



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Task Order with Treadwell & Rollo for PCE Central Plume Remediation Phase 1 Dual Phase (Soil Vapor and Groundwater) Extraction Project (\$302,000) and Revising Hourly Rates

**MEETING DATE:** May 3, 2006

**PREPARED BY:** Public Works Director

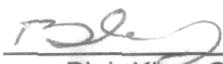
**RECOMMENDED ACTION:** That the City Council adopt a resolution authorizing the City Manager to execute a task order with Treadwell & Rollo for PCE Central Plume Remediation Phase 1 Dual Phase (Soil Vapor and Groundwater) Extraction Project in the amount of \$302,000 and revising hourly rates.

**BACKGROUND INFORMATION:** The initial PCE remediation work on the Central Plume has started with the City, through its consultants, Treadwell & Rollo, operating the Soil Vapor Extraction (SVE) located in the alley south of Pine Street, between Church Street and Pleasant Avenue ("the Alley"). This system was installed as a pilot project by the Guild defendants and was turned over to the City as part of the settlement agreement. This system reduces PCE levels in soil and protects indoor air in adjacent buildings from vapor contamination where the soil levels are high in the source area. However, the system needs to be expanded, both to remove vapors in the west end of the Alley and assist in deeper soil remediation further south.

Groundwater in the source area also needs to have high levels of PCE removed. The plan to date has been to expand the SVE system and install groundwater extraction wells with centralized treatment units. Treadwell & Rollo believes that a combined approach - called dual phase extraction - will be more cost effective than separate systems. Very simply, this approach uses one well connected to a water pump and a vacuum pump to accomplish both tasks. One advantage to this system is that as the water level in the well is lowered by the pump, additional soil area is exposed to the vacuum pump and additional PCE is removed more effectively than if it was in water.

The proposed scope of work includes design and installation of one such well to verify the design criteria and cost estimates prior to installing a full system. (See attached letter from Treadwell & Rollo.) This work would be done as a separate Task under the terms of the Master Agreement between the City and Treadwell & Rollo. The earlier task order for the SVE system modifications will be closed.

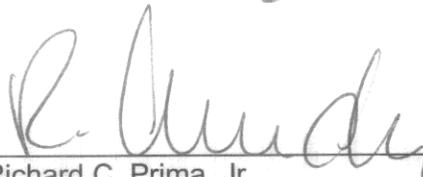
In addition, Treadwell & Rollo has requested that the Master Agreement, first entered into in 2004 be revised to update some of the hourly rates. The initial agreement included reduced rates for the principal staff involved in the City's work. Now that much of the work is moving into the design and operations stage, staff is comfortable with adjusting these rates.

APPROVED:   
Blair King, City Manager

**FISCAL IMPACT:** The cost of this work will be paid from the Central Plume settlement fund. The work has the potential to reduce costs for future work, although the exact amount is unknown at this time and will be estimated as part of this work.

**FUNDING AVAILABLE:** \$302,000 – Central Plume Settlement Fund; less amount corresponding to uncompleted work in the SVE task to be closed.

  
\_\_\_\_\_  
Ruby Paiste, Interim Finance Director

  
\_\_\_\_\_  
Richard C. Prima, Jr.  
Public Works Director

RCP/pmf  
Attachment  
cc: Steve Schwabauer, City Attorney  
Wally Sandelin, City Engineer  
George Bradley, Street Superintendent



24 April 2006  
3923.12.0001

Mr. Richard Prima  
Public Works Department  
City of Lodi  
221 West Pine Street  
Lodi, California 95240

Subject: Proposed Scope, Schedule and Budget  
Central Plume Remediation – Phase 1  
Dual Phase Groundwater and Soil Vapor Extraction  
Central Plume Area  
Lodi, California

Dear Mr. Prima:

Treadwell & Rollo, Inc. is pleased to submit this proposal to design, install, and operate a single-well dual phase extraction (DPE) system (Phase 1) in the source area of the Central Plume Area in Lodi, California. The purpose of phasing this work is to demonstrate the effectiveness of DPE in reducing perchloroethene (PCE) and other halogenated volatile organic compounds (HVOCs) in saturated and unsaturated soil and in groundwater, and in mitigating the current calculated indoor air risk determined to exist in certain buildings in the Central Plume source area bound by Pine Street to the north, Pleasant Street to the west, Oak Street to the south, and Church Street to the east.

We believe that DPE can be used to remediate the HVOCs known to be present in the Central Plume source area at a potentially significant cost savings when compared to the soil vapor extraction/air sparging/groundwater extraction system remedial approach presented in the *Remedial Investigation/Feasibility Study Lodi Central Plume Area, Lodi, California* by Levine Fricke Recon dated 16 August 2004. The work described in this proposal is an amendment to the work currently underway in the Central Plume, referred to as the Interim Soil Vapor Extraction System (ISVES). Certain tasks currently scheduled for performance under that scope of work can be folded into the DPE Phase 1 work, eliminating potential overlap of work and expense. For example, the reporting and the operations and maintenance tasks currently budgeted for the ISVES can be combined with the DPE Phase 1 work, resulting in an early close-out of the ISVES. We will also use the above-ground treatment system located behind the Guild facility to treat the additional soil vapor extracted during the DPE Phase 1 work, further leveraging prior work and reducing overall project costs.

The proposed DPE work will use a single well for both soil vapor and groundwater extraction. In the Central Plume, PCE is known to be present in high concentrations in soil above and below the water table, and in groundwater. Although free-phase, or dense non-aqueous phase liquids (DNAPL) such as PCE have not been visually observed in soil samples collected in the Central

**Treadwell & Rollo, Inc.** *Environmental & Geotechnical Consultants*  
555 Montgomery Street, Suite 1300, San Francisco, California 94111  
Telephone (415) 955-9040, Facsimile (415) 955-9041

Mr. Richard Prima  
Public Works Department  
City of Lodi  
7 April 2006  
Page 2

Plume, the high concentrations of dissolved PCE and other HVOCs in groundwater suggest that DNAPLs are likely present and continue to be a source for dissolved-phase HVOCs in groundwater. By lowering the groundwater table in areas where DNAPL is potentially present, a greater mass of contaminated soil becomes available for remediation by soil vapor extraction (SVE). As SVE is a proven and relatively cost-effective and rapid remediation measure, this typically results in quicker overall soil remediation. The extraction and treatment of contaminated groundwater is also beneficial as it captures contaminated groundwater that would typically flow downgradient and contribute to the larger groundwater contamination plume. Figure 1 presents how DPE wells combine the effectiveness of SVE and groundwater extraction in a single well.

A treatment system comprised of DPE wells should be inherently more efficient than a remedial action comprised of soil vapor-only wells and groundwater-only wells. Significant cost savings in well construction and the installation of buried pipelines connecting each well to a treatment facility are one benefit, as is a more rapid remediation of contaminants currently present below the water table. As part of this Phase 1 work we will estimate the cost savings of DPE through the life of the project.

Phase 1 will include the installation of a single DPE well in the western portion of the Central Plume source area. The well may be located either north or south of the ally, while well-head treatment systems associated with the well would be located on either Oddfellows or Beckman property. An area approximately the size of two or three parking spaces will be required. Soil vapor will be piped to the system currently operating behind Guild. Following a period of operation and data assessment, additional DPE wells would be installed at appropriate locations throughout the Central Plume source area.

Treadwell & Rollo proposes the following four tasks for the Phase 1 program to evaluate DPE as a cost effective approach to remediating the LCPA source area.

- Task 1 – Interim SVE System Optimization
- Task 2 – DPE Phase 1 Design Work Plan
- Task 3 – Implement DPE Phase 1 Test
- Task 4 – DPE Operation & Maintenance and Data and Cost Evaluation

## **SCOPE OF SERVICES**

Our proposed tasks to implement the scope of services are as follows.

Mr. Richard Prima  
Public Works Department  
City of Lodi  
7 April 2006  
Page 3

### **Task 1 – Interim SVE System Optimization**

There are currently three SVE wells operating in the Central Plume as an interim SVE system. These wells, FSEW-3 and PSEW-1A and -1B, located south of the alley behind and to the west of Guild, are being used to provide sub-slab depressurization of buildings in the Central Plume source area to mitigate the possible migration of soil vapors containing HVOCs into residences and businesses. Our initial monitoring of the performance of these wells indicates that depressurization is not occurring over the entire source area. (Note: Our current scope of work for the ISVES work includes budget to plumb in additional SVE wells currently present in the Central Plume source area, assuming that only using wells currently plumbed into the treatment system would not generate the radii of influence needed to depressure all the building slabs in the source area. These funds can be reallocated to the DP work.)

Installation and operation of the DPE Phase 1 well will provide additional sub-slab depressurization in the western portion of the source area, and utilize the vapor-phase treatment system constructed by Guild. Some modifications to the current interim SVE system will be required to facilitate this.

We will determine how to configure the piping and blower layout of the current interim SVE system to handle the additional vapor load from the DB well. We will also follow up on our initial evaluation of the interim SVE well performance that suggests that the surface piping arrangement and well head design is likely entrapping water that is impeding vapor flow to the treatment system. As the DPE well will produce vapor with a high initial moisture content, the above-ground piping system will have to be altered to mitigate this. We will complete the efficiency evaluation, specify the design changes, retain a subcontractor to complete the changes, and restart the system.

### **Task 2 – DPE Phase 1 Design Work Plan**

Treadwell & Rollo will prepare a work plan, construction schedule, and cost estimate to design, install, and operate a single DPE well located in the western section of the Central Plume source area. Operating the DPE well at this location will increase the subslab depressurization under the buildings in the western portion of the source area.

Specific tasks include:

- Develop DPE design specifications, including optimal well location, depth, diameter, screen length and groundwater pump size;
- Select appropriate equipment and contractors; and

Mr. Richard Prima  
Public Works Department  
City of Lodi  
7 April 2006  
Page 4

- Prepare test protocols and verify cost estimate to construct the DPE well.

### **Task 3 – Implement DPE Phase 1 Test**

The DPE test is anticipated to include installing one 4-inch diameter PVC well, 100 feet deep, with an estimated 80 feet of screen. The well will be equipped with a groundwater extraction pump that discharges to a low-profile air stripper, with treated water discharged to the sanitary sewer. The low-profile air-stripper can be located away from the DPE well, which allows flexibility in selecting the optimal DPE well location while locating the air stripper in an area that can be easily accessed and engineered. Soil vapor will be routed to the current SVE treatment system through new trench and piping. Additional blower capacity will be required to handle the increased volume of vapor that can be pulled from the DPE well.

Treadwell & Rollo will procure necessary equipment and contractors, install and operate the DPE and evaluate results. Specific tasks include:

- Procure all necessary well installation, water discharge, and air permits (likely needed for the air stripper),
- Select and procure the well pump, air stripping unit, blower, and appropriate plumbing;
- Select and procure required contractors (driller and remedial contractor);
- Oversee installation and development of the DPE well and extraction system;
- Oversee trenching, piping installation and integration into the current vapor-phase carbon treatment system (could be performed jointly by T&R and City employees);
- Perform initial system start-up and system optimization.

Mr. Richard Prima  
Public Works Department  
City of Lodi  
7 April 2006  
Page 5

Installation of the DPE well and piping to the Guild SVE treatment system should be completed in approximately two weeks. We have assumed that 200 feet of trenching will be required to convey the vapor phase to the Guild system and the treated liquid phase to the storm drain. A well-head and treatment pad area roughly equivalent to two parking spaces will be required for the duration of the test. The system will require regular monitoring which we have assumed will be conducted in combination with current monitoring of the interim SVE system. We have conceptually sized the groundwater pumping system to produce approximately 10 gallons per minute for the duration of the test, which will be confirmed via a step test after installation of the DBE well and pump.

#### **Task 4 – DPE Operation & Maintenance and Data & Cost Evaluation**

During the estimated six-month initial operation period, Treadwell & Rollo will operate and maintain (O&M) the DPE system. We will also evaluate the performance of the system to determine whether this is a viable and cost effective approach to remediating the Central Plume source area contamination. Specifically, we will measure groundwater drawdown in the DPE well and selected monitoring wells, groundwater production rates, well head vacuum in the DPE well and selected monitoring wells, determine if installation of additional DPE wells would effectively remediate the soil, soil vapor, and groundwater contamination in the Central Plume source area. A comparison of the costs of a DPE source remediation program with a SVE/groundwater extraction system will be prepared. We will also make an initial evaluation of how the DPE system may be modified to provide hydraulic control of the more heavily-contaminated groundwater in the source area using recharge wells along the perimeter of the source area, and controlled injection of chemical and biological media to increase the speed and efficiency of the remediation.

The results of the evaluation will be provided in a draft and final report to the City and RWQCB. The report will include figures showing the as-built layout of the well, conveyance piping, changes to the plumbing at the Guild treatment system, water and soil vapor extraction records, calculated contaminant mass removal, laboratory analyses, and progress reports prepared during the pilot test. This report, which will be prepared in lieu of the reporting documents anticipated to be prepared for the interim soil vapor extraction system, will include the information needed to support the selection of the final remedy for the Central Plume source area.

#### **SCHEDULE**

We can begin this work immediately upon receipt of authorization. We estimate the duration for the SVE system optimization and the design, installation, start up, operation and evaluation of the DPE system will be as follows.

Mr. Richard Prima  
 Public Works Department  
 City of Lodi  
 7 April 2006  
 Page 6

<b>Task</b>	<b>Approximate Duration</b>
Task 1 – Interim SVE System Optimization	3 weeks
Task 2 – DPE Phase 1 Design and Work Plan	5 weeks
Task 3 – Implement DPE Phase 1 Test	6 months
Task 4 – DPE O&M and Data & Cost Evaluation	6 months

**ESTIMATED COSTS**

We have estimated project costs using conservative assumptions, including a 15% contingency for construction and O&M costs. Our estimated costs are broken down by task below.

Task 1 – Interim SVE System Optimization.....	\$56,000
Task 2 – DPE Phase 1 Design and Work Plan.....	\$20,000
Task 3 – Implement DPE Phase 1 Test.....	\$144,500
Task 4 – DPE O&M and Data & Cost Evaluation.....	<u>\$26,000</u>
<b>Design, Installation and Start Up Total .....</b>	<b>\$246,500</b>
<b>Six-Month O&amp;M Total .....</b>	<b>\$55,000</b>

The granular activated carbon (GAC) change-out costs cannot be confirmed until we have operated the pilot test and determined its efficiency and the above O&M cost may change. Other assumptions are presented above under task descriptions.

**PROJECT TEAM**

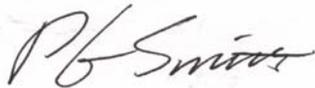
Treadwell & Rollo has enlisted the services of Haley & Aldrich to assist in the engineering tasks for this project. Haley & Aldrich has designed and operated numerous DPE wells and brings a unique level of experience to our project team. We have discussed the issue of potential conflict of interest with work they are performing for an insurance carrier of a party (Lodi Chrome) in the

Mr. Richard Prima  
Public Works Department  
City of Lodi  
7 April 2006  
Page 7

Northern Plume, and have Haley & Aldrich's assurance that there will be no communication between the engineering staff assisting us on this work and those working on the Northern Plume. Treadwell & Rollo will be in responsible charge of all work, which we anticipate will be performed under our current master service agreement with Lodi. Haley & Aldrich will provide engineering design and system performance evaluation services, supported by Treadwell & Rollo engineers. Field work will be performed by Treadwell & Rollo and task-specific contractors. As Treadwell & Rollo and Haley & Aldrich have a long history of cooperation, we anticipate that there will be seamless integration of the staff working on this project.

We propose to perform our work on a time-and-expense basis in accordance with the City of Lodi-Treadwell & Rollo terms and conditions. We will not exceed the estimated authorized total unless the scope of services changes. We appreciate the opportunity to present this proposal and look forward to assisting you on this project. If you have any questions, please call me at 415-955-9040.

Sincerely yours,  
TREADWELL & ROLLO, INC.



Philip G. Smith, CPGS, REA II  
Vice President

39231205.PGS

14 February 2006  
Project No. 3923

Mr. Richard Prima  
Public Works Department  
City of Lodi  
221 West Pine Street  
Lodi, California 95240

## RECEIVED

FEB 17 2006



CITY OF LODI  
PUBLIC WORKS DEPARTMENT

Subject: Request for Certain Billing Rate Changes  
Environmental Services Contract

Dear Mr. Prima:

It has come to my attention that certain billing rates for Treadwell & Rollo personnel have not been adjusted for two years. As noted in Section III of our 22 April 2004 Technical Services Task Order Agreement for Professional Services, Exhibit A, billing rates for eight named Treadwell & Rollo employees (including Smith, Shipman, Leong, and Hubbard) are set at specific values which were significantly discounted from our 2004 billing rates, with all other employees billed at a discount of 8% from standard rates at the time the work is performed.

The Agreement does not contain specific language for adjusting billing rates for the eight named employees. It is my recollection that this condition was discussed with either you or Steve Schwabauer prior to signing the agreement, with the understanding that rates could be adjusted after one year.

I would like to propose that we use the 8% rate discount for all Treadwell & Rollo employees, with the exception of my rate, which would be adjusted from \$206/hour to \$225/hour. This represents a 13% reduction from my standard rate of \$260/hour. An 8% discount to, for example, Patrick Hubbard's current billing rate of \$190/hour, results in a rate of \$174.80/hour, or \$8.80/hour more than his current Lodi rate of \$166/hour. I believe that this approach continues to provide the City with a very fair value and demonstrates our ongoing commitment to serving Lodi.

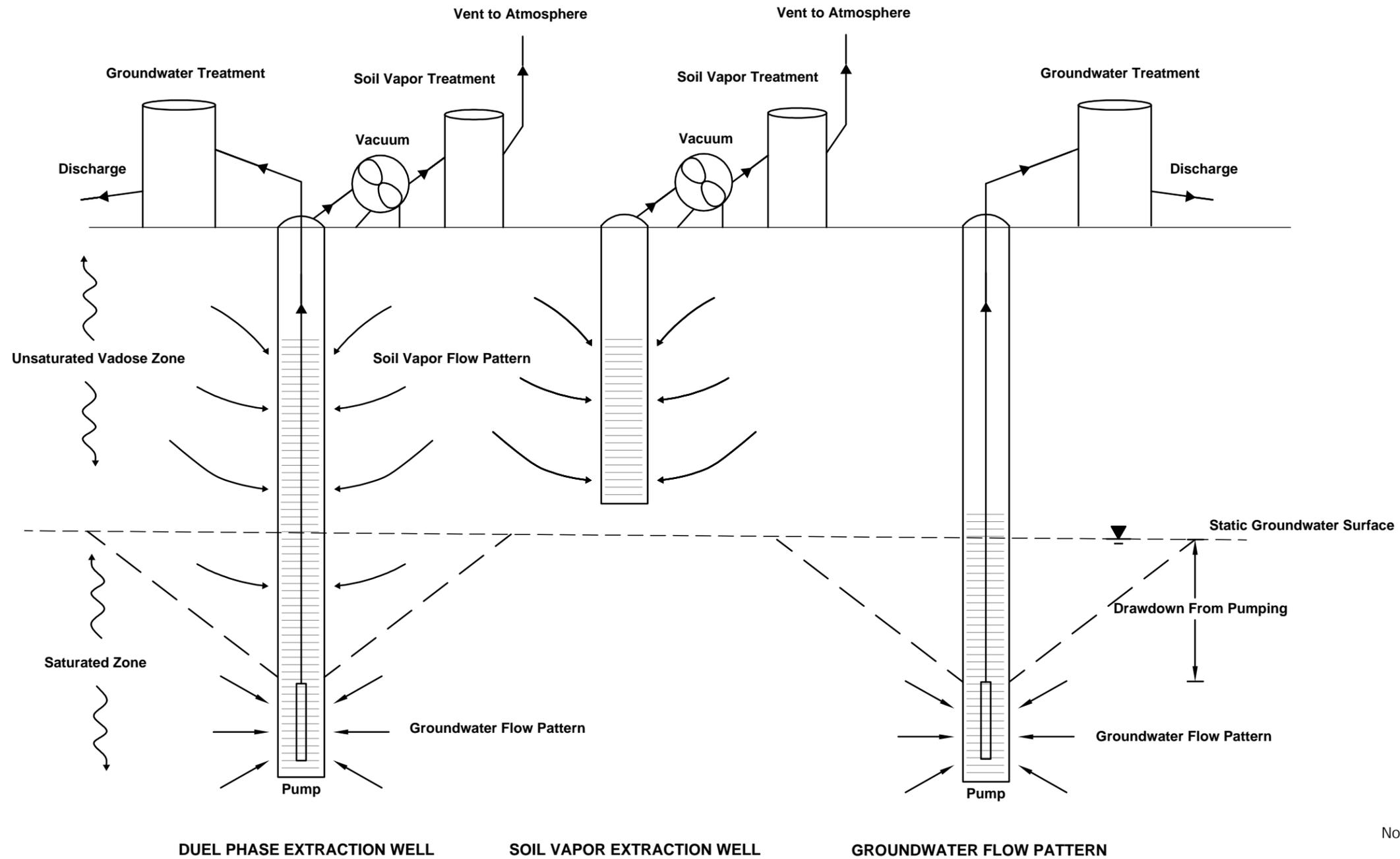
Please let me know if you are amenable to this change, which I would like to put into effect on 1 March 2006. As always, please call me with any questions.

Sincerely yours,  
TREADWELL & ROLLO, INC.

Philip G. Smith, REA II  
Vice President

39231203.PGS

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Not to Scale

<b>LODI GROUNDWATER CENTRAL PLUME</b> Lodi, California		
<b>DUEL PHASE EXTRACTION WELL - PHASE 1</b>		
Date 04/24/06	Project No. 3923.12	Figure 1
<b>Treadwell &amp; Rollo</b>		

RESOLUTION NO. 2006-84

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE TASK ORDER WITH TREADWELL & ROLLO FOR PCE CENTRAL PLUME REMEDIATION PHASE 1 DUAL PHASE (SOIL VAPOR AND GROUNDWATER) EXTRACTION PROJECT; AND FURTHER TO AMEND THE 2004 MASTER AGREEMENT WITH TREADWELL & ROLLO TO UPDATE HOURLY RATES

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Task Order with Treadwell & Rollo for PCE Central Plume Remediation Phase 1 Dual Phase (Soil Vapor and Groundwater) Extraction Project in an amount not to exceed \$302,000; and

BE IT FURTHER RESOLVED that the City Manager is further authorized to amend the 2004 Master Agreement with Treadwell & Rollo to update hourly rates.

Dated: May 3, 2006

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I hereby certify that Resolution No. 2006-84 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 3, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce,  
and Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk

**TECHNICAL SERVICES TASK ORDER AGREEMENT  
FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF LODI  
AND  
TREADWELL & ROLLO, INC.**

THIS TASK ORDER AGREEMENT, hereinafter referred to as "Agreement," made and entered into on this 22<sup>nd</sup> day of April 2004, by and between the City of Lodi, hereinafter referred to as "Client," and Treadwell & Rollo, Inc., hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, Client is proceeding with participation in remediation studies and possible work in connection with PCE and TCE soil and groundwater contamination in Lodi referred to in draft administrative orders from the State of California Regional Water Quality Control Board and Department of Toxics Substances Control, that requires the services of a consultant; and

WHEREAS, Consultant has available and offers to provide personnel and facilities necessary to accomplish such work as may be requested by Client;

NOW, THEREFORE, Client and Consultant agree as follows:

I. DESCRIPTION OF PROJECT

Services provided shall be as described in written task orders made pursuant to and referencing this Agreement, but in general shall include engineering, analytical services, and litigation support.

II. SCOPE OF SERVICES

Consultant agrees to perform those services described in separate written task orders signed by Client and Consultant. Unless modified in writing by both parties, duties of Consultant shall not be construed to exceed those services specifically described in each task order.

III. TIME FOR COMPLETION

The time for completion of work shall be as identified in each task order issued pursuant to this Agreement.

IV. COMPENSATION

For services to be performed by Consultant, as described in each task order, Client agrees to pay, and Consultant agrees to accept, compensation as identified in each task order. Consultant shall invoice Client on a time and materials cost basis for services provided under this Agreement in accordance with the Billing Rate Schedule contained in Exhibit A unless task orders specifically indicate otherwise.

Subject to Section XVII of this agreement, Consultant may augment in-house personnel with subconsultants. Hourly rate for subconsultants shall not exceed those for equivalent in-house personnel.

Consultant shall submit invoices for services as prescribed in each task order. Client shall pay such invoices within 30 days after their receipt. If payment is not made within 30 days, interest on the unpaid balance will accrue at a rate of one (1) percent per month compounded monthly.

#### V. RESPONSIBILITY OF CONSULTANT

Consultant agrees that in undertaking the duties to be performed hereunder, it shall act as an independent consultant for and on behalf of Client. Client shall not direct the work and means for accomplishment of the services and work to be performed hereunder. Client, however, retains the right to require that work performed by Consultant meet specific standards without regard to the manner and means of accomplishment thereof.

Consultant shall perform the Services in a manner consistent with the level of care and skill ordinarily exercised by consultants performing comparable services under comparable circumstances in the general location of the Project Site. Notwithstanding any provision of this Agreement, Consultant makes no representation, warranty or guarantee, express or implied, and expressly disclaims any representations, warranties or guarantees, whether made orally or in writing, and whether made prior to or contemporaneously herewith.

#### VI. OWNERSHIP OF DOCUMENTS

All documents and other materials obtained, prepared, or created by Consultant shall be owned by Client. Consultant shall have the right to retain copies of such materials.

#### VII. NO THIRD PARTY RELIANCE

Consultant and Client agree that all analyses, findings, conclusions and recommendations of Consultant made pursuant to this Agreement are for the sole benefit of Client and may not be relied on by any other person.

#### VIII. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, their directors, officers, and employees from and against claims, damages, losses, and expenses (including reasonable attorneys' fees) whether incurred in a third party action or in an action brought by Client against Consultant to enforce Client's rights under this provision, arising out of performance of the work, provided that any such claim, damage, loss, or expense is caused by negligent acts or omissions of Consultant, any subconsultant employed directly by Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

Client agrees to indemnify, defend and save harmless Consultant, its officers, agents and employees, and any subcontractors employed by Consultant incident to this Agreement, from and against all losses, claims, costs, damages, liabilities and other expenses, including reasonable

attorneys' fees (whether incurred in a third party action or in an action brought by Consultant against Client to enforce Consultant's rights under this provision) arising out of (a) material breach or failure to perform any material provision of this Agreement by Client, or (b) the negligence, gross negligence, or willful misconduct of Client.

#### IX. HEALTH AND SAFETY

Client assumes all responsibility for the health and safety of all persons affected by the Project Site or the Services, except the Consultant and persons under the direct control, supervision, or direction of the Consultant.

#### X. INSURANCE

Consultant shall procure and maintain the following insurance policies, each of which shall provide primary coverage with respect to work performed under this Agreement.

1. **Comprehensive General Liability Insurance.** Insurance including premises/operations, products/completed operations, blanket contractual, and broad-form property damage liability coverages. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000 per occurrence, and \$2,000,000 per year in aggregate.
2. **Automobile Bodily Injury and Property Damage Liability.** Insurance covering owned (if any), non-owned, rented, and leased cars. The limit shall not be less than \$1,000,000 per occurrence.
3. **Workers' Compensation and Employer's Liability.** Insurance as prescribed by applicable law, including liability under the Longshoreman's and Harbor Workers' Act and the Jones Act, if applicable. The employer's liability limit shall not be less than \$1,000,000.
4. **Professional Liability Insurance.** Insurance covering losses resulting from errors or omissions of the Consultant. The limit of liability shall not be less than \$1,000,000 per claim and in the aggregate.

Should Consultant or any of its officers, employees, or agents be found to have been negligent in the performing of professional services or work, or to have breached any express or implied warranty, breached any representation or any provision of this Agreement, Client, all persons or entities claiming through Client and all persons or entities claiming to have in any way relied upon or been damaged by Consultant's services or work agree that the maximum aggregate amount of the liability of Consultant, its officers, employees and agents shall be limited to the total amount of the fee paid to Consultant by Client for its work performed with respect to the project, or \$500,000, whichever is greater. The Agreement price is predicated on this limitation of liability. Should Client object to this provision, then the Agreement price will be renegotiated by Consultant and Client to account for the increase in Consultant's potential liability. Any objection by Client to this limitation on liability must be conveyed to Consultant before Client's acceptance of this Agreement.

## XI. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement may not be assigned by either Client or Consultant without the prior written consent of the other.

## XII. BENEFIT

Except as herein provided, this Agreement shall inure to the benefit of the assigns, heirs, and successors of the parties to this Agreement.

## XIII. TERMINATION

Client may terminate this Agreement for its convenience. Consultant shall be compensated for work performed to the date of termination including a reasonable amount for profit on work accomplished and cost to terminate work.

In the event Consultant shall persistently fail to perform services and work hereunder in a manner satisfactory to Client, this Agreement may, at Client's option, be terminated. Consultant shall be compensated for completed and useful work performed to the date of termination.

Client or Consultant may terminate this Agreement at any time on 30 days prior written notice to the other party.

This Agreement shall terminate without any action of a party in the event either Client or Consultant becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency or the relief of debtors.

## XIV. RIGHT OF INSPECTION AND AUDIT

Client shall at reasonable times during the term of this Agreement have reasonable access to inspect and audit project-related documents and other materials resulting from Consultant's activities pursuant to this Agreement. Client shall reimburse Consultant for Consultant's reasonable costs in assisting with any such inspections and audits.

## XV. JURISDICTION

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

No provision of this Agreement shall be construed for or against any party on the basis of its contribution, or lack of contribution, to the drafting of such provision, and the provisions of Section 1654 of the California Civil Code shall have no application to this Agreement. The failure of any party to enforce any provision of this Agreement shall not in any way be construed as a waiver of

any such provision and shall not prevent that party from thereafter enforcing such or any other provision of this Agreement.

#### XVI. NON-BINDING MEDIATION

Any dispute or controversy between the parties relating to this Agreement shall be attempted to be resolved in good faith pursuant to non-binding mediation. The parties shall attempt to select the mediator by mutual agreement. If they are unable to do so within fifteen (15) calendar days from the date the dispute is first identified by the party first to assert a claim, the party first asserting one or more claims shall provide the other party with a written list of names of five (5) potential mediators. The other party shall either select the mediator from such list, or shall provide the other party with a written list of names of five (5) additional potential mediators. The mediator thereupon shall be selected from such list of ten (10) names by the parties alternately striking names from such list, the first party to strike a name being selected by the parties' flip of a coin. The last name remaining to be stricken from the list shall be the mediator. The parties shall proceed to resolve the dispute through non-binding mediation within forty-five (45) calendar days from the date of the mediator's selection, or such longer period as the parties may mutually agree upon. If the parties are unable to resolve the dispute by such means after making every reasonable effort to do so, the parties thereafter may pursue such other remedies as may be available to them under the provisions of this Agreement and pursuant to the laws of the State of California. The paragraph shall not apply to claims made by Consultant pursuant to Mechanics Lien laws.

#### XVII. INTEGRATION

This Agreement represents the entire understanding of Client and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

#### XVIII. SUBCONTRACTS

Except with prior written approval of Client, Consultant shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

#### XIX. NOTICES

Any notice to a party in connection with this Agreement must be in writing and addressed to the party at its address as set forth in the Task Order, or such other address or addresses as to which the parties may notify each other from time to time. Any notices made to Consultant shall be addressed to Consultant's project manager or principal in charge of the project described in the Task Order. All notices made hereunder shall be deemed effective on receipt. Client shall notify Treadwell & Rollo, Inc. by certified mail of any change of ownership or any information provided on the Acceptance of Proposal on Authorization to Proceed. In the event client fails to notify, in writing by certified mail, any changes, Client shall be liable for all credit extended prior to said written notification as though no changes in fact occurred, without prejudice to Client's right to proceed, additionally against all successors.

TREADWELL & ROLLO, INC.

CITY OF LODI

Philip Smith  
Signature

H. Dixon Flynn  
Signature

Philip Smith  
Printed Name

H. Dixon Flynn  
Printed Name

Principal  
Title

City Manager  
Title

4/20/04  
Date

MAY 19, 2004  
Date

attachment

Approved as to form  
D. Stephen Schwabauer  
D. Stephen Schwabauer  
Interim City Attorney

ATTEST:  
Susan J. Blackston  
SUSAN J. BLACKSTON  
City Clerk

## Exhibit A

### Billing Rate Schedule

<u>Position</u>	<u>Billing Rate</u> <u>(dollars per hour)</u>
Philip Smith	207
Michael McGuirer	184
Dorinda Shipman, Patrick Hubbard	166
David Dixon, Glenn Leong	146
Michael Chamberlain	121
Joshua Graber	106
Other Staff	8% below standard rates

Direct expenses (telephone, reproduction, postage, *etc.*) will be billed at actual cost.

Mileage will be billed at \$0.35 per mile.

Travel time will be included at the appropriate hourly rate either at 50% or one-way only.

Subconsultants as approved by the City will be billed at actual cost plus 10%.

### EQUIPMENT CHARGES

Vans, Trucks	\$13.50/hr	(travel time plus time on site)
Nuclear Moisture-Density Guage	\$12.50/hr	
Special Computer or Analytical Software	\$30.00/hr	
Other Equipment	As approved by City	