

CITY OF PITTSBURG
Housing Authority Minutes
July 21, 2003

Chair Yvonne Beals called the meeting of the Housing Authority to order at 7:00 P.M. in the City Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California, after having met in Closed Session at 5:30 P.M. pursuant to Section 54956.9 of the Government Code, Conference with Legal Counsel - Existing Litigation regarding Communities for a Better Environment and Pesticide Action Network of North America vs. City of Pittsburg, Superior Court Case No. C02-02065 and AFSCME Local 512, AFL-CIO v. City of Pittsburg, Unfair Practice Charge No. SF-CE-108-M; Conference with Legal Counsel - Anticipated Litigation pursuant to subdivision (b) of Section 54956.9 regarding one case; and Liability Claims pursuant to Section 54956.95 regarding William R. Hendricks, Claimant.

Mayor Beals advised that there was nothing to report from Closed Session.

MEMBERS PRESENT: Glynn, Kee, Leatherwood, Parent, Rios, Wallen, Beals

MEMBERS ABSENT: None

STAFF PRESENT: Executive Director, Willis Casey
Assistant Executive Director, Nasser Shirazi
Legal Counsel, Linda Daube
City Clerk, Lillian Pride
Director of the Redevelopment Agency, Garrett Evans
Director of Economic Development, Brad Nail
Director of Public Works, John Fuller
Assistant Director of Public Works, Walter Pease
Director of Recreation, Paul Flores
Director of Finance, Marie Simons
Director of Human Resources, Marc Fox
City Engineer, Joe Sbranti
Police Chief, Aaron Baker
Executive Assistant to the City Manager, Alice Evenson

PLEDGE OF ALLEGIANCE

Roger Riley led the Pledge of Allegiance.

CITIZENS REMARKS

There were no citizens remarks.

MEMBERS REMARKS

There were no Members remarks.

CONSENT

On motion by Member Glynn, seconded by Member Wallen and carried unanimously to adopt the Consent Calendar, as follows:

- a. **DISBURSEMENT LIST** Period Ending: June 30, 2003

Approved Disbursement List period ending June 30, 2003.

- b. **MINUTES** Dated: June 16, 2003

Approved Minutes dated June 16, 2003.

ADJOURNMENT

The meeting of the Housing Authority adjourned at 7:01 P.M. to the next meeting set for August 18, 2003.

Respectfully submitted,

Lillian J. Pride, Secretary

als

CITY OF PITTSBURG
Redevelopment Agency Minutes
July 21, 2003

Chair Yvonne Beals called the meeting of the Redevelopment Agency to order at 7:02 P.M. in the City Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California, after having met in Closed Session at 5:30 P.M. pursuant to Section 54956.9 of the Government Code, Conference with Legal Counsel - Existing Litigation regarding Communities for a Better Environment and Pesticide Action Network of North America vs. City of Pittsburg, Superior Court Case No. C02-02065 and AFSCME Local 512, AFL-CIO v. City of Pittsburg, Unfair Practice Charge No. SF-CE-108-M; Conference with Legal Counsel - Anticipated Litigation pursuant to subdivision (b) of Section 54956.9 regarding one case; and Liability Claims pursuant to Section 54956.95 regarding William R. Hendricks, Claimant.

Mayor Beals advised that there was nothing to report from Closed Session.

MEMBERS PRESENT: Glynn, Kee, Parent, Rios, Beals

MEMBERS ABSENT: None

STAFF PRESENT: Executive Director, Willis Casey
Assistant Executive Director, Nasser Shirazi
Legal Counsel, Linda Daube
City Clerk, Lillian Pride
Director of the Redevelopment Agency, Garrett Evans
Director of Economic Development, Brad Nail
Director of Public Works, John Fuller
Assistant Director of Public Works, Walter Pease
Director of Recreation, Paul Flores
Director of Finance, Marie Simons
Director of Human Resources, Marc Fox
City Engineer, Joe Sbranti
Police Chief, Aaron Baker
Executive Assistant to the City Manager, Alice Evenson

CITIZENS REMARKS

There were no citizens remarks.

MEMBERS REMARKS

There were no Member remarks.

CONSENT

On motion by Member Glynn, seconded by Vice Chair Rios, and carried unanimously to adopt the Consent Calendar, as shown.

- a. **MINUTES** Dated: July 7, 2003

Approved Minutes dated July 7, 2003.

- b. **RESOLUTION 03-900** Authorize a FY 2002-03 Budget of \$199,380 for the Promotional and Marketing Programs to be used for Economic Development Programs within the Los Medanos Project Area through FY 2003-04

Adopted Resolution 03-900.

CONSIDERATION

Mayor Beals convened JOINTLY the CITY COUNCIL and the REDEVELOPMENT AGENCY at this time to consider the following:

1. **RESOLUTION 03-901** The Reimbursement of City Fees Waived for the
Combined w/CC 03-9873 Construction of the Mt. Diablo Habitat for Humanity Fee Herb White Way Project

City Manager Willis Casey advised that pursuant to the Disposition and Development Agreement Between the Redevelopment Agency of the City of Pittsburg and Mt. Diablo Habitat for Humanity, Article 7, Section 702, the Agency agreed to pay all fees ordinarily imposed directly by the City of Pittsburg on a project of this kind, including without limitation, parkland dedication fees, traffic impact fees and all permit and plan checking fees.

The estimated cost of all fees in this case were identified as \$145,374, an amount to be transferred from the Low-Moderate Housing Set-Aside Funds to the City General Fund for Fiscal Year 2003-2004.

Mr. Casey recommended that the City Council approve the reimbursement of City fees waived for the construction of the Mt. Diablo Habitat for Humanity Herb White Way Project.

On motion by Member Parent, seconded by Vice Chair Rios, and carried unanimously to adopt Redevelopment Agency Resolution 03-901.

On motion by Vice Mayor Rios, seconded by Councilmember Glynn, and carried unanimously to adopt City Council Resolution 03-9873.

2. **RESOLUTION 03-902** Allocation of Funding for the Enterprise Zone Fee

City Manager Casey reported that on February 18, 2003, the City Council approved a Memorandum of Understanding between the State of California and the City of Pittsburg (the "MOU") to set forth the terms, conditions, and Scope of Work for the local participation in the Enterprise Zone Program and delivery of program services. A Fee Waiver/Reduction Program was approved when the Council approved the MOU on February 18, 2003; however, a mechanism to allow the Agency to reimburse the City for the cost of such fee waivers or reductions was not approved at that time. In order to allow the Agency to reimburse the City for the cost of the waived or reduced fees, money needs to be approved for such use.

Mr. Casey advised that there would be a negative fiscal impact to the Agency in an amount not to exceed \$750,000 for the year 2003-2004. He recommended that funding in an amount not to exceed \$750,000 for Fiscal Year 2003-2004 be approved for the Enterprise Zone Fee Waiver Reduction Program.

Vice Mayor Rios was pleased to be informed that the City would receive quarterly reports and that there would be an audit trail.

On motion by Vice Chair Rios, seconded by Member Glynn and carried unanimously to adopt Redevelopment Agency Resolution 03-902.

On motion by Vice Mayor Rios, seconded by Mayor Beals and carried unanimously to adopt City Council Resolution 03-9871.

Mayor Beals ADJOURNED the JOINT SESSION with the CITY COUNCIL to consider the remainder of the Redevelopment Agency agenda.

PUBLIC HEARING

1. **RESOLUTION 03-903** Amending the Implementation Plan for the Los Medanos Project Area 1999-2004 (the "First Amendment")

Executive Director Casey reported that the Redevelopment Agency of the City of Pittsburg, consistent with its goals and objectives to eliminate blight, would amend Section I of the implementation Plan for the Los Medanos Project Area 1999-2004 to include a subsection entitled "Redevelopment Activities."

Mr. Casey recommended that the Agency approve the First Amendment to the Implementation Plan for the Los Medanos Project Area 1999-2004.

Chair Beals opened the public hearing for Resolution 03-903. There were no comments for or against the resolution. Chair Beals closed the public hearing for Resolution 03-903.

On motion by Member Glynn, seconded by Member Parent and carried unanimously to adopt Resolution 03-903.

ADJOURNMENT

The meeting of the Redevelopment Agency adjourned at 7:09 P.M. to the next meeting set for August 4, 2003.

Respectfully submitted,

Lillian J. Pride, Secretary

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CITY OF PITTSBURG
City Council Minutes
July 21, 2003

Mayor Yvonne Beals called the meeting of the City Council to order at 7:10 P.M. in the City Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California, after having met in Closed Session at 5:30 P.M. pursuant to Section 54956.9 of the Government Code, Conference with Legal Counsel - Existing Litigation regarding Communities for a Better Environment and Pesticide Action Network of North America vs. City of Pittsburg, Superior Court Case No. C02-02065 and AFSCME Local 512, AFL-CIO v. City of Pittsburg, Unfair Practice Charge No. SF-CE-108-M; Conference with Legal Counsel - Anticipated Litigation pursuant to subdivision (b) of Section 54956.9 regarding one case; and Liability Claims pursuant to Section 54956.95 regarding William R. Hendricks, Claimant.

Mayor Beals advised that there was nothing to report from Closed Session.

MEMBERS PRESENT: Glynn, Kee, Parent, Rios, Beals

MEMBERS ABSENT: None

STAFF PRESENT: City Manager, Willis Casey
Assistant City Manager, Nasser Shirazi
City Attorney, Linda Daube
City Clerk, Lillian Pride
Director of the Redevelopment Agency, Garrett Evans
Director of Economic Development, Brad Nail
Director of Public Works, John Fuller
Assistant Director of Public Works, Walter Pease
Director of Recreation, Paul Flores
Director of Finance, Marie Simons
Director of Human Resources, Marc Fox
City Engineer, Joe Sbranti
Police Chief, Aaron Baker
Executive Assistant to the City Manager, Alice Evenson

CITIZENS REMARKS

CHARLES SMITH, Pittsburg, expressed concern with the possible litigation against the City from a former police officer. While he recognized that it was Council policy or procedure to send such matters to the City's insurance companies, he suggested that there was a propensity throughout the City's history to reach a settlement. He expressed concern that the residents of the community were unaware whether or not the City had good or bad cops. He suggested that the issues associated with the potential litigation were issues that the people of the community would likely want to be aware. For the good of the City's Police Department, he urged that no settlement be made based on settlements

from the past. He recommended that an actual investigation be conducted in response to some of the charges that had been made.

Mayor Beals clarified for the benefit of the audience that the City Council was not at liberty to speak to potential litigation issues.

BEN JOHNSON, Pittsburg, Chairman of the United Veterans Council, updated the Council on the military tank. He advised that the Veterans Council had procured the tank, had physically recorded the serial numbers of the tank and would be sending off monies to the U.S. Treasury to pay for the demilitarization of the tank. The Veterans Council had also procured transportation to move the tank to the site where it would be located. He expressed his hope that the transportation of the tank would occur in the next three to four weeks and be available for a dedication ceremony anticipated on November 11, 2003.

BERTHA STOBBS, Pittsburg, reiterated previous concerns with mobilehome park inspection fees that she understood remained in the City's budget. She requested that the Council review and approve the inspection fees to allow the inspection of the City's mobilehome parks. She commented that there were almost 700 spaces in two mobilehome parks in the City that needed to be inspected.

Ms. Stobb also spoke to a City ordinance regarding Neighborhood Watch Block parties where a fee of \$150 would be imposed on such events. The Neighborhood Watch Program would also be required to pay the fees associated with \$1 million of liability insurance in order to hold the block parties. She expressed concern that block parties had been held in the past without the imposition of fees. Since the Neighborhood Watch Programs had no budgets and no monies, she requested that the Council consider the waiver of the applicable fees.

Ms. Stobb added that she had attempted to raise the concern with the Community Advisory Committee (CAC) with no success. She explained that she had been involved with the Neighborhood Watch Programs for many years, which programs had been very beneficial in eliminating crime and improving neighborhoods. She added that anywhere from 11 to 15 Neighborhood Watches were held each month. Further, she noted that there had not been a Community Relations Officer since January 2003. She urged the assignment of a Community Relations Officer to offer such services as bicycle registration, fingerprinting and children's ID's, as well as other aspects of community relations. She requested that a Community Relations Officer be appointed as soon as possible. She also understood that there had been a Neighborhood Watch manual which had been available in the past for any Block Captain or participants. That manual was no longer used, although she suggested that it should be used and updated.

WILLIE MIMS, Pittsburg, representing the Black Political Association (BPA), spoke to the serious charges labeled at both the Chief of Police and the City Manager. Whether or not the charges were fact or fiction, he suggested that the Council had the responsibility to the citizens of the City to conduct an investigation. He also commented that he would like to speak to Resolution No. 03-9864 on the Consent Calendar and if not allowed to do so

would consider that a violation of Section 54954.3 of the Brown Act.

COUNCIL REPORTS

Vice Mayor Rios reported that on July 9 she had met with the Redevelopment Subcommittee and a number of citizens to discuss concerns with the California Theater. An update on the Fire Station and other Redevelopment Agency projects had also been provided.

The Vice Mayor advised that she had also met with the Finance Subcommittee to initiate the first step in reviewing City expenditures. It was hoped that everything would be in place by the budget workshop scheduled for July 28. She had also attended a recent League of California Cities seminar in Monterey, with several discussions on the State Budget. She noted that documentation on the budget was available for Council review. Further, Vice Mayor Rios commented that she had attended a seminar on fiduciary responsibility, which seminar she had found to be very informative. She recommended that other Councilmembers attend the next such seminar given its interest and information.

Vice Mayor Rios added that she also had a tour of the Delta View Golf Course along with City staff. She complimented the work and efforts with respect to the golf course and commended City staff efforts to improve that facility.

Councilmember Kee reported that he had also attended the Redevelopment Subcommittee meeting and a Neighborhood Watch meeting for the Americana Subdivision, where concerns had been raised with the insurance requirements for the Neighborhood Watch block parties. He had also met with Councilmember Glynn as the Ad Hoc Committee to review the various City Commissions/Committees, as requested by the Mayor. He presented notes from the last meeting and sought Council comments on that discussion at the Council's convenience.

Councilmember Kee advised that he had also attended the Teen Spirit Festival which had started late since some of the materials had been vandalized. That event had been well attended. He also had the opportunity over the weekend to serve as a judge at the City Talent Show showcasing local talent.

Councilmember Glynn reported that he had attended a Transportation Workshop hosted by Senator Tom Torlakson in the City of Oakley. The discussion at that time focused on Contra Costa and Alameda county transportation issues. He had also met with Councilmember Kee to discuss the Commission/Committee issues and had attended the Measure C Seminar held at the Holiday Inn in Concord which had been attended by a number of elected officials and others.

Councilmember Glynn further reported on meetings with the Economic Development Director to discuss various developments in the City. Additionally, he had attended a number of Rotary Club meetings during the month.

Mayor Beals reported that the City of Pittsburg had been honored with a certificate from the League of American Bicyclists as being a bicycle friendly community. She expressed the City's appreciation for that recognition.

CITY MANAGER REPORT

City Manager Casey advised that the City was still awaiting the results of the finalization of the State Budget.

Director of Recreation Paul Flores reported that the Teen Spirit event had been successful with several activities and events following the theme offered by the Recreation Department of having small events in various City parks.

CONSENT CALENDAR

Councilmember Parent spoke to Consent Calendar Item d related to a Water System Vulnerability Assessment. She commented that the staff report had indicated that cities larger than Pittsburg would be allocated federal funds. She inquired what amount the City could receive and requested that item be pulled to allow a clarification from staff.

On motion by Vice Mayor Rios, seconded by Councilmember Glynn, and carried unanimously to adopt the Consent Calendar, with the exception of Item d, as follows:

- a. **MINUTES** Dated: July 7, 2003
Approved Minutes dated July 7, 2003, as submitted.
- b. **CLAIMS** #1532, Lateefah Anderson
Denied Claim #1532, Lateefah Anderson.
- c. **RESOLUTION 03-9862** Notice of Completion and Acceptance of Public Improvements within Subdivision 8363, San Marco Unit 2, for Continuous Maintenance
Adopted Resolution 03-9862.
The following item was removed for discussion by Councilmember Parent.
- d. **RESOLUTION 03-9864** Award Water System Vulnerability Assessment Consultant Contract

On June 12, 2002, President Bush signed the Public Health Security and Bioterrorism Preparedness and Response Act. The Act includes significant new requirements for drinking water utilities to better prepare for a terrorist attack by preparing a Vulnerability Assessment. The Public Works Department had selected the consulting firm of

Kennedy/Jenks Consultants to assist in responding to this Federal mandate, which must be completed no later than December 31, 2003 of the City of Pittsburg.

Councilmember Parent questioned whether or not the City could be reimbursed for the costs of the mandated assessment.

Assistant Director of Public Works Walter Pease explained that the federal government had given large water districts \$115,000 each. The medium to smaller water districts had been promised technical help and support, although no actual funds. The technical help and support would consist of a couple of days worth of classes, which would meet many of the City's needs. He expected no financial assistance from the federal government.

WILLIE MIMS, Pittsburg, inquired whether or not the contract had been put out to bid since it appeared as if only one contract company had been consulted.

Director of Public Works John Fuller advised that consultant contracts for services like the subject project were not required to be bid like a contract for construction projects. In this instance, the City would be paying for a service. The City had solicited proposals from three different companies, with the Kennedy/Jenks proposal considered to be the best value for the dollar.

On motion by Councilmember Glynn, seconded by Councilmember Parent and carried unanimously to adopt Resolution 03-9864.

CONSIDERATION

1. **ORDINANCE 03-1212**
Combined w/03-9860 Adoption of the Mitigated Negative Declaration and Mitigation Monitoring Plan and Adoption of an Ordinance Amending the Zoning Map from RM to RS-O and Adoption of a Resolution to Approve Tentative Subdivision Map 8112. (Lawlor Estates. RZ-02-13 and Subdivision 8112)

2. **RESOLUTION 03-9860**
Combined w/03-1212 Adoption of Resolution to Approve Tentative Subdivision Map 8112 (Lawlor Estates RZ-02-13, Subdivision 8112)

City Manager Casey advised that on July 7, 2003 the City Council introduced Ordinance 03-1212, which would rezone a 10.8 acre site on the south side of West Leland Road, east of Evergreen Estates Subdivision and west of Chestnut Drive.

The rezoning would be from RM (Medium Density Residential) to RS-O (Single Family Residential with a Limited Overlay). Ordinance 03-1212 had been submitted to the Council for the second reading and adoption. On July 7, 2003, the Council also denied the appeal of Tentative Subdivision Map 8112. Staff had prepared a resolution for Council adoption to reapprove the proposed subdivision.

Mr. Casey explained that there would be no fiscal impacts associated with the project. He recommended that the Council adopt the ordinance adopting the Mitigated Negative Declaration and Mitigation and Monitoring Plan and Amend the Zoning Map from Medium Density Residential to Single Family Residential with a Limited Overlay, as shown in Exhibits A and B to the staff report dated July 21, 2003. He also recommended that the Council adopt a resolution approving Tentative Subdivision Map 8112, subject to conditions.

On motion by Councilmember Glynn, seconded by Councilmember Parent and carried unanimously to adopt Ordinance 03-1212.

Councilmember Parent advised that she had originally voted against the item and would be consistent in voting against the resolution portion of the project again. She opposed the overlays for the size of the lots and the height of the buildings.

Councilmember Kee commented that for the sake of consistency he too would be voting against the item as he had initially voted. He clarified that he would like to see the project succeed and wished the developer all the best in doing so.

On motion by Councilmember Glynn, seconded by Vice Mayor Rios and carried by the following vote to adopt Resolution 03-9860.

Ayes: Glynn, Rios, Beals
Noes: Kee, Parent

3. **RESOLUTION 03-9861** First Amendment of the Stormwater Utility Area Agreement 2003 Between the Contra Costa County Flood Control and Water Conservation District and the City of Pittsburg

City Manager Casey reported that approving the resolution attached to the staff report dated July 21, 2003 would authorize the City Manager to execute the First Amendment of the Stormwater Utility Area Agreement 2003, which allows the Contra Costa County Flood Control and Water Conservation District to administer a joint inspection program for inspection activities and illicit discharge control activities related to the Joint Municipal National Pollution Discharge Elimination System (NPDES) Permit.

Mr. Casey explained that the fiscal impact of entering into the proposed agreement would be approximately \$19,250 a year for the next six years.

The NPDES monies would fund the inspection program resulting from the proposed agreement which would come from the special storm water assessment described in the Stormwater Utility Area Agreement approved on July 7, 2003 by the City Council and which could only be used to fund NPDES activities. The adoption of the resolution would not affect the General Fund or any other City funds.

Mr. Casey recommended that the Council adopt a resolution approving the First Amendment of the Stormwater Utility Area Agreement between the Contra Costa County Flood Control and Water Conservation District and the City of Pittsburg.

On motion by Mayor Beals, seconded by Vice Mayor Rios and carried unanimously to adopt Resolution 03-9861.

4. **RESOLUTION 03-9863** Approve Renewal of Rubicon Programs Environmental Center Lease

City Manager Casey advised that in August 2001, the City of Pittsburg and Rubicon Programs developed an agreement which provided for a combination of landscaping and building maintenance services and financial compensation by Rubicon Programs in exchange for the use of a 1,344 square foot office space, and occasional use of a meeting room, at the Environmental Center (EC). The two-year lease agreement would expire on July 30, 2003. Both the City of Pittsburg Public Works Department and Rubicon Programs were interested in extending the lease. He requested City Council authorization to extend the lease agreement.

Mr. Casey explained that Rubicon paid \$100 a month in rent, \$24 per month for basic domestic water and a portion of the costs for the electric and gas utilities for the property. Rubicon also performs or had performed services including repainting the exterior of the EC building, regular maintenance of the EC grounds, irrigation repair and the propagation of plants in the EC greenhouse. Those services helped to reduce the Public Works landscape maintenance costs. He recommended that the Council adopt a resolution extending the lease agreement, direct the City Attorney to prepare an amendment and authorize the City Manager to execute the agreement on behalf of the City of Pittsburg.

Vice Mayor Rios acknowledged concerns that she had in the past when the firm had not provided detailed information. She was pleased with the program. As an employee of the Social Security Administration, she had also seen the results of the program.

On motion by Vice Mayor Rios, seconded by Councilmember Glynn and carried unanimously to adopt Resolution 03-9863.

5. **RESOLUTION 03-9867** Approve Letter to Contra Costa Transportation Authority (CCTA) Requesting the Buchanan Road Bypass and Range Road Interchange be included in the Measure C Reauthorization Project List

City Manager Casey requested that the Council review and approve the draft letter attached to the staff report dated July 21, 2003 to the Contra Costa Transportation Authority (CCTA) expressing the City's desire to see the Buchanan Road Bypass Project and the Range Road Interchange Project included in the Authority's Measure C Reauthorization Project List. The Measure C Reauthorization Project List is part of a ballot measure to extend the County's half-cent sales tax for transportation improvements.

Mr. Casey advised that if the two identified projects were included in the Measure C Reauthorization Project List and if the ballot measure were to pass, the projects could then become fully funded with the only local funding coming from the City's local traffic mitigation fees.

Mr. Casey recommended that the Council review and approve the draft letter to the CCTA requesting that the Buchanan Road Bypass and Range Road Interchange projects be included in their Measure C Reauthorization Project List.

BEN JOHNSON, Pittsburg, commented that as a long time advocate for the projects he expressed his hope that the projects would be included in the Measure C Reauthorization. However, he requested clarification of whether or not the City would be spending the entire \$10 million plus in mitigation fees on the project. He understood that the Range Road project could cost approximately \$18 million. He requested a response, in writing, as to how the structure of the mitigation fees would be spent for the project and where the other funds would come from aside from the mitigation fees and Measure C, if Measure C was not reauthorized.

Councilmember Kee requested clarification from staff in that the City was planning an overcrossing, not an interchange for Range Road. He inquired whether there was one and the same project or whether an overcrossing or a freeway interchange was being requested to be funded through Measure C.

City Engineer Joe Sbranti explained that the draft letter had not been specific in that the request from many citizens was that a full interchange be provided at Range Road. He commented that there was some difficulty in showing the relevancy on a regional basis that a full interchange would qualify for regional funding. Staff was of the opinion that relevance could be shown in terms of an overcrossing as to how it would benefit regional traffic. He otherwise suggested that a full interchange at Range Road might be difficult and that the funding would probably be for just the overcrossing.

Councilmember Kee inquired of the costs of the full interchange as opposed to an overcrossing, to which Mr. Sbranti commented that he had seen a difference in costs ranging anywhere from \$10 million or more.

As the Chair of the TRANSPLAN Committee, Councilmember Glynn advised that the Buchanan Road Bypass had been discussed for many years with the project close to being approved. He suggested that muddying the waters of the Buchanan Road project with the inclusion of the Range Road Interchange in the same document was not recommended.

Councilmember Glynn strongly recommended that the letter not be sent in its currently drafted form.

Councilmember Parent commented that recent communications regarding the Buchanan Road Bypass itself had indicated that if the State cut traffic monies the project

could lose State funds. She recognized that Buchanan Road was currently the regional contact from East to Central County, as was State Route 4, and she agreed with the comments regarding Range Road. She would rather retain the possibility of improvements to Buchanan Road if the State were not to help the City fund that project.

Mayor Beals agreed that the letter should not be submitted in its current form and that perhaps it should be deferred. She emphasized the need for the Council to seriously consider the relevancy of the Measure C dollars and what the City might request in the way of projects. As to the Buchanan Road Bypass and how it would be funded, she noted that if through the City's Local Traffic Mitigation fees, it would be a large detriment to the use of those funds. Until other regional fees or other sources of funding for the project could be found, she suggested that the Council highly consider the placement of other projects on the Measure C Reauthorization Project List. She opposed placing a project on the list that might not be well received by others which could harm the project and potential funding sources.

Mayor Beals emphasized the need to consider other possible projects and perhaps one that did not have a \$45 million cost. She suggested that the letter be modified and returned to the Council for review. She otherwise understood that there was no urgency to send the letter other than to state the City's support for its projects. She recommended that the letter return to the Council in another form at a later date and that it be more specific as related to Range Road with the possible consideration of the Buchanan Road improvements and potentially other improvements as well.

Councilmember Glynn pointed out that Buchanan Road was currently inundated with morning and afternoon traffic, primarily from those traveling through the City to reach other destinations as opposed to being utilized specifically by City residents. He also suggested that if the Buchanan Road Bypass was ever realized, it was likely that Buchanan Road would continue to be used to its capacity and that additional metering might have to take place over the hill. He emphasized that Buchanan Road and the future bypass, in and of themselves would be major arteries that would continue to be used by those residing to the east of Pittsburg as a major alternative route, or singular alternative to the use of State Route 4.

Councilmember Glynn suggested that the funds should be concentrated on anything to do with the Buchanan Road Bypass being adopted as well as improvements to Buchanan Road, particularly for the section between Buchanan Park and Railroad Avenue.

Mayor Beals agreed, although she noted that as indicated in the staff report, the only sources would be through local funds.

The Mayor expressed her uncertainty whether or not the local dollars should be spent on the Buchanan Road Bypass, especially when City residents were not those using that road. Until it could be determined how the regional fee could possibly fund that project or other projects, she suggested that the Council should defer the submittal of the letter.

Councilmember Parent commented that approximately fifteen years ago, City staff had thought at that time that it had worked out funding with the City of Antioch to fund the Buchanan Road Bypass through regional cooperation. That arrangement had ultimately not worked out. She suggested that the objections to spending money that would ostensibly only help the City of Antioch was an ironic reversal.

Councilmember Parent emphasized the need to work together. She pointed out that Measure C funds were generated from all over the County and the cities in the County would have to work together to provide the projects that would benefit all. She emphasized the need to have a project on the list to entice East County voters to vote for the half cent sales tax to fund projects that would benefit East County. She pointed out that other cities in the County had received the bulk of the monies that East County had paid for over the past several years. Councilmember Parent recommended that the City identify one or two projects and then meet cooperatively with the other East County cities to ensure a united voice in the Measure C reauthorization effort.

Mayor Beals questioned if the Buchanan Road Bypass were placed on the list whether or not it would be partially or fully funded.

Mr. Sbranti explained that currently there was a portion of funding that had been allocated through the Regional Traffic Mitigation Fees. Measure C would also contribute to that. If the local fees also contributed and some of the roadways were fronting developments, developers would contribute as well, creating the potential to cover the total cost of the project. As to any possible shortfalls, he noted that it was very early in the process to make such a determination without knowing how much Measure C could contribute.

Mr. Sbranti added that another agenda item would speak to regional fees. How that moved forward would also determine how much funding would be needed.

Councilmember Glynn stated that it was imperative that the region work together to accomplish the needed projects. He commented that a project that had a significant amount of support throughout the voting populace was the fourth bore of the Caldecott Tunnel which would involve major expenses and ever increasing costs of construction. In terms of the Buchanan Road Bypass, he stated that rejoining the East Contra Costa Regional Fee and Financing Authority (ECCRFFA) could be one way to pay for a large portion of any improvements to Buchanan Road.

Councilmember Glynn emphasized that Buchanan Road was considered by the voting constituency to be a major artery through the City of Pittsburg in order to travel to Walnut Creek as an alternative to State Route 4. Similarly, the City was improving the Pittsburg/Antioch Highway, which had also been considered to be the north side arterial in lieu of State Route 4 traveling west. He suggested that regional cooperation needed to be focused to work that out.

Councilmember Parent recommended that the letter be sent back to staff to be

redrafted and returned to the Council for reconsideration at its August 18 meeting.

On motion by Councilmember Parent, seconded by Mayor Beals and carried unanimously to redraft the letter to the Contra Costa Transportation Authority (CCTA), as discussed, with the letter to be returned to the Council for consideration on August 18.

6. **RESOLUTION 03-9868** Approving a List of Material Testing Firms for On-Call Material Testing Services Related to the City's Capital Improvement Program and Authorizing the City Manager to Enter into Agreements with Selected Firms

City Manager Casey noted that the material testing on-call list would allow staff to use pre-qualified material testing firms on an as-needed basis to perform quality control testing on Capital Improvement Program Projects.

Mr. Casey advised that there would be no fiscal impacts as a result of approving the proposed on-call material testing list. No contracts would be issued to any firms on the list without City Council approval of project funding that would include a budget for material testing. He recommended that the City Council adopt a resolution approving the on-call material testing list and authorize the City Manager to enter into agreements with selected firms.

WILLIE MIMS, Pittsburg, inquired of the projected total cost of the project and inquired why the cost had not been included in the staff report. He suggested that staff would likely return to the Council at some point in the future requesting more funds.

City Engineer Sbranti explained that each contract was presented to the City Council and each contained a line item for materials testing. Within each budget, the Council was allowed an opportunity to approve that line item. The Council was not being asked to approve any funding for the consultants at this time. Each time a project was presented for consideration, there would be a dollar amount for the Council to approve or disapprove.

On motion by Councilmember Parent, seconded by Councilmember Glynn and carried unanimously to adopt Resolution 03-9868.

7. **MINUTE ORDER** Approve a Letter Outlining City Council's Comments on Draft Principles of Agreement for the Shaping Our Future Compact

City Manager Casey explained that the City Council had been asked to provide a letter stating its position on the Draft Principles of Agreement for the Shaping our Future Compact. A letter drafted by staff, which incorporates Council feedback on the Compact, had been presented for approval.

Mr. Casey advised that there would no fiscal impacts associated with the approval of the letter. He recommended that the Council approve the wording of the letter and

authorize the Mayor to sign the letter and have it mailed on the Council's behalf.

BRUCE OHLSON, Pittsburg, congratulated the City on its award as being a bicycle friendly community. He was speaking on his own behalf and not as a bicyclist at this time. In that regard, it appeared as if the Urban Limit Line (ULL) would be a serious issue of contention in the Shaping our Future Compact. He commented on his understanding that both the cities of Oakley and Antioch had indicated that they would try to derail Measure C if the Shaping our Future Compact was adopted and if the ULL portion of the Compact was adopted as part of Measure C.

Mr. Ohlson added that he was a member of an advisory committee to the CCTA. As a long time observer of the transportation situation in East County, he requested that the City bow out of the ULL controversy at this time given that the City did not need the bad publicity that would accompany the controversy related to the ULL. He also suggested that the City's response to Principle 1, Urban Limit Line, as contained in the proposed letter, should be silent. He took exception to the statement that sending the letter would not cost the City any monies in that it could cost the City and the entire County Measure C. He suggested that the City wait until the March 2004 County vote on the ULL to enter the fray.

ROGER RILEY, Pittsburg, was uncertain of the impacts from the letter, although he recommended that more details be made available to the public before any comments were made. He suggested that the letter be deferred until the impacts of such a proposal could be identified through a public hearing.

Councilmember Glynn stated that he had serious concerns with the letter, particularly related to the ULL and the concepts listed in the letter which were not mutually exclusive. He suggested that the letter was premature. He also objected to the CCTA requesting that it have control of land uses as opposed to the County, which was currently involved in land use resolution issues. He strongly supported the return of land use decisions to the 19 cities in Contra Costa County, as opposed to the County Board of Supervisors, which could further constrain the ULL. He advised that he would not vote for the document in any form.

Councilmember Kee also expressed concern with the way that the response to Principle 1 had been worded, which was basically asking a group that had no control over the ULL to change it. The way that section had been written implied that if the ULL was changed the City would support the program, which he suggested was not fair to the Shaping our Future process.

Councilmember Parent recognized that the letter was a response to the Shaping our Future Committee in that it was reflective of the City's ideas. She too had attended the recent Shaping our Future Workshop which had been attended by many elected officials and others. As to the ULL as drawn, which excluded the City's Marina from inside the City limits, she had no problem indicating that was an error in that the City had the right to develop its own Marina. Councilmember Parent suggested that the City should indicate that it did not like certain aspects of the ULL and would reserve the right to continue to comment on those aspects, particularly in regards to the Montreux project on Kirker Pass

Road. She clarified that the City of Pittsburg was not saying as it had been reported that the City would not support Shaping our Future unless the ULL was changed, the City simply did not like the ULL as it was currently drawn.

Councilmember Parent commented that possibly the Shaping our Future group with enough exceptions would sit down and rethink that issue. She recognized that the City faced the potential of having someone else determine the future of the City of Pittsburg. She also suggested that the proposal that the ULL be placed on the ballot was preposterous in that the Board of Supervisors had been elected by the populace in the County to make decisions. Passing those decisions to the voters would abdicate that responsibility. She agreed that the City's planning decisions should be made by the City and that the City should make its comments now in terms of trying to influence those that were trying to get every City in the County to work together.

Councilmember Parent pointed out that the Shaping our Future Compact was not a law. It was an agreement to discuss the issues. She suggested that the City should respond rather than being silent on the issue. She specifically commended the City's response to Principle 6. As to Principle 1, if the Council wished to redraft that section, she would support modifications to that section.

Councilmember Glynn referenced the Thomas Ranch property, which was currently outside of the ULL, outside of the City limits and outside the City's Sphere of Influence (SOI). If the Buchanan Road Bypass were to be placed through that area with a selection of a central route, the Thomas Ranch property and the Buchanan Road Bypass could be incorporated within the City limits. Additionally, the annexation of the Montreaux property was outside of the ULL, the City limits and the City's SOI. He also referenced the Buchanan Road Bypass continuation from Kirker Creek to Bailey Road, which would take into consideration Bailey Road Estates, also outside of the ULL, the City limits and the City's SOI.

Councilmember Glynn further spoke to the potential annexation of Ambrose Park to include the pool which was outside of the City limits but within and surrounded by the City of Pittsburg. The annexation of the Mirant property was outside of the City limits. Further, the annexation of Sky Ranch II was outside of the City limits. The City Marina, while inside the City limits was situated outside of the ULL.

Councilmember Glynn commented that he had copies of the latest maps he had reviewed with the Director of Planning which reflected that the ULL must have been drawn by someone with no knowledge of the City of Pittsburg. He otherwise agreed that the City must have a response since no response would result in the City being a victim to the process.

Councilmember Glynn concurred with the comments that the letter should be redrafted so that it would make sense with respect to what the City was attempting to do and then move forward with the process. While he recognized that Councilmember Kee had spent months involved in the process, and while he did not disagree with the process,

he suggested that the group had skillfully avoided at all costs the mention of the ULL up until the time when Mr. Kee had not been present and when concerns related to the ULL had been raised.

Vice Mayor Rios thanked staff for the preparation of the response letter and while in support of the letter since the City needed to be at the table and share its concerns, she was not in support of the Shaping Our Future “agency.” She suggested there remained too many unanswered questions. She did not believe that the cities should give up their rights. Vice Mayor Rios agreed with Councilmembers Parent and Glynn regarding the ULL and she agreed that the Board of Supervisors was not fulfilling its responsibility in that regard. She pointed out that many voters who did not live in the City of Pittsburg would be asked to make a decision for the City of Pittsburg, which was totally unfair. While she was in agreement that the letter should be revised, she emphasized that the City should also participate in the process to share its concerns.

Councilmember Kee thanked staff for the preparation of the letter and acknowledged that the responses were reflective of the conversations that had occurred. Again speaking to Principle 1 and whether or not the Council agreed with the ULL issues, he noted they were asking for the ULL to be changed in order to participate in the program. He suggested that a better way would be to indicate that the City reserved the right to seek changes to the ULL and still participate in the process as opposed to not participating in the process unless the ULL was changed. He suggested that would represent a willingness to participate in a spirit of regional cooperation while still allowing the City's concerns to be expressed.

Mayor Beals expressed her appreciation for the comments and shared the concerns with Principle 1, as written. She requested that staff return with a redrafted letter for Council review.

Planning Manager Melissa Ayres commented that the first paragraph of Principle 1 was a direct response to the question. The remainder of the response in that section had been in response to individual Councilmembers. The first paragraph could be retained with the remaining comments deleted which would allow the City to be counted when the committee made the next changes.

Ms. Ayres explained that there had already been one round of changes since the May 17 meeting. If the letter was not submitted now, the City would not be included in the second round of changes.

Councilmember Glynn reiterated his objection to the fact that 18 other cities in the County would have something to say about the ULL within the City of Pittsburg. He emphasized that Central County would win at the City's loss. He did not support the document in its current form. He referenced the June 2003 Draft Responses to Draft Principles of Agreement, and recommended the following revision to the second sentence of Principle 4.

4. *The Contra Costa Transportation Authority should continue to function as the clearinghouse for dissemination of information and facilitator of solutions involving transportation routes of regional significance.*

With the elimination of the word “overseer” to be replaced with the term “agency” in the third sentence of Principle Six, Housing Elements, would now read:

6. *An agreed upon agency will maintain a database of the housing elements of the cities and the County, accessible from all City and County planning offices.*

To the second sentence of Principle 9, School District Coordination:

9. *The County and local municipalities agree in principle to collaborate with school districts plus area colleges and universities to continue to improve educational opportunities for area citizens.*

And to the first sentence of Principle 12, Common Vision:

12. *The County and local municipalities principally agree and acknowledge that the Shaping Our Future Vision will guide transportation planning and coordination among jurisdictions.*

Mayor Beals spoke to Principle 1 and suggested that there should be some language to indicate the City’s preservation of land use decisions within the City’s jurisdiction. She made a motion that the draft letter be revised with the suggested changes and that staff revise Principle 1 to reflect the Council's comments, with the draft letter to be returned to the Council on August 18.

Councilmember Parent suggested that eliminating everything in the response to Principle 1, with the exception of the first paragraph, would address in part some of the issues being discussed regarding the ULL.

Mayor Beals restated the original motion to revise the draft response letter, as proposed, with the changes proposed by Councilmember Glynn and with the elimination of the second, third and fourth paragraphs under the Draft Response to Principle 1, with the letter to be returned to the Council on August 18, 2003.

Vice Mayor Rios seconded the motion.

Councilmember Parent understood that would be too late to respond to the Shaping Our Future Compact. She suggested that the changes could be made now.

Ms. Ayres suggested that if the changes were made by the Council now, the letter could still be reviewed by the Mayor prior to signing to ensure that the information, as discussed, had been included. As to the deadline for response, she noted that the deadline had passed and that the City had informed the Shaping Our Future Compact that the City

would be responding.

Mayor Beals inquired whether or not the Council would be comfortable with those changes. She also clarified that the response to Principle 1 would only include the first paragraph unless the Council wished to agree upon language to ensure local control of land use issues.

Ms. Ayres noted that the last sentence of Principle 3: General Plan and Zoning Maps which read “Even while working towards a common regional vision, jurisdictions will retain local control of general plans and zoning of land within its municipal boundary,” which should address some of the concerns expressed.

Mayor Beals pointed out that the statement had not addressed the City’s SOI.

Councilmember Glynn advised that he was only in concurrence with the first paragraph, the draft response to Principle 1.

Mayor Beals amended her initial motion, to approve a letter outlining the City Council’s comments on Draft Principles of Agreement for the Shaping Our Future Compact, striking all but the first paragraph of Draft Response to Principle 1, including the recommended language changes proposed by Councilmember Glynn with the Mayor to review and sign the letter with consent through the vote on this motion.

Vice Mayor Rios as the second to the initial motion, accepted the amendment to the motion.

On motion by Mayor Beals, seconded by Vice Mayor Rios, and carried unanimously to approve a letter outlining the City Council's comments on the draft principles of agreement for the Shaping Our Future Compact; striking all but the first paragraph of Draft Response to Principle 1, including the recommended language changes proposed by Councilmember Glynn with the Mayor to review and sign the letter with consent through the vote on this motion.

8. **RESOLUTION 03-9869** Adopt a Resolution in Support of Assembly Constitutional Amendment 10 (ACA 10) Which Will Allow Cities and the County to Increase Stormwater Assessments

City Manager Casey reported that there was a Statewide need to provide sufficient revenue to fund the National Pollutant Discharge Elimination System (NPDES) Clean Water Program in each city and county. Assembly Constitutional Amendment 10 (ACA 10) would add storm water to the exemptions under Proposition 218. This Legislation would provide as much flexibility as possible for the cities and counties to adopt Stormwater fees to fund their clean water programs.

There would be no fiscal impact to the City although should Proposition 218 pass, the flexibility to increase the existing stormwater assessment would help in continuing to fund

the new stringent requirements of the NPDES program. Mr. Casey recommended that the City Council adopt the resolution in support of ACA 10.

On motion by Vice Mayor Rios, seconded by Councilmember Glynn and carried unanimously to adopt Resolution 03-9869.

9. **RESOLUTION 03-9865** Appointing a Council Subcommittee to Initiate Discussions with the East County Transportation Improvement Authority (ECTIA) and Approving an Approach to Expedite an Increase in the Regional Traffic Mitigation Fees

City Manager Casey explained that as directed by the City Council on May 19, 2003, staff met with representatives of the East County Transportation Improvement Authority (ECTIA) and TRANSPLAN to discuss the possibility of the City becoming a full partner in East County's regional transportation mitigation fee programs. Further, staff has reviewed the possibility of implementing an increase to the City's regional fees on a short term basis while continuing to meet with ECTIA and other regional transportation authorities. Staff is requesting that the Council select a subcommittee of two Councilmembers to initiate discussions with ECTIA and further, direct staff to return to the Council in August to begin the process to increase the City's regional transportation mitigation fee.

The resolution would direct staff to begin a process to raise the regional transportation mitigation fees charged to new development under Municipal Code Section 15.100. The City currently charged \$1,409 per square foot, whereas other East County jurisdictions currently charged \$7,902.

Mr. Casey recommended that the City Council adopt a resolution appointing an Ad Hoc Subcommittee of two Councilmembers to initiate discussions with ECTIA regarding full partnership in East County's Regional Traffic Mitigation Fee programs and direct staff to move forward with the process to implement an immediate Regional Traffic Mitigation Fee increase based on Fehr & Peers Associates, East Contra Costa Fee Program Update Draft Report, dated May 1, 2001.

Councilmember Glynn made a motion to adopt Resolution No. 03-9865, assigning himself and Councilmember Kee as the Ad Hoc Committee members.

Councilmember Parent commented that she had waited for the item for seven months. She inquired what the Council would be presented in August in that she would not want a suggestion, she sought a resolution, a report or something that the Council would be asked to adopt sooner rather than later.

City Attorney Linda Daube explained that if the Council desired to increase its Regional Transportation Fees, there were processes involved and it would take approximately 90 days to get the fees through that process. Staff would likely return in August to initiate that process. Thereafter it could take 90 days.

On the motion, Councilmember Kee stated that he had the same concerns as Councilmember Parent. He requested assurance that the process would be expedited since the issue had been initiated some time ago. He sought clarification that the Council would have some sort of resolution to take some action in the near future. He seconded the original motion.

Vice Mayor Rios advised that she would not be voting for the item to be consistent with the past actions she had taken on the issue. She emphasized the need for the City to take a careful look before the matter returned to the Council. She suggested that the nexus should support the reasons why the fees were to potentially be increased. Until such reasons were presented to her, she would not support the action recommended by staff.

Councilmember Glynn clarified that he had recommended that he and Councilmember Kee serve on the Ad Hoc Committee since he was the Chair of the TRANSPLAN Committee and Councilmember Kee was the Alternate.

On motion by Councilmember Glynn, seconded by Councilmember Kee to adopt Resolution 03-9865 by the following vote:

Ayes: Glynn, Kee, Parent, Beals
Noes: Rios

10. **RESOLUTION 03-9871** Allocation of Funding for the Enterprise Zone Fee
Combined w/RDA 03-902 Waiver/Reduction Program

On February 18, 2003, the City Council approved a Memorandum of Understanding between the State of California and the City of Pittsburg (the "MOU") to set forth the terms, conditions, and Scope of Work for the local participation in the Enterprise Zone Program and delivery of program services. A Fee Waiver/Reduction Program was approved when the Council approved the MOU on February 18, 2003; however, a mechanism to allow the Agency to reimburse the City for the cost of such fee waivers or reductions was not approved at that time.

In order to allow the Agency to reimburse the City for the cost of the waived or reduced fees, money needs to be approved for such use.

Action was taken to adopt Resolution 03-9871 in Joint Session with the Redevelopment Agency, as follows:

On motion by Vice Mayor Rios, seconded by Mayor Beals and carried unanimously to adopt City Council Resolution 03-9871.

11. **RESOLUTION 03-9872** Authorizing Staff to Negotiate an Agreement for
Information Technology Management and Support
Services

City Manager Casey reported that in April 2003, staff issued Request for Proposals for Information Technology Services. Twenty-one proposals were received. The proposals were reviewed and the field of qualified firms narrowed following a predetermined procedure. The review process included interviews with top ranked firms. Staff requests Council authorization to negotiate an agreement with the top ranked finalist. The goal of negotiation would be to agree on a final scope of services and cost that delivers the services at a fair and reasonable price. Upon successful completion of the negotiations, the agreement would be presented to the Council for approval.

The fiscal impacts to the City would be the costs incurred related to staff time to be devoted to the negotiation process. No overtime costs would be incurred. Staff costs had also been included in the adopted budget. The fiscal impact of the negotiation process was expected to be minor.

Mr. Casey recommended that the City Council adopt a resolution authorizing the administrative staff to negotiate an agreement with Baton Rouge International Incorporated (BRI) Information Technology Management and Support Services.

Mayor Beals expressed her appreciation to Assistant City Manager Nasser Shirazi for his efforts on the item. She recognized the time and effort involved and was impressed that the City had a long list of firms that had shown some interest in providing the needed City services. She commended Mr. Shirazi for his hard work and attention given to the matter which had been a priority set by the City Council.

On motion by Mayor Beals, seconded by Vice Mayor Rios and carried unanimously to adopt Resolution 03-9872.

12. **RESOLUTION 03-9873** The Reimbursement of City Fees Waived for the
Combined w/RDA 03-901 Construction of the Mt. Diablo Habitat for Humanity Fee
Herb White Way Project

Pursuant to the Disposition and Development Agreement Between the Redevelopment Agency of the City of Pittsburg and Mt. Diablo Habitat for Humanity, Article 7, Section 702, the Agency agrees to pay all fees ordinarily imposed directly by the City of Pittsburg on a project of this kind, including without limitation, parkland dedication fees, traffic impact fees and all permit and plan checking fees.

Action was taken to adopt Resolution 03-9873 in Joint Session with the Redevelopment Agency, as follows:

On motion by Vice Mayor Rios, seconded by Councilmember Glynn and carried unanimously to adopt Resolution 03-9873.

13. **RESOLUTION 03-9870** Approving a Memorandum of Understanding By and
Between the City and USS-POSCO Industries for the

Relocation of Segments of Two Pipelines Owned,
Operated and Maintained by USS-POSCO

City Manager Casey reported that the construction of the State Route 4 Flood Relief Project necessitates the relocation of two pipelines owned, operated and maintained by USS-POSCO Industries (UPI); one 18-inch (450mm) and the other 24-inch (600mm) in diameter. The pipelines are used for the transmission of non-potable water for use in industrial processes. The relocation of the pipelines is included in the scope of work for the State Route 4 Flood Relief Project. The proposed Memorandum of Understanding by and between the City and USS-POSCO specifies the general framework under which the pipeline relocation is to be financed, engineered, constructed and administered.

There would be no fiscal impact to the City since no additional allocation of funds was required for the financial liability to be incurred by the City as a result of the approval of the MOU. In the event of one or more failures of UPI's pipelines, the City's maximum liability would be limited to a net amount of \$60,000 to be paid from funds previously allocated for the construction of the State Route 4 Flood Relief Project.

Mr. Casey recommended that the City Council adopt a resolution authorizing the City Manager to execute the Memorandum of Understanding (MOU) on behalf of the City. He further recommended that the City Engineer be authorized to take all such actions necessary to fulfill the obligations of the City in accordance with the provisions of the MOU.

Councilmember Glynn made a motion to approve the staff recommendation.

City Engineer Sbranti advised that staff would like to introduce Item K, to be attached to the MOU previously distributed. He requested that the resolution be amended to include Item K, at the end of the MOU.

Councilmember Kee amended his motion to include Item K, as recommended by staff.

Vice Mayor Rios seconded the motion.

In response to the Council, Mr. Sbranti read into the record Item K in its totality as follows:

Item K:

No provision of this MOU shall be construed as prohibiting UPI from performing any necessary rehabilitation or replacement of those existing segments of the 18-inch and 24-inch pipelines to remain within the Pittsburg/Antioch Highway. Any such rehabilitation or replacements shall be subject to the provisions of the Pittsburg Municipal Code as it pertains to the work within the public right-of-way. Any rehabilitation or replacement of the existing pipelines segments within the railroad right-of-way shall be subject to the requirements of the Union Pacific Railroad and the

Public Utilities Commission. Prior to the completion of the relocation of the UPI's water lines, the City of Pittsburg will make efforts to coordinate with UPI in an attempt to facilitate the rehabilitation or replacement of existing UPI water lines under the Pittsburg/Antioch Highway and the Union Pacific Railroad.

On motion by Councilmember Glynn, seconded by Vice Mayor Rios and carried unanimously to adopt Resolution No. 03-9870, as amended.

PUBLIC HEARING

1. **RESOLUTION 03-9866** Approving a Consent Judgment Resolving All Claims in the Matter of *Communities for a Better Environment ("CBE") and Pesticide Action Network of North America ("PANNA") v. City of Pittsburg and the Dow Chemical Company*, Civil No. C02 02965

City Manager Casey advised that on July 19, 2002, the Communities for a Better Environment ("CBE") and the Pesticide Action Network of North America ("PANNA") filed a lawsuit challenging a proposed Sulfuryl Fluoride Modernization Project to be built at Dow Chemical plant in the City of Pittsburg. The parties had been negotiating for almost one year to resolve all claims without further litigation. On June 6, 2003, the City Council approved a tentative settlement providing that the parties would continue to develop a Consent Judgment that would be presented at a City Council meeting for a public hearing prior to final approval of the court. Staff presented the Consent Judgment for Council Consideration.

There would be no fiscal impacts in approving the Consent Judgment. Pending approval by the court, all issues and litigation would be settled.

Mr. Casey recommended that the City Council open the public hearing, accept public comment, close the public hearing, and adopt a resolution approving a Consent Judgment.

Mayor Beals opened the public hearing for Resolution 03-9866.

CHARLES SMITH, Pittsburg, identified himself as an environmental scientist and commented that he lived less than a mile from the environmental release pathways of Dow Chemical. He spoke to part six of the agreement, specifically Page 7, and read that section into the record. He noted that section left out the element of discovery. He expressed concern that in the future, it was possible that sulfuryl chloride could be found to be dangerous or beneficial. He added that staff had admitted early on in the process that it did not have the expertise to understand California Environmental Quality Act (CEQA) documentation and work. Knowing that and knowledgeable of the fact that Dow Chemical had the financial wherewithal to do what it wanted to do, he expressed concern that the Consent Judgment appeared to gloss over what could occur in the future. Since no one could predict what could occur in the future, he objected to the situation where future obligations would be non-negotiable.

DENNIS PEARL, Principle, Performance Mechanical, located on West Tenth Street, Pittsburg, explained that they had been in business in the City since 1985 and employed a large number of construction personnel and expected to participate in the development of the plant with Dow Chemical. He recognized the work done by staff to resolve the situation and he urged the Council to approve the Consent Judgment to allow the project to proceed.

WILLIE MIMS, Pittsburg, commented that on June 17 he had appeared before the Council at which time he had offered a challenge that the Council not approve the project, although the project had ultimately been approved. The lawsuit had subsequently been filed against the City as a result of that action. He suggested that those wrong decisions historically made by the Council would cost the City dearly. While no costs had been incurred by the City in this instance, he stated that it had cost Dow Chemical \$1 million.

Mr. Mims spoke to Page 4, Section (c) of the Consent Judgment, which referenced CEQA processes and noted that the City was not qualified and did not understand CEQA law. He questioned staff's submittals of Negative Declarations, exemptions and the like. He commented that the subject project had been determined to be a Category Two, Replacement Facility, which was inaccurate in that the tank involved in the project had increased from 95 to 125 feet in height. He suggested that the City had been lucky in this case since it had not been sued.

City Attorney Linda Daube identified for the record letters that had been received from the Plaintiffs, including a letter from the Pesticide Action Network of North America (PANNA) dated July 21, 2003, supportive of the Consent Judgment, and a letter from Communities for A Better Environment, via facsimile dated July 21, 2003, also in support of the Consent Judgment. Both letters were read into the record and made a part of the public record.

JOHN SAMPSON, Site Manager, Dow Chemical, explained that he had participated with PANNA and Communities for a Better Environment for the past year to negotiate the settlement. He took the opportunity to thank City staff for their assistance and efforts to reach the Consent Judgment, an agreement that he characterized as the best for all involved. He was excited about the new facility and for a continued investment in the City of Pittsburg.

Mayor Beals closed the public hearing for Resolution 03-9866.

On motion by Vice Mayor Rios, seconded by Councilmember Glynn and carried unanimously to adopt Resolution 03-9866.

ADJOURNMENT

The meeting of the City Council adjourned at 9:04 P.M. to a special meeting on July

28, 2003 at 5:00 P.M. for a Closed Session, and then to the regular City Council meeting scheduled for August 4, 2003.

Respectfully submitted,

Lillian J. Pride, City Clerk

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