

AGREEMENT FOR PROFESSIONAL SERVICES
(Design Professional)

THIS AGREEMENT is made and entered into this 1st day of April, 2013, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Stantec Consulting Services, Inc., a New York Corporation, whose address of record is 200, 10160 – 112 Street, Edmonton AB, Canada T5K 2L6, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to prepare Sewer Master Plan for the City of Merced; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide engineering services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the engineering services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Engineer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of One Hundred Twelve Thousand Dollars (\$112,000.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, protect, defend (with legal counsel reasonably acceptable to City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property, or expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation), that arise out of, pertain to, or relate to, the negligence, recklessness, willful misconduct of Consultant or its employees, subcontractors, or agents in the performance of this Agreement. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's

Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: *John M. Bramble*
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: *[Signature]*
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: *K. Byrd* 2/28/13
City Attorney Date

V-16324

213469 PO#: 109009
ACCOUNT DATA:

BY: *Bridley Hunt*
Verified by Finance Officer

Funds Available: mm 3/20/13

553-1107-637-6500 113059
\$112,000.00 W

CONSULTANT
STANTEC CONSULTING SERVICES,
INC., A New York Corporation

BY: *St L Beck*
(Signature)

Steven L. Beck
(Typed Name)

Its: Principal
(Title)

BY: *SA McIlroy*
(Signature)

Sarah A. McIlroy
(Typed Name)

Its: Principal
(Title)

Taxpayer I.D. No. 680309852

3875 Atherton Road
ADDRESS: ~~200, 10160 112 Street~~
Edmonton AB, Canada
~~75K 2L6~~ Rocklin, CA 95765

TELEPHONE: (916) 773-8100

FAX: (916) 773-8448

E-MAIL: steven.beck@stantec.com

Exhibit A
City of Merced
Sewer Master Plan Project Update
Scope of Services

Stantec (previously ECO:LOGIC) completed a Draft Report for the City of Merced Sewer Master Plan in January of 2007. The Plan addressed how to sewer development within the Specific Urban Development Plan (SUDP) boundary and considered options for how to sewer "Study Areas" outside the SUDP. The draft report compiled several years of flow studies and hydraulic modeling, however, was not finalized because sewerage needs of UC Merced and nearby areas had not been fully defined.

Over the last five years, several things have changed which will require a comprehensive update to the 2007 Draft Sewer Master Plan:

- In January 2012, the City adopted its Merced 2030 Vision General Plan describing new land use assumptions.
- The City has completed a number of rehabilitation projects (including the partial lining of the Gerard Trunk Sewer).
- More recent data exists on peak sewer flows during larger storm events.
- The City is permitted by the State to prepare and maintain a Sewer System Management Plan (SSMP). The SSMP requires the City demonstrate sufficient sewer capacity exists and that a capital improvement plan be created to minimize sewer overflows.
- UC Merced has likely revised forecasts for student enrollment and its future sewerage needs.
- The City has been approached recently by private organizations about locating industrial processing facilities in the Merced service area.

This scope of work provides an update to the 2007 Draft Sewer Master Plan and includes the following major tasks:

1. Update land use and wastewater flows generated from the 2030 Vision General Plan Boundary and adjacent Study Areas, including UC Merced.
2. Assess available capacity of major sewers.
3. Determine the best means to sewer the Buildout of General Plan and adjacent Study Areas, including UC Merced.

4. Develop an interim service plan and CIP for City growth.
5. Develop a prioritized sewer repair and replacement program.
6. Develop Industrial Waste Acceptance Decision Matrix.
7. Conduct project meetings.
8. Prepare Draft and Final master plan reports.

TASK 1: UPDATE NEW LAND USE ASSUMPTIONS AND WASTEWATER FLOWS

In this task Stantec will:

- Review and update land use information from the 2030 Vision General Plan.
- Review WWTF flow data to determine average flows, groundwater infiltration, and rainfall dependent infiltration and inflow during large storm events.
- Assign equivalent dwelling units, average and peak wastewater flow generation rates to each land use
- Engage UC Merced to determine current average, peak hour, reliable and firm pumping capacity into the City's sewer.
- It is assumed the City will provide an updated GIS shape file with land use designations. Stantec will review land use assumptions with the City prior to including the information in the updated hydraulic analysis.

TASK 2: ASSESS AVAILABLE CAPACITY IN SEWERS

Using current land use and new flow inputs, Stantec will run the previously developed hydraulic flow routing model to both calibrate the model and determine the extent of any hydraulic bottlenecks.

Stantec will run the model using previously established capacity criteria and design storm conditions. The model will also reflect any system changes completed in the last five years since the model was developed.

TASK 3: DETERMINE SEWER SYSTEM NEEDS AT GENERAL PLAN BUILDOUT

Using future land uses and flow inputs, Stantec will run an expanded model to determine the best means to maximize existing sewer capacity and construct new sewers and pump stations to serve planned City growth at General Plan buildout. The analysis will include maps of proposed new trunk sewers, new sewer sizes and inverts, new pump stations, and tributary areas.

TASK 4: DEVELOP INTERIM SERVICE PLAN

As with the analysis within the Draft Report, the City's trunk sewer system has capacity to convey up to about 10,000 additional EDUs in North Merced with some changes to tributary areas. It is desired to maximize use of this available capacity prior to constructing new trunk sewers across Bear Creek and to the WWTF. Stantec will use the growth assumptions provided by the UC, and any known development project schedules provided by the City to determine the best use of facilities in the coming years. Stantec will also develop a low and high-end estimate of when new trunk sewers will be required.

TASK 5: DEVELOP SEWER REPAIR AND REPLACEMENT PROGRAM

In addition to the CIP to serve City growth, the City needs a methodology for prioritizing sewer repairs and replacement. Stantec will assess relative condition of the City's sewer assets by a combination of previously identified repair projects, and the asset's age as an indicator of its relative condition. With assistance from the City, Stantec will prioritize the sewer assets by their relative risk of failure. Risk is the combination of impact of failure (consequences) and probability of failure (the sewer's relative condition). Stantec will develop an annual budget for sewer and pump station repair and replacement.

TASK 6: INDUSTRIAL WASTE ACCEPTANCE DECISION MATRIX

The City of Merced has been approached recently by private organizations regarding their plans to locate industrial processing facilities in the Merced service area. These predominantly include food and dairy processors. Though new industries may provide economic benefits, they may also require upgrades to the City's existing water, sewer, and road infrastructure. Connecting a new industry to the City's sewer collection system can have a number of impacts on collection system maintenance and WWTF operations.

Task 6.1 – Review Recently Adopted Industrial Pretreatment Ordinance

Each proposed industrial user will be permitted and monitored based on the recently adopted industrial pretreatment program. Stantec will review the ordinance and develop evaluation parameters and boundary conditions that facilitate City staff evaluation of industrial discharger's proposals for consistency with the City's pretreatment and FOG ordinances.

Task 6.2 - Review Current WWTF Loading and Performance

Stantec currently maintains a calibrated BioWin Model for Merced WWTF. A brief review of current plant data will be conducted to how this model can be used in the evaluation of proposed industrial discharges.

Task 6.3 – Evaluate Potential Industrial Waste Characteristics

A complete flow and load characterization of the proposed industrial waste is required to estimate City wastewater infrastructure needs. Since, there are no actual wastes from a proposed industry before the fact of construction and operation, Stantec will compile a few potential industrial user profiles with waste characteristics based on a literature survey pertaining to these industrial users.

Task 6.4 - Industrial Waste Acceptance Impact/Benefit Analysis

For the impact/benefit analysis, potential negative impacts and revenues from connecting an industrial user will be projected. These projections will be based on potential industrial waste flow and load characteristics (Task 6.3) and capacity currently available at the WWTF (Task 6.2).

Task 6.5 - Development of Industrial Waste Acceptance Decision Matrix and Report Preparation

An industrial waste acceptance decision matrix (i.e., a decision tool) will be prepared based on the impact/benefit analysis (Task 6.4). A brief report summarizing each step of the evaluation and background data used in the preparation of decision matrix will be delivered.

TASK 7: PROJECT MEETINGS

Stantec has assumed four (4) project meetings with City staff would be necessary though the course of the project. Stantec will prepare an agenda, meeting minutes, and action items for each meeting.

TASK 8: PREPARE DRAFT AND FINAL MASTER PLAN REPORT

The Draft and Final report will contain all the background information developed as part of the Draft Report of 2007, and add to it the information developed as part of this update so to provide a comprehensive Master Plan Report for City and Public Review.

Stantec will prepare ten (10) copies of a Draft Sewer Master Plan for City review. Stantec will conduct a workshop with City staff and interested parties to discuss the draft report and receive any comments. Stantec will revise the Draft and submit fifteen (15) copies of a Final Master Plan Report. The final report will also be provided to the City in *.PDF format for additional reproduction or posting.

TASK 9: PROJECT MANAGEMENT AND ADMINISTRATION

This task includes supervision of staff and monitoring and control of budget and schedule, as well as coordination with the City on administrative matters.

PROJECT BUDGET

The proposed project budget is \$112,000. A breakdown of the project budget by task is shown Table 1 (attached).

**CITY OF MERCED
SEWER SYSTEM MASTER PLAN PROJECT UPDATE
ENGINEERING FEE ESTIMATE BREAKDOWN**

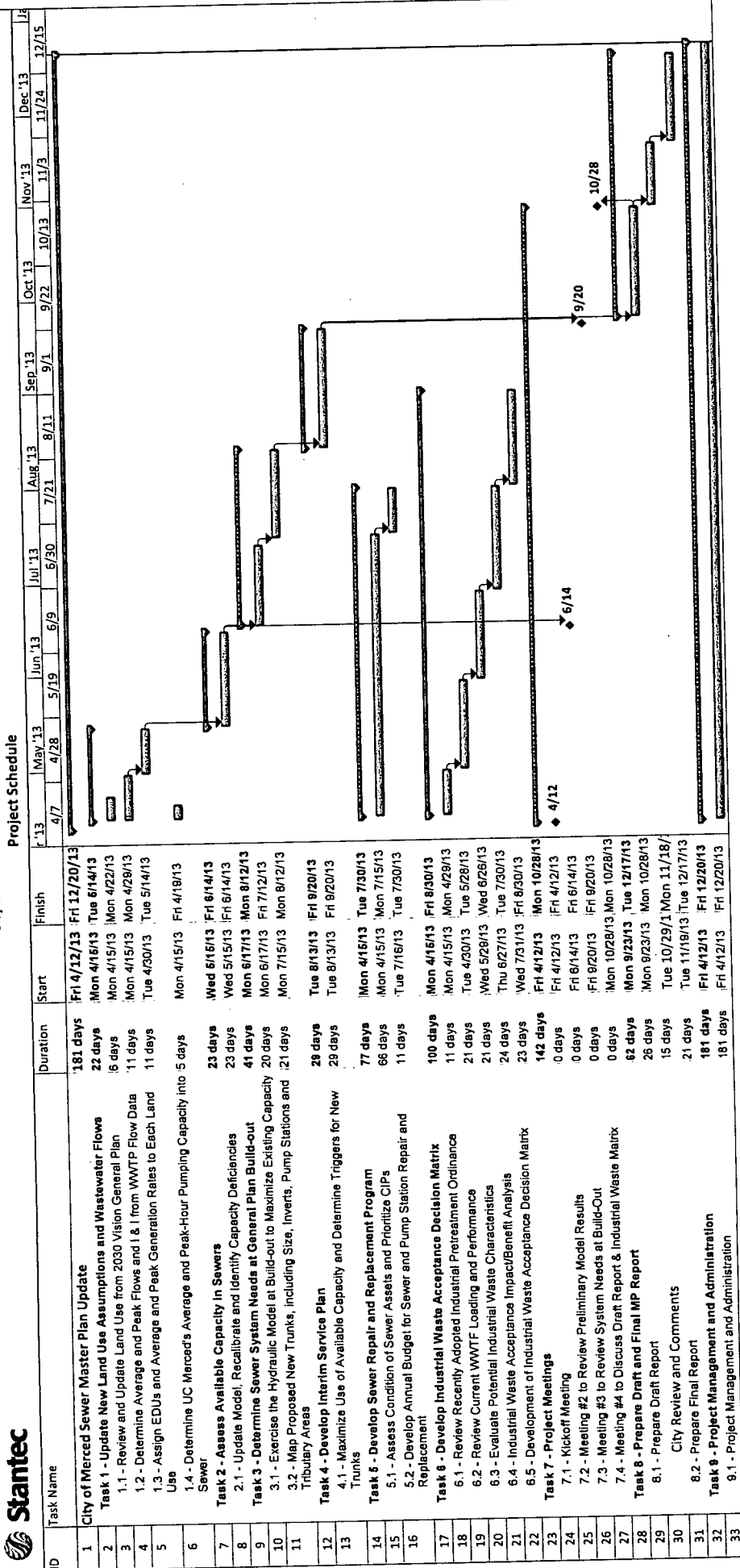
TASKS	TASK DESCRIPTION	Principal Engineer	Associate Engineer I	Engineer	GIS Specialist	Admin. Assistant	Staff Cost Estimate	Sub-Consultant Cost Estimate	Other Direct Costs (a)	Total Task Cost Estimate
		\$231	\$144	\$122	\$110	\$95				
1	Update New Land Use Assumptions and Wastewater Flows									
	1.1 Review and Update Land Use from 2030 Vision General Plan		8	6			\$1,884			\$1,884
	1.2 Determine Average and Peak Flows and I&I from WWTP Flow Data		8	12			\$2,616			\$2,616
	1.3 Assign EDUs and Average and Peak Generation Rates to Each Land Use		8	12			\$2,616			\$2,616
	1.4 Determine UC Merced's Average and Peak-Hour Pumping Capacity Into Sewer		6	6			\$1,595	\$2,376		\$3,972
2	Assess Available Capacity in Sewers									
	2.1 Make Updates to Model, Recalibrate and Identify Bottlenecks		32	32			\$8,512			\$8,512
3	Determine Sewer System Needs at General Plan Build-Out									
	3.1 Run the Hydraulic Model at Buildout to Maximize Existing Capacity		32	24			\$7,536			\$7,536
	3.2 Map Proposed New Trunks, Including Size, Inverts, Pump Stations and Tributary Areas		16	16	6		\$4,916	\$1,584	\$200	\$6,700
4	Develop Interim Service Plan									
	4.1 Maximize Use of Available Capacity and Determine Triggers for New Trunks		24	32	2		\$7,580	\$1,584	\$100	\$9,264
5	Develop Sewer Repair and Replacement Program									
	5.1 Assess Condition of Sewer Assets and Prioritize CIPs		32	24			\$7,536	\$1,584		\$9,120
	5.2 Develop Annual Budget for Sewer and Pump Station Repair and Replacement		24	16			\$5,408	\$1,584		\$6,992
6	Develop Industrial Waste Acceptance Decision Matrix									
	6.1 Review Recently Adopted Industrial Pretreatment Ordinance		6				\$864			\$864
	6.2 Review Current WWTP Loading and Performance		16				\$2,304			\$2,304
	6.3 Evaluate Potential Industrial Waste Characteristics		16	8			\$3,280			\$3,280
	6.4 Industrial Waste Acceptance Impact/Benefit Analysis	4	24	8			\$5,356			\$5,356
	6.5 Development of Industrial Waste Acceptance Decision Matrix	4	24	8		3	\$5,841		\$200	\$5,841
7	Project Meeting									
	7.1 Kickoff Meeting	4	4			1	\$1,595	\$792	\$200	\$2,587
	7.2 Meeting #2 to Review Preliminary Model Results of Available Capacity in Sewers	4	4			1	\$1,595	\$792	\$200	\$2,587
	7.3 Meeting #3 to Review System Needs at Buildout and Interim Service Plan	4	4			1	\$1,595	\$792	\$200	\$2,587
	7.4 Meeting #4 to Discuss Draft Report & Industrial Waste Matrix	4	4			1	\$1,595	\$792	\$200	\$2,587
8	Prepare Draft and Final MP Report									
	8.1 Prepare Draft Report	4	32	24	4	8	\$9,680	\$1,584	\$1,500	\$12,744
	8.2 Prepare Final Report	4	16	16	4	8	\$9,380	\$1,188	\$2,000	\$9,568
9	Project Management and Administration									
	9.1 Project Management and Administration	4								
							\$924	\$1,584		\$2,508
	TOTAL TASKS	36	340	244	16	23	\$90,989	\$16,236	\$4,800	\$112,000

Notes:
(a) Includes mileage, reproduction, and GIS/CAD charges etc.



City of Merced Sewer Master Plan Update

Project Schedule



Project: sch_merced_sewer_mast
Date: Thu 4/4/13

Task

Split

Milestone

Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

Deadline

Progress