>
<td>Fire Prevention Inspector I/II</td>
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**HUMAN RESOURCES DEPARTMENT**

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<tbody>
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<td>Director of Human Resources</td>
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</tr>
<tr>
<td>Assistant Director of Human Resources</td>
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<tr>
<td>Deputy Director of Human Resources</td>
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<tr>
<td>Risk Manager</td>
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<tr>
<td>Liability Claims Investigator I/II</td>
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<td>Consultants</td>
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## MUNICIPAL UTILITIES DEPARTMENT

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<tr>
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<td>Engineering Manager</td>
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<td>Deputy Director/Wastewater</td>
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<tr>
<td>Deputy Director/Collection Systems &amp; Maintenance</td>
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<tr>
<td>Deputy Director/Water Resources</td>
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<td>Program Manager III</td>
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<td>Program Manager I/II</td>
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<td>Sr. Civil Engineer</td>
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<td>Associate Civil Engineer</td>
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<td>Technical Services Supervisor</td>
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<td>Environmental Control Officer Senior</td>
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<tr>
<td>Public Works Inspector</td>
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<tr>
<td>Buyer I/II/Senior</td>
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## POLICE DEPARTMENT

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<tr>
<td>Deputy Chief of Police II</td>
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<td>Deputy Chief of Police I</td>
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<tr>
<td>Program Manager III</td>
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<td>Program Manager I/II</td>
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<td>Program Manager III</td>
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<td>Program Manager I/II</td>
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## PUBLIC WORKS DEPARTMENT

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<tr>
<td>Deputy Public Works Director/City Engineer</td>
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<tr>
<td>Deputy Public Works Director/Operations &amp; Maintenance</td>
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<tr>
<td>Engineering Services Manager</td>
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Solid Waste Manager  5
Assistant Solid Waste Manager  5
City Traffic Engineer  5
Program Manager III  5
Program Manager I/II  5
Sr. Civil Engineer  5
Assistant City Traffic Engineer  5
Principal Administrative Analyst  5
Fleet Manager  5
Associate Civil Engineer  5
Associate Traffic Engineer  5
Assistant Civil Engineer  5
Associate Engineer  5
Assistant Engineer  5
Sr. Administrative Analyst  5
Sr. Public Works Supervisor Electrical (Traffic)  5
Sr. Public Works Supervisor/Streets  5
Project Manager I/II/III  5
Junior Engineer  5
Sr. Facilities Maintenance Supervisor  5
Administrative Analyst  5
Supervising Mechanic  5
Parks Superintendent  5
Senior Parks Supervisor  5
Parks Supervisor  5
Sr. Engineering Technician  5
Public Works Safety/Training Officer  5
Sr. Maintenance Repair Technician  5
Engineering Technician I/II  5
Consultants  5

APPENDIX A: Page 7 of 7
APPENDIX B – DESIGNATED BOARDS, COMMISSIONS, COMMITTEES  
CITY OF STOCKTON CONFLICT OF INTEREST CODE

BUILDING-HOUSING BOARD OF APPEALS

Designated Positions  Disclosure Categories
Chairperson & all Board Members  1

CENTRAL PARKING DISTRICT ADVISORY BOARD

Designated Positions  Disclosure Categories
Executive Director & all Board Members  2

CITY COUNCIL SALARY SETTING COMMISSION

Designated Positions  Disclosure Categories
Chairperson & all Commission Members  1

CIVIL SERVICE COMMISSION

Designated Positions  Disclosure Categories
Chairperson & all Commission Members  1

CLIMATE ACTION PLAN ADVISORY COMMITTEE

Designated Positions  Disclosure Categories
Chairperson & all Commission Members  1

COUNCIL WATER ADVISORY GROUP

Designated Positions  Disclosure Categories
Chairperson & all Commission Members  1

DEVELOPMENT OVERSIGHT COMMISSION

Designated Positions  Disclosure Categories
Chairperson & all Commission Members  1
HANDICAPPED ACCESS BOARD OF APPEALS

Designated Positions
Chairperson & all Commission Members

Disclosure Categories
1

PUBLIC ARTS ADVISORY COMMITTEE

Designated Positions
Chairperson & all Committee Members

Disclosure Categories
1

PUBLIC FINANCING AUTHORITY

Designated Positions
Chairperson
Executive Director
Treasurer
Legal Advisor
Consultants

Disclosure Categories
4
4
4
4
Consultants

REDEVELOPMENT AGENCY

Designated Positions
Chairperson & all Agency Members

Disclosure Categories
1

REDEVELOPMENT COMMISSION/RELOCATION APPEALS BOARD

Designated Positions
Chairperson & all Commission Members

Disclosure Categories
1

STOCKTON ARTS COMMISSION

Designated Positions
Chairperson & all Commission Members

Disclosure Categories
1

STOCKTON COMMUNITY DEVELOPMENT COMMITTEE

Designated Positions
Chairperson & all Committee Members

Disclosure Categories
1
### STOCKTON MEASURE W OVERSIGHT COMMITTEE

<table>
<thead>
<tr>
<th>Designated Positions</th>
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<tr>
<td>Chairperson &amp; all Commission Members</td>
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### STOCKTON PARKS AND RECREATION COMMISSION

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### STOCKTON SPORTS COMMISSION

<table>
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<tr>
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### STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD

<table>
<thead>
<tr>
<th>Designated Positions</th>
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</thead>
<tbody>
<tr>
<td>Chairperson &amp; all Commission Members</td>
<td>1</td>
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</tbody>
</table>
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

DISCLOSURE CATEGORY 1

a. Investments and business positions in any business entity located in, doing business or planning to do business in the City of Stockton. (See FPPC Form 700 Schedules A-1 and A-1 Instructions)

b. Income, including loans, gifts, and travel payments from all sources, regardless of the jurisdiction. (See FPPC Form 700 Schedules C and D Instructions)

c. Financial interests in real property (See FPPC Form 700 Schedule B Instructions):
   1) within the boundaries of the City of Stockton, or
   2) within a two mile radius of any property owned or used by the City of Stockton; or
   3) subject to the jurisdiction of the City of Stockton.
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 2

CENTRAL PARKING DISTRICT

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee’s position.

a. Investments and business positions in any business entity located in, doing business or planning to do business in the Central Parking District. (See FPPC Form 700 Schedules A-1 and A-2 Instructions)

b. Income, including loans, gifts, and travel payments from sources, within the Central Parking District. (See FPPC Form 700 Schedules D and E Instructions)

c. Financial interests in real property (See FPPC Form 700 Schedule B Instructions):
   1) within the boundaries of the Central Parking District, or
   2) within a two mile radius of any property owned or used by the Central Parking District; or
   3) subject to the jurisdiction of the Central Parking District.
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 3

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee’s position.

a. All investments within the boundaries of the City of Stockton or within a two mile radius of the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

b. All investments in business entities which, within the last two years, have contracted, or in the future may contract with the City of Stockton to provide services, supplies, materials, machinery or equipment (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

c. All investments in business entities in the construction or building industry within the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

d. All interests in real property within the City of Stockton (See FPPC Form 700 Schedule B Instructions);

e. All sources of personal income (See FPPC Form 700 Schedule C Instructions);

f. The name of each business entity not specified above in which he or she is a director, officer, partner, trustee, employee, or is holding any position of management. (See FPPC Form 700 Schedule A-2 Instructions)

g. Income, including loans, gifts, and travel payments from all sources, regardless of the jurisdiction. (See FPPC Form 700 Schedules C, D and E Instructions).
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 4

An investment, income or real property interest is reportable if it may be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

a. All investments, income or real property interest (See FPPC Form 700 Schedules A-1 and A-2 Instructions):
   1) within the boundaries of the City of Stockton;
   2) within a two mile radius of the City of Stockton;
   3) in business entities which, within the last two years, have contracted, or in the future may contract with the City of Stockton to provide services, supplies, materials, machinery or equipment;
   4) in business entities in the construction or building industry within the City of Stockton;
   5) from business entities engaged in building construction or design including contractors and subcontractors located or doing business in the City of Stockton;

b. The name of each business entity not specified above in which he or she is a director, officer, partner, trustee, employee, or is holding any position of management (See FPPC Form 700 Schedule A-2 Instructions);

c. Investments in or income from persons or business entities engaged in the acquisition or disposal of real property within the City of Stockton (See FPPC Form 700 Schedule B Instructions);

d. Income, including loans, gifts, and travel payments from all sources, regardless of the jurisdiction. (See FPPC Form 700 Schedules C, D and E Instructions).
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY 5

a. Investments and business positions in any business entity that manufacture or sell supplies, books, machinery or equipment of the type utilized by the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

b. Investments in or income from business entities that are contractors or subcontractors and are, or have been, within the previous two year period, doing business in the City of Stockton (See FPPC Form 700 Schedules A-1 and A-2 Instructions);

c. Income, including loans, gifts, and travel payments from sources that:
   1) manufacture, sell, or provide goods, equipment, vehicles, machinery or services, including training or consulting services;
   2) provide leased facilities to the City of Stockton;
   3) are subject to the regulatory, permit, or licensing authority of, or have an application for a license or permit pending before the City of Stockton; and
   4) engage in land development, construction or the acquisition or sale of real property.
(See FPPC Form 700 Schedules C, D and E)
APPENDIX C – DISCLOSURE CATEGORIES
CITY OF STOCKTON CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORY: CONSULTANTS

Consultants (the individual representing the firm) shall be included in the listing of designated employees and shall disclose pursuant to Disclosure Category 1, subject to the following limitation: The City Manager may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and, thus, is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties, and based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record, and shall be retained for public inspection in the same manner and location as this conflict of interest code.

DATE: ________________________

TO: CITY CLERK, CITY OF STOCKTON

FROM: ___________________________ DEPARTMENT: ___________________________

SUBJECT: CONFLICT OF INTEREST DISCLOSURE CATEGORIES FOR NEW CONSULTANT POSITION

The following Consultant, __________________________ was hired on ____/____/____
and will be performing the following duties:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________.

The following Disclosure Categories apply to this position:

___ Category 1                     ___ Category 4
___ Category 2                     ___ Category 5
___ Category 3

_________________________________  ___________________________
Chair/Director/Department Head      Date

APPENDIX C: Page 6 of 6
October 19, 2010

TO: Mayor and City Council

FROM: Laurie Montes, Deputy City Manager

SUBJECT: OPTION TO EXTEND THE 2009 TEAM LEASE WITH TEAM COUGARS FC, LCC, AND EXECUTE THE FIRST AMENDMENT TO 2009 TEAM LEASE

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to exercise a one year option to renew the 2009 Team Lease with Team Cougars FC LLC to lease the Stockton Arena for team events; and execute an amendment to the 2009 Lease to modify some of its terms; and take all actions appropriate to carry out the purpose and intent of this resolution.

Summary

This resolution will authorize the City to exercise a one-year mutual option to extend the 2009 Lease with Team Cougars FC LLC for the 2010-2011 season; and execute a first amendment to the 2009 Team Lease amending certain provisions including the following: (1) Exhibit B team schedule dates for 2010-2011 season; (2) Exhibit E insurance; (3) revising the option to extend to be available, if desired, for the 2011-2012 season; (4) requiring a business license and (5) updating the parties contact information. The remaining provisions of the 2009 Lease will stay the same including operating parameters, facility charges, and revenue sharing terms for the regular soccer season.

DISCUSSION

Background

From the first Team Season of 2006-2007 with American Pro Sports in Major Indoor Soccer League, the City Council has taken six separate actions regarding indoor soccer lease. A summary of Council resolutions and related actions is attached as Exhibit 1 to this staff report.

Present Situation

Team Cougars FC LLC currently holds the ownership of the California Cougars indoor soccer interest with the Professional Arena Soccer League Franchise. The 2009 Team Lease allows for one mutual option to extend the Lease for a one year term. Team Cougars FC, LLC requests the City Council to consent to a one year extension of the 2009 Lease for the 2010-2011 team season. At the same time, the parties also wish to
amend certain provisions of the 2009 Lease which is attached to the Resolution as “Exhibit A: First Amendment to the 2009 Sport Team Lease”. The Amendment changes five elements of the 2009 Sport Team Lease (which is incorporated in and referenced as “Exhibit 2: Sport Team Lease”).

The Amendments include the following:

(1) Exhibit B: Team Schedule Dates for 2010-2011 Season. The Team placed first holds on a select number of dates while the season schedule was being developed. From that hold schedule, the City will allow the team to choose 10 dates: eight home games, one exhibition, and one US Cup Open to be played at the Stockton Arena. The hold schedule will allow City to adjust the team schedule if a major tour/event requests a Cougars date. SMG reviewed the dates and does not anticipate changes to the schedule. The Cougars will be permitted to play home games, exhibitions, etc. at other facilities if the Stockton Arena is unavailable.

(2) Exhibit E: Insurance. Insurance requirements have increased from $1 million to $2 million general liability with a $4 million aggregate limit.

(3) The provision regarding the option to extend the Lease is amended to be available, if desired, for the 2011-2012 season.

(4) A City of Stockton business license is required for the upcoming Lease term.

(5) The parties contact information was updated.

All other elements (e.g., operating guidelines, financial provisions, and facility charges) of the 2009 Lease remain unchanged. The Cougars will pay rent of $4,000 per game day, which includes all expenses except specific and agreed upon additional production charges. The Cougars will pay on demand for those requested production costs. The revenue sharing provision provides potential team related sponsorship and club seat sales to be split between the City and the team. The Cougar’s receive 100% of the merchandise sales. The City receives 100% of City advertising, concessions, catering, and suite revenue. At the option and request of the team, the City may provide a pass through convenience fee of $1.00 per ticket to the team.

This First Amendment to the 2009 Lease will meet the mutual goals of controlling the team costs, while guaranteeing the City will not subsidize the sport team game day operations. Additionally, the Cougars are committed to providing goodwill community events for the youth of Stockton.
October 19, 2010

SPORTS TEAM LEASE (MUTUAL OPTION FOR ONE YEAR) FOR CALIFORNIA COUGARS 2010-2011 TEAM SEASON

(Page 3)

Notification

The City Charter requires the publication of a notice to lease City property. Therefore, a "Notice of Intention to Lease City Property" was published at least ten days prior to the Council action schedule for October 19, 2010. This notification is included as Exhibit 3.

FINANCIAL SUMMARY

The fiscal impact of this new contract on the General Fund will be revenue neutral to revenue positive for this 2010-2011 team season, as this Lease will control City expenses and protect City revenue and facility fees.

For an average game day for 2009-2010 team season, the City maintained a modest net profit per game for each of the four regular games. The City expects a modest net profit for the 2010-2011 team season. Additional suite revenue (which is recognized annually), advertising, and potential sponsorship agreements will also benefit the City of Stockton.

Respectfully submitted,

[Signature]
LAURIE MONTES
DEPUTY CITY MANAGER

[Signature]
BOB DEIS
CITY MANAGER

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2009 TEAM LEASE

FOR

STOCKTON EVENTS CENTER ARENA

(ARENA SOCCER TEAM)

BETWEEN

THE CITY OF STOCKTON

AND

TEAM COUGARS FC, LLC
2009 TEAM LEASE FOR
STOCKTON EVENTS CENTER ARENA
(ARENA SOCCER TEAM)

This Lease (the "Lease") is made and entered into on October 20, 2009, by and between the City of Stockton (the "City") and Team Cougars FC, LLC, a California limited liability company (the "Tenant"). The City and the Tenant are referred to collectively as the "parties" and individually as a "party."

RECITALS

A. Capitalized terms used in this Lease, unless defined elsewhere in this Lease, have the meanings set forth in the Glossary of Defined Terms attached to this Lease as Exhibit "A."

B. The Tenant has been granted the right by the League to operate a professional men's arena soccer team Stockton, California.

C. The Tenant desires to lease from the City, and the City desires to Lease to the Tenant, the Arena for Team Events in accordance with the terms and conditions of this Lease.

NOW THEREFORE, incorporating the above recitals herein, the parties hereby agree as follows:

ARTICLE 1. BASIC LEASE PROVISIONS

Section 1.1 Lease For Team Events: Services and Facilities: "As Is" Conveyance.

(a) Lease. In accordance with the terms and conditions of this Lease, the City hereby leases to the Tenant, and the Tenant hereby leases from the City, the Arena on the Team Event Dates throughout the Term, for the Tenant's use and operation in fielding the Team and conducting Team Events. Notwithstanding the foregoing, the City may make available those portions of the Arena not required exclusively for the conduct of the Team Events (including, without limitation, general public entrances and pedestrian corridors, meeting room and ballroom areas, catering facilities, and administrative offices and locker facilities not leased to the Tenant under this Lease) to other users and patrons of the Arena on the Team Event Dates so long as such availability to other users and patrons does not materially impair the efficient conduct of the Team Events on such Team Event Dates.

Except for the Locker Room Facilities as set forth in Section 1.1(b) and the Team Administrative Office as set forth in Section 1.2, the Tenant shall have no right under this Lease to use the Arena other than for Team Events on the Team Event Dates.
(i) **Team Schedule.** The schedule for the Team Event Dates for the Initial Term shall be set in accordance with the Team Event Schedule and Related Policies set forth in the attached Exhibit "B." The City, through the Manager, and the Tenant shall cooperate with each other and with the Other Arena Teams to set the Team Event Schedule for the Option Terms in accordance with the Arena booking policies and procedures then in effect.

In the event the Tenant has scheduled a Team Event at the Arena, in accordance with the Team Event Schedule and Related Policies attached as Exhibit "B," and subsequently the Tenant desires to cancel such Tenant Event, then the Tenant shall immediately provide written notice of such cancellation of the Team Event to the Manager (the "Cancellation Notice"). If the Tenant delivers the Cancellation Notice to the Manager at least eight (8) weeks prior to the date of the Team Event, then the Manager shall cancel the date of the Team Event and the Tenant shall have no right to occupy or use the Arena on the date of the cancelled Team Event (the "Confirmed Cancellation Date"). Except as provided in Section 7.2, if the Tenant delivers the Cancellation Notice to the Manager less than eight (8) weeks prior to the date of the Team Event, then the Manager shall cancel the Team Event and the Tenant shall have no right to occupy or use the Arena on the Confirmed Cancellation Date. Upon the Manager's cancellation of the Team Event on the Confirmed Cancellation Date, the Tenant shall pay to the Manager the Rent for such cancelled Team Event, less any rent actually collected for the Arena for such Confirmed Cancellation Date. In the event the Manager incurred costs and expenses directly related to the Tenant's cancellation of the Team Event in excess of the Rent, the Tenant shall promptly reimburse the Manager for all such reasonable costs and expenses.

(b) **Locker Room Facilities.** The City shall provide to the Tenant the following dressing and related facilities (collectively, the "Locker Room Facilities"):  

(i) The home team locker room during the entire Team Season, except that the Tenant shall comply with City requests to temporarily vacate the Home Team Locker Facility (by moving all Team equipment to the storage area designated for the Team) during the Team Season for special events at the Arena. 

(ii) An auxiliary locker room for the visiting team and separate dressing areas for referees and dance team on Team Event Dates; and

(iii) Trainer's facilities, storage facilities, and laundry facilities during the entire Team Season, subject to sharing with the Other Arena Teams during any overlap between the Team Season and the seasons of operation of the Other Arena Teams.

The Tenant shall totally vacate the Locker Room Facilities at the end of the Team Season (which is defined to end three (3) days after the Team's last game of the Team Season).
The Tenant acknowledges and agrees that the City will provide the Locker Room Facilities, which includes installed lockers, toilets and shower facilities, but that the Tenant shall be responsible at its sole cost for providing all other furniture, fixtures, and equipment that it deems necessary to make the Locker Room Facilities functional.

Improvements may be made to the Locker Room Facilities by the Tenant with the prior written approval of the City (and, except with respect to the Home Team Locker Facility, by the Other Arena Teams), and the costs of all such improvements made by the Tenant shall be the sole responsibility of the Tenant. The Tenant acknowledges that any improvements to the Locker Room Facilities which result in permanent or semi-permanent attachment to the floors, walls, or ceilings of the Locker Room Facilities will make such improvements fixtures and, at the end of the Term, such improvements will become property of the City. All improvements are to be approved, in writing, in advance by the City in its sole discretion and are subject to any reasonable conditions being desirable by the City including, but not limited to, the provision of labor and material bonds and insurance in connection with construction of such improvements.

(c) Other City-Provided Facilities and Services. The City, through its Manager, shall provide to the Tenant during or in connection with Team Events the services and facilities described in the attached Exhibit "C." Staffing for the services described in Exhibit "C" shall be the sole responsibility of the City, and shall be of a nature and at levels consistent with industry standards for comparably attended events of the nature of the Team Events in other similarly situated public arenas. The City shall be entitled to reimbursement for the services and facilities only to the extent described in Exhibit "C."

The Tenant shall be responsible, at its sole cost, for providing all facilities, services and equipment necessary for conduct of the Team Events other than those expressly specified to be provided by the City under the terms of this Lease. The City, through its Manager, shall have the right to approve any agents, contractors or other persons employed by the Tenant (including, without limitation, security personnel) other than Team personnel. Such approval shall not to be unreasonably withheld. The Tenant shall use its best and reasonable efforts to cause all such persons retained or hired by the Tenant to comply with all applicable federal, state, and local laws and regulations, and with all rules and regulations established for the Arena by the Manager, on behalf of the City. The Tenant hereby assumes all risks and liability that may result from the failure by any such persons retained or hired by the Tenant to comply with such laws, rules and regulations, and any failure by such persons to comply with such laws, rules and regulations shall constitute a Tenant Event of Default if not cured within the time and in the manner set forth in Section 5.1(a).

(d) Box Office Facility and Ticket Sales. Except as otherwise provided below, the City, through its Manager or a reputable ticket service engaged by the Manager on the City’s behalf (the "Ticket Service"), shall be solely responsible for and authorized to operate the box office at the Arena and arrange for and conduct the sale
of all tickets for Team Events, whether at the box office or through remote facility sales operations. The City, through its Manager or the Ticket Service, shall conduct all ticket sales operations in a commercially reasonable manner consistent with industry standards for sale of tickets to events at public arena facilities similar to the Arena. The City, through its Manager and the Ticket Service, shall reasonably cooperate with the Tenant regarding the sale of tickets for Team Events.

Notwithstanding the foregoing, the Tenant may separately control and perform the sale of season ticket packages and/or group ticket sales for Team Events. The City shall cause the Manager and the Ticket Service to cooperate with the Tenant and to facilitate the sale by the Tenant of season ticket packages and/or group ticket sales. The Tenant shall provide an accurate and complete report to the City of all season ticket packages sold and group ticket sales completed by the Tenant in a timely fashion so that the City, through its Manager, can adequately and timely perform all applicable functions under this Lease, including, without limitation, the determination and allocation to the City of the Facility Fee Revenue for each Team Event. Tenant may distribute up to One Thousand (1000) Complimentary Tickets per Team Event without a Facility Fee, as defined in Section 2.1(b), being charged. For all distributed Complimentary Tickets exceeding One Thousand (1,000), Tenant shall be charged the Facility Fee.

(e) "As is" Conveyance; Acceptance of Arena. By taking possession of the Arena for Team Events as of the commencement of the Term, the Tenant will have acknowledged that the Arena has been inspected and approved by the League; that the Tenant has previously inspected the Arena and accepts the Arena "as is", and that the Arena is free of patently obvious conditions that violate this Lease.

Section 1.2 Lease of Team Administrative Offices. In addition to the lease of facilities described in Section 1.1, the City shall lease to the Tenant and the Tenant shall lease from the City the Team Administrative Office throughout the Term. The Team Administrative Office shall be provided to the Tenant at no cost to the Tenant other than the payment of Rent in accordance with Section 2.1. Tenant shall vacate Team Administrative Office within two (2) weeks following the completion of the Term described in Section 1.3.

Section 1.3 Term of Lease.

(a) **Term.** The term of this Lease (the "Term") shall commence upon the date of execution by both parties (the "Effective Date") and shall continue through and terminate at the end of one Team Season, thereby covering the Team Season of 2009-2010.

(b) **Mutual Option Term.**

(i) **One-Year Mutual Option to Extend.** Subject to the terms of this subsection (b), and subject to prior written approval by City, the Tenant may
exercise one (1) mutual option to renew this Lease, for a term of one (1) year, for the Team Season of 2010-11 ("Mutual Option Term").

(ii) **No Default.** To exercise any option to create a Mutual Option Term under this Lease, there shall exist no uncured Tenant Event of Default at the time of such exercise. In the event that an uncured Tenant Event of Default exists at the time the Tenant attempts to exercise the option to create a Mutual Option Term, such exercise shall be void and without any legal effect.

(iii) **Exercise of Mutual Option.** In order to exercise the option to create a Mutual Option Term under this Lease (and provided City has given its prior written approval), the Tenant shall advise the City in writing, by not later than the following dates, of the Tenant's intention to create a Mutual Option Term under this Lease:

(A) March 1, 2010, with respect to the Mutual Option Term for the 2010-11 Team Season;

The Rent for the Mutual Option Term shall be negotiated by the parties, but shall not be less than the amount set forth in Section 2.1.

(c) **Survival of Provisions.** The provisions of Sections 3.5, 3.9, 7.3 and 7.13(a) shall survive expiration or earlier termination of the Term, and shall remain in full force and effect.

**ARTICLE 2. FINANCIAL PROVISIONS**

**Section 2.1 Rent and Facility Fee.**

(a) **Amount.** In consideration for this Lease, the Tenant shall pay to the City as rent (the "Rent") the amount of Four Thousand Dollars ($4,000) per Team Event.

(b) **Facility Fee.** In addition to Rent, Tenant shall also pay a Facility Fee in an amount no higher than One Dollar and Eighty Cents ($1.80) per ticket sold for each Team Event.

(c) **Payment of Rent.** The Rent for each Team Event shall be retained by the City upon settlement of the Gross Gate Receipts for each Team Event as provided in Section 2.3(k). No Rent shall be charged by the City with respect to Team Events described in items (3) and (4) of the definition of Team Events set forth in Exhibit "A."

**Section 2.2 Team Event Cost Reimbursement.** In addition to the payment of Rent in accordance with Section 2.1, the Tenant shall pay the sum amounts set forth in subsections (a) and (b) below (such sum is referred to as the "Cst Reimbursement Amount") for and in connection with each Team Event:
(a) For the Extra Facilities and Services described in Part II of Exhibit "C," if any are requested by the Tenant in connection with a particular Team Event, the amounts specified in such Part II of Exhibit "C."

The Cost Reimbursement Amount for each Team Event shall be retained by the City upon settlement of the Gross Gate Receipts for each Team Event as provided in Section 2.3(k).

2.3 Revenue Generation and Allocations. This section describes the parties' rights and responsibilities with respect to generation of revenues in connection with the operation of the Arena and the conduct of the Team Events and sets forth the allocation of such revenues between the City and the Tenant.

(a) Ticket Revenue. The Team shall be allocated all Net Gate Receipts from each Team Event. The City shall be allocated the following amounts from and related to each Team Event: (i) the Rent; (ii) the Cost Reimbursement Amount; (iii) the Ticket Service Costs; and (iv) the Facility Fee Revenue.

(b) Naming Rights and Pouring Rights. Subject to compliance with applicable law, the City shall have the exclusive right to sell naming rights, pouring rights, and other commercial or product sponsorship rights with respect to the Arena and any components thereof, and shall be entitled to retain all revenue received in connection with the sale of such rights. The Arena and the various components thereof shall at all times be known by such name as designated by the City and shall not otherwise be designated by the Tenant or any agent of the Tenant in any manner or in any publication, Advertising or on any ticket, unless the City first consents to such other designation in its sole discretion. The City, through its Manager, shall provide the Tenant with guidelines with respect to protected naming rights, pouring rights, and other commercial or product sponsorship rights (including any limitations on competition by other brands in the operation of the Arena), and the Tenant shall adhere to and comply with such guidelines in the conduct of its business under this Lease (including refraining from promoting or entering into arrangements for the use and/or advertising of other brands to which competition limitations apply).

(c) Concession Services. The City, through its Manager or a reputable concessionaire engaged by the Manager on the City's behalf, shall have the exclusive right to operate the Concession Services at Team Events, and shall cause the Concessions Services to be operated at all Home Games. For each Team Event the City shall receive one hundred percent (100%) of the Concession Services Adjusted Gross Revenue.

(d) Team Merchandise. The City, through its Manager or a reputable merchandiser engaged by the Manager on the City's behalf, shall have the exclusive right to sell Team Merchandise at Team Events and at the Arena Store; provided, however, that the City, in its sole discretion, may grant the right to the Tenant to sell Team Merchandise through the Tenant's own vendors at designated Team Events. As
between the City and the Tenant, an amount equal to one hundred percent (100%) of the Team Merchandise Net Revenue shall be allocated and paid to the Tenant, and the balance of the Team Merchandise Net Revenue shall be allocated and paid to the City. Such amounts shall be paid to Tenant at the time of settlement pursuant to subsection (k) below. Notwithstanding the foregoing, if the City, in its sole discretion, grants the Tenant the right to sell Team Merchandise through the Tenant's own vendors at designated Team Events (a "Tenant Merchandising Right"), the Tenant shall pay and the City shall retain any mutually negotiated rights fee for such Tenant Merchandising Right, and the Tenant shall retain all revenues derived from the sale of Team Merchandise under such Tenant Merchandising Right.

(e) Advertising. Except as otherwise expressly provided in this subsection (e), the City shall have the exclusive right to sell Advertising, and shall be entitled to retain all revenue received in connection with the sale of such Advertising.

Notwithstanding the foregoing, the Tenant shall have the right to sell and shall be entitled to retain all revenue received in connection with City approved temporary Advertising placed in the Arena during Team Events related to temporary dasher board signage, temporary field surface signs or logos, program sales, Team equipment, reader boards, and temporary signage in other areas of the Arena as well as broadcasting rights (as further described in subsection (j) below). The Tenant may be allowed to sell video advertising on the scoreboard, consistent with guidelines provided by the City and Manager as may be amended from time to time.

All temporary signage permitted on the dasher boards and other areas of the Arena shall be installed by Manager prior to Team Events and removed promptly following Team Events. No permanent signage at the Arena shall be covered at any time by any temporary signage under the control of the Tenant. The temporary advertising shall not violate any exclusive advertising rights granted by the City to naming sponsors, beverage companies or other typical grantees of exclusive rights in the Arena.

Notwithstanding the foregoing, the Tenant may place City approved temporary signage over the permanent dasher board signage provided by the professional hockey team occupying the Arena, so long as the hockey team's permanent signage is left intact underneath the Tenant's temporary signage. The Tenant shall be responsible for replacing, at its sole cost, any of the hockey team dasher board signage that is damaged due to the Tenant's actions.

The Tenant may request that the City consider selling Advertising to a sponsor that has an established sponsorship arrangement with the Team (a "Team-Related Sponsor"). If the City, in the exercise of its commercially reasonable good faith judgment, determines that the sale of such Advertising is in the best financial interest of the Arena, and if a sale of Advertising at the Arena is thereafter completed with the Team-Related Sponsor, then the Tenant shall be entitled to a commission
equal to twenty percent (20%) of each installment of revenue received by the City from such sale of Advertising to the Team-Related Sponsor.

(f) **Luxury Suites.** The City shall have the exclusive right to market and sell lease rights or license rights of any nature and duration with respect to the Luxury Suites rights. One hundred percent (100%) of the Luxury Suites Lease or License Fee Revenue, shall be allocated to the City.

(g) **Club Seats.** Tenant shall cooperate with Manager to develop a Club Seat Marketing Program. If after program is set, Tenant agrees to the inclusion of tickets to some or all Team Events in a Club Seat Package, then the City shall open the Club Seat Area for Team Events for which tickets are included. The pricing of any Club Seat Package that includes the sale of tickets to some or all of the Team Events shall include:

(i) a component representing the value of any tickets to the Team Events provided in the Club Seat Package (the "Ticket Component"); and

(ii) a component representing the value of other specified rights to be provided in the Club Seat Package (such as, by way of illustration, access rights to limited areas of the Arena, catered food and beverage services, rights to purchase tickets to other events at the Arena, etc.) (the "Premium Component").

No Club Seat Package or Club Seat Marketing Program that includes the sale of tickets to some or all of the Team Events shall be effectuated unless and until the City and the Tenant have agreed upon the allocation of revenues from the sale of the Club Packages between the Ticket Component and the Premium Component. The revenues received from the sales of any Club Seat Package and Club Seat Marketing Program agreed to between the City and the Tenant pursuant to an Operating Memorandum shall be allocated as follows:

(A) the portion of such revenue that is allocable to the Ticket Component shall be deemed Gross Gate Receipts under this Lease; and

(B) the portion of such revenue that is allocable to the Premium Component (the "Club Seat Premium Component Revenue") shall not be deemed Gross Gate Receipts and shall be retained by the City.

(h) **Catering Services.** The City, through its Manager or a reputable caterer engaged by the Manager on the City’s behalf, shall have the exclusive right to operate the Catering Services At Team Events, and shall cause the Catering Services to be operated at all Home Games. One hundred percent (100%) of the revenue related to catering services shall be to the City.

(i) **Parking.** The City shall operate the Arena Parking Facilities generally in accordance with a traffic and parking management plan (the "TPMP") to be
prepared in accordance with this subsection (i) and the additional terms outlined in the attached Exhibit "D." As between the City and the Tenant, the City shall be entitled to all revenue received in connection with the Arena Parking Facilities, except as otherwise provided in Exhibit "D" with respect to the Tenant's right to revenues from the "Ballpark Parking Lot" in connection with the operation of such lot on Team Event Dates.

(i) **Broadcast and Television Operations.** The City shall provide television facilities and services to the Tenant for Team Events in the form and manner set forth in the attached Exhibit "C," and the Tenant shall pay the City the amount specified in Exhibit "C" for such facilities and services. The Tenant shall have the exclusive right to conduct or cause the conduct of television operations relating to or arising from the Team Events at its sole cost. The Tenant shall have the right to retain all revenue in connection with such broadcast and/or television operation.

(k) **Convenience Fee.** At the request of the Team, City, through its Manager, shall collect a One Dollar ($1.00) convenience fee on all paid tickets that will be rebated to the team at settlement in accordance with subsection (i) below.

(l) **Settlement.** The Manager, on behalf of the City, shall collect and serve as the repository of all revenue with respect to each Team Event. Within three (3) days after each Team Event, the Manager shall complete the settlement of revenues for such Team Event by paying to the Tenant the portion of the revenues to which the Tenant is entitled and by providing the Tenant with a settlement statement in form and content consistent with standard industry practice for the settlement of event revenue.

2.4 **Tenant Accounting Records; Audit.** The Tenant shall maintain accurate accounting records and other written documentation pertaining to all revenue received by it which is required to be taken into account in allocating revenues between the City and the Tenant under this Lease. Such records and documentation may be kept at the Tenant's office in Manteca, California, during the term of this Lease, and for a period of three (3) years from the date of the final payment hereunder, and said records shall be made available to City Manager, or designee, upon reasonable request at any time during regular business hours.

Once every year during the Term of this Lease, the City or any designated agent or employee of the City shall be entitled to audit all the books, records and accounts of the Tenant pertaining to the Arena and its operations at the Arena exclusively for the purpose of ensuring that the appropriate amounts have been paid to the City pursuant to this Lease. Such audit shall be conducted during normal business hours upon seventy-two (72) hours notice at the principal place of business of the Tenant and other places where records are kept. Any audit undertaken under this section shall be completed within sixty (60) days of the commencement thereof, subject to extensions of time for any periods of delay due to no fault of the City or its auditors. If it shall be determined as a result of such audit that there has been an underpayment to the City under this Lease, such underpayment shall become immediately due and payable with
interest at the then applicable Local Agency Investment Fund interest rate, determined as of and accruing from the date that said payment(s) should have been made. In addition, if the underpayment shall be found to have understated payments due to the City by five percent (5%) or more of the actual payment due to the City, and the City is entitled to additional payments from the Tenant as a result thereof, then the Tenant shall pay, in addition to the interest charges referenced hereinabove, all of City's reasonable costs and expenses connected with any audit or review of Tenant's accounts and records. All such payments shall be paid within ten (10) days of receipt of written notice to the Tenant of such underpayment. If the Tenant disputes such findings, the parties agree to meet and confer for a period of thirty (30) days to resolve such dispute, and no payments for any disputed amounts shall be due during such meet and confer period.

2.5 City Accounting Records: Audit. The City shall maintain accurate accounting records and other written documentation pertaining to all revenue received by it which is required to be taken into account in allocating revenues between the City and the Tenant under this Lease. Such records and documentation shall be kept at the City's office during the term of this Lease, and for a period of three (3) years from the date of the final payment hereunder, and said records shall be made available to Tenant or its designee, upon reasonable request at any time during regular business hours.

Tenant or any designated agent or employee of the Tenant shall be entitled to audit all the books, records and accounts of the City pertaining to the Arena and its operations at the Arena exclusively for the purpose of ensuring that the appropriate amounts have been paid to the Tenant pursuant to this Lease. Such audit shall be conducted during normal business hours upon seventy-two (72) hours notice at the principal place of business of the City and other places where records are kept. Any audit undertaken under this section shall be completed within sixty (60) days of the commencement thereof, subject to extensions of time for any periods of delay due to no fault of the Tenant or its auditors. If it shall be determined as a result of such audit that there has been an underpayment to the Tenant under this Lease, such underpayment shall become immediately due and payable with interest at the then applicable Local Agency Investment Fund interest rate, determined as of and accruing from the date that said payment(s) should have been made. In addition, if the underpayment shall be found to have understated payments due to the Tenant by five percent (5%) or more of the actual payment due to the Tenant, and the Tenant is entitled to additional payments from the City as a result thereof, then the City shall pay, in addition to the interest charges referenced hereinabove, all of Tenant's reasonable costs and expenses connected with any audit or review of the City's accounts and records. All such payments shall be paid within ten (10) days of receipt of written notice to the City of such underpayment. If the City disputes such findings, the parties agree to meet and confer for a period of thirty (30) days to resolve such dispute, and no payments for any disputed amounts shall be due during such meet and confer period.
ARTICLE 3. OPERATIONAL PROVISIONS

Section 3.1 Covenant Concerning Team. In consideration for the City's execution of this Lease, the Tenant covenants and agrees as follows:

(a) Ownership. The Tenant owns a membership interest in the League entitling the Tenant under the League Documents to operate the Team in the Arena as a full-fledged team member of the League throughout the Term.

(b) Maintain Good Standing of Team. During the Term, the Tenant shall maintain the Team as an arena soccer team of the character and standing required by the League Documents, and the League, and shall not do or suffer anything to be done which could cause the rights of the Team to be lost, impaired, or diminished in any material respect.

(c) Maintain Membership in League. During the Term, the Tenant shall cause the Team to maintain its membership in good standing in the League (or any successor thereto) under the League Documents.

(d) Maintain Territorial Rights. During the Term, the Tenant shall take all actions required to maintain its territorial rights under the League Documents as related to the Arena.

Section 3.2 Arena Operations Standard. Throughout the Term, the City shall cause the Arena to be operated and maintained in a commercially reasonable manner. For purposes of this section, "commercially reasonable" refers to the standard generally established by other owners and operators of sports and entertainment arenas in California comparable in quality to the Arena.

Section 3.3 City's Control of Arena. Subject to the terms of this Lease, and excluding the promotion of professional arena or indoor soccer games, the City shall retain the complete control of the operation, management and maintenance of the Arena, including, without limitation, the right to book and conduct other sports and entertainment events consistent with the Team Event Schedule and Related Policies attached as Exhibit "B."

Without limiting the generality of the foregoing grant of control to the City, the City reserves the exclusive right, at its sole cost and expense, to do the following, as long as such actions do not materially interfere with the Tenant's ability to conduct Team Events at the Arena consistent with this Lease:

(a) Change, in any manner whatsoever, the number, appearance, dimension, and locations of Arena walks, buildings, landscaping, parking, and service areas.
(b) Regulate all traffic within and related to the Arena, including the Arena Parking Facilities.

(c) Promulgate, from time to time, reasonable rules and regulations regarding the use of Arena for the purpose of ensuring that Arena operations are in keeping with the community standards and the family atmosphere of Arena or to provide for public safety.

(d) Regulate the days and hours the Arena and various business operations within the Arena will be open to the public; provided, however, that the Arena box office shall be open for business during hours that are comparable to the business hours maintained at box offices serving comparable public arenas; and provided, further, however, that the City shall establish and implement a system whereby authorized personnel of the Tenant and the Team shall have access to the Team Administrative Office at all times.

(e) Determine the size, number, quality, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken at the Arena.

Notwithstanding anything to the contrary in this Lease, the City and its invitees shall be entitled to the exclusive use and occupancy during each Team Event of one (1) Luxury Suite. No Gross Gate Receipts shall be attributable to the City's use and occupancy of the City Luxury Suite.

3.4 Manager. The City has designated the Manager to serve as, and the Tenant agrees and acknowledges that the Manager is, the City's authorized representative for operation, management, and maintenance of the Arena, with authority to represent the City in performing the City's duties and responsibilities and to exercise the City's rights and authorities under this Lease. As the City's authorized representative, the Manager is responsible, on behalf of the City, for the day-to-day operation, management, and maintenance of the Arena.

The Manager is under separate obligation to the City to regularly report to the City and to obtain input and decisions from the City regarding all matters arising in connection with the operation, management, and maintenance of the Arena and the performance of this Lease that requires City approval or action. All decisions and actions of the City under this Lease will be reported to the Tenant by the Manager on behalf of the City.

Subject to any separate agreement with the Manager, the City may change the entity and/or individual acting as the Manager, or delegate one or more specific operations, management, or maintenance functions to one or more specific other representative at any time with notice and without liability to the Tenant. Any Manager of the Arena is the beneficiary of all of the Tenant's obligations to the City under this Lease, including, without limitation, all releases and indemnities.
Section 3.5 Copyrighted Material. The Tenant warrants and covenants, in its own behalf and in the Team's and any applicable artist/performer's behalf, that all copyrighted material to be performed at Team Events has been or shall be duly licensed or authorized by the copyright owner or their representatives and that any and all royalty fees arising from the use of copyrighted material in the performance has been or shall be paid in full when due. The Tenant specifically agrees to fully indemnify and hold harmless the City, the Manager, and their respective agents and employees against any losses or liabilities relating to copyright or trademark violations or claims arising from Team Events or the Tenant's other use of the Arena. The indemnification provisions of this section shall survive the expiration of the Term and the termination of the Lease.

Section 3.6 Community Involvement. The Tenant shall reasonably seek and encourage the involvement and participation of the Team's players and coaches in civic endeavors such as a Team booster club, community projects, school appearances, developing of youth soccer, support of special needs children, television, press, and radio interviews, charities, and civic functions when reasonably requested.

Section 3.7 Insurance. The Tenant shall comply with the insurance requirements set forth in the attached Exhibit "E."

Section 3.8 Responsibility for Equipment and Acts; Lost Items. The Tenant assumes full responsibility for equipment brought or used by it and for the acts and conduct of players, officials, and all others participating in any Team Event. Lost articles of the public discovered by Tenant shall be given promptly to the Manager, who shall thereafter have full custody of such articles.

Section 3.9 Tenant's Employees and Agents. The Tenant agrees that its agents and employees involved in the preparation for, or presentation of, Team Events, shall not be considered employees or agents of the City for any purposes, including, but not limited to, worker's compensation. The Tenant further agrees that in the event of a claim for any benefits against the City made by one of the Tenant's employees, the Tenant shall indemnify, defend, and hold harmless the City from any and all damages as an employer under the California Workers' Compensation Insurance Act, and for any other damages arising out of or caused by the Tenant's employees, agents, or independent contractors or companies claiming City benefits or workers' compensation coverage. The provisions of this section shall survive the expiration of the Term and the termination of the Lease.

Section 3.10 Hazardous Waste. The Tenant shall comply, in all material respects, with every applicable law and regulation regulating hazardous substances brought into the Arena by the Tenant and shall not cause to occur upon, in, or about the Arena, or use the Arena to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process hazardous substances, except in compliance with all applicable laws and regulations. The Tenant shall provide, upon request, the City with copies of all Material Safety Data Sheets (MSDS), environmentally related regulatory permits or approvals (including revisions or
Section 3.11 No Claims. Nothing contained in this Lease shall create or justify any claim against the City by any person that the Tenant may have employed or with whom the Tenant may have contracted relative to the purchase of materials, supplies, or equipment, or the furnishing or the performance of any work or services with respect to the Tenant’s use and occupancy of the Arena.

ARTICLE 4. DAMAGE, DESTRUCTION, AND CONDEMNATION

Section 4.1 Damage and Destruction. In the event of any damage or destruction of the Arena that renders the Arena unusable, or in case of emergency, which in the City's reasonable discretion prevents the Arena from being used for Team Events, this Lease shall be suspended for such time until such damage or destruction has been repaired or until the emergency has passed, and the Tenant's payments to the City shall also be suspended, unless the Tenant is entitled to receive reimbursement for such payments through business interruption insurance or some other form of insurance. During such period, the Tenant may play Home Games at a site other than the Arena.

If the City fails to begin to repair or restore the Arena, or if the emergency has not passed, within ninety (90) days following the date of such damage or destruction or emergency, this Lease, at the option of Tenant, shall terminate as of the date of such damage, destruction, or emergency.

If this Lease is terminated by the Tenant pursuant to this section, the Tenant waives its right to any other damages available at law, in equity, or pursuant to this Lease arising out of such termination. Further, if such damage or destruction or emergency is beyond the control of the City, the Tenant shall not be entitled to make a claim or file a lawsuit against the City for the Tenant's inability to use and occupy the Arena; provided, however, that the Tenant may elect to terminate this Lease as set forth above based upon City's failure to timely repair or restore the Arena.

Section 4.2 Condemnation. If the whole or any substantial part of the Arena shall be taken by any paramount public authority under the power of eminent domain, then this Lease shall be terminated from the day when the possession of that part shall be taken for said public purpose.

All damages awarded for this taking with respect to the value of the Arena and the parcel upon which it is located shall belong to and be the property of City. Nothing herein shall preclude or prevent the Tenant from bringing an action or otherwise seeking to recover from the condemning public authority the value of its leasehold interest in this
Lease, the loss of goodwill related to operation of the Team, or other similar damage to the Tenant attributable to such condemnation.

Section 4.3 Damage to Facilities by Tenant. The Tenant's employees and agents shall not damage the Arena or other City property and the Tenant shall, upon demand and at the Tenant's sole cost and expense, repair or replace any and all Arena property or other property damaged by its employees or agents, provided however, that property damaged during normal Team play shall not be considered damaged under this section and shall be considered normal wear and tear and shall be repaired or replaced by City at its sole cost and expense.

ARTICLE 5. DEFAULT AND REMEDIES

Section 5.1 Tenant Default.

(a) Tenant Event of Default. The following events each constitute a "Tenant Event of Default" and a basis for the City to take action against the Tenant:

(i) Dissolution of League. The dissolution, termination, or disbandment of the League or other official professional indoor or arena soccer league which may replace the League; or

(ii) Team Withdrawal from League or Relocation. The Tenant causes or permits the withdrawal or removal of the Team from the League or other official professional indoor or arena soccer league which may replace the League, or the Tenant causes or permits the relocation of the Team from the Arena; or

(iii) Failure to Pay. The failure by the Tenant to make any payment under this Lease when and if due, and the continuance of such failure for a period of ten (10) days after written notice thereof from the City to the Tenant; or

(iv) Failure to Use Arena. The failure by the Tenant to use and occupy the Arena for Team Events as set forth in this Lease, including, without limitation, the failure of the Team to play one or more of its Home Games at the Arena; or

(v) Unauthorized Transfer. A Transfer occurs, either voluntarily or involuntarily, in violation of Section 7.6; or

(vi) Failure to Perform. The failure by the Tenant to observe or perform any material covenant, condition, or provision of this Lease not otherwise specifically mentioned in this subsection (a), where such failure continues for thirty (30) days after written notice from the City notifying the Tenant of such failure, provided, however, that if the nature of the Tenant's failure is such that more than thirty (30) days are reasonably required to cure, then the Tenant shall not be in default if Tenant begins
such cure within the thirty (30)-day period described above and thereafter diligently
prosecutes such cure to completion; or

(vii) Misrepresentation. Any representation or warranty of the
Tenant contained in this Lease proves to have been incorrect in any material and
adverse respect when made; or

(viii) Suspension: Dissolution. The Tenant, or the Team, shall
have voluntarily suspended its business or, the Tenant shall have been dissolved or
terminated; or

(ix) Other Defaults. (A) The making by the Tenant of any
general assignment or general arrangement for the benefit of creditors; (B) the filing by
or against the Tenant of a petition to have the Tenant adjudged bankrupt or a petition
for reorganization or arrangement under any law relating to bankruptcy (unless, in the
case of a petition filed against the Tenant, the same is dismissed within sixty (60) days);
(C) the taking of any action at the corporate level by the Tenant to authorize any of the
foregoing actions on behalf of the Tenant; or (D) the appointment of a trustee or
receiver to take possession of the Tenant’s interest in this Lease, where such seizure is
not discharged within sixty (60) days.

(b) City Remedies In General. Subject to the limitations on termination
set forth in subsection (c) below, if a Tenant Event of Default shall occur, the City at any
time thereafter may give a written termination notice to Tenant, and on the date
specified in such notice (which shall be not less than the time required by applicable law
or as otherwise provided in this Lease and which may be the day of the notice for
defaults under subsections (a)(l), (ii), (iv), (vii), or (viii) above), the Tenant’s right to
possession shall terminate and this Lease shall terminate, unless on or before such
date all arrears of sums payable by Tenant under this Lease and all costs and expenses
incurred by or on behalf of the City hereunder, of which Tenant has been given notice in
accordance with subsection (a) above shall have been paid by Tenant and all other
breaches of this Lease by Tenant at the time existing, of which Tenant has been given
notice in accordance with subsection (a) above shall have been cured. In the event the
City terminates this Lease pursuant to the provisions of this section or in the event the
League causes the completion of a Tenant Assignment of this Lease in accordance with
subsection (c) below and this Lease remains in effect, the City may pursue all remedies
available at law or in equity against the Tenant, including (i) recovering of money
damages (which shall consist of all actual damages, but in any event shall not be less
than the sum of all Rent that would have been due for Team Events during the balance
of the Team Season had the Lease not been terminated), and/or (ii) specific
performance. The remedies provided for in this Lease are in addition to any other
remedies available to City at law or in equity by statute or otherwise. Notwithstanding
anything herein to the contrary, the City shall not be entitled to any remedy other than
termination of this Lease by reason of a Tenant Event of Default described in
subsection 5.1(a)(i).
(c) **Specific Performance Remedy.**

NOTWITHSTANDING ANY OF THE FOREGOING, THE TENANT ACKNOWLEDGES THAT THE GAMES PLAYED BY THE TEAM ARE UNIQUE AND PLAYED WITH PARTICULAR SKILL SUCH THAT THERE IS NO SUBSTITUTE THEREFOR. BASED ON THE FOREGOING, THE TENANT ACKNOWLEDGES THAT THE DAMAGES SUFFERED BY THE CITY FOR ANY EVENT OF DEFAULT HEREUNDER CANNOT BE ESTIMATED WITH ANY DEGREE OF CERTAINTY AND THAT MONETARY DAMAGES CANNOT FAIRLY AND ADEQUATELY COMPENSATE THE CITY FOR A BREACH OF SAID COVENANTS; THEREFORE, THE TENANT AGREES THAT THE CITY SHALL HAVE THE RIGHT, IN ADDITION TO ANY OTHER APPLICABLE RIGHTS OR REMEDIES, TO COMPEL THE TENANT TO COMPLY WITH THE AFORESAID COVENANTS BY APPROPRIATE SPECIFIC PERFORMANCE, INJUNCTIVE OR EQUITABLE PROCEEDINGS WITHOUT POSTING ANY BOND. ADDITIONALLY, ANY PROVISION OF LAW OR THIS LEASE TO THE CONTRARY NOTWITHSTANDING, THE PARTIES ACKNOWLEDGE AND AGREE THAT IF THE TENANT WAS TO FAIL TO OBSERVE OR TO PERFORM ANY OF THE MATERIAL PROVISIONS IN THIS LEASE, THE AWARD OF DAMAGES ARISING FROM SUCH EVENT OF DEFAULT WOULD NOT BE AN ADEQUATE REMEDY, IN THAT THE SUBJECT MATTER OF THIS LEASE IS UNIQUE, AND THE BREACH OF SUCH OBLIGATIONS CREATE IRREPARABLE HARM INCAPABLE OF CALCULATION BY MONETARY DAMAGES. THEREFORE, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CITY HAS THE ABSOLUTE RIGHT TO SPECIFIC PERFORMANCE, ANY OTHER INJUNCTIVE RELIEF, OR ANY OTHER COURT ORDER TO ENFORCE THE COVENANTS AND OBLIGATIONS UNDERTAKEN BY THE TENANT UNDER THIS LEASE; AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS LEASE, NO CURE PERIOD SHALL BE A CONDITION TO THE RIGHT TO OBTAIN SUCH SPECIFIC PERFORMANCE, OTHER INJUNCTIVE RELIEF OR ANY COURT ORDER ENFORCING PERFORMANCE OF THIS LEASE.

Section 5.2 **City Default.**

(a) **City Event of Default.** The following events each constitute a "City Event of Default" and a basis for the Tenant to take action against the City:

(i) **Failure to Pay.** The failure by the City to make any payment under this Lease when and if due and the continuance of such failure for a period of ten (10) days after written notice thereof from the Tenant to the City; or

(ii) **Failure to Perform.** The failure by the City to observe or perform any material covenant, condition, or provision of this Lease not otherwise specifically mentioned in this subsection (a), where such failure continues for thirty (30) days after written notice from the Tenant notifying the City of such failure, provided, however, that if the nature of the City's failure is such that more than thirty (30) days are reasonably required to cure, then the City shall not be in default if it begins such cure
within the thirty (30)-day period described above and thereafter diligently prosecutes such cure to completion; or

(iii) Misrepresentation. Any representation or warranty of the City contained in this Lease proves to have been incorrect in any material and adverse respect when made.

(b) Tenant Remedies. On the occurrence of any City Event of Default, the Tenant shall be entitled to any remedy available by law, including (i) terminating this Lease, (ii) recovering of money damages, and/or (iii) specific performance. The remedies provided for in this Lease are in addition to any other remedies available to Tenant at law or in equity by statute or otherwise.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations and Warranties of Tenant. The Tenant hereby represents and warrants to the City as follows:

(a) Due Organization and Existence. The Tenant is a duly organized, validly existing California corporation, and is in good standing under the laws of the State of California and has the power and authority to carry on its business as now being conducted.

(b) Approvals. Except as previously obtained, no consent, approval, order or authorization of, or registration declaration or filing is required in connection with the execution and delivery of this Lease by the Tenant.

(c) Authority of Tenant. The Tenant has full power and authority to execute and deliver this Lease and to accept the property contemplated hereunder, to execute and deliver all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

(d) Authority of Persons Executing Documents. This Lease and all other documents or instruments executed and delivered, or to be executed and delivered by the Tenant, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Tenant, and all actions required under the Tenant’s organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(e) Valid Binding Agreement. This Lease constitutes a legal, valid, and binding obligation of the Tenant enforceable by and against it in accordance with its
terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

(f) **No Breach of Law or Agreement.** Neither the execution nor delivery of this Lease by the Tenant or of any other documents or instruments executed and delivered, or to be executed or delivered by the Tenant, pursuant to this Lease, nor the performance by the Tenant of any provision, condition, covenant, or other term hereof or thereof, will conflict with or result in a breach of any statute, rule, or regulation, or any judgment, decree, or order of any court, board, commission, or agency whatsoever binding on the Tenant, or any provision of the organizational documents of the Tenant, or will conflict with or constitute a breach of or a default under any restriction, agreement, or instrument to which Tenant is a party.

(g) **Pending Proceedings.** The Tenant is not in default under any law or regulation or under any order of any court, board, commission, or agency whatsoever, and there are no claims, actions, suits, or proceedings pending or, to the knowledge of the Tenant, threatened against or affecting the Tenant or the Team at law or in equity, before or by any court, board, commission, or agency whatsoever which might, if determined adversely to Tenant, materially and adversely affect the Tenant's ability to perform its obligations under this Lease.

(h) **League Documents.** The terms and provisions of this Lease do not violate any League Documents to which the Tenant or the Team is a party or subject to.

Section 6.2 **Representations and Warranties of City.** The City represents, covenants, and warrants to the Tenant as follows:

(a) **Due Organization and Existence.** The City is a charter city and has the power to enter into this Lease.

(b) **Approvals.** Except as previously obtained, no consent, approval, order or authorization of, or registration declaration or filing is required in connection with the execution and delivery of this Lease by the City.

(c) **Authority of City.** The City has full power and authority to execute and deliver this Lease and to accept the property contemplated hereunder, to execute and deliver all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

(d) **Authority of Persons Executing Documents.** This Lease and all other documents or instruments executed and delivered, or to be executed and delivered by the City, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the City, and all actions required under the City's organizational documents and applicable governing law for the authorization, execution, delivery, and performance of
this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(e) Valid Binding Agreement. This Lease constitutes a legal, valid, and binding obligation of the City enforceable by and against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Notices, Demands, and Communications. Formal notices, requests for consents, demands, and communications between the City and the Tenant shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered by facsimile transmission, or delivered personally, to the principal office of the parties as follows:

City: c/o International Facilities Group, LLC
1372 Shermer Road
Northbrook, Illinois 60062
Attn: Stockton Arena Manager
Fax: 847-509-3715

With a copy to: City of Stockton
425 North El Dorado Street
Stockton, California 95202
Attn: City Manager
Fax: 209-937-8904

With a copy to: City of Stockton
Office of City Attorney
425 North El Dorado Street
Stockton, California 95202
Fax: 209-937-8898

Tenant: Team Cougars FC, LLC
Managing Member
1960 Railroad Drive
Sacramento, CA 95815

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this section. Receipt shall be deemed to have occurred on the date
shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.2 Excused Delay. In addition to specific provisions of this Lease, performance by either party shall not be deemed to be in default where delays or defaults are due to war; insurrection; acts of terrorism; epidemics; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; energy shortages; energy rationing; discovery of previously unknown Hazardous Materials or archeological or historical resources; lack of transportation; court order preventing action; pending litigation that presents a material financial risk to a party if it proceeds with action under this Lease while the outcome of such litigation is pending; delays in processing approvals caused by any governmental entity; or any other similar causes (other than lack of funds of Tenant) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In no event shall the City or the Tenant be required to agree to cumulative delays in excess of sixty (60) days.

Section 7.3 Indemnification.

(a) By Tenant. The Tenant shall indemnify, defend and hold the City, the City’s council members, the Manager, and the City’s and the Manager’s respective officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys’ fees) which arise out of or in connection with the Tenant’s use and occupancy of the Arena, except to the extent such claim arises from the grossly negligent or willful misconduct of the City or the Manager.

(b) By City. The City shall indemnify, defend and hold the Tenant, its officers, managers, members, employees, players, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys’ fees) which arise out of or in connection with the City’s use and occupancy of the Arena, except to the extent such claim arises from the grossly negligent or willful misconduct of the Tenant.

(c) Survival. The provisions of this section shall survive the expiration of the Term and the termination of the Lease.

Section 7.4 Relationship of Parties. Nothing contained in this Lease shall be interpreted or understood by either of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Tenant or its agents, employees or contractors. The Tenant has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the
performance of services under the Lease. The Tenant shall be solely responsible for its own acts and those of its agents and employees.

Section 7.5 Waivers. Any waiver by the City of any obligation or condition in this Lease must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of the Tenant or to pursue any remedy allowed under this Lease or applicable law. Any extension of time granted to the Tenant to perform any obligation under this Lease shall not operate as a waiver or release from any of its obligations under this Lease. Consent by the City to any act or omission by the Tenant shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 7.6 No Transfers without City Consent. The Tenant shall not Transfer this Lease without the City's prior written consent, which shall not be unreasonably withheld or delayed and which shall be given if the transferee possesses financial capability and management expertise reasonably sufficient to operate the Team and perform the obligations of the Tenant under this Lease.

Section 7.7 Binding Effect. The rights and obligations of this Lease shall inure to the benefit of, and be binding upon, the parties to the Lease and their heirs, administrators, executors, personal representatives, successors, and assigns.

Section 7.8 Entire Agreement; Amendments. This Lease constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and supersedes any prior written or oral statement and understandings. The parties may amend this Lease only by means of a writing signed by the parties expressly stating its intention to amend this Lease.

Section 7.9 Interpretation. Each reference in this Lease to this Lease, or any other agreement, plan, or document shall refer to the named agreement, plan or document as such agreement, plan or document may be amended from time to time. Statutory references include any amendments to or renumbering of the referenced statutes.

As used in this Lease, the singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in interpreting any of the Lease terms and provisions.

Section 7.10 Non-Liability of Individuals. No member, official, employee or agent of the City shall be personally liable to the Tenant in the event of any default or breach by the City or for any amount which may become due to the Tenant or its successor or on any obligation under the terms of this Lease. No member, official, employee or
agent of the Tenant shall be personally liable to the City in the event of any default or breach by the Tenant or for any amount which may become due to the City or its successor or on any obligation under the terms of this Lease.

Section 7.11 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Lease with the exception of the rights created for the benefit of the Manager as described in Section 3.4.

Section 7.12 Applicable Law. This Lease shall be governed by California law.

Section 7.13 Legal Actions.

(a) Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Lease or to collect damages as a result of any Tenant Event of Default or City Event of Default, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees and costs incurred in such action (including any appeal of such action). The provisions of this subsection shall survive expiration of the Term or any earlier termination of this Lease.

(b) Third Party Litigation. In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Lease and/or the power of the City or the Tenant to enter into this Lease or perform its obligations hereunder, either the City or the Tenant may (but shall have no obligation to) defend such action. Upon commencement of any such action, the City and the Tenant shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

(c) Forum. Any lawsuit pertaining to any matter arising under, or growing out of, this Lease shall be instituted in San Joaquin County, California.

Section 7.14 Severability. If any term of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.15 Title of Parts and Sections. Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Lease provisions.

Section 7.16 Multiple Originals; Counterparts. This Lease may be executed in multiple original counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

Section 7.17 Other Necessary Acts. Each party shall execute and deliver to the other parties all further instruments and documents as may be reasonably necessary to
carry out this Lease in order to provide and secure to the parties the full and complete enjoyment of their rights hereunder.

Section 7.18 Possessory Interest Tax. The Tenant agrees and acknowledges that this Lease may create a possessory interest in the Arena subject to applicable possessory interest taxes or property taxes levied on such interest under California law. The Tenant shall have the right to contest in good faith, any such taxes or assessments. In the event it is determined by the appropriate body that such taxes are due, the Tenant shall immediately pay such taxes or assessments. If any such taxes or assessments are not paid when due, then the City may, in addition to any other remedy granted to the City under this Lease, withhold the amount of such unpaid taxes or assessments from the Net Gate Receipts otherwise payable to the Tenant, and apply the withheld amount toward the payment of such unpaid taxes and assessments.

Section 7.19 Attached Exhibits. The following exhibits are (or upon completion shall be) attached to and incorporated in this Lease by this reference:

Exhibit "A" Glossary of Defined Terms
Exhibit "B" Team Event Schedule and Related Policies
Exhibit "C" City-Provided Facilities and Services
Exhibit "D" Specified Terms for the Transportation and Parking Management Plan
Exhibit "E" Insurance Requirements

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

ATTEST:
By: [Signature]
KATHERINE GONG
CITY CLERK

CITY OF STOCKTON, a charter city
By: [Signature]
LAURIE MONTEZ
INTERIM CITY MANAGER
DEPUTY

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
By: [Signature]
CITY ATTORNEY
TEAM COUGARS FC, LLC, a California limited liability company

By: [Signature]
Managing Member
EXHIBIT "A"

GLOSSARY OF DEFINED TERMS

Unless the context otherwise requires, the following terms shall have the following respective meanings when used in this Lease. The following definitions are equally applicable both to the singular and plural forms and the feminine, masculine and neuter forms of the terms defined. Any agreement, instrument, or other document defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof entered into from time to time in compliance therewith. Any term defined below by reference to any agreement, instrument or other document shall have such meaning whether or not such agreement, instrument or other document is in effect.

All initially capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in this Lease to which this Glossary is attached. Exhibits referenced herein and not otherwise defined are exhibits to this Lease. Unless otherwise indicated, section references are to sections of this Lease.

"Advertising" means all announcements, acknowledgements, banners, signs, panels, scoreboard panels, dasher board panels, showbills, promotional materials, handouts and promotional product sampling give-a-ways, and other printed material, audio or visual commercial messages displayed, announced or otherwise presented at the Arena, including, without limitation, video messages.

"Agency" means the Redevelopment Agency of the City of Stockton, a public body, corporate and politic, established and organized pursuant to the California Community Redevelopment Law.

"Arena" means that certain multipurpose indoor arena owned by the City within.

"Arena Parking Facilities" means all of the parking facilities within or in the vicinity of the Arena that are owned and maintained by the City, the Agency, or the Stockton Central Parking District.

"Arena Store" means the store contained in or in the vicinity of the Arena operated by the City, through its Manager or a reputable merchandiser engaged by the Manager on the City's behalf, in which Team Merchandise, merchandise related to the Other Arena Teams, merchandise related to other Arena events, and other similar merchandise may be displayed and sold.

"Catering Services" means the business of selling food, beverages and merchandise (exclusive of Team Merchandise) directly to patrons of the Club Seats and the Luxury Suites, at or in connection with Team Events.
"City" means the City of Stockton, a charter city of the State of California, acting through the City Council and the City Manager as designated in Section 7.16 of this Agreement.

"City Council" means the City Council of the City.

"City Event of Default" has the meaning set forth in Section 5.2(a).

"City Luxury Suite" means the Luxury Suite designated for exclusive use and occupancy by the City and its invitees.

"City Manager" means the City Manager of the City.

"Club Seats" means the approximately three hundred fifty (350) club seats and related lounge and comfort areas to be included in the Arena.

"Club Seat Premium Component Revenue" has the meaning set forth in Section 2.3(g).

"Complimentary Tickets" means any form of admission to a Team Event given free of monetary charge, including, but not limited to, admission provided to sponsors intended as in-kind compensation for services or products.

"Concession Services" means the business of selling food, beverages, and merchandise (exclusive of Team Merchandise and Catering Services) to patrons of the Arena, at or in connection with Team Events.

"Concession Services Adjusted Gross Revenue" means the total amount of cash receipts and credits derived from the Concession Services less all sales taxes attributable to the Concession Services.

"Core Facilities and Services" has the meaning set forth in Part I of Exhibit "C."

"Core Facilities and Services Payment" has the meaning set forth in Section 2.2(a).

"Cost Reimbursement Amount" has the meaning given in Section 2.2.

"Extra Facilities and Services" has the meaning set forth in Part II of Exhibit "C."

"Facility Fee Amount" means and shall equal the amount of up to One Dollar and Eighty Cents ($1.80) on paid tickets.

"Facility Fee Revenue" for a given Team Event means the product of the Facility Fee Amount multiplied by the total attendance, including Paid Attendance and excluding Complimentary Tickets for such Team Event.
"Gross Gate Receipts" for a given Team Event means, except as otherwise provided below, the total of all amounts of cash, or its equivalent, paid for admissions to such Team Event from any ticket purchaser or other attendee (including any ticket handling or processing fees or charges passed through to the ticket purchaser), as collected by the Tenant (with respect to season ticket or group ticket sales, if handled directly by Tenant), the City, the Manager, the Ticket Service, or any other City-authorized ticket sales representative. Gross Gate Receipts shall not include any Club Seat Premium Component Revenue or any Luxury Suite Lease or License Fee Revenue.

"Hazardous Materials" means any item or agent (biological, chemical, physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

"Home Games" means, collectively, Pre-Season Home Games, Regular Season Home Games, Playoff Home Games, and Special Event Home Games.

"Home Team Locker Facility" has the meaning set forth in Section 1.1(b).

"IFG" means International Facilities Group, LLC, or its affiliate approved by the City as the City's initial Manager for the Arena.

"IFG Agreement" means the Facilities Management Agreement entered into by the City and IFG, dated as of March 2, 2004, providing for IFG to serve as the City's Manager for the Arena and other specified City facilities.

"League" means the Professional Arena Soccer League.

"League Documents" means all rules, regulations, policies, procedures, guidelines, and other written documents of any nature governing the conduct of professional teams in the League.

"Lease" means this Lease.

"Locker Room Facilities" means the facilities within the Arena defined and described in Section 1.1(c).

"Luxury Suites" means the approximately 24 luxury suites (containing approximately 12 seats each) and related comfort areas.

"Luxury Suites Lease or License Fee Revenue" means all revenue received from the sale of annual or multi-year lease or license rights with the respect to the Luxury Suites.
"Manager" means IFG-Stockton, Inc., its permitted successors and assigns, or any successor or replacement entity hired by the City to operate, manage, and maintain the Arena on behalf of the City.

"Mutual Option Term" means the option term that may be exercised for this Lease, as further defined and described in Section 1.3(b).

"Net Gate Receipts" for a given Team Event means Gross Gate Receipts less:

1. the Facility Fee Revenue; less
2. all federal, state, and local governmental taxes and fees of any nature applicable to the Gross Gate Receipts, other than the Facility Fee Revenue; less
3. all Ticket Service Costs; less
4. the Rent; less
5. the Cost Reimbursement Amount.

"Other Arena Teams" means the professional hockey team and the professional arena football team that play their respective home games in the Arena.

"Paid Attendance" for a given Team Event means, except as provided below, the total number of tickets or other forms of admission sold for such Team Event (whether full price or discounted). Paid Attendance shall not include tickets with respect to the standard number of seats in the Luxury Suites (anticipated to be twelve (12) seats per Luxury Suite), but shall include "standing room only" tickets sold with respect to the Luxury Suites above such standard number of seats.

"Playoff Home Games" means the League-sanctioned playoff games following the regular season and typically leading to the League championship played by the Team in which the Team acts as the host team for its opponent.

"Regular Season Home Games" means the League-sanctioned regular season games played by the Team in which the Team acts as the host team for its opponent.

"Rent" has the meaning set forth in Section 2.1(a).

"Special Event Home Games" means any League "all star" game, any game played at the Arena between the Team and its "major league" affiliate or other professional or amateur soccer team which is not a regular member of the League, or any other soccer game promoted by the Team with the permission of the City involving professional or amateur teams other than the Team.
"Team" means the professional men's arena soccer team to be operated by the Tenant with full rights to play professional arena soccer games within the League.

"Team Administrative Office" means the administrative office designated for use by the Team within the Arena, generally as described and shown in the Arena Program.

"Team Event Dates" means the dates (and time periods within each date) scheduled for conduct of the Team Events in accordance with the provisions of Section 1.1(b) and the Team Event Schedule and Related Policies attached as Exhibit B.

"Team Events" means, collectively, the following events to be conducted at the Arena on Team Event Dates consistent with the procedure for scheduling Arena events as set forth in Section 1.1(b) and the Team Schedule and Related Policies:

(1) all Pre-Season Home Games, Regular Season Home Games, and Playoff Home Games of the Team during the Team Season;

(2) subject to booking availability, Special Event Home Games within the Team Season to be promoted or organized by the Team with the City's permission;

(3) regular practice sessions, excluding Training Camp, of the Team (A) on Team Event Dates, and (B) with not less than twenty-four (24) hours advance approval by the Manager, on such other dates during the Team Season on which the soccer playing surface is in place without special set-up and on which such practice can be accommodated consistent with the conduct of other events scheduled for use of the Arena on such dates (only house lighting will be provided for practices); and

(4) subject to booking availability, one (1) non-Home Game event related to the Team Season to promote the Team, such as a "meet the team" promotion, a season ticket-holder party, an intra-squad scrimmage open to the general public without cost, or a youth clinic or camp.

"Team Merchandise" means all novelties, souvenirs, merchandise and programs related to the Team, affixed with the Team logo and sold at Team Events or at the Arena Store.

"Team Merchandise Net Revenue" means the total amount of cash receipts and credits derived from the sale of Team Merchandise at the Arena Store, less: (1) all sales taxes; and (2) all reasonably incurred costs of selling the Team Merchandise, including without limitation the costs of all labor and materials (including the wholesale cost of obtaining the Team Merchandise for sale), and any fees charged to the City by any merchandiser engaged to sell the Team Merchandise.

"Team Season" means the Team's annual season, commencing three (3) days prior to the date of the Team's first Pre-Season Home Game or Regular Season Home
Game, as applicable, and ending three (3) days after the date of the Team's last Regular Season Home Game or Playoff Home Game, as applicable.

"Tenant" means Team Cougars FC, LLC, a California limited liability company, or its successors and assigns as permitted pursuant to this Lease.

"Tenant Event of Default" has the meaning set forth in Section 5.1(a).

"Term" means the term of this Lease which, unless earlier terminated in accordance with the provisions of this Lease, shall consist of the Initial Term and any Option Term.

"Ticket Service" has the meaning set forth in Section 1.1(e).

"Ticket Service Costs" means the reasonable costs incurred by the City or the Manager in connection with the sale and processing of tickets and admissions related to Team Events, including, without limitation, ticket printing costs and any service, handling, or credit card charges or fees of any nature charged or collected by the Ticket Service or any other City-authorized ticket sales representative in connection with such sale and processing.

"TPMP" has the meaning set forth in Section 2.3(i).

"Transfer" means:

(1) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or any part thereof or any interest therein or any contract or agreement to do any of the same; or

(2) The subleasing of all or part of the Arena by the Tenant.

Notwithstanding the foregoing, a Transfer does not include an assignment of this Lease for security purposes.

"Weekend Period" means the period including Friday evening, Saturday afternoon and evening, and Sunday afternoon and evening.
EXHIBIT "B"

TEAM EVENT SCHEDULE AND RELATED POLICIES

Section 1. Team Event Dates for 2009-2010 Regular Season.
The following dates are held for use by Tenant for five (5) Team Events. Tenant shall release or confirm all dates for Team Events no later than August 31st of each year during the Term, or all dates held will be released.

Sunday, November 8, 2009
Thursday, January 28, 2010
Saturday, February 6, 2010
Saturday, February 13, 2010
Thursday, February 25, 2010

Tenant’s final schedule shall not be announced publicly until the Manager has approved the Arena dates for the Tenant Homes Games.

Section 2. Time of Games. For each Home Game, Tenant and the opposing team shall entitled to the use and occupancy of the Arena beginning no less than two (2) hours prior to the scheduled commencement of the Home Game and until one and one-half (1½) hours after the completion of the Team's Home Game. Tenant shall provide the Manager reasonable notice of all planned incidental activities related to a Home Game (including, but not limited to, Team-sponsored ceremonies or celebrations), but in no instance less than seven (7) calendar days prior to the date of the Home Game. Tenant agrees to adjust the start time of the scheduled Home Games to the extent reasonably possible (and in accordance with applicable League rules and regulations) so that the Manager may coordinate the Arena for other events, or other uses or needs which may develop from time to time.
EXHIBIT C

CITY-PROVIDED FACILITIES AND SERVICES

I. Core Facilities and Services. The City, through its Manager, shall provide the following facilities and services (collectively, the "Core Facilities and Services") for each Team Event, unless the Tenant requests that any particular Core Facilities or Services not be provided. The City shall provide the Core Facilities and Services without charge to the Tenant (other than payment of Rent in accordance with Section 2.1).

A. Facilities. The City, through its Manager, shall provide an arena soccer playing surface, dasher boards, goals, scoreboards, benches, penalty boxes, referee areas, scorers' table and other similar items meeting standard League requirements for the conduct of professional arena soccer games. Replacement or alteration of the Team logo on the playing surface shall be at Tenant's sole cost.

B. Services. The City, through its Manager, shall provide air conditioning, heating, lighting, janitorial supplies, maintenance supplies and equipment, including electrical, gas, water & sewer utilities and other similar miscellaneous goods and services during each Team Event and during periods of set-up and tear-down of the facilities being provided for the Team Event. The City, through its Manager, shall provide personnel required to staff the Arena for each Team Event ("Arena Personnel"), including, but not limited to, event manager, facility technical director, utility technicians, ticket takers, ushers, peer group security, security personnel, first aid personnel, firemen, custodians, restroom attendants, changeover and set-up personnel for the facilities described in Part I.A above, clean-up personnel, and such other personnel as the Manager in its reasonable discretion shall deem required for the Team Event. The Arena Personnel shall be provided only by or through the Manager. Staffing for the Core Facilities and Services described in this Part I shall be the sole responsibility of the City, and shall be in amounts consistent with industry standards for comparably attended events of the nature of the Team Events in other similarly situated public arenas.

C. Public Address and Scoreboard. The City, through its Manager, shall furnish the Arena public address and scoreboard systems on a non-exclusive basis for each Team Event. Such systems shall be operated according to rules and regulations established from time to time by the Manager, on behalf of the City, and the City shall at all times (except during the performance of a Team Event) have the right to use such systems without cost concurrently with the Tenant's use of such systems.

D. Maintenance and Quality Standard. The City, through its Manager, shall cause the Core Facilities and Services described in this Part I to be provided to the Tenant, and shall cause the Arena to be operated and maintained in connection with all Team Events, in a commercially reasonable manner. For purposes of this section, "commercially reasonable" refers to the standard generally established by other owners and operators of sports and entertainment arenas in California comparable in quality to the Arena. If provision of any Core Facilities and Services is prevented due to any of
the causes listed in Section 7.2, or due to impossibility of obtaining materials, accidents, loss of power or other causes beyond the reasonable control of the City and the Manager, or during any period of repairing of equipment or apparatus, neither the City nor the Manager shall have any liability (including, without limitation, liability for consequential damages or loss of profits) for failing to provide such Core Facilities and Services due to such cause.

E. **Event Traffic Control.** The City shall provide sufficient police and other personnel required to provide traffic control for all Team Events in accordance with the TPMP. In no event shall the costs of any police or traffic control personnel be charged, directly or indirectly, to the Tenant during the Term.

F. **Large Screen Video System-Use.** If requested by the Tenant, the City, through its Manager, shall make available to the Tenant the use of the Arena's large screen video system at no cost to the Tenant. The Tenant shall pay the costs of the large screen video system personnel utilized during Team Events, as provided below.

II. **Extra Facilities and Services.** At the Tenant's request to the Manager, on behalf of the City, not less than forty-eight (48) hours prior to the scheduled start of a particular Team Event, the City, through its Manager, shall provide the following facilities and services (collectively, the "Extra Facilities and Services") for the specified Team Event. The Tenant shall pay the City the amounts specified below for the provision of Extra Facilities and Services for each applicable Team Event, as provided in Section 2.2 and 2.3(a).

A. **Large Screen Video System-Personnel.** If requested by the Tenant, the City, through its Manager, shall make available to the Tenant the use of the Arena's large screen video system as set forth above. The Tenant shall pay the City the costs of the large screen video system personnel.

B. **Telephone Service.** If requested by the Tenant, the City, through its Manager, shall provide telephone service at locations requested by the Tenant. The Tenant shall pay the City for all installation, service, equipment, long distance, toll and repair charges made with respect to such telephone service in accordance with a per line charge established by the City from time to time.

C. **Broadcast and Television Service Personnel.** If requested by the Tenant, the City, through its Manager, shall provide the personnel necessary to assist the Tenant, or its agents, to plug into the existing in-Arena broadcast cable wiring. The Tenant shall pay the City for all reasonable charges for such personnel for each Team Event.

D. **Rental Equipment.** If requested by the Tenant, the City, through its Manager, will rent equipment necessary for a specified Team Event. The Tenant shall pay the City all rental charges, delivery and pick up charges and any damages or loss charges made with respect to such equipment rental, unless such damages or losses
arise from any gross negligence or willful misconduct on the part of the City, the Manager, or their respective agents, representatives or employees.

E. Production Services. If requested by the Tenant, the City, through its Manager, will provide personnel necessary to assist the Tenant with production staff to be used during Team Events as provided in Sections 2.2 and 2.3. Such staff may include sound system operators, engineers, electricians, scoreboard operators, stagehands, forklift operators, video directors, switchers, computer graphics technicians and audio and video technicians.

III. Box Office and Ticket Sales Service. The City, through its Manager or a reputable ticket service engaged by the Manager on the City's behalf, shall provide the box office and ticket sales services for Team Events as fully set forth in Section 1.1(e). The Ticket Service Costs for such services shall be deducted from Gross Gate Receipts and paid to the City as provided in Section 2.3(a).
EXHIBIT D

SPECIFIED TERMS FOR THE
TRANSPORTATION AND PARKING MANAGEMENT PLAN

Definitions:

The parking lot west of the Ballpark: "Ballpark Parking Lot"
The parking garage north of the Arena: "Public Parking Garage"
The baseball team tenant of the Ballpark: "Ports"

Other definitions as set forth in Exhibit A of this Lease.

Terms To Be Included in TPMP:

Ballpark Parking Lot

- Lot controlled by City Central Parking District ("District") on a daily basis with fifteen (15) spaces reserved for Ports use. Costs are responsibility of the District and revenues are the property of the District (except for Home Game parking as provided below)
- For Home Games, lot reserved from two (2) hours before each Home Game until one (1) hour after the end of the Home Game for Tenant/Team parking, except for fifteen (15) spaces reserved for Ports use
- Tenant will coordinate with District to ensure that all spaces, except for fifteen (15) spaces reserved for Ports use, are available in lot two (2) hours prior to Home Game
- Tenant will receive all revenue from Home Games parking, subject to any cost reimbursement to District for costs of services if District operates the lot for the Home Games (estimated to be about ten percent (10%) of the gross parking revenue). If District insurance permits, Tenant can operate the lot during Home Games, except that fifteen (15) spaces are reserved for Ports use. District and Tenant will work cooperatively in operation of lot during Home Games.

Public Parking Garage

- Garage is operated by District at all times with all costs the responsibility of the District and revenues the property of the District
- Tenant may purchase spaces in Garage for Home Games VIP parking at market rate
- Tenant has opportunity to purchase daily and monthly parking passes in Garage at market rate to accommodate employee and team parking

Police Personnel

- City to provide adequate police supervision on days of Team Events at no cost to the Tenant.
EXHIBIT "E"

INSURANCE REQUIREMENTS

Tenant shall procure and maintain for the duration of the Term insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives or employees.

A. **Minimum Limits of Insurance**

Tenant shall maintain insurance limits not less than:

1. General liability: One Million Dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage, combined single limit and One Million Dollars ($1,000,000) aggregate limit, with a Four Million Dollar ($4,000,000)-umbrella policy limit. Such liability insurance shall be adjusted every five (5) years in accordance with increase in the CPI to the extent such readjusted amount of insurance is commercially and reasonably available.

2. Automobile Liability: One Million Dollars ($1,000,000) per accident for bodily injury and property damage.

3. Workers' Compensation: As required by State law.

B. **Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by the City.

C. **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, the Agency, and their officers, officials, employees, and volunteers are to be covered as additional insured on general liability and automobile liability policies as respects: liability out of activities performed by or on behalf of Tenant; premises owned, occupied or used by Tenant; and automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the City, the Agency, and their officers, officials, employees or volunteers.
2. For any claims related to the Team Events, Tenant's insurance coverage shall be primary insurance as respects City, the Agency, and their officers, officials, employees and volunteers.

3. Any insurance or self-insurance maintained by City, the Agency, and their officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute to it.

4. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to City, the Agency, and their officers, officials, employees or volunteers.

5. Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

D. Subcontractors

Before permitting any subcontractors to perform work under this Lease, Tenant shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by Tenant as may be applied to each subcontractor's work.

E. Acceptability of Insurers

Insurance is to be placed with insurers that are admitted insurance carriers in the State of California, or must otherwise be approved by the City.

F. Verification of Coverage

Tenant shall furnish City with original endorsements of effective coverage for policies on which City is included as an additional insured as required by this Exhibit, and shall furnish original certificates of insurance for all other required policies. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences.

Upon request, Tenant shall furnish City a certified copy of any or all policies of insurance covering the work required under this Lease.
RESOLUTION AUTHORIZING THE CITY TO EXERCISE THE ONE-YEAR OPTION TO EXTEND THE 2009 TEAM LEASE WITH TEAM COUGARS FC, LLC, AND EXECUTE THE FIRST AMENDMENT TO THE 2009 TEAM LEASE

On October 20, 2009, the City Council approved the 2009 Team Lease with Team Cougars FC, LLC, for four home games during the 2009/2010 Team Season. The Lease provided a one-year mutual option to extend for the 2010/2011 Team Season; and

Team Cougars FC, LLC, now desires to exercise the one-year option to extend the 2009 Team Lease for the regular season of home games, an exhibition game, and a US Open Cup Game for the 2010/2011 Season; and

The parties also desire to amend certain terms and conditions of the 2009 Team Lease; and

The City Charter requires the Publication of a notice to lease City property. Therefore, a “Notice of Intention to Lease City Property” has been published at least ten days prior to the Council action; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is authorized to exercise the one-year option to extend the 2009 Team Lease with Team Cougars FC, LLC.

2. The First Amendment to 2009 Team Lease for the Stockton Events Center Arena (Arena Soccer Team) between the City of Stockton and Team Cougars FC, LLC, is approved.

3. The City Manager is authorized to execute the First Amendment to 2009 Team Lease for the Stockton Events Center Arena (Arena Soccer Team), a copy of which is attached as Exhibit A and incorporated by this reference. This Amendment modifies certain terms and conditions regarding the original 2009 Team Lease.
4. The City Manager is authorized and directed to take whatever actions are appropriate to carry out the purpose and intent of the resolution.

PASSED, APPROVED and ADOPTED ________________________.

__________________________________________________________
ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

__________________________________________________________
KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
FIRST AMENDMENT TO 2009 TEAM LEASE
FOR THE STOCKTON EVENTS CENTER ARENA
(ARENA SOCCER TEAM)

THIS FIRST AMENDMENT TO TEAM LEASE ("Amendment") by and between
the City of Stockton ("City") and Team Cougar’s FC, LLC, a California Limited Liability
Company ("Tenant"), is entered into as of the effective date set forth herein.

RECITALS

A. On October 20, 2009, the City and Tenant entered into an agreement
entitled 2009 Team Lease for Stockton Events Center Arena (Arena Soccer Team)
("Lease") that governs, among other things, the terms and conditions regarding revenue
sharing for certain elements of the Cougars home games held at the Stockton Arena.

B. The term of the 2009 Lease terminated at the end of the Cougar’s 2009-
2010 team season. The 2009 Lease contains a one-year mutual option to extend the
term.

C. The City and Tenant now desire to exercise the option to extend the
Lease and to amend certain terms of the 2009 Lease as provided herein.

D. Capitalized terms not defined herein shall have the same meaning as set
forth in the Lease.

NOW, THEREFORE, in consideration of the foregoing, and for other good and
valuable consideration, the receipt and sufficiency of which are hereby acknowledged,
the City and Tenant hereby amend the 2009 Lease as follows:

AGREEMENT

1. Revisions to Lease. The following provisions shall either amend, or
supplant and replace, as indicated below, the corresponding provisions of the Lease.

(a) Article 1, Section 1.3(b). Article 1, Section 1.3(b)(i) Mutual Option Term
shall be amended to provide an option to extend for the 2011-2012
season to read as follows:

Section 1.3(b)(i) One-Year Mutual Option to Extend. Subject to the terms
of this subsection (b), and subject to prior written approval by City, the
Tenant may exercise one (1) mutual option to renew this Lease, for a term
of one (1) year, for the Team Season of 2011-2012 ("Mutual Option
Term").
(b) Article 7, Section 7.1: Notices, Demands and Communications shall be amended to update Tenant's contact information to read as follows:

Section 7.1 Notices, Demands and Communications.

Tenant: Team Cougars FC, LLC
Art Pulido, Managing Partner
Turlock Indoor Soccer
500 South Center
Turlock, CA 95380
(530) 321-9061

The remainder of Section 7.1 shall remain the same

(c) Article 7: Article 7 shall be amended to add a new section entitled "7.20 Business License" and will read as follows:

Section 7.20. Business License. Tenant shall obtain and maintain a business license with the City of Stockton for the term of this Agreement.

(d) Exhibit "B" Team Event Schedule and Related Policies: Exhibit "B" to the 2009 Lease shall be deleted in its entirety and replaced with a new Exhibit "B," attached hereto, containing the Team Event Schedule for the 2010-2011 season and related policies.

(e) Exhibit "E" Insurance Requirements: Exhibit "E" to the 2009 Lease shall be deleted in its entirety and replaced with a new Exhibit "E," attached hereto, containing the insurance requirements for the 2010-2011 season.

2. Scope of Amendment. This Amendment constitutes the entire understanding of the parties on the subjects covered, and supersedes all prior agreements, written or oral, between the parties on the subjects.

3. Effective Date. This Amendment is effective on October 19, 2010, and the terms hereof shall apply only for the period of time identified as "Team Season 2010-2011" for all Home Games starting with the Home Game scheduled for November 14, 2010, and ending with the last 2010-2011 Regular Season Game in the Spring 2011. If this Amendment is executed after the November 14, 2010, Home Game, the provisions of this Amendment shall nonetheless apply retroactively to the November 14, 2010, Home Game and those thereafter as provided herein.

4. Effectiveness/Conflict. All provisions of the 2009 Lease not amended hereby shall remain unaltered and in full force and effect. In the event of any conflict between the Lease and this Amendment, this Amendment shall control.
IN WITNESS WHEREOF, the parties have executed this Amendment by their authorized representatives.

APPROVED AS TO FORM AND CONTENT: CITY OF STOCKTON

JOHN LUEBBERKE
CITY ATTORNEY

By: ___________________________ By: ___________________________
LORI S. WHITTAKE
DEPUTY CITY ATTORNEY BOB DEIS
CITY MANAGER

ATTEST: TENANT:

TEAM COUGARS FC LLC, a limited liability company

By: ___________________________ By: ___________________________
KATHERINE GONG MEISSNER ART PULIDO
CITY CLERK MANAGING PARTNER
EXHIBIT B
2010-2011 TEAM SEASON
TEAM EVENT SCHEDULE AND RELATED POLICIES

To protect the City best financial interests, The City and Team agree to the following hold calendar listed below. These listed dates will be finalized by Council Action and Approval.

The Team will be provided a “first hold” on the following dates. Tenant agrees to release its hold on any dates listed below if requested by the City. This applies to requests made before or after City Council approval. City will use its best efforts to reschedule Tenant’s events at Arena. City agrees Tenant is permitted to play home games, exhibitions, and US Open Cup at area facilities if Arena dates are unavailable. The hold schedule will allow City to adjust the team schedule if a major tour requests a Cougars date. SMG reviewed the dates and does not anticipate changes to the schedule. The Cougars will be permitted to play home games, exhibitions, etc. at area soccer arenas if Arena dates are not available.

This agreement amends the 2009 Sport Team Lease Section 1.1 (i) Team Schedule.

TEAM HOLDS PENDING CITY COUNCIL ACTION

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For each home game, the Tenant and opposing Team shall be entitled to the use and occupancy of the Arena beginning no less than two (2) hours prior to the scheduled commencement of the game and until one and one-half (1 ½) hours after the completion of the Team’s game. Tenant shall provide the Manager reasonable notice of all planned incidental activities related to a home game (including, but not limited to team sponsored ceremonies or celebrations), but in no instance less than seven (7) calendar days prior to the date of the game.

Tenant agrees to adjust the start time of the scheduled game to the extent reasonably possible (and in accordance with applicable League rules and regulations) so that the Manager may coordinate the Arena for other events, or other uses or needs which may develop from time to time.
EXHIBIT E
INSURANCE REQUIREMENTS
SPORTS TEAM LEASE

Tenant shall procure and maintain for the duration of the Term insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives or employees.

Minimum Limits of Insurance:

Tenant shall maintain insurance limits not less than:

1. GENERAL LIABILITY: Two Million Dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage, combined single limit and Four Million Dollars ($4,000,000) aggregate limit, ($4,000,000).

2. AUTOMOBILE LIABILITY: One Million Dollars ($1,000,000) per accident for bodily injury liability and property damage.

3. WORKERS COMPENSATION: As required by State law.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retention must be declared to and approved by the City.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, the Agency, and their officers, officials, employees, and volunteers are to be covered as additional insured on general liability and automobile liability policies as respects: liability out of activities performed by or on behalf of Tenant; premises owned, occupied or used by Tenant; and automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the City, the Agency, and their officers, officials, employees or volunteers.

2. For any claims related to the Team Events, Tenant’s insurance coverage shall be primary insurance as respects City, the Agency, and their officers, officials, employees and volunteers.

3. Any insurance or self-insurance maintained by City, the Agency, and their officers, officials, employees or volunteers shall be excess of Tenant’s insurance and shall not contribute to it.

4. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to City, the Agency, and their officers, officials, employees or volunteers.

5. Tenant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
6. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City.

**Subcontractors:**

Before permitting any subcontractors to perform work under this Lease, Tenant shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by Tenant as may be applied to each subcontractor’s work.

**Acceptability of Insurers:**

Insurance is to be placed with insurers that are admitted insurance carriers in the State of California, or must otherwise be approved by the City.

**Verification of Coverage:**

Tenant shall furnish City with original endorsements of effective coverage for policies on which City is included as an additional insured as required by this Exhibit, and shall furnish original certificates of insurance for all other required policies. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences.

Upon request, Tenant shall furnish City a certified copy of any or all policies of insurance covering the work required under this Lease.
CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 6.04
October 19, 2010

TO: Mayor and City Council

FROM: Pamela Sloan, Director of Community Services

SUBJECT: AGREEMENT WITH THE BOARD OF DIRECTORS OF THE CHILDREN'S MUSEUM OF STOCKTON

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing an agreement with the Board of Directors of the Children's Museum of Stockton, to operate the Children's Museum, and authorize the City Manager to take appropriate actions to carry out the purpose and intent of the resolution.

SUMMARY

The proposed agreement will grant the Children's Museum of Stockton Board of Directors the exclusive right and privilege to operate the Children's Museum of Stockton for five years, subject to renewal of two additional one-year terms. The Board will receive all revenues, which will be used to offset the costs of operating and maintaining the museum.

DISCUSSION

Background

During the 2010/11 budget preparation, the Children's Museum was one of the programs proposed for elimination as part of the 2010 Community Services Department's Budget Reduction Plan. Operation of the museum by the City during the 2010/2011 budget year would have required a direct General Fund subsidy estimated at $115,000. The program was selected to be discontinued, as it is a non-public safety service nor a critical area of city programming. However, the Board expressed interest in operating the museum as they did prior to 2002.

The Children's Museum of Stockton Board of Directors is a non-profit group that started the museum in 1989. In 2002 the Board approached the City to manage the day-to-day operations, and the Board continued with fundraising for exhibit improvements.

Present Situation

The Board has worked with City staff to establish an operating agreement so they can take over day-to-day operations, fundraising, and exhibit improvement. A detailed scope of work was provided to the Board.
AGREEMENT WITH THE BOARD OF DIRECTORS OF THE CHILDREN'S MUSEUM OF STOCKTON

(Page 2)

The proposed agreement would allow the Board to continue operations and maintenance of the museum. Admission and program fees will be set by the Board upon review and approval by the Community Services Department. The Board would receive all revenue from general admission, summer camp, birthday parties, after-hour rentals, fundraising, and merchandise sales to offset the costs of operating and maintaining the museum. The term of the proposed agreement will be for five years, commencing October 19, 2010 and ending on October 18, 2015. The proposed agreement will be subject to renewal for two additional one-year terms by agreement of the Board and the City.

FINANCIAL SUMMARY

The Children’s Museum has required an annual General Fund subsidy of approximately $115,000 for the past two years to cover its annual operating costs. The City’s operating costs include full-time and part-time staff costs, utilities, alarm services, janitorial services, materials and supplies, building maintenance and repair, and other miscellaneous expenses.

The proposed agreement with the Children’s Museum of Stockton Board of Directors for operation of the Children’s Museum will generate an annual savings of approximately $105,000 for the City. The City will continue to incur minor costs of approximately $10,000 per year for administrative costs associated with the management of the operating agreement. These administrative costs include time that will be spent by the Deputy Director and the Recreation Supervisor for the annual review of the facility’s operating plan, fee schedule, and year-end report. Staff is also required to conduct regular site inspections to ensure that the facility is maintained at acceptable standards. Sufficient funds have been budgeted for these costs. The Board will be responsible for all costs associated with the operation and maintenance of the museum.

Respectfully submitted,

[Signature]

PAMELA SLOAN
DIRECTOR OF COMMUNITY SERVICES

APPROVED BY

[Signature]

BOB DEIS
CITY MANAGER

PS:GD:gd/kas

::ODMA\GRPWISE\COS.PR.PR_Library:128053.1
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF STOCKTON AND THE BOARD OF DIRECTORS OF THE CHILDREN'S MUSEUM OF STOCKTON FOR THE OPERATION OF THE CHILDREN'S MUSEUM

The Children's Museum is a City of Stockton (City) subsidized Museum located at 402 West Weber Avenue, Stockton, California; and

The Board of Directors of the Children's Museum of Stockton (Board) is a non-profit group that has worked as a partner with the City to improve the Children's Museum; and

The Board worked with the City to operate the Children's Museum to avoid closure; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is hereby authorized to execute an Agreement between the City of Stockton and the Children's Museum of Stockton Board of Directors for the operation of the Children's Museum for a five-year period, commencing on October 19, 2010, and ending on October 18, 2015, subject to renewal for two additional one-year terms by agreement of both parties.

2. The City Manager is hereby authorized, on behalf of the City of Stockton, to execute the Agreement, a copy of which is attached as Exhibit A and incorporated by this reference.

City Atty
Review
Date October 12, 2010
3. The City Manager is hereby authorized to take the appropriate actions to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED __________________________

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
AGREEMENT
FOR THE OPERATION OF THE CHILDREN'S MUSEUM OF STOCKTON

THIS AGREEMENT is made and entered into on ____________, by and between the CITY OF STOCKTON, a municipal corporation (hereinafter referred to as "CITY") and THE CHILDREN'S MUSEUM OF STOCKTON BOARD OF DIRECTORS, a non-profit corporation (501) (c) (3), EIN 68-0224599, with a business address of 402 West Weber, Stockton, California 95203, (hereinafter referred to as "OPERATOR"), for the operation of THE CHILDREN'S MUSEUM located in San Joaquin County, California (hereinafter referred to as "FACILITY").

RECITALS

Since 2002, the CITY has been operating the FACILITY which consists of hands-on educational exhibits; and

Due to the CITY's current financial condition, it is unable to fund the daily operation of the FACILITY; and

OPERATOR desires to operate the FACILITY as a private non-profit operation; and

OPERATOR will receive all revenue generated by the FACILITY from admissions, memberships, vending machine, donations, and fundraising activities.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the CITY and OPERATOR agree as follows:

1. TERM AND TERMINATION

   CITY hereby grants to OPERATOR the exclusive right and privilege to operate the FACILITY for a five-year period commencing on October 19, 2010, and ending on October 18, 2015. This Agreement shall be automatically renewed for two additional periods of twelve (12) months each, unless either party notifies the other party in writing of its intent not to renew at least 60 days prior to the end of the initial term or any renewal term, as applicable.

   Either party may terminate this Agreement for cause in the event the either party fails to perform any of its material obligations hereunder so as to be in default and fails to cure such default within thirty (30) days after written notice thereof.
2. **RENT**

The OPERATOR will pay rent of One Dollar per year for the exclusive right to operate the FACILITY.

3. **OPERATION OF PREMISES**

   a. **General Operation and Use:** OPERATOR will manage the general day-to-day operation and maintenance of the FACILITY. OPERATOR will be responsible for all costs associated with the operation of the FACILITY.

   b. **Scope of Services:** OPERATOR shall perform the Scope of Services as set forth in Exhibit "A," attached hereto.

   c. **Employees of OPERATOR:** OPERATOR may employ any and all employees or obtain volunteers that OPERATOR deems necessary for the operation, management, and maintenance of the FACILITY. It is understood that all such employees so employed by OPERATOR or its volunteers shall be provided at the sole expense of OPERATOR and shall be the sole responsibility of OPERATOR. It is further understood that none of the employees or volunteers of OPERATOR are or shall be deemed to be employees, agents, or representatives of CITY. OPERATOR shall furnish a list of employees and volunteers engaged to work at the FACILITY to CITY quarterly.

   d. **Mandatory Fingerprinting:** OPERATOR shall comply with the relevant portions of CITY's Administrative Directive HR-40 regarding who must be fingerprinted and what offenses or disqualifiers will prohibit an individual from working at FACILITY. OPERATOR and its employees/volunteers, if applicable, are required to submit fingerprints in a manner authorized by the State of California Department of Justice. OPERATOR and all applicable employees shall submit fingerprints prior to starting work. OPERATOR is responsible for all costs of fingerprinting and background check.

   Any individual who has been convicted of certain criminal offenses (disqualifiers) is not eligible to work at FACILITY. In addition, if any of OPERATOR's employee(s)/volunteer(s) assigned to OPERATOR is/are subsequently found to have a disqualifying conviction, that/those employee(s)/volunteer(s) shall be immediately removed from the FACILITY and shall not be allowed to perform any further work under this Agreement.

   OPERATOR shall confirm in writing to CITY that OPERATOR's employees/volunteers have not been convicted of any of the offenses specified in California Public Resources Code section 5164 or CITY Administrative Directive HR-40.
e. **Rules and Regulations:** OPERATOR shall conform to and enforce all rules and regulations now and hereafter adopted by CITY, San Joaquin County, and State of California for the use and control of FACILITY.

f. **Utilities:** OPERATOR is responsible for the payment of all utilities for FACILITY during the term of this Agreement. This includes but is not limited to: electricity, gas, water, sewer, phone service, alarm service, fire extinguishers, and other utility services as needed.

4. **MERCHANDISE SALES**

OPERATOR is granted the exclusive right to sell merchandise at FACILITY. OPERATOR will comply with all CITY policies and agreements in relationship to contracted vendors and report and pay all required sales taxes.

5. **USE OF EQUIPMENT PROVIDED BY CITY AND INVENTORY**

Prior to the commencement of this Agreement, CITY shall supply OPERATOR with an inventory of equipment, supplies, and other personal property owned by CITY and kept at the FACILITY that may be used by OPERATOR during the term of this Agreement. OPERATOR and CITY shall agree upon inventory during a scheduled walk through. OPERATOR shall have the use of the equipment and existing supplies but shall be responsible for their security, maintenance, repair, and/or replacement. Upon the expiration of the term of this Agreement or its earlier termination, CITY and OPERATOR shall perform a closing inventory.

6. **CONDITION OF PROPERTY AND REPAIRS**

a. **Condition of Property:** OPERATOR accepts the FACILITY “as is” in its existing physical condition, without warranty by CITY, or any duty or obligation on the part of CITY to maintain the FACILITY other than as set forth herein. At the end of the term of this Agreement or its earlier termination, OPERATOR will surrender to CITY the FACILITY in the same condition as when received, less reasonable use and wear and tear, damage caused by an act of God, or by the elements excepted. OPERATOR shall remove any and all equipment and personal property of the OPERATOR, except however, the CITY and OPERATOR agree that CITY may remove said property and bill the cost of removal and/or storage, if necessary, to OPERATOR, who agrees to be responsible for such costs. The CITY and OPERATOR will conduct a video inventory of the FACILITY prior to October 19, 2010. Each agency will receive a copy of said inventory.

b. **Daily Operation:** OPERATOR shall be responsible for all day-to-day operations of the FACILITY.

c. **Maintenance of Premises:** OPERATOR shall be responsible for all maintenance associated with the FACILITY, including but not limited to, landscape
maintenance, buildings, janitorial, plumbing, roof, painting of building, electrical, heating and air conditioning, mechanical systems, sewer, and water source. OPERATOR may hire or contract with any qualified company to perform the maintenance related to the building. All costs associated with maintaining the building are the sole responsibility of the OPERATOR. OPERATOR shall maintain the FACILITY and parking lot in a clean and sanitary condition at all times.

d. Repairs: OPERATOR agrees that CITY shall have no responsibility for any repairs, maintenance, or work to the FACILITY, including but not limited to, repairs to any buildings, fixtures, equipment, plumbing, roof, painting of the building, electrical or mechanical systems, and parking area.

e. Alterations and Additions: OPERATOR shall not make any structural alterations, additions, or improvements to FACILITY without first having secured prior written consent of CITY. Any alterations, additions, removal of permanent exhibits, or changes including painting of the building requested by OPERATOR and approved by CITY shall be made at the sole expense of OPERATOR and shall, upon termination of this Agreement, become the property of City, unless otherwise agreed in writing.

f. If OPERATOR vacates the property prior to the expiration of said Agreement, OPERATOR is responsible for any cost or repairs that occurred during their occupancy.

7. PERMITS, LICENSES, AND AGREEMENTS

OPERATOR shall obtain at OPERATOR's own expense any and all permits, licenses such as a City of Stockton business license, and agreements which may be required to operate the FACILITY and/or are required by law, to operate the FACILITY and any other use allowed by this Agreement. The OPERATOR agrees to comply with the CITY's Special Event Permit process for any and all special events.

8. NOT A CONTRACT OF EMPLOYMENT

It is understood and agreed that this is not a contract of employment and no employer and employee relationship exists between CITY and OPERATOR or any of OPERATOR's employees or volunteers.

9. NOTICES

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally served or sent by certified mail or express or overnight delivery, postage prepaid, addressed to the respective parties as follows:
TO CITY: City of Stockton  
       Attn: Adolfo Cruz, Deputy Director of Community Services  
       605 N El Dorado St.  
       Stockton, CA  95202

TO OPERATOR: Children's Museum Board of Directors  
             402 West Weber  
             Stockton, California 95203

10. **DEBT LIABILITY DISCLAIMER**

    CITY is not liable for any debts or claims that arise from the obligations of OPERATOR.

11. **INDEMNIFICATION**

    OPERATOR shall indemnify, defend, and hold harmless CITY, its officers, agents, and employees from any claim, expense, liability, or payment for any injury or damage to any person or property to the extent caused by OPERATOR's willful misconduct or negligent performance of its duties pursuant to this Agreement.

12. **INSURANCE**

    OPERATOR shall adhere to CITY's insurance requirements as set forth in Exhibit "B," attached hereto.

13. **WORKERS' COMPENSATION**

    In accordance with the provisions of Section 3700 of the California Labor Code, OPERATOR shall secure at its own expense and maintain during the life of this Agreement, workers' compensation coverage for its employees as necessary to protect OPERATOR and its employees under the Workers' Compensation Insurance and Safety Act, including coverage under United States Longshore and Harbor Workers' Act, when applicable. Such insurance shall be in a standard form and shall relieve CITY of all responsibility for such claims and/or liability. OPERATOR shall, prior to undertaking the work contemplated herein, supply CITY with a certificate of insurance evidencing that said coverages are in full effect.

14. **MEDIATION**

    Any claims, disputes, or controversies arising out of, or in relation to, the interpretation, application, or enforcement of this Agreement may be submitted to non-binding mediation prior to the initiation of any suit or other litigation. The cost of said mediation shall be split equally between the parties.
15. **NON-DISCRIMINATION**

In performing services under this Agreement, OPERATOR shall not discriminate in the employment of its employees or in the engagement of any subcontractor of OPERATOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

16. **ASSIGNMENT**

OPERATOR shall neither assign nor delegate its rights and/or duties under this Agreement without first obtaining CITY's written consent to the assignment and/or delegation. Any such assignment or delegation made by OPERATOR without prior written consent of CITY will render this Agreement voidable at the sole discretion of CITY.

17. **APPLICABLE LAW**

The provisions of this Agreement and any and all disputes arising therefrom shall be governed by the laws of the State of California.

18. **CAPTIONS**

The captions of the sections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

19. **INTEGRATION AND MODIFICATION**

This Agreement represents the entire integrated agreement between CITY and OPERATOR, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by CITY and OPERATOR.

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

20. **SEVERABILITY**

The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.
21. **THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CITY and OPERATOR.

22. **AUTHORITY**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and OPERATOR have executed this Agreement as of the date first above written.

ATTEST:

KATHERINE GONG MEISSNER
CITY CLERK

CITY OF STOCKTON, a
Municipal Corporation

By _________________________

BOB DEIS
CITY MANAGER - "CITY"

CHILDREN'S MUSEUM BOARD OF
DIRECTORS

By _________________________

DIANE BATRES
President

"OPERATOR"

APPROVED AS TO FORM
AND CONTENT:

JOHN LUEBERKE
CITY ATTORNEY

LORI S. WHITTAKER
Deputy City Attorney
MANAGEMENT OPERATION AND MAINTENANCE FOR THE CHILDREN’S MUSEUM OF STOCKTON
“SCOPE OF SERVICES”
EXHIBIT “A”

1.0 SCOPE OF SERVICES

The City’s intent is that the Children’s Museum be used to its full capacity to serve the families and schools in our community. It is expected that the OPERATOR will be responsible for the management and operation of the Museum, including, but not limited to, general admission, birthday parties, summer camp, facility rentals, field trips, marketing, and maintenance of building interior and exterior. The OPERATOR will also be responsible for all expenses associated with the management, operations and maintenance of the Children's Museum.

The Museum is 22,000 square feet. The facility consisting of the following:

- Two Birthday Party rooms
- Art Studio
- A finished storage room plus an additional room for storage
- Janitors room for cleaning equipment
- A stage for performances
- Exhibits
  - Fire Truck and 6 televisions
  - Police Car and Motorcycle
  - Food 4 Less
  - NEWS10 with two televisions
  - Eye Exhibit with 1 television
  - Hospital with x-ray machine
  - Safety City
  - RTD Bus
  - Storm Water
  - Helicopter
  - Three Aquariums
  - Toddler Area
  - Recycling Area
  - Movie Theater with 1 television and DVD player
  - Magnetic Wall
  - Bank
  - Post Office
  - Shoe Store

- A reception area with cash register
- 1 Snack vending machine, 2 Coke-A-Cola machines
- 1 fax machine, 1 copy machine
2.0 MUSEUM MANAGEMENT

2.1 Administration

The OPERATOR shall provide, formulate, implement, and manage all program operations, financial management, and maintenance program of the museum.

2.2 Program Operation

The OPERATOR shall provide, on an annual basis, a program operation plan including a fee schedule for the City's review and approval, to include, but not limited to, days of operation, hours of operation, classes, traveling exhibits, special events, community outreach programs, birthday parties and private parties, marketing; and any other services or programs offered in the museum. The purpose of this annual plan is to ensure the Museum is used to its full potential and achieve the City's goal to serve the needs of our community. This shall also include annual budget plan and a list of program/rental fees.

i. 402 West Weber is to be used as a Children's Museum. Any other uses must be approved in writing by the City.

ii. Alcohol is not permitted in the Children's Museum of Stockton. The OPERATOR may serve alcohol at Board sponsored events as long as all attendees are over 21 years old. Special Events including Alcohol will follow all permit requirements set forth by the CITY and COUNTY.

iii. OPERATOR will be responsible for all expenses associated with the Museum including, but not limited to; utilities, water, electricity, maintenance interior and exterior, landscaping, parking lot maintenance, janitorial, marketing and personnel.

iv. City and OPERATOR staff liaisons will maintain an open line of communication to discuss programming and facility needs and will meet quarterly to discuss any issues related to this agreement.

2.3 Financial Management

The OPERATOR is required to prepare and maintain financial documents necessary for the operation of the Museum. This includes preparing, updating,
and maintaining accounting records to report true and correct expenditures; profit or loss in accordance with Generally Accepted Accounting Principles.

i) Annual Report: OPERATOR shall maintain all operating expenses and revenue documents, including, but not limited to, expense receipts, invoices, ledgers, sale receipts, payroll and payroll tax returns, sales tax returns; and any other records reasonably necessary to verify gross revenue. Annual financial statements consisting of balance sheet, income statement (profit/loss), statement of retained earnings, and statement of cash flows shall be submitted to the City within ninety (90) days of the fiscal year end. OPERATOR shall also include a listing of all OPERATOR-owned equipment located at the Museum, with the date of acquisition, cost, and accrued depreciation.

ii) Audit: OPERATOR shall maintain records available for an audit. The City shall have the right, within a 30 day written notice, to audit the Board’s financial documents, to cause an audit of the records at the City’s expense, to make abstracts from the records, to make copies of all records, and to examine any and all licenses.

Location of Records: OPERATOR shall make available any financial records requested by City even if not maintained/ stored within city limits.

3.0 MUSEUM MAINTENANCE

3.1 Maintenance

OPERATOR shall be responsible for all building maintenance interior and exterior; janitorial, lighting, and overall general maintenance; and this shall include parking lot maintenance and graffiti abatement to preserve the Museum in operable and aesthetically sound condition.

i) Site Inspections: The City shall reserve its right to inspect the museum to ensure the area is maintained to acceptable standards. The City shall inform OPERATOR of any deficiencies and shall require the OPERATOR to correct within 24-hours.
EXHIBIT B
INSURANCE REQUIREMENTS
CHILDRENS MUSEUM OPERATOR

OPERATOR (HEREIN OPERATOR) shall procure and maintain for the duration of the Operating Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the operation and use of the premises. The cost of such insurance shall be borne by the Operator. Operator shall agree to waive right of recovery against the City of Stockton (CITY).

Minimum Limits of Insurance: Operator shall maintain limits not less than:

- **GENERAL LIABILITY:**
  $1,000,000 per occurrence, $2,000,000 General aggregate, for bodily injury, personal injury and property damage, including Contractual Liability and Fire Legal Liability ($100,000). If commercial General Liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to this project location.

- **EXCESS LIABILITY:** $2,000,000 Excess Liability

- **COMMERCIAL AUTOMOBILE:**
  $1,000,000 per occurrence, combined single limit, for bodily injury liability and property damage liability.

- **WORKERS COMPENSATION:**
  Statutory Limits, including employers Liability not less than $1,000,000 per occurrence (BI/DISEASE).

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to the approval by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, agents, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses to satisfy the Deductible and or Self-Insured Retention.

Other Insurance Provisions: Each policy is to contain, or be endorsed to contain, the following provisions:

1. “The City of Stockton (CITY), its officers, agents, employees and volunteers” are to be covered as additional insured’s with respect to liability arising out of operations, maintenance or use of that part of the premises leased to the lessee.

2. The Operator’s insurance coverage shall be primary insurance as respects “The City of Stockton, its officers, agents, employees and volunteers.” Minimum Required Limits of Insurance shall not serve to reduce the liability of the Operator’s insurer nor the operator. Any insurance or self-insurance maintained by the CITY, its, officers, agents, employees, or volunteers shall be excess of the Operator’s insurance and shall not contribute with it.
3. Policies shall waive right of recovery against the CITY.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be contributory by the CITY, nor may it be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

5. For General Liability both forms: Additional Insured form at least as broad as ISO form CG 20 11 11 85 (Modified) (sample attached) is required.

6. Certificates and Endorsements shall be sent to:
   CITY OF STOCKTON
   ATTN: Risk Services
   425 N. El Dorado Street
   Stockton, CA 95202

   **Acceptability of Insurers:** Insurance shall be placed with California Admitted insurers with a current A.M. Best’s rating of no less than A: VII.

   **Verification of Coverage:** Lessee shall furnish the CITY with original certificates and amendatory additional insured endorsements effecting coverage required by this Lease. The endorsements should be on forms provided by the CITY (sample attached) or if on other than the CITY’s forms provided those endorsements or policies shall conform to ACCORD and ISO standards and requirements and the requirements of this agreement. All certificates and endorsements are to be received and approved by the CITY before occupancy or operations occur. The CITY reserves the right to be provided complete certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

   **Subcontractors, Sub-lessees, Vendors, Exhibitors:** Lessee shall include all subcontractors, sub-lessees, vendors, and exhibitors as insured’s under its policies or if Lessee elects to rely upon insurance provided by subcontractors, sub-lessees, vendors and exhibitors (herein “Sub-lessees”), Lessee shall require all sub-lessees to provide certificates of insurance and Additional Insured endorsements that satisfy all requirements listed in paragraphs A, B, C and D above. Sub-lessees shall provide said insurance evidence to Lessee, however upon CITY’s request Lessee shall furnish separate certificates and additional insured endorsements for each sub-lessee to the CITY for review and approval.

   **Deviation from Requirements:** Any requested deviations from the above Insurance Requirements must be submitted to the CITY Risk Services, (209) 937-8682, Fax (209) 937-8833.
Reproduction of Insurance Services Office, Inc. Form (Modified)

INSURER:

POLICY NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

1. Designation of Premises (Part Leased to You):
2. Name of person or Organization (Additional Insured): City of Stockton, its Council, Officers, Agents, Employees, Authorized Representatives, and Volunteers are Additional Insured's.
3. Additional premium:

WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alteration, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. This insurance shall be primary as respects the City of Stockton (CITY) or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the CITY shall be in excess of this insurance and shall not be called upon to contribute with it.
2. The insurance afforded by this policy shall not be canceled, changed, or modified except after thirty (30) day advance written notice has been given to the CITY. (10 days advance written notice for non-payment of premium).
3. The Insurer named above waives any right of recovery the Insurer may have against the CITY when the Insured has agreed to such waiver in writing prior to the loss.

__________________________________________________________
Signature – Authorized Representative of Insurer

__________________________________________________________
Name of Insurance Company

CG 20 11 11 85 Insurance Services Office, Inc. Form (Modified)
CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 6.05
TO: Mayor and City Council

FROM: Gustavo A. Durán, Interim Director
       Economic Development Department

SUBJECT: AUTHORIZE ACQUISITION OF A PERMANENT WATERLINE EASEMENT
         FOR THE DELTA WATER SUPPLY PROJECT

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the acquisition of a permanent waterline easement for the Delta Water Supply Project located adjacent to Davis Road at a total cost of $1,000.

Summary

On November 8, 2005, the City Council adopted Resolution No. 05-1493 approving the Delta Water Supply Project and associated environmental documents and directed City staff to proceed with the design, financing, and permitting for the project. City Council further directed City staff to bring back for Council consideration certain items, including authorization to acquire any interests in land at such time as it is appropriate for the City to take further actions to proceed with the project. On August 4, 2009, the City Council approved Resolution No. 09-0265 authorizing the negotiation of real property for raw and treated pipelines for the project. The proposed acquisition is for the freshwater pipeline connection with the present City water distribution system further to the south. An agreement has now been negotiated with the San Joaquin Area Flood Control Agency for the acquisition of the property rights adjacent to Davis Road on parcel APN # 070-090-18 in the amount of $1,000 (map attached).

DISCUSSION

Background

On November 8, 2005, the City Council adopted Resolution No. 05-1493 approving the Delta Water Supply Project and associated environmental documents and directed City staff to proceed with the design, financing, and permitting for the project. City Council further directed City staff to bring back for Council consideration certain items, including authorization to acquire any interests in land at such time as it is appropriate for the City to take further actions to proceed with the project. On June 2, 2009, the City Council approved Resolution No. 09-0151 authorizing the negotiation of real property for the intake and pump station for the project and on August 4, 2009, approved Resolution No. 09-0265 authorizing the negotiation of real property for the raw and treated pipelines for the project. The proposed acquisition is for the freshwater pipeline connection with the present City water distribution system further to the south.
AUTHORIZE ACQUISITION OF A PERMANENT WATERLINE EASEMENT FOR THE
DELTA WATER PROJECT

(Page 2)

Present Situation

The owner of the property, San Joaquin Area Flood Control Agency, has agreed to the
negotiated price in the amount of $1,000 and no additional funds will be necessary for
closing costs.

ENVIRONMENTAL CLEARANCE

Environmental Clearance for this project was approved by Resolution No. 05-0493,
adopted on November 8, 2005, and said project is in compliance with the General Plan.

FINANCIAL SUMMARY

The cost of the acquisition is $1,000 will be paid from Multi-funded Capital Improvement
Project Account No. 399-9922-670, Delta Water Supply Project and no additional funds
will be necessary for closing costs.

Respectfully submitted,

[Signature]

GUSTAVO A. DUÑÁN, INTERIM DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

GD:AH:at

Attachments

APPROVED

[Signature]

BOB DEIS
CITY MANAGER
VICINITY MAP

San Joaquin Area
Flood Control
APN: 070-090-18
Resolution No. ____________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING ACQUISITION BY THE CITY OF STOCKTON OF A PERMANENT WATERLINE EASEMENT INTEREST, VIA AN EASEMENT DEED HEREAFTER MORE PARTICULARLY DESCRIBED, AND AUTHORIZING EXECUTION OF THE AGREEMENT AND RELATED DOCUMENTS FOR THE DELTA WATER SUPPLY PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. It is hereby declared that the City's acquisition of a Waterline Easement from the San Joaquin Area Flood Control Agency, via an Easement Deed, for the Delta Water Supply Project is necessary for a public purpose, to wit:

   WATER LINE, WATER SUPPLY FACILITIES AND IMPROVEMENTS

2. The City of Stockton hereby authorizes its acquisition of a Permanent Waterline Easement from the San Joaquin Area Flood Control Agency, via an Easement Deed, for the Delta Water Project, more particularly described in the Agreement for Purchase and Sale of Real Property Interest, a copy of which is attached as Exhibit “A” and incorporated by this reference.

3. The City Council hereby approves the total purchase price of said easement to be acquired in the sum of $1,000.

4. The transfer of real property for valuable consideration of this acquisition is hereby authorized and approved as stated in the Agreement.

5. The specific terms and conditions of this acquisition are as expressly provided in the attached Agreement and incorporated by this reference.

6. Environmental Clearance for this project was approved by Resolution No. 05-0493, adopted on November 8, 2005, and said project is in compliance with the General Plan.

City Atty: ____________________
Review: ____________________
Date: October 12, 2010
7. The City Manager is hereby authorized and directed to execute the Agreement and any documents necessary to carry out the purposes hereof, and the City Attorney is directed to cause the recordation of the appropriate documents.

PASSED, APPROVED and ADOPTED ____________________________.

__________________________
ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

__________________________
KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY INTERESTS

This AGREEMENT dated ____________, 2010, is made and entered into by and between THE CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, hereinafter called "Buyer", and SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity, hereinafter called "Seller".

WITNESSES THAT:

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Seller agrees to grant to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions herein set forth, a permanent waterline easement for construction, operation and maintenance of a water pipeline in Seller's real property situated in the County of San Joaquin, State of California, described as San Joaquin County Assessor's Parcel Number APN 070-090-18 and as described in Exhibit "A", attached hereto and incorporated by this reference (hereinafter called "the Property").

2. The total purchase price for the easement interest in the Property shall be the sum of ONE THOUSAND DOLLARS ($1,000.00). The purchase price is based upon an appraisal of the fair market value of the Property. The appraisal made no attempt to assign value to any lesser interest in the Property, including any leasehold estate. The purchase price, therefore, is the total price for the easement interest in the Property without distinction or separation for various interests that may be held in the Property. Seller shall be responsible for any apportionment or allocation of the purchase price if required for separately held interests that may exist.

3. Except as otherwise expressly provided herein, all costs of title insurance and documentary transfer taxes, if any, shall be paid by Buyer.

4. Title to the easement interest in the Property shall be delivered free and clear of all liens, encumbrances, conditions, restrictions, easements, rights of possession, and leasehold interests excepting only such matters of title specifically waived in writing by the Buyer. Seller shall provide Buyer with a Release of Lien or Consent to Easement from each holder of a mortgage and/or deed of trust that is a lien against the Property. The balance of the unpaid principal and interest due on any note or notes secured by mortgages, deeds of trust, or other lien on the subject property, up to and including the amount to be paid Seller under the terms of this Agreement, shall be deducted from the purchase price and paid to the persons or entities entitled thereto, if they so require. Seller shall provide Buyer with a Consent to Easement from each Lessee having a leasehold interest in the Property, or from any other party claiming to have an interest in the Property. Those matters of title specifically waived by the Buyer are as follows:

Page 1 of 7

EXHIBIT A

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(a) Current property taxes, including general and special taxes and assessments collected therewith, which shall be allocated pursuant to applicable sections of the Revenue and Taxation Code;

(b) The lien of supplemental taxes, if any, assessed pursuant to the provisions of chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California;

(c) Such other matters affecting title to, or use of, the Property which are approved in writing by Buyer.

5. Taxes, assessments, penalties, interest charges, delinquency charges, and municipal service charges of every kind levied upon or assessed against the Property, except as otherwise expressly set forth herein or arising from the subject property interests being acquired, shall be paid by Seller.

6. For the purpose of conveying the easement interest in the Property to Buyer, Seller shall execute, acknowledge, and deliver to Buyer an easement deed for the permanent waterline easement interest described in Clause 1, above, for recordation in accordance with this Agreement. A copy of the easement deed is attached hereto as Exhibit "B".

7. License to Enter. Seller hereby grants to Buyer, its employees, agents, and contractors, permission to enter upon the Property prior to the Close of Escrow for the purpose of constructing the Delta Water Supply Project and accomplishing all incidents necessary thereto. It is understood that this permission is not a waiver in any way of the right of compensation for the Property that is the subject of this agreement or of any remedy authorized by law to secure payment thereof, or a waiver of any right to seek just compensation for the property rights to be granted. The right of the Buyer to enter said property shall commence upon the effective date of this agreement and shall remain in effect until it is terminated by mutual agreement or until the Delta Water Supply Project improvements have been completed in the vicinity of Seller's property. Buyer shall indemnify and hold Seller harmless from liability resulting from Buyer's use and occupancy of said property under this provision. Seller agrees to notify its tenants, if any, of Buyer's right to enter the Property.

8. Buyer understands and agrees that its construction of the Delta Water Supply Project on the Property shall be performed in a manner that protects Seller's existing flood control structures and Buyer shall repair or replace any such structures damaged by its project at Buyer's sole cost and expense. Buyer understands and agrees that upon completion of its project, it will leave the Property free of debris and return the Property surface to conform to grades existing prior to the project. Buyer further agrees that its backfill material will not adversely affect the performance of existing levees. Buyer shall obtain all necessary regulatory permits as may
be required for its project work on the Property and shall coordinate its
dev construction activities to avoid conflict with the nearby Davis Road Bridge
Project. Seller's access to existing levees shall be maintained at all times.

9. Seller hereby states that, to the best of Seller's knowledge, during the
period of Seller's ownership of the Property, there have been no known
underground storage tanks or related equipment nor known existence,
disposal, storage, releases or threatened releases of hazardous materials,
substances or hazardous wastes on, from or under the Property. Seller
further represents that Seller has no knowledge of any underground storage
tanks or related equipment nor knowledge of the existence, disposal,
release, or threatened release of hazardous materials, substances or
hazardous wastes, on, from, or under the Property which may have
occurred prior to Seller taking title to the Property.

The term "hazardous materials" when used in this Agreement shall mean
any hazardous waste or hazardous substance as defined in any federal,
state, or local statute, ordinance, rule, or regulation applicable to the
property, including, without limitation, the Comprehensive Environmental
Response, Compensation, and Liability Act of 1980, as amended (Title 42
United States Code sections 9601-9675), the Resource Conservation and
Recovery Act (Title 42 United States Code sections 6901-6992k), the
Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and
Safety Code sections 25300-25395.15), the Hazardous Waste Control Law
(Health and Safety Code sections 25100-25250.25), and any state and
federal underground tank laws, rules and regulations. "Hazardous
materials" shall also include asbestos or asbestos-containing materials,
radon gas, and petroleum or petroleum fractions, whether or not defined as
a hazardous waste or hazardous substance in any such statute, ordinance,
rule, or regulation.

The acquisition price of the easement interest in the Property being
acquired in this transaction reflects the negotiated value for the Property
without the presence of contamination. If the Property being acquired is
found to be contaminated by the presence of hazardous substances or
materials which require mitigation under federal or state law, Buyer may
elect to recover its cleanup costs from those who caused or contributed to
the contamination. If Buyer should discover any hydrocarbonous
substances or any hazardous substances or materials (as determined under
federal, state or local law then in effect), asbestos or asbestos-bearing
materials or other environmental condition subject to legal requirements for
investigation, corrective or remedial action on, in or under the Property,
Buyer shall immediately notify Seller in writing of the same, and if such
discovery is made after the Close of Escrow, Buyer shall cause the
condition to be corrected or remedied in accordance with applicable law.
The representations and promises made in this Clause No. 9 are intended to, and shall survive the execution, delivery and recordation of the deed referenced in Clause No. 6, above.

10. Buyer warrants to Seller that Buyer has not used the services of a real estate broker for which Seller will be charged a fee or commission. Seller shall be responsible at Seller’s sole expense for real estate brokerage fees or commissions, if any.

11. Seller and Buyer shall, upon request by the other, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the spirit and intent of this Agreement.

12. Time is of the essence in this Agreement.

13. In the event that Seller is unable to convey the easement interest in the Property to Buyer as herein provided prior to August 30, 2010, then Buyer, at its option, may terminate and cancel this Agreement and, in such event, neither Seller nor Buyer shall in any manner be further obligated by the terms of this Agreement.

14. If suit should be brought for any sum due or the enforcement or declaration of any right or obligation hereunder, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney’s fees.

15. Any notice which either party may or is required to give shall be in writing and given by personal delivery or mailing same by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time, and any notice so mailed shall be deemed received on the third day after mailing.

Buyer’s address: City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Attn: City Manager

with copy to: Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206
Attn: Director

Seller’s address: San Joaquin Area Flood Control Agency
22 E Weber Avenue, 3rd Floor
Stockton, CA 95202
16. This Agreement is subject to final approval of the City Council of the City of Stockton.

17. Seller represents, warrants and covenants to Buyer as of the date of this Agreement and as of the date of the recording of the deed referenced in Clause No. 6, above, (the "Close of Escrow"), as follows:

a. No Condemnation. To the best of the Seller's knowledge, there are no pending or threatened condemnations or similar proceedings affecting the Property, or any portion thereof, nor does the Seller have any knowledge that any such action is contemplated.

b. No Proceedings. To the best of the Seller's knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the Property. Seller has not received and is not aware of any notice from any public buyer or entity with respect to any current or future proceeding against or basis for any future proceeding against or affecting the Property or any part of the Property, or concerning any existing or potential, past, present or future hazardous materials at the Property.

c. No Violation of Law. Seller represents and warrants that, to the best of the Seller's knowledge, as of the date of this Agreement and as of the Close of Escrow, the Property is not in violation of any law, ordinance or regulation of any governmental authority including those relating to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

d. Clear Title. Seller represents and warrants that Seller is the owner of the Property and has marketable and insurable fee simple title to the Property free of restrictions, leases, liens and other encumbrances, except for the exceptions permitted pursuant to Clause No. 4, above. During the term of this Agreement, Seller shall not convey or accept any offer to convey the Property or any portion of the Property nor shall Seller encumber or permit encumbrance of the Property in any way nor grant any property, contract or occupancy right relating to the Property or any portion thereof without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

e. Contracts. Seller hereby covenants, represents, and warrants that at the Close of Escrow, there will be no contracts, licenses, commitments, or undertakings concerning maintenance, operation, or repair of the Property or equipment on the Property, or the performance of services on the Property, including payment for such services performed prior to Close of Escrow, or the use of the
Property or any part of it, by which Buyer would become obligated or liable to any person. If any person or entity makes a lawful claim for payment for services performed prior to Close of Escrow (other than services provided to Buyer), Seller will be obligated to pay or cause to be paid such claim prior to Close of Escrow, subject to Seller's right to contest the validity of such claim. If any such claim for services performed prior to Close of Escrow (other than services provided to Buyer) is made after the Close of Escrow, Seller shall indemnify, defend, and hold Buyer harmless from any and all claims, demand, or liability. This duty of defense and indemnification shall survive the Close of Escrow.

f. No Default. Seller hereby covenants, represents, and warrants that, to the best of Seller's knowledge and belief, Seller has received no notice of any default under any contract, transaction, agreement, encumbrance, or instrument pertaining to the Property, which has remained uncured as of the date of this Agreement. The obligation to notify Buyer of notices of default shall extend to the Close of Escrow.

g. Indemnification. Seller agrees to indemnify, defend, and hold Buyer harmless for breach of the warranties set forth above in subsections (a) through (f) of this Clause No. 17.

18. Page numbering references in this agreement do not apply to exhibits or other attachments. Diagrams, maps and/or drawings attached to this agreement, if any, are provided for illustrative purposes only. In the event of conflict with a written description, the written description shall control.

19. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

20. This agreement represents the entire and integrated agreement between Seller and Buyer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Seller and Buyer.
21. The undersigned represent and warrant they are duly authorized to execute this Agreement and to bind the parties.

Dated: 9-15-10

"SELLER"

SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity

By: [Signature]

Printed Name: James Gootman

Title: Executive Director

APPROVED AS TO FORM AND CONTENT:

By: [Signature]

SCOTT L. SHAPIRO, Legal Counsel for the San Joaquin Area Flood Control Agency

"BUYER"

CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California

By: [Signature]

ROBERT DEIS
CITY MANAGER

APPROVED AS TO FORM AND CONTENT:

By: [Signature]

JOHN LUEBERKE
INTERIM CITY ATTORNEY

::ODMAIGRPWISECOS.PW.PW_Library:166284.1
EXHIBIT A

The land referred to is situated in the County of San Joaquin, City of Stockton, State of California, and is described as follows:

A portion of that 25.287 acre parcel as shown on that certain Record of Survey filed for record in Book 31 of Surveys at Page 19, San Joaquin County Records, located in the Northwest one-quarter of Section Four, Township Two North, Range Six East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at the intersection of the east right-of-way line of Davis Road (82-feet wide) and the Northerly line of said 25.287 acre parcel; thence South 89° 14' 57" East along said Northerly line, 80.61 feet; thence South 27° 19' 25" West, 44.20 feet to the beginning of a tangent 65.00-foot radius curve to the right; thence Southerly along said 65.00-foot radius curve, having a central angle of 47° 43' 54" an arc length of 54.15 feet and a long chord that bears South 51° 11' 22" West 52.60 feet thence South 75° 03' 19" West, 14.38 feet to said East right-of-way line; thence North 04° 02' 27" West, along said East right-of-way line, 77.10 feet to the POINT OF BEGINNING.

APN: 070-090-18
EXHIBIT “B”
FORM OF EASEMENT DEED

When Recorded, Return to:
City of Stockton
425 N. El Dorado Street, 3rd Floor
Stockton, CA 95202

APN 070-090-18

EASEMENT DEED TO THE CITY OF STOCKTON

THIS EASEMENT DEED, made this ___ day of ___________ 2010, by and between SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity, GRANTOR, and the CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, CITY,

WITNESSETH

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, GRANTOR hereby grants to CITY an easement for the installation, construction, operation, maintenance, repair and replacement of a City of Stockton water pipeline, and incidents necessary thereto, in, on, over, across, under, and through the following described real property situate, lying and being in the City of Stockton, County of San Joaquin, State of California, more particularly described as follows:

See Exhibit "A", attached hereto

IN WITNESS WHEREOF, GRANTOR has hereunto set its hand the day and year first hereinabove written.

"GRANTOR"

DATED: ______________

SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity

By: ________________________________

Printed Name: ________________________________

Title: ________________________________
EXHIBIT A

The land referred to is situated in the County of San Joaquin, City of , State of California, and is described as follows:

A portion of that 25.287 acre parcel as shown on that certain Record of Survey filed for record in Book 31 of Surveys at Page 19, San Joaquin County Records, located in the Northwest one-quarter of Section Four, Township Two North, Range Six East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at the intersection of the east right-of-way line of Davis Road (82-feet wide) and the Northerly line of said 25.287 acre parcel; thence South 89° 14' 57" East along said Northerly line, 80.61 feet; thence South 27° 19' 25" West, 44.20 feet to the beginning of a tangent 65.00-foot radius curve to the right; thence Southerly along said 65.00-foot radius curve, having a central angle of 47° 43' 54" an arc length of 54.15 feet and a long chord that bears South 51° 11' 22" West 52.60 feet thence South 75° 03' 19" West, 14.38 feet to said East right-of-way line; thence North 04° 02' 27" West, along said East right-of-way line, 77.10 feet to the POINT OF BEGINNING.

APN: 070-090-18
RESOLUTION NO. SJAFCA 10-17

SAN JOAQUIN AREA
FLOOD CONTROL AGENCY

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RESOLUTION AUTHORIZING AN AGREEMENT FOR ACQUISITION
OF A PERMANENT EASEMENT ON SJAFCA OWNED PROPERTY
IDENTIFIED AS PARCEL NUMBER 070-090-18 FOR THE DELTA
WATER SUPPLY PROJECT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN JOAQUIN
AREA FLOOD CONTROL AGENCY, AS FOLLOWS:

1. That an agreement with the City of Stockton for the acquisition of a
permanent easement at 10828 N. Davis Road, Stockton, CA (San Joaquin County
Assessor's Parcel Number 070-090-18) is approved.

2. That the said permanent easement covers the entire SJAFCA parcel
(4,138 square feet).

3. That compensation to SJAFCA in the amount of $1,000 (ONE
THOUSAND DOLLARS) for a permanent easement is approved.

4. That a copy of the agreement is attached as Exhibit "A" and incorporated
by this reference.

PASSED, APPROVED AND ADOPTED this ___8___th day of ___September___, 2010.

[Signature]
for DIANA LOWERY, Chairperson
of the San Joaquin Area
Flood Control Agency

ATTEST:

[Signature]
JAMES B. GIOOTTINI, Secretary
of the San Joaquin Area
Flood Control Agency

APPROVED AS TO FORM:

[Signature]
SCOTT L. SHAPIRO, Legal Counsel
for the San Joaquin Area
Flood Control Agency
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY INTERESTS

This AGREEMENT dated _____________, 2010, is made and entered into by and between THE CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, hereinafter called "Buyer", and SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity, hereinafter called "Seller".

WITNESSES THAT:

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Seller agrees to grant to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions herein set forth, a permanent waterline easement for construction, operation and maintenance of a water pipeline in Seller’s real property situated in the County of San Joaquin, State of California, described as San Joaquin County Assessor’s Parcel Number APN 070-090-18 and as described in Exhibit “A”, attached hereto and incorporated by this reference (hereinafter called "the Property").

2. The total purchase price for the easement interest in the Property shall be the sum of ONE THOUSAND DOLLARS ($1,000.00). The purchase price is based upon an appraisal of the fair market value of the Property. The appraisal made no attempt to assign value to any lesser interest in the Property, including any leasehold estate. The purchase price, therefore, is the total price for the easement interest in the Property without distinction or separation for various interests that may be held in the Property. Seller shall be responsible for any apportionment or allocation of the purchase price if required for separately held interests that may exist.

3. Except as otherwise expressly provided herein, all costs of title insurance and documentary transfer taxes, if any, shall be paid by Buyer.

4. Title to the easement interest in the Property shall be delivered free and clear of all liens, encumbrances, conditions, restrictions, easements, rights of possession, and leasehold interests excepting only such matters of title specifically waived in writing by the Buyer. Seller shall provide Buyer with a Release of Lien or Consent to Easement from each holder of a mortgage and/or deed of trust that is a lien against the Property. The balance of the unpaid principal and interest due on any note or notes secured by mortgages, deeds of trust, or other lien on the subject property, up to and including the amount to be paid Seller under the terms of this Agreement, shall be deducted from the purchase price and paid to the persons or entities entitled thereto, if they so require. Seller shall provide Buyer with a Consent to Easement from each Lessee having a leasehold interest in the Property, or from any other party claiming to have an interest in the Property. Those matters of title specifically waived by the Buyer are as follows:
(a) Current property taxes, including general and special taxes and assessments collected therewith, which shall be allocated pursuant to applicable sections of the Revenue and Taxation Code;

(b) The lien of supplemental taxes, if any, assessed pursuant to the provisions of chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California;

(c) Such other matters affecting title to, or use of, the Property which are approved in writing by Buyer.

5. Taxes, assessments, penalties, interest charges, delinquency charges, and municipal service charges of every kind levied upon or assessed against the Property, except as otherwise expressly set forth herein or arising from the subject property interests being acquired, shall be paid by Seller.

6. For the purpose of conveying the easement interest in the Property to Buyer, Seller shall execute, acknowledge, and deliver to Buyer an easement deed for the permanent waterline easement interest described in Clause 1, above, for recordation in accordance with this Agreement. A copy of the easement deed is attached hereto as Exhibit "B".

7. License to Enter. Seller hereby grants to Buyer, its employees, agents, and contractors, permission to enter upon the Property prior to the Close of Escrow for the purpose of constructing the Delta Water Supply Project and accomplishing all incidents necessary thereto. It is understood that this permission is not a waiver in any way of the right of compensation for the Property that is the subject of this agreement or of any remedy authorized by law to secure payment thereof, or a waiver of any right to seek just compensation for the property rights to be granted. The right of the Buyer to enter said property shall commence upon the effective date of this agreement and shall remain in effect until it is terminated by mutual agreement or until the Delta Water Supply Project improvements have been completed in the vicinity of Seller's property. Buyer shall indemnify and hold Seller harmless from liability resulting from Buyer's use and occupancy of said property under this provision. Seller agrees to notify its tenants, if any, of Buyer's right to enter the Property.

8. Buyer understands and agrees that its construction of the Delta Water Supply Project on the Property shall be performed in a manner that protects Seller's existing flood control structures and Buyer shall repair or replace any such structures damaged by its project at Buyer's sole cost and expense. Buyer understands and agrees that upon completion of its project, it will leave the Property free of debris and return the Property surface to conform to grades existing prior to the project. Buyer further agrees that its backfill material will not adversely affect the performance of existing levees. Buyer shall obtain all necessary regulatory permits as may
be required for its project work on the Property and shall coordinate its construction activities to avoid conflict with the nearby Davis Road Bridge Project. Seller's access to existing levees shall be maintained at all times.

9. Seller hereby states that, to the best of Seller's knowledge, during the period of Seller's ownership of the Property, there have been no known underground storage tanks or related equipment nor known existence, disposal, storage, releases or threatened releases of hazardous materials, substances or hazardous wastes on, from or under the Property. Seller further represents that Seller has no knowledge of any underground storage tanks or related equipment nor knowledge of the existence, disposal, release, or threatened release of hazardous materials, substances or hazardous wastes, on, from, or under the Property which may have occurred prior to Seller taking title to the Property.

The term "hazardous materials" when used in this Agreement shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25), and any state and federal underground tank laws, rules and regulations. "Hazardous materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

The acquisition price of the easement interest in the Property being acquired in this transaction reflects the negotiated value for the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous substances or materials which require mitigation under federal or state law, Buyer may elect to recover its cleanup costs from those who caused or contributed to the contamination. If Buyer should discover any hydrocarbonous substances or any hazardous substances or materials (as determined under federal, state or local law then in effect), asbestos or asbestos-bearing materials or other environmental condition subject to legal requirements for investigation, corrective or remedial action on, in or under the Property, Buyer shall immediately notify Seller in writing of the same, and if such discovery is made after the Close of Escrow, Buyer shall cause the condition to be corrected or remedied in accordance with applicable law.
The representations and promises made in this Clause No. 9 are intended to, and shall survive the execution, delivery and recordation of the deed referenced in Clause No. 6, above.

10. Buyer warrants to Seller that Buyer has not used the services of a real estate broker for which Seller will be charged a fee or commission. Seller shall be responsible at Seller's sole expense for real estate brokerage fees or commissions, if any.

11. Seller and Buyer shall, upon request by the other, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the spirit and intent of this Agreement.

12. Time is of the essence in this Agreement.

13. In the event that Seller is unable to convey the easement interest in the Property to Buyer as herein provided prior to August 30, 2010, then Buyer, at its option, may terminate and cancel this Agreement and, in such event, neither Seller nor Buyer shall in any manner be further obligated by the terms of this Agreement.

14. If suit should be brought for any sum due or the enforcement or declaration of any right or obligation hereunder, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

15. Any notice which either party may or is required to give shall be in writing and given by personal delivery or mailing same by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time, and any notice so mailed shall be deemed received on the third day after mailing.

Buyer's address: City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Attn: City Manager

with copy to: Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206
Attn: Director

Seller's address: San Joaquin Area Flood Control Agency
22 E Weber Avenue, 3rd Floor
Stockton, CA 95202
16. This Agreement is subject to final approval of the City Council of the City of Stockton.

17. Seller represents, warrants and covenants to Buyer as of the date of this Agreement and as of the date of the recording of the deed referenced in Clause No. 6, above, (the "Close of Escrow"), as follows:

a. No Condemnation. To the best of the Seller's knowledge, there are no pending or threatened condemnations or similar proceedings affecting the Property, or any portion thereof, nor does the Seller have any knowledge that any such action is contemplated.

b. No Proceedings. To the best of the Seller's knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the Property. Seller has not received and is not aware of any notice from any public buyer or entity with respect to any current or future proceeding against or basis for any future proceeding against or affecting the Property or any part of the Property, or concerning any existing or potential, past, present or future hazardous materials at the Property.

c. No Violation of Law. Seller represents and warrants that, to the best of the Seller's knowledge, as of the date of this Agreement and as of the Close of Escrow, the Property is not in violation of any law, ordinance or regulation of any governmental authority including those relating to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

d. Clear Title. Seller represents and warrants that Seller is the owner of the Property and has marketable and insurable fee simple title to the Property free of restrictions, leases, liens and other encumbrances, except for the exceptions permitted pursuant to Clause No. 4, above. During the term of this Agreement, Seller shall not convey or accept any offer to convey the Property or any portion of the Property nor shall Seller encumber or permit encumbrance of the Property in any way nor grant any property, contract or occupancy right relating to the Property or any portion thereof without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

e. Contracts. Seller hereby covenants, represents, and warrants that at the Close of Escrow, there will be no contracts, licenses, commitments, or undertakings concerning maintenance, operation, or repair of the Property or equipment on the Property, or the performance of services on the Property, including payment for such services performed prior to Close of Escrow, or the use of the
Property or any part of it, by which Buyer would become obligated or liable to any person. If any person or entity makes a lawful claim for payment for services performed prior to Close of Escrow (other than services provided to Buyer), Seller will be obligated to pay or cause to be paid such claim prior to Close of Escrow, subject to Seller’s right to contest the validity of such claim. If any such claim for services performed prior to Close of Escrow (other than services provided to Buyer) is made after the Close of Escrow, Seller shall indemnify, defend, and hold Buyer harmless from any and all claims, demand, or liability. This duty of defense and indemnification shall survive the Close of Escrow.

f. No Default. Seller hereby covenants, represents, and warrants that, to the best of Seller’s knowledge and belief, Seller has received no notice of any default under any contract, transaction, agreement, encumbrance, or instrument pertaining to the Property, which has remained uncured as of the date of this Agreement. The obligation to notify Buyer of notices of default shall extend to the Close of Escrow.

g. Indemnification. Seller agrees to indemnify, defend, and hold Buyer harmless for breach of the warranties set forth above in subsections (a) through (f) of this Clause No. 17.

18. Page numbering references in this agreement do not apply to exhibits or other attachments. Diagrams, maps and/or drawings attached to this agreement, if any, are provided for illustrative purposes only. In the event of conflict with a written description, the written description shall control.

19. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

20. This agreement represents the entire and integrated agreement between Seller and Buyer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Seller and Buyer.
21. The undersigned represent and warrant they are duly authorized to execute this Agreement and to bind the parties.

Dated: 9-15-10

"SELLER"
SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity

By: [Signature]

Printed Name: Janelle Godteln
Title: Executive Director

APPROVED AS TO FORM AND CONTENT:

BY: [Signature]
SCOTT L. SHAPIRO, Legal Counsel
for the San Joaquin Area
Flood Control Agency

Dated: ________________

"BUYER"
CITY OF STOCKTON, a municipal corporation in the County of San Joaquin,
State of California

By: ______________________
ROBERT DEIS
CITY MANAGER

APPROVED AS TO FORM AND CONTENT:

By: ______________________
JOHN LUEBBERKE
INTERIM CITY ATTORNEY
EXHIBIT “B”
FORM OF EASEMENT DEED

When Recorded, Return to:
City of Stockton
425 N. El Dorado Street, 3rd Floor
Stockton, CA 95202

APN 070-090-18

EASEMENT DEED TO THE CITY OF STOCKTON

THIS EASEMENT DEED, made this ___ day of _____________ 2010, by and
between SAN JOAQUIN AREA FLOOD CONTROL AGENCY, a public entity, GRANTOR,
and the CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State
of California, CITY,

WITNESSETH

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby
acknowledged, GRANTOR hereby grants to CITY an easement for the installation,
construction, operation, maintenance, repair and replacement of a City of Stockton water
pipeline, and incidents necessary thereto, in, on, over, across, under, and through the
following described real property situate, lying and being in the City of Stockton, County of
San Joaquin, State of California, more particularly described as follows:

See Exhibit “A”, attached hereto

IN WITNESS WHEREOF, GRANTOR has hereunto set its hand the day and year
first hereinabove written.

"GRANTOR"

DATED: ________________

SAN JOAQUIN AREA FLOOD CONTROL
AGENCY, a public entity

By: _______________________

Printed Name: _____________________

Title: ___________________________
EXHIBIT A

The land referred to is situated in the County of San Joaquin, City of , State of California, and is described as follows:

A portion of that 25.287 acre parcel as shown on that certain Record of Survey filed for record in Book 31 of Surveys at Page 19, San Joaquin County Records, located in the Northwest one-quarter of Section Four, Township Two North, Range Six East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at the intersection of the east right-of-way line of Davis Road (82-feet wide) and the Northerly line of said 25.287 acre parcel: thence South 89° 14' 57" East along said Northerly line, 80.61 feet; thence South 27° 19' 25" West, 44.20 feet to the beginning of a tangent 65.00-foot radius curve to the right; thence Southerly along said 65.00-foot radius curve, having a central angle of 47° 43' 54" an arc length of 54.15 feet and a long chord that bears South 51° 11' 22" West 52.60 feet thence South 75° 03' 19" West, 14.38 feet to said East right-of-way line; thence North 04° 02' 27" West, along said East right-of-way line, 77.10 feet to the POINT OF BEGINNING.

APN: 070-090-18
October 18, 2010

TO: The Honorable Mayor and City Council

FROM: Katherine Gong Meissner, City Clerk

SUBJECT: AMENDMENT TO RESOLUTION CONSENT ITEM 6.06 OF THE OCTOBER 19, 2010 AGENDA – “AROUND THE BENCH”

For your information, the Resolution for Agenda Item 6.06, regarding the approval of a Neighborhood Stabilization Program loan has been amended to reflect the following:

The resolution distributed with the agenda showed a loan amount of $201,400. The amount of $207,542 shown in the staff report is correct. The attached resolution corrects the amount on the resolution to be $207,542.

If you have any questions, please call me at 937-8864.

ORIGINAL SIGNED BY

KATHERINE GONG MEISSNER
CITY CLERK

KGM: bh

emc: City Manager
City Attorney
RESOLUTION APPROVING A $207,542 NEIGHBORHOOD STABILIZATION PROGRAM LOAN TO NEW GENESIS HOUSING DEVELOPMENT CORPORATION FOR THE PURCHASE, REHABILITATION, AND MISCELLANEOUS COSTS ASSOCIATED WITH THE PROPERTY LOCATED AT 3154 JADE COURT

Title III of the Housing and Economic Recovery Act of 2008 appropriated funds for emergency assistance for acquisition and redevelopment of abandoned and foreclosed homes and residential properties. These funds are to be considered Community Development Block Grant (CDBG) funds, and the grant program is to be commonly referred to as the Neighborhood Stabilization Program (NSP); and

On November 18, 2008, the City Council approved a substantial amendment to the 2008-2009 One Year Action Plan and all related documents, which established NSP activities; and

The City desires to build capacity in non-profit housing organizations through participation in NSP-funded activities; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council hereby approves a $207,542 loan in NSP funds for the purchase, rehabilitation, and miscellaneous costs associated with the property located at 3154 Jade Court, Stockton, California.

City Atty
Review LSW
Date October 12, 2010
2. The City Manager, or designee, is authorized to review and approve the price and terms of the subsequent sale of this property to an eligible homebuyer, consistent with NSP guidelines.

3. The City Manager, or designee, is authorized to take all appropriate actions to carry out the intent of this resolution.

PASSED, APPROVED AND ADOPTED_________________________.

________________________________________
ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

_________________________
KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
TO: Mayor and City Council

FROM: Gustavo A. Durán, Interim Director
Economic Development Department

SUBJECT: APPROVE A NEIGHBORHOOD STABILIZATION PROGRAM LOAN TO NEW GENESIS HOUSING DEVELOPMENT CORPORATION

RECOMMENDATION

It is recommended that the City Council approve a $207,542 Neighborhood Stabilization Program loan to New Genesis Housing Development Corporation for the acquisition and rehabilitation of the property at 3154 Jade Court, and to authorize the City Manager or his designee to take all appropriate actions to meet the intent of the resolution.

Summary

On March 31, 2009, the City Council approved four local non-profit housing organizations to undertake Neighborhood Stabilization Program (NSP) activities, i.e. acquire, repair, and sell foreclosed single-family homes. New Genesis is a new, non-profit developer who was not included in that group. As NSP projects continue, City staff recommends building local capacity and helping newer organizations develop experience. New Genesis and City staff are proposing a partnership beginning with the subject property, which would include City technical assistance.

DISCUSSION

Background

Early in 2009, City staff requested proposals from interested parties to implement a portion of the NSP. The City Council subsequently approved four local non-profit housing organizations on March 31, 2009, to acquire, rehabilitate, and sell vacant foreclosed homes.

Neighborhood Stabilization Program activities have been on-going since April 2009, and are anticipated to continue for some time. With the sale of each single-family home to an eligible buyer, the City receives a portion of the sale proceeds that are used for additional homes. All of the original $7.2M Neighborhood Stabilization Program allocation for this activity has been obligated to 39 homes. To date, approximately $4.5M in program income has been received from sales; however, additional funds are forthcoming. The City was also recently notified that it was awarded an additional $4.3M in NSP funds from a new Federal appropriation.
Present Situation

In addition to reducing the supply of vacant foreclosed homes, eliminating their blighting influences on neighborhoods, and creating additional homeownership opportunities, Federal NSP legislation was intended to create and retain jobs. Staff believes in fostering the development of additional qualified non-profit housing organizations. These entities specialize in providing much needed housing and supportive services to lower income persons that typically are underserved by private developers.

New Genesis approached staff earlier this year requesting participation in the purchasing and repairing of NSP homes. Upon receiving a proposal, Articles of Incorporation, State of California 501(c)(3) determination letter, etc., staff has determined that New Genesis is sufficiently organized to provide affordable housing consistent with NSP requirements. New Genesis has formed a management team consisting of experienced local realtors and builders. The proposed loan for the acquisition and rehabilitation of the property at 3154 Jade Court (map attached), would allow New Genesis to gain Federally-funded housing experience on a manageable scale to start. Adequate technical assistance will be available from City staff.

Specifics of this proposed loan are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price</td>
<td></td>
</tr>
<tr>
<td>94% of Current Market Value</td>
<td>$ 190,000</td>
</tr>
<tr>
<td>(Appraised on 9/1/10)</td>
<td></td>
</tr>
<tr>
<td>Closing Costs</td>
<td>$ 5,000</td>
</tr>
<tr>
<td>Rehabilitation Budget</td>
<td></td>
</tr>
<tr>
<td>Bid Rec'd on 8/18/10 and approved</td>
<td>$ 12,542</td>
</tr>
<tr>
<td>by staff</td>
<td></td>
</tr>
<tr>
<td>Total Proposed Loan</td>
<td>$ 207,542</td>
</tr>
</tbody>
</table>

Terms of the loan will be the same as provided to the other NSP non-profit organizations, zero percent interest for one year, with a three-month extension available for extenuating circumstances. Repayment will be required at the time of sale of the property to an eligible homebuyer.

To include New Genesis in additional NSP activities and to allocate the recently-awarded the $4.3 Neighborhood Stabilization Program 3 grant, staff will be returning to Council with a recommendation to issue a new Request for Proposal in the near future.
APPROVE A NEIGHBORHOOD STABILIZATION PROGRAM LOAN TO NEW GENESIS HOUSING DEVELOPMENT CORPORATION

(Page 3)

FINANCIAL SUMMARY

Sufficient funds for this $207,542 loan are available in the NSP Acquisition Rehab account No. 063-8526-640 and will be allocated under the existing appropriation approved on June 8, 2010, by Resolution No. 10-0179.

Respectfully submitted,

GUSTAVO A. DURÁN, INTERIM DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

GAD:BB:myb
Attachments

::ODMA\GRPWISE\COS.HRD.HRD_Library:103489.1
October 19, 2010

TO: Mayor and City Council

FROM: Gustavo A. Durán, Interim Director
       Economic Development Department

SUBJECT: AUTHORIZE ACQUISITION FOR THE SPERRY ROAD EXTENSION PROJECT

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the acquisition of two permanent street and highway easements as follows: 1) property located at 6006 South French Camp Road from Stephen R. Lima and Paulette C. Lima; and Lanny Bowden and Sally Bowden in the amount of $1,575,000; and 2) property located at 5641 S. El Dorado Street from Alice J. Bordenave, Trustee in the amount of $325,700 for the Sperry Road Extension Project.

Summary

The Sperry Road Extension Project consists of the extension of Sperry Road from Performance Drive to French Camp Road. On June 26, 2007, Council authorized Resolution No. 07-0262 approving the environmental clearance for the project. The easements proposed for acquisition are owned by Stephen R. Lima and Paulette C. Lima and Lanny Bowden and Sally Bowden; and Alice J. Bordenave, Trustee and is located north of French Camp Road and the El Dorado Street intersection (map attached).

DISCUSSION

Background

Sperry Road is a two-lane roadway between Airport Way and McKinley Avenue. The lack of a Sperry Road connection to Interstate 5 increases the pressure on existing facilities such as Charter Way, the Crosstown Freeway, McKinley Avenue, and French Camp Road. The City is experiencing substantial development of commercial and industrial lands in south Stockton, adjacent to the Stockton Metropolitan Airport, which creates additional east-west traffic demands. In response to the transportation needs in south Stockton, the City’s General Plan identified a need to provide a continuous route between Interstate 5 and State Route 99 by extending Sperry Road to French Camp Road, and reconstructing the Interstate 5/French Camp Road interchange. A specific plan for Arch-Airport/Sperry Road was developed. The limit of the Specific Plan extends along Arch Road, between Austin Road and the future French Camp/I-5 Interchange, and includes the extension of Sperry Road. The specific plan was adopted by the City in 2002 by Resolution No. 02-0516, as well as by San Joaquin County.
AUTHORIZE ACQUISITION FOR THE SPERRY ROAD EXTENSION PROJECT
(Page 2)

The Sperry Road Extension Project will extend and realign approximately 6,500 feet of Sperry Road, from Performance Drive to French Camp Road, just east of Interstate 5. The extension will require the construction of an elevated roadway including five bridges crossing railroads, roadways, and French Camp Slough. The footprint of the ultimate Sperry Road Extension will be wide enough to accommodate eight lanes, although presently Sperry Road will be constructed with four lanes.

Present Situation

The owners of the proposed acquisition at 6006 South French Camp Road, Stephen R. Lima and Paulette C. Lima; and Lanny Bowden and Sally Bowden had their property appraised for $1,690,000 plus $600,000 for damages for a total of $2,290,000. The City appraised the property for $1,426,600 and the owners agreed to a negotiated price of $1,575,000. In addition, up to $9,000 will be needed for miscellaneous closing costs, for a total cost of up to $1,584,000.

The owner of the proposed acquisition at 5641 S. El Dorado Street, Alice J. Bordenave, Trustee, has accepted the City’s offer of the appraised value in the amount of $325,700. In addition, up to $8,000 will be needed for miscellaneous closing costs, for a total cost of up to $333,700.

ENVIRONMENTAL CLEARANCE

The Final Environmental Impact Report / Environmental Assessment (FEIR/EA 8-03 SCH 2003112018) and Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program for the Sperry Road Extension, Project No. 99-01, was approved by City Council on June 26, 2007, by way of Resolution 07-0262.

FINANCIAL SUMMARY

The total cost of these two acquisitions including closing costs (up to $1,917,700) will be paid from Project Account No. 399-9837-640, Sperry Road Extension Project. Funding source will be Street Improvements Public Facilities Fees, South Zone (Fund 915).
AUTHORIZE ACQUISITION FOR THE SPERRY ROAD EXTENSION PROJECT
(Page 3)

Respectfully submitted,

GUSTAVO A. DURÁN, INTERIM DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

GD:JM:RC:at
Attachment

APPROVED

BOB DEIS
CITY MANAGER
Resolution No. ____________

STOCKTON CITY COUNCIL

=================================================================

RESOLUTION AUTHORIZING ACQUISITION BY THE CITY OF STOCKTON OF TWO STREET AND HIGHWAY EASEMENTS, VIA EASEMENT DEEDS HEREINAFTER MORE PARTICULARLY DESCRIBED, AND AUTHORIZING EXECUTION OF THE AGREEMENTS AND RELATED DOCUMENTS FOR THE SPERRY ROAD EXTENSION PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. It is hereby declared that the City's acquisition of the easement interests from Stephen R. Lima and Paulette C. Lima and Lanny Bowden and Sally Bowden; and Alice J. Bordenave, Trustee, via Easement Deeds for the Sperry Road Extension Project is necessary for a public purpose, to wit:

   Street and Highway Improvements

2. The City of Stockton hereby authorizes its acquisition of the easement interests from Stephen R. Lima and Paulette C. Lima and Lanny Bowden and Sally Bowden at 6066 South French Camp Road and Alice J. Bordenave, Trustee, at 5641 South El Dorado Street via Easement Deeds, for the Sperry Road Extension Project and described in the "Agreement for Purchase and Sale of Real Property Interest," copies of which are attached as Exhibits A and B, respectively, and incorporated by this reference.

3. The City Council hereby approves the total purchase price of said real property to be acquired at 6066 South French Camp Road for the sum of $1,575,000, plus up to $9,000 for miscellaneous closing costs, and said real property to be acquired at 5641 S. El Dorado Street for the sum of $325,700, plus up to $8,000 for miscellaneous closing costs.

4. The transfer of real property for valuable consideration of these acquisitions is hereby authorized and approved as stated in the Agreement.

5. The specific terms and conditions of these acquisitions are expressly provided in the attached Agreement and incorporated by this reference.

6. With regard to environmental clearance for the Sperry Road Extension Project, the Final Environmental Impact Report / Environmental Assessment (FEIR/EA 8-03 SCH 2003112018) and Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program for the Sperry Road Extension, Project No. 99-01, was approved by City Council on June 26, 2007, by way of Resolution 07-0262.

City Atty: 
Review: 
Date: October 12, 2010

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7. The City Manager is hereby authorized and directed to execute the Agreements and any documents necessary to carry out the purposes hereof, and the City Attorney is directed to cause the recordation of the appropriate documents.

PASSED, APPROVED and ADOPTED ____________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY INTEREST

This AGREEMENT dated ____________ is made and entered into by and between THE CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, hereinafter called "Buyer", and Stephen R. Lima and Paulette C. Lima; and Lanny Bowden and Sally Bowden, hereinafter called "Seller".

WITNESSES THAT:

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Seller agrees to grant to Buyer, and Buyer agrees to purchase from Seller, a fee interest in that certain real property, herein called "the Property", situated in the County of San Joaquin, State of California, described in Exhibit "A" attached hereto and incorporated by this reference, upon the terms and conditions herein set forth.

2. The total purchase price for the fee interest shall be the sum of ONE MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($1,575,000.00). The purchase price, therefore, is the total price for the Property without distinction or separation for various interests that may be held in the Property. Seller shall be responsible for any apportionment or allocation of the purchase price if required for separately held interests that may exist.

   Included in the purchase price as stated herein is compensation for existing improvements on the Property, including but not limited to the following: None

3. Except as otherwise expressly provided herein, all costs of title insurance and documentary transfer taxes, if any, shall be paid by Buyer.

4. Title to the fee interest in the Property shall be delivered free and clear of all liens, encumbrances, conditions, restrictions, easements, rights of possession, and leasehold interests excepting only such matters of title specifically waived in writing by the Buyer. Seller shall provide Buyer with a Release of Lien from each holder of a mortgage and/or deed of trust that is a lien against the Property. The balance of the unpaid principal and interest due on any note or notes secured by mortgages, deeds of trust, or other lien on the subject property, up to and including the amount to be paid Seller under the terms of this Agreement, shall be deducted from the purchase price and paid to the persons or entities entitled thereto, if they so require. Those matters of title specifically waived by the Buyer are as follows:

EXHIBIT "A"
(a) Current property taxes, including general and special taxes and assessments collected therewith, which shall be allocated pursuant to applicable sections of the Revenue and Taxation Code;

(b) The lien of supplemental taxes, if any, assessed pursuant to the provisions of chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California;

(c) Such other matters affecting title to, or use of, the Property which are approved in writing by Buyer.

(d) The sub-surface oil and gas lease with Vintage Production of California dated April 24, 2006

5. Taxes, assessments shall be prorated at close of escrow between Buyer and Seller and penalties, interest charges, delinquency charges, and municipal service charges of every kind levied upon or assessed against the Property, except as otherwise expressly set forth herein or arising from the subject fee interest being acquired, shall be paid Seller.

6. For the purpose of conveying the herein described fee interest to Buyer, Seller shall execute, acknowledge, and deliver to Buyer a grant deed for recordation, in accordance with this Agreement.

7. Seller grants to Buyer, its employees, agents, and contractors, permission to enter upon the Property prior to the close of escrow for the purpose of constructing the Sperry Road Extension and accomplishing all incidents necessary thereto. It is understood that this permission is not a waiver in any way of the right of compensation for the fee interest that is the subject of this agreement or of any remedy authorized by law to secure payment thereof, or a waiver of any right to seek just compensation for the property rights to be granted. The right of the Buyer to enter said Property shall commence upon the effective date of this agreement and shall remain in effect until it is terminated by mutual agreement or until the Sperry Road Extension improvements have been completed in the vicinity of Seller's property. Buyer shall indemnify and hold Seller harmless from any liability resulting from the use and occupancy of said Property under this provision. Buyer will also provide fencing along the Property to secure the storage facility. Seller agrees to notify its tenants, if any, of Buyer's right to enter the Property.

8. Seller hereby states that, to the best of Seller's knowledge, during the period of Seller's ownership of the Property, there have been no known underground storage tanks or related equipment nor known existence, disposal, storage, releases or threatened releases of hazardous materials, substances or hazardous wastes on, from or under the Property. Seller further represents that Seller has no knowledge of any underground
storage tanks or related equipment nor knowledge of the existence, disposal, release, or threatened release of hazardous materials, substances or hazardous wastes, on, from, or under the Property which may have occurred prior to Seller taking title to the Property.

The term "hazardous materials" when used in this Agreement shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25, and any state and federal underground tank laws, rules and regulations. "Hazardous materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

The acquisition price of the Property being acquired in this transaction reflects the negotiated value for the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous substances or materials which require mitigation under federal or state law, Buyer may elect to recover its cleanup costs from those who caused or contributed to the contamination. If Buyer should discover any hydrocarbonous substances or any hazardous substances or materials (as determined under federal, state or local law then in effect), asbestos or asbestos-bearing materials or other environmental condition subject to legal requirements for investigation, corrective or remedial action on, in or under the Property, Buyer shall immediately notify Seller in writing of the same, and if such discovery is made after the close of escrow, Buyer shall cause the condition to be corrected or remedied in accordance with applicable law.

The representations and promises made in this paragraph are intended to, and shall survive the execution, delivery and recordation of the deed referenced in paragraph number 6.

9. Buyer warrants to Seller that Buyer has not used the services of a real estate broker. Seller shall be responsible at Seller's sole expense for real estate brokerage fees or commissions, if any.

Page 3 of 7
10. Seller and Buyer shall, upon request by the other, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the spirit and intent of this Agreement.

11. Time is of the essence in this Agreement.

12. Buyer and seller agree to close escrow on or before December 15, 2010 (Closing Date), unless any change is authorized by both Buyer and Seller. In addition to any change of Closing Date agreed to by both Buyer and Seller, Seller has a one time option to extend the closing date to January 26, 2011. In order for Seller to exercise this one time option to extend, Seller must notify Buyer in writing by November 1, 2010 of their desire to extend. If Buyer does not close within five business days after the agreed upon closing date, the Buyer agrees to pay to Seller a prorated monthly rent of SEVEN THOUSAND THREE HUNDRED FIVE DOLLARS($7,305.00) for the period of time between the agreed upon closing date and the actual closing date. If the Seller delays the close of escrow and does not close within five business days after the agreed upon closing date, the Seller agrees to pay the Buyer a penalty in the amount equal to any rents which are collected from the Property after the agreed upon closing date.

13. If suit should be brought for any sum due or the enforcement or declaration of any right or obligation hereunder, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney’s fees.

14. Any notice which either party may or is required to give shall be in writing and given by personal delivery or mailing same by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time, and any notice so mailed shall be deemed received on the third day after mailing.

Buyer’s address: City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Attn: City Manager

Seller’s address: Steve Lima
460 Whiskey Hill Road
Watsonville, CA 95076

15. This Agreement is subject to final approval of the City Council of the City of Stockton.
16. Seller represents, warrants and covenants to Buyer as of the date of this Agreement and as of the date of the recording of the Grant Deed transferring the Property to the Buyer (the "Closing"), as follows:

a. No Condemnation. To the best of the Sellers’ knowledge, there is no other pending or threatened condemnation or similar proceedings affecting the Property, or any portion thereof, nor does the Seller have any knowledge that any such action is contemplated.

b. No Proceedings. To the best of the Seller’s knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the Property except as outlined in this agreement. Seller has not received and is not aware of any notice from any public buyer or entity with respect to any current or future proceeding against or basis for any future proceeding against or affecting the Property or any part of the Property, or concerning any existing or potential, past, present or future hazardous materials at the Property.

c. No Violation of Law. Seller represents and warrants that, to the best of the Seller's knowledge, as of the date of this Agreement and as of the Closing, the Property is not in violation of any law, ordinance or regulation of any governmental authority including those relating to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

d. Clear Title. Seller represents and warrants that Seller is the owner of the Property and has marketable and insurable fee simple title to the Property free of restrictions, leases, liens and other encumbrances, except for the exceptions permitted pursuant to paragraph 4, above. During the term of this Agreement, Seller shall not convey or accept any offer to convey the Property or any portion of the Property nor shall Seller encumber or permit encumbrance of the Property in any way nor grant any property, contract or occupancy right relating to the Property or any portion thereof without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

e. Contracts. Seller hereby covenants, represents, and warrants that at the Closing, there will be no contracts, licenses, commitments, or undertakings concerning maintenance, operation, or repair of the Property or equipment on the Property, or the performance of services on the Property, including payment for such services.
performed prior to Closing, or the use of the Property or any part of it, by which Buyer would become obligated or liable to any person. If any person or entity makes a lawful claim for payment for services performed prior to Closing (other than services provided to Buyer), Seller will be obligated to pay or cause to be paid such claim prior to Closing, subject to Seller’s right to contest the validity of such claim. If any such claim for services performed prior to Closing (other than services provided to Buyer) is made after the Closing, Seller shall indemnify, defend, and hold Buyer harmless from any and all claims, demand, or liability. This duty of defense and indemnification shall survive the Closing.

f. No Default. Seller hereby covenants, represents, and warrants that, to the best of Seller’s knowledge and belief, Seller has received no notice of any default under any contract, transaction, agreement, encumbrance, or instrument pertaining to the Property, which has remained uncured as of the date of this Agreement. The obligation to notify Buyer of notices of default shall extend to the Closing.

17. The City has threatened to exercise its authority to acquire the subject property by eminent domain and would have considered using that authority had an agreement with you not been achieved via the Agreement for Purchase and Sale of Real Property. This intention will be memorialized in a letter from the City of Stockton to the Seller and attached hereto and incorporated herein as Exhibit “B”.

18. It is understood and agreed by and between the parties that the Seller will hold the Buyer harmless from any previous and future claims of severance damages or any other claim relating to the Irrevocable Offer of Dedication for the I5/French Camp Road Interchange and Sperry Road Extensions Project, as required in a County of San Joaquin Department of Public Works Memorandum dated June 12, 2001, from Gabriel Karam, Senior Civil Engineer Public Services Division, to Kerry Sullivan, Deputy Director, Community Development Department, via Jeff Fisher.

19. It is understood and agreed between Seller and Buyer that the payments made to Seller as set forth in this Agreement represent a full and complete payment of compensation for the acquisition of all property interests pertaining to the Property and includes and satisfies any and all other payments including any goodwill claims, arising out of the acquisition of the Property and of the Seller’s business.

20. Page numbering references in this agreement do not apply to exhibits or other attachments. Diagrams, maps and/or drawings attached to this
agreement, if any, are provided for illustrative purposes only. In the event of conflict with a written description, the written description shall control.

21. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

22. This agreement represents the entire and integrated agreement between Seller and Buyer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Seller and Buyer.

23. The undersigned represent and warrant they are duly authorized to execute this Agreement and to bind the parties.

Dated: ______________

"SELLER"

[Signatures]

STEPHEN R. LIMA

LANNY BOWDEN

PAULETTE C. LIMA

SALLY BOWDEN

"BUYER"

CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California

BOB DEIS
CITY MANAGER

APPROVED AS TO FORM AND CONTENT

By: ______________________

ASSISTANT CITY ATTORNEY
EXHIBIT "A"  
December 7, 2009

DESCRIPTION  
LIMA, ET AL., SPERRY ROAD EXTENSION - APN 193-020-32

That certain real property situate in the County of San Joaquin, State of California, being a portion of Sections 12 and 13 of the C.M. Weber Grant, "El Rancho del Campo de los Franceses", and also being a portion of that certain 9.59 acre parcel as shown in Book 35 of Surveys, at Page 160, filed on November 4, 2004, San Joaquin County Records, and also being a portion of that certain property as described in Grant Deed recorded on January 24, 2003 as Document Number 2003-016875, San Joaquin County Records, more particularly described as follows:

COMMENCING at the City of Stockton Control Point No. 316, a brass disk in a monument box stamped "10S-12" at the intersection of Wolfe Road and French Camp Road, as referenced in Book 35 of Surveys, at Page 5, filed for record on December 3, 2001, San Joaquin County Records, which bears South 09°19'46" West 13943.95 feet from City of Stockton Control Point No. 340, being a 5/8" aluminum rod driven to refusal with 2 1/2" diameter aluminum cap stamped "CORP L.S. 4334," set in an aluminum monument box with screw locking cover in the COS corporation yard, 1465 S. Lincoln Street. The point is located 30 feet south of approximate center of the truck wash structure, said Point No. 340 also shown on said Record of Survey filed for record in Book 35 of Surveys, at Page 5; thence South 84°26'53" East 7113.82 feet to a point on the southeasterly line of herein described right of way widening, said point also being the TRUE POINT OF BEGINNING of herein described right of way widening; thence northwesterly along said southeasterly line of herein described right of way widening, North 50°15'47" West 160.78 feet, to the northwesterly line of said 9.59 acre parcel; thence northeasterly along the said northwesterly line, North 52°40'34" East 220.10 feet; thence leaving the said northwesterly line of 9.59 acre parcel, along the northeasterly line of herein described right of way widening, being a non-tangent curve to the left an arc length of 211.60 feet, said curve having a radius of 986.49 feet, and a central angle of 12°17'24", the radius point from beginning of said curve bearing North 36°43'41" East with a chord bearing South 59°25'01" East 211.20 feet, to a point on the left (west) bank of French Camp Slough as described in said Document Number 2003-016875, said point also being the southeasterly line of said 9.59 acre parcel; thence southerly along the said left (west) bank of French Camp Slough the following courses:

1) South 50°22'35" West 60.41 feet;
2) thence South 12°45'35" West 169.40 feet,

to a point which bears South 63°19'46" East from the TRUE POINT OF BEGINNING of herein described right of way widening; thence leaving the said left (west) bank of French Camp Slough, also being the southeasterly line of said 9.59 acre parcel, along said southeasterly line of herein described right of way widening, being a non-tangent curve to the right an arc length of 167.17 feet, said curve having a radius of 1139.00 feet, and a central angle of 8°24'34", the radius point from beginning of said curve bearing North 22°27'57" East, with a chord bearing...
EXHIBIT "A"

December 7, 2009

North 63°19'46" West 167.02 feet, to the TRUE POINT OF BEGINNING of herein described right of way widening, containing 1.29 acres, more or less.

SUBJECT TO any portion of said land lying within the original banks of French Camp Slough claimed by the State of California as a public trust easement.

ALSO SUBJECT TO special assessments, if any, restrictions, reservations and easements of record.

EXCEPTING THEREFROM any portion of the land within the natural bed of the French Camp Slough and its tributaries below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline. (This exception being described in said Document Number 2003-016875.)

Bearings and distances are based on the California Coordinate System, Zone 3, North American Datum 1983. Multiply distances shown by 1.00006343 to obtain ground distances.

End of Description.

12-07-2009
EXHIBIT "A"

APN 193–360–26
LOUIS M ANDRADE
IN 99044318

BEING A PORTION OF
SECTIONS 12 AND 13
C.M. WEBER GRANT, EL
RANCHO DEL CAMPO
DE LOS FRANCÉS,
SAN JOAQUIN COUNTY,
STATE OF CALIFORNIA.

APN 193–360–25
GREG E &
BEVERLY C KENT
IN 99096779

PARCEL MAP
08–003

PROPOSED SPERRY
ROAD EXTENSION
REMAIN
1.19 ACRES±

TRUE POINT
OF BEGINNING
NORTHING: 2149678.08
EASTING: 6337007.52

L=211.60'
R=986.49'
Δ=1217'24"
CH=55'25'01"E
CH=211.20'

RECORD OF SURVEY
35–160

NORTHING: 2149441.85
EASTING: 6336956.13

APN 193–020–32
STEPHEN & PAULETTE LIMA
DN 2003–016875

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

APRVD

CITY ENGINEER
DATE DRAWING NO.
1/19/10

4562 A

182
DESCRIPTION

SPERRY ROAD EXTENSION - LIMA, ET AL., REMAINDER - APN 193-020-32

That certain real property situate in the County of San Joaquin, State of California, being a portion of Sections 12 and 13 of the C.M. Weber Grant, "El Rancho del Campo de los Franceses", and also being a portion of that certain 9.59 acre parcel as shown in Book 35 of Surveys, at Page 160, filed on November 4, 2004, San Joaquin County Records, and also being a portion of that certain property as described in Grant Deed recorded on January 24, 2003 as Document Number 2003-016875, San Joaquin County Records, more particularly described as follows:

COMMENCING at the City of Stockton Control Point No. 316, a brass disk in a monument box stamped "10S-12" at the intersection of Wolfe Road and French Camp Road, as referenced in Book 35 of Surveys, at Page 5, filed for record on December 3, 2001, San Joaquin County Records, which bears South 09°19'46" West 13943.95 feet from City of Stockton Control Point No. 340, being a 5/8" aluminum rod driven to refusal with 2 1/2" diameter aluminum cap stamped "CORP L.S. 4334," set in an aluminum monument box with screw locking cover in the COS corporation yard, 1465 S. Lincoln Street. The point is located 30 feet south of approximate center of the truck wash structure, said Point No. 340 also shown on said Record of Survey filed for record in Book 35 of Surveys, at Page 5; thence South 84°26'53" East 7113.82 feet to a point on the southwesterly line of a proposed right of way widening; thence northwesterly along said southwesterly line of a proposed right of way widening, North 50°15'47" West 160.78 feet, to the northwesterly line of said 9.59 acre parcel; thence northeasterly along the said northwesterly line, North 52°40'34" East 220.10 feet to the TRUE POINT OF BEGINNING of herein described parcel; thence leaving the said northwesterly line of 9.59 acre parcel, along the southwesterly line of herein described parcel, being a non-tangent curve to the left an arc length of 211.60 feet, said curve having a radius of 986.49 feet, and a central angle of 12°17'24"", the radius point from beginning of said curve bearing North 36°43'41" East, with a chord bearing South 59°25'01" East 211.20 feet, to a point on the left (west) bank of French Camp Slough as described in said Document Number 2003-016875, said point also being the southeasterly line of said 9.59 acre parcel; thence northeasterly along the said left (west) bank of French Camp Slough the following courses:

1) North 50°22'35" East 254.83 feet,
2) thence North 30°16'35" East 86.97 feet,

to the said northwesterly lines of 9.59 acre parcel; thence leaving the said left (west) bank of French Camp Slough as described in said Document Number 2003-016875, also being the southeasterly line of said 9.59 acre parcel along the said northwesterly lines of 9.59 acre parcel the following courses:

1) South 84°08'41" West 291.78 feet;
2) thence South 52°40'34" West 165.58 feet,
to the **TRUE POINT OF BEGINNING** of herein described remainder, containing 1.19 acres, more or less.

**SUBJECT TO** any portion of said land lying within the original banks of French Camp Slough claimed by the State of California as a public trust easement.

**ALSO SUBJECT TO** special assessments, if any, restrictions, reservations and easements of record.

**EXCEPTING THEREFROM** any portion of the land within the natural bed of the French Camp Slough and its tributaries below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline. (This exception being described in said Document Number 2003-016875.)

Bearings and distances are based on the California Coordinate System, Zone 3, North American Datum 1983. Multiply distances shown by 1.00006343 to obtain ground distances.

End of Description.

[Signature]

**STATE OF CALIFORNIA**

01-13-2010
Date

Name

Street Address

Stockton, CA Zip Code

Subject: PROPERTY, STOCKTON, CA

Dear Name of Owner of Subject Property;

This letter concerns the City of Stockton's potential for use of eminent domain to acquire a portion [or all] of the above mentioned property from you for a public purpose. The City of Stockton is a public agency with the power of eminent domain. As such, the City would have considered the exercise of its authority to acquire the subject property by eminent domain had an agreement with you not been achieved via the Agreement for Purchase and Sale of Real Property approved by City Council Resolution No. xyz on Date.

If you have questions, please call me at 937-8059

GUSTAVO A. DURÁN, INTERIM DIRECTOR
REVITALIZATION DEPARTMENT

JOE MULLIGAN
SUPERVISING REAL PROPERTY AGENT
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY INTEREST

This AGREEMENT dated ______________ is made and entered into by and between THE CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, hereinafter called "Buyer", ALICE J. BORDENAVE, as Trustee of the Bordenave Family Trust, dated September 24, 1991, hereinafter called "Seller".

WITNESSES THAT:

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Seller agrees to grant to Buyer, and Buyer agrees to purchase from Seller, a fee interest in that certain real property, herein called "the Property", situated in the County of San Joaquin, State of California, described in Exhibit "A" attached hereto and incorporated by this reference, upon the terms and conditions herein set forth.

2. The total purchase price for the fee interest shall be the sum of THREE HUNDRED FIFTY THREE HUNDRED DOLLARS ($325,700.00). The purchase price is based upon an appraisal of the fair market value of the Property. The appraisal made no attempt to assign value to any lesser interest in the Property, including any leasehold estate. The purchase price, therefore, is the total price for the Property without distinction or separation for various interests that may be held in the Property. Seller shall be responsible for any apportionment or allocation of the purchase price if required for separately held interests that may exist.

   Included in the purchase price as stated herein is compensation for existing improvements on the Property, including but not limited to the following: None

3. Except as otherwise expressly provided herein, all costs of title insurance and documentary transfer taxes, if any, shall be paid by Buyer.

4. Title to the fee interest in the Property shall be delivered free and clear of all liens, encumbrances, conditions, restrictions, easements, rights of possession, and leasehold interests excepting only such matters of title specifically waived in writing by the Buyer. Seller shall provide Buyer with a Release of Lien from each holder of a mortgage and/or deed of trust that is a lien against the Property. The balance of the unpaid principal and interest due on any note or notes secured by mortgages, deeds of trust, or other lien on the subject property, up to and including the amount to be paid Seller under the terms of this Agreement, shall be deducted from the purchase price and paid to the persons or entities entitled thereto, if they so require. Those matters of title specifically waived by the Buyer are as follows:

Page 1 of 6
(a) Current property taxes, including general and special taxes and assessments collected therewith, which shall be allocated pursuant to applicable sections of the Revenue and Taxation Code;

(b) The lien of supplemental taxes, if any, assessed pursuant to the provisions of chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California;

(c) Such other matters affecting title to, or use of, the Property which are approved in writing by Buyer.

5. Taxes, assessments, penalties, interest charges, delinquency charges, and municipal service charges of every kind levied upon or assessed against the Property, except as otherwise expressly set forth herein or arising from the subject easement interest being acquired, shall be paid by Seller.

6. For the purpose of conveying the herein described fee interest to Buyer, Seller shall execute, acknowledge, and deliver to Buyer a grant deed for recordation, in accordance with this Agreement.

7. Seller grants to Buyer, its employees, agents, and contractors, permission to enter upon the Property prior to the close of escrow for the purpose of constructing the Sperry Road Extension and accomplishing all incidents necessary thereto. It is understood that this permission is not a waiver in any way of the right of compensation for the fee interest that is the subject of this agreement or of any remedy authorized by law to secure payment thereof, or a waiver of any right to seek just compensation for the property rights to be granted. The right of the Buyer to enter said property shall commence upon the effective date of this agreement and shall remain in effect until it is terminated by mutual agreement or until the Sperry Road Extension improvements have been completed in the vicinity of Seller’s property. Buyer shall indemnify and hold Seller harmless from any liability resulting from the use and occupancy of said property under this provision. Seller agrees to notify its tenants, if any, of Buyer’s right to enter the Property.

8. Seller hereby states that, to the best of Seller’s knowledge, during the period of Seller’s ownership of the Property, there have been no known underground storage tanks or related equipment nor known existence, disposal, storage, releases or threatened releases of hazardous materials, substances or hazardous wastes on, from or under the Property. Seller further represents that Seller has no knowledge of any underground storage tanks or related equipment nor knowledge of the existence, disposal, release, or threatened release of hazardous materials, substances or hazardous wastes, on, from, or under the Property which may have occurred prior to Seller taking title to the Property.
The term "hazardous materials" when used in this Agreement shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25, and any state and federal underground tank laws, rules and regulations. "Hazardous materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

The acquisition price of the Property being acquired in this transaction reflects the negotiated value for the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous substances or materials which require mitigation under federal or state law, Buyer may elect to recover its cleanup costs from those who caused or contributed to the contamination. If Buyer should discover any hydrocarbonous substances or any hazardous substances or materials (as determined under federal, state or local law then in effect), asbestos or asbestos-bearing materials or other environmental condition subject to legal requirements for investigation, corrective or remedial action on, in or under the Property. Buyer shall immediately notify Seller in writing of the same, and if such discovery is made after the close of escrow, Buyer shall cause the condition to be corrected or remedied in accordance with applicable law.

The representations and promises made in this paragraph are intended to, and shall survive the execution, delivery and recordation of the deed referenced in paragraph number 6.

9. Buyer warrants to Seller that Buyer has not used the services of a real estate broker. Seller shall be responsible at Seller's sole expense for real estate brokerage fees or commissions, if any.

10. Seller and Buyer shall, upon request by the other, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the spirit and intent of this Agreement.

11. Time is of the essence in this Agreement.

12. In the event that Seller is unable to convey to Buyer the Property as herein provided prior to August 20, 2010, then Buyer, at its option, may terminate
and cancel this Agreement and, in such event, Buyer shall in no manner be further obligated by the terms of this Agreement.

13. If suit should be brought for any sum due or the enforcement or declaration of any right or obligation hereunder, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

14. Any notice which either party may or is required to give shall be in writing and given by personal delivery or mailing same by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time, and any notice so mailed shall be deemed received on the third day after mailing.

Buyer's address:  
City of Stockton  
425 N. El Dorado Street  
Stockton, CA 95202  
Attn: City Manager

Seller's address:  
Alice J. Bordenave, Trustee  
PO Box B  
French Camp, California 95231

15. This Agreement is subject to final approval of the City Council of the City of Stockton.

16. Seller represents, warrants and covenants to Buyer as of the date of this Agreement and as of the date of the recording of the Grant Deed transferring the Property to the Buyer (the "Closing"), as follows:

a. No Condemnation. To the best of the Seller's knowledge, there are no pending or threatened condemnation or similar proceedings affecting the Property, or any portion thereof, nor does the Seller have any knowledge that any such action is contemplated.

b. No Proceedings. To the best of the Seller's knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the Property. Seller has not received and is not aware of any notice from any public buyer or entity with respect to any current or future proceeding against or basis for any future proceeding against or affecting the Property or any part of the Property, or concerning any existing or potential, past, present or future hazardous materials at the Property.
c. No Violation of Law. Seller represents and warrants that, to the best of the Seller's knowledge, as of the date of this Agreement and as of the Closing, the Property is not in violation of any law, ordinance or regulation of any governmental authority including those relating to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

d. Clear Title. Seller represents and warrants that Seller is the owner of the Property and has marketable and insurable fee simple title to the Property free of restrictions, leases, liens and other encumbrances, except for the exceptions permitted pursuant to paragraph 4, above. During the term of this Agreement, Seller shall not convey or accept any offer to convey the Property or any portion of the Property nor shall Seller encumber or permit encumbrance of the Property in any way nor grant any property, contract or occupancy right relating to the Property or any portion thereof without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

e. Contracts. Seller hereby covenants, represents, and warrants that at the Closing, there will be no contracts, licenses, commitments, or undertakings concerning maintenance, operation, or repair of the Property or equipment on the Property, or the performance of services on the Property, including payment for such services performed prior to Closing, or the use of the Property or any part of it, by which Buyer would become obligated or liable to any person. If any person or entity makes a lawful claim for payment for services performed prior to Closing (other than services provided to Buyer), Seller will be obligated to pay or cause to be paid such claim prior to Closing, subject to Seller's right to contest the validity of such claim. If any such claim for services performed prior to Closing (other than services provided to Buyer) is made after the Closing, Seller shall indemnify, defend, and hold Buyer harmless from any and all claims, demand, or liability. This duty of defense and indemnification shall survive the Closing.

f. No Default. Seller hereby covenants, represents, and warrants that, to the best of Seller's knowledge and belief, Seller has received no notice of any default under any contract, transaction, agreement, encumbrance, or instrument pertaining to the Property, which has remained uncured as of the date of this Agreement. The obligation to notify Buyer of notices of default shall extend to the Closing.

17. Page numbering references in this agreement do not apply to exhibits or other attachments. Diagrams, maps and/or drawings attached to this
agreement, if any, are provided for illustrative purposes only. In the event of conflict with a written description, the written description shall control.

18. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

19. This agreement represents the entire and integrated agreement between Seller and Buyer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Seller and Buyer.

20. The undersigned represent and warrant they are duly authorized to execute this Agreement and to bind the parties.

Dated: 8-3-10

"SELLER"

Alice J. Bordenave, Trustee

"BUYER"

CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California

BOB DEIS
CITY MANAGER

APPROVED AS TO FORM AND CONTENT

By: [Signature]
INTERIM CITY ATTORNEY
EXHIBIT "A"

APN 193-020-41
SPERRY ROAD EXTENSION
ROBERT LUCIEN BORDENAVE

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

1" = 80'

APRVD BY:

REV DATE BY

Dwg By: BAS

Ck By: SLB

SLOUGH

NORTHING: 2149591.91
EASTING: 633751.90
CH = 504°30'46"W 223.81'
L = 223.81'
R = 9949.37'
Δ = 01°17'20"

CALIFORNIA MONUMENT
89.43'

TIE TO 6°46'
12°43'44"W
33'33"33"W

APN 193-020-30
STEVEN JONES
IN 98064759

TIE LINE

APN 193-020-40
N74°45'08"W
36.19'

PROPOSED SPERRY ROAD EXTENSION
RIGHT-OF-WAY TAKE
2.99 ACRES:

PARCEL 2
RECORD OF SURVEY
17-057

APN 193-020-41
S15°14'52"W
47.97'

BEING A PORTION OF THE C.M. WEBER
GRANT, EL RANCHO
DEL CAMPO DE LOS FRANCESES, SAN
JOAQUIN COUNTY,
STATE OF CALIFORNIA.

APRVD BY:

REV DATE BY

Dwg By: BAS

Ck By: SLB

SCALE: 1" = 80'

CITY ENGINEER

4563A

194
EXHIBIT "A"

April 27, 2010

DESCRIPTION

APN 193-020-41 – SPERRY ROAD EXTENSION - ROBERT LUCIEN BORDENAVE

That certain real property situated in the County of San Joaquin, State of California, being a portion of the C.M. Weber Grant "El Rancho del Campo de los Franceses" and also being a portion of that certain 3.40 acre parcel labeled "Parcel 2" as shown on Book 17 of Surveys, at Page 57, filed on March 21, 1968, San Joaquin County Records, and also being a portion of that certain property as described in Quitclaim Deed recorded on June 12, 1992 as Instrument Number 92067995, San Joaquin County Records, more particularly described as follows:

COMMENCING at the City of Stockton Control Point No. 316, a brass disk in a monument box stamped "10S-12" at the intersection of Wolfe Road and French Camp Road, as referenced in Book 35 of Surveys, at Page 5, filed for record on December 3, 2001, San Joaquin County Records, which bears South 09°19'46" West 13943.95 feet from City of Stockton Control Point No. 340, being a 5/8" aluminum rod driven to refusal with 2 1/2" diameter aluminum cap stamped "CORP L.S. 4334," set in an aluminum monument box with screw locking cover in the COS corporation yard, 1465 S. Lincoln Street; said Point No. 340 also shown on said Record of Survey filed for record in Book 35 of Surveys, at Page 5; thence North 87°10'47" East 8013.56 feet to a 6 inch by 6 inch concrete CALTRANS monument shown on the east right of way line of El Dorado Street on the Parcel Map filed in Book 3 of Parcel Maps, at Page 81, on August 13, 1976, San Joaquin County Records; said concrete monument is located at the northwesterly terminus of the course labeled "N51°05'09"W 32.05"; thence South 00°55'48" West 427.99 feet to a 6 inch by 6 inch concrete CALTRANS monument shown on the east right of way line of El Dorado Street on the Parcel Map filed in Book 3 of Parcel Maps, at Page 81; said concrete monument is located at the southerly terminus of the course labeled "N00°15'30"E 203.17"; thence South 18°51'04" West 859.80 feet to point on the southerly line of herein described Sperry Road Extension proposed right of way, said point also being the TRUE POINT OF BEGINNING of herein described right of way widening; thence in a general southwesterly direction along the southerly lines of the herein described proposed right of way the following courses:

(1) South 15°14'52" West 40.00 feet;
(2) thence North 74°45'08" West 20.00 feet;
(3) thence South 15°14'32" West 47.97 feet,

to the south line of said Parcel 2; thence along the said south line of Parcel 2, the following courses:

(1) North 73°03'34" West 45.09 feet;
(2) thence South 88°26'26" West 104.99 feet;

thence leaving the said south line of Parcel 2, along the west line of said Parcel 2 and a meander line of the right (east) bank of French Camp Slough, as described in said Instrument Number 92067995 the following courses:

(1) North 68°04'23" West 167.01 feet;
(2) thence North 26°38'34" West 119.00 feet;
(3) thence North 09°22'01" East 26.20 feet to the north line of said Parcel 2;

thence North 71°34'02" East 581.49 feet along the said north line of Parcel 2 to a point on the westerly right of way line of El Dorado Street as shown on the said Record of Survey filed in Book 17 of Surveys, at Page 57 and on the east line of said Parcel 2; thence along the said westerly right of way line of El Dorado Street, being a non-tangential curve to the right (concave to the west), having a radius of 9949.37
feet, a central angle of 01° 17' 20", having a chord that bears South 04°30'46" West 223.81 feet, an arc length of 223.81 feet; thence South 05°09'26" West 71.83 feet to a point on the said westerly right of way line of El Dorado Street that bears North 83°47'59" East from the TRUE POINT OF BEGINNING; thence leaving the said westerly right of way line of El Dorado Street and the said east line of Parcel 2 along the southerly lines of the herein described proposed right of way the following courses:

(1) North 83°33'33" West 89.43 feet;
(2) thence South 15°14'52" West 35.25 feet;
(3) thence North 74°45'08" West 36.19 feet, to the TRUE POINT OF BEGINNING of the herein described proposed right of way.

Containing 2.99 acres, more or less.

SUBJECT TO any public trust easement lying within the banks of French Camp Slough and encumbered by the State of California.

SUBJECT TO any special assessments, restrictions, reservations, easements, and other encumbrances.

Bearings and distances are based on the California Coordinate System, Zone 3, North American Datum 1983. Multiply distances shown by 1.00000943 to obtain ground distances. All distances are provided in United States Survey Feet.

End of Description.

This document was prepared by me, or under my direct supervision.

Landon Blake – PLS 8489

[Signature]
TO: Mayor and City Council

FROM: Gustavo A. Durán, Interim Director
Economic Development Department

SUBJECT: ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT CONTRACT AWARDS FROM THE DEPARTMENT OF ENERGY

RECOMMENDATION:

It is recommended that the City Council adopt a resolution authorizing the City Manager to award three separate contracts for energy efficiency and conservation conversions for the City of Stockton’s high rise office building located at 400 East Main Street.

Summary

On December 15, 2009, the City Council adopted Resolution No. 09-0407 authorizing the City Manager to accept an Energy Efficiency and Conservation Block Grant Award in the amount of $2,728,000, appropriate, and authorize the City Manager to execute all necessary documents to secure grant funds in order to carry out the purposes specified in the grant award.

Action to be taken at this time is to award $306,733.19 in contracts by resolution to the three contractors that submitted the most competitive proposals. The plumbing and electrical contractors are local companies. All three contractors, including the window covering contractor, will be paying prevailing wages to their employees and filing certified payrolls. The contractor installing the window coverings is a sole proprietor and will be working on the installation himself, with one employee who lives in the City of Stockton.

DISCUSSION

Background

On February 17, 2009, American Recovery Reinvestment Act was signed to stimulate the faltering economy and specifically to create or save 3.5 million jobs over a two-year period. The $787 billion stimulus package provides $288 billion in tax relief, $144 billion in local relief, and $355 billion for federal, social, and spending programs. Implementation of this program must be carried out by many federal, state, and local government entities on an extremely accelerated timetable. Staff submitted the Energy Efficiency and Conservation Block Grant Application to the Department of Energy on June 5, 2009.
ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT CONTRACT
AWARDS THE DEPARTMENT OF ENERGY

(Page 2)

On December 2, 2009, staff was notified that the 2009 Energy Efficiency and Conservation Block Grant Application in the amount of $2,728,700 was approved by the United States Department of Energy. These grant funds are to be used to fund energy efficiency projects for various City buildings, Climate Action Plans, Green Building Programs, energy efficient appliances, and building elements for homes purchased and rehabilitated under the Neighborhood Stabilization Program. Additional uses include business recycling programs to increase environmental stewardship, street light (LED) retrofit, and increased recycling in multi-family units.

Present Situation

The City’s property manager for the office building known as 400 East Main Street is CB Richard Ellis. After the notification by the Department of Energy of the Block Grant Award to the City of Stockton for energy efficiency improvements, the City instructed CB Richard Ellis to call for proposals to retrofit the existing water closets and faucets with low flow devices that substantially reduce water usage. In addition to plumbing appliances, CB Richard Ellis called for proposals to replace or retrofit the lighting for the garage and for the replacement of energy efficient window coverings.

Listed below is a summary of the most competitive proposals received by CB Richard Ellis.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shutter Elite</td>
<td>Window Coverings</td>
<td>$198,832.19</td>
</tr>
<tr>
<td>Carr Electric</td>
<td>Electrical</td>
<td>$ 59,182.00</td>
</tr>
<tr>
<td>Wagner Mechanical</td>
<td>Plumbing</td>
<td>$ 48,719.00</td>
</tr>
</tbody>
</table>

FINANCIAL SUMMARY

No General Fund monies will be used on this project. The funding source is the Energy Efficiency and Conservation Block Grant Award from the Department of Energy. The total grant awarded to the City of Stockton is $2,728,700 and the amount allocated to this project was $331,000. However, total costs for this project are $306,733.19; therefore, a savings of $24,266.81 is expected and will be used on other projects approved by the granting agency and authorized by the City Council under Resolution No. 09-0407.
These funds can only be used for the purposes stated above. Funds are available in account 304-8608-640, Capital Improvement Grant/EECBG – Energy Efficiency/City Buildings.

Respectfully submitted,

GUSTAVO A. DURÁN, INTERIM DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

APPROVED

BOB DEIS
CITY MANAGER

GAD:GI:at
Attachments

::ODMA\GRPWISE\COS.CM.CM_Library:84562.1
RESOLUTION APPROVING THREE SEPARATE CONTRACTS FUNDED FROM THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT BY THE UNITED STATED DEPARTMENT OF ENERGY FOR ENERGY EFFICIENCY PROJECTS AT 400 EAST MAIN STREET AND AWARDING CONTRACTS TO WAGNER MECHANICAL, INC., IN THE AMOUNT OF $48,719; TO CARR ELECTRIC INC., IN THE AMOUNT OF $59,182; AND TO SHUTTER ELITE, IN THE AMOUNT OF $198,832.19.

On December 15, 2009, the City Council adopted Resolution No. 09-0407 authoring the City Manager to accept the Energy Efficiency & Conservation Block Grant Award in the amount of $2,728,000 and to execute all necessary documents to secure grant funds in order to carry out the purpose specified in the grant award; and

Pursuant to the City Council's action, staff requested that CB Richard Ellis (CBRE), property manager at 400 East Main Street, obtain proposals from qualified contractors for energy efficient upgrades for water closets, faucets, lighting, and window coverings; and

CBRE received the lowest proposals from Wagner Mechanical, Inc., in the amount of $48,719; Carr Electric, Inc., in the amount of $59,182; and Shutter Elite in the amount of $198,832.19; and

Wagner Mechanical, Inc., Carr Electric, Inc., and Shutter Elite have agreed to perform said services in accordance with the terms and conditions specified in the Contract, copies of which are attached as Exhibits A, B, and C, respectively, and incorporated by this reference; now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The specifications and all letters of clarification and amendments to the specifications contained in the submittals are herein incorporated by reference and approved.

2. The work is hereby authorized and the Contracts are awarded to the contractors listed above.

3. The City Manager is hereby authorized to execute the Contracts, substantially in the form attached hereto as Exhibits A, B, and C and incorporated herein by this reference, on behalf of the City of Stockton with Wagner Mechanical, Inc., in the amount of $48,719; Carr Electric, Inc., in the amount of $59,182; and Shutter Elite, in the amount of $198,832.19, in accordance with the specifications, all letters of
clarification, and all amendments to the specifications contained in the proposals for such work hereinabove adopted by the City Council.

4. The City Manager is authorized to take such other actions as are appropriate to carry out the intent of this resolution.

PASSED, APPROVED and ADOPTED ________________________.

__________________________
ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

__________________________
KATHERINE GONG MEISSNER, City Clerk
of the City of Stockton
CONTRACT

This contract is made and entered into on ____________, 2010, by and between WAGNER MECHANICAL, INC., with a business address at 937 West Church Stockton, CA, 95203, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, specifications for all material cost and the installation, hereinafter called "PROJECT," as described in Exhibit "C" attached.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:
   (a) To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the specifications. The "contract documents," which include the project specifications, and all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.
   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefor at the prices specified in Exhibit "A," attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of the Economic Development Department of the City of Stockton.
   (c) CONTRACTOR shall provide insurance and indemnification as set forth in Exhibit "B," which is attached to this contract and incorporated by this reference. Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each
   (d) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.
To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.

(e) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(f) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor’s responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

(g) Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.

(h) Contractor agrees to provide to City certified payrolls in a form that is acceptable to City per pay period prior to payment by City to contractor for services.
2. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the City to be necessary or advisable and to require such extra work as may be determined by the City to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,814. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the City with adequate detailed cost data for such item of work.

3. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.
4. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

5. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

"CITY"

ATTEST: KATHERINE GONG MEISSNER CITY CLERK

CITY OF STOCKTON, a municipal corporation

By_________________________________

BOB DEIS
CITY MANAGER

"CONTRACTOR"

WAGNER MECHANICAL, INC.
937 West Church Street
Stockton, CA 95203

APPROVED AS TO FORM & CONTENT:

By: ____________________________
City Attorney

By: ____________________________

Jeff Wagner
President

108-0443478
Tax Identification No.
EXHIBIT A

REPLACEMENT OF PLUMBING AND LAVATORY FIXTURES

400 E. MAIN STREET

BID SCHEDULE

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<td>$48,719</td>
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</table>

BIDDERS NAME: WAGNER MECHANICAL
937 West Church Street
Stockton, CA 95203
EXHIBIT B
INSURANCE REQUIREMENTS
CONTRACTOR INSURANCE REQUIREMENTS

1. **INSURANCE:** Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than “A: VII” in Best Insurance Key Rating Guide, the following policies of insurance:

   A.) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit (CG 0001).

   B.) **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

   C.) **WORKERS’ COMPENSATION** Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

**Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by CITY.

**Other Insurance Provisions**

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.* ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

2. For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance as respects the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers.* Any coverage maintained by the CITY shall be excess of the Contractor’s insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, which shall permit ten (10) days advance notice. The insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

4. Regardless of these contract minimum insurance requirements, the contractor and its insurer shall agree to commit the contractor's full policy limits and these minimum requirements shall not restrict the contractor's liability or coverage limit obligations.

5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

6. The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY's, execution of the Agreement and start of work.

7. Proper Address for Mailing Certificates, Endorsements and Notices shall be: City of Stockton, Attn: Risk Services, 425 N El Dorado St., Stockton, CA 95202

8. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Services (209) 937-5037. Our Fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Contractor shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right (but not obligation) to purchase insurance or insure (or self-insure) for the above required coverages, at the contractor's full expense.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the subcontractor, and/or require each subcontractor to
adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractors insurance shall have the same impact as described above.

2. **INDEMNIFICATION:**

(Contractor) shall hold harmless, defend, and indemnify the CITY OF STOCKTON and its officers, agents and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of the work described herein, caused in whole or in part by any act or omission of the contractor, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY OF STOCKTON.
EXHIBIT "C"
Job Proposal-revised

Wagner Mechanical, Inc.
11149 Sheldon Road Lindsay California 93246
Phone: (209) 463-0193 FAX: (209) 463-3460
State License #: 307799

We propose to furnish all material, labor, tools, freight, equipment & sales tax to complete the following:

1. Remove 62 each wall hung water closets.
2. Furnish & install 62 each new Kohler #4330ET wall hung water closets with Sloan Royal #111 1.6 G.P.F. flush valves.
3. Remove 23 each wall hung urinals.
4. Furnish & install 23 each Kohler #K4960 wall hung urinals with Sloan #186 1.0 G.P.F. flush valves.
5. Remove 55 each 4" center set lavatory faucets.
6. Furnish & install 55 each Kohler #K1559 single-handle 4" center set lavatory faucets with .5 G.P.M. flow restriction.
7. Remove & dispose of all removed fixtures.

Price Exclusions:
1. Permits and/or fees if required are by owner.
2. Cleaning of walls not covered by new fixtures.
3. Painting (if necessary).
5. Any other work not specifically stated in scope

Price: $48,719.00

Payment to be made as follows, Progress Payments to be Negotiated.

All material is guaranteed to be as specified. All work to be completed in a Workmanlike manner according to standard practices. Any alteration or deviation from above specification involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate. All agreements contingent upon strike, accident, or delays beyond our control. Owner to carry out fire brake, natural disaster, and other liability insurance related to the premises.

Authorized Signature:

Note: This proposal may be withdrawn by us if not accepted within 30 days from date of proposal.

Acceptance of Proposal: The above prices, specification, and conditions are satisfactory and are hereby accepted. You are authorized to proceed with above specified work.

Authorized Signature:
CONTRACT

This contract is made and entered into on ____________, 2010, by and between CARR ELECTRIC with a business address at 3750 Wilcox Road, Stockton, CA, 95215, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, specifications for the installation of retrofitted garage light fixtures, hereinafter called "PROJECT," as described in Exhibit "C" attached.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:
   (a) To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the specifications. The "contract documents," which include the project specifications, and all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.
   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefor at the prices specified in Exhibit "A," attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of the Economic Development Department of the City of Stockton.
   (c) CONTRACTOR shall provide insurance and indemnification as set forth in Exhibit "B," which is attached to this contract and incorporated by this reference. Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.
To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.

That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.
(h) Contractor agrees to provide to City certified payrolls in a form that is acceptable to City per pay period prior to payment by City to contractor for services.

2. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the City to be necessary or advisable and to require such extra work as may be determined by the City to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,814. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the City with adequate detailed cost data for such item of work.

3. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this
requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

4. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

5. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

"CITY"

ATTEST:  
KATHERINE GONG MEISSNER  
CITY CLERK

CITY OF STOCKTON, a municipal corporation

By______________________________

BOB DEIS  
CITY MANAGER

"CONTRACTOR"

Carr Electric, Inc.  
3750 Wilcox Road  
Stockton, CA  95215

By:______________________________

Carr Electric, Inc.

68-0396689  
Tax Identification No.
EXHIBIT A

Electrical Retrofit Project

400 E. MAIN STREET

BID SCHEDULE

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<td>GRAND TOTAL</td>
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BIDDERS NAME: Carr Electric, Inc.
EXHIBIT B
INSURANCE REQUIREMENTS
CONTRACTOR INSURANCE REQUIREMENTS

1. **INSURANCE:** Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

   A.) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit (CG 0001).

   B.) **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for “any auto” with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

   C.) **WORKERS’ COMPENSATION** Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

**Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by CITY.

**Other Insurance Provisions**

The Policy (s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.* ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

2. For any claims related to this project, the Contractor’s insurance coverage shall be primary insurance as respects the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers.* Any coverage maintained by the CITY shall be excess of the Contractor’s insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

4. Regardless of these contract minimum insurance requirements, the contractor and its insurer shall agree to commit the contractor's full policy limits and these minimum requirements shall not restrict the contractor's liability or coverage limit obligations.

5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

6. The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY's, execution of the Agreement and start of work.

7. Proper Address for Mailing Certificates, Endorsements and Notices shall be: City of Stockton, Attn: Risk Services, 425 N El Dorado St., Stockton, CA 95202

8. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Services (209) 937-5037. Our Fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Contractor shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right (but not obligation) to purchase insurance or insure (or self-insure) for the above required coverages, at the contractor's full expense.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the subcontractor, and/or require each subcontractor to
adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractors insurance shall have the same impact as described above.

2. **INDEMNIFICATION:**

(Contractor) shall hold harmless, defend, and indemnify the CITY OF STOCKTON and its officers, agents and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of the work described herein, caused in whole or in part by any act or omission of the contractor, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY OF STOCKTON.
August 11, 2010

Paul Knight
CB Richard Ellis
400 E Main Street
Stockton, CA 95202

Re: Garage Lighting Retrofit
   400 E Main Street
   Stockton, CA 95202

Dear Paul,

We are pleased to offer our electrical proposal to retrofit 196 Garage light fixtures and pole lights as follows:

**Induction Retrofit Proposal**

**Inclusions**
- Remove existing 150 watt High Pressure Sodium lamps and ballasts
- Change lighting circuits from 480 volt to 277 volt
- Furnish and install 196 each 80 watt induction lamps and generators
- Provide 10 each spare retrofit kits
- Provide breakers to accommodate new circuitry
- Disposal fees
- Documentation for rebates, permit, and permit fees
- $1,000 allowance for City of Stockton to inspect and certify installation
- Tax incentives to Carr Electric are included in the fee structure
- Prevailing wage rates included
- All work to be accomplished during normal work hours

Total Electrical Price for above work at prevailing wage  
Material $52,820  
Labor $6,362

**Cost Analysis**
- Lamps are rated for 100,000 hours of use (over 8 times that of fluorescent)
- 14 hours/day x 6 days a week = 4380 hours/year = 22.83 years before lamps need replacement
- 84,990 KWH saved per year x .12 = an annual energy savings of $10,199
- P.G. & E. rebate is $4,249
- Cost of Project w/ PG&E rebate $54,933
- ROI w/ PG&E rebate 5.39 Years
Thank you for the opportunity to work with you on this project.

Should you have any questions or need further clarification please do not hesitate to call.

Sincerely,

C. E. 'Tad' Simard
Estimator/Project Manager
Carr Electric, Inc.
CONTRACT

This contract is made and entered into on ____________, 2010, by and between SHUTTER ELITE,, with a business address at 1121 Sycamore Avenue, Modesto, CA, 95350, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, specifications for the installation of solar screens and shades for 400 East Main Street, hereinafter called "PROJECT," as described in Exhibit "C" attached.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:
   (a) To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the specifications. The "contract documents," which include the project specifications, and all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.
   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefor at the prices specified in Exhibit "A," attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of the Economic Development Department of the City of Stockton.
   (c) CONTRACTOR shall provide insurance and indemnification as set forth in Exhibit "B," which is attached to this contract and incorporated by this reference. Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.
(d) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.

(e) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(f) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

(g) Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.
(h) Contractor agrees to provide to City certified payrolls in a form that is acceptable to City per pay period prior to payment by City to contractor for services.

2. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the City to be necessary or advisable and to require such extra work as may be determined by the City to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,814. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the City with adequate detailed cost data for such item of work.

3. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this
requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

4. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

5. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

"CITY"

ATTEST:
KATHERINE GONG MEISSNER
CITY CLERK

CITY OF STOCKTON, a municipal corporation

By__________________________

BOB DEIS
CITY MANAGER

"CONTRACTOR"

Shutter Elite
1121 Sycamore Avenue
Modesto, CA 95350

By__________________________

City Attorney

APPROVED AS TO FORM & CONTENT:

By: _________________________

Ray Van Nieuwenhuyzen
Owner

77-0456498
Tax Identification No.
EXHIBIT A

SOLAR SCREENS AND SHADES

400 E. MAIN STREET

BID SCHEDULE

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BIDDERS NAME: Shutter Elite
EXHIBIT B
INSURANCE REQUIREMENTS
CONTRACTOR INSURANCE REQUIREMENTS

1. **INSURANCE**: Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

A.) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit (CG 0001).

B.) **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

C.) **WORKERS' COMPENSATION** Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

**Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by CITY.

**Other Insurance Provisions**

The Policy (s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form **must** be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any coverage maintained by the CITY shall be excess of the Contractor's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers’ compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

4. Regardless of these contract minimum insurance requirements, the contractor and its insurer shall agree to commit the contractor’s full policy limits and these minimum requirements shall not restrict the contractor’s liability or coverage limit obligations.

5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

6. The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY’s, execution of the Agreement and start of work.

7. Proper Address for Mailing Certificates, Endorsements and Notices shall be: City of Stockton, Attn: Risk Services, 425 N El Dorado St., Stockton, CA 95202

8. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY’s Risk Services (209) 937-5037. Our Fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Contractor shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right (but not obligation) to purchase insurance or insure (or self-insure) for the above required coverages, at the contractor’s full expense.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the subcontractor, and/or require each subcontractor to
adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractor's insurance shall have the same impact as described above.

2. **INDEMNIFICATION:**

(Contractor) shall hold harmless, defend, and indemnify the CITY OF STOCKTON and its officers, agents and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of the work described herein, caused in whole or in part by any act or omission of the contractor, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY OF STOCKTON.
# EXHIBIT "C"

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## Shutter Elite

1121 Sycamore Avenue
Modesto, CA, 95350
usa
Phone: 209-579-2071 / 209-599-5095
Fax:

## Quote

**Quote:** 419
**Ref. No.:**
**Created:** 1/14/2010
**Sales Rep.:** VanNieuwenhuyzen

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## Comments

1. Insolroll solar shades installed on 8 floors @ 400 Main, Stockton, Ca.
2. Remove & dispose of existing mini blinds. ALL EXISTING BLINDS WILL BE RECYCLED. Dumpster may be parked at loading dock during job.
3. 1399 manual shades.
4. Color to be selected by owner from full color range within selected fabric group. Fabric samples and product specs to be provided as submittals.
5. Fabric group selected are GREENGUARD CERTIFIED
6. Mock up shades to be provided for approval upon contract award.
7. NO FASCIA
8. Installation schedule to be coordinated with CRBE.
9. CITY OF STOCKTON LOCAL HIRING ORDINANCE WILL BE COMPLIED WITH.

*We look forward to your business.*
TO: MAYOR and CITY COUNCIL

FROM: DIANNA R. GARCIA, Director of Human Resources

SUBJECT: RESOLUTION AUTHORIZING THE SIXTH EXTENSION OF MILITARY LEAVE WITH SUPPLEMENTAL PAY AND BENEFITS

RECOMMENDATION

Adopt a resolution as follows: authorizing the sixth extension of military leave with supplemental pay and benefits for up to 12 additional months, following depletion of the initial 30-day military leave allotment, and exhaustion of the benefits provided under Council Resolution 05-0204, or until completion of the employee’s mobilization, whichever occurs first. This authorization is for City employees ordered to active duty as part of Operations Noble Eagle, Enduring Freedom, Iraqi Freedom (which changed to Operation New Dawn on September 1, 2010), or any other military mobilization as a result of terrorist attacks on the United States of America.

SUMMARY

The Human Resources Department, on behalf of employee military personnel, desires to extend the current supplemental military leave benefits, for up to 12 months, following exhaustion of benefits under the 30-day military leave allotment and Resolution 05-0204, or until completion of the employee’s mobilization, whichever occurs first.

DISCUSSION

Background

On September 25, 2001, the City Council adopted Council Resolution No. 01-0513, authorizing City employees who were ordered to active duty as part of the United States of America’s military response to the September 11, 2001, terrorist attacks ("Operation Noble Eagle" and "Operation Enduring Freedom"), and who had exhausted their 30 days of paid military leave, to receive six months of supplemental military pay and benefits. Supplemental military pay is compensation equal to the difference between their military pay and their City salary; in addition, such employees are to receive all City benefits to which the employee would normally have been entitled for the six month period.

On March 12 and September 10, 2002, April 3, 2003, and March 23, 2004 respectively, the City Council extended, by resolution, the supplemental salary and benefits for an additional six months to employees who remained on active duty during those periods.
RESOLUTION AUTHORIZING THE SIXTH EXTENSION OF MILITARY LEAVE WITH SUPPLEMENTAL PAY AND BENEFITS

(Page 2)

On May 24, 2005, to avoid inflicting any undue hardship or adverse impacts on employees after the 30-day paid military leave and the six-month extensions authorized by Council resolution expired, the Council adopted Resolution No. 05-0204 providing up to 12 additional months of supplemental pay and benefits, or up to the entire employee mobilization period, whichever occurs first, increasing the total supplemental entitlement period to 18 months.

On December 1, 2009, President Barack Obama announced plans to deploy an additional 30,000 U.S. troops to Afghanistan on an accelerated timeline to reinforce the 68,000 Americans and 39,000 non-U.S. International Security Assistance Force (ISAF) troops already there.

Present Situation

The Human Resources Department has been advised that one employee in the Police Department has been recalled to active duty this year, and will, in November 2010, exhaust the eighteen-month supplemental entitlement granted by Resolution No. 05-0204. Accordingly, the employee's benefits and any supplemental salary will be discontinued. The employee is expected to be mobilized for a period of active duty not to exceed 400 days.

To provide the affected employee with continuing supplemental pay and benefits during deployment, staff recommends that the City Council, pursuant to the authority granted by Military and Veteran’s Code sections 395.01 and 395.03, adopt a resolution authorizing military leave with supplemental pay and benefits for up to 12 additional months, upon exhaustion of the eighteen month supplemental entitlement. This action will make the entire entitlement for supplemental military pay and benefits equal to 30 months, or two and one half years.

FINANCIAL SUMMARY

The estimated full cost for the one affected employee is approximately $9,000 per month for 12 months. This includes payroll driven benefits, as well as the cost for healthcare and pension. Sufficient funds are available in Account No. 010-2422-530 to cover the cost of this action.
RESOLUTION AUTHORIZING THE SIXTH EXTENSION OF MILITARY LEAVE WITH SUPPLEMENTAL PAY AND BENEFITS
(Page 3)

Respectfully submitted,

DIANNA R. GARCIA
DIRECTOR OF HUMAN RESOURCES

APPROVED

BOB DEIS
CITY MANAGER

::ODMA\GRPWISE\COS.PER.PER.Library:76495.1
RESOLUTION AUTHORIZING THE SIXTH EXTENSION OF MILITARY LEAVE WITH SUPPLEMENTAL PAY AND BENEFITS FOR UP TO 12 ADDITIONAL MONTHS FOLLOWING DEPLETION OF THE INITIAL 30-DAY MILITARY LEAVE ALLOTMENT AND EXHAUSTION OF THE BENEFITS PROVIDED UNDER COUNCIL RESOLUTION NO. 05-0204, OR UNTIL COMPLETION OF THE EMPLOYEE'S MOBILIZATION, WHICHEVER OCCURS FIRST

On September 25, 2001, the City Council adopted Resolution No. 01-0513 providing for six months of supplemental pay for any City employee who had completed one year of service for the City, had exhausted the 30-day paid military leave, and was ordered to active duty in response to the events of September 11, 2001 ("Operation Noble Eagle" or "Operation Enduring Freedom"); and

On March 12 and September 10, 2002, April 3, 2003, and March 23, 2004, respectively, the City Council extended, by resolution, the supplemental salary and benefits for an additional six months to provide supplemental salary and benefits for employees who remained on active duty during those periods; and

On May 24, 2005, in an effort to avoid inflicting any undue hardship or adverse impacts on employees after the 30-day paid military leave and the six-month extensions authorized by Council resolution expired, the Council adopted Resolution No. 05-0204, providing up to 12 additional months of supplemental pay and benefits, or up to the entire employee mobilization period, whichever occurs first, increasing the total supplemental entitlement period to 18 months; and

On December 1, 2009, President Barack Obama announced his intent to disrupt, dismantle, and eventually defeat al-Qaeda and prevent their return to either Afghanistan or Pakistan and announced plans to deploy an additional 30,000 U.S. troops to Afghanistan on an accelerated timeline to reinforce the 68,000 Americans and 39,000 non-U.S. International Security Assistance Force (ISAF) troops already there; and

One employee in the Police Department has been recalled to active duty this year and will, in November 2010, exhaust the 18-month supplemental entitlement
granted by Resolution No. 05-0204. The employee is expected to be mobilized for a period of active duty not to exceed 400 days; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. In order to provide the above-mentioned City employee with continuing supplemental benefits and salary during deployment, the City Council, pursuant to the authority granted by Military and Veterans Code sections 395.01 and 395.03, adopts a resolution authorizing military leave with supplemental pay and benefits for up to 12 additional months following exhaustion of the initial 30-day paid military leave benefit, exhaustion of the six-month extension of supplemental pay and benefits, and exhaustion of the 12 additional months of pay and benefits granted by Resolution 05-0204. This resolution will make the entire entitlement for supplemental military pay equal to 30 months or 2 1/2 years.

2. The City Manager is hereby authorized and directed to make any and all expenditures, appropriations, and/or transfers of funds as necessary to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED ____________________________.

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

__________________________
KATHERINE GONG MEISSNER, Clerk
of the City of Stockton
CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 6.10
TO: Mayor and City Council

FROM: Mark J. Madison, Director of Municipal Utilities

SUBJECT: MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES PROJECT (PROJECT M10013)

RECOMMENDATION

It is recommended that the City Council adopt a resolution approving specifications, addendum and all environmental findings; and authorizing the City Manager to execute a maintenance contract with Storm Water Inspection & Maintenance Services, Inc. of Byron, in the amount of $146,370 for the two Fiscal Years 2010-2011 and 2011-2012, with three possible one-year extensions for the Maintenance of Stormwater Underground Treatment Devices Project (Project M10013).

Summary

This action will approve a maintenance contract with Storm Water Inspection & Maintenance Services, Inc. of Byron, California to perform maintenance services for the two Fiscal Years 2010-2011 and 2011-2012, with three possible one-year extensions (Fiscal Years 2012-2013, 2013-2014 and 2014-2015) on various stormwater underground treatment devices operated by the Stockton Consolidated Storm Drainage Maintenance Assessment District 2005-1, and the City-owned and -operated treatment devices located at American Legion Park and the Stockton Events Center.

The work includes, but is not limited to, the semi-annual inspection of the treatment devices, removal of accumulated sediment, and in a few devices, replacement of filter cartridges, as needed to ensure optimal operations.

DISCUSSION

Background

On July 26, 2005, the City Council, pursuant to Resolution 05-0392, ordered the formation of the Stockton Consolidated Storm Drainage Maintenance Assessment District (District) No. 2005-1. The formation of this District was based on the provisions of the Municipal Improvement Act of 1913 (Act) and the Stockton Improvement Procedure Code (Stockton Code). The purpose of this District is to provide funding for the operations, maintenance, and replacement of the components of the stormwater quality treatment devices that are required by the City’s Stormwater National Pollutant Discharge Elimination System Permit. An Annual Engineer’s Report is prepared for the
MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES
PROJECT (PROJECT M10013)

(Page 2)

District that details the type and location of the devices that must be maintained with the funds collected.

The District operates and maintains nine underground stormwater treatment devices and are referred to as:

- Riverbend Bay Saver Stormwater Treatment System
- Simbad Estates Vortechs Model 2000
- Dama Estates Stormwater Management, Inc. Vault with 7-cartridge Stormfilter
- Silver Springs and Gold Springs Con/Span Storm Vault Mitigation System
- Old Oak Estates Vortechs System
- Oakmore Meadows Storm Vault Mitigation System
- Little Johns Creek North & South Con/Span Storm Vault Mitigation System
- Malisa Manor Stormwater Management, Inc. (Stormwater 350) StormFilter
- Meadowlands Unit No. 2 CDS Technologies, Inc. 17 cartridge Media Filtration System

The assessment district collects funding via the San Joaquin County annual tax rolls for the operations and maintenance of these devices.

The City, as a separate legal entity, owns and maintains two underground stormwater treatment devices in public lands that were installed after original development for improvement of water quality. These units are described as follows:

- American Legion Park, CDS Technologies, Inc. 156 cartridge Media Filtration System
- Stockton Event Center, CDS Technologies, Inc. 91 cartridge Media Filtration System

Funding for the portion of this contract attributed to these two devices will be paid from the Stormwater Utility Operations Account as the stormwater quality improvement benefits the City at-large.

Attached, as Exhibit A, is a map with the location of each of the devices referenced.

On May 14, 2010, the Municipal Utilities Department advertised this maintenance project. On June 3, 2010, four sealed bids were received and opened. The apparent low bidder was rendered non-responsive for not possessing the appropriate Contractors Class "A" License, as specified in the bid. The second lowest bid was 82% higher than the lowest bid. It was anticipated that the City would receive a more competitive bid if
MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES PROJECT (PROJECT M10013)

(Page 3)

the project was re-bid and the requirement of a Contractor Class "A" License eliminated. On August 24, 2010, Council approved with Resolution 10-0272 that rejected all bids and authorized the re-bid of the Maintenance of Stormwater Underground Treatment Devices (Project M10013).

Present Situation

On September 3, 2010, the Municipal Utilities Department advertised this maintenance project. Bid specification packages were purchased by seven firms interested in the project. The Municipal Utilities Department held a non-mandatory pre-bid conference and site tour on September 8, 2010 to provide prospective bidders the opportunity to ask questions regarding the project and tour the sites of the devices. Six potential bidders were in attendance at this meeting.

While local hiring provisions are not required for this project because this a maintenance contract, staff believed this project was amenable to, and could easily accommodate the provisions and accordingly included them in the specifications for the bid in an effort to assist Stockton’s local economic improvement efforts with the support of local firms.

On September 23, 2010, five sealed bids were received and opened with the following results:

<table>
<thead>
<tr>
<th>COMPANY NAME</th>
<th>LOCATION</th>
<th>BID PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Storm Water Inspection &amp; Maintenance Services, Inc.</td>
<td>Byron, CA</td>
<td>$146,370.00</td>
</tr>
<tr>
<td>2. Applegate Teeple's Drilling Company, Inc.</td>
<td>Empire, CA</td>
<td>$174,806.00</td>
</tr>
<tr>
<td>3. West Costs Storm, Inc.</td>
<td>San Bernardino, CA</td>
<td>$177,500.00</td>
</tr>
<tr>
<td>4. Diede Construction, Inc.</td>
<td>Woodbridge, CA</td>
<td>$243,630.47</td>
</tr>
<tr>
<td>5. United Storm Water</td>
<td>City of Industry, CA</td>
<td>$344,900.00</td>
</tr>
<tr>
<td>Engineer's Estimate</td>
<td></td>
<td>$180,000.00</td>
</tr>
</tbody>
</table>

The bid received by Storm Water Inspection & Maintenance Services, Inc. of Byron, California is compliant with the specifications, and is otherwise regular in all respects.
MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES
PROJECT (PROJECT M10013)

(Page 4)

For these reasons, it is recommended that Council authorize the City Manager to award a maintenance contract in the amount of $146,370 to Storm Water Inspection & Maintenance Services, Inc. for the Maintenance of Stormwater Underground Treatment Devices Project (Project M10013).

ENVIRONMENTAL CLEARANCE

With regard to environmental clearance requirements for the proposed work, it has been determined that this action/project is exempt from the requirements of the California Environmental Quality Act since this type of action/project has been granted a "Categorical Exemption" under Article 19, Section 15301 of the State of California Environmental Quality Act Guidelines.

FINANCIAL SUMMARY

Funding for the portion of this contract attributed to the nine devices maintained by the Stockton Consolidated Storm Drainage Maintenance Assessment District No. 2005-1 is generated by the annual assessments levied and collected by the District and is available in the District's (Fund 072) accounts ($89,970). No financial action is required at this time for Fiscal Year 2010-2011. Assessment District will budget sufficient funds to pay for this contract in Fiscal Years 2011-2012, 2012-2013, 2013-2014, and 2014-2015, if the contract is extended.

The use of the funds collected within the various zones of the Stockton Consolidated Storm Drainage Maintenance Assessment District No. 2005-1 is restricted by Proposition 218 to pay only the expenses related to the maintenance and operations of the specific stormwater quality treatment device(s) detailed in the annual engineer's report for each zone of the District. The funds collected from the property owners of a zone can only be used for work on the device(s) in that zone as it imparts special benefit restricted to the properties of that area. District funds are segregated and cannot be used to operate, maintain, or support the activities of the stormwater, or any other utility at large.

The maintenance of the American Legion Park and Stockton Event Center CDS units will be paid from the Storm Water Utility (441-4432-571) fund. Sufficient maintenance funds have been budgeted in the Fiscal Year 2010-2011 to cover this maintenance expense ($56,400). Municipal Utilities will budget sufficient funds to pay for this contract in Fiscal Years 2011-2012, 2012-2013, 2013-2014, and 2014-2015, if the contract is extended, through the annual budget approval process.
October 19, 2010

MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES PROJECT (PROJECT M10013)

(Page 5)

This project has no impact on the General Fund.

PREPARED BY: Christina Walter

Respectfully submitted,

MARK J. MADISON
DIRECTOR OF MUNICIPAL UTILITIES

APPROVED

BOB DEIS
CITY MANAGER

MJM: CW: rmk

::ODMA\GRPW\SE\COS.MUD.MUD_Library.140161.1
EXHIBIT A

UNDERGROUND TREATMENT DEVICES

SILVER SPRINGS AND GOLD SPRINGS
MEADOWLANDS
LEGION PARK
STOCKTON EVENTS CENTER
DAMA ESTATES
RIVERBEND
OAKMORE MEADOWS
HARDING WY
PARK ST
AIRPORT WY
FREMONT ST
WATERLOO RD
MARIPOSA RD
MORADA LN
HAMMER LN
EIGHT MILE RD
THORNTOWER
METRO RD
PACIFIC AVE
DRAKE RD
CAYUGA RD
LEANDER RD
PACIFIC AVE
COMO AVE
AEOLVE RD
SOUTHERN RANCH RD
EIGHTH ST
ROBERTS RD

LITTLE JOHNS CREEK NORTH AND SOUTH

MALISA MANOR
SIMBAD ESTATES
OLD OAK ESTATES

APRIL 2010

0 0.5 1 2 3 4 Miles

G1 StormBMP.pdf
Resolution No. ________

STOCKTON CITY COUNCIL

RESOLUTION APPROVING SPECIFICATIONS AND ADDENDUM AND ALL ENVIRONMENTAL FINDINGS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MAINTENANCE CONTRACT WITH STORM WATER INSPECTION & MAINTENANCE SERVICES, INC., IN THE AMOUNT OF $146,370, FOR THE TWO FISCAL YEARS 2010-2011 AND 2011-2012 WITH THREE POSSIBLE ONE-YEAR EXTENSIONS, FOR THE MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES PROJECT (PROJECT M10013)

On September 23, 2010, the City Clerk of the City of Stockton did open, examine, and publicly declare the sealed bids offered for the Maintenance of Stormwater Underground Treatment Devices Project (Project M10013), now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Maintenance of Stormwater Underground Treatment Devices Project (Project M10013) is categorically exempt under Article 19, Section 15301 of the State California Environmental Quality Act Guidelines.

2. The specifications and addendum contained in the bid for the Maintenance of Stormwater Underground Treatment Devices Project (Project M10013) are incorporated herein by reference and are hereby approved and adopted.

3. Said work is hereby authorized and the contract, in the amount of $146,370, awarded to the best regular responsible bidder, to wit; Storm Water Inspection & Maintenance Services, Inc., of Byron, California.

4. The City Manager is hereby authorized and directed to execute a contract on behalf of the City of Stockton with Storm Water Inspection & Maintenance Services, Inc., in accordance with said bid, specifications, and addenda hereinabove adopted by the City Council. A copy of said contract is attached hereto as Exhibit A and incorporated by this reference.

5. The City Clerk is hereby authorized to return to each of the unsuccessful bidders, the bidder's bond, certified checks, and cashier's checks, which accompanied their respective bids for the above-mentioned work.

6. The City Manager is authorized to take the appropriate actions to carry out the intent of this resolution.

City Atty:
Review:
Date: October 12, 2010
PASSED, APPROVED and ADOPTED ________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

::ODMA|GRPW3EICOS.MUD.MUD_Library:142125.1
MAINTENANCE CONTRACT

MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES
PROJECT NO. M10013
FOR THE CITY OF STOCKTON

THIS CONTRACT is entered into as of Date Approved, by and between the CITY OF STOCKTON, a municipal corporation (hereinafter "CITY"), and Storm Water Inspection & Maintenance Services, Inc., with a business address at 6701 Armstrong Road, Byron, California, (hereinafter "CONTRACTOR").

WITNESSETH

CITY utilized a competitive bidding process to select CONTRACTOR to perform the following services: two-year maintenance contract with possible three one-year extensions to maintain various stormwater underground treatment devices. The work includes, but is not limited to, the removal of accumulated sediment and in a few devices, replacement of filter cartridges, which are further described herein; and

CONTRACTOR has the skill, experience, resources and equipment to perform said services; and

CONTRACTOR has agreed to perform said services in accordance with the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and the performance of the conditions contained herein, CITY and CONTRACTOR agree as follows:

SECTION 1
SCOPE OF SERVICES

CONTRACTOR, for the benefit of and at the direction of CITY, shall perform the work set forth in the scope of services set forth in Exhibit A, which is attached hereto and incorporated herein by this reference (hereinafter the "Services").

CONTRACTOR warrants that the Services will be performed in a good and workmanlike manner and in all respects in accordance with accepted practices and standards in CONTRACTOR's profession.

CONTRACTOR warrants that the Services will be performed in accordance with the project specifications, set forth in Exhibit B, which is attached hereto and incorporated herein by this reference (hereinafter the "Specifications").

SECTION 2
COMPENSATION

CONTRACTOR shall be compensated for performance of the Services in the amount set forth in Exhibit A, which shall not exceed ONE-HUNDRED FORTY-SIX THOUSAND THREE-HUNDRED SEVENTY DOLLARS($ 146,370.00).

Payment will be made in accordance with the payment provisions of the Specifications, including but not limited to, Section 00700-8.0, PAYMENT.
SECTION 3
RIGHTS AND DUTIES OF CONTRACTOR

CONTRACTOR represents and warrants that it has, or will have at the time this Contract is executed, all licenses (including a City of Stockton Business License), permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance and approvals.

CONTRACTOR shall not undertake any work beyond the scope of this Contract unless such additional work is approved in accordance with section 00700 – 7.0, SCOPE OF WORK – CHANGES IN THE WORK of the Specifications.

CONTRACTOR shall meet with CITY or third parties as necessary, on all matters connected with the carrying out of the Services. Either party may request a meeting.

SECTION 4
CHANGES IN WORK

CITY reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the Services.

Any such changes will be set forth in a contract change order in accordance to section 00700 – 7.0, SCOPE OF WORK – CHANGES IN THE WORK of the Specifications.

SECTION 5
TERM

The term of this Contract shall be seven-hundred thirty (730) Days following the date of Notice to Proceed.

SECTION 6
TERMINATION OF CONTRACT

This Contract may be terminated as provided in section 00700-6.7, Termination of Contract, of the Specifications.

SECTION 7
NOTICES

Any notice, tender, delivery, or requests for payment to be given to any party herein in connection with this Contract, may be effected by personal delivery, in writing or by mail, and shall be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed as set forth below:
CITY: Mark J. Madison  
Director of Municipal Utilities Department  
City of Stockton  
2500 Navy Drive  
Stockton, CA 95206  

with a copy to: John Lubberke  
City Attorney  
City of Stockton  
425 North El Dorado Street, 2nd Floor  
Stockton, CA 95202  

CONTRACTOR: Ric Campos  
President  
Storm Water Inspection & Maintenance Services, Inc.  
6701 Armstrong Road  
Byron, California 94514  

SECTION 8  
INDEPENDENT CONTRACTOR  

Nothing in this Contract shall be interpreted so as to cause CONTRACTOR to be considered an employee of CITY. CONTRACTOR is employed solely as an independent contractor to render a professional service and is responsible for all obligations consistent with that status.  

Subcontractors shall not be recognized as having any direct or contractual relationship with the CITY. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of CONTRACTOR. CONTRACTOR shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. CONTRACTOR is responsible to CITY for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.  

SECTION 9  
WORKERS’ COMPENSATION  

Workers’ Compensation insurance shall be provided in accordance with section 00820-2.4, Workers’ Compensation Insurance, of the Specifications.  

SECTION 10  
INSURANCE  

In addition to the Workers’ Compensation Insurance, CONTRACTOR shall comply with the insurance requirements set forth in Section 00820 – Liability and Insurance Requirements, of the Specifications.
SECTION 11
PERFORMANCE BOND

CONTRACTOR shall furnish CITY with a Performance Bond. Each bond, irrevocable letter of credit, certificate of deposit or similar account or cash deposit shall be in the amount of ONE-HUNDRED FORTY SIX THOUSAND THREE-HUNDRED SEVENTY DOLLARS ($146,370.00). The bond required of CONTRACTOR shall be furnished by a company authorized to do surety business in the State of California. Said bond shall be executed by the surety and CONTRACTOR concurrently with the signing of this Contract. The bond must be approved as to surety by the Risk Services Division of CITY.

SECTION 12
INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless CITY, its officers, agents, and employees, from any claim, expense, liability, or payment for any injury, death, or damage to any person or property to the extent caused by CONTRACTOR's willful misconduct or negligent performance of its duties pursuant to this Contract. Such indemnification shall include all claims, suits, or actions of every name, kind, and description resulting from providing the Services, or by or on account of any act or omission by CONTRACTOR or its agents during the progress of this Contract or at any time before its completion. However, CONTRACTOR shall not be held liable for claims, suits, or actions, or to indemnify, defend and hold harmless CITY if the injury to or death of any person, or damage to property, is the result of willful misconduct or negligence of CITY.

SECTION 13
AUDITING

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY under this Contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Contract.

SECTION 14
ATTORNEY'S FEES

In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments, or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees and other documented expenses.
SECTION 15
ASSIGNMENT

CONTRACTOR shall neither assign nor delegate its rights and/or duties under this Contract without first obtaining CITY's written consent to the assignment and/or delegation. Any such assignment or delegation made by CONTRACTOR without prior written consent of CITY will render this Contract voidable at sole discretion of CITY.

SECTION 16
NONDISCRIMINATION

In performing services under this Contract, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any subcontractors on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

SECTION 17
APPLICABLE LAW

The provisions of this Contract and any and all disputes arising therefrom shall be governed by the laws of the State of California.

SECTION 18
CAPTIONS

The captions of the sections of this Contract are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

SECTION 19
INTEGRATION AND MODIFICATION

The specifications and the bid of CONTRACTOR both on file with the City Clerk, are hereby incorporated herein by reference to the extent that the specifications and such bid of CONTRACTOR do not differ from the provisions and terms of this Contract, and if a difference does exist the provisions and terms of this Contract shall supersede the specifications and the bid of CONTRACTOR.

This Contract represents the entire integrated agreement between CONTRACTOR and CITY; supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties; and may be amended only by written instrument signed by CONTRACTOR and CITY.

SECTION 20
SEVERABILITY

The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

SECTION 21
AUTHORITY

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.
IN WITNESS WHEREOF, the parties have executed this Contract the day first hereinabove written.

ATTEST:

KATHERINE GONG MEISSNER,
CITY CLERK

By ____________________________
  City Clerk

CITY OF STOCKTON, a municipal corporation

By ____________________________
  City Manager

  "CITY"

APPLICATION AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By ____________________________
  City Attorney
  John Lubberke

a corporation

By ____________________________

Its ____________________________

(Contractor's Attorney)

_____________________________
  (Printed Name)

  "CONTRACTOR"
## BASE BID

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description</th>
<th>Est. Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mobilization, Demobilization, Bonds, Permits, and Insurance on all Work</td>
<td>36</td>
<td>Each</td>
<td>$100.00</td>
<td>$3,600.00</td>
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<tr>
<td>2.</td>
<td>Confined Space Entry Requirements</td>
<td>36</td>
<td>Each</td>
<td>$20.00</td>
<td>$720.00</td>
</tr>
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<td>3.</td>
<td>Oakmore Meadows: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>4.</td>
<td>Oakmore Meadows: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$5,000</td>
<td>$10,000</td>
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<tr>
<td>5.</td>
<td>Oakmore Meadows: Replace Hydrocarbon Mats</td>
<td>1</td>
<td>Lump Sum</td>
<td>$600.00</td>
<td>$600.00</td>
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<tr>
<td>6.</td>
<td>Malisa Manor: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
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<tr>
<td>7.</td>
<td>Malisa Manor: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>8.</td>
<td>Malisa Manor: Replace Filter Cartridges</td>
<td>10</td>
<td>Each</td>
<td>$100.00</td>
<td>$10,000</td>
</tr>
<tr>
<td>9.</td>
<td>Little Johns Creek North and South: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>10.</td>
<td>Little Johns Creek North and South: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$7,500</td>
<td>$15,000</td>
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<tr>
<td>11.</td>
<td>Little Johns Creek North and South: Replace Hydrocarbon Mats</td>
<td>1</td>
<td>Lump Sum</td>
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<td>$600.00</td>
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<td>12.</td>
<td>Old Oak Estates: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
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<tr>
<td>13.</td>
<td>Old Oak Estates: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$2,000.00</td>
<td>$4,000.00</td>
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<td>14.</td>
<td>Dama Estates: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
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<td>15.</td>
<td>Dama Estates: Maintenance Services</td>
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<td>Each</td>
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<td>16.</td>
<td>Dama Estates: Replace Filter Cartridges</td>
<td>7</td>
<td>Each</td>
<td>$100.00</td>
<td>$700.00</td>
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<td>17.</td>
<td>Simbad Estates: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>18.</td>
<td>Simbad Estates: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$1,250.00</td>
<td>$2,500.00</td>
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<tr>
<td>19.</td>
<td>Riverbend Estates: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>Item #</td>
<td>Description</td>
<td>Est. Quantity</td>
<td>Unit</td>
<td>Unit Price</td>
<td>Total Price</td>
</tr>
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<td>-----------------------------------------------------------------------------</td>
<td>---------------</td>
<td>--------</td>
<td>------------</td>
<td>-------------</td>
</tr>
<tr>
<td>20.</td>
<td>Riverbend Estates: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$1,500.00</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>21.</td>
<td>Silver Springs and Gold Springs: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$600.00</td>
<td>$2,400.00</td>
</tr>
<tr>
<td>22.</td>
<td>Silver Springs and Gold Springs: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$15,000.00</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>23.</td>
<td>Silver Springs and Gold Springs: Replace Hydrocarbon Mats</td>
<td>1</td>
<td>Lump Sum</td>
<td>$1,200.00</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>24.</td>
<td>Meadowlands: Inspections and Reports</td>
<td>4</td>
<td>Each</td>
<td>$200.00</td>
<td>$800.00</td>
</tr>
<tr>
<td>25.</td>
<td>Meadowlands: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$1,275.00</td>
<td>$2,550.00</td>
</tr>
<tr>
<td>26.</td>
<td>Meadowlands: Replace Filter Cartridges</td>
<td>17</td>
<td>Each</td>
<td>$100.00</td>
<td>$1,700.00</td>
</tr>
<tr>
<td><strong>TOTAL BASE BID:</strong> The sum of Items 1 through 26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$89,970.00</strong></td>
</tr>
</tbody>
</table>

**SUPPLEMENTAL BID**

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description</th>
<th>Est. Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>27.</td>
<td>Legion Park and Stockton Events Center: Inspections and Reports</td>
<td>8</td>
<td>Each</td>
<td>$400.00</td>
<td>$3,200.00</td>
</tr>
<tr>
<td>28.</td>
<td>Legion Park: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$9,000.00</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>29.</td>
<td>Legion Park: Replace Filter Cartridges</td>
<td>156</td>
<td>Each</td>
<td>$100.00</td>
<td>$15,600.00</td>
</tr>
<tr>
<td>30.</td>
<td>Stockton Events Center: Maintenance Services</td>
<td>2</td>
<td>Each</td>
<td>$5,250.00</td>
<td>$10,500.00</td>
</tr>
<tr>
<td>31.</td>
<td>Stockton Events Center: Replace Filter Cartridges</td>
<td>91</td>
<td>Each</td>
<td>$100.00</td>
<td>$9,100.00</td>
</tr>
<tr>
<td><strong>TOTAL SUPPLEMENTAL BID:</strong> The sum of Items 27 through 31</td>
<td></td>
<td></td>
<td></td>
<td><strong>$56,400.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL BID:** BASE BID plus SUPPLEMENTAL BID (sum of Items 1 through 31)

<p>| | | | | | |</p>
<table>
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<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL BID:</strong></td>
<td>BASE BID plus SUPPLEMENTAL BID (sum of Items 1 through 31)</td>
<td></td>
<td></td>
<td></td>
<td><strong>$146,370.00</strong></td>
</tr>
</tbody>
</table>
BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, Storm Water Inspection & Maintenance Services, Inc., a corporation, as Principal and Name of Insurance Company, a corporation, organized and existing under the laws of the State of State and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of ONE-HUNDRED FORTY-SIX THOUSAND THREE-HUNDRED SEVENTY AND NO/100 DOLLARS ($146,370.00), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES
(PROJECT No. M10013)

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.
No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond, and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on______________________________

STORM WATER INSPECTION & MAINTENANCE SERVICES, INC. a corporation

APPROVED AS TO SURETY:

______________________________

By "PRINCIPAL"

APPROVED AS TO FORM:

JOHN LUEBBERKE OFFICE OF THE CITY ATTORNEY

______________________________

SURETY

______________________________

By ATTORNEY-IN-FACT

______________________________

CITY ATTORNEY

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258
CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 6.11
TO: Mayor and City Council

FROM: Robert Murdoch, Director
       Public Works Department

SUBJECT: PARTS ACQUISITION – FLEET

RECOMMENDATION

It is recommended that the City Council adopt two resolutions. The first resolution will reject all proposals received for the outsourcing of Fleet parts acquisition. The second resolution will reinstate a position allocation for a Materials Specialist in the Administrative Services Department for the Central Stores function.

Summary

Parts acquisition for Public Works Fleet operations is performed by Administrative Services (Central Stores) staff and by Fleet staff. Due to staff reductions in 2009, Administrative Services was unable to provide an adequate level of service to Fleet, which resulted in mechanics spending their time looking for parts instead of working on vehicles. In February 2010, the City Council authorized the release of a Request for Proposal (RFP) to explore outsourcing the Fleet parts acquisition function. Proposals were submitted by two firms and interviews conducted by a Selection Committee that included Councilmember Elbert Holman. At the conclusion of this process, it was determined that it would be more cost effective to continue to have Central Stores provide the parts acquisition function. Therefore, it is recommended that outsourcing of Fleet parts acquisition not be pursued and that one fulltime Materials Specialist position and one part time position be added to the Central Stores function, as the lower cost option to ensure adequate support for Fleet operations.

DISCUSSION

Background

The Fleet Section of the Public Works Department is responsible for maintaining the City’s vehicles and equipment. The City’s fleet consists of 978 vehicles and related pieces of equipment, ranging from Fire trucks and Police cars to pickup trucks, sedans, the bookmobile and the Pixie Woods train. Repair work is either undertaken by City staff at the main repair garage located at the Municipal Service Center, or outsourced to local repair shops. Staff estimates that approximately 20% of all repair work is currently outsourced. Expenditures on parts for repairs performed by City staff, including tires and shop supplies, totaled $1.4 million in Fiscal Year 2008/2009 and $1.1 million for Fiscal Year 2009/2010. Most of these parts were purchased from local vendors, and a
recent review of the database of vendors used by Fleet revealed 163 total vendors, of which 121 or 74% were local Stockton businesses.
The Administrative Services Department operates the Central Stores function at the Municipal Service Center. This function includes ordering, stocking, and supplying materials ranging from protective gloves and shovels to oil filters and spark plugs. The Public Works Fleet Section has always relied on Central Stores to stock commonly used automotive repair parts and to obtain other parts as needed. This onsite parts service increases efficiency by ensuring that mechanics have the parts available when needed.

Starting in 2009, staff reductions resulted in no permanent Administrative Services staff assigned to the Central Stores function. Parts acquisition became cumbersome and Fleet mechanics were spending a significant amount of time researching and ordering parts instead of repairing vehicles and equipment. In an effort to increase efficiency, Public Works recommended, and the City Council authorized, the release of an RFP to outsource the Fleet parts acquisition function in February 2010. Two firms responded to the RFP:

- Integrated Business Solutions/NAPA Auto Parts
- Brannon Tire

A Selection Committee was formed consisting of city staff from Administrative Services and Public Works. The Council representative was Councilmember Holman. Both firms were interviewed on July 15, 2010.

While the Fleet parts RFP process was underway, Administrative Services reorganized the Purchasing Section and added a provisional employee to the Central Stores function. This resulted in an immediate and significant increase in the support provided for the Fleet parts acquisition function. Efficiency improvements included the streamlining of the purchase order process and improved inventory management.

Present Situation

The Selection Committee reviewed the two proposals for experience, cost, overall approach, and responsiveness to the RFP. Both firms had similar approaches and were responsive to the RFP. Based on experience, NAPA has an overwhelming advantage, as according to their proposal, they have been providing parts procurement services since 1991 and currently feature 260 such operations nationwide. In California, these include the Cities of Sacramento, Inglewood, Oxnard, and Indio, and the County of San Diego. Brannon Tire, on the other hand, has never provided this service nor attempted to provide this service to any agency. This lack of experience greatly concerned the Selection Committee.
REQUEST FOR PROPOSALS FOR PARTS ACQUISITION – FLEET

(Page 3)

From a cost standpoint, the RFP was structured to request pricing for two functions, which were administration of service and cost of parts. The administrative function represents the monthly cost to staff and operate, during normal business hours, an onsite parts counter. The administrative costs from each proposal, as well as the City’s current costs, are as follows:

- City/Fleet (current) $2,287/month or $27,441/year
- Brannon Tire $13,500/month or $162,000/year
- NAPA $12,673/month or $152,076/year

The City/Fleet cost represents 75% of the salary of one provisional Materials Specialist. The remaining 25% is funded by Administrative Services for non-Fleet functions. To allow a comparison of the cost for parts, the RFP included a request for pricing of 81 commonly used parts that represent about 20% of Fleet’s annual parts purchases. The results were as follows:

- City actual cost $197,522
- Brannon Tire proposed cost $190,336 3.7% lower than City
- NAPA proposed cost $228,917 15.9% higher than City

In addition to the pricing and service level issues reviewed during the RFP process, a third issue surfaced that was not anticipated. Local vendors that currently provide parts to the City’s Fleet operation expressed concern that contracting out the parts acquisition function would reduce the amount of parts purchased locally. As noted earlier, 74% of vendors used by Fleet are local. One consequence of contracting out parts acquisition is the loss of the City’s ability to insure that local vendors are used. During the interviews, Brannon Tire cited the possibility of losing their existing parts supply business with the City as one of the reasons they decided to make a proposal.

After the interviews were completed, the Selection Committee discussed the improvements that had been made to the parts acquisition process by Administrative Services and the improvements that still need to be made if this service were to remain a City function. It was made clear during this discussion that the City’s current low administrative costs were the result of a staffing level that could not be sustained over the long term. In particular, the provisional position would need to be upgraded to regular fulltime status because Civil Service rules limit use of a provisional employee to 18 months. In addition, a new part time position would be needed to insure adequate coverage when the permanent employee was not in the office. The workload and funding of the part time position would be divided between Fleet and General Stores at 20% and 80%, respectively.
REQUEST FOR PROPOSALS FOR PARTS ACQUISITION – FLEET

These additional City/Fleet costs alter the administrative cost comparison as follows:

- City/Fleet (current situation) $2,287/month or $27,441/year
- City/Fleet (revised) $6,180/month or $74,167/year
- Brannon Tire $13,500/month or $162,000/year
- NAPA $12,673/month or $152,076/year

The $27,441 cost listed for the City/Fleet (current situation) represents 75% of the cost of a provisional Materials Specialist position – the remaining 25% cost is assigned to Administrative Services, for a total City (current) cost of $36,588. The $74,167 cost listed for the City/Fleet (revised) option represents 75% of a full time Materials Specialist and 20% of a part time employee. The remaining cost of $38,138 would be funded by Administrative Services, for a total City (revised) cost of $112,305.

Reinstate Materials Specialist position $57,423 increased cost to City
Establish and Hire Part Time position $18,294 increased cost to City
Total $75,717 increased cost to City

Add current costs:
Total current plus increased costs to City $112,305

These costs would be charged as follows:

Fleet 501-5023-571 $ 74,167
Administrative Services 010-1340-510 $ 38,138
Total $112,305

Taking into account the pricing discussed above, the service improvements made by Administrative Services, and the desire to keep parts purchases local, it was the Selection Committee’s recommendation that contracting for Fleet parts acquisition services is not warranted.

FINANCIAL SUMMARY

The City will save money by declining to outsource the parts acquisition function. To achieve and maintain an acceptable level of service to Fleet, additional staff costs as described in this report will need to be incurred, and are therefore recommended:

Reinstate Materials Specialist position $57,423 increased cost to City
Establish and Hire Part Time position $18,294 increased cost to City
Total $75,717 increased cost to City
REQUEST FOR PROPOSALS FOR PARTS ACQUISITION – FLEET

Adequate funding exists to accommodate the recommended staffing changes. The $38,138 annual cost liability assigned to Administrative Services is General Fund money. However, the actual additional impact of the changes on the General Fund would be only $1,550 per year, as Administrative Services is currently paying the entire $36,588 cost of the provisional Materials Specialist.

Respectfully Submitted,

ROBERT MURDOCH, DIRECTOR
PUBLIC WORKS DEPARTMENT

Approved

BOB DEIS
CITY MANAGER

::ODMA\GRP\WSE\COS.PW.PW_Library:165522.1
Resolution No. _____________

STOCKTON CITY COUNCIL

RESOLUTION REJECTING ALL PROPOSALS FOR THE OUTSOURCING OF FLEET PARTS ACQUISITION

In February 2010, City Council authorized the release of a Request for Proposals to explore outsourcing the Fleet parts acquisition function. Proposals were submitted, but at the conclusion of the interview selection process the Selection Committee (led by Councilmember Holman) determined it would be more cost effective to augment Central Stores to provide the parts acquisition function; therefore, it is recommended that outsourcing of Fleet parts acquisition not be pursued; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. All proposals received as a result of a Request for Proposals released in February 2010 for the outsourcing of Fleet parts acquisition are hereby rejected.
2. The City Manager is hereby authorized to take appropriate actions to carry out the purpose and intent of this resolution.

PASSED, APPROVED and ADOPTED ________________________________

ATTEST: ______________________________________________________
ANN JOHNSTON, Mayor
of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

City Atty Review Date October 12, 2010

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RESOLUTION REINSTATING POSITION ALLOCATION FOR MATERIALS SPECIALIST AND ADDING A PART-TIME POSITION IN THE ADMINISTRATIVE SERVICES DEPARTMENT

In February 2010, City Council authorized the release of a Request for Proposals to explore outsourcing of the Fleet parts acquisition function. Proposals were submitted, but at the conclusion of the interview selection process the Selection Committee (led by Councilmember Holman) determined it would be more cost effective to augment Central Stores to provide the parts acquisition function. Therefore, it is recommended that one full-time Materials Specialist position (previously eliminated when the incumbent retired) be re-instated and one part-time position be added to Central Stores; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. Reinstat eone full-time Materials Specialist position in the Administrative Services Department for the Central Stores function.
2. Establish one part-time Materials Specialist position in the Administrative Services Department to assist with the Central Stores function.
3. The City Manager is hereby authorized to take appropriate actions to carry out the purpose and intent of this resolution.

PASSED, APPROVED and ADOPTED ____________________________

ATTEST: ANN JOHNSTON, Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

City Atty Review Date October 12, 2010
MINUTES
CITY COUNCIL CLOSED SESSION
JUNE 22, 2010

CITY HALL
CITY COUNCIL CHAMBERS
STOCKTON, CALIFORNIA

C-1. CC/RD CALL TO ORDER / ROLL CALL 4:01 PM

Roll Call
Present:
Councilmember Eggman
Councilmember Lowery
Councilmember Martin
Vice Mayor Miller
Mayor Johnston

Absent:
Councilmember Fritchen, and Councilmember Holman.

Note: Councilmembers Fritchen and Holman arrived to Closed Session at 4:03 p.m.

C-2. CC/RD ANNOUNCEMENT OF CLOSED SESSION

C- 2.01) PUBLIC EMPLOYEE PERFORMANCE EVALUATION: Interim City Manager This Closed Session is authorized pursuant to Government Code Section 54957.

C- 2.02) CONFERENCE WITH LABOR NEGOTIATOR Agency Designated Representatives: Kevin O’Rourke; Dianna Garcia

C-3. CC/RD PUBLIC COMMENT 4:02 PM

None.

C-4. CC/RD ADJOURN TO CLOSED SESSION 4:02 PM

The Council recessed to Closed Session at 4:02 p.m. The Council returned from Closed Session and recessed at 5 p.m.

KATHERINE GONG MEISSNER
CITY CLERK OF THE CITY OF
STOCKTON
SECRETARY-REDEVELOPMENT AGENCY
1. **CC/RD CALL TO ORDER/ROLL CALL 5:30 PM**

   Roll Call 5:31 PM  
   Present:  
   Councilmember Eggman  
   Councilmember Fitchen  
   Councilmember Holman  
   Councilmember Lowery  
   Councilmember Martin  
   Vice Mayor Miller  
   Mayor Johnston

2. **CC/RD REPORT OF ACTION TAKEN IN CLOSED SESSION 5:31 PM**

   Interim City Attorney John Luebberke announced that there was no reportable action taken in Closed Session.

3. **INVOCATION/PLEDGE TO FLAG 5:31 PM**

   Senior Chaplain Jim Reed, Stockton Law Enforcement Chaplaincy provided the Invocation. The Pledge of Allegiance was led by Vice Mayor Miller.

4. **PROCLAMATIONS/COMMENDATIONS/CITY ANNOUNCEMENTS OR INVITATIONS 5:33 PM**

   4.01) **PROCLAMATION: National Mens Health Month - June 2010 RECIPIENTS:**  
   Sammy Nunez, Executive Director Fathers & Families of San Joaquin 5:33 PM

   Note: City Clerk Katherine Gong Meissner read the Proclamation in the absence of Mr. Nunez and announced that the City would forward the Proclamation on to Mr. Nunez.

5. **CITIZENS’ COMMENTS, ANNOUNCEMENTS OR INVITATIONS* 5:34 PM**

   Alice Jensen - Support for Golf Courses; opposed to raising fees

   Ramiro Reyes - opposition to Police Officer’s Association Billboards

   Cynthia Gail Boyd - Preamble of the Constitution of the United States; Billboards posted throughout the city; Letter addressed to Councilmember Eggman, dated June 22, 2010 from Irene Carey regarding Dangerous Neighborhood (filed)
Vincent Sayles - Rebound exerciser

Edward Jacobs - Support for Golf Courses; opposed to raising fees

Captain Dave Macedo, President of Stockton Firefighters Local #456 - Asked to speak under Item 6.05 Public Comment during the Public Hearing.

Albert L. Jones - Parking citation (Staff to follow up)

Ralph L. White - Code Enforcement staffing; Black Leadership Council - letter to Mayor Johnston and Stockton City Council from Ralph L. White, Stockton Black Leadership Council, dated June 22, 2010 regarding enforcement of the City Charter; Article X; Officers and Employees; Section 1000; Restrictions; Amended Election 11/8/94 effective 5/22/95; Amended Election 10/11/49 effective 12/19/49 (filed).

Maria Ramos - referenced a Flyer from Stockton Firefighters; support of Public Safety

Oscar Barrera - Asked to speak under Item 6.05 Public Comment during the Public Hearing.

Joseph A. Madar - General Fund fundraisers

6. CC/RD CONSENT AGENDA 6:08 PM

6.01) GG—Resolution to execute a Letter of Agreement between the City of Stockton and the STOCKTON CITY EMPLOYEES' ASSOCIATION to provide concessions and modification of its Memorandum of Understanding as a result of the City's current budget crisis.

—(HR) 6:09 PM

6.02) GG—Resolution approving and adopting Letter of Agreement between the City of Stockton and STOCKTON MID-MANAGEMENT/SUPERVISING LEVEL BARGAINING UNIT (B&G):

—(HR)

6.03) GG—Resolution approving the Unrepresented Management and Confidential Employees Unit Total Compensation Plan for a term of one year period, and authorizing the City Manager to continue the ninety-six hour furlough calendar for Fiscal Year 2010-2011, eliminate all cost-of-living increases for the Fiscal Year 2010/11, and implement the recommended benefit changes in the Comparison of Proposed Compensation Plan With Current Plan:

—(HR)

6.04) GG—Consider an ACTION PLAN for fiscal sustainability that will guide the City and provide a blueprint for the public to understand the issues currently facing the City, and act as a mandate both for making immediate changes and for long-term restructuring of labor agreements to restore a balance between employment costs and the preservation of City services; while ensuring maximum transparency for the public.

—(GM) 6:24 PM
6.05) **CC—Resolution adopting emergency measures affecting the terms and conditions of sworn employees in the FIRE DEPARTMENT**

---(GM)---

6.06) **CC—Resolution adopting emergency measures affecting the terms and conditions of sworn employees in the POLICE DEPARTMENT**

---(GM)---

**Note:** Items 6.01, 6.02, and 6.03 were removed from the Consent Agenda and heard under Unfinished Business concurrently as Items 7.01, 7.02, and 7.03 respectively.

**Note:** Item 6.04 was removed from the Consent Agenda and heard as Item 7.04 under Unfinished Business.

**Note:** Items 6.05 and 6.06 were removed from the Consent Agenda, heard as Items 7.05 and 7.06 respectively, and considered during the Public Hearing Item 9.01 regarding the City’s proposed 2010-2011 Fiscal Year Budget.

7. **UNFINISHED BUSINESS 6:08 PM**

7.01 **(formerly Item 6.01) CC Resolution to execute a Letter of Agreement between the City of Stockton and the STOCKTON CITY EMPLOYEES’ ASSOCIATION to provide concessions and modification of its Memorandum of Understanding as a result of the City’s current budget crisis.**

---(HR)---

7.02 **(formerly Item 6.02) CC Resolution approving and adopting Letter of Agreement between the City of Stockton and STOCKTON MID-MANAGEMENT/SUPERVISING LEVEL BARGAINING UNIT (B&C).**

---(HR)---

7.03 **(formerly Item 6.03) CC Resolution approving the Unrepresented Management and Confidential Employees Unit Total Compensation Plan for a term of one-year period, and authorizing the City Manager to continue the ninety-six hour furlough calendar for Fiscal Year 2010-2011, eliminate all cost of living increases for the Fiscal Year 2010/11, and implement the recommended benefit changes in the Comparison of Proposed Compensation Plan With Current Plan.**

---(HR)---

Interim City Manager O’Rourke introduced Dianna Garcia, Director of the Human Resources Department provided a staff report regarding each of the agreements to the Council with the aid of a PowerPoint presentation (filed) and answered questions from the Council.

**Motion:** Approve

7.01 **(formerly Item 6.01) CC Resolution 10-0196 to execute a Letter of Agreement**
between the City of Stockton and the STOCKTON CITY EMPLOYEES' ASSOCIATION to provide concessions and modification of its Memorandum of Understanding as a result of the City’s current budget crisis.

7.02 (formerly Item 6.02) CC Resolution 10-0197 approving and adopting Letter of Agreement between the City of Stockton and STOCKTON MID-MANAGEMENT/SUPERVISING LEVEL BARGAINING UNIT (B&C).

7.03 (formerly Item 6.03) CC Resolution 10-0198 approving the Unrepresented Management and Confidential Employees Unit Total Compensation Plan for a term of one-year period, and authorizing the City Manager to continue the ninety-six hour furlough calendar for Fiscal Year 2010-2011, eliminate all cost of living increases for the Fiscal Year 2010/11, and implement the recommended benefit changes in the Comparison of Proposed Compensation Plan With Current Plan.

Moved by: Councilmember Fritch, seconded by Councilmember Martin.

Vote: Motion carried 7-0

Yes: Councilmember Eggman, Councilmember Fritch, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.

7.04 (formerly Item 6.04) CC Consider an ACTION PLAN for fiscal sustainability that will guide the City and provide a blueprint for the public to understand the issues currently facing the City, and act as a mandate both for making immediate changes and for long-term restructuring of labor agreements to restore a balance between employment costs and the preservation of City services, while ensuring maximum transparency for the public.

(CM) 6:23 PM

Note: A Memorandum dated June 21, 2010 to the Mayor and City Council from Kevin O'Rourke, Interim City Manager providing additional information in regards to the following items, which was distributed around the bench (filed):
- Item 7.04 (formerly 6.04), the resolution and the Action Plan,
- Item 7.05 (formerly 6.05), the resolution and the staff report, and
- Item 7.06 (formerly 6.06), the resolution and the staff report.

Mayor Johnston read opening comments into the record regarding the proposed Action Plan for Fiscal Sustainability.

Interim City Manager Kevin O'Rourke outlined the proposed Action Plan for Fiscal Sustainability with the aid of a PowerPoint presentation (filed).

Motion: Approve 7.04 (formerly Item 6.04) CC Resolution 10-0199 adopting an
ACTION PLAN for fiscal sustainability that will guide the City and provide a blueprint for the public to understand the issues currently facing the City, and act as a mandate both for making immediate changes and for long-term restructuring of labor agreements to restore a balance between employment costs and the preservation of City services, while ensuring maximum transparency for the public. 

(CM)

Moved by: Councilmember Eggman, seconded by Vice Mayor Miller.

Vote: Motion carried 7-0

Yes: Councilmember Eggman, Councilmember Fritch, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.

8. NEW BUSINESS

None.

Mayor Johnston announced a brief recess at 6:46 p.m. and reconvened the meeting at 6:59 p.m.

9. PUBLIC HEARINGS** 6:59 PM

Note: Items 6.05 and 6.06 were removed from the Consent Agenda, heard as Items 7.05 and 7.06 respectively, and considered during the Public Hearing Item 9.01 regarding the City's proposed 2010-2011 Fiscal Year Budget.

Note: A Memorandum dated June 21, 2010 to the Mayor and City Council from Kevin O'Rourke, Interim City Manager providing additional information in regards to the following items, which was distributed around the bench (filed):
Item 7.04 (formerly 6.04), the resolution and the Action Plan,
Item 7.05 (formerly 6.05), the resolution and the staff report, and
Item 7.06 (formerly 6.06), the resolution and the staff report.

9.01) CC/ Hearing to consider public comments/testimony regarding the proposed RD 2010-11 BUDGET, 2010-15 CAPITAL IMPROVEMENT PROGRAM, and FEE ADJUSTMENTS. City Council Action At the conclusion of the public hearing, adopt two resolutions: approving the Proposed 2010-2011 Annual Budget, 2010-2015 Capital Improvement Program, and approving fee adjustments in the City Fee Schedule; making of benefit findings pursuant to California Redevelopment Law in connection with adoption of the Redevelopment Agency’s 2010-2011 Budget. 6:59 PM

Mayor Johnston declared the Public Hearing open at 7:00 p.m.

7.05

(formerly 6.05) CC Resolution adopting emergency measures affecting the terms and conditions of sworn employees in the FIRE
DEPARTMENT
(CM)

7.06 (formerly 6.06) CC Resolution adopting emergency measures affecting the terms and conditions of sworn employees in the POLICE DEPARTMENT
(CM)

Interim City Manager Kevin O'Rourke - Budget graphics contest; announced the following 3 winners:

Sharyn Shoji, Administrative Services Payroll Division
Bret Hunter, City Clerk's Office
Joe Ripley, Administrative Services Information Technology Division

Interim City Manager Kevin O'Rourke provided the proposed Annual Budget Fiscal Year 2010-2011 with the aid of a PowerPoint presentation (filed).

Mayor Johnston - clarification as to what departments would receive positions added

Interim City Manager Kevin O'Rourke responded with the following information:

Police Department = 20 positions
Municipal Utilities = 13 positions
Administrative Services = 4 positions
Community Services = 1 position

Joe Maestretti, Budget Manager - Revenues/Expenditures

Interim City Manager Kevin O'Rourke introduced the General Fund Department Budgets. Each of the General Fund Departments and designated staff gave their reports with the aid of the PowerPoint that was filed by Mr. O'Rourke.

Police Chief Blair Ulring gave the report regarding the Police Department Budget, followed by the Mr. O'Rourke's explanation of the budget Plan A Concession/Impositions by this Department.

Questions were asked about the negotiations with Stockton Police Officers' Association (SPOA).

Fire Chief Ron Hittle gave the report regarding the Fire Department Budget
the the concessions/impositions made under Budget Plan A.

Councilmember Martin - asked questions regarding the Truck 4 location, what other options were explored when studying the close of Truck Company 4, the possibility of reopening Truck Company 4 at a later date, and rolling brown outs.

Councilmembers inquired about the structural concessions, the various options, Budget Plan A vs. Plan B, the on-going Fire union negotiations, and bullet points of what is needed from the Fire union to move on. Comments were made that the quality of work by our Public Safety employees is not a question.

Interim City Manager Kevin O’Rourke gave an overview of what Budget Plan B would look like if the Fire Department concessions were not made.

Public Works Director Bob Murdoch gave the report regarding the Public Works budget.

Pamela Sloan, Director of the Community Services Department reported on her department budget.

Mayor Johnston announced a brief recess at 8:57 p.m. and reconvened the meeting at 9:05 p.m.

Interim City Manager Kevin O’Rourke gave the budget report regarding the Support Departments. Several questions were asked relative to the Assistant to the City Manager position and the process used for filling the position vs. how other positions throughout the city are filled, the salary range, the classification and compensation study performed which reduces the position salary, the recommended effective date for the pay rate and the position salary.

Ms. Garcia also spoke about the 2007 classification and compensation study, the fairness and disparity issues related to implementation of the study especially to Unrepresented employees, compensation disparity and compaction issues.

Discussion ensued amongst the Councilmembers regarding the timeline for remedying these salary disparities; it was decided that this issue be brought forward and the salary inequities for the classifications be brought back all at one time to be remedied sooner than later.
Mark Madison, Director of the Municipal Utilities gave the budget report for his department.

Gus Duran, Interim Director of Economic Development gave the budget report for his department.

Mike Niblock, Director of the Community Development Department gave the budget report for his department.

Councilmember Eggman - fees; requested a study session to establish goals relating to the nexus study and all things that affect the fees.

Councilmember Fritchman stated that nexus studies are very important, and a way must be found to jump start the economy and develop incentives to get people back to work. Fee deferrals were also discussed, and that a study session be held as early as August.

Interim City Manager Kevin O'Rourke - shared with the Council that he has asked that the Economic Development and Community Development Departments to examine the opportunity to consolidate the 2 departments. He has shared this with incoming City Manager Bob Deis as well.

Mahin Shah, Budget Analyst provided a staff report regarding the Capital Improvement Program and Fee Schedule.

Questions were asked about the fees for the Children’s Museum and golf cart fees. Comments from Councilmembers were made about the golf cart pass and the fee for this, the recommendations from the outside consultant on this matter and whether to subsidize the carts. Ultimately, the Council agreed to a compromise on the golf cart fee.

Mr. O'Rourke introduced Laurie Montes, Deputy City Manager, who provided a staff report on the Entertainment Venues, the buy-out of IFG and transitioning to a lower cost manager for the venues. More information on this matter will be forthcoming.

Interim City Manager Kevin O'Rourke thanked all staff and bargaining units that worked on the budget.

City Clerk clarified the recommended actions for Items 7.05 (formerly 6.05)
and 7.06 (formerly 6.06) as follows:

7.05 - Amended Resolution adopting emergency measures affecting the terms and conditions of sworn employees in the Fire Department to include the documents as attached to the city Manager’s memoranda of June 21 and 22, 2010.

7.06 - Amended Resolution adopting emergency measures affecting the terms and conditions of sworn employees in the Police Department to include the documents as attached to the City Manager’s memoranda of June 21, and 22, 2010.

Councilmember Martin - asked for clarification about the implementation of Plan A and Plan B to which Interim City Attorney Luebberke responded.

Public Comment

Colleen Foster - support of the Library and thanked the Council for their support; supports the Fiscal Action Plan

Captain Dave Macedo, President of Stockton Firefighters Local #456 - Fire Department budget and concessions

Oscar Barrera, retired Firefighter - Budget

Bryan Carr, Firefighter - Budget; Fiscal Action Plan

Mayor Johnston declared the Public Hearing closed at 10:40 p.m.

Councilmember Martin commented about the Fire Union contract offers and the time frame for review. Future negotiations to continue.

Note: A Memorandum dated June 22, 2010 to the Mayor and City Council from Kevin O’Rourke, Interim City Manager providing additional information in regards to Items 6.05, 6.06, and 9.01 was distributed around the bench (filed).

Motion: Approve 6.05) CC Amended Resolution 10-0200 adopting emergency measures affecting the terms and conditions of sworn employees in the FIRE DEPARTMENT to include the documents as attached to the City Manager’s

Moved by: Councilmember Eggman, seconded by Vice Mayor Miller.

Vote: Motion carried 6-1

Yes: Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Vice Mayor Miller, and Mayor Johnston.  
No: Councilmember Martin.

Motion: Approve 6.06) CC Amended Resolution 10-0201 adopting emergency measures affecting the terms and conditions of sworn employees in the POLICE DEPARTMENT to include the documents as attached to the City Manager’s memorandum of June 21, 2010 and June 22, 2010.  
(CM)

Moved by: Councilmember Holman, seconded by Councilmember Lowery.

Vote: Motion carried 7-0

Yes: Councilmember Eggman, Councilmember Fritchen, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.

Motion: Approve 9.01) City Council Action

9.01 a CC Amended Resolution 10-0202 approving the Proposed 2010-2011 Annual Budget, 2010-2015 Capital Improvement Program, and approving fee adjustments in the City Fee Schedule and authorizing the various fund transfers and administrative actions to include the documents as attached to the City Manager’s memorandum of June 22, 2010, and also include the appropriation from the Equipment Fund for the Police Department, and add back into the revised Personnel Listing, an Executive Assistant position in the Economic Development Department, as well as work out a compromise position on the Golf Cart rental.

Moved by: Councilmember Eggman, seconded by Vice Mayor Miller.

Vote: Motion carried 7-0

Yes: Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.

Motion: Approve 9.01 b CC Resolution 10-0203 making of benefit findings pursuant to California Redevelopment Law in connection with adoption of the Redevelopment Agency’s 2010-2011 Budget.

Moved by: Vice Mayor Miller, seconded by Councilmember Lowery.
Vote: Motion carried 7-0

Yes: Councilmember Eggman, Councilmember Fitchen, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.

Motion: Approve Redevelopment Agency Action, 9.01 c RD Resolution 10-019 approving the 2010-2011 Redevelopment Agency Budget

Moved by: Councilmember Eggman, seconded by Councilmember Holman.

Vote: Motion carried 7-0

Yes: Councilmember Eggman, Councilmember Fitchen, Councilmember Holman, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.

10. COUNCIL/REDEVELOPMENT AGENCY COMMENTS AND COMMITTEE REPORTS

Council Comments

Mayor Johnston - Thanked the Budget Staff, Executive Team, and Labor Unions

11. ADJOURNMENT 10:47 PM

KATHERINE GONG MEISSNER
CITY CLERK OF THE CITY OF STOCKTON
SECRETARY REDEVELOPMENT AGENCY
C-1. CC/RD CALL TO ORDER / ROLL CALL (4:00 P.M.)

Roll Call
Present:
Councilmember Holman
Councilmember Lowery
Vice Mayor Miller
Mayor Johnston

Absent:
Councilmember Eggman, Councilmember Fritchén, and Councilmember Martin.

Note: Councilmember Fritchén arrived at 4:02 p.m. and Councilmember Martin arrived at 5:30 p.m.

C-2. CC/RD ANNOUNCEMENT OF CLOSED SESSION

C-2.01) CONFERENCE WITH LEGAL COUNCIL

Number of Cases: One

Name of Case: City of Stockton v. California Opathics Patient Association, Inc., et al. (San Joaquin County Superior Court Case No. 39-2010-00238049-CU-MC-STK

This Closed Session is authorized pursuant to Section 54956.9(a) of the Government Code.

C-2.02) CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representatives: Bob Deis; Dianna Garcia

Employee Organizations; Unrepresented Units:
Stockton City Employees' Association; Operating Engineer's Local 3; Mid-Management/Supervisory Level Unit; Unrepresented Management/ Confidential; Law Department; Stockton Police Management Association;
Stockton Firefighters Local 456 International Association of Firefighters; Stockton Fire Management, Stockton Police Officers' Association (SPOA)

This Closed Session is authorized pursuant to Section 54957.6(a) of the Government Code.

C-3. CC/RD PUBLIC COMMENT

None

C-4. CC/RD ADJOURN TO CLOSED SESSION

The Council recessed to Closed Session at 4:01 p.m. The Council returned from Closed Session and recessed at 5:00 p.m.

KATHERINE CONG MEISSNER
CITY CLERK OF THE CITY OF
STOCKTON
SECRETARY REDEVELOPMENT AGENCY
MINUTES
CITY COUNCIL/REDEVELOPMENT AGENCY CONCURRENT CITY HALL
AUGUST 24, 2010 CITY COUNCIL CHAMBERS STOCKTON, CALIFORNIA

1. CC/RD CALL TO ORDER/ROLL CALL 5:30 PM

Roll Call 5:30 PM
Present:
Councilmember Fritchen
Mayor Johnston
Councilmember Lowery
Councilmember Holman
Vice Mayor Miller
Councilmember Martin

Absent:
Councilmember Eggman.

2. CC/RD REPORT OF ACTION TAKEN IN CLOSED SESSION 5:30 PM

City Attorney John M. Luebberke - there were no matters to report.

3. INVOCATION/PLEDGE TO FLAG 5:30 PM

Pastor Marcelo Barioni of Keys to Life Christian Fellowship provided the Invocation. The Pledge of Allegiance was led by Councilmember Lowery.

4. PROCLAMATIONS/COMMENDATIONS/CITY ANNOUNCEMENTS OR INVITATIONS 5:33 PM

4.01) Certificate: Adopt-A-Park Program Volunteer Recipient: Volunteers from 19 Parks/Facilities 5:33 PM

5. CITIZENS’ COMMENTS, ANNOUNCEMENTS OR INVITATIONS* 5:44 PM

Georgianna Reichelt - democracy; speakers should show respect for others and respect the law

Gary Malloy - raises for Mayor, City Attorney and other City
administrators

Lisa Bryan - wastewater fee increase, item 9.02 (submitted a neighborhood petition against the increase which was filed).

Cynthia Boyd - James Rivera, Johnny Ford, and her own case

Ramonia Young - requested an investigation in the death of James Rivera

Nguyen T. Tocan - repeated accounts of persecution

Ramiro Reyes - respect for all speakers who express their opinions

Bobby Bivens - Approval of a vendor pool for bond management; diversity and taking of event tickets by City staff

Kunta Rigmaden - would like to speak with the Mayor and Council directly to get some responses to the questions from members of the community.

Dionne Smith Downs had nothing to say

Ralph White - event tickets; respect for the City Charter

Yia Carter - sympathizes for the community; why two sanitation systems

6. CC/RD CONSENT AGENDA 6:18 PM

Motion: Approve 6. CC/RD CONSENT AGENDA as follows:

Moved by: Councilmember Fritchen, seconded by Vice Mayor Miller.

Vote: Motion carried 6-0

Yes: Councilmember Fritchen, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.
Absent: Councilmember Eggman.

6.01) CC REPEAL AND REPLACE COUNCIL POLICY 100-2 - APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES
Resolution 10-0271 approving revisions to Council Policy 100-2,
City Council Mayor Appointments to Boards, Commissions, and Committees, based on pilot process tested and refined during the period of January 2010 to May 2010. (CLK)

6.02) CC LETTER OF SUPPORT FOR RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS

Motion supporting an application to the California Debt Limit Allocation Committee (CDLAC) for unused Recovery Zone Economic Development Bonds that will be re-allocated by the Committee at their September 22, 2010 meeting. (CM)

6.03) CC MAINTENANCE OF STORMWATER UNDERGROUND TREATMENT DEVICES

Resolution 10-0272 rejecting all bids and authorizing the re-bid for the Maintenance of Stormwater Underground Treatment Devices (Project M10013). (MUD)

6.04) CC PURCHASE OF ONE WATER SERVICE TRUCK (PUR 10-035)

Resolution 10-0273 authorizing the City Manager to issue a purchase order in the amount of $103,473.70 to Big Valley Ford of Stockton, California, for the purchase of a water service truck (PUR 10-035). (MUD)

7. UNFINISHED BUSINESS

8. NEW BUSINESS

8.01) CC FILLING ONE VACANCY ON THE SAN JOAQUIN COUNTY COMMISSION ON AGING

Resolution appointing one commissioner to serve on the San Joaquin Commission on Aging for a term commencing upon appointment and ending September 16, 2011. (CLK) 6:19 PM

Motion: Approve Resolution 10-0274 appointing Melvin Boles as the commissioner to serve on the San Joaquin Commission on Aging for a term commencing upon appointment and ending September 16, 2011.

Moved by: Councilmember Fritchcn, seconded by Councilmember Martin.

Vote: Motion carried 6-0
Yes: Councilmember Fritchen, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.
Absent: Councilmember Eggman.

8.02) CC ANNUAL SALARY FOR THE MAYOR

Ordinance amending part XII, sections 3-140 and 3-142, of chapter 3 of the Stockton Municipal Code amending the salary for the Mayor. This action is pursuant to City Council Salary Setting Commission Resolution 09-001 that stipulates that the annual salary of the Mayor shall be the same as that of the Chair of the Board of Supervisors of San Joaquin County. (HR)

6:22 PM

Mayor Johnston declined the salary increase.

Motion: Approve No raise for the Mayor and reject the Salary Setting Commissions’ recommendation to set the Mayor’s salary to be the same as the Chair of the Board of Supervisors of San Joaquin County.

Moved by: Councilmember Martin, seconded by Councilmember Holman.

Vote: Motion carried 6-0

Yes: Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.
Absent: Councilmember Eggman.

9. PUBLIC HEARINGS** 6:24 PM

Councilmember Lowery stepped away from the dais.

9.01) CC Hearing to consider comments/testimony regarding the MEDICAL CANNABIS ORDINANCE - Continued from June 29, 1010.

At the conclusion of the public hearing, it is recommended that the City Council adopt the following:
1. Ordinance approving a City-initiated Code Amendment to allow the establishment of medical cannabis dispensaries in specified zoning districts with the approval of a Planning Commission Use Permit;

2. Ordinance regulating the operation and employee permit requirements;

3. Resolution amending the 2010-2011 Fee Schedule to incorporate new fees related to the permit to operate, employee permit, renewal fees, and cost recovery;

4. Resolution implementing the Administrative Guidelines to establish the procedures for the dispensaries' selection process. (CM) This item to be heard concurrent with agenda item 10.01.

6:24 PM

Affidavit of posting of the continued public hearing is on file in the office of the City Clerk.

Memorandum from the City Clerk dated August 24, 2010 transmitting the following:
1) Letter dated August 12, 2010 received by City Clerk's Office on August 23, 2010 addressed to "Dear Supporter of Safe Access in Stockton" from Peggy Dohlen, Executive Director of Stockton Patient Cooperative (filed); and

2) Email dated 8/24/2010 to John Luebberke from Dennis Revell regarding Stockton City Council Meeting/August 24, 2010/Agenda Items 9.01 and 10.01/Medical Cannabis Ordinance (filed).


Moved by: Councilmember Martin, seconded by Councilmember Martin.

Vote: Motion carried 5-0

Yes: Councilmember Fritch, Councilmember Holman, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.
Absent: Councilmember Eggman, and Councilmember Lowery.

The Mayor announced that the public hearing of June 29, 1010 was continued to tonight and remains open.

Guy Petzold, Deputy City Attorney, provided the staff report aided by a PowerPoint presentation (filed).

Councilmember Lowery returned to the dais.

Comments were taken from the following public members:

Ramiro Reyes

Tai Bogen referenced proposed code sections entitled "Operators Permit" (filed)

Gary Gershon, ACLU - patient privacy considerations, accessibility for ADA compliance

Peg Dohlen - Community outreach and programs

Patrick Goggin, separation standards from sensitive uses, zoning districts

Max Del Real - local control, points for residents

Craig Litman, commended Council and staff and that the ordinance is ready to go

Cynthia Boyd - Montel Williams and Multiple Sclerosis; discretion of the Chief of Police

Mr. Petzold clarified the appeal process, the grounds for permit denial, that Councilmember appointments to the Selection Committee would be made from the city at-large, and Committee appointee eligibility requirements.

Councilmember Holman expressed concerns relative to the potential for increased criminal activity when marijuana and money are involved; he stressed the importance for adequate policing, which may be difficult during these budgetary times. He expressed appreciation for the work involved and input gathered in putting together the proposal for tonight.
Dennis Rivell - method of measurement,

Nguyen Tocan opposed this proposal

Amir Daliri - method of cultivation

George Mull - suggestions regarding how to measure regarding separation standards for sensitive uses

Peg Dohlen - suggests that Planning Commission can decide how to measure regarding separation standards involving sensitive uses

Mr. Litman - suggested putting in buffers where there are sensitive uses, and the Selection Committee can use this as part of their ranking

Michael O’Leary - agrees with Mr. Litman’s suggestion

Roy Hogart - buying clones and growing own

Bob Bentz, retired federal officer, suggests selling the marijuana at the counseling centers; will there be a fee for increased crime rate? Expressed opposition to this proposal.

The Mayor declared the public hearing closed at 7:30 p.m.

City Attorney John Luebberke - reviewed the separation standards and that it is 300 feet from residential and 600 feet from sensitive uses. To address the issues that have been brought up regarding the separation standards and how to measure, he suggested changing the measurement criteria for sensitive uses, that there be a 300 foot minimum buffer no matter how it is measured, to solve the pathways problem. This way there will always be a minimum of 300 feet from the cannabis use to the sensitive use.

The Council was in full agreement to the minimum of 300 foot buffer as suggested by Mr. Luebberke.

**Motion:** Approve Ordinance 013-10 CS (as amended) effective September 23, 2010 to approve a City-initiated Code Amendment to allow the establishment of medical cannabis dispensaries in specified zoning districts with the approval of a Planning Commission Use Permit and that staff be directed to amend the language in this ordinance with regard to the distance separation section to provide a minimum separation of 300 feet between the front entrance of a dispensary and
the property line of a sensitive use.

Moved by: Councilmember Martin, seconded by Mayor Johnston.

Vote: Motion carried 5-1

Yes: Councilmember Fritchen, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.
No: Councilmember Holman.
Absent: Councilmember Eggman.

Motion: Approve Ordinance 014-10 C.S. effective September 23, 1010 regulating the operation and employee permit requirements.

Moved by: Mayor Johnston, seconded by Councilmember Martin.

Vote: Motion carried 5-1

Yes: Councilmember Fritchen, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.
No: Councilmember Holman.
Absent: Councilmember Eggman.

Motion: Approve Resolution 10-0275 amending the 2010-2011 Fee Schedule to incorporate new fees related to the permit to operate, employee permit, renewal fees, and cost recovery; and that the account number be corrected as reflected in the following sentence contained in the resolution: "To reimburse staff and consultants, expenditure Account No. 010-0170-510 has been established."

Moved by: Councilmember Martin, seconded by Vice Mayor Miller.

Vote: Motion carried 6-0

Yes: Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.
Absent: Councilmember Eggman.

Motion: Approve Resolution 10-0276 implementing the Administrative Guidelines to establish the procedures for the dispensaries’ selection process.
Moved by: Councilmember Martin, seconded by Vice Mayor Miller.

Vote: Motion carried 0-0

Absent: Councilmember Eggman.

The Council recessed at 7:38 p.m.

the Council reconvened at 7:50 p.m.

9.02) CC Hearing to consider public comments/testimony regarding PROPOSITION 218 PUBLIC PROTEST HEARING TO CONSIDER WASTEWATER RATE ADJUSTMENTS

At the conclusion of the public hearing it is recommended that the City Council adopt the following:

Resolution approving the following:

1. Adopting the Final Report - Wastewater Rate Study, dated August 24, 2010 as prepared by HDR Engineering, Inc.

2. Overruling any protests, assuming less than 50% of the affected ratepayers or property owners have submitted written protests as tallied by the City Clerk.

3. Approving the wastewater rates adjustments as identified in the Report, and amend the City of Stockton 2010-2011 Fee Schedule to reflect those adjustments for the current fiscal year.

4. Directing staff to perform an annual review of the proposed future rate adjustments to determine appropriateness and request those necessary adjustments.

5. Approving a Consumer Price Index (CPI) as determined for a period of time from January to January by the Bureau of Labor Statistics, U.S. City Average, Other Goods and Services, 1982-84 base, not to exceed 4.00% annually.

(MUD) This item to be heard concurrent with agenda item 10.02.

7:38 PM

Motion: Approve the acceptance of the Council Water Committee
meeting of August 11, 2010 for filing.

**Moved by:** Councilmember Lowery, seconded by Councilmember Fritchken.

**Vote:** Motion carried 6-0

**Yes:** Councilmember Fritchken, Councilmember Holman, Councilmember Lowery, Councilmember Martin, Vice Mayor Miller, and Mayor Johnston.

**Absent:** Councilmember Eggman.

Affidavits of posting, mailing, publication, continued public hearing, and presence to notify the public of the continuance of the public hearing were filed in the office of the City Clerk.

City of Stockton Municipal Utilities Department Final Report of Wastewater Rate Study dated August 17, 2010 as prepared by HDR (filed).

Memorandum dated August 24, 2010 addressed to the Mayor and Members of the City Council from Guy D. Petzold, Deputy City Attorney regarding Items 9.02 and 9.03 regarding a change to each of the resolutions to allow the City Clerk a place to insert the number of protests that are received when the public hearings are closed (filed).

Municipal Utilities Director Mark Madison asked that a copy of Business Council Resolution 81910 signed by Fritz Grupe, Chairman of the Board, dated August 19, 2010 (filed).

The Mayor declared the public hearing opened at 7:51 p.m.

Mark Madison, Director of Municipal Utilities Department, provided the staff report aided by a PowerPoint presentation (filed).

Mr. Madison introduced key staff and the consultants, HDR Engineering, Inc. who worked on the project.

City Clerk Katherine Meissner announced that 173 protests were received prior to the hearing tonight.

Comments from the public:

Bill Loyko - resident and member of the Concerned Citizens Coalition,
and member of the Water Advisory Group (WAG), made personal comments—not as a representative of the WAG. He expressed his opposition to the wastewater (Item 9.02) and stormwater (Item 9.03) increases because of his lack of confidence in the Municipal Utilities Department management practices, and the department's failure to meet bond convenants.

John Beckman, BIA - supports the rate increases

Tony Ketner, Vernon Transportation Company - questioned if revenues are down due to the housing crises; the CPI and connection fees

The Mayor declared the public hearing closed at 8:44 p.m.

City Clerk Katherine Meissner announced for the record that 110,996 notices were mailed, 176 protests were received, however, a majority protest does not exist. Clerk's Certificate Results of Tabulation filed.

Motion: Approve Resolution 10-0277 approving the Waste Water Rate Study, Overruling Protests, Approving an Annual Consumer Price Index Adjustment, Approving the Waste Water Rate Adjustments, and Amending the 2010-2011 Fee Schedule to Reflect the New Rates.

Moved by: Councilmember Fritch, seconded by Councilmember Lowery.

Vote: Motion carried 6-0

Yes: Councilmember Fritch, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.
Absent: Councilmember Eggman.

9.03)

CC Hearing to consider public comments/testimony regarding
STORMWATER BALLOTING

At the conclusion of the public hearing it is recommended that the City Council adopt the following:

Resolution approving the following:

1. Adopting the Final Stormwater Rate Study and Fee Report, dated August 17, 2010 as prepared by HDR Engineering, Inc.
2. Overruling any protests, assuming less than 50% of the affected ratepayers or property owners have submitted written protests as tallied by the City Clerk

3. Approving mailing ballots for the new Clean Water Fee for Stormwater Services with a 45-day period as required under Proposition 218 and set October 25, 2010 4:30 p.m. as the date and time to close balloting.

4. Directing staff to perform an annual review of the proposed future rate adjustments to determine appropriateness and request those necessary adjustments.

5. Approving a Consumer Price Index (CPI): Bureau of Labor Statistics, U.S. City Average, Other Goods and Services, 1982-84 base, as determined for a period of time from January to January and not to exceed 4.00% annually.

(MUD) This item to be heard concurrent with agenda item 10.02.

8:33 PM

The Mayor declared the public hearing opened at 8:46.

Affidavits of posting, mailing, publication, continued public hearing, and presence to notify the public of the continuance of the public hearing were filed in the office of the City Clerk.

Memorandum dated August 24, 2010 addressed to the Mayor and Members of the City Council from Guy D. Petzold, Deputy City Attorney regarding Items 9.02 and 9.03 regarding a change to each of the resolutions to allow the City Clerk a place to insert the number of protests that are received when the public hearings are closed (filed).

City of Stockton Municipal Utilities Department Final Stormwater Rate Study and Fee Report dated August 17, 2010 as prepared by HDR (filed).

Mark Madison, Director of Municipal Utilities Department, provided the staff report aided by a PowerPoint presentation (filed).

City Clerk Meissner announced that 117 protests were received prior to the hearing.
Public Comments:

Bill Loyko - requested that the City make available ASK Stockton for citizens to submit comments either pro or con for this issue; that a stormwater rate increase was approved to proceed in the initial process, not a clean water fee, therefore, a new Prop 218 notice needs to be sent because an error was made.

Bob Bentz - errant notice though not malicious, but nonetheless is not proper; San Joaquin County not notified until the notices were out; this is not transparency.

Mr. Beckman - incorporate comments from Item 9.02.

Roy Hogart - pumping station near his house and questioning whether clean water will be received.

The Mayor declared the public hearing closed at 9:20 p.m.

City Clerk Katherine Meissner announced that 68,533 notices were mailed to property owners and 117 protests were received, therefore, a majority protest does not exist. Clerk’s Certificate Results of Tabulation filed.

**Motion:** Approve Resolution 10-0278 approving the Stormwater Rate Study, Overruling Protests, Directing the Mailing of Fee Ballots for the Clean Water Fee for Stormwater Services, approving an appropriate Consumer Price Index, and Adopting Proposition 218 Fee Ballot Proceedings Procedures.

**Moved by:** Councilmember Eggman, seconded by Councilmember Lowery.

**Vote:** Motion carried 6-0

**Yes:** Councilmember Fritchen, Mayor Johnston, Councilmember Lowery, Councilmember Holman, Vice Mayor Miller, and Councilmember Martin.

**Absent:** Councilmember Eggman.

Public Comment Regarding item 8.02 - Annual Salary for the Mayor

The Mayor allowed Dale Stocking, City resident to speak at this time, as his card was overlooked earlier. He spoke to Item 8.02, the Mayor's
salary and commended her on not taking the increase. The budget should not be tied to outside criteria, including the Mayor’s salary. He suggested a Charter change.

10. COUNCIL/REDEVELOPMENT AGENCY COMMENTS AND COMMITTEE REPORTS

10.01) REPORT OF CHAIR LESLIE BARANCO MARTIN ON THE COUNCIL LEGISLATION/ENVIRONMENTAL COMMITTEE MEETING OF JULY 28, 2010

a) COMMITTEE REPORT
ACTION: Accept for filing.

b) ISSUE: Medial Cannabis Ordinance
COMMITTEE RECOMMENDATION: Forward draft Medical Cannabis Dispensary Ordinance to the City Council for approval.

(CM) This item to be heard concurrent with agenda item 9.01.

See Item 9.01 for action on part 10.01 a) relative to accepting the committee report for filing.

Action was taken on part 10.01 b) relative to forwarding the draft medical Cannabis Dispensary ordinance to the City Council for approval by virtue of it being placed on tonight’s agenda as Item 9.01.

10.02)

REPORT OF CHAIR DIANA LOWERY ON THE COUNCIL WATER COMMITTEE MEETING OF AUGUST 11, 2010.

a) COMMITTEE REPORT
ACTION: Accept for filing.

b) ISSUE: Wastewater and Stormwater Rate Studies and Proposition 218 Proceedings
COMMITTEE RECOMMENDATION: Forward to the City Council for Approval

c) ISSUE: Delta Water Supply Project Bond Issues
COMMITTEE RECOMMENDATION: None. Information Only
(MUD) This item to be heard concurrent with agenda items 9.02 & 9.03.

See Item 9.02 for action on 10.01 a) relative to accepting the committee report for filing.

Action was taken on 10.02 b) relative to forwarding the Wastewater and Stormwater Rate Studies and proposition 218 Proceedings to the City Council for approval by virtue of it being placed on tonight's agenda as Items 9.02 and 9.03.

No action of the Council was required on 10.02 c), the Delta Water Supply Project Bond Issues as this was informational only.

COUNCIL COMMENTS

Vice Mayor Miller - congratulated VisitStockton.org; Downtown Stockton Alliance tour for holiday bookings

11. ADJOURNMENT 9:17 PM

KATHERINE GONG MEISSNER
CITY CLERK OF THE CITY OF STOCKTON
SECRETARY REDEVELOPMENT AGENCY
NEW BUSINESS

8.01) CC
   PUBLIC MEETING: STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT

8.02) CC
   NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT PROJECT
TO: Mayor and City Council  
FROM: Bob Deis, City Manager  
SUBJECT: PUBLIC MEETING: STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT  

RECOMMENDATION  

Adopt a resolution of intention to disestablish the Stockton Tourism Business Improvement District formed under the Parking and Business Improvement Area Law of 1989; and adopt a resolution of intention to establish the Stockton Tourism Business Improvement District under the Property and Business Improvement District Law of 1994 and to levy an assessment on lodging businesses within the district and setting the time and place for a public hearing on December 7, 2010.  

SUMMARY  

Lodging business owners, along with the Greater Stockton Chamber of Commerce and the Stockton Sports Commission, requested that the City of Stockton consider forming a Tourism Business Improvement District under the Property and Business Improvement District Law of 1994 for the purpose of promoting tourism and as a funding mechanism that will help generate funds for tourism. In the process, the existing 1989 TBID must be disestablished.  

DISCUSSION  

Background  

Business Improvement Districts are public/private sector partnerships that perform a variety of services to improve the image of cities and promote individual business districts. They also carry out economic development services by working to attract, retain, and expand businesses.  

In California, there are two separate laws that authorize the formation of a Business Improvement District:  

- The Parking and Business Improvement Area Law of 1989 (Streets and Highways Code Section 36500 et seq.)  
- Property and Business Improvement District Law of 1994 (Streets and Highways Code Section 36600 et seq.)  

The summary (a full comparison sheet is attached as Exhibit A) of the major differences between the two California Laws are:
PUBLIC MEETING: STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT
(Page 2)

- 1989 Act – District is formed and renewed for a one year term.
  1994 Act – Districts are initially formed for up to five years, and can be renewed for up to 10 years.
- 1989 Act – An Advisory Board is appointed by City council.
  1994 Act – An entity is selected and organized by the stakeholders (lodging businesses).
- 1989 Act – Decisions are made by Advisory Board with City oversight.
  1994 Act – Decisions are made by the chosen entity, and guided by a management plan approved by the stakeholders (lodging businesses).

In 2006, the City of Stockton passed an ordinance establishing the Tourism Business Improvement District under the Parking and Business Improvement Area Law of 1989, and it went into effect in 2007. For the past 3 years, the total amount collected was approximately $1.2 million (approximately $400,000 per year). Based on the Advisory Board decision, these funds were shared equally between the Greater Stockton Chamber of Commerce and the Stockton Sports Commission, less five percent for administrative fees by the City of Stockton.

In 2009, lodging business owners/operators, along with the Greater Stockton Chamber of Commerce and the Stockton Sports Commission, expressed interest in forming a Tourism Improvement District under the Property and Business Improvement District Law of 1994. City staff, along with a consultant (Civitas), has worked with the interested groups to bring forward a new assessment district plan for Council consideration.

The basic steps to form this new Business Improvement District are:
- A petition drive is conducted and at least 50% of the businesses who will pay the assessment must agree to form the district.
- The City proposes a new district by adopting a resolution of intention. Types of improvements and activities to be financed are specified in the management plan. Then, public notice must be provided and a public hearing be held.
- Council must also consider adopting a resolution of intention to disestablish the 1989 TBID, and later adopting an ordinance disestablishing the 1989 TBID
- A public hearing is held to approve the 1994 TBID
- A contract between the Stockton Convention and Visitor’s Bureaus and the City of Stockton to manage the TBID funds must be executed

While work was being completed on the 1994 TBID, and to continue funding TBID activities and commitments, the annual renewal of the 1989 TBID assessments needed to be renewed. At the June 8, 2010 meeting, Council was given an update on the 1994 TBID work, and the annual renewal of the 1989 TBID was renewed for one year (Resolution 10-0168).
PUBLIC MEETING: STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT
(Page 3)

Present Situation

In February 2010, a Management District Plan (Attachment A) was developed based on collaboration between the lodging businesses and Civitas. This business plan sets forth the boundaries of the Stockton Tourism Business Improvement District, assessment amount (four percent per hotel/motel room per night), a service plan and budget, and a proposed means of governance.

In July 2010, a petition drive was held to determine if the lodging businesses would support the formation of the Tourism Business Improvement district under the 1994 law. Under this act, the City must receive petitions from businesses that will pay at least 50% of the proposed assessment. The City received seven petitions from business that will be paying 54% of the assessments. Thus, it has been determined that the lodging businesses have agreed to the special assessment for the purpose of undertaking and implementing the tourism business improvement as described in the Management District Plan.

Under the Property and Business Improvement District Law of 1994 the governing body is an entity chosen and organized by the stakeholders. The Management District Plan approved by the lodging businesses identifies the Stockton Convention and Visitors Bureau (a separate entity from the Greater Stockton Chamber of Commerce – Conference and Visitors Bureau) as the organization to manage the district. The Stockton Convention and Visitors Bureau is a 501(c)6 non-profit organization whose mission is to stimulate the local economy by promoting Stockton as a business, conference, sports, and visitor destination through marketing programs including advertising, promotion, and visitors services. Decisions made by the Stockton Convention and Visitors Bureau are to be guided by the Management District Plan approved by the stakeholders who pay the assessments.

The hotel/motel owner is responsible for paying the assessment; however, they may pass the assessment to the hotel guests. These funds will be remitted to Administrative Services Department of the City of Stockton with the payment of their Hotel and Room Tax (Transient Occupancy Tax). These funds will be passed to the Stockton Convention and Visitors Bureau, less 5% City administrative costs. The City of Stockton will need to enter into a contract with the Stockton Convention and Visitors Bureau for the administration and implementation of the Management Plan.

As required by the Property and Business Improvement District Law of 1994, a resolution of intention must be adopted to set a public hearing to levy the assessment to the owners of the lodging businesses within the district. The public hearing is to be set for December 7, 2010. In addition, Council will need to take action to declare its
PUBLIC MEETING: STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT
(Page 4)

intention to disestablish the Stockton Tourism Business Improvement District formed under the 1989 Law.

On November 16, 2010 a public meeting will be held to provide interested parties an opportunity to provide testimony in support or opposition to the assessment. At that time, Council will be asked to adopt an ordinance disestablishing the 1989 TBID to be effective December 31, 2010.

FINANCIAL SUMMARY

There is no financial impact to the City with this action.

Respectfully Submitted,


BOB DEIS
CITY MANAGER

BD:CM:FL

::ODMA\GRPWISE\COS.CM.CM.Library:85446.1
CALIFORNIA
TOURISM BUSINESS IMPROVEMENT DISTRICTS

There are two California laws which TBIDs can be created under; the “Parking and Business Improvement Area Law of 1989” or the “Property and Business Improvement District Law of 1994.” To help your destination determine which is appropriate for you, following is a comparison of the major differences between the two laws.

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>1989 ACT</th>
<th>1994 ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Term</td>
<td>Districts are formed and renewed for a one year term.</td>
<td>Districts are initially formed for up to five years, and can be renewed for up to 10 years.</td>
</tr>
<tr>
<td>Initiation Process</td>
<td>Adoption of a resolution of intention by the City Council or Board of Supervisors. The Council or Board can adopt this resolution of its own accord, without petitions requesting it.</td>
<td>A petition drive wherein petitions must be signed by businesses who will pay at least 50% of the proposed assessment</td>
</tr>
<tr>
<td>Renewal Process</td>
<td>Publication in newspaper, two City or County hearings</td>
<td>Preparation of management plan, petition drive, adoption of resolution by City or County, public meeting and public hearing</td>
</tr>
<tr>
<td>Governing Body</td>
<td>An advisory board appointed by the City Council or Board of Supervisors.</td>
<td>A corporation chosen and organized by the stakeholders.</td>
</tr>
<tr>
<td>Governance Process</td>
<td>Decisions made by Advisory Board and Corporation with City or County oversight</td>
<td>Decisions made by corporation, guided by a management district plan approved by stakeholders.</td>
</tr>
<tr>
<td>Corporation Public Entity Status</td>
<td>City or County may consider the corporation to be a public entity for certain laws</td>
<td>Express exemption for corporation—it is not considered a public entity</td>
</tr>
</tbody>
</table>

7700 College Town Drive
Suite 111
Sacramento, CA 95826
800-999-7781
www.civitasadvisors.com

303
Under the Property and Business Improvement District Act of 1994, the TBID formation process can be divided into seven steps. The amount of time and effort each step requires varies for individual districts.

1. Creation of Formation Resources
   - Identify Steering Committee Members
   - Obtain information needed for database

2. Owner Outreach and Education
   - Educate business owners about TBIDs via handouts and meetings
   - Obtain input and support from business owners
   - Hold focus groups and circulate surveys as needed

3. District Plan Development
   - Identify district boundaries and included businesses
   - Identify benefit zones, if needed
   - Determine services to be provided by the District
   - Determine assessment rate and budget
   - Determine governance structure
   - Draft and Review District Plan

4. Petition Drive
   - Prepare, distribute and collect Petitions for formation
   - Submit petitions from owners who will pay 50% or more of the assessment to the City Council or Board of Supervisors

5. Initial Hearing
   - Prepare Resolution of Intention
   - Prepare Notice of Public Meeting/Hearing
   - Resolution of Intention Hearing
   - Mail notice to all owners

6. Public Meeting
   - Public meeting held by City Council / Board of Supervisors

7. Public Hearing
   - City Council / Board of Supervisors considers any protests presented
   - If there is no majority protest, the City Council / Board of Supervisors can adopt Resolution of Formation

Civitas has the experience and expertise to guide your destination through the TBID formation process. For more information, contact us at (800)999-7781 or visit www.civitasadvisors.com

CIVITAS


7700 College Town Drive
Suite 111
Sacramento, CA 95826
800-999-7781
www.civitasadvisors.com
STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT

MANAGEMENT DISTRICT PLAN

Formed pursuant to the Property and Business Improvement District Act of 1994 (Streets and Highways Code §36600 et seq.)

Submitted to the

City of Stockton

July 29, 2010

by

CIVITAS

PARTNERSHIP PROGRESS PROSPERITY
STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT
MANAGEMENT DISTRICT PLAN

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I. INTRODUCTION AND OVERVIEW

Developed by City of Stockton (the City) and lodging business owners, the Stockton Tourism Business Improvement District (STBID) is a benefit assessment district proposed to help fund marketing and sales promotion efforts for Stockton lodging businesses. This approach has been used successfully in Stockton and other destination areas throughout the country to improve tourism and drive additional room nights.

Location: The proposed STBID includes all lodging businesses (e.g. hotels, motels, and inns) located within the boundaries of the City of Stockton.

Services: Marketing and sales promotions to increase tourism and to market Stockton as a tourist, meeting and event destination.

Budget: The total STBID annual budget for each year of its five year operation is anticipated to be approximately $847,875.

Cost: Annual assessment rates are 4% of gross short term (stays less than 31 days) room rental revenue on lodging businesses. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days.

Formation: TBID formation requires submittal of petitions from lodging businesses representing more than 50% of the total annual assessment followed by a City Council hearing and an opportunity for a written protest. The assessed lodging business owners will receive notice of the public hearing by mail. If there is a majority written protest, the TBID will not be formed.

Duration: The proposed STBID will have a five year life. The STBID assessment will be implemented beginning November 1, 2010. Once per year beginning on the anniversary of the formation of the district there is a 30 day period in which owners paying more than 50% of the assessment may protest and terminate the district.
II. WHY A TOURISM BUSINESS IMPROVEMENT DISTRICT FOR STOCKTON?

There are several reasons why now is the right time to form a TBID in Stockton; the most compelling are as follows:

1. *The Need to Increase Occupancy*

The formation of the STBID is a proactive effort to provide supplemental funding beyond that provided by the City. This STBID will replace the current tourism business improvement district which was formed under a different enabling law. The funding will ensure that adequate financing exists for the investment required to increase occupancy in the lodging industry and be competitive in the conference segment of the tourism market. The investment will cover an expanded marketing and promotional budget needed to reach this market segment.

2. *An Opportunity for Increasing City Tax Revenues*

As occupancy rates increase, so too will the City’s TOT revenue. With designated public/private funding for tourism marketing efforts, annual occupancy rates should increase significantly as new marketing and sales promotion programs are implemented. Greater occupancy will also produce an increase in sales tax revenues from tourist spending. This represents a substantial return to the City. The formation of the STBID in partnership with the the City creates a stable funding source tied directly to tourism promotion.

3. *Stable Funding for Tourism Promotion*

The STBID will provide a designated source of funding for consistent tourism promotion efforts. The STBID will provide funding for tourism promotion free of the political and economic circumstances that can reduce or eliminate government funding for tourism promotion.
III. WHAT IS A TOURISM BUSINESS IMPROVEMENT DISTRICT?

Tourism Business Improvement Districts (TBIDs) utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow lodging and tourism-related business owners to organize their efforts to increase tourism. Tourism-related business owners within the district fund a TBID, and those funds are used to provide services that the businesses desire and that benefit the lodging businesses within the District.

Tourism Business Improvement District services may include, but are not limited to:

➤ Marketing of the Destination
➤ Tourism Promotion Activities
➤ Sales Lead Generation
➤ Administrative Expenses

In California, Tourism Business Improvement Districts are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. The key difference between TBIDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.

There are many benefits to Tourism Business Improvement Districts:

➤ Funds cannot be diverted for other government programs;

➤ Tourism Business Improvement Districts are customized to fit the needs of each tourism district;

➤ They allow for a wide range of services, including those listed above;

➤ Tourism Business Improvement Districts are designed, created and governed by those who will pay the assessment;

➤ They provide a designated funding source for tourism promotion.

The Property and Business Improvement District Law of 1994 (AB 3754) is provided in Appendix 1 of this document.
IV. STOCKTON TBID BOUNDARY

The STBID will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the City of Stockton.

The boundary currently includes 44 lodging business. Please see the boundary map below. A complete listing of lodging businesses within the proposed STBID can be found on Appendix 2 of this Plan.

City of Stockton, California

Legend

- Major Roads
- Within City Limits

0 1 2 4 Miles
V. SERVICE PLAN AND BUDGET

A. Assessment

The Tourism Business Improvement District annual assessment rates are based upon 4% of gross short term (stays less than 31 days) room rental revenue per night for lodging businesses. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days.

The term “gross revenue” as used herein includes the following: (1) Any charge for a room, whether the guest uses the room or not; (2) Any charge for additional guests in a room; and (3) Any fee for guaranteeing the availability of a room, whether or not that room is occupied. Gross revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes. Any other charges shall be considered gross revenue only in accordance with the local transient occupancy tax.

Bonds may not be issued.

The amount of assessment, if passed on to each transient, shall be separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business.

B. Determination of Special Benefit

State law provides that the expenses of the district shall be apportioned in proportion to the benefit received by assessed businesses.

A special benefit is defined as a particular and distinct benefit over and above general benefits conferred on the public at large. Conversely, a general benefit is a benefit to businesses in the surrounding community or a benefit to the public in general resulting from the improvement, activity or service to be provided by the assessment levied. Many general benefits to the public at large are conveyed by municipal services, such as fire protection, police services and public transit services. These services are targeted to serve the public at large and do not confer special benefits on particular businesses.

The services in this Management District Plan are designed to provide targeted services to lodging businesses. These services are tailored not to serve the general public, but rather to serve the specific lodging businesses within the District, e.g., the proposed activities are specifically targeted to increase room nights for assessed lodging businesses within the boundaries of the District, and are narrowly tailored. STBID funds will be used exclusively to benefit the assesses.

The activities paid for from assessment revenues are lodging business services creating special benefit to those businesses. In addition, these activities are not for the benefit of the general public and do not provide general benefit as defined above. All general benefits (if any) to the surrounding community and general public are intangible and unquantifiable. It is appropriate that these special business-related benefits be funded through business assessments.
C. **Time and Manner for Collecting Assessments**

The STBID assessment will be implemented beginning November 1, 2010 and will continue for five years. The City of Stockton will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the STBID. The City shall take all reasonable efforts to collect the assessments from each lodging business. The City of Stockton shall forward the assessments to the Stockton Convention and Visitors Bureau (“SCVB”) which will have the responsibility of managing the TBID programs as provided in this Management District Plan.

D. **Service Plan Budget and Programs to be Provided:**

**Service Plan Budget Summary - Calendar Years 2010 - 2015**

A summary of the annual service plan budget for the STBID is provided on the following pages. The total five year improvement and service plan budget is projected at approximately $847,875 annually, or $4,239,375 through 2015.

E. **Annual Service Plan:**

A service plan budget has been developed to deliver services throughout the District. An annual service plan and budget will be developed and approved by the SCVB Board. Please see the budget exhibit below. The budget also includes a portion for contingencies and renewal of the District. Should the SCVB Board approve, funds may be appropriated for the renewal effort. If there are funds remaining at the end of the District term and lodging businesses choose to renew, these remaining funds could be transferred to the renewed District. If there are funds remaining at the end of the District and lodging businesses choose not to renew, any remaining funds will be spent consistent with this Plan or returned to assessed businesses in equal proportions to the assessment paid by each business.

F. **Adjustments**

The SCVB board has full authority to manage expenditures consistent with this Plan. Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget below shall remain the same. The SCVB board shall have the authority to adjust budget allocations between the categories below by no more than fifteen percent (15%) per year.
## Stockton Tourism Business Improvement District
### Annual Budget, Years One through Five

<table>
<thead>
<tr>
<th>Services Provided</th>
<th>Descriptions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SALES and MARKETING - 75%</td>
<td>Sales and Marketing programs and activities will be designed to increase</td>
<td>$635,906.25</td>
</tr>
<tr>
<td></td>
<td>occupancy rates. These activities may include, but are not limited to</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Sports Oriented Promotions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Lead Generation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Trade Shows</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Sales Blitzes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Familiarization Tours</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Advertising</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Collateral</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Marketing Programs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Local Property Visits</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Director of Sales Meetings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• General Manager Meetings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Professional Industry Conferences / Affiliation Events</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Staffing Costs</td>
<td></td>
</tr>
<tr>
<td>ADMINISTRATIVE and OPERATIONS - 20%</td>
<td></td>
<td>$169,575</td>
</tr>
<tr>
<td></td>
<td>• Office Administrative/Operational Expenses</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Legal/Accounting</td>
<td></td>
</tr>
<tr>
<td>CONTINGENCY/RENEWAL - 5%</td>
<td></td>
<td>$42,393.75</td>
</tr>
<tr>
<td>Total Tourism District Annual Budget</td>
<td></td>
<td>$847,875</td>
</tr>
</tbody>
</table>
VI. BID GOVERNANCE

A. Corporation Governance

The Stockton Convention and Visitors Bureau (SCVB) shall serve as the Owner’s Association for the STBID. The SCVB will be governed by a nine-member Board of Directors. At least six members of the Board of Directors will be representatives of assessed lodging businesses.

B. Brown Act and California Public Records Act Compliance

The Owner’s Association of a TBID is considered a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the SCVB board and committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owner’s Association is also subject to the record keeping requirements of the California Public Records Act.

C. Annual Report

The SCVB board shall present an annual report at the end of each fiscal year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1).
APPENDIX 1 – THE PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994
STREETS AND HIGHWAYS CODE
Division 18. Parking

*** THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY SESSIONS 1-5, ***
AND 7, AND URGENCY LEGISLATION THROUGH CH 4 OF THE 2010 REGULAR SESSION

§ 36600. Citation of part

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

§ 36601. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) Businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements.

(d) Assessments levied for the purpose of providing improvements and promoting activities that benefit real property or businesses are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the real property or businesses for which the improvements and activities are provided.

§ 36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within a business improvement area. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

§ 36603. Preemption of authority or charter city to adopt ordinances Levy ing assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from
those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

§ 36603.5. Part prevails over conflicting provisions

Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

§ 36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

§ 36605. [Section repealed 2001.]

§ 36606. "Assessment"

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the properties or businesses located within a property and business improvement district.

§ 36607. "Business"

"Business" means all types of businesses and includes financial institutions and professions.

§ 36608. "City"

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county.

§ 36609. "City council"

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.
§ 36610. 'Improvement''

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

(a) Parking facilities.
(b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
(c) Trash receptacles and public restrooms.
(d) Lighting and heating facilities.
(e) Decorations.
(f) Parks.
(g) Fountains.
(h) Planting areas.
(i) Closing, opening, widening, or narrowing of existing streets.
(j) Facilities or equipment, or both, to enhance security of persons and property within the area.
(k) Ramps, sidewalks, plazas, and pedestrian malls.
(l) Rehabilitation or removal of existing structures.

§ 36611. "Property and business improvement district"; "District"

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

§ 36612. "Property"

"Property" means real property situated within a district.

§ 36613. "Activities"

"Activities" means, but is not limited to, all of the following:

(a) Promotion of public events which benefit businesses or real property in the district.
(b) Furnishing of music in any public place within the district.
(c) Promotion of tourism within the district.
(d) Marketing and economic development, including retail retention and recruitment.
(e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
(f) Activities which benefit businesses and real property located in the district.
§ 36614. "Management district plan"; "Plan"

"Management district plan" or "plan" means a proposal as defined in Section 36622.

§ 36614.5. "Owners' association"

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the district.

§ 36615. "Property owner"; "Owner"

"Property owner" or "owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. The city council has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this subdivision requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient.

§ 36616. "Tenant"

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

§ 36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.
§ 36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

§ 36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

§ 36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

(1) A map showing the boundaries of the district.

(2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.
§ 36622. Contents of management district plan

The management district plan shall contain all of the following:

(a) A map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements and activities proposed for each year of operation of the district and the maximum cost thereof.

(e) The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance. The plan may provide that all or any class or category of real property which is exempt by law from real property taxation may nevertheless be included within the boundaries of the district but shall not be subject to assessment on real property.

(l) Any other item or matter required to be incorporated therein by the city council.
§ 36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners of businesses in the proposed district which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

§ 36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements or activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

§ 36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, the city council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement about whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.
(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties or businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) The adoption of the resolution of formation and recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

§ 36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 36625, but need not contain information about the preliminary resolution if none has been adopted.

§ 36626.5. [Section repealed 1999.]

§ 36626.6. [Section repealed 1999.]

§ 36626.7. [Section repealed 1999.]

§ 36627. Notice and assessment diagram

Following adoption of the resolution establishing the district pursuant to Section 36625 or 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. If the assessment is levied on businesses, the text of the recorded notice shall be modified to reflect that the assessment will be levied on businesses, or specified categories of businesses, within the area of the district. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.
§ 36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

§ 36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

§ 36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

§ 36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and a new district established pursuant to this part.

§ 36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution establishing the management district plan described in Section 36622. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part shall be charged interest and penalties.

§ 36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement
district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

§ 36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

§ 36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

§ 36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

§ 36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention; Modification of improvements and activities by adoption of resolution after public hearing

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public meetings and public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public meeting.
(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public meeting, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

§ 36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

§ 36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

§ 36641. [Section repealed 2001.]

§ 36642. [Section repealed 2001.]

§ 36643. [Section repealed 2001.]

§ 36650. Report by owners' association; Approval or modification by city council
(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

§ 36651. Designation of owners' association to provide improvements and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements or activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

§ 36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.
(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

§ 36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property or of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

§ 36671. Refund of remaining revenues upon disestablishment of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired
with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.
APPENDIX 2 – LODGING BUSINESSES TO BE ASSESSED WITHIN THE STBID

<table>
<thead>
<tr>
<th>Name</th>
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</thead>
<tbody>
<tr>
<td>Oxford Hotel</td>
<td>37 S. Aurora Street</td>
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<tr>
<td>Town House Inn</td>
<td>1604 N Wilson Way</td>
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<tr>
<td>Ramada Plaza</td>
<td>111 E March Lane</td>
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<tr>
<td>Lexington Plaza Waterfront</td>
<td>110 W. Freemont Street</td>
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<tr>
<td>Stockton Hospitality LP</td>
<td>2323 Grand Canal Boulevard</td>
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<td>Stockton Motor Inn</td>
<td>1333 E Dr. Martin Luther King</td>
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<td>America’s Best Value &amp; Suites</td>
<td>3473 W. Hammer Lane</td>
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<td>I-5 Inn</td>
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<td>Delta Hotel</td>
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<tr>
<td>El Dorado Inn &amp; Suites</td>
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<tr>
<td>White House Motel</td>
<td>2305 S. El Dorado Street</td>
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Resolution No. ______

STOCKTON CITY COUNCIL

RESOLUTION OF THE CITY OF STOCKTON DECLARING ITS INTENTION TO DISESTABLISH THE STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT

On February 6, 2006, the City Council adopted Ordinance No. 003-007 establishing the Stockton Tourism Business Improvement District (District); and

The City Council has annually renewed the District since 2007; and

The Parking and Business Improvement Area Law of 1989, Streets and Highways Code section 36500 et seq., allows the City Council to disestablish the District; and

The City Council wishes to establish a new tourism improvement district and now intends to disestablish the District; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The recitals set forth herein are true and correct.
2. The City Council declares its intention to disestablish the District.
3. The time and place for a public hearing on the disestablishment of the District is set for 5:30 p.m. or as soon thereafter as the matter may be heard on November 16, 2010, at the Council Chambers, 425 N. El Dorado Street, Stockton, CA 95202.
4. The City Council intends to disestablish the District concurrently with forming a new tourism business improvement district under the Property and Business Improvement District Act of 1994. The proposed new district will contain the same businesses; therefore, the City Council proposes transferring any remaining revenue to the new district to be used for marketing and promotions efforts that benefit those businesses which paid the assessment.

City Atty
Review:  
Date: October 12, 2010
5. The City Clerk is directed to provide notice of the public hearing in accordance with Streets and Highways Code section 36523.

6. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED ____________________________.

__________________________
ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

__________________________
KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
RESOLUTION OF THE CITY COUNCIL DECLARING ITS INTENTION TO ESTABLISH THE STOCKTON TOURISM BUSINESS IMPROVEMENT DISTRICT, FIXING THE TIME AND PLACE OF A PUBLIC MEETING AND A PUBLIC HEARING THEREON, AND GIVING NOTICE THEREOF

The Property and Business Improvement Law of 1994, Streets and Highways Code section 36600 et seq., authorizes cities and counties to establish property and business improvement districts for the purposes of promoting tourism; and

Lodging business owners, members of the business community, and representatives from the City of Stockton have met to consider the formation of the Stockton Tourism Business Improvement District (STBID); and

Lodging businesses have drafted a Management District Plan which sets forth the proposed boundaries of the STBID, a service plan and budget, and a proposed means of governance; and

A majority of the lodging business owners subject to assessment under the STBID have petitioned the City Council to establish the STBID, now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The recitals set forth herein are true and correct.

2. The City Council finds that the lodging businesses that will pay more than 50 percent of the assessment proposed in the Management District Plan have signed and submitted petitions in support of the formation of the STBID. The City Council accepts the petitions and adopts this Resolution of Intention to establish the STBID and to levy an assessment on certain lodging businesses within the STBID boundaries in accordance with the Property and Business Improvement District Law of 1994.

3. The City Council finds that the Management District Plan satisfies all requirements of Streets and Highways Code section 36622.

City Atty
Review:
Date: October 12, 2010
4. The City Council declares its intention to establish the STBID and to levy and collect assessments on lodging businesses within the STBID boundaries pursuant to the Property and Business Improvement District Law of 1994.

5. The boundaries of the STBID shall be the boundaries of the City of Stockton, as set forth on the map attached as Exhibit A.

6. The name of the district shall be the Stockton Tourism Business Improvement District.

7. The annual assessment rate shall be 4 percent of gross short term (stays less than 31 days) room rental revenue on lodging businesses. Based on the benefit received, assessments will not be collected on stays of more than 30 consecutive days.

8. The assessments levied for the STBID shall be applied toward sales promotion and marketing programs to market Stockton as a tourist, meeting, and event destination, and for other capital improvements as set forth in Streets and Highways Code section 36610. Funds remaining at the end of any year may be used in subsequent years in which STBID assessments are levied as long as they are used consistent with the requirements of this resolution.

9. The STBID will have a five-year term unless renewed pursuant to Streets and Highways Code section 36660.

10. Bonds will not be issued.

11. The time and place for the public meeting to establish the STBID and the levy of assessments is set for November 16, 2010, at 5:30 p.m., or as soon thereafter as the matter may be heard, at the Council Chambers located at 425 N. El Dorado Street, Stockton, California 95202.

12. The time and place for the public hearing to establish the STBID and the levy of assessments are set for December 7, 2010, at 5:30 p.m., or as soon thereafter as the matter may be heard, at the Council Chambers located at 425 N. El Dorado Street, Stockton, California 95202. The City Clerk is directed to provide written notice to the lodging businesses subject to assessment of the date and time of the hearing and to provide that notice as required by Streets and Highways Code section 36623.

13. At the public hearing the testimony of all interested persons for or against the establishment of the STBID may be received. If at the conclusion of the public hearing, there are of record written protests by the owners of the lodging businesses within the proposed STBID that will pay fifty percent (50%) or more of the estimated total assessment of the entire STBID, no further proceedings to establish the STBID shall occur.
14. The complete Management District Plan is on file with the City Clerk and may be reviewed upon request.

15. This resolution shall take effect immediately upon its adoption by the City Council.

PASSED, APPROVED AND ADOPTED ___________________________.

____________________________________________
ANN JOHNSTON, Mayor  
of the City of Stockton

ATTEST:

____________________________________________
KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton
EXHIBIT A
District Boundaries

City of Stockton, California

Legend
- Major Roads
- Within City Limits

4 Miles
October 19, 2010

TO: Mayor and City Council

FROM: Robert Murdoch, Director
Public Works Department

SUBJECT: NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND
BRIDGE REPLACEMENT PROJECT

RECOMMENDATION

It is recommended that Council adopt four resolutions to:

1. Accept the request made by Viking Construction Company/Bay Cities Construction to withdraw their bid from consideration.

2. Approve plans and specifications, and award a Construction Contract in the amount of $38,747,806.79 to RGW Construction, Inc. of Livermore, for the construction of the North Stockton Railroad Grade Separations and Bridge Replacement, Project No. 05-17.

3. Authorize an Amendment to the Professional Services Master Contract with Psomas of Roseville, for construction management, inspection, and materials testing services in the amount of $3,250,000.

4. Authorize an Amendment to the Professional Services Master Contract with Mark Thomas and Company of Sacramento, for construction staking in the amount of $880,346.

It is further recommended that the resolutions authorize the City Manager to take appropriate actions to carry out the purpose and intent of these resolutions.

SUMMARY

On September 16, 2010, the City received six bids for construction of the North Stockton Railroad Grade Separations and Bridge Replacement Project (Exhibit A). The project consists of the following improvements:

<table>
<thead>
<tr>
<th>Project Location</th>
<th>Improvement Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eight Mile Road at Union Pacific Railroad (west)</td>
<td>Grade Separation (Overpass)</td>
</tr>
<tr>
<td>Eight Mile Road at Union Pacific Railroad (east)</td>
<td>Grade Separation (Overpass)</td>
</tr>
<tr>
<td>Lower Sacramento Road at Union Pacific Railroad</td>
<td>Grade Separation (Underpass)</td>
</tr>
<tr>
<td>Lower Sacramento Road Bridge at Bear Creek</td>
<td>Bridge Replacement</td>
</tr>
</tbody>
</table>
Contractors were instructed to bid the Lower Sacramento Road Bridge at Bear Creek as a "bid alternate" that would only be awarded if funding permitted. RGW Construction, Inc. was found to be the responsive low bidder. Viking Construction Company/Bay Cities Construction joint venture has requested their bid be withdrawn from consideration due to errors in their bid. Staff recommends that Council accept Viking Construction Company/Bay Cities Construction's request to withdraw their bid. Staff also recommends award of the Construction Contract to RGW Construction, Inc. in the amount of $38,747,806.79. The Lower Sacramento Bridge at Bear Creek alternate bid will not be awarded as sufficient funding is not available. Staff further recommends award of Construction Management contract to Psomas in the amount of $3,250,000 as well as a Survey Staking Contract to Mark Thomas & Co in the amount of $880,346.

Taking the recommended actions will have no impact on the General Fund and the local hire ordinance will apply to the construction contract.

DISCUSSION

Background

In November 2007, Council approved the environmental document and authorized contracting for design services with Mark Thomas & Co. for the North Stockton Grade Separations and Bridge Replacement Project which consists of the following improvements:

- Eight Mile Road at Union Pacific (West) Grade Separation (Overpass)
- Eight Mile Road at Union Pacific (East) Grade Separation (Overpass)
- Lower Sacramento Road at Union Pacific Grade Separation (Underpass)
- Lower Sacramento Road over Bear Creek Bridge Replacement
- Lower Sacramento Road at Pixley Slough Bridge Replacement
- Morada Lane and Union Pacific Grade Separation (Underpass)

During the course of design, the State initiated a call for funding applications under the newly adopted Proposition 1B Highway Railroad Crossing Safety Account program. On June 10, 2008, the City Council authorized staff to apply for Proposition 1B funding for the following projects in the noted amounts:

- Eight Mile Road at Union Pacific (West) $8,500,000
- Eight Mile Road at Union Pacific (East) $8,500,000
- Lower Sacramento Road at Union Pacific $10,000,000

**TOTAL** $27,000,000
In August 2008, the California Transportation Commission approved the City's Proposition 1B funding request of $27 million for the three grade separation projects. The City was required to enter into a Baseline Agreement with the California Department of Transportation committing to specific milestone delivery dates for the project. The City executed Baseline Agreements in November 2008 which committed to awarding a construction contract by October 2010 or risk jeopardizing funding. Consequently, staff focused on completing the design for the three Proposition 1B funded grade separations noted above. In addition, the design of the Lower Sacramento Bridge over Bear Creek would also be completed. Design of the Morada Lane grade separation and Lower Sacramento Road at Pixley Slough bridge projects will be completed in the future as required by future development and/or need.

Design work for the noted 3 grade separations and bridge was completed in June 2010. Based on estimates at that time, it was determined that sufficient funds may not be available to award the Lower Sacramento Road and Bear Creek Bridge replacement project. Therefore, the Bear Creek bridge project was designated a "Bid Alternate" to be awarded only if funding permitted. The project was advertised in July 2010 with four bid schedules. Schedules A, B, and C for the three grade separation projects and schedule D (bid Alternate) for the Lower Sacramento Road/Bear Creek Bridge Project. The "basis of award" was clearly defined in the bid documents as the lowest bid for the cumulative total of bid schedules A, B, and C. Again, the alternate bid, schedule D, was to be awarded only if funding permitted.

The project is being funded through a variety of funding sources with Proposition 1B funding being a major source. The maximum amount of Proposition 1B funding possible is $27 million. However, the Proposition 1B funding program requires the capture of proportionate savings that result from favorable bid results. Based on this cost savings policy, the City anticipates that only $19.23 million of the $27 million can be expended on the project. Additional funds will be provided by Measure K, the region's existing and future half-cent transportation sales tax, and by other funding sources as listed in the table below:

<table>
<thead>
<tr>
<th>Funding Source</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Prop 1B</td>
<td>$19.23 million</td>
</tr>
<tr>
<td>Measure K Renewal RR Grade Separation</td>
<td>$16.72 million</td>
</tr>
<tr>
<td>State Local Planning Partnership</td>
<td>$ 5.10 million</td>
</tr>
<tr>
<td>Existing Measure K</td>
<td>$ 3.50 million</td>
</tr>
<tr>
<td>Union Pacific Railroad</td>
<td>$ 2.57 million</td>
</tr>
<tr>
<td>Municipal Utilities Dept.</td>
<td>$ 0.28 million</td>
</tr>
</tbody>
</table>
October 19, 2010

NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENTS PROJECT

(Page 4)

<table>
<thead>
<tr>
<th>Savings from earlier project phases</th>
<th>$ 1.15 million</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>$48.55 million</td>
</tr>
</tbody>
</table>

Present Situation

On Thursday, September 16, 2010, bids were received for the North Stockton Railroad Grade Separations and Bridge Replacement, Project No. 05-17 with the following results:

<table>
<thead>
<tr>
<th>Company/Joint Venture</th>
<th>Schedule A,B,C Grade Separations</th>
<th>Schedule D Bridge</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Viking Construction Co./Bay Cities</td>
<td>Withdrawn</td>
<td>Withdrawn</td>
<td>--</td>
</tr>
<tr>
<td>RGW Construction, Inc.(Livermore)</td>
<td>$ 38,747,806.79</td>
<td>$ 7,829,460.00</td>
<td>$ 46,577,266.79</td>
</tr>
<tr>
<td>DeSilva Gates/MCM (Dublin)</td>
<td>$ 39,158,881.30</td>
<td>$ 6,897,745.00</td>
<td>$ 46,056,626.30</td>
</tr>
<tr>
<td>Teichert Construction (Stockton)</td>
<td>$ 39,322,329.25</td>
<td>$ 8,028,599.11</td>
<td>$ 47,350,928.36</td>
</tr>
<tr>
<td>R&amp;L Brosamer (Walnut Creek)</td>
<td>$ 41,686,701.66</td>
<td>$ 7,998,627.05</td>
<td>$ 49,685,328.71</td>
</tr>
<tr>
<td>West Bay Builders (Novato)</td>
<td>$ 43,285,056.00</td>
<td>$ 6,737,800.00</td>
<td>$ 50,022,856.00</td>
</tr>
<tr>
<td>Engineer's Estimate</td>
<td>$ 43,572,000.00</td>
<td>$ 7,790,000.00</td>
<td>$ 51,362,000.00</td>
</tr>
</tbody>
</table>

Upon review, the bid of Viking Construction Company/Bay Cities Construction was found to have errors and omissions. Consequently, Viking Construction Company/Bay Cities Construction has requested their bid be withdrawn from further consideration per their letter of September 21, 2010 (Exhibit B). Public Works staff with concurrence of the City Attorney's office recommends that Council accept their request. The apparent low responsive bidder is RGW Construction, Inc in the amount noted above. RGW Construction, Inc.'s bid was regular in all respects.

A bid protest was received from DeSilva Gates/MCM joint venture (Exhibit C). DeSilva Gates contends that RGW Construction and other bidders have materially unbalanced their bids by inflating their prices for Location D (alternate bid item) so that they could lower their prices for the "basis of award" which is the sum total of schedules A, B, and C. DeSilva Gates/MCM suggests that the City can consider the other bidders non-responsive due to the supposed unbalanced bids which would make Desilva Gates/MCM the apparent low bidder. RGW has responded that DeSilva Gates/MCM's claims are unsupported and their bid is well within the City's engineer's estimate for the work.
NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENTS PROJECT

(Page 5)

The City Attorney's Office has reviewed RGW's bid and the protest filed by DeSilva Gates/MCM and has determined the protest to be without merit. The basis of award was clearly defined and location D was not guaranteed to be awarded. As will be explained later in this staff report, there is not sufficient funding available to build the bridge which makes the bid protest moot.

To adequately manage a construction contract of this size and complexity, construction management services will need to be obtained. Staff solicited qualifications packages from 17 firms. Seven firms submitted statements of qualifications, and five were asked to present detailed proposals and participate in interviews. Psomas was determined to be the highest ranking firm from a project understanding, expertise, and capability standpoint.

Public Works staff has negotiated a scope and fee in the amount of $3,250,000 with Psomas for construction management and testing services. The contract amount is approximately 8.4% of the construction cost which is reasonable for the size and complexity of this project. Construction Management costs generally range between 7 and 15 percent. Therefore, staff recommends Council approve an Amendment to the Professional Services Master Contract with Psomas for the noted scope and fee.

Staff also recommends that Council approve an Amendment to the Professional Services Master Contract with Mark Thomas and Company, the project designer, to provide construction survey staking services in the amount of $880,346.00. Construction survey staking is needed by the Contractor to build the project. On a project of this size, it is advantageous to have the designer provide the survey staking and controls to avoid or resolve conflicts.

Therefore, the total contracting cost to build and manage the construction of just the three grade separations, Schedules A, B, & C, will be as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Cost (RGW)</td>
<td>$38,747,806.79</td>
</tr>
<tr>
<td>Construction Management (Psomas)</td>
<td>$ 3,250,000.00</td>
</tr>
<tr>
<td>Construction Staking (Mark Thomas)</td>
<td>$  880,346.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$42,878,152.79</strong></td>
</tr>
</tbody>
</table>

In addition to this amount, contingencies of 10% of the construction value as well as city staff costs will need to be budgeted. When these costs are accounted for, there will not be sufficient funding available to build Schedule D which is the Lower Sacramento Road/Bear Creek Bridge Project.
Construction of the 3 grade separations is anticipated to begin this Fall and take 535 working days or approximately two years to complete. As part of the construction process, Eight Mile Road will remain open, however, Lower Sacramento Road at the Union Pacific Railroad tracks will need to be closed. Staff and the Contractor will provide adequate detours for city traffic during construction.

Taking the recommended actions will have no impact on the General Fund and the local hire ordinance will apply to the construction contract.

FINANCIAL SUMMARY

Funds to award the contracts and construct the three grade separation projects are available from State Prop 1B, Measure K, Measure K Renewal, State/Local Partnership Program, and the Union Pacific Railroad. Adequate funding has already been appropriated and a the Letter of No Prejudice was recently approved by the San Joaquin Council of Governments (SJVCOG) which confirms that agency's resolve to commit the Measure K Renewal funds needed to construct the grade separations. Specifically, funds are available in the following project accounts:

399-9829-640 Eight Mile Road/UPRR (East) Grade Separation
399-9716-640 Eight Mile Road/UPRR (West) Grade Separation
399-9718-640 Lower Sacramento Road Widening/UPRR

Because SJVCOG will have to sell bonds, there will be an interest cost to advance the Measure K Renewal funds. This interest cost is balanced by the lower construction costs being realized in the current bidding environment, the leveraging of the State Proposition 1B funds, and the benefit of having the projects construction built now.

Any and all interest costs will be absorbed within the Measure K Renewal program and no City funds will be needed to pay interest costs. City and SJVCOG staff are currently negotiating the source of funding from within the Measure K program to cover the borrowing costs. Once an agreement is reached, a Measure K Construction Cooperative Agreement for this project will have to be approved by the City Council and the SJVCOG Board.

The only additional project appropriations required at this time are the funds from the Municipal Utilities Department, which are needed to install a water line:

Transfer appropriation from:
423-7623-670 $277,604
CIP Water, Transmission Mains, Capital Outlay
Transfer appropriation to:
399-9718-640  $277,604
Lower Sacramento Road/UPRR

The City Manager is authorized to undertake additional financial actions consistent with the purpose and intent of the resolutions.

Prepared By: James Wong, Associate Civil Engineer

Respectfully submitted,

ROBERT MURDOCH, DIRECTOR
PUBLIC WORKS DEPARTMENT

RM:EA:nla

Attachments

::ODMA\GRPWISE\COS.PW.PW_Library:166419.1
VIA HAND DELIVERY AND CERTIFIED MAIL

September 21, 2010

Robert Murdoch
Public Works Director
City of Stockton
22 East Weber Avenue
Room 301
Stockton, CA 95202-2317

City of Stockton
Office of the City Clerk
425 North El Dorado St.
Stockton, CA 95202

Project: North Stockton Railroad Grade Separations and Bridge Replacement
Subject: Request for Relief from Bid

To Whom It May Concern:

Viking/Bay Cities, a joint venture [hereinafter "Viking/Bay Cities"] requests to be relieved of its bid pursuant to California Public Contract Code §§5100-5103 and applicable provisions of the City of Stockton Municipal Code, standard specifications and other contract requirements and allow Viking/Bay Cities to withdraw its bid proposal submitted to the City of Stockton on September 16, 2010 in connection with the North Stockton Railroad Grade Separations and Bridge Replacement Project [hereinafter "Project"] based upon the following facts and circumstances:

1. In preparing its bid for the Project, Viking/Bay Cities obtained bids from various subcontractors for portions of the work for the Project. Attached as Exhibit A is a true and correct copy of the unit pricing provided by Bay Cities Paving and Grading, Inc. [hereinafter "Bay Cities"] that was Bay Cities’ responsibility in obtaining for the joint venture for the Project. Page 4 of the Bay Cities’ unit cost pricing pertaining to Location C & D shows a unit price of $7.00 per cubic yard for Item No. 26, Roadway Excavation and a total for this item in the amount of $770,000.00.

2. Burt Peterson acted as the bid runner for the Project for Viking/Bay Cities. Prior to Viking/Bay Cities submitting its bid, Burt Peterson contacted Viking Construction Company’s office to obtain the final Viking/Bay Cities bid amount as well as the final pricing information necessary to complete Viking/Bay Cities’ bid. Randy Jenco spoke with Burt Peterson by telephone and provided Burt with various final unit price information, including the unit price for Roadway Excavation, Item No. 26 pertaining to Location C. Viking/Bay Cities’ unit price for Roadway Excavation was $7.00 per cubic yard based upon the pricing provided by Bay Cities. After obtaining the final prices to include in Viking/Bay Cities’ bid, Burt Peterson completed the Viking/Bay Cities Bid proposal by inserting bid amounts in the bid proposal submitted by Viking/Bay Cities to the City of Stockton. Attached as Exhibit B is a true and correct copy of Viking/Bay Cities’ bid proposal form pertaining to Location C (Form 3 of 4) that was included with Viking/Bay Cities’ bid to the City.

3. Burt Peterson inadvertently entered the wrong unit price under Item No. 26, crossed out the price and placed his initial to the left of the lineout. Burt Peterson then inserted the unit cost for Item No. 26, Roadway Excavation in the amount of $7.00 per cubic yard; however, the unit price was inadvertently placed in the “Total Amount” column instead of in the “Unit Price” column. (Exhibit B)

4. The mistake by Burt Peterson in listing the unit price for Roadway Excavation in the “Total Amount”
column instead of in the “Unit Price” column was clerical in nature and was not caused by an error judgment or carelessness in inspecting the site of the work or in reading the plans and specifications. The mistake identified above made Viking/Bay Cities’ bid proposal materially different than Viking/Bay Cities intended since the unit price listed by Viking/Bay Cities for Item No. 26, Roadway Excavation for Location C should have been inserted in the “Unit Price” column instead of in the “Total Amount” column. Viking/Bay Cities’ total amount for Item No. 26, Roadway Excavation should have been $770,000.00 instead of $7.00.

Inasmuch as Viking/Bay Cities, a joint venture has established entitlement to relief pursuant to Public Contract Code §§5100 et. seq. and applicable City of Stockton laws and requirements, Viking/Bay Cities respectfully requests that the City of Stockton grant Viking/Bay Cities’ request to withdraw its bid proposal in its entirety and consent to relieve Viking/Bay Cities from its bid. By my signature below, I certify under penalty of perjury under the laws of the State of California that the above facts are true and that Exhibit A is a true and correct copy of the unit prices provided by Bay Cities in connection with the Project.

Sincerely,

[Signature]

RANDY JENCO
President, Viking Construction Company, Inc.

Enclosures

cc: Guy Petzold
Deputy City Attorney
(via fax)
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANT.</th>
<th>PRICE</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MOBILIZATION (BCP WORK ONLY)</td>
<td>LS</td>
<td>1</td>
<td>720,000.00</td>
<td>720,000.00</td>
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<td>4</td>
<td>WATER POLLUTION CONTROL</td>
<td>LS</td>
<td>1</td>
<td>30,000.00</td>
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<td>5</td>
<td>TEMPORARY FIBER ROLL</td>
<td>LF</td>
<td>30,200</td>
<td>1.65</td>
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<td>TEMPORARY GRAVEL BAG BERM</td>
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<td>TEMP CONST ENTRANCE</td>
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<td>4</td>
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<td>7,200.00</td>
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<td>TEMP CHECK DAM</td>
<td>EA</td>
<td>35</td>
<td>200.00</td>
<td>7,000.00</td>
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<td>9</td>
<td>TEMP DI PROTECTION</td>
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<td>STREET SWEEPING</td>
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<td>11</td>
<td>CONSTRUCTION SITE MANAGEMENT</td>
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<td>16</td>
<td>TEMP PAVEMENT</td>
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<td>22</td>
<td>REMOVE CULVERT</td>
<td>LF</td>
<td>600</td>
<td>25.00</td>
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<td>REMOVE INLET</td>
<td>EA</td>
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<td>REMOVE CONCRETE HEADWALL</td>
<td>CY</td>
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<td>26</td>
<td>ADJUST MHMG TO GRADE</td>
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<td>COLD PLANE ASPHALT CONCRETE PAVEMENT</td>
<td>SB</td>
<td>850</td>
<td>9.36</td>
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<td>29</td>
<td>CLEARING AND GRUBBING</td>
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<td>6,700</td>
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<td>32</td>
<td>STRUCTURE EXCAVATION (BRIDGE)</td>
<td>CY</td>
<td>1,431</td>
<td>18.00</td>
<td>27,168.00</td>
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<td>33</td>
<td>STRUCTURE BACKFILL (BRIDGE)</td>
<td>CY</td>
<td>605</td>
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<tr>
<td>34</td>
<td>IMPORT BORROW</td>
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<td>289,000</td>
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<td>35</td>
<td>IMPORTED TOPSOIL IN MEDIAN PLANTERS - 18&quot; DEPTH</td>
<td>CY</td>
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<td>36</td>
<td>BANK MULCH - 3&quot; DEPTH</td>
<td>CY</td>
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<td>37</td>
<td>GRANULAR MULCH - 3&quot; DEPTH</td>
<td>CY</td>
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<tr>
<td>38</td>
<td>SOIL AMENDMENTS</td>
<td>SF</td>
<td>210,000</td>
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<td>30,000.00</td>
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<tr>
<td>39</td>
<td>JUTE MESH [ROLLED EROSION CONTROL PRODUCT]</td>
<td>SF</td>
<td>185,000</td>
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<td>40</td>
<td>MEDIAN MAINTENANCE BORDER PAVING - STREETPRINT</td>
<td>SF</td>
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<td>2.38</td>
<td>33,155.00</td>
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<tr>
<td>41</td>
<td>12&quot; WIDE CONCRETE CURB</td>
<td>LF</td>
<td>25</td>
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**LOCATION 'B'**

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**LOCATION 'C'**

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LOCATION "D" SUBTOTAL: 3,694,684.00
## CITY PROJECT NUMBER: 05-17

### 9/9/2010

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**EXHIBIT B**
DECLARATION OF BURT PETERSON

I, Burt Peterson, declare as follows:

1. I am the Chief Financial Officer for Viking Construction Company, Inc. [hereinafter, "Viking"] and served as bid runner in connection with Viking/Bay Cities’ submission of its bid to the City of Stockton in connection with the North Stockton Railroad Grade Separations and Bridge Replacement Project [hereinafter “Project”]. I personally submitted Viking/Bay Cities’ bid to the City of Stockton on September 16, 2010.

2. Just prior to submitting Viking/Bay Cities’ bid to the City of Stockton, I made several calls to the Viking office to obtain the final pricing for Viking/Bay Cities’ proposal. In one of my calls, I spoke with Randy Jenco and he provided various final unit price information, including the unit price for Roadway Excavation, Item No. 26 pertaining to Location C. Randy Jenco indicated a unit price of $7.00 per cubic yard for Item No. 26, Roadway Excavation.

3. When completing the Viking/Bay Cities’ Bid Proposal Form (Form 3 of 4) for Location C, I inadvertently entered the wrong unit price under Item No. 26 and crossed-out the wrong price and placed my initial to the left of the lineout. I then inserted the unit cost for Item No. 26, Roadway Excavation in the amount of $7.00 per cubic yard; however, I placed the unit price for this item in the “Total Amount” column mistakenly instead of placing the $7.00 amount in the “Unit Price” column for Item No. 26, Roadway Excavation.

4. Attached to my Declaration as Exhibit B is a true and correct copy of the Bid Proposal Form (Form 3 of 4) for Location C that was completed by me and included in Viking/Bay Cities’ bid to the City of Stockton.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and if called as a witness in this matter, I would testify competently thereto.

Executed this 21st day of September, 2010 at Rancho Cordova, California.

[Signature]

BURT PETERSON
DeSilva Gates – MCM a Joint Venture  
11555 Dublin Boulevard  
Dublin, CA 94568

VIA EMAIL AND  
FIRST CLASS MAIL

September 24, 2010

Office of the City Clerk  
City of Stockton, City Hall  
425 North El Dorado Street  
Stockton, CA 95202

James Wong, Project Manager  
City of Stockton  
Department of Public Works  
22 East Webster Avenue, Room 301  
Stockton, CA 95202-2317

Re: North Stockton Railroad Grade Separations and Bridge Replacement Project  
Project No. 05-17 (the “Project”)  
Bid Protest

Ladies and Gentlemen:

This letter is submitted by DeSilva Gates — MCM, a Joint Venture (“DGC/MCM”) as a bid protest of some of the bids submitted to the City of Stockton (“City”) for the Project¹. In short, some of the bidders — RGW Construction, Inc. (“RGW”), Teichert Construction (“Teichert”) and R&L Brosamer, Inc. (“R&L Brosamer”) have materially unbalanced their bids by moving revenue from Locations “A”, “B” and “C” to Location “D”. As a result, these bidders submitted lower bids for Locations A/B/C than would have been submitted if the bids had not been unbalanced. By moving revenue to Location D, these bidders were able to have a lower bid for bid comparison purposes (Locations A/B/C) and obtain a windfall (i.e. recover the revenue moved to Location D) if the City included Location D in the Project. Based on the bids submitted, if the City determines to include Location "D" in the Project, the City will not be receiving the lowest price for the Project if it awards the contract to RGW, the lowest numerical bidder for Locations A/B/C. DGC/MCM is the lowest numerical bidder for Locations A/B/C/D — it submitted a bid that is balanced as between the Locations and fully responsive. DGC/MCM is the lowest responsible bidder for the Project if it includes Location D.

¹ This letter does not protest the bid submitted by Viking/Bay Cities, a Joint Venture, a bid which is nearly ten (10) percent lower than the DGC/MCM bid for the entire Project and nearly ten (10) percent lower than the RGW bid for Locations A/B/C. While we believe that a material mistake was made by Viking/Bay Cities in the preparation of its bid, it did not materially unbalance its bid as between Locations A/B/C and Location D. Based on the assumption that Viking/Bay Cities will seek relief from its bid, unless otherwise noted, this letter ignores the Viking/Bay Cities bid.
The bid documents provided that:

"Bids are required for the entire work. The amount of the bid for comparison purposes will be the total of all items for Locations "A", "B" and "C". The basis for determining the lowest bidder and the basis for contract award will be based on the lowest responsive bid total for Locations "A", "B" and "C". Location "D" is a bid alternative and will not be used as a basis of contract award." **Bidding Schedule.**

RGW’s bid for Locations A/B/C was $38,747,806.79; its bid for Location D was $7,829,460.00 for a total of $46,577,266.79. DGC/MCM’s bid for Locations A/B/C was $39,248,773.00 (corrected); its bid for Location D was $6,913,745.00 for a total bid of $46,162,518.00. DGC/MCM is the lowest numerical bidder for Locations A/B/C/D. If the City determines to include Location D in the Project, the City of Stockton will save over $400,000.00 if it rejects the bid of RGW and awards the contract to DGC/MCM.

The bids for Location D for each of the six (6) bidders (listed from lowest to highest) were:

- **DGC / MCM** $6,913,745.00
- **Viking / Bay Cities** $7,162,446.00
- **West Bay Builders** $7,430,400.00
- **RGW Construction** $7,829,460.00
- **R&L Brosamer** $7,998,627.05
- **Teichert Construction** $8,028,599.11

Putting aside the West Bay bid, which was non-competitive, RGW’s bid for Location D ($7,829,460.00) is nearly $800,000.00 higher than the average of the DGC/MCM and Viking/Bay Cities bids for Location D ($7,038,095.50); R&L Brosamer’s bid for Location D ($7,998,627.05) is more than $900,000.00 higher than the average of the DGC/MCM and Viking/Bay Cities bids for Location D; and Teichert’s bid for Location D ($8,028,599.11) is nearly $1,000,000.00 higher than the average of the DGC/MCM and Viking/Bay Cities bids for Location D. It is clear that these bidders moved revenue to Location D anticipating that the City would determine to include Location D in the Project. Under Standard Specification section 2-1.06, Rejection of Bidders, the City may reject a proposal that show irregularities of any kind. Section 2-1.10 of the Standard Specifications – “Disqualifications of Bidders” provides: “Proposals in which prices are obviously unbalanced may be rejected.” The use of “may” provides for the City’s discretion and exercise of sound judgment.
California courts routinely turn to Federal public contract law for guidance and legal authority in dealing with public contract law issues because it is more fully developed than State law. In the federal arena, courts have commonly upheld board decisions rejecting unbalanced bids. In analyzing bid responsiveness, a mathematically unbalanced bid may be rejected when there is reasonable doubt that the bid will result in the lowest ultimate cost to the government. Integrity Management International, Inc. Comp. Gen Dec. B-217016, December 11, 1984, 84-2 CPD at 654. Award cannot be made on a materially unbalanced bid. E-Z Copy Inc. and Hawaii Copico, P.S. Protest Nos. 86-48 and 86-50, August 1, 1986. A bid is materially unbalanced if an award to the bidder “fails to represent the lowest ultimate cost to the Government or the imbalance is such that it will adversely affect the integrity of the competitive bidding system.” SMS Data Products Group., Inc v. United States (1990) 900 F.2d 1553, 1557.

In closing, by moving revenue to Location D, RGW, Teichert and R&L Brosamer sought to obtain an advantage over the bidders that did not unbalance their bids. Those bidders submitting unbalanced bids “bet” that the City would add Location D as an alternate and, as a result, those bidders would receive a windfall. If the City determines to include Location D in the Project, acting in its best interests, the City can properly reject those unbalanced bids and award the contract to the lowest responsible bidder for the entire Project, DGC/MCM.

Very truly yours,

DeSilva Gates – MCM, a Joint Venture

By: DeSilva Gates Construction, L.P.,
California limited partnership,
Managing Party

By: [Signature]
Mike Kloos
Vice President

MK:da

---

Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION ACCEPTING BID WITHDRAWAL FROM VIKING CONSTRUCTION COMPANY/BAY CITIES CONSTRUCTION FOR THE NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT (PROJECT NO. 05-17)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The request made by Viking Construction Company/Bay Cities Construction to withdraw their bid from consideration for the North Stockton Railroad Grade Separations and Bridge Replacement (Project No. 05-17) is hereby accepted.

2. The City Clerk is authorized and directed to return to the checks or bidder's bonds which accompanied the bid filed.

PASSED, APPROVED and ADOPTED ____________________________.

ATTEST: ________________________________________________________________________________________________

ANN JOHNSTON
Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

::ODMA\GRP\WISE\COS.PW.PW_Library:166803.1

City Atty   
Review   
Date  October 12, 2010

359
Resolution No. ____________

STOCKTON CITY COUNCIL

RESOLUTION AWARDING A CONSTRUCTION CONTRACT TO
RGW CONSTRUCTION, INC., IN THE AMOUNT OF $38,747,806.79, FOR THE NORTH
STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT
(PROJECT NO. 05-17)

On September 16, 2010, the City Clerk of the City of Stockton opened, examined,
and publicly declared the sealed proposals or bids offered for the North Stockton Railroad
Grade Separations and Bridge Replacement (Project No. 05-17); now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS
FOLLOWS:

1. The plans and/or specifications contained in the bid for the North Stockton
   Railroad Grade Separations and Bridge Replacement (Project No. 05-17) are incorporated
   by reference and are approved and adopted.

2. All bids except that next mentioned are rejected; and

3. The work is authorized and the contract awarded to the lowest and best
   regular responsible bidder, to wit: RGW Construction, Inc., at the price of $38,747,806.79.

4. The City Manager is authorized to execute a contract on behalf of the City of
   Stockton with RGW Construction, Inc., in accordance with the plans and/or specifications
   and all letters of clarification for such work adopted by the City Council, a copy of which is
   attached hereto as Exhibit A.

5. The City Clerk is authorized to return to each of the unsuccessful bidders, the
   bidder's bonds, certified checks, and cashier's checks which accompanied their respective
   bids for the above-mentioned work.

6. The City Manager is authorized and directed to make all appropriations and
   transactions appropriate to complete the funding of the project.

PASSED, APPROVED and ADOPTED ____________________________.

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

ANN JOHNSTON, Mayor
of the City of Stockton

::ODMA\GRPWISE\COS.PW.PW_Library:166802.1

City Atty
Review: ____________________________
Date: October 12, 2010
CONSTRUCTION CONTRACT

This contract is made and entered into on ____________, by and between RGW CONSTRUCTION, INC., a corporation, with a business address at 550 Greenville Road, Livermore, CA 94550, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT (PROJECT NO. 05-17), hereinafter called "PROJECT," were regularly adopted by Council Resolution No. ______, on ________________; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by Council Resolution No. ______, on ________________.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:

   (a) To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications therefor regularly adopted on ________________, by Council Resolution No. ______. The "contract documents," which include the project plans, specifications, and all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.

   (b) To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefor at the prices specified in Exhibit "A," attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton.

   (c) CONTRACTOR shall provide insurance and indemnification as set forth in Exhibit "B," which is attached to this contract and incorporated by this reference.

EXHIBIT "A"
Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.

(d) The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.03 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Resolution No. 03-0707, effective December 1, 2003, and the provisions of the issued project specifications.

The Director will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect, otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of days as set forth, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of SIX THOUSAND AND NO/100 DOLLARS ($6,000.00) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, the CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY shall further have the right to charge to CONTRACTOR,
CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

(e) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS ($25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California.
(f) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(g) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

(h) Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.

2. CITY agrees:
   
   (a) To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety percent (90%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefor; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.
(b) Pursuant to Section 22300 of the Public Contract Code, the contractor will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the $23,578 limit shown in Section 4-1.03 shall be increased to $30,224. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.
(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

5. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

6. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:
KATHERINE GONG MEISSNER
CITY CLERK

CITY OF STOCKTON, a municipal corporation

By ________________________________

BOB DEIS
CITY MANAGER
"CITY"
Dated: ____________________

JOHN M. LUEBBERKE
OFFICE OF THE CITY ATTORNEY

By: __________________________
DEPUTY CITY ATTORNEY

RGW CONSTRUCTION, INC.,
a corporation
550 Greenville Road
Livermore, CA  94550

By: __________________________
"CONTRACTOR"

(Indicate status: corporation,
partnership, or sole proprietorship)

Tax Identification No.
### NORTH STOCKTON GRADE SEPARATIONS AND BRIDGE REPLACEMENT, PROJECT NO. 05-17

**EXHIBIT A**

**BID PROPOSAL FORM (FORM 1 of 4)**
Eight Mile Road / UPRR Overhead
Location "A"

**CITY OF STOCKTON**
PUBLIC WORKS DEPARTMENT

**CITY PROJECT NUMBER: 05-17**

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<th>Item Type</th>
<th>Item Description</th>
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## NORTH STOCKTON GRADE SEPARATIONS AND BRIDGE REPLACEMENT, PROJECT NO. 05-17

### EXHIBIT A

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### NORTH STOCKTONGRADE SEPARATIONS AND BRIDGE REPLACEMENT, PROJECT NO. 05-17

#### EXHIBIT A

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<th>Item</th>
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**Location "A" Subtotal:** $12,249,961.48
# EXHIBIT A

## NORTH STOCKTON GRADE SEPARATIONS AND BRIDGE REPLACEMENT, PROJECT NO. 05-17

**BID PROPOSAL FORM (Form 2 of 4)**

Eight Mile Road / UPRR (SPRR) Overhead

Location "B"

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### CITY OF STOCKTON
### PUBLIC WORKS DEPARTMENT

**CITY PROJECT NUMBER: 05-17**

9/8/2010

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3 of 4
### NORTH STOCKTON GRADE SEPARATIONS AND BRIDGE REPLACEMENT, PROJECT NO. 05-17

#### EXHIBIT A

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**Location "B" Subtotal:** 375,933.30
# Exhibit A

## North Stockton Grade Separations and Bridge Replacement, Project No. 05-17

**Bid Proposal Form (Form 3 of 4)**

Lower Sacramento Road / UP RR Underpass
Location "C"

**City of Stockton**

**Public Works Department**

**City Project Number:** 05-17

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1 of 4
### NORTH STOCKTON GRADE SEPARATIONS AND BRIDGE REPLACEMENT, PROJECT NO. 05-17

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## Exhibit A

### North Stockton Grade Separations and Bridge Replacement, Project No. 05-17

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</table>

| Location "C" Subtotal | $15,096,932.34 |
BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, RGW CONSTRUCTION, INC., a corporation, as Principal and ____________________, a corporation, organized and existing under the laws of the State of ________________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of THIRTY EIGHT MILLION SEVEN HUNDRED FORTY-SEVEN EIGHT HUNDRED SIX AND 79/100 DOLLARS ($38,747,806.79), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

NORTH STOCKTON RAILROAD GRADE SEPARATIONS
AND BRIDGE REPLACEMENT
(PROJECT NO. 05-17)

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond, and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections
2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on __________________________

RGW CONSTRUCTION, INC., a corporation

By __________________________
"PRINCIPAL"

APPROVED AS TO SURETY:

By __________________________
SURETY

APPROVED AS TO FORM & CONTENT:

JOHN M. LUEBBERKE
OFFICE OF THE CITY ATTORNEY

Dated __________________________

By __________________________
DEPUTY CITY ATTORNEY

::odnai/gprwiselcos.pw.pw_library:166734.1
BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That we, RGW CONSTRUCTION, INC., a corporation, as Principal and ________________, corporation, organized and existing under the laws of the State of __________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of THIRTY EIGHT MILLION SEVEN HUNDRED FORTY-SEVEN EIGHT HUNDRED SIX AND 79/100 DOLLARS ($38,747,806.79), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

NORTH STOCKTON RAILROAD GRADE SEPARATIONS
AND BRIDGE REPLACEMENT
(PROJECT NO. 05-17)

NOW, THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to
be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on ____________________________

RGW CONSTRUCTION, INC.
a corporation

APPROVED AS TO SURETY:

____________________________

"PRINCIPAL"

SURETY

APPROVED AS TO FORM & CONTENT:

JOHN M. LUEMBERKE
OFFICE OF THE CITY ATTORNEY

Dated ______________

By ______________

DEPUTY CITY ATTORNEY

ATTORNEY-IN-FACT

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EXHIBIT B
INSURANCE REQUIREMENTS
CONTRACTOR INSURANCE REQUIREMENTS

1. **INSURANCE.** Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

   A.) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance including XCU (Explosion, Collapse & Underground) coverage, with limits of coverage which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than $2,000,000 per occurrence, and if written on an Aggregate basis, $4,000,000 Aggregate limit (CG 0001).

   B.) **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

   C.) **WORKERS' COMPENSATION** Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

   D.) **PROPERTY INSTALLATION FLOATER** Installation Floater shall provide property damage coverage for machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the City of Stockton's site.

   E.) **RAILROAD PROTECTIVE LIABILITY INSURANCE.** Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of City as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. A binder stating the policy is in place must be submitted to City before the work may be commenced and until the original policy is forwarded to City.

**Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by CITY.

**Other Insurance Provisions**

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability Insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form **must be used with** either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any coverage maintained by the
CITY shall be excess of the Contractor's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

4. Regardless of these contract minimum insurance requirements, the contractor and its insurer shall agree to commit the contractor's full policy limits and these minimum requirements shall not restrict the contractor's liability or coverage limit obligations.

5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

6. The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY's, execution of the Agreement and start of work.

7. Proper Address for Mailing Certificates, Endorsements and Notices shall be: City of Stockton, Attn: Risk Services, 425 N El Dorado St., Stockton, CA 95222

8. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Services (209) 937-5037. Our Fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Contractor shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right (but not obligation) to purchase insurance or insure (or self-insure) for the above required coverages, at the contractor's full expense.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the subcontractor, and/or require each subcontractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractors insurance shall have the same impact as described above.

2. **INDEMNIFICATION:**

(Contractor) shall hold harmless, defend, and indemnify the CITY OF STOCKTON and its officers, agents and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of the work described herein, caused in whole or in part by any act or omission of the contractor, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts
any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY OF STOCKTON.
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO PROFESSIONAL SERVICES MASTER CONTRACT WITH PSOMAS, IN THE AMOUNT OF $3,250,000.00, FOR THE NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT (PROJECT NO. 05-17)

The City of Stockton desires to hire PSOMAS for construction management, inspection, and materials testing services for the North Stockton Railroad Grade Separations and Bridge Replacement (Project No. 05-17); now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Amendment to the Professional Services Master Contract with PSOMAS, in the amount of $3,250,000, for the North Stockton Railroad Grade Separations and Bridge Replacement (Project No. 05-17) is hereby approved.

2. The City Manager is hereby authorized to execute said Amendment to Professional Services Master Contract, a copy of which is attached as Exhibit A and incorporated herein by this reference.

3. The City Manager is authorized to take whatever actions are necessary to carry out the purpose and intent of this resolution.

PASSED, APPROVED and ADOPTED ________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

City Atty Review Date October 12, 2010

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AMENDMENT TO
PROFESSIONAL SERVICES MASTER CONTRACT
WITH PSOMAS

This Amendment to Professional Services Master Contract for construction management, inspection, and materials testing services is made and entered into on _____________, by and between the City of Stockton, a municipal corporation, hereinafter referred to as "CITY," PSOMAS, hereinafter referred to as "FIRM," to provide CITY with construction management, inspection, and materials testing services for the NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT (PROJECT NO. 05-17), hereinafter referred to as "PROJECT."

WITNESSETH:

WHEREAS, CITY and FIRM entered into a Professional Services Master Contract for Design, Geotechnical, Testing, Plan Review, and Survey Services; Construction Management and Inspection Services; Roofing, Electrical, and Mechanical Design Services; and Preparation of Generalized and Specialized CEQA and NEPA Studies on July 13, 2010, pursuant to Resolution No. 10-0242, as part of a vendor pool and desire to amend said Contract by specifying FIRM to provide construction management, inspection, and materials testing services for PROJECT.

NOW, THEREFORE, in consideration of these premises and the following terms and conditions, the parties hereto agree as follows:

1. Section 1—SCOPE OF SERVICES. The Scope of Services is hereby amended to include construction management, inspection, and materials testing services for PROJECT as per Exhibit "A," attached hereto and by reference made a part hereof.

2. Section 2—COMPENSATION. Compensation is hereby amended ($3,250,000.00) to include Exhibit "B," attached hereto and by reference made a part hereof. Compensation shall be paid no more frequently than once per month on a time and materials basis for work completed.

3. Section 3—SCHEDULE FOR COMPLETION. Service under this amendment will be performed concurrently with the project construction estimated to occur between October 2010 through October 2012, unless otherwise approved in writing.

4. Section 13—INSURANCE. Insurance requirements under this amendment
shall comply with the current insurance requirements set forth in Exhibit "C," which is attached to this contract and incorporated by this reference. FIRM shall provide thirty (30) days written notice to CITY prior to canceling or changing the terms of such coverage.

5. All other terms and conditions of said original Professional Services Master Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to Professional Master Contract to be executed on the date and year first written above.

ATTEST: CITY OF STOCKTON, a municipal corporation

KATHERINE GONG MEISSNER Bob Deis
City Clerk of the City of Stockton City Manager

APPROVED AS TO FORM & CONTENT: PSOMAS,
JOHN M. LUEBBERKE a corporation
OFFICE OF THE CITY ATTORNEY 1075 Creekside Ridge Drive, Suite 200
By: Roseville, CA 95678
Deputy City Attorney

Title: ____________________________
SCOPE OF WORK

We have reviewed all tasks listed in Scope of Work within Section 3.1 of the Request for Proposals and have a clear understanding of our role as desired by the City. We have broken the tasks in three major phases, Pre-Construction Phase Services, Construction Phase Services and Post-Construction Phase Services. These categories have then been divided into “Major Tasks” and then divided again into sub-tasks that include all services listed by the City as well as incorporating supplemental tasks that Psomas feels enhance the project, could provide areas of potential savings or result in an expedited project delivery.

Pre-Construction Phase Services

Meetings

Meeting with City Project Manager and Design Consultant — Our Resident Engineer will arrange a meeting between the City Project Manager and the Design Engineer, to review key aspects of the project plans, specific areas of concern, develop problem-resolution paths, establish open and cooperative lines of communication, and review contract administration procedures.

Meeting with City Project Manager, UPRR, Caltrans OE, Utilities and other Stakeholders — Our Resident Engineer will arrange meeting(s) between the City Project Manager and the various stakeholders involved in this project. The purpose of these meetings will be to jointly review key aspects of the project plans, establish open and cooperative lines of communication, and address any relevant issues involving contract construction work pertaining to individual stakeholders.

Pre-Construction Conference — Psomas will facilitate a pre-construction conference with the Contractor prior to the start of construction activities on the project. Our Resident Engineer will develop an invitation list based upon discussions with the City Project Engineer and project design team to include all interested City departments, UPRR, local utilities and oversight agencies. At the meeting we generally review the project plan and specification requirements highlighting areas such as project communication lines, safety issues, labor compliance, utilities, staking, material testing, scheduling of regular progress meetings, progress payments and other salient features of this contract. Also at this meeting, we will provide all necessary forms to the Contractor for submittal in accordance with Caltrans construction record and accounting formats. A project specific meeting agenda is developed by Psomas, attendees are recorded, and meeting minutes will be summarized for distribution to the City Project Manager, the approved meeting participants and the project record files.
Preliminary Project Work

*Documentation of Pre-Construction Conditions* — Under direction from the Resident Engineer, our Construction Inspector(s) will document pre-construction conditions using photographs, written notes and video recordings. This documentation is necessary to assure the project is restored to its pre-existing condition upon completion of the construction contract and to protect against potential claims from the Contractor, tenants, utilities, or other outside agencies. Any damage attributable to the Contractor’s actions will be documented and tracked until the Contractor repairs the damage to pre-project conditions or to the requirements of the contract plans and specifications. The entire site will be videotaped including any off-site areas that may be affected by project construction activity. Special or sensitive areas will be noted and extra documentation will be provided. Copies of all documentation, including photographs, notes and video, will be given to the City Project Manager.

*Contract Document Review* — Our Resident Engineer and other key team members, will perform a formal review of the contract documents to evaluate them for clarity, completeness, consistency and ease of construction in order to achieve overall project objectives. This effort will reduce or hopefully eliminate ambiguities, errors, omissions and contradictions between the plans, specifications, pay items and item payment provisions for the purpose of minimizing disputes during the construction phase. A second important benefit is also derived from this process in which any plan errors, specification conflicts and/or ambiguities can be worked on and resolved *before* the Contractor encounters the issue in question. By providing a resolution to the problem, before it is encountered, keeps the project moving, eliminates potential delay costs and allows the City an opportunity to mitigate the issue if a formal change order is required.

*Review Resident Engineer Files* — Our Resident Engineer will perform a separate review of the Resident Engineer’s Pending File that consists of design engineer memos to the Resident Engineer and any technical reports and studies. The review of this file will be completed prior to arranging the pre-construction meeting between our Senior Resident Engineer, the City Project Manager and the Design Engineer.

*Review of Permits, Agreements, Easements and Environmental Documents* — The Resident Engineer, with assistance from the Structure Representative and Biologist, will review permits, agreements, easements and environmental documents associated with the project to assure compatibility and to identify notification requirements or schedule conflicts that potentially could impact the construction sequence. Copies of all reviews and findings will be placed into project files and incorporated into the final project record documents. Once construction begins, our RE, upon identifying actual or potential problems, will coordinate consultations with the design engineer and City Project Manager to implement engineering solutions.

*Establish Project Records and Contract Administration Procedures* — The Resident Engineer, with assistance from the Structure Representative and Office Engineer, will establish the proposed contract administration and record keeping procedures to be implemented during the construction phase of the project. The record keeping system will be based upon the Caltrans Construction Manual and City of Stockton reporting.
procedures. Prior to development, all administration and record keeping procedures will be submitted to the City Project Manager for review and approval.

Community Outreach — Community outreach will begin with a kick off ground breaking ceremony that will provide our initial public interaction between the project and the numerous stakeholders involved. It also affords an opportunity to refine the list of stakeholders, local residences, businesses, emergency service providers, etc, that will be used during the project construction phase. Our public outreach specialist, Lucy Co Communications, will provide support to the City and our Resident Engineer in the tasks of community outreach and public notifications for the duration of the project. Lucy Co is fully capable and prepared to provide services that include; public participation and notifications; generation of a project mailing list; develop a project website; and organize groundbreaking and project opening ceremonies. Tasks are defined under Construction Phase Services – Quality Assurance / Quality Control – Community Outreach and Public Notifications.

Construction Phase Services

Contract Administration

Project Coordination and Correspondence — Upon start of construction activities, our RE will implement the agreed upon construction management procedures, policies and practices and will commit appropriate staff. Our Resident Engineer will serve as the point of contact with the Contractor and act as the liaison between the City, the design engineer, UPRR, Caltrans, the public, property owners, permitting agencies, utilities and all other parties involved in the contract. The RE in turn will report directly to the City Project Manager and also to the Caltrans Oversight Engineer, as directed and agreed upon by the City Project Manager. Contract administration duties will involve correspondence, project documentation records, weekly progress and coordination meetings, necessary reporting schedules and distribution of copies of the project control reports.

Weekly Project Meetings — Our Resident Engineer and staff will conduct weekly progress meetings with the Contractor, the City, UPRR, local agencies, utility companies, Caltrans Oversight Personnel, and other interested project participants as invited. Prior to holding the initial weekly project meeting, our Resident Engineer will meet with the City Project Manager to develop a list of desired meeting participants. He will prepare all weekly meeting agendas that will cover areas such as the progress of the work, outstanding project issues, submittal status, RFIs, potential claims, changes, utility issues, project safety, and public relations issues. Meeting minutes will be developed and distributed to all parties on an on-going basis.

At our weekly progress meetings, the Contractor will be requested to submit and inform all meeting participants of their planned activities and their resources and efforts that will be dedicated to the project in the coming two weeks. Additionally, all requests for lane closures or traffic control plans for the following week will be presented and discussed. The two-week schedule shall be updated by the Contractor on a weekly basis and will be utilized throughout the course of the project to confirm short-term activities, status of
submittals in regards to the planned activities, to include ongoing local agency and utility coordination, and to schedule required material testing and field survey services. Weekly meetings are instrumental in helping to achieve project quality assurance, maintaining open lines of communication, good working relationships, and for addressing and resolving project issues before they become project claims. We will also be available to conduct any special coordination meetings that may become necessary, meet with local businesses, adjacent property owners and private citizens.

**Schedule Management** — Our Resident Engineer and project staff take an active role in reviewing and monitoring the Contractor’s actual progress in relation to their submitted CPM baseline schedule. To assist in this effort, Psomas has incorporated Creative Planning Solutions (CPS), a scheduling specialist in our team. We believe strongly that the Contractor’s schedule is a critical part of the success of the project, therefore we pay our utmost attention to verify that it is kept up-to-date and that it is a true representation of the current project status. CPS will assist our team by inserting time impacts to the schedule from outside agencies, weather, contract change orders, work delays or accelerations based on actual operations. All increases in contract time from Owner related causes will be evaluated and negotiated prior to placement into the on-going schedule. The Contractor will be advised of any schedule slippage. CPM updates are required from the Contractor whenever appropriate or as specified in the contract special provisions. Based on this information, Psomas will prepare a monthly progress report to the City and designated stakeholders describing key project issues, project cost status and schedule status.

**Payment Recommendations** — Monthly progress pay estimates will be generated based upon an accepted schedule of values submitted by the Contractor and the contract bid items as presented in the contract specifications, and shall adhere to the requirements of the Caltrans Local Assistance Procedures Manual, along with the City schedule and format. All monthly payment requests received from the Contractor will be verified as to reasonableness, differences will be negotiated with the Contractor and quantities submitted are supported by field-measured documentation prepared by our field inspectors.

**Schedule of Values** The Resident Engineer will work directly with the Contractor to establish a “schedule of values” for each bid item requiring a schedule of values as specified in the Special Provisions to be paid at lump sum. Our Resident Engineer will verify that the agreed upon schedule of values is a fair and equitable payment schedule based upon the value of work to be performed.

**Change Orders, Changes and Claims Management** — Our Resident Engineer will develop a Potential Change Order (PCO) tracking system whereby issues are given a PCO number and then reviewed in detail with the City Project Manager and responsible design engineer. The RE will prepare a recommendation to accompany each PCO or Cost Reduction Incentive Proposal (CRIP) upon its submittal to the City, and will obtain concurrence and/or approval from UPRR for any changes within the railroad right of way. Corresponding cost analysis, time and schedule impacts, necessary drawings for corrections or changes, field reports, correspondence and supporting calculations will be placed in the project files with each approved change order or potential claim issue.
Approved PCO’s or CRIP’s that result in change orders will be issued in a format acceptable to the City. Rejected potential change orders are recorded, logged, and filed as potential claims for further evaluation. Psomas’ team will investigate and offer resolution to these potential claim issues promptly. Psomas will provide prompt review of any additional cost claims from the Contractor, develop an independent estimate, and provide a recommendation to the City. Change orders or Notices of Potential Claims that involve, or could be inferred to involve extensions of contract time, will be incorporated into the current CPM project schedule for evaluation of possible impacts to controlling work operations. If requested, Psomas will be available, after the completion of the project, to perform claims administration, including coordinating and monitoring claims response preparation, logging claims, and tracking claims status. Our foremost concern is to always protect the City’s interest and resolve each issue as soon as possible while concurrently developing a reasonable, contractually supportable resolution.

Management of Construction Inspectors — Our key staff members will be responsible for the daily management of the field inspection staff and specialty service provider staff. They will work closely to coordinate inspection priorities, coordinate field surveys, material sampling and testing needs, review field reports to verify that information is being recorded properly, review field quantity documentation, verify that any project changes have been incorporated into individual plan sets and that project as-built notations are continually placed on the final record plan set. All CM team members will meet at regular intervals to share information, update each other on critical project issues, discuss project safety aspects and review the Contractor’s two-week look ahead schedule to stay abreast of all anticipated contractor crew activities so as to properly schedule material testing and field survey needs.

Mitigating Issues and Extra Work Costs — At Psomas our approach to the administration and management of project disputes, issues and extra work is to be extremely proactive towards the common objective of negotiating a fair and equitable settlement between the City and the Contractor. We believe this begins at the project kickoff partnering meeting where issues resolution paths are established beginning at the lowest level between the field inspectors and contractor foremen. An issue escalation process is also established to allow for resolution within the project team who are most knowledgeable of the facts or circumstances involved in the dispute. If a change order is required, our team, working with the Contractor, will establish whether the reimbursement of costs is to be paid by agreed lump-sum or at force account payment. To reach this goal, the physical approach to performing the work and any impacts to the overall contract are openly discussed with the Contractor, meetings will be held to identify and detail the full scope of the work, labor and equipment utilization will quantified and agreed to, and a fair cost will be negotiated before the work begins. If the work needs to proceed immediately in order to minimize costly delays or if agreement on fair compensation cannot be negotiated with the Contractor, our team will oversee, track and document the extra work on a force account basis. Our team will document that extra work performed under force account is diligently and efficiently performed and that the Contractor receives only the fair reimbursement of costs he is entitled as specified within the contract language. If no ultimate resolution can be reached, the issue is forwarded to the Notice of Potential Claim file. All documents are cataloged and summarized so that
when a final determination is made, the total costs involved are accurate and we can now compare them to the Contractor’s payment request.

*Administer City of Stockton Local Hire Ordinance* – Psomas will work directly with the Contractor and appropriate City staff to define the best management practices in order to verify that the Contractor complies with this ordinance as required by the Special Provisions of the contract. We can assist the Contractor by providing information as to local union apprentice programs, job vacancy advertisement media opportunities or conducting job outreach meetings.

**Document Control**

*Document Control* - Our Resident Engineer and Assistant Resident Engineer will develop and present to the Stockton Project Manager for approval a project documentation index that will include all standard Caltrans files and tracking logs. These files will be clear, concise, updated and maintained on a daily basis by the Assistant Resident Engineer, Office Engineer and the Construction Inspector, and will be available for review by concerned parties at all times.

✓ All project records will conform to the file index system used by Caltrans as shown in Chapter 3 of the Caltrans Construction Manual.

✓ Material sampling and testing intervals will conform to Chapter 8 of the Caltrans Construction Manual.

✓ Survey records, procedures and methodology will conform to Section 12 of the Caltrans Survey Manual.

✓ Certifications for material sampling and testing personnel and facilities will be incorporated into the project records as described in Chapter 16 of the Caltrans Local Assistance Program Manual (LAP).

✓ Project final reports and certifications will conform to Chapter 17 of the Caltrans LAP Manual.

In addition to the above, Psomas has and will implement a unique Data Tracking System (DTS) to allow for web-based data tracking (at no additional cost to the City). DTS was developed internally by Psomas staff and is currently being used on all our projects.

The DTS tracks and electronically stores all of the standard documents that are typical for a construction project:

- Correspondence – Letters, transmittals, field memos, e-mail, phone conversations
- Submittals
- RFI’s/Clarifications
- Potential Change Orders (PCO’s) and Change Orders (CO’s)
- Issues
- Documents (e.g. daily diaries, photos, meeting minutes, etc.)
- Contact Information
The DTS can be accessible by all approved team members with simple access to the internet, via Microsoft Explorer (with appropriate security of course). The City can benefit directly by having the ability to review the documents and determine status of any piece of documentation throughout the progress of the work. It is capable of automatically generating transmittals and logging transactions in one step allowing our staff to be much more efficient. This automation improves the level of documentation and allows our staff to focus more on being proactive and effective at the other aspects of the project. We can easily generate reports summarizing the status of any of our logs for regular or impromptu meetings. Any documents (e.g. daily diaries, meeting minutes, photos, etc.) can be viewed within the customizable document directory. Additionally, using our DTS software allows for digital real-time submission and approval of submittals and RFI’s.

Requests for Information — RFI’s, contractor requested clarifications, interpretations of the contract plans and specifications requiring technical responses received from the Contractor will be logged and then reviewed and responded to in a timely manner by the Resident Engineer and appropriate staff. In some cases the RFI’s may need to be forwarded to the Designer-of-Record via transmittal for response. All related transmittals/responses will be logged and reviewed at each weekly meeting with copies forwarded to the City Project Manager, and if involves the railroad, with the UPRR representative.

Submittal Management — Psomas will log submittals received from the Contractor and, when appropriate, review and respond in a timely manner. Psomas will develop a submittal distribution list to identify parties responsible for review and acceptance. In cases where City Departments, UPRR, Caltrans Oversight Departments, utilities or the designer of record must review the submittal, we will briefly review the submittal for completeness then forward the information to the appropriate individual for review. Upon receipt of the reviewed submittal, Psomas will return it to the Contractor. A complete tracking log of each submittal’s status (i.e. approved, approved as noted, etc.) will be maintained in the project records by Psomas. Outstanding submittal issues will be addressed at each weekly progress meeting.

Coordination

Coordination with Regulatory Agencies and Permit Compliance — Upon award of the contract, our RE will contact and submit proper notifications, and throughout the project will coordinate with the Department of Fish and Game, the Regional Water Quality Control Board, Reclamation District 784, US Fish and Wildlife Services, the Army Corp of Engineers, and any other resource or regulatory agencies, local, state, or federal, that may have jurisdiction over the construction of the project. Our Resident Engineer and our Biologist have previously worked together with these agencies in providing successful resolutions to permitting concerns, and will verify compliance with all State and Federal permits and certifications issued, including biological monitoring and reporting services.

Coordination with Union Pacific Railroad Company — Coordination, timing, and tracking of submittals with UPRR is critical to project scheduling. Psomas understands the level of effort undertaken by the City of Stockton and Mark Thomas in working with
the railroad to fast-track the design portion of this project. Our Resident Engineer, Andy Gust, with assistance from Marty Jackson will continue to build upon the City’s positive working relationship with UPRR by immediately initiating open and cooperative lines of communication with UPRR personnel, in order to avoid possible schedule impacts imposed by UPRR work obligations or permit requirements. Both Andy and Marty have worked directly with representatives from UPRR such as Mr. Paul MacDonald and Mr. Jim Smith, maintenance managers and flaggers. We have direct experience with submission of falsework, shoring and shoo-fly plans to the UPRR home office in Omaha and are knowledgeable their procedures and submittal requirements. Our team will also have Mr. James Mendez, a retired UPRR track specialist who will oversee and help coordinate the shoo-fly installation and removal as well as the placement of new ballast, ties and track materials once the underpass structure is finished.

**Utility Coordination** — Psomas will take the lead role (using James Wong as the City assigned staff) in providing a proactive approach to working with and monitoring the location, protection, installation and relocation of all required utilities and existing facilities within the project right-of-way and within the UPRR easements. In order to coordinate and to assist in the safe and timely execution of operations associated with the affected utilities, we will work very closely with the Contractor and representatives of UPRR, Kinder Morgan, PG&E, Sprint, AT&T, MCI, COMCAST, CDM (Delta Water Supply), City of Stockton MUD, as well as the City’s Utility Departments for sewer and water systems. Utility companies’ commitments to providing project-related services involve the cooperation and coordination of numerous individuals not to mention long lead times in procuring specialized equipment and materials necessary to complete the work. Verifying that the City has appropriate cooperative agreements in place, the Contractor has completed required preparatory activities, and has provided proper work site access to the utility companies will be paramount to the successful completion of the project without delays. The team will also work closely with our CPM specialist to verify that the Contractor’s submitted CPM baseline and subsequent schedule updates, all include required utility work activities with associated notification and relocation timelines clearly shown.

**Field Management**

**Construction Observation/Inspection Services** — Psomas will use on-site inspectors on a daily basis to check the quality and quantity of the work performed by all trades and to verify provisions of the contract documents are being fulfilled. Psomas field staff will inspect construction methods, materials, techniques, and sequences to evaluate the Contractor’s compliance with the construction documents, provide observation of material testing, and will review all construction prior to burial. Inspectors will assist with monthly progress payment recommendations by making measurements of bid items, checking the percent complete in the field, and assisting with Contractor meetings to resolve any differences in percent complete. Daily Inspection Reports will be prepared to document observed construction activities and will include the number, classification, and hourly summary of Contractor’s activity and equipment, weather, and will include any salient discussions, abnormal occurrences, unforeseen conditions, and observations noted by the field inspector(s) during the course of their inspection duties. Daily
Inspection Reports will be available for City review the next construction day, upon request. The Daily Inspection Reports will be reviewed before the start of construction with the County Project Manager to verify that all aspects and concerns are being addressed during construction.

Diligent inspection can expose errors, omissions, incomplete design elements and sequences not discovered in the pre-construction review process. Inspectors will mark up a field blueprint set of drawings to incorporate Contractor record drawing markups, prepare punchlists, coordinate and conduct the final inspections and acceptance walkthroughs. Inspectors will assist with monthly progress payment recommendations by making measurements of contract bid items, checking the percent complete in the field, and assisting with Contractor meetings to resolve any differences in percent complete.

Digital photographs will be taken on a regular basis to document the progress of the project and will be stored and provided to the City in digital format on a regular basis or at the close of the project along with all other digital data on compact disc. During the project construction phase, photographs can be sorted, edited indexed and placed into three-ring binders noting the date, time and location of each picture. Photographic binders will be stored at the project site office for easy access by the City Project Manager. In addition, our inspectors will document all special situations with digital photographs or video depending on what is most appropriate.

Traffic Control Requirements — Maintaining current traffic patterns and minimizing impacts from construction activities to Stockton area motorists, pedestrians, bicycles, local residences, and local businesses will be the prime objective in our review and approval of the Contractor’s required traffic control plans. Traffic plans, including contingency plans will be thoroughly reviewed and analyzed by our Resident Engineer, with input from the City’s Project Manager and the City’s Traffic Engineering Division prior to approval. In addition, if special conditions develop or unforeseen impacts occur, our Resident Engineer, with City and the design consultants support, will initiate the necessary modifications to the approved plans. Our experience has shown that although traffic plans and construction staging documents appear to “make sense” on paper, when they are implemented in the field the traveling public sometimes has trouble understanding or following the modified traffic pattern. Our field inspectors, along with our Resident Engineer, will spend time observing the public’s reaction to modified traffic patterns and if difficulties seem to be developing, will immediately pass this information to the City Project Manager and the Design Consultant. Working as a team, we will assist the design consultant in preparing or modifying the staged traffic for ease of use and understanding by the traveling public. Traffic control plans, including shoulder closures, lane closures, and approved detours will follow all requirements as set forth in the Caltrans Manual of Traffic Control for Construction and Maintenance Work Zones, as well as any requirements provided for in the City of Stockton. Our assigned staff will verify that the Contractor complies on a daily basis with the approved traffic handling plans and will verify that continuous ingress and egress is provided to residences and businesses within the project limits. Our traffic handling plan and field installation reviews will also confirm that the Contractor is using traffic control equipment and devices that conform to the latest MUTCD Manual.
**Electrical, Pump House, Landscaping, Soundwall, Bridge Inspections** – Our entire team of Psomas professionals has inspection experience that includes, but is not limited to: Electrical work for pump houses, traffic signals, street lighting and joint utility trenches; general site preparation including clearing, grubbing, and mass grading, embankments, underground construction, including wet and dry utilities and detention ponds. Our team has inspection experience with new road construction, existing road widening and improvements, AC overlays, slurry and chip seal placements, subgrade, structural section, and HMA paving requirements. Our structures background includes post-tensioned bridges, steel girders, precast girders, MSE walls, retaining walls, large reinforced concrete box culverts, soundwalls and pumping plants. We are experienced in working within and adjacent to environmentally sensitive areas such as wetland preservation/mitigation, tree protection, tree removal and mitigation, water quality management, and erosion control construction and monitoring.

**Health and Safety Awareness** – Psomas will maintain awareness of health and safety requirements and will enforce contract provisions for protection of public and project personnel in and around the construction site and detour areas. As always, Psomas can not be responsible for the construction Contractor’s means, methods, or techniques, or for safety measures, precaution or programs at the project site. However, we will stress to the Contractor that the safety of the public, the workers, and all project participants will be monitored at all times. Should safety issues develop during construction, Psomas will notify the City, agree upon the necessary course of action and document the issue as thoroughly as possible.

**Review/Inspect Trench Excavation & Shoring** – Our CM team presents extraordinary depth and experience in the review and analysis of specialized structure work associated with shored trench excavations and temporary shoring walls. Our Assistant Structures Representative, Mr. Larry Camilleri has direct experience with shoring systems and temporary shoring walls from his past employment with a foundation and shoring contracting firm. This knowledge will be readily used in the UPRR underpass construction as well as deep excavations associated with water line construction.

**Monitor Pile Handling & Installation** – Our CM team will provide services that include analysis of all pile driving activities such as driving equipment submittals, hammer energy calculations, pile handling diagrams, elevation control and operational safety issues. Again, our Assistant Structures Representative, Mr. Larry Camilleri, has a background in working for a pile and foundation contractor. This experience and knowledge will be an invaluable asset for this operation. Larry is extremely knowledgeable in the energy analysis of pile hammers, capacities and performance characteristics of pile hammers and hydraulic cranes, proper pile handling procedures, pile protection systems, operational safety aspects of pile driving operations and data recording of in place pile bearing.

**Material Sampling and Testing** – Psomas will enter into a subcontract with Neil Anderson to provide the necessary services to fill the requirements set forth by the City and Caltrans. Neil Anderson will assign a certified material testing and sampling manager that will be responsible for supervising and coordinating this program, and in conjunction with the RE, will develop a quality assurance plan specific to this project. All
documentation regarding sampling frequencies and testing results will conform to Caltrans and FHWA frequencies as set forth in the Caltrans Construction Manual and the City of Stockton Quality Assurance Program. If the need arises, Neil Anderson can provide material source inspection services, or, depending on the development of a cooperative source inspection contract with Caltrans by the City of Stockton, our project team will notify and arrange for source inspection services from the Caltrans Materials and Testing labs located in California.

All test procedures will conform to Caltrans accepted test methods as described in the Caltrans Material and Testing Manuals, and all testers will be pre-certified by the Caltrans Regional Lab for each test to be performed on the project. Certifications will be kept current throughout project duration. Neil Anderson will also be responsible for providing test results in a timely manner and copies of all test reports will be forwarded to the construction field office for inclusion in the project record files. Psomas will observe all testing and verify that appropriate methods as specified in the contract documents are used, and will review all test reports to substantiate contract compliance. Testing logs will be prepared to display test results and to assist in identifying testing trends and any requirements for re-testing. Re-tested areas will be tracked and cross-indexed so follow up reports can be noted for proper documentation of accepted re-tests. We will require the Contractor to correct any deficiencies in accordance with the contract documents. If requested by the City, Neil Anderson staff can also make recommendations to the RE regarding any remedial actions that may be necessary to correct for unacceptable material or workmanship provided by the Contractor.

Coordinate Construction Surveying Services - Psomas will coordinate with the Mark Thomas Company as required for construction quality control, payment quantities, and construction staking. Psomas will verify that all surveying work shall conform to the methods, procedures, and requirements of Section 12 of the Caltrans Survey Manual and the Staking Information Booklet. Survey requests will be received by the RE from the Contractor with priorities, assuring the maintenance of the single point of contact for this project. Psomas field staff will log all survey requests, recording the date of request and the date of actual survey work performed. All survey notes and field stakes will be reviewed to assure conformance with the Contractor’s request and accuracy of the information staked in the field. Survey notes will be assembled and maintained in the project files.

Quality Assurance/Quality Control

Furnish Qualified Staff — Psomas will provide a full-time Resident Engineer with over 30 years of construction management and administration experience, a Structure Representative with over 30 years of structures experience and a Senior Field Inspector with over 30 years experience. These key team members alone provide the City with almost 100 years of direct experience in the construction of bridges, grade separations, roadways, retaining walls and pump stations all built to Caltrans, FHWA and/or Railroad requirements. As identified in the cost proposal (Staffing Schedule), our team is further supported by the following City of Stockton personnel:
- Jimmy Campero (Assistant Resident Engineer): 4,168 hours
- James Wong (Utility Coordinator): 1,920 hours
- David Regsdale (Inspector): 3,760 hours
- Reid Burson (Peak Roadway / Bridge Inspector): 1,184 hours

*Project Progress Reports* — Our Project Manager with assistance from the project team, will prepare periodic progress reports keeping the City and the City Project Manager informed and updated on the current status of the project. This report can include items such as current project progress, percent complete, any outstanding project issues, current project costs and projections, DBE participation status, approved changes, potential claims, and current photographs of job progress. This format was well-received on previous Psomas CM projects and can be built upon or refined to meet the City’s reporting needs. This report can be presented in both hard copy and “Adobe pdf” format.

*Audit Job Records* — One of the primary areas of responsibility for our Project Manager will be to perform periodic reviews, evaluations and audits of the project records. Audits will be conducted on specified intervals as agreed upon between our Project Manager and the City’s Project Manager.

**Ancillary Services**

*Labor Compliance* — Psomas will oversee all services necessary to provide the City of Stockton a certified labor compliance program for this contract. As part of their respective field duties, our field inspector(s) will conduct periodic labor compliance interviews using accepted forms issued by the State or City’s Labor Compliance guidelines. Field inspection diaries will note the presence of the Contractor and subcontractors on the project each day. This will allow for payroll verification, adherence to compliance with state prevailing wage and labor laws, apprenticeship requirement verification, and subcontractor/DBE utilization tracking. The Assistant Resident Engineer will review the weekly submitted Contractor and subcontractor payroll reports and inform the Resident Engineer of any inconsistencies, irregularities or if any payroll submittals are missing.

*Community Outreach and Public Notifications* — Continuing the outreach program through construction will be performed in order to keep the community informed of the project status. Detailed scope is as follows:

1. **Events:** Organize/run groundbreaking and opening ceremonies, media relations, write and design invite postcards. Print and mail 4”x6” color postcards not to exceed 2,000

2. **Quarterly Updates:** Develop 1, 8-1/2" x 11" color, 2-sided, project newsletter to coincide with the beginning of the project. Printing and mailing for up to 2,000.

After the first hard copy newsletter, quarterly newsletters (7 ea) will be developed for incorporation into the project website (No hardcopies to be distributed).
3. **Website**: Develop text and graphics for project specific pages and update throughout the project. Includes up to 3 pages, to be housed on the client server (City of Stockton). Page can include e-mail newsletter function.

4. **Hotline**: Establish a project hotline phone number. On-site staff will check messages daily and route to appropriate person for resolution.

5. **Stakeholder Database**: Create a project stakeholder database to ensure people who have key stakes or interest in the project stay informed about integral project news. This will also serve as a mailing list for outreach materials. LucyCo will update the database once prior to sending the grand opening postcard.

6. **Signage**: Coordinate design for construction signage to be posted along route

**SWPPP Monitoring** — The emphasis on SWPPP by the Regional Water Quality Control Board has significantly increased over recent years with the passing of the revised General Permit requirements, which include the requirement for year-round SWPPP monitoring, and the implementation of the new General Permit requirements that became effective on July 1, 2010. Psomas and our designated environmental consulting firm Argonaut, specialize in the management and adherence of construction projects to the Regional Water Quality Control Board General Permit provisions. Once construction activities begin, our Resident Engineer and Construction Inspector(s) will work directly with the Contractor and Argonaut to perform routine SWPPP monitoring reviews of the project. Project records will be developed for filing of weekly reviews to assure that all BMP’s are in place and adequately maintained, that pre-storm event, during storm event and post-storm event documents are completed and filed within the project records. The Psomas SWPPP program efforts include addressing features such as the weather watch program, the sampling and monitoring plan and the development and distribution of an emergency contacts list for incident response teams from the Contractor for addressing issues that may arise outside of normal work hours. Project records will include any related correspondence to the Contractor pertaining to the compliance of the approved SWPPP. Our team will assist the Contractor in developing SWPPP report documents that conform to requirements set forth by the Regional Water Quality Control Board, Caltrans, State Water Resources Control Board, U.S. Environmental Protection Agency and the City of Stockton’s storm water program requirements.

**Biological & Environmental Mitigation** — Our Resident Engineer, in conjunction with our proposal Biologist, Argonaut, will review the Environmental Impact Report (EIR) and develop contract administration files and the project documentation necessary for project construction monitoring. As required, a copy of the EIR will be kept in the project files at all times, accessible for review by all concerned parties and oversight agencies. Argonaut, working with Andy, will track all the CEQA mitigation measures that must be implemented during construction and will review all project permits (1601-1603 Streambed Alternation Agreements, Reclamation Board encroachment permit, 401 Water Quality Certification, Section 404 permit issued by the U.S. Army Corps of Engineers, and Biological Opinion issued by the US Fish and Wildlife Service) to determine all regulatory requirements that must be met.
Argonaut will prepare a construction compliance-tracking matrix that incorporates all the EIR mitigation measures and regulatory permit requirements, timing of implementation, allowed construction windows, and reporting and notification requirements. This same documentation and tracking matrix has been successfully used by Psomas and Argonaut on almost every project where Psomas has provided full CM services to our clients. Of special note, Psomas and Argonaut successfully implemented this same program on the Arden Garden Connector Project, by working directly with Mr. Jim Clifton of RD1000, Mr. William Maher of American River Flood District, Mr. Charles Woolsey of the Department of Water Resources, and representatives from the California Department of Fish and Game, the Army Corp of Engineers, and US Fish and Wildlife. This cooperation enabled the construction of the Arden Garden Bridge, within the Canal, to receive variances that allowed construction to continue from the specified October 15th date to January 1st. While variances are not guaranteed or assumed, Argonaut and Psomas will work with the Contractor and these agencies to hopefully produce and maintain construction windows as large as possible.

**Digital Aerial Images:** Our subconsultant, View Point Aerial Photography, will provide high resolution color digital aerial images on CD of each work site. Both wide angle and close-up views will be included. For budgeting purposes, a total of $5,000 has been budgeted. At $300/flight (Escalates to $325/flight after first 12 months) assume 4 flights each per 4 each projects.

**Provide Construction Surveying QA Services** - As outlined by the City, construction staking will be provided by Mark Thomas Company, and if requested by the City of Stockton, Psomas can (if required) furnish Quality Assurance Construction verification survey services. Psomas has the largest field survey staff in Northern California and they have performed this same service on multiple projects throughout the Central Valley. Our field survey teams have all necessary tools and equipment to quickly provide high quality, high precision checks of all the permanent and temporary survey points that will be used during construction. At the completion of each QA survey, the field crew will provide immediate feedback on their findings and will provide formal written staking reports within two of the field investigation. All reports will be placed into the project records and provided to Mark Thomas survey teams as well. For budgeting purposes, 4 individual site visits were estimated at $2,500/visit/site (Total = $10,000)

**Post-Construction Phase Services**

**Project Close Out**

**Punch Lists** — Generation of project punch lists and the completion of deficient work in an important element to our overall quality control plan for each and every project we manage. For all contract item work that approaches completion, our Resident Engineer, assisted by the Structures Representative and our assigned Inspector(s) will generate a punch list of any and all deficiencies. Punch lists shall be generated for work identified by milestones, such as a completion of a construction stage, completion of a facility in its’ entirety, portions of work the Contractor is requesting relief of maintenance on, and project completion. If a Contractor requests a punch list before substantial completion of
the work, the list shall be labeled "preliminary” and the Contractor informed that additional punch list items may and will follow. After substantial acceptance, Psomas will schedule a “walk-through” with designated City and appropriate project stakeholder representatives and prepare a preliminary punch list, which will include all items required to be furnished or corrected before project acceptance.

Final Inspection — After the Contractor has completed the correction of all deficient items noted in the preliminary punch lists, our Resident Engineer will coordinate and lead a final “job walk” through of the project. Once all items are complete, Psomas will submit a letter to the City stating that to the best of our knowledge and belief, the project has been completed in accordance with the Construction Contract Documents and recommend acceptance.

Project Closeout — Upon final completion, we will transmit for the City’s files one complete set of all project documentation including all records, maps, plans, shop drawings, submittals, manufacturers literature, survey notes and records, photographs (annotated and bound chronologically), including any pre-construction and progress video tape. A red-lined set of full sized contract plans will be transmitted to the project design team for production of the final record drawings on revised mylars. All original documents generated during the project will be provided to the City including daily inspection reports, summaries, reports, testing documents, meeting minutes, agendas, meeting tape-recordings, clarifications, schedules, correspondence, and all other documents generated. Project final reports and certifications as required in Chapter 17 of the Caltrans LAP Manual will be prepared and forwarded to the City Project Manager for signature and final distribution, and Caltrans will be provided with a copy of the applicable sections of the project records, a copy of the project record drawings, and any additional items required by Caltrans for project close-out.

In addition, all digital documentation, including photographs in JPEG (JPG) format, will be copied to a recordable CD Rom and transmitted to the City at closeout or upon request. All documentation will be in Microsoft Office NT compatible format. In addition, if requested, we can also provide progress photographs in hard copy, bound chronologically.

Plant Establishment Period - The City requests construction management services to be included for the establishment period of the irrigation and landscape work as specified in the contract specifications. The handling plant establishment period for all irrigation and landscape contract work will be managed in a similar manner as contained in this scope of work. This work will be done concurrently with post construction activities.
City of Stockton
North Stockton Railroad Grade Separations & Bridge Replacement Project

Budget Summary

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<thead>
<tr>
<th>1) PROJECT TEAM</th>
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<tr>
<td>PSOMAS</td>
<td></td>
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<tr>
<td>Steve Manganoli, PE</td>
<td>Project Manager</td>
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<tr>
<td>Andy Gust, PE</td>
<td>Resident Engineer</td>
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<tr>
<td>Larry Camilleri</td>
<td>Assistant Structures Representative</td>
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<tr>
<td>Ed Ux</td>
<td>Lead Structures Inspector</td>
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<tr>
<td>Pam Ward</td>
<td>Administrative Support</td>
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<td>Scott Bryant, PLS</td>
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<tr>
<td>Marty Jackson</td>
<td>URS - Structures Representative</td>
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<td>James Mendiz</td>
<td>Safework - Railroad Survey Inspector</td>
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<td>Neil Anderson &amp; Associates (Material Sampling &amp; Testing)</td>
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<td><strong>$26,730</strong></td>
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**GRAND TOTAL:** $3,286,598
EXHIBIT C
INSURANCE REQUIREMENTS
CONSULTANT CORPORATION SERVICES

INSURANCE  Throughout the life of this Contract, the Consultant shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

A. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than $2,000,000 per occurrence, and if written on an Aggregate basis, $4,000,000 Aggregate limit (CG 0001).

B. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

C. PROFESSIONAL ERRORS AND OMISSIONS, Not less than $1,000,000 per Claim/$2,000,000 Aggr. (5 yr discovery and reporting tail period coverage). Certificate of Insurance only required.

D. WORKERS’ COMPENSATION Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by CITY.

Other Insurance Provisions

The Policy (s) shall also provide the following:

a.) The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

b.) For any claims related to this project, the Consultant’s insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representative, agents, employees and volunteers. Any coverage maintained by the CITY shall be excess of the Consultant’s insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
c.) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

d.) Regardless of these contract minimum insurance requirements, the Consultant and its insurer shall agree to commit the Consultant's full policy limits and these minimum requirements shall not restrict the Consultant's liability or coverage limit obligations.

e.) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

f.) The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY's, execution of the Agreement and start of work.

g.) Proper Address for Mailing Certificates, Endorsements and Notices shall be:
   City of Stockton,
   Attn: Risk Services
   425 N. El Dorado
   Stockton, CA 95202

h.) Upon notification of receipt by the City of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the City a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the City's Risk Services Manager (209) 937-6982. Our Fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Consultant shall be withheld until acceptable replacement coverage notice is received by the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Contract. In the event of insurance cancellation, the City reserves the right to purchase insurance or insure (or self-insure) for the above required coverages, at the Consultant's full expense.

If the Consultant should subcontract all or any portion of the work to be performed in this contract, the Consultant shall cover the Sub-consultant, and/or require each Sub-consultant to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractors insurance shall have the same impact as described above.
2. **INDEMNIFICATION**

Consultant agrees to indemnify, including the cost to defend, CITY OF STOCKTON, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of consulting and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by the CITY OF STOCKTON or the agents, servants, or independent contractors who are directly responsible to the CITY OF STOCKTON, or arising from the active negligence of the CITY OF STOCKTON.
RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO PROFESSIONAL SERVICES MASTER CONTRACT WITH MARK THOMAS AND COMPANY, IN THE AMOUNT OF $880,346, FOR THE NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT (PROJECT NO. 05-17)

The City of Stockton desires to hire Mark Thomas and Company for construction staking for the North Stockton Railroad Grade Separations and Bridge Replacement (Project No. 05-17); now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Amendment to the Professional Services Master Contract with Mark Thomas and Company, in the amount of $880,346, for the North Stockton Railroad Grade Separations and Bridge Replacement (Project No. 05-17) is hereby approved.

2. The City Manager is hereby authorized to execute said Amendment to Professional Services Master Contract, a copy of which is attached as Exhibit A and incorporated herein by this reference.

3. The City Manager is authorized to take whatever actions are necessary to carry out the purpose and intent of this resolution.

PASSED, APPROVED and ADOPTED ________________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
AMENDMENT TO
PROFESSIONAL SERVICES MASTER CONTRACT
WITH MARK THOMAS AND COMPANY

This Amendment to Professional Services Master Contract for construction staking services is made and entered into by and between the City of Stockton, a municipal corporation, hereinafter referred to as "CITY," MARK THOMAS AND COMPANY, hereinafter referred to as "FIRM," to provide CITY with construction management, inspection, and materials testing services for the NORTH STOCKTON RAILROAD GRADE SEPARATIONS AND BRIDGE REPLACEMENT (PROJECT NO. 05-17), hereinafter referred to as "PROJECT."

WITNESSETH:

WHEREAS, CITY and FIRM entered into a Professional Services Master Contract for Design, Geotechnical, Testing, Plan Review, and Survey Services; Construction Management and Inspection Services; Roofing, Electrical, and Mechanical Design Services; and Preparation of Generalized and Specialized CEQA and NEPA Studies on July 13, 2010, pursuant to Resolution No. 10-0242, as part of a vendor pool and desire to amend said Contract by specifying FIRM to provide construction staking services for PROJECT.

NOW, THEREFORE, in consideration of these premises and the following terms and conditions, the parties hereto agree as follows:

1. Section 1—SCOPE OF SERVICES. The Scope of Services is hereby amended to include construction staking services for PROJECT as per Exhibit "A," attached hereto and by reference made a part hereof.

2. Section 2—COMPENSATION. Compensation is hereby amended ($880,346.00) to include Exhibit "B," attached hereto and by reference made a part hereof. Compensation shall be paid no more frequently than once per month on a time and materials basis for work completed.

3. Section 3—SCHEDULE FOR COMPLETION. Service under this amendment will be performed concurrently with the project construction estimated to occur between October 2010 through October 2012, unless otherwise approved in writing.

4. Section 13—INSURANCE. Insurance requirements under this amendment
shall comply with the current insurance requirements set forth in Exhibit "C," which is attached to this contract and incorporated by this reference. FIRM shall provide thirty (30) days written notice to CITY prior to canceling or changing the terms of such coverage.

5. All other terms and conditions of said original Professional Services Master Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to Professional Master Contract to be executed on the date and year first written above.

ATTEST: CITY OF STOCKTON, a municipal corporation

KATHERINE GONG MEISSNER By: BOB DEIS
City Clerk of the City of Stockton CITY MANAGER

APPROVED AS TO FORM & CONTENT: MARK THOMAS and COMPANY,
JOHN M. LUEBBERKE a corporation
OFFICE OF THE CITY ATTORNEY 7300 Folsom Boulevard, Suite 203
Deputy City Attorney Sacramento, CA 95826

Title: ________________
Exhibit ‘A’

Scope of Work

Mark Thomas & Company, Inc. (MTCO) will provide construction survey services and the necessary office support for the North Stockton Railroad Grade Separations and Bridge Replacement Project (City Project No. 05-17). Our Scope of Work is based on the Project Understanding above.

Construction staking will be performed in accordance with Chapter 12 of the Caltrans Surveys Manual: Construction Surveys, dated September, 2006.

Assumptions

1. All staking requests shall be transmitted to MTCO by the Resident Engineer.

2. The Resident Engineer shall provide a minimum of 48 hours notice to MTCO to schedule mobilization. Friday to Monday does not constitute 48 hours notice. In the event that a staking operation is estimated to take more than one day to complete, add 24 hours to the minimum 48 hours advance notice for each estimated additional day of staking.

3. The Resident Engineer shall verify that the contractor’s requests for construction stakes are acceptable, including:
   i. The requested staking area is ready for stakes.
   ii. The stakes will be used in a reasonable time period.
   iii. The stakes have been requested in a reasonable length of time in advance.
   iv. Requests for "original" stakes are truly original.

4. MTCO will be given a priority list for each staking request and the priorities will be noted on the staking request form. If no priorities are given by the contractor, staking will proceed in the order listed on the staking request form.

5. The Resident Engineer shall ensure that MTCO will not receive additional staking priorities or different crew mobilizations in excess of those listed on each staking request.

6. The Resident Engineer shall provide a 3 week ‘look-ahead schedule’ of operations and time estimates to MTCO each week.

7. The Resident Engineer shall ensure that areas to receive stakes are relatively clear of construction equipment and activity such that stakes can be set in safe and expeditious manner.
8. If a survey field crew is mobilized to an area that is not ready for stakes, the resident engineer will charge the contractor a minimum of 4 hours of field crew time as an extra above the contract amount and the staking request will be voided by the resident engineer. The contractor shall submit a new request for the stakes when the area or facility has been properly prepared.

9. If the contractor determines that the staking provided appears to have discrepancies or is ambiguous, a request for clarification must be sent to the resident engineer within 24 hours from the time of staking. If the original staking provided has undergone unit conversion, altered or disturbed then MTCO will assume no responsibility of the accuracy of the conversions and/or alterations.

10. The Resident Engineer will ensure that MTCO surveyors are apprised of all project safety issues and that we are apprised in a timely manner of situations that would affect a construction site survey operation.

Exclusions

1. MTCO will not set working stakes (ie: “bluetops”) to complete the work.

2. MTCO will not set any stake or provide any construction survey service for any improvement shown on the Landscape plans.

3. MTCO will not set any stake or provide any construction survey service for any Temporary Water Pollution Control feature or device.

4. MTCO will not set any stake or provide any construction survey service for the placement of temporary railing, crash cushions, barricades, channelizers, temporary pavement delineation, temporary pavement markings, or temporary traffic signals.

5. MTCO will not perform any “As-Built” construction surveys.

6. MTCO will only survey utility pothole locations that are shown on the Plans.

7. MTCO will not provide Traffic Control operations including lane closures for our survey crews.

8. MTCO will not stake the location of Roadside Signs.

9. MTCO will not stake bridge falsework or temporary shoring.
Task 1: Eight Mile Road / UPRR Overhead (Location ‘A’)

1.1 Project Management

MTCo will perform project management for the survey tasks. MTCc will attend the Pre-Construction Kickoff Meeting and a total of fifteen (15) site visits and/or weekly project meetings with the City and/or Resident Engineer to coordinate the staking.

1.2 Grid Grade Notes

MTCo will prepare Grid Grade Notes for conversion into the final Slope Stake Notes. The Grid Grade Notes will be prepared based upon the final set of general roadway cross sections and will be developed at 50 foot intervals, and at the BC/EC of horizontal curves, the BVC/EVC/low and high points of vertical curves, and other critical locations (such as transitions and lane tapers). The limits of the Grid Grade Notes will extend along Eight Mile Road within the area of improvements.

1.3 Control Verification/Control Maintenance

Using conventional survey total station instruments, differential levels and global positioning system total stations, MTCo will check and verify project control points, and establish additional control points necessary for the survey layout for construction.

1.4 Clearing Limits

Provide offset stakes for 8,600 +/- LF of clearing limits at 100 foot intervals along tangents and 50 foot intervals along curves, including all EC’s, BC’s, and Angle points.

1.5 Sawcut

Provide offset stakes for 1,000 +/- LF of sawcut line at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC’s, BC’s, and Angle points.

1.6 Slope Stakes

Provide offset stakes for 12,800 +/- LF of slope stakes at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC’s, BC’s, and grade breaks. Task to include temporary roadway alignments as shown on the stage construction plans.

1.7 Rough Grade Stakes

Provide offset stakes for 12,800 +/- LF of rough grade stakes at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC’s, BC’s, and grade breaks.
with offsets to ES or EP. Task to include temporary roadway alignments as shown on the stage construction plans.

1.8 Finish Grade Stakes

Provide offset stakes for 17,400 +/- LF of Finish Grade at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC’s, BC’s, CR’s, Angle points and grade breaks for curb, gutter and sidewalk, or edge of pavement.

1.9 Storm Drain Systems

Provide offset stakes for 23 Drain Systems (as shown on the drainage system plans and profiles). Two offset stakes will be provided for Flared End Sections (6), Manholes (20), and Drop Inlets (20).

1.10 Electrical

Provide stakes for: Street Light Standards (15), Utility Cabinets and Vaults (10). These will be staked with 2 straddlers showing cut/fill to top of curb or to finish grade if not controlled by adjacent facilities or adjacent construction staking.

1.11 Fence

Provide offset stakes for 4,600 +/- LF of Right of Way at 100 foot intervals along tangents and 50 foot along curves, including all EC’s, BC’s, and Angle Points.

1.12 Waterline

Provide one set of offset stakes for waterline.

1.13 Joint Trench

Provide offset stakes for 3,700 +/- LF at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC’s, BC’s, and Angle Points. Cuts will be to given to finish grade. Trench locations will be staked to centerline of trench; stakes to individual conduits will not be provided. Locations will not be staked within the limits of the proposed structure of outside the limits of the existing or proposed right of way. Invert elevations to joint trench facilities (electrical, telephone, CATV) will not be provided. Joint trench locations will be staked based upon the Utility Plans included in the “As Bid” plans prepared by MTC. Only one set of stakes will be provided.
1.14 Structures

Set staking for the UPRR overcrossing at LOL including abutments, bents, wing walls, and temporary benchmarks for contractor’s use in accordance with the Caltrans Construction Surveys; Chapter 12, Section 12.5-10, or City requirements.

Two sets of abutment fill stakes (phase 1 and 2) for two abutments.

Two sets of offset stakes to LOL of two abutments, two bents (phase 1 and 2), and one set of offset stakes to four wing walls.

One set of stakes for edge of deck control.

1.15 PG&E Relocation Support

Provide right of way staking and additional surveying support for relocation of PG&E overhead electric and underground gas facilities.

One set of stakes for roadway easement and PG&E easement

One set of stakes for edge of access road on north side

1.16 Record of Survey

MTCo will set monuments along the right of way and prepare a Record of Survey for said monumentation. The Record of Survey will be processed through the local agency, although review and filing fees are not included in this scope. This work will take place after construction.

Task 2: Eight Mile Road / UPRR (SPRR) Overhead (Location ‘B’)

2.1 Project Management

MTCo will perform project management for the survey tasks. MTCo will attend the Pre-Construction Kickoff Meeting and a total of fifteen (15) site visits and/or weekly project meetings with the City and/or Resident Engineer to coordinate the staking.

2.2 Grid Grade Notes
MTCo will prepare Grid Grade Notes for conversion into the final Slope Stake Notes. The Grid Grade Notes will be prepared based upon the final set of general roadway cross sections and will be developed at 50 foot intervals, and at the BC/EC of horizontal curves, the BVC/EVC/low and high points of vertical curves, and other critical locations (such as transitions and lane tapers). The limits of the Grid Grade Notes will extend along Eight Mile Road within the area of improvements.

2.3 Control Verification/Control Maintenance

Using conventional survey total station instruments, differential levels and global positioning system total stations, MTCo will check and verify project control points, and establish additional control points necessary for the survey layout for construction.

2.4 Clearing Limits

Provide offset stakes for 5,000 +/- LF of clearing limits at 100 foot intervals along tangents and 50 foot intervals along curves, including all EC’s, BC’s, and Angle points.

2.5 Sawcut

Provide offset stakes for 1,800 +/- LF of sawcut line at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC’s, BC’s, and Angle points.

2.6 Slope Stakes

Provide offset stakes for 7,500 +/- LF of roadway slope stakes, 500 +/- LF of WID Canal realignment, and 2 Retention Basins, at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC’s, BC’s, and grade breaks. Task to include temporary roadway alignments as shown on the stage construction plans.

2.7 Rough Grade Stakes

Provide offset stakes for 7,500 +/- LF of rough grade stakes at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC’s, BC’s, and grade breaks with offsets to ES or EP. Task to include temporary roadway alignments as shown on the stage construction plans and 2 Retention Basins.

2.8 Finish Grade Stakes
Provide offset stakes for 14,600 +/- LF of Finish Grade at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC's, BC's, CR's, Angle points and grade breaks for curb, gutter and sidewalk, edge of pavement, and AB access road.

2.9 Storm Drain Systems

Provide offset stakes for 23 Drain Systems (as shown on the drainage system plans and profiles). Two offset stakes will be provided for Flared End Sections (11), Manholes (12), Drop Inlets (26), Headwalls (4). Provide one set of offset stakes for 350 +/- LF of WID Canal realignment (triple box culvert).

2.10 Electrical

Provide stakes for: Street Light Standards (15), Utility Cabinets and Vaults (3). These will be staked with 2 straddlers showing cut/fill to top of curb or to finish grade if not controlled by adjacent facilities or adjacent construction staking.

2.11 Fence

Provide offset stakes for 7,800 +/- LF of Right of Way, and Drainage Basin's at 100 foot intervals along tangents and 50 foot along curves, including all EC's, BC's, and Angle Points.

2.12 Joint Trench

Provide offset stakes for 2,800 +/- LF at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC's, BC's, and Angle Points. Cuts will be to given to finish grade. Trench locations will be staked to centerline of trench; stakes to individual conduits will not be provided. Locations will not be staked within the limits of the proposed structure of outside the limits of the existing or proposed right of way. Invert elevations to joint trench facilities (electrical, telephone, CATV) will not be provided. Joint trench locations will be staked based upon the Utility Plans included in the "As Bid" plans prepared by MTCo. Only one set of stakes will be provided. Coordination for final joint trench locations will be provided by the City or Construction Management Consultant.

2.13 Structures

Provide offset stakes for MSE (mechanically stabilized embankment) wall.
Provide stakes for the UPRR overcrossing at LOL including abutments, bents, wing walls, and temporary benchmarks for contractor's use in accordance with the Caltrans Construction Surveys; Chapter 12, Section 12.5-10, or City requirements.

Two sets of abutment fill stakes (phase 1 and 2) for two abutments.

Two sets of offset stakes to LOL of two abutments, two bents (phase 1 and 2), and one set of offset stakes to four wing walls.

One set of stakes for edge of deck control.

2.14 PG&E Relocation Support

Provide right of way staking and additional surveying support for relocation of PG&E overhead electric and underground gas facilities.

One set of stakes for roadway easement and PG&E easement

2.15 Record of Survey

MTCo will set monuments along the right of way and prepare a Record of Survey for said monumentation. The Record of Survey will be processed through the local agency, although review and filing fees are not included in this scope. This work will take place after construction.

Task 3: Lower Sacramento Road / UPRR Underpass (Location 'C')

3.1 Project Management

MTCo will perform project management for the survey tasks. MTCo will attend the Pre-Construction Kickoff Meeting and a total of fifteen (15) site visits and/or weekly project meetings with the City and/or Resident Engineer to coordinate the staking.

3.2 Grid Grade Notes

MTCo will prepare Grid Grade Notes for conversion into the final Slope Stake Notes. The Grid Grade Notes will be prepared based upon the final set of general roadway cross sections and will be developed at 50 foot intervals, and at the BC/EC of horizontal curves, the BVC/EVC/low and high points of vertical curves, and other critical locations (such as transitions and lane tapers). The limits of the Grid Grade Notes will extend along Lower Sacramento Road within the area of improvements.

3.3 Control Verification/Control Maintenance
Using conventional survey total station instruments, differential levels and global positioning system total stations, MTCo will check and verify project control points, and establish additional control points necessary for the survey layout for construction.

3.4 Clearing Limits

Provide offset stakes for 8,000 +/- LF of Roadway and 2,200 +/- LF of Shoofly clearing limits at 100 foot intervals along tangents and 50 foot intervals along curves, including all EC's, BC's, and Angle points.

3.5 Sawcut

Provide offset stakes for 500 +/- LF of sawcut line at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC's, BC's, and Angle points.

3.6 Slope Stakes

Provide offset stakes for 8,000 +/- LF of Roadway and 2,200 +/- LF of Shoofly slope stakes at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC's, BC's, and grade breaks. Task to include temporary roadway alignments as shown on the stage construction plans.

3.7 Rough Grade Stakes

Provide offset stakes for 7,700 +/- LF of Roadway and 2,200 +/- LF of Shoofly rough grade stakes at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC's, BC's, and grade breaks with offsets to ES or EP. Task to include temporary roadway alignments as shown on the stage construction plans.

3.8 Finish Grade Stakes

Provide offset stakes for 9,800 +/- LF of Roadway Finish Grade and 2,200 +/- LF of Shoofly rail at 50 foot intervals along tangents and 25 foot intervals along curves, including all EC's, BC's, CR's, Angle points and grade breaks for curb, gutter and sidewalk, or edge of pavement.

3.9 Storm Drain Systems

Provide offset stakes for 19 Sewer and Drain Systems (as shown on the drainage system plans and profiles). Two offset stakes will be provided for Manholes (20), and Drop Inlets (22).
3.10 Electrical

Provide stakes for: Street Light Standards (13), Utility Cabinets and Vaults (9). These will be staked with 2 straddlers showing cut/fill to top of curb or to finish grade if not controlled by adjacent facilities or adjacent construction staking.

3.11 Fence

Provide offset stakes for 3,500 +/- LF of Right of Way at 100 foot intervals along tangents and 50 foot along curves, including all EC’s, BC’s, and Angle Points.

3.12 Waterline

Provide offset stakes for 800 +/- LF of waterline at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC’s, BC’s, Angle Points, Grade Breaks, and Appurtenances. Line stakes will be given for angle points and appurtenances. Cuts will be to finish grade or invert elevation if noted in plan set.

3.13 Joint Trench

Provide offset stakes for 4,200 +/- LF at 50 foot intervals along tangents, 25 foot intervals along curves, including all EC’s, BC’s, and Angle Points. Cuts will be to given to finish grade. Trench locations will be staked to centerline of trench; stakes to individual conduits will not be provided. Locations will not be staked within the limits of the proposed structure of outside the limits of the existing or proposed right of way. Invert elevations to joint trench facilities (electrical, telephone, CATV) will not be provided. Joint trench locations will be staked based upon the Utility Plans included in the “As Bid” plans prepared by MTCO. Only one set of stakes will be provided.

3.14 Structures

Set staking for the UPRR underpass at layout line including abutments, bents, wing walls, and temporary benchmarks for contractor’s use in accordance with the Caltrans Construction Surveys; Chapter 12, Section 12.5-10, or City requirements.

One set of abutment cut stakes for two abutments.

One set of offset stakes to layout line of two abutments, and one bent.

One set of stakes for edge of deck control.

3.15 Retaining Wall
Provide offset stakes for 3,300 +/- LF of retaining wall (retaining walls 1 – 4) to LOL at 50 foot intervals along tangents and 25 foot along curves, including beginning and ending of wall, all EC's, BC's, angle points, grade breaks in footing and changes in wall height.

3.16 Utility Relocation Support

Provide right of way staking and additional surveying support for relocation of PG&E overhead electric, underground gas facilities and Sprint and Verizon fiber optic lines.

One set of stakes for roadway easement and PG&E easement

3.17 Record of Survey

MTCo will set monuments along the right of way and prepare a Record of Survey for said monumentation. The Record of Survey will be processed through the local agency, although review and filing fees are not included in this scope. This work will take place after construction.
Project Understanding

Location ‘A’

Eight Mile Road / UPRR Overhead is Location “A” of the City of Stockton’s Railroad Grade Separation & Bridge Replacement Projects. This project will take a new roadway over the existing railroad tracks along with widening the existing facility to eight lanes. The alignment of the roadway will be pushed north in order to construct the project in two stages.

The length of roadway being constructed from beginning to end is approximately 4700 feet. The roadway will be widened to eight lanes including a landscaped median, curb & gutter, and sidewalk. Embankment will be sloped at 2:1 and will have an AB access road and ditch adjacent to it.

The structure constructed will be a cast-in-place pre-stressed concrete box girder and will be 125 feet - 9 inches wide and 245 feet long. It will include Type 26 modified concrete barriers on both sides of the structure which include wrought iron railing on top of the barriers and sidewalk railing 21 inches from the roadway. There will also be 30 foot long approach slabs constructed at the beginning and ends of the structure along the roadway.

Drainage on this project will consist of 23 drainage systems including 4 treatment unit facilities. Approximately 4900 feet of pipe will be installed with 20 drainage inlets and 20 manholes.

This project will be constructed in two distinct stages. In the first stage the north half of the facility will be constructed. The intersections of Davis Road and Marlette Road with Eight Mile Road will require temporary signals and temporary traffic delineation. Vehicle traffic will need to be shifted several times in stage 1 and then shifted to the north to build stage 2.

Electrical improvements consist of the installation of 15 new street lights. Conduit for fiber-optic lines for a signal interconnect will be installed to the limits of the project.

Location ‘B’

Eight Mile Road / UPRR (SPRR) Overhead is Location “B” of the City of Stockton’s Railroad Grade Separation & Bridge Replacement Projects. This project will take a new roadway over the existing railroad tracks and widen the roadway from two to eight lanes. The widened and elevated roadway will remain on its current alignment and will require a temporary retaining wall built on the south side of the existing Eight Mile Road to construct the project in two stages.

The length of roadway being constructed from beginning to end is approximately 3300 feet. The roadway will be widened to eight lanes including a landscaped median and curb & gutter.
No sidewalk is proposed for this project. Embankment will be sloped at 2:1 and will have an AB access road and ditch adjacent to it.

The project will also include the replacement and realignment of the Woodbridge Irrigation District canal. The existing culvert will be replaced by a larger triple 8’ wide by 4’ tall box culvert, and the canal will be realigned for 175’ on the south side of the widened Eight Mile Road.

The project will be constructed in two stages, with the first stage having three sub stages. Stage 1A will include the construction of the south half of the WID box culvert and Signature Drive. Stage 1B will complete the box culvert, and Stage 1C will complete the construction of the southern half of the widened and elevated roadway. For this stage a temporary Mechanically Stabilized Embankment (MSE) wall will be constructed 5’ off the south edge of pavement, and the new roadway section will be built south of the wall. Stage 2 will move traffic from the existing roadway to the newly constructed portion and complete the new roadway north of the retaining wall.

Pearson Road will be terminated with a cul-de-sac 500 feet north of the current intersection. Golfview Road will be reconstructed for 150’ to a higher roadway profile but will not widened. A new Signature Drive roadway 44’ wide with curb and gutter will provide a driveway entrance to Cannery parcel.

The overhead structure will be a cast-in-place pre-stressed concrete box girder and will be 125 feet - 9 inches wide and 243 feet long. It will include Type 26 modified concrete barriers on both edges of the structure with type 3 chain link railing on top of the barriers. Sidewalk railing will be placed 21 inches from the roadway. There will also be 30 foot long approach slabs constructed at each end of the structure along the roadway.

Drainage on this project will consist of 23 drainage systems and two large retention basins constructed on the north side of the roadway.

Electrical improvements consist of the installation of 15 new street lights.

**Location ‘C’**

Lower Sacramento Road / UPRR Underpass is Location “C” of the City of Stockton’s Railroad Grade Separation & Bridge Replacement Projects. This project will take a new roadway underneath the railroad tracks and will widen to six lanes. The widened and lowered roadway will remain on its current alignment and will require large retaining walls to be built along its length.
The length of roadway being constructed from beginning to end is approximately 2000 feet. The roadway will be widened to six lanes including a landscaped median, raised sidewalk (with small retaining walls behind them) and curb & gutter. Cut Slopes will be sloped at 2:1. The total length of retaining walls within the project is about 3800 feet.

Grider Way will be extended to intersect with Whistler Way, roughly 1500 feet, and will act as a detour road during the construction of Lower Sacramento Road. The existing roadway will be reconstructed, and the extension will be 32 feet wide. The Lower Sacramento Road / Grider Way intersection will be completely re-built.

A pump station will be constructed adjacent to UPRR requiring site grading and the installation of a 35' deep wet well. Waterlines include a new 16" line and the relocation of an existing 30" line totaling about 2500 linear feet.

There are 19 separate storm drain and sewer systems, totaling about 4800 linear feet. This includes a 42" trunk line below and parallel to Grider Way.

The underpass structure is a two span steel plate girder. It shall have a width of 58.25 feet, and a length of 127 feet.

A Railroad Shoofly, roughly 3000 linear feet, will be installed prior to construction of the underpass structure.

Electrical improvements consist of installing a new traffic signal at the intersection of Lower Sacramento Road and Grider Way, and installation of 13 new street lights. Conduit for fiber-optic lines for a signal interconnect will be installed to the limits of the project.

The staging plan for the project calls for construction of the Grider Way extension, driveway realignment, and Shoofly in the first stage. In the second stage, local traffic is detoured through the Grider extension, and railroad traffic is shifted onto the Shoofly. This allows for construction of the underpass structure, and the south half of the underpass. This includes half Retaining Walls #1, 6, and half of #2 and #4. Once the underpass structure is completed, railroad traffic is shifted back, the shoofly is removed, and the north half of the underpass shall be completed.

**Location 'D'**

Lower Sacramento Road / Bear Creek Bridge Replacement is Location "D" of the City of Stockton’s Railroad Grade Separation & Bridge Replacement Projects. This project will take a new roadway over Bear Creek, replacing a bridge and will widen to six lanes.
Lower Sacramento Road will be reconstructed and widened from Armor Drive to the Grider Way, as well as a sliver widening 600 feet south of Armor Drive. The roadway will be widened to six lanes, including a landscaped median, curb and gutter and a sidewalk. Seven driveways will also be re-aligned and reconstructed. A new bike path will be constructed parallel to Bear Creek, crossing Lower Sacramento Road below the structure and in front of the North Abutment. The total length of the new segment of path shall be about 1500 feet. Roadway improvements total about 6500 linear feet.

There are 16 separate storm drain and sewer lines, totaling about 2500 linear feet. Water lines include multiple relocations of an existing 16” line totaling about 900 linear feet, and the install of two fire hydrants.

The new bridge will be a three span voided slab structure. It will have a width of 111.75 feet, and a length of 700 feet. Along with the bridge, a total four flood walls will be reconstructed; one at each corner of the bridge.

A sound wall will be constructed at the southern end of the project, two feet inside the Right of Way. The wall is approximately 700 linear feet long.

Electrical improvements consist of the installation of 7 new street lights and the extension of fiber-optic line conduits from the intersection of Lower Sacramento Road and Grider Way south to Royal Oaks.

The staging plan for the project calls for construction of the east half of Lower Sacramento Road in the first stage. Once this is completed, traffic may be shifted east, and the west half of the roadway can be completed.
# Exhibit "B"
## Detailed Cost Estimate

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**Total Costs:**
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- 488,0
- 56,180
- 610,0
- 51,650
- 612,0
- 122,400
- 60,0
- 17,880
- 2,500

**Total:** $268,039

---

Page 1

hours-cost EM - UPRR 2010-09-29.xls
# Exhibit "B"
## Detailed Cost Estimate

**Job #** 57-0221B  
**Job Name:** City of Stockton: Eight Mile Rd / UPRR (SPRR) Overhead  
**Date:** June 6, 2010

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*hours-cost EM - SPRR 2010-09-29.xls*
**Exhibit "B"**

**Detailed Cost Estimate**

**Job #** 57-0221B  
**Job Name:** City of Stockton: Lower Sac Rd / UPRR Underpass  
**Date:** June 8, 2010

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**hours-cost LSR - UPRR 2010-09-23.xls**
EXHIBIT C

INSURANCE REQUIREMENTS
CONSTRUCTION STAKING / LAND SURVEYING SERVICES

INSURANCE  Throughout the life of this Contract, the Consultant shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

A. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than $2,000,000 per occurrence, and if written on an Aggregate basis, $4,000,000 Aggregate limit (CG 0001).

B. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

C. PROFESSIONAL ERRORS AND OMISSIONS, Not less than $1,000,000 per Claim.$2,000,000 Aggr. (5 yr discovery and reporting tail period coverage). Certificate of Insurance only required.

D. WORKERS' COMPENSATION Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by CITY.

Other Insurance Provisions

The Policy (s) shall also provide the following:

a.) The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds. ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01 (or earlier editions of these forms).

b.) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representative, agents, employees and volunteers. Any coverage maintained by the CITY shall be excess of the Consultant's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
c.) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

d.) Regardless of these contract minimum insurance requirements, the Consultant and its insurer shall agree to commit the Consultant's full policy limits and these minimum requirements shall not restrict the Consultant's liability or coverage limit obligations.

e.) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

f.) The Company shall furnish the City of Stockton with the Certificates and Endorsements for all required insurance, prior to the CITY's, execution of the Agreement and start of work.

g.) Proper Address for Mailing Certificates, Endorsements and Notices shall be:
   City of Stockton,
   Attn: Risk Services
   425 N. El Dorado
   Stockton, CA 95202

h.) Upon notification of receipt by the City of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the City a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the City's Risk Services Manager (209) 937-8682. Our Fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Consultant shall be withheld until acceptable replacement coverage notice is received by the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Contract. In the event of insurance cancellation, the City reserves the right to purchase insurance or insure (or self-insure) for the above required coverages, at the Consultant's full expense.

If the Consultant should subcontract all or any portion of the work to be performed in this contract, the Consultant shall cover the Sub-consultant, and/or require each Sub-consultant to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractors insurance shall have the same impact as described above.
2. **INDEMNIFICATION**

Consultant agrees to indemnify, including the cost to defend, CITY OF STOCKTON, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of consulting and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by the CITY OF STOCKTON or the agents, servants, or independent contractors who are directly responsible to the CITY OF STOCKTON, or arising from the active negligence of the CITY OF STOCKTON.
PUBLIC HEARINGS

9.01) CC
Hearing to consider public comments/testimony regarding

FAYE SPANOS, TRUST, ET AL., REQUEST FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

At the conclusion of the public hearing it is recommended that:

a) Resolution certifying an Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) and adopting the amended California Environmental Quality Act “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project,” dated August, 2010;

b) Resolution approving a General Plan Amendment to amend portions of the project area from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations; and

c) Ordinance approving a Rezoning of portions of Residential, Low Density (RL), Residential, Medium Density (RM), Open Space (OS), and Public Facilities (PF) to Residential, Low Density (RL), Residential, Medium Density (RM), Residential, High Density (RH), Commercial, Neighborhood (CN), Open Space (OS) and Public Facilities (PF) for the project.

(CD)
TO: Mayor and City Council

FROM: Michael M. Niblock, Secretary
City Planning Commission

SUBJECT: FAYE SPANOS, TRUST, ET AL., REQUEST FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

RECOMMENDATION

It is recommended that the City Council adopt two resolutions and one ordinance, as follows:

1. Resolution certifying an Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) and adopting the amended California Environmental Quality Act "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project," dated August, 2010;

2. Resolution approving a General Plan Amendment to amend portions of the project area from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations; and

3. Ordinance approving a Rezoning of portions of Residential, Low Density (RL), Residential, Medium Density (RM), Open Space (OS), and Public Facilities (PF) to Residential, Low Density (RL), Residential, Medium Density (RM), Residential, High Density (RH), Commercial, Neighborhood (CN), Open Space (OS) and Public Facilities (PF) for the project.

Findings for each of the above-recommended actions have been incorporated into the respective resolutions and ordinance attached to this newsletter.

SUMMARY

Faye Spanos, Trust, et al., are proposing to develop a new Planned Development project with a mix of residential and commercial uses on a ±360-acre site. At its regular meeting of September 9, 2010, the City Planning Commission considered and recommended approval of the requests for the Addendum/Initial Study to previously-certified Final Environmental Impact Report (FEIR11-05) and adoption of the amended California Environmental Quality Act "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project," General Plan amendment, and Rezoning. The Planning Commission also considered and approved the Planned Development Permit and Large Lot Vesting Tentative Map. The environmental document, General Plan amendment, and Rezoning require final approval by the City Council. The Planned Development Permit and Vesting Tentative Map were not appealed, so Council action is not required for those
October 19, 2010

FAYE SPANOS, TRUST, ET AL., REQUEST FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

(Page 2)

matters; however, the information is presented in this report as background, attached as Exhibits 1 through 21.

DISCUSSION

Background

The project site was previously approved for a Planned Development known as the “The Preserve” project located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Slough. Subsequently, the applicant decided to amend the approved land use plan. The proposed modifications to the approved plan include the preservation of existing wetland areas, the enhancement of pedestrian/bicycle connections throughout the project site, the development of a neighborhood commercial center, re-alignment of the dry-land levee on the west side of the future extension of Trinity Parkway, and the relocation of a proposed elementary school. Since the proposed land use plan was inconsistent with the previously-approved plan, the applicant was required to submit new applications for a General Plan amendment, Rezoning, Large Lot Vesting Tentative Map, Planned Development Permit and an Addendum/Initial Study to the previously-certified Final Environmental Impact Report.

The Planned Development project will promote a good quality development through a mix of complimentary land uses. The overall proposed project will consist of residential units, a commercial retail/office center, an elementary school, parks, open space and green belts. A comparison of the previously-approved Planned Development plan and the Delta Cove Planned Development includes the following new changes:

- Number of Residential Units -- residential units will increase from 1,481 to 1,545 units by the redesign of the land use plan. The density will increase from 6.5 to 8.6 units per gross acre.

- High Density Residential -- a 13-acre site will be designated on the northwest corner of Otto Drive and Trinity Parkway to allow construction of a 280-unit condominium or apartment project (Exhibit 11).

- Commercial Retail Center -- a 2.5-acre site located on the south side of a neighborhood sport park (Parcel 1) provides for up to 15,000 square feet of retail/office space. The remaining 5.7 acres (Parcels 2 and 3) located on both sides of Otto Drive and west of Street 1 will allow the development of 40 townhouse units and 60 live/work units (Exhibits 11 and 12).
- Wetlands -- existing wetlands located on the west side of the proposed Residential Medium Density (RM) zone will be preserved and protected for wildlife habitat (Exhibit 11).

- Elementary School -- an 11-acre elementary school site will be moved and located adjacent to the neighborhood sport park (Exhibit 11).

- Parks and Open Space -- the Delta Cove project includes a significant amount of open space and park land. This land plan complies with the General Plan requirements with a total of 42 acres for park land and 95 acres for open space and green belts (Exhibit 13).

- Transit -- the Delta Cove project is designed to accommodate multiple forms of transportation. A vehicular and non-vehicular circulation plan will encourage bicycle and pedestrian travel as well as alternatives to the automobile through a comprehensive transit system (Exhibit 14).

- Pedestrian and Bicycle Paths -- a pedestrian/bicycle trail system provides access between important destinations within the project area, such as the residential neighborhoods, public facilities and parks. It also is planned to link to areas outside the Delta Cove project (Exhibit 15).

The development of the proposed project will use the requested Large Lot Tentative Map and Planned Development Permit. However, a Small Lot Tentative Map will need to be filed and approved to fully implement the proposed project. The Large Lot Vesting Tentative Map divides the ±360 acre-site into 51 large lots for the purpose of sale. The Delta Cove project complies with the Planned Development Permit section 16.68 of the Development Code, which allows for flexibility in determining lot size, setback, site coverage, building height, open space/common area and parking.

The Planned Development project is intended to develop in four phases and features several types of residential units that include detached single-family homes, small-lot traditional, Motor Court and Bungalow Court clusters, alley-loaded residential units, live/work units, and multi-family residential. The project also includes a commercial neighborhood center to allow a variety of community-serving retail and office uses, which will provide area residents with the opportunity to meet many of their daily shopping and service needs.

The primary ingress/egress to the project site is via Trinity Parkway at Otto Drive. Along the eastern edge of the project Trinity Parkway serves as the north-south arterial connecting the project to Eight Mile Road (north) and Hammer Lane (south). Otto Drive has been designed to serve as an east-west minor arterial within Delta Cove and will
continue further west crossing Mosher Slough to accommodate the transportation needs of the neighboring Sanctuary project to be developed on Shima Tract. A Planned Development Permit requires that at least 20 percent of the gross project area be reserved for, and devoted to, landscaped and useable common open space. Approximately 44 percent of the overall site's gross area will be dedicated to greenbelts, landscaped areas, common open space, parks and waterway areas. The existing ±30-acre power line easement located in the center of the project site will contain a neighborhood sports park and stormwater detention basins. This park will be dedicated to the City to be used as a public park and will be maintained by the Stockton Consolidated Landscape Maintenance District. A homeowner's association will be responsible for the maintenance of walls/fences, open space, stormwater detention basins, commonly landscaped areas, greenbelts and mini-parks.

Present Situation

Environmental Clearance

The Addendum to the previously-certified Final Environmental Impact Report (FEIR11-05) for the Delta Cove Planned Development project was prepared in compliance with the California Environmental Quality Act and City Guidelines for the Implementation of the California Environmental Quality Act. In addition, the mitigation monitoring/reporting provisions and related California Environmental Quality Act findings are included in the amended "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project”, dated August, 2010. The City Council must adopt all applicable mitigation measures identified in the Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) and the related California Environmental Quality Act Findings in conjunction with the approval of any related discretionary authorizations.

General Plan Amendment and Rezoning

To develop the Planned Development project, the applicant filed General Plan amendment and rezoning applications. The General Plan amendment would redesignate portions of the project site from Low Density Residential, Medium Density Residential, Open Space, and Parks and Recreation to Low Density Residential, Medium-Density Residential, High Density Residential, Commercial, Open Space, and Parks and Recreation designations. The rezoning would affect portions of Residential, Low Density (RL), Residential, Medium Density (RM), Open Space (OS), and Public Facilities (PF) changing them to Residential, Low Density (RL), Residential, Medium Density (RM), Residential, High Density (RH), Commercial, Neighborhood (CN), Open Space (OS) and Public Facilities (PF). The General Plan is only amended by the Council up to four times in a single calendar year. This request represents the third
FAYE SPANOS, TRUST, ET AL., REQUEST FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

(Page 5)

General Plan amendment for 2010. The Planning Commission adopted a resolution recommending approval of the General Plan amendment on September 9, 2010. The Planning Commission is also recommending approval of the proposed rezoning request.

PUBLIC HEARING DISCUSSION

Following the staff presentation at the Planning Commission’s regular meeting on September 9, 2010, the applicant’s attorney presented testimony in support of the proposed project. He indicated that the project site was approved for a Planned Development in December, 2008. In order to comply with the goals and policies of the General Plan and comply with the Settlement Agreement with the Attorney General of California and the Sierra Club, the applicant redesigned the project site in 2009.

The changes to the approved plan include the preservation of existing wetland areas, the installation of pedestrian/bicycle connections throughout the project site, the development of a neighborhood commercial center, the increase of parks and open space acreages. To reduce vehicular trips within the project site, the developer pledged to work with the City and the San Joaquin Regional Transit District to provide transit stops along the project’s arterial streets within a 5-minute walking distance from each neighborhood. The bike/pedestrian circulation system would provide access to parks, the commercial retail center, residential areas and the school. Additionally, the design of the residential units, commercial and office buildings would comply with the City’s newly adopted Green Building Ordinance (Cal Green) to reduce greenhouse gas emissions for the development project.

Planning Commission members asked several questions including:

- What is the availability of fire and police services for the project?

Staff responded that the Fiscal Impact Analysis (FIA) for the Delta Cove project describes a variety of funding mechanisms including a Community Facilities District (CFD) that could be used to supplement the cost of fire and police services needed. Overall, the final Fiscal Impact Analysis projected a surplus per year after Project buildout. No other persons spoke in support of or opposition to the proposed project.

PLANNING COMMISSION ACTION

Following the public hearing and their deliberation, the Planning Commission voted 6-0 (Kontos recused) to approve the Planned Development Permit and Large Lot Vesting Tentative Map. The Planning Commission also recommended that the City Council take the following actions, based on the findings as contained in the attached Planning Commission staff report:

439
October 19, 2010

FAYE SPANOS, TRUST, ET AL., REQUEST FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

(Page 6)

1) Certify the Addendum/Initial Study to previously-certified Final Environmental Impact Report (FEIR11-05) and adopt the amended California Environmental Quality Act "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project" dated August, 2010.

2) Approve General Plan amendment request; and

3) Approve Rezoning request.

FINANCIAL SUMMARY

A Fiscal Impact Analysis and Public Facilities Financing Plan for the Delta Cove project provide a variety of financing mechanisms to assure that the Project would mitigate all projected deficits to the City. By the implementation of the funding programs, the Project would be at least fiscally neutral, or produce a surplus, to the City at buildout. Therefore, there is no financial impact to the City as a result of this action.

PUBLIC NOTIFICATION

A notice of this public hearing was published in the Stockton Record on October 9, 2010 to fulfill the requirement to publish a notice in the local newspaper at least one time, ten days prior to the public hearing. Notice was also provided to owners of record as shown on the last equalized tax roll and addresses within 300 feet of the site at least ten days prior to the public hearing (Stockton Municipal Code Section 16.88.030).

VOTES REQUIRED

Four votes of the City Council are necessary to approve the noted requests.

Respectfully Submitted,

MICHAEL M. NIBLOCK, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT

APPROVED BY

BOB DEIS
CITY MANAGER

MMN: JL: sis

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EXHIBIT 1

STAFF REPORT
P. C. Agenda
September 9, 2010

STAFF REPORT

Item E-2 (a), (b), (c), (d), and (e): PUBLIC HEARING – Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05), General Plan amendment, Rezoning, Planned Development Permit, and Large Lot Vesting Tentative Map, Case Nos. P09-160, Faye Spanos, Trust, et al., (Delta Cove Project)

Data: Faye Spanos, Trust, et al., is proposing to develop a new Planned Development project with a mix of commercial and residential uses on a ±360-acre site located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Slough. The project site was previously-approved for a Planned Development known as the “The Preserve” project. The vacant project site is located within the City limits and is bounded to the:

- north across Bear Creek by open space and vacant land zoned Open Space (OS) and Residential, Low Density (RL);

- east across future Trinity Parkway by existing single-family homes zoned Residential, Low Density (RL); and

- south and west across Mosher Slough by farmland zoned Mixed Use (MX) (Exhibits 3, 4 and 5).

In order to develop the residential/commercial project on the subject site, the Planning Commission is requested to approve or recommend approval of the following environmental document and discretionary applications:

- Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05);

- General Plan amendment to amend portions of the project area from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations;

- Rezoning of portions of Residential, Low Density (RL), Residential, Medium Density (RM), Open Space (OS), and Public Facilities (PF) to Residential, Low Density (RL), Residential, Medium Density (RM), Residential, High Density (RH), Commercial, Neighborhood (CN), Open Space (OS) and Public Facilities (PF);
Large Lot Vesting Tentative Map for the purpose of sale; and

Planned Development Permit to allow the development of single-family, two-family residential, multi-family residential, a commercial retail center and a proposed elementary school with open spaces, parks, and green belts as well as a waiver to allow a minor arterial street crossing the central portion of the project site.

Environmental Clearance: As background, the City Council approved the 2035 General Plan in December 2007. Litigation was initiated against the City by the Sierra Club alleging inadequate environmental review under the California Environmental Quality Act in January, 2008. Subsequent to the filing of the Sierra Club lawsuit, the Attorney General of the State of California contacted the City and indicated that he may join the pending litigation unless the City agreed to certain actions to more definitively implement the intent of the California Global Warming Solutions Act, also known as Assembly Bill 32 that establishes a statewide greenhouse gas emissions cap for 2020, based upon 1990 emissions. On September 9, 2008, the City Council approved a Memorandum of Agreement ("Settlement Agreement") with the Attorney General of California and the Sierra Club. The Agreement contains a list of actions for the City to achieve reductions in greenhouse gas emissions, including the adoption of a Climate Action Plan. The Agreement also contains "Early Climate Protection Actions" for development projects considered for approval prior to the adoption of the City’s Climate Action Plan. Emission estimates derived from the City’s greenhouse gas inventory analysis indicate the projected business-as-usual greenhouse gas emission level by 2020 at 3,000,886 metric tons and the 1990 greenhouse gas emission level at 2,138,308 metric tons. Thus, the reduction that is needed by 2020 is 862,578 metric tons (28.7%). In September of 2009, the City Council adopted an interim greenhouse gas emission reduction target to reach the 1990 greenhouse gas emissions level by 2020.

In order to comply with the greenhouse gas emissions reduction target, an Addendum to previously-certified Final Environmental Impact Report (FEIR11-05) was prepared and describes how the Delta Cove project reaches the reduction goal. The Delta Cove project is projected to generate new greenhouse gas emissions of up to 27,045 metric tons per year according to the 2020 business-as-usual model output. However, implementation of the project’s proposed mitigation measures will substantially reduce greenhouse gas emissions to 18,825 metric tons per year. The Delta Cove project is anticipated to reduce greenhouse gas emissions by approximately 8,820 metric tons per year (30% reduction). The proposed project exceeds the required reduction of greenhouse gas emissions from 2020 business-as-usual conditions. The measures to reduce greenhouse gas emissions include vehicle trip reduction strategies such as the establishment of public transit service/improvements, the installation of bike/pedestrian circulation system connections to parks, the commercial retail center, residential uses and the school. The provision of parks, open space and green belts will encourage residents to
recreate within the community and reduce travel to other areas of the City. In addition, the project will comply with the City’s adopted Green Building Ordinance (Cal Green), effective on August 26, 2010.

Based upon the City’s review of the project’s environmental document, the revised project would not cause or increase new significant environmental effects. Therefore, an Addendum was considered appropriate based on Section 15164 of the Guidelines for the California Environmental Quality Act (CEQA). Staff has prepared and is recommending adoption of the amended “Findings, Statement of Overriding Considerations and Mitigation Monitoring/Reporting Program for the Delta Cove Project. The Planning Commission must independently review, consider and approve the Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) to its adequacy and compliance with the State and City California Environmental Qualify Act Guidelines and the City’s Settlement Agreement prior to approving or recommending that the City Council approve any related discretionary authorizations, as applicable.

Discussion: As background, a Master Development Plan application was filed in 2005 to develop the site into a residential community with parks, open space/common areas, and green belts. A Master Development Plan, per the provisions of the Development Code, is intended to provide a comprehensive framework for the development of property that has a mixed land use. However, the project site will be primarily developed with residential uses with amenities and does not meet the Master Development Plan criteria. Therefore, a Planned Development Permit application was submitted in March, 2008, to replace the Master Development Plan application. The Planned Development project was approved by the City Council on December 9, 2008. Subsequently, the applicant decided to amend the approved land use plan. The proposed modifications to the approved plan include the preservation of existing wetland areas, the enhancement of pedestrian/bicycle connections throughout the project site, the development of a neighborhood commercial center, re-alignment of the dry-land levee on the west side of the future extension of Trinity Parkway and the relocation of a proposed elementary school. Since the proposed land use plan was inconsistent with the previously-approved plan, the applicant was required to submit new applications for General Plan amendment, Rezoning, Large Lot Vesting Tentative Map, Planned Development Permit and an Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05). The revised Planned Development project was renamed “Delta Cove.”

General Plan Amendment/Rezoning:

Applications for the Delta Cove development were submitted in July, 2009. The proposed development will be consistent with the 2035 General Plan Land Use diagram, subject to approval of the proposed General Plan Map amendment. The project site is currently designated as Low Density Residential, Medium Density
Residential, Parks and Recreation and Open Space on the General Plan Map. In order to allow the proposed land uses within the Delta Cove project site, a General Plan amendment application was required to reclassify portions of the above-noted land uses to Low Density Residential, Medium Density Residential, High Density Residential, Commercial, Parks and Recreation and Open Space (Exhibits 6 and 7).

The project site was annexed to the City in 1989. The proposed rezoning is consistent with the proposed General Plan amendment and the plan depicted by the proposed Planned Development. In order to implement the proposed project, the applicant has requested to rezone portions of the site from existing Residential, Low Density (RL), Residential, Medium Density (RM), Public Facilities (PF) and Open Space (OS) to Residential, Low Density (RL), Residential, Medium Density (RM), Residential High Density (RH), Commercial Neighborhood (CN), Public Facilities (PF) and Open Space (OS) (Exhibits 8 and 9).

Large Lot Vesting Tentative Map and Planned Development Permit:

The proposed project will be implemented through the use of the following Vesting Tentative Map and Planned Development Permit:

Large Lot Vesting Tentative Map-

The ±360-acre site will be subdivided into 51 large lots with 25 residential lots and 26 non-residential lots. Creating the large lots in the project site will be for the purpose of sale (Exhibit 10). Furthermore, a small lot Tentative Map for the project site will need to be filed in order to fully implement the project.

Planned Development Permit-

The Planned Development project will promote a high quality development through a mix of complimentary land uses. The overall proposed project will consist of residential units, a commercial retail/office center, an elementary school, parks, open space and green belts. A comparison of the previously-approved Planned Development plan and the Delta Cove Planned Development includes the following new changes:

- Number of Residential Units -- residential units will increase from 1,481 to 1,545 units by the redesign of the land use plan. The density will increase from 6.5 to 8.6 units per gross acre.

- High Density Residential -- a 13-acre site will be designated on the northwest corner of Otto Drive and Trinity Parkway to allow construction of a 280-unit condominium or apartment project (Exhibit 11).
- Commercial Retail Center -- a 2.5-acre site located on the south side of a neighborhood sport park (Parcel 1) provides for up to 15,000 square feet of retail/office space. The remaining 5.7 acres (Parcels 2 and 3) located on both sides of Otto Drive and west of Street 1 will allow the development of 40 townhouse units and 60 live/work units (Exhibits 11 and 12).

- Wetlands -- existing wetlands located on the west side of the proposed Residential Medium Density (RM) zone will be preserved and protected for wildlife habitat (Exhibit 11).

- Elementary School -- an 11-acre elementary school site will be moved and located adjacent to the neighborhood sport park (Exhibit 11).

- Parks and Open Space -- the Delta Cove project includes a significant amount of open space and park land. This land plan complies with the General Plan requirements with a total of 42 acres for park land and 85 acres for open space and green belts (Exhibit 13).

- Transit -- the Delta Cove project is designed to accommodate multiple forms of transportation. A vehicular and non-vehicular circulation plan will encourage bicycle and pedestrian travel as well as alternatives to the automobile through a comprehensive transit system (Exhibit 14).

- Pedestrian and Bicycle Paths -- a pedestrian/bicycle trail system provides access between important destinations within the project area, such as the residential neighborhoods, public facilities and parks. It also is planned to link to areas outside the Delta Cove project (Exhibit 15).

The Delta Cove project complies with the Planned Development Permit section 16.68 of the Development Code, which allows for flexibility in determining lot size, setback, site coverage, building height, open space/common area and parking. Design standards for the buildings, walls, fences and landscaping are detailed in the Planned Development document. Delta Cove features several types of residential units that include detached single-family homes, small-lot traditional, Motor Court and Bungalow Court clusters, alley-loaded residential units, live/work units and multi-family residential. Table 5.2 illustrates lot size, setback, lot coverage, parking and other standards for each type of housing (Exhibit 16). The commercial neighborhood center will allow a variety of community-serving retail and office uses, which will provide area residents with the opportunity to meet many of their daily shopping and service needs within the community, thus reducing vehicle miles traveled (VMTs). The commercial retail center is centrally located within easy walking distance to all residents living in the Delta Cove project (Exhibits 11 and 12).

The Planned Development component of the project describes the planned four-phase development of the project site (Exhibit 17):
Phase 1: Includes a re-alignment of the dry-land levee to the west in conjunction with the Trinity Parkway Phase II extension project, a mass grading and dewatering of Phase 1 site, the construction of the eastern half of Otto Drive right-of-way including stub-outs serving future phases, the improvement of terminal storm drainage, the construction of Trinity Parkway bridge crossing Mosher Slough, either prior to the issuance of the 300th residential building permit or with the development of Phase 2, whichever occurs first, and the development of 570 residential units, 18 live/work units, 13 townhouse units, 15,000 square feet of commercial building as well as 51 acres of parks/open space;

Phase 2: Includes a mass grading and dewatering of the Phase 2 site, the construction of the eastern half of Otto Drive right-of-way and the development of 302 residential units, 42 live/work units, 27 townhouse units as well as 23 acres of parks/open space;

Phase 3: Includes a mass grading and dewatering of the Phase 3 site, the construction of the western half of Otto Drive right-of-way and the development of 304 residential units as well as 26 acres of parks/open space; and

Phase 4: Includes a mass grading and dewatering of the Phase 4 site and the construction of 269 residential units as well as 22 acres of parks/open space.

The primary ingress/egress to the project site is via Trinity Parkway at Otto Drive. Trinity Parkway serves as the major north-south arterial located along the eastern edge of the project to Eight Mile Road (north) and Hammer Lane (south). Otto Drive has been designed to serve as an east-west minor arterial within Delta Cove and crossing Mosher Slough to Shima Tract (Exhibit 18). Section 16.68.030 A.2 of the Development Code states that a Planned Development project "...not be separated by a public street." In order to deviate from the code requirement, the applicant is requesting a waiver to allow that the Planned Development be separated by a minor arterial street. Staff recommends approval of the waiver to comply with commercial/residential mixed uses under the Planned Development provision. A Planned Development requires that at least 20 percent of the gross project area must be reserved for, and devoted to, landscaped and useable common open space. Approximately 44 percent of the overall site’s gross area will be dedicated to greenbelts, landscaped areas, common open space, parks and waterway areas, which exceeds the development code requirement (Exhibits 19 and 20). The existing ±30-acre power line easement located in the center of the project site will contain a neighborhood sports park and stormwater detention basins. This park will be dedicated to the City to be used as a public park and will be maintained by the
Stockton Consolidated Landscape Maintenance District. Masonry walls with landscaped strips will be installed along future Trinity Parkway and Otto Drive. A homeowner’s association will be responsible for the maintenance of walls/fences, open space, stormwater detention basins, commonly landscaped areas, greenbelts and mini-parks.

Fiscal Impact Analysis:

David Taussig and Associates, Inc. prepared the Fiscal Impact Analysis for the Delta Cove project. The Fiscal Impact Analysis report addresses the fiscal implications of the Planned Development, comparing the annual costs of providing public services against the annual revenues that would be generated by new development in order to determine net fiscal impact. The analysis is based on current actual costs and anticipated escalations over the build-out of the project. Goodwin Consulting Group has reviewed the Fiscal Impact Analysis and concluded that the Fiscal Impact Analysis assumptions and methodologies are consistent with the City’s Fiscal Impact Analysis template and guidelines. The Fiscal Impact Analysis describes a variety of funding mechanisms to assure that the Project will mitigate all projected deficits to the City and identifies a preferred approach to address anticipated interim deficits. Furthermore, the principles and objectives incorporated as part the FIA provide additional security that the Project will be at least fiscally neutral, or produce a surplus, to the City.

Public Facilities Financing Plan: David Taussig and Associates, Inc. prepared the Public Facilities Financing Plan for the Delta Cove project. The purpose of the Public Facilities Financing Plan is to guide financing of infrastructure and public facilities for the project and adheres to the City’s Public Facilities Financing Plan template and guidelines as it relates to new development. This Public Facilities Financing Plan contains project-specific facilities and cost estimates, project-specific cost allocations, additional impact fee obligations, other funding mechanisms and conclusions of results, including total costs and fees, burden analyses, and feasibility tests. Goodwin Consulting Group, the City’s fiscal/financial peer review consultant, has reviewed the Public Facilities Financing Plan and concluded that its assumptions and methodologies are consistent with the City’s Public Facilities Financing Plan template and guidelines. According to Goodwin Consultant and based on standard industry guidelines, the Project appears to be feasible under Scenario 1. The Delta Cove project will pay fees or use other financing mechanisms so as not to negatively affect the City’s finances in any way. A copy of a memorandum from Goodwin Consulting Group, Inc. is attached as Exhibit 21.

Other Comments

The Municipal Utilities Department, Fire Department, other City departments and surrounding property owners have been notified of this request. As of the writing of this staff report, no objections have been received concerning this request. The City
Attorney, Municipal Utilities Department and Fire Department have submitted memoranda with recommended conditions that have been incorporated into the staff report’s proposed conditions.

**Recommendation for the Addendum/Initial Study to the previous-certified Final Environmental Impact Report (FEIR 11-05):** That the Planning Commission certify the Addendum/Initial Study (P09-160) to the previously-certified Final Environmental Impact Report (FEIR11-05) and adopt the amended the California Environmental Quality Act (CEQA) Findings in regards to the related General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit applications for this project, based on the following findings:

1. The Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) for the Delta Cove project has been reviewed and considered prior to any related project approvals, reflects the City’s independent judgment and has been found to be adequate for said approvals.

2. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

3. Based on the review of the Addendum/Initial Study to the previously-certified Environmental Impact Report (FEIR11-05), and consideration of all written and oral comments received, it has been determined that subject to any modifications and mitigation measures identified in the Addendum, the project will not have a significant effect on the environment.

4. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed “Early Climate Protection Actions” for the project in order to meet the interim Greenhouse Gas Reduction Target pursuant to the City’s Settlement Agreement with the Sierra Club and Attorney General of California.

5. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures and mitigation monitoring/reporting provisions, as specified in the amended “Findings, Statement of Overriding
Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project" dated August, 2010.

Recommendation for General Plan Amendment: Approval based upon the following findings:

1. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

2. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed "Early Climate Protection Actions" for the project in order to meet the interim Greenhouse Gas Reduction Target pursuant to the City’s Settlement Agreement with the Sierra Club and Attorney General of California.

3. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures and mitigation monitoring/reporting provisions, as specified in the amended "Findings Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project" dated August, 2010.

4. The proposal conforms to City of Stockton 2035 General Plan Policies for the location and development of residential and commercial land use sand related ancillary facilities.

5. The land uses allowed under the proposed General Plan designations are expected to be compatible with existing and proposed land uses surrounding the subject site.

6. The proposed General Plan amendment is not expected to endanger, jeopardize or otherwise constitute a hazard to the public convenience,
health, interest, safety or general welfare of persons residing or working in the City.

Recommendation for Rezoning: Approval based upon the following findings:

1. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

2. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed “Early Climate Protection Actions” for the project in order to meet the interim Greenhouse Gas Reduction Target pursuant to the City’s Settlement Agreement with the Sierra Club and Attorney General of California.

3. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures and mitigation monitoring/reporting provisions, as specified in the amended “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project” dated August, 2010.

4. The proposed RL (Residential, Low Density), RM (Residential, Medium Density), RH (Residential, High Density), CN (Commercial Neighborhood) PF (Public Facilities) and OS (Open Space) zoning designations are consistent with the proposed Low Density Residential, Medium Density Residential, High Density Residential, Commercial, Parks and Recreation, and Open Space 2035 General Plan designations for the site as determined by the Planned Development.

5. The uses permitted in the proposed rezoning are similar to and compatible with existing and proposed land uses surrounding the subject site.

6. The proposed rezoning is not expected to endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.
Recommendation for Planned Development: Approval based upon the following findings:

1. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

2. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed “Early Climate Protection Actions” for the project in order to meet the interim Greenhouse Gas Reduction Target pursuant to the City’s Settlement Agreement with the Sierra Club and Attorney General of California.

3. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures and mitigation monitoring/reporting provisions, as specified in the amended “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project” dated August, 2010.

4. The proposal is in keeping with the policies of the Land Use Section of the General Plan, which encourages Planned Development projects.

5. The proposed project complies with the Planned Development ordinance by providing environmental choices for future residents through flexibility and creativity of design and dispersion of housing types and various forms of recreational and open space.

6. The proposed density forms the basis for the proposed General Plan and zoning designations for the site, and therefore, conforms.

7. The development is expected to be compatible with existing and planned surrounding land uses.
8. The waiver to allow the Planned Development project areas to be separated by the public street does not adversely affect the surrounding neighborhood or traffic in the vicinity of the site.

Proposed Conditions for Planned Development:

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.

2. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, the project shall be subject to all applicable mitigation measures identified in the approved Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) and in the City adopted “Findings, Statement of Overriding Considerations Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project,” as amended in August, 2010.

3. Pursuant to General Plan Settlement Agreement with the Attorney General and the Sierra Club relative to Sierra Club vs. City of Stockton (San Joaquin County Superior Court Case No. CV 034405), all mitigation measures addressed in the “Early Climate Protection Actions” shall apply to this Planned Development Permit approval, regardless of whether the Settlement Agreement remains in legal force and effect.

4. Comply with all conditions and requirements of the related Large Lot Vesting Tentative Map.

5. This Planned Development permit shall not be effective until the requested General Plan Amendment and Rezoning are both in effect.

6. The owners, developers and/or successors-in-interest shall be responsible for the establishment of a Homeowners’ Association (HOA) and Covenants, Conditions and Restrictions (CC&Rs) for the maintenance of landscaping, structures and walls/fences on the private properties and common areas within the subdivision area as well as street trees within the right-of-way and planting easements adjacent to all residential units. The Covenants, Conditions and Restrictions shall be subject to review and approval by the City Attorney and the Community Development Director prior to their recordation. The owners, developers and/or successors-in-interest shall be responsible for recordation of the Covenants, Conditions and Restrictions and payment of recording expenses prior to or in conjunction with the recordation of any small lot Final Map for this subdivision. The City shall be declared to be a third-party beneficiary of the Covenants, Conditions and Restrictions and shall be entitled, without obligation, to take appropriate legal action to enforce the Covenants, Conditions and Restrictions.
7. The final design plans for single-family residences, masonry walls and the multi-family residential project constructed within the project site shall be subject to review and approval by the Architectural Review Committee for consistency with the approved Planned Development (P09-160) and the Citywide Design Guidelines prior to the issuance of any building permit in the subdivision area.

8. In accordance with the policies and standards of the 2035 General Plan, the project shall pay its own way and be subject to implementation of Fiscal/Financial mitigation measures. The project's Fiscal Impact Analysis and Public Facilities Financing Plan specify and mandate those measures and financing mechanisms needed to ensure no negative fiscal impact and that there is adequate funding for infrastructure, facilities, operation, and maintenance costs.

Recommendation for Large Lot Vesting Tentative Map: Approval based upon the following findings:

1. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

2. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed "Early Climate Protection Actions" for the project in order to meet the interim Greenhouse Gas Reduction Target pursuant to the City's Settlement Agreement with the Sierra Club and Attorney General of California.

3. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/controls and mitigation mitigation monitoring/reporting provisions, as specified in the amended "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project" dated August, 2010.
4. The map complies with all applicable Federal, State, County and City codes, regulations and adopted standards, as determined by the City of Stockton.

5. None of the grounds for denial as stipulated in Section 66474 of the State of California Subdivision Map Act are applicable on this tentative map.

6. The proposed project is consistent with the City's General Plan designation and zoning for the site.

Proposed Conditions for Large Lot VTM:

Planning and Engineering Services

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.

2. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, the project shall be subject to all applicable mitigation measures identified in the approved Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) and in the City adopted "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project." as amended in August, 2010.

3. Pursuant to the General Plan Settlement Agreement with the Attorney General and the Sierra Club relative to Sierra Club vs. City of Stockton (San Joaquin County Superior Court Case No. CV 034405), all mitigation measures addressed in the "Early Climate Protection Actions" shall apply to this Vesting Tentative Map approval and Maps relative to the Vesting Tentative Map, regardless of whether the Settlement Agreement remains in legal force and effect.

4. In order to minimize any adverse financial impact on the City of Stockton (COS) associated with development and/or use of the subject site, the owners, developers and/or successors-in-interest agrees that it will not challenge or protest any applicable fees associated with the development of the site.

5. In accordance with the policies and standards of the 2035 General Plan, the project shall pay its own way and be subject to implementation of Fiscal/Financial mitigation measures. The project's Fiscal Impact Analysis and Public Facilities Financing Plan specify and mandate those measures and financing mechanisms needed to ensure no negative fiscal impact and
that there is adequate funding for infrastructure, facilities, operation, and maintenance costs.

6. The mitigation of all environmental impacts of the Project and its services, facilities, operations and maintenance (collectively, "Project Mitigation") shall be the sole and exclusive responsibility by the owners, developers and/or successors-in-interest. Such Project Mitigation may be implemented through the payment of impact fees, taxes, levies, assessments, or other financing mechanisms. As part of the Project's exclusive obligation to cover the mitigation of all environmental impacts of the Project and its services, facilities, operations and maintenance, the City has obligations to set and determine Financing Mechanisms. The City shall determine whether the developer shall pay all or only some portion of "Impact Fees" imposed by the City on the development in legal effect at the time any such Impact Fees become due and payable under the City law and Government Code Section 66498.1, or whether some other Financing Mechanism will adequately fund such Project Mitigation obligations. The owners, developers and/or successors-in-interest shall be responsible for the costs for the processing of all developer-requested land use approvals including building permits, plan checks and other similar permits, when such costs are incurred by the City. If the City determines in good faith that the Fiscal Impact Analysis does not adequately include such future City processing costs, then the City shall impose those additional funding requirements needed to ensure that the processing costs to the City are fully covered by the Project.

7. The Large Lot Vesting Tentative Map is for financing and sale purposes only.

8. The Large Lot Vesting Tentative Map shall not be vested until the requested General Plan Amendment and Rezoning applications are both effective.

9. This Large Lot Vesting Tentative Subdivision Map (P09-160) shall supercede all prior-approved vesting tentative large lot and small lot maps (VTM7-08 and VTM28-05).

10. The owners, developers and/or successors-in-interest shall dedicate and improve Otto Drive from its western termination northwest to the proposed Mosher Slough Bridge crossing to provide a four-lane arterial roadway, including full frontage improvements.

11. The owners, developers and/or successors-in-interest shall disclose to all future home buyers in this development that Trinity Parkway will be extended with a bridge crossing over Mosher Slough to Hammer Lane/Shima Tract to the south. The owners, developers and/or successors-in-interest shall install and maintain a future facilities sign at the Trinity Parkway/Otto Drive.
intersection. The size, text and location of the sign shall be approved by the Community Development Director.

12. The owners, developers and/or successors-in-interest shall prepare a design and obtain all applicable permits for the construction of the four-lane Mosher Slough bridge crossing connection of Otto Drive between the western project area of the subdivision and Shima Tract to the west, including the extension of utilities. The owners, developers and/or successors-in-interest shall, consistent with the design, dedicate to the City all real property within the project area required for the right-of-way and construction of the bridge and attendant improvements. All associated bridge crossing improvements, including but not limited to: curb, gutter, sidewalk, street lighting, pavement (four lanes), and underground utilities shall be constructed with the first phase of development proximate to the bridge crossing. All of the above said requirements shall be performed to the satisfaction of the Community Development Director.

13. The owners, developers and/or successors-in-interest shall disclose to all future home buyers in this development that Otto Drive will be extended with a bridge crossing over Mosher Slough to Shima Tract to the west. The owners, developers and/or successors-in-interest shall install and maintain a future facilities sign at the Otto Drive and westernmost street intersection shown in the Planned Development. The size, text and location of the sign shall be approved by the Community Development Director.

14. The owners, developers and/or successors-in-interest shall provide a minimum 50-foot to 80-foot maintenance access easement from the toe of levee for flood control as required by Reclamation District 2126, San Joaquin County Flood Control and State of California Department of Water Resources and as shown in the Planned Development.

15. The owners, developers and/or successors-in-interest shall be responsible for 100% of the design and construction costs of on-site roadway and intersection improvements and roadway extensions, and public utilities identified on the tentative map and/or included in the project Environmental Impact Report (EIR11-05) and addendum, project description or as mitigation measures. Improvements include but are not limited to all sewer, water, and storm drain lines, traffic signals, street lighting, street paving, curb, gutter, sidewalk and landscaping. If any of the above said improvements are included in the calculations for the Public Facilities Fee (PFF) Program adopted by the City Council, and the owners, developers and/or successors-in-interest pays said fees at the established time of collection, the owners, developers and/or successors-in-interest may construct and request reimbursement for said constructed improvement(s) as long as the improvement(s) is included in the calculation of the above referenced fee,
the requested reimbursement is in accordance with adopted Guidelines for
the above referenced fee, and the reimbursement requested does not
exceed the cost identified for the said improvements(s) included in the
calculation of the above referenced fee. However, should the extent of
identified Public Facilities Fee (PFF) improvements be revised, all or part of
the Public Facilities Fee (PFF) Program repealed or suspended, or for other
reasons/actions the improvements become ineligible under Public Facilities
Fee (PFF) program in effect at the time of development, the owners,
developers and/or successors-in-interest shall be responsible for payment of
their proportionate share of the cost of said improvements.

16. Dedicate lots used for private streets as a public utility easement for the
proposed public sanitary sewer and waterlines. All gated access shall be
identified and conform to City Standards.

17. The owners, developers and/or successors-in-interest shall prepare and
submit a technical memorandum to be approved by the City identifying traffic
calming measures required on-site. Rights-of-way and lot layouts within the
tentative map area may need to be revised to accommodate traffic calming
measures which may include roundabouts, traffic circles, etc...

18. The owners, developers and/or successors-in-interest shall be responsible
for design and construction costs and installation of off-site roadway and
intersection improvements, including traffic signals, at the following locations
as identified in the Existing Plus Approved Project (EPAP) plus Project
section in the Environmental Impact Report (EIR 11-05) and Addendum:

Otto Drive/Trinity Parkway
Otto Drive/Mariners Drive
Mariners Drive/Whitewater Lane
Mariners Drive/Blackswain Place
Mariners Drive/Sturgeon Road
Eight Mile Road/I-5 Northbound Ramps
Hammer Lane/Mariners Drive
Hammer Lane/Kelley Drive
Hammer Lane/Pershing Avenue
Trinity Parkway (Otto Drive to Hammer Lane)
Northbound and Southbound Interstate 5 south of Hammer Lane

The traffic signals shall be installed when warranted or at the discretion of
the Community Development Director. All other improvements shall be
installed with the first parcel or final map for this project or as identified in an
improvement/ development phasing plan subject to the approval of the
Community Development Director. Should the owners, developers and/or
successors-in-interest choose to phase these improvements, the owners,
developers and/or successors-in-interest shall prepare an improvement/development phasing plan to determine the level of project development that can occur within established level of service standards prior to completion of said improvements. Said plan shall be approved by the City and identified improvement timing shall be binding to the owners, developers and/or successors-in-interest.

19. Prior to recordation of any part of the Vesting Tentative Large Lot Map as a small lot Final Map (Parcel Map/Subdivision Map), the owners, developers and/or successors-in-interest shall enter into a Master Agreement to identify the timing/phasing of improvements and provide for appropriate improvement securities. Developer shall be entitled to employ Large Lot Maps for the purpose of subdividing the project into parcels for the purpose of phasing, leasing, financing or sale.

20. The owners, developers and/or successors-in-interest shall be responsible for their proportionate share of design and construction costs for the improvements, based on traffic loadings, to reduce the significance of the cumulative impacts at the following intersections as identified in the Future 2035 Plus Project section in the Environmental Impact Report (EIR 11-05) and Addendum:

- Eight Mile Road/I-5 Southbound and Northbound Ramps
- Otto Drive/Trinity Parkway
- Hammer Lane/Mariners Drive
- Hammer Lane/Kelley Drive
- Hammer Lane/I-5 Southbound and Northbound Ramps
- Hammer Lane/Pershing Avenue

21. The owners, developers and/or successors-in-interest shall dedicate and construct bus turn-outs and shelters along Trinity Parkway, Otto Drive, and any other location as required by the Community Development Director in consultation with the San Joaquin Regional Transit District, in conformance with City Standards. Rights-of-way and lot layouts within the tentative map area may need to be revised to accommodate required locations for bus turn-outs and shelters.

22. The owners, developers and/or successors-in-interest shall be responsible to pay for their proportionate share of all project related off-site street/traffic circulation improvements needed to mitigate the project’s cumulative off-site impacts. If any of the above said improvements are included in the calculations for the Public Facilities Fee (PFF) Program adopted by the City Council, and the owners, developers and/or successors-in-interest pays said fees at the established time of collection, the owners, developers and/or successors-in-interest may construct and request reimbursement for said
constructed improvement(s) as long as the improvement(s) is included in the calculation of the above referenced fee, the requested reimbursement is in accordance with adopted Guidelines for the above referenced fee and the reimbursement requested does not exceed the cost identified for the said improvement(s) included in the calculation of the above referenced fee. However, should the extent of identified the Public Facilities Fee (PFF) improvements be revised, all or part of the Public Facilities Fee (PFF) Program repealed or suspended, or for other reasons/actions the improvements become ineligible under the Public Facilities Fee (PFF) program in effect at the time of development, the owners, developers and/or successors-in-interest shall be responsible for payment of their proportionate share of the cost of said improvements.

23. Provide appropriately sized utilities, including natural gas and three-phase electrical power to all City-owned and maintained facilities.

24. Deed notifications shall be recorded against all properties adjoining Bear Creek and Mosher Slough disclosing the potential for levee seepage and potential "standing groundwater" issues. Further, the owners, developers and/or successors-in-interest shall disclose to all future home buyers in this development that there will be a paved Class 1 bicycle/pedestrian path on the crown of the Bear Creek/Mosher Slough levees.

25. The owners, developers and/or successors-in-interest shall abandon any public utilities and public utility easements not required for this development prior to the recordation of a final map.

26. The owners, developers and/or successors-in-interest shall provide a Traffic Calming Device Plan and a Master Striping Plan. The Master Striping Plan shall be prepared for the roadway network that shall include all striping/lane geometrics, and fiber optic cable interconnects of all traffic signals for the ultimate design. Said Master Striping Plan shall identify how new or widened streets transition at match points with existing streets, which may affect Right-of-Way requirements and shall be approved by the Community Development Director prior to approval of improvement plans or any final map.

27. Trinity Parkway, at the future crossing of Mosher Slough, shall be temporarily terminated to the satisfaction of the Community Development Director.

28. Otto Drive, at the identified western terminus of the subdivision, shall be temporarily terminated to the satisfaction of the Community Development Director.
29. The owners, developers and/or successors-in-interest shall dedicate access rights to the City of Stockton along the following streets:

   a. Trinity Parkway, entire length, except at the intersection with Otto Drive.

   b. Otto Drive, entire length, except at identified access openings in the Planned Development.

The City reserves the right to request additional access rights to be dedicated to the City of Stockton on any future submission of a small lot tentative map.

30. The owners, developers and/or successors-in-interest shall provide Flood Control access along the levees as required by the San Joaquin County Flood Control and State of California Department of Water Resources.

31. The owners, developers and/or successors-in-interest shall design and construct the ultimate roadway improvements along (APN's 071-170-02, 04, and 05) for Trinity Parkway and Otto Drive as part of this project.

32. The owners, developers and/or successors-in-interest shall participate in any applicable Transportation Systems Management (TSM) programs established by the City of Stockton and pay their proportionate share of the cost to provide an appropriate area for a park and ride facility.

33. The owners, developers and/or successors-in-interest shall dedicate and improve Trinity Parkway from the existing street termination south of the Bear Creek bridge crossing to a future bridge crossing of Mosher Slough, in order to provide a four-lane arterial roadway, including full frontage improvements prior to recordation of any final map.*

34. The owners, developers and/or successors-in-interest shall prepare, or cause to be prepared, a design and obtain all applicable permits for the construction of the four-lane Mosher Slough bridge crossing extension of Trinity Parkway between Bear Creek and Mosher Slough Bridge to the north and a two-lane extension of Trinity Parkway between Mosher Slough and Hammer Lane, including all utility extensions. Further, the owners, developers and/or successors-in-interest shall consistent with the design, dedicate to the City all real property within the project area required for the right-of-way and construction of the bridge and attendant improvements. All associated bridge crossing improvements and street improvements, including but not limited to: curb, gutter, sidewalk, street lighting, pavement (four lanes), and underground utilities within the boundary of this tentative map shall be constructed either with Phase 2 of development or prior to the
issuance of the 300th building permit (inclusive of model homes), whichever occurs first. In addition, the owners, developers and/or successors-in-interest, in this same time frame, shall construct the two-lane extension of Trinity Parkway between Mosher Slough and Hammer Lane, including all appropriate utility extensions. All of the above said requirements shall be performed to the satisfaction of the Community Development Director. *

35. The owners, developers and/or successors-in-interest shall prepare or cause to be prepared a Project Report, Environmental Document and Final Design, as required by Caltrans, for the reconstruction of the Eight Mile Road/Interstate 5 interchange to reduce the significance of the project impacts as identified in the Environmental Impact Report (EIR11-05) and Addendum for this project. Construction of the identified improvements shall commence prior to recordation of any final map. *

36. Should the City elect not to complete, the owners, developers and/or successors-in-interest shall prepare or cause to be prepared a Project Report, Environmental Document and Final Design, as required by Caltrans, for the reconstruction of the Hammer Lane/Interstate 5 Interchange to reduce the significance of the project impacts as identified in the Environmental Impact Report (EIR11-05) and Addendum for this project. Construction of the identified interchange improvements shall commence prior to issuance of the building permit that contains the 2700th Dwelling Unit (DU) from the combined development of Delta Cove (Atlas Tract) and Sanctuary (Shima Tract). *

37. Should the City elect not to complete, the owners, developers and/or successors-in-interest shall prepare or cause to be prepared a Project Report, Environmental Document and Final Design, as required by CALTRANS, for the construction of the Otto Drive/Interstate 5 Interchange to reduce the significance of the project impacts as identified in the Environmental Impact Report (EIR 11-05) and Addendum for this project. The owners, developers and/or successors-in-interest shall pay their proportionate share, based on traffic loadings, of the construction of the identified improvements. Should the Hammer Lane/Interstate 5 Interchange improvements not be constructed within the identified level of development, the owners, developers and/or successors-in-interest shall commence construction of the identified Otto Drive/Interstate 5 Interchange improvements prior to issuance of the building permit that contains the 2700th Dwelling Unit (DU) from the combined development of Delta Cove (Atlas Tract), and Sanctuary (Shima Tract). *

38. The owners, developers and/or successors-in-interest shall pay their proportionate share to cover the costs for a Project Report, Environmental Document, and Final Design, as required by Caltrans, and for the construction of necessary improvements described in the Project Report for
the Interstate 5 mainline system and Gateway/Interstate 5 Interchange to provide a level-of-service that conforms with State Urban Highway Standards.*

* Improvements herein identified by an asterisk (*) may be included in the calculations for the current or proposed Public Facilities Fee (PFF) Program. If any of the improvements are included in the calculations for the Public Facilities Fee Program (PFF) adopted by the City Council, and the owners, developers and/or successors-in-interest pay said fees at the established time of collection, the owners, developers and/or successors-in-interest may construct and request reimbursement for said constructed improvement(s) as long as the improvement(s) is included in the calculation of the above referenced fee, the requested reimbursement is in accordance with adopted Guidelines for the above referenced fee and the reimbursement requested does not exceed the cost identified for the said improvement(s) included in the calculation of the above referenced fee. However, should the extent of identified the Public Facilities Fee (PFF) improvements be revised, all or part of the Public Facilities Fee (PFF) Program repealed or suspended, or for other reasons/actions the improvements become ineligible under the Public Facilities Fee (PFF) program in effect at the time of development, the owners, developers and/or successors-in-interest shall be responsible for payment of their proportionate share of the cost of said improvements.

City Attorney

39. The owners, developers and/or successors-in-interest shall be responsible for the City's legal and administrative costs associated with defending any legal challenge of the approvals for this project or its related environmental documents.

40. The City has reached a General Plan Settlement Agreement (Settlement Agreement) with the Attorney General and the Sierra Club relative to Sierra Club vs. City of Stockton (San Joaquin County Superior Court Case No. CV 034405). Pursuant to this Condition of Approval, the terms and conditions of the Settlement Agreement relative to the Climate Action Plan shall apply to this Vesting Tentative Map approval and such terms and conditions shall survive recordation of the small lot Final Map or Maps relative to the Vesting Tentative Map, regardless of whether the Settlement Agreement remains in legal force and effect. If the General Plan Settlement Agreement for any reason is rescinded or otherwise found not to be legally binding, then the City may adopt climate action plans, regulations, and/or other similar new City laws reflective of the goals, policies and action plans set forth in the Settlement Agreement.

Municipal Utilities Department

General
41. The owners, developers and/or successors-in-interest shall provide permanent rights-of-way for and construct all on-site and off-site water, storm, non-potable water, and sanitary sewer facilities as designed and shown on the accepted improvement plans for the development. Any reimbursement costs for oversizing shall be determined in accordance with the Stockton Municipal Code.

42. The owners, developers and/or successors-in-interest shall prepare and submit master water, storm, sanitary sewer and non-potable water plans for this project, subject to approval by the Municipal Utilities Director and prior to the approval of any improvement plans. These master utility plans must identify future extensions to adjacent property.

43. All utilities shall be extended in bridge crossings over Mosher Slough and Bear Creek.

WATER

44. The owners, developers and/or successors-in-interest shall prepare and submit, acceptable to the Director of Municipal Utilities, an Integrated Water Management Plan.

45. In accordance with Senate Bill 221 and Government Code Section 66473.7, the owners, developers and/or successors-in-interest shall submit a request to the Director of Municipal Utilities for Verification of Sufficient Water Supply. The request shall be submitted 90 days prior to the filing of the first final map, and accompanied by the appropriate fees (refer to the City's adopted fee schedule).

46. The owners, developers and/or successors-in-interest shall conduct a water system analysis, acceptable to the Director of Municipal Utilities, that demonstrates that the water system improvements to be constructed within the City of Stockton water service area are sufficient to meet the following conditions (use a Hazen–Williams Coefficient of 110):

For ultimate build-out of the subdivision:

a. With a given system pressure of 45 psi at all future points of connection to the City water system and no wells operating within the subdivision, the internal water system improvements shall be sized to provide at least 40 psi pressure at any location during the period of peak hour demand (peak hour demands shall be calculated at 175% of maximum daily demands).

b. With a given system pressure of 45 psi at all future points of
connection to the City water system and no wells operating within the subdivision, the internal water system improvements shall be sized to provide at least 20 psi pressure at any location during the period of maximum day demand (maximum day demands shall be calculated at 210% of the average day demands) combined with a fire flow (refer to table for fire flow demands) out of any fire hydrant in the subdivision.

<table>
<thead>
<tr>
<th>Use</th>
<th>GPM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single family use</td>
<td>2,000</td>
</tr>
<tr>
<td>Multi family use</td>
<td>3,000</td>
</tr>
<tr>
<td>Commercial use</td>
<td>2,500</td>
</tr>
<tr>
<td>Institutional use</td>
<td>4,500</td>
</tr>
</tbody>
</table>

For phased developments of units within a subdivision (interim development):

c. With a given system pressure of 45 psi at the existing points of connection to the City water system and no wells operating within the subdivision, the internal water system improvements shall be sized to provide at least 20 psi pressure at any location during the period of maximum day demand combined with a fire flow of 1,500 gpm out of any fire hydrant in the subdivision (maximum day demands shall be calculated at 210% of the average day demands).

STORMWATER

47. The owners, developers and/or successors-in-interest shall form a maintenance assessment district, acceptable to the City of Stockton, which includes all necessary assessments to fund the operation, maintenance, repair, and replacement of the Project’s Stormwater Quality Control Criteria Plan treatment devices. In addition, the owners, developers and/or successors-in-interest shall be responsible for the costs of forming the assessment district, including but not limited to the city-selected Assessment District Counsel, Engineer’s Report, Proposition 218 vote, and noticing requirements.

48. The owners, developers and/or successors-in-interest will be required to obtain all necessary permits and shall meet all requirements established by the City of Stockton, San Joaquin County Flood Control and Water Conservation District prior to discharge to Mosher Slough.

49. The owners, developers and/or successors-in-interest shall dedicate in fee title to the City of Stockton, a 0.5-acre parcel in size containing the storm drainage pump station.

NONPOTABLE WATER
50. The owners, developers and/or successors-in-interest shall prepare a master plan for the non-potable irrigation system for the withdrawal and use of non-potable water from the Project storm basins, Mosher Slough, Bear Creek, and/or other identified water sources. The master plan shall be subject to the approval of the Municipal Utilities Director. The system will consist of an intake structures, interconnections between storm basins, basins, bulkheads, pumps, non-potable water mains, etc. that would distribute non-potable water to parks, open space, streetscape, landscaping, and landscaped medians within the Project area.

51. The owners, developers and/or successors-in-interest shall design, construct, own, and operate a permanent dewatering and groundwater discharge system to mitigate the high groundwater levels on the Project site. The owners, developers and/or successors-in-interest shall prepare Master Plans for the construction of a permanent dewatering system to mitigate the high groundwater levels on the Project site. Said Master Plans shall be subject to the approval of the Municipal Utilities Director. The maintenance entity, approved by the City, shall be established, and be responsible for establishing a funding mechanism for the design, permitting, construction, operation, maintenance, and repair of the approved system, prior to the recordation of any final map. The collection system shall be privately owned and maintained.

52. The owners, developers and/or successors-in-interest shall design and construct the non-potable water infrastructure and appurtenances to the satisfaction of the Director of Municipal Utilities. The non-potable system will be dedicated to the City and system operation will be provided by the City with financing provided by an assessment district. Prior to recordation of any final map, the owners, developers and/or successors-in-interest shall establish an assessment district, subject to approval of the City, to provide funding for the operation, maintenance, repair, and replacement of project’s non-potable water system improvements, including but not limited to the pump stations, wet well and distribution systems. The non-potable irrigation system shall be constructed with each individual unit and the initial system shall be operational after the issuance of the 150th building permit or not more than two years after the recordation of any final map, which ever comes first. In addition, the owners, developers and/or successors-in-interest shall be responsible for the costs of forming the assessment district, including but not limited to the city-selected Assessment District Counsel, Engineer’s Report, Proposition 218 vote, and noticing requirements.

53. The owners, developers and/or successors-in-interest shall provide adequate room for a levee seepage collection system at the toe of the levee. This system must collect and convey levee seepage water to the public storm drainage system. The owners, developers and/or successors-in-interest
shall design, construct, and operate the levee seepage collection system. The collection system shall be privately owned and maintained. The point-of-connection to the public storm drainage system shall be at a storm drainage maintenance hole, located in the public right-of-way. The owners, developers and/or successors-in-interest shall prepare a master plan for the construction of levee seepage collection system. Said master plans shall be subject to the approval of the Municipal Utilities Director and the City Engineer. Prior to the recordation of any final map, the owners, developers and/or successors-in-interest or an entity approved by the City shall be established to fund the operation and maintenance of the approved system.

54. The owners, developers and/or successors-in-interest shall dedicate an easement to the City of Stockton for the non-potable booster pump station.

Fire Department

55. When infrastructure development and construction begins, there shall be a minimum of two (2) Fire Department access routes into the Delta Cove project designed and maintained to meet City of Stockton standards. The first Fire Department access point will be established at Otto Drive. The second Fire Department access will be required at Trinity Parkway and the new Bear Creek Bridge.

Central Valley Flood Protection Board

56. The owners, developers and/or successors-in-interest shall be required to obtain all necessary permits from Federal, State, County, City and/or Central Valley Flood Protection Board prior to the repair and rehabilitation of the levees and the relocation of the dry-land levee in conjunction with the Trinity Parkway Phase II extension in the Delta Cove project.

September 2, 2010

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff's position.

Staff report prepared by Senior Planner Jenny Liaw
CITY OF STOCKTON
THE DELTA COVE PLANNED DEVELOPMENT PROJECT
(REVISION)

Draft Addendum/Initial Study (P09-160)
to Previously Certified EIR File No. 11-05

Prepared for:

LEAD AGENCY
CITY OF STOCKTON
Community Development Department
Planning/Engineering Services Division
345 North El Dorado Street
Stockton, CA 95202
(209) 937-8444

Prepared by:

LSA Associates, Inc.
4200 Rocklin Road, Suite 11B
Rocklin, CA 95677
(916) 630-4600

AUGUST 2010
DELTA COVE

FINDINGS, OVERRIDING CONSIDERATIONS, MITIGATION MONITORING
AND REPORTING PROGRAM REVISED

ADDENDUM/INITIAL STUDY (P09-160) TO PREVIOUSLY-CERTIFIED FINAL
EIR (FEIR11-05)

SCH# 2006092063

LSA

August 2010
EXISTING ZONING

Faye Spanos Trust, et al.
P09-160

STOCKTON CITY PLANNING COMMISSION
CONCEPTUAL LAND USE PLAN

Faye Spanos Trust, et al.
P09-160

STOCKTON CITY PLANNING COMMISSION
<table>
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<tr>
<th>Land Use</th>
<th>Acres</th>
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<th>%</th>
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<td>833</td>
<td>6.27</td>
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<tr>
<td>RM</td>
<td>34.84</td>
<td>231</td>
<td>9.50</td>
</tr>
<tr>
<td>RH</td>
<td>12.75</td>
<td>281</td>
<td>22.06</td>
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<tr>
<td>CN (Parcels 2 &amp; 3)</td>
<td>*</td>
<td>100</td>
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<td><strong>Sub-total</strong></td>
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<tr>
<td>CN (Parcel 1) Commercial</td>
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<tr>
<td>Office</td>
<td></td>
<td>3,000 SF</td>
<td></td>
</tr>
<tr>
<td>CN (Parcel 2 &amp; 3) Office/Live Work</td>
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<td>16,000 SF</td>
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<td><strong>Commercial</strong></td>
<td>8.31</td>
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<td>-</td>
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<tr>
<td>Neighborhood Sports Park**</td>
<td>13.41</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>School</td>
<td>11.06</td>
<td>-</td>
<td>-</td>
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<td>Arterial Roads (Otto Drive/Trinity Pkwy)</td>
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<td><strong>Sub-total</strong></td>
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<td>-</td>
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<tr>
<td>Neighborhood Pocket Parks A-J</td>
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<td>-</td>
</tr>
<tr>
<td>****Linear Levee Parks</td>
<td>13.96</td>
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<td>-</td>
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<td><strong>Sub total</strong></td>
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<td>-</td>
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<tr>
<td>Center Park Parcels A, C, D, &amp; E</td>
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<td>-</td>
<td>-</td>
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<tr>
<td>Community Garden</td>
<td>0.92</td>
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<td>-</td>
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<tr>
<td>Wetland Preserve</td>
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<tr>
<td>Perimeter Levee/OS</td>
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<td>Waterway Area</td>
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<td><strong>Sub total</strong></td>
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<td>-</td>
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<td><strong>GRAND TOTAL</strong></td>
<td>359.52</td>
<td>1,545</td>
<td>4.30</td>
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* CN - Parcel 2/3 include maximum 60 Live/Work Units and 40 townhome units on 5.73 acres, however acreage is counted under Non-residential land use.
** Total acreage of Neighborhood Sports Park includes 6.5 acre Sports Park parcel plus Center Park B 6.91 acres.
*** Gross Acreage include interior Local & Collection Road R/W measured to centerline, that are adjacent to each zoned area.
**** Reference Exhibit 5.1 Levee Setbacks used to measure Perimeter Levee/OS area.

Faye Spanos Trust, et al. P09-160

STOCKTON CITY PLANNING COMMISSION
LEGEND
- Proposed Transit Stop Location
- 5-Minute Walk Zone

TRANSIT 5-MINUTE WALK ZONES
Faye Spanos Trust, et al.
P09-160

STOCKTON CITY PLANNING COMMISSION
LEGEND

- Class I Bike Path & Pedestrian Trail
- Bikeway
- Pedestrian Path/Trail (5-6 feet wide)
- Pedestrian Path/Trail (8 feet wide)
- Levee Ramp Access Points
- Existing Class I Bike Path & Pedestrian Trail
- Existing Bikeway

NOTE:
1. Pedestrian paths/trails shall be aligned to the levee ramp access points.
2. The City prefers an alternative 12'-wide sidewalk consisting of alternative materials (i.e., D,C) for the sidewalk design along Trinity Parkway. This alternative design will be subject to Local and State Agency approvals.

PEDESTRIAN AND BICYCLE PATHS
Faye Spanos Trust, et al.
P09-160

STOCKTON CITY PLANNING COMMISSION
### TABLE 5.2
MINIMUM LOT STANDARDS

**Faye Spanos Trust, et al.**  
P09-160

<table>
<thead>
<tr>
<th>Lot Rtn</th>
<th>50'</th>
<th>40'</th>
<th>35'</th>
<th>35'</th>
<th>35'</th>
<th>10'</th>
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<tbody>
<tr>
<td>Lot Width</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot Depth (varies)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Living/Porch/会在阳台</td>
<td>15', 12' for porch</td>
<td>12', 8' porch</td>
<td>10', 8' porch</td>
<td>10', 8' porch</td>
<td>10', 8' porch</td>
<td>15', 12' porch</td>
</tr>
<tr>
<td>Garage</td>
<td>20'</td>
<td>20'</td>
<td>18'</td>
<td>18'</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Living/Garage</td>
<td>5'</td>
<td>5'</td>
<td>5'</td>
<td>5'</td>
<td>5'</td>
<td>10'</td>
</tr>
<tr>
<td>Living</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
</tr>
<tr>
<td>Porch/Balcony</td>
<td>10'</td>
<td>8'</td>
<td>8'</td>
<td>8'</td>
<td>8'</td>
<td>10'</td>
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<tr>
<td>Street-side facing garage</td>
<td>20'</td>
<td>20'</td>
<td>10'</td>
<td>10'</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Living</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
<td>10'</td>
<td>5'</td>
<td>10' to PL, 5' to Alley</td>
</tr>
<tr>
<td>Garage</td>
<td>-</td>
<td>5'</td>
<td>5'</td>
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<tr>
<td>Maximum Building Height</td>
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<td>35'</td>
<td>35'</td>
<td>35'</td>
<td>50'</td>
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<tr>
<td>Lot Coverage</td>
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<td>60%</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
<td>75%</td>
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<table>
<thead>
<tr>
<th>Covered</th>
<th>2 enclosed/unit</th>
<th>2 enclosed/unit</th>
<th>2 enclosed/unit</th>
<th>2 enclosed/unit</th>
<th>2 enclosed/unit</th>
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<tr>
<td>Uncovered</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>.5/unit</td>
<td>Per Code</td>
</tr>
<tr>
<td>Guest</td>
<td>0</td>
<td>0</td>
<td>.25/unit</td>
<td>.25/unit</td>
<td>.25/unit</td>
<td>.25/unit</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Roof overhangs, popouts, decorative trim, bay windows, and entertainment niches**

2' overhangment, no closer than 3' to PL.

| Front to Front | -   | -   | 15' | -   | -   | 20' |
| Side to Side   | -   | -   | 10' | -   | -   | 15' |
| Garage to Garage | -   | -   | 30' | 30' | 30' | 30' |

* Reciprocal use easements are permitted on all detached single-family dwellings.
<table>
<thead>
<tr>
<th>Neighborhood Pocket Park A</th>
<th>0.56</th>
<th>0.43</th>
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<tbody>
<tr>
<td>Neighborhood Pocket Park C</td>
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</tr>
<tr>
<td>Neighborhood Pocket Park D</td>
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<tr>
<td>Neighborhood Pocket Park E</td>
<td>1.88</td>
<td>1.57</td>
</tr>
<tr>
<td>Neighborhood Pocket Park F</td>
<td>2.15</td>
<td>1.93</td>
</tr>
<tr>
<td>Neighborhood Pocket Park G</td>
<td>1.50</td>
<td>1.26</td>
</tr>
<tr>
<td>Neighborhood Pocket Park H</td>
<td>2.07</td>
<td>1.40</td>
</tr>
<tr>
<td>Linear Levee Parks</td>
<td>13.06</td>
<td>10.33</td>
</tr>
<tr>
<td><strong>Subtotal Neighborhood Pocket Parks</strong></td>
<td><strong>29.30</strong></td>
<td><strong>19.92</strong></td>
</tr>
</tbody>
</table>

**OPEN SPACE**

| Center Park C | 1.27 | 1.27 |
| Center Park D | 6.50 | 6.50 |
| Center Park E | 7.11 | 6.58 |
| Community Garden | 0.92 | 0.92 |
| **Subtotal Waterway Area** | **19.53** | **19.53** |
| **Subtotal Open Space** | **49.62** | **49.62** |

**PUBLIC FACILITIES/PARK**

| Neighborhood Sports Park (Center Park B) | 6.91 | 6.12 |
| **Subtotal Public Facilities/Open Space** | **13.41** | **11.96** |

**OTHER OPEN SPACE**

| Common Area Open Space | 13.74 | 13.74 |
| **Subtotal Other Open Space** | **21.62** | **21.62** |
| **Grand Total Park and Open Space** | **161.95** | **151.48** |
MEMORANDUM

September 1, 2010

To: Jenny Liaw

Cc: Anh Thai and Michael Medve

From: Dave Freudenberger and Cindy Yan


PURPOSE

David Taussig and Associates, Inc. (DTA) has prepared a fiscal impact analysis and a public facilities financing plan for the Delta Cove/Atlas Tract project (Project), formerly known as the Preserve, as part of the Project’s development approval process. Goodwin Consulting Group, Inc. (GCG), working under a contract with AECOM, was retained by the City of Stockton (City) to conduct peer reviews of the fiscal impact analysis (FIA) and the public facilities financing plan (PFFP) for the Project. As part of the peer reviews, GCG evaluated the assumptions, methodologies, and conclusions applicable to each study. GCG applied standard industry practices along with the City’s approved polices and guidelines and updated templates to ensure that the results of the FIA and PFFP are reasonable and consistent with the City’s approved methodologies and assumptions. This memorandum summarizes GCG’s findings from the reviews of the FIA and PFFP.

PROJECT DESCRIPTION

The Project consists of approximately 360 acres located within Stockton’s city limits. The Project is located in the Delta Secondary Zone on the Atlas Tract in northwest Stockton and is generally bounded by Bear Creek to the north, Interstate 5 to the east, and Mosher Slough/Shima Tract to the south and west.

The Project is expected to include a total of 1,545 residential units, which is comprised of 758 single family detached large lot units, 347 single family detached small lot units, 160 single family attached units, and 280 apartment units. Approximately 31,000 square feet
of retail/commercial and office space is anticipated within the Project. At buildout, the Project is anticipated to have a population of 4,636 new residents and 81 employees.

**FISCAL IMPACT ANALYSIS**

After a detailed review of three draft FIA's (dated January 11, 2010, August 5, 2010, and August 25, 2010), GCG identified several issues and concerns. While most of the issues were minor in nature and quickly resolved, there were two significant issues – adherence to maintenance cost assumptions identified in the FIA guidelines, and the Project’s absorption schedule – that materially affected the results and intent of the FIA. GCG worked closely with DTA, the Project developers, and City staff to resolve these two significant issues.

As a result of collaborative effort, DTA prepared another FIA dated August 31, 2010. In this FIA, DTA addressed GCG's concerns by including a sensitivity analysis that incorporates the City's service cost estimates, increases the Project's buildout period by approximately 50%, and reduces residential home values. In addition, DTA made other adjustments to address some of the other issues identified by GCG and City staff. Overall, the final FIA projects interim deficits at the onset of development and a surplus of approximately $30,000 (low-value scenario) to $380,000 (high-value scenario) per year after buildout. The FIA describes a variety of funding mechanisms to assure that the Project will mitigate all projected deficits to the City and identifies a preferred approach to address anticipated interim deficits. Furthermore, the principles and objectives incorporated as part the FIA provide additional security that the Project will be at least fiscally neutral, or produce a surplus, to the City.

GCG has extensively reviewed DTA’s August 31, 2010, FIA and concludes that its assumptions and methodologies are consistent with the City’s FIA template and guidelines.

**PUBLIC FACILITIES FINANCING PLAN**

DTA prepared an initial PFFP, dated January 18, 2010, and a second PFFP dated August 4, 2010. Similar to the FIA, GCG had concerns with the Project’s absorption schedule and with the document adhering to the PFFP template and guidelines. GCG worked closely with DTA, the Project developers, and City staff to determine how best to revise the PFFP.

DTA prepared a third PFFP dated August 25, 2010. GCG has conducted a thorough review of this PFFP and its related assumptions, and concurs with the conclusions and supporting analysis. GCG also reviewed the PFFP to ensure that its assumptions and methodologies are consistent with the City’s PFFP template and guidelines.
RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF STOCKTON TO RECOMMEND TO THE CITY COUNCIL THE APPROVAL OF THE REQUEST OF FAYE SPANOS, TRUST, ET AL., FOR A GENERAL PLAN AMENDMENT TO AMEND PORTIONS OF THE PROJECT AREA FROM LOW AND MEDIUM DENSITY RESIDENTIAL, OPEN SPACE, PARKS AND RECREATION TO LOW, MEDIUM, AND HIGH DENSITY RESIDENTIAL, COMMERCIAL, OPEN SPACE, PARKS AND RECREATION DESIGNATIONS, FOR PROPERTY LOCATED WEST OF THE FUTURE EXTENSION OF TRINITY PARKWAY, SOUTH OF BEAR CREEK, NORTH AND EAST OF MOSHER SLOUGH (DELTA COVE PLANNED DEVELOPMENT PROJECT, P09-160)

WHEREAS, the City of Stockton has heretofore formulated and adopted a General Plan for the physical development of the City, which General Plan contains each of the elements required by law to be a part of it;

WHEREAS, an amendment to the General Plan has been requested relative to the area located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Slough; and

WHEREAS, said areas are bounded by Open Space to the north, Low Density Residential to the east, and Mix Use to the south and west.

NOW, THEREFORE, the Planning Commission of the City of Stockton finds and determines as follows:

That the amendment to the General Plan is recommended for adoption for the following reasons:

1. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

2. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed "Early Climate Protection Actions" for the project in order to meet the interim Greenhouse Gas Reduction Target pursuant to the City’s Settlement Agreement with the Sierra Club and Attorney General of California.

3. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measure and mitigation monitoring/reporting provisions, as specified in the amended “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project” dated August, 2010.
4. The proposal conforms to City of Stockton 2035 General Plan Policies for the location and development of residential and commercial land use and related ancillary facilities.

5. The land uses allowed under the proposed General Plan designations are expected to be compatible with existing and proposed land uses surrounding the subject site.

6. The proposed General Plan amendment is not expected to endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF STOCKTON AS FOLLOWS:

That the Planning Commission does hereby recommend to the City Council that its General Plan be amended portions of the project area from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations for property generally located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Slough (P09-160).

PASSED, APPROVED, AND ADOPTED this 9th day of September 2010, by the following votes:

AYES: Chair Fugazi, Vice Chair Fant, Commissioner Hatch, Commissioner Davis, Commissioner Surratt, Commissioner Smith; and Commissioner Kontos – Abstained

NOES:

ABSENT:

ATTEST:

MICHAEL M. NIBLOCK, SECRETARY
CITY PLANNING COMMISSION

APPROVED:

CHRISTINA FUGAZI, CHAIR
CITY PLANNING COMMISSION

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497
Resolution No. ________________

STOCKTON CITY COUNCIL

RESOLUTION AMENDING THE GENERAL PLAN FROM LOW AND MEDIUM DENSITY RESIDENTIAL, OPEN SPACE, PARKS AND RECREATION TO LOW, MEDIUM, AND HIGH DENSITY RESIDENTIAL, COMMERCIAL, OPEN SPACE, PARKS AND RECREATION DESIGNATIONS FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT (P09-160)

The City of Stockton has heretofore formulated and adopted a General Plan for the physical development of the City, which General Plan contains each of the elements required by law to be part of it; and

Following a public hearing, the Planning Commission adopted a resolution on September 9, 2010, recommending the City Council approve a request by Faye Spanos, trust, et al., for a General Plan amendment to change the General Plan designation from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations for property located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Slough; and

The City Council of the City of Stockton has reviewed and considered the Planning Commission's recommendation and all environmental documents necessary for the approval of the proposed amendment to the City of Stockton 2035 General Plan Diagram at a duly noticed public hearing on October 19, 2010; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council finds as follows:

   a. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

   b. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed "Early Climate Protection Actions" for the project in order to meet the interim Greenhouse Gas

City Atty
Review _______________________
Date October 13, 2010
Reduction Target pursuant to the City’s Settlement Agreement with the Sierra Club and Attorney General of California.

c. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures and mitigation monitoring/reporting provisions, as specified in the amended “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project,” dated August 2010.

d. The proposal conforms to the City of Stockton 2035 General Plan Policies for the location and development of residential and commercial land uses and related ancillary facilities.

e. The land uses allowed under the proposed General Plan designations are expected to be compatible with existing and proposed land uses surrounding the subject site.

f. The proposed General Plan amendment is not expected to endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the City.

2. Based on the above findings, the City Council upholds the Planning Commission’s recommendation and approves the proposed General Plan amendment to change the General Plan designation from Low and Medium Density Residential, Open Space and Parks and Recreation to Low, Medium, and High Density Residential, Commercial, Open Space and Parks and Recreation designations for property located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Slough (Delta Cove Planned Development Project, P09-160).

PASSED, APPROVED AND ADOPTED ________________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
Resolution No. ________

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE ADDENDUM/INITIAL STUDY TO PREVIOUSLY-CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT (P09-160) FOR THE DELTA COVE PLANNED DEVELOPMENT PROJECT

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council of the City of Stockton, after careful review and consideration of all comments received, and after using its independent judgment, hereby approves the Addendum/Initial Study to previously-certified Final Environmental Impact Report (FEIR11-05) for the Delta Cove Planned Development Project and adopts the Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove Planned Development Project for the General Plan amendment and Rezoning for property located west of the future extension of Trinity Parkway, south of Bear Creek, north and east of Mosher Siough, as set forth in the report of the Planning Commission filed with the City Council on October 19, 2010, based upon the following findings:

   a. The Addendum/Initial Study to the previously-certified Final Environmental Impact Report (FEIR11-05) for the Delta Cove project has been reviewed and considered prior to any related project approvals, reflects the City’s independent judgment, and has been found to be adequate for said approvals.

   b. The City of Stockton, as the California Environmental Quality Act Lead Agency, has determined that the previously-certified Final Environmental Impact Report (FEIR11-05), as amended by the Addendum/Initial Study for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project, has been completed in compliance with the California Environmental Quality Act and the City of Stockton Guidelines for the Implementation of the California Environmental Quality Act.

   c. Based on the review of the Addendum/Initial Study to the previously-certified Environmental Impact Report (FEIR11-05), and consideration of all written and oral comments received, it has been determined that subject to any modifications and mitigation measures identified in the Addendum, the project will not have a significant effect on the environment.

   d. The City of Stockton has reviewed and considered a memorandum relative to global climate change for the Delta Cove project, which was prepared in order to update the environmental documentation. The memorandum addressed “Early Climate Protection Actions” for the project in order to meet the interim Greenhouse Gas

City Atty Review Date ________

October 12, 2010

500
Reduction Target pursuant to the City's Settlement Agreement with the Sierra Club and Attorney General of California.

   e. Pursuant to Section 15164 of the California Environmental Quality Act Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures, and mitigation monitoring/reporting provisions as specified in the amended "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Delta Cove General Plan amendment, Rezoning, Vesting Tentative Map and Planned Development Permit Project," dated August 2010.

   PASSED, APPROVED AND ADOPTED ____________________________

   ATTEST: ____________________________
   ANN JOHNSTON, Mayor
   of the City of Stockton

   KATHERINE GONG MEISSNER
   City Clerk of the City of Stockton
ORDINANCE NO.___________

AN ORDINANCE AMENDING CHAPTER 16 OF THE STOCKTON MUNICIPAL CODE, WHICH SETS FORTH THE ZONING PROVISIONS OF THE CITY OF STOCKTON, BY AMENDING THE "ZONING MAP," PARTICULARLY REFERRED TO IN SECTION 16.16.030 OF THE STOCKTON MUNICIPAL CODE TO RECLASSIFY PORTIONS OF RESIDENTIAL, LOW DENSITY (RL), RESIDENTIAL, MEDIUM DENSITY (RM), OPEN SPACE (OS), AND PUBLIC FACILITIES (PF) TO RESIDENTIAL, LOW DENSITY (RL), RESIDENTIAL, MEDIUM DENSITY (RM), RESIDENTIAL, HIGH DENSITY (RH), COMMERCIAL NEIGHBORHOOD (CN), OPEN SPACE (OS), AND PUBLIC FACILITIES (PF) FOR PROPERTY LOCATED WEST OF THE FUTURE EXTENSION OF TRINITY PARKWAY, SOUTH OF BEAR CREEK, NORTH AND EAST OF MOSHER SLOUGH (FAYE SPANOS, TRUST, ET AL., P09-160)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Rezoning Classification.

The City Council hereby finds and declares, based upon the record of these proceedings, that the provisions of this ordinance are consistent with the City of Stockton 2035 General Plan, specifically the Land Use Element of the General Plan and the objectives, goals, and policies of the General Plan; that the Addendum/Initial Study to previously-certified Final Environmental Impact Report (FEIR11-05) for the Delta Cove Planned Development Project, has been prepared for Faye Spanos, Trust, et al., Rezoning Project (the "Project"), in compliance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the City's Guidelines for the Implementation of CEQA, and said environmental document has been reviewed and certified by the City Council; and that, pursuant to Sections 15164 of the State CEQA Guidelines, the approval of this Rezoning request by Faye Spanos, Trust, et al., is based on, and subject to, the implementation of the concurrently adopted findings as specified in the related findings for the Project.

The "Zoning Map," particularly referred to in Section 16.16.030 of the Stockton Municipal Code, and by reference made a part hereof, is hereby amended as follows, to wit:

The subject property (as described in Exhibit "A" which is attached hereto and incorporated herein by this reference), which is located in the City of Stockton, County of
San Joaquin, State of California, is hereby reclassified in accordance with the Rezoning descriptions (REZONING REQUEST OF FAYE SPANOS, TRUST, ET AL., P09-160).

SECTION 2. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: ____________________________
EFFECTIVE: __________________________

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
EXHIBIT "A"
LEGAL DESCRIPTION
REZONE RESIDENTIAL LOW DENSITY

PARCEL 1:

ALL that certain real property situate in and being a portion of PARCEL "A", "B" and "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the North half of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 11°18'31" West, 1283.27 feet from the Interior quarter corner of said Section 12; thence North 79°57'35" West, a distance of 247.62 feet; thence North 72°09'11" West, a distance of 541.56 feet to the beginning of a curve concave to the Southwest having a radius of 854.00 feet; thence Northwesterly 233.24 feet along the arc of said curve through a central angle of 15°38'53"; thence North 87°48'04" West, a distance of 434.16 feet; thence North 00°17'29" East, a distance of 191.63 feet; thence North 89°42'31" West, a distance of 30.83 feet; thence North 02°41'21" East, a distance of 75.07 feet; thence North 03°47'01" East, a distance of 110.34 feet; thence North 00°17'29" East, a distance of 130.38 feet; thence North 00°19'42" East, a distance of 55.52 feet; thence North 03°06'26" West, a distance of 110.19 feet; thence North 02°03'05" East, a distance of 55.03 feet; thence South 89°42'31" East, a distance of 39.81 feet; thence North 00°17'29" East, a distance of 130.00 feet; thence South 89°42'31" East, a distance of 391.57 feet; thence North 30°39'19" East, a distance of 34.77 feet; thence South 89°42'31" East, a distance of 1021.72 feet; thence South 41°08'53" East, a distance of 12.46 feet; thence South 89°58'23" East, a distance of 482.10 feet; thence North 87°11'30" East, a distance of 69.90 feet; thence South 00°17'29" West, a distance of 96.66 feet; thence North 88°56'04" East, a distance of 325.09 feet; thence North 00°17'29" East, a distance of 100.00 feet; thence South 89°42'31" East, a distance of 1342.33 feet; thence South 43°46'06" East, a distance of 7.08 feet; thence South 89°53'26" East, a distance of 119.22 feet; thence North 88°35'03" East, a distance of 76.98 feet; thence South 89°41'01" East, a distance of 224.53 feet; thence South 01°15'26" West, a distance of 96.98 feet; thence South 51°35'08" East, a distance of 21.86 feet; thence South 01°15'26" West, a distance of 847.99 feet; thence South 54°25'59" West, a distance of 21.86 feet; thence South 01°15'26" West, a distance of 158.11 feet; thence South 51°55'08" East, a distance of 21.86 feet; thence South 01°15'26" West, a distance of 225.15 feet; thence North 89°42'31" West, a distance of 204.33 feet to the beginning of a curve concave to the Northeast having a radius of 1259.00 feet; thence Northwesterly 340.53 feet along the arc of said curve through a central angle of 15°29'50"; thence North 74°12'41" West, a distance of 58.01
feet; thence South 15°47'19" West, a distance of 172.21 feet to the beginning of a curve concave to the Northwest having a radius of 600.00 feet; thence Southwesterly 201.52 feet along the arc of said curve through a central angle of 19°14'37"; thence along a non-tangent line North 54°58'04" West, a distance of 64.25 feet to the beginning of a curve concave to the Northeast having a radius of 1000.00 feet; thence Northwesterly 220.60 feet along the arc of said curve through a central angle of 12°38'22" to the beginning of a reverse curve concave to the Southwest having a radius of 1254.00 feet, to which beginning a radial line bears North 47°40'18" East; thence Northwesterly 357.32 feet along the arc of said curve through a central angle of 16°19'34"; thence along a non-tangent line North 25°26'28" East, a distance of 166.98 feet to the beginning of a curve concave to the Northwest having a radius of 1829.00 feet; thence Northeasterly 636.18 feet along the arc of said curve through a central angle of 19°55'45"; thence along a non-tangent line North 78°09'40" West, a distance of 129.85 feet to the beginning of a non-tangent curve concave to the Northwest having a radius of 1700.00 feet, to which beginning a radial line bears South 84°58'13" East; thence Southerly 226.16 feet along the arc of said curve through a central angle of 07°37'20"; thence along a non-tangent line North 74°32'58" West, a distance of 231.48 feet to the beginning of a tangent curve concave to the South having a radius of 1474.00 feet; thence Northwesterly 414.46 feet along the arc of said curve through a central angle of 16°06'37"; thence along a non-tangent line North 00°17'29" East, a distance of 422.04 feet; thence South 88°42'59" West, a distance of 307.62 feet; thence North 00°17'29" East, a distance of 26.62 feet; thence North 89°42'31" West, a distance of 448.00 feet; thence South 00°17'29" West, a distance of 26.00 feet; thence North 89°42'31" West, a distance of 100.00 feet; thence South 00°17'29" West, a distance of 196.35 feet to the beginning of a curve concave to the West having a radius of 1026.00 feet; thence Southerly 44.35 feet along the arc of said curve through a central angle of 02°28'36"; thence South 02°46'05" West, a distance of 754.72 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 79.97 acres, more or less.

PARCEL 2:

ALL that certain real property situate in and being a portion of PARCEL "B" and "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northwest quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 58°23'34" West, 357.35 feet from the Interior quarter corner of said Section 12; thence North 89°42'31" West, a distance of 1340.74 feet; thence North 00°17'29" East, a distance of 352.60 feet; thence North 89°42'31" West, a distance of 100.00 feet; thence North 00°17'29" East, a
distance of 398.43 feet; thence North 48°39'36" West, a distance of 13.26 feet; thence North 00°21'29" East, a distance of 465.13 feet; thence South 87°48'04" East, a distance of 504.60 feet to the beginning of a curve concave to the South having a radius of 746.00 feet; thence Easterly 87.79 feet along the arc of said curve through a central angle of 06°44'34"; thence South 78°36'18" East, a distance of 63.87 feet; thence South 13°50'54" West, a distance of 158.00 feet to the beginning of a curve concave to the Southeast having a radius of 500.00 feet; thence Southwesterly 17.17 feet along the arc of said curve through a central angle of 01°58'04" to a point of cusp with a curve concave to the Southwest having a radius of 800.00 feet and to which point a radial line bears North 08°32'04" East; thence Southeasterly 130.03 feet along the arc of said curve through a central angle of 09°18'45"; thence South 72°09'11" East, a distance of 414.55 feet to the beginning of a curve concave to the Northeast having a radius of 800.00 feet; thence Southeasterly 108.41 feet along the arc of said curve through a central angle of 07°45'51"; thence South 79°55'02" East, a distance of 222.08 feet; thence North 81°59'10" East, a distance of 26.47 feet; thence South 02°49'21" West, a distance of 804.43 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 33.85 acres, more or less.

PARCEL 3:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northwest quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 01°45'31" West, 236.53 feet from the Interior quarter corner of said Section 12; thence North 89°42'31" West, a distance of 194.49 feet; thence North 02°49'21" East, a distance of 895.63 feet; thence South 79°55'02" East, a distance of 87.43 feet; thence South 10°04'58" West, a distance of 140.00 feet; thence South 79°55'02" East, a distance of 52.50 feet; thence South 26°36'58" East, a distance of 37.10 feet; thence South 88°52'22" East, a distance of 24.06 feet; thence South 00°17'29" West, a distance of 699.56 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 3.26 acres, more or less.
PARCEL 4:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the East half of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears South 67°51'46" East, 2858.27 feet from the Interior quarter corner of said Section 12; thence North 89°42'31" West, a distance of 1183.70 feet; thence South 00°17'29" West, a distance of 57.67 feet; thence North 86°27'58" West, a distance of 162.23 feet; thence North 74°06'56" West, a distance of 139.99 feet; thence North 17°40'16" East, a distance of 43.94 feet to the beginning of a non-tangent curve concave to the Northeast having a radius of 958.50 feet, to which beginning a radial line bears South 18°34'02" West; thence Northwesterly 88.54 feet along the arc of said curve through a central angle of 05°17'34" to the beginning of reverse curve concave to the Southwest having a radius of 1541.50 feet, to which beginning a radial line bears North 23°51'36" East; thence Northwesterly 355.99 feet along the arc of said curve through a central angle of 13°13'54" to the beginning of reverse curve concave to the Northeast having a radius of 300.00 feet, to which beginning a radial line bears South 10°37'42" West; thence Northwesterly 154.41 feet along the arc of said curve through a central angle of 29°29'25" to a point of cusp with a curve concave to the Northwest having a radius of 135.00 feet and to which point a radial line bears South 37°15'12" East; thence Northeasterly 43.78 feet along the arc of said curve through a central angle of 18°34'48" to a point of cusp with a curve concave to the Northeast having a radius of 256.50 feet and to which point a radial line bears South 39°33'07" West; thence Southeasterly 129.48 feet along the arc of said curve through a central angle of 28°55'25" to the beginning of reverse curve concave to the Southwest having a radius of 1585.00 feet, to which beginning a radial line bears North 10°37'42" East; thence Southeasterly 212.56 feet along the arc of said curve through a central angle of 07°41'02" to a point of cusp with a curve concave to the Southeast having a radius of 551.00 feet, to which beginning a radial line bears North 68°42'08" West; thence Northeasterly 68.62 feet along the arc of said curve through a central angle of 07°08'09"; thence along a non-tangent line North 12°17'31" West, a distance of 786.20 feet; thence North 00°17'29" East, a distance of 36.72 feet; thence South 89°42'31" East, a distance of 102.11 feet; thence South 23°26'26" East, a distance of 26.66 feet; thence South 89°42'31" East, a distance of 424.47 feet; thence North 00°30'40" East, a distance of 93.50 feet; thence South 89°42'31" East, a distance of 29.06 feet to the beginning of a non-tangent curve concave to the Southeast having a radius of 565.00 feet, to which beginning a radial line bears North 85°49'39" West; thence Northeasterly 401.54 feet along the arc of said curve through a central angle of 40°43'12" to a point of cusp with a curve concave to the Northeast having a radius of 854.00 feet and to which point a radial line bears
South 49°09'45" West; thence Southeasterly 470.46 feet along the arc of said curve through a central angle of 31°33'49"; thence South 72°24'04" East, a distance of 335.10 feet; thence South 87°50'46" East, a distance of 313.15 feet; thence South 01°37'20" East, a distance of 362.09 feet; thence South 48°10'31" West, a distance of 15.08 feet; thence South 00°22'09" East, a distance of 431.67 feet; thence South 67°01'47" East, a distance of 38.54 feet; thence South 05°28'10" East, a distance of 270.39 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 44.42 acres, more or less.

BASIS OF BEARINGS for this description is the line between City of Stockton Monuments "Stockton S.W. Base 1954" (Monument No. 1003) and "Harte" (Monument No. 1001) as calculated from the City of Stockton Traverse Control Monument Survey, filed for record in Book 35 of Surveys at Page 5, San Joaquin County Records. Said line is taken to bear North 27°25'53" West.

END OF DESCRIPTION.

Rien Groenewoud, P.L.S. 6946
License Expires 09/30/2011
REZONE RESIDENTIAL LOW DENSITY 79.97 ACRES

PARCEL "C"
P.M. 14-04
S.J.C.R.

SCALE: 1" = 250'

DRAWN: RG
DATE: 02/04/10
SCALE: 1" = 250'
JOB NO.: 06171B
PHONE: 866.526.4214

PLAT TO ACCOMPANY LEGAL DESCRIPTION
REZONE - RESIDENTIAL LOW DENSITY DELTA COVE
STOCKTON, CALIFORNIA

510
REZONE RESIDENTIAL
LOW DENSITY
44.42 ACRES

PARCEL "C"
P.M. 14-94
S.J.C.R.

PLAT TO ACCOMPANY
LEGAL DESCRIPTION
REZONE - RESIDENTIAL LOW DENSITY
DELTA COVE

DRAWN BY: RG
DATE: 020410
SCALE: 1" = 250'
JOB NO.: 06171B
PHONE: 866.526.4214

MVE | CIVIL SOLUTIONS
STOCKTON, CALIFORNIA

514
EXHIBIT "A"
LEGAL DESCRIPTION
REZONE RESIDENTIAL MEDIUM DENSITY

PARCEL 1:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the North half of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 05°04'36" West, 1330.39 feet from the Interior quarter corner of said Section 12; thence North 00°17'29" East, a distance of 953.21 feet; thence South 89°42'31" East, a distance of 448.00 feet; thence South 00°17'29" West, a distance of 929.12 feet; thence South 87°12'48" West, a distance of 448.65 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 9.68 acres, more or less.

PARCEL 2:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northeast quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 43°06'23" East, 1493.45 feet from the Interior quarter corner of said Section 12; thence North 25°26'28" East, a distance of 266.04 feet; thence South 87°19'00" West, a distance of 30.61 feet; thence North 25°26'28" East, a distance of 48.72 feet to the beginning of a curve concave to the West having a radius of 1673.00 feet; thence Northwesterly 374.76 feet along the arc of said curve through a central angle of 12°50'04"; thence along a non-tangent line South 74°32'58" East, a distance of 27.03 feet to the beginning of a non-tangent curve concave to the Southwest having a radius of 1700.00 feet, to which beginning a radial line bears South 77°20'53" East; thence Northwesterly 226.16 feet along the arc of said curve through a central angle of 07°37'20"; thence along a non-tangent line South 78°09'40" East, a distance of 129.85 feet to the beginning of a non-tangent curve concave to the Southwest having a radius of 1829.00 feet, to which beginning a radial line bears South 84°29'17" East; thence Southeasterly 636.18 feet along the arc of said
curve through a central angle of 19°55'45"; thence South 25°26'28" West, a distance of 166.98 feet to the beginning of a non-tangent curve concave to the Southwest having a radius of 1254.00 feet, to which beginning a radial line bears North 31°20'44" East; thence Southeasterly 357.32 feet along the arc of said curve through a central angle of 16°19'34" to the beginning of a reverse curve concave to the Northeast having a radius of 1000.00 feet, to which beginning a radial line bears South 47°40'18" West; thence Southeasterly 220.60 feet along the arc of said curve through a central angle of 12°38'22"; thence South 54°58'04" East, a distance of 64.25 feet to a point of cusp with a curve concave to the Northwest having a radius of 600.00 feet and to which point a radial line bears South 54°58'04" East; thence Southwesterly 149.13 feet along the arc of said curve through a central angle of 14°14'28"; thence South 49°16'24" West, a distance of 58.04 feet to a point of cusp with a curve concave to the Northeast having a radius of 636.00 feet and to which point a radial line bears South 49°16'24" West; thence Northwesterly 96.21 feet along the arc of said curve through a central angle of 08°40'02" to the beginning of a reverse curve concave to the Southwest having a radius of 1114.00 feet, to which beginning a radial line bears North 57°56'26" East; thence Northwesterly 602.88 feet along the arc of said curve through a central angle of 31°00'28"; thence North 63°48'47" West, a distance of 29.00 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 5.17 acres, more or less.

PARCEL 3:

ALL that certain real property situate in and being a portion of PARCEL "B" and "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northwest quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 30°17'51" West, 1218.50 feet from the Interior quarter corner of said Section 12; thence North 72°09'11" West, a distance of 414.55 feet to the beginning of a curve concave to the Southwest having a radius of 800.00 feet; thence Northwesterly 130.03 feet along the arc of said curve through a central angle of 09°18'45" to a point of cusp with a curve concave to the Southeast having a radius of 500.00 feet and to which point a radial bearing bears North 78°07'10" West' thence Northeasterly 17.17 feet along the arc of said curve through a central angle of 01°58'04"; thence North 13°50'54" East, a distance of 158.00 feet; thence South 73°47'33" East, a distance of 63.47 feet; thence South 72°09'11" East, a distance of 468.80 feet; thence South 76°02'06" East, a distance of 134.28 feet; thence South 79°55'02" East, a distance of 202.58 feet; thence South 02°49'21" West, a distance of 159.05 feet; thence South 81°59'10" West, a distance of 26.47 feet; thence North 79°55'02" West, a distance of 222.08 feet to the beginning of a curve concave to
the Northeast having a radius of 800.00 feet; thence Northwesterly 108.41 feet along the arc of said curve through a central angle of 07°45'51" to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 3.39 acres, more or less.

PARCEL 4:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 11°17'03" West, 171.74 feet from the Interior quarter of said Section 12; thence North 00°17'29" East, a distance of 68.13 feet; thence South 89°42'31" East, a distance of 26.00 feet; thence North 00°17'29" East, a distance of 699.56 feet; thence North 88°52'22" West, a distance of 24.06 feet; thence North 26°36'58" West, a distance of 37.10 feet; thence North 79°55'02" West, a distance of 52.50 feet; thence North 10°04'58" East, a distance of 140.00 feet; thence South 79°55'02" East, a distance of 397.74 feet; thence South 78°04'32" East, a distance of 97.24 feet; thence South 61°11'39" West, a distance of 43.34 feet; thence South 25°44'39" West, a distance of 55.42 feet to the beginning of a non-tangent curve concave to the East having a radius of 782.50 feet, to which beginning a radial line bears North 81°55'03" West; thence Southerly 106.40 feet along the arc of said curve through a central angle of 07°47'28"; thence South 00°17'29" West, a distance of 640.07 feet to the beginning of a curve concave to the Northwest having a radius of 167.50 feet; thence Southwesterly 107.11 feet along the arc of said curve through a central angle of 36°38'24" to the beginning of a non-tangent curve concave to the Southwest having a radius of 267.50 feet, to which beginning a radial line bears North 49°08'13" East; thence Southeasterly 191.64 feet along the arc of said curve through a central angle of 41°02'51"; thence South 00°11'04" West, a distance of 464.51 feet to the beginning of a curve concave to the Northeast having a radius of 256.50 feet; thence Southeasterly 226.67 feet along the arc of said curve through a central angle of 50°37'57" to a point of cusp with a curve concave to the Northwest having a radius of 135.00 feet and to which point a radial line bears South 55°50'00" East; thence Southwesterly 131.99 feet along the arc of said curve through a central angle of 56°01'04"; thence North 89°48'56" West, a distance of 106.56 feet; thence North 00°11'01" East, a distance of 20.00 feet; thence North 00°11'11" East, a distance of 687.50 feet; thence North 05°07'56" West, a distance of 62.50 feet; thence North 31°00'23" West, a distance of 70.70 feet; thence North 58°59'37" East, a distance of 100.22 feet; thence North 35°36'50" West, a distance of 41.05 feet to the beginning of a non-tangent curve concave to the Southwest having a radius of 232.50 feet, to which beginning a radial...
line bears North 38°14'49" East; thence Northwesterly 154.02 feet along the arc of said curve through a central angle of 37°57'20"; thence North 89°42'31" West, a distance of 140.99 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 10.90 acres, more or less.

PARCEL 5:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northeast quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 81°14'13" East, 656.72 feet from the Interior quarter corner of said Section 12; thence North 00°17'29" East, a distance of 671.59 feet; thence South 79°59'01" East, a distance of 10.75 feet to the beginning of a curve concave to the Southwest having a radius of 696.00 feet; thence Southeasterly 582.16 feet along the arc of said curve through a central angle of 47°55'27" to the beginning of a reverse curve concave to the Northeast having a radius of 1054.00 feet, to which beginning a radial line bears South 57°56'26" West; thence Southeasterly 213.80 feet along the arc of said curve through a central angle of 11°37'20" to a point of cusp with a curve concave to the Southeast having a radius of 565.00 feet and to which point a radial bearing bears North 66°03'38" West; thence Southwesterly 194.92 feet along the arc of said curve through a central angle of 19°46'01"; thence along a non-tangent line North 89°42'31" West, a distance of 566.73 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 6.91 acres, more or less.

BASIS OF BEARINGS for this description is the line between City of Stockton Monuments "Stockton S.W. Base 1954" (Monument No. 1003) and "Harte" (Monument No. 1001) as calculated from the City of Stockton Traverse Control Monument Survey, filed for record in Book 35 of Surveys at Page 5, San Joaquin County Records. Said line is taken to bear North 27°25'53" West.

END OF DESCRIPTION.

Rien Groenewoud, P.L.S. 6946
License Expires 09/30/2011
REZONE
RESIDENTIAL
MEDIUM DENSITY
9.68 ACRES

PARCEL "C"
P.M. 14-94
S. J. C. R.

POINT OF
BEGINNING
PARCEL 1

INTERIOR 1/4 CORNER

WEST LINE OF SE 1/4
SECTION 12

N05°04'36"W
1330.39'

S87°12'48"W
448.65'

S 89°42'31"E
448.00'

SCALE: 1" = 150'

LICENSED LAND SURVEYOR
RIEN GROENEWOUD
STATE OF CALIFORNIA
No. 6946
02-12-10

Drawn By: RG
Date: 020410
Scale: 1" = 150'
Job No.: 06171B
Phone: 866.526.4214

PLAT TO ACCOMPANY
LEGAL DESCRIPTION
REZONE - RESIDENTIAL MEDIUM DENSITY
DELTA COVE
STOCKTON CALIFORNIA

MVE | CIVIL SOLUTIONS
OF 6

520
EXHIBIT “A”
LEGAL DESCRIPTION
REZONE RESIDENTIAL HIGH DENSITY

ALL that certain real property situate in and being a portion of PARCEL “C” as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northeast quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel “C” which bears North 82°46’39” East, 2423.43 feet from the Interior quarter corner of said Section 12; thence North 86°55’56” West, a distance of 357.08 feet; thence South 00°07’25” West, a distance of 27.20 feet; thence North 89°52’35” West, a distance of 231.29 feet to the beginning of a non-tangent curve concave to the Northeast having a radius of 746.00 feet, to which beginning a radial bearing bears South 16°15’24” West; thence Northwesterly 429.88 feet along the arc of said curve through a central angle of 33°01’00”; thence along a non-tangent line North 49°16’24” East, a distance of 168.04 feet to the beginning of a curve concave to the Northwest having a radius of 600.00 feet; thence Northeasterly 350.65 feet along the arc of said curve through a central angle of 33°29’05”; thence North 15°47’19” East, a distance of 172.21 feet; thence South 74°12’41” East, a distance of 58.01 feet to the beginning of a curve concave to the Northeast having a radius of 1259.00 feet; thence Easterly 340.53 feet along the arc of said curve through a central angle of 15°29’50”; thence South 89°42’31” East, a distance of 204.33 feet; thence South 01°15’26” West, a distance of 527.00 feet; thence South 00°07’25” West, a distance of 197.47 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 12.76 acres, more or less.

BASIS OF BEARINGS for this description is the line between City of Stockton Monuments “Stockton S.W. Base 1954” (Monument No. 1003) and “Harte” (Monument No. 1001) as calculated from the City of Stockton Traverse Control Monument Survey, filed for record in Book 35 of Surveys at Page 5, San Joaquin County Records. Said line is taken to bear North 27°25’53” West.

END OF DESCRIPTION.

Rien Groenewoud, P.L.S. 6946
License Expires 09/30/2011
REZONE
RESIDENTIAL
HIGH DENSITY
12.76 ACRES

PARCEL "C"
P.M. 14-04
S. J. C. R.

PLAT TO ACCOMPANY
LEGAL DESCRIPTION
REZONE - RESIDENTIAL HIGH DENSITY
DELTA COVE
STOCKTON, CALIFORNIA

M/E CIVILSOLUTIONS
SHEET 1
EXHIBIT “A”
LEGAL DESCRIPTION
REZONE COMMERCIAL NEIGHBORHOOD

PARCEL 1:

ALL that certain real property situate in and being a portion of PARCEL “C” as shown on
that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page
94, San Joaquin County Records, and lying within the Northeast quarter of Section 12,
Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton,
San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 70°09'57" East, 1551.84
feet from the Interior quarter corner of said Section 12, said Point of Beginning being
also the beginning of a curve concave to the Northeast having a radius of 746.00 feet,
to which beginning a radial line bears North 49°16'24" East; thence Northwesterly
112.85 feet along the arc of said curve through a central angle of 08°40'02" to the
beginning of a reverse curve concave to the Southwest having a radius of 1004.00 feet,
to which beginning a radial line bears North 57°56'26" East; thence Northwesterly
806.35 feet along the arc of said curve through a central angle of 46°00'58"; thence
North 78°04'32" West, a distance of 97.48 feet; thence North 00°17'29" East, a distance
of 221.26 feet; thence North 87°19'00" East, a distance of 480.17 feet; thence South
25°26'28" West, a distance of 266.04 feet; thence South 63°48'47" East, a distance of
29.00 feet to the beginning of a curve concave to the Southwest having a radius of
1114.00 feet; thence Southeasterly 602.88 feet along the arc of said curve through a
central angle of 31°00'28" to the beginning of a reverse curve concave to the Northwest
having a radius of 636.00 feet, to which beginning a radial line bears South 57°56'26" West;
thence Southeasterly 96.21 feet along the arc of said curve through a central
angle of 08°40'02"; thence along a non-tangent line South 49°16'24" West, a distance of
110.00 feet to the Point of Beginning

SUBJECT TO all easements and/or rights-of-way of record.

Containing 4.36 acres, more or less.

PARCEL 2:

BEGINNING at a point in said Parcel “C” which bears North 40°18'01" East, 1010.51
feet from the Interior quarter corner of said Section 12; thence North 00°17'29" East, a
distance of 204.95 feet; thence South 78°04'32" East, a distance of 75.25 feet to the
beginning of a curve concave to the Southwest having a radius of 896.00 feet; thence
Southeasterly 719.61 feet along the arc of said curve through a central angle of
46°00'58" to the beginning of a reverse curve concave to the Northwest having a radius
of 854.00 feet, to which beginning a radial line bears North 57°56'26" East; thence Southwesterly 130.84 feet along the arc of said curve through a central angle of 08°46'41" to a point of cusp with a curve concave to the Southeast having a radius of 565.00 feet and to which point a radial bearing bears North 45°06'27" West; thence Southwesterly 206.62 feet along the arc of said curve through a central angle of 20°57'11" to a point of cusp with a curve concave to the Northeast having a radius of 1054.00 feet and to which point a radial bearing bears South 46°19'06" West; thence Northwesterly 213.80 feet along the arc of said curve through a central angle of 11°37'20" to the beginning of a reverse curve concave to the Southwest having a radius of 696.00 feet, to which beginning a radial line bears North 57°56'26" East; thence Northwesterly 582.16 feet along the arc of said curve through a central angle of 47°55'27"; thence North 79°59'01" West, a distance of 10.75 feet to the Point of Beginning."

SUBJECT TO all easements and/or rights-of-way of record.

Containing 3.95 acres, more or less.

BASIS OF BEARINGS for this description is the line between City of Stockton Monuments "Stockton S.W. Base 1954" (Monument No. 1003) and "Harte" (Monument No. 1001) as calculated from the City of Stockton Traverse Control Monument Survey, filed for record in Book 35 of Surveys at Page 5, San Joaquin County Records. Said line is taken to bear North 27°25'53" West.

END OF DESCRIPTION.

Rien Groenewoud, P.L.S. 6946
License Expires 09/30/2011
EXHIBIT “A”
LEGAL DESCRIPTION
REZONE OPEN SPACE

PARCEL 1:

ALL that certain real property situate in and being a portion of PARCEL “A”, “B” and “C” as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at the Interior quarter corner of said Section 12; thence South 00°08'20" West, a distance of 1198.51 feet; thence South 88°58'30" East, a distance of 2565.07 feet; thence South 88°59'03" East, a distance of 21.51 feet; thence North 00°07'25" East, a distance of 380.36 feet; thence North 01°40'19" West, a distance of 685.43 feet; thence North 04°44'42" West, a distance of 142.39 feet to the beginning of a curve concave to the East having a radius of 30.67 feet; thence Northerly 2.61 feet along the arc of said curve through a central angle of 04°52'07"; thence North 00°07'25" East, a distance of 96.24 feet to the beginning of a curve concave to the East having a radius of 30.67 feet; thence Northerly 3.54 feet along the arc of said curve through a central angle of 06°36'53"; thence along a non-tangent line North 37°22'21" West, a distance of 93.74 feet; thence North 89°13'30" West, a distance of 160.35 feet; thence North 85°20'11" West, a distance of 20.99 feet; thence North 84°05'14" West, a distance of 90.13 feet; thence North 85°58'31" West, a distance of 9.63 feet; thence North 87°10'05" West, a distance of 201.70 feet; thence South 00°45'59" West, a distance of 42.18 feet; thence South 72°24'04" East, a distance of 76.74 feet; thence South 87°50'46" East, a distance of 313.15 feet; thence South 01°37'20" East, a distance of 362.09 feet; thence South 48°10'31" West, a distance of 15.08 feet; thence South 00°22'09" East, a distance of 431.67 feet; thence South 87°01'47" East, a distance of 38.54 feet; thence South 05°28'10" East, a distance of 270.39 feet; thence North 89°42'31" West, a distance of 1183.70 feet; thence South 00°17'29" West, a distance of 57.67 feet; thence North 86°27'58" West, a distance of 162.23 feet; thence North 74°06'56" West, a distance of 139.99 feet; thence North 17°40'16" East, a distance of 43.94 feet to the beginning of a non-tangent curve concave to the Northeast having a radius of 958.50 feet, to which beginning a radial line bears South 18°34'02" West; thence Northwesterly 88.54 feet along the arc of said curve through a central angle of 05°17'34" to the beginning of a reverse curve concave to the Southwest having a radius of 1541.50 feet, to which beginning a radial line bears North 23°51'36" East; thence Northwesterly 355.99 feet along the arc of said curve through a central angle of 13°13'54" to the beginning of a reverse curve concave to the Northeast having a radius of 300.00 feet, to which beginning a radial line bears
South 10°37'42" West; thence Northwesterly 154.41 feet along the arc of said curve through a central angle of 29°29'25" to the beginning of a point of cusp with a curve concave to the Northwest having a radius of 135.00 feet and to which point a radial line bears South 37°15'12" East; thence Westerly 88.21 feet along the arc of said curve through a central angle of 37°28'16"; thence North 89°48'56" West, a distance of 105.36 feet; thence North 00°11'04" East, a distance of 10.00 feet; thence North 89°48'56" West, a distance of 20.00 feet; thence North 00°11'11" East, a distance of 687.50 feet; thence North 05°07'56" West, a distance of 62.50 feet; thence North 31°00'23" West, a distance of 70.70 feet; thence North 58°59'37" East, a distance of 100.22 feet; thence North 35°36'50" West, a distance of 41.05 feet to the beginning of a non-tangent curve concave to the Southwest having a radius of 232.50 feet, to which beginning a radial line bears North 38°14'49" East; thence Northwesterly 154.02 feet along the arc of said curve through a central angle of 37°57'20"; thence North 89°42'31" West, a distance of 140.99 feet; thence North 00°17'29" East, a distance of 68.13 feet; thence North 89°42'31" West, a distance of 168.49 feet; thence North 02°49'21" East, a distance of 895.63 feet; thence North 79°55'02" West, a distance of 100.81 feet; thence South 02°49'21" West, a distance of 963.48 feet; thence North 89°42'31" West, a distance of 1340.74 feet; thence North 00°17'29" East, a distance of 352.50 feet; thence North 89°42'31" West, a distance of 100.00 feet; thence North 00°17'29" East, a distance of 398.43 feet; thence North 48°39'36" West, a distance of 13.26 feet; thence North 00°17'29" East, a distance of 465.14 feet; thence North 87°48'04" West, a distance of 117.92 feet; thence North 03°38'41" East, a distance of 108.03 feet; thence South 87°48'04" East, a distance of 186.18 feet; thence North 00°17'29" East, a distance of 191.63 feet; thence North 89°42'31" West, a distance of 30.83 feet; thence North 02°41'21" East, a distance of 75.07 feet; thence North 03°47'01" East, a distance of 110.34 feet; thence North 00°17'29" East, a distance of 130.38 feet; thence North 00°19'42" East, a distance of 55.52 feet; thence North 03°06'26" West, a distance of 110.19 feet; thence North 02°03'05" East, a distance of 55.03 feet; thence South 89°42'31" East, a distance of 39.81 feet; thence North 00°17'29" East, a distance of 130.00 feet; thence South 89°42'31" East, a distance of 391.57 feet; thence North 30°39'19" East, a distance of 34.77 feet; thence South 89°42'31" East, a distance of 1021.72 feet; thence South 41°08'53" East, a distance of 12.46 feet; thence South 89°58'23" East, a distance of 482.10 feet; thence North 87°11'30" East, a distance of 69.90 feet; thence South 00°17'29" West, a distance of 96.66 feet; thence North 88°56'04" East, a distance of 325.09 feet; thence North 00°17'29" East, a distance of 100.00 feet; thence South 89°42'31" East, a distance of 1342.33 feet; thence South 43°46'06" East, a distance of 7.08 feet; thence South 89°53'26" East, a distance of 119.22 feet; thence North 88°35'03" East, a distance of 76.98 feet; thence South 89°41'01" East, a distance of 224.53 feet; thence South 01°15'26" West, a distance of 96.98 feet; thence South 51°55'08" East, a distance of 21.86 feet; thence South 01°15'26" West, a distance of 847.99 feet; thence South 54°25'59" West, a distance of 21.86 feet; thence South 01°15'26" West, a distance of 158.11 feet; thence South 51°55'08" East, a distance of 21.86 feet; thence South 01°15'26" West, a distance of 752.15 feet; thence South 00°07'25" West, a
distance of 197.47 feet; thence North 86°55’56” West, a distance of 357.08 feet; Thence South 00°07’25” West, a distance of 27.20 feet; thence North 89°52’35” West, a distance of 32.04 feet; thence South 00°45’59” West, a distance of 35.72 feet; thence South 89°14’01” East, a distance of 492.24 feet; thence North 42°32’32” East, a distance of 66.32 feet; thence North 00°07’25” East, a distance of 176.24 feet to the beginning of a curve concave to the East having a radius of 300.50 feet; thence Northeasterly 42.21 feet along the arc of said curve through a central angle of 08°02’56”; thence North 08°10’21” East, a distance of 36.34 feet to the beginning of a curve concave to the West having a radius of 299.50 feet; thence Northeasterly 42.07 feet along the arc of said curve through a central angle of 08°02’56”; thence North 00°07’25” East, a distance of 330.04 feet; thence North 01°35’05” East, a distance of 750.41 feet; thence North 00°04’31” East, a distance of 949.52 feet; thence North 87°46’00” West, a distance of 4510.73 feet; thence South 01°37’43” West, a distance of 2749.46 feet; thence South 88°22’48” East, a distance of 1995.42 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 90.35 acres, more or less.

PARCEL 2:

ALL that certain real property situate in and being a portion of PARCEL “C” as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northeast half of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel “C” which bears North 11°16’31” West, 1283.27 feet from the Interior quarter corner of said Section 12; thence North 02°46’05” East, a distance of 754.72 feet to the beginning of a curve concave to the West having a radius of 1026.00 feet; thence Northerly 44.35 feet along the arc of said curve through a central angle of 02°28’36”; thence North 00°17’29” East, a distance of 196.35 feet; thence South 89°42’31” East, a distance of 100.00 feet; thence South 00°17’29” West, a distance of 927.21 feet; thence North 87°12’48” East, a distance of 774.12 feet; thence South 00°17’29” West, a distance of 275.96 feet; thence North 78°04’32” West, a distance of 320.33 feet; thence North 79°55’02” West, a distance of 601.58 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 5.81 acres, more or less.
PARCEL 3:

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the East half of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears South 35°04'16" East, 647.77 feet from the Interior quarter corner of said Section 12; thence North 00°11'04" East, a distance of 464.51 feet to the beginning of a curve concave to the Southwest having a radius of 267.50 feet; thence Northwesterly 191.64 feet along the arc of said curve through a central angle of 41°02'51" to a point of cusp with a curve concave to the Northwest having a radius of 167.50 feet and to which point a radial bearing bears South 53°04'07" East; thence Northerly 107.11 feet along the arc of said curve through a central angle of 36°38'24"; thence North 00°17'29" East, a distance of 640.07 feet to the beginning of a curve concave to the East having a radius of 782.50 feet; thence Northerly 106.40 feet along the arc of said curve through a central angle of 07°47'28"; thence North 25°44'39" East, a distance of 55.42 feet; thence North 61°11'39" East, a distance of 43.34 feet; thence South 78°04'32" East, a distance of 243.59 feet; thence South 00°17'29" West, a distance of 876.55 feet; thence South 89°42'31" East, a distance of 537.67 feet; thence South 00°30'40" West, a distance of 93.50 feet; thence North 89°42'31" West, a distance of 424.47 feet; thence North 23°26'26" West, a distance of 26.66 feet; thence North 89°42'31" West, a distance of 102.11 feet; thence South 00°17'29" West, a distance of 36.72 feet; thence South 12°17'31" East, a distance of 786.20 feet to the beginning of a non-tangent curve concave to the Southeast having a radius of 551.00 feet, to which beginning a radial line bears North 61°33'59" West; thence Southwesterly 68.62 feet along the arc of said curve through a central angle of 07°08'09" to a point of cusp with a curve concave to the Southwest having a radius of 1585.00 feet and to which point a radial line bears North 18°18'44" East; thence Northwesterly 212.56 feet along the arc of said curve through a central angle of 07°41'02" to the beginning of a reverse curve concave to the Northeast having a radius of 256.50 feet, to which beginning a radial line bears South 10°37'42" West; thence Northwesterly 356.15 feet along the arc of said curve through a central angle of 79°33'22" to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 14.47 acres, more or less.

BASIS OF BEARINGS for this description is the line between City of Stockton Monuments "Stockton S.W. Base 1954" (Monument No. 1003) and "Harte" (Monument
No. 1001) as calculated from the City of Stockton Traverse Control Monument Survey, filed for record in Book 35 of Surveys at Page 5, San Joaquin County Records. Said line is taken to bear North 27°25'53" West.

END OF DESCRIPTION.

Rien Groenewoud, P.L.S. 6946
License Expires 09/30/2011
REZONE
OPEN SPACE
90.35 ACRES

PARCEL "C"
P.M. 14-94
S.J.C.R.

SCALE: 1" = 250'

SEE SHEET 2

SEE SHEET 4

0 250 500 750

MVE CIVIL SOLUTIONS

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

REZONE - OPEN SPACE
DELTA COVE

STOCKTON  CALIFORNIA

Sheet 3 of 9
REZONE
OPEN SPACE
90.35 ACRES

PARCEL "C"
P.M. 14-04
S.J.C.R.

SCALE: 1" = 250'
EXHIBIT “A”
LEGAL DESCRIPTION
REZONE PUBLIC FACILITY

ALL that certain real property situate in and being a portion of PARCEL "C" as shown on that certain map filed for record on July 15, 1986, in Book 14 of Parcel Maps at Page 94, San Joaquin County Records, and lying within the Northeast quarter of Section 12, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, City of Stockton, San Joaquin County, California, being more particularly described as follows:

BEGINNING at a point in said Parcel "C" which bears North 13°46'54" East, 1386.91 feet from the Interior quarter corner of said Section 12; thence North 00°17'29" East, a distance of 902.50 feet; thence North 88°42'59" East, a distance of 307.62 feet; thence South 00°17'29" West, a distance of 422.04 feet to the beginning of a non-tangent curve concave to the Southwest having a radius of 1474.00 feet, to which beginning a radial line bears North 00°39'35" West; thence Southeasterly 414.46 feet along the arc of said curve through a central angle of 16°06'37"; thence South 74°32'58" East, a distance of 204.45 feet to the beginning of a non-tangent curve concave to the Northwest having a radius of 1673.00 feet, to which beginning a radial line bears South 77°23'36" East; thence Southwesterly 374.76 feet along the arc of said curve through a central angle of 12°50'04"; thence South 25°26'28" West, a distance of 48.72 feet; thence South 87°19'00" West, a distance of 449.55 feet; thence North 00°17'29" East, a distance of 54.70 feet; thence South 87°12'48" West, a distance of 325.47 feet to the Point of Beginning.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 12.40 acres, more or less.

BASIS OF BEARINGS for this description is the line between City of Stockton Monuments "Stockton S.W. Base 1954" (Monument No. 1003) and "Harte" (Monument No. 1001) as calculated from the City of Stockton Traverse Control Monument Survey, filed for record in Book 35 of Surveys at Page 5, San Joaquin County Records. Said line is taken to bear North 27°25'53" West.

END OF DESCRIPTION.

Rien Groenewoud, P.L.S. 8946
License Expires 09/30/2011

Licensed Land Surveyor
Exp. 9-30-2011
No. 6946
State of California
REZONE
PUBLIC FACILITY
12.40 ACRES

PARCEL "C"
P.M. 14-04
S. I. C. R.

PLAT TO ACCOMPANY
LEGAL DESCRIPTION

REZONE - PUBLIC FACILITY
DELTA COVE

MVE | CIVIL SOLUTIONS
STOCKTON, CALIFORNIA

Drafted By: RG
Date: 02/04/10
Scale: 1" = 150'
Job No.: 06171B
Phone: 866.526.4214

M E

Sheet 1 OF 1

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