



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

July 28, 2020

SUBJECT: Council discussion and consideration of adoption of Resolution No. 35-20 approving a grant and loan agreement with Yuba Water Agency

PREPARED BY: Jim Goodwin, City Manager

Recommendation

Adopt Resolution No. 35-20 approving a grant and loan agreement with Yuba Water Agency.

Background/Discussion

Earlier this year the City Council provided direction to staff to move forward with plans for a regional solution to Wheatland's lack of wastewater capacity to support new investment in the community. On June 9, 2020, the City Council approved an MOU with Olivehurst Public Utility District (OPUD) to work together on evaluating the potential of working with OPUD as a partner in that regional solution.

City staff also applied to Yuba Water Agency (YWA) for assistance with funding the engineering design and environmental review of a pipeline connecting Wheatland to the proposed expanded OPUD wastewater collection infrastructure. That application was approved by YWA on July 7.

The agreement before you includes the terms for acceptance of the award approved by YWA. Specifically, the agreement provides for:

1. A \$1.3 million grant to the city for completing the infrastructure design.
2. A \$1.3 million loan to the city for infrastructure design.
3. No interest accrual on the loan for five years after approval of this agreement.
4. No payment requirement for five years after approval of this agreement.
5. Future interest will match the average rate of interest earned by funds deposited with the Yuba County Treasurer during the preceding 12 months of each year. The rate will be adjusted annually on June 30th.
6. Payment of the loan balance in full by June 30, 2030.
7. A provision for a loan extension or loan forgiveness should new development not occur.

YWA's commitment to infrastructure development supporting investment is clear based on the grant and favorable loan terms included in this agreement.

Alternatives

Council may choose not to accept the agreement and not move forward with the design on the infrastructure required to connect to OPUD.

Fiscal Impact

No current impact. Potential future loan repayment and interest obligations

Attachments

1. Resolution No. 35-20 approving agreement with YWA
2. Grant and Loan Agreement with YWA

RESOLUTION NO. 35-20

**APPROVING A GRANT AND LOAN AGREEMENT
WITH YUBA WATER AGENCY**

WHEREAS, the City of Wheatland desires to remove barriers to new investment in the city; and

WHEREAS, the lack of wastewater capacity is a barrier to new investment; and

WHEREAS, the City of Wheatland and Olivehurst Public Utility District have entered into a Memorandum of Understanding to work together on a potential regional wastewater solution; and

WHEREAS, Yuba Water Agency has approved a grant and loan award to the City of Wheatland for design of a regional wastewater connection; and

WHEREAS, the City of Wheatland desires to accept the funding award.

NOW THEREFORE, BE IT RESOLVED the City Council approves the Yuba County Water Agency – City of Wheatland Grant and Loan Agreement and directs the City Manager to sign.

PASSED AND ADOPTED by the City Council of the City of Wheatland on this 28th day of July 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Rick West, Mayor

Attest:

Lisa J. Thomason, City Clerk

YUBA COUNTY WATER AGENCY – CITY OF WHEATLAND GRANT & LOAN AGREEMENT

THIS AGREEMENT is entered into this July 7, 2020, by and between Yuba County Water Agency, a public agency ("Lender"), and the City of Wheatland, a public agency ("Borrower"), (collectively the "Parties"), who agree as follows:

1. RECITALS. This Agreement is made with reference to the following background recitals:

1.1 Borrower intends to design wastewater system improvements to serve parts of the City of Wheatland and connect to the Olivehurst Public Utility wastewater collection system. Borrower intends to expedite the design process in an effort to capture potential State and/or Federal stimulus funds for "shovel-ready" projects. Borrower's plans are described in more detail in the attached funding request letter from Borrower (see Exhibit A).

1.2 Borrower seeks financing assistance from Lender so that Borrower may proceed with the infrastructure design and related environmental, survey, and administration work. Borrower requests that Lender provide (a) a grant in the sum of \$1,300,000.00 (the "Grant"), and (b) a loan in the amount of \$1,300,000.00 (the "Loan") to be repaid by Borrower in installments.

1.3 The Parties agree that Borrower will not be required to make payments on the Loan for a period of five years after the execution of this agreement.

1.4 The Parties further agree that the Loan will not accrue interest during the five-year period after the date of this Agreement when no payments are required.

1.5 Lender has determined that Borrower's proposed design and related work has merit and the planned improvements would further Lender's water quality and water supply objectives. Lender therefore agrees to provide the Grant and Loan on and subject to the terms of this Agreement. Lender determines that the Grant and Loan will directly further and support Lender purposes and objectives consistent with the Yuba County Water Agency Act and that the Grant and Loan are authorized and appropriate expenditures of Lender funds.

2. GRANT. Lender agrees to grant to Borrower the sum of \$1,300,000.00, subject to the terms of this Agreement. The Grant shall be used by Borrower to pay costs directly related to the design of wastewater system improvements to serve parts of the City of Wheatland and connect to the Olivehurst Public Utility wastewater system as described in Exhibit A. Borrower acknowledges that the Grant proceeds are restricted funds and pledges that the Grant proceeds will be used solely for these purposes and for no other purpose.

3. LOAN.

3.1 Lender agrees to loan to Borrower, and Borrower agree to borrow from Lender, a sum not-to-exceed \$1,300,000.00, subject to the terms and conditions of this Agreement. Borrower shall use the funds provided by the Lender for the purposes described in the recitals and for no other purpose. The final Loan amount shall be the final sum total of the Loan funds disbursed by Agency pursuant to section 5 below.

3.2 Borrower accepts the Loan and approves this Agreement with Lender evidencing this indebtedness in the original principal amount of \$1,300,000.00. Borrower promises to pay to Lender, or order, the Loan with interest accruing commencing five years after the date of this Agreement at a rate equal to the average rate of interest earned by funds deposited with the Treasurer of Yuba County during the preceding twelve (12) months of each year. The interest rate will be adjusted annually on June 30th. Borrower will repay the Loan principal and interest balance in full by June 30, 2030. Borrower may fully repay the principal balance and any accrued interest at any time, without prepayment penalty.

3.3 Loan debt service payments will not be required for five years after the execution of this agreement, and the Loan balance will not accrue interest for the same initial five-year period.

3.4 Borrower's payment(s) will be sufficient to fully repay the original principal amount of the loan plus accrued interest (at the rate provided in section 3.2) If the interest rate in section 3.2 changes, Lender will notify Borrower of the new payment amount.

3.5 Borrower will pay the Loan principal and interest in annual installments, a lump sum payment prior to June 30, 2030, or some combination of both. Loan payments shall be credited first to accrued interest and then to principal.

3.6 The Parties understand that funds collected by Borrower through it sewer connection fees, minus a small administration portion of such fees, which the Borrower would retain, serve as the basis for repayment of the loan. The ability of Borrower to repay the loan to the Lender is based on the collection of sufficient sewer connection fees and Lender agrees that Borrower shall only be required to repay the loan as such fees are collected. The Parties retain the ability to renegotiate and change the Agreement to include the possibility of a loan extension or loan forgiveness should lack of development in the area occur.

3.7 In the event of extenuating or unforeseen circumstances adversely affecting Borrower, then, upon request by Borrower, Borrower and Lender agree to engage in additional negotiations to alter the terms of this Agreement, including loan forgiveness in the event that significant new development in the area resulting in sewer connection fee revenue to Borrower has not occurred.

4. NO PRECEDENT. By loaning these funds to Borrower, Lender expressly establishes no precedent for loans to other local government agencies or other projects.

5. DISBURSEMENT OF FUNDS. Grant and Loan funds will be disbursed on an as needed basis upon written request of the Borrower, allowing up to 30 days for the Lender to process the disbursement request. Agency first shall disburse Grant funds and, after exhausting the Grant amount, it will begin disbursing Loan funds. Interest will not accrue on the loaned funds until disbursement has been requested and the five-year term of no required payments has lapsed.

6. PUBLIC WORKS REQUIREMENT. If any portion of the Grant/Loan-funded work consists of public works, as defined in Labor Code sections 1720 to 1720.4, then Borrower and its contractors and subcontractors shall comply with California statutes and regulations applicable to public works projects, including, but not limited to, the following requirements: payment of prevailing wage rates; employment of apprentices; hours of labor limitations and overtime; keeping of proper payroll records; maintaining required workers' compensation insurance; procurement of payment/labor and materials bonds; non-discrimination laws; contractors' state license requirements; contractor registration with the State Department of Industrial Relations; and California Environmental Quality Act environmental review.

7. RECORD KEEPING. Borrower shall maintain accurate bookkeeping records, accounts, and documentation pertaining to the receipt, disbursement, and use of the Grant and Loan proceeds to pay vendors, contractors, suppliers, and others who perform the infrastructure work, including all invoices, receipts, canceled checks, contracts, purchase orders, and other source documents. These records shall be retained for a period of not less than three years from the fund disbursement date. These records shall be accessible and available for inspection or audit by Lender, or by its employees, accountants, attorneys, or agents, at reasonable times and upon reasonable notice. This Agreement, and performance and payments under this Agreement, are subject to examination and audit by the State Auditor General for three years following final payment. (See Government Code section 8546.7.)

8. INDEMNIFICATION. Borrower shall indemnify, defend, protect, and hold harmless Lender, and its officers, employees, volunteers and agents from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including but not limited to, attorney, expert witness and consultant fees and litigation costs) of every nature arising out of Borrower's performance of the Grant/Loan-funded work and caused by the negligent or willful act or omission of Borrower or its contractors or subcontractors or their employees, agents, and subcontractors, except where caused by the active negligence, sole negligence or willful misconduct of Lender or as otherwise provided or limited by law.

9. REPRESENTATION AND WARRANTIES. Borrower makes the following representations and warranties:

9.1 There are no legal actions, suits, or proceedings pending or, to the knowledge of Borrower, threatened against Borrower.

9.2 Borrower is not in default of any obligation, judgment, bond, debenture, note or other evidence of indebtedness.

9.3 No outstanding tax liability has been asserted against Lender by the IRS, California Franchise Tax Board or any other taxing authority.

10. DEFAULT. At the option of the Lender, the occurrence of any of the following events shall constitute a default:

10.1 Borrower fails to make any payment of principal or interest or any other amounts due Lender hereunder when due and not otherwise excused as set forth in this Agreement, and such failure shall continue for five days after notice thereof from Lender.

10.2 Any material representation or warranty made by Borrower is breached, false or misleading in any material respect, causing injury to Lender.

10.3 Any material provision of this Agreement ceases to be valid and binding for a reason other than a change in applicable law, or Borrower contests any such provision, or Borrower, or any agent or trustee on behalf of Borrower, deny that Borrower has any or further liability under this Agreement.

10.4 Borrower fails to perform any covenant, conditions, or agreement set forth herein, and such failure shall continue for a period of 30 days after notice thereof (which notice shall specify in reasonable detail the nature of such failure) from Lender, unless within that 30-day period Borrower submits to Lender a satisfactory plan to cure the failure.

10.5 Borrower becomes insolvent or unable to pay its debts as they mature or makes an assignment of its rights under this Agreement for the benefit of creditors, or there shall occur a material adverse change in the financial condition of Borrower.

10.6 Borrower files or there is filed against Borrower a petition to have Borrower adjudicated a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Borrower, the same is dismissed or stayed within 60 days.

10.7 Borrower applies for or consents to the appointment of a receiver, trustee or conservator for any portion of Borrower's property, or such appointment is made without Borrower's consent and is not vacated within 60 days.

In the event of default, Lender may immediately call the Loan due and payable and enforce its remedies as provided by law.

11. LIMITATIONS. Borrower shall not, without prior consent of Lender (a) pledge, mortgage or otherwise encumber in any manner whatsoever any of Borrower's present property or assets, (b) borrow money or obtain a loan from any person, corporation, or any other source, (c) make or guarantee any advances or loans made to others, or (d) sell or distribute a substantial part, or all, of its assets.

12. GENERAL PROVISIONS.

12.1 Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of terms of this contract among the Parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in or attached to this Agreement.

12.2 Construction and Interpretation. The Parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

12.3 Waiver. The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

12.4 Successors and Assignment. This Agreement shall bind and inure to the benefit of the respective successors, assigns, heirs, devisees and personal representatives of the parties.

12.5 Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties.

12.6 Governing Law and Venue. Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

12.7 Attorney's Fees. In the event any legal action is brought to enforce or construe this Agreement or the promissory note, the prevailing party shall be entitled to an award of reasonable attorney's fees, expert witness and consultant fees, litigation costs, and costs of suit.

12.8 Notices. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail addressed as follows:

Lender:

General Manager
Yuba County Water Agency
1220 F Street
Marysville, CA 95901

Borrower:

City Manager
City of Wheatland
111 C. Street
Wheatland, CA 95962

Any party may change its address by notifying the other party of the change in the manner provided above.

YUBA COUNTY WATER AGENCY

CITY OF WHEATLAND

By: _____
Nicholas Whittlesey, Jr., General
Manager
Date _____

By: _____
Jim Goodwin, City Manager
Date _____

Attest:

Secretary

Attest:

Secretary

Exhibit A

Funding Request letter dated May 28, 2020 from Jim Goodwin, City Manager on behalf of the City of Wheatland for Yuba County Water Agency's Board of Directors. (Attached below)

EXHIBIT A

From: noreply@civicplus.com
To: [Jim Mitrisin](#)
Subject: Online Form Submittal: General Grant Request
Date: Thursday, May 28, 2020 10:30:26 AM

General Grant Request

Organization Name City of Wheatland

Organization Type Government Agency

(Section Break)

Requester's First and Last Name Dane Schilling

Email Address schilling@coastlandcivil.com

Mailing Address 111 C Street

City or Community Name Wheatland

Zip Code 95692

Phone Number 5304014610

(Section Break)

Describe Your General Grant Request Wheatland Regional Wastewater Treatment Project - Design & Environmental (portion of IRWMP Project WTL-16)

In general, the project would replace the City's existing secondary level wastewater treatment plant that discharges on the north bank of the Bear River with a regional solution by conveying the City's current and future wastewater to the Olivehurst Public Utilities District (OPUD) system where it will be treated to a tertiary level.

This request is to fund the preliminary design, environmental review (CEQA and NEPA), permitting and final design activities required to make this project ready for construction bidding as soon as possible.

The scope of this project includes decommissioning of the City's wastewater plant and construction of the necessary infrastructure (pipeline and pump stations) to convey the City's sewage to southerly limits of OPUD's proposed South County Wastewater Project. It is expected that the City's initial phase (this project) will accommodate 1.5 MGD of flow (approx. 5500 EDUs). A future parallel pipeline will be constructed when needed.

This project (in its entirety) was accepted by the Yuba County RWMG into the IRWM on May 22, 2020. The application and a budgetary cost estimate is included with this application.

(Section Break)

Upload Supplemental Information (Optional)

Upload Supplemental Information (Optional)

Upload Supplemental Information (Optional)

(Section Break)

Next Steps

Agency staff will review all grant requests and will contact the requesting party via email regarding next steps in the process.

Email not displaying correctly? [View it in your browser.](#)



City of Wheatland

111 C Street Wheatland, California 95692

TELEPHONE (530) 633-2761
FAX (530) 633-9102

May 28, 2020

Jim Mitrisin
Clerk of the Board / Management Analyst
Yuba Water Agency
1220 F Street
Marysville, CA 95901

Dear Jim:

Thank you for your assistance with our grant application to Yuba Water Agency. We are looking forward to meeting with the POD Committee on June 2.

The Wheatland Regional Wastewater Treatment Project was recently included in the Integrated Regional Water Management Plan (IRWMP) as Yuba IRWMP WTLD-16. The specific project we are seeking funding for now is the Design and Environmental portion of this larger project. The amount requested is \$2.6 million. Our goal is to move the regional wastewater treatment project to "shovel ready" status.

The proposed uses for this grant request are as follows:

Project Administration	\$ 478,140
Environmental Review (CEQA & NEPA)	\$ 350,000
Preliminary Engineering and Report	\$ 478,140
Final Design Engineering & Surveying	\$1,275,040
Right of Way Clearance	\$ 15,000
Total this request	\$2,596,320

We are seeking a funding package that mirrors the recent award to OPUD for the design of the water and wastewater service extensions to the Yuba County Entertainment Zone.

Wastewater capacity limitation is a significant barrier to new investment in the City of Wheatland, a barrier the community has struggled to overcome for nearly two decades. The opportunity to resolve this in a regional partnership is exciting. The Wheatland City Council directed staff to pursue a regional solution earlier this year, and we have been working diligently on that solution. Yuba Water Agency's participation is key to moving forward.

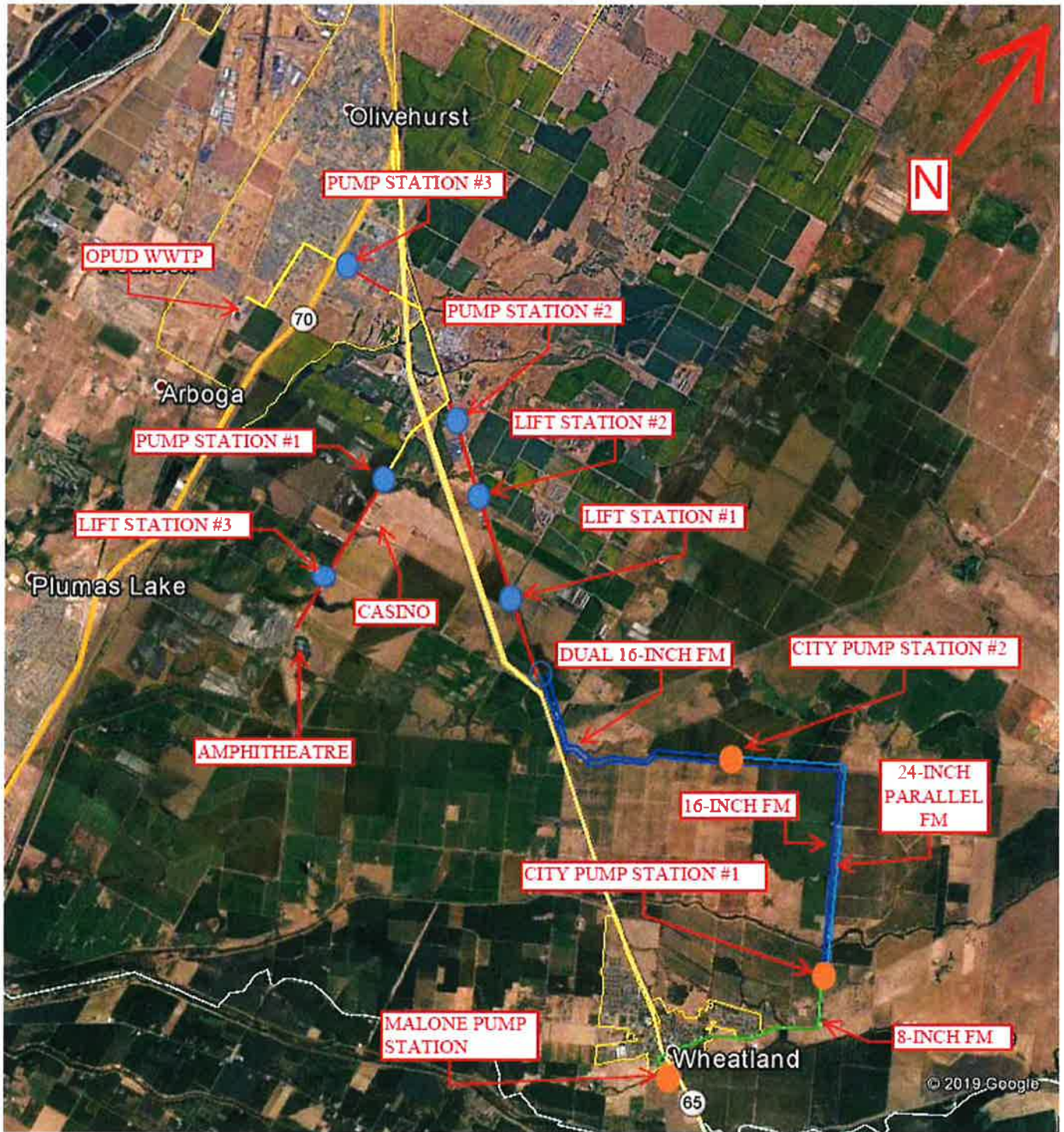
Wheatland City Engineer Dane Schilling and I will both attend the POD Committee meeting to answer questions. Thank you for your consideration.

Regards,

Jim Goodwin
City Manager

**Wheatland Regional Sewer Connection to OPUD
Preliminary Budget Estimate**

Item No.	Item Description	Estimated Quantity	Unit	Unit Price (\$/Unit)	Amount (\$)
1	Mobilization (Based on 2%)	1	LS	\$ 250,000	\$ 250,000
2	Clearing and Grubbing	1	LS	\$ 10,000	\$ 10,000
3	Traffic Control	1	LS	\$ 100,000	\$ 100,000
4	8" PVC C-900 or Epoxy Lined DIP Forcemain	11000	LF	\$ 70	\$ 770,000
5	16" PVC C-900 or Epoxy Lined DIP Forcemain	40000	LF	\$ 170	\$ 6,800,000
6	24" PVC C-900 or Epoxy Lined DIP Forcemain	15600	LF	\$ 190	\$ 2,964,000
6	Type SS1 - Sanitary Sewer Manhole	2	EA	\$ 6,500	\$ 13,000
7	SWPPP - BMP and Compliance	1	LS	\$ 25,000	\$ 25,000
8	Trench Sheet Piling and Bracing	1	LS	\$ 15,000	\$ 15,000
9	Caltrans Encroachment Permit	1	LS	\$ 6,500	\$ 6,500
10	Union Pacific RR Encroachment Permit	1	LS	\$ 6,500	\$ 6,500
11	Pig Port and Vault	8	EA	\$ 8,500	\$ 68,000
12	Steel Casing for Creek/Canal Crossings	4	EA	\$ 50,000	\$ 200,000
13	Steel Casing for State Highway Crossings	2	EA	\$ 100,000	\$ 200,000
14	Steel Casing for Railroad Crossing	7	EA	\$ 75,000	\$ 525,000
15	1" CARV w/ Access Vault	65	EA	\$ 5,000	\$ 325,000
16	Pipeline Easements	20000	LF	\$ 3.00	\$ 60,000
Total Bid Schedule - Pipeline					\$ 12,338,000
Pump Stations/ WWTP demo					\$ 3,600,000
Contingency @ 20.0%					\$ 3,187,600
Subtotal Construction					\$ 19,125,600
SOFT COSTS					
Project Administration					\$ 478,140
Environmental					\$ 350,000
Preliminary Engineering @ 3.0%					\$ 478,140
Design Engineering and Surveying @ 8.0%					\$ 1,275,040
Right of Way Clearance					\$ 15,000
Subtotal Design, Environmental and					\$ 2,596,320
Inspection					\$ 478,140
Construction Surveying					\$ 318,760
Subtotal Construction Services					\$ 796,900
Grand Total					\$ 22,520,000



Location Map - Wheatland Regional Wastewater Treatment Project