

CITY OF YUBA CITY
STAFF REPORT

Date: November 18, 2008
To: Honorable Chairperson & Directors of the Redevelopment Agency
From: Redevelopment Agency
Presentation by: George L. Musallam, Public Works Director

Summary

Subject: Town Center Property – License and Cleanup Agreement with Yuba City Steel Products Company

Recommendation: Authorize the Executive Director to enter into a License and Cleanup Agreement with Yuba City Steel Products Company covering environmental investigation and remediation of property located at 425 Franklin Avenue (AP#52-380-016) owned by the Redevelopment Agency of the City of Yuba City.

Fiscal Impact: All costs incurred by the Redevelopment Agency are reimbursed by Yuba City Steel per an Agency Acquisition Agreement.

Background:

The Redevelopment Agency of the City of Yuba City (Agency) currently owns property located at 425 Franklin Avenue (AP#52-380-016), as shown on the map attached as Exhibit A. This property was conveyed to the Agency by Yuba City Steel Products Company (Yuba City Steel) pursuant to an Agency Acquisition Agreement dated October 22, 1991. The Agency Acquisition Agreement provides that Yuba City Steel is required to cleanup and remediate any hazardous materials that are determined to exist on the property at its sole cost, and that such obligation shall survive the close of escrow.

The Agency and Yuba City Steel entered into a Reimbursement Agreement, dated September 27, 2006 whereby the parties agreed that the Agency would conduct an environmental investigation and perform any necessary remediation of the property and that Yuba City Steel would reimburse the Agency for costs incurred in connection with the investigation and remediation. The investigation is nearing completion and remediation measures are being negotiated with the California Regional Water Quality Control Board.

The Agency and Yuba City Steel now desire to continue the investigation and remediation of the property pursuant to the terms of a new License and Cleanup Agreement, attached as Exhibit B.

Analysis:

The proposed License and Cleanup Agreement requires Yuba City Steel to directly conduct and oversee the investigation and remediation of the property as required by the California Regional

Water Quality Control Board and any other governmental agencies, subject to Agency approval. The License and Cleanup Agreement further requires Yuba City Steel to diligently pursue work activities associated with the investigation and remediation until completion and receipt of a "No Further Action Letter" or equivalent from the California Regional Water Quality Control Board or other governmental agency with jurisdiction.

The Agency will not waive any rights contained in or reserved by either the 1991 Agency Acquisition Agreement or the 2006 Reimbursement Agreement. The License and Cleanup Agreement allows the Agency to resume direct conduct and oversight of the investigation and remediation, at the Agency's sole discretion, by terminating or suspending the License and Cleanup Agreement and reinstating the Reimbursement Agreement.

Fiscal Impact:

All costs incurred by the Agency are reimbursed by Yuba City Steel per an Agency Acquisition Agreement. There will be an indirect benefit resulting from the Agency not having to seek reimbursement from Yuba City Steel for costs incurred by the investigation and remediation activities, as Yuba City Steel will be invoiced directly by consultants and contractors performing such activities.


Alternatives:

Reject the License and Cleanup Agreement and direct staff to either continue operating under the current Reimbursement Agreement or to develop an alternative agreement covering the investigation and remediation.

Recommendation:

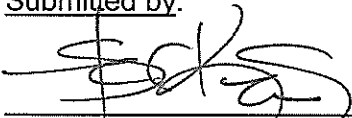
Authorize the Executive Director to enter into a License and Cleanup Agreement with Yuba City Steel Products Company covering environmental investigation and remediation of property located at 425 Franklin Avenue (AP#52-380-016) owned by the Redevelopment Agency of the City of Yuba City.

Prepared by:



Kevin Bradford
Associate Civil Engineer

Submitted by:



Steven R. Jepsen
City Manager

Reviewed by:

Department Head



Finance



City Attorney

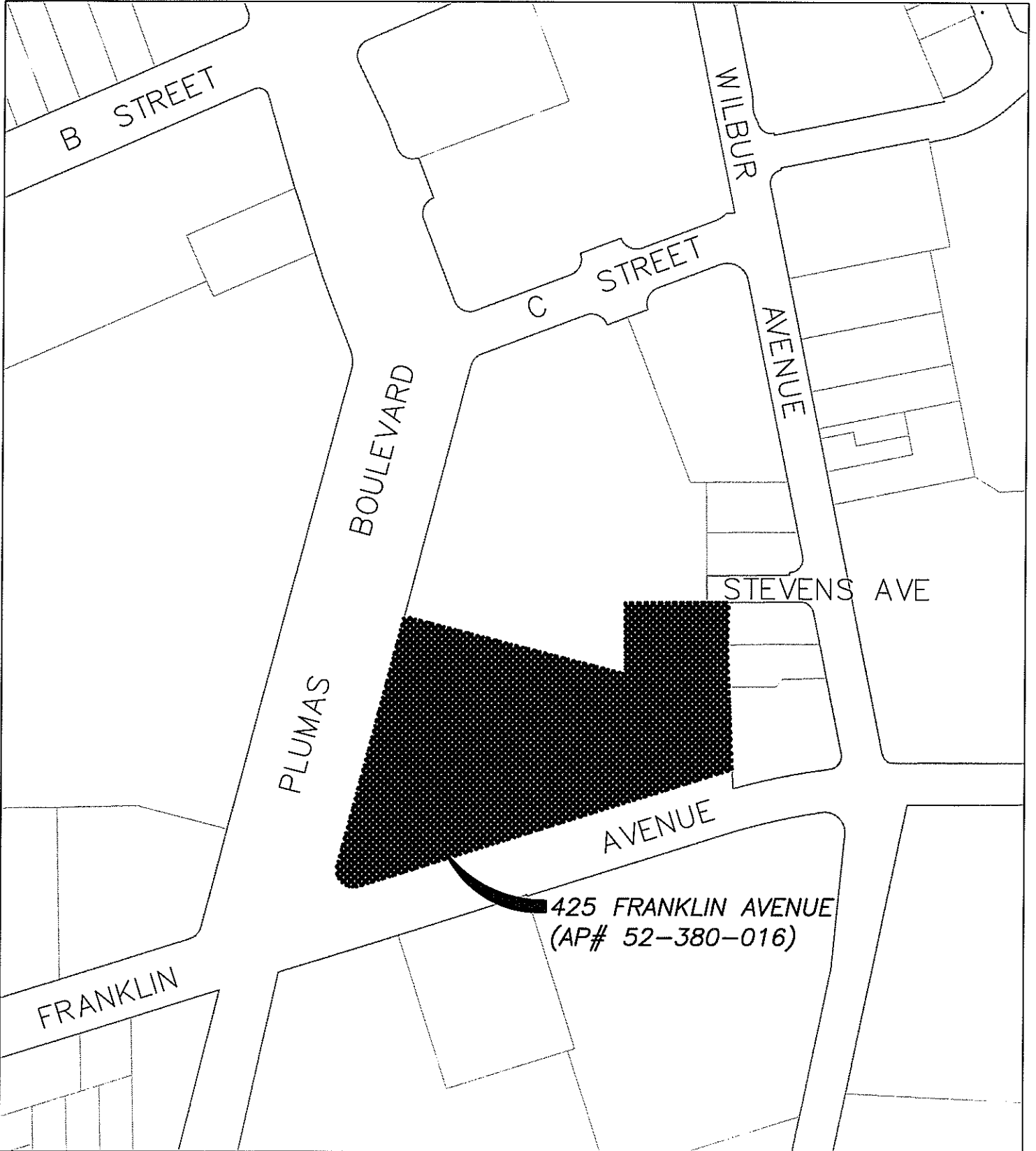
Assistant City Manager

EXHIBIT A
Legal Description of Property

EXHIBIT A
PROPERTY LOCATION MAP
425 FRANKLIN AVENUE



SCALE: 1" = 200'



LICENSE AND CLEANUP AGREEMENT

This License and Cleanup Agreement ("**Agreement**") is entered into this 3rd day of November, 2008, by and through the Redevelopment Agency of the City of Yuba City, a public body, corporate and politic (hereinafter "**Agency**") and Yuba City Steel Products Co., a California corporation (hereinafter "**Yuba City Steel**"). In consideration of the material promises contained herein, the parties agree as follows:

1. Background.

(a) Agency is the owner of that certain real property commonly known as 526 Stevens Avenue, Yuba City, California, and as described in Exhibit A (hereinafter the "**Property**"). Yuba City Steel once owned and operated the Property;

(b) The Property was conveyed to the Agency by Yuba City Steel pursuant to that certain Agency Acquisition Agreement entered into by and between the Agency and Yuba City Steel on October 22, 1991;

(c) Section 9 of the Acquisition Agreement provides that Yuba City Steel is required to cleanup and remediate any hazardous materials, as defined therein, that are determined to exist on the Property at its sole cost, and that such obligation shall survive the close of escrow;

(d) The parties entered into that certain Reimbursement Agreement, dated September 27, 2006 ("**Reimbursement Agreement**"), attached hereto as Exhibit B, whereby the parties agreed that Agency would conduct the investigation and remediation of the Property and Yuba City Steel would reimburse the Agency for costs incurred in connection with the investigation and remediation at the Property.

(e) The parties now desire to continue the investigation and remediation of the Property pursuant to the terms of this Agreement.

2. Reimbursement Agreement. The Agency and Yuba City Steel hereby agree to continue the investigation and remediation of the Property pursuant to the terms of this Agreement and to hold the Reimbursement Agreement in abeyance as of the Effective Date of this Agreement. The Reimbursement Agreement shall be revived pursuant to Paragraph 16 of this Agreement. The Agency does not waive any rights contained in or reserved by the Reimbursement Agreement.

3. Reimbursement for Costs Owed under the Reimbursement Agreement. As of the Effective Date, Yuba City Steel owes the Agency \$60,000 for costs not yet reimbursed under the Reimbursement Agreement. The parties hereby agree that Yuba City Steel will pay to Agency the sum of \$5,000 per month with no interest. Such payment shall be due on the first day of every month following the Effective Date until the total \$60,000 is paid to Agency. If Yuba City Steel fails to make such payment, the Agency may, in its sole and absolute discretion, take all available steps to recover the costs of remediation from Yuba City Steel and any other parties who may be responsible for the existence of Hazardous Materials on the Property, pursuant to the Acquisition Agreement, the Polanco Redevelopment Act ("**Polanco Act**"), and any other available remedies under state or federal law.

4. Rights under Acquisition Agreement Retained. The parties agree that the conduct of the investigation and remediation of the Property pursuant to this Agreement shall serve as a means of satisfying Yuba City Steel's obligations to remediate the Site under Section 9 of the Acquisition Agreement. The parties further agree that, in addition to the rights and remedies provided herein, the Agency retains all rights and remedies available pursuant to the Acquisition Agreement.

5. The Investigation and Remediation. The parties agree that beginning on the Effective Date, Yuba City Steel shall, subject to the terms of this Agreement, directly conduct and oversee the investigation and remediation of the Property, including the work described in the AMEC Geomatrix Proposal dated August 22, 2008 (attached as Exhibit C), and reasonably necessary subsequent investigation and remediation work, including but not limited to, continued sampling, monitoring, operation, and maintenance of wells, borings, soil vapor probes ("SVPs"), etc., as required by the Regional Water Quality Control Board ("RWQCB") or any other governmental agency, and restoration of the Property as set forth below. The above-described activities are hereinafter referred to as the "Activities." The Activities shall be subject to Agency's approval in accordance with the terms of this Agreement. Yuba City Steel agrees to diligently pursue the Activities until completion and receipt of a "No Further Action Letter" or equivalent from the RWQCB or other governmental agency with jurisdiction.

6. Grant of License. Agency hereby grants a license for reasonable access, as further defined herein, to Yuba City Steel to carryout the Activities ("License"). The Activities shall be carried out by Yuba City Steel at its sole cost and expense. The License shall begin on the Effective Date of this Agreement and shall terminate pursuant to Paragraph 16 of this Agreement. This Agreement represents a License that is limited in purpose and scope to the least amount of access which is required to undertake and complete the Activities and does not represent a lease or create in Yuba City Steel or any party acting on Yuba City Steel's behalf or direction any interest in the Property or create a partnership, joint venture or any association or relationship between Agency, Yuba City Steel or any other party other than that of licensors and licensees.

7. Agency's Prior Approval Required. Yuba City Steel shall obtain Agency's written approval prior to the commencement of any Activities, including approval of the location of any sample, well, or boring points on the Property. Yuba City Steel shall obtain Agency's comments and approval prior to the submittal of any workplans, reports, correspondence, etc. to the RWQCB or any other governmental agency. Yuba City Steel shall provide Agency with an opportunity to participate in any conference calls or meetings with RWQCB or any other governmental agency regarding the Activities or the Property.

8. Disruption. Yuba City Steel shall perform or cause to be performed the Activities in a good and workmanlike manner and at times that will not unreasonably interfere with Agency's use of the Property. Yuba City Steel shall use its best efforts to minimize disruption to current activities on, and to prevent damage to any personal property and structures of Agency and others located at, on or near the Property. Yuba City Steel will separate by cones or other construction safety barriers the areas surrounding the Activities while Yuba City Steel or any other party performs any work in that area. Neither Yuba City Steel nor any of Yuba City Steel's representatives will park on or store any construction vehicles, equipment or unreasonable quantity of materials on the Property when the Activities are not actively in progress. Yuba City

Steel or any of Yuba City Steel's representatives will use all reasonable efforts to allow safe ingress and egress to the Property.

9. Restoration. Upon completion of the Activities or a significant phase thereof, Yuba City Steel agrees to restore the Property, or any portion thereof, which is, or was in any way, affected, damaged or disturbed due to the performance of the Activities to a condition which is the same or similar to the condition, quality and specifications that existed before the commencement of the Activities. Yuba City Steel shall properly remove or abandon or cause the proper removal or abandonment of all monitoring wells, SVPs, sample points, bore holes and any and all related machinery, equipment and improvements upon the RWQCB's (or other governmental agency with jurisdiction) request. Yuba City Steel agrees to notify Agency 30 days in advance of any monitoring well, SVP, or other system abandonment.

10. Maintenance of Wells/Sample Points. Yuba City Steel shall maintain any wells, borings, SVPs and any and all other monitoring devices, equipment or improvements installed upon the Property in good working condition, at no cost to Agency.

11. Copies of Reports. Yuba City Steel or its representatives shall deliver to Agency copies of any raw data, studies, analyses, correspondence, RWQCB comments or approvals, draft and final work plans or other reports regarding the Activities or the investigation and remediation, within a reasonable time after the receipt by Yuba City Steel of such documents.

12. Notice for Access. Agency shall provide Yuba City Steel with access to the Property to perform the Activities at all reasonable times pursuant to the terms of this Agreement. Yuba City Steel shall provide Agency with at least five days advance notice of its intended time of access. If Agency determines that access cannot be granted on the proposed date, the parties shall cooperate to reschedule the date of access within seven calendar days after the original requested access date.

13. Indemnification. Yuba City Steel hereby assumes any and all liabilities associated with the Activities to be conducted by any third party on behalf of Yuba City Steel at the Property. Yuba City Steel shall defend, indemnify and hold harmless Agency and its respective officers, directors, employees, agents, representatives and contractors from and against any and all Claims directly or indirectly arising out of or related to the Activities, the investigation or remediation at the Property, the creation by Yuba City Steel or any of Yuba City Steel's representatives any contamination at the Property, including, the exacerbation, increase, disturbance or worsening of any pre-existing contamination at the Property, or Yuba City Steel's or any of Yuba City Steel's representatives treatment, storage, transportation, recycling, handling and/or disposal of any Hazardous Material generated, produced or resulting from the Activities. For the purposes of this Paragraph, "**Claims**" shall mean: any and all losses, claims, damages (including without limitation bodily injury or death of any person, or property damages), obligations, defenses, disbursements, costs (including without limitation remedial, removal, response, abatement, cleanup, investigative, operation and monitoring costs), liabilities, demands, causes of action, suits, orders, proceedings, amounts in contribution, fines, penalties, judgments or expenses (including without limitation court costs and reasonable attorneys', consultants' and experts' fees and disbursements).

The liability of Yuba City Steel and Yuba City Steel's representatives under this Paragraph shall not be limited to the insurance coverages required as part of this Agreement and shall not cease and shall survive the expiration or earlier termination of this Agreement.

14. Insurance. Prior to conducting or causing any Activities to be conducted upon the Property, Yuba City Steel shall obtain and maintain, or cause its contractors, agents or representatives to obtain and maintain, in full force and effect during the term of this Agreement, with an insurer(s) having a rating, as circulated by Best's Insurance reports, of "A" or better:

(a) Commercial General Liability Insurance. Commercial General Liability Insurance and/or a Liability Umbrella Policy with a combined single limit in the amount of \$2,000,000 per occurrence, naming Agency as additional insureds; and

(b) Workers' Compensation Insurance. Workers' Compensation Insurance with coverage not less than that required by applicable law; and

(c) Professional Liability Insurance. Professional Liability Insurance in the amount of \$1,000,000.

(d) Insurance Not Available. If the minimum insurance limits contained in this Paragraph 14 are not available for any Activities to be conducted upon the Property, the Activities shall be conducted only with prior written consent of Agency which consent shall not be withheld unreasonably.

(e) Notice for Change in Policies. All policies of insurance required to be maintained under this Agreement shall be written so that Agency will be notified in writing of any cancellation, termination or restrictive amendment of such policy at least thirty (30) days prior to the effective date of such cancellation, termination or restrictive amendment. Yuba City Steel shall provide Agency with original certificates from insurers evidencing the above insurance prior to conducting any Activities on the Property.

15. Liens. Yuba City Steel shall discharge at once or bond or otherwise secure against any liens and attachments which are filed in connection with the investigation performed on the Property pursuant to this Agreement, and shall indemnify and save Agency harmless from and against any and all Claims resulting directly or indirectly from such liens and attachments.

16. Termination. Yuba City Steel's and its representatives' right of access to the Property to perform the Activities shall terminate upon:

(a) the receipt of a "No Further Action Letter" or equivalent from the RWQCB or other applicable governmental agency with jurisdiction, and the proper abandonment of wells, borings and SVPs and removal of equipment placed on the Property; or

(b) upon notice by Agency terminating the Agreement, which notice shall be effective 10 days from the date of receipt of said notice by the Yuba City Steel. Termination by Agency shall be within Agency's sole discretion.

Upon the termination of this Agreement under Paragraph 16(b), the parties shall resume the investigation and remediation of the Property pursuant to the Reimbursement Agreement (attached as Exhibit B).

17. No Admission of Liability. Nothing contained in this Agreement shall be construed in any manner or fashion to be an admission by Agency of any responsibility or liability for contamination of any type or description that may be present on the Property.

18. No Waiver of Polanco Act Rights. The parties acknowledge and agree that the Agency's conduct with respect to the investigation and remediation of the Property is in accordance with the requirements of the Polanco Act, and the Agency retains all rights and remedies available to the Agency in connection with the investigation and remediation of the Property including but not limited to the right to recover costs from responsible parties pursuant to Health and Safety Code section 33459.4.

19. Generator Status. All Hazardous Materials generated at the Property as a result of the Activities shall become the sole property of Yuba City Steel. Yuba City Steel shall be solely responsible for the proper handling, transportation, storage and disposal of such Hazardous Materials and, without limiting the foregoing, shall, if necessary, use one or more hazardous waste manifests signed by Yuba City Steel as generator to have such Hazardous Materials transported to a location selected by Yuba City Steel for final disposal. All laboratory and field equipment are the sole responsibility of Yuba City Steel to decontaminate, and all Hazardous Materials arising from the decontamination of such equipment shall be managed as described in this Paragraph 19.

20. Compliance with Environmental Laws. Yuba City Steel shall and shall require Yuba City Steel's representatives to comply with all applicable Environmental Laws and all lawful orders of any governmental authority or agency. Yuba City Steel shall obtain all permits, consents, approvals and/or licenses required for the performance of the Activities undertaken pursuant to this Agreement unless such compliance requires actions not authorized by this Agreement; in which case an amendment to this Agreement will be required before such action can be undertaken.

21. Remedies for Breach. If Yuba City Steel directly or through any of Yuba City Steel's representatives breaches this Agreement in any manner, then, in addition to all other rights and remedies available at law or in equity, Agency may: (a) terminate Yuba City Steel's License and/or (b) cure such default and be reimbursed from Yuba City Steel within 30 days after demand for reimbursement of reasonable costs incurred by Agency as a direct result of Yuba City Steel's breach. Agency agrees to mitigate any damages as a result of such breach. If Yuba City Steel fails to pay any such sum when due, Yuba City Steel will pay interest on the amount due from the date due through the date of payment in full at a rate equal to the lower of: (i) 18% per annum or (ii) the maximum rate allowed by law.

22. Cost of Activities. Nothing contained in this Agreement shall obligate Agency to pay or incur any costs or expenses for the Activities or any work related to the Activities to be performed by Yuba City Steel or any of Yuba City Steel's representatives.

23. Confidentiality. Yuba City Steel shall hold and maintain as confidential, to the extent permitted by law, all information and data obtained and report(s) generated as a result of the Activities and shall not, without first obtaining Agency's written approval, divulge or release such information to any third party (including the RWQCB, other governmental agency with jurisdiction).

24. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

25. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single, original document.

26. Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

27. Enforceability. If any portion of this Agreement is declared to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of this Agreement.

28. Modification. This Agreement may only be modified or amended by writing signed by all parties.

29. Incorporation. Exhibits A, B, and C, attached, are hereby incorporated by this reference and made a part of this Agreement.

30. Notices. All notices, consents or demands required by this Agreement or other communications to any party by the other shall be deemed given when in writing and delivered to each so noticed party by U.S. Mail or nationally recognized overnight deliver service as follows:

Yuba City Steel: Yuba City Steel Products Co.,
345 Epley Drive
Yuba City, CA 95991
Attn.: Bob Zellner

and

Clinton L. West
345 Epley Drive
Yuba City, CA 95991

Agency: Redevelopment Agency of the
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993
Attn.: Executive Director

Either party may change its contact information by notice hereunder to the others.

32. Definitions. When used herein, the following capitalized terms shall have the following meanings:

(a) "**Environmental Laws**" mean all federal, state and local laws, statutes, ordinances, codes, rules, regulations and guidance relating to the protection of the environment, protection of public health, protection of employees and/or governing the use, handling, generation, treatment, recycling, storage, manufacture, transportation or disposal of Hazardous Materials, including without limitation, as amended, the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Emergency Planning Community Right To Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; applicable state laws; and all rules and regulations enacted, promulgated or amended under any of the foregoing.

(b) "**Hazardous Materials**" mean, without regard to amount and/or concentration, petroleum, petroleum distillates, petroleum products, mineral oil, radioactive materials and substances, asbestos, asbestos containing material, polychlorinated biphenyls ("**PCBs**"), radon, and any other materials or substances which are regulated under, defined as, or otherwise included in the definition, of "hazardous substances," "hazardous materials," "solid wastes," "recyclable material," "hazardous wastes," "toxic substances," "toxic pollutants," "pollutants" or "contaminants" in any applicable Environmental Law, and constituents and degradation products of any of the foregoing.

(c) "**Effective Date**" shall mean the date the last party to sign this Agreement signs it.

Agency:

By

Name

Title

Date

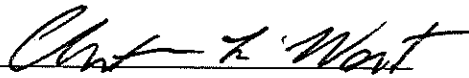
Yuba City Steel:

By

Name

Title

Date



CLINTON L. WEST

CHAIRMAN

11/10/08

EXHIBIT A
Legal Description of Property

EXHIBIT B
Reimbursement Agreement

EXHIBIT C

AMEC Geomatrix Proposal Remediation Plan dated August 22, 2008