

STOCKTON CITY COUNCIL/SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY/PUBLIC FINANCING AUTHORITY

CONCURRENT AGENDA

REVISED

February 7, 2012

Closed Session 4:00 PM/Regular Meeting 5:30 PM

Council Chambers – City Hall

425 North El Dorado Street, Stockton CA

Ann Johnston, Mayor/Chair

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

Elbert H. Holman, Jr. (District 1)

Paul Canepa (District 3)

Diana Lowery (District 4)

Susan Talamantes Eggman (District 5)

Dale C. Fritchen (District 6)



APPOINTED OFFICIALS

Bob Deis
City Manager/ Successor Agency Executive Director

John M. Luebberke
City Attorney/Successor Agency Counsel

Bonnie Paige
City Clerk/ Successor Agency Secretary

F. Michael Taylor, City Auditor

*Citizens may comment on any subject within the jurisdiction of the City Council/Successor Agency of the Redevelopment Agency, including items on the Agenda. Each speaker is limited to three 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 Hearing until the Hearing is opened. If a large number of people desire to speak at a Hearing, the Mayor/Chair may limit the amount of time allocated to each speaker to three (3) minutes.

***Additions to the Agenda - Government Code Section 54954.2(b)(2), allows members of the City Council present at the meeting to take immediate action, with either a two-thirds or unanimous vote, to place an item on the agenda that action must be taken and that the item came to the attention of the City subsequent to the agenda being posted.

All proceedings before the City Council/Successor Agency of the Redevelopment Agency/Public Financing Authority 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/Successor Agency of the Redevelopment Agency/Public Financing Authority, please contact the Office of the City Clerk at (209) 937-8459 at least 48 hours prior to the meeting to enable the City/Successor 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

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 limitation 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.

STOCKTON CITY COUNCIL/SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY/PUBLIC FINANCING AUTHORITY CONCURRENT AGENDA

February 7, 2012

Closed Session – 4:00 PM

1. CLOSED SESSION CALL TO ORDER / ROLL CALL

2. ADDITIONS TO CLOSED SESSION AGENDA***

3. ANNOUNCEMENT OF CLOSED SESSION

3.01 CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

Number of Cases: Two

Name of Case: Stockton Police Officers' Association v. City of Stockton, et al. (San Joaquin County Superior Court Case No. 39-2010-00245197)

Name of Case: In Re Municipal Derivatives Antitrust Litigation (MDL 1950, No. 08-02516 (VM)(GWG)(S.D.N.Y.))

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

3.02 CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Bob Deis

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.

3.03 CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION

Number of Cases: Two

Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code Section 54956.9(c).

3.04 EMPLOYEE PERFORMANCE EVALUATION

Title: City Auditor

This Closed Session is authorized pursuant to Government Code Section 54957.

4. PUBLIC COMMENT*

5. RECESS TO CLOSED SESSION

STOCKTON CITY COUNCIL/SUCCESSOR AGENCY OF THE REDEVELOPMENT
AGENCY/PUBLIC FINANCING AUTHORITY CONCURRENT AGENDA

February 7, 2012

Regular Session - 5:30 PM

6. REGULAR SESSION CALL TO ORDER / ROLL CALL

7. INVOCATION/PLEDGE TO FLAG

8. REPORT OF ACTION TAKEN IN CLOSED SESSION

9. ADDITIONS TO REGULAR SESSION AGENDA***

10. PROCLAMATIONS, COMMENDATIONS OR INVITATIONS

10.01 PROCLAMATIONS

10.02 CERTIFICATES

11. CITIZENS' COMMENTS, ANNOUNCEMENTS OR INVITATIONS*

12. CONSENT AGENDA

12.01 CC - CONTRACT FOR DELTA COALITION ADVOCACY SERVICES

Motion 2012-02-07-1201 authorizing the City Manager to enter into a contract (on behalf of the Delta Coalition) with Sacramento Advocates, Inc., in the amount of \$200,000 to provide consulting services by representing the Delta Coalition and the City of Stockton in a concentrated advocacy effort aimed at communicating to the Governor, the state legislature, and the region's federal legislative delegation vital information regarding the interests of a broad coalition of Delta stakeholders; communicating with, and advocating through, various involved parties messages in furtherance of the interests of the Delta region and potentially facilitating future legislation all related to various Delta related issues, including the Delta Plan and Bay Delta Conservation Plan. (MAYOR)

12.02 CC - MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF STOCKTON AND THE SAN JOAQUIN RAIL COMMISSION ESTABLISHING A FEE CREDIT

Motion 2012-02-07-1202 approving a Memorandum of Understanding (MOU) between the City of Stockton and the San Joaquin Rail Commission recognizing a \$50,000 investment in the Urban Land Institute Advisory Panel as a credit against future fees for a yet to be determined construction project by the Rail Commission within the Greater Downtown Stockton area. (CM)

12.03 CC - DEDICATION OF TWO ACCESS EASEMENTS IN A PORTION OF MAIN STREET BETWEEN HUNTER STREET AND EL DORADO STREET FOR THE STATE COURTHOUSE PROJECT

Resolution 2012-02-07-1203 authorizing the dedication of one exclusive access easement and one access easement to the State of California, Administrative Office of the Courts over a portion of a parcel owned by the City of Stockton for the New Stockton Courthouse Project via an agreement and grant of easements from the City of Stockton and authorizing the execution of documents related thereto. (EDD)

12.04 CC - STUDY OF NITRATE IMPACTS TO RECEIVING WATER QUALITY FOR THE REGIONAL WASTEWATER CONTROL FACILITY

Motion 2012-02-07-1204 amending the Professional Services Master Contract with Robertson-Bryan, Inc. for \$125,417 to conduct a study providing the required field sampling, data collection and analysis, and report to submit to the Regional Water Quality Control Board regarding the effects of the City's wastewater discharge of nitrate to the San Joaquin River. (MUD)

12.05 CC - VIOLENCE AGAINST WOMEN ACT PROGRAM

Resolution 2012-02-07-1205 authorizing acceptance of grant funds in the amount of \$178,978 from the California Emergency Management Agency for the Law Enforcement and Specialized Units - Violence Against Women Act Grant Program; appropriating a twenty-five percent cash match in the amount of \$59,659; and authorizing the execution of grant documents. (PD)

12.06 CC – PROJECT SAFE NEIGHBORHOODS PROGRAM

Resolution 2012-02-07-1206 authorizing acceptance of grant funds in the amount of \$132,550 from the California Emergency Management Agency through the United States Attorney's Office, Eastern District of California for the Project Safe Neighborhoods Program and authorizing the execution of grant documents. (PD)

12.07 CC - MARCH LANE/EBMUD TRAIL GREENSCAPE, PHASE 2 PROJECT 11-25

Motion 2012-02-07-1207 authorizing the City Manager to execute an Amendment to the Professional Services Master Contract with Siegfried Engineering, Inc., in the amount of \$69,900 for March Lane/EBMUD Trail Greenscape, Phase 2 (Project 11-25) to design bike path improvements and landscaping in the East Bay Municipal Utility District right-of-way located between Pacific Avenue and Hillsboro Way. (PW)

12.08 CC - EIGHT MILE ROAD AND INTERSTATE 5 DETENTION BASIN RELINQUISHMENT

Motion 2012-02-07-1208 authorizing the City Manager to execute a Budget Amendment of \$30,000 to the Eight Mile/I-5 Interchange project account for

additional professional services and administrative costs to closeout the project. (PW)

12.09 CC – FRENCH CAMP ROAD / INTERSTATE 5 (I-5) INTERCHANGE RECONSTRUCTION PROJECT 99-01

Motion 2012-02-07-1209 authorizing the City Manager to execute a utility agreement with Pacific Gas and Electric Company (PG&E) and approve payment in the amount of \$216,389 to fund utility relocation costs of a gas line; execute a utility agreement with PG&E and approve payment in the amount of \$1,427,918 to fund the utility relocation costs of electric distribution lines, poles, and vaults; and, execute a Measure K Renewal cooperative agreement in the amount \$2,000,000 with San Joaquin Council of Governments (SJCOG) to fund the utility relocation cost. (PW)

12.10 CC/RD - Approve minutes of the regular City Council/Redevelopment Agency meetings of June 28, 2011 and November 29, 2011, and the minutes of the Special meeting of August 16, 2011. (CLERK)

13. ADMINISTRATIVE MATTERS

14. UNFINISHED BUSINESS

15. NEW BUSINESS

15.01 CC - BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM CONTRACT

Resolution 2012-02-07-1501 of Intention approving an amendment to the contract between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City of Stockton, to include the provisions of retirement law Government Code Section 20516 (Employees Sharing Cost of Additional Benefits) for Fire Safety employees. Pursuant to CalPERS retirement law (Gov. Code Section 20471), this contract amendment will also require the City Council to adopt an Ordinance at least 20 days after Council approves a Resolution of Intent. Adoption of the Ordinance will be on the agenda for the February 28, 2012, Council Meeting. (HR)

15.02 CC – MARSHALL PLAN PROJECT ON PUBLIC SAFETY

Motion 2012-02-07-1502 adopting findings and authorizing the City Manager to enter into a contract with David Bennett Consulting in the amount of \$122,200 to provide consulting services in support of the Marshall Plan Project on Public Safety. (CM)

16. HEARINGS**

16.01 CC - REZONING - EAST STOCKTON RECYCLING & TRANSFER
STATION

At the conclusion of the public hearing, it is recommended that the City Council approve the following:

Resolution 2012-02-07-1601 certifying an Initial Study/Final Mitigated Negative Declaration (P10-365) and adopting the related CEQA (California Environmental Quality Act) "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project," dated November 28, 2011; and,

Ordinance 2012-02-07-1601 approving a rezoning of four parcels from IL (Industrial, Limited) to IG (Industrial, General) for property located on the north side of Weber Avenue and west of F Street. (CD)

16.02 CC - MIRACLE MILE PARKING LOT RENTAL FEE

At the conclusion of the public hearing, it is recommended that the City Council adopt the following:

Resolution 2012-02-07-1602 authorizing an amendment to the General Parking 2011-12 Fee Schedule by incorporating a City-owned Miracle Mile Parking Lot rental fee; and, authorizing the City Manager to take appropriate actions to carry out the purpose and intent of the resolution; and,

Motion 2012-02-07-1602 authorizing a Miracle Mile Parking Lot rental policy. (EDD)

16.03 CC - FIREWORKS ORDINANCE

At the conclusion of the public hearing, it is recommended that the City Council adopt the following:

Resolution 2012-02-07-1603 increasing the regulatory fee for the sale of safe and sane fireworks from \$500 to \$600; and,

Ordinance 2012-02-07-1603 amending Chapter 8.92 of the Stockton Municipal Code concerning the sale and discharge of fireworks within the City limits, and to increase the administrative penalties for violating the ordinance. (FD)

17. COUNCIL COMMENTS

18. ADJOURNMENT

INFORMATIONAL ITEMS:

CONSENT AGENDA



AGENDA ITEM 12.01

February 7, 2012

TO: Mayor and City Council

FROM: Ann Johnston, Mayor

SUBJECT: **CONTRACT FOR DELTA COALITION ADVOCACY SERVICES**

RECOMMENDATION

It is recommended that by motion action the City Council authorize the City Manager to enter into a contract (on behalf of the Delta Coalition) with Sacramento Advocates, Inc., in the amount of \$200,000 to provide consulting services by representing the Delta Coalition and the City of Stockton in a concentrated advocacy effort aimed at communicating to the Governor, the state legislature, and the region's federal legislative delegation vital information regarding the interests of a broad coalition of Delta stakeholders; communicating with, and advocating through, various involved parties messages in furtherance of the interests of the Delta region and potentially facilitating future legislation all related to various Delta related issues, including the Delta Plan and Bay Delta Conservation Plan.

SUMMARY

This contract will allow the City and the Delta Coalition to use a highly experienced legislative advocate to represent the interests of the Delta region. The selection of Sacramento Advocates, Inc., has been made following a formal recommendation by the Delta Coalition made at its meeting of January 9, 2012. The Delta Coalition, after having considered various options, selected Sacramento Advocates, Inc., as the preferred vendor. This agreement will have a term that runs from February 7, 2012, through September 31, 2012, and generally may be terminated on sixty days' notice. The financial commitment of the City is expected to be approximately \$16,000 over the life of the agreement, but this commitment may vary somewhat depending on the degree of financial participation committed by other stakeholders.

DISCUSSION

Background

In November 2009, the California Legislature enacted Senate Bill X7 1 (The Delta Reform Act). It established the Delta Stewardship Council (DSC), an independent State agency, and requires that the DSC develop, adopt, and implement by January 1, 2012, the Delta Plan, a legally enforceable, comprehensive, long-term management plan for the Sacramento–San Joaquin Delta and the Suisun Marsh (Delta) that achieves the “coequal goals” as specified in California Water Code Section 85300(a). The coequal goals are the two goals of providing a more reliable water supply for California and

CONTRACT FOR DELTA COLATION ADVOCACY SERVICES

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protecting, restoring and enhancing the Delta ecosystem. The coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place” (Water Code section 85054). Achieving the coequal goals is a primary and fundamental purpose of the Delta Plan. The DSC has issued several staff drafts of the Delta Plan, the most recent being the Fifth Staff Draft, which is the “project” or “program” analyzed in the recently released Draft Program Environmental Impact Report for the Delta Plan (the “DEIR”). On February 2, 2012, the City and the Delta Coalition provided comments to the DEIR.

The Delta Plan and the Bay Delta Conservation Plan are also the subject of a resolution adopted by the Council on December 13, 2011. The joint resolution and associated staff report are attached as Attachment A. The joint resolution, adopted in coordination with other stakeholders in San Joaquin County, provided a clear message of support for an initiative for joint action, advocacy, and mutual interests on issues concerning the Delta. As an associated action, the Council endorsed the participation of the Mayor and Councilmember Eggman in their representation of the City Council on the Delta Coalition.

Present Situation

The Delta Coalition is beginning to undertake a task of great importance to the City of Stockton and the Delta region as a whole. If the current trajectory of the Delta Plan and Bay Delta Conservation Plan remain unaltered, each has the potential to greatly harm the ability of this region to grow and thrive in the future.

It is imperative that resources within this region that are poised to participate on its behalf be focused in a manner that will have the greatest potential to accomplish meaningful results. The members of the Delta Coalition have stated emphatically that the retention of Sacramento Advocates, Inc., is essential to this effort and that they are prepared to participate financially in that regard. In making its selection of Sacramento Advocates, Inc., the Delta Coalition relied on the unique level of access this firm has to the administration of the current Governor and members of the legislature as well as their reputation and clout in Sacramento. It should also be noted that Sacramento Advocates, Inc., is free from certain conflicts that make it difficult for other public agency advocates (who represent cities in both Northern and Southern California) to take up certain positions on water-related issues, particularly in relation to the Bay Delta Conservation Plan. While many agencies, including the City of Stockton, employ their own advocacy firms, it is important to recognize that individual agencies will have specific issues to address in addition to the defined priorities of the Delta Coalition. Those efforts would continue in conjunction with the efforts of Sacramento Advocates, Inc.

CONTRACT FOR DELTA COLATION ADVOCACY SERVICES

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The draft agreement for retention of Sacramento Advocates, Inc., (Attachment B) provides for services beginning on the effective date of February 7, 2012, and ending on September 31, 2012, at a rate of \$25,000 per month. The Agreement calls for the carrying out of a very ambitious Scope of Work on behalf of the Delta Coalition, which includes advocacy at the state and federal level as well as other efforts aimed at furthering the interests of the Delta region including the drafting of potential legislation. The Delta Coalition on the advice of Sacramento Advocates, Inc., has initiated the legislative process through the placement of two spot bills for this legislative session to address additional issues not covered by bills already introduced. The total value of the draft agreement is \$200,000, although the City's expected share is approximately \$16,000.

FINANCIAL SUMMARY

The cost of these services will be funded from the Water and Wastewater funds account numbers 421-4210-572 and 431-4311-572. It is expected that the City's commitment will be approximately \$16,000, although this could vary somewhat depending on the commitments made by other members of the Delta Coalition. Attachment C is a draft document that sets out the expected contributions of various members of the Delta Coalition. While these contributions have not all been approved by their respective entities, it is expected that they will do so and that other members of the Delta Coalition will also provide support as this effort progresses. This matter has been brought to Council in advance of the various approvals due to the urgency to act within the current legislative session on these rapidly evolving matters.

Respectfully submitted,



ANN JOHNSTON
MAYOR

Attachment A – Joint Resolution and Staff Report of December 13, 2011

Attachment B – Draft Agreement

Attachment C – Draft Delta Coalition Funding Matrix

December 13, 2011

To: Mayor and City Council

From: Michael E. Locke, Deputy City Manager/
Interim Community Development Director

Subject: **JOINT RESOLUTION OF CITIES, COUNTY, AND OTHER SAN JOAQUIN COUNTY STAKEHOLDERS REGARDING LAND USE, WATER, AND OTHER DELTA RELATED ISSUES**

RECOMMENDATION

It is recommended that the City Council adopt a joint resolution in coordination with other cities, the county, and other stakeholders in San Joaquin County in support of an initiative for joint action, advocacy, and mutual interests on issues concerning the Sacramento-San Joaquin River Delta (Delta) a draft of which is attached hereto as Resolution. It is also recommended that the City Council adopt a motion endorsing the participation of the Mayor and Councilmember Eggman in their representation of the City Council on the San Joaquin County Delta Initiative Coalition and authorizing the Mayor and/or the City Manager, or his designee, as applicable, to execute and transmit to the Delta Stewardship Council a joint stakeholder comment letter (substantially in the form of Attachment A) and separate City comments regarding the Delta Plan Draft Program Environmental Impact Report (DPEIR) and related comments and correspondence concerning the Delta Plan, DPEIR, the Bay Delta Conservation Plan (BDCP), and related Delta plans or programs.

Summary

Staff is requesting that the City Council adopt a joint resolution in coordination with other cities, the county, and other stakeholders in San Joaquin County in support of an initiative for joint action, advocacy, and mutual interests on issues concerning the Sacramento-San Joaquin River Delta (Delta). In addition, it is requested that the Council adopt a motion endorsing the participation of the Mayor and Councilmember Eggman in their representation of the City Council on the San Joaquin County Delta Initiative Coalition and authorizing the Mayor and/or the City Manager, or his designee, as applicable, to execute and transmit to the Delta Stewardship Council joint stakeholder comments and separate City comments regarding the Delta Plan Draft Program Environmental Impact Report (DPEIR) and related comments and correspondence concerning the Delta Plan, DPEIR, the Bay Delta Conservation Plan (BDCP), and related Delta plans or programs. Specifically, the other San Joaquin County and regional stakeholders include, but are not limited to representatives of the following: San Joaquin County, other County cities within the county, San Joaquin Council of Governments, Port of Stockton, San Joaquin Farm Bureau, Delta Counties Coalition, Delta Protection Commission, reclamation/flood control districts/agencies, water districts/agencies, select non-governmental environmental and resource

**JOINT RESOLUTION OF CITIES, COUNTY, AND OTHER SAN JOAQUIN COUNTY
STAKEHOLDERS REGARDING LAND USE, WATER, AND OTHER DELTA
RELATED ISSUES**

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conservation organizations, San Joaquin Partnership, Business Council, Building Industry Association of the Delta, and major developers.

The purpose of this request is to facilitate a coordinated and collaborative response, with other affected stakeholders, in opposition to the Delta Stewardship Council's proposed Draft Delta Plan and corresponding DPEIR, the BDCP, and other related Delta plans or programs that may adversely affect economic development and sustainability in the City of Stockton and San Joaquin County. In addition to a joint stakeholder comment letter, staff will prepare a more specific City of Stockton comment letter regarding the DPEIR. A preliminary draft of a joint stakeholder comment letter expressing our shared concerns and overarching issues regarding the Delta Plan DPEIR has been prepared for the Council's consideration and endorsement (Attachment A). A more detailed City of Stockton letter will be prepared in the next few weeks. The DPEIR public review period was recently extended from 60 days to 90 days, ending on February 2, 2012.

While it is not ready for Council consideration on this agenda, staff will be bringing forward to the Council in January an opportunity to participate in a concerted advocacy effort aimed at communicating to the state legislature and the region's federal legislative delegation vital information regarding the interests of this broad coalition of Delta stakeholders, and potentially facilitating future legislation. This effort will involve the retention of an advocate for this purpose, likely by the City, with the financial burden of that retention and the ensuing advocacy effort shared amongst the stakeholders.

DISCUSSION

Background

In November 2009, the California Legislature enacted Senate Bill X7 1 (The Delta Reform Act). It established the Delta Stewardship Council (DSC), an independent State agency, and requires that the DSC develop, adopt, and implement by January 1, 2012 the Delta Plan, a legally enforceable, comprehensive, long-term management plan for the Sacramento–San Joaquin Delta and the Suisun Marsh (Delta) that achieves the “coequal goals” as specified in California Water Code Section 85300(a). The coequal goals are the two goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. The coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place” (Water Code section 85054). Achieving the coequal goals is a primary and fundamental purpose of the Delta Plan. The DSC has issued several staff drafts of the Delta Plan, the most recent being the Fifth Staff Draft, which is the “project” or “program” analyzed in the recently released Draft Program Environmental Impact Report for the Delta Plan.

**JOINT RESOLUTION OF CITIES, COUNTY, AND OTHER SAN JOAQUIN COUNTY
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The Fifth Staff Draft Delta Plan generally covers five topic areas and goals: increased water supply reliability, restoration of the Delta ecosystem, improved water quality, reduced risks of flooding in the Delta, and protection and enhancement of the Delta as an evolving place. Although the DSC, through the Delta Plan, does not propose or contemplate constructing, owning, or operating any facilities related to these five topic areas, the Delta Plan sets forth regulatory policies, and recommendations, that seek to influence the actions, activities and projects of cities, counties, State, federal, regional, and other local agencies toward meeting the goals in the five topic areas. In other words, local public agencies such as the City of Stockton will be required to conform their actions to the policies in the Delta Plan and to the regulatory and appeal procedures established to implement the Plan.

City staff has monitored the development of the draft Delta Plan and provided comments and coordinated with San Joaquin County, the Port of Stockton, and other affected parties. The most recent City comments regarding the Fifth Staff Draft Delta Plan were submitted on September 29, 2011 and, on the same date, the City and San Joaquin County submitted a joint cover letter to express our mutual concerns (see Attachments B and C). The City and other agencies are concerned with the scope and extent of proposed regulatory and review authority that the DSC is considering for adoption. The City continues to encourage that the DSC create a Delta Plan that helps achieve California's coequal goals of providing reliable water supplies and restoring the Delta habitat while recognizing and protecting the Delta as a place where people work and live. The proposed Delta Plan, in its current form, continues to threaten the ability of local communities to grow and prosper, takes away local decision making, and provides an appointed body with the authority to veto local land use and other decisions based upon subjective criteria. A summary of the City's concerns is provided in a document entitled "City of Stockton Talking Points Re: 5th Draft Delta Plan" (Attachment D).

City staff have conducted periodic coordination meetings with representatives of San Joaquin County and the Port of Stockton and have more recently assisted the Mayor in the establishment and coordination of stakeholder meetings to facilitate a collaborative and uniform effort to address our mutual concerns with the proposed adoption and implementation of the Delta Plan, the Program EIR, and with related Delta plans and programs, such as the Bay Delta Conservation Plan (BDCP). Presently, the stakeholder group is preliminarily known as the "San Joaquin County Delta Initiative Coalition Stakeholders". Currently, the stakeholders include representatives of the City of Stockton (including the Mayor, Councilmember Eggman, and City staff), representatives of San Joaquin County (including Board of Supervisors Chairman Larry Ruhstaller and County staff), the City of Tracy, City of Ripon (including Mayor Elden "Red" Nutt), City of Lodi (including Mayor Bob Johnson), City of Escalon (including

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Mayor Daniel "Danny" Fox), San Joaquin Council of Governments, Port of Stockton, San Joaquin Farm Bureau, non-governmental environmental and resource conservation organizations (Restore the Delta and CA Sportsfishing Protection Alliance), and representatives of the Delta Protection Commission, Central Delta Water Agency, Business Council Inc. of San Joaquin County, Building Industry Association of the Delta, AG Spanos Companies, and the Grupe Company. The intent is to expand this group to include other affected San Joaquin County cities and interested parties with mutual concerns to improve our negotiating position with the DSC and with legislators in Sacramento and Washington, D.C.

On July 19, 2011, the City Council held a Study Session, where City staff made a preliminary presentation regarding the Third Staff Draft Delta Plan. Since that date, staff made similar updated presentations on October 6, 2011 to the City's Development Oversight Commission and on November 10, 2011 to the Business Council of San Joaquin County. It is now time to update, engage, and confirm the support of the full City Council on pending, and future developments concerning the Delta Plan, the Program EIR, and on planned coordination and advocacy efforts.

Present Situation

On November 4, 2011, the DSC released a 2,200 page Draft Program Environmental Impact Report for the Delta Plan (DPEIR) and established a 60-day public review period. On November 8, 2011, the City submitted a letter requesting that the review period be extended an additional 90 days, to April 2, 2011 (Attachment E). However, at their meeting on November 17, 2011, the DSC only extended the public review period by an additional 30 days, ending on February 2, 2012.

City staff members are in the process of reviewing the DPEIR and are coordinating our efforts with the aforementioned stakeholder group to develop both a detailed City of Stockton comment letter as well as to finalize the above-referenced separate joint stakeholder comment letter expressing our shared concerns and overarching issues regarding the DPEIR. Those letters will be submitted on or prior to the February 2, 2012 deadline.

Staff is requesting that the City Council adopt the above-referenced joint resolution in coordination with other stakeholders in San Joaquin County in support of an initiative for joint action, advocacy, and mutual interests on issues concerning the Sacramento-San Joaquin River Delta (Delta). In addition, it is requested that the Council adopt a motion endorsing the participation of the Mayor and Councilmember Eggman in their representation of the City Council on the San Joaquin County Delta Initiative Coalition and authorizing the Mayor and/or the City Manager, or his designee, as applicable, to execute and transmit to the Delta Stewardship Council joint stakeholder comments and

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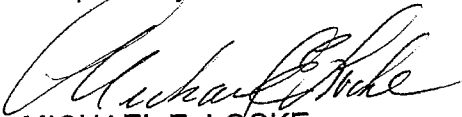
separate City comments regarding the Delta Plan Draft Program Environmental Impact Report (DPEIR) and related comments and correspondence concerning the Delta Plan, DPEIR, the Bay Delta Conservation Plan (BDGP), and related Delta plans or programs.

Staff will periodically update the City Council as significant developments occur and as further direction is necessary.

FINANCIAL SUMMARY

There will be no fiscal impact to City departments resulting from this authorization. However, at a future meeting the Council will be given the opportunity to decide whether to participate in the stakeholder advocacy effort, which would require some financial commitment likely from Wastewater and Water Fund resources. There would be no direct impact on the General Fund.

Respectfully Submitted,



MICHAEL E. LOCKE
DEPUTY CITY MANAGER/
INTERIM COMMUNITY DEVELOPMENT DIRECTOR

MEL:MMN:sis

- Attachment A - Preliminary Draft Joint Stakeholder Comment Letter to Delta Stewardship Council Re: Delta Plan Draft Program Environmental Impact Report (DPEIR)
- Attachment B - City Comments to DSC on Fifth Staff Draft Delta Plan, dated September 29, 2011
- Attachment C - City of Stockton/San Joaquin County Joint Comment Letter to DSC, dated September 29, 2011
- Attachment D - City of Stockton Talking Points Re: 5th Draft Delta Plan
- Attachment E - City of Stockton Request for Time Extension to Review Period on Draft Program Environmental Impact Report for the Delta Plan (DPEIR), dated November 8, 2011

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ATTACHMENT A

To Attachment A

PRELIMINARY DRAFT JOINT STAKEHOLDER COMMENT LETTER TO THE DELTA STEWARDSHIP COUNCIL RE: DELTA PLAN DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT (DPEIR)

This letter is being submitted on behalf of the undersigned to express our continued concern with the content of the Draft Delta Plan and with the Draft Environmental Impact Report (Draft EIR) specifically.

While we recognize the challenges that result from the short timeframe provided by the Legislature for completing a Delta Plan, the Draft EIR does not provide the public with a good understanding of what the proposed Project is, what the impacts of the proposed Project will be, or how mitigation measures will reduce any impacts that result. The analysis of affected environments and impacts from Delta Plan policies and recommendations is incomplete and unclear, and the structure of the document appears to be a post hoc rationalization for approving the Delta Plan as currently drafted. The 90 days that the Council has provided for public comment is also woefully inadequate, particularly when the comment period spans two holiday periods, a time when many government agencies are shuttered as a result of budget cuts.

Most fundamentally, the Project Description is incomplete and does not provide the reader with an adequate understanding of what the Delta Plan is intended to do. While the Draft EIR identifies “regulatory policies” and “non-binding recommendations” as comprising the proposed Project, the Draft EIR downplays the Plan's real-world impact. For example, the Draft EIR suggests that the policies and recommendations “are statements of policy direction to other agencies which, if the direction is followed, could lead to other types of specific physical action.” (Draft EIR, p. ES-2.) These vague statements ignore the fact that Plan policies are likely to become mandatory for any agency seeking to approve a project that falls within the Council's “Covered Actions” process. Mandatory compliance with many of the Plan policies could lead to far-reaching prohibitions on development, agriculture, and economic activity throughout the Delta, with significant environmental impacts. By failing to adequately describe the scope and reach of the Plan, the Project Description ensures the EIR will omit consideration of many potential impacts. General statements in the Project Description also call into question the actual effect or intended effect of “recommendations” in the Delta Plan. The environmental analysis should identify and fully analyze impacts associated with each proposed policy, and each recommendation as applicable.

In this vein, the Draft EIR does not adequately discuss the impact of incorporating the Bay Delta Conservation Plan (BDCP) into the Delta Plan. We understand that, should the BDCP meet certain statutory criteria, the BDCP will

be “incorporated” into the Delta Plan. In that event, it appears that any covered action would need to be consistent with the BDCP. The Draft EIR fails to address the impacts of imposing the substance of the BDCP on third parties, through the Council’s consistency determinations for covered actions. Both the Delta Plan and Draft EIR must fully disclose the impact of incorporating the BDCP into the Delta Plan and how that incorporation could impact third parties, entities that have not voluntarily participated in the BDCP and who will not have any “regulatory assurances” as a result of the approval of the BDCP.

The Draft EIR’s analysis of impacts to water resources and to utilities and service systems does not provide an appropriate description of water diverted and used within the areas of origin and fails to discuss the impact of the prohibitory provisions contained in the Delta Plan regarding the appropriation and use of water. While the statutes creating the Council and directing the preparation of a Delta Plan expressly recognize the protections provided by the various area of origin laws, these important protections are largely ignored by the Delta Plan and Draft EIR. In this regard, both the Delta Plan and Draft EIR are defective.

The Draft EIR’s discussion of alternatives is also inadequate. The only alternatives discussed in the Draft EIR do not appear to meet the stated project objectives. As such, the alternatives appear to be nothing but strawmen, selected and discussed in a way that would assure their failure. The EIR’s failure to consider viable alternatives mirrors the Council’s continued failure to consider modifications to the Draft Delta Plan, despite the many public comments to this effect.

Individually, the undersigned will provide the Council with specific comments on the Delta Plan and Draft EIR. The significant flaws identified above raise concerns that we share collectively. We look forward to the opportunity to review a revised Draft EIR that addresses both the significant concerns raised herein and the comments we will submit individually.

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ANN JOHNSTON
Mayor

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CITY OF STOCKTON

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ATTACHMENT B
To Attachment A
ELBERT H. HOLMAN, JR.
District 1

PAUL CANEPA
District 3

DIANA LOWERY
District 4

SUSAN TALAMANTES EGGMAN
District 5

DALE FRITCHEN
District 6

September 29, 2011

Phil Isenberg, Chairman
Council Members
Delta Stewardship Council
Attn: P. Joseph Grindstaff, Executive Officer
980 Ninth Street, Suite 1500
Sacramento, California 95814

CITY OF STOCKTON COMMENTS ON THE DELTA PLAN – FIFTH STAFF DRAFT

The City of Stockton (City) appreciates the opportunity to review and comment on the Fifth Staff Draft Delta Plan (Draft Plan), which will serve as the basis for the draft Environmental Impact Report (EIR) for the adoption of the final Delta Plan. The City will provide more detailed comments as the Delta Plan progresses, and will have specific comments regarding the potential environmental impacts of the Delta Plan as part of the California Environmental Quality Act (CEQA) process.

The Delta Stewardship Council (DSC) has circulated several iterations of a draft Delta Plan, receiving comments and suggestions for revisions to the various drafts. As the largest urban area in the Delta, the governance provisions as well as the economic and fiscal impacts of the Draft Plan are of critical concern to the City. The City's concerns with the Draft Plan include general concerns and specific concerns. Below, we outline some of our general concerns, provide a broader discussion of how the Draft Plan impacts the Delta as a place, and address a few specific concerns arising from the policies and recommendations contained in the Draft Plan

The following comments summarize the City's general concerns with the existing content of the Draft Plan and lists key recommendations:

- Over 50 percent (21,256 acres) of the City's incorporated urban area and an additional 7,932 acres within the City's Sphere of Influence are located within the Secondary or Primary Zones of the Delta (see attached Exhibit 1). All development within these boundaries must be consistent with the City's adopted 2035 General Plan, Infrastructure Master Plans, and the Local Agency Formation Commission's adopted Sphere Plan and

Municipal Service Review for the City. A comprehensive Environmental Impact Report, which was in full compliance with CEQA, and certified on December 11, 2007, and for which a Notice of Determination was filed on December 12, 2007, addressed those approved plans. As there are still discretionary approvals required for some projects contemplated by these approved plans, the Delta Plan, as currently drafted, could act as a de facto *reversal* of the prior approvals and indirectly usurp the City's existing land use authority within the areas covered by the Delta Plan. The Delta Plan certainly cannot retroactively invalidate otherwise lawfully adopted plans and should be revised to eliminate the potential conflicts with existing adopted plans.

- The effect of the Delta Plan must not be to stifle progress in existing urban areas or prevent orderly and carefully planned growth. The Draft Plan should consider more carefully the application of "consistency determinations" as applied to urban areas within the Secondary Zone of the Delta and should be revised to exempt planned urban development within the incorporated City limits and the City's adopted Sphere of Influence, which is defined as of the effective date of the Delta Plan.
- The definition of "project" should mirror the definition of "project" in CEQA, including all of the exemptions recognized by CEQA.
- All levee improvements and any other flood control projects should be exempt from the consistency determination process.
- Urban development within existing planning areas, located behind levees that meet current federal standards, should be considered consistent with the Delta Plan.
- Any improvements to existing public facilities should not be covered actions, particularly those required by regulatory agencies. For example, anticipated upgrades to the City's Regional Wastewater Control Facility (RWCF) to meet state water quality requirements should not be a covered action.
- As the Delta Independent Science Board has stated, there is no broadly accepted objective methodology for prioritizing stressors. The Council has no mechanism to assess fair and equitable stressor fees.
- Pollutant loading fees for constituents discharged under limits established by permits issued by the Regional Water Quality Control Board duplicate existing discharge fees, usurp the authority of the Regional Board, and most importantly ignores that municipalities incur tremendous costs to comply with water quality standards adopted for protection of beneficial

uses. Accordingly, no such pollutant loading fees should be assessed or recommended by the Delta Stewardship Council.

- The Delta Plan should address economic sustainability impacts within the Secondary Zone of the Delta, particularly in urban areas like Stockton and the Port of Stockton. The Economic Sustainability Plan prepared by the Delta Protection Commission (DPC), as input to the Draft Delta Plan, focuses solely on the Primary Zone and does not address the economic impacts within the Secondary Zone of the Delta.
- The Delta Plan must not be developed, drafted, or implemented in a way that would undermine the current protections for the areas of origin, as codified in California Water Code, Section 11460. The Delta Plan cannot be used to prohibit water users within the areas of origin from continuing to put water to reasonable and beneficial use. The Delta Stewardship Council does not have authority over the diversion and use of water, and the determination of whether existing or future diversion and/or use of water complies with state law currently rests with the State Water Resources Control Board. The Delta Plan must not alter this regulatory framework.
- The Delta Plan should not use the “assessed value” of Delta lands as a measure of “worth.” Instead, the Delta Plan must recognize the significant importance of the continued vitality of Delta agriculture, including its economic multiplier effect, and its contribution to maintaining an adequate food supply for people throughout the state and country.

I. IMPACT OF DELTA PLAN ON LOCAL COMMUNITIES

At this juncture, and given the status of the Delta Plan and commencement of CEQA review, the City believes that this is a good opportunity to pause and review the Draft Plan overall; including as it relates to governance generally and its impact on the “Delta as a place.” A revisit to these overarching themes helps to place the specifics of the Delta Plan in context and allows for a more thoughtful consideration of the policies and recommendations contained in the Plan as they relate to the coequal goals and Delta as a place.

A. Local Governance and the Delta As A Place

The Delta Plan will likely have the most impact on local and regional government agencies in and around the Delta through its implementation, which is the subject of Chapter 3. Chapter 3 includes a discussion of “Covered Actions” and consistency findings, which would apply to many actions taken by local agencies on matters

addressed by the Delta Plan. Indeed, the most likely cause of conflict over the implementation of the Delta Plan is the tension created by subjecting the decision-making authority of local governments to the strict, and frequently subjective, requirements of the Delta Plan as well as the oversight by the Delta Stewardship Council.

The development and implementation of the Delta Plan, including determining the consistency of covered actions must be done in a way that does not adversely affect the "Delta as an evolving place." Indeed, the entire exercise of preparing the Delta Plan is geared towards achieving the "coequal goals," which are defined as:

the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code, § 85054 (emphasis added).)

Meeting the coequal goals, while recognizing the values of the Delta as an evolving place, applies equally throughout the Delta – not just to sparsely populated areas. Potential conflict exists where local governments continue to engage in activities and approve projects essential to the economic and social well-being of the people of the Delta. Those activities may potentially be at risk due to the Draft Plan as proposed.

The question then, is how far can and will the Delta Plan reach into local sovereignty and what types of activities and/or projects can potentially be "prohibited" by the implementation of the Delta Plan through application of the DSC's "consistency" determinations?

B. Covered Actions

The City continues to have serious concerns about the Draft Plan's definition and treatment of "covered actions." Whether a particular action by the City is a covered action has significant policy, legal, financial, and practical consequences to the City, its residents, businesses, property owners, *and developers*. As drafted, the plan appears to exceed the Legislature's intent with regard to covered actions, and in doing so overreaches, duplicates provisions of existing law, and subjects even previously approved development to a cumbersome, time consuming, uncertain layer of administrative, and potential judicial review.

Water Code section 85225 provides that:

[a] state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of

consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.

"Covered actions" are defined as plans, programs, or projects¹, that meet *all* of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
- (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(Water Code, § 85057.5(a).) Water Code section 85057.5, subdivision (b) contains various exceptions to plans, programs, or projects that are, by definition, not "covered actions" under the Delta Plan.

Chapter 3 of the Draft Plan touches on the concept of "covered actions" and begins to address how covered actions will ultimately be measured against the Delta Plan. Again, Water Code section 85057.5 requires, among other things, that in order to be a covered action, a plan, program, or project must be "covered by one or more provisions of the Delta Plan." The Draft Plan at page 57, lines 27-28, clarifies that being "covered by one or more provision" means that one of the policies contained in the Delta Plan must be applicable to the proposed project. In other words, only where *no* policies are implicated by a proposed project is the project not a covered action.²

While the concept of determining consistency with the specific policies in the Delta Plan appears straightforward, Policy G P1 appears to provide for a much more

¹ "Project," for the purpose of the Delta Plan, has the same meaning as the use of that term for CEQA purposes.

² The Draft Plan uses the terms "policies" in certain places and the concepts of "coequal goals" and "inherent objectives" in others. It is unclear whether, in order to demonstrate "consistency," an approving agency must demonstrate consistency with policies contained in the Delta Plan, or whether the approving agency must demonstrate consistency with the more vague concepts of "coequal goals" and "inherent objectives" of the Delta Plan. It should also go without saying that, in order to be "consistent" with the Delta Plan, a project must not jeopardize or degrade *the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.*

subjective standard. Policy G P1 discusses consistency not only with the policies contained in the Delta Plan, but also with the "coequal goals" and "inherent objectives," however they may be defined. This loose language appears to subject covered actions to a much more subjective review by the Council – a process by which local agencies might not now how some "inherent objective" will be interpreted when an appeal is filed. Delta Plan policies must be drafted in a way that works towards attaining the coequal goals and the "inherent objectives." Where a local agency is required to make consistency findings, those findings must be based on specific policies articulated in the Delta Plan – not on vague concepts applied subjectively.

While there is some implicit recognition that "covered actions" might occur outside the Delta, the real and practical effect of implementing the Delta Plan will be that the majority of "covered actions" will consist of projects approved by local government agencies – those agencies with primary land use and other approval authority in the Delta. It is these local government agencies that will shoulder the significant added burden and cost associated with this new administrative requirement. However, the Draft Plan's potential impact extends much farther than delays and increased cost in the approval of future development. As discussed below, the proposed Delta Plan goes so far as to reopen projects that are consistent with previously adopted land use plans through its requirement that agencies file a consistency certification for any of their previously approved plans or programs that have not been incorporated into the Delta Plan. (See Draft Plan p. 61:32-35.) This requirement places a massive financial and administrative burden on local governments, especially during the current fiscal crisis and with significantly reduced resources, to prepare such consistency findings. In addition, and even though previously approved plans are not covered actions, yet-to-be-approved projects that are consistent with these previously approved plans could still be held inconsistent with the Delta Plan. For example, projects that are in the pipeline and that are consistent with the City's 2007 General Plan could now be invalidated through the covered action process. The practical effect of the application of the consistency determination process, as it relates to existing approved General Plans, could be to invalidate parts of lawfully adopted General Plans, or at least subject them to post-hoc appellate review and litigation.

Moreover, the Draft Plan's definition of covered actions, which incorporates CEQA's definition of "project," also overreaches by failing to incorporate CEQA's statutory and categorical exemptions, except for ministerial projects. Because the Draft Plan requires local agencies to make detailed findings for all significant impacts of *any* covered action, the omission of CEQA's categorical exemptions effectively nullifies the effect of these exemptions. This is contrary to the Legislature's direction that certain projects not be subject to the time, expense, and burden of CEQA compliance. In addition to creating a CEQA-like environmental assessment and findings requirement for projects that otherwise would not be subject to CEQA, for projects that are subject to CEQA, this requirement makes the DSC a separate administrative appellate body for CEQA in the Delta. This additional requirement adds a layer of review and timeline that

is inconsistent with CEQA and its timelines for project approval, in particularly its short statute of limitations.³

C. Consistency with the Delta Plan

When a local agency undertakes a “covered action,” that agency *must* prepare a “written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.” (Wat. Code, § 85225.) The Draft Plan discusses consistency in the context of specific policies contained in the Delta Plan, as well as in the context of the “coequal goals,” the “inherent objectives” of the Delta Plan, and the Delta Plan generally. In this regard, some clarity regarding consistency with the Delta Plan, its policies and/or the coequal goals may be appropriate.

Water Code sections 85225.10 through 85225.25 provide for procedures by which any person, including a member of the DSC or its executive officer, can “appeal” a local agency’s certification of consistency to the DSC.⁴ Water Code section 85225.30 directs the DSC to adopt administrative procedures for appeals, which are contained in Appendix B of the Draft Plan.

Appendix B provides very short timeframes for the local agency, at its own cost, to prepare and submit the complete record before that local agency at the time the certification was made, including a requirement that the local agency prepare a table of contents of that record as well as a chronology of events and actions relevant to the “covered action.” If the local agency fails to provide all of this information within 10 days of an appeal being filed, the DSC may automatically affirm the appeal and find the project inconsistent with the Delta Plan. The DSC must, with limited exception, hear an appeal within 60 days of the filing of an appeal and must render a decision within 60 days of hearing the appeal. If the appeal is granted, the DSC “remands” the action back to the local agency for reconsideration.

Notwithstanding Water Code section 85225.25’s authorization for the local agency to proceed with a covered action either as originally proposed or as modified by the local agency in response to the DSC’s findings, the administrative procedures appended to the Draft Plan prohibit a local agency from implementing a project unless an appeal has been denied or otherwise dismissed, or the local agency files a revised certification of consistency addressing the DSC’s findings and no further appeal has

³ As discussed below, even a single appeal of a consistency determination (without an appeal of any remand), is likely to extend far beyond any CEQA statute of limitation for a local agency’s land use approval.

⁴ The Draft Plan contains no requirement that a person appealing a consistency determination to the DSC participate in the project proceedings before the local agency. The Draft Plan should be revised to contain such a requirement to afford the local agency with an opportunity to address any alleged deficiencies in the first instance.

been filed.⁵ This added requirement appears at odds with the statutory language providing the local agency with the final say on whether a proposed project should proceed. (Water Code, § 85225.25.)

The appeal process is highly burdensome to local agencies and is likely to result in substantial cost and staff resources. The appellate procedures also place a substantial burden on local agency funds and staff resources and include unreasonable, if not infeasible, timelines for local agency action, with potentially dire consequences if agencies are unable to comply. In addition to the concerns generally regarding the intrusion on local sovereignty, the City is concerned that this new program being implemented by the State through the DSC creates an unfunded mandate in violation of Article XIII B, section 6 of the California Constitution. The City has experienced significant reductions in funding and staff resources over the last three years and simply does not have the luxury of extra staff and resources necessitated by these new requirements.⁶

It is within this new world that many local and regional government agencies in the Delta will be required to operate. The numerous Delta Plan policies, concepts of “coequal goals” and “inherent objectives” will provide new obstacles not only to new development, but also potentially to improvements and upgrades of existing infrastructure, redevelopment projects, and other necessary projects that protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

A prime example of the problems and conflicts associated with the Draft Plan’s treatment of covered actions and consistency is found in Draft Plan Policy RR P3. Draft Plan Policy RR P3 requires all covered actions to be consistent with Table 7-1. Table 7-1, in turn, includes “all urban development” under “covered actions.” By including “all urban development” within the definition of “covered actions,” Table 7-1 unreasonably broadens the Legislature’s definition of “covered action” (see Wat. Code, § 85057.5(a); Draft Plan at p. 57), which limits “covered actions” to those that will have a “significant impact on the achievement of one more of the coequal goals.”

While the DSC’s legal advisers have publicly stated that the interpretation of a covered action is expected to be rather narrow due in part to the “significant impact” language in Water Code section 85057.5, the plain language of Policy RR P3 (and Table 7-1) appears to cast a wide net over all future development within the area covered by the Delta Plan, including the City of Stockton. Under Table 7-1, urban development that meets the highest levels of flood protection (urban), and thus should

⁵ Water Code section 85225.25 contemplates a project moving forward notwithstanding the DSC’s finding of inconsistency. The administrative rules create a circumstance by which a local agency can be caught in a never-ending circle of remands and appeals.

⁶ At a minimum, the Draft Plan should be revised to require an appellant to pay for the cost of the administrative record – similar to the same requirement in CEQA.

not implicate the policy concerns behind Policy RR P3, becomes a covered action whether or not it has a significant effect on achievement of the coequal goals (a Legislative prerequisite). To the extent the plan seeks to ensure adequate flood protection for urban development, this provision is unnecessary because state law already requires that the specified levels of flood protection be provided (i.e., Central Valley Flood Protection Act (CVFPA), Local Flood Protection Planning Act.).⁷ Moreover, it makes all urban development within the Delta subject to a consistency finding (and associated appeal process and litigation), even if such development is proposed pursuant to previously approved plans. The result is to create a type of “double jeopardy,” whereby local agencies’ prior planning efforts are subject to a cumbersome, lengthy, and uncertain as to outcome, layer of new administrative potential judicial review.

Another example is the Draft Plan’s potential to nullify the intent and implementation of the City’s General Plan and other important plans that have been adopted as a result of years of planning, community participation and expense. Under the Draft Plan the DSC could find that specific projects that implement the City’s General Plan, specific plans or community plans are inconsistent with the Delta Plan, thereby frustrating the City’s ability to provide for orderly development within its boundaries. This also introduces an element of uncertainty to the land development process that could stifle needed and desirable development within the existing urban areas of the Delta. If landowners and developers cannot rely on the measure of certainty provided by proposing development consistent with an adopted General Plans, it is foreseeable they will choose to go elsewhere, depriving Delta cities and counties of needed economic and redevelopment. Such a result is directly contrary to the legislative finding and declaration that carefully planned future development is essential to the economic and social well being” of persons living and working in the Delta.

The Draft Plan should be revised to recognize the need to protect the economic and social well-being of existing Delta residents; including those living in existing urban areas. The practical effect of the Delta Plan cannot be to stifle progress in existing urban areas and prevent orderly and carefully planned growth. The Delta Plan certainly

⁷ For example, the CVFPA already requires general plans to incorporate information from CVFPP and agencies to conform their general plan and zoning ordinances upon completion of the next Housing Element update, accordingly, and/or following such amendments or by July 1, 2015, whichever occurs first, impose conditions on development to ensure adequate levels of flood protection (200 years in urban areas, 100 in nonurban areas). In order to enter into development agreement, or issue a permit to construct a residence, or approve a parcel map within a flood hazard zone, a city or county must find that existing facilities protect urban and urbanizing areas to a 1-in-200 chance of flooding (or lower) in any given year, or the FEMA standard of flood protection in nonurbanized areas, or impose conditions on the development that will provide the required level of protection, or find that the local flood management agency has made adequate progress on construction of the flood protection system to provide the required level of protection.

cannot retroactively invalidate otherwise lawfully adopted plans, such as the City's 2035 General Plan. In this regard, the Draft Plan should more carefully consider the application of "consistency determinations" as applied to urban areas and should be revised to eliminate the potential conflicts with existing plans. The Draft Plan should also be revised to not place the significant burden of the appeals process on local governments.

D. The Delta Plan should not Devalue Delta Agriculture

The Draft Plan, in an apparent attempt to justify the abandoning of certain Delta islands, makes the assertion that the cost of maintaining, improving, or repairing levees "may be more than the assessed value of the use of the land they protect in some cases." (Draft Plan at p.23:23-24.) Of course, the same can be said, that the cost to maintain levees exceeds the "assessed value", of lands that provide habitat, open space, parks, infrastructure, roads, and other land uses that provide important public values. This statement is contrary to the recognition of the substantial value of Delta agriculture as expressed earlier in the Draft Plan. (Draft Plan at p.15:1-3.) As such, the statement regarding the assessed value of Delta agricultural land and the cost of maintaining levees should be removed from the Draft Plan.

E. Risk Reduction Policy RR P3 Is Inappropriate

The protection of the inhabitants of the City and surrounding areas from flooding is of utmost importance to the City. The City's current land use policies and building restrictions, combined with federal levee requirements provide the City with the appropriate tools to continue to address this critical issue. The City's comments regarding the Draft Plan's attempt to inappropriately constrain the City's land use authority should not be construed as a reduction of the City's commitment to protect the public.

The City has very serious concerns with RR P3 and accompanying Table 7-1. The problem statement that purports to support the policy contained in RR P3 claims that existing Delta levee standards and laws are insufficient to reduce flood risks to lives, property, and "State interests" in the Delta." (Draft Plan at p.173:8-10.) Policy RR P3 attempts to address this problem statement, requiring all covered actions in the Delta to be consistent with Table 7-1. (Draft Plan at p.173:12.) Table 7-1, in turn, provides for acceptable land uses and minimum levee design classifications. The practical effect of this "policy" would be to inhibit the orderly growth within the City's Sphere of Influence, growth that has undergone significant planning and environmental review, negates federal requirements already developed to protect life, property, and other interests, and would preclude the key objectives of the Delta Protection Commission's Economic Sustainability Plan. RR P3 and Table 7-1 should be removed from the Draft Plan.

The City of Stockton and/or the Port of Stockton have several fully-entitled and environmentally-cleared development projects in the City limits located within the

Secondary Zone of the Delta that are in various phases of the development process (see attached Exhibit 2). Some of those projects have approved Master Development Plans with Development Agreements, Planned Development Permits, Large-lot and/or Small-lot Tentative Subdivision Maps, or property leases, and are approaching buildout (requiring only ministerial approvals, such as Final Subdivision/Parcel Maps, building permits, etc.). Other approved master planned projects are in the early phases of the development process and may require additional discretionary entitlements (e.g., Small-lot Tentative Subdivision or Parcel Maps, Conditional Use Permits, etc.). The City respectfully requests that the buildout of those projects and future planned urban development projects in the City's corporate limits and Sphere of Influence, located within the Secondary Zone of the Delta, be exempt from the "consistency determination" provisions of the Draft Plan and that Risk Reduction Policy RR P3 and Table 7-1 be removed from the Draft Plan.

II. IMPACT OF DELTA PLAN ON LOCAL WATER SUPPLIES

The Draft Plan includes policies and recommendations on reducing reliance on the Delta through improved regional self-reliance. For many water suppliers in and around the Delta, these policies and recommendations create a contradiction.

As the Draft Plan notes, water supply self-reliance is achieved, in part, through the development of local and regional water supplies. For the City, those local and regional supplies include the Delta. The Draft Plan should be revised to recognize that certain areas of the State rely upon the Delta as a *local* water supply. To the extent the Delta Plan continues to require communities in the Delta watershed to develop alternate supplies while also promoting continued export through new conveyance options, it violates the area of origin laws as set forth in Water Code sections 10504 et seq., Water Code sections 11460 et seq., and Water Code section 12200 et seq.

Local water supplies also include groundwater. The Eastern San Joaquin County Groundwater Basin is designated as critically overdrafted. (DWR Bulletin 118-80.) Since that time, local stakeholders have been working towards achieving a consensus-based approach, which has resulted in the Eastern San Joaquin Integrated Regional Water Management Plan (IRWMP). This plan contemplates diverting surface water in surplus years to conjunctively manage water local water resources in an effort to achieve regional self-reliance. WR R10 recommends the State Water Resources Control Board (SWRCB) to take certain actions, including potential groundwater basin adjudications, where certain conditions exist. The Draft Plan should promote consensus-based approaches to managing available water resources and help make clear that adjudications, which consume a tremendous amount of time and resources, should only be initiated as a last resort.

III. DELTA PLAN AND WATER QUALITY

A. Recommendation WQ R6 is Impractical

WQ R6 recommends that the SWRCB and regional boards adopt certain objectives and TMDLs. (Draft Plan at p.148:22-38.) The Draft Plan recommends adopting narrative or numeric water quality objectives for nutrients by the end of 2013. Considering the lack of information currently available, setting such a deadline for the adoption of nutrient water quality objectives is unreasonable and impractical. The Draft Plan also recommends accelerating the completion of TMDLs for pyrethroids to January 1, 2016. This short timeframe is also unreasonable and impractical. There are no existing water quality standards for pyrethroid pesticides. Prior to establishing a TMDL, water quality standards must be adopted into the relevant Basin Plans, and approved by U.S. EPA. This process itself takes considerable time and recommending completion of a pyrethroid TMDL by the end of 2015 is unreasonable and impractical. Instead of recommending unachievable goals, the Draft Plan should strive to recommend goals that are actually achievable.

Another example of unrealistic expectations in the Draft Plan can be found in the Water Quality Driver Performance Measures at page 150. There, the Draft Plan provides that a Driver Performance Measure is meeting TMDLs for critical pesticides by 2020. This is, of course, problematic because the Central Valley Pesticide TMDL is currently behind schedule and is still in development. It is inappropriate to set a compliance date for meeting TMDLs when TMDL adoption may be years out still.

With respect to the issue of emerging contaminants, special studies cannot be conducted until an appropriate test methodology is established for such contaminants. Thus, the 2014 deadline suggested here is also unrealistic.

The City also takes issue with the WQ R8. It suggests that the Central Valley Water Board shall require treatment just because it may be feasible – not because it is required. First, the Central Valley Water Board may not dictate the manner of compliance. (See Wat. Code, § 13360(a).) In other words, for POTWs, the Central Valley Water Board is required to set effluent limitations to protect beneficial uses and ensure compliance with water quality standards. POTWs must then determine how they will comply with the effluent limitations. Compliance methods may include, but are not limited to, treatment, source control, special studies, or other mechanisms. For urban stormwater, municipalities must implement control methods to reduce the discharge of pollutants to the maximum extent practicable. (33 U.S.C.S., §1342(p)(3).) Accordingly, WQ R8 proposes a recommendation that directly contradicts applicable water quality laws and must be removed.]

IV. DELTA PLAN AND ECONOMIC SUSTAINABILITY IMPACTS WITHIN SECONDARY ZONE OF THE DELTA

The Delta Plan should address economic sustainability impacts within the Secondary Zone of the Delta, particularly on urban areas like Stockton and the Port of Stockton (e.g., impacts on shipping, dredging, and industrial development and operations within and in the vicinity of the Port of Stockton; agricultural operations; boating, marinas, parks, and other recreational/tourism land uses and operations; etc.). The Economic Sustainability Plan prepared for the Delta Protection Commission (DPC), as input to the Draft Delta Plan, focuses solely on the Primary Zone and does not address the economic impacts within the Secondary Zone of the Delta.

V. CONCLUSION

The City looks forward to the continued opportunity to work with DSC staff in making the Delta Plan a success in achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Should you have any questions or wish to discuss these comments, please contact Deputy City Manager Michael E. Locke at (209) 937-5011 or City Attorney John Luebberke at (209) 937-8934.



ANN JOHNSTON
MAYOR

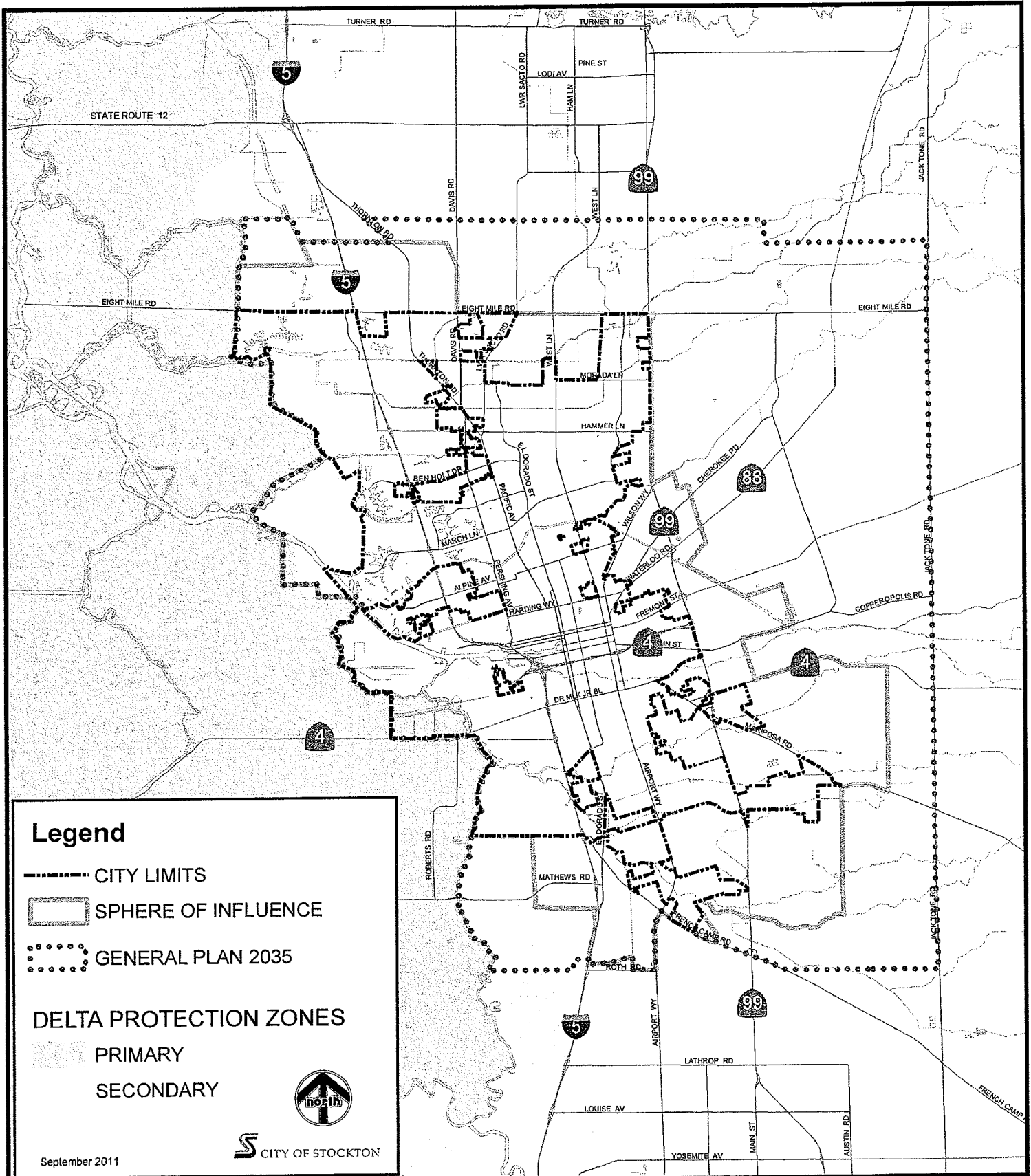
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Attachments

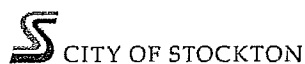
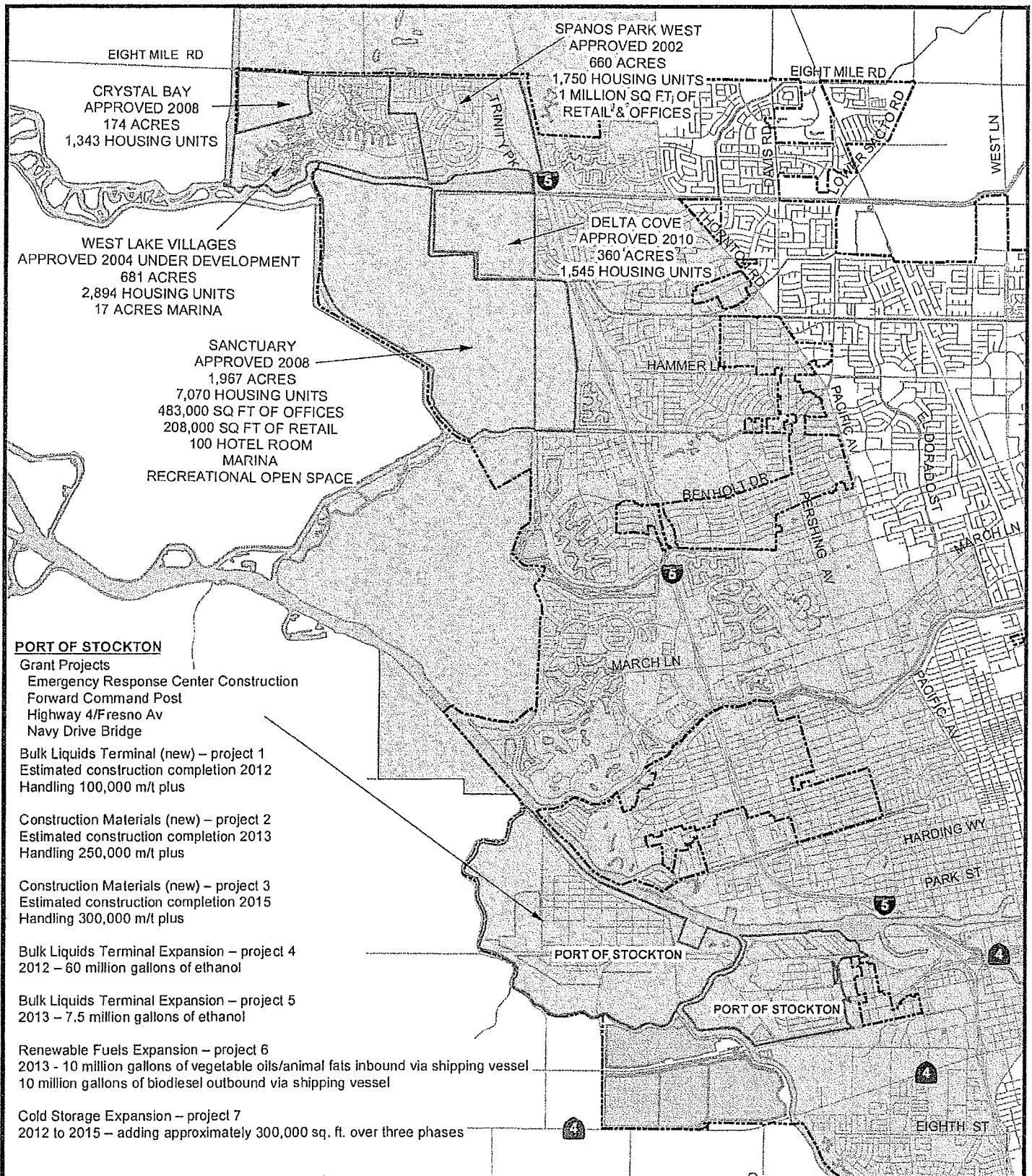
emc: Stockton City Council w/attachments
Bob Deis, City Manager w/attachments
Michael E. Locke, Deputy City Manager w/attachments
John Luebberke, City Attorney w/attachments
Jeff Willett, Acting Municipal Utilities Director w/attachments
Michael Niblock, Community Development Interim Program Specialist w/attachments
David Stagnaro, AICP, Planning Manager, CDD/Planning and Engineering Services Division w/attachments
Stockton Planning Commission w/attachments
Stockton Development Oversight Commission w/attachments
San Joaquin County Board of Supervisors w/attachments
Manuel Lopez, San Joaquin County Administrator w/attachments
David Wooten, San Joaquin County Counsel w/attachments
Terry Dermody, San Joaquin County Special Water Counsel w/attachments

Elena Reyes, San Joaquin County Deputy County Administrator w/attachments
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Konrad "Rad" Bartlam, Lodi City Manager w/attachments
D. Stephen Schwabauer, Lodi City Attorney w/attachments
James Glaser, San Joaquin County LAFCO Executive Officer w/attachments
Paul Simmons, Attorney, Somach Simmons & Dunn w/attachments
John Beckman, CEO, BIA of the Delta w/attachments

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DELTA PROTECTION ZONES / CITY BOUNDARIES



CITY LIMITS - - - - -

DELTA PROTECTION ACT OF 1992
SECONDARY ZONE



DELTA PLAN - SECONDARY ZONE DEVELOPMENT

372



BOARD OF SUPERVISORS

44 N. SAN JOAQUIN STREET, SUITE 627
STOCKTON, CALIFORNIA 95202
TELEPHONE: 209/468-3113
FAX: 209/468-3694

CARLOS VILLAPUDUA

First District

FRANK L. RUHSTALLER, Chairman

Second District

STEVE J. BESTOLARIDES, Vice-Chairman

Third District

KEN VOGEL

Fourth District

LEROY ORNEILLAS

Fifth District



CITY OF STOCKTON

OFFICE OF THE CITY COUNCIL
CITY HALL • 425 N. El Dorado Street
Stockton, CA 95202-1997
209 / 937-8244 • Fax 209 / 937-7149

ANN JOHNSTON, Mayor

KATHERINE M. MILLER, Vice Mayor, District 2

ELBERT H. HOLMAN, JR., District 1

PAUL CANEPA, District 3

DIANA LOWERY, District 4

SUSAN TALAMANTES EGGMAN, District 5

DALE FRITCHEN, District 6



September 29, 2011

Mr. Phil Isenberg, Chairman
Council Members
Delta Stewardship Council
650 Capital Mall, Fifth Floor
Sacramento, CA 95814

**SAN JOAQUIN COUNTY AND CITY OF STOCKTON JOINT COMMENT LETTER
REGARDING 5TH DRAFT DELTA PLAN**

Dear Mr. Isenberg:

The City of Stockton (City) and San Joaquin County (County) have respectfully submitted separate comment letters regarding the 5th Draft of the Delta Plan. To emphasize the sincerity of the City and County, we emphatically express in this joint letter that there are concerns with the Stewardship Council's(Council) Delta Plan shared by the local community that have yet to be resolved.

Fundamentally, the City and the County are seriously concerned with the direction of the Delta Plan and details set forth in the 5th Draft as it relates to local and regional economic sustainability, local land use authority, flood protection, future water supplies, and a fair and equitable distribution of impacts related to the future implementation of the Delta Plan. Our hope is that the Council will seriously consider the comments put forth and that you will ultimately recognize the Sacramento-San Joaquin River Delta as a special place of significance, requiring protections, in terms of where we, as the greater Stockton and San Joaquin County community, lives, works, and plays.

The City of Stockton and San Joaquin County have worked and will continue to work together to provide meaningful comments to the Delta Stewardship Council. Should you have any questions, please contact Tom Gau, Director of Public Works, San Joaquin County, and/or Michael E. Locke, Deputy City Manager, City of Stockton".

Sincerely,

Frank L. Ruhstaller, Chairman
San Joaquin County Board of Supervisors

Ann Johnston, Mayor
City of Stockton

San Joaquin County/City of Stockton Joint Comment Letter Regarding
5th Draft Delta Plan

September 29, 2011

cc: San Joaquin County's State Delegation
Escalon City Council
Lathrop City Council
Lodi City Council
Manteca City Council
Ripon City Council
Tracy City Council
Port of Stockton

Stockton City Council
Bob Deis, Stockton City Manager
Michael E. Locke, Stockton Deputy City Manager
John Luebberke, Stockton City Attorney
Jeff Willett, Stockton Acting Municipal Utilities Director
Michael Niblock, Stockton Community
Development Interim Program Specialist
David Stagnaro, AICP, Stockton Planning Manager
Stockton Planning Commission
Stockton Development Oversight Commission

CITY OF STOCKTON TALKING POINTS RE: 5TH DRAFT DELTA PLAN

The Delta Stewardship Council will soon adopt a “Delta Plan”. Local public agencies such as the City of Stockton will be required to conform their actions to the policies in the Plan. The City and other agencies are concerned with the scope and extent of proposed regulatory and review authority that the Council is considering for adoption. The Proposed Delta Plan, in its current form, continues to threaten the ability of local communities to grow and prosper, may usurp local decision making, and provides an appointed body with the authority to veto local land use and other decisions regarding “covered actions” based upon subjective criteria. Some of the City’s most significant concerns are outlined below:

- The Proposed Delta Plan threatens growth and land use approvals, including growth and new land uses consistent with existing planning documents.

Over 50 percent (21,256 acres) of the City’s incorporated urban area and an additional 7,932 acres within the City’s Sphere of Influence are located within the Secondary or Primary Zones of the Delta. Currently, all development within these boundaries must be consistent with the City’s adopted 2035 General Plan and Infrastructure Master Plans. The Delta Plan, as currently drafted, could act as a *de facto reversal* of the prior approvals and indirectly usurp the City’s existing land use authority within the areas covered by the Delta Plan.

- The Proposed Delta Plan may stifle progress in existing urban areas or prevent orderly and carefully planned growth.

The Proposed Delta Plan creates new standards and criteria for all but ministerial approvals within the area covered by the Delta Plan. The practical effect of the implementation of the Delta Plan could be to create new barriers to growth and redevelopment within the City’s existing urban footprint. The City believes that the ultimate Delta Plan should exclude existing urban areas in the secondary zone of the Delta from the Delta Plan certification of consistency determination requirements for covered actions and should exempt planned urban development within the incorporated City limits and the City’s adopted Sphere of Influence.

- **The Delta Plan should not threaten local water supplies.**

The Proposed Delta Plan requires water users to “reduce reliance” on the Delta. For many local communities, the local water supplies include the Delta. For many of these communities, it is not possible or practicable to find alternate sources of water. The Delta Plan must recognize the need for local Delta communities to achieve regional self-reliance through the continued beneficial use of water from local sources, including the Delta.

- **Urban development within existing planning areas, located behind levees that meet current federal standards, should be considered consistent with the Delta Plan.**

The Proposed Delta Plan would place new restrictions on development “behind levees,” and would impose requirements that greatly exceed existing federal requirements for levee construction. The City believes that the Delta Plan should provide for development consistent with federal standards for levee construction / flood protection.

- **The Delta Plan should address economic sustainability impacts within the Secondary Zone of the Delta, particularly in urban areas like Stockton and the Port of Stockton.**

The implementation of the Delta Plan could adversely impact the financial viability of local communities through increased restrictions and by creating regulatory uncertainties. Currently, the Economic Sustainability Plan prepared by the Delta Protection Commission (DPC), which is being used to develop the Delta Plan, focuses solely on the Primary Zone and does not address the economic impacts within the Secondary Zone of the Delta. As portions of the City’s existing urban area and Sphere of Influence are located within the secondary zone, the Delta Plan should build upon the DPC’s Economic Sustainability Plan and analyze the impacts of the Delta Plan and the Bay Delta Conservation Plan on these areas.

ANN JOHNSTON
Mayor

KATHERINE M. MILLER
Vice Mayor
District 2



CITY OF STOCKTON

OFFICE OF THE CITY COUNCIL
CITY HALL • 425 N. El Dorado Street • Stockton, CA 95202-1997
209 / 937-8244 • Fax 209 / 937-8568

ATTACHMENT E
To Attachment A

ELBERT H. HOLMAN, JR.
District 1

PAUL CANEPA
District 3

DIANA LOWERY
District 4

SUSAN TALAMANTES EGGMAN
District 5

DALE FRITCHEN
District 6

November 8, 2011

Phil Isenberg, Chairman, and Council Members
Delta Stewardship Council
Attn: P. Joseph Grindstaff, Executive Officer
980 Ninth Street, Suite 1500
Sacramento, California 95814

CITY OF STOCKTON REQUEST FOR TIME EXTENSION TO COMMENT PERIOD ON THE DRAFT EIR FOR THE DELTA PLAN

The City of Stockton (City) appreciates the opportunity to review and comment on the Draft Environmental Impact Report (EIR) for the Draft Delta Plan, for which the 60-day public review period ends on January 3, 2012. The City understands that the 60-day review period exceeds the minimum 45-day review period authorized under the California Environmental Quality Act (CEQA) for this draft EIR. However, due to the voluminous (+2,200 pages) and complex nature of the Draft EIR, the fact that the review period falls during two major holiday periods, and the significance of the Delta Plan on Stockton, the City is respectfully and officially requesting that the Delta Stewardship Council (DSC) extend the public review period for an additional 90 days, ending on April 2, 2012. The City has substantially reduced staff resources and this time extension will facilitate an adequate review by our staff and will allow for appropriate input by all affected parties, including our City Council, Planning Commission, and Development Oversight Commission.

The City looks forward to your favorable response to our time extension request. The City is committed to our continued coordination with the Delta Stewardship Council and staff in the review of the Draft EIR and the ongoing review and future adoption and implementation of the Delta Plan. Should you have any questions or wish to discuss this request, please contact Deputy City Manager Michael E. Locke at (209) 937-5011 or City Attorney John Luebberke at (209) 937-8934.

A handwritten signature in cursive script that reads "Ann Johnston".

ANN JOHNSTON
MAYOR

AJ/ML/JL/MMN:ss

emc: Stockton City Council
Bob Deis, City Manager
Michael E. Locke, Deputy City Manager
John Luebberke, City Attorney
Jeff Willett, Acting Municipal Utilities Director
Michael Niblock, Community Development Interim Program Specialist
David Stagnaro, AICP, Planning Manager, CDD/Planning and Engineering Services Division
Stockton Planning Commission
Stockton Development Oversight Commission
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Manuel Lopez, San Joaquin County Administrator
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Cary Keaton, Lathrop City Manager
Konrad "Rad" Bartlam, Lodi City Manager
D. Stephen Schwabauer, Lodi City Attorney
James Glaser, San Joaquin County LAFCO Executive Officer
Paul Simmons, Attorney, Somach Simmons & Dunn
John Beckman, CEO, BIA of the Delta
Nelson Bahler, Grupe Company
Barbara Barrigan-Parrilla, Restore the Delta
Andrew Chesley, San Joaquin Council of Governments
Bill Jennings, CA Sportsfishing Protection Alliance
Mike Machado, Delta Protection Commission
David Nelson, AG Spanos Companies
Dante Nomellini, Nomellini, Grilli & McDaniel PLCs
Natalia Orfanos, AG Spanos Companies
Katie Paterson, San Joaquin Farm Bureau
Tom Zuckerman, Central Delta Water Agency

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11-0334

Resolution No.

STOCKTON CITY COUNCIL

-- A Delta Initiative of Cities and Agencies of San Joaquin County --

RESOLUTION ON LAND USE, WATER, AND OTHER DELTA RELATED ISSUES

This Resolution is effective upon passage by the CITIES, the COUNTY AND OTHER STAKEHOLDERS WITHIN SAN JOAQUIN COUNTY, which include political subdivisions of the State of California and other interested parties, both public and private, hereinafter collectively referred to as "the MEMBERS."

RECITALS

WHEREAS, the Sacramento-San Joaquin River Delta is at risk from many factors, and in addressing these threats the State is proposing large-scale changes to the Delta ecosystem, land use authority within the Delta, water conveyance through and around the Delta, water rights, statewide management, and many other aspects related to the Delta; and

WHEREAS, the CITIES, COUNTY and OTHER STAKEHOLDERS as Members believe there is value in developing an initiative on issues concerning the Sacramento-San Joaquin River Delta, its watershed, and greater Bay/Delta estuary; and

WHEREAS, the MEMBERS wish to collectively articulate the issues and interests from the perspective of the Delta region itself, from the people who call the Delta home and best understand the tremendous resource the Delta represents; and

WHEREAS, the MEMBERS have identified a need for joint action, advocacy, and mutual interests on Delta-related issues.

NOW THEREFORE, the MEMBERS adopt this Resolution for the purpose of articulating mutual interests on Delta issues. Furthermore, the MEMBERS resolve to work together to defend Delta-related interests at a regional perspective and to use their unified voice to advocate on behalf of local government in available forums at all levels. Our principles of mutual interests are as follows:

1. Recognition of the authority and responsibility given to local government related to land use, water resource development, flood management, public health and safety, economic development and sustainable growth, agricultural stability, recreation, and environmental protection.

City Atty


Review

Date December 7, 2011

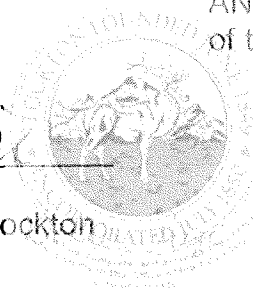
2. Protect the economic viability of agriculture, industry, recreation, and the ongoing vitality of communities throughout the Delta.
3. Represent and include local government in any new governance structures for the Delta.
4. Funding and implementation of urban and non-urban flood protection through rehabilitation, improvement, and maintenance of flood control levees and structures.
5. Protection and restoration of the Delta ecosystem including adequate water supply, quality, and outflow to support fisheries, wildlife, and habitat in perpetuity while supporting immediate improvements to the existing Through-Delta Conveyance as part of a complete strategy for the State's water management.
6. Incorporation of sustainable approaches for improved water supply, quality, and reliability through the overarching principle of regional self-sufficiency to reduce future reliance on exports from the Delta.


PASSED, APPROVED, and ADOPTED December 13, 2011.

ATTEST:



BONNIE PAIGE
City Clerk of the City of Stockton





ANN JOHNSTON, Mayor
of the City of Stockton

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Barry S. Brokaw
 Donne Brownsey

Strategic Partner:
 Cassie Gilson,
 Gilson Government Strategies

Sacramento Advocates, Inc.

A California based Public Affairs and Governmental Relations Firm

1215 K Street, Suite 2030 □ Sacramento, CA 95814
 Phone (916) 448-1222 □ Fax (916) 448-1121

Template for Agreement

What follows, as you requested, is a proposal for lobbying services to be provided by Sacramento Advocates, Inc. on behalf of the Delta Coalition for lobbying services for commencing with the effective date of this agreement and concluding September 30, 2012.

Proposal for Services

Sacramento Advocates, Inc. will assist The Delta Coalition in the development and execution of a public policy strategy before the California Legislature, the Governor's Office, all appropriate Executive Branch Agencies and Departments, boards and commissions and other state Constitutional Officers as necessary or beneficial.

Scope of Work

BDCP

- Engage the Brown Administration, including but not limited to, the Governor's executive secretary Nancy McFadden, his Legislative Secretary Gareth Elliot, and Secretary of Resources John Laird to press the case for wresting the BDCP out of private hands, and making it a truly inclusive process, grounded on science and equally focused on restoration and water reliability. (Non-diversion alternatives have to be included as part of the EIR/EIS of the BDCP; a cost benefit analysis should be taken for all diversion and non-diversion alternatives; an independent review of the science must be done in coordination with the Delta counties; and of course, the BDCP governance role has to include a role for decision-makers in the Delta counties).
- Reach out to the water retailer community, the critics of MWD and the other exporters, to broaden the discrediting of the BDCP. This has to be made bigger than just the Delta.
- Engage statewide taxpayer organizations to launch broadsides over the costs to ratepayers of a conveyance facility vs. upgrading and repairing Delta levees to better satisfy the twin goals.
- Concurrently, introduce legislation in February 2012 to require the proposed changes to the BCDP.
- Strategize and propose new conditions on current water importers as part of any

negotiated agreement.

Delta Stewardship Council/Delta Plan

- Coordinate activities with the Delta area and environmental community opponents to the Delta Protection Act; Seek insertion into the Delta Plan a protection of local government sovereignty (local governments to identify areas of conflict with the Delta Plan in order to seek specific changes in the Delta Plan). Seek legislation to require the Plan to acknowledge and avoid conflicts with existing requirements placed upon local governments because of covered action.
- Engage with the Administration and the Executive Agencies in the discussions as they develop a revised water bond act for 2012.

Specifics of Contract

This proposal shall serve as a contract between the Delta Coalition (hereinafter, CLIENT) and Sacramento Advocates, Inc. (hereinafter ADVOCATE), whereby ADVOCATE agrees to represent CLIENT'S interests before the California Legislature, the Office of the Governor, State Constitutional Officers, and any and all agencies of the State of California as needed, as an advocate for CLIENT'S positions on state policy and legislative matters as directed by CLIENT.

For said services, CLIENT shall pay ADVOCATE a fee of \$10,000 for the remainder of the month of January, 2012. The monthly fee shall be \$25,000 per month effective February 1, 2012 and shall continue at that rate through September 30, 2012. Fees shall be considered due and payable on the first of each month, commencing with the effective date of this agreement, with the last payment under the terms of this agreement due on September 1, 2012.

Additionally, ADVOCATE may bill client for normal and customary business expenses (including, but not limited to, authorized travel and accommodations) incurred while transacting business as defined herein on behalf of CLIENT. Such expenses must be approved in advance by CLIENT and shall be due upon receipt.

It is the intention of the parties to this agreement that the services rendered hereunder and the Payments made therefore are not in any way contingent upon the enactment or defeat of any legislative or administrative proposal. The parties hereto agree that such sums as are paid pursuant to this agreement shall be deemed to be the reasonable value of services rendered hereunder. In the event that any agency or court determines that such payments were otherwise contingent, this agreement shall be deemed rescinded.

It is the intention of the parties to this agreement that ADVOCATE is an independent contractor and not an employee, agent, joint venturer or partner of CLIENT. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CLIENT and ADVOCATE. Both parties acknowledge that ADVOCATE is not an employee for state or federal tax purposes. ADVOCATE shall retain the right to perform such services for others during the term of this agreement.

ADVOCATE is responsible for complying with the reporting requirements of a "lobbyist" pursuant to the California Political Reform Act. CLIENT is responsible for complying with the reporting requirements of a "lobbyist employer" pursuant to the California Political Reform Act.

Either party may terminate the agreement, with or without cause, on sixty (60) days advance written notice to the non-terminating party. No payment obligations shall exist after the effective date of the notice of termination, except for chargeable expenses incurred prior to that date.

If the above meets with your approval, please sign where indicated below and return one original with the first payment.

Sincerely,

BARRY S. BROKAW for
SACRAMENTO ADVOCATES

Accepted and Agreed To:

By:

Dated: _____

DRAFT		
Delta Coalition		
	Monthly	8 Months
GOVERNMENT AGENCIES		
San Joaquin County	\$2,000	\$16,000
City of Escalon	\$500	\$4,000
City of Lathrop	\$1,000	\$8,000
City of Lodi	\$1,000	\$8,000
City of Manteca	\$1,000	\$8,000
City of Ripon	\$500	\$4,000
City of Stockton	\$2,000	\$16,000
City of Tracy	\$1,000	\$8,000
PUBLIC AGENCIES		
Business Council of San Joaquin County	\$2,000	\$16,000
Central and South Delta Water Agencies	\$3,000	\$24,000
Delta Chamber of Commerce		\$500
Port of Stockton	\$3,000	\$24,000
San Joaquin Area Flood Control Agency	\$1,000	\$8,000
San Joaquin Council of Governments	\$500	\$4,000
San Joaquin Farm Bureau	\$1,000	\$8,000
San Joaquin Partnership	\$3,000	\$24,000
Greater Stockton Chamber of Commerce	\$500	\$4,000
SJC Hispanic Chamber of Commerce		\$500
Stockton East Water Dist.	\$3,000	\$24,000
South San Joaquin Irrigation District	\$3,000	\$24,000
Totals	\$29,000	\$233,000

CONSENT AGENDA



AGENDA ITEM 12.02

February 7, 2012

To: Mayor and City Council

From: Michael E. Locke, Deputy City Manager

Subject: **CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF STOCKTON AND THE SAN JOAQUIN RAIL COMMISSION ESTABLISHING A FEE CREDIT**

RECOMMENDATION

It is recommended that the City Council approve by motion action a Memorandum of Understanding (MOU) between the City of Stockton and the San Joaquin Rail Commission recognizing a \$50,000 investment in the Urban Land Institute Advisory Panel as a credit against future fees for a yet to be determined construction project by the Rail Commission within the Greater Downtown Stockton area as defined (Attachment A).

Summary

The San Joaquin Rail Commission, Board of Directors, at its regular meeting of January 6, 2012 considered and approved a \$50,000 contribution to assist in funding the Urban Land Institute (ULI) Advisory Panel. The Board, in its favorable approval, conditioned the funding subject to the City approving a MOU to recognize the \$50,000 as a credit against future fees for a yet to be determined project to be constructed in the Greater Downtown Stockton.

The ULI Advisory Panel is a strategic initiative implementing the Economic Development component of the City Council's adopted goal for 2012-2013.

The strategic initiative for Downtown Revitalization was based on the ULI Advisory Panel. The study is focused on two specific elements;

- o The Public-Private Strategy for adaptive reuse and infill development for the central core of Downtown Stockton
- o The second area of emphasis is the strategy related to the defining of a Transit Oriented District and implementation techniques to effectuate the plan. The District would be centered around the Cabral Rail Station.

While the Board of Directors recognized the importance of the Advisory Panel's effort the concern was raised as to the use of the \$50,000 investment and the outcome of the ULI Panel. Discussion ensued as to other funding sponsors and the public-private participants in the project. The conclusion of the debate resulted in the conditional

CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF STOCKTON AND THE SAN JOAQUIN RAIL COMMISSION ESTABLISHING A FEE CREDIT

(Page 2 of 3)

authorization for \$50,000 subject to a MOU recognizing the funds as a credit against any agency project to be constructed within the Greater Downtown Stockton area.

DISCUSSION

The San Joaquin Regional Rail Commission will be the single largest contributing sponsor at their \$50,000 level. The forthcoming is a list of contributing sponsors;

San Joaquin Rail Commission	\$ 50,000
Stockton Downtown Alliance	\$ 10,000
San Joaquin Council of Governments	\$ 25,000
AG Spanos Corporation	\$ 10,000
Grupe Commercial Company	\$ 5,000
Fritz Grupe	\$ 20,000
San Joaquin Regional Transit District	\$ 5,000
City of Stockton – (personnel)	\$ 40,000
Total Contributions	\$165,000

The project when designed anticipated funding sources outside of cash contributions by the City. The dollar value of contributed staff is estimated for the purpose of budget management.

The inclusion of the sponsors is important to begin to build a stakeholder group who are engaged in the Greater Downtown Stockton Area. Their active participation in the study may provide the basis for an ongoing commitment to participate in a Task Force designed to facilitate the implementation recommendations of the Advisory Panel.

It has become painfully clear that Redevelopment as we have know it since 1959 will no longer be in place following the action of the California Supreme Court to uphold AB-26 setting forth the basis for dissolution of Redevelopment. Thus, there is an immediate need to develop and implement a strategy of public-private partnerships supported by the City of Stockton.

In recognition of the commitment of the Rail Commission, the City Council is being requested to recognized the funding advance as a credit against future fees for a yet to be determined project. To maintain a focus on Downtown, the MOU would provide the following;

CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF STOCKTON AND THE SAN JOAQUIN RAIL COMMISSION ESTABLISHING A FEE CREDIT

(Page 3 of 3)

- o The \$50,000 advance will be recognized as a credit for City of Stockton fees for accepted project by the San Joaquin Rail Commission within the Greater Downtown Stockton Area.
- o That the project eligibility would be initiated within ten years of the date of the Board's approval.

It is recommended that the City Council authorize the City Manager to enter into an MOU recognizing the Rail Commission funding as a credit against future fees for a Rail Commission Project in the Greater Downtown Stockton Area.

FINANCIAL SUMMARY

There is no direct impact on the City's General Fund.

Respectfully submitted,


MICHAEL E. LOCKE
DEPUTY CITY MANAGER

APPROVED


BOB DEIS
CITY MANAGER

MEL:pcv

Attachment A -Memorandum of Understanding (MOU) between the City of Stockton and the San Joaquin Rail Commission

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**MEMORANDUM OF UNDERSTANDING
(DEVELOPMENT FEES)**

THIS MEMORANDUM OF UNDERSTANDING is entered into on _____, by and between THE SAN JOAQUIN RAIL COMMISSION ("COMMISSION"), and the CITY OF STOCKTON ("CITY"), a municipal corporation.

WHEREAS, based upon actions taken at its regular meeting of January 6, 2012, the COMMISSION will contribute \$50,000 to the costs associated with the services provided to the CITY by the Urban Land Institute Advisory Panel; and

WHEREAS, COMMISSOIN has provided its contribution on the condition that the contribution be recognized by CITY as a credit against future development fees owed by the COMMISSION for any accepted project it shall undertake within Greater Downtown Stockton; and

WHEREAS, CITY is willing to provide the requested credit for any such project initiated within ten years following approval of this MOU by the Board of Directors of the COMMISSION.

NOW, THEREFORE, in consideration of these premises and the mutual understanding contained herein, the parties agree as follows:

1. The above recitals are true and correct.
2. CITY acknowledges that the COMMISSION has a credit against further development fees owed to CITY for any project COMMISSION may initiate within the City limits of the City of Stockton, and within Greater Downtown Stockton (the "Credit");
3. The CITY acknowledges that the Credit is in the amount of \$50,000.
4. The parties acknowledge that the Credit shall expire and no longer have any force or effect after ten years shall have elapsed from the date this MOU is approved by the Board of Directors of COMMISSION.
5. The parties agree that the term "Greater Downtown Stockton" shall have the meaning attributed thereto by that Memorandum of Agreement between the City, the Attorney General, and the Sierra Club, approved by the City Council on September 9, 2008, by Resolution No. 08-0371.
6. This MOU shall be binding upon the successors and assigns of the parties hereto.

7. The provisions of this MOU and any and all disputes arising therefrom shall be governed by the laws of the State of California.
8. This MOU contains the entire agreement between the parties with regard to the matter set forth and is only effective when approved by the parties and fully executed.
9. The undersigned represent and warrant that they are duly authorized to execute this MOU and bind the parties.

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

CITY OF STOCKTON, a municipal corporation

ATTEST:

By: _____
BOB DEIS
City Manager

BONNIE PAIGE
City Clerk of the City of Stockton

APPROVED AS TO FORM
AND CONTENT

SAN JOAQUIN RAIL COMMISSION

OFFICE OF THE
CITY ATTORNEY

By: _____

By: _____

Printed Name: _____

Its: _____

::ODMA\GRPWISE\COS.CA.CA_Library:54984.1

CONSENT AGENDA



AGENDA ITEM 12.03

February 7, 2012

TO: Mayor and City Council

FROM: Wendy S. Saunders, Director
Economic Development Department

SUBJECT: **DEDICATION OF TWO ACCESS EASEMENTS IN A PORTION OF MAIN STREET BETWEEN HUNTER STREET AND EL DORADO STREET FOR THE STATE COURTHOUSE PROJECT**

RECOMMENDATION

It is recommended that the Council adopt a resolution authorizing the City Manager to execute an Agreement and Grant of Easements with the State of California Administrative Office of the Courts (State) for two access easements in a portion of Main Street between Hunter Street and El Dorado Street for the State courthouse project.

SUMMARY

On August 18, 2009, the City Council adopted Resolution 09-0290 approving the donation agreement for Hunter Square Plaza to the State for the construction of a new courthouse. On December 8, 2009, per Council Resolution 09-0406, the City agreed to abandon Hunter Square Plaza. After City Council approved the donation agreement for Hunter Square Plaza to the State and the abandonment of Hunter Square Plaza, the State determined that additional area was required for a secure driveway for the courthouse. The additional area consists of a portion of Main Street which is presently being used as a pedestrian pathway. The subject of the proposed dedications is to provide the State with an exclusive access and secure yard area and a non-exclusive vehicle ingress and egress easement in a portion of Main Street between Hunter Street and El Dorado Street (Attachment A - Vicinity Map). The dedications will allow the new courthouse to have an exclusive driveway for inmate transport (Attachment B – Proposed Site Plan).

DISCUSSION

Background

Hunter Square Plaza is presently a landscaped open space with lawn and a large central fountain. Hunter Square has been selected as the preferred site for the courthouse and the State presently has started the design phase. Construction is anticipated to be completed no later than January 2015. After City Council approved the donation agreement for Hunter Square Plaza to the State and the abandonment of Hunter Square Plaza, the State determined that additional area was required for a secure driveway for the courthouse. The additional area consists of a portion of Main Street which is presently being used as a pedestrian pathway. The next step in the process is to dedicate an exclusive access easement and non-exclusive access easement for inmate transport purposes. This is the subject of the proposed dedications.

**DEDICATION OF TWO ACCESS EASEMENTS IN A PORTION OF MAIN STREET
BETWEEN HUNTER STREET AND EL DORADO STREET FOR THE STATE
COURTHOUSE PROJECT**

(Page 2)

NOTIFICATION

The City Charter requires the publication of a notice to grant or convey an interest in public property. Therefore, a "Notice of Intention to Grant or Sell Real Property Interest" has been published ten days prior to the Council action.

ENVIRONMENTAL CLEARANCE

This project is categorically exempt under the State CEQA Guidelines (Article 19 Section: 15301, Class 1). In accordance with Section 65402 of the Government Code, this activity/project has been determined to conform with the City's General Plan Policy Document, as amended

FINANCIAL SUMMARY

The subject property is being conveyed at no cost to the Grantee. The advertising costs necessary to publish the Notification, estimated to be \$500.00, will be paid from the project account 343-7381-640.20-52. This action does not impact the General Fund.

Respectfully submitted,



WENDY S. SAUNDERS, DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

WS:RC:slw

Attachment A – Vicinity Map
Attachment B – Proposed Site Plan

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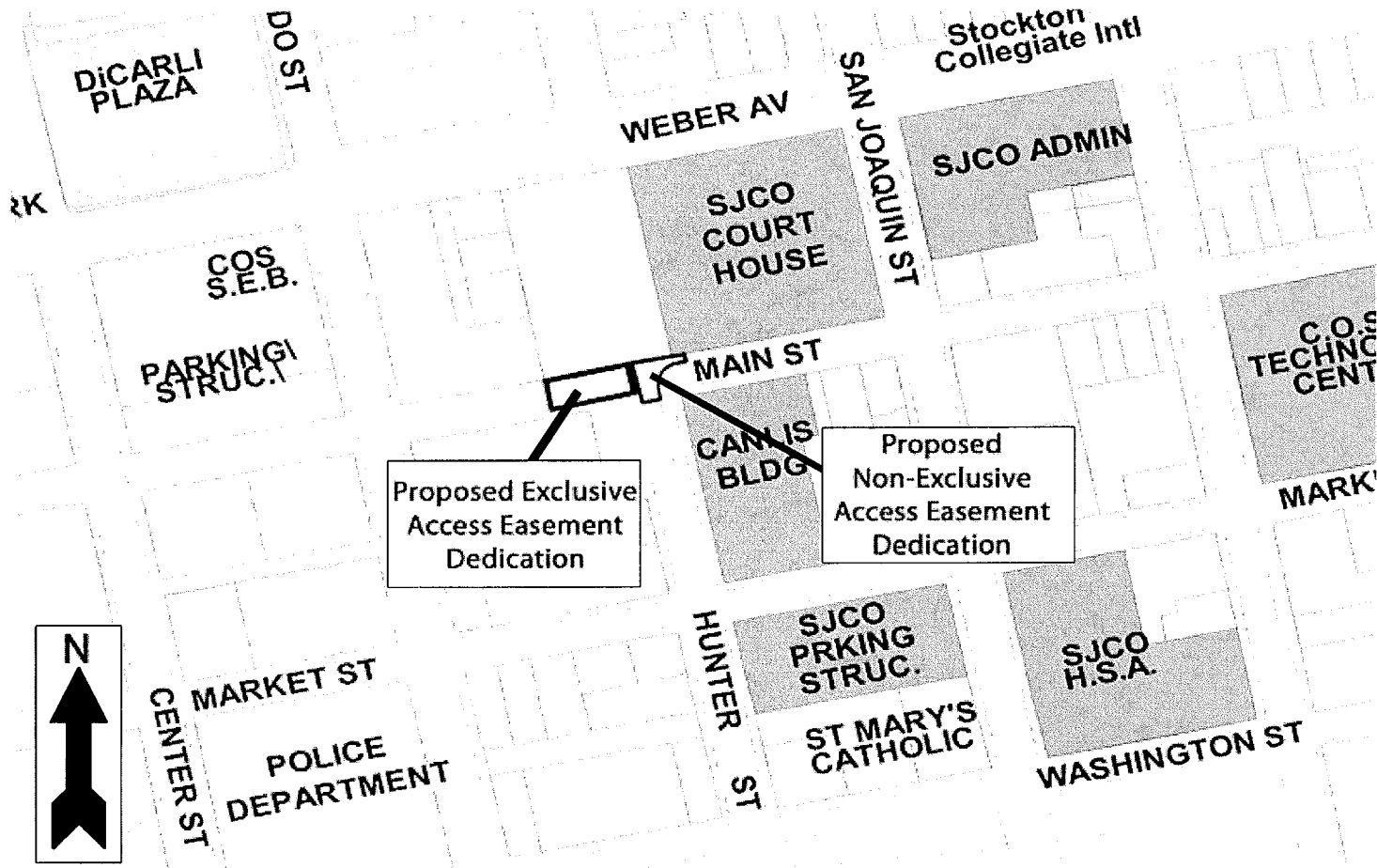
APPROVED



MICHAEL E. LOCKE
DEPUTY CITY MANAGER

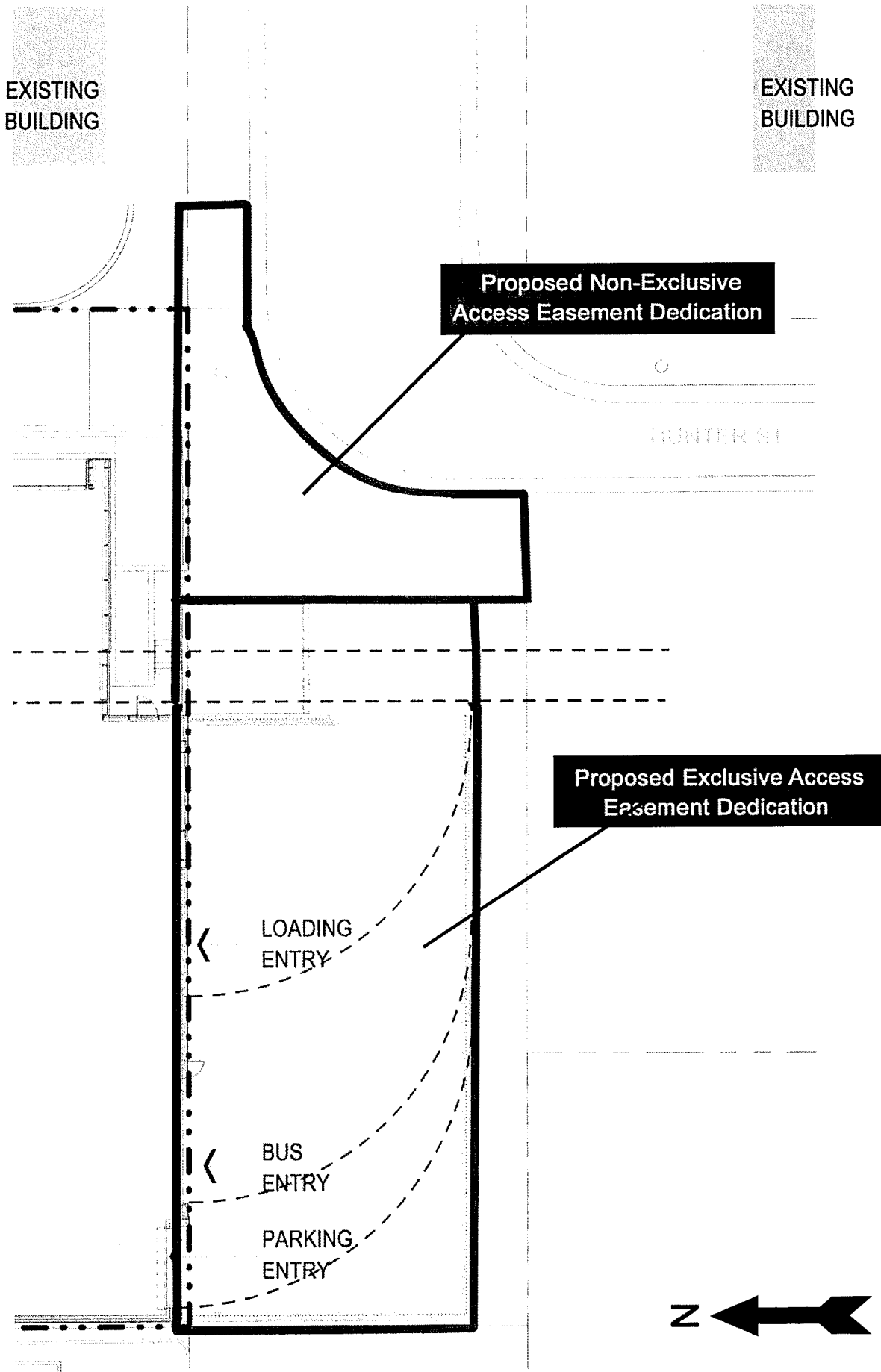
VICINITY MAP

Attachment A



PROPOSED SITE PLAN

ATTACHMENT B



STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE DEDICATION OF ONE EXCLUSIVE ACCESS EASEMENT AND ONE ACCESS EASEMENT TO THE STATE OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS OVER A PORTION OF A PARCEL OWNED BY THE CITY OF STOCKTON FOR THE NEW STOCKTON COURTHOUSE PROJECT VIA AN AGREEMENT AND GRANT OF EASEMENTS FROM THE CITY OF STOCKTON AND AUTHORIZING THE EXECUTION OF DOCUMENTS RELATED THERETO

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

1. The grant of one exclusive access easement and one access easement to the State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts (State), herein more particularly described in the Agreement and Grant of Easements attached as Exhibit "1" hereto and incorporated herein by this reference, over a portion of a parcel owned by the City of Stockton for the New Stockton Courthouse Project is hereby authorized and approved.

2. This easement is being granted to provide permanent access easement rights for improvements associated with the New Stockton Courthouse Project.

3. This project is categorically exempt under the State CEQA Guidelines (Article 19, Section 15301, Class 1). In accordance with Section 65402 of the Government Code, this activity/project has been determined to conform to the City's General Plan Policy Document, as amended.

4. Pursuant to the requirements of Article V, Section 510, of the Stockton City Charter, a "Notice of Intention to Grant or Sell Real Property Interest" has been duly published.

5. The City Manager is hereby authorized and directed to execute the documents necessary to carry out the purposes hereof and to cause recordation of the appropriate documents.

City Atty:
Review
Date February 1, 2012

6. The City Manager is hereby authorized and directed to take whatever actions are appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED February 7, 2012.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton

WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
c/o Judicial Council of California
Administrative Office of the Courts
Office of Court Construction and Management
455 Golden Gate Avenue, 8th floor
San Francisco, CA 94102
Attn: Eunice Calvert-Banks, Manager, Real Estate

OFFICIAL STATE BUSINESS – EXEMPT FROM RECORDING FEES PURSUANT TO GOV'T. CODE SECTION 27383 AND DOCUMENTARY TRANSFER TAX PURSUANT TO REVENUE AND TAXATION CODE SECTION 11922.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AND GRANT OF EASEMENTS

Agency: Judicial Council of California,
Administrative Office of the Courts
Project: New Stockton Courthouse (#39-F1)
DGS Project Parcel: 10686

APN(S):

THIS AGREEMENT AND GRANT OF EASEMENTS (“**Agreement**”) dated _____, 2011, by and between the **CITY OF STOCKTON** a municipal corporation, hereinafter referred to as the Grantor and the **STATE OF CALIFORNIA, acting by and through the JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS** herein referred to as the State, is entered into with reference to the following facts:

A. The Grantor is the owner of that certain real property (“**Easement Area A**”), more particularly described in **Exhibit “A”** and (“**Easement Area B**”), more particularly described in **Exhibit “B”** attached hereto and incorporated herein.

B. The State is acquiring title to that certain real property (“**State Property**”) which is more particularly described in **Exhibit “C”** attached hereto and incorporated herein, concurrent with the recordation of this Agreement.

C. In accordance with Government Code 15853, the State is authorized to acquire the Easement Area “A” and Easement Area “B”.

D. State will be constructing a new courthouse upon the State Property (“**New Stockton Courthouse**”) which will be occupied and used by the Superior Court of California, County of San Joaquin (“**Court**”) for court purposes.

E. Employees and representatives of the State require Easement Area A and Easement Area B for ingress, egress, and passage of persons, automobiles, garbage

trucks, delivery trucks, buses, and other vehicles and equipment from the adjacent public street known as Main Street to the State Property once the New Stockton Courthouse is constructed to access the secured, underground courthouse parking area, loading dock, trash bins, and the areas for holding prisoners attending Court sessions.

F. In addition, the State requires Easement Area A to maintain a “secure yard” as depicted on the Secure Yard Diagram attached hereto as **Exhibit “D”** and incorporated herein. The secure yard improvements will include concrete and decorative paving, landscape and planting materials including trees, concrete planters, security bollards, metal fencing, vehicle security gate, pole mounted cameras, loop detectors, conduit and utilities below paving, irrigation system for planters, lighting, intercom systems including bollards, and foundations for planters and bollards and other improvements beneficial to maintaining the security of the New Stockton Courthouse (together the “Secure Yard Improvements”).

G. In addition, the State needs Easement Area B to maintain security improvements as depicted on the Security Improvements Diagram attached hereto as **Exhibit “E”** which will include concrete and decorative paving, benches, security bollards, pedestal-mounted parking access control, conduit and utilities below paving, loop detectors, knox box for emergency access, fire department connection, trees and irrigation systems, cameras, and lighting and other improvements beneficial to maintaining the security of the New Stockton Courthouse (together the “Security Improvements”).

H. The Grantor is willing to grant an exclusive easement on, over, and across Easement Area A to the State to access the secured, underground courthouse parking area, and the areas for holding prisoners attending Court sessions and to maintain the Secure Yard Improvements.

I. The Grantor is willing to grant a non-exclusive easement on, over, and across Easement Area B to the State to access the secured, underground courthouse parking area, and the areas for holding prisoners attending Court sessions from Main Street and to maintain the Security Improvements.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto agree as follows:

1. Grant of an Exclusive Easement on, over and across Easement Area A to the State. The **CITY OF STOCKTON**, a municipal corporation, hereby grants to the **State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts**, an exclusive easement on, over, and across Easement Area A to maintain the Secure Yard Improvements and for ingress, egress, and passage of persons, automobiles, garbage trucks, delivery trucks, buses, and other vehicles and equipment from the adjacent public street known as Main Street to State Property for access to the secured, underground courthouse parking area, the loading

dock, the trash bins, and the areas for holding prisoners attending Court sessions located within the New Stockton Courthouse.

2. Grant of a Non-Exclusive Easement on, over and across Easement Area B to the State. The **CITY OF STOCKTON**, a municipal corporation, hereby grants to the **State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts**, a non-exclusive easement on, over, and across Easement Area B to maintain the Security Improvements and for ingress, egress, and passage of persons, automobiles, garbage trucks, delivery trucks, buses, and other vehicles and equipment from the adjacent public street known as Main Street to State Property for access to the secured, underground courthouse parking area, the loading dock, the trash bins, and the areas for holding prisoners attending Court sessions located within the New Stockton Courthouse.

3. Easements are Appurtenant to State Property. Easement Area A and Easement Area B are personal to State, except that they are appurtenant to the State Property and shall pass with any conveyance of the State Property.

4. Performance of Maintenance. The State shall perform, or cause to be performed, the Maintenance (as defined below in this section) of all hardscaped and landscaped surfaces, lighting and other utilities, fencing, fixtures, and all Secure Yard Improvements and Security Improvements located at any time within Easement Area A and Easement Area B. As used in this Agreement, “**Maintenance**” shall mean all maintenance, operations, repairs, and replacement of the Secure Yard Improvements and Security Improvements occasioned by: (a) ordinary use and normal wear and tear; (b) acts or omissions by persons other than the Parties to this Agreement or their employees, contractors, agents, tenants, or licensees (whether or not insured); and/or (c) forces or events beyond the reasonable control of the Parties (whether or not insured).

5. Governing Law. This Agreement, and the Parties’ performance under this Agreement, will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.

6. Integration. This Agreement contains the entire agreement of the Parties with respect to the subject matter described herein, and supersedes all previous communications, representations, understandings, and agreements, whether verbal, written, express, or implied, between the Parties with respect to such subject matter.

7. Other Uses in the Easement Area B. The Grantor reserves to itself all other uses in Easement Area B, including without limitation the Grantor’s right to use and to grant to third parties the right to use Easement Area B, including surface, subsurface and aerial, for and purpose or purposes which do not interfere with the uses granted to the State under this Agreement.

8. Notices Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this Agreement to the following persons:

If to City: City of Stockton
425 N. El Dorado Street
Stockton, California, 95202-1997
Attention: City Manager
Telephone: (209)
Facsimile: (209)

With a copy to:

If to AOC: Judicial Council of California
Administrative Office of the Courts
Office of Court Construction and Management
Design and Construction Services
2860 Gateway Oaks Drive, Suite 400
Sacramento, California 95833
Attn: Steve Sundman, Project Manager
Telephone: (916) 263-1378
Facsimile: (916) 263-2342

With a copy to: Judicial Council of California
Administrative Office of the Courts
Office of Court Construction and Management
Attn: Assistant Director, Real Estate
455 Golden Gate Avenue
San Francisco, CA 94102
Telephone: (415) 865-4040
Facsimile: (415) 865-8885

In addition, all audit requests and notices by the City related to termination of this Agreement, and any default notice or other notice alleging any breach or default by the State of this Agreement must also be sent to:

Administrative Office of the Courts
Attention: Senior Manager, Business Services
455 Golden Gate Avenue
San Francisco, California 94102-3688
Facsimile: (415) 865-4326

A Party may change its address for notice under this Agreement by giving written notice to the other Party in the manner provided in this section 8. Any notice or communication sent under this section 8 will be deemed to have been duly given as follows: (1) if by personal delivery, on the date actually received by the addressee or its representative at the address provided above; or (2) if sent by certified U.S. mail, return receipt requested, on the first business day that is at least three calendar days after the date deposited in the U.S. Mail; or (3) if sent by facsimile transmission, upon electronic confirmation of good receipt by the receiving facsimile machine and provided that the original of such notice or communication is also sent to the recipient by overnight courier for delivery on the next business day following the day on which the facsimile transmission is sent. Facsimile notice received after normal business hours of the recipient will be deemed received at 9:00 a.m. on the first business day after the date on which the facsimile notice was confirmed electronically.

[Signatures on following page]

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

GRANTOR:

**CITY OF STOCKTON,
a public body, corporate and politic**

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
BONNIE PAIGE
CITY CLERK
Date: _____

APPROVE AS TO FORM AND CONTENT:

Office of City Attorney:
JOHN M. LUEBBERKE
CITY ATTORNEY

By: _____
Name: John M. Luebberke
Title: City Attorney
Date: _____

STATE:

**STATE OF CALIFORNIA, acting by
and through the JUDICIAL COUNCIL
OF CALIFORNIA, ADMINISTRATIVE OFFICE
OF THE COURTS**

**APPROVED AS TO FORM:
Administrative Office of the Courts,
Office of the General Counsel**

By: _____
Name: Ronald G. Overholt
Title: Interim Administrative Director
of the Courts
Date: _____

By: _____
Name: Leslie G. Miessner
Title: Supervising Attorney, Real Estate Unit
Date: _____

EXHIBIT "A"
EXCLUSIVE ACCESS EASEMENT FOR APN 149-020-15
LEGAL DESCRIPTION
Easement Area "A"

That certain real property, situated in the City of Stockton, County of San Joaquin, State of California, being a portion of Rancho Del Campo De Los Franceses, and being a portion of Hunter Street Plaza lying South of the northerly line of Main Street (60.6 feet in width), said property being more particularly described as follows:

COMMENCING at the southwesterly corner of Block 3 East of Center, also known as 'Public Square' as shown on the 'Map of the City of Stockton' filed August 17, 1860 in the Office of the Recorder of the County of San Joaquin; thence along the northerly line of Main Street, being 60.6 feet in width, and also being the southerly line of that portion of Hunter Street Plaza now abandoned by that certain Stockton City Council Resolution No. 09-0406 and recorded as Instrument No. 2009-180354, San Joaquin County Records, South 78°21'39" West 51.80 feet to the **POINT OF BEGINNING**; thence leaving last said lines South 11°38'21" East 50.60 feet, thence South 78°21'39" West 130.00 feet; thence North 11°38'21" West 50.60 feet to the southwesterly corner of said abandoned Hunter Street Plaza; thence along the southerly line thereof North 78°21'39" East 130.00 feet to the **POINT OF BEGINNING**.

Containing 6,578 square feet (0.151 acres) more or less.

The Basis of Bearings for this description is the City of Stockton Horizontal Control System per Book 35 of Surveys at Page 5, Official Records of San Joaquin County.

End of Description

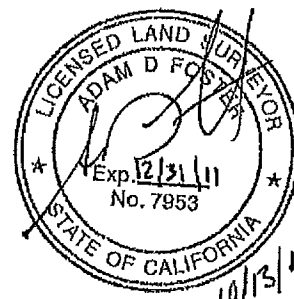


EXHIBIT "B"
ACCESS EASEMENT FOR APN 149-020-15
LEGAL DESCRIPTION
Easement Area "B"

That certain real property, situated in the City of Stockton, County of San Joaquin, State of California, being a portion of Rancho Del Campo De Los Franceses, and being a portion of Hunter Street Plaza lying South of the northerly line of Main Street (60.6 feet in width), said property being more particularly described as follows:

BEGINNING at the southwesterly corner of Block 3 East of Center, also known as 'Public Square' as shown on the 'Map of the City of Stockton' filed August 17, 1860 in the Office of the Recorder of the County of San Joaquin; thence along the southerly line of said Block 3, also being the northerly line of Main Street, being 60.6 feet in width, North 78°21'39" East 18.00 feet; thence leaving last said lines South 11°38'21" East 10.00 feet; thence South 78°21'39" West 13.00 feet to the beginning of a curve, concave southeasterly, having a radius of 36.00 feet; thence westerly, southwesterly, and southerly along said curve, through a central angle of 90°00'00" an arc distance of 56.55 feet (said curve being subtended by a chord bearing South 33°21'39" West 50.91 feet); thence South 11°38'21" East 14.60 feet; thence South 78°21'39" West 20.80 feet; thence North 11°38'21" West 60.60 feet to the southerly line of that portion of Hunter Street Plaza now abandoned by that certain Stockton City Council Resolution No. 09-0406 and recorded as Instrument No. 2009-180354, San Joaquin County Records; thence along said line North 78°21'39" East 51.80 feet to the **POINT OF BEGINNING**.

Containing 2,029 square feet (0.047 acres) more or less.

The Basis of Bearings for this description is the City of Stockton Horizontal Control System per Book 35 of Surveys at Page 5, Official Records of San Joaquin County.

End of Description

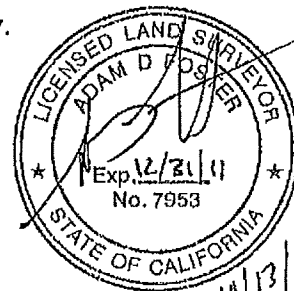


EXHIBIT "C"

LEGAL DESCRIPTION OF STATE PROPERTY

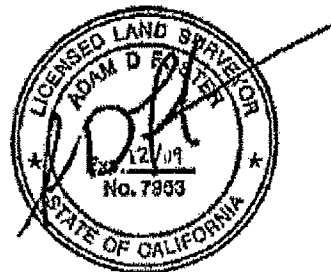
That certain real property situated in the City of Stockton, County of San Joaquin, State of California, being a portion of Rancho Del Campo De Los Franceses, and being that portion of Hunter Street Plaza lying North of the northerly line of Main Street (60.6 feet in width), said property being more particularly described as follows:

BEGINNING at the northwesterly corner of Block 3 East of Center, also known as 'Public Square' as shown on the 'Map of the City of Stockton' filed August 17, 1860 in the Office of the Recorder of the County of San Joaquin; thence southerly along the westerly line of said Block 3, South $11^{\circ}40'21''$ East 303.00 feet to the southwest corner of said Block 3; thence westerly along the westerly prolongation of the south line of said Block 3, South $78^{\circ}21'39''$ West 181.80 feet to the southeasterly corner of Block 2 East of Center; thence northerly along the easterly line of said Block 2 North $11^{\circ}40'21''$ West 303.00 feet to the northeasterly corner of said Block 2, also being a point on the southerly line of Weber Avenue, being 111 feet in width; thence easterly along said line North $78^{\circ}21'39''$ East 181.80 feet to the Point of Beginning.

Containing 55,085 square feet (1.265 acres) more or less.

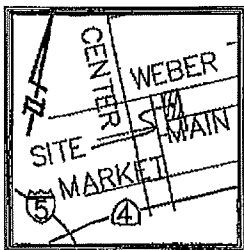
The Basis of Bearings for this description is the City of Stockton Horizontal Control System per Book 35 of Surveys at Page 5, Official Records of San Joaquin County.

End of Description



6-8-09

4548A



VICINITY MAP
NOT TO SCALE

City of Stockton

APN 149-020-15
Doc.#2009-180354
San Joaquin County

AREA of Easement
6,578±Sq.Ft./0.151±Ac.

APN 149-020-12

Southwesterly Corner
Doc. #2009-180354

Southerly Line of Abandoned
Hunter Street Plaza per
Doc. #2009-180354,
San Joaquin County

S11°40'21"E

303.00'

Point of Commencement
SW Corner Block 3
East of Center

Point of Beginning

S78°21'39"W

181.80'

51.80'

N11°38'21"W
50.60'

S11°38'21"E
50.60'

City of Stockton
MAIN STREET

60.60'

60.60'

S78°21'39"W 130.00'

SPE FD HOLDINGS, LLC

APN 149-030-06

A portion of Rancho Del Campo De Los Franceses
(NW ¼ Sec. 11, T.1N., R.6E., M.D.B.&M.)

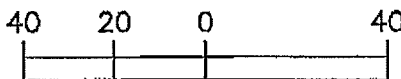
Basis of Bearings
City of Stockton
Horizontal Control
System per 35
Surveys 5.

131.3'



HUNTER STREET

County of San Joaquin
APN 149-140-24
Doc.#2008-191345
San Joaquin County



(IN FEET)
1 INCH = 40 FEET

PSOMAS

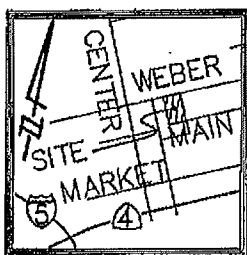
1075 Creekside Ridge Drive, Suite 200
Roseville, CA 95678
(916) 788-8122 (916) 788-0800 (FAX)

NO.	REV. DATE	BY	APRVD
DWG. BY ADF 10/13/2011			
CK. BY			
SCALE 1" = 40'			

**CITY OF STOCKTON
EXCLUSIVE ACCESS EASEMENT
FOR APN 149-020-15**

**CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS**

APPROVED BY <i>[Signature]</i>	
CITY ENGINEER	
DATE 10/24/11	DRAWING NO.



VICINITY MAP
NOT TO SCALE

County of San Joaquin
 APN 149-160-01
 Doc.#2008-191345
 San Joaquin County

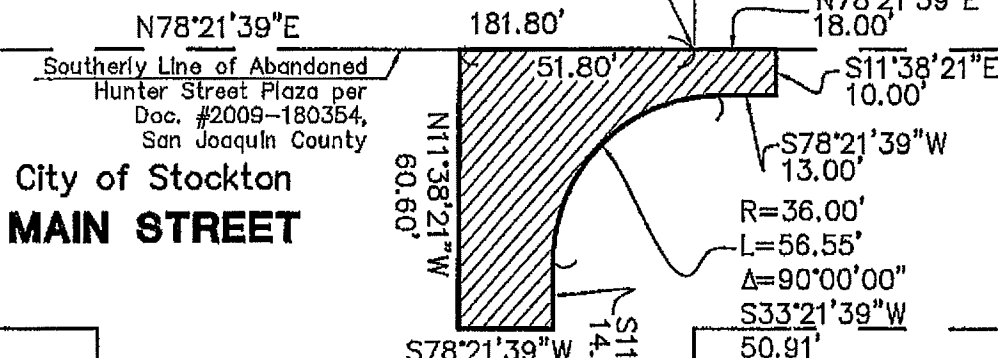
City of Stockton
 APN 149-020-15
 Doc.#2009-180354
 San Joaquin County

A portion of Rancho Del Campo De Los Franceses
 (NW 1/4 Sec. 11, T.1N., R.6E., M.D.B.&M.)

AREA of Easement
 2,029±Sq.Ft./0.047±Ac.

Basis of Bearings
 City of Stockton
 Horizontal Control
 System per 35
 Surveys 5.

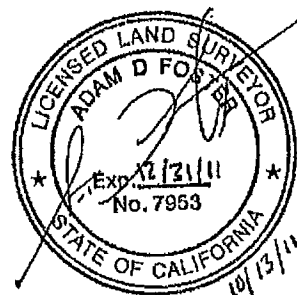
Point of Beginning
 SW Corner Block 3
 East of Center



City of Stockton
MAIN STREET

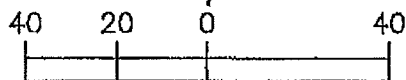
HUNTER STREET
 (Width=131.3')

County of San Joaquin
 APN 149-140-24
 Doc.#2008-191345
 San Joaquin County



PSOMAS

1078 Creekside Ridge Drive, Suite 200
 Roseville, CA 95678
 (916) 788-8122 (916) 788-0800 (FAX)



(IN FEET)
 1 INCH = 40 FEET

NO.	REV. DATE	BY	APRVD.
DWG. BY ADF 10/13/2011			
CK. BY			
SCALE 1" = 40'			

**CITY OF STOCKTON
 ACCESS EASEMENT
 FOR APN 149-020-15**
 CITY OF STOCKTON
 DEPARTMENT OF PUBLIC WORKS

APPROVED BY	<i>[Signature]</i>	
CITY ENGINEER		
DATE	10/24/11	DRAWING NO.

AOC ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) SS.

On this _____ day of _____, in the year 20__, before me, a notary public in and for the State of California, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

NOTARY PUBLIC
State of California

(seal)

AOC ACKNOWLEDGMENT

COUNTY ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF SAN JOAQUIN) SS.

On this _____ day of _____, in the year 20__, before me, a notary public in and for the State of California, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

NOTARY PUBLIC
State of California

(seal)

COUNTY ACKNOWLEDGMENT

CERTIFICATE OF ACCEPTANCE

Agency: Judicial Council of California,
Administrative Office of the Courts
Project: New Stockton Courthouse (#39-F1)
DGS Parcel: 10686
Assessor's Parcel No.:

This is to certify that, pursuant to sections 15853, 27281 and 70301 et seq. of the California Government Code, the interest in real property conveyed by the Agreement and Grant of Easements dated _____ from the **THE CITY OF STOCKTON**, a municipal corporation, to the STATE OF CALIFORNIA, acting by and through the JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS, is hereby accepted by the undersigned officer on behalf of the State Public Works Board pursuant to the approval action by said Board and duly adopted on _____. The Grantee consents to the recordation thereof by its duly authorized officer.

Accepted
STATE OF CALIFORNIA
STATE PUBLIC WORKS BOARD

By: _____
Jerry Leong
Assistant Administrative Secretary

Dated: _____

Consent
JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS

By: _____
Ronald G. Overholt
Interim Administrative Director of the Courts

Dated: _____

Approved as to form:
ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF THE GENERAL COUNSEL

By: _____
Leslie G. Miessner
Supervising Attorney, Real Estate Unit

Dated: _____

CONSENT AGENDA



AGENDA ITEM 12.04

February 7, 2012

TO: Mayor and City Council

FROM: Jeff Willett, Interim Director of Municipal Utilities Department

SUBJECT: **AMENDMENT TO PROFESSIONAL SERVICES CONTRACT WITH ROBERTSON-BRYAN, INC., FOR A STUDY OF NITRATE IMPACTS TO RECEIVING WATER QUALITY FROM THE REGIONAL WASTEWATER CONTROL FACILITY DISCHARGE**

RECOMMENDATION

It is recommended that the City Council authorize by motion amending the Professional Services Master Contract with Robertson-Bryan, Inc. for \$125,417 to conduct a study providing the required field sampling, data collection and analysis, and report to submit to the Regional Water Quality Control Board regarding the effects of the City's wastewater discharge of nitrate to the San Joaquin River.

Summary

Robertson-Bryan, Inc. (RBI) has an existing contract through December 2, 2013 to assist the City with specialized and complex technical and regulatory issues regarding the City's wastewater discharge. As a part of these services, City staff has been working with RBI to address regulatory issues for the wastewater permit renewal due in 2013. Currently there is a high potential for a much lower permit limit for nitrate, including a reduced mixing zone for dilution in the San Joaquin River being imposed in the 2013 permit. Our current nitrate discharge limit is 40 milligrams per liter, and the State is considering limits of 10 milligrams per liter with new permits.

As a result, staff requested RBI, under their existing contract, to develop a Field Study Work Plan that has now been formally approved by the Regional Water Quality Control Board (RWQCB). The study is intended to demonstrate that acceptable nitrate levels can be achieved by implementing process modifications proposed in the 2011 Regional Wastewater Control Facility (RWCF) Capital Improvement and Energy Management Plan to avoid additional capital and Operations and Maintenance (O&M) costs. The RWQCB requires this field study be performed before considering any variation to future nitrate discharge limits, including maintaining a mixing zone in the river. Staff has met with the RWQCB and they support this approach to evaluate the RWCF nitrate discharge.

DISCUSSION

Background

In August 2011, City Council adopted the RWCF Capital Improvement and Energy Management Plan. The cost of compliance for the potential reduced nitrate standard of

AMENDMENT TO PROFESSIONAL SERVICES CONTRACT WITH ROBERTSON-BRYAN, INC., FOR A STUDY OF NITRATE IMPACTS TO RECEIVING WATER QUALITY FROM THE REGIONAL WASTEWATER CONTROL FACILITY DISCHARGE

Page 2

10 milligrams per liter (included recently in other permits issued to wastewater facilities) was identified in the Capital Improvement and Energy Management Plan at approximately \$18 million in capital cost, and over \$1 million in annual O&M costs. To avoid these costs, reconfiguration of the existing RWCF wetlands process to reduce nitrate discharge was proposed in the Capital Improvement and Energy Management Plan. Further studies to confirm this alternative were recommended in the Capital Improvement and Energy Management Plan.

Present Situation

The City operates the RWCF under a National Pollutant Discharge Elimination System permit (NPDES No. CA0079138, Order No. R5-2008-0154), adopted by the RWQCB on October 23, 2008. In granting dilution credits and associated mixing zones, the RWQCB applies requirements specified in the State Water Resources Control Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (commonly referred to as the Statewide Implementation Plan). While the Statewide Implementation Plan specifically addresses implementation of water quality standards for priority toxic pollutants, the RWQCB implements the Statewide Implementation Plan mixing zone provisions for non-priority pollutants, including nitrate.

Nitrate is regulated by the RWQCB through application of the California Department of Public Health maximum contaminant level (MCL) of 10 milligrams per liter as nitrogen. However, RWQCB has also been concerned with the effects of elevated nitrate discharges on biologically sensitive aquatic resources or critical habitats, development of objectionable bottom deposits, and other nuisance conditions by the ability of elevated nitrogen levels to cause algae blooms in river systems. This nitrate study has been developed to address those concerns and will be submitted as part of the Report of Waste Discharge required by the RWQCB for the 2013 National Pollutant Discharge Elimination System permit renewal. The study will take 12 months to complete to account for seasonal variations of water quality in the San Joaquin River.

FINANCIAL SUMMARY

Sufficient funds are available in the following Fiscal Year 2011-2012 accounts:

RWCF Wastewater Operation	\$125,417	431-4331-574.20-65
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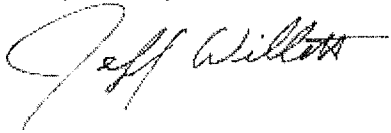
There is no impact to the General Fund from this action.

February 7, 2012

AMENDMENT TO PROFESSIONAL SERVICES CONTRACT WITH ROBERTSON-BRYAN, INC., FOR A STUDY OF NITRATE IMPACTS TO RECEIVING WATER QUALITY FROM THE REGIONAL WASTEWATER CONTROL FACILITY DISCHARGE

Page 3

Respectfully submitted,



JEFF WILLETT
INTERIM DIRECTOR OF MUNICIPAL UTILITIES

JW:LP:bg:cla

APPROVED



MICHAEL E. LOCKE
DEPUTY CITY MANAGER

Attachment A – Amendment to Master Services Contract with Condor

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**AMENDMENT TO
PROFESSIONAL SERVICES MASTER CONTRACT
TO PROVIDE TECHNICAL SUPPORT AND COORDINATION
FOR
WASTEWATER NPDES PERMIT COORDINATION AND TECHNICAL STUDIES**

This Amendment to Professional Services is made and entered into on _____ by and between the City of Stockton, a municipal corporation, hereinafter referred to as "CITY," and Robertson-Bryan, Inc., hereinafter referred to as "FIRM," to provide CITY a Nitrate Field Study to support the 2013 wastewater NPDES permit renewal.

WITNESSETH:

WHEREAS, CITY and FIRM entered into a Professional Services Master Contract for Technical Support and Coordination for Wastewater NPDES Permit Coordination and Technical Studies on December 19, 2008, and desire to amend said Contract by specifying FIRM to provide preparation of a Nitrate Field Study to support the 2013 wastewater NPDES permit renewal.

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 is hereby amended to include a Nitrate Field Study as per Exhibit "1", attached hereto and by reference made a part hereof.
2. Section 2, Compensation is hereby amended in the amount of \$125,417 to include Exhibit "1."
3. Section 3, Term is hereby amended to include Exhibit "1."
4. Section 7, Notices, is hereby amended to provide that FIRM shall notify the City of Stockton Municipal Utilities Department, Larry Parlin, Deputy Director/Wastewater, on all matters related to the work.
5. All other terms and conditions of the Contract not expressly amended by this document shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to Contract to be executed on the date and year first written above.

ATTEST:

CITY OF STOCKTON, a municipal corporation

BONNIE PAIGE
City Clerk of the City of Stockton

By: _____
BOB DEIS
City Manager

APPROVED AS TO FORM:

"FIRM"

JOHN LUEBBERKE
CITY ATTORNEY

ROBERTSON-BRYAN, INC.

By: _____
City Attorney

By: _____

Title: _____

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December 21, 2011

DELIVERED BY EMAIL

Mr. Larry Parlin
Deputy Director of Wastewater
Department of Municipal Utilities
City of Stockton
2500 Navy Drive
Stockton, CA 95206

Subject: Proposal to Implement the City of Stockton's Regional Wastewater Control Facility's Nitrate Field Study Work Plan in Support of Maintaining Dilution Credit for Nitrate in the NPDES Permit

Dear Mr. Parlin:

Per your request, please accept this proposal from Robertson-Bryan, Inc. (RBI) to provide professional services related to implementing a biologically based study to assess the effects of the Regional Wastewater Control Facility (RWCF) discharge of nitrate plus nitrite to the San Joaquin River. This proposal is for Phase 2 of the Nitrate Study and will implement the data collection, data analysis, and reporting tasks provided in the *Work Plan for the Evaluation of the Potential Effects of Nitrate Plus Nitrite Discharged from the Stockton Regional Wastewater Control Facility on the San Joaquin River* (Work Plan, prepared for the Central Valley Regional Water Quality Control Board (Regional Water Board) by RBI on behalf of the City of Stockton (City) in November 2011 under Phase 1 of the study. The draft Work Plan was presented to the Regional Water Board on October 6, 2011, and a revised version that addressed comments provided by Board staff was issued on November 30, 2011. The Final Work Plan was approved by the Regional Water Board on December 9, 2011.

In accordance with the Work Plan, RBI will implement a study of the RWCF discharge of nitrate plus nitrite as provided in the scope of work detailed below to compare physical, chemical, and biological conditions within and outside areas influenced by the RWCF discharge.

9888 Kent Street
Elk Grove CA 95624
Phone 916.714.1801
Fax 916.714.1804

881 Cumorah Court
Placerville CA 95667
Phone 530.295.1265
Fax 530.295.8174

1942 Broadway Suite 314
Boulder CO 80302
Phone 303.938.3088
Fax 303.938.6850

www.robertson-bryan.com

I. PROJECT TEAM ORGANIZATION

RBI will be responsible for project oversight and management, data collection, and reporting. The primary RBI contact and project manager for the study is:

David Thomas
Fisheries Biologist/Water Quality Specialist
Robertson-Bryan, Inc.
9888 Kent Street
Elk Grove, CA 95624
(916) 714-1805
(916) 714-1804 (FAX)
dave@robertson-bryan.com

All benthic macroinvertebrate (BMI) taxonomic identification will be conducted by BioAssessment Services (BAS), a member of the California Macroinvertebrate Laboratory Network (CAMLNet), as recommended by the California Department of Fish and Game (CDFG) in its California Stream Bioassessment Protocol (CSBP). PhycoTech, an environmental consulting company located in St. Joseph, Michigan, that is recognized as one of the leading phycology (i.e., study of algae and plankton) companies in the country, will perform the analyses of algae samples. The City currently utilizes California Laboratory Services (CLS), an analytical laboratory located in Rancho Cordova, for nitrate plus nitrite analyses and, therefore, CLS will be utilized for conducting the laboratory analyses of nitrate plus nitrite, total nitrogen, total phosphorous, and dissolved ortho-phosphate under this study. The Fishery Foundation of California (FFC) will provide a boat and one staff member to operate the boat and provide additional assistance with field data collection.

II. SCOPE OF WORK – WORK PLAN IMPLEMENTATION

This scope of work consists of tasks necessary to implement the Work Plan and includes tasks for preparing and mobilizing equipment and field data collection; laboratory coordination and data review; database development and data analyses; literature review and summary; modeling; report preparation; and meetings and project management. A detailed description of each task is provided below.

TASK 1: FIELD DATA COLLECTION

RBI will collect field data according to the methods specified in the Work Plan. Field sampling will consist of collection of data relating to the: 1) benthic macroinvertebrate (BMI) community, 2) periphyton community, 3) algal community, 4) submerged and emergent aquatic macrophyte communities, and 5) water quality (primarily nitrate, nitrite, total nitrogen, dissolved oxygen, pH, temperature, electrical conductivity, total phosphorus, and dissolved orthophosphate). In accordance with the Work Plan, data will be collected at 11 sampling stations in the San Joaquin River. The sampling stations consist of 4 locations in

the near-field mixing zone of the RWCF discharge (Zone 1), 4 locations in the area upstream and downstream (outside of Zone 1) of tidal movement of RWCF effluent (Zone 2), and 3 locations in the control reach upstream of Zone 2, beyond the extent of tidal mixing of RWCF effluent. Per the Work Plan, sample collection for each parameter to be monitored will occur bi-monthly over a one-year period according to the schedule provided in **Table 1**.

Table 1. Schedule for collection of algae, BMI, submerged and emergent vegetation, and water quality data from the San Joaquin River. "X" denotes months in which the parameter will be collected or monitored.

Month ¹	Algae ²	BMI ²	Nitrate And Phosphorous ^{2,3}	Submerged and Emergent Vegetation	Temperature, DO, pH, EC, Depth, and Clarity
January				X	X
February					
March	X	X	X	X	X
April					
May	X	X	X	X	X
June					
July	X	X	X	X	X
August					
September				X	X
October					
November	X	X	X	X	X
December					

¹ Initial month of sampling will depend on the date of approval of the Work Plan.
² Parameters monitored at stations 1A-1, 1B-1, 2A-1, 2B-1, 3A, and 3B only.
³ Includes nitrate plus nitrite, total nitrogen, total phosphorous, and dissolved ortho-phosphate.

Field sampling for each event will occur on one day, for a total of six days of sampling. This scope of work and budget allocates hours for one RBI staff and one FFC staff to conduct field data collection from a boat provided and captained by FFC staff. In addition, this task allocates hours for RBI acquisition and preparation of the necessary equipment and materials for each field data collection event, including boat, sample collection equipment and containers, calibration of measuring devices, field logs, camera, and additional gear and supplies. Additional information regarding individual parameters that will be monitored is provided in the following subsections.

Algae Sampling. In accordance with the Work Plan and Table 1, RBI staff will collect algae samples using standard grab samples at a minimum of 7 of the 11 monitoring sites in March, May, July, and November (i.e., two samples in Zone 1 nearest the outfall, another two samples in Zone 2, and three samples in the reference reach upstream – see work plan p. 6-8).

In order to have a sufficiently robust experimental design for addressing the study questions, a total of 9 samples may need to be collected (i.e., three in Zones 1 and 2 and three in the reference site). Final determination on number of field samples needed, and the number of laboratory sub-samples analyzed from those samples, will be made in consultation with the project team biostatistician after reviewing the variability in the initial samples collected and analyzed. For the purposes of this scope and budget, 9 samples are assumed at this time. Following each sampling event, all algae samples will be preserved according to laboratory recommendations and shipped overnight under chain-of-custody (COC) to PhycoTech for analyses. This subtask allocates direct expenses for PhycoTech to analyze the samples collected at six locations during four individual sampling events and to provide analytical reports summarizing the results at all six locations for each sampling event.

BMI Sampling. BMI sampling will be conducted at three stations along a transect established perpendicular to the channel and flow using a hand-operated dredge (e.g., petite Ponar® dredge) deployed from a boat. Samples will be collected at the following three stations along each transect:

1. 1/4th of the transect width,
2. Midpoint (i.e., 1/2 of the width) of the transect, and
3. 3/4th of the transect width.

The three samples collected at each transect will be combined to form one composite sample representing each transect. The samples will be preserved, labeled, and delivered to BAS for taxonomic identification and analysis of community metrics. This subtask allocates direct expenses for BAS to process BMI samples collected at seven of the 11 monitoring sites during four individual sampling events and to provide analytical reports summarizing the results at all six locations for each sampling event. In addition, this subtask allocates direct expenses for equipment and supplies, including a petite Ponar® dredge, sample bottles, and preservative (i.e., ethanol solution).

Submerged and Emergent Vegetation Characterization. Visual observations and qualitative characterizations will be made of submerged and emergent aquatic macrophytes that exist along established transects at each of the 11 monitoring sites during all six sampling events. Samples of species present may be collected for species identification purposes, as appropriate, and their relative abundance at each site will be characterized based on observations and photo-documentation. This subtask will occur at the identified sampling sites during each of the six field sampling dates.

Water Quality Monitoring. During each of the six field outings, RBI staff will measure water temperature dissolved oxygen (DO), pH, and electrical conductivity (EC) at all 11 monitoring sites using a handheld (e.g., YSI, HydroLab) water quality meter. In addition, water depth will be measured at all 11 monitoring sites using a boat-mounted depth meter and water clarity will be measured using a standard Secchi disc during all sampling events. In accordance with the Work Plan and Table 1, grab samples will be collected at six of the

sampling stations during four of the sampling events (March, May, July, and November) for nitrate plus nitrite, total nitrogen, total phosphorous, and dissolved ortho-phosphate. The samples will be stored and preserved according to CLS' guidelines and delivered under COC within the specified holding time following sampling.

TASK 2: LABORATORY COORDINATION AND REPORT REVIEW

Under this task, RBI will coordinate with each of the analytical laboratories prior to each field data collection event to schedule analyses, obtain clean sample collection containers, and arrange for sample deliveries to the laboratories. In addition, RBI will review analytical reports provided by BAS, PhycoTech, and CLS to ensure all requested analyses were conducted and data quality objectives were met, and communicate any necessary corrections associated with the reports to the laboratories.

TASK 3: DATABASE DEVELOPMENT AND DATA ANALYSIS

RBI will develop and maintain a comprehensive database for storage and analyses of all data collected during this study. RBI will analyze and interpret the data collected at each of the sampling sites during the six field sampling events (January, March, July, and November) to characterize the BMI, algae, and macrophytes communities that exist at each site seasonally, and to determine if differences observed within vs. outside the influence of the RWCF discharges: (a) can be attributed to nitrate plus nitrite levels in the discharge, and (b) whether observed river differences "exceed" conditions defined by the SIP that must be met in order to be granted a mixing zone. The expertise of staff at BAS and PhycoTech will assist RBI in interpreting the results of the BMI and algae community surveys. In addition, RBI will subconsult with Dr. Dan Hayes, a biostatistician in the Department of Fisheries and Wildlife at Michigan State University, on statistical analyses of the data collected.

TASK 4: LITERATURE REVIEW AND SUMMARY

In order to determine the potential nitrogen-related impacts of the RWCF discharge on State Water Project facilities, a literature search of available information regarding total nitrogen impacts on SWP canals and reservoirs will be conducted to determine the potential for the RWCF nitrate discharge levels to affect far-field algal blooms. In addition, a literature search and review of available site-specific information associated with submerged and emergent vegetation will be conducted, as requested by the Regional Water Board, to determine if the area of vegetative coverage are substantial enough to restrict the movement of aquatic life, adversely affect habitat for special-status species, produce undesirable or nuisance species, or otherwise cause a nuisance.

TASK 5: MODEL RWCF NITRATE CONTRIBUTION AT DRINKING WATER INTAKES

The California Department of Water Resources' (DWR) Delta Simulation Model (DSM2), a one-dimensional hydrodynamic model of the Delta, will be used to model the fraction of water at drinking water intakes in the Delta that is constituted, on the average, by RWCF

effluent. This flow-fraction information will then be used to determine the incremental amount of nitrate that would be contributed from the RWCF to each drinking water intake under conditions where the RWCF is regulated to: (1) a 10 mg/L nitrate effluent limitation; and (2) a higher nitrate effluent limitation (e.g., 30 mg/L), based on an appropriate dilution credit and mixing zone. Hours allocated under this task include time to set up the required model runs and output, run the model, post-process the output data, analyze the results, and write up the findings.

TASK 6: REPORT PREPARATION

Following the completion of all sampling events and receipt of the associated laboratory reports from BAS, PhycoTech, and CLS, RBI will prepare a detailed administrative draft study report with supporting appendices documenting the results of the study for City staff review and comment. RBI will respond to up to two (2) rounds of comments in preparation of a final report for submittal to the Regional Water Board. RBI also will prepare a cover letter for City letterhead that interprets the results of this study, as well as the results of previous dilution studies, regarding the suitability for a mixing zone and dilution credit for nitrate plus nitrite to be granted.

TASK 7: MEETING WITH REGIONAL WATER BOARD STAFF

Following completion of Task 6, RBI will attend one (1) meeting to present and discuss the study results with Regional Water Board NPDES permitting staff and City staff.

TASK 8: PROJECT MANAGEMENT

This task provides hours for the Principal-in-Charge and Project Manager to oversee and direct RBI staff efforts on each task during implementation of the study. In addition, this task provides time for project coordination by phone, email, and fax with other project team members, budget and schedule tracking, and other duties to coordinate/administer the project.

III. SCHEDULE

RBI can begin providing professional services upon receipt of a signed contract or written authorization to proceed. RBI understands that the final study report will be submitted to the City for inclusion in the Report of Waste Discharge that is expected to be prepared and submitted to the Regional Water Board in early 2013. Consequently, in order to conduct all field sampling, analyze the samples, and prepare the final report, RBI is anticipating the initial field data collection to occur in January 2012.

IV. CONTRACT AND BILLING ARRANGEMENT

RBI recommends a time-and-materials contract not to exceed **\$125,417** without written authorization to provide the professional services defined in this scope of work (see

Mr. Larry Parlin
City of Stockton
December 21, 2011
Page 7



Attachment 1 for a detailed project budget). RBI will invoice monthly according to RBI's 2012 rates (Attachment 2) for all work activities completed in the prior month.

If you have any questions regarding this scope of work and budget, please do not hesitate to contact me at (916) 714-1802. We look forward to assisting you on this important study.

Sincerely,

A handwritten signature in cursive script that reads 'Michael D. Bryan'.

Michael D. Bryan, Ph.D.
Partner/Principal Scientist

Attachment 1: RBI Budget
Attachment 2: 2012 Fee Schedule



ATTACHMENT 1

RBI Budget

Robertson-Bryan, Inc.						
	Principal Scientist	Senior Scientist I	Project Scientist II	Project Scientist III	Staff Scientist I	RBI Subtotal
PROFESSIONAL SERVICES						
Task 1: Field Data Collection	2	6	88		8	\$ 16,892.00
Task 2: Laboratory Coordination and Report Review	1	4	12			\$ 2,888.00
Task 3: Database Development and Data Analysis						
Database Development		4	20			\$ 3,972.00
Data Analyses	10	8	16	16		\$ 8,920.00
Task 4: Literature Review and Summary	2	2	24			\$ 4,708.00
Task 5: Modeling RWCF Nitrate Contribution at Drinking Water Intakes	2	6		80		\$ 14,948.00
Task 6: Report Preparation						
Prepare Administrative Draft Report	8	16	80		8	\$ 18,688.00
Prepare Final Report	2	4	12		2	\$ 3,368.00
Task 7: Meet with Regional Water Board Staff	10		14			\$ 4,482.00
Task 8: Project Management	16	22	10	4		\$ 9,738.00
Total Hours:	53	72	276	100	18	
Rate:	\$ 220.00	\$ 178.00	\$ 163.00	\$ 168.00	\$ 130.00	
Labor Subtotal:	\$ 11,660	\$ 12,816	\$ 44,988	\$ 16,800	\$ 2,340	\$ 88,604
DIRECT EXPENSES						
Dr. Dan Hayes, MSU, Biostatistician						\$ 3,000
Sample collection supplies (bottles, preservative, Secchi disc, supplies)						\$ 250
PhycoTech algae sample analyses (9 samples x 4 events x \$300/sample)						\$ 10,800
Shipping for algae samples (4 shipments x \$200/shipment)						\$ 800
BAS BMI sample analyses (7 samples x 4 events x \$400/sample)						\$ 11,200
Ponar dredge rental (4 events x \$75/event)						\$ 300
CLS laboratory analyses (6 samples x 4 events x \$139/event)						\$ 3,336
Boat rental (\$150/day x 6 days)						\$ 900
FFC boat captain						\$ 4,200
Mileage						\$ 400
5% administrative fee on subconsultant labor and laboratory services						\$ 1,627
Subtotal Direct Expenses						\$ 36,813
TOTAL BUDGET						\$ 125,417

ATTACHMENT 2
2012 FEE SCHEDULE

Charges for project work performed by Robertson-Bryan, Inc. (RBI) will be calculated and billed at the hourly rates shown below.

PROFESSIONAL SERVICES	RATE/HOUR
◆ Managing Partner	\$230.00
◆ Principal Engineer/Scientist	\$220.00
◆ Resource Director	\$195.00
◆ Senior Engineer/Scientist II	\$185.00
◆ Senior Engineer/Scientist I	\$178.00
◆ Project Engineer/Scientist III	\$168.00
◆ Project Engineer/Scientist II	\$163.00
◆ Project Engineer/Scientist I	\$145.00
◆ Staff Engineer/Scientist II	\$135.00
◆ Staff Engineer/Scientist I	\$130.00
◆ Technical Analyst	\$120.00
◆ Graphics/GIS	\$115.00
◆ Administrative Assistant	\$80.00
◆ Intern	\$55.00

Up to ten percent (10%) of subcontractor charges will be added to cover administrative costs. Hourly rates will be increased by a minimum of fifty percent (50%) for depositions, trials, and hearings.

INVOICING AND PAYMENTS

Invoices will be issued on a monthly basis for all work performed on a project. Payment is due upon receipt of the invoice.

CONSENT AGENDA



AGENDA ITEM 12.05

February 7, 2012

TO: Mayor and City Council

FROM: Blair Uling, Interim Chief of Police

SUBJECT: **GRANT AWARD FOR THE LAW ENFORCEMENT AND SPECIALIZED UNITS - VIOLENCE AGAINST WOMEN ACT PROGRAM**

RECOMMENDATION

It is recommended that the City Council adopt a resolution to approve grant funding from the California Emergency Management Agency in the amount of \$178,978 for the Law Enforcement and Specialized Units - Violence Against Women Act Program; appropriate a 25% cash match in the amount of \$59,659, for a total program cost of \$238,637; and direct the City Manager to execute all required contracts or agreements with the granting agency, provide additional information and furnish such documents as may be required, execute all documents and amendments or extensions pertaining to the grant project, and make all required appropriations in compliance with, and for the purposes stated in, the project contract.

Summary

In November 2011, the Police Department applied for \$156,606 in grant funding from the California Emergency Management Agency for the Law Enforcement and Specialized Units - Violence Against Women Act Program to enhance the collaborative effort currently in place between the Stockton Police Department and the Women's Center of San Joaquin County. On December 28, 2011, the Police Department was notified by the California Emergency Management Agency that the application was approved for an increased amount of \$178,978 for the period of January 1, 2012, through December 31, 2012. As specified in the application material, the grant requires a 25% local match. An appropriation in the amount of \$59,659 is required bringing the grant total to \$238,637.

DISCUSSION

Background

The City of Stockton has received grant monies from California's Emergency Management Agency since 2007 for its Violence Against Women Act Law Enforcement and Specialized Units program, helping to maintain funding for the collaboration between the Stockton Police Department and Women's Center of San Joaquin County. This Specialized Unit focuses on advocacy for victims and other assistance needed to successfully prosecute and end domestic violence.

**GRANT AWARD FOR THE LAW ENFORCEMENT AND SPECIALIZED UNITS -
VIOLENCE AGAINST WOMEN ACT PROGRAM**

(Page 2)

In November 2011, the Police Department submitted an application to the California Emergency Management Agency requesting grant funding under its Law Enforcement and Specialized Units - Violence Against Women Act Program. The grant application requested funding for a full-time Detective and a part-time Community Service Officer in the Stockton Police Department, and a full-time Victim Advocate and overhead from the Women's Center of San Joaquin County. On December 28, 2011, the Police Department was notified their application was approved for funding and that the amount awarded included an additional \$22,372. The grant is available for a three-year funding cycle, the future two years contingent upon funding in the State budget and the successful implementation of the grant program. The Police Department has been the recipient of this grant for the past five years.

Present Situation

The Police Department submitted a grant application and received approval for funding from the California Emergency Management Agency for the grant period of January 1, 2012, through December 31, 2012.

Grant funds will be used to 1) maintain one full-time Police Officer and one part-time Community Service Officer to help investigate domestic violence and sexual assault cases, 2) maintain one full-time Domestic Violence Prevention Coordinator from the Women's Center of San Joaquin, housed in the Police Department's Investigation Division to help develop and deliver training to police and medical professionals and to provide advocacy assistance for women from populations where such crimes are traditionally underreported, and 3) train 258 law enforcement professionals and first responders in recognition and treatment of victims and the use of resource referral cards developed by the Women's Center of San Joaquin County. As part of the grant funding an operational Memorandum of Understanding between the Police Department and the Women's Center of San Joaquin County has been established.

FINANCIAL SUMMARY

An appropriation of \$59,659 is required as a cash match (25%) for the program bringing the total project amount for the period of January 1, 2012, through December 31, 2012, to \$238,637. Sufficient funds are available in the Police Department's Asset Seizure Account No. 023-6401-992.90-20. To provide the match, the following transfers are necessary:

February 7, 2012

**GRANT AWARD FOR THE LAW ENFORCEMENT AND SPECIALIZED UNITS -
VIOLENCE AGAINST WOMEN ACT PROGRAM**

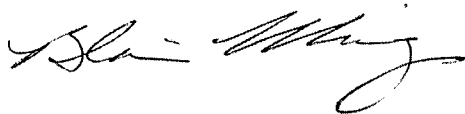
(Page 3)

<u>From:</u>		<u>Amount</u>
Account #023-6401-992.90-20	State Asset Seizure Fund	\$ 59,659
 <u>To:</u>		
Account #025-6471-492.90-10	OES Domestic Violence Grant	\$ 59,659

The following appropriations are necessary to authorize OES Domestic Violence Grant revenue and expenditures:

Transfer Account #023-6401-992.90-20	\$59,659
Revenue Account #025-6471-331.21-00	\$178,978
Transfer In Account #025-6471-492.90-10	\$ 59,659
Expenditure Account #025-6471-530	\$ 178,978

Respectfully submitted,



BLAIR ULRING
INTERIM CHIEF OF POLICE

APPROVED


Bob BOB DEIS
CITY MANAGER

BU:EM

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STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF \$178,978 FROM THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY FOR THE LAW ENFORCEMENT AND SPECIALIZED UNITS - VIOLENCE AGAINST WOMEN ACT GRANT PROGRAM; APPROPRIATING A TWENTY-FIVE PERCENT CASH MATCH IN THE AMOUNT OF \$59,659; AND AUTHORIZING THE EXECUTION OF GRANT DOCUMENTS

The City of Stockton (City) desires to continue participation in a certain program designated as the Law Enforcement and Specialized Units Violence Against Women Act grant program to be funded in part from grant funds administered by the California Emergency Management Agency (CalEMA); and

Following the City's submittal of the Law Enforcement and Specialized Units Program grant proposal, CalEMA awarded \$178,978 for the grant program for the period of January 1, 2012, through December 31, 2012; and

The Law Enforcement and Specialized Units Program grant requires a 25% local match, and an appropriation in the amount of \$59,659 is required; and

The Police Department, as the lead agency for the Law Enforcement and Specialized Units program, collaborates with the Women's Center of San Joaquin County to reduce violent crimes against women; now, therefore,

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

1. The grant award from CalEMA is hereby accepted in the amount of \$178,978 for the Law Enforcement and Specialized Units Violence Against Women Act grant program, and the required 25% cash match in the amount of \$59,659 is hereby authorized, for a total program cost of \$238,637.

2. The City Manager is hereby authorized, on behalf of the City, to execute all required contracts or agreements with the granting agency, provide additional information, and furnish such documents as may be required; execute all documents and amendments or extensions pertaining to the grant project; and make all required appropriations in compliance with, and for the purposes stated in, the project contract.

3. The City Manager is hereby authorized to establish all required accounts and make any and all expenditures, appropriations, transfers, and/or distributions of funds on behalf of the City, as may be appropriate to carry out the purpose and intent of this Resolution.

City Atty: _____
Review GDP
Date February 1, 2012

4. Grant funds received hereunder shall not be used to supplant ongoing law enforcement expenditures.

5. Any personnel positions approved for the funding under this proposal shall be filled without unnecessary delay and shall not be subject to local hiring freezes.

PASSED, APPROVED, and ADOPTED February 7, 2012.

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton

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CONSENT AGENDA



AGENDA ITEM 12.06

TO: Mayor and City Council

FROM: Blair Ullring, Interim Chief of Police

SUBJECT: **GRANT AWARD FOR THE PROJECT SAFE NEIGHBORHOODS PROGRAM**

RECOMMENDATION

It is recommended a resolution be adopted to approve a grant award from the California Emergency Management Agency in the amount of \$132,550 for the Project Safe Neighborhoods Program.

Summary

The Police Department is seeking Council approval to participate in a Project Safe Neighborhoods Grant that would fund, for one year, one full-time police officer assigned to the FBI Gun/Gang Task Force.

DISCUSSION

Background

In 2006, the Police Department was successful in receiving Project Safe Neighborhoods funds for overtime missions to support gun sweeps and target criminals armed with guns and to establish a gun hotline, wherein citizens can report and receive awards of up to \$500 for the arrest of criminals armed with handguns or the confiscation of illegal firearms.

On December 22, 2011, the Police Department was notified of the opportunity to apply for another round of grant funding for the purpose of creating safer neighborhoods through sustained reduction in crime associated with gang and gun violence.

Present Situation

The U.S. Attorney's Office has contracted with the California Emergency Management Agency (CalEMA) to administer the Project Safe Neighborhoods grant program. The Stockton Police Department was recently notified that \$51,346 in 2009 grant program funds and \$81,204 in 2011 grant program funds are available for Fiscal Year 2011/12. The grant funds will be used to fund the salary and benefits of one full-time police officer assigned to the Alcohol Tobacco Firearms (ATF) Anti-Gang/Gun Task Force and Federal Bureau of Intelligence (FBI) Task Force. Participation in these multi-agency task forces helps the Stockton Police Department better respond to gang and gun violence.

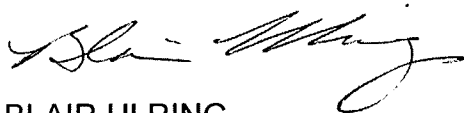
GRANT AWARD FOR THE PROJECT SAFE NEIGHBORHOODS PROGRAM

(Page 2)

FINANCIAL SUMMARY

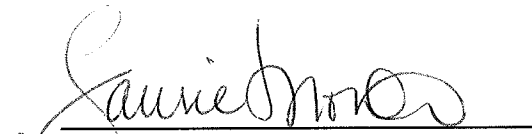
There is no match requirement for this grant. The Administrative Services Department has established Revenue Account Number 025-6470-331.21-00 and Expenditure Account Number 025-6470-530 for this grant. An appropriation in the amount of \$132,550 is required for the one-year grant period.

Respectfully submitted,



BLAIR ULRING
INTERIM CHIEF OF POLICE

APPROVED


for BOB DEIS
CITY MANAGER

BU:em

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STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF \$132,550 FROM THE CALIFORNIA EMERGENCY MANAGEMENT AGENCY THROUGH THE UNITED STATES ATTORNEY'S OFFICE, EASTERN DISTRICT OF CALIFORNIA FOR THE PROJECT SAFE NEIGHBORHOODS PROGRAM AND AUTHORIZING THE EXECUTION OF GRANT DOCUMENTS

The City of Stockton (City) desires to continue participation in the Project Safe Neighborhoods Program to create safer neighborhoods currently plagued by gang and gun violence, to be funded in part from grant funds administered by the California Emergency Management Agency (CalEMA) through the United States Attorney's Office, Eastern District of California; and

Following the City's submittal of the Project Safe Neighborhoods grant proposal, CalEMA awarded \$132,550 for the grant program for the period of October 1, 2011, through September 30, 2012; and

The Project Safe Neighborhoods Program does not require a cash match; and

With these funds, the Police Department will fund one full-time police officer assigned to the Alcohol Tobacco Firearms Anti-Gang/Gun Task Force and FBI Task Force; now, therefore,

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

1. The grant award from the California Emergency Management Agency is hereby accepted in the amount of \$132,550 for the Project Safe Neighborhoods grant program.

2. The City Manager is hereby authorized, on behalf of the City, to execute all required contracts or agreements with the granting agency, provide additional information, and furnish such documents as may be required; execute all documents and amendments or extensions pertaining to the grant project; and make all required appropriations in compliance with, and for the purposes stated in, the project contract.

3. The City Manager is hereby authorized to establish all required accounts and make any and all expenditures, appropriations, transfers, and/or distributions of funds on behalf of the City, as may be appropriate to carry out the purpose and intent of this Resolution.

4. Grant funds received hereunder shall not be used to supplant ongoing law enforcement expenditures.

City Atty: _____
Review *GOP*
Date February 1, 2012

5. Any personnel positions approved for the funding under this grant shall be filled without unnecessary delay and shall not be subject to local hiring freezes.

PASSED, APPROVED, and ADOPTED February 7, 2012.

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton

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CONSENT AGENDA



AGENDA ITEM 12.07

February 7, 2012

TO: Mayor and City Council

FROM: Robert Murdoch, Director
Public Works Department

SUBJECT: **DESIGN SERVICES CONTRACT AMENDMENT WITH SIEGFRIED
ENGINEERING, INC. - MARCH LANE/EBMUD TRAIL GREENSCAPE,
PHASE 2 (PROJECT NO. 11-25)**

RECOMMENDATION

It is recommended that the City Council approve a motion authorizing the City Manager to execute an Amendment to the Professional Services Master Contract with Siegfried Engineering, Inc., in the amount of \$69,900 for March Lane/EBMUD Trail Greenscape, Phase 2 (Project No. 11-25) to design bike path improvements and landscaping in the East Bay Municipal Utility District (EBMUD) right-of-way located between Pacific Avenue and Hillsboro Way.

It is further recommended that the motion authorize the City Manager to take appropriate actions to carry out the purpose and intent of this motion.

Summary

March Lane/EBMUD Trail Greenscape, Phase 2 (Project No. 11-25) will provide bike path improvements and install landscaping in the EBMUD corridor paralleling March Lane between Pacific Avenue and Hillsboro Way (Attachment A).

Public Works has secured \$125,000 in Measure K Non-competitive Bicycle Program funds from the San Joaquin Council of Governments (SJCOG). The funds secured will provide preliminary engineering, environmental clearance, and final design of the Phase 2 improvements. The funds provide for 100% of the cost for this phase of the project.

Two consultants were considered for the necessary design and survey services: Callander Associates and Siegfried Engineering, Inc. After consideration of the scope and fee submitted by each, staff recommends that the City Council authorize an Amendment to the Professional Services Master Contract with Siegfried Engineering, Inc. in the amount of \$69,900 to provide for the Phase 2 design.

DISCUSSION

Background

The March Lane/EBMUD Trail Greenscape, Phase 2 (Project No. 11-25) is the next phase of a project to improve the 3-mile EBMUD right-of-way paralleling March Lane.

DESIGN SERVICES CONTRACT AMENDMENT WITH SIEGFRIED ENGINEERING, INC. FOR MARCH LANE/EBMUD TRAIL GREENSCAPE, PHASE 2 (PROJECT NO. 11-25)

(Page 2)

The second phase project limits are in the EBMUD right-of-way between Pacific Avenue and Hillsboro Way, an approximate 1-mile length.

The first EBMUD segment addressed EBMUD right-of-way between Pershing Avenue and Precissi Lane. Siegfried Engineering, Inc. volunteered preliminary engineering and design services for bike path and landscaping improvements for the first phase which is known as the March Lane Bicycle & Pedestrian Trail Greenscape Project. Siegfried's volunteered services helped the City to secure state competitive grant funding for the construction of project improvements. The final design was completed in 2011, and the project will begin construction in Spring/Summer 2012.

For Phase 2, Public Works has secured \$125,000 in Measure K Non-competitive Bicycle Program funds from SJCOG. The funds secured will provide preliminary engineering, environmental clearance, and final design for bike path improvements in the remaining un-landscaped portions of the EBMUD corridor paralleling March Lane, between Pacific Avenue and Hillsboro Way. This approximate 1-mile long project is identified as Phase 2 of the March Lane/EBMUD Trail Greenscape Project (Attachment A). The funds will pay 100 percent of the cost for the design phase of this project.

Present Situation

Phase 2 will create 12 acres of shaded and improved bike path within the noted limites by realigning portions of the existing bike path, installing pedestrian amenities adjacent to the path, installing ADA upgrades at bike path/street intersections, along with landscaping and irrigation. The following improvements are included in the design:

- Re-aligning portions of the bike path, and installing "spur" trails connecting the bike path to existing sidewalk;
- Installing benches and trash/recycling receptacles;
- Adding wheelchair ramps and landings at street crossings;
- Providing landscaping consisting of trees, turf, and shrubs, including drought-tolerant and low-maintenance plants; and
- Installing an irrigation system.

The purpose of this project is to beautify an important City transportation corridor, improve functionality for bicyclists and pedestrians, and enhance the overall transportation experience.

Completing the design of Phase 2 will make this project ready to capture construction funding from available grant programs. Having already received state grant funding on another segment of the EBMUD corridor, this project is a strong candidate to receive future funding from state and federal funding sources.

DESIGN SERVICES CONTRACT AMENDMENT WITH SIEGFRIED ENGINEERING, INC. FOR MARCH LANE/EBMUD TRAIL GREENSCAPE, PHASE 2 (PROJECT NO. 11-25)

(Page 3)

Council adopted Resolution No. 10-0242 on July 13, 2010, approving Professional Services Master Contracts for Design, Geotechnical, Testing, Plan Review, and Survey Services with a number of firms. These firms provide services as needed to accommodate the City's aggressive project delivery schedules. The contracts are for a period of five years. The scope of services and fee are negotiated on a project specific basis. If the negotiated fee for a particular project exceeds Charter limits, a contract amendment is submitted to Council for consideration.

Staff has reviewed the firms identified for design and survey services in the consultant vendor pool and determined that Callander Associates and Siegfried Engineering, Inc. have the best project-specific experience and general qualifications to be considered for performing the required services on time and budget in accordance with the City's objectives.

Scope and fees were requested from both Callander Associates and Siegfried Engineering, Inc. Callander Associates provided a fee of \$74,340 while Siegfried Engineering, Inc. provided a fee of \$69,900. After reviewing the scope and fees submitted by each consultant, Public Works' staff recommends that the City Council authorize an Amendment to the Professional Services Master Contract with Siegfried Engineering, Inc. in the amount of \$69,900 (Attachment B).

FINANCIAL SUMMARY

The \$125,000 has already been received from the San Joaquin Council of Governments. The following financial actions are required:

Establish Revenue Estimate

80-6723-337.30-07		
Measure K Non-Competitive Funds, March Lane EBMUD Bike Trail		\$125,000

Appropriate to:

80-6723-640.10-10		
Measure K, March Lane EBMUD Bike Trail, Salaries		\$ 25,000

80-6723-640.20-61		
Measure K, March Lane EBMUD Bike Trail, Engineering Services		\$100,000

These actions will provide adequate capacity to award the \$69,900 contract to Siegfried Engineering, Inc, plus provide for contingencies and staff costs. The City Manager is

February 7, 2012

**DESIGN SERVICES CONTRACT AMENDMENT WITH SIEGFRIED ENGINEERING,
INC. FOR MARCH LANE/EBMUD TRAIL GREENSCAPE, PHASE 2
(PROJECT NO. 11-25)**

(Page 4)

authorized to record these transactions and undertake any additional financial actions that are necessary and appropriate to carry out the intent of the motion.

Taking the recommended actions will have no impact on the City's General Fund.

Respectfully submitted,



ROBERT MURDOCH, DIRECTOR
PUBLIC WORKS DEPARTMENT

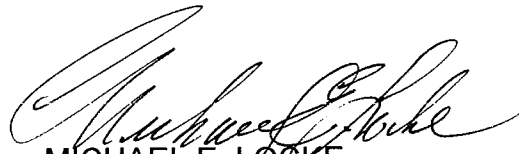
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Attachment A – Project Vicinity Map

Attachment B – Amendment to Professional Services Master Contract

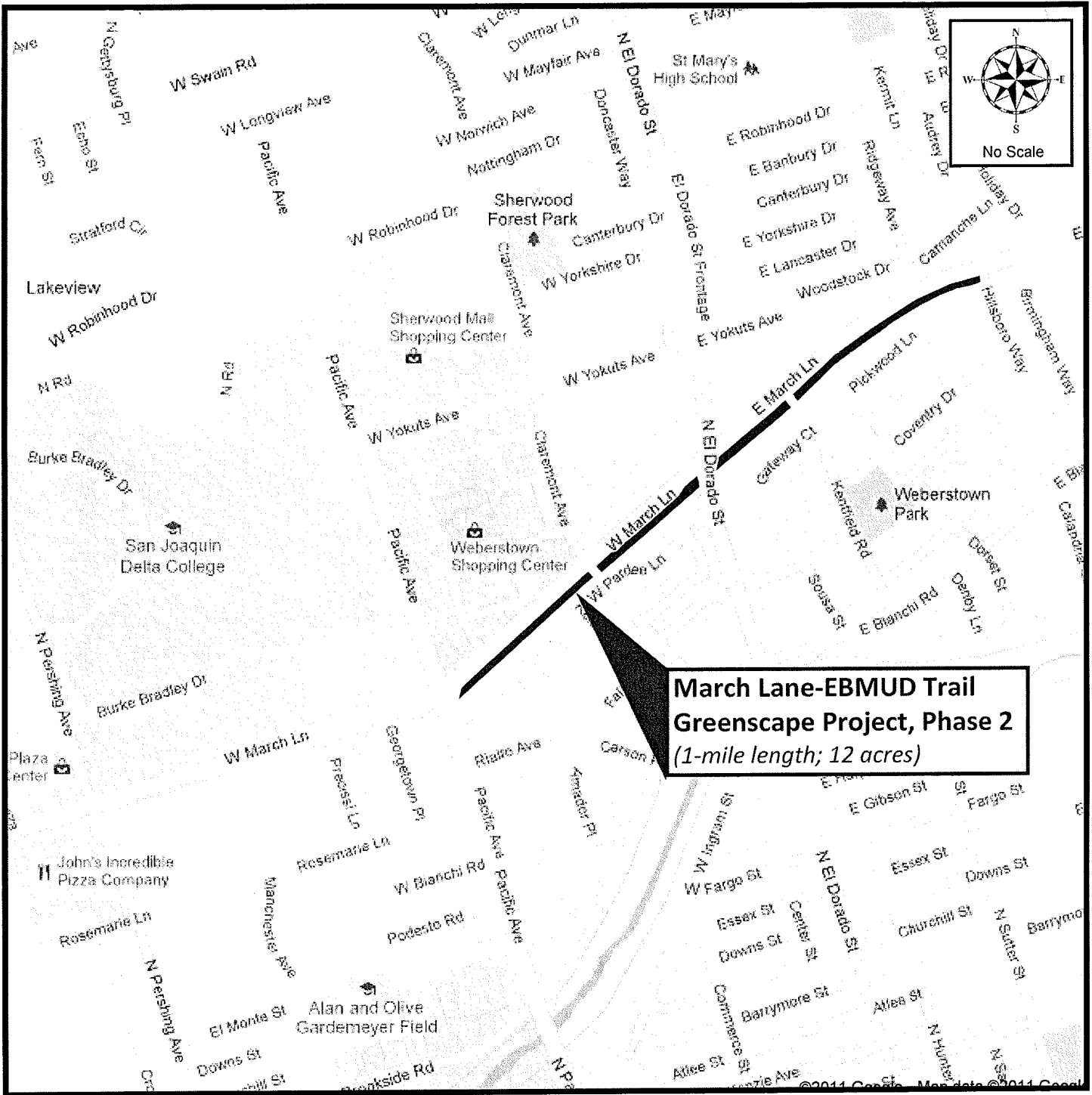
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APPROVED



MICHAEL E. LOCKE
DEPUTY CITY MANAGER

**PROJECT VICINITY MAP:
March Lane-EBMUD Trail Greenscape Project, Phase 2
(Project No. 11-25)**



**March Lane-EBMUD Trail
Greenscape Project, Phase 2
(1-mile length; 12 acres)**

**AMENDMENT TO PROFESSIONAL
SERVICES MASTER CONTRACT
WITH SIEGFRIED ENGINEERING, INC.**

This Amendment to Professional Services Master Contract for design services is made and entered into on _____, by and between the City of Stockton, a municipal corporation, hereinafter referred to as "CITY," SIEGFRIED ENGINEERING, INC., hereinafter referred to as "FIRM," to provide CITY with design services for the MARCH LANE/EBMUD TRAIL GREENSCAPE, PHASE 2 (PROJECT NO. 11-25), 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 design 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 design services for PROJECT as per Exhibit "A," attached hereto and by reference made a part hereof.
2. Section 2—COMPENSATION. Compensation is hereby amended (\$69,900.00) 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. Services under this amendment will be performed during the period of February 2012 through March 2013, 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)

City Atty
Review _____
Date _____

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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

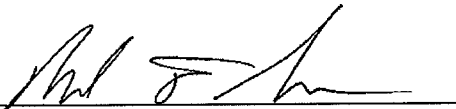
BONNIE PAIGE
City Clerk of the City of Stockton

By: _____
BOB DEIS
CITY MANAGER

APPROVED AS TO FORM & CONTENT:
JOHN M. LUEBBERKE
OFFICE OF THE CITY ATTORNEY

SIEGFRIED ENGINEERING, Inc.
a corporation
3244 Brookside Road, Suite 100
Stockton, CA 95219

By: _____
Deputy City Attorney

By:  _____

Title: _____ V.P. _____

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EXHIBIT A

SCOPE OF LANDSCAPE ARCHITECTURAL SERVICES

CONSTRUCTION DOCUMENTS FOR BIKE PATH REPAIR, RELOCATION, AND LANDSCAPE ENHANCEMENT WITHIN THE EBMUD EASEMENT FROM PACIFIC AVENUE TO HILLSBORO WAY STOCKTON, CA

January 10, 2012

SIEGFRIED ENGINEERING, INC. (Siegfried) shall provide surveying, civil engineering and landscape architectural services to Client for the EBMUD easement corridor located between Pacific Avenue and Hillsboro Way (**Project**) in Stockton, California including the following services:

TASK 1: INITIAL RESEARCH AND REVIEW

To initiate the work, Siegfried's design team will research and verify the following:

- public records of subdivision, parcel, corner records, and survey maps to determine street right-of-ways,
- file copies of utility service districts and companies to locate existing
 - 1) electrical, gas, telephone, fiber optic, and cable television services,
 - 2) sanitary and storm sewers,
 - 3) water mains, and
 - 4) fire hydrants.

Research will be facilitated by meeting with the utility companies, public agencies, and service districts and will be verified by field investigations in the following phase of work to identify the characteristics and infrastructure needs of the Project area.

- Siegfried will schedule and facilitate a project kick off meeting.

TASK 2: PROJECT MANAGEMENT SERVICES

- Siegfried shall manage the Project to provide the scope of services to meet the Project schedule and budget as set forth in the City's agreement with SJCOG.
- Siegfried shall manage and assist the City with any permitting requirements necessary to construct the project.
- Monthly progress reports will be submitted to the City showing
 - 1) progress of work,
 - 2) information/decisions required to maintain the Project schedule and complete deliverables,
 - 3) problems encountered that may affect the schedule, budget, or work products, and
 - 4) anticipated work, action items, and review activities for the following month.
- Siegfried shall arrange and facilitate
 - 1) Project Kick-Off meeting
 - 2) Bi-Monthly status/coordination meetings with City staff and provide minutes for these meetings,
- Siegfried shall provide consultation and advice, through oral and written communications on all matters relating to the Project.
- Siegfried shall be a liaison with the City and other interested utilities or public agencies.

TASK 3: SURVEYING BASE PLANS AND MAPS

Siegfried shall verify the location of all underground and overhead utilities as well as physical ground features from the east side of the intersection of Pacific Avenue to the terminus of the EBMUD greenbelt as it intersects and crosses March Lane near Hillsboro Way . Topographic survey data and final mapping shall include but is not limited to the following:

- 1) location and description of existing survey monuments,
- 2) all right-of-ways and easements tied to the City of Stockton Horizontal and Vertical System,
- 3) all existing ground plain features and topography, including all existing utility facilities that are visible or that are available from utility company, record drawings,
- 4) location and flow lines of pertinent underground.

Siegfried will prepare up to two (2) legal descriptions and plats for the purpose of acquiring easements on APN's 104-100-01 and 104-120-031.

TASK 4 –CONSTRUCTION DOCUMENTS

1. Based upon the previously developed corridor layout concept plan Siegfried will prepare a concept drawing for City review and approval. After initial review up to 2 revisions to the concept plan will be made. The site plan will not include special feature elements like demonstration gardens, fitness courses, vertical elements, public art, or bus stops. The design will focus on enhancing and beautifying the pathway corridor.
2. Along with the concept plans an estimate of probable construction costs will be developed and updated throughout the design and approval process.
3. Based upon the final City approved site plan Siegfried will prepare the Project improvement plans in accordance with EBMUD and City standards including the following deliverables:
 - a. Tree Planting Plan.
 - b. Shrub and Groundcover Plan.
 - c. Pathway Relocation and Trail Amenity Plan
 - d. Irrigation and Control Systems Plan.
 - e. Accessibility and Ramp Design plan
 - f. Detail plans that contain details necessary to further clarify the design intent.
 - g. Project technical specifications.

Said improvement plans will be submitted at the 65%, 95% and Final plan stages. Each submittal will consist of 2 full sets of bond improvement plans, 2 11x17 reduced size sets of plans, 1 PDF on CD of the improvement plans and 2 hard copies of the technical specifications.

In addition the improvement plans will be designed and set up in such a fashion so as to allow the project to be constructed in phases. The cost estimates will be prepared in the same fashion and broken down into phases. The number of phases is limited to four (4) and only one set of specifications will be prepared for all four phases. Note that only one irrigation and control system will be designed for all phases and that the plans will be checked and approved as one plan set not four individual plans sets.

TASK 5 –AGENCY APPROVALS

1. Siegfried will provide improvement plans and specifications to the City for review and will submit the plans to EBMUD at the 95% stage for their review and approval.

2. Siegfried will make the required corrections to the plans and specifications in order to gain EBMUD and City approval.

TASK 6 –BIDDING SUPPORT (OPTIONAL)

1. Siegfried will provide responses to contractor questions during bidding. Said questions and responses will be tracked using a tracking log which will be supplied to the City at each update.

TASK 7 –CONSTRUCTION ADMINISTRATION (OPTIONAL)

1. Construction administration services shall include RFI responses, clarification sketches, assisting with construction change directives, and project close out.
2. Siegfried will provide up to 6 site visits during construction to review progress.

EXCEPTIONS TO THE SCOPE

1. *It is understood that the following **are not** included in the Scope:*
 - a. *design of architectural features,*
 - b. *design of demonstration gardens,*
 - c. *design of fitness course,*
 - d. *design of bus stop improvements,*
 - e. *design of Cal Water Service to sites,*
 - f. *CEQA and NEPA document preparation,*
 - g. *permit application and plan check fees,*
 - h. *traffic & signalization study and plan,*
 - i. *design of building, interior plumbing, and fire sprinkler plans,*
 - j. *electric and telephone service plans,*
 - k. *Public Outreach,*
 - l. *construction inspection, supervision and scheduling,*
 - m. *Construction staking, and*
 - n. *Reimbursable Expenses*

EXHIBIT B

FEE SCHEDULE

**CONSTRUCTION DOCUMENTS FOR BIKE PATH
REPAIR, RELOCATION, AND LANDSCAPE
ENHANCEMENT WITHIN THE EBMUD EASEMENT FROM
PACIFIC AVENUE TO HILLSBORO WAY**

January 10, 2012

<u>TASK</u>	<u>DESCRIPTION</u>	<u>ESTIMATED FEE</u>
1	Initial Research and Review	\$3,000.00
2	Project Management Services	\$5,000.00
3	Surveying Base Plans and Maps	\$17,000.00
4	Construction Documents	\$32,000.00
5	Agency Approvals	\$5,000.00
	Total Base Bid	\$62,000.00
	Optional Services	
6	Bidding Support	\$2,000.00
7	Construction Administration	\$5,000.00
	Estimated Reimbursable Expenses	\$900.00
	TOTAL NOT-TO-EXCEED FEE	\$69,900.00

Note:

1. *The optional bidding and construction administration fees represent a fee as if the entire project is bid and constructed at once. If the project is phased then the fees will be negotiated at that time.*

EXHIBIT C
INSURANCE REQUIREMENTS
CONSULTANTS

CONSULTANT shall procure and maintain for the duration of the Agreement, 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 **CONSULTANT**, its agents, representatives, volunteers, or employees.

1. **INSURANCE** Throughout the life of this Contract, the Consultant shall pay for and maintain in full force and effect with an insurance 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 (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence.
 - B. **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.
 - C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR ADDITIONAL REQUIREMENT(S):

- (i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage 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.
- (ii) **PROFESSIONAL ERRORS AND OMISSIONS**, Not less than \$50,000 per Claim./\$1,000,000 Aggregate. Certificate of Insurance only required.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

- 1 The Commercial General Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.*
2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date **CONSULTANT** completes its performance of services under this Agreement.

3. For any claims related to products provided under this contract, the Consultant's insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. 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.
4. Each insurance policy required by this clause shall have a provision 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, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
5. 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.
6. 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.
7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.
8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
425 N. El Dorado Street
Stockton, CA 95202
9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Consultant 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 Manager (209) 937-8682. Our fax is (209) 937-5702.

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. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Consultant should subcontract all or any portion of the work to be performed in this contract, the Consultant shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.

CONSENT AGENDA



AGENDA ITEM 12.08

February 7, 2012

TO: Mayor and City Council

FROM: Robert Murdoch, Director
Public Works Department

SUBJECT: **EIGHT MILE ROAD AND INTERSTATE 5 DETENTION BASIN
RELINQUISHMENT**

RECOMMENDATION

It is recommended that the City Council approve a motion authorizing the City Manager to execute a Budget Amendment of \$30,000 to the Eight Mile/I-5 Interchange project account for additional professional services and administrative costs to closeout the project.

Summary

The Eight Mile Road and Interstate 5 Detention Basin Relinquishment is the final step in fulfilling the City's cooperative agreement with the State, which the City adopted on February 24, 2004, (Resolution No. 04-0107). The cooperative agreement required the City to construct the Eight Mile Road and Interstate 5 Interchange Improvements, provide a five-year landscape maintenance period, and relinquish the detention basin property to the State. Additional funds (not originally budgeted) are needed for professional surveying and mapping services, recording fees, and administrative costs necessary to complete the relinquishment process and close out the project.

Background

On February 24, 2004, the City entered into a cooperative agreement with the State (Resolution No 04-0107) to improve the Eight Mile Road and Interstate 5 Interchange, build a storm water detention basin, provide a five-year landscape maintenance period, and relinquishment of the detention basin property to the State. In 2006, the City completed the construction of the interchange improvements. In 2011, the five-year landscape maintenance period ended and the maintenance of the facility was turned over to the State. In addition, title to the basin property was conveyed to the State on November 8, 2011. However, the State is requesting that the City provide a record of survey map and a right-of-way record map.

Present Situation

Additional funding is required to prepare a record of survey map and proprietary right-of-way record map and provide for recording fees and administrative costs. Staff estimates these cost will total \$30,000.

EIGHT MILE ROAD AND INTERSTATE 5 DETENTION BASIN RELINQUISHMENT

(Page 2)

Since these costs were not included in the project budget, Council approval is needed to authorize the City Manager to execute the necessary budget transfer to provide the needed funding.

FINANCIAL SUMMARY

This project is funded by Street Improvement Public Facilities Fees (PFF). With the recent merging of the fee areas, adequate capacity exists in the Citywide PFF fund balance to address the recommended funding increase. The following transactions are required:

Appropriate from:

910-0000-288
Fund Balance, Unified Street Improvement PFF \$30,000

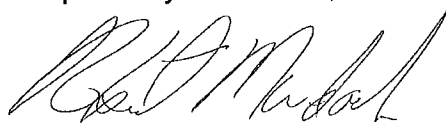
Appropriate to:

910-9972-640
Eight Mile/I-5 Interchange project, Unified Street Improvement PFF \$30,000

With these actions, sufficient funding will be available for Public Works to complete the relinquishment of the detention property to the State, and close out the project. The City Manager is authorized to record these and any related financial actions, consistent with the intent of the motion, which may be required and are appropriate to close out the project.

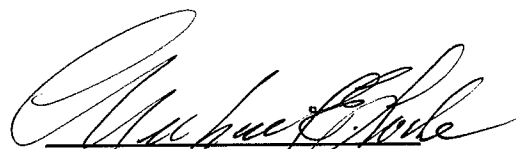
There is no impact to the City's General Fund from taking the recommended actions.

Respectfully submitted,



ROBERT MURDOCH, DIRECTOR
PUBLIC WORKS DEPARTMENT

APPROVED BY


MICHAEL E. LOCKE
DEPUTY CITY MANAGER

RM:CG:cl

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CONSENT AGENDA



AGENDA ITEM 12.09

February 7, 2012

TO: Mayor and City Council

FROM: Robert Murdoch, Director
Public Works Department

SUBJECT: **FRENCH CAMP ROAD / INTERSTATE 5 (I-5) INTERCHANGE
RECONSTRUCTION, PROJECT NO. 99-01 – UTILITY AGREEMENTS AND
MEASURE K RENEWAL COOPERATIVE AGREEMENT**

RECOMMENDATION

It is recommended that the City Council approve a motion authorizing the City Manager to:

1. Execute a utility agreement with Pacific Gas and Electric Company (PG&E) and approve payment in the amount of \$216,389 to fund utility relocation costs of a gas line.
2. Execute a utility agreement with PG&E and approve payment in the amount of \$1,427,918 to fund the utility relocation costs of electric distribution lines, poles, and vaults.
3. Execute a Measure K Renewal cooperative agreement in the amount \$2,000,000 with San Joaquin Council of Governments (SJCOG) to fund the utility relocation cost.

It is further recommended that the motion authorize the City Manager to execute the above-mentioned PG&E agreements and Measure K Renewal cooperative agreement, and to take appropriate actions to carry out the purpose and intent of this motion.

Summary

The City is the lead agency for the French Camp Road/I-5 Interchange Reconstruction, Project No. 99-01 (see Attachment A – Vicinity Map). The final design of the project is now complete, with construction scheduled to begin by September 2012. To facilitate the planned improvements, agreements must be executed with PG&E to relocate their gas and electric utilities (Attachments B & C) prior to the start of construction. A Measure K Renewal cooperative agreement is needed between the City and SJCOG to fund the cost of these utility relocations.

Therefore, staff recommends Council approve a motion authorizing the City Manager to execute a Measure K Renewal cooperative agreement in the amount \$2,000,000 with SJCOG (Attachment D) to fund the utility relocation cost, to execute two utility agreements with PG&E, and to approve payment in the amount of \$216,389 to pay for cost of utility

**FRENCH CAMP ROAD / INTERSTATE 5 (I-5) INTERCHANGE RECONSTRUCTION,
PROJECT NO. 99-01 – UTILITY AGREEMENTS AND MEASURE K RENEWAL
COOPERATIVE AGREEMENT**

(Page 2)

relocation of gas lines and \$1,427,918 to pay for cost of utility relocation of electric distribution lines, poles, and vaults.

There is no impact to the City's General Fund as a result of taking the recommended actions.

DISCUSSION

Background

Sperry Road is a two-lane extension of Arch-Airport Road, running from Airport Way west and ending at McKinley Avenue. Because Sperry Road does not connect to I-5, truck traffic from south Stockton must detour, traveling circuitous routes to reach this main freeway. The City's 2035 General Plan forecasts substantial growth in traffic due to development of commercial and industrial lands in south Stockton. In response, the City's 2035 General Plan identified a need to provide a continuous route through south Stockton between I-5 and State Route 99. To accomplish this, the 2035 General Plan requires an Arch-Sperry Road-French Camp Road connection project to connect I-5 with State Route 99 (Attachment A – Vicinity Map).

For implementation purposes, the project was divided into three major components: 1) Sperry Road Extension, Project No. 09-11, from Performance Drive to French Camp Road (currently in construction); 2) French Camp Road/I-5 Interchange Reconstruction, Project No. 99-01 (contract plans completed); and 3) Manthey Road Relocation, Project No. 11-20, realignment of a portion of Manthey Road west of I-5 to provide adequate spacing between Manthey Road and the new interchange ramp intersection in accordance with Caltrans' highway design standards (scheduled to begin construction January 2012).

The purpose of the French Camp Road/I-5 Interchange Reconstruction Project and the Manthey Road Relocation Project (components 2 and 3) is to accommodate the anticipated traffic demands due to the planned Arch-Sperry Road extension. Proposed modifications at the interchange include the relocation and widening of on and off-ramps, signalization of ramp/street intersections, relocation of Val Dervin Parkway, and loop on-ramps. The interchange reconstruction will also construct auxiliary lanes on I-5 between French Camp Road and Downing Avenue, and realign a portion of French Camp Road to facilitate its connection with the extension of Sperry Road at a signalized intersection.

On January 29, 2008, Council approved a freeway agreement between the City and Caltrans (Resolution No. 08-0034). In general, the freeway agreement allows the relocation of city streets and relocation of access routes within city limits to facilitate the reconstruction of this interchange.

**FRENCH CAMP ROAD / INTERSTATE 5 (I-5) INTERCHANGE RECONSTRUCTION,
PROJECT NO. 99-01 – UTILITY AGREEMENTS AND MEASURE K RENEWAL
COOPERATIVE AGREEMENT**

(Page 3)

On December 13, 2011, Council approved a construction contract to Bay Cities Paving and Grading, Inc. for construction of Manthey Road Realignment, Phase 1 (Resolution No. 11-0330).

Present Situation

The final design for the French Camp Road/I-5 Interchange Reconstruction Project is now complete. The project is scheduled to begin construction by September 2012, and is anticipated to take approximately 30 months to complete.

Existing PG&E gas and electric utilities are in conflict with the planned work. Relocating the utilities will require the removal of about 130 trees located on private property. Staff has secured utility relocation plans, utility claim letters, and utility agreements from PG&E, which have been approved by Caltrans. PG&E is ready to relocate their utilities, but cannot do so until the utility agreements are executed by the City.

Overall, the French Camp/I-5 Interchange Reconstruction Project will remove 741 trees. There is funding within the project budget for the design and construction of a landscape project. In fact, the final design for the landscape project is 30 percent complete. As the overall project nears completion in 2014, the landscaping plans will be completed and put out to bid as a separate project. Installation of replacement landscaping will begin as the final interchange improvements are nearing completion.

There are two utility agreements with PG&E. The first agreement approves payment in the amount of \$216,389 for the cost of utility relocation of gas lines (Attachment B). The second agreement approves payment in the amount of \$1,427,918 for the cost of utility relocation of electric distribution lines, poles, and vaults (Attachment C).

In addition, poles, lines, fiber optic cables, and vaults owned by the American Telephone & Telegraph (AT&T) must be relocated to accommodate the interchange project. Utility relocation plans, claim letter, and utility agreement at an estimated cost of \$83,688.20 are pending Caltrans' approval. Funding to accommodate this cost is included in the \$2,000,000 current recommendation; however, staff will return to Council for approval to execute the AT&T utility agreement once Caltrans has approved.

To fund the above-mentioned PG&E and AT&T utility relocation cost, a Measure K Renewal cooperative agreement in the amount \$2,000,000 must be executed with SJCOG.

Staff recommends Council adopt a motion authorizing the City Manager to execute a Measure K Renewal cooperative agreement (Attachment D) in the amount of \$2,000,000 with SJCOG, and the associated two gas and electric utility agreements with PG&E.

**FRENCH CAMP ROAD / INTERSTATE 5 (I-5) INTERCHANGE RECONSTRUCTION,
PROJECT NO. 99-01 – UTILITY AGREEMENTS AND MEASURE K RENEWAL
COOPERATIVE AGREEMENT**

(Page 4)

FINANCIAL SUMMARY

Funding for the Manthey Road Relocation Project is 100 percent from Public Facilities Fees (PFF). In contrast, the French Camp Road/I-5 Interchange Reconstruction Project is funded by a combination of Measure K, State, and federal sources. The project phases and funding, presented in order of delivery, are as follows:

Description	Cost	Funding Sources
Manthey Road Relocation	\$7,584,800	PFF
French Camp/I-5 Utility Relocation	\$2,000,000	Measure K State Highway and Measure K project savings
French Camp/I-5 Construction	\$28,550,000	Federal, State, Measure K State Highway, Measure K Regional Arterial
French Camp/I-5 Landscaping	\$2,650,000	Measure K Regional Arterial

The Measure K Regional Arterial Funds noted above represent an advance of funds due to the City from SJCOG. Because the City needs to use these funds in advance of them being available from SJCOG, interest costs will be incurred. An interest agreement is currently being negotiated with SJCOG and will appear on a future Council agenda. This is not of immediate concern because SJCOG has agreed to defer use of the Measure K Regional Arterial Funds as long as possible, to the later years of the project. This will reduce the interest cost to the City. As a result, there are no Measure K Regional Arterial Funds (and no interest costs) associated with the \$2,000,000 utility relocation work, which is the subject of the current recommendation.

Sufficient Measure K funds were appropriated into Account 080-9945-640 in the 2011/2012 Capital Improvement Program, and no further appropriations are required at this time. Staff recommends giving the City Manager authority to execute the \$2,000,000 cooperative agreement with SJCOG to complete the funding for the following utility relocations:

Description	Cost	Status of Agreement
PG&E Gas Utility Relocation	\$216,389	Recommended for approval
PG&E Electric Utility Relocation	\$1,427,918	Recommended for approval
AT&T Utility Relocation	\$83,688	Pending
Contingencies	\$272,005	---
Total	\$2,000,000	

February 7, 2012

**FRENCH CAMP ROAD / INTERSTATE 5 (I-5) INTERCHANGE RECONSTRUCTION,
PROJECT NO. 99-01 – UTILITY AGREEMENTS AND MEASURE K RENEWAL
COOPERATIVE AGREEMENT**

(Page 5)

Staff recommends that the motion authorize the City Manager to execute the above-mentioned PG&E agreements, and to take other appropriate actions necessary to carry out the purpose and intent of this motion.

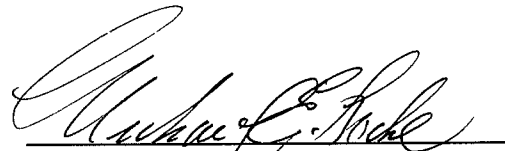
There is no impact to the City's General Fund as a result of taking the recommended actions.

Respectfully submitted,



ROBERT MURDOCH, DIRECTOR
PUBLIC WORKS DEPARTMENT

APPROVED



MICHAEL E. LOCKE
DEPUTY CITY MANAGER

RM:AM:RD:cl

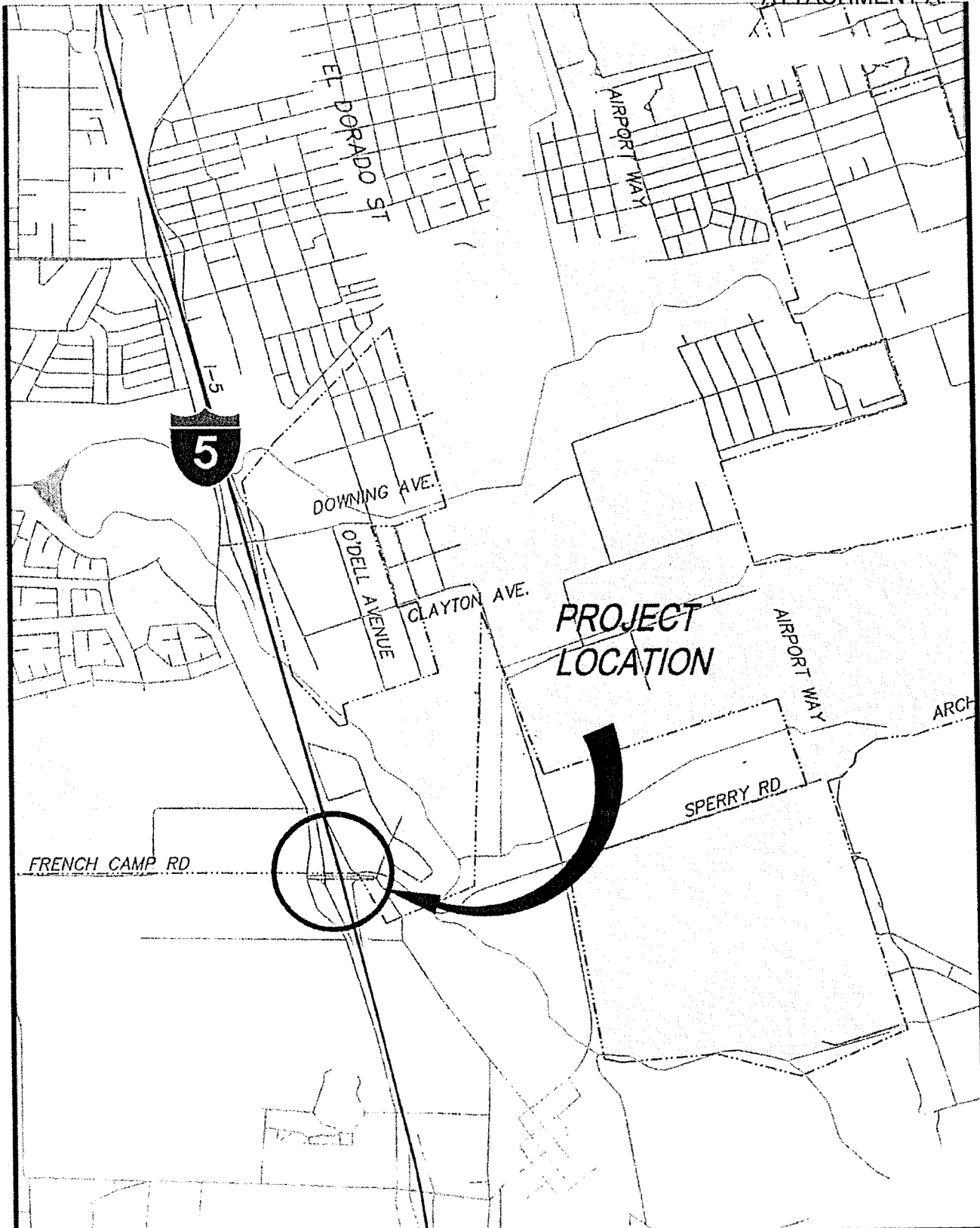
Attachment A – Vicinity Map

Attachment B – Utility Agreement for Relocation of Gas Line

Attachment C – Utility Agreement for Relocation of Electric Distribution Lines, Poles, and
Vaults

Attachment D – Measure K Renewal Cooperative Agreement

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NO. REV. DATE BY APRVD.				I-5/FRENCH CAMP ROAD INTERCHANGE CITY OF STOCKTON DEPARTMENT OF PUBLIC WORKS		APPROVED BY	
DWC. BY						CITY ENGINEER	
CK. BY						DATE	DRAWING NO.
SCALE							

DISTRICT 10	COUNTY San Joaquin	ROUTE 5	KILOMETER POST PM 35.5 to 38.0	EA 10-0E4901
FEDERAL AID NO. N/A		OWNER'S FILE NUMBER 30616247		
FEDERAL PARTICIPATION				
On The Project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		On The Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Owner Payee Data No. _____ or form STD 204 is attached

UTILITY AGREEMENT NO. 10-UT-3818.1 DATE December 6, 2011

The City of Stockton, hereinafter called "CITY," in cooperation with the California Department of Transportation ("STATE"), proposes the reconstruction of the Interstate 5 (I-5)/French Camp Road Interchange, extension of Sperry Road from Performance Drive to French Camp Road, and relocation of Manthey Road.

And

Name: Pacific Gas and Electric Company

Address: 4040 West Lane, Stockton, CA 95204

Herein after called "OWNER," owns and maintains GAS LINES.

Within the limits of STATE project which requires RELOCATION OF GAS LINES.

To accommodate STATE project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 10-UT 3818.1 dated December 1, 2011, OWNER shall relocate gas lines. All work shall be performed substantially in accordance with OWNER's Plan No. PM 30616247 dated August 10, 2010 consisting of one sheet, a copy of which is on file in the District office of the Department of Transportation at 1976 E. Martin Luther King Jr. Blvd. Stockton, CA. Deviations from the OWNER's plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

STATE's project

The City of Stockton (CITY) in partnership with the California Department of Transportation (STATE), proposes the reconstruction of the Interstate 5 (I-5)/French Camp Road Interchange, extension of Sperry Road from Performance Drive to French Camp Road, and relocation of Mantley Road. The interchange reconstruction would create a Type L-9, partial cloverleaf interchange, including widening of the existing structure to accommodate new loop on-ramps and constructing auxiliary lanes on I-5 from French Camp Road to Downing Avenue. The proposed project would provide route continuity, improved traffic operations, and reduced congestion on local streets between State Route 99 and I-5. Construction is expected to begin in August 2012.

OWNER's RELOCATION OF GAS LINES

PG&E will deactivate and abandon the existing gas lines and install a new 1-inch gas service line that will cross French Camp Road to provide gas service for the gas station.

II. LIABILITY FOR WORK

The existing facilities described in Section I above will be relocated in accordance with Section 5 of the Freeway Master Contract dated November 1, 2004.

Estimated Relocation Costs	\$ 432,779.00
Total Estimated STATE Liability, 0%.....	\$ 0
Total Estimated OWNER Liability, 50%.....	\$ 216,389.00
Total Estimated CITY Liability, 50%	\$ 216,389.00

III. PERFORMANCE OF WORK

OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.

Use of out-of-state personnel, or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by State's representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

The CITY shall pay its share of the actual and necessary cost of the herein described work within 90 days after receipt of five (5) copies of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

It is understood and agreed that the CITY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the CITY for the "used life" or accumulated depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by CITY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

The OWNER shall submit a final bill to the CITY within 360 days after the completion of the work described in Section I above. If the CITY has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and CITY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, CITY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the CITY processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by CITY. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement, shall have the prior concurrence of CITY.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of CITY's request of March 12, 2009 to review, study and/or prepare relocation plans and estimates and perform inspections for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If CITY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, CITY will notify OWNER in writing, and CITY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

OWNER shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein.

CITY will acquire new rights of way in the name of STATE. CITY or OWNER through negotiation or condemnation and when acquired in either STATE or CITY's name, shall convey same to OWNER by Easement Deed. CITY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement.

It is understood that said highway is a federal-aid highway and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement by reference; provided, however, the provisions of any agreements entered into between the CITY and the OWNER pursuant to state law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable federal or state regulatory body and approved by the Federal Highway Administration (FHWA), shall govern in lieu of the requirements of said 23 CFR Part 645.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

CITY OF STOCKTON:

PACIFIC GAS AND ELECTRIC COMPANY:

By: _____
Bob Deis Date
City Manager, City of Stockton

By: Marvin Penner 1/04/2012
Name: Marvin Penner Date
Manager
Title Land Management

ATTEST:

By: _____
Bonnie Paige Date
City Clerk, City of Stockton

By: _____
Name Date
Title _____

APPROVED AS TO FORM AND PROCEDURE:

By: _____
John Luebberke Date
City Attorney

- Distribution: 1 original to City of Stockton
- 1 original to PG&E
- 1 copy to Caltrans R/W Utility File

DISTRICT 10	COUNTY San Joaquin	ROUTE 5	KILOMETER POST PM 35.5 to 38.0	EA 10-0E4901
FEDERAL AID NO. N.A		OWNER'S FILE NUMBER 30615959		
FEDERAL PARTICIPATION				
On The Project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		On The Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Owner Payee Data No. _____ or form STD 204 is attached

UTILITY AGREEMENT NO. 10-UT-1818.2 DATE December 6, 2011

The City of Stockton, hereinafter called "CITY," in cooperation with the California Department of Transportation ("STATE"), proposes the reconstruction of the Interstate 5 (I-5)/French Camp Road Interchange, extension of Sperry Road from Performance Drive to French Camp Road, and relocation of Manthey Road.

And

Name: Pacific Gas and Electric Company

Address: 4040 West Lane, Stockton, CA 95204

Herein after called "OWNER," owns and maintains ELECTRIC DISTRIBUTION LINES, POLES AND VAULTS.

Within the limits of STATE project which requires ELECTRIC DISTRIBUTION LINES, POLES AND VAULTS.

To accommodate STATE project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 10-UT-3818.2 dated November 8, 2011, OWNER shall relocate electric distribution lines, poles and vaults. All work shall be performed substantially in accordance with OWNER's Plan No. PM 30615959 dated May 17, 2011 consisting of two sheets, a copy of which is on file in the District office of the Department of Transportation at 1976 E. Martin Luther King Jr. Blvd, Stockton, CA. Deviations from the OWNER's plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

STATE's project

The City of Stockton (CITY) in partnership with the California Department of Transportation (STATE), proposes the reconstruction of the Interstate 5 (I-5)/French Camp Road Interchange, extension of Sperry Road from Performance Drive to French Camp Road, and relocation of Manthey Road. The interchange reconstruction would create a Type L-9, partial cloverleaf interchange, including widening of the existing structure to accommodate new loop on-ramps and constructing auxiliary lanes on I-5 from French Camp Road to Downing Avenue. The proposed project would provide route continuity, improved traffic operations, and reduced congestion on local streets between State Route 99 and I-5. Construction is expected to begin in August 2012.

OWNER's ELECTRIC DISTRIBUTION LINES, POLES AND VAULTS.

- 1) Approximately 28 m (92 ft) of existing overhead (12 kv) distribution lines and respective poles located on the east side of the existing NB Off-Ramp gore will have to be relocated from its current location into a proposed 6.1 m (20 ft) public utility easement located along the east side of the NB Off-Ramp in order to avoid a physical conflict with the grading of a proposed trapezoidal ditch which runs along the entire length of the NB Off-Ramp.
- 2) Approximately 700 m (2297 ft) of existing overhead electric (12 kV) distribution lines and respective poles running more or less from south to north, beginning at approximately 90 m (295 ft) to the right of the proposed NB Off-Ramp alignment and behind the existing private property belonging to Darshan and Kulwinder Singh, APN 193-020-370 and concluding near the end of the proposed NB On-Ramp alignment. Part of these existing lines will be relocated in order to avoid direct physical conflict with the construction equipment during the construction of the proposed NB Off-Ramp and NB Loop On-Ramp. The other part of existing overhead electric (12 kV) distribution line will be relocated to a proposed 6.1 m (20 ft) public utility easement along the right side of the proposed NB On-Ramp in order to avoid direct physical conflict with the proposed widening improvements for this ramp. Because of these NB On-Ramp widening improvements, a pole located on the east side of the NB On-Ramp near the end of the proposed ramp alignment will be relocated in order to avoid any physical conflict with the ramp grading and in turn approximately 114 m (374 ft) of existing overhead electric (12 kV) distribution line which extends across and over the existing I-5 will be relocated.
- 3) Approximately 100 m (328 ft) of existing underground electric (100 mm or 4 in 13 kV) distribution line located on the north side of the existing French Camp Road between the intersections with the existing Val Deryn Parkway and the existing NB On-Ramp terminus will be relocated further north into a 6.1 m (20 ft) public utility easement which runs on the north side of the proposed French Camp Road and NB On-Ramp, in order to avoid physical conflict with the proposed improvements along French Camp Road and the NB On-Ramp.
- 4) Approximately 252 m (827 ft) of existing PG&E overhead electric (12 kV) distribution lines and poles which will be relocated currently run more or less from south to north on the west side and parallel to the existing SB Off-Ramp will have to be relocated further west into a proposed 7.6 m (25 ft) public utility easement which runs along the West side of the proposed SB Off-Ramp. This relocation is needed in order to avoid any physical conflict with the proposed SB Off-Ramp.
- 5) Approximately 81 m (26 ft) of existing overhead electric (12 kV) distribution lines near the intersection of the existing Manthey Road and the existing Henry Long Boulevard will be relocated in order to avoid physical conflict with the proposed improvements for the SB Off-Ramp.
- 6) An existing electrical vault located along the existing Frank West Circle near the intersection with the proposed French Camp Road will be relocated in order to avoid physical conflict with the proposed improvements.

II. LIABILITY FOR WORK

The existing facilities described in Section I above will be relocated in accordance with Sections 5A, 5B and 5C of the Freeway Master Contract dated November 1, 2004.

Estimated Relocation Costs.....	\$ 1,664,346.00
Total Estimated STATE Liability, 0%.....	\$ 0
Total Estimated OWNER Liability, 14.2%.....	\$ 236,428.00
Total Estimated CITY Liability, 85.8%	\$ 1,427,918.00

III. PERFORMANCE OF WORK

OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.

Use of out-of-state personnel, or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by State's representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

The CITY shall pay its share of the actual and necessary cost of the herein described work within 90 days after receipt of five (5) copies of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

It is understood and agreed that the CITY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the CITY for the "used life" or accumulated depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by CITY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

The OWNER shall submit a final bill to the CITY within 360 days after the completion of the work described in Section I above. If the CITY has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and CITY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, CITY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the CITY processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by CITY. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement, shall have the prior concurrence of CITY.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of CITY's request of March 12, 2009 to review, study and/or prepare relocation plans and estimates and perform inspections for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If CITY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, CITY will notify OWNER in writing, and CITY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

OWNER shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein.

CITY will acquire new rights of way in the name of STATE, CITY or OWNER through negotiation or condemnation and when acquired in either STATE or CITY's name, shall convey same to OWNER by Easement Deed. CITY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement.

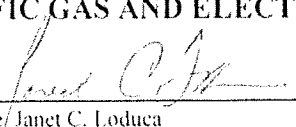
It is understood that said highway is a federal-aid highway and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement by reference; provided, however, the provisions of any agreements entered into between the CITY and the OWNER pursuant to state law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable federal or state regulatory body and approved by the Federal Highway Administration (FHWA), shall govern in lieu of the requirements of said 23 CFR Part 645.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

CITY OF STOCKTON:

PACIFIC GAS AND ELECTRIC COMPANY:

By: _____
Bob Deis Date
City Manager, City of Stockton

By:  _____ 1/5/12 _____
Name/Janet C. Loduca Date
Vice President Environmental
Title _____

ATTEST:

By: _____
Bonnie Paige Date
City Clerk, City of Stockton

By: _____
Name _____ Date _____
Title _____

APPROVED AS TO FORM AND PROCEDURE:

By: _____
John Luebberke Date
City Attorney

Distribution: 1 original to City of Stockton
1 original to PG&E
1 copy to Caltrans R/W Utility File

**MEASURE K RENEWAL COOPERATIVE AGREEMENT
FOR THE UTILITY RELOCATION OF THE
FRENCH CAMP ROAD/INTERSTATE 5 (I-5) CONSTRUCTION**

This Cooperative Agreement ("Agreement") is made and entered into this _____ day of _____, 2012 by and between the City of Stockton, a political subdivision of the State of California ("Sponsor") and the SAN JOAQUIN COUNCIL OF GOVERNMENTS, acting as the San Joaquin County Local Transportation Authority ("Authority").

RECITALS

WHEREAS, Authority and Sponsor desire to enter into a Cooperative Agreement for funding of transportation improvements in San Joaquin County pursuant to the authority provided by San Joaquin County Local Transportation Improvement Plan and Ordinance ("LTIP"), which was approved by the voters of San Joaquin County on November 7, 2006; and

WHEREAS, Sponsor desires to receive funding from the Authority for the particular transportation improvement project specified herein ("Project"); and

WHEREAS, the Project is eligible as the **Utility Relocations of the French Camp Road/Interstate 5 (I-5) Interchange Project** of the Congestion Relief category of the LTIP; and

WHEREAS, the Authority is authorized under the LTIP to issue Measure K funds to Sponsor in an amount up to **\$700,000** and Measure K Renewal funds in an amount up to **\$1,300,000** for eligible utility relocation costs as estimated by the Sponsor in Exhibit "A;"

WHEREAS, Authority shall issue utility relocation reimbursement payments as provided in Section 2.1 to Sponsor pursuant to a request for reimbursement submitted by the Sponsor; however, the Sponsor understands that in no event shall utility relocation reimbursement payments, when aggregated, exceed the lesser of **\$2,000,000** or **100%** of the total utility relocation reimbursement cost as listed in Exhibit "A"; and

WHEREAS, any difference in cost which result in less than **\$2,000,000** being spent on the Project shall be retained by the Authority and may be re-programmed to the construction phase of the French Camp Road/I-5 Interchange project; and

WHEREAS, Sponsor agrees to abide by the terms and conditions of the Authority as set forth herein for the receipt of Measure K funds; and

WHEREAS, Authority agrees to provide funding for the transportation improvements of the Sponsor's Project according to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

AGREEMENT

SECTION I Covenants of Sponsor

1.1. Project Application. The complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure K funds, and the anticipated timing for release of Measure K funds shall be specified in the application, which is attached as Exhibit "A," and incorporated herein by this reference.

1.2. Change In Project Scope. A change in the Project scope as described in Exhibit "A" may not be implemented until it has been approved by the Authority. In no event will a change in scope result in the Authority reimbursing more than \$2,000,000.

1.3. Measure K Percentage Share Defined. For this Agreement, the combined Measure K/Measure K Renewal percentage share of eligible Project costs shall be 100% of Project costs with the total not to exceed the lesser of \$2,000,000 or 100% of the total costs for Project costs listed in Exhibit "A".

1.3.a Eligible Reimbursement Costs. Eligible reimbursement costs shall be utility relocation costs for the Project as specified in Exhibit "A" or as may be approved from time to time by the Authority pursuant to Section 1.2.

1.4. Right of Way Costs. It is understood that right-of-way acquisition costs are not eligible reimbursement costs of the Project.

1.5. Construction and Other Costs. It is understood that construction, construction administration, and inspection costs are not a part of the eligible reimbursement costs of the Agreement.

1.6. Invoices and Progress Reports. Starting one month after the execution of this Agreement, Sponsor shall provide monthly progress reports and shall provide invoices no less than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:

1.6.a. Copies of Consultant Invoices. Sponsor shall provide the Authority with one (1) copy of all invoices submitted to Sponsor by every consultant, subconsultant, contractor, or subcontractor performing work related to the Project.

1.6.b. Progress Reports. The monthly progress reports shall include a brief description of status of the Project, the work completed to date, including any issues that may impact Project schedule. This summary may be included on the invoices submitted to the Authority or be attached to those invoices.

1.7. Use of Funds. Sponsor shall use Measure K funds consistent with the project scope of work described in Exhibit "A" or approved in writing by the Authority pursuant to Section 1.2.

1.8. Submittal of Documents. Sponsor shall provide copies to the Authority of all executed contracts which relate to the Project scope as described in Exhibit "A" or approved by the Authority pursuant to Section 1.2. Sponsor shall retain records pertaining to the Project for a four (4) year period following completion of the Project.

1.8.a Communication to Authority. Upon inquiry, Sponsor shall communicate, verbal or written, to Authority or its representatives with Project documents, invoices and progress reports.

at any time of Project activities consistent to the provisions specified in Section I (1.6), (1.7), (1.8), and Section II (2.2)

1.9. Completion of Project. Sponsor shall be responsible for the timely completion of the utility relocations of the Project and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work. Since Sponsor is responsible for project management and oversight, any and all costs which exceed the lesser of \$2,000,000 or 100% of the total eligible utility relocation costs set forth in Exhibit "A" shall be the sole responsibility of Sponsor. This provision shall apply in all instances including situations where a change in scope has been approved by the Authority pursuant to Section 1.2.

1.9.a. Letter of Project Completion. Sponsor shall provide a letter of project completion which includes final cost, revenues, schedule of activities, etc.. This letter shall accompany the final invoice for payment from the sponsor to provide notice of project account closing by Authority.

1.10. Excess Costs. In the event the actual Project cost exceeds the estimate shown in Exhibit "A," this amount will be considered an excess cost. **Sponsor is solely responsible for all costs over the amount identified in Section 1.3.**

1.12. Errors and Omissions. Sponsor shall diligently monitor and manage all aspects of the Project and shall aggressively pursue any and all remedies, including full restitution and damages from any consultant, contractor or sub-contractor and their insured and sureties suspected of any acts, errors, or omissions committed during business activities that economically damage the project.

SECTION II Covenants of Authority

2.1. Reimbursement Payments. The Authority shall make reimbursement payments to Sponsor for eligible Project costs as specified in Exhibit "A". To receive monthly reimbursement payments for work completed on the Project, Sponsor shall comply with the following reimbursement procedures:

2.1.a. Deadline to Submit Reimbursement Requests. All invoices and progress reports shall be submitted to Authority on or before 5:00 p.m. on the tenth (10th) calendar day of the month in which the Sponsor requests reimbursement payments. Authority shall issue reimbursement payments to Sponsor on or before the last day of the month for all timely submittals. The final invoice for reimbursement shall be submitted to the Authority no later than 90 days after the discharge of the Agreement.

2.1.b. Late Submittals. If Sponsor fails to submit documents to Authority as set forth in Section 2.1.a, above, then Authority may provide reimbursement payments for late submittals in the following calendar month.

2.1.c. Ineligible Expenditures. The Authority, in accordance with Section 2.1.e., reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible expenditures.

2.1.d. Reimbursement Amount. The amount of reimbursement payments to Sponsor shall be equivalent to 100% of eligible utility relocation expenditures for each invoice

submitted to the Authority as specified in Exhibit "A". The total reimbursement percentage share for this Agreement is the lesser of \$2,000,000 or 100% of the total utility relocation construction cost.

2.1.e. Suspension of Reimbursement. If the Authority determines that any costs in an invoice are not allowable, the Authority shall return the invoice to Sponsor, with an invoice dispute notice outlining the reason for the return and the proposed remedy, if one exists, which would make the invoice acceptable for payment. Sponsor may re-submit the invoice for payment after reviewing the invoice notice and making any necessary corrections. Sponsor may also immediately submit a new invoice representing only the amounts which are not in dispute, while setting aside the disputed amounts for review in accordance with the provisions set forth in this Section 2.1.

2.1.e. (1) Meeting. Once a dispute has occurred, the Authority shall arrange a meeting between the Authority and the Sponsor staff to discuss and attempt to resolve the dispute. If the invoice was received on or before 5:00 p.m. on the 10th day of the month, the meeting shall be held no later than the 20th day of the same month. If the invoice was received after this date and time, then the meeting shall be held no later than the 20th day of the following month.

2.1.e. (2) Technical Advisory Committee. If an agreement cannot be reached at the meeting, then the Sponsor or the Authority shall have the option to take the dispute to the Authority's Technical Advisory Committee, with the understanding that by doing so the reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.1.e. (3) Board Decision. If the Sponsor or the Authority disagrees with the resolution by the Technical Advisory Committee then the dispute shall be submitted to the Authority's Board for resolution. If the Board determines that the disputed cost item(s) is ineligible, the Authority shall not provide reimbursement payment to the Sponsor for the disputed item(s). If the Board determines that the disputed cost item(s) is eligible, then the Authority shall provide reimbursement payment to the Sponsor for the disputed cost.

2.1.e. (4) Reservation of Rights. By utilizing the above procedures, the Sponsor does not surrender any rights to pursue available legal remedies if the Sponsor disagrees with the Board decision.

2.1.f. Acceptance of Work Does Not Result In Waiver. Reimbursement payments do not result in a waiver of the right of the Authority to require fulfillment of all terms of this Agreement.

2.2 Right to Conduct Audits. The Authority shall have the right to conduct audits of all Sponsor's records pertaining to the Project at any time of Project activities and up to four (4) years after completion of the Project. Such audits during Project construction include quality assurance and cost control of Sponsor's construction management activities to assure use of funds are consistent with the Project scope of work described in Exhibit "A" or approved in writing by the Authority pursuant to Section 1.2.

SECTION III Mutual Covenants

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.4.

3.2. Discharge. This Agreement shall be subject to discharge as follows:

3.2.a. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties.

3.2.b. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.13, this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.3. Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Sponsor:

3.3.a. Sponsor shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under the Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Sponsor shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Sponsor under this Agreement or in connection with any work, authority, or jurisdiction delegated to Sponsor under this Agreement.

3.3.b. Authority shall fully defend, indemnify and hold harmless Sponsor, and any officer or employee of Sponsor, against any damage or liability occurring by reason of anything done or omitted to be done by Authority under or in connection with any work, authority or jurisdiction delegated to Authority under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold the Sponsor harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

3.4. Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below:

TO AUTHORITY:

Andrew T. Chesley
Executive Director
San Joaquin County
Transportation Authority
555 E. Weber Avenue
Stockton, California 95202

TO SPONSOR:

Robert Murdoch
Director
City of Stockton
Public Works Department
22 E. Weber Avenue
Stockton, CA 95202

Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.4. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.5. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

3.6. Integration. This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.7. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.8. Independent Agency. Sponsor renders its services under this Agreement as an independent agency and the Authority is also an independent agency under the Agreement. None of the Sponsor's agents or employees shall be agents or employees of the Authority and none of the Authorities' agents or employees shall be agents or employees of Sponsor.

3.9. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

3.10. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the Authority or as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

3.11. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

3.12. Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.

3.13. Survival. The following provisions in this Agreement shall survive discharge:

3.13.a. Sponsor. As to Sponsor, the following sections shall survive discharge: Section 1.7 (obligation to apply funds to Project), Section 1.8 (obligation to provide copies and retain records), and Section 1.9 (obligation to continue to manage Project).

3.13.b. Authority. As to Authority, the following section shall survive discharge: Section 2.1.a (submittal deadline and payment of final invoice), and Section 2.2 (right to conduct audit).

3.13.c. Both Parties. As to both parties, the following section shall survive discharge: Section 3.3. (mutual indemnities).

3.14. Limitation. All obligations of Authority under the terms of this Agreement are expressly contingent upon the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure K. If for any reason the Authority's right or ability to collect or expend such sales tax proceeds is terminated or suspended in whole or part so that it materially affects the Authority's ability to fund the project, the Authority shall promptly notify Sponsor, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent. Any

future obligation to fund this project or any other project or projects of Sponsor, not already specifically covered by separate Agreement, shall arise only upon execution of a new Agreement.

3.15. Attorneys' Fees. Should any litigation commence between the parties concerning the rights and duties of any party pursuant to, related to, or arising from, this Agreement, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees and costs of such litigation, or in a separate action brought for that purpose.

3.16. Time. Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.

3.17. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.18. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

3.19. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.20. No Continuing Waiver. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.21. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

3.22. Signator's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

CITY OF STOCKTON

SAN JOAQUIN COUNTY
TRANSPORTATION AUTHORITY

By: _____
BOB DEIS
City Manager

By: _____
CHUCH WINN
Chair

ATTEST:

ATTEST

By: _____
BONNIE PAIGE
City Clerk

By: _____
ANDREW T. CHESLEY
Executive Director

APPROVED AS TO FORM AND CONTENT:
JOHN M. LUEBBERKE
City Attorney

APPROVED AS TO FORM:

By: _____
Deputy City Attorney

By: _____
STEVE DIAL
Deputy Executive Director/CFO

Exhibit "A"

MEASURE K RENEWAL DELIVERY PLAN
APPLICATION FOR MEASURE K FUNDING
FOR THE FRENCH CAMP ROAD/I-5 INTERCHANGE PROJECT

This application is a request for reimbursement of utility relocations for the French Camp Road/I-5 Interchange project.

1. Project Name, Location:

French Camp Road/I-5 Interchange, Project No. 99-01. (See Attached Project Vicinity Map)

2. Project Sponsor:

City of Stockton

3. Contact Person, Phone No.:

Ray Deyto, Associate Civil Engineer

Phone Number: (209) 937-8869

4. Project Scope of Work:

The proposed project consists of reconstructing the French Camp Road/I-5 Interchange to accommodate anticipated traffic demands at the interchange, as build-out of the City of Stockton General Plan occurs. Other improvements also include the relocation/widening of the northbound and southbound on/off-ramps; signalization of the intersections; relocation of Val Dervin Parkway; construction of northbound and southbound loop on-ramps; and the realignment of Manthey Road west of Interstate 5. The interchange reconstruction will also realign a portion of Sperry Road and construct auxiliary lanes on Interstate 5 between French Camp Road and Downing Avenue and install landscaping.

Funds requested for this cooperative agreement are for utility relocations (gas, electric, communication utility lines).

5. Expected Timing for Delivery of Project:

	<u>Start Date</u>	<u>Completion Date</u>
Preliminary Design/Engineering	April 2000	December 2005
Environmental	April 2000	December 2006
Right of Way Acquisition	December 2007	March 2012
Final Design	March 2006	February 2012
Utility Relocation	February 2012	August 2012
Construction	August 2012	December 2014

6. Estimated Project Cost:

Utility Relocations	\$2,000,000
TOTAL:	\$2,000,000
Cost eligible for Measure K in this contract	\$2,000,000

7. Expected Timing for Release of Measure K Funds by Quarter:

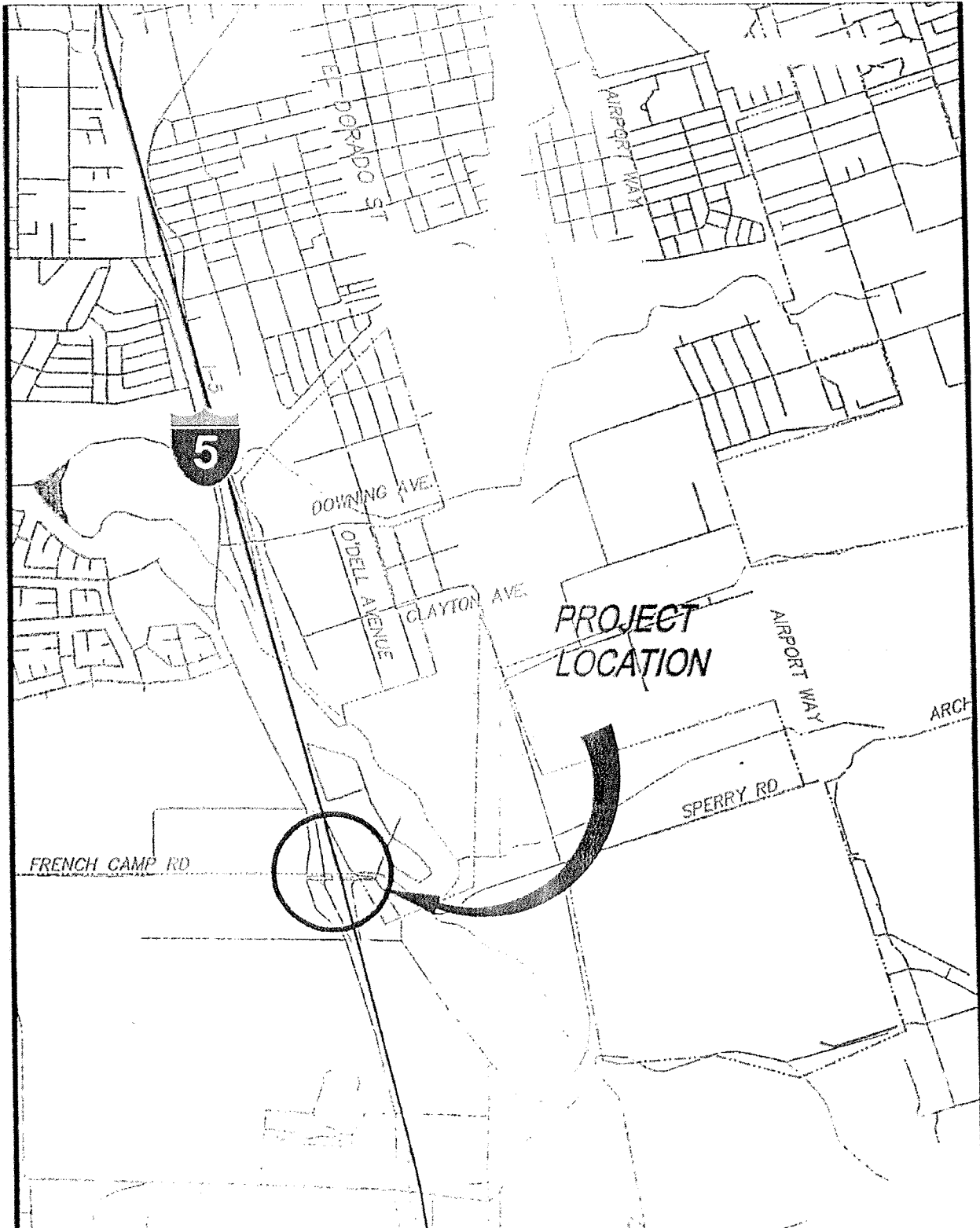
	FY 2011/12	FY 2012/13
February – March	\$ 500,000	
April - June	\$1,000,000	
July - August		\$500,000
TOTAL	\$1,500,000	\$500,000

8. Source(s) and Amount of Funds for Project:

<u>Source</u>	<u>Amount</u>	<u>Percentage</u>
Measure K Renewal	\$1,300,000	65.00%
Existing Measure K (Hammer Lane 3B Savings)	\$700,000	35.00%
TOTAL	\$2,000,000	100.00%

9. Project Vicinity Map (see attached):

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NO.	REV. DATE	BY	APRVD.	I-5/FRENCH CAMP ROAD INTERCHANGE	APPROVED BY	
DWC. BY					CITY ENGINEER	
CK. BY				CITY OF STOCKTON		DATE
SCALE				DEPARTMENT OF PUBLIC WORKS		DRAWING NO.

CONSENT AGENDA



AGENDA ITEM 12.10

**MINUTES
CITY
COUNCIL/REDEVELOPMENT
AGENCY CONCURRENT
JUNE 28, 2011**

**CITY HALL
CITY COUNCIL CHAMBERS
STOCKTON, CALIFORNIA**

1. CC/RD CALL TO ORDER/ROLL CALL 5:30 PM

Roll Call 5:30 PM

Present:

Councilmember Canepa
Councilmember Eggman
Councilmember Fritchen
Councilmember Holman
Councilmember Lowery
Vice Mayor Miller
Mayor Johnston

2. CC/RD REPORT OF ACTION TAKEN IN CLOSED SESSION 5:30 PM

City Attorney John M. Luebberke announced that there was no reportable action taken during Closed Session this evening.

3. INVOCATION/PLEDGE TO FLAG 5:30 PM

Pastor Carl Kimmons of In the House Ministries provided the Invocation. The Pledge of Allegiance was led by Councilmember Fritchen.

4. PROCLAMATIONS/COMMENDATIONS/CITY ANNOUNCEMENTS OR INVITATIONS 5:32 PM

4.01) Commendation: Retirement of Community Development Director

Recipient: Mike Niblock

Max Varga, Field Representative for Senator Lois Wolk presented a resolution to Mr. Niblock commemorating his many years of service to the city. 5:32 PM

5. CITIZENS' COMMENTS, ANNOUNCEMENTS OR INVITATIONS* 5:37 PM

Carol Hadley, Scout Merit Badge Counselor - introduced Scouts from Troop 172 and Troop 176; working on their Eagle Scout Award

Gary Malloy - thanked the Council and staff for their work on the budget

Tocan Nguyen - shared her personal political views

145.2

Vincent Sayles - shared his personal religious views

Deborah Gurley - thanked staff for repairing a fallen fence in her neighborhood; thanked the Boys and Girls Club for their youth activities

6. CC/RD CONSENT AGENDA 5:48 PM

6.01) CC AUTHORIZING THE CITY MANAGER TO AMEND THE PROFESSIONAL SERVICES MASTER CONTRACT WITH SIEGFRIED ENGINEERING, INC. TO ADMINISTER THE ASSESSMENT DISTRICT SEGREGATIONS

Resolution 11-0174 authorizing an amendment to the Professional Services Master Contract with Siegfried Engineering, Inc. for on call engineering services to administer the Assessment District Segregations for fiscal years 2011/12, 2012/13 and 2013/14.

(CD) 5:48 PM

Motion: Approve the Consent Agenda.

Moved by: Councilmember Eggman, seconded by Councilmember Fritchen.

Vote: Motion carried 7-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Vice Mayor Miller, and Mayor Johnston.

7. UNFINISHED BUSINESS 5:48 PM

None.

8. NEW BUSINESS 5:48 PM

8.01) CC READ TO ME, STOCKTON!, A PROJECT OF THE MAYOR'S BOOK CLUB

**This item is for information only.
(MAYOR) 5:48 PM**

Mayor Johnston provided background information regarding Read to Me, Stockton! Mayor Johnston noted that this project is a collaboration of multiple partners which include the City of Stockton, Stockton Unified School District, United Way of San Joaquin County, Rotary Club of Stockton, Stockton-San Joaquin Public Library, University of the Pacific, Bring Me A Book, and San Joaquin Office of Education. Mayor Johnston introduced Deborah Keller, from Stockton Unified School District who provided a PowerPoint presentation after the audience viewed a video clip (filed).

145.3

8.02) CC REVISION OF COUNCIL POLICY 100-2 REGARDING PUBLIC APPOINTMENT PROCESS FOR BOARDS/COMMISSIONS, AND COMMITTEES

Resolution approving the revisions to Council Policy 100-2 City Council and Mayoral Appointments to Boards, Commissions, and Committees amending language as it relates to notification requirements, attendance requirements, removal policy, and Ethics training.

**This Item was heard concurrently with Item 10.01.
(CLK) 6:18 PM**

10.01) Report of Chair Susan Eggman on the Council Legislation/Environmental Committee Meetings of March 29, 2011 and May 26, 2011.

a) COMMITTEE REPORT

ACTION: Accept for filing.

b) ISSUE: Public Appointment Process for Boards, Commissions, and Committees.

RECOMMENDATION: Forward to City Council for Adoption.

**This Item was heard concurrently with Item 8.02.
(CLK) 6:18 PM**

Motion: Approve accepting the Report of Chair Susan Eggman on the Council Legislation/Environmental Committee Meetings of March 29, 2011 and May 26, 2011 for filing.

Moved by: Councilmember Eggman, seconded by Councilmember Holman.

Vote: Motion carried 7-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Vice Mayor Miller, and Mayor Johnston.

Assistant City Clerk Bonnie Paige provided the staff report aided by a PowerPoint presentation (filed).

Motion: Approve 8.02) CC REVISION OF COUNCIL POLICY 100-2 REGARDING PUBLIC APPOINTMENT PROCESS FOR BOARDS/COMMISSIONS, AND COMMITTEES

Resolution 11-0175 approving the revisions to Council Policy 100-2 City Council and Mayoral Appointments to Boards, Commissions, and Committees amending

language as it relates to notification requirements, attendance requirements, removal policy, and Ethics training.

Moved by: Vice Mayor Miller, seconded by Councilmember Lowery.

Vote: Motion carried 7-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Vice Mayor Miller, and Mayor Johnston.

9. PUBLIC HEARINGS 6:18 PM**

None.

10. COUNCIL/REDEVELOPMENT AGENCY COMMENTS AND COMMITTEE REPORTS 6:26 PM


COUNCIL COMMENTS 6:26 PM

Councilmember Fritchen - announced he will be out of town next week participating with the Girl Scout Camp.

Vice Mayor Miller - extended a public invitation to a Community Independence Day Parade on July 4, 2011 10:00 a.m. at the Miracle Mile, starting from Harding Way to the University of the Pacific.

Mayor Johnston - announced a barbeque lunch sponsored by the Emergency Food Bank on July 8, 2011 at 7 West Scotts Avenue.

11. ADJOURNMENT 6:29 PM

for 
KATHERINE GONG MEISSNER
CITY CLERK OF THE CITY OF
STOCKTON
SECRETARY REDEVELOPMENT
AGENCY

**MINUTES
CITY COUNCIL/REDEVELOPMENT AGENCY/PUBLIC FINANCING
AUTHORITY CONCURRENT
MEETING OF NOVEMBER 29, 2011**

CITY COUNCIL CHAMBERS, CITY HALL, STOCKTON, CALIFORNIA

1. CLOSED SESSION CALL TO ORDER / ROLL CALL 4:01 PM

Roll Call 4:01 PM

Present:

Councilmember Canepa
Councilmember Eggman
Councilmember Holman
Councilmember Lowery
Mayor Johnston

Absent:

Councilmember Fritchen, and Vice Mayor Miller.

Note: Councilmember Fritchen arrived to Closed Session at 4:02 p.m.

Note: Vice Mayor Miller arrived to Closed Session at 4:07 p.m.

2. ADDITIONS TO CLOSED SESSION AGENDA***

3. ANNOUNCEMENT OF CLOSED SESSION 4:01 PM

3.01 PUBLIC EMPLOYEE PERFORMANCE EVALUATION: 5:02 PM

City Auditor

This Closed Session is authorized pursuant to Government Code Section 54957.

3.02 CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION 4:01 PM

Number of Cases: One

Name of Case: Stockton Police Officers' Association v. City of Stockton, et al. (San Joaquin County Superior Court Case No. 39 2010-00245197)

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

3.03 CONFERENCE WITH LABOR NEGOTIATOR 4:02 PM

145.6

Agency Designated Representative: Bob Deis

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.

3.04 CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION 4:01 PM

Number of Cases: Two

Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code section 54956.9(c).

3.05 Conference with Legal Counsel - Potential Exposure to Litigation: 4:01 PM

Number of Cases: One

Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code section 54956.9(b).

4. PUBLIC COMMENT* 4:01 PM

None.

5. RECESS 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 5:15 p.m.

Supervising Deputy City Clerk Dora Sidrian announced that the regular Council meeting would begin at 5:45 p.m. due to the length of the Closed Session this evening.

6. REGULAR SESSION CALL TO ORDER / ROLL CALL 5:45 PM

Roll Call 5:45 PM

Present:

Councilmember Canepa

Councilmember Eggman

145.7

Councilmember Fritchen
Councilmember Holman
Councilmember Lowery
Vice Mayor Miller
Mayor Johnston

7. INVOCATION/PLEDGE TO FLAG 5:45 PM

Senior Chaplain Jim Reid of the Stockton Police Chaplaincy provided the Invocation. The Pledge of Allegiance was led by Councilmember Fritchen.

8. REPORT OF ACTION TAKEN IN CLOSED SESSION 5:46 PM

No reportable action.

9. ADDITIONS TO REGULAR SESSION AGENDA***

None.

10. PROCLAMATIONS, COMMENDATIONS OR INVITATIONS 5:46 PM

10.01 PROCLAMATIONS

None.

10.02 CERTIFICATES - Volunteer organizations recognition

Recipients: VISTAS volunteers

SOS (Serve our Stockton) Day Volunteers

Adopt-A-Park Volunteers

VIPS (Volunteers in Police Services) 5:47 PM

Others recognized:

Aaron Owens - Stribley Park

Stockton Leadership Foundation

Quail Lakes Baptist Church

God's Throne Baptist Church

10.03 CHECK PRESENTATION - Light Up the Night
Presented by: Dylan George, Government Relations Representative (Pacific Gas & Electric Company); and, Paul Douglas, Business Development Manager (Siemens)
6:03 PM

Councilmember Lowery - introduced the Light Up the Night Campaign

Stockton Police Department Chief Blair Ullring - spoke to the Light Up the Night campaign

11. CITIZENS' COMMENTS, ANNOUNCEMENTS OR INVITATIONS*
6:12 PM

Catherine Alejo - spoke to the homeless living under the Aurora Street Bridge

David Bregante - expressed his appreciation for the Stockton Police Department and the State Department of Alcoholic Beverage Control (ABC)

Tocan Nguyen - shared her political views

Mary M. Martinez - invitation to a meeting on December 1, 2011 at 2707 Transworld Drive; spoke to the closure of the Arch Road/Airport Way Postal Processing and Distribution Center

Vincent Sayles - spoke to the King James Bible and God's word

Tom Ruemmler - spoke to the reduction of new construction fees and regulations; new construction technology and khanacademy.com

Jamie Johnson Glover - spoke to the Arch Road/Airport Way Postal Processing and Distribution Center closure; invitation to the meeting regarding the closure study on December 1, 2011 6:00 p.m. at 2707 Transworld Drive

12. CONSENT AGENDA 6:33 PM

12.01 CC - LABOR RELATIONS AND STRATEGIC HUMAN RESOURCES SERVICES

Motion adopting findings and authorizing a contract with Ann Goodrich, to be effective January 1, 2012 in an amount not to

exceed \$98,000 for Labor Relations and Strategic Human Resources Services. (CM)

12.02 **CC - BACKHOE LOADERS PURCHASE**

Resolution 11-0317 approving findings and authorizing the purchase of two backhoes, in the amount of \$152,817.68, through the California Multiple Award Schedules Cooperative Purchase Agreement with Holt of California. (MUD)

12.03 **CC - FORENSIC TECHNOLOGY, INC. CONTRACT**

Resolution 11-0318 approving findings and awarding a purchase contract to Forensic Technology, Inc. in the amount of \$186,540 for the IBISTrax-3D system for ballistic imaging. (PD)

12.04 **CC/RD/PFA - Approve minutes of the November 14, 2011 Special City Council. (CLERK)**

Note: Councilmember Lowery was noted absent from the Council Chambers.

Motion: Approve the Consent Agenda

Moved by: Councilmember Fritchen, seconded by Councilmember Holman.

Vote: Motion carried 6-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston.

Absent: Councilmember Lowery.

13. **ADMINISTRATIVE MATTERS**

None.

14. **UNFINISHED BUSINESS**

None.

15. **NEW BUSINESS 6:33 PM**

15.01 **CC - STOCKTON CONVENTION AND VISITORS BUREAU 2012 ANNUAL SERVICE PLAN AND BUDGET 6:33 PM**

Resolution approving the proposed 2012 Annual Operating Budget and Assessment for the Stockton Tourism Business

Improvement District. (CM)

Stockton Convention & Visitors Bureau Executive Director Wes Rhea provided the staff report aided by a PowerPoint presentation (filed).

Note: Councilmember Lowery returned to the Council Chambers.

Motion: Approve **Resolution 11-0319** approving the proposed 2012 Annual Operating Budget and Assessment for the Stockton Tourism Business Improvement District.

Moved by: Vice Mayor Miller, seconded by Councilmember Eggman.

Vote: Motion carried 7-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Councilmember Lowery, Vice Mayor Miller, and Mayor Johnston.

16. HEARINGS**

None.

17. COUNCIL COMMENTS 6:48 PM

Councilmember Lowery - spoke to VISTAS program; VISTAS is able to accommodate large projects; VISTAS link on stocktongov.com; December 3, 2011 Starlight Night events and activities, free and family friendly; thanked Vice Mayor Miller as a co-partner of the Starlight Night project

Councilmember Canepa - thanked Dave Rajkovich and the San Joaquin County of Education for the return of the Naval Minesweeper Vessel to the Delta

Councilmember Eggman - El Concilio Annual Tamale Fundraiser Dinner; December 1, 2011, lunch 11:00 a.m.-2:00 p.m. and dinner 5:00 p.m.-8:00 p.m. at the Civic Auditorium

Vice Mayor Miller - in accordance with the City's Travel Policy, Vice Mayor Miller reported on the League of California Cities Board Meeting, she attended November 16-18, 2011 in San

Diego. Copies of the Legislative Positions and of the League's budget are available by request, from the City Manager's office.


Councilmember Fritchen - announced his absence for next Tuesday's December 6, 2011 Council meeting; as part of the San Joaquin Flood Control Agency lobbying delegation going to Washington D.C.

Councilmember Holman - recognized the faith-based community; Reverend Bob Hailey of Unity Baptist Church, retirement; Bishop Troy Dockery of Greater Christ Temple Church, inauguration

Mayor Johnston - Stockton's Operation Peacekeepers recognized nationally in the November 27, 2011 Stockton Record Parade Magazine; encouraged all to remember the less fortunate during this holiday season; shop local, support local

18. ADJOURNMENT

The Council recessed to Closed Session at 7:01 p.m. and adjourned at 8:20 p.m.; no reportable action.


for BONNIE PAIGE
BONNIE PAIGE
CITY CLERK OF THE CITY OF
STOCKTON
SECRETARY REDEVELOPMENT
AGENCY

**MINUTES
SPECIAL CITY COUNCIL
MEETING OF AUGUST 16, 2011**

CITY COUNCIL CHAMBERS, CITY HALL, STOCKTON, CALIFORNIA

1. CLOSED SESSION CALL TO ORDER / ROLL CALL 4:00 PM

Roll Call 4:00 PM

Present:

Councilmember Canepa
Councilmember Eggman
Councilmember Fritchen
Councilmember Holman
Councilmember Lowery
Vice Mayor Miller
Mayor Johnston

3. PUBLIC COMMENT* 4:00 PM

None.

2. ANNOUNCEMENT OF CLOSED SESSION 4:00 PM

2.01 CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Bob Deis

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. 4:01 PM**

2.02

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

Number of Cases: Four

**Name of Case: Stockton Firefighters' Local 456, International
Association of Firefighters v. City of Stockton, et al. (San Joaquin
County Superior Court Case No. 39-2010-00244326)**

**Name of Case: Stockton Police Officers' Association v. City of
Stockton, et al. (San Joaquin County Superior Court Case No. 39-
2010-00245197)**

Name of Case:Ron Hittle v. City of Stockton et al. (San Joaquin County Superior Court Case No. 39-2011-00262021)

Name of Case:Edmond A. Rodriguez v. City of Stockton et al. (San Joaquin County Superior Court Case No. 39-2010-00240354)

This Closed Session is authorized pursuant to Section 54956.9(a) of the Government Code. 4:00 PM

2.03 **CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**
Number of Cases: One

Based on existing facts and circumstances there is significant exposure to litigation pursuant of Government Code section 54956.9 (b) 4:00 PM

2.04 **PUBLIC EMPLOYEE PERFORMANCE EVALUATION:**

City Manager

This Closed Session is authorized pursuant to Government Code Section 54957. 4:00 PM

4. **RECESS TO CLOSED SESSION 4:01 PM**

The Council recessed to Closed Session at 4:01 p.m. Council returned from Closed Session and recessed at 5:00 p.m.

5. **STUDY SESSION CALL TO ORDER / ROLL CALL 5:30 PM**

Roll Call 5:30 PM

Present:

Councilmember Canepa
Councilmember Eggman
Councilmember Fritchen
Councilmember Holman
Councilmember Lowery
Vice Mayor Miller
Mayor Johnston

6. **REPORT OF ACTION TAKEN IN CLOSED SESSION 5:30 PM**

City Attorney John M. Luebberke announced that there was no reportable action taken during Closed Session this evening.

7. **PUBLIC COMMENT* 5:31 PM**

Tocan Nguyen - Redevelopment Agency

8. STUDY SESSION AGENDA 5:34 PM

8.01 IMPACTS OF THE ACTIONS OF THE CALIFORNIA STATE LEGISLATURE AND GOVERNOR RELATED TO THE STOCKTON REDEVELOPMENT AGENCY 5:34 PM

Note: A memo was distributed around the bench, dated August 16, 2011 addressed to the Mayor and City Council from Michael E. Locke, Deputy City Manager providing additional information relating to the impacts of the actions of the California State Legislature and Governor, Item 8.01 (filed).

City Manager Bob Deis introduced the item. Deputy City Manager Mike Locke provided the staff report aided by a PowerPoint presentation (filed).

Mayor Johnston - impacts to the city relating to the proposed dissolution of Stockton's Redevelopment Agency

Councilmember Holman - the difference between the Redevelopment/Council resolutions that the Council authorized versus the obligation of written contracts

Councilmember Lowery - using the El Dorado Street Project as an example for clarification with respect to projects that are in the midst of completion

Councilmember Canepa - status of the Visionary Home Builder's project

Councilmember Fritchen - oversight and appeal process

Councilmember Holman - Successor Agency

Vice Mayor Miller - questioned if Stockton assumes the role as Successor Agency, who maintains control of Redevelopment Development Agency actions?

Mayor Johnston - Special Districts

Councilmember Lowery - terms and interest rates

Susan Mayer - Redevelopment Agency 2011-12 Budget

Mayor Johnston - asked regarding escalating increases in debt payment

Councilmember Canepa - inquired as to what directly affects the pass through


Vice Mayor Miller - debt incurred by non-profit agencies

Public Comment

Larry Test - El Dorado Street Project

9. ADJOURNMENT

Council reconvened Closed Session at 7:15 p.m. and adjourned at 8:05 p.m.; no reportable action.


BONNIE PAIGE
CITY CLERK OF THE CITY OF
STOCKTON

NEW BUSINESS



AGENDA ITEM 15.01

February 7, 2012

TO: Mayor and City Council

FROM: Teresia Haase, Director of Human Resources

SUBJECT: **AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY OF STOCKTON TO PROVIDE PROVISIONS OF RETIREMENT LAW SECTION 20516, EMPLOYEE COST SHARING**

RECOMMENDATION

It is recommended that the City Council adopt a Resolution of Intention to approve an amendment to the contract between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City of Stockton, to include the provisions of retirement law Government Code section 20516 (Employees Sharing Cost of Additional Benefits) for Fire Safety employees. Pursuant to CalPERS retirement law (Gov. Code section 20471), this contract amendment will also require the City Council to adopt an Ordinance at least 20 days after Council approves a Resolution of Intent. Adoption of the Ordinance will be on the agenda for the February 28, 2012, Council Meeting.

Summary

The Memorandum of Understanding (MOU) between the City of Stockton and Stockton Fire Fighters' Local #456 approved on October 18, 2011, by the City Council includes provisions that change the manner in which employees in this Unit will make contributions toward the cost of their retirement benefits. To implement these provisions, the City must amend its contract with CalPERS to include the provisions of retirement law, Government Code section 20516, Employees Sharing Cost of Additional Benefits. This contract amendment will allow Fire Safety employees to share in the cost of what is defined as "employer contributions" to the CalPERS retirement system on a pre-tax basis. Employee contributions toward the employer cost of retirement benefits would also be credited to the employees' CalPERS member accounts, and will earn interest, the same as normal member contributions.

In order to amend the City's contract with CalPERS, the City Council must adopt a Resolution of Intention to approve the amendment, and an Ordinance Authorizing an Amendment to Contract. Additionally, a secret ballot election by the employees affected is required by Government Code section 20474. This is necessary when a retirement contract is amended to provide a benefit which changes the employees' rate of contribution.

**AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY OF
STOCKTON TO PROVIDE PROVISIONS OF RETIREMENT LAW SECTION 20516,
EMPLOYEE COST SHARING
(Page 2)**

DISCUSSION

Background

On October 18, 2011, the Council, by motion, authorized the City Manager to execute the Memorandum of Understanding between the Stockton Fire Fighters' Local #456 and the City of Stockton, effective July 1, 2011. Included in the MOU are provisions relating to contributions towards retirement benefits for Fire Unit employees.

CalPERS retirement benefits are funded with *member* (employee) contributions and employer contributions. Member contributions for Fire Safety employees are a fixed 9% of the employees' salary and other reportable earnings. Retirement Law permits employers to pay all, or a portion, of the *member* contributions that would otherwise be paid by the employees. For many years, based on collective bargaining agreements, the City has paid the *member* contributions for employees, in addition to the employer contributions.

Employer contributions change from year to year, depending on employee and retiree demographics, employee salaries and other reportable earnings, changes in retirement benefits, and CalPERS earnings. Currently, the employer contribution rate for the City's Fire Safety employees is 29.099% of salary and other reportable earnings. There is an additional cost to the City of 9.746% for pension obligation bond expenses, bringing the total employer cost for retirement benefits to 38.845% of CalPERS reportable earnings.

As part of the Action Plan for Fiscal Sustainability approved by the City Council on June 22, 2010, City employees are expected to contribute towards the cost of their retirement benefits. In the new Fire Unit MOU's, employees agreed to contribute 9% of their salary and other reportable earnings towards the **employer's cost** of CalPERS retirement benefits, on an **after-tax basis**. Fire Safety employees chose to contribute towards the employer's cost on an after-tax basis, rather than the ***member contributions*** on a pre-tax basis, in order to preserve a retirement benefit enhancement provision under retirement law Section 20692, "Employer-Paid Member Contributions Converted to Pay Rate During Final Compensation Period" (EPMC). The provisions of Section 20692 allow an employer who pays the *member* contribution for employees to add the value of those contributions (9% for Fire Safety) to the employee's reportable compensation for the final twelve (12) months of employment immediately preceding retirement, thereby increasing the basis upon which the retirement allowance is calculated by CalPERS.

As part of the Fire Unit MOU, the City agreed to determine whether its contract with CalPERS could be amended to include the provisions of Government Code Section

**AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY OF
STOCKTON TO PROVIDE PROVISIONS OF RETIREMENT LAW SECTION 20516,
EMPLOYEE COST SHARING**

(Page 3)

20516, Employee Cost Sharing. Amending the City's CalPERS contract to include these provisions would enable employees to share some, or all, of the employer cost of existing benefit improvements on a pre-tax basis. Although employees are currently sharing 9% of the employer cost, the City's CalPERS contract has not been amended to include the provisions of Section 20516, therefore, contributions are being deducted on an after-tax basis. Section 20516 requires that the amount of employer cost shared by employees be related to the cost of retirement benefit improvements, and limits the period of time a portion of the employer costs can be shared by employees. There are two cost components associated with optional retirement benefit enhancements. The first component is the "normal" cost of a benefit improvement. The "normal" cost is considered to be the additional cost an employer would be required to pay over a period of years (depending on employee demographics) in order to fully-fund an enhanced retirement benefit for retired employees. Employees may share the "normal" cost of a benefit improvement indefinitely.

The second cost component related to retirement benefit improvements is for the "unfunded actuarial accrued liability" (UAAL). This amount represents the liability that is created immediately upon amendment of the CalPERS contract to include an enhanced retirement benefit for past service time. The UAAL amount calculated by CalPERS, can be amortized over a period of 20 years and is incorporated into the calculated *employer* rate for the 20 year amortization period. Therefore, any Employee Cost Sharing attributed to the UAAL is limited to 20 years from the effective date of the benefit improvement.

Present Situation

City staff requested that CalPERS provide an analysis to identify any retirement benefit improvement(s) for the City's Fire Safety members and calculate the maximum amount of cost that can be shared by employees under the provisions of Section 20516. CalPERS determined that the provisions of employee cost sharing under Section 20516 could be applied to the enhanced benefit formula 3%@50. The City contracted with CalPERS to provide this benefit improvement to Fire Safety employees, effective December 16, 2001.

CalPERS has calculated the normal cost of the 3%@50 benefit for the City's Fire Safety members to be 5.614%, and the cost attributable to the accrued liability to be 8.464%, for a maximum allowable employee cost sharing of 14.078% of employees' reportable compensation, which is well above the 9% employer cost the Fire Unit employees have agreed to share in their current contract.

**AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION
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EMPLOYEE COST SHARING**

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The 20-year amortization period for the accrued liability cost associated with the 3%@50 benefit improvement began on December 16, 2001, and will end on December 15, 2021. Therefore, any employee cost sharing associated with the 3%@50 benefit formula cannot exceed 5.614%, effective December 16, 2021.

In order to amend the contract with CalPERS to include the provisions of Section 20516, the City Council must adopt a Resolution of Intention to Approve an Amendment to Contract (Exhibit 1) and adopt an Ordinance Authorizing an Amendment to Contract. Adoption of the Ordinance must be at least 20 days following adoption of the Resolution of Intention. A Certification of Governing Body's Action and a Certification of Compliance with Government Code Section 20516 must also be completed upon adoption of the Resolution of Intention. Both documents are included as part of the Resolution of Intention to Approve Amendment to Contract (Exhibits 2 and 3).

Since this contract amendment changes the employees' rate of contribution, Government Code Section 20474 requires a secret ballot election for employees affected by the contract amendment, which must be conducted after adoption of the Resolution of Intention and prior to adoption of the Ordinance. A secret ballot election for Fire Unit employees will be conducted, and the results tabulated, within seven (7) days of Council Adoption of the Resolution of Intention. A sample employee ballot is attached for informational purposes (Attachment A). If the majority of the Fire Unit employees vote to disapprove the proposed plan, the contract would not be amended. Affected employees would continue to pay 9% of the employer cost on an after-tax basis pursuant to the terms of the MOU's.

Assuming favorable employee election results, the Ordinance will be placed on the City Council agenda for the February 28, 2012, Council Meeting. The contract amendment will be effective the first day of the following pay period after the Ordinance's 30 day wait period, or April 1, 2012. The contract amendment would cover both Fire Management and Fire Unit employees.

FINANCIAL SUMMARY

Based on their new Memorandum of Understanding, Fire Unit employees are now paying a portion of the employer's cost, equal to 9% of their reportable compensation, toward the cost of their retirement benefits, on an after-tax basis. Amending the City's contract with CalPERS to include the provisions of Government Code section 20516, Employee Cost Sharing, will not increase City's expenditures for retirement benefits, but

February 7, 2012

**AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY OF
STOCKTON TO PROVIDE PROVISIONS OF RETIREMENT LAW SECTION 20516,
EMPLOYEE COST SHARING
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will allow the employees' contributions toward the employer cost of retirement benefits to be deducted on a pre-tax basis.

Respectfully submitted,



TERESIA HAASE
DIRECTOR OF HUMAN RESOURCES

TH:tm

APPROVED:


LAURIE MONTES
DEPUTY CITY MANAGER

Attachment A: Certification of Employee Election and Cost Sharing Ballot

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
 Actuarial and Employer Services Branch
 Public Agency Contract Services
 P.O. Box 942709
 Sacramento, CA 94229-2709
 (888) CalPERS (225-7377)

CERTIFICATION OF EMPLOYEE ELECTION

I hereby certify that the following employees of the City of Stockton have expressed their approval or disapproval of said agency's intention to amend its contract to provide Section 20516 (Employees Sharing Cost of Additional Benefits); Section 21362.2 (3% @ 50 Full formula) effective December 16, 2001 for local fire members. The employee cost sharing contributions are not to exceed 14.078%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond December 16, 2021. Thereafter, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.614% of payroll on the basis described in the Resolution of Intention adopted by said agency's governing body on _____, _____, in such manner as to permit each employee to separately and secretly express his choice and that the outcome of such election was as follows:

	Number of employees eligible to vote	Number of votes approving said participation	Number of votes disapproving said participation
Local Fire Fighters as defined in Govt. Code Section 20433	_____	_____	_____

 Clerk or Secretary

 Date

(Amendment)
 PERS-CON-16 (Rev. 9/03)

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

GOVERNMENT CODE SECTION 20516

COST SHARING BALLOT

For use by the local fire members of the City of Stockton to determine their approval or disapproval of the proposal of said agency's governing body to amend its contract with the Board of Administration of the California Public Employees' Retirement System to provide Section 20516 (Employees Sharing Cost of Additional Benefits) applicable to Section 21362.2 (3% @ 50 Full formula) effective December 16, 2001 for local fire members. The employee cost sharing contributions are not to exceed 14.078%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond December 16, 2021. Thereafter, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.614% of payroll.

Government Code Section 20474 requires a secret ballot election by the employees affected whenever the contract is amended to provide a benefit that changes the employees' rate of contribution.

Shall the contract provide for an employee cost sharing contribution not to exceed 14.078% of reportable earnings?	YES	<input type="checkbox"/>
	NO	<input type="checkbox"/>

NOTE: The change in the member contribution rate will be effective as of the effective date of the amendment to the contract.

STOCKTON CITY COUNCIL

RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY OF STOCKTON TO PROVIDE THE PROVISIONS OF RETIREMENT LAW SECTION 20516, EMPLOYEE COST SHARING

On October 18, 2012, the City Council of the City of Stockton by motion authorized the City Manager to execute the Memorandum of Understanding between the City of Stockton and Fire Fighters' Local #456, which includes provisions for employees to share the cost of what is defined as employer contributions, on a pre-tax basis, pursuant to the provisions of Public Employees' Retirement Law (Government Code section 20516); and

An amendment to the contract between the Board of Administration of the California Public Employees' Retirement System is necessary in order implement the provisions of Government Code section 20516; and

The Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments of said Law; and

One of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in the contract; and

The following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Cost of Additional Benefits): Section 21362.2 (3% @ 50 Full Formula), which was effective December 16, 2001, for local fire members. The employee cost sharing contributions are not to exceed 14.078%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond December 16, 2021. Thereafter, in any give contribution year, the maximum employee cost sharing contribution cannot exceed 5.614% of payroll.

now, therefore,

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

1. The City Council of the City of Stockton does hereby give notice of intention to approve an amendment to the contract between the City of Stockton and the Board of Administration of the California Public Employees' Retirement System, a copy of said amendment being attached hereto (Exhibit 1) and by this reference made a part hereof.

2. The City Council of the City of Stockton does hereby authorize Certification of Governing Body's Action (Exhibit 2) in connection with adoption of proposed amendment to the contract between the City of Stockton and the Board of Administration of the California Public Employees' Retirement System.

3. The City Council of the City of Stockton does hereby authorize Certification of Compliance with Government Code section 20516 (Exhibit 3), stating that the City of Stockton has complied with the provisions of retirement law by agreeing in writing with its Fire Safety employees to share the cost of Section 21362.2 (3% @ 50 Full formula).

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 February 7, 2012.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

BONNIE PAIGE, City Clerk
of the City of Stockton

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EXHIBIT 1

California
Public Employees' Retirement System



AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Stockton



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective September 1, 1944, and witnessed September 1, 1944, and as amended effective July 1, 1948, July 1, 1950, February 1, 1952, February 1, 1954, January 1, 1956, January 1, 1960, January 16, 1962, January 1, 1963, January 6, 1968, October 1, 1969, July 1, 1973, August 16, 1973, October 1, 1973, January 1, 1975, July 1, 1978, November 1, 1980, August 1, 1982, January 1, 1993, May 13, 1993, May 12, 1994, March 1, 1997, June 24, 1997, December 1, 1997, March 16, 1999, November 1, 2000, December 16, 2001 and March 16, 2002 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 15 are hereby stricken from said contract as executed effective March 16, 2002, and hereby replaced by the following paragraphs numbered 1 through 16 inclusive:
 1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

AGREEMENT BETWEEN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE PUBLIC AGENCY

2. Public Agency shall participate in the Public Employees' Retirement System from and after September 1, 1944 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
 - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

- (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
- 4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
- 5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **ALL CENTRAL PARKING DISTRICT EMPLOYEES HIRED ON OR AFTER AUGUST 16, 1973.**
- 6. Prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
- 7. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

8. Public Agency and the Stockton Redevelopment Agency have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Stockton Redevelopment Agency, pursuant to Section 20567.6 of the Government Code. Such merger is effective as of July 1, 1975. Public Agency, by this contract, assumes the assets and liabilities accumulated under the former contract of the Stockton Redevelopment Agency. Legislation repealed said Section effective January 1, 1988.
 - a. Service performed for the former agency prior to July 1, 1975 shall be subject to the terms and conditions of the former agency's contract as it was in effect at that time. Service performed after July 1, 1975 shall be subject to the terms and conditions of this contract. For purposes of computing retirement allowances, separate calculations shall be made for service performed under each contract.
9. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to June 30, 1978, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Sections 21624 and 21626 (Post-Retirement Survivor Allowance).
 - b. Section 21222.1 (One-Time 5% Increase - 1970). Legislation repealed said Section effective January 1, 1980.
 - c. Section 20042 (One-Year Final Compensation).
 - d. Section 21326 (One-Time 1% to 7% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to July 1, 1974). Legislation repealed said Section effective January 1, 2002.

- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 21027 (Military Service Credit for Retired Persons).
- g. Section 20965 (Credit for Unused Sick Leave).
- h. Section 21574 (Basic Level of 1959 Survivor Benefits).
- i. Section 21635 (Post-Retirement Survivor Allowance to Continue After Remarriage).
- j. Section 21551 (Continuation of Pre-Retirement Death Benefits After Remarriage of Survivor).
- k. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for local miscellaneous members and local safety members.
- l. Section 21335 (5% Cost-of-Living Allowance, base year 2001) for local miscellaneous members only.
- m. Section 20903 (Two Years Additional Service Credit).
- n. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50 Full formula) for local fire members. The employee cost sharing contributions are not to exceed 14.078%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond December 16, 1921. Thereafter, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.614% of payroll.

- 12. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on January 1, 1975. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.

PLEASE DO NOT SIGN "EXIST ONLY"

13. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
14. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
15. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

16. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF STOCKTON

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Actuarial and Employer Services Branch
Public Agency Contract Services
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (225-7377)

CERTIFICATION OF GOVERNING BODY'S ACTION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the _____ of the _____
(governing body)

_____ of the _____
(public agency)

on _____
(date)

Clerk/Secretary

Title

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Actuarial and Employer Services Branch
Public Agency Contract Services
P.O. Box 942709
Sacramento, CA 94229-2709
(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 20516**

I hereby certify that in accordance with Section 20516 of the Government Code, City of Stockton and its fire employees have agreed in writing to share the costs of the following benefit:

Section 20516 (Employees Sharing Cost of Additional Benefits):
Section 21362.2 (3% @ 50 Full formula) effective December 16, 2001 for local fire members. The employee cost sharing contributions are not to exceed 14.078%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond December 16, 2021. Thereafter, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.614% of payroll.

Signature

Title

Witness

Date

NEW BUSINESS



AGENDA ITEM 15.02

February 7, 2012

TO: Mayor and City Council

FROM: Bob Deis, City Manager

SUBJECT: **CONTRACT FOR CONSULTANT SERVICES TO SUPPORT THE MARSHALL PLAN PROJECT ON PUBLIC SAFETY**

RECOMMENDATION

It is recommended that by motion action the City Council adopt findings and authorize the City Manager to enter into a contract with David Bennett Consulting in the amount of \$122,200 to provide consulting services in support of the Marshall Plan Project on Public Safety.

It is also recommended that by motion action the City Council authorize the transfer of \$150,000 from General Fund Contingency to the Non-Departmental Professional & Special Services Account to fund this project.

SUMMARY

During our recent January 31 Study Session, I proposed a committee, a timeline, a process and consultant that will lead to the completion of your Strategic Initiative Marshall Plan on Public Safety. As noted in the Study Session, the Readiness Phase is complete and staff is prepared to move forward to the next phase. Consistent with the Study Session consensus discussion of Council to allocate funding for consultant services in support of the Marshall Plan I am submitting for your approval a contract for services with David Bennett Consulting. This Strategic Initiative was proposed (and approved on May 17, 2011) with the caveat that adequate one-time resources would be provided to support this unprecedented project. Without these resources, we cannot move forward on this project. This investment represents less than two-tenths of one percent of the annual Police operating budget. It has the potential to truly change Stockton's reputation and community for generations to come.

DISCUSSION

Background

On May 17, 2011 the City Council adopted a Work Plan for their City Council Goals that included 37 Strategic Initiatives, one of which, the Marshall Plan, focused on reducing crime and improving a sense of Public Safety in the City. Consistent with the adopted work plan for this Strategic Initiative we have completed the Readiness Phase which included reaching out to major stakeholders that participate directly or indirectly in the Criminal Justice System (CJS) or are directly impacted by the CJS or crime itself in order to assess their willingness to participate in this project. As outlined in the work

**CONTRACT FOR CONSULTANT SERVICES TO SUPPORT THE MARSHALL PLAN
PROJECT ON PUBLIC SAFETY**

(Page 2 of 4)

plan, the City will act as a “convener” facilitating a discussion with these stakeholders. During the January 31, 2012 Study Session I communicated to the Council that I have contacted proposed Committee members that reflect the City’s diversity and include representatives from the CJS stakeholders and people are excited about participation in this project.

During the January 31 Study Session I also proposed a timeline, a process and a consultant that will lead to the completion of your Strategic Initiative. The process includes a three phased approach facilitated by a professional consultant over a period of twelve months. A key component in the success of this project is the need to have adequate resources to support the Committee and produce an actionable work product. This Committee resource was part of the original Business Plan submittal to the Council last year (see Attachment A). If we are to achieve the goals of this project, we need a professional resource that is not consumed by the “day-to-day” challenges of the City.

We have surveyed the consultant field for a resource that would work with the Committee and the City to facilitate meetings, capture and interpret data and input and develop an implementation plan that meets project objectives. In our survey we found consultants that typically focus in one area e.g. police, jails, county criminal justice systems, etc., but we could not find consultants that encompass all aspects of the system. I chose David Bennett because he and his cohort understand and have worked with most parts of the criminal justice system with particular experience in comprehensive analysis of overall criminal justice system issues. He has over 34 years of criminal justice consulting experience and has advised over 250 criminal justice systems nationwide.

The trademark of his work is research-based, data-driven community based solutions for reducing recidivism. He is exceptionally skilled in data compilation and computer analysis. He has worked across the spectrum of interventions, from prevention efforts such as creating innovative mental health diversion programs, to addressing at-risk populations in both the adult and juvenile systems. He has also been heavily involved in overall CJS issues to create more effective, efficient systems with economically feasible solutions. The projects that he has facilitated have restored integrity to overburdened criminal justice systems by focusing on evidence based practices. His process focuses on developing collaborative crime reduction models that work across agencies, systems, and involve the community. Innovative solutions designed by David such as an early case resolution process developed for Salt Lake County, Utah have been subsequently adopted in a number of states because of the real results it has had in reducing costs and case load backlogs within respective CJSs. David has also been successful in bridging the gap between siloed criminal justice systems in challenging communities, such as Baltimore, Maryland, to bring real change in a system that had struggled for decades. David has the ability to interact with system stakeholders, forge agreement from disparate perspectives, and produce and implement change.

**CONTRACT FOR CONSULTANT SERVICES TO SUPPORT THE MARSHALL PLAN
PROJECT ON PUBLIC SAFETY**

(Page 3 of 4)

Consistent with the January 31 Study Session consensus discussion to allocate funding for consultant services in support of the Marshall Plan I am submitting for your approval a contract for services with David Bennett Consulting. The proposed contract for services with the consultant is attached and includes his proposal for this project as Exhibit A to the contract (Attachment B).

Findings

Stockton Municipal Code Section 3.68.070 provides an exception to the competitive bidding process in cases where the City Council has approved findings that support and justify the purchase.

The following findings support the exception as follows:

- There is an immediate need to move forward with the Strategic Initiative Marshall Plan Project on Public Safety.
- The Marshall Plan is one of the most important goals for the City of Stockton.
- The City does not have the expertise, resources, or staff time to support this effort to the level that is necessary for success.
- There would be a significant delay in moving forward with the Marshall Plan if the City were to engage in a formal Request for Proposals (RFP) process. To expedite work, staff surveyed the consultant field for qualified candidates.
- The identified consultant is uniquely qualified for this effort because of his broad experience across the spectrum of services in the criminal justice system combined with a community based approach that develops collaborative crime reduction models.
- The majority of consultants in this field focus in one area of the criminal justice system and are not well versed in all aspects of the system.
- The identified consultant has demonstrated the talent and capability to facilitate diverse groups through challenging criminal justice issues in order to produce highly actionable strategies that lead to real results.
- The identified consultant provides expertise in data compilation including proprietary methods of computer analysis
- The proposed fees are reasonable and comparable to the costs for similar efforts documented in other jurisdictions.

**CONTRACT FOR CONSULTANT SERVICES TO SUPPORT THE MARSHALL PLAN
PROJECT ON PUBLIC SAFETY**

(Page 4 of 4)

FINANCIAL SUMMARY

As I mentioned in the initial outline for the Strategic Initiative that was reviewed and approved by Council, this is a project that requires additional one-time costs to fund the consultant. As you may recall, we have also allocated one-time funding for consultant services in support of two other adopted strategic initiatives, a Management Review of the Community Development Department with Management Partners, Inc. and the Downtown Revitalization Plan with the Urban Land Institute. We are spending approximately \$150,000 from the General Fund to fund the Community Development Management Review. We are spending approximately \$150,000 for the Downtown Revitalization Project; however, through public and private donations we were able to avoid a General Fund contribution other than staff time. In both cases these outside professionals provide a unique expertise that is necessary to address the challenges in the City of Stockton.

The proposal from David Bennett consulting includes a budget of \$122,200 at this stage, along with \$27,800 for contingency. This of course is an estimate of his time at this stage in the project. His time will be largely driven by City and Committee demands for his assistance. I propose that we fund this contract by transferring funds from the General Fund Contingency to the Non-Departmental Professional & Special Services Account.

Respectfully Submitted,


for BOB DEIS
CITY MANAGER

BD:cc

Attachment A – Council Business Plan – Marshall Plan to Reduce Crime
Attachment B – Agreement for Consultant Services with David Bennett Consulting

**2011 Business Plan Proposal
City of Stockton Marshall Plan to Reduce Crime**

What City Council goal does this proposal seek to address?

Increase Public Safety, both real and perceived.

What is your proposal, project or focused work activity?

This proposal includes: 1) a convening of all stakeholders on this topic eliciting their support and involvement of this project, 2) data review of our crime trends to determine sources or drivers of our high crime rates and 3) recommendations for the City and all stakeholders to both ameliorate crime levels and improve people's sense of public safety. For purposes of this study, the stakeholders include: the City, the San Joaquin County Criminal Justice (SJCCJS) and Human Service Systems, the State Court (San Joaquin) System, non-profits (including faith based institutions) whose mission is focused on preventing criminal activity or reducing recidivism, the State and the schools.

Project success will include an acceptance and support from most stakeholders on: 1) the study's overall findings on what are the key drivers of our high crime rates, 2) based on findings in #1, an overall plan with actionable initiatives to improve public safety and 3) in concert with each other, agreed upon roles for each stakeholder to implement the initiatives.

**How does this project address or make a positive impact on the Council's goal?
How will you know?**

The City of Stockton has initiated studies and efforts in the past that ranged from a specific voter approved public safety initiative (police/fire) to task forces that produced limited follow through. Past initiatives included studies that focused on improving police efforts or included a community wide conversation about crime, but with limited data--driven or evidence--based initiatives resulting in a sustained effort to reduce crime from a multi-disciplinary standpoint. These initiatives were primarily City centric and did not take into account the myriad of stakeholders that impact public safety in the City. These past projects did not address how each stakeholder's work impacts each other. For example, if the City restored the 99 officers that were eliminated over the last two years, can the SJCCJS handle the related work activity?

There are various institutions that have a piece of this complex topic, and there are examples of some stakeholders collaborating on a specific project (typically related to a grant funded initiative), however, there needs to be more sustained (coordinated) efforts that include all stakeholders relying on the same data to implement complementary

efforts towards reducing crime and enhancing Stocktonians sense of safety. We cannot arrest our way out of this problem.

We will make a positive impact at first by an acceptance and buy in by most stakeholders that we are heading in the right direction. The ultimate proof will be measuring crime rates and Stocktonians sense of safety over time. Stockton's high crime rates have been around and developing over years, thus a downward trend will take some time.

Who is the Project Lead?

The Project Lead will be the City Manager, at least initially. The CM Office will hire a project manager to complete this project.

What is the City's role (direct service delivery, convener or support/advocacy)?

The City's primary role for this project will be convener of all the stakeholders in the public safety issue. However, to the extent that City services are impacted (Police or Peace Keepers, etc.), we will have a role in the direct service delivery.

Can his be accomplished within current budgeted resources? If not, what is needed as one-time or ongoing resources?

To complete this phase of the project, we estimate a budget of \$150,000 (one-time) is needed to hire an outside criminal justice planner who will evaluate our data and approach, convene and engage all stakeholders and develop specific recommendations.

What are some key milestones for this Plan?

Milestone #1: Readiness Assessment Phase. Approach all stakeholders and solicit buy-in and participation of this project.

Milestone #2: Analysis Phase. Gather and analyze data to understand and report out crime data in Stockton, including causes or drivers of crime trends. Report out to stakeholders. Consider conducting survey of Stockton citizens on perceptions of crime and public safety.

Milestone #3: Planning Phase. Provide recommendations on multi disciplinary initiatives or strategies to reduce crime trends and increase a sense of safety. Solicit stakeholders support and feedback on recommendations.

Milestone #4: Complete Project Report and present to City Council.

Milestone #5: Implementation Phase. Recommendations will be implemented. Timelines are contingent on the list of recommendations.

CITY OF STOCKTON AGREEMENT FOR CONSULTANT SERVICES

This Independent Contractor Agreement (“Agreement”) is by and between the City of Stockton, a municipal corporation (“City”) and David Bennett Consulting (“Contractor”). City and Contractor may be collectively referred to as the “Parties.”

In consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. EFFECTIVE DATE AND TERM

This Agreement shall commence on the date that the Agreement is fully executed by the Parties, and shall remain and continue in effect for a twelve month period.

2. SERVICES

Contractor shall perform for the City services (“Services”) set forth in the Scope of Work, attached hereto and incorporated herein as “Exhibit A.”

3. PRICE

The price (“Price”) to be paid by City to Contractor for the Services shall not exceed \$122,200.

4. CITY MANAGEMENT

The City’s Manager shall represent City in all matters pertaining to the administration of this Agreement and shall be authorized to act on the City’s behalf.

5. PAYMENT

(a) The City agrees to pay Contractor monthly, in equal payments over a twelve month period in accordance with the terms as set forth in Section 2 and Section 3 of this Agreement.

(b) Contractor shall not be compensated for any services rendered in connection with his or her performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City’s Manager, pursuant to Section 6 of this Agreement. Contractor shall be compensated for any additional services pursuant to the hourly rate stated herein.

(c) Contractor's contact information for notices is David M. Bennett, 2940 American Saddler Drive, Park City, UT 84060.

6. CHANGES

This Agreement, including but not limited to the scope of Services and Price, may be amended in whole or part only by an agreement in writing signed by both City and Contractor.

7. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City for work completed.

8. DEFAULT OF CONSULTANT

The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City can terminate this Agreement immediately by written notice to the Contractor.

9. INDEMNIFICATION

(a) Insurance shall be provided as set forth in Exhibit B.

(b) To the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs which arise out of, pertain to, or relate to the gross negligence, recklessness, or willful misconduct of the Contractor.

(c) City shall indemnify, protect, defend and hold harmless Contractor from and against any and all losses, liabilities, damages, costs and expenses, including but not limited to attorney's fees and costs which arise out of Contractor's performance of this Agreement within the scope of his duties as a

consultant providing an updated strategy and pathway for moving the City leadership team toward the City Council's aggressive list of goals.

10. INDEPENDENT CONTRACTOR

(a) Contractor is, and shall at all times remain, as to the City, a wholly independent contractor. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that he is in any manner an officer, employee, or agent of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing Services hereunder.

11. LEGAL RESPONSIBILITIES

The Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect the performance of his or her Service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

12. UNDUE INFLUENCE

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly, from the Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) Contractor shall not, without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other

information concerning the Services performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(b) Contractor shall promptly notify City should Contractor be serviced with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, or party regarding this Agreement and the work performed thereunder. Contractor agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. ASSIGNMENT

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

15. GOVERNING LAW

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the County of San Joaquin.

16. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force of effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

17. DISPUTE RESOLUTION

All claims, disputes, or any other matters in controversy between the Parties arising out of or in any way related to this Agreement shall first attempt to be resolved by informal telephonic or written communication between the Parties. In the event that informal techniques do not resolve a dispute, all Parties agree that any dispute will be submitted to mediation, prior to pursuing any other remedies provided by law.

18. ATTORNEY'S FEES

In any action between the Parties arising out of or connected with this Agreement, including any arbitration proceeding, the prevailing party in such action shall be awarded, in addition to any damages, injunctions, or other relief, its costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

19. INTERPREATION, SEVERABILITY

(a) The headings used in this Agreement are used for the convenience only and shall not be construed in interpreting this Agreement. Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural and conversely.

(b) If any portion of this Agreement shall be held invalid or inoperative, then, so far as in reasonable and possible:

1. The remainder of this Agreement shall be considered valid and operative; and
2. Effect shall be given in the intent manifested by the portion held invalid or inoperative.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on this day and year below:

CITY OF STOCKTON

DAVID BENNETT
CONSULTING

Date: _____

Date: _____

By: BOB DEIS
(Print Name)

By: DAVID M. BENNETT
(Print Name)

Its: CITY MANAGER
(Title)

Its: _____
(Title)

(Signature)

(Signature)

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

BONNIE PAIGE
CITY CLERK

City of Stockton, California

Public Safety Planning Initiative

David M. Bennett
David Bennett Consulting
2940 American Saddler Drive
Park City, Utah 84060
Tel: (435) 649-1999
davidbennett@mac.com

In association with

Donna Lattin
3124 Southwood Drive
Philomath, OR 97370
(541) 929-9298

The Stockton Cross-System

Public Safety Planning Initiative

At a time of budget shortfall the last thing on most official's minds is planning. Most jurisdictions simply survey the damage, wait out the storm, and then re-build. And most often what is rebuilt closely resembles what was lost. Sometimes this makes sense. However, in most cases, the need to rebound provides an opportunity to rethink; and jurisdictions that take the time to reassess their efforts come back stronger.

The proposed project is a cross-system initiative to create a unified plan for public safety. In hard times each jurisdiction makes its own tough choices about where to cut spending. However, funding cuts in one area have implications in other areas. The loss of a prevention program, the reduction in law enforcement officers, and down-sizing of treatment programs all have ripple effects. In hard economic times it is, therefore, all the more important to plan collectively.

- ✓ What are the primary “drivers” of Stockton’s crime rate?
- ✓ What are the lessons of violence prevention efforts and offender management?
- ✓ What are the no-cost measures that can be taken to strengthen the criminal justice system?
- ✓ What is the near-term plan for responding to the challenge of the State prison release?
- ✓ What is the long-term plan for building a balanced portfolio of strategies?

The objective is the development of a system-wide Plan to map a common course toward a shared goal. Unlike efforts that target a particular point in the system (such as Dr. Braga’s report on local law enforcement gang initiatives), this project aims to look at the ‘Big Picture.’ This project would take a cross-system approach to planning.

A cross-system approach to planning is important because good outcomes depend on coordinated approaches. Incarceration, by itself, does not reduce criminal behavior. Law enforcement, by itself is not the solution. Supervision without treatment does not reduce recidivism. Given this, the best hope for managing risk is to have a system that targets its resources where it can reap the greatest benefits, coordinates its efforts across the continuum, and has integrity: the one empty bed necessary to deliver on a promised swift and certain response.

The planning process will build from locally tested ideas, past studies, and current initiatives: your system is not short on innovation.

The process will start from what has already been accomplished in the areas of policing, prosecution, prevention to re-entry, and then examine these efforts within a systems context. We will facilitate a series of discussions to allow a fresh look at how the business of the system is conducted, while considering tested strategies that can improve effectiveness, streamline operations and improve offender outcomes.

At a time of budget shortfall this is an especially valuable exercise. All agencies and governments are struggling to protect the community, preserve good programs, and adapt to new mandates. The planned release of State prisoners to the counties is but one new challenge. This project will give Stockton a framework for cross-system planning.

The questions will be asked across the spectrum of the system.

The project is broken into three planning phases over a 12-month time period. We propose that an Implementation effort be planned as a separate phase — after recommendations are adopted and the system has decided how to proceed.

Phase I: A Forum for Review (4 months)

This phase provides the forum for a facilitated review of local efforts in crime prevention and risk management: from prevention to prisoner re-entry. These efforts will be discussed within the context of local plans and practices, national findings and best practice research regarding risk reduction.

This phase will be grounded in individual meetings with system stakeholders, as well as a series of meetings with a Planning Commission convened for this project. I recommend that commission membership be enlisted before the start of the project, and that stakeholders have an opportunity to discuss the project, in meetings with the City Manager, before the official project launch.

Questions to address in the first phase include:

- What is the nature of the crime in Stockton and likely drivers?
- What efforts have been tried to reduce violence? Property crimes?
- What has worked? How do we know?
- What are the national findings regarding crime suppression and prevention, violence reduction, detention reform, and improved offender outcomes?
- What key strategies need to be in place/maintained to support a comprehensive plan?
- What data is available to inform and shape our next steps?

Phase 2: Building a Better System (4 months)

This phase will focus on a review of initiatives to improve the functioning of the criminal justice system. Key components of the system will be reviewed and observed; and, depending on availability, key data elements will be collected toward the goal of providing a brief system diagnostic and framing issues for review. This phase will include a Symposium to present and review system data.

- What system efficiencies can reduce impact on jail and save resources?
- What prevention and diversion efforts are needed?
- How do we assess our efforts, from pre-booking, pre-trial, prosecution, probation, community programs, detention, and re-entry?
- What policies should be reviewed for improved efficiency?
- What measures are essential to improved outcomes?
- What are the local planning issues for the prisoner re-entry initiative?
- What data is needed to support system review and refinement?

Phase 3: Charting a Cross-System Strategy (4 months)

The final phase will include a system wide discussion to assist in the formation of local strategies/recommendations toward the development of a cross-system plan: a roadmap for community crime reduction. The discussion will be grounded in local data, and informed by research and local experience regarding effective violence reduction measures.

It will be guided by questions: How can the larger system design a balanced portfolio of strategies that can inform future budget cutting or enhancements? How to best map out a plan for realizing system effectiveness and efficiencies? How to ensure that the data needed to measure performance and mark progress is available? How best to track trends in capacity and resource needs? How to incorporate the best evidence into program and system planning? How to come together to help shape the future?

Proposed Number of trips: I propose 8 trips over the course of the project for me and my colleague: 16 trips total. However this is dependent on the Planning Committee's and the City's needs as they work through the phases.

- Phase 1: 3 trips
- Phase 2: 3 trips (1 of the trips = Symposium)

➤ Phase 3: 2 trips (1 of the trips= Planning Forum)

A project of this nature depends for its success on the full participation of system participants. Key players from all government bodies and agencies must be prepared to share data, contribute to discussions, and help shape the direction of the planning. The work of the consultants is limited without this commitment.

A project of this nature also depends upon some common expectations. Given that this project is built around the formation of a new cross-system Planning Committee convened to help shape the project direction, this effort will be a 'work in progress.' As such, it will be important to have the flexibility to respond to project progress with an ability to reassess resources needed in terms of specialized expertise, project duration, and cost.

Finally, the nature of this project leaves the end product in question. Given that the project is exploratory in nature the desired end product will need to be defined early in the project. This end product must realistically reflect the direction of the group and the available time and resources.

Finally, given the past efforts in your community we want to make clear that this project is not intended to replicate any police staffing analyses, cost-benefit analyses, or research-based data studies.

The Team

David M. Bennett

I am a criminal justice consultant with over 30 years experience. I have advised more than 250 jurisdictions in 40 states regarding the development of systems-based solutions to public safety and jail management.

Before beginning my consulting career I worked to establish, and then manage, the Pre-Trial Services Department of Salt Lake County Criminal Justice Services in Utah.

I have also worked on several nationwide projects. Under the sponsorship of the National Institute of Corrections and the American Justice Institute, I served as lead trainer and helped set the agenda for the federal government's first jail overcrowding seminar in 1981. I also participated in the development of the Law Enforcement Assistance Administration's jail management guidelines, which have been recommended to state and local officials since 1978. I am co-author of the first *Jail Capacity Planning Workbook* published by the U.S. Department of Justice.

I will be joined in this project by Donna Lattin, who specializes in alternative to jail programs and evidence-based practices. Donna and I have a new document out, published by the National Institute of Corrections, "*Jail Capacity Planning Guide: A Systems Approach.*" This document is a revised version of the earlier jail capacity planning workbook.

I have been involved in several projects in California, including serving as an expert witness for Sonoma County for the Coleman/Plata deliberations.

My work is based on the conviction that simply building more jail beds will not by itself solve our crime problem. The promise of reducing criminal behavior requires jail planning that is embedded within broad system reform — and toward the goal of efficient prosecution, swift and humane justice, quality supervision, and evidence-based programs. And, it must be grounded in good data. I advocate a holistic 'systems approach' to problems of crime.

Donna Lattin

Donna began her career as a community corrections manager and policy analyst for the Oregon legislature. As a consultant she specializes in the assessment of local criminal justice systems and jail alternatives. She works with jurisdictions to develop system master plans based on best practices and evidence-based research, helping counties develop comprehensive strategies to effect positive change. For the last 15 years Donna has worked around the country to plan and design jail alternative programs in both the juvenile and adult systems.

BUDGET

	Hourly Rate	Days on-site	Days off-site	Total hours	Total Fee	# of Trips	Cost per Trip	Total Travel	Total Cost
Consultants									
Bennett	\$175	24	21	360	\$63,000	8	\$1,450	\$11,600	\$74,600
Lattin	\$100	24	21	360	\$36,000	8	\$1,450	\$11,600	\$47,600
Total									\$122,200

The fee is submitted as a lump sum. Costs for materials, office expenses, and administration are built into the hourly rates. The fee is negotiable based upon the scope of work.

EXHIBIT "B"

INSURANCE REQUIREMENTS

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

Minimum Limits of Insurance

1. **INSURANCE** Throughout the life of this Contract, the Consultant shall pay for and maintain in full force and effect with an insurance 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 (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence.

B. **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.

C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR ADDITIONAL REQUIREMENT(S):

(i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage 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.

Deductibles and Self-Insured Retention

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. The City, its 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 the Consultant; premises owned, occupied or used by the Consultant; and automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees or volunteers.
2. For any claims related to the project, the Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to City, its officers, officials, employees, or volunteers.
4. The Consultant'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.
5. Each insurance policy required by this Agreement 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.

Subcontractors

Before permitting any subcontractors to perform work under this Agreement, the Consultant shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by the Consultant 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 City.

Verification of Coverage

The Consultant 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, the Consultant shall furnish City a certified copy of any or all policies of insurance covering the work required under this Agreement.

HEARINGS



AGENDA ITEM 16.01

February 7, 2012

TO: Mayor and City Council

FROM: Michael E. Locke/Deputy City Manager/
Interim Community Development Director

SUBJECT: **PUBLIC HEARING: REQUEST OF J.H. WILLIAMS EAST LLC FOR APPROVAL OF A REZONE (P10-365)**

RECOMMENDATION

It is recommended that the City Council adopt a resolution and an ordinance, as follows:

1. Resolution certifying an Initial Study/Final Mitigated Negative Declaration (P10-365) and adopting the related CEQA (California Environmental Quality Act) "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project," dated November 28, 2011; and an
2. Ordinance approving a rezoning of four parcels from IL (Industrial, Limited) to IG (Industrial, General) for property located on the north side of Weber Avenue and west of F Street.

Summary

At its meeting of December 8, 2011, the Planning Commission considered and recommended approval of the requests of J.H. Williams East LLC for an Initial Study/Final Mitigated Negative Declaration and adoption of the related CEQA "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project," and Rezoning for this project (P10-365). A Use Permit was approved by the Planning Commission, subject to the subsequent approval of the environmental document and Rezoning, which require final approval by the City Council. The applicant has requested the Rezoning of four parcels adjacent to their existing recycling and transfer station facility located at 2435 East Weber Avenue and a new Use Permit to accommodate a proposed 1.77-acre expansion of the existing 4.96-acre facility, for a total of 6.7 acres. The parcels would be rezoned from IL (Industrial, Limited) to IG (Industrial, General). Expansion of the facility would include the construction of a new 33,400-square-foot metal building for indoor materials processing. The proposed site expansion would improve truck access, on-site queuing and circulation of trucks and would provide increased capacity in order to accommodate the complete diversion of commercial and residential "single-stream" recyclable materials currently processed at another facility owned by the applicant located at 401 South Lincoln Street. The primary objective of consolidating the two facilities is the permanent closure of the Lincoln Street site, which would: 1) increase operating efficiency, 2) eliminate hauling between the two sites and 3) maximize the waste hauling capacity of the combined facility.

PUBLIC HEARING: J.H. WILLIAMS EAST LLC REQUEST FOR APPROVAL OF A REZONE (P10-365)

(Page 2)

DISCUSSION

Background

A Use Permit (UP97-61) was issued on December 20, 1961, to permit baling and limited storage of waste paper on a portion of the project site, generally located at 2435 East Weber Avenue. In response to a 1995 proposal by the previous operator to expand the facility, staff determined that a new Use Permit, a General Plan amendment from Low/Medium-Density Residential to Industrial and a rezoning of the property from M-1 (Light Industrial District) to M-2 (Heavy Industrial District) was required in order for the transfer station to expand its permitted activities. The new Use Permit (UP75-95) was approved by the Planning Commission on September 23, 1996, and the City Council subsequently approved the accompanying General Plan amendment and rezoning requests. In response to a number of complaints received by staff regarding the operation of the recycling facility (under prior ownership), the Planning Commission modified UP75-95 on November 8, 2001. The modifications included additional conditions to address pest control, the installation of an odor neutralizing system, restricted hours of operation and the installation of a litter/dust barrier. The existing facility is currently permitted by the State Department of Resources Recycling and Recovery (CalRecycle) to process a maximum of 512 tons per day of recyclable material. East Stockton Recycling and Transfer Station (ESRTS) is a large-volume transfer station and resource recovery facility that is open to commercial vehicles only. Customers currently bring construction and demolition (C&D) materials (including wood, cement, asphalt, dirt, bricks and stone) to the facility. In addition, the facility processes pre-separated glass, newspaper, cardboard and other recyclable materials.

The applicant also operates a recycling facility at 401 South Lincoln Street which processes commercial and residential "single-stream" recyclable materials under a separate Use Permit (UP48-96). The material is termed "single-stream," because all of the recyclables are mixed together. The facility is permitted by CalRecycle to process a maximum of 500 tons per day of recyclable material. The Lincoln Street site is extremely visible from the adjacent elevated freeway structures of Interstate 5 and State Highway Route 4 and is regarded by many as a visual symptom of blight and dilapidation and is located at a primary gateway to downtown.

Present Situation

Rezoning and Use Permit

J.H. Williams East LLC is proposing to consolidate its Lincoln Street operation with the Weber Avenue facility. The primary objective of consolidating the two facilities is the permanent closure of the Lincoln Street site, which would: 1) increase operating efficiency, 2) eliminate hauling between the two sites and 3) maximize the waste hauling

PUBLIC HEARING: J.H. WILLIAMS EAST LLC REQUEST FOR APPROVAL OF A REZONE (P10-365)

(Page 3)

capacity of the combined facility. In order to accommodate the proposed land use, the applicant has applied for a rezoning of four parcels near the existing facility from IL (Industrial, Limited) to IG (Industrial, General) and a new Use Permit. The proposed rezoning is appropriate for the project and is consistent with the General Plan designation of Industrial.

The new Use Permit would supercede the previously-approved Use Permit (UP75-95) and allow a 1.77-acre expansion of the existing 4.96-acre ESRTS facility, for a total of 6.7 acres. The project site is bisected by F Street, which would be abandoned in conjunction with the project and revert to the applicant, who owns property on both sides of the street. Expansion of the facility would include the construction of a new 33,400-square-foot metal building for indoor materials processing. This new structure would include approximately 2,000 square feet of additional office space. The proposed site expansion would improve truck access, on-site queuing and circulation of trucks and would provide increased capacity in order to accommodate the complete diversion of commercial and residential “single-stream” recyclable materials currently processed at the applicant’s Lincoln Street facility.

The proposed facility would process an average combined tonnage of 1,000 tons per day and a maximum of 1,250 tons per day. The limit on weekly average material acceptance would be increased from 2,560 to 7,000 tons per week. The current operating hours of ESRTS are 7:30 am to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday. The facility is closed on Sunday. The applicant is proposing to operate the facility 24 hours a day, seven days per week; however, materials would only be accepted from 5:00 a.m. to 10:00 p.m., Monday through Friday, and from 6:00 a.m. to 5:00 p.m. on Saturday and Sunday. The remaining hours of operation would accommodate on-site processing activities within the proposed building.

Environmental Clearance

The Initial Study/Final Mitigated Negative Declaration was prepared in compliance with the California Environmental Quality Act (CEQA), State CEQA Guidelines and City Guidelines for the Implementation of CEQA. In addition, the mitigation monitoring and reporting provisions and related CEQA findings are included in the related “Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project,” dated November 28, 2011 (CEQA Findings).

The City Council must consider adopting all applicable mitigation measures identified in the Initial Study/Final Mitigated Negative Declaration (P10-365) and the related CEQA Findings in conjunction with the approval of any related discretionary authorizations, or any modifications thereof, provided all impacts remain fully mitigated. Information related to the environmental clearance required for the project is provided in the staff report to the Planning Commission dated December 8, 2011 (Attachment A).

PUBLIC HEARING: J.H. WILLIAMS EAST LLC REQUEST FOR APPROVAL OF A REZONE (P10-365)

(Page 4)

Neighborhood Participation

In compliance with the provisions of SMC Section 16.88.025, which require a neighborhood meeting for any application requiring action by the City Council, the applicant held an open house-style public meeting on Wednesday, November 16, 2011, at Martin Luther King, Jr. Elementary School, which is located less than a mile from the project site at 2640 East Lafayette Street. Notices were mailed by the applicant to 94 property owners, residents and agencies. In addition to City staff and the project team, a total of five residents attended the meeting. While a few simply signed-in and took an information packet, others noted concerns with regard to noise, odor, and rodents, which are summarized in the Public Meeting Summary Report (Exhibit 12). Noise and odor are discussed on page 5 of the Planning Commission staff report. In addition, staff has proposed Condition No. 11, which would require the ongoing use of a pest control service, in order to address pest control concerns associated with the facility.

PUBLIC HEARING DISCUSSION

The Planning Commission held a public hearing on this item on December 8, 2011. Several people spoke in favor of the project, including representatives from St. Mary's Interfaith Community Services, Allied Waste, and California Waste Recovery Systems. Several others, including neighbors and/or property owners, spoke in opposition to the project, citing concerns with respect to air quality (dust), noise, odor, traffic and rodents. A significant amount of discussion was focused on the applicant's responsibility for addressing rodents attributable to the site. The applicant committed to strict adherence with the proposed Use Permit Conditions of Approval, including a requirement that the applicant contract with a professional pest control service (Condition No. 11). The Planning Commission assured those in attendance that they will closely scrutinize the applicant's efforts to address this problem during subsequent Use Permit reviews. Modifications/additions to the Use Permit conditions of approval included: 1) modification to Condition No. 24 to add a three-month review in accordance with public noticing requirements; 2) modification to Condition No. 29 to strengthen the language by replacing all of the "shoulds" with "shalls;" and 3) the addition of Condition No. 34, which requires the owner/applicant to attenuate anticipated noise impacts to the property located at 2376 East Weber Avenue through acquisition or other means.

PLANNING COMMISSION ACTION

Following the public hearing on December 8, 2011, the Planning Commission voted 4-2 (Commissioner Lopez absent) to approve the Use Permit and to recommend that the City Council approve the following actions, based on the findings contained in the attached Planning Commission staff report (Attachment A):

PUBLIC HEARING: J.H. WILLIAMS EAST LLC REQUEST FOR APPROVAL OF A REZONE (P10-365)

(Page 5)

1. Adopt the Final Initial Study/Mitigated Negative Declaration and adopt the "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project" dated November 28, 2011; and
2. Approve the Rezoning of four parcels from IL (Industrial, Limited) to IG (Industrial, General) for property located on the north side of Weber Avenue and west of F Street. (P10-365).

FINANCIAL SUMMARY

There is no financial impact to City departments with this action.

PUBLIC NOTIFICATION

A notice of this public hearing was published in the Stockton Record on January 27, 2012 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 Planning Commission recommendation.

Respectfully submitted,


MICHAEL E. LOCKE
DEPUTY CITY MANAGER/
INTERIM COMMUNITY DEVELOPMENT DIRECTOR

MEL:ACB:sis

APPROVED


BOB DEIS
CITY MANAGER

Attachment A – Planning Commission staff report (dated December 8, 2011)

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EXHIBIT 1

STAFF REPORT
P.C. Agenda
December 8, 2011

STAFF REPORT

Item 4.01: PUBLIC HEARING – Initial Study/Mitigated Negative Declaration, Rezoning and Use Permit
Case No. P10-365, J.H. Williams East LLC

Data: J.H. Williams East LLC is requesting approval of an Initial Study/Mitigated Negative Declaration, the rezoning of four parcels from IL (Industrial, Limited) to IG (Industrial, General) and a Use Permit to allow the expansion of an existing recycling facility and transfer station. The proposed project includes a 1.77-acre expansion of the existing 4.96-acre East Stockton Recycling and Transfer Station (ESRTS) facility at 2435 East Weber Avenue. The expanded facility would accommodate existing ESRTS recycling activities, as well as commercial and residential single-stream recycling activities currently conducted at another facility in the City. The project site is located on the west side of Filbert Street, on the north and south sides of East Weber Avenue. The site is bounded to the:

- north across tracks of the Stockton Terminal and Eastern Railroad Company (unzoned) by industrial uses zoned IL;
- east across Filbert Street by vacant property and the San Joaquin Regional Transit District's bus maintenance facility zoned IG (Industrial, General);
- south by residential uses and vacant parcels zoned IL and across an alley by residential uses zoned RM (Residential, Medium-Density); and
- west by industrial and residential uses on parcels zoned IL (see attached exhibits).

General Plan: The General Plan designates the project site for Industrial uses.

Environmental Clearance: Staff has prepared, circulated and is recommending approval of an Initial Study/Proposed Final Mitigated Negative Declaration (P10-365). Pursuant to Sections 15071 and 15074 of the State CEQA Guidelines, the Initial Study/Proposed Mitigated Negative Declaration (P10-365) must be adopted prior to any approval for the proposed project. In addition, the "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project" need to be adopted to ensure that adequate mitigation measures are implemented as part of the project (Exhibits 2 and 3).

Discussion:

Background

A Use Permit (UP97-61) was issued on December 20, 1961, to permit baling and limited storage of waste paper on a portion of the project site. In response to a 1995 proposal by the previous operator to expand the facility, staff determined that a new Use Permit, a General Plan amendment from Low/Medium-Density Residential to Industrial and a rezoning of the property from M-1 (Light Industrial District) to M-2 (Heavy Industrial District) was required in order for the transfer station to expand its permitted activities. The new Use Permit (UP75-95) was approved by the Planning Commission on September 23, 1996, and the City Council subsequently approved the accompanying General Plan amendment and rezoning requests. In response to a number of complaints received by staff regarding the operation of the recycling facility, the Planning Commission modified UP75-95 on November 8, 2001. The modifications included additional conditions to address pest control, the installation of an odor neutralizing system, restricted hours of operation and the installation of a litter/dust barrier. (Exhibit 11)

Current Application

The applicant is requesting the rezoning of four parcels near the existing facility from IL (Industrial, Limited) to IG (Industrial, General) and a new Use Permit. The new Use Permit would supercede the previously-approved Use Permit (UP75-95) and allow a 1.77-acre expansion of the existing 4.96-acre East Stockton Recycling and Transfer Station (ESRTS) facility, for a total of 6.7 acres. The project site is bisected by F Street, which would be abandoned in conjunction with the project and revert to the applicant, who owns property on both sides of the street. Expansion of the facility would include the construction of a new 33,400-square-foot metal building for indoor materials processing. This new structure would include approximately 2,000 square feet of additional office space. The proposed site expansion would improve truck access, on-site queuing and circulation of trucks and would provide increased capacity in order to accommodate the complete diversion of commercial and residential "single-stream" recyclable materials currently processed at another facility owned by the applicant at 401 South Lincoln Street.

The material is termed "single-stream," because all of the recyclables are mixed together. The primary objective of consolidating the two facilities is the permanent closure of the Lincoln Street site, which would: 1) increase operating efficiency, 2) eliminate hauling between the two sites and 3) maximize the waste hauling capacity of the combined facility.

As per a prior agreement between City staff and the property owner/applicant, the Use Permit (UP48-96) for the Lincoln Street facility was administratively amended (P10-097) on August 10, 2010, to facilitate the timely closure of the facility. Condition No. 23 was added to the Lincoln Street Use Permit at that time to assign an expiration date of February 29, 2012. The amendment established a schedule for the applicant to comply with all applicable Use Permit conditions and secure the required land use entitlements to accommodate the transition to the subject Weber Avenue facility. The amended conditions required closure of the Lincoln Street facility, including the removal of all structures, equipment and debris to the satisfaction of the Community Development Director. At this time, staff is recommending Condition of Approval no. 27 for the proposed Use Permit, which would recognize the previously-approved conditions and closure schedule for the Lincoln Street facility.

Approval of the proposed Use Permit would allow the ESRTS facility to more than double the daily tonnage of recyclable materials that can be processed on the site. The existing facility is currently permitted by the State Department of Resources Recycling and Recovery (CalRecycle) to process a maximum of 512 tons per day of recyclable material. ESRTS is a large-volume transfer station and resource recovery facility that is open to commercial vehicles only. Customers currently bring construction and demolition (C&D) materials (including wood, cement, asphalt, dirt, bricks and stone) to the facility. In addition, the facility processes pre-separated glass, newspaper, cardboard and other recyclable materials. Under the proposal, the expanded facility would process "single-stream" materials that are currently processed at the Lincoln Street site. The proposed facility would process an average combined tonnage of 1,000 tons per day and a maximum of 1,250 tons per day. The limit on weekly average material acceptance would be increased from 2,560 to 7,000 tons per week. The current operating hours of ESRTS are 7:30 am to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday. The facility is closed on Sunday. The applicant is currently proposing to operate the facility 24 hours a day, seven days per week; however, materials would only be accepted from 5:00 a.m. to 10:00 p.m., Monday through Friday, and from 6:00 a.m. to 5:00 p.m. on Saturday and Sunday. The remaining hours of operation would accommodate on-site processing activities within the proposed building.

The Initial Study/Proposed Final Mitigated Negative Declaration (Exhibits 2 and 3) includes analysis relative to the potential for noise, odor and traffic-related impacts

associated with the proposed expansion.

Noise

The proposed project would result in an increase in activity on the expanded ESRTS site, as well as increases in truck deliveries and export activities. The noise analysis concluded that, in order to reduce the potential for noise impacts to a less than significant level, the project would be required to construct eight-foot high masonry walls along a portion of the southern property line of the subject site, west of the proposed building, and along the southern property lines of several lots on the south side of Weber Avenue and along the west side of F Street, between Weber Avenue and Myrtle Street. (Exhibit 8)

Odor

In addition to construction and demolition materials, the proposed Use Permit would authorize consolidation of activities currently conducted at the Lincoln Street site, which would include commercial and residential "single-stream" recyclables. The environmental document's analysis concludes that the project would need to include specific actions to control odor emissions. As an example, the document notes that the processing of recyclable materials from residential structures could create objectionable odors on the subject site. In order to reduce the significance of potential odors, the operator would be required to remove these residual elements and transfer them to a landfill on a daily basis. Other activities, such as the processing of glass materials, would either be located at the east end of the project site, away from residences, or within an enclosed building to minimize odors. The existing Use Permit for the facility required the installation of an odor-neutralizing system (mistlers) in material sorting areas. Recognizing the effectiveness of this system, staff is recommending that the requirement be included in the proposed Use Permit's recommended Conditions of Approval (No. 12). During the processing of the subject application, a complaint concerning "bad and constant" odor was filed with staff in the City's Code Enforcement Division and subsequently forwarded to CalRecycle for investigation. Staff from CalRecycle discussed the complaint with the reporting party, as well as the operator, and determined that no corrective actions were required at that time.

Traffic

The proposed expansion of the facility is projected to increase the level of truck trips to and from the site. The environmental document's traffic analysis analyzed the project's potential impacts to on-site queuing, project access and turning movements along the route to and from State Route 4. The analysis found that the proposed project would be able to provide on-site queuing in excess of estimated queuing requirements. It noted that, in the event queuing requirements exceed expectations, a truck metering plan would have to be enacted by the operator to

stagger the arrival of trucks and minimize off-site impacts on the surrounding roadway system. The analysis identified the potential need for minor modifications to the site driveway to accommodate truck turning movements. Those modifications will be addressed at the time of site development of the expanded facility. Similarly, as mitigation for potential truck turning movement impacts to the local street system, the document includes a mitigation measure that would require further definition and construction of any necessary off-site street improvements.

With respect to parking, the Development Code requires one on-site parking space for every 500 square feet of gross floor area, resulting in a total of 67 required parking spaces. The proposed site plan provides a total of only 47 parking spaces. However, the proposed site plan identifies a paved area on the south side of the project site that could easily accommodate the difference in required parking. The recommended Conditions of Approval (No. 26) include a requirement to provide additional striped parking spaces to meet the noted Code requirements.

In accordance with the Design Review provisions of Section 16.120 of the Stockton Municipal Code (SMC), the Architectural Review Committee reviewed the proposed elevations and architectural treatments for the proposed structures on November 30, 2011, and found them to be in general compliance with applicable provisions of the Citywide Design Guidelines. The Architectural Review Committee requested minor modifications to the proposed elevations that would serve to provide a more aesthetically pleasing appearance along Weber Avenue. The revised drawings will be presented at the Planning Commission hearing.

Neighborhood Meeting

In compliance with the provisions of SMC Section 16.88.025, which require a neighborhood meeting for any application requiring action by the City Council, the applicant held a public meeting on Wednesday, November 16, 2011, at Martin Luther King Jr. Elementary School, which is located less than a mile from the project site at 2640 East Lafayette Street. Notices were mailed by the applicant to 94 property owners, residents and agencies. In addition to City staff and the project team, a total of five residents attended the meeting. While a few simply signed-in and took an information packet, others noted concerns with regard to noise, odor, and rodents, which are summarized in the Public Meeting Summary Report (Exhibit 12). Noise and odor are discussed on page 5 of this staff report. In addition, staff has proposed Condition No. 11, which would require the ongoing use of a pest control service, in order to address pest control concerns associated with the facility.

Staff from Engineering Services, the Fire Department, Municipal Utilities Department, Public Works Department and other City departments, as well as have the surrounding neighborhood, have been notified of this request. To date staff has not received any written objections regarding the proposed project. The staff

report's recommended Conditions of Approval include recommendations from reviewing agencies regarding the project.

Recommended Findings for the Initial Study/Mitigated Negative Declaration: Consideration and approval of the Initial Study/Final Mitigated Negative Declaration (P10-365) and adoption of the "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project", based upon the following findings:

1. The Initial Study/Final Mitigated Negative Declaration has been completed in compliance with the California Environmental Quality Act (CEQA), State CEQA Guidelines and City of Stockton Guidelines for the Implementation of CEQA.
2. The Initial Study/Final Mitigated Negative Declaration 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.
3. Based on the review of the Initial Study/Final Mitigated Negative Declaration, consideration of all written and oral comments received and subject to any modifications and mitigation measures identified in the Initial Study/Final Mitigated Negative Declaration, the project will not have a significant effect on the environment.
4. Pursuant to Section 15074 of the State CEQA Guidelines (California Code of Regulations), all project approvals will be based on and subject to the CEQA findings, mitigation measures and mitigation monitoring/reporting provisions as specified in the "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project" ("Findings").

Rezone: Adopt a resolution recommending that the City Council approve an ordinance for the rezoning of the subject site, based on the following findings:

Recommendation for the Rezoning: Approval based upon the following findings:

1. An Initial Study/Final Mitigated Negative Declaration (P10-365) has been prepared and approved for the project. The "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project" has been adopted to ensure the implementation of all applicable mitigation measures necessary to clearly reduce any potentially

significant impacts to a "less-than-significant" level.

2. The proposed IG (Industrial, General) zoning designation is consistent with the Industrial General Plan designation for the site.
3. The uses permitted by the proposed rezoning are similar to and compatible with existing and proposed land uses surrounding the subject site.
4. 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 the Use Permit: Approval based on the following findings and subject to the proposed Conditions of Approval:

1. An Initial Study/Final Mitigated Negative Declaration (P10-365) has been prepared and approved for the project. The "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project" has been adopted to ensure the implementation of all applicable mitigation measures necessary to clearly reduce any potentially significant impacts to a "less-than-significant" level.
2. The proposed use is allowed within the proposed zoning district with the approval of a Use Permit, and subject to the approval of the proposed rezoning request, complies with all other applicable provisions of the Stockton Municipal Code and the affirmative findings required under Section 16.168.050 are hereby adopted.
3. The proposed use is expected to be compatible with surrounding land uses and is not likely to interfere with the comfortable enjoyment of life or property in the area.
4. The proposed use will not be detrimental to the health, safety, peace or general welfare of persons residing or working in the neighborhood or be detrimental or injurious to the health, safety, peace or general welfare of the City.
5. The proposed elevations and architectural treatment for the proposed structures have been reviewed against applicable provisions of the Citywide Design Guidelines and the Findings contained in Stockton Municipal Code Section 16.120.060 are hereby adopted.

Proposed Conditions of Approval for the Use Permit:

1. Comply with all applicable Federal, State, County, and City codes, regulations, and adopted standards, and pay all applicable fees.
2. Pursuant to Section 15074 of the State CEQA Guidelines, the project shall be subject to all applicable mitigation measures identified in the approved Final Initial Study/Mitigated Negative Declaration (P10-365) and in the City-adopted "Findings and Mitigation Monitoring Program for the East Stockton Recycling and Transfer Station Project."
3. All signs pertaining to this use shall be approved by the Community Development Director or Planning Commission.
4. In the event the operation of this use should prove detrimental to the health, safety, peace or general welfare of the surrounding neighborhood, this Use Permit shall be subject to revocation or modification as provided in the Development Code.
5. Any significant modifications to the final design plans for the proposed building and/or masonry walls shall be subject to review and approval by the Community Development Director or Architectural Review Committee for consistency with the approved Use Permit and the Citywide Design Guidelines prior to the issuance of any building permit in the project area.
6. No loitering shall be allowed on the premises. The operator shall discourage loitering on immediately abutting public rights-of-way and shall post "No Loitering" signs on the outside of the property.
7. Security lighting within the facility shall be installed in all parking and common areas, as well as at the main entrances. Any lighting on the site shall be shielded so as not to shine onto adjacent rights-of-way or nearby residential properties.
8. In order to minimize any adverse financial impact on the City of Stockton associated with development and/or use of the subject site, the owners, developers and/or successors-in-interest (ODS) agrees that they will not challenge or protest any applicable fees associated with the development of the site, but if such fees are amended or modified, the ODS agree to pay such fees as they may be amended or modified from time to time.
9. This Use Permit shall supercede the previously-approved Use Permit (No. UP75-9) for the subject site.

10. The 1.32-acre site located on the south side of Weber Avenue shall be used only for storage and parking purposes that are related to the subject use.
11. An on-going pest control service shall be implemented and shall consist of placement of bait stations/traps at 20-foot intervals around the active perimeter of the transfer station and at 40-foot intervals around the perimeter of the remaining areas. These stations shall be inspected daily by facility personnel to insure they are in good working order and shall be inspected on a bi-monthly basis by a qualified pest control company. Any damaged stations shall be replaced promptly and a monthly log of this maintenance (including activity) shall be kept on-site for inspection.
12. An odor neutralizing system shall be utilized, installed and maintained along the south and east ends of the sorting area. Any chemicals used to neutralize odors shall be non-toxic and shall not be noxious or offensive to persons residing or working in the vicinity of the recycling facility.
13. A minimum eight (8) foot high solid vegetative screen shall be planted adjacent to the exterior of the solid perimeter wall to visually obscure the wall and minimize the occurrence of graffiti. The vegetative screen shall reach the minimum height within three (3) years of planting, be maintained in a healthy manner so as not to become deteriorated and not overhang the public sidewalk. The maintenance of the vegetation shall remain the sole responsibility of the property owner or successors-in-interest.
14. The existing litter/dust barrier shall be maintained to a height not to exceed an overall height of thirty (30) feet and not less than eight (8) feet above the top of the existing perimeter wall surrounding the sorting area. In addition, a netting material shall be utilized and maintained to fully cover the top of the sorting area to prevent lightweight materials (paper, plastic bags, etc.) from leaving the site. These barriers shall be periodically (at least weekly) washed down to remove accumulated dust and other materials to prolong their effectiveness. The type and size of the litter/dust barrier netting shall be subject to the approval of the Community Development Director, shall be designed to effectively contain dust and litter on the site and shall be maintained by the ODS.
15. Any recyclable items (e.g., cardboard, etc.) that may decompose and create odors when exposed to the elements shall be stored within a completely enclosed building. Recyclable materials stored within completely enclosed structures may remain on-site for a period of time not to exceed six (6) weeks from the time they are delivered to the site.

16. Unless otherwise noted, all other recyclable items, with the exception of concrete, required to be stored within a completely enclosed building, shall be removed from the site within forty-eight (48) hours of receipt. Concrete shall be removed from the site within one week of its receipt.
17. Unless otherwise noted, all non-recyclable items shall be removed from the site the same business day that they are received, with the following exception: if non-recyclables are received after 3 p.m., they must be placed in a trailer, enclosed by tarpaulins and removed the next business day by 10 a.m.
18. As a limited exception to the requirements of Conditions 14, 17, 18 and 19, the time constraints of those conditions may be suspended to accommodate the City of Stockton's "spring cleanup" events that take place six (6) times per year, or as often as deemed necessary by the City. Additional time for the removal of material gathered during these limited events may be granted, as determined by the Community Development Director. It shall be the applicant's responsibility to contact the Community Development Director to inform the Director of the additional time needed to remove material accepted by the "spring cleanup" events.
19. The public street right of way shall not be used for loading/unloading activities and or project traffic queuing/site maneuvering.
20. All processing and storage areas shall be permanently paved prior to initiation of uses in those areas.
21. A street sweeping program shall be initiated immediately to remove debris from the site and the area surrounding the site as follows: (a) clean the sorting area daily (except on days when not open for business); and (b) clean neighboring streets as follows (except on days when not open for business): 1) Weber Avenue adjacent to the facility -- daily; 2) Filbert Street adjacent to the facility -- daily; 3) Filbert Street and Myrtle Street adjacent to the Crosstown Freeway -- weekly; (4) 'F' Street adjacent to the facility -- daily; and (5) at other times, as warranted, in response to complaints received by affected neighborhoods.
22. During regular business hours and upon complaints received from neighbors, the owner/operator or his or her appointee(s), shall conduct periodic inspections in order to manually clean up any debris surrounding the facility.
23. A dedicated phone line shall be installed at the business for the purpose of

- taking complaints regarding the operation of this use. Calls received on this phone line shall be forwarded to a live person when the business is closed, otherwise the phone shall be staffed by personnel during business hours. The phone number for this dedicated phone line shall be posted on the premises (visible from the right-of-way) when the business is closed and shall be given to the City of Stockton, Community Development Department, Planning Division, and Police Department, Neighborhood Services Division, once it is established. In addition, the phone number of the City's Neighborhood Services Division shall be posted as an alternate phone number to contact in the event that the operator of this facility is not responsive to such complaints.
24. There shall be a six-month, and one-year review of this Use Permit. As part of the review, the business owner/applicant shall submit a report thirty (30) days in advance of the scheduled review that includes the previous six (6) and twelve (12) month's reports, respectively, from routine inspections conducted by the Department of Resources Recycling and Recovery (CalRecycle) on the facility, and an outline of any reported violations and corrective measures taken to remedy those violations. The report shall also include any complaints received by the facility and corrective measures taken on those complaints.
 25. This Use Permit, as modified, shall remain posted in a conspicuous place in the office on the subject site and shall be immediately made available to City personnel upon inspection of the premises.
 26. The site plan shall be modified, as necessary, to provide additional off-street parking spaces to meet all applicable Code requirements.
 27. Failure to comply with the closure deadline for the Lincoln Street transfer facility (Use Permit No. P10-097), subject to extensions that may be authorized by the Community Development Director, will result in the subject Use Permit for the Weber Avenue recycling facility and transfer station being scheduled for a review hearing by the Planning Commission.
 28. The owner/applicant shall design and construct frontage improvements along the north side of Weber Avenue from F Street to the westerly property line of the project site including, but not limited, to installation of curb, gutter, sidewalk, landscaping, street lighting, commercial driveway and paving, in compliance with City Standards, prior to any occupancy approval of any building permits for the proposed Project expansion.
 29. City records indicate the proposed project parking lot located on the south

side of Weber Avenue consists of three separate legal parcels (APN 153-232-01, 153-232-21, 153-232-05) held in common ownership. To ensure appropriate access and parking circulation to/from the site via Weber Avenue, the subject parcels should be merged, or should enter into a reciprocal access and parking agreement. Said merger or agreement should be in place and should be recorded at the San Joaquin County Recorder's office prior to any occupancy approval of any building permits for the proposed Project expansion.

30. The owner applicant shall abandon (remove) the existing project site driveways that are proposed to be replaced on the north and south side of Weber Avenue, east of F Street and install vertical curb, gutter and sidewalk prior to any occupancy approval of any building permits for the proposed Project expansion.
31. The proposed gate serving the parking lot on the south side of Weber Avenue shall remain open ½ hour before and after all scheduled shift changes and during regular customer/visitor service hours.
32. The proposed project access gate serving as the truck entrance/exit on the north side of Weber Avenue shall remain open ½ hour before and after all scheduled truck delivery business hours.
33. The owner/applicant shall be responsible for making application for abandonment of F Street from Weber Avenue to the railroad rights of way and abandonment approval is required prior to initiation of the proposed Project expansion. Subject to approval of the F Street abandonment, the owner/applicant shall design and construct improvements to terminate the public street access and accommodate a fire access driveway for emergency vehicle access only, in conformance with City Standards. The emergency gate access shall be at least 26 feet in width and include a knox box locking mechanism subject to the review and approval of the City fire Department.

November 30, 2011

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.

The staff report was prepared by Senior Planner Adam Brucker.

Hard Copy Available for Review in the City Clerk's Office



PUBLIC REVIEW DRAFT INITIAL STUDY /
MITIGATED NEGATIVE DECLARATION

for the

EAST STOCKTON RECYCLING AND TRANSFER STATION
2435 Weber Avenue
Stockton, CA

Administrative Use Permit: P10-365

October 14, 2011

Prepared for:

CITY OF STOCKTON
Community Development Department
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-8444

Hard Copy Available for Review in City Clerk's Office



FINAL INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION

for the

EAST STOCKTON RECYCLING AND TRANSFER STATION
2435 Weber Avenue
Stockton, CA

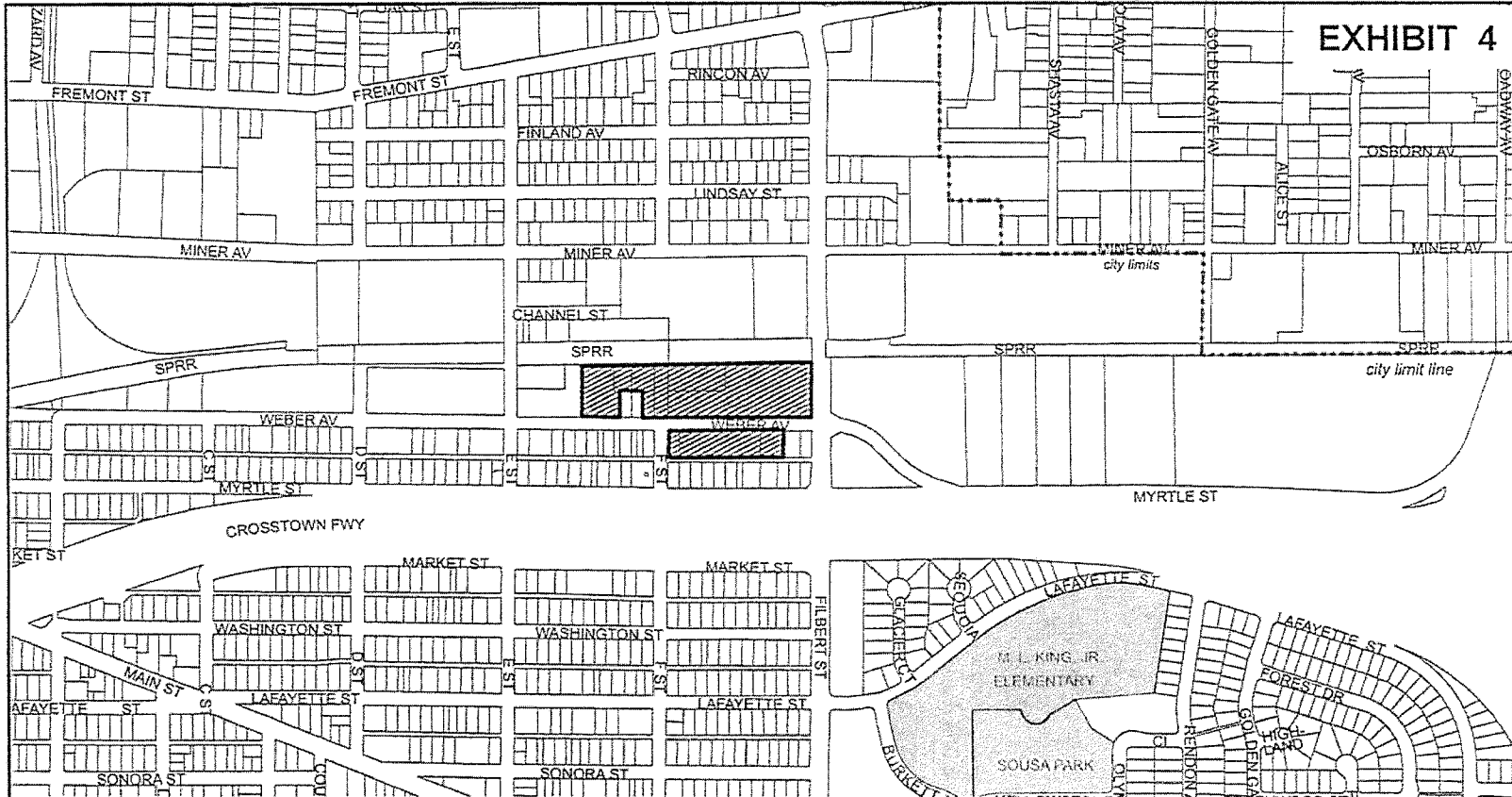
Administrative Use Permit: P10-365

November 28, 2011

Prepared for:

CITY OF STOCKTON
Community Development Department
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-8444

EXHIBIT 4



VICINITY
J.H. Williams East, LLC
P10-365



PH DATE: 12-08-11

STOCKTON PLANNING COMMISSION

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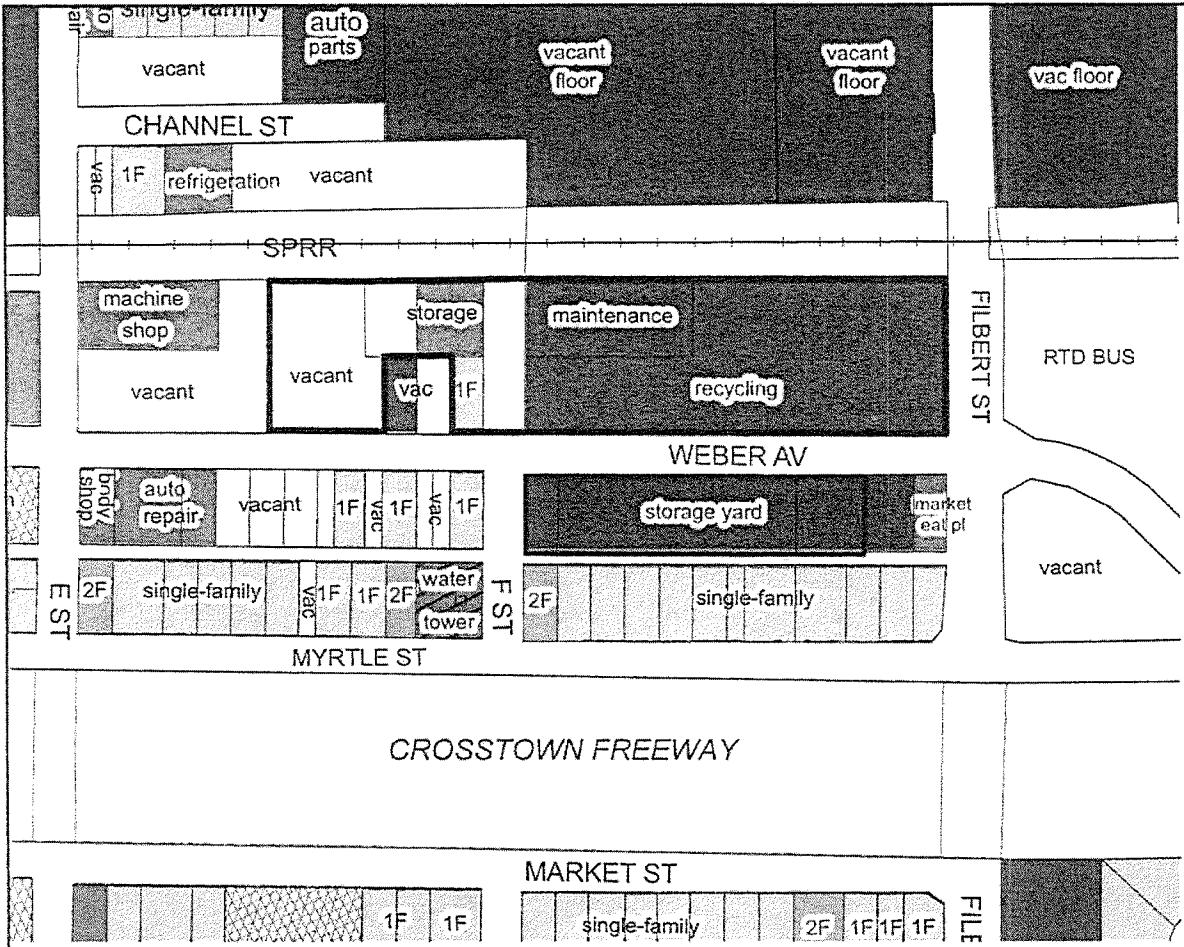
EXHIBIT 5



LAND USE

LEGEND

- 1F SINGLE FAMILY
- 2F TWO FAMILY



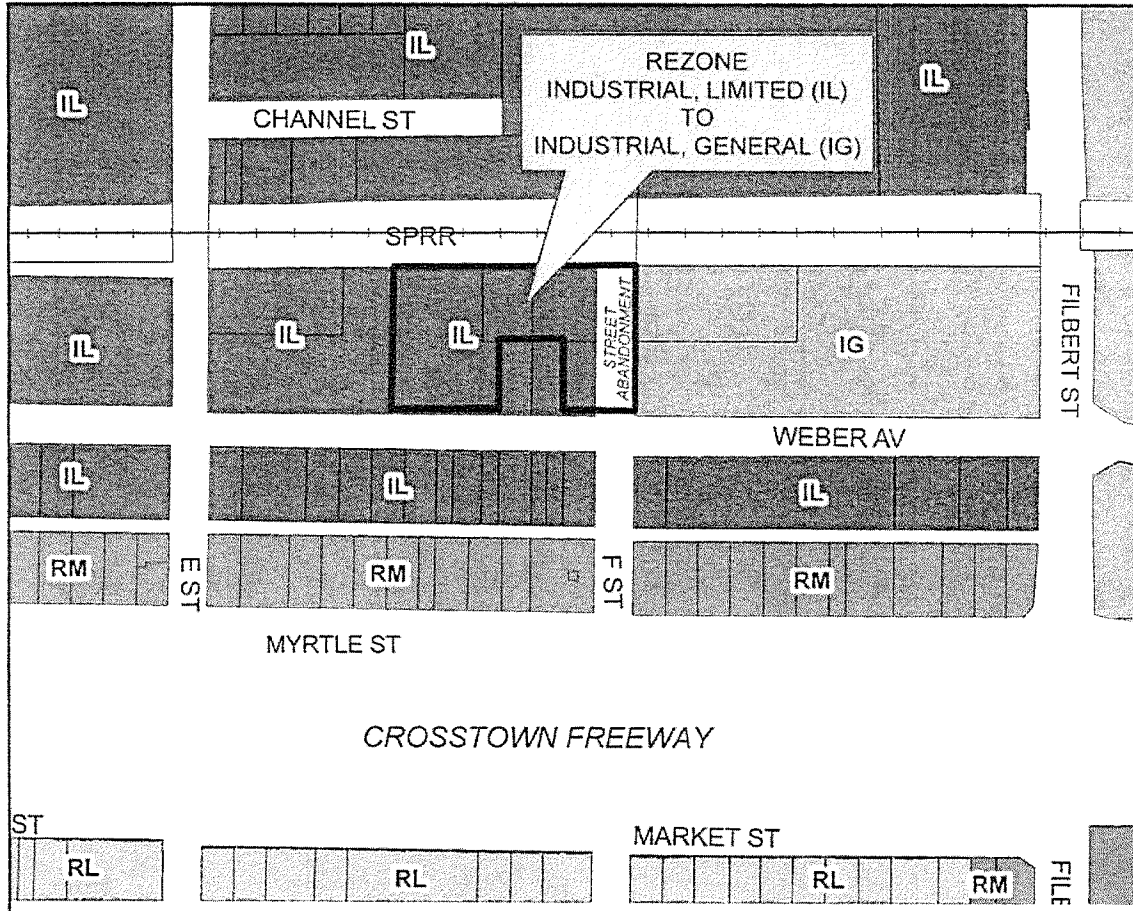
J.H. Williams East, LLC
P10-365

PH: 12-08-11

STOCKTON PLANNING COMMISSION

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EXHIBIT 6



REZONE

LEGEND

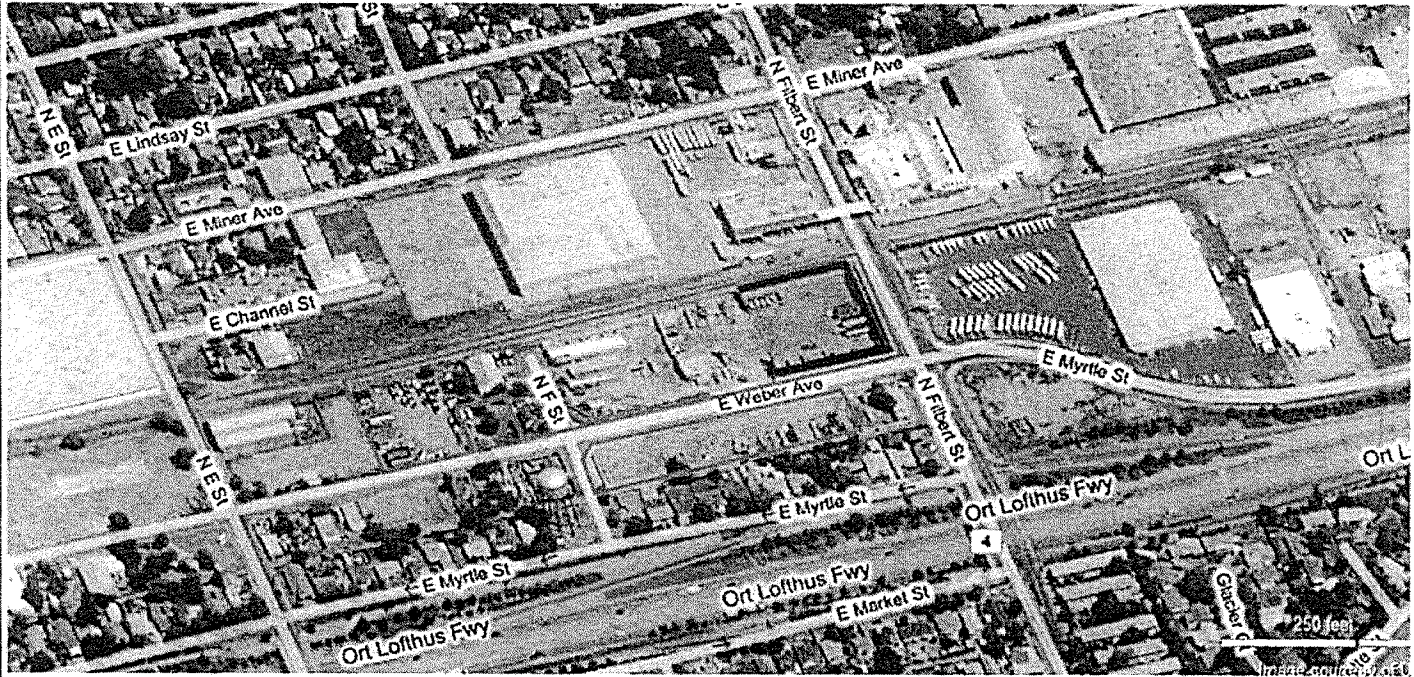
- IG - INDUSTRIAL, GENERAL
- IL - INDUSTRIAL, LIMITED
- RL - RESIDENTIAL, LOW DENSITY
- RH - RESIDENTIAL, HIGH DENSITY
- RM - RESIDENTIAL, MEDIUM DENSITY

J.H. Williams East, LLC
P10-365

PH: 12-08-11

STOCKTON PLANNING COMMISSION

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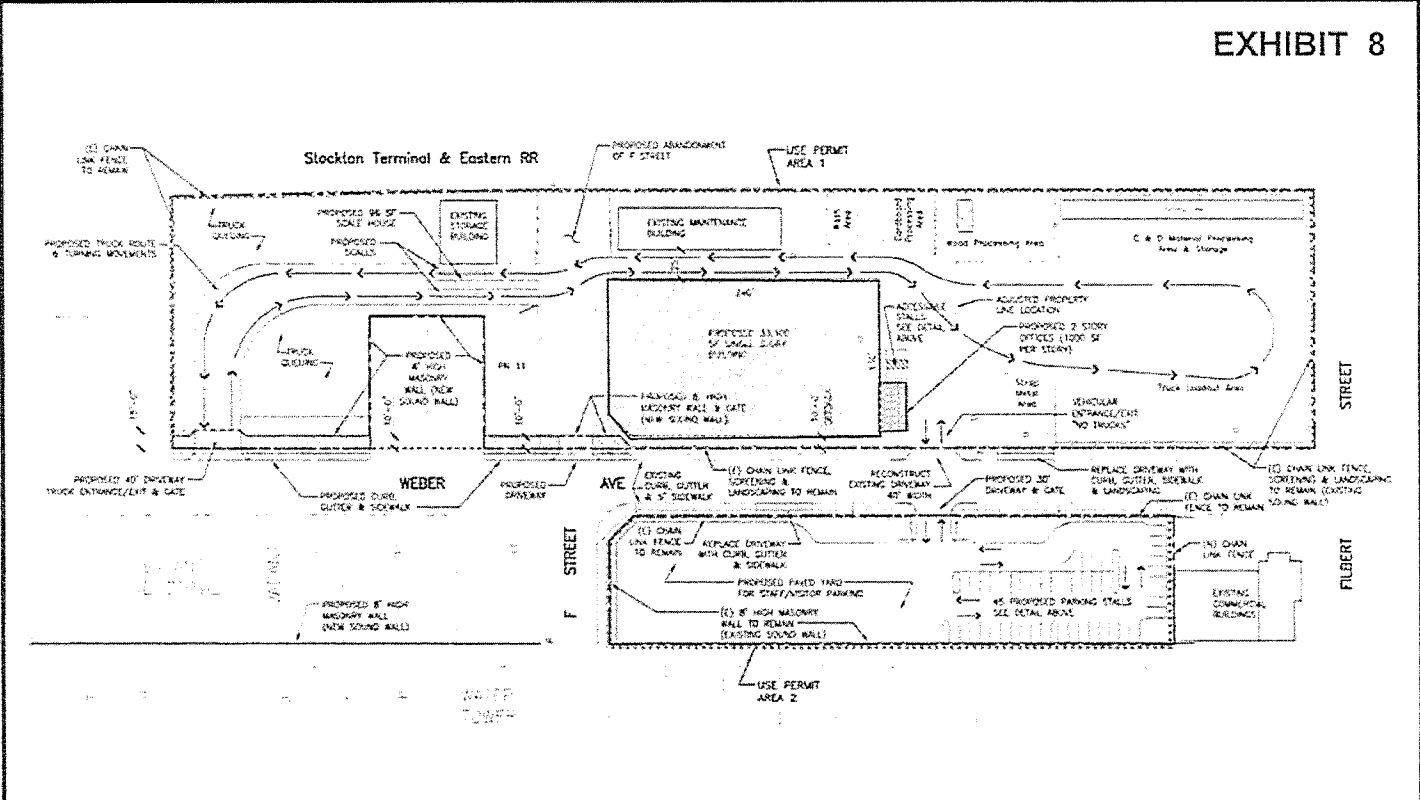
J.H. Williams East, LLC
 P10-365



PH: 12-09-11

STOCKTON CITY PLANNING COMMISSION

EXHIBIT 8



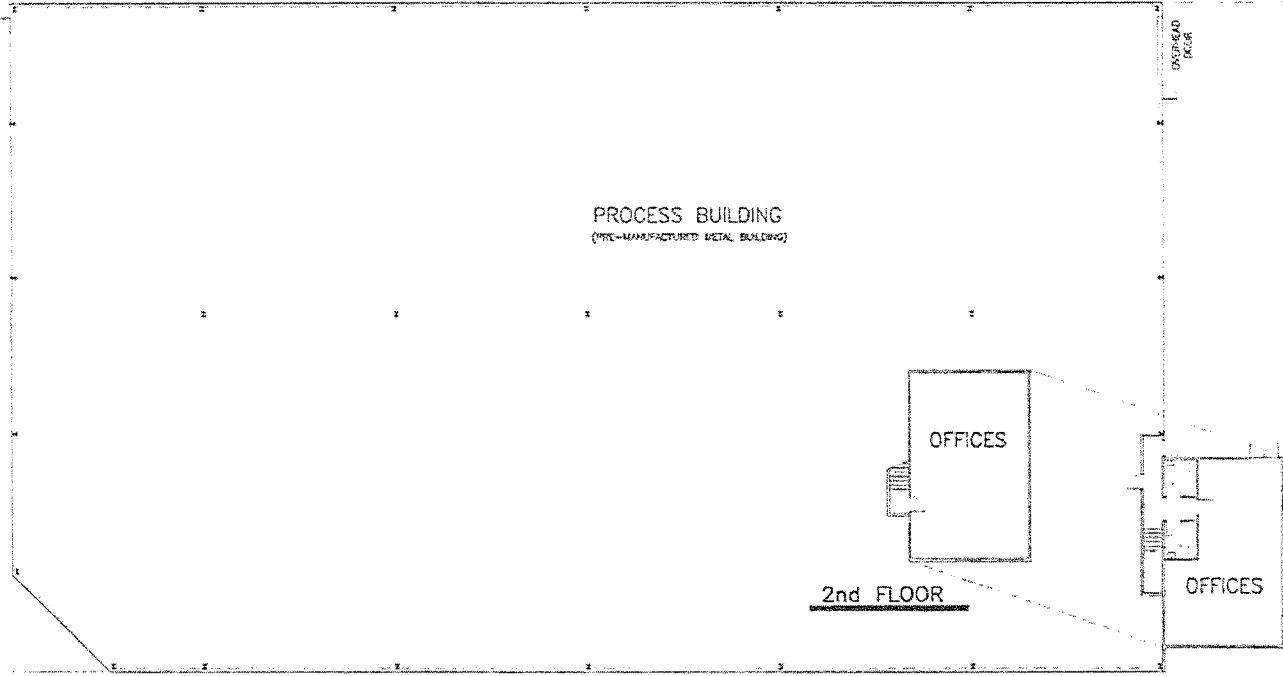
SITE PLAN
J.H. Williams East, LLC
P10-365



PH: 12-08-11

STOCKTON CITY PLANNING COMMISSION

EXHIBIT 9



FLOOR PLAN

J.H. Williams East, LLC

P10-365



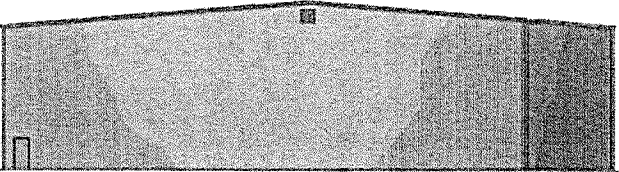
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STOCKTON CITY PLANNING COMMISSION

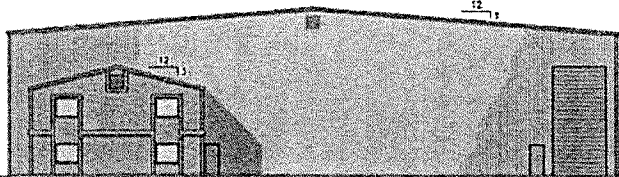
EXHIBIT 10



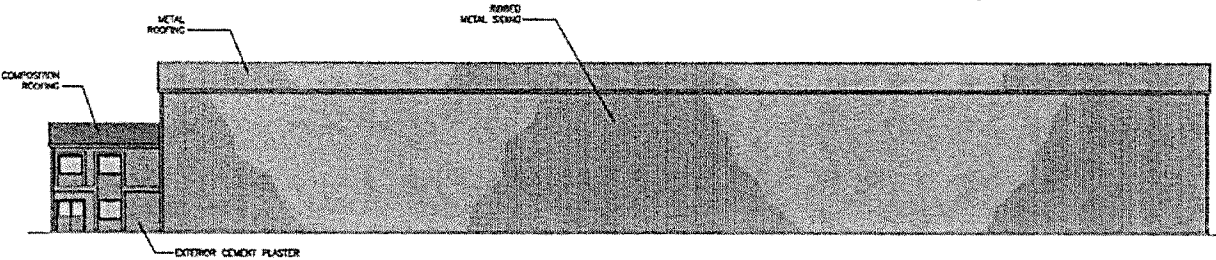
SOUTH ELEVATION



WEST ELEVATION



EAST ELEVATION



NORTH ELEVATION

ELEVATIONS

J.H. Williams East, LLC
P10-365



PH: 12-08-11

STOCKTON CITY PLANNING COMMISSION



USE PERMIT NO. UP75-95 (REVISED 11-8-01)

DATE APPROVED: November 8, 2001

ISSUED TO: Robert Ronyak
2435 East Weber Avenue
Stockton, CA 95205

DESCRIPTION OF USE: Solid Waste Transfer and Recycling Station

PROPERTY LOCATION: 2435 East Weber Avenue

PROPERTY ZONED: M-2 and C-M APN: 153-231-17 CT: 19.00 TZ: 02 BL: 01 PA: 01

CONDITIONS OF APPROVAL:

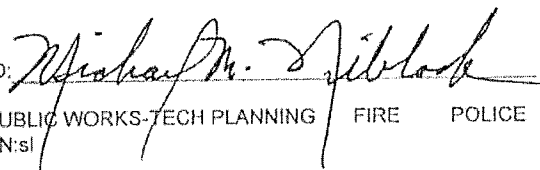
NOTE: THIS PERMIT IS ISSUED PURSUANT TO THE PROVISIONS OF PART II, CHAPTER 16, SMC AND IS SUBJECT TO THE CONDITIONS OF APPROVAL AND ATTACHED DEVELOPMENT PLAN. USE OR CONSTRUCTION MUST BE COMMENCED WITHIN ONE YEAR AFTER THE DATE OF APPROVAL OR AN EXTENSION MUST BE GRANTED AS PROVIDED IN THIS CHAPTER; OTHERWISE, THIS PERMIT SHALL BE NULL AND VOID. THIS PERMIT IS SUBJECT TO REVOCATION AND/OR MODIFICATIONS AS PROVIDED IN THIS CHAPTER.

1. Comply with applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.
2. In the event that the operation of this use shall prove detrimental to the health, safety, peace or general welfare of the surrounding neighborhood, this Use Permit shall be subject to revocation or modification as provided in the Zoning Code.
3. This Use Permit shall be subject to the mitigation agreement and to all applicable mitigation measures which are identified in the Proposed "Mitigated" Negative Declaration/Expanded Initial Study (IS17-95), as amended. Curbs, sidewalks and gutters shall be installed within 18 months from issuance of the Use Permit.
4. The recently leased 0.6-acre parcel, located at the northeast corner of "E" Street and Weber Avenue, shall not be used for any waste processing activities until the State-issued Solid Waste Facility Permit is revised to reflect an expansion of this leased area and proper environmental documentation is prepared and circulated through the State Clearinghouse.
5. The 1.65-acre site located on the south side of Weber Avenue shall be used only for storage and parking purposes.
6. An eight-foot high masonry wall shall be installed and maintained along the south property line adjacent to the divisional alley in order to provide a buffer for the residential uses to the south.
7. Any graffiti on the property shall be removed within twenty-four (24) hours.

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8. An on-going pest control service shall be implemented and shall consist of placement of bait stations/traps at 20-foot intervals around the active perimeter of the transfer station and at 40-foot intervals around the perimeter of the remaining areas. These stations shall be inspected daily by facility personnel to insure they are in good working order and shall be inspected on a bi-monthly basis by a qualified pest control company. Any damaged stations shall be replaced promptly and a monthly log of this maintenance (including activity) shall be kept on-site for inspection.
9. An odor neutralizing system shall be utilized, installed and maintained along the south and east ends of the sorting area. Any chemicals used to neutralize odors shall be non-toxic and shall not be noxious or offensive to persons residing or working in the vicinity of the recycling facility.
10. Unless otherwise noted, no equipment activities connected with the business (inclusive of truck/tractor operations) shall be allowed except during regular business hours as follows: 1) Monday through Friday from 7 a.m. to 7 p.m.; and 2) Saturday from 7 a.m. to 1 p.m.
11. The existing perimeter wall shall be completely repaired, and/or replaced as necessary, within three (3) months from the approval of this modified Use Permit. The wall shall be constructed of the same material and shall be painted with graffiti-resistant paint to match throughout the site. In order to ensure that recyclable materials will not be visible from the public right-of-ways, no recyclable materials may be stacked higher than the solid perimeter wall.
12. A minimum eight (8) foot high solid vegetative screen shall be planted adjacent to the exterior of the solid perimeter wall to visually obscure the wall and minimize the occurrence of graffiti. The vegetative screen shall reach the minimum height within three (3) years of planting, be maintained in a healthy manner so as not to become deteriorated and not overhang the public sidewalk. The maintenance of the vegetation shall remain the sole responsibility of the property owner or successors-in-interest.
13. A litter/dust barrier shall be installed to a height not to exceed an overall height of thirty (30) feet and not less than eight (8) feet above the top of the existing perimeter wall surrounding the sorting area. In addition, a netting material shall be utilized to fully cover the top of the sorting area to prevent lightweight materials (paper, plastic bags, etc.) from leaving the site. These barriers shall be periodically (at least weekly) washed down to remove accumulated dust and other materials to prolong their effectiveness. The type and size of the litter/dust barrier netting shall be subject to the approval of the Community Development Director, shall be designed to effectively contain dust and litter on the site and shall be maintained by the property owner or successors-in-interest.
14. Unless otherwise noted, no waste gathered from restaurants or residential uses, particularly apartment complexes, may be accepted onto the site. These types of facilities generate putrefying wastes that create odors known to be offensive to the average citizen.
15. Any recyclable items that may decompose and create odors when exposed to the elements (e.g., cardboard, etc.) shall be stored within a completely enclosed building. Recyclable materials stored within completely enclosed structures may remain on-site for a period of time not to exceed six (6) weeks from the time they are delivered to the site.
16. Unless otherwise noted, all other recyclable items, with the exception of concrete, required to be stored within a completely enclosed building, shall be removed from the site within forty-eight (48) hours of receipt. Concrete shall be removed from the site within one week of receipt.
17. Unless otherwise noted, all non-recyclable items shall be removed from the site the same business day that they are received, with the following exception: if non-recyclables are received after 3 p.m., they must be placed in a trailer, enclosed by tarpaulins and removed the next business day by 10 a.m.

18. As a limited exception to the requirements of Conditions 10, 14, 16 and 17, the time constraints of those conditions may be suspended to accommodate the City of Stockton's "spring cleanup" events that take place six (6) times per year, or as often as deemed necessary by the City. Additional time for the removal of material gathered during these limited events may be granted, as determined by the Community Development Director. It shall be the applicant's responsibility to contact the Community Development Director to inform the Director of the additional time needed to remove material accepted by the "spring cleanup" events.
19. A street sweeping program shall be initiated immediately to remove debris from the site and the area surrounding the site as follows: (a) Clean the sorting area daily (except on days when not open for business); and (b) Clean neighboring streets as follows (except on days when not open for business): 1) Weber Avenue adjacent to the facility -- daily; 2) Filbert Street adjacent to the facility -- daily; 3) Filbert Street and Myrtle Street adjacent to the Crosstown Freeway -- weekly; (4) 'F' Street adjacent to the facility -- daily; and (5) at other times, as warranted, in response to complaints received by affected neighborhoods.
20. During regular business hours and upon complaints received from neighbors, the owner/operator or his or her appointee(s), shall conduct periodic inspections in order to manually clean up any debris surrounding the facility.
21. A dedicated phone line shall be installed at the business for the purpose of taking complaints regarding the operation of this use. Calls received on this phone line shall be forwarded to a live person when the business is closed, otherwise the phone shall be manned by personnel during business hours. The phone number for this dedicated phone line shall be posted on the premises (visible from the right-of-way) when the business is closed and shall be given to the City of Stockton, Community Development Department, Planning Division, and the Housing and Redevelopment Department, Neighborhood Services Division, once it is established. In addition, the phone number of the City's Neighborhood Services Division shall be posted as an alternate phone number to contact in the event that the operator of this facility is not responsive to such complaints.
22. There shall be a six-month, and one-year and continual annual review of this Use Permit from the date of latest revision of the Use Permit.
23. As part of the annual review, the business owner/applicant shall submit an annual report thirty (30) days in advance of the scheduled review that includes the previous twelve (12) month's reports from routine inspections conducted by the State Integrated Waste Management Board on the facility, and an outline of any reported violations and corrective measures taken to remedy those violations. The report shall also include any complaints received by the facility and corrective measures taken on those complaints.
24. This Use Permit, as modified, shall remain posted in a conspicuous place in the office on the subject site and shall be immediately made available to City personnel upon inspection of the premises.

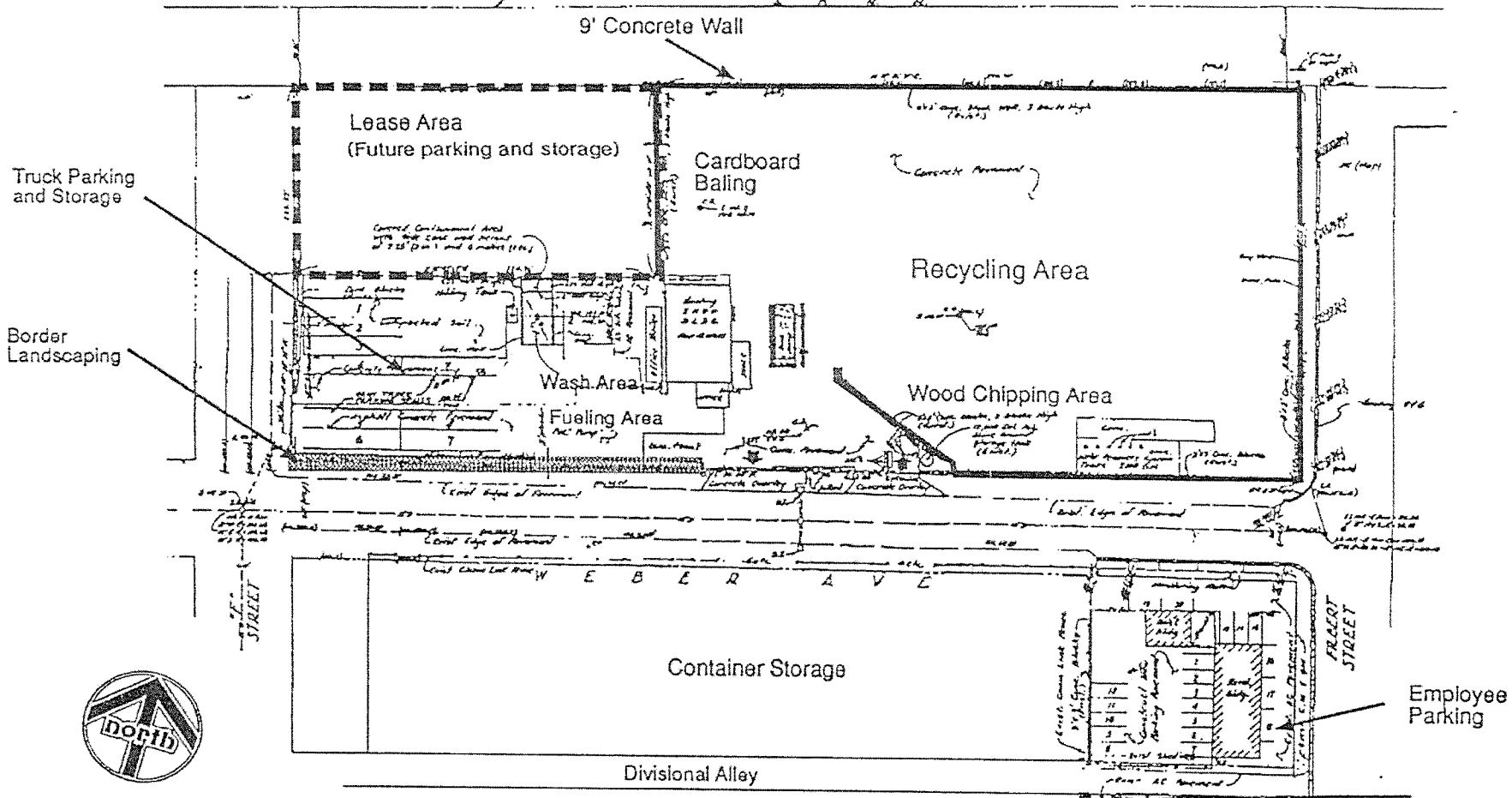
APPROVED: 

DATE ISSUED: November 20, 2001

cc: PUBLIC WORKS-TECH PLANNING FIRE POLICE BUILDING SJ PUBLIC HEALTH SERVICE FILE COPY
SN:sl

NOTICE: To protest the imposition of any development fee, dedication, reservation or other exaction imposed on your project, you must file written notice with the City Clerk's office within 90 days after approval of the project or imposition of the fees, dedications, reservations or other exactions stating that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest, along with a statement of the factual elements of the dispute and the legal theory forming the basis for the protest.

::ODMA\GRPWISE\COS.CDD.CDD_Library:19238.1



SITE PLAN

FILE COPY

Robert Ronyak, et al
UP 75-95

PERMIT NO. UP 75-95 Revised
 APPROVED 11-8-01
 DATE ISSUED 11-8-01
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 318 NORTH EL DORADO STREET
 STOCKTON, CA 95202-1997

710-96

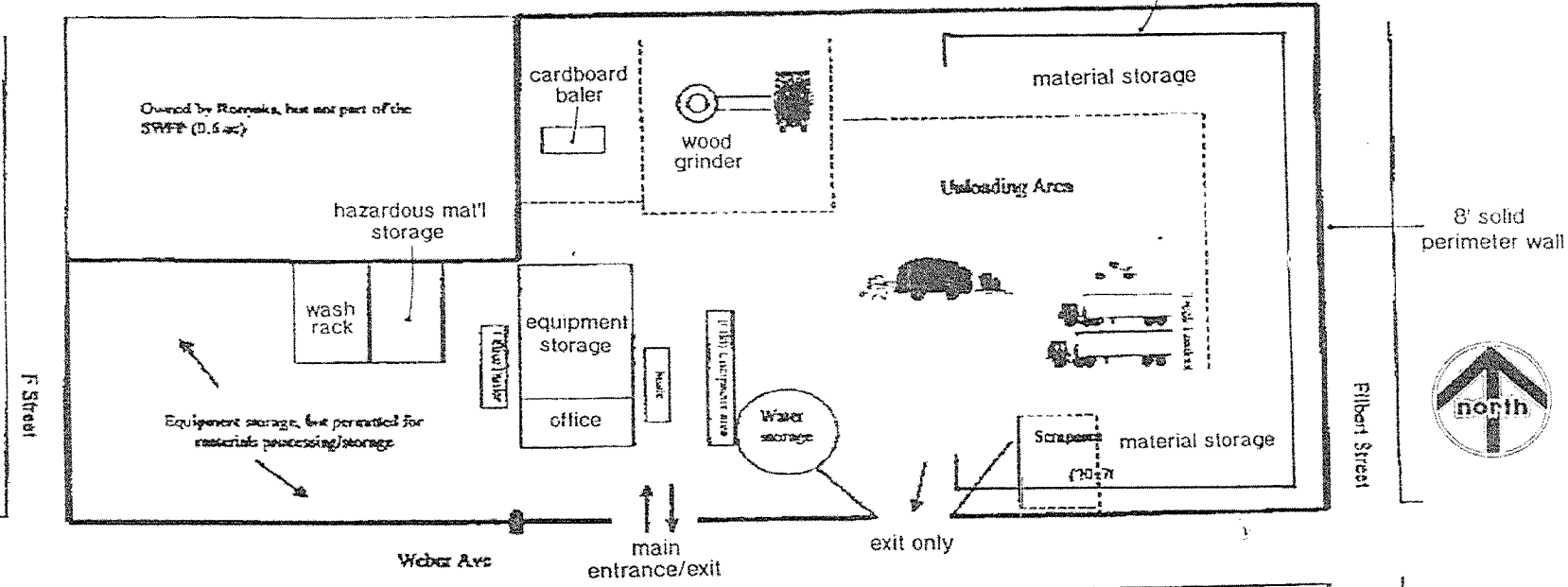
STOCKTON CITY PLANNING COMMISSION

195

East Stockton Transfer and Recycling Station

dust/litter control barrier netting (30' in height)

SPRR



F Street

8' solid perimeter wall



Weber Ave

Filbert Street

Employee Parking, Empty Container Storage, and Truck Parking (1.65 ac)

Permitted Boundary - 2.71 acres

FILE COPY

SITE PLAN

Robert Ronyak, et al
UP 75-95

NO. UP 75-95 REVISED 11-8-01
APPROVED 11-8-01

UNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
1000 EL DORADO STREET
STOCKTON, CA 95202-1997

PH 11-8-01

STOCKTON CITY PLANNING COMMISSION



STOCKTON
R E C Y C L I N G

**PUBLIC MEETING
SUMMARY REPORT**

Wednesday, November 16, 2011
5:00 p.m. – 7:00 p.m.

King Elementary School
2640 East Lafayette Street, Stockton, Calif.

Prepared by
Judith Buethe Communications
445 West Weber Avenue, Suite 221
Stockton, CA 95203
(209) 464-8707

General Information about This Document

What is in this document?

This document is a summary report of the Public Meeting for the Stockton Recycling, Inc. Use Permit Request held on Wednesday, November 16, 2011.

What should you do?

- *Please read this summary report.*
- *If you have any concerns about the summary report, please contact Judith Buehe, Public Outreach Coordinator, (209)464-8707, Ext. 101, Judith@buehecommunications.com.*
- *If you have questions about the project in general, please contact Rick Powell, Vice President/ Project Manager, (209)943-6613, rpowell@stocktonrecycling.com.*

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EXECUTIVE SUMMARY

Stockton Recycling, Inc., in cooperation with the City of Stockton, held a Public Meeting for a Use Permit Request in Stockton, California, on Wednesday, November 16, 2011.

Stockton Recycling is seeking a use permit from the City of Stockton to expand the company's East Stockton Recycling and Transfer Station (ESRTS), located at 2435 East Weber Avenue, Stockton, California. The existing station currently processes primarily construction and demolition recyclable materials under City of Stockton and California Department of Resources Recycling and Recovery permits.

The objectives of the project are to do the following:

- 1) Consolidate two recycling operations on one site to increase operating efficiency,
- 2) Reduce hauling of recyclable materials between the two existing sites, and
- 3) Continue the maximum handling capacity of recyclable materials for the combined facilities.

Environmental studies are underway. The Public Meeting provided members of the public with an opportunity to provide comments or concerns.

The Public Meeting was publicized through a written notice in an envelope sent via first-class U.S. mail to the area surrounding the proposed expansion.

Fourteen persons signed in at the Public Meeting--five members of the public and nine members of the project team and the City of Stockton. The Public Meeting was conducted as an open house.

Informational display boards and maps were available. Attendees were also provided with a multi-page informational handout and comment sheets. Environmental specialists from the project team, the City of Stockton, and representatives of the project owner were available to receive comments and answer questions.

Oral comments were gathered by personnel staffing the meeting.

Chapter 1: Introduction

1.1 A Public Meeting Was Held

Stockton Recycling, Inc. (SRI) in cooperation with the City of Stockton, held a Public Meeting at the King Elementary School from 5:00 p.m. – 7:00 p.m. on Wednesday, November 16, 2011, in Stockton, California.

1.2 Announcement of the Public Meeting

The Public Meeting was publicized by a written notice in an envelope sent via first-class U.S. mail on November 4, 2011, to owners and occupants of 94 properties in the area surrounding the proposed expansion. [See Appendix A for copies of the public notice, the mailing list, and the U.S. Post Office receipt for the postage.]

1.3 Purpose and Goals of the Public Meeting

Stockton Recycling, Inc. is seeking a use permit from the City of Stockton to expand the company's East Stockton Recycling and Transfer Station (ESRTS), located at 2435 East Weber Avenue, Stockton, California. The proposed project would expand the existing East Stockton Recycling and Transfer Station (ESRTS). The existing Station currently processes primarily construction and demolition recyclable materials under City of Stockton and California Department of Resources Recycling and Recovery permits.

Environmental studies are underway. The Public Meeting was an opportunity for property owners and occupants nearby the project site to provide comments or concerns. Members of the public were advised that their comments will become part of the public record and will be considered in developing the final environmental document.

1.4 Format of the Public Meeting

Fourteen persons signed in at the Public Meeting, including five members of the public. The meeting was conducted as an open house with specialists from the project team available to receive comments and answer questions. Attendees were encouraged to submit written comments on comment sheets that were supplied. Project team specialists were available to explain the project, respond to questions, and receive public input.

Chapter 2: Public Meeting Proceedings

2.1 Welcome Board and Sign-in Table

A welcome board greeted attendees as they entered the multipurpose room in the King Elementary School where the Public Meeting was held. Attendees were asked to sign in to maintain an attendance record and to ensure that all interested parties could be added to the project mailing list. [See Appendix F for a sign-in list of attendees at the Public Meeting.] The Public Outreach Coordinator staff members encouraged attendees to ask questions, and provide their comments about the project. The Public Outreach staff also gave each attendee two items: a multi-page informational handout with graphics of the site and a comment sheet. The handout welcomed them to the Public Meeting, stated the night's agenda (an open house format), and provided project background and purpose, and project contact information. Comment sheets provided space for comments and/or concerns. [See Appendix _____ for copies of the Welcome board and handouts.]

The Public Outreach Coordinator staff also explained the overall format and encouraged people to ask questions of and provide comments to the project team members who were present.

Comment sheets, pens, and a box for comment sheets were available. No comment sheets were turned in. A visual demographic survey indicated that of the five members of the public, two were Hispanic, two were African/American or Black, and one was White.

2.2 Personnel on Hand

The following personnel organized and conducted the Meeting and were available to answer questions from the public.

2.2.1 City of Stockton

Adam Brucker, Senior Planner

2.2.2 Stockton Recycling, Inc.

Rick Powell, Vice President/Project Manager

Jamie Williams

2.2.3 Consultants

Kleinfelder/Insite Environmental

Amy Gartin, Environmental Specialist

Charlie Simpson, Senior Environmental Specialist

Pacific Waste

Mark White

Judith Buethe Communications

Judith Buethe, Public Outreach Manager

Mary Ann Piana Chapman, Assistant Public Outreach Manager

Daniela Ayala, Translator

Chapter 3: Public Input

No written comments were received.

Chapter 4: Outcome of the Public Meeting

Table #1

CONCERNS
Noise
Dust
Odor
Traffic
Rodents
Hours of operation

The meeting was very interactive between members of the public and project team specialists; and positive informal comments were made by members of the public.

APPENDICES

Appendix A: Noticing

Invitation



You Are Cordially Invited to a Public Meeting

Wednesday, November 16, 2011
5:00 p.m. – 7:00 p.m.

King Elementary School
2640 East Lafayette Street, Stockton, CA

Why Is This Public Meeting Being Held?

Stockton Recycling, Inc. is seeking a use permit from the City of Stockton to expand the company's East Stockton Recycling and Transfer Station (ESRTS), located at 2435 East Weber Avenue, Stockton, California. This notice is to tell you of the public meeting that will be held on November 16. The meeting will be held in an open house format. You are invited to attend any time between 5:00 p.m. and 7:00 p.m. to talk about the proposed project with the project development team.

Project Description

The proposed project would expand the existing East Stockton Recycling and Transfer Station (ESRTS). The existing Station currently processes primarily construction and demolition recyclable materials under City of Stockton and California Department of Resources Recycling and Recovery permits.

The expansion project would involve a 1.77-acre expansion of the existing site at 2435 East Weber Avenue, Stockton, from 4.96 to 6.28 acres. The expansion acreage would accommodate a relocated truck entry, truck staging areas, a new truck scale and truck circulation, and use of an existing warehouse building on the expansion site. A new 33,400-square-foot metal building would be located within the existing site to accommodate recycling activities relocated from the company's existing facility at 401 South Lincoln Street, Stockton. A new 1,000-square-foot office would be constructed adjacent to this building. With the exception of building and landscaping areas, the entire site would be paved.

Project Objectives

The objectives of the project are to do the following:

- 1) Consolidate the two recycling operations on one site to increase operating efficiency,
- 2) Reduce hauling of recyclable materials between the two existing sites, and
- 3) Continue the maximum handling capacity of recyclable materials for the combined facilities.

Hours of Operation

Currently, the operating hours are 7:30 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday. The facility is closed on Sunday. New hours of operation would be seven days per week, 24 hours per day.

Contact Information

For more information about the project, feel free to contact the following persons:

Environmental

Amy Gartin, AGartin@kleinfelder.com, (209) 948-1345

Project Information

Mary Ann Pina Chapman, MaryAnn@buedtcommunications.com, (209) 464-8707, Ext. 101

Se habla Español. A Spanish-language translator will be available at the public meeting.

U.S. Post Office Receipt for mailing invitations

Stockton Recycling
 DELTA STATION
 STOCKTON, California *Notice*
 952022322
 0565760203 -0098
 11/04/2011 (800)275-8777 02:25:17 PM

Product Description	Sales Receipt		Final Price
	Qty	Unit Price	
44c Lady Liberty/Flag Forever (Forever) Lady Liberty/Flag Dble Side PSA Bkit	1	\$44.00	\$44.00
	1	\$8.80	\$8.80
Total:			\$52.80

Paid by:
 VISA \$52.80
 Account #: XXXXXXXXXXXX3851
 Approval #: 969939
 Transaction #: 366
 23 903440220

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

 Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.

Bill#: 1000202864087
 Clerk: 05

All sales final on stamps and postage
 Refunds for guaranteed services only
 Thank you for your business

 HELP US SERVE YOU BETTER
 Go to: <https://postalexperience.com/Pos>
 TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE
 YOUR OPINION COUNTS

Public Notice
Stockton Record

**CITY OF STOCKTON
PUBLIC NOTICE OF AVAILABILITY
DRAFT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION**
(Pursuant to Public Resources Code Sections 21092 and 21097.3 and Cal. Code of Regulations Title 14, Section 15087)

The City of Stockton Community Development Department has completed, independently reviewed and analyzed the following Draft Initial Study/Mitigated Negative Declaration: P10-365 for the proposed East Stockton Recycling and Transfer Station (ESRTS) project. The proposed project includes a 1.77-acre expansion of the existing 4.96-acre ESRTS facility located at 2035 East Weber Avenue. The existing ESRTS facility currently processes primarily construction and demolition wastes. The expanded facility would accommodate existing ESRTS recycling activity, as well as commercial and residential single-stream recycling activity now accommodated at a separate facility located at 401 South Lincoln Street in Stockton. The Lincoln Street facility will be closed when the expanded ESRTS facility is in operation. Permitted recycling activity at the expanded ESRTS facility would average 1,000 tons per day (TPD) with a maximum allowable daily processing limit of 1,250 TPD. The limit on weekly average material acceptance would be increased from 2,500 to 7,000 tons per week, and the facility would operate 24 hours per day, seven days a week. The project also includes a new 33,400 square-foot structure located within the existing site that would accommodate the single-stream recycling facilities relocated from 401 South Lincoln Street.

Entitlements being sought by the project applicant include approval of a Rezone and a Use Permit. The East Stockton Recycling and Transfer Station project is located west of Fibert Street, on the north and south sides of East Weber Avenue. The project site is comprised of Assessor's Parcel Numbers 153-150-04, 05, 08, and 55; 153-231-01 and 17; 153-232-01, 05, and 21.

A copy of the Draft IS/MND may be reviewed and/or obtained at the following addresses:

Community Development Department
or at: <http://www.stockton.gov/planning/engineering>
Planning Division
345 North El Dorado Street
Stockton, CA 95202

The Draft IS/MND may also be reviewed at the following public library locations:

Cesar Chavez Central Library
605 North El Dorado Street
Stockton, CA 95202

Mayr Angelou Branch Library
2324 Pock Lane
Stockton, CA 95205

Fair Oaks Branch Library
2370 East Main Street
Stockton, CA 95205

Margaret K. Troke Branch Library
602 West Benjamin Holt Drive
Stockton, CA 95207

Any written comments on this document must be received at this same address no later than November 15, 2011 at 5:00 p.m. Further information may be obtained by contacting the City Planning Division at (209) 937-8268.

MICHAEL E. LOCKE, DEPUTY CITY MANAGER/
INTERIM COMMUNITY DEVELOPMENT DIRECTOR

#888784 10/14/11

Appendix B: Handouts



Comments

Name (Please print): _____ Date: _____

Street address: _____

City: _____ State: _____ Zip: _____

Please add my name to the Stockton Recycling Project mailing list.

I would like the following comments filed in the record. (Please print.) _____

Please mail or e-mail to:

Public Information Coordinator
Stockton Recycling Project
P.O. Box 773, Stockton, CA 95201-0773
Hotline@buethcommunications
(209) 464-4350 or toll-free (877) 464-4350



Date: November 16, 2011

<i>Please Print Your Name</i>	<i>Organization, if any</i>	<i>Address, City and Zip</i>	<i>E-mail</i>	<i>Phone</i>

Thank you for attending. Gracias por su asistencia.



Public Meeting/Open House

Wednesday, November 16, 2011

5:00 p.m. – 7:00 p.m.

King Elementary School
2640 East Lafayette Street, Stockton, CA

Why Is This Public Meeting Being Held?

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Hours of Operation

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Contact Information

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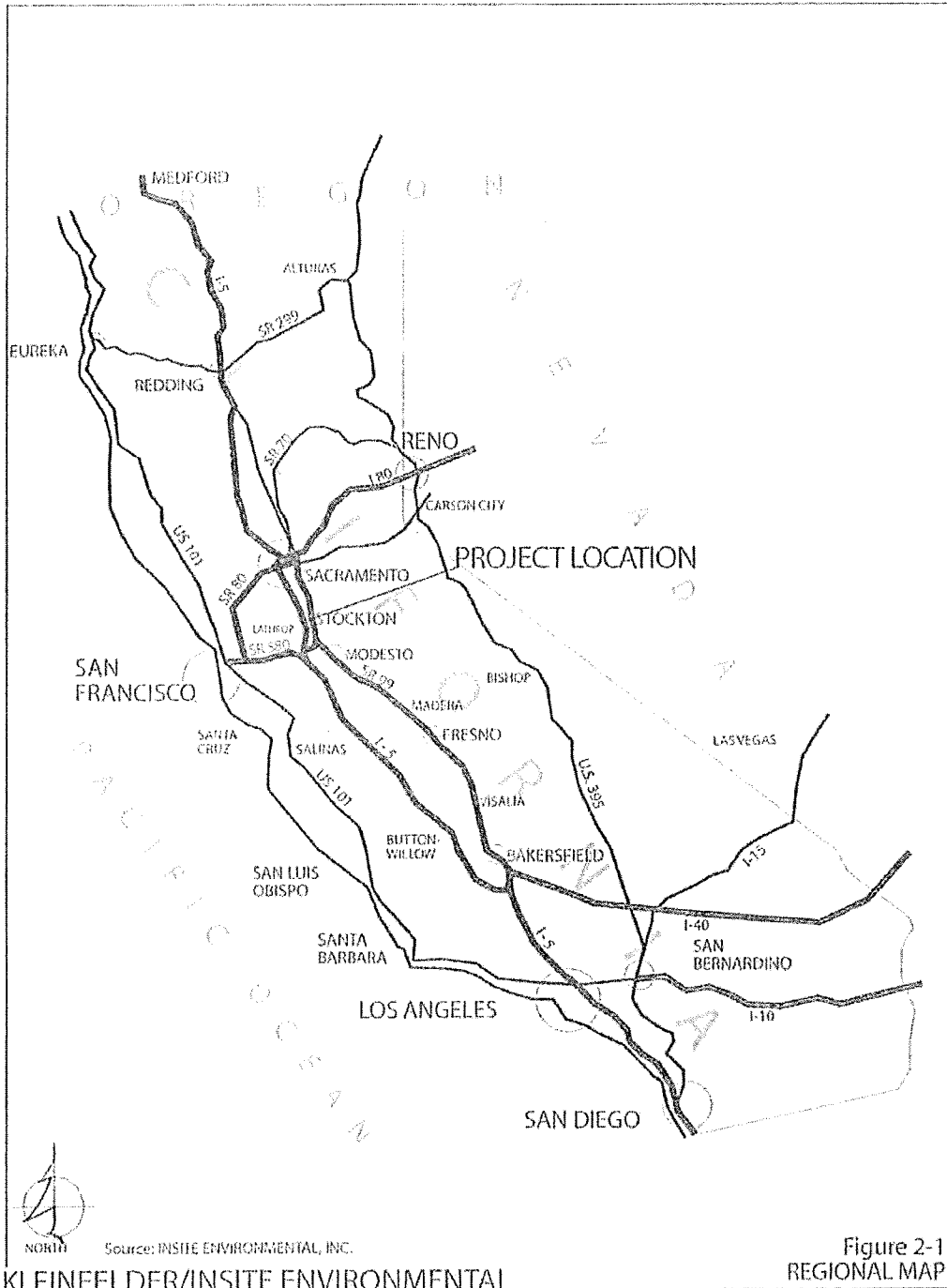
Environmental

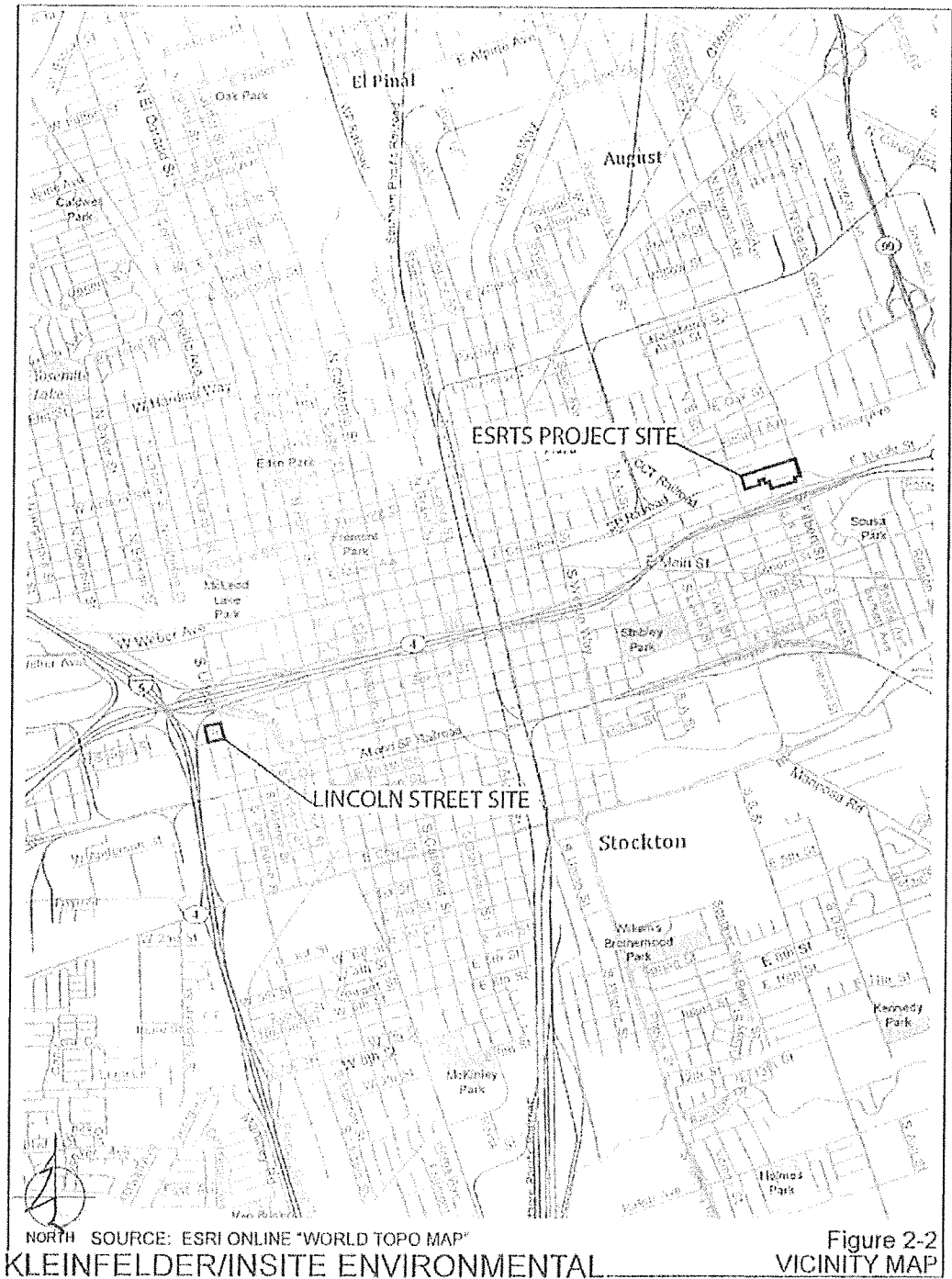
Amy Gartin, AGartin@kleinfelder.com, (209) 948-1345

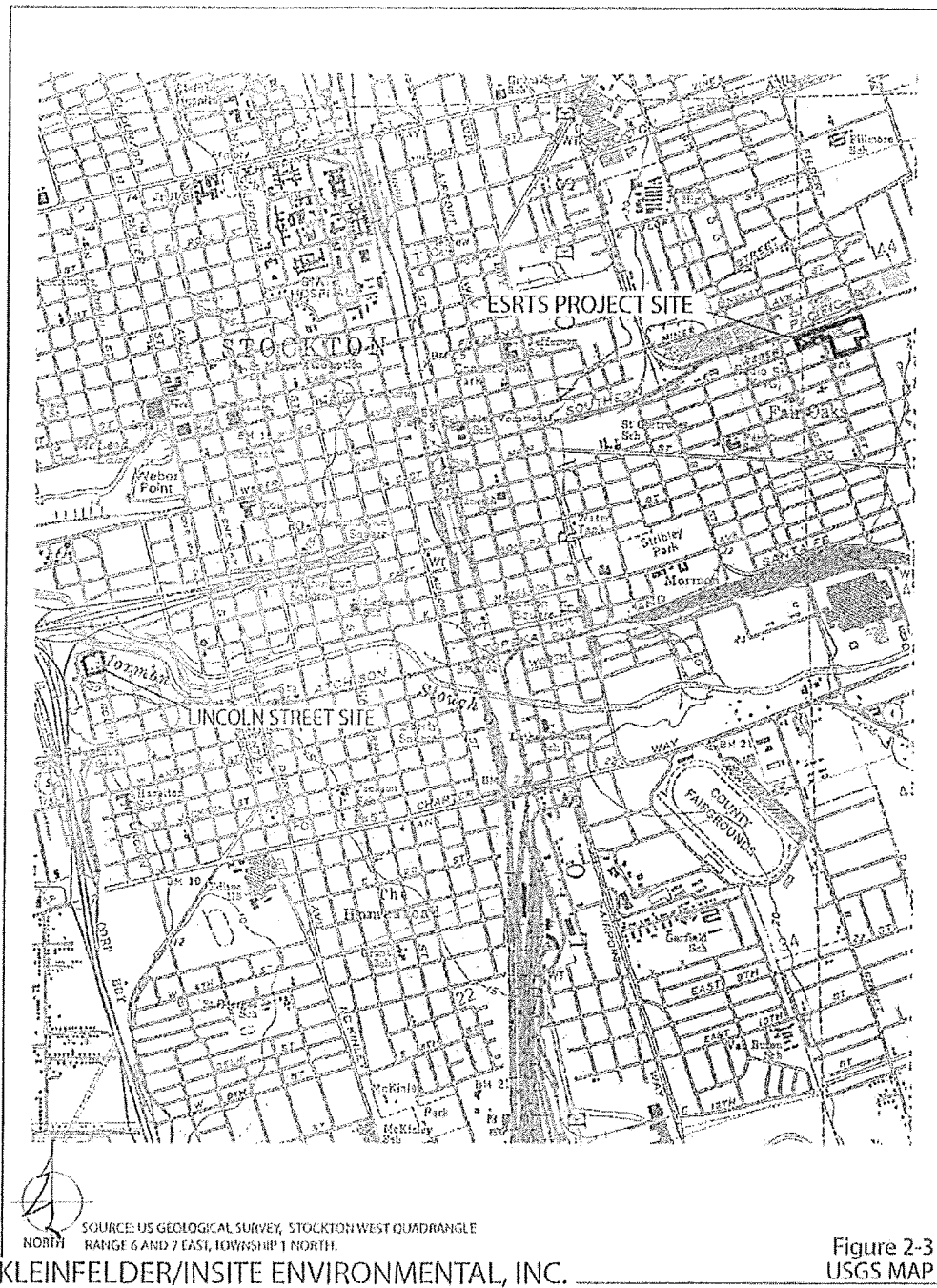
Project Information

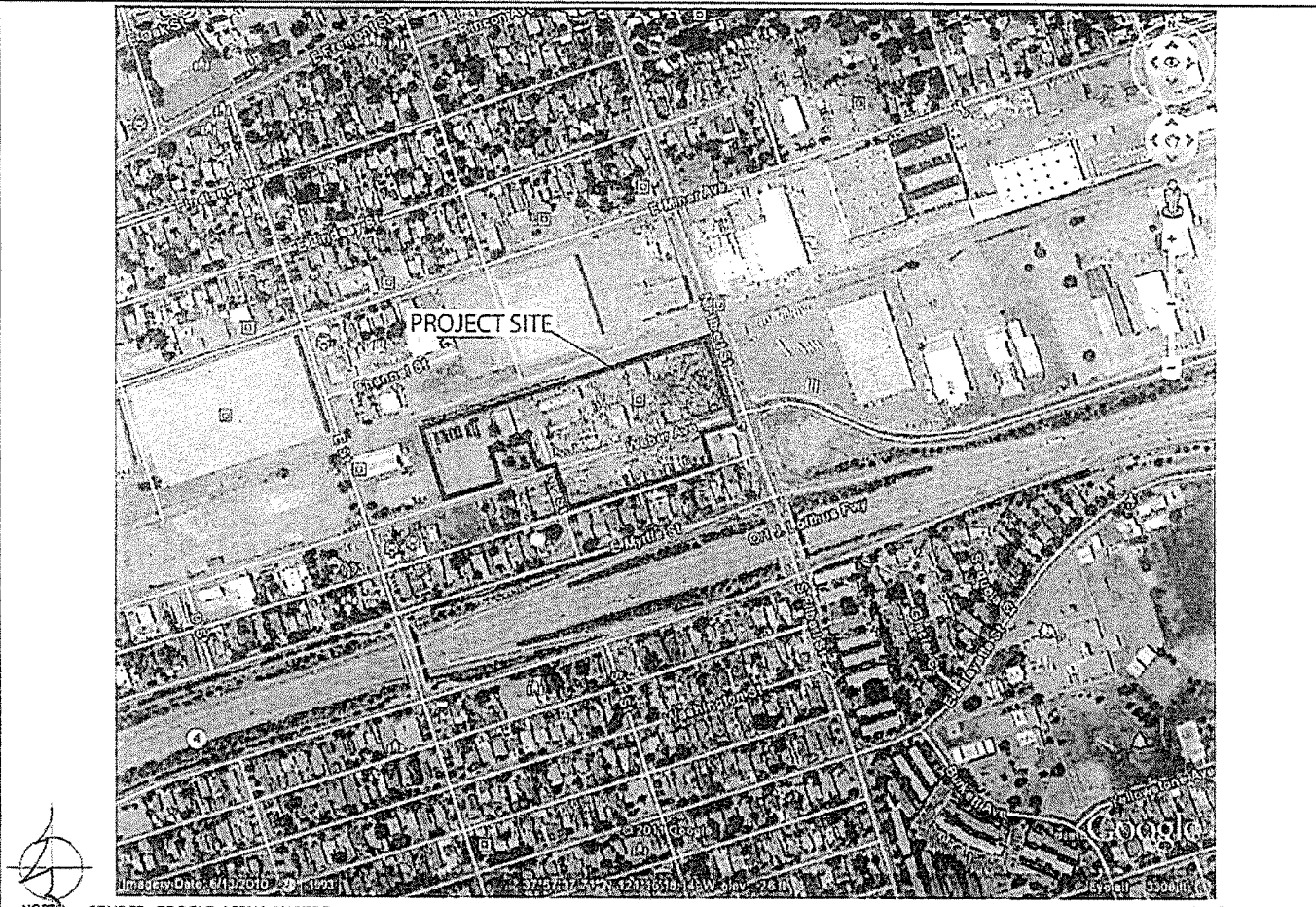
Mary Ann Piana Chapman, MaryAnn@buethcommunications.com, (209) 464-8707, Ext. 102

Se habla Español. A Spanish-language translator will be available at the public meeting.



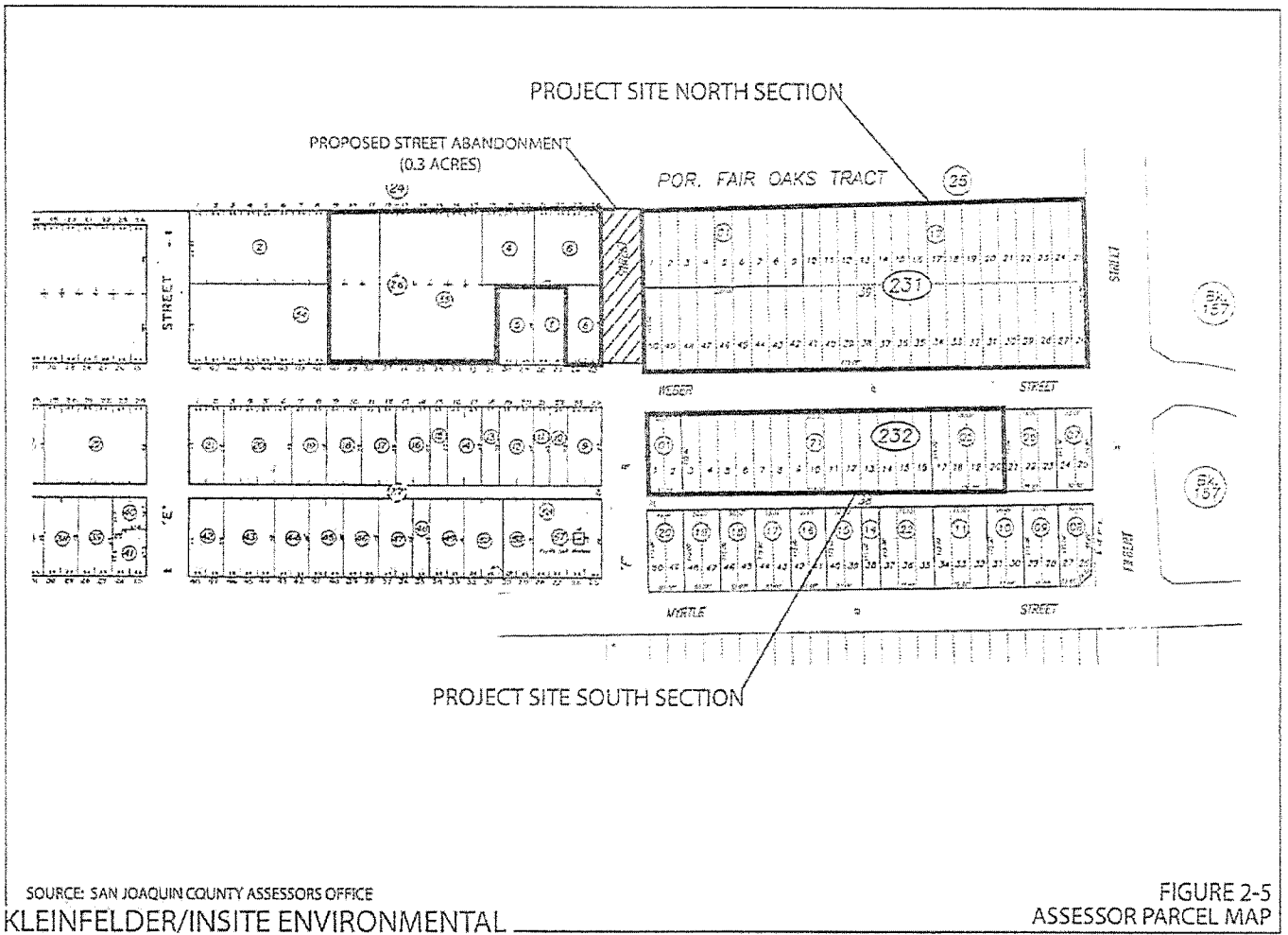


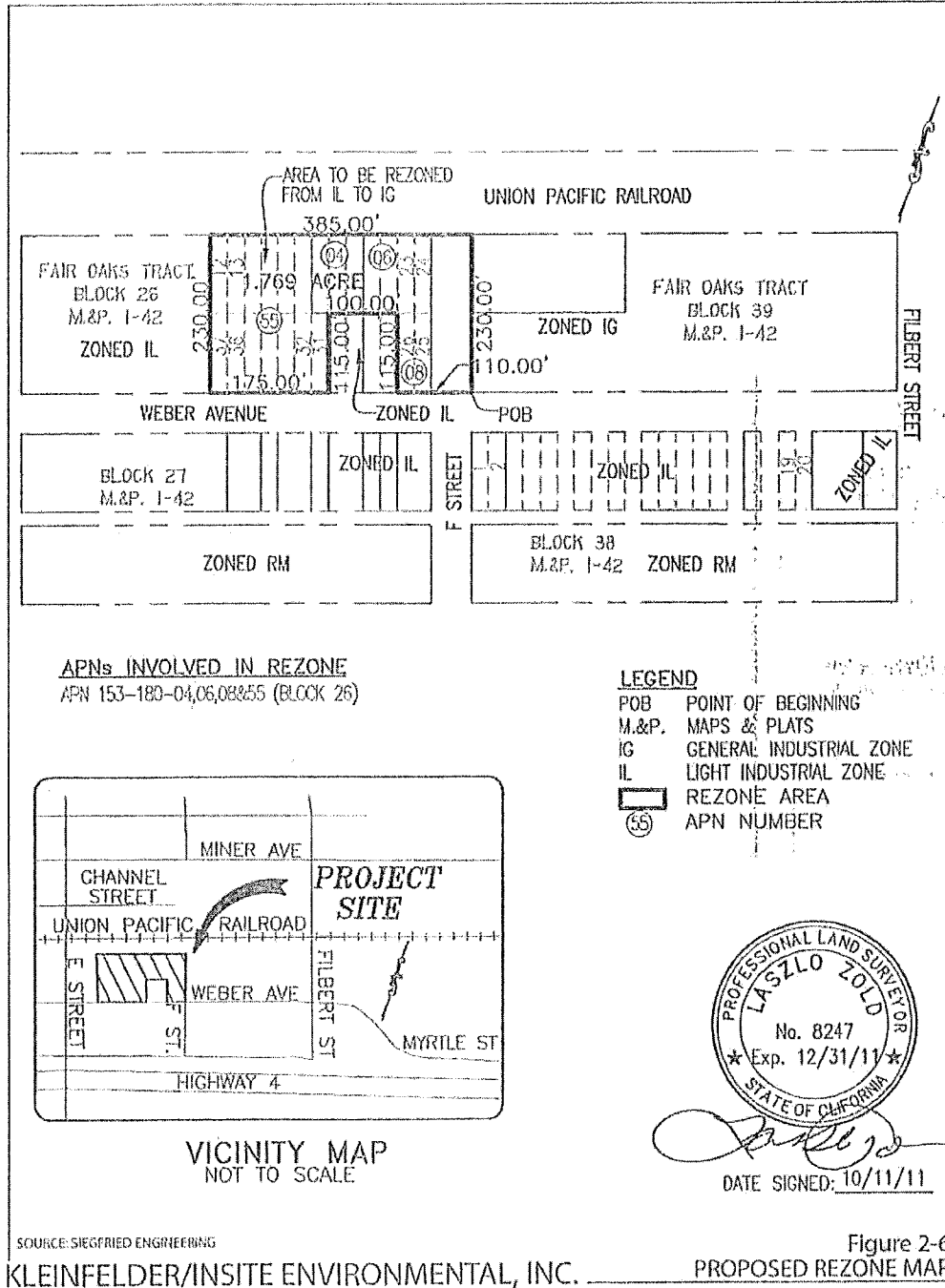


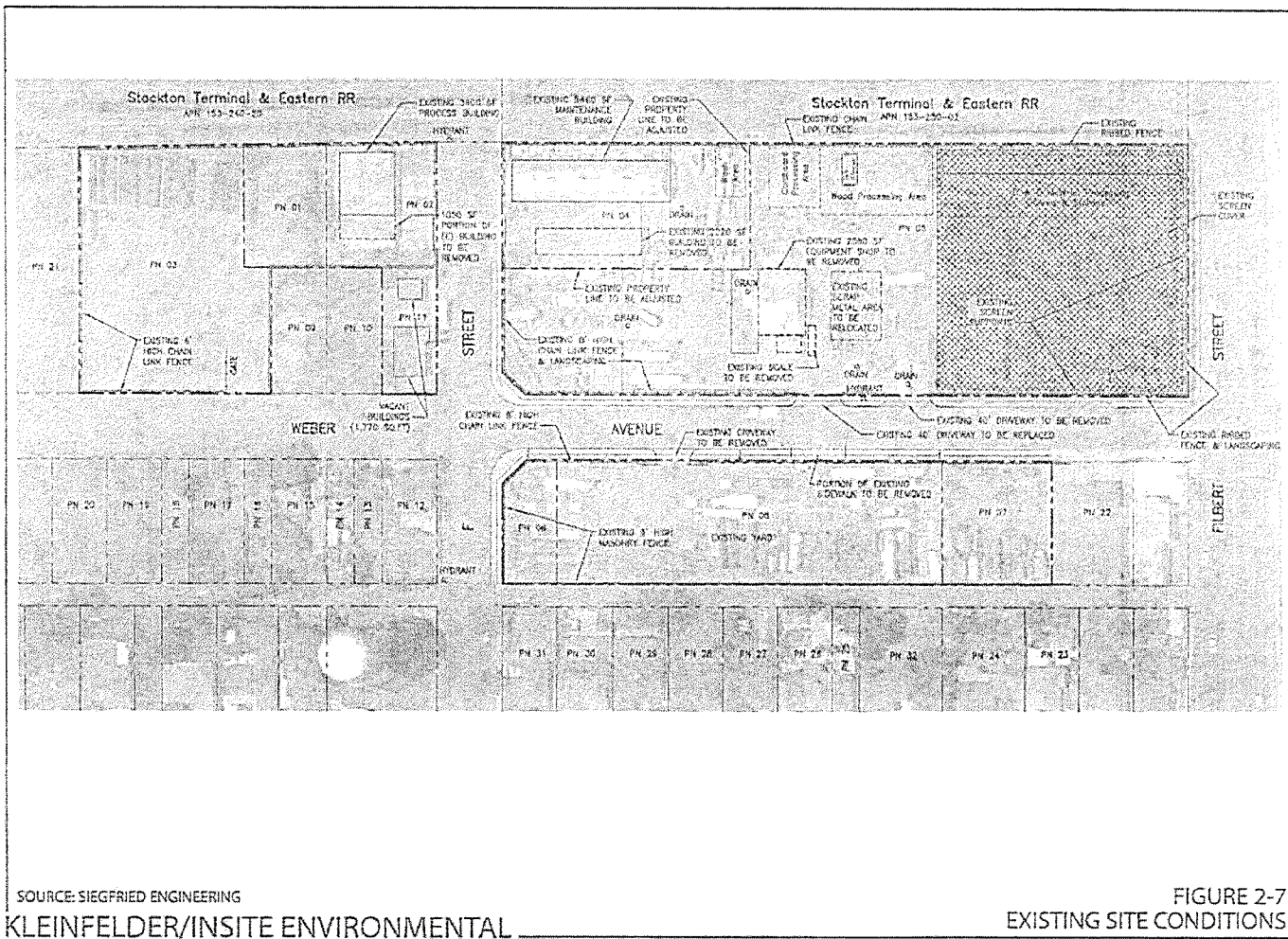


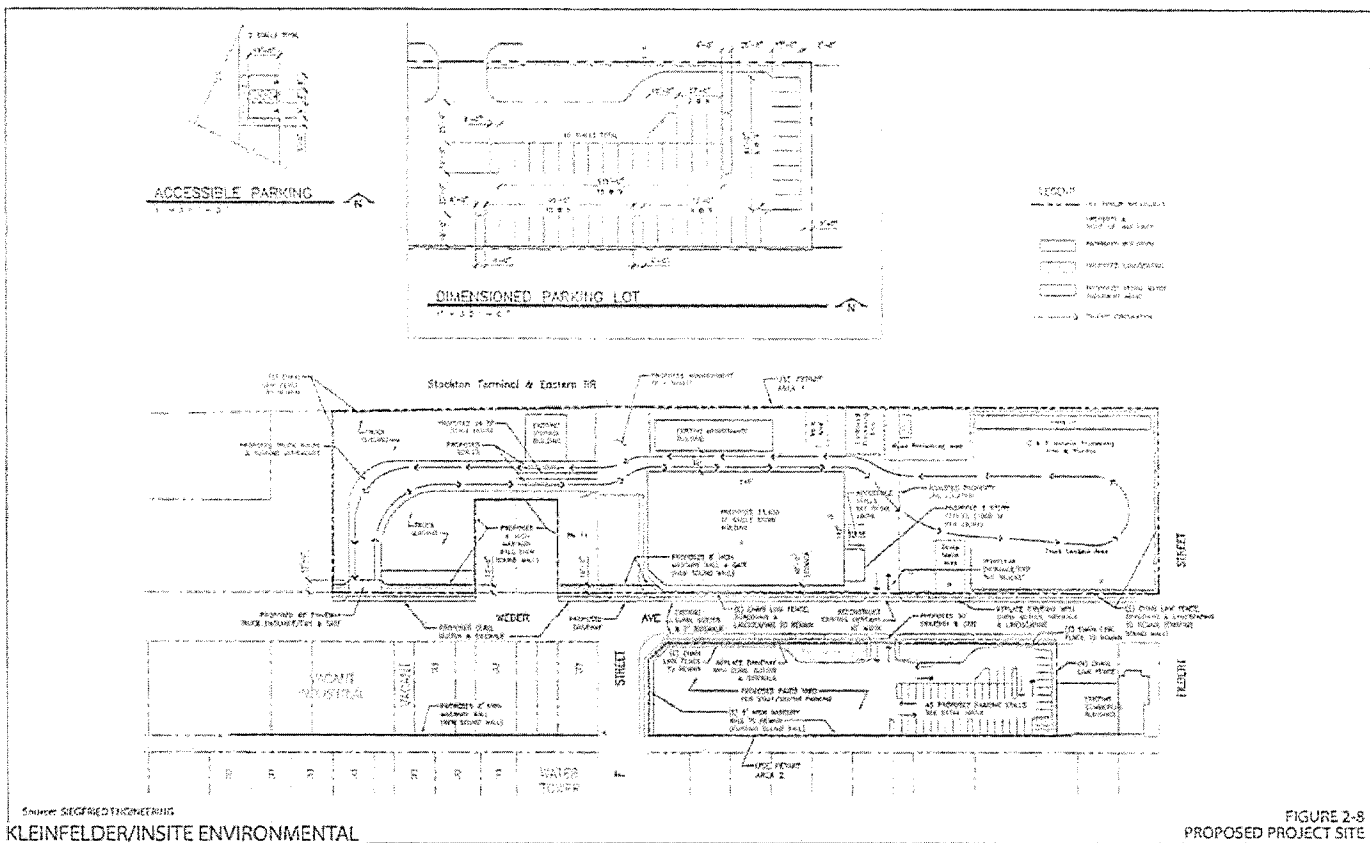
NORTH SOURCE: GOOGLE AERIAL PHOTOS
KLEINFELDER/INSITE ENVIRONMENTAL

FIGURE 2-4
AERIAL PHOTO



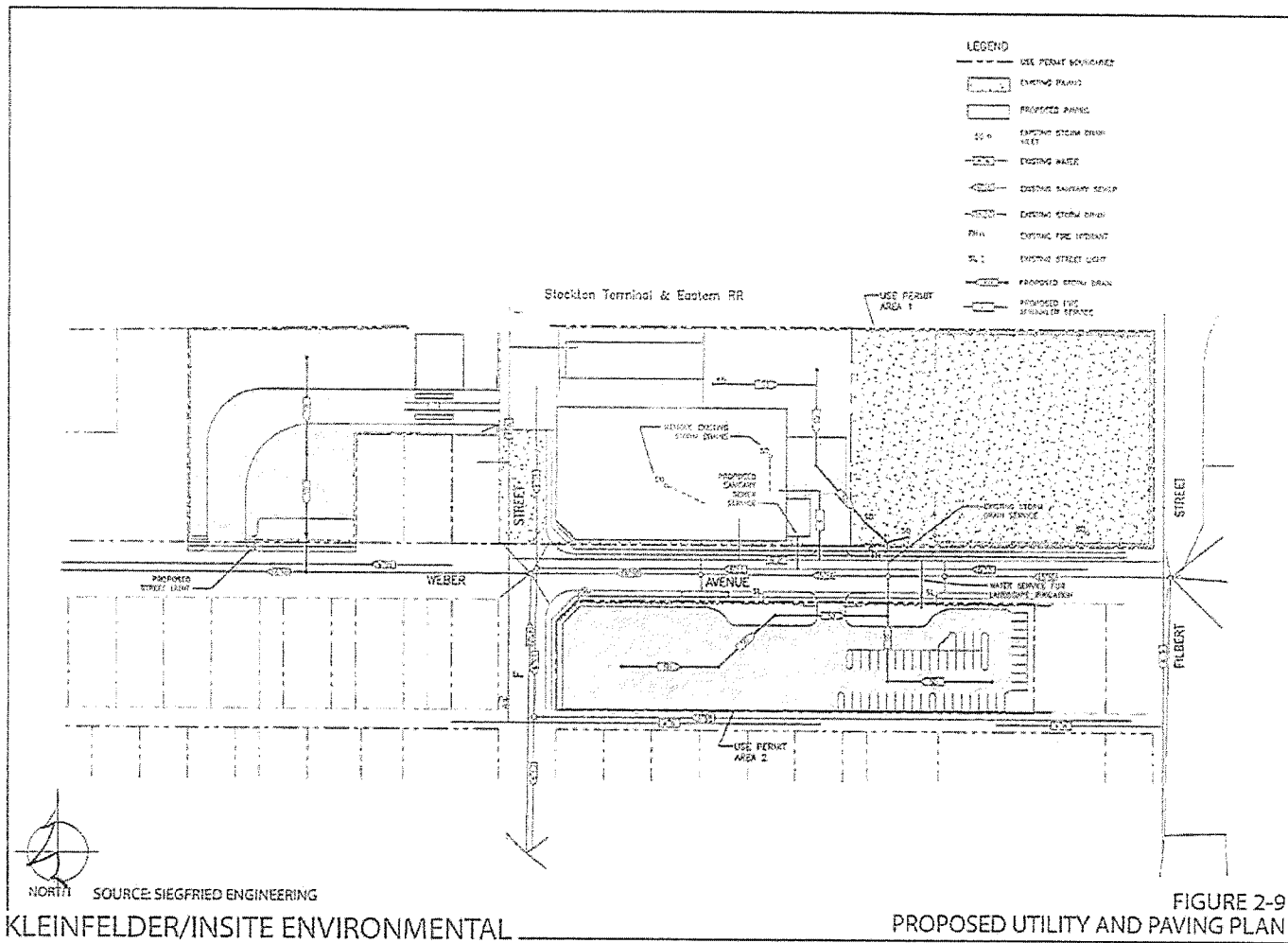


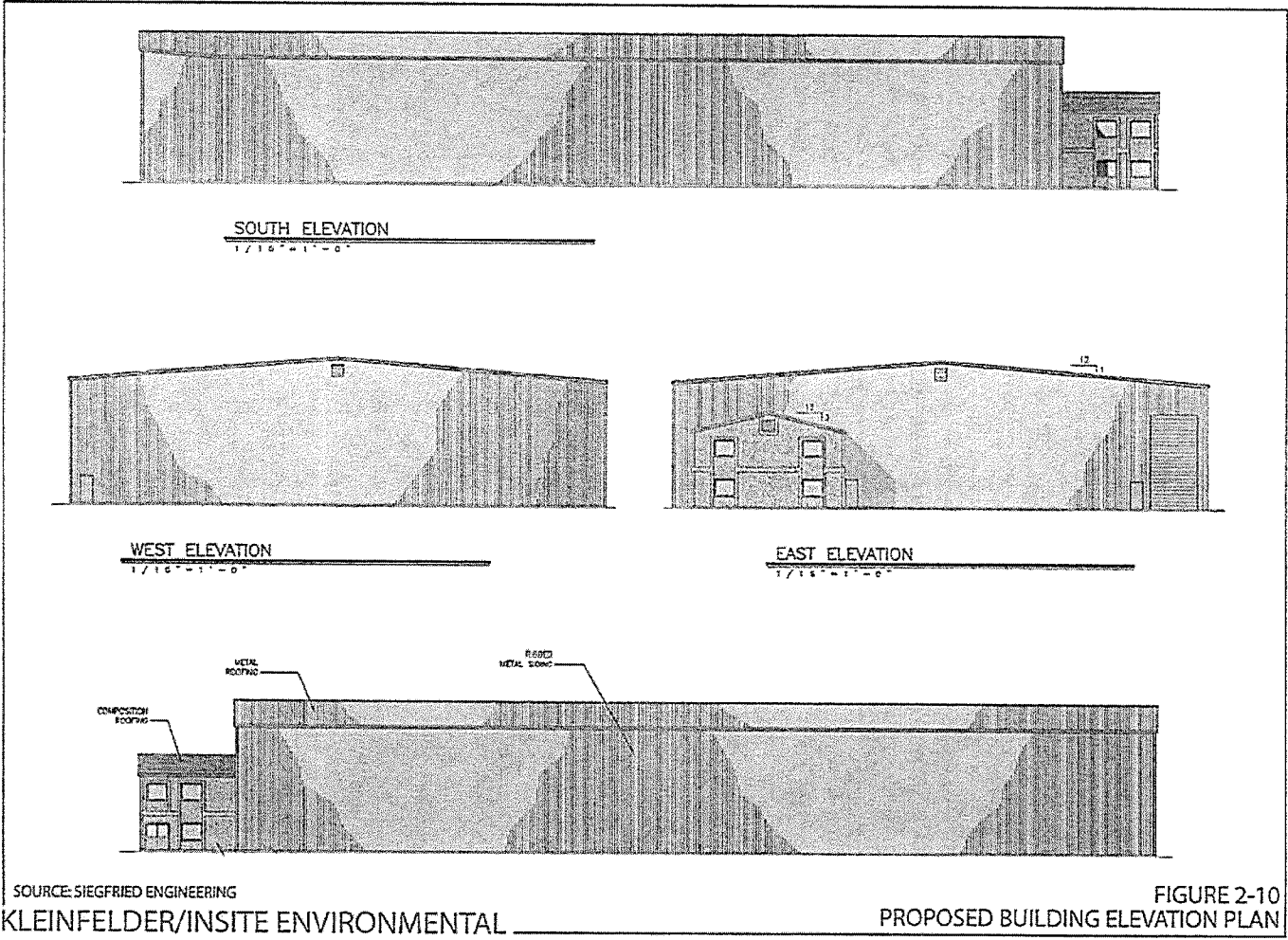




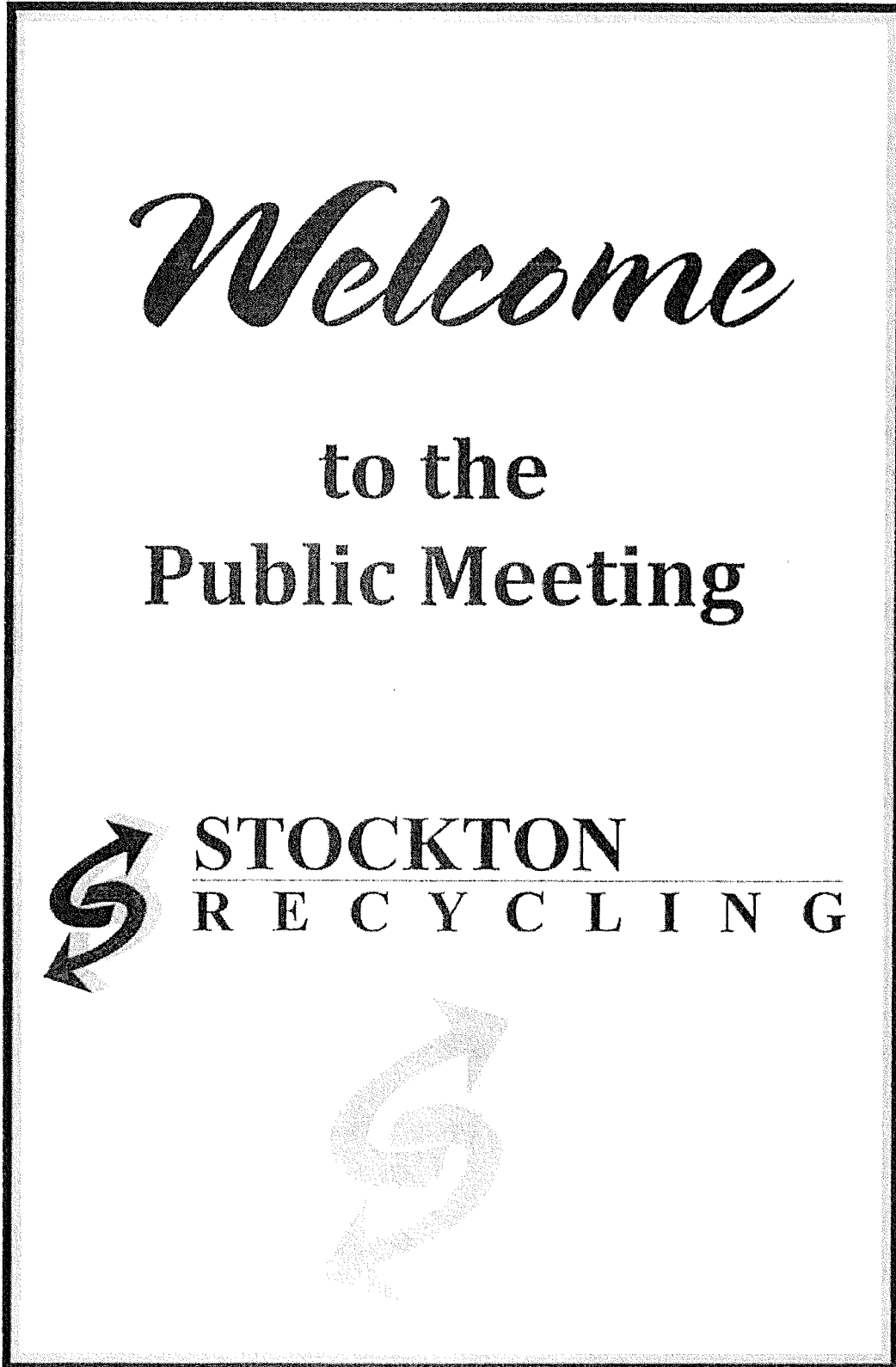
Shawn STEFFRED ENGINEERING
KLEINFELDER/INSITE ENVIRONMENTAL

FIGURE 2-8
PROPOSED PROJECT SITE

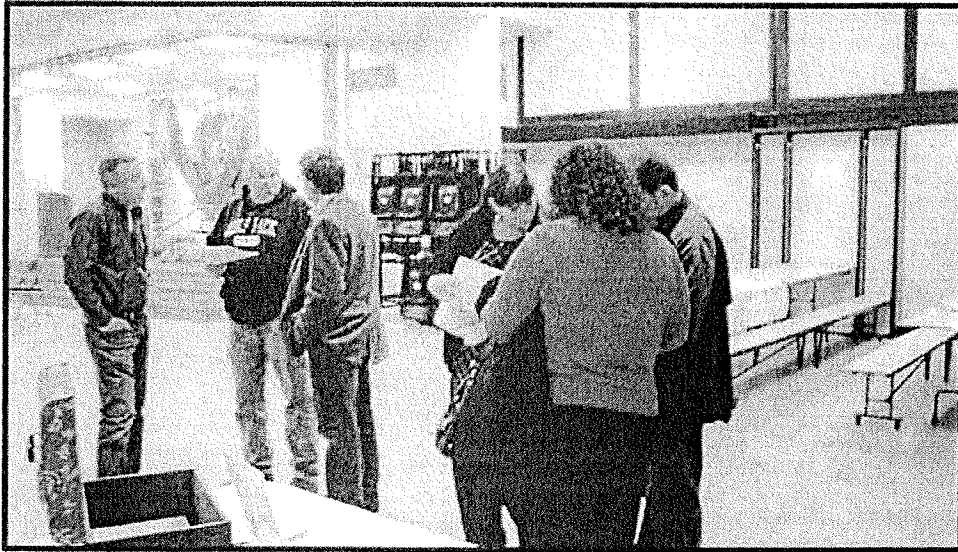
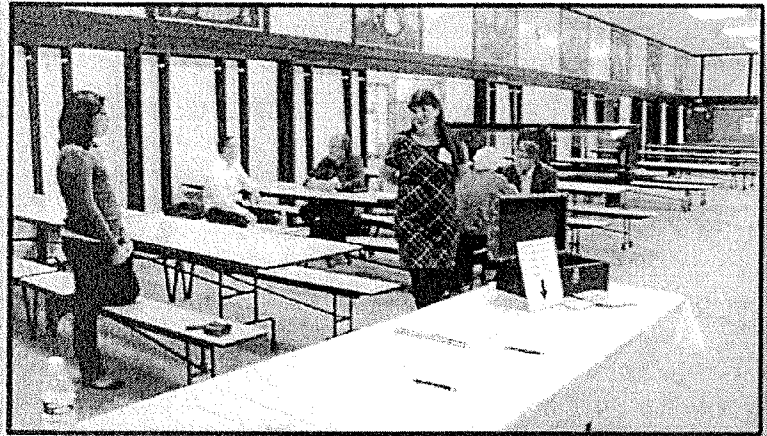
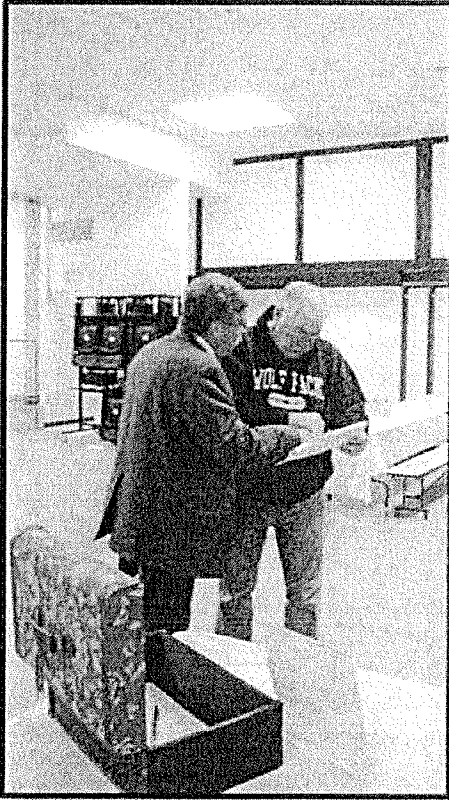


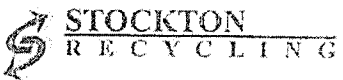


Appendix C: Displays



Appendix D: Meeting Photographs





Date: November 16, 2011

Please Print Your Name	Organization, if any	Address, City and Zip	E-mail	Phone
CHARLIE SIMPSON	KLEINFELDER	2001 MECH-AIRPORT, STE 100, STOCKTON 95206	csimpson@kleinfelder.com	209-469-4370
Adam Brucker	City of Stockton	515 N. El Dorado Street Stockton, CA 95202	adam.brucker@stocktonca.gov	209-937-7564
MIGUEL GRIFFIN	CITY OF STOCKTON	2871 E. WOOD AVE	lggriffin@cityofstockton.com	(209) 977-7518
MARIE MUNOZ		2455 EMERALD ST	mmuniz@stocktonca.gov	(209) 639-4346

Thank you for attending. Gracias por su asistencia.


**STOCKTON
RECYCLING**

Date: November 16, 2011

Please Print Your Name	Organization, if any	Address, City and Zip	E-mail	Phone
JUDITH BUETHE	JBC	P.O. Box 775 Stockton, CA 95201	judith@buethecommunications.com	(209) 464-8707
Daniela Ayala	—	2334 Long Island Dr 95206	—	(209) 351-1810
Amy Garth	Kleinfielder/Fiske	2001 Arch Airport, Suite 102 Stockton 95206	martine.kleinfielder.com	948-1345
MARK WHITE	PACIFIC WASTE	8410 MEDITERRANEAN WAY SACRAMENTO, CA 95826	MARK@PWPG.NET	916 (387-977)
Iris Ramirez	—	2102 E Washington St	IrisTheFlower29@yahoo.com	209 271 0918
Marilyn Chapman	JBC	445 West Windsor Stockton, CA 95203	Marilyn R buethecommunications.com	(209) 978-8912
Jamie Williams	SRI	1533 Waterloo Rd.	JWilliams@StocktonRecycling.com	209-598-3389
Leon Brant	NUMERITECH	124 N E	—	
Ron Corzzi	—	2455 E Myrtle St	r.corzzi@pythoo.com	209-639-3009
Rick Powell	SRI			

Thank you for attending. Gracias por su asistencia.

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (P10-365) FOR THE EAST STOCKTON RECYCLING AND TRANSFER STATION 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 Initial Study/Mitigated Negative Declaration (P10-365) for the East Stockton Recycling and Transfer Station Project and adopts the "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project" for the Rezoning and Use Permit (P10-365), for property located on the west side of Filbert Street, on the north and south sides of East Weber Avenue, as set forth in the report of the Planning Commission filed with the City Council on February 7, 2012, based upon the following findings:

a. The Initial Study/Mitigated Negative Declaration (P10-365) has been completed in compliance with the California Environmental Quality Act (CEQA), State CEQA Guidelines, and City Guidelines for the Implementation of CEQA;

b. The Initial Study/Mitigated Negative Declaration (P10-365) 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; and

c. Based on the significant and/or potentially significant environmental effects identified in the Initial Study/ Mitigated Negative Declaration (P10-365) and pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures, and mitigation monitoring/reporting provisions as specified in the "Findings and Mitigation Monitoring/Reporting Program for the East Stockton Recycling and Transfer Station Project."

PASSED, APPROVED, and ADOPTED _____ February 7, 2012 _____.

ATTEST:

ANN JOHNSTON
Mayor of the City of Stockton

BONNIE PAIGE
City Clerk of the City of Stockton
::ODMA\GRPWISE\COS.CDD.CDD_Library:93322.1

City Atty
Review *BP*
Date January 31, 2012

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 TO RECLASSIFY FROM IL (INDUSTRIAL, LIMITED) TO IG (INDUSTRIAL, GENERAL) FOR PROPERTY LOCATED NORTH OF WEBER AVENUE AND WEST OF F STREET (J.H. WILLIAMS EAST LLC, P10-365)

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

SECTION I. 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 an Initial Study/Mitigated Negative Declaration (P10-365) has been prepared for J.H. Williams East LLC for the East Stockton Recycling and Transfer Station 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 15091 and 15093 of the State CEQA Guidelines and Public Resources Code section 21081.6, the approval of this Rezoning request (P10-365) by J.H. Williams East LLC 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 "1," 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 description

City Atty
Review
Date February 1, 2012

contained in the attached Exhibit "2" (REZONING REQUEST OF J.H. WILLIAMS EAST LLC/P10-365).

SECTION II. EFFECTIVE DATE.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: _____

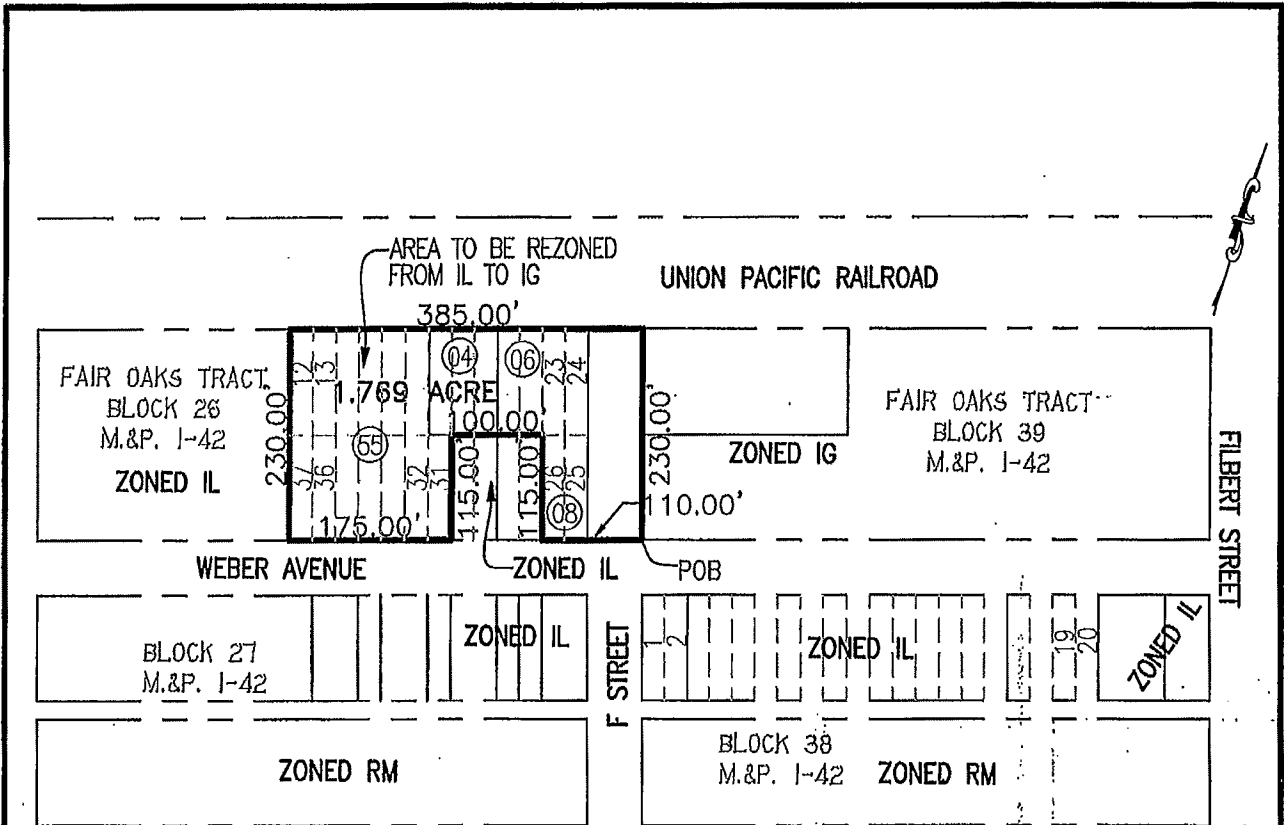
EFFECTIVE: _____

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton

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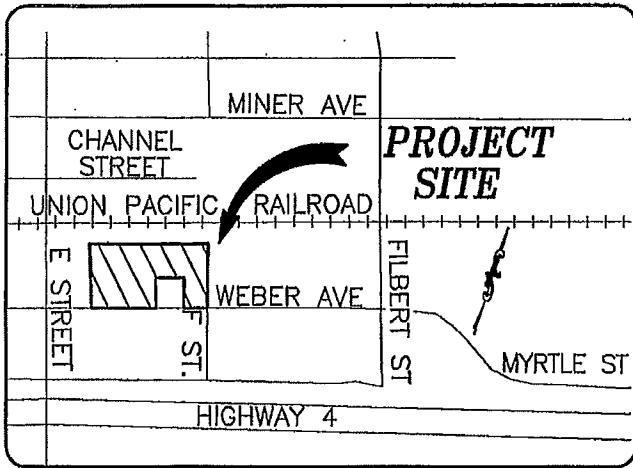


APNs INVOLVED IN REZONE

APN 153-180-04,06&55 (BLOCK 26)

LEGEND

- POB POINT OF BEGINNING
- M.&P. MAPS & PLATS
- IG GENERAL INDUSTRIAL ZONE
- IL LIGHT INDUSTRIAL ZONE
- REZONE AREA
- 55 APN NUMBER



VICINITY MAP
NOT TO SCALE



DATE SIGNED: 09/09/11

PREPARED BY SIEGFRIED ENGINEERING, INC.

SHEET 1 OF 1

REV. NO.	REV. DATE	REV. BY	REZONE		APPROVED BY: _____ CITY ENGINEER
			PORTION OF BLOCK 26 AND F STREET BETWEEN BLOCKS 26 AND 39		
DIGITIZED			CITY OF STOCKTON		DATE
DWG. BY wmk			DEPARTMENT OF PUBLIC WORKS		
CK. BY wmk			SCALE 1" = 200'		

DESCRIPTION

REZONE

APNs 153-180-4,6,8&55

ALL THAT CERTAIN PROPERTY LYING WITHIN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, SAID PROPERTY BEING PORTIONS OF BLOCK 26 AND F STREET (60.00 FEET IN WIDTH) LYING BETWEEN BLOCKS 26 AND 39 PER FAIR OAKS TRACT FILED IN BOOK 1 OF MAPS AND PLATS AT PAGE 42, SAN JOAQUIN COUNTY RECORDS, SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 12 THROUGH 26 AND 31 THROUGH 37 OF BLOCK 26 OF SAID FAIR OAKS TRACT FILED IN BOOK 1 OF MAPS AND PLATS AT PAGE 42, SAN JOAQUIN COUNTY RECORDS,

TOGETHER WITH F STREET BETWEEN BLOCKS 26 AND 39 OF SAID FAIR OAKS TRACT FILED IN BOOK 1 OF MAPS AND PLATS AT PAGE 42, SAN JOAQUIN COUNTY RECORDS,

CONTAINING 1.769 ACRES, MORE OR LESS.

END OF DESCRIPTION



Laszlo Zold

LASZLO ZOLD, P.L.S. #8247
LICENSE EXPIRES: 12-31-11

lz
10194-3001
9/09/11

HEARINGS



AGENDA ITEM 16.02

February 7, 2012

TO: Mayor and City Council

FROM: Wendy S. Saunders, Director
Economic Development Department

SUBJECT: **PUBLIC HEARING TO AMEND THE 2011-12 CITY SERVICE FEES BY
INCORPORATING A CITY-OWNED MIRACLE MILE PARKING LOT
RENTAL FEE SCHEDULE**

RECOMMENDATION

Public hearing to consider public comments and testimony regarding the proposed amendment to the Fiscal Year 2011-12 Fee Schedule to include a City-owned Miracle Mile Parking Lot rental fee.

At the conclusion of the public hearing, it is recommended that the City Council adopt the following resolution:

- 1) Authorize an amendment to the General Parking 2011-12 Fee Schedule (Exhibit 1 to the Resolution) by incorporating a City-owned Miracle Mile Parking Lot rental fee;
- 2) Authorize the City Manager to take appropriate actions to carry out the purpose and intent of the resolution; and,

It is recommended that the City Council adopt the following motion:

- 1) Authorizing a Miracle Mile Parking Lot rental policy (Attachment B).

Summary

City staff has received several requests for use of City-owned parking lots in the Miracle Mile Improvement District (MMID) for public and private events. No policy or fee schedule exists for such use. Therefore, in cooperation with the MMID, staff has prepared a policy and fee structure for use of the City-owned lots to host events.

DISCUSSION

Background

The City of Stockton owns and operates eleven parking lots within the Miracle Mile Improvement District (Attachment A - Map). These lots are dedicated to support commercial businesses along the Miracle Mile, most of which do not own on-site

PUBLIC HEARING TO AMEND THE 2011-12 CITY SERVICE FEES BY INCORPORATING A CITY-OWNED MIRACLE MILE PARKING LOT RENTAL FEE SCHEDULE

(Page 2)

parking. The City-owned lots back up to the storefronts on both sides of the Miracle Mile.

On July 17, 2007, the City Council established the Miracle Mile Management District 2007-02 Property-Based Improvement District (PBID). This PBID, which is administered by the MMID, allows property owners to assess themselves in order to pay for specific improvements, maintenance, security and marketing functions along the Miracle Mile.

On June 7, 2011, the City Council approved a \$250,000 reimbursement agreement with the MMID to make improvements to three of the existing public parking lots (specifically Lots B, D, E (one lot), and F), including replacement of landscaping and removal of the raised planter boxes.

Present Situation

Two events have recently been held on city-owned MMID lots. On Saturday, October 1, 2011, a Miracle Mile business owner held an Octoberfest party in the parking lot behind his place of business, and on Saturday, October 15, 2011, the MMID held the 90th anniversary of the Miracle Mile event on one of the lots. Several promoters have inquired about holding similar events. While events can be beneficial for businesses located on the MMID, some may be disruptive by temporarily eliminating parking for MMID customers. In coordination with the MMID Executive Director and Community Services Department, staff has prepared a policy to ensure that events on the City lots are in the best interest of the MMID businesses at large. The policy includes rental fees, security deposits and consent of adjacent business owners.

On January 24, 2012, the City Council approved a motion to schedule a public hearing to amend the General Parking 2011-12 Fee Schedule. The proposed Fee Schedule amendment is attached as Exhibit 1 to the resolution. The policy for renting a City-owned parking lot on the Miracle Mile is included as Attachment B.

NOTIFICATION

Notice in *The Record* was published once each week for two successive weeks prior to the hearing. In addition, a copy of the proposed adjustments to the 2011-12 Fee Schedule was available for public review in the City Clerk's Office prior to final action being taken by the City Council.

**PUBLIC HEARING TO AMEND THE 2011-12 CITY SERVICE FEES BY
INCORPORATING A CITY-OWNED MIRACLE MILE PARKING LOT RENTAL FEE
SCHEDULE**

(Page 3)

FINANCIAL SUMMARY

There is no financial cost to the City for this action.

Respectfully submitted,



WENDY S. SAUNDERS, DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

WSS:GF:JM:slw

Attachment A – Map
Attachment B – Rental Policy

APPROVED



MICHAEL E. LOCKE
DEPUTY CITY MANAGER

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MIRACLE MILE PARKING DISTRICT



Attachment B Miracle Mile Parking Lot Rental Policy

Purpose:

To establish standard procedures for the rental of City-owned parking lots along the Miracle Mile.

Policy:

Any person or organization may apply to the City of Stockton to rent one or more City-owned parking lots located on the Miracle Mile. The parking lots are shown and identified on the attached map. The application shall include a description of the event to be held, the date and time of the event, expected attendance for the event, and the specific lot(s) requested, along with a certification (see attached form) signed by each business owner/operator or tenant on property abutting the subject parking lot(s). The certification form shall indicate the applicant has made contact with the owner/tenant and state whether the owner/tenant agrees to the applicant's proposed use of the parking lot(s) on the day(s) in question. The application must be approved by the Miracle Mile Improvement District prior to submission to the City. In addition, before the City approves the application, the organization must have an approved Special Event Permit obtained through the City's Community Services Department.

Procedure:

1. Apply for and receive a Special Event Permit through the City's Community Services Department. Refer to the City's Special Event Guidelines for instructions on obtaining a Special Event Permit.
2. Submit to the Miracle Mile Improvement District Executive Director a completed Miracle Mile Parking Lot Rental Application (attached) at least 60 days in advance of the event. The Miracle Mile Improvement District Executive Director is located at 2540 Pacific Avenue, Suite 3, Stockton CA 95204. Phone 209-948-MILE (6453)
3. Obtain written approval for the use of parking lot(s) by the Miracle Mile Improvement District Executive Director
4. If the Director does not approve the use, the decision may be appealed to the Miracle Mile Improvement District Board within 10 calendar days of the Director's disapproval. (The Miracle Mile Improvement District Board meets monthly.)
5. Obtain written approval for the use of the lot(s) from the Director of the City's Community Service Department. The Director will not approve the use unless the applicant provides evidence of the required insurance and endorsements. If the Director does not approve the use, the decision may be appealed to the City Manager within 10 calendar days of the Director's disapproval. The City Manager retains the right not to approve the use.

6. Rental Fee (per lot and payable to the City of Stockton):
 - a. Non-Profit organization: \$50 (proof of current non-profit status is required)
 - b. All others: \$250
7. Refundable Cleaning/Damage Deposit (per lot and payable to the City of Stockton):
 - a. Non-Profit Organization: \$200
 - b. All others: \$500
8. Security is required for all events, including security at the rented parking lot(s). The number of licensed security guards and/or police officers, and where they are to be stationed, will be determined by the Stockton Police Department as part of the Special Event Permit application process.
9. Portable restrooms, trash receptacles, recycling bins, dumpsters and other waste management resources may be required at your event, including on the rented parking lot(s). The City's Community Services Department will determine the waste management requirements as part of the Special Event Permit application process.
10. All portable restrooms, trash receptacles and other waste management resources must be removed from the parking lot(s) within 12 hours of the event's end. If not, the cleaning deposit will be forfeited.
11. Parking lot(s) must be left in the general condition in which it was at the time of the rental. All trash, signage, and/or decorations for the event located on the parking lot(s) must be removed within two hours of the event's end. If not, the cleaning deposit will be forfeited.
12. Any damage to the parking lot(s) (including damage to the landscaping and/or irrigation system) will result in a deduction from, or entire loss of, the damage deposit. Any costs associated with damages greater than the deposit will be the responsibility of the applicant
13. Refunds of the cleaning/damage deposit, along with a letter explaining the reasons for any deductions from, or loss of, the deposit, will be mailed to the applicant within 30 days after the event.

For additional information, please call the Community Services Department at (209) 937-8119.

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City of Stockton - Community Services Department
605 N. El Dorado Street, Stockton CA 95202 - Phone: (209) 937-8119

Application for rental of one or more Miracle Mile parking lots (see attached map). A Special Events Permit will also be required.

1. Name of Applicant _____
Address _____ Phone _____
2. Name of Organization (if different than the Applicant) _____
Address _____ Phone _____
3. Purpose of Event _____
4. Parking Lot(s) to be Rented _____
5. Date of Event _____ Time _____
month day year between and
6. Survey of all businesses/tenants abutting the proposed lot(s) closures:

Number of businesses/tenants in favor: _____
Number of businesses/tenants opposed: _____

7. It is understood that this event will be conducted in compliance with the Miracle Mile Parking Lot Rental Policy and in accordance with the City's Special Events Permit.
8. The undersigned shall defend, indemnify and hold harmless the City of Stockton, its officers, employees and agents from any and all claims, damages or suits that may arise or in any way be occasioned by the granting of this permit or maintenance of any activity under the terms of the permit.

SIGNATURE _____ DATE _____

Approval of the Miracle Mile Improvement District Executive Director (required):

SIGNATURE _____ DATE _____

Approval of the City of Stockton's Community Services Director (required):

SIGNATURE _____ DATE _____

Required Attachments:

- A. Certification signed by each business/tenant abutting the parking lot(s) involved in the proposed use of the parking lot(s) indicating the applicant has contacted each about the proposed use.
- B. Proof of insurance
- C. Proof of current non-profit status, if applicable
- D. Cleaning/damage deposit and rental fees

Location of Miracle Mile Parking Lots

Lots A through I, identified in red, are City-owned parking lots available for rent through the Miracle Mile Parking Lot Rental Policy.

MIRACLE MILE PARKING DISTRICT



CERTIFICATION

REQUEST FOR USE OF CITY OWNED PARKING LOT _____

The applicant _____ is requesting to rent and use City owned Parking Lot ____ along the Miracle Mile, in connection with an event (_____) to be held on _____ between the hours of _____ and _____.

The undersigned hereby certifies that he/she has contacted in person the following businesses and/or tenants that occupy the properties that abut the subject parking lot informing them about the proposed use of the parking lot on the day(s) in question concerning the event and asking them if there is opposition to such use.

Applicant's Signature

Date

Name of Business/Tenant

Phone Number

Address

Signature of Business Owner/Operator/Tenant

Date

No opposition/opposed to proposed use

STOCKTON CITY COUNCIL

RESOLUTION ESTABLISHING FEES FOR THE RENTAL OF CITY-OWNED MIRACLE MILE PARKING LOTS AND INCORPORATING FEES INTO THE 2011-12 FEE SCHEDULE

The City of Stockton (City) owns and operates 11 parking lots within the Miracle Mile Improvement District which are dedicated to support commercial businesses along the Miracle Mile; and

City staff has received several requests for the use of these City-owned parking lots for public and private events. No policy or fee schedule currently exists for such use; and

In cooperation with the Miracle Mile Improvement District, staff has prepared a policy and fee structure for use of the City-owned lots located along the Miracle Mile to host events; now, therefore,

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

1. The Miracle Mile Parking Lot Rental Fee, attached hereto as Exhibit 1, is hereby approved and incorporated into the 2011-12 Fee Schedule.
2. The City Manager is hereby authorized to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED February 7, 2012.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

BONNIE PAIGE, City Clerk
of the City of Stockton

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City Atty:
Review
Date February 1, 2012

Exhibit 1

Parking
General Parking

2010/2011 FEE SCHEDULE

Account #	Pay Code	Effective Date	DESCRIPTION	Amount
085-0000-362.10-00		7/1/2010	400 East Main Garage Monthly Parking	\$86.00
085-0000-362.10-00		7/1/2010	400 East Main Street Garage Access Card Fee	\$5.00
085-0000.362.10-00		7/1/2010	400 East Main Street Garage – Lost Card Fee	\$28.00
City-Owned Miracle Mile Pkg Lots		2/7/2012	Event Parking on City-Owned Miracle Mile Parking Lots	
010-0000-362.49-00		2/7/2012	Rental fee per parking lot – Profit Business	\$250.00
010-0000-362.49-00		2/7/2012	Rental fee per Parking Lot (Non-Profits are required to show proof of non-profit status)	\$50.00
010-0000-239.10-98		2/7/2012	Profit Business Deposit – Refundable Cleaning/Damage Deposit	\$500.00
010-0000-239.10-98		2/7/2012	Non-Profit Deposit – Refundable Cleaning/Damage Deposit	\$200.00

HEARINGS



AGENDA ITEM 16.03

February 7, 2012

TO: Mayor and City Council

FROM: David L. Rudat, Interim Fire Chief

SUBJECT: **ORDINANCE AMENDING THE FIREWORKS ORDINANCE AND PUBLIC HEARING TO INCREASE THE ADMINISTRATIVE PENALTIES AND THE ENFORCEMENT FEE**

RECOMMENDATION

It is recommended that the City Council, after conducting a public hearing, adopt an ordinance to amend Chapter 8.92 of the Stockton Municipal Code concerning the sale and discharge of fireworks within the City limits, and to increase the administrative penalties for violating the ordinance, and adopt a resolution to increase the "enforcement fee" from \$500 to \$600.

Summary

In response to requests from numerous non-profit organizations, the City Council in 2010 adopted an ordinance, codified in Chapter 8.92 of the Municipal Code, to allow local non-profit organizations to sell around the Fourth of July holiday "safe and sane" fireworks. The ordinance and the administrative regulations promulgated by the Fire Department have enabled the non-profits that have been selected to sell fireworks to net more than \$800,000 since the ordinance's adoption. Staff has discovered, however, that some revisions to the ordinance, such as better defining which organizations qualify to participate in the program, are in order for staff to administer the program more smoothly. Staff also believes that the \$35 application fees received from all applicants should be retained to cover the cost of processing the applications, and increasing the administrative penalties will serve as a deterrent to violating the ordinance. Those revisions are set forth in the attached ordinance (Attachment A). In addition, in order that the ordinance remains revenue neutral, the "enforcement fee" (paid only by those organizations that receive a fireworks sales permit) would be increased from \$500 to \$600.

ORDINANCE AMENDING THE FIREWORKS ORDINANCE AND PUBLIC HEARING TO INCREASE THE ADMINISTRATIVE PENALTIES AND THE ENFORCEMENT FEE
(Page 2)

DISCUSSION

Background

Under State law, a city may adopt an ordinance that allows non-profit organizations to sell what are called "safe and sane" fireworks for fundraising purposes. In response to requests from local non-profit organizations, the City Council, in 2010, adopted an ordinance, codified in Chapter 8.92 of the Stockton Municipal Code, for that purpose.

In general terms, non-profit organizations (as defined in the ordinance) may apply for a fireworks sales permit. The City Council limited the number of permits to 30, to be decided by lottery. In both 2010 and 2011, there were over 100 applicants for the 30 permits. The organizations that receive the permits may sell the safe and sane fireworks from June 28 to July 4.

The Council adopted several fees in connection with the ordinance, including a \$35 application fee to process the applications, a permit fee in the amount of \$147 to cover the cost of inspecting the fireworks stands to ensure they meet safety regulations, and a regulatory fee in the amount of \$500 to cover the cost of enforcement of the ordinance, primarily the overtime cost incurred by the police and fire departments on July 4 itself. All applicants paid the application fee, but that fee was returned to those applicants that did not meet the requirements under the ordinance and hence did not participate in the lottery. It is proposed that no application fees be refunded, as there are real costs involved in processing all applications. The other fees are paid only by those organizations that receive permits.

The permitted organizations are to report to the City their sales and expenses. In 2010, the organizations grossed around \$1,000,000 and netted \$333,995; in 2011, the organizations again grossed about \$1,000,000 and netted 471,214. Spreadsheets listing the organizations that received permits in 2010 and 2011, showing the revenues and expenses, and setting forth the purposes for which the net proceeds were used are attached (Attachments B and C).

Present Situation

Although the ordinance and the administrative regulations promulgated by the Fire Department have been implemented with success, staff has discovered a number of ambiguities in the ordinance that need to be addressed in order for the program to run more smoothly in the future.

ORDINANCE AMENDING THE FIREWORKS ORDINANCE AND PUBLIC HEARING TO INCREASE THE ADMINISTRATIVE PENALTIES AND THE ENFORCEMENT FEE

(Page 3)

One issue that community organizations and staff found in need of clarification was how to define more clearly which nonprofit organizations would be eligible for the lottery. As written, the ordinance does not require that an organization that is required to be registered with the State Attorney General's Office be up to date in its filing with the State Attorney General's Office nor that it be an established organization within the community. There were also uncertainties as to whether several organizations which had affiliation with one school but were themselves nonprofit organizations could apply and, if so, how many organizations from each school could apply.

In order to address those issues, staff proposes the ordinance be revised to define a nonprofit organization as either (1) an organization that (a) the California Attorney General's Office shows as in a "current" status, (b) has had a Stockton zip code mailing address for more than 12 consecutive months immediately prior to filing an application and (c) primarily serves Stockton residents. For those organizations that are not required to register with the State Attorney General's Office, but whose purposes are charitable, religious, philanthropic or educational, they may apply if they satisfy (b) and (c) in the previous sentence. Section 8.92.010 E 1 and 2. In addition, if more than one organization that meets the requirements of Section 8.92.010 E. 2 (i.e., is not incorporated as a nonprofit) but are affiliated with a school or college wish to apply, it will be up to the school itself to decide which organization will be the applicant. Section 8.92.010 E. 3; Section 8.92.020 E.

Along with these changes, the Fire Chief may set the deadline for accepting applications earlier than March 31 and the lottery date has been moved from May 1 to on or about May 10. These changes will provide ample time for the City Manager's office to hear appeals, should that be necessary for any organization(s).

In terms of enforcing the ordinance, the Police Department often discovered that persons were discharging not the safe and sane fireworks but the so called dangerous fireworks, such as cherry bombs, M-80's, bottle rockets, etc., and, as the police approached, would run into a house, making it difficult to know who to cite. To address that concern, the ordinance now proposes that where police officers or firefighters observe the discharge of dangerous fireworks at a residential structure or in the street in the front of such structure, the resident in possession of the structure shall be cited. Section 8.92.015 G. In the last two years, the citations that have been issued for violations of the ordinance have been processed through the San Joaquin County Superior Court, with the typical fine being \$100. Because the citations have been processed through the court system, the City does not receive the full amount of any fines that are collected. This year, staff intends to issue citations to persons violating

ORDINANCE AMENDING THE FIREWORKS ORDINANCE AND PUBLIC HEARING TO INCREASE THE ADMINISTRATIVE PENALTIES AND THE ENFORCEMENT FEE

(Page 4)

the ordinance under the City's administrative citation procedures; the administrative fines are also being increased from \$100, \$250 and \$500 to \$250, \$500 and \$1000. Because the City itself collects the administrative fines and because the amount of the fines are being increased, that should result in the City's receiving substantially more revenue from the enforcement efforts than in the past.

Although all organizations who received permits did file their reporting requirements timely this year, that was not the case the previous year. Accordingly, to motivate organizations to file timely, the proposed ordinance provides that if the reporting information is not filed timely, the organization will not be eligible to submit an application the following year. In addition, rather than have organizations file their information with the City Clerk (which otherwise had no involvement in the ordinance), the organizations will file the information with the Fire Department. Section 8.92.100.

The remainder of the proposed changes is largely non-substantive and simply reflects reorganizing the ordinance so that it will read more clearly.

Notice of the public hearing was published in The Record on January 20, and January 31, 2012.

FINANCIAL SUMMARY

The Council's intent in adopting the permit fee and the regulatory fee was to make the ordinance financially neutral to the City; this has largely been achieved. The revenues and expenses relative to administering the program in 2010 and 2011 are attached (Attachment D). Financial neutrality was achieved, however, because of a substantial fine in 2010 and \$3000 in "donations" (from the fireworks wholesalers) in 2011. Neither of these can be assured in future years. (Moreover, it is not good policy to expect "donations" from the fireworks wholesalers in order to keep the ordinance financially neutral.) To provide, therefore, a revenue stream to keep the program financially neutral, staff is recommending the enforcement fee be increased from \$500 to \$600 and that the administrative penalties be increased from \$100, \$200 and \$500 to \$200, \$500 and \$1000. Section 8.92.090. The slight increase in the enforcement fee should not act as a deterrent to any organization applying for a permit and, based on past practice, the fee will likely be paid by the fireworks wholesalers. This increase will generate approximately \$3000 in fees, which equates to the "donation" made by fireworks wholesalers and prevented a deficit in 2011. The increased penalties should also act as a deterrent to persons' violating the ordinance.

February 7, 2012

**ORDINANCE AMENDING THE FIREWORKS ORDINANCE AND PUBLIC HEARING
TO INCREASE THE ADMINISTRATIVE PENALTIES AND THE ENFORCEMENT FEE**


(Page 5)

Respectfully submitted,



DAVID L. RUDAT
INTERIM FIRE CHIEF

APPROVED


for BOB DEIS
CITY MANAGER

DLR:MR:aa

- Attachment A – Redlined Fireworks Ordinance
- Attachment B - 2010 Fireworks Sale Gross Receipts Report
- Attachment C - 2011 Fireworks Sale Gross Receipts Report
- Attachment D- 2010 and 2011 Fireworks Sale Enforcement Program Comparison of Actual Revenue and Expenditures

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ORDINANCE NO. _____

~~AN ORDINANCE AMENDING ORDINANCE NO. 007-10 AND CHAPTER 8.92 IF THE STOCKTON MUNICIPAL CODE CONCERNING BY DELETING CHAPTER 8.92, SAFE AND SANE FIREWORKS, AND ADDING A NEW CHAPTER 8.92, FIREWORKS.~~

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

SECTION I. AMENDMENT OF CODE.

Ordinance No. 007-10 and Chapter 8.92, Safe and Sane Fireworks, of the is hereby deleted from the Stockton Municipal Code and hereby amended to read as follows.

~~SECTION II. AMENDMENT OF CODE.~~

~~Title 8 of the Stockton Municipal Code is hereby amended by adding Chapter 8.92 thereto and shall read, as follows:-~~

~~Chapter 8.92~~

~~FIREWORKS~~

Sections:

- ~~8.92.010 Definitions~~
- ~~8.92.015 Sale and Discharge; Time Limit~~
- ~~8.92.020 Permit Required; Issuance; Limitations~~
- ~~8.92.030 Permit Application; Regulations; Limitations~~
- ~~8.92.040 Prerequisites to Issuance of Permit~~
- ~~8.92.050 Permit Applications; Notice of Acceptance or Rejection; Selection Procedure; Fee~~
- ~~8.92.060 Suspension of Permit; Appeal Procedure~~
- ~~8.92.070 Fireworks Sales Stand; Operation~~
- ~~8.92.080 Fireworks Sales Stands; Requirements~~
- ~~8.92.090 Fee Imposed Upon Permittees~~
- ~~8.92.100 Temporary Sales Tax Permit; Requirements~~
- ~~8.92.110 Reserved~~
- ~~8.92.120 Permissible Locations for Discharge~~
- ~~8.92.130 Prohibitions on Discharge~~
- ~~8.92.140 Reserved~~
- ~~8.92.150 Administrative Penalties; Appeals~~

- ~~8.92.160~~ — Financial Reporting
- ~~8.92.170~~ — Concurrent Authorities
- ~~8.92.180~~ — Provisions Supplementary

CHAPTER 8.92

FIREWORKS

8.92.010 Definitions.

The following words and phrases, as used in this Chapter, are defined as follows:

A. "Applicant" shall mean a non-profit organization that applies for a fireworks sales permit as provided in this Chapter. An applicant may be two or more non-profit organizations provided, however, a non-profit organization may not apply on its own behalf and also apply with any other non-profit organization(s).

BA. "City Manager" shall mean the City Manager of the City of Stockton and/or his or her designee or designees.

CB. "Dangerous fireworks" means (1) dangerous fireworks as set forth in California State Fireworks Law (Sections 12505 and 12561 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference or (2) safe and sane fireworks, as defined in subsection J below, that have been modified in any respect from their original design.

DC. "Fire Chief" shall mean the Fire Chief of the City of Stockton or the Fire Chief's designee and/or his or her designee or designees.

ED. "Nonprofit organization" means

1. any organization that (a) is required to register with the California State Attorney General's Office and the California State Attorney General's Office shows the organization in a "current" status, (b) has had a Stockton zip code mailing address for more than twelve consecutive months immediately prior to filing an application and (c) primarily serves City residents;
2. any organization that (a) is not required to register with the California State Attorney General's Office but has been created for charitable, religious, philanthropic or educational purposes and the net proceeds of such organization are committed to the promotion of the objectives of the organization and not to private gain, (b) has had a Stockton zip code mailing address for more than twelve consecutive months immediately prior to filing an application and (c) primarily serves City residents;
3. an organization that otherwise meets the requirements of subsection E. 2 but is affiliated with and officially recognized by an elementary, middle or high school within the City of Stockton or by a college within the City of Stockton.

~~(1) any nonprofit association, charity, church, corporation, club, or society, organized primarily for veteran, patriotic, welfare, civic, benevolent, betterment, youth activities, or~~

~~charitable purposes, and has obtained a nonprofit status with either the California Franchise Tax Board or the Internal Revenue Service or (2) a group which is an integral part of a recognized nonprofit national organization having such tax exempt status, or (3) an organization affiliated with and officially recognized by an elementary, junior high school, high school, school district, and/or college that serves, in whole or in part, the residents of Stockton, and which has a principal and permanent meeting place within the City limits of the City of Stockton.~~

F. "Permit" shall mean a fireworks sale permit.

G. "Permittee" shall mean an applicant to which the City has issued a permit.

H.E. "Person" means and includes any individual, firm, partnership, joint venture, association, concern, corporation, state, trust, business trust, receiver, syndicate, or any other group of combination acting as a unit.

~~F. "Principal and permanent meeting place" means and includes, but not be limited to, a permanent structure, playing field, geographic area, or service population which resides in or is located within the City of Stockton.~~

I.G. "Residents of the City" or "City residents" means and includes owners of businesses and/or property in the City as well as occupants of residential dwellings.

J.H. "Safe and sane fireworks" or "fireworks" (a.k.a. "state approved fireworks") means safe and sane fireworks as set forth in California State Fireworks Law (Sections 12529 and 12562 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference.

K. "Stockton zip code" means those zip codes as established from time to time by the Fire Chief.

~~I. "Stockton City Clerk" or "City Clerk" means the Stockton City Clerk and/or his or her designee or designees.~~

8.92.015 Sale and Discharge --~~Time Limit~~

A. Subject to the ~~provisions of this Chapter~~, the State Fireworks Law, Sections 12500 through 12726 of the Health and Safety Code of the state, and any regulations promulgated thereunder, only safe and sane fireworks, as defined herein, may be sold within the Stockton City limits of the City of Stockton and only as follows:

June 28: Noon to 8 p.m.

June 29: 9 a.m. to 8 p.m.

June 30: 9 a.m. to 8 p.m.

July 1: 9 a.m. to 8 p.m.

July 2: 9 a.m. to 8 p.m.

July 3: 9 a.m. to 8 p.m.

July 4: 9 a.m. to 9 p.m.

~~_ during the period beginning at 12:00 noon on June 28 and shall not continue after 9:00 p.m. on July 4 of the same year. The sale of fireworks shall be permitted only from 12:00 noon to 8:00 p.m. on June 28; from 9:00 a.m. to 8:00 p.m. daily from June 29 through July 3; and from 9:00 a.m. to 9:00 p.m. on July 4. No fireworks classified as "dangerous fireworks" by Section 12505 of the Health and Safety Code of the state of California may be sold within the City.~~

~~B. _____ B. _____ Subject to the provisions of this Chapter, the State Fireworks Law, Sections 12500 through 12726 of the Health and Safety Code of the state, and any regulations promulgated thereunder, no person shall discharge any safe and sane fireworks, as defined herein, may be discharged within the Stockton City limits except as follows:~~

~~June 28: Noon to 11 p.m.~~

~~June 29: 9 a.m. to 11 p.m.~~

~~June 30: 9 a.m. to 11 p.m.~~

~~July 1: 9 a.m. to 11 p.m.~~

~~July 2: 9 a.m. to 11 p.m.~~

~~July 3: 9 a.m. to 11 p.m.~~

~~July 4: 9 a.m. to 11 p.m.~~

~~C. _____ No person shall discharge any safe and sane fireworks on public property nor in or on a public street except in those areas approved in writing by the Fire Chief.~~

~~D. _____ No person shall ignite, explode, project or use, nor permit the ignition, explosion, projection or use, of any safe and sane fireworks:~~

~~1. upon or over the property of another person without that person's consent ;~~

~~2. within 10 feet of any residential dwelling or other structure used as a place of habitation; or~~

~~3. within 50 feet of any fireworks sales stand.~~

~~E. _____ Except as provided in subsection F of this section, no person under 18 years of age shall purchase, sell, possess, use or discharge safe and sane fireworks.~~

~~F. _____ No person having the care, custody or control of a person under 18 years of age shall allow such person to possess, use or discharge:~~

~~1. any dangerous fireworks; or~~

~~2. any safe and sane fireworks unless such person under the age of 18 does so under the direct supervision of a person of age 18 or older and otherwise in compliance with the other requirements of this section.~~

~~City limits of the City of Stockton only during the period beginning at 12:00 noon to 11:00 p.m. on June 28 and from 9:00 a.m. to 11:00 p.m., daily, from June 29 through July 4. No fireworks classified as "dangerous fireworks" by Section 12505 of the Health and Safety Code of the state of California may be discharged within the City.~~

G.. No person shall discharge dangerous fireworks within the Stockton City limits. For purposes of this section, where dangerous fireworks are discharged at or in the street in front of a residential structure, the resident(s) in possession of the residential structure shall be deemed the person who has discharged dangerous fireworks.

~~C. The use or discharge of fireworks within fifty (50) feet of any fireworks sales stand is prohibited.~~

8.92.020 Permit Required; Issuance; Limitations

~~A. Except as provided in this Chapter, it is unlawful to offer for sale or sell at retail "safe and sane fireworks" without having first applied for and been issued a permit for such sales therefor, in the manner set forth in this chapter.~~

~~B. The City shall issue permits for the sale of safe and sane fireworks shall be issued only to nonprofit organizations, and such fireworks shall be sold only at the fireworks outdoor sales stands, as more specifically set forth hereinafter.~~

~~C. The City shall issue permits shall be issued by lottery. Each applicant shall have one lot. The lottery shall take place at a time, place and manner determined by the Fire Chief in accordance with administrative rules and procedures adopted by the Fire Chief. Each individual applicant and joint venture shall receive one lot.~~

~~D. The City shall issue no more than thirty (30) such permits annually shall be issued and be outstanding at any time.~~

~~E. No nonprofit organization may receive more than one permit for fireworks sale during any one calendar year; one permit may be issued to two qualifying applicants as a joint venture. Only one application per school will be allowed. If an organization is affiliated with a recognized educational institution as defined in subsection D of Section 8.92.010, but maintains a separate tax exempt status with the Internal Revenue Service or the California Franchise Tax Board, said nonprofit organization shall be allowed a separate application.~~

E. If more than one nonprofit organization as defined in Section 8.92.010 E.3. from a particular elementary, middle or high school, or from a particular college, wish to apply for a permit, only one such organization may apply, as determined by the principal or other person in charge of the school/college.

F.F. A nonprofit organization may obtain a permit only two years in a row and any nonprofit organization that obtains a permit two years in a row must wait one

~~application cycle before reapplying. A nonprofit organization cannot avoid this restriction by changing its name. be awarded a permit for more than two consecutive sales years.~~

~~G.G. Any nonprofit organization applicant that has had its fireworks sales permit suspended or revoked within the prior three years shall be eligible to submit an application for a fireworks sales permit only upon demonstrating to the Fire Chief's reasonable satisfaction that suitable arrangements have been made to preclude future violations.~~

8.92.030 Permit Application; Regulations; Limitations

~~A. All applications for a permit to sell fireworks must may be complete and filed with the Fire Department between the first business day in March and the last business day in March of each year or as otherwise determined by the Fire Chief, except that for the year 2010 applications must be submitted no later than June 1, 2010. All applications shall be accompanied by a non-refundable application fee in an amount set by resolution of the City Council. Applications that are not complete or filed late shall not be processed.~~

~~B. All permit applications must be properly completed and submitted to the Stockton Fire Department before the close of business on the last business day in March, except that for the year 2010 applications must be submitted no later than June 1, 2010. Permit applications that are incomplete or filed late shall not be processed.~~

~~B.G. All permit applications shall be made in writing on a form supplied by the City. A completed permit application shall be accompanied by an assurance that, if the applicant is issued a permit, the applicant shall, before receipt of such permit, deliver to the City the following items and/or information:~~

- ~~1. Proper identification and signature of the permit applicant;~~
- ~~2. The proposed location of the fireworks sales stand;~~
- ~~3. The dates and hours the applicant proposes to operate the stand;~~
- ~~4. A detailed description of the fireworks proposed to be sold;~~
- ~~5. The written consent of the owner of record and/or lessor in control of the property upon which the proposed fireworks sales stand will be located;~~
- ~~6. The plan for staffing the stand during the proposed days and hours of operation;~~
- ~~7. The fireworks distributor's business name, address, telephone number, and person that is the point of contact;~~
- ~~8. Proof of a temporary sales tax permit from the State Board of Equalization or proof of application to the State Board of Equalization;~~
- ~~9. Proof of insurance to include one million dollars public liability, property damage, and product liability coverage with riders attached to the policies designating the City as an additional insured;~~

~~940. Proof of a State Fire Marshal Retail Fireworks License; and~~

~~104. Such other information and documentation that the Fire Chief in his or her reasonable discretion may require.~~

~~D. Each applicant shall file with the City, at the time of filing the permit application, a nonrefundable application fee as may be established by resolution of the City Council, if selected in the lottery as a permittee, and a refundable cash deposit, certificate of deposit, or a surety bond made payable to the City in the amount as set by resolution of the City Council to assure compliance with the provisions of this chapter. Such deposit certificate or bond shall be refundable upon compliance with the provisions and requirements of this chapter, including but not limited to, the removal of the sales stand, cleaning of the site, and full passage of the City's final site inspection.~~

~~E. The Fire Chief is authorized to promulgate administrative regulations and procedures necessary for the successful and effective implementation of this chapter including rules and procedures governing the submission of applications for permits to sell safe and sane fireworks, inspections of fireworks stands, operation of fireworks stands, and such regulations relating to the sale of safe and sane fireworks as may be necessary for the protection of life and property. Said administrative regulations and procedures shall be set forth in writing and are subject to prior approval by the City Attorney.~~

~~8.92.040 Prerequisites to Issuance of Permit~~

~~Permits to sell fireworks shall only be issued to applicants that meet all of the following qualifications:~~

~~A. The applicant must be a nonprofit organization that conducts its activities primarily for the benefit of the City and its residents.~~

~~B. The applicant must have been organized and established in the City's corporate limits for a minimum of one year continuously preceding the filing of application for the permit, and must have a bona fide membership of at least ten members who are residents of the City.~~

~~8.92.0450 Permit Applications; Notice of Acceptance or Rejection of Applications; Appeals; Selection Procedure; Fee~~

~~A. The Fire Chief shall notify all applicants thirty (30) days after the final permit application deadline whether its application has been accepted or rejected.~~

~~B. Any applicant may appeal the Fire Chief's decision to the City Manager by filing a written appeal within five calendar days of the Fire Chief's decision. The City Manager will hear the appeal as soon as possible with the goal to have all appeals heard and decided by May 10 of each year. The City Manager shall affirm, modify or reverse the Fire Chief's decision. The City Manager's decision shall be final.~~

C. The Fire Chief shall conduct a lottery for those applicants whose applicants have been accepted on or about May 10 of each year, or when all appeals have been decided, whichever is later. Those applicants selected in the lottery are eligible to obtain a permit.

D. The Fire Chief shall notify all applicants regarding the results of the lottery, and the names of the applicants who are eligible to receive a that have been granted permits, and the names of the alternates who are eligible to receive a permit..., except that for the year 2010 the Fire Chief shall make this notification by 5:30 p.m. on May 20 and said successful lottery/prospective permittees

E. Those applicants that are eligible to receive a permit will have until June 3 to submit their documents and information final paperwork required in subsection C of Section 8.92.030. If any applicant successful lottery/prospective permittee fails to submit its documents and information paperwork by the deadline, in any given year, the Fire Chief shall notify the requisite number of alternates substitute lottery selections that they have until a date certain to submit their documents and information paperwork as required by subsection C of Section 8.92.030. In 2010, the Fire Chief must notify these substitute lottery applicants by June 9 and they will have until June 17 to submit the required paperwork.

F.B. All applicants that are eligible to receive have been granted permits shall, prior to issuance of the permit, pay a permit fee, a refundable cash deposit (or other security in a form acceptable to the City), and a regulatory fee in an amounts set by resolution of the City Council. The permit fee is intended to cover the cost of the first inspection of the fire works stand. Any necessary subsequent inspections shall be subject to a reinspection fee in an amount as set by resolution of the City Council. The refundable cash deposit, certificate of deposit or a surety bond made payable to the City and provided by the applicant pursuant to subsection D of section 8.92.030, shall be held by the City to be available to cover the cost of removal of the fireworks sales stand, in accordance with subsection M, of section 8.92.0780. The regulatory fee is to cover the cost of enforcement of this Chapter.

G.C. Each applicant that has been granted a permit shall have no less than two members of its sales staff attend an operator safety seminar administered by the City of Stockton Fire Department.

8.92.0560 Suspension of Permit; Appeal Procedure

A. The Fire Chief may suspend immediately and without notice or hearing a the permit of any permittee when the Fire Chief determines a permittee has that violateds any rule, regulation or ordinance while operating or preparing to operate a fireworks sales stand during or immediately preceding any period of sale. If the Fire Chief determines after the period of sale reasonably believes that a violation has occurred during, immediately preceding, or immediately following the authorized period of sale, the Fire Chiefhe or she shall have power to may prohibit the permittee from applying for acquiring a fireworks sales permit in the future.

B. Any decision of the Fire Chief made pursuant to this ~~section~~ chapter shall be subject to ~~appeal to review~~ by the City Manager. When the decision being appealed affects the ~~current sales~~ period, such ~~appeal review~~ shall be ~~conducted~~ held at the earliest possible time that the permittee, ~~the~~ City Manager and the Fire Chief can schedule ~~the appeal~~ hearing for such review. For decisions that do not affect the current sales period the ~~appeal~~ shall be filed within 10 days of the decision and ~~hearing~~ shall be ~~conducted~~ held within ~~ten (10)~~ City business days after the ~~appeal~~ has been filed. ~~request for hearing, which request must be made within ten (10) calendar days after notice of the decision being appealed.~~ The City Manager may set aside, ~~modify or reverse~~ the decision, ~~modify it or revoke in his or her reasonable discretion.~~ The decision of the City Manager shall be final.

8.92.0670 Fireworks Sales Stand; Operation

A. It is unlawful for a permittee to allow any person other than the permitted ~~applicant nonprofit organization, or its qualified nonprofit organization joint venture partner pursuant to subsection E of Section 8.92.020,~~ to operate the fireworks sales stand for which at the permit has been issued, or to share otherwise participate in the proceeds profits of the operation of the sales stand.

B. It is unlawful for the permittee to allow any person other than individuals who are members of the permitted applicant and at least 18 years old nonprofit organization, or the spouses or adult children of such members who are at least 18 years old, to sell, be within the fireworks sales stand or otherwise participate in the sale of fireworks.

C. It is unlawful for the permittee to pay any consideration to any person for selling or otherwise participating in the sale of fireworks.

D. During the time fireworks are sold, each sales stand must have an adult present satisfying the requirements of subsection B above and satisfying the requirements of subsection G below. ~~in attendance and in charge thereof while fireworks are stored therein.~~

E. No person may sleep in or remain in the sales stand after close of business.

F. All unsold fireworks must be securely stored at a designated central storage location, ~~in a locked container~~, approved by the Fire Chief, during non-sale periods.

G. Each sales stand must have present on duty at all times during the sales period, at least one salesperson who attended the City of Stockton Fire Department's operator safety seminar as required by section 8.92.040 G., ~~required pursuant to subsection C of section 8.92.050.~~

H. The sale of fireworks shall conform to restrictions of Section 8.92.015.

I. All unsold fireworks stock and any accompanying litter shall be removed from the sales location by 10:5:00 p.m. on July 4th and the sales stand shall be removed by 12:00 noon on July 7 of each year.

J. Permittees shall require all persons who appear to be under the age of thirty (30) years to provide proof of age and shall make no sales of fireworks to persons younger than eighteen (18) years of age.

K. The City's permit to sell fireworks and the temporary sales tax permit required by Section 8.92.080 of this Chapter shall be displayed in a prominent place in the sales stand.

L. The permittee shall display a poster measuring 18" x 32" notifying purchasers of applicable restrictions established by this Chapter. The City shall provide such posters that shall be returned to the City after the sales period.

8.92.0780 Fireworks Sales Stands; Requirements

All retail sales of “safe and sane fireworks” shall be made only from within a temporary fireworks sales stand, and sales from any other building or structure is hereby prohibited. Fireworks sales stands are subject to the following requirements:

A. Fireworks sales stands shall be put in place by the permittee no earlier than 8:00 a.m. on June 23²⁶ of each year.

B. No fireworks sales stand shall be located within twenty-five (25) feet of any other building or structure within five feet of any curb line, or within one hundred (100) feet of any gasoline pump.

C. No fireworks stand shall be located within one hundred (100) feet of any building used as a school, day care, hospital, place of detention, public garage or place of assembly that can accommodate three hundred (300) or more occupants.

D. A minimum of twenty (20) feet of separation shall be provided between the fireworks sales stand and any parked vehicle that is not under the immediate control of the permittee.

E. No weeds or other combustible materials are permitted within twenty-five (25) feet of the fireworks sales stand.

F. The locations of aAll fireworks sales stands shall be preapproved by the Fire Chief.

G. Within all fireworks sales stands the electrical wiring shall be in conduits and breaker boxes shall consist of GFI breakers.

H. All fireworks sales stands shall be built and maintained in accordance with the safety requirements of the City prior to opening for business and shall be maintained in accordance with such safety requirements during the sales period.

I. No generators shall be allowed within ~~twenty-five (25)~~ feet of any fireworks sales stand.

J. Smoking and the consumption of alcoholic beverages shall not be allowed within ~~fifty (50)~~ feet of any fireworks sales stand and "No Smoking" signs shall be displayed on and in the fireworks sales stand.

K. Permittees shall place no signs in the public right-of-way.

L. Each fireworks sales stand shall be provided with two, two-and-one-half gallon pressurized water type fire extinguishers, or two 2A10BC dry chemical/powder type fire extinguishers, in good working order, and easily accessible for use in case of fire.

M. The fireworks sales stand shall be removed from its the temporary location and the site cleaned by 12:00 p.m. on July 7 ~~of each year and all accompanying litter shall be cleared from the location by 5:00 p.m. on July 5.~~ If the permittee does not remove the stand and/or clean the sales site as required by this sectionchapter, the City may do so, or cause the same to be done, and the reasonable cost thereof shall be charged to against the permittee or deducted fro the permittee's security deposit, and his or her deposit, certificate or surety. In addition, any permittee found to be in violation of this section shall be subject to an administrative penalty imposed UNDER in accordance with section 8.92.090150.

N. ~~The permit to sell fireworks shall be displayed in a prominent place in the fireworks sales stand.~~

~~O. In addition to any other administrative procedures set forth by the City, it shall be the responsibility of permittee under this chapter to display a poster measuring 18" x 32" that shall be posted at the point of sale of the fireworks to notify purchasers of all applicable restrictions established by this Code. The City shall provide the posters, which shall be returned to the City after use.~~

8.92.090 Fee Imposed Upon Permittees

~~A. In addition to any other fee imposed pursuant to this chapter, each permittee permitted under this chapter shall pay an annual regulatory fee to the City in an amount established by resolution of the City Council.~~

~~— B. — The fee required by this section shall be payable within five days from the date that the Fire Chief notifies applicants that their permit has been approved pursuant to Section 8.92.050.~~

~~— C. — No permittee may offer for sale or sell safe and sane fireworks, unless and until the permittee has paid to the City the fee imposed by this section.~~

~~— D. — The annual regulatory fee established pursuant to this section is not intended to generate excess revenue for the City, but rather to attempt to offset costs.~~

8.92.080100 Temporary Sales Tax Permit; Requirements

A. Each permittee must obtain a temporary sales tax permit from the State Board of Equalization.

~~— B. — The temporary sales tax permit shall be displayed in a prominent place in the fireworks sales stand.~~

8.92.110 — Reserved

8.92.120 — Permissible Locations for Discharge

~~— The discharge of fireworks in the City shall be limited to private property except as otherwise provided in this chapter. No fireworks shall be discharged on public, or semipublic properties, or in a public street or right-of-way except in those areas approved in writing by the Fire Chief.~~

8.92.130 — Prohibitions on Discharge

~~— A. — It is unlawful for any person to ignite, explode, project, or otherwise fire or use any fireworks, or permit the ignition, explosion or projection thereof, upon or over onto the property of another without his consent, or to ignite, explode, project, or otherwise fire or make use of, any fireworks within ten (10) feet of any residential dwelling or other structure used as a place of habitation by human beings.~~

~~— B. — Except as provided in subsection C of this section 8.92.130, it is unlawful for individuals under eighteen years of age to sell, purchase, possess, use or discharge “safe and sane fireworks.”~~

~~— C. — It is unlawful for any person having the care, custody or control of a minor under the age of eighteen years to permit such minor to discharge, explode, fire or set off any dangerous, illegal fireworks, at any time, or to permit such minor to discharge or set off any “safe and sane fireworks” unless such minor does so under the direct supervision of a person over eighteen years of age and during the hours and on the days permitted by this chapter.~~

8.92.140 — **Reserved**

8.92.090150 **Administrative Penalties; Appeals**

In addition to any other remedy available at law, any person or entity who possesses, uses, stores, sells, and/or displays dangerous fireworks or any person or entity who sells, possesses, uses, or discharges ~~sells, and/or displays~~ safe and sane fireworks on or at dates, times, and/or locations other than those permitted by this Chapter, or any permittee who violates any provision of this chapter, is subject to an administrative penalty, in an amount as provided below:

A. The amount of the administrative penalty shall be \$250 ~~one hundred (\$100)~~ dollars for the first violation, \$500 ~~two hundred (\$200)~~ dollars for a second violation within any twelve-month period, and \$1000, ~~and five hundred (\$500)~~ dollars for any subsequent violations within any twelve-month period.

B. Appeals of administrative penalties shall be made and heard in accordance with ~~Title 1, Chapter 1.44 et. seq.,~~ of this Code.

8.92.10060 **Financial Reporting**

On or before September 1 ~~each of any year authorized pursuant to a permit,~~ the permittee shall submit to the Fire Chief ~~City Clerk~~ a financial statement by the treasurer or financial officer of the permittee setting forth the total gross receipts from the sales of fireworks, fireworks stand operated by the permittee; ~~all expenses incurred and paid in connection with the purchase and sale of fireworks; and the sale thereof;~~ and to whom and for what purpose the net proceeds of the fireworks sales were or will be disbursed; ~~and a, along with the most recent report filed by the permittee with to the State Board of Equalization that reflects the sales of the fireworks.~~ Any permittee that files the written financial statement and/or the State Board of Equalization report after September 1 shall not be eligible to submit an application for the following year and will not be eligible to submit an application for any year after that until the statement and the report have been filed. ~~The filing of such statement shall be a condition precedent to the granting of any subsequent permit.~~

8.92.1170 **Concurrent Authorities.**

This Chapter is not the exclusive regulation for fireworks within the City of Stockton. It shall supplement and be in addition to the other codes, statutes, regulations and ordinances heretofore and hereinafter enacted by the City of Stockton, the State of California or any other entity or agency having jurisdiction.

8.92.1280 **Provisions Supplementary**

The provisions of this Chapter are supplementary to the provisions of the Fire Code of the City of Stockton. In case of direct conflict between the provisions of the Fire Code of the City, and the provisions of this Chapter, the provisions of this

Chapter shall prevail. Except with respect to such direct conflict, the provisions of the Fire Code of City of Stockton shall remain in full force and effect.

8.92.130 Administrative Regulations

The Fire Chief may promulgate administrative regulations and procedures necessary to implement this Chapter, including rules and procedures governing the submissions of applications, inspections and operation of fireworks sales stands and such other regulations as may be necessary for the protection of life and property. Administrative regulations and procedures shall be in writing and shall be approved by the City Attorney.

SECTION III. SEVERABILITY.

If any part of this Ordinance is held invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof had been deleted.

SECTION IIIIV. EFFECTIVE DATE.

This Ordinance shall become effective thirty (30) days from and after its adoption.

ADOPTED: _____

EFFECTIVE: _____

ATTEST:

ANN JOHNSTON, Mayor
of the City of Stockton

~~BONNIE PAIGE~~KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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2010 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for	Late Submittals
1	Calvary First Assemblies of God		No	\$682.00		\$18,699.85		Youth/kid programs	Per City Council Approved Submitted by 03/31/2011
2	Champion Gymnastics Booster	The profit from our fundraiser will help pay for our optional gymnastics team level 7-10, with travel cost for the 10-11 season.	Yes	\$682.00	\$27,743.45	\$9,860.84	\$17,882.61	The profit from our fundraiser will help pay for our optional gymnastics team level 7-10, with travel cost for the 1-11 season. We will be traveling to Pennsylvania, Las Vegas, and Lost Angeles this year. There are some 30 optional level kid's competing this year.	
3	Club Stockton Volleyball		No	\$682.00	\$33,315.00	\$19,299.89	\$14,015.11	Volleyball equipment. Facility construction and improvements.	Per City Council Approved Submitted by 03/31/2011
4	Community Center 4 the Blind	Funds generated helps support programs and services of community center for the blind.	Yes	\$682.00	\$33,708.00	\$23,574.04	\$10,133.96	The funds generated are helping to support programs and services of Community Center for the Blind. Adaptive computer, Braille, Daily Living Skills orientation and Mobility.	
5	Dr Lewis D. Stallworth, Sr. Charter School, Inc.		No	\$682.00	\$25,240.00	\$500.00	\$24,740.00	All proceeds will benefit the students at Dr. L.D. Stallworth Charter School, grades K-12. We plan on purchasing educational equipment as well as keep some money in case of field trips or other student activities throughout 2010-11.	Per City Council Approved Submitted by 03/31/2011

2010 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for	Late Submittals
6	Friends of Walton School	Funds from the sale of fireworks will go towards the purchase and installation of a wheelchair accessible playground on the Walton campus.	Yes	\$682.00	\$30,592.77	\$20,456.12	\$10,136.65	Funds from the sale of fireworks will go toward the purchase and installation of a wheelchair accessible playground on the Walton Campus.	
7	Hoover Tyler Little League	Profits will be used for general operating expenses and to purchase uniforms and equipment as needed.	Yes	\$682.00	\$57,943.00	\$37,857.00	\$20,086.00	Profits will be used for general operations expenses and to purchase uniforms and equipment as needed.	
8	International Order of Rainbow for Girls, Stockton Assembly #9	Proceeds paid to the Masonic Temple Association for day to day expenses.	Yes	\$682.00	\$7,510.56	\$2,464.00	\$5,046.56	Proceeds paid to the Masonic Temple Association for day to day expenses.	
9	Kingdom Culture Ministries	Proceeds went to the non-profit organization for purposes of ministry and outreach. Planning to purchase a van for the need of the ministry.	Yes	\$682.00	\$42,852.00	\$24,900.08	\$17,951.92	The proceeds went to the non-profit organization for purposes of ministry and outreach. We plan to purchase a van to the needs of the ministry.	
10	Kiwans Club of El Dorado, Stockton		No	\$682.00	\$22,920.00	\$16,072.00	\$6,848.00	Scholarship for High School student at Franklin, Lincoln, and Weston Ranch High Schools. Reading program and Library books for Van Guren Elementary School.	Per City Council Approved Submitted by 03/31/2011
11	Lakeview Assembly of God	Lords Gym Youth Outreach Center, Lakeview Youth Camps, Lakeview Children's Ministry	Yes	\$682.00	\$35,580.00	\$25,000.13	\$10,579.87	Lords Gym Youth Outreach Center, Lakeview Youth Camps, Lakeview Children's Ministry	
12	Lincoln Presbyterian Church	Youth & Mission work	Yes	\$682.00	\$25,618.00	\$18,600.13	\$7,017.87	Youth & mission work @ Lincoln Presbyterian Church.	

2010 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for	Late Submittals
13	LTA / Wisdom Woods	Conducts a children's camp every year and take under privilege children who cannot afford to go.	Yes	\$682.00	\$34,869.51	\$25,744.10	\$9,125.41	We have a childrens camp every year and take undr-privilaged children who cannot afford to go with us. Most of these children have never been out of town. We also sponsered a Father/Son campout.	
14	Northern Little League		No	\$682.00	\$37,455.00	\$24,775.09	\$12,679.91	Central Stockton kids ages 4-16 will benefit greatly. Proceeds will be able to provide new equipment, uniforms, and better playing field's for these children.	Per City Council Approved Submitted by 03/31/2011
15	Parents By Choice	Proceeds are and will be used to aid our organization in its service to foster children and foster families.	Yes	\$682.00	\$41,800.84	\$28,684.68	\$13,116.16	Proceeds are and will be used to aid our organization in its service to foster children and foster families.	
16	San Joaquin Elementary PTA	Proceeds are being used to benefit the students and parents of San Joaquin Elementary School.	Yes	\$682.00	\$49,307.00	\$32,093.40	\$17,213.60	The proceeds are being used to benefit the students and parents of San Joaquin Elementary School. We donated \$6651.00 to the Franklin High School Band students for entry fees competitions and travel expenses. San Joaquin's proceeds will be used to purchase library books and student rewards for academic achievement. Money has been earmaked, as our fundraising efforts continue towards the purchase of an electronic marquee (\$60-\$75,00) in order to inform and involve all students and parents ouf our school activities.	
17	Service First of Northern California		Yes	\$682.00	\$27,901.36	\$22,398.38	\$5,502.98	Net proceed to be used by all of our program to benefit our consumers.	

2010 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for	Late Submittals
18	South Stockton Lions	Net proceeds from this activity will be used, and is presently being used, to fund our clubs ongoing projects.	Yes	\$682.00	\$32,793.00	\$22,489.37	\$10,303.63	Net proceeds from this activity will be used, and is presently being used, to fund our clubs ongoing projects.	
19	South Stockton Vikings	All financial income go to the youth in the community.	Yes	\$682.00	\$42,100.00	\$34,212.64	\$7,887.36	We came home with \$7887.36. All financial income go to our youth in the community. We make sure everyone child can pay or cheer with uniforms and equipment.	
20	Special Children's Sports Club	Proceeds will be used to fund the organization of seasonal baseball, soccer, bowling and basketball for children with disabilities in Stockton. It will also help recreational Sports Club of San Joaquin.	Yes	\$682.00	\$42,218.00	\$26,506.24	\$15,711.76	Proceeds will be used to fund the organization of seasonal baseball, soccer, bowling and basketball for children with disabilities in Stockton. It will also help recreational sports club of San Joaquin fund single day events for children and adults with disabilities such as Ports games and hockey games.	
21	St. Mary's High School Foundation	Balance for St. Mary's Athletics.	Yes	\$682.00	\$30,901.69	\$21,808.72	\$9,092.97	Sales Tax \$1480.00 (Filed quarterly in Sept) Balance for St. Mary's Athletics.	
22	Stockton Black Family Day	Distributes to the following: Cost to COS, The Power Submit, Film Festival an African History, Our Children's Pavilion Activity, The Health Awareness Fair & Health Walk 2010, 2 Scholarship funds, and Security for the event.	Yes	\$682.00	\$35,849.00	\$23,260.41	\$12,588.59	We distributed towards the following: Cost to the City of Stockton: The Power Summit; Film Festival on African History; our children Pavilion Activity. The Health Awareness Faire and Health Walk 2010; 2 scholarship fund and security for the event. Other cost of providinga safe environment for the community to have a relaxed time.	

2010 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for	Late Submittals
23	Stockton Host Lions Club	Funds are helping Children Red Cross, United Way, and others as needs arise.	Yes	\$682.00	\$42,030.00	\$25,782.00	\$16,248.00	We are using the funds to help children (1st tee) Red Cross, United Way and others as needs arise. We support the attached organizations. Our net proceeds from the sale of fireworks is \$11267.00	
24	Stockton LULAC 2060	Proceeds will be used towards local scholarships, Christmas Food Basket Program, Youth Conference, and other community events.	Yes	\$682.00	\$30,956.00	\$24,782.11	\$6,173.89	Proceeds will be used for local scholarships, Christmas Food Basket Program, youth conference and other community events.	
25	Stockton Police Officers Benefit Associations	Proceeds were retained by the Stockton Police Officers Benefit Association for the purpose of assisting with charitable needs within the City of Stockton.	Yes	\$682.00	\$45,173.53	\$24,926.13	\$20,247.40	Proceeds were retained by the Stockton Police Officers Benefit Association for the purpose of assisting with charitable needs within the City of Stockton.	
26	Stockton Sister Cities	Student Exchange Programs , Teacher Exchange Programs, and Stockton Sister Cities Association	Yes	\$682.00	\$28,967.23	\$21,174.04	\$7,793.19	To finance student exchange programs, teacher exchange programs, fund Stockton Sister Cities Association official visits to foreign cities.	
27	Stockton Valley Sports		No	\$682.00					
28	Sunflower Presents	Enrichment programs and arts programs for the seniors and disabled in rehab, hospitals, day care, and assists living care facilities.	Yes	\$682.00	\$42,545.00	\$29,874.00	\$12,671.00	Enrichment programs and arts programs for the seniors and disabled in Rehab, Hospitals, Day Care, and Assisted Living Care Facilities.	

2010 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for	Late Submittals
29	Swenson Park Men's Club	Venture Academy Athletics, Bear Creek HS Athletics, and Junior Golf Swenson Park Golf Club.	Yes	\$682.00	\$27,435.00	\$20,231.81	\$7,203.19	Venture Academy Athletics, Bear Creek H.S. Athletics Junior Golf Swenson Park Golf Club.	
30	Weston Ranch High School (Athletic Boosters)		No	\$682.00	\$60,661.00	\$35,964.15	\$24,696.85	The funds will be distributed to the various sports programs at Weston Ranch High School. These funds will purchase needed equipment, uniforms, supplies, etc. The funds will be distributed in April/May 2011, coaches will give us there request to consider.	Per City Council Approved Submitted by 03/31/2011

TOTAL \$995,985.94 \$661,991.35 \$333,994.59

AVERAGE \$35,495.43 \$23,540.80 \$11,954.63

2011 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for
1	Abundant Life Church		Yes	\$697.00	\$28,000.00	\$5,330.03		Building Lease, Outreach Programs
2	American Assoc of Univ Women (AAUW)		Yes	\$697.00	\$23,739.00	\$2,285.49		Delta College Scholarships-graduates continuing on to 4 yr university, 7th grade girls sent to math-science camp at Stanford. Monetary awards to H.S girls writing essays on the "most important woman in their lives" and speech contest.
3	Boys & Girls Clubs of Stockton		Yes	\$697.00	\$36,163.00	\$25,734.00		Fund summer camp for children at Boys & Girls Club.
4	Delta College Foundation		Yes	\$697.00	\$28,337.92	\$2,302.00		Split between First Baptist Church and Delta College
5	Ed Stewart Post 803			\$697.00	\$21,876.90	\$1,779.95		The funds collected will be used to support Armed Forces veterans, families, and service-connected individuals whom have rendered service in support of the Armed Forces.
6	Faith Fellowship Christian Center		Yes	\$697.00	\$31,301.00	\$21,800.97		We are implenting foodbank distribution facilities for the local community. We also have a family resource center in the planning stages for implementation this year, and we will be conducting various outreach events for the homeless and underpriviledged.

2011 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for
7	Family Extension Foster Care		Yes	\$697.00	\$19,242.17	\$17,859.36		We use the funds to assist the foster children to participate in extracurricular activities that provide outlets for emotional and physical aggressiveness, so real in the population of children we serve.
8	Greater Christ Temple Church			\$697.00	\$40,569.00	\$19,429.27		Building Fund and Church Programs
9	Haven of Peace			\$697.00	\$37,897.19	\$28,486.18		Haven of Peace invited RSC to partner with us: Haven of Peace (65%), and Recreational Sports Club (35%). Proceeds were used for the shelter's operating expenses.
10	Jane Frederick Continuation School / Port City Girls Softball League		Yes	\$697.00	\$12,000.00	\$2,767.00		Our proceeds will be used for Movie and an assortment of Gift Certificates for students that have positive behavior, good attendance, a 3.00 or higher GPA and are positive role models. Prom for Junior and Seniors. End of the year celebration for all the students Brunch for students and families for recognition of students that pass the CA HSEE. Proceeds will be used to purchase uniforms and equipment such as safety gear, bats and balls.

2011 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for
11	Kingdom Culture Ministries	Proceeds went to the non-profit organization for purposes of ministry and outreach. Planning to purchase a van for the need of the ministry.		\$697.00	\$35,058.00	\$20,559.62		Net proceeds will go to the purchase of sound and video equipment needed for the ministry.
12	Lakeview Assembly of God	Lords Gym Youth Outreach Center, Lakeview Youth Camps, Lakeview Children's Ministry	Yes	\$697.00	\$32,369.00	\$25,770.00		Proceeds to be split between 3 ministries. Childrens camp, Youth camp, Helping Hands Outreach, Food & Clothing give away.
13	League of United Latin American Citizens Council 2060	local scholarships, Christmas Food Basket Program, Youth Conference, and other		\$697.00	\$36,725.00	\$0.00		scholarships, youth conferences, food basket program and
14	Lincoln Lakers Swim Team LVW #6		Yes	\$697.00	\$26,909.00	\$0.00		Swim team equipment (scoring system, lane lines, meter flags, speakers, outdoor signage, BBQ, sand/water play area. Tuition for swimmers in need & suits.
15	Lincoln Presbyterian Church	Youth & Mission work	Yes	\$697.00	\$26,637.00	\$19,705.00		Lincoln Presbyterian College group & choir.
16	Parents By Choice	Proceeds are and will be used to aid our organization in its service to foster children and foster families.		\$697.00	\$40,301.32	\$30,420.06		We will use the funds to pay for our upcoming special events (parents night out, Christmas, Spring Camp) and to support our student apprentice program.
17	Pixie Woods		Yes	\$697.00	\$28,391.00	\$21,031.29		Park improvements
18	San Joaquin County Office of Ed. Educational Foundation			\$697.00	\$41,887.00	\$32,001.00		Funds raised will be used to help local schools send students to science camp.

2011 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for
19	San Joaquin School PTA			\$697.00	\$61,451.85	\$4,999.00		The proceeds are being used to benefit the students and parents of San Joaquin Elementary School. We donated \$7000.00 to Franklin High School Band students for entry fees for competitions and travel expenses. San Joaquin's proceeds will be used to purchase library books and student rewards for academic achievement. Money has been earmarked for security cameras for our campus.
20	San Joaquin Valley Youth for Christ		Yes	\$697.00	\$17,429.00	\$11,049.60		Scholarships to adolescents for prevention services; gang awareness, substance abuse and anger management
21	Service First of Northern California			\$697.00	\$24,378.28	\$18,069.66		Net proceed to be used by all of our programs to benefit our consumers.
22	Stockton Baptist School		Yes	\$697.00	\$43,772.00	\$30,316.00		School books for the year-\$3999.00; Testing materials-\$1026.00; AT&T yellow page advertisement-\$3636.00; Net of \$4795.00 to be distributed for school rent to help cover utilities and pro-rated loan costs for 4 months of school year.

2011 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for
23	Stockton California Striped Bass Association		Yes	\$697.00	\$37,321.00	\$24,662.93		Christmas party for Stockton Childrens Home, TLC Donations for Christmas and other necessities during the year, Fishin N Grinnen fishing day for Disabled Children, Donations for Disable Veterans Derbies, Donations to Deaf Sturgeon Derby.
24	Stockton Police Officers Benefit Association	Proceeds were retained by the Stockton Police Officers Benefit Association for the purpose of assisting with charitable needs within the City of Stockton.	Yes	\$697.00	\$36,412.12	\$21,945.57		Proceeds were retained by the Stockton Police Officers Benefit Assn for the purpose of assisting with charitable needs within the City of Stockton.
25	Sunflower Presents	Enrichment programs and arts programs for the seniors and disabled in rehab, hospitals, day care, and assists living care facilities.	Yes	\$697.00	\$21,847.00	\$9,552.23		Providing live entertainment to seniors and disabled in Stockton care facilities.
26	Swenson Park Golf Club	Venture Academy Athletics, Bear Creek HS Athletics, and Junior Golf Swenson Park Golf Club.		\$697.00	\$28,037.00	\$2,278.00		Stockton Blind Center 1/3 net, First Tee of San Joaquin 1/3 net; Swenson Park Golf Club 1/3 net.
27	Tender Hands Safe Haven Inc			\$697.00	\$19,156.00	\$15,188.22		THSH Office Rental - Paid to Joanne Cortez (Landlord); THSH Donation Storage Facility & extra space storage, Stockton, THSH Donation Pick-up Expenses. (Mountain View, CA)

2011 Fireworks Sale Gross Receipts Report

	Name of Non-Profit	Benefits	Submit	City of Stockton Fees	Gross Sales	Expenses	Nets	Used for
28	The Life Church			\$697.00	\$35,216.00	\$2,657.00		\$3500 to Calvary First Assembly (in Stockton) for youth & children's programs. The Life Church children's ministry building remodel & day camp program, supplies for kids, etc.
29	United Cerebral Palsy of San Joaquin		Yes	\$697.00	\$29,925.00	\$20,061.00		Support of UCP programs.
30	United Christian Schools dba: Brookside Christian H.S. Football		Yes	\$697.00	\$51,469.80	\$33,174.00		Brookside Christian High School Football Program; new uniforms, ball machine, additional helmets & shoulder pads, equipment bags, football & misc. equipment.

TOTAL

\$953,818.55 \$471,214.43

AVERAGE

2011 FIREWORKS SALES ENFORCEMENT PROGRAM (048-2634)**COMPARISON OF ACTUAL REVENUE AND EXPENDITURES**

Source: GMBA on-line financial system

Page 1 of 3

10/18/11 RB

	July 4, 2011 Program		
	FY 2010-11	FY 2011-12	Total
<u>Actual Revenues:</u>			
342.23-14, Fireworks Sales Stand (30 x \$147 each; all collected in June 2011)	\$4,410.00	\$0.00	\$4,410.00
342.23-15, Fireworks Sales Stand Reinspection	\$0.00	\$0.00	\$0.00
342.61-01, Fireworks Enforcement Fee (30 x \$500 each + \$700 (one time donation) + \$2,300 (one time donation); all in June 2011)	\$18,000.00	\$0.00	\$18,000.00
342.63-01, Fireworks Sales Application Fee (104 x \$35 each; all collected in May & June 2011)	\$3,640.00	\$0.00	\$3,640.00
Total Actual Revenue	\$26,050.00	\$0.00	\$26,050.00
<u>Actual Expenditures:</u>			
10-10, Regular Salaries (covers time period from 2/16/11 through 7/15/11)	\$3,570.32	\$3,109.23	\$6,679.55
10-13, Overtime Salaries (covers time period from 6/16/11 through 7/15/11)	\$2,062.26	\$11,126.93	\$13,189.19
All 10-series benefit and insurance accounts related to Regular Salaries and Overtime Salaries above	\$923.22	\$4,666.83	\$5,590.05
20-37, General Liability Insurance (related to Reg and Overtime Salaries above)	\$171.83	\$541.48	\$713.31
30-50, Materials and Supplies (postings from June 2011 to August 1, 2011)	\$73.48	\$24.08	\$97.56
Total Actual Expenditures	\$6,801.11	\$19,468.55	\$26,269.66
Actual Revenues Over (Under) Actual Expenditures			(\$219.66)
Difference as a Percent of Total Expenditures			-0.8% *

* Less than a 1% variance.

2010 FIREWORKS SALES ENFORCEMENT PROGRAM (048-2634)
 COMPARISON OF ACTUAL REVENUE AND EXPENDITURES
 Source: GMBA on-line financial system
 Page 2 of 3
 10/19/11 RB

	July 4, 2010 Program		
	FY 2009-10	FY 2010-11	Total
<u>Actual Revenues:</u>			
342.23-14, Fireworks Sales Stand (30 x \$147 each; all collected in June 2010)	\$4,410.00	\$0.00	\$4,410.00
342.23-15, Fireworks Sales Stand Reinspection	\$0.00	\$0.00	\$0.00
342.61-01, Fireworks Enforcement Fee (FY 09-10: 30 x \$500 each; all collected in June 2010) (FY 10-11: 12 x \$100 each (administrative citations), + \$2,032 (administrative citation BHOA), all in Sept & Oct 2010)	\$15,000.00	\$3,232.00	\$18,232.00
342.63-01, Fireworks Sales Application Fee (118 x \$35 each; all collected in May & June 2010)	\$4,130.00	\$0.00	\$4,130.00
Total Actual Revenue	\$23,540.00	\$3,232.00	\$26,772.00
<u>Actual Expenditures:</u>			
10-10, Regular Salaries (covers time period from 5/16/10 through 7/15/10)	\$1,033.26	\$6,151.03	\$7,184.29
10-13, Overtime Salaries (covers time period from 6/1/10 through 8/15/10)	\$2,520.91	\$10,455.35	\$12,976.26
All 10-series benefit and insurance accounts related to Regular Salaries and Overtime Salaries above	\$200.85	\$2,061.06	\$2,261.91
20-37, General Liability Insurance (related to Reg and Overtime Salaries above)	\$89.55	\$321.24	\$410.79
30-50, Materials and Supplies (postings from June 2011 to August 1, 2011)	\$2,679.23	\$323.07	\$3,002.30
Total Actual Expenditures	\$6,523.80	\$19,311.75	\$25,835.55
Actual Revenues Over (Under) Actual Expenditures			\$936.45
Difference as a Percent of Total Expenditures			3.6%

2010 AND 2011 PROGRAMS COMBINED

Actual Total Revenue	\$52,822.00
Less Actual Total Expenditures	<u>(\$52,105.21)</u>
Actual Revenue Over (Under) Actual Expenditures	<u>\$716.79</u>
Variance as Percent of Actual Total Expenditures	1.4%

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 007-10 AND CHAPTER 8.92 OF THE STOCKTON MUNICIPAL CODE CONCERNING FIREWORKS

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

SECTION I. AMENDMENT OF CODE.

Ordinance No. 007-10 and Chapter 8.92, Fireworks, of the Stockton Municipal Code are hereby amended to read as follows.

CHAPTER 8.92

FIREWORKS

8.92.010 Definitions

The following words and phrases, as used in this Chapter, are defined as follows:

A. "Applicant" shall mean a non-profit organization that applies for a fireworks sales permit as provided in this Chapter. An applicant may be two or more non-profit organizations provided, however, a non-profit organization may not apply on its own behalf and also apply with any other non-profit organization(s).

B. "City Manager" shall mean the City Manager of the City of Stockton and/or his or her designee or designees.

C. "Dangerous fireworks" means (1) dangerous fireworks as set forth in California State Fireworks Law (Sections 12505 and 12561 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference or (2) safe and sane fireworks, as defined in subsection J below, that have been modified in any respect from their original design

D. "Fire Chief" shall mean the Fire Chief of the City of Stockton or the Fire Chief's designee.

E. "Nonprofit organization" means
1. any organization that (a) is required to register with the California State Attorney General's Office and the California State Attorney General's Office shows the organization in a "current" status, (b) has had a Stockton zip code mailing

CITY ATTY *mhr*
REVIEW _____

DATE FEB 01 2012

address for more than twelve consecutive months immediately prior to filing an application and (c) primarily serves City residents;

2. any organization that (a) is not required to register with the California State Attorney General's Office but has been created for charitable, religious, philanthropic or educational purposes and the net proceeds of such organization are committed to the promotion of the objectives of the organization and not to private gain, (b) has had a Stockton zip code mailing address for more than twelve consecutive months immediately prior to filing an application and (c) primarily serves City residents;

3. an organization that otherwise meets the requirements of subsection E. 2 but is affiliated with and officially recognized by an elementary, middle or high school within the City of Stockton or by a college within the City of Stockton.

F. "Permit" shall mean a fireworks sale permit.

G. "Permittee" shall mean an applicant to which the City has issued a permit.

H. "Person" means and includes any individual, firm, partnership, joint venture, association, concern, corporation, state, trust, business trust, receiver, syndicate, or any other group of combination acting as a unit.

I. "Residents of the City" or "City residents" means and includes owners of businesses and/or property in the City as well as occupants of residential dwellings.

J. "Safe and sane fireworks" or "fireworks" means safe and sane fireworks as set forth in California State Fireworks Law (Sections 12529 and 12562 of the Health and Safety Code and the relevant sections of Title 19, Code of Regulations, Subchapter 6), as hereinafter may be amended from time to time, which are hereby incorporated by reference.

K. "Stockton zip code" means those zip codes as established from time to time by the Fire Chief.

8.92.015 Sale and Discharge

A. Subject to this Chapter, the State Fireworks Law, Sections 12500 through 12726 of the Health and Safety Code of the state, and any regulations promulgated thereunder, only safe and sane fireworks may be sold within the Stockton City limits and only as follows:

- June 28: Noon to 8 p.m.
- June 29: 9 a.m. to 8 p.m.
- June 30: 9 a.m. to 8 p.m.
- July 1: 9 a.m. to 8 p.m.
- July 2: 9 a.m. to 8 p.m.
- July 3: 9 a.m. to 8 p.m.
- July 4: 9 a.m. to 9 p.m.

B. Subject to this Chapter, the State Fireworks Law, Sections 12500 through 12726 of the Health and Safety Code of the state, and any regulations promulgated thereunder, no person shall discharge any safe and sane fireworks within the Stockton City limits except as follows:

- June 28: Noon to 11 p.m.
- June 29: 9 a.m. to 11 p.m.
- June 30: 9 a.m. to 11 p.m.
- July 1: 9 a.m. to 11 p.m.
- July 2: 9 a.m. to 11 p.m.
- July 3: 9 a.m. to 11 p.m.
- July 4: 9 a.m. to 11 p.m.

C. No person shall discharge any safe and sane fireworks on public property nor in or on a public street except in those areas approved in writing by the Fire Chief.

D. No person shall ignite, explode, project or use, nor permit the ignition, explosion, projection or use, of any safe and sane fireworks:

1. upon or over the property of another person without that person's consent ;
2. within 10 feet of any residential dwelling or other structure used as a place of habitation; or
3. within 50 feet of any fireworks sales stand.

E. Except as provided in subsection F of this section, no person under 18 years of age shall purchase, sell, possess, use or discharge safe and sane fireworks.

F. No person having the care, custody or control of a person under 18 years of age shall allow such person to possess, use or discharge:

1. any dangerous fireworks; or
2. any safe and sane fireworks unless such person under the age of 18 does so under the direct supervision of a person of age 18 or older and otherwise in compliance with the other requirements of this section.

G. No person shall discharge dangerous fireworks within the Stockton City limits. For purposes of this section, where dangerous fireworks are discharged at or in the street in front of a residential structure, the resident(s) in possession of the residential structure shall be deemed the person who has discharged dangerous fireworks.

8.92.020 Permit Required; Issuance; Limitations

A. Except as provided in this Chapter, it is unlawful to offer for sale or sell at retail safe and sane fireworks without having been issued a permit for such sales.

B. The City shall issue permits for the sale of safe and sane fireworks only to nonprofit organizations, and such fireworks shall be sold only at the fireworks sales stands, as more specifically set forth herein.

C. The City shall issue permits by lottery. Each applicant shall have one lot. The lottery shall take place at a time, place and manner determined by the Fire Chief in accordance with administrative rules and procedures adopted by the Fire Chief.

D. The City shall issue no more than 30 permits annually.

E. If more than one nonprofit organization as defined in Section 8.92.010 E.3. from a particular elementary, middle or high school, or from a particular college, wish to apply for a permit, only one such organization may apply, as determined by the principal or other person in charge of the school/college.

F. A nonprofit organization may obtain a permit only two years in a row and any nonprofit organization that obtains a permit two years in a row must wait one application cycle before reapplying. A nonprofit organization cannot avoid this restriction by changing its name.

G. Any nonprofit organization that has had its permit suspended or revoked within the prior three years shall be eligible to submit an application only upon demonstrating to the Fire Chief's reasonable satisfaction that suitable arrangements have been made to preclude future violations.

8.92.030 Permit Application; Regulations; Limitations

A. All applications must be complete and filed with the Fire Department between the first business day in March and the last business day in March of each year or as otherwise determined by the Fire Chief. All applications shall be accompanied by a non-refundable application fee in an amount set by resolution of the City Council. Applications that are not complete or filed late shall not be processed.

B. All applications shall be made in writing on a form supplied by the City. A completed application shall be accompanied by an assurance that, if the applicant is issued a permit, the applicant shall, before receipt of such permit, deliver to the City the following items and/or information:

1. Proper identification and signature of the applicant;
2. The proposed location of the fireworks sales stand;
3. The dates and hours the applicant proposes to operate the stand;
4. A detailed description of the fireworks proposed to be sold;
5. The written consent of the owner of record and/or lessor in control of the property upon which the proposed fireworks sales stand will be located;

6. The fireworks distributor's business name, address, telephone number, and person that is the point of contact;
7. Proof of a temporary sales tax permit from the State Board of Equalization or proof of application to the State Board of Equalization;
8. Proof of insurance to include one million dollars public liability, property damage, and product liability coverage with riders attached to the policies designating the City as an additional insured;
9. Proof of a State Fire Marshal Retail Fireworks License; and
10. Such other information and documentation that the Fire Chief in his or her reasonable discretion may require.

8.92.040 Notice of Acceptance or Rejection of Applications; Appeals; Selection Procedure; Fee

A. The Fire Chief shall notify all applicants 30 days after the final permit application deadline whether its application has been accepted or rejected.

B. Any applicant may appeal the Fire Chief's decision to the City Manager by filing a written appeal within five calendar days of the Fire Chief's decision. The City Manager will hear the appeal as soon as possible with the goal to have all appeals heard and decided by May 10 of each year. The City Manager shall affirm, modify or reverse the Fire Chief's decision. The City Manager's decision shall be final.

C. The Fire Chief shall conduct a lottery for those applicants whose applicants have been accepted on or about May 10 of each year, or when all appeals have been decided, whichever is later. Those applicants selected in the lottery are eligible to obtain a permit.

D. The Fire Chief shall notify all applicants regarding the results of the lottery, the names of the applicants who are eligible to receive a permit, and the names of the alternates who are eligible to receive a permit.

E. Those applicants that are eligible to receive a permit will have until June 3 to submit their documents and information required in subsection C of Section 8.92.030. If any applicant fails to submit its documents and information by the deadline, the Fire Chief shall notify the requisite number of alternates that they have until a date certain to submit their documents and information as required by subsection C of Section 8.92.030.

F. All applicants that are eligible to receive permits shall, prior to issuance of the permit, pay a permit fee, a refundable cash deposit (or other security in a form acceptable to the City), and a regulatory fee in amounts set by resolution of the City Council. The permit fee is intended to cover the cost of the first inspection of the fire works stand. Any necessary subsequent inspections shall be subject to a reinspection fee in an amount as set by resolution of the City Council. The refundable cash deposit shall be held by the City to cover the cost of removal of the fireworks sales stand, in accordance with subsection M of section 8.92.070. The regulatory fee is to cover the cost of enforcement of this Chapter.

G. Each applicant that has been granted a permit shall have no less than two members of its sales staff attend an operator safety seminar administered by the City Fire Department.

8.92.050 Suspension of Permit; Appeal Procedure

A. The Fire Chief may suspend immediately and without notice or hearing a permit when the Fire Chief determines a permittee has violated any rule, regulation or ordinance while operating or preparing to operate a fireworks sales stand during or immediately preceding any period of sale. If the Fire Chief determines after the period of sale that a violation occurred during, immediately preceding, or immediately following the authorized period of sale, the Fire Chief may prohibit the permittee from applying for a permit in the future.

B. Any decision of the Fire Chief made pursuant to this section shall be subject to appeal to the City Manager. When the decision being appealed affects the current sales period, such appeal shall be conducted at the earliest possible time that the permittee, the City Manager, and the Fire Chief can schedule the appeal. For decisions that do not affect the current sales period the appeal shall be filed within 10 days of the decision and shall be conducted within 10 business days after the appeal has been filed. The City Manager may set aside, modify, or reverse the decision. The decision of the City Manager shall be final.

8.92.060 Fireworks Sales Stand; Operation

A. It is unlawful for a permittee to allow any person other than the permitted applicant, to operate the fireworks sales stand for which a permit has been issued, or to share in the proceeds of the sales.

B. It is unlawful for the permittee to allow any person other than individuals who are members of the permitted applicant and at least 18 years old, or the spouses or children of such members who are at least 18 years old, to sell, be within the fireworks sales stand or otherwise participate in the sale of fireworks.

C. It is unlawful for the permittee to pay any consideration to any person for selling or otherwise participating in the sale of fireworks.

D. During the time fireworks are sold, each sales stand must have an adult present satisfying the requirements of subsection B above and satisfying the requirements of subsection G below.

E. No person may sleep in or remain in the sales stand after close of business.

F. All unsold fireworks must be securely stored at a designated central storage location, approved by the Fire Chief, during non-sale periods.

G. Each sales stand must have present at all times during the sales period at least one person who attended the Fire Department's operator safety seminar as required by section 8.92.040 G.

H. The sale of fireworks shall conform to restrictions of Section 8.92.015.

I. All unsold fireworks and any litter shall be removed from the sales location by 10:00 p.m. on July 4th.

J. Permittees shall require all persons who appear to be under the age of 30 to provide proof of age and shall make no sales of fireworks to persons younger than 18.

K. The City's permit to sell fireworks and the temporary sales tax permit required by Section 8.92.080 of this Chapter shall be displayed in a prominent place in the sales stand.

L. The permittee shall display a poster measuring 18" x 32" notifying purchasers of applicable restrictions established by this Chapter. The City shall provide such posters that shall be returned to the City after the sales period.

8.92.070 Fireworks Sales Stands; Requirements

All retail sales of safe and sane fireworks shall be made only from within a temporary fireworks sales stand, and sales from any other building or structure is hereby prohibited. Fireworks sales stands are subject to the following requirements:

A. Fireworks sales stands shall be put in place by the permittee no earlier than 8:00 a.m. on June 23 of each year.

B. No fireworks sales stand shall be located within 25 feet of any other building or structure within five feet of any curb line, or within 100 feet of any gasoline pump.

C. No fireworks stand shall be located within 100 feet of any building used as a school, day care, hospital, place of detention, public garage or place of assembly that can accommodate 300 or more occupants.

D. A minimum of 20 feet of separation shall be provided between the fireworks sales stand and any parked vehicle that is not under the immediate control of the permittee.

E. No weeds or other combustible materials are permitted within 25 feet of the fireworks sales stand.

F. The locations of all fireworks sales stands shall be approved by the Fire Chief.

G. Within all fireworks sales stands the electrical wiring shall be in conduits and breaker boxes shall consist of GFI breakers.

H. All fireworks sales stands shall be built in accordance with the safety requirements of the City prior to opening for business and shall be maintained in accordance with such safety requirements during the sales period.

I. No generators shall be allowed within 25 feet of any fireworks sales stand.

J. Smoking and the consumption of alcoholic beverages shall not be allowed within 50 feet of any fireworks sales stand and "No Smoking" signs shall be displayed on and in the fireworks sales stand.

K. Permittees shall place no signs in the public right-of-way.

L. Each fireworks sales stand shall be provided with two, two-and-one-half gallon pressurized water type fire extinguishers, or two 2A10BC dry chemical/powder type fire extinguishers, in good working order, and easily accessible for use in case of fire.

M. The fireworks sales stand shall be removed from its location and the site cleaned by 12:00 p.m. on July 7. If the permittee does not remove the stand and/or clean the site as required by this section, the City may do so, or cause the same to be done, and the reasonable cost thereof shall be charged to the permittee or deducted from the permittee's security deposit. In addition, any permittee found to be in violation of this section shall be subject to an administrative penalty imposed under Section 8.92.090.

8.92.080 Temporary Sales Tax Permit

Each permittee must obtain a temporary sales tax permit from the State Board of Equalization.

8.92.090 Administrative Penalties; Appeals

In addition to any other remedy available at law, any person who possesses, uses, stores, sells, and/or displays dangerous fireworks or any person who sells, possesses, uses or discharges safe and sane fireworks on or at dates, times, and/or locations other than those permitted by this Chapter, or any permittee who violates any provision of this chapter, is subject to an administrative penalty, in an amount as provided below:

A. The amount of the administrative penalty shall be \$250 for the first violation, \$500 for a second violation within any twelve-month period, and \$1000 for any subsequent violations within any twelve-month period.

B. Appeals of administrative penalties shall be made and heard in accordance with Chapter 1.44 of this Code.

8.92.100 Financial Reporting

On or before September 1 each permittee shall submit to the Fire Chief a financial statement by the treasurer or financial officer of the permittee setting forth the total gross receipts from the sales of fireworks, ; all expenses incurred and paid in connection with the purchase and sale of fireworks; to whom and for what purpose the net proceeds of the fireworks sales were or will be disbursed; and a report filed by the permittee with the State Board of Equalization that reflects the sales of the fireworks. Any permittee that files the written financial statement and/or the State Board of Equalization report after September 1 shall not be eligible to submit an application for the following year and will not be eligible to submit an application for any year after that until the statement and the report have been filed.

8.92.110 Concurrent Authorities

This Chapter is not the exclusive regulation for fireworks within the City of Stockton. It shall supplement and be in addition to the other codes, statutes, regulations and ordinances heretofore and hereinafter enacted by the City of Stockton, the State of California or any other entity or agency having jurisdiction.

8.92.120 Provisions Supplementary

The provisions of this Chapter are supplementary to the provisions of the Fire Code of the City of Stockton. In case of direct conflict between the provisions of the Fire Code of the City, and the provisions of this Chapter, the provisions of this Chapter shall prevail. Except with respect to such direct conflict, the provisions of the Fire Code of City of Stockton shall remain in full force and effect.

8.92.130 Administrative Regulations

The Fire Chief may promulgate administrative regulations and procedures necessary to implement this Chapter, including rules and procedures governing the submissions of applications, inspections and operation of fireworks sales stands and such other regulations as may be necessary for the protection of life and property. Administrative regulations and procedures shall be in writing and shall be approved by the City Attorney.

SECTION II. SEVERABILITY.

If any part of this Ordinance is held invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof had been deleted.

SECTION III. EFFECTIVE DATE.

This Ordinance shall become effective thirty (30) days from and after its adoption.

ADOPTED: _____

EFFECTIVE: _____

ATTEST:

ANN JOHNSTON, Mayor
of the City of Stockton

BONNIE PAIGE
City Clerk of the City of Stockton

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