



REPORT TO COUNCIL City of Sacramento

915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

CONSENT
June 5, 2007

Honorable Mayor and Members of the City Council

Title: Subject: Supplemental Agreement: Fulton Avenue Development project.

Location/Council District: 3701 Fulton Avenue, Council District 2

Recommendation: Adopt a **Resolution** 1) authorizing the City Manager or his designee to execute Supplemental Agreement #4 to City Agreement 2006-0606 with Baseline Environmental Consulting for an additional expenditure of \$155,663, bringing the total cost to \$451,392, and 2) authorizing the City Manager to execute an agreement with the Elsie-Gridley Wetlands Mitigation Bank and pay the permit fee of \$138,930 for the purchase of wetlands mitigation credits associated with the project.

Contact: Dean Peckham, Senior Project Manger, 808-7063
James R. Rinehart, Citywide Economic Development Manager, 808-5054

Presenters: Not applicable

Department: Economic Development

Division: Citywide

Organization No: 4453

Description Analysis:

Issue: On May 1, 2007 the Sacramento City Council approved the contract (Resolution #2007-254) with Teichert Construction for site grading associated with the Fulton Avenue Development project. As part of the approved remediation plan for the project, the Final Implementation Plan approved by Sacramento County Environmental Mgmt. Dept. (March 2007) the City is required to conduct an analytical testing and sampling plan of the site as cleanup and grading occurs. Because of their exhaustive knowledge of the project, staff recommends that Baseline Environmental be retained to complete this work.

This staff report requests City Council approval of the contract amendment and additional funding, since the contract exceeds \$100,000.

The City is required to purchase wetlands mitigation credits as part of its Nationwide 38 permit from the U.S. Army Corps of Engineers as a result of the removal of wetlands associated with the site remediation.

Policy Considerations: The Fulton Avenue Development project is consistent with the City of Sacramento Strategic Plan goals to expand economic development throughout the City and achieve sustainability and livability.

Per City of Sacramento Code, Chapter 58.02.202 and the City Manager's memorandum dated July 30, 1993 (Authority for Execution of Contracts – Revision); the City Council must approve contracts where total costs (including supplemental agreements) exceed \$100,000.

Environmental Considerations: The City Council Certified an Environmental Impact Report and adopted a Mitigation Monitoring Plan for this project on January 16, 2007.

Rationale for Recommendation: Baseline Environmental has an exhaustive knowledge of the site and issues resulting from involvement in the development of the Final Implementation Plan for site remediation. Hiring another firm to perform the site sampling and testing would result in a substantial delay in the project schedule and jeopardize the City's lease with Raption Honda Investment Group, LLC.

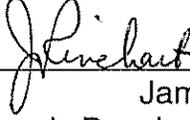
Second, the City is required to contribute to the wetlands mitigation bank in order to secure final approval of its Nationwide 38 permit from the U.S. Army Corps of Engineers. Failure to make the payment and secure the permit would jeopardize the completion of the project and the ability to repay the \$6.4 million Community Reinvestment Capital Improvement Program (CRCIP) bridge loan.

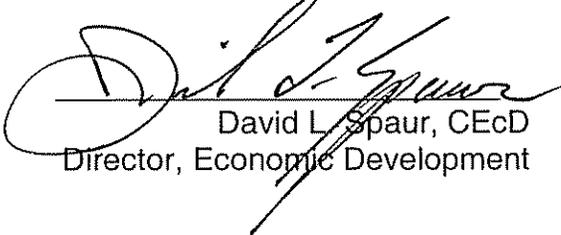
Financial Considerations: Financing for this project has been provided by pre-development funding in the amount of \$500,000 and a "bridge loan" in the amount of \$6.4 million approved by City Council on May 23, 2006 as part of the Community Reinvestment Capital Improvement Program (CRCIP).

The Baseline Environmental contract shall be funded by CB38 in an amount not to exceed \$155,663. The payment of the wetlands mitigation fee in the amount of \$138,930 to Elsie-Gridley Wetlands Mitigation Bank shall be funded by CB34.

Emerging Small Business Development (ESBD):

Baseline Environmental Consulting is an ESBD Firm certified (BAE5075A3OP) with the City of Sacramento.

Respectfully submitted by: 
James R. Rinehart
Citywide Economic Development Manager

Approved by: 
David L. Spaur, CECD
Director, Economic Development

Recommendation Approved:

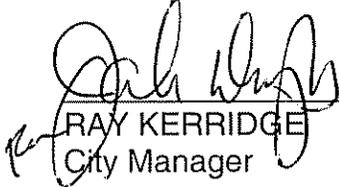

RAY KERRIDGE
City Manager

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Attachment 1**BACKGROUND**

- A. In 2002, the City Council directed staff to examine potential alternatives for the "highest and best" uses for the 21-acre Sacramento Trapshoot Club Site adjacent to Haggin Oaks Golf Course. In 2004, Mel Rapton Honda, currently located on Fulton Avenue, submitted a written request to the City to lease a portion of the existing property. An Exclusive Rights to Negotiate was executed on June 1, 2004, between the City and Mel Rapton Honda.
- B. The Sacramento Trapshooting Club has operated a shooting range at the present location within the Haggin Oaks Golf complex for approximately 80 years, resulting in the deposit of lead shot and clay pigeon debris over a relatively large area. Approximately 750,000 square feet (17 acres) are contaminated to some extent with elemental lead and polynuclear aromatic hydrocarbons (PAH). Cleanup of these materials is required since, depending on concentration, some are considered hazardous waste under federal and state law.
- C. In July 2004, the City initiated a process under the regulatory oversight of the County of Sacramento Environmental Management Department (EMD) and the California Regional Water Quality Board (Board) where in the contamination of the site would be characterized and appropriate remediation would be developed and ultimately implemented.
- D. In 2006 the City submitted a permit application to the U.S. Army Corps of Engineers for a Nationwide 38 permit which allows the City to conduct remediation of a contaminated site where known wetlands exist.
- E. The City and its consultant, Baseline, have conducted numerous samplings of the site to ascertain the level of contamination. As a result of a consultative working group meeting in February 2006 regarding the final results it was determined that additional off-site sampling is needed to characterize contamination located north of the Trapshoot Club site. Any contaminated soil found off site will be consolidated with on-site contamination. Finally, Baseline will prepare the Final Response plan for the remediation of the site including the preparation of a Risk Management Plan (RMP).
- F. In response, the City's consultant, Baseline, prepared a 3rd workplan for off-site sampling deemed acceptable to all parties. The results of this work were incorporated into The Final Response Plan and a Risk Management Plan (RMP) will be prepared which addresses worker and environmental safety. The additional sampling, laboratory analysis and preparation of the Final Response Plan and RMP has increased the anticipated cost of the investigation.

- G. In January 2007 the City Council approved the Environmental Determination: Environmental Impact Report; Mitigation Monitoring Plan; General Plan Amendment to redesignate 20± (twenty) gross acres from Parks, Recreation and Open Space to Heavy Commercial/Warehouse; Rezone of 20± (twenty) gross acres from the Single Family (R-1) zone to the Heavy Commercial Planned Unit Development (C-4 PUD) zone; Establishment of the Fulton Avenue Planned Unit Development (PUD), including PUD Guidelines and a PUD Schematic Plan; Tentative Parcel Map to subdivide one parcel into two (2) parcels; Subdivision Modifications to allow non-standard streets and elbows rezoning and tentative map for the Fulton Avenue development (former Sacramento Trapshoot Club)
- H. In March 2007 the County of Sacramento Environmental Management Department approved the Final Implementation Plan for the remediation of the Fulton Avenue Development site (formerly Sacramento Trapshoot Club).
- I. The Sacramento County Environmental Management Department is requiring a detailed soils sampling and testing plan as part of the site remediation. The additional sampling, laboratory analysis has increased the anticipated cost of the investigation, necessitating the 4th Supplemental Agreement.
- J. In April 2007 the City received a letter of conditional approval from the U.S. Army Corps of Engineers for the Nationwide 38 permit, subject to the City paying the necessary wetlands mitigation credits for the 0.824 acres of wetlands to be removed at the Fulton Avenue Development project.
- K. On May 1, 2007 Council approved Resolution #2007-254 awarding the grading contract to Teichert Construction for the Fulton Avenue Development. Teichert will begin grading on approximately June 15, 2007. Payment of the wetlands mitigation fee of \$138,930 must occur prior to grading.

Attachment 2

Project Title and Job Number: Fulton Avenue Site, Sacramento
Purchase Order #:

Date: 5-9-07
Supplemental Agreement No.: 4

The City of Sacramento ("City") and Baseline Environmental Consulting ("Consultant"), as parties to that certain Consultant and Professional Services Agreement designated as Agreement Number 2004-0606 including any and all prior supplemental agreements modifying said agreement (said agreement and supplemental agreements are hereafter collectively referred to as the "Agreement"), hereby supplement and modify the Agreement as follows:

1. The scope of Services specified in Exhibit A of the Agreement is amended as follows:

Please see Attachment 2.

2. In consideration of the additional and/or revised services described in section 1, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Agreement for payment of Consultant's fees and expenses, is **increased** by \$155,663.00 (one hundred fifty-five thousand, six hundred sixty-three dollars) , and said maximum not-to-exceed amount is amended as follows:

Agreement's original not-to-exceed amount:	<u>\$65,550.00</u>
Net change by previous supplemental agreements:	<u>\$230,179</u>
Not-to-exceed amount prior to this supplemental agreement:	<u>\$295,729.00</u>
Increase by this supplemental agreement:	<u>\$155,663.00</u>
New not-to exceed amount including all supplemental agreements:	<u>\$451,392.00</u>

3. Consultant agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Consultant for any and all direct and indirect costs that may be incurred by Consultant in connection with such additional and/or revised services, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by Consultant.

4. Consultant warrants and represents that the person or persons executing this supplemental agreement on behalf of Consultant has or have been duly authorized by Consultant to sign this supplemental agreement and bind Consultant to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all of the services, duties, obligations, and conditions required under the Agreement, as supplemented and modified by this supplemental agreement.

CITY OF SACRAMENTO
A Municipal Corporation

Consultant

By: _____

By: _____

Printed Name: John Dangberg
Title: Assistant City Manager

Print Name: _____

For: Ray Kerridge, City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk

Deputy City Attorney

BASELINE
ENVIRONMENTAL CONSULTING

2 May 2007
Y4368-C0.00704

Mr. Dean Peckham CITY OF
SACRAMENTO Economic
Development Department 1030 15th
Street, 2nd Floor Sacramento, CA
95814-4009

Subject: Scope and Cost Proposal for Conducting Verification Sampling, 3701 Fulton Avenue Site, Sacramento

Dear Dean:

Thank you for asking BASELINE to provide a scope and cost estimate for conducting verification sampling at the 3701 Fulton Avenue site in Sacramento, the former Sacramento Trapshooting Club. On 14 March 2007, a Final Implementation Plan ("Plan") was submitted to the Sacramento County Environmental Management Department regarding remediation of the subject site.

The Implementation Plan describes the approach for verification sampling to ensure that contaminated soil has been removed from Parcel A to the established clean-up goals for lead, arsenic, and polynuclear aromatic hydrocarbons ("PAHs"). The sampling locations have been developed to consist of one sample per 2,500 square feet, or a total of about 180 samples. All samples would be analyzed for lead and PAHs and ten percent of the samples would be analyzed for arsenic.

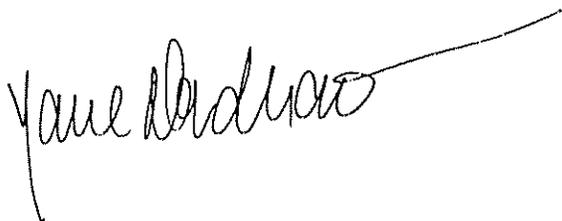
BASELINE would collect the verification samples incrementally as the contaminated soil is removed from Parcel A. It is envisioned that the sampling would occur in three separate events, resulting in about 60 samples being collected during each event. The 60 samples would be submitted to the laboratory for analysis on a regular turn-around-time (i.e., five working days). Once the results have been received from the laboratory, BASELINE would evaluate the data and perform statistical analyses, if needed. Within two working days from receipt of data from the laboratory, we would advise the City about any need for additional excavation to remove contaminated soil to a level below the established clean-up goals. If additional excavation were to be required, BASELINE would coordinate with the City regarding specific areas to be re-excavated.

BASELINE

Dean Peckham
2 May 2007
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We are assuming that the City would arrange for surveying and staking the boundaries of Parcel A and the boundaries of the remediation area north of the leasehold (by the detention basin).

Following completion of sampling, BASELINE will provide an Implementation Report documenting all sampling activities and removal of contaminated soil to meet clean-up goals. The cost for implementing the sampling efforts outlined in the Final Implementation Plan is presented in the attached Table 1. If you have any questions or need additional information, please do not hesitate to contact us at your convenience.

A handwritten signature in black ink, appearing to read "Yane Nordhav", with a long horizontal line extending to the right from the end of the signature.

Yane Nordhav, P.G.
Principal

YN:cr
Enclosure

cc: Jim Rinehart

WETLAND RESOURCES LLC
ELSIE GRIDLEY MITIGATION BANK

Purchase Agreement for 0.824 seasonal wetland Mitigation acres.

This Agreement ("Agreement") is made and entered into as of 5/7/2007, by and between City of Sacramento and Wetland Resources LLC. Other defined terms used herein are defined in the Definitions or upon the first appearance of said term.

In consideration of the mutual promises, covenants and conditions herein, the Parties agree as follows:

1. Definitions

- A. Mitigation Bank. "Mitigation Bank" means the Elsie Gridley Mitigation Bank Facility located in Solano County, California, owned and operated by WRLLC. Army Corps permit number 200000614.
- B. Mitigation. "Mitigation" shall mean the per acre unit of the Mitigation Bank allocated to City of Sacramento pursuant to this Agreement as mitigation for impacts to seasonal wetlands for the City of Sacramento's project number SPK – 2007-21-SO.

2. Term of Agreement

The term of this Agreement shall be in perpetuity.

3. Obligations of WRLLC

WRLLC shall have the following obligations:

- A. Assignment of Mitigation Units. Pursuant to this Agreement City of Sacramento has purchased certain Mitigation Units equivalent to: 0.824 acres of seasonal wetlands.
- B. Maintenance and Endowment of the Mitigation Units. WRLLC shall maintain and permanently endow with sufficient funding the long-term maintenance and preservation of the Mitigation Bank property.
- C. Maintain and Permits and Approvals. WRLLC shall obtain and maintain, throughout the term of this Agreement, all permits and approvals for the Mitigation Bank.
- D. Compliance With Laws. WRLLC shall at all times comply with all applicable laws, permits and approvals pertaining to WRLLC's performance under this Agreement, including but

not limited to environmental laws, permits and approvals applicable to the development, restoration, management, and maintenance of suitable created seasonal wetland Mitigation Units.

4. Purchase Price and Terms: 0.824 acres of seasonal wetlands: \$138,930.00. Full payment required upon execution of this agreement.

5. Indemnification

WRLLC shall indemnify, defend and hold harmless, City of Sacramento, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to or death of any person and damage to property or for contribution or indemnity claimed by third parties arising out of or caused in any way, directly or indirectly, by WRLLC's activities as required by this Agreement.

6. Successors And Assigns

The terms, covenants and conditions of this Agreement shall apply to and shall bind the successors and assigns of City of Sacramento and WRLLC.

7. Notices

Any and all notices to be given under this Agreement, or which any Party may desire to give to another, shall be in writing. Said notices shall be deemed delivered by personal delivery to the other Party's place of business as designated below during regular business hours, or on the third day following deposit in the mail, said deposit by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

A. If to: City of Sacramento
1030 15th Street, Suite 250
Sacramento, CA. 95814

B. If to WRLLC:

Mr. Edward Flynn
Wetland Resources LLC
3030 Bridgeway Suite 107,
Sausalito, CA 94965

Changes of address shall be promptly filed with the other Parties.

8. Waiver the waiver by any Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

9. Applicable Law

The interpretation and effect of this Agreement shall be governed by application of the laws of the State of California.

10. Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded by binding arbitration before JAMS in San Francisco, California, which shall have exclusive jurisdiction over such lawsuits.

11. Time of The Essence

Time is of the essence with this Agreement.

12. Negotiated Agreement

Each Party acknowledges that no other Party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another Party to execute this Agreement. The Parties agree that no provisions or provision may be subject to any rule of construction based upon any Party being considered the Party "drafting" this Agreement.

13. Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

14. Attorneys Fees and Costs

In the event that any legal action is necessary to enforce any terms or conditions of this Agreement, the prevailing party in any such action shall be entitled to an award of reasonable attorneys fees and costs, including all expert witness and consultant's fees as determined by the arbitrator.

15. Ownership of Mitigation Units

City of Sacramento owns the Mitigation Units free and clear of any claims, liens and encumbrances, and shall have the unqualified right to sell, convey or otherwise transfer said Mitigation Units to any successors in interest of the project number SPK 2007-21-SO, otherwise known as the Fulton Avenue Development.

IN WITNESS WHEREOF, the Parties make this Agreement as of the Effective Date.

FOR:

City of Sacramento

By _____

Print Name: _____

(Title)

FOR WRLLC:

WETLAND RESOURCES, LLC.

By:

Print Name: Benjamin Winslow
Managing Member

RESOLUTION NO.

Adopted by the Sacramento City Council

AUTHORIZE A FOURTH SUPPLEMENTAL AGREEMENT WITH BASELINE ENVIRONMENTAL CONSULTING AND PAYMENT OF WETLANDS MITIGATION FEES TO THE ELSIE-GRIDLEY WETLANDS MITIGATION BANK FOR THE FULTON AVENUE DEVELOPMENT PROJECT

BACKGROUND:

- A. In 2002, the City Council directed staff to examine potential alternatives for the "highest and best" uses for the 21-acre Sacramento Trapshoot Club Site adjacent to Haggin Oaks Golf Course. In 2004, Mel Rapton Honda, currently located on Fulton Avenue, submitted a written request to the City to lease a portion of the existing property. An Exclusive Rights to Negotiate was executed on June 1, 2004, between the City and Mel Rapton Honda.
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- C. The Sacramento County Environmental Management Department is requiring a detailed soils sampling and testing plan as part of the site remediation. The additional sampling, laboratory analysis has increased the anticipated cost of the investigation, necessitating the 4th Supplemental Agreement.
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- E. On May 1, 2007 Council approved Resolution #2007-254 awarding the grading contract to Teichert Construction for the Fulton Avenue Development. Teichert will begin grading on approximately June 15, 2007. Payment of the wetlands mitigation fee must occur prior to grading..

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

Section 1. The City Manager is hereby authorized to enter into a supplemental agreement in the amount of \$155,663 with Baseline Environmental Consulting for the completion of tasks necessary to complete the remedial investigation of contamination at the Sacramento Trapshooting Club. This supplemental agreement brings the total cost of the remedial investigation to \$451,392.

Section 2. The City Manager is hereby authorized to sign the agreement with the Elsie-Gridley Wetlands Mitigation Bank and pay the permit fee of \$138,930 for the purchase of wetlands mitigation credits.

MAYOR

ATTEST:

CITY CLERK