LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: January 15, 2020
Time: Closed Session 6:15 p.m.
Regular Meeting 7:00 p.m.

*and via conference call:
1311 Midvale Road
Lodi, CA 95240 &
Fairmont Rehab Hospital
960 S. Fairmont Avenue
Lodi, CA 95240

For information regarding this Agenda please contact:
Pamela M. Farris
Assistant City Clerk
Telephone: (209) 333-6702

AMENDED

6:55 p.m. Invocation/Call to Civic Responsibility. Invocations/Calls may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. These are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any speaker.

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

a) Conference with Adele Post, Human Resources Manager, and Andrew Keys, Deputy City Manager (Labor Negotiators), Regarding AFSCME General Services and Maintenance & Operators, Lodi Professional Firefighters, Executive Management, Council Appointees, and Confidential Employees Pursuant to Government Code §54957.6 (CM)

b) Actual Litigation: Government Code Section 54956.9; One Application; *Donald Sanford v. City of Lodi*; Worker's Compensation Appeals Board Case No. ADJ11362808 (DOI: 12/02/2014) (CA)

C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll Call

B. Presentations – None

C. Consent Calendar (Reading; Comments by the Public; Council Action)

C-1 Receive Register of Claims for November 29, 2019 through December 26, 2019 in the Amount of $5,310,486.06 (FIN)

C-2 Approve Minutes (CLK)
a) December 4, 2019 (Regular Meeting)
b) December 10 and December 17, 2019 (Shirtsleeve Sessions)

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Municipal Services Center Security Fence Improvement Project (PW)

Res. C-4 Approve Plans and Specifications and Authorize Advertisement for Bids for Citywide Bicycle Facilities Detection Improvement Project and Adopt Resolution Authorizing City Manager to Execute Agreements with State of California for Funding Allocation (PW)

Res. C-5 Adopt Resolution Authorizing City Manager to Execute Purchase Order with L N Curtis & Sons, of Walnut Creek, for Purchase of Additional Self Contained Breathing Apparatus (SCBA) and SCBA Equipment and Appropriating Funds ($55,053.38) (FD)

Res. C-6 Adopt Resolution Awarding Contract for 2019 Pavement Crack Sealing Project to Graham Contractors, Inc., of San Jose ($46,082) (PW)

Res. C-7 Adopt Resolution Awarding Contract for Blakely Park Restroom Improvements to Soracco, Inc., of Lodi ($333,587), Authorizing City Manager to Execute Change Orders ($50,000), and Appropriating Funds ($117,000) (PW)

C-8 Accept Improvements Under Contract for Lodi Station Parking Garage Structural Repair Project (PW)

Res. C-9 Adopt Resolution Accepting Public Improvements of Reynolds Ranch Buffer Trail and Authorizing City Manager to Execute Landscape Maintenance Agreement (PW)

Res. C-10 Adopt Resolution Accepting Public Improvements of Gateway North Subdivision, Unit No. 1, Tract No. 3940, and Amending Traffic Resolution No. 97-148 by Approving Yield Control on Larkspur Lane at Primrose Drive (PW)

Res. C-11 Adopt Resolution Approving Final Map and Authorizing City Manager to Execute Improvement Agreement for Interlaken Subdivision, Tract No. 4024 (PW)

Res. C-12 Adopt Resolution Approving Final Map and Authorizing City Manager to Execute Improvement Agreement for Iris Drive Subdivision, Tract No. 4023 (PW)

Res. C-13 Adopt Resolution Authorizing City Manager to Waive Bid Process and Execute Professional Services Agreement with Garland/DBS, Inc., of Cleveland, Ohio, for Parks Division Storage Shed Gutter Replacement Project ($24,113), and Appropriating Funds ($24,113), Utilizing U.S. Communities Contract No. 14-5903 (PRCS)

Res. C-14 Adopt Resolution Authorizing City Manager to Waive Bid Process and Execute Professional Services Agreement with Bauer Compressors, Inc., of Norfolk, Virginia, for Purchase of Four Breathing Air Compressors, Installation, Training, Annual and Quarterly Maintenance (Not to Exceed $213,070), Utilizing State of California Contract No. 1-19-42-07 (FD)

Res. C-15 Adopt Resolution Authorizing Chief of Police to Execute Agreement for Confidential Wage and Claim Information for Use in Conducting Law Enforcement Employment Background Investigations with Employment Development Department ($373.50) (PD)

Res. C-16 Adopt Resolution Authorizing City Manager to Execute Cooperation Agreement with Woodbridge Irrigation District and City of Stockton to Collectively Manage Groundwater Resources (PW)

Res. C-17 Adopt Resolution Approving Renewal of Chiropractic Benefit Administration Agreement with Landmark Healthplan of California; and Further Authorizing City Manager to Execute Agreement (CM)

C-18 Accept Report on Results of Phase 1 Environmental Study and Noise Studies for Two Potential Homeless Emergency Aid Program Project Sites (CD)

C-19 Appoint Teresa Whitmire and Tracy Williams to Lodi Senior Citizens Commission and Roger Stafford to Site Plan and Architectural Review Committee; Re-Post for Vacancy on Site Plan and Architectural Review Committee; and Post for Expiring Term on Lodi Improvement Committee (CLK)

C-20 Accept Monthly Protocol Account Report Through December 31, 2019 (CLK)

D. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

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E. Comments by the City Council Members on Non-Agenda Items

F. Comments by the City Manager on Non-Agenda Items

G. Public Hearings

Res. G-1 Public Hearing to Consider Adopting Resolution to Approve Community Development Block Grant (CDBG) Consolidated Plan Amendment No. 1 (CD)

Res. G-2 Public Hearing to Consider Adopting Resolution Authorizing City Manager to Execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas, for Conceptual Development (Phase 1) and Design Development (Phase 2) for Replacement of Aeration Blowers and Diffusers at White Slough Water Pollution Control Facility ($225,000), in Accordance with California Government Code Section 4217 (PW)

H. Regular Calendar

H-1 Lodi Improvement Committee Presentation of 2018-19 Prior Year Accomplishments, 2019-20 Year Goals, and Receive Direction on Updating Committee By-Laws (CD)

Res. H-2 Adopt Resolution Approving Revisions to Contracts for Lodi Executive Management Employees (Excluding Council Appointees) for Period January 1, 2020 through December 31, 2022 (CM)

I. Ordinances

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J. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

_____
Pamela M. Farris
Assistant City Clerk

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Pamela M. Farris
Assistant City Clerk

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AGENDA ITEM C-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Receive Register of Claims for November 29, 2019 through December 26, 2019 in the Total Amount of $5,310,486.06

MEETING DATE: January 15, 2020

PREPARED BY: Internal Services Director

RECOMMENDED ACTION: Receive the attached Register of Claims for $5,310,486.06

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of $5,310,486.06 for November 29, 2019 through December 26, 2019. Also attached is Payroll in the amount of $1,638,919.24 through December 1, 2019 and $1,843,816.86 through December 15, 2019. This report covers one month of claims and two pay periods.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: As per attached report.

Andrew Keys
Internal Services Director

APPROVED: _____
Stephen Schwabauer, City Manager

Council Report
City of Lodi - v11.3.19 Live
11/29/2019 through 12/26/2019

Fund	Fund Title	Amount
100	General Fund	$2,711,976.89
103	Measure L	$14,795.47
120	Library Fund	$16,064.13
140	Expendable Trust	$171,917.60
200	Parks Rec & Cultural Services	$28,278.99
205	State Grants	$4,114.55
213	LPD-Public Safety Prog AB 1913	$21,635.01
270	Comm Dev Special Rev Fund	$271.70
300	Street Fund	$111,362.00
301	Gas Tax-2105 2106 2107	$32,396.79
303	Measure K Funds	$11,270.50
305	TDA - Streets	$862.25
307	Federal - Streets	$333,625.68
350	H U D	$6,887.15
403	Vehicle Replacement Fund - PD	$6,017.22
407	Vehicle Replacement Fund- PRCS	$194,872.64
431	Capital Outlay/General Fund	-$103,536.33
432	Parks & Rec Capital	$4,844.40
434	Arts in Public Places-IMF	$150.00
500	Electric Utility Fund	$114,428.11
501	Utility Outlay Reserve Fund	$62,538.50
504	Public Benefits Fund	$37,926.26
530	Waste Water Utility Fund	$213,223.89
531	Waste Wtr Util-Capital Outlay	$74,745.77
560	Water Utility Fund	$49,629.22
561	Water Utility-Capital Outlay	$153,961.45
565	PCE/TCE Rate Abatement Fund	$900.00
590	Central Plume	$10,237.00
600	Dial-a-Ride/Transportation	$163,980.77
601	Transit Capital	$156,081.00
650	Internal Service/Equip Maint	$27,150.49
655	Employee Benefits	$662,282.03
660	General Liabilities	$1,304.62
665	Worker's Comp Insurance	$11,753.50
801	L&L Dist Z1-Almond Estates	$2,536.81
Total		**$5,310,486.06**

12/30/2019 7:32:48 AM

Council Report: Payroll
City of Lodi - v11.3.19 Live
Pay Period 12/1/2019

Fund	Description	Amount
100	General Fund	$929,946.52
103	Measure L	$115,370.68
120	Library Fund	$25,271.49
200	Parks Rec & Cultural Services	$100,071.33
214	LPD-OTS Grants	$2,067.27
270	Comm Dev Special Rev Fund	$23,989.68
301	Gas Tax-2105 2106 2107	$31,213.12
500	Electric Utility Fund	$191,551.29
501	Utility Outlay Reserve Fund	$16,097.16
530	Waste Water Utility Fund	$144,365.66
560	Water Utility Fund	$21,063.67
600	Dial-a-Ride/Transportation	$9,246.32
650	Internal Service/Equip Maint	$19,803.19
655	Employee Benefits	$8,861.86
Report Total		**$1,638,919.24**

Council Report: Payroll
City of Lodi - v11.3.19 Live
Pay Period 12/15/2019

Fund	Description	Amount
100	General Fund	$1,076,896.79
103	Measure L	$129,909.65
120	Library Fund	$22,487.00
200	Parks Rec & Cultural Services	$121,564.80
214	LPD-OTS Grants	$1,136.48
219	LPD-ABC Grant	$1,287.40
270	Comm Dev Special Rev Fund	$24,612.00
301	Gas Tax-2105 2106 2107	$34,430.62
500	Electric Utility Fund	$197,641.86
501	Utility Outlay Reserve Fund	$27,676.20
530	Waste Water Utility Fund	$152,114.39
560	Water Utility Fund	$19,074.78
600	Dial-a-Ride/Transportation	$9,635.51
650	Internal Service/Equip Maint	$25,349.38
Report Total		**$1,843,816.86**

AGENDA ITEM C-02

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Minutes
a) December 4, 2019 (Regular Meeting)
b) December 10, 2019 (Shirtsleeve Session)
c) December 17, 2019 (Shirtsleeve Session)

MEETING DATE: January 15, 2020

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) December 4, 2019 (Regular Meeting)
b) December 10, 2019 (Shirtsleeve Session)
c) December 17, 2019 (Shirtsleeve Session)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through C, respectively.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Pamela M. Farris
Assistant City Clerk

Attachments

APPROVED: _____
Stephen Schwabauer, City Manager

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LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, DECEMBER 4, 2019

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of December 4, 2019, was called to order by Mayor Chandler at 5:48 p.m.

Present: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler
Absent: None
Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

NOTE: Council Member Mounce participated in the meeting via teleconference.

NOTE: Council Member Nakanishi arrived at 5:53 p.m.

C-2 Announcement of Closed Session

a) Conference with Adele Post, Human Resources Manager, and Andrew Keys, Deputy City Manager (Labor Negotiators), Regarding Lodi City Mid-Management Association, AFSCME General Services and Maintenance & Operators, Lodi Professional Firefighters, Executive Management, and Confidential Employees Pursuant to Government Code §54957.6 (CM)

C-3 Adjourn to Closed Session

At 5:48 p.m., Mayor Chandler adjourned the meeting to a Closed Session to discuss the above matter. The Closed Session adjourned at 6:25 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:01 p.m., Mayor Chandler reconvened the City Council meeting, and City Attorney Magdich disclosed the following action.

Item C-2a) was discussion and direction given with no reportable action.

A. Call to Order / Roll Call

The Regular City Council meeting of December 4, 2019, was called to order by Mayor Chandler at 7:01 p.m.

Present: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler
Absent: None
Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

NOTE: Council Member Mounce participated in the meeting via teleconference.

B. Presentations

B-1 Lodi Citizens in Action “Heroes Behind the Badge” Presentation (CLK)

Lodi Citizens in Action member June Aaker presented the Lodi Police Foundation with a check in the amount of $7,112 from net proceeds raised at the recent "Heroes Behind the Badge" fundraiser and 5K Fun Run/Walk. In addition to the Lodi Police Department, Partners, and Animal Shelter, this year's event was expanded to many branches of law enforcement including the San Joaquin Sherriff's Department, California Highway Patrol, California Department of Fish and Wildlife, Cal-Fire, United States Forestry Services, and the US Army. The event focused on free, family fun to build relationships between law enforcement and the community, and it received coverage from KCRA Channel 3 news. Representatives from the Lodi Police Foundation and Police Chief Tod Patterson thanked Lodi Citizens in Action for its continued support of law enforcement. Chief Patterson stated the funds will be used to equip patrol vehicles with Kevlar blankets.

B-2 Presentation to Retiring Members of Boards, Committees, Commissions, and Task Forces (CLK)

Mayor Chandler presented certificates of recognition to the following retiring members who were present at the meeting: Scot Martin, retiree from the Library Board of Trustees, and Steve Hennecke and Dave Kirst, retirees from the Lodi Planning Commission. Mayor Chandler also recognized the following retiring members who were unable to attend:

Greater Lodi Area Youth Commission Student Appointees
Emma Colarossi
Rubie Dhillon
Harlie Litton
Genesis Ramirez

Library Board of Trustees
Terry Costa

Lodi Arts Commission
Jean Justeau Payne

Lodi Improvement Committee
Ron Cook
Sunil Yadav

Senior Citizens Commission
Julie Whiteley
Roberta Wirth

Site Plan & Architectural Review Committee
Wendel Kiser

C. Consent Calendar (Reading; Comments by the Public; Council Action)

Council Member Johnson made a motion, second by Mayor Pro Tempore Kuehne, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

ROLL CALL VOTE
The City Council held a ROLL CALL vote (all voiced their votes).

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler
Noes: None
Absent: None

C-1 Receive Register of Claims for November 1, 2019 through November 14, 2019 in the Amount of $2,079,732.41 (FIN)

Claims were approved in the amount of $2,079,732.41.

C-2 Approve Minutes (CLK)

The minutes of November 5, 2019 (Shirtsleeve Session), November 6, 2019 (Regular Meeting), and November 12, 2019 (Shirtsleeve Session) were approved as written.

C-3 Adopt Resolution Awarding Bid for Purchase of Medium Voltage Cable from The Okonite Company, of San Ramon ($152,118.31) (EU)

Adopted Resolution No. 2019-252 awarding the bid for purchase of medium voltage cable from The Okonite Company, of San Ramon, in the amount of $152,118.31.

C-4 Adopt Resolution Authorizing City Manager to Execute Change Order No. 1 with West Coast Arborists, Inc., of Stockton, for Power Line Clearing and Vegetation Management ($655,087) and Appropriating Funds ($655,087) (EU)

This item was removed from the Consent Calendar at the request of Council Member Nakanishi for discussion purposes.

In response to Council Member Nakanishi, City Manager Schwabauer stated the City has contracted with crews to perform tree trimming, or vegetation management services, for at least the last 20 years, but likely longer. He stated staff will research it further to see how long it has been. In further response to Council Member Nakanishi, Electric Utility Director Jeff Berkheimer stated that SB901 has placed a greater focus on vegetation management practices for all utilities due to wildfire risks. He added that Utility crews aim to provide a same-day response to complaints about trees in utility lines.

Council Member Nakanishi made a motion, second by Council Member Johnson, to adopt Resolution No. 2019-255 authorizing the City Manager to execute Change Order No. 1 with West Coast Arborists, Inc., of Stockton, for power line clearing and vegetation management, in the amount of $655,087, and appropriating funds, in the amount of $655,087.

ROLL CALL VOTE
The City Council held a ROLL CALL vote (all voiced their votes).

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler
Noes: None
Absent: None

C-5 Adopt Resolution Authorizing City Manager to Execute Amendment No. 1 to Software Maintenance Professional Services Agreement that Encompasses Police Department's Dispatch, Records, Jail, Report Writing, and Property Room Software System with Superion, LLC, a CentralSquare Company, of Lake Mary, Florida ($172,351.75) (PD)

Adopted Resolution No. 2019-253 authorizing the City Manager to execute Amendment No. 1 to Software Maintenance Professional Services Agreement that encompasses Police Department's dispatch, records, jail, report writing, and property room software system with Superion, LLC, a CentralSquare Company, of Lake Mary, Florida, in the amount of $172,351.75.

C-6 Adopt Resolution Authorizing City Manager to Execute Contract with San Joaquin Valley Air Pollution Control District for Acceptance of Grant to Purchase New Alternative Fuel Vehicle and Appropriate Funds ($19,598.67) (FD)

Adopted Resolution No. 2019-254 authorizing the City Manager to execute contract with San Joaquin Valley Air Pollution Control District for acceptance of grant to purchase new alternative fuel vehicle and appropriating funds in the amount of $19,598.67.

C-7 Adopt Resolution Appointing Astrida Trupovnieks, Business Development Manager, as Alternate Board Member to San Joaquin Partnership Board of Directors to Represent Board Member and City Council Member Bob Johnson on an As-Needed Basis (CM)

This item was pulled from the Consent Calendar by Mayor Chandler for discussion purposes.

Mayor Chandler stated that typically elected officials serve in the capacity of Delegate and Alternate to regional boards and commissions versus staff members. While he encouraged the Business Development Manager to regularly attend the meetings of the San Joaquin Partnership, he proposed that the Alternate position be filled by a Council Member and suggested Council Member Mounce be appointed because she previously served in this capacity before assuming a greater role on the League of California Cities.

Council Member Mounce expressed interest in serving in this capacity, adding that her office is one block away from The Partnership, which adds a layer of convenience, and she, through her employer, has vast knowledge and experience in business attraction, tax credits, and saving businesses money.

Council Member Johnson stated he has served on The Partnership for the last 15 years and has seen a transformation in the make-up of the Board and a change in direction as it relates to business attraction and the methods used to accomplish this goal. Board members are taking a more active role than they have in the past, and a recent bylaw amendment established voting rights for Alternate members. His suggestion that the Business Development Manager be appointed as Alternate was based on her 20 years of experience and work in this field and her connections with businesses and individuals within San Joaquin County.

In response to Council Member Nakanishi, Council Member Johnson confirmed that his recommendation is the appointment of Business Development Manager Astrida Trupovnieks as the Alternate member on the San Joaquin Partnership. Council Member Nakanishi explained to the public that Council Members have a significant amount of additional responsibilities serving on various regional boards and commissions, either as Delegates or as Alternates. Historically, Council Members have served in these positions, even though it can be difficult at times to make all of the commitments. Council Member Nakanishi stated that, if Council Member Mounce is interested in serving in this capacity, then she should have the opportunity to do so.

Steve Rinchon, member of the public and Delta College student, requested an explanation on what a Delegate and Alternate does.

Mayor Chandler explained that the Delegate is the individual who holds the office, while the Alternate serves in his/her capacity during an absence.

Mayor Chandler made a motion, second by Council Member Mounce, to adopt Resolution No. 2019-256 appointing Council Member Mounce as Alternate Board Member to San Joaquin Partnership Board of Directors to represent Board Member and City Council Member Bob Johnson on an as-needed basis.

ROLL CALL VOTE
The City Council held a ROLL CALL vote (all voiced their votes).

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: Council Member Johnson
Absent: None

D. Comments by the Public on Non-Agenda Items
THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.
Public comment may only be made on matters within the Lodi City Council's jurisdiction (Government Code Section 54954.3, Lodi City Council Protocol Manual Section 6.3I). The Council cannot take action or deliberate on items that are not on this agenda unless there is an emergency and the need to take action on that emergency arose after this agenda was posted (Government Code Section 54954.2(b)(2)). All other items may only be referred for review to staff or placement on a future Council agenda.

Megan Shields, member of the public, expressed frustration about the increase in homeless and transients in Lodi, many of whom loiter around businesses and on streets and sidewalks, leave messes, harass pedestrians, panhandle, and erect tents throughout town. She stated there are many unused locations in Lodi and suggested allowing the homeless to set up camp in one area equipped with a portable restroom. She further stated she would like to know more about loitering laws.

Mayor Chandler invited Ms. Shields to attend the Committee on Homelessness meeting tomorrow and summarized many of Lodi's accomplishments, including re-instituting the Police bicycle officer downtown, creating the Community Resource Liaison officer whose time is dedicated solely to homeless issues, helping over 100 homeless individuals get off Lodi streets, Council Members serving on the Homeless Committee, and Lodi's cooperation with San Joaquin County to battle the homeless problem.

Council Member Mounce stated she is equally frustrated, and shared that the City's challenge is State legislation that prevents local law enforcement from properly dealing with homeless activities, in addition to the inability to house individuals. The State of California has determined the homeless have a right to live on streets unless a community has adequate shelter. Lodi does not have enough beds, and many of the homeless do not want to stay in a shelter. Council Member Mounce encouraged the public to contact the City Manager for concerns regarding public benches and the Police Department if homeless are sleeping in doorways.

Douglas Craig, member of the public, also expressed concerns about the increase in homelessness in Lodi, stating this issue is effecting all communities, but he does not want to see Lodi become like Sacramento. He stated the Police Department will not move homeless off of private property unless they are doing something wrong and the property owner files a complaint.

City Manager Schwabauer stated that the Community Resource Liaison officer begins clearing out the downtown area first thing in the morning and is proactively moving people out of spaces. Patrol officers do less of this because they are responding to higher-priority calls while the Liaison's sole focus is on the homeless.

E. Comments by the City Council Members on Non-Agenda Items

Council Member Nakanishi shared his perspective as a Council Member over the last year, stating that a major focus of Council's was the homelessness situation, which will continue to be an issue as will affordable housing. He encouraged the public to attend the Committee on Homelessness and Continuum of Care meetings, at which ideas, projects, and programs are vetted before they come before Council. Further, he stated that as a Council Member he serves on a number of regional boards, including the Eastern San Joaquin Groundwater Joint Powers Authority and Delta Protection Commission, and has represented the Mayor and/or Mayor Pro Tempore on committees when they were unable to attend. He also meets with citizens and constituents at City Hall to discuss issues or concerns. Council Member Nakanishi thanked Lodi citizens for voting to support Measure L, which enabled the City to complete projects such as the Candy Cane Park improvements. Without Measure L, the City would have been forced to cut services and programs and tap into reserve funds. The financial projection shows that, without a

recession, Lodi's budget will be balanced by utilizing all reserves until the year 2023, at which time revenues and expenses will not match. The hope is that the economy will improve and additional revenue sources can be generated.

Council Member Johnson informed the public that City Clerk Jennifer Ferraiolo is retiring from the City of Lodi after 31 years of service, stating he had the good fortune to work with her over the last 20 years while serving on Council and City boards. He stated Lodi was fortunate to have phenomenal city clerks over the years and that Ms. Ferraiolo is an exceptional City Clerk who has faced a number of circumstances and issues and handled them with poise while treating people with dignity and respect. Council Member Johnson wished Ms. Ferraiolo well in retirement and stated he was sorry to see her go.

Mayor Chandler announced that a retirement reception is planned for Ms. Ferraiolo on Tuesday, December 17, 2019 at 5 p.m. at Hutchins Street Square in the Holz Room.

Council Member Mounce thanked Council and staff for making it possible for her to participate in the meeting remotely while she is attending the League of California Cities League Leaders Workshop, at which members will determine the organization's goals for the upcoming year that will likely have a heavy emphasis on homelessness and changing laws so cities can effectively battle homelessness in communities.

F. Comments by the City Manager on Non-Agenda Items

None.

G. Public Hearings – None

H. Regular Calendar – None

I. Ordinances

I-1 Adopt Ordinance No. 1973 Entitled, “An Ordinance of the City Council of the City of Lodi Authorizing Amendment to Contract between City Council of City of Lodi and Board of Administration of California Public Employees’ Retirement System” (CLK)

Mayor Pro Tempore Kuehne made a motion, second by Council Member Mounce, (following reading of the title) to waive reading of the ordinance in full and adopt and order to print Ordinance No. 1973 entitled, "An Ordinance of the City Council of the City of Lodi Authorizing Amendment to Contract between City Council of City of Lodi and Board of Administration of California Public Employees' Retirement System," which was introduced at a regular meeting of the Lodi City Council held November 6, 2019.

ROLL CALL VOTE
The City Council held a ROLL CALL vote (all voiced their votes).

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler
Noes: None
Absent: None

J. Reorganization of the City Council

J-1 Presentation to Outgoing Mayor

City Manager Schwabauer presented outgoing Mayor Chandler with a plaque in appreciation of his dedicated service to the community.

Mayor Chandler thanked his wife, Jan, for her constant support, tolerance, and for understanding his busy schedule that takes him away so often and he presented her with flowers. He further thanked the dedicated employees who constantly put forth extra effort, the citizens for their support, and Pat Patrick with the Chamber of Commerce for his assistance in helping make Lodi a tourism location. He commented on the many new businesses that will be coming on-line soon and stated that Lodi citizens care about future growth and value the agricultural land surrounding the city, but he added that towns must grow if they want to survive. He expressed his joy at serving as Lodi's Mayor this past year.

J-2 Reorganization of the Lodi City Council: a) Election of Mayor and b) Election of Mayor Pro Tempore

City Clerk Ferraiolo, serving as Chair, conducted the election for the office of Mayor as follows:

NOMINATION(S) FOR MAYOR / VOTE:
Council Member Chandler, seconded by Council Member Johnson, nominated Council Member Kuehne for the office of Mayor.

There being no further nominations for the office of Mayor, the nominations were closed.

Resolution No. 2019-257 nominating Council Member Kuehne for the position of Mayor carried by the following vote:
Ayes: Council Members – Council Member Chandler, Council Member Johnson, Council Member Kuehne, Council Member Mounce, and Council Member Nakanishi
Noes: Council Members – None
Absent: Council Members – None

City Clerk Ferraiolo turned over the gavel to newly elected Mayor Kuehne who then conducted the election for the office of Mayor Pro Tempore.

NOMINATION(S) FOR MAYOR PRO TEMPORE / VOTE:
Council Member Johnson, seconded by Council Member Chandler, nominated Council Member Nakanishi for the office of Mayor Pro Tempore.

There being no further nominations for the office of Mayor Pro Tempore, the nominations were closed.

Resolution No. 2019-258 nominating Council Member Nakanishi for the position of Mayor Pro Tempore carried by the following vote:
Ayes: Council Members – Council Member Chandler, Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Kuehne
Noes: Council Members – None
Absent: Council Members – None

Mayor Kuehne thanked his wife, Robbi, for her support; his adoptive mom Pat Lynch; and City Clerk Ferraiolo, stating he will miss her after she retires. Mayor Kuehne laid out his priorities for the year ahead, including homelessness by adding emergency shelters with support services in winter months and preventing at-risk families from becoming homeless; capitalizing on the momentum occurring downtown with new restaurants and expanding businesses; continue making Lodi a tourist-friendly community so people visit and enjoy restaurants, breweries, and boutiques and bring in greater tourism dollars; creating safe places for teens and families to congregate, such as the upcoming bowling alley and the many community parks; providing affordable housing opportunities and revisiting the City's housing policies; and working with staff and the Chamber of Commerce to attract more businesses that offer higher-paying jobs that fit well in the community and seeking a college or university that wants a presence in Lodi. He thanked everyone for their support.

City Manager Schwabauer announced that staff is working on applying for HOME grant funds for

a 16-unit apartment project and he hopes to have that discussion before Council in the near future. This effort fits with Mayor Kuehne's affordable housing goal.

J. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 8:12 p.m.

ATTEST:

Jennifer M. Ferraiolo
City Clerk

LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 10, 2019

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, December 10, 2019, commencing at 7:05 a.m.

Present: Council Member Mounce, Mayor Pro Tempore Nakanishi, and Mayor Kuehne
Absent: Council Member Chandler, and Council Member Johnson
Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

NOTE: Council Member Mounce participated in the meeting via teleconference.

B. Topic(s)

B-1 Presentation on Preliminary Draft Amendment to 2019-23 Consolidated Plan for the Community Development Block Grant Program (CD)

City Manager Schwabauer reminded Council that last year there was discussion about revising the Community Development Block Grant (CDBG) Consolidated Plan because the consultant was displeased with the general goals for affordable housing and wanted more specificity listed in the Plan, such as projects like Crane's Landing. The CDBG Program Coordinator conducted a public process to come up with goals, and the Council is also invited to present its goals.

CDBG Program Administrator Patrice Clemons provided a presentation regarding the preliminary draft amendment to the 2019-23 CDBG Consolidated Plan. Specific topics of discussion included meetings with subrecipients; feedback; current and proposed amendments to the priority populations, priority needs, projects, and goals; City Council scoring sheet; and upcoming public meetings.

Council Member Mounce stated that, when it comes to homelessness, the primary issue is lack of housing and affordable housing, which effects 20 percent of homeless. The other 80 percent have substance abuse and mental health issues. She stated that providing housing for those 80 percent, without services, does no good and she hopes that the homeless are part of the extremely-low income category.

In response to Mayor Pro Tempore Nakanishi, Ms. Clemons stated that all CDBG applicants will be asked to prioritize requests as either low or extremely low income in order to properly score the applications. Those who focus programs or projects on serving low and/or extremely low income individuals will be more competitive in the scoring process, and staff will follow-up to ensure applicants meet the goals included in the application.

City Attorney Magdich pointed out that the revised priority population does not include homeless; rather it lists the population as very-low income and extremely-low income children, youth, single-parent families, individuals, seniors, and persons with disabilities. Ms. Clemons stated the definition could be modified to add homeless, but it is assumed these groups are homeless or at-risk of being homeless.

Council Member Mounce stated the challenge is this is such a small amount of money for the east side and large-scale projects for the homeless, such as Crane's Landing, are unattainable. Further, she is opposed to committing future CDBG funds for projects, especially when there is no way to know how much money the City will receive in future years or even whether the CDBG program will still be in existence. Council Member Mounce stated she feels CDBG funds are

better spent on rehabilitating homes through grants to homeowners who do not have the financial means to make repairs to their homes. Mr. Schwabauer clarified that that CDBG funds would not be used to build large-scale projects, like Crane's Landing; rather, this exercise is to provide some specificity to the Consolidated Plan by listing goals, and the priorities will depend on the applications received. He added the odds of receiving an application to assist on a housing project is not great, unless it is a project the City proposes, and in that case, CDBG funds would only fund a portion of the project along with other funding sources, such as HOME or HEAP funds. In further response to Council Member Mounce, Mr. Schwabauer confirmed that the ratio of 60 percent for City projects and 40 percent for non-profit projects will still be followed.

In response to Mayor Pro Tempore Nakanishi, Mr. Schwabauer stated the City is required to go through this process as a requirement to receive Federal money.

Mayor Kuehne agreed that large-scale housing projects may not be viable due to the small amount of funding and that he would prefer to see programs that prevent homelessness. He suggested more directed programs such as home repairs for damaged roofs or leaking toilets; assisting single parents living in cars with children; or utilizing Code Enforcement to help homeowners ensure homes are habitable.

Council Member Mounce supported the concept of using Code Enforcement to connect homeowners with funding to fix violations and putting pressure on landlords, which is a significant part of the problem on the east side.

Ms. Clemons stated that some of the proposed goals could be combined in order to condense the list and make fewer needs.

Council Member Mounce disagreed that the goals of safe neighborhoods, parks, and the Asset Based Community Development (ABCD) program are related, stating the ABCD program focuses more on programs that help individuals 10 to 20 years down the line when instead it should focus immediate attention on fighting crime, drugs, and blight. She stressed the importance of Neighborhood Watch programs and that each block should have its own captain, which is something the Lodi Improvement Committee previously encouraged but lately has done a poor job promoting. Further, she suggested putting all homeless-related needs into one goal to shrink some of the categories.

Mayor Kuehne stated he believes there is a correlation in combining those goals because part of the ABCD program is finding leaders in the area, which could be part of the goal of ensuring there are Neighborhood Watch captains on each block.

Council Member Mounce countered that the ABCD programs all have direct costs to Lodi, but if the Lodi Improvement Committee were doing what it was initially tasked with, there would be no cost to citizens or the programs. She stated the ABCD program is not a quantifiable program at this time. She reiterated that she is not in favor of combining goals 1 and 2. Council Member Mounce also cautioned that some of the tasks that the Lodi Improvement Committee are taking on, such as immigration, are services already being provided by other agencies and it is unnecessary for the Committee to incorporate those under its purview.

Mayor Kuehne suggested a category to fund a winter shelter next year, but on a larger scale, as well as adding programs to address mental health issues for youth.

Council Member Mounce cautioned there is not enough CDBG funding to address every social issue and many of these suggestions are City-wide and not focused on the east side. Many of the homeless are in locations outside of the target area, and she stated there is money through the Continuum of Care to address those issues. Lodi's goal should be writing the best grant to fund projects that focus on crime, drugs, blight, and housing in the target area.

Myrna Wetzel, member of the public, suggested an assistance program to help low-income renters with home repair skills to fix up their homes in exchange for a reduction in rent.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:58 a.m.

ATTEST:

Jennifer M. Ferraiolo
City Clerk

LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 17, 2019

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, December 17, 2019, commencing at 7:06 a.m., at the Community Partnership for Families Lodi Family Resource Center, 118 North Church Street, Lodi.

Present: Council Member Chandler, Mayor Pro Tempore Nakanishi, and Mayor Kuehne
Absent: Council Member Johnson, and Council Member Mounce
Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

NOTE: Council Member Chandler arrived at the meeting at 7:22 a.m.

B. Topic(s)

B-1 Receive Information and Visit the Community Partnership for Families Lodi Family Resource Center Located at 118 North Street (CLK)

Meredith Baker, Chief Executive Officer of the Community Partnership for Families (CPF) of San Joaquin County gave a presentation and provided a tour of the Lodi Family Resource Center located at 118 North Church Street. Specific topics of discussion included overview of CPS, its resource centers, and services; its move in June 2019 from the previous location on Oak Street to the facility on Church Street; need for larger facility in Lodi; operation of Centers and other facilities across San Joaquin County, including Stockton, Tracy, and Lodi; increase in number of participants needing assistance, as well as the number of service providers; and recent addition of homeless assistance, which is not funded through homeless funding, such as the Continuum of Care.

Lynsay Nuss, Site Manager, listed the number of services provided through the CPF Family Resource and Referral Centers and explained that from 2016 to June of this year, the Center assisted on average eight homeless individuals a year; however, since the move to the new location on Church Street, that number has increased to 43, likely because the Center is more accessible.

In response to Mayor Kuehne, Ms. Baker explained the Cal-Fresh employee training program, CPF's expansion of the program utilizing both Federal and private funds, and the demanding steps toward completing the program in order for individuals to get off of government assistance. With a larger facility, the Resource Center could bring in more agencies. Some agencies currently have offices in the Center, while other agencies operate programs a few days a week. She stated the greatest challenge for CPF is space because many of the groups come in at the same time, which prevents CPF from serving all of the individuals who need assistance.

Ms. Baker reported that the landlord of its facility served CPF with a three-day notice to reduce the number of clientele and services due to high foot traffic and complaints regarding shopping carts. CPF is looking into it further. Ms. Baker clarified it is not a notice of eviction; rather, it is a notice to remedy the situation.

In response to Mayor Pro Tempore Nakanishi, Ms. Baker stated that CPF of San Joaquin County has a $2.4 million budget, 30 employees, and serves roughly 15,000 clientele a year.

Leah Suelter, owner of the Fashionable You Boutique, stated a group formed the ARCH (Action to Reduce Crime and Homelessness) Initiative, which works closely with Resource Liaison Officer

Dan Schiele and toward the goal of getting homeless off of the streets. The group found that CPF acts as hub and a place for homeless to go during the day to work toward employment. To date, the group has gotten seven individuals off the street. She stated there are currently 15 members in the group including two Lodi business owners, police officers from other counties, attorneys, and Lodi Police Department cadets. The other business owner is from Second Hand Rose. She provided Council with a log of Lodi ARCH's progress (filed).

Mayor Pro Tempore Nakanishi stated he supports what the Initiative is doing, but cautioned it can be controversial because there are some who will look positively on this and others who will not.

Council Member Chandler pointed out the Chamber of Commerce has a healthy community project and suggested the Initiative seek the Chamber's support.

Mayor Pro Tempore Nakanishi suggested getting support from the Downtown Alliance as well.

Ms. Suelter clarified that the Initiative is not part of CPF; it simply refers individuals to its facility for assistance and services.

City Manager Schwabauer stated the lease on the Lodi Adopt-A-Child building ends in spring. Staff intends to bring forth a Request for Proposals (RFP) in January to entertain interest in using the facility. To date, Lodi Adopt-A-Child, The Village, and CPF have expressed interest. The RFP will provide input on each entity's vision and proposal, and Council will ultimately decide which entity, or entities, to lease the building to.

Matt Teresi with Lodi Adopt-A-Child stated its organization has spent a significant amount of money dealing with the homeless and he believes CPF has an actionable, organized plan for addressing it, which is something he supports. He stated he cannot speak for the entire Lodi Adopt-A-Child Board, but he supports an alliance with CPF on use of the building.

Ms. Baker added that CPF agrees, stating both organizations can support one another with its programs and its wrap-around services.

"Brian," member of the public, questioned if the Blue Shield property is still vacant, to which Council Member Chandler replied in the negative.

Mr. Schwabauer further explained that each party submitting an RFP will submit its proposals, either with no rent but more services or with greater rent, and it will be up to Council on what it wants for that building and the community. Currently, Lodi Adopt-A-Child does not pay rent on the building; however, it has spent a significant amount of money toward improving the building.

An unidentified individual representing Lodi Adopt-A-Child added that it also contributes in sales tax revenue for the community.

Myrna Wetzel, member of the public, questioned if the homeless come to CPF or if staff goes into the community to help the homeless, to which Ms. Nuss stated that the majority of homeless individuals are referred to CPS, however, she has done some outreach to the homeless in the community.

Ms. Baker concluded by stating CPF did not expect such an increase in individuals and service providers coming to the facility and expressed appreciation to the community for its support.

The meeting concluded with a tour of the facility.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:41 a.m.

ATTEST:

Jennifer M. Ferraiolo
City Clerk

AGENDA ITEM **C-03**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Plans and Specifications and Authorize Advertisement for Bids for Municipal Services Center Security Fence Improvement Project

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve plans and specifications and authorize advertisement for bids for Municipal Services Center Security Fence Improvement Project.

BACKGROUND INFORMATION: This project includes replacing roughly 330 feet of security fencing, a pedestrian gate, and an updated automated vehicular gate, at the Municipal Services Center (MSC), located at 1331 South Ham Lane.

The existing chain link vehicular access gate was intended to be opened and closed once during the work day and minimally on weekends. To enhance security at MSC, the gate now remains closed and must be opened multiple times an hour as each vehicle enters and exits the facility. The current automatic gate was not designed or constructed to operate under these more demanding conditions, and is prone to derailing from its track and tipping over.

The existing fence is chain link and does not provide the security needed to meet today's requirements. The proposed fence is eight-foot high wrought iron fencing with pickets at the top and replicates the security fence design recently constructed at the Transit Center and Surface Water Treatment Facility, which has proven to be secure and functional.

The plans and specifications are on file in the Public Works Department. The planned bid opening date is February 12, 2020. The project estimate is $250,000.

FISCAL IMPACT: This project will minimize the ongoing maintenance costs to the chain link gate and will reduce the likelihood of equipment stored in the yard from being stolen. This project will not impact the General Fund.

FUNDING AVAILABLE: Funding will be identified at project award.

Charles E. Swimley, Jr.
Public Works Director

Prepared by Alice Bernardino, Assistant Engineer
CES/AB/tdb

APPROVED: _____
Stephen Schwabauer, City Manager

AGENDA ITEM **C-04**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Plans and Specifications and Authorize Advertisement for Bids for Citywide Bicycle Facilities Detection Improvement Project and Adopt Resolution Authorizing City Manager to Execute Agreements with State of California for Funding Allocation

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve plans and specifications and authorize advertisement for bids for Citywide Bicycle Facilities Detection Improvement Project and adopt resolution authorizing City Manager to execute agreements with State of California for funding allocation.

BACKGROUND INFORMATION: The City received Active Transportation Program (ATP) Cycle 3 state grant, in the amount of $447,000, for various bicycle and pedestrian safety improvements. This project consists of installing 13 bike/traffic video detection systems on existing traffic signals, painting 20,300 square feet of green bike lanes, and other incidental and related work, as described in the specifications for the project.

The project will enhance bicycle detection at the 13 traffic signal locations on Lower Sacramento Road, portions of Lodi Avenue, and Hutchins Street, as shown on Exhibit A. The project will also pilot some green bike lane striping on Lower Sacramento Road. Staff will monitor the performance and effectiveness of the green bike striping on Lower Sacramento Road.

The California Transportation Commission (CTC) approved the funding allocation request at the December 5, 2019 CTC meeting. CTC requires the City to enter into a Master Agreement/Program Supplement Agreement with the State for the funding allocation commitment.

The specifications are on file in the Public Works Department. The planned bid opening date is February 19, 2020. The project estimate is $515,000. Local funds will be used to account for the difference between the grant amount and the project estimate.

Staff recommends approving plans and specifications and authorizing advertisement for bids for Citywide Bicycle Facilities Detection Improvement Project and authorizing City Manager to execute agreements with State of California for funding allocation.

FISCAL IMPACT: There will be an increase in future maintenance cost to maintain the new green bicycle striping.

APPROVED: _____

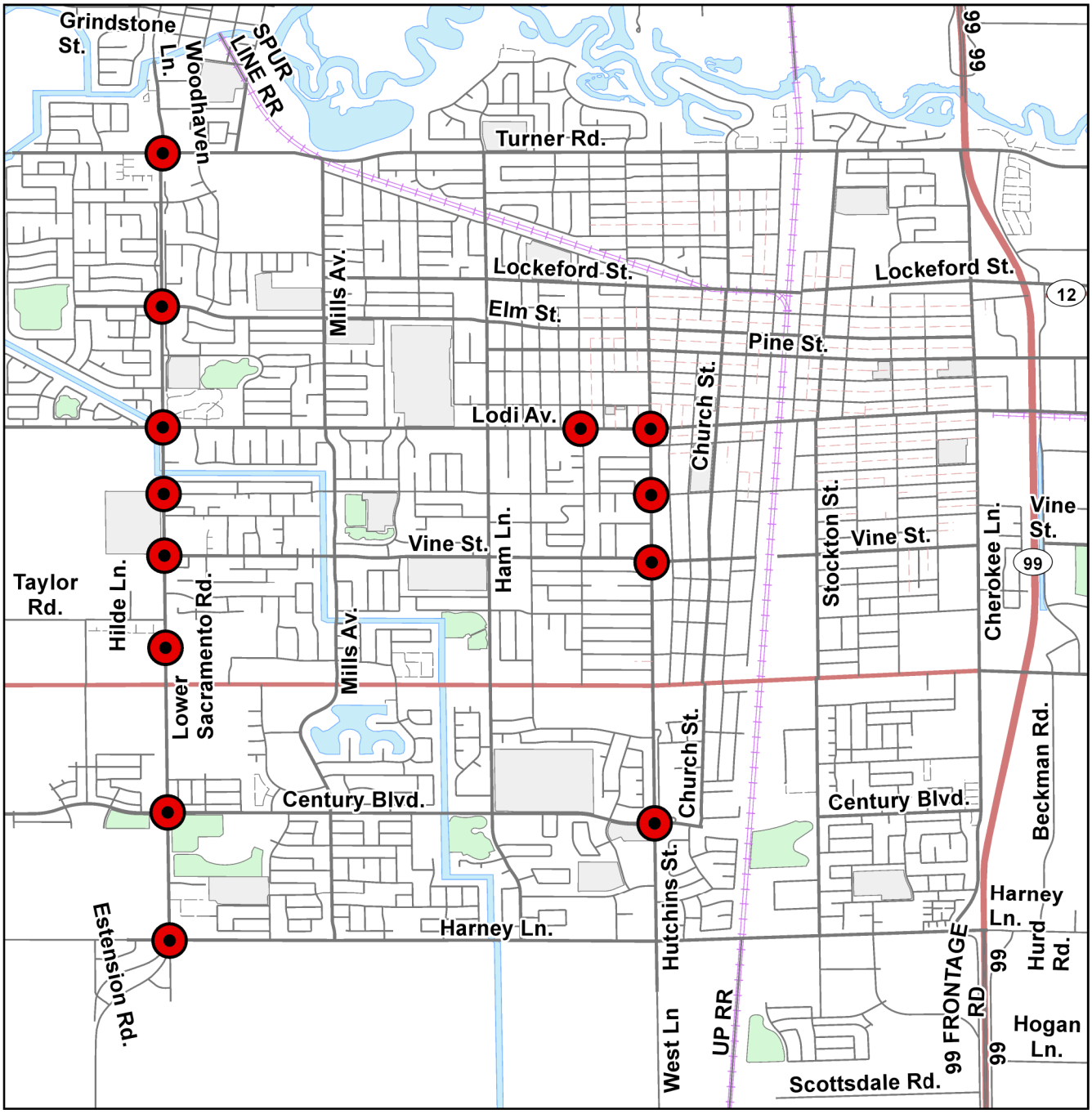
Stephen Schwabauer, City Manager

FUNDING AVAILABLE: Funding will be identified at project award.

Charles E. Swimley, Jr
Public Works Director

Prepared by Lyman Chang, City/Engineer/Deputy Public Works Director
CES/LC/tdb
Attachment

cc: Senior Civil Engineer, Nathan
Engineering Technician, Mangrich
Public Works Management Analyst



Traffic Signals UpGrade Location(13)

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EXHIBIT A
CITYWIDE BICYCLE FACILITIES DETECTION IMPROVEMENT PROJECT
LOCATION MAP

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
AGREEMENTS WITH STATE OF CALIFORNIA FOR
FUNDING ALLOCATION

==========

WHEREAS, the City received Active Transportation Program (ATP) Cycle 3 state grant, in the amount of $447,000, for various bicycle and pedestrian safety improvements; and

WHEREAS, the California Transportation Commission (CTC) approved the funding allocation request at their December 5, 2019 meeting; and

WHEREAS, staff recommends authorizing the City Manager to execute agreements with State of California for funding allocation.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize City Manager to execute agreements with the State of California for funding allocation for various bicycle and pedestrian safety improvements; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-05**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute a Purchase Order with L N Curtis & Sons, for the purchase of Additional Self Contained Breathing Apparatus (SCBA) and SCBA Equipment and Appropriating Funds ($55,053.38)

MEETING DATE: January 15, 2020

PREPARED BY: Fire Chief

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute a Purchase Order with L N Curtis & Sons for the purchase of Self Contained Breathing Apparatus (SCBA) and SCBA Equipment and appropriating funds in the amount of $55,053.

BACKGROUND INFORMATION: The City of Lodi was part of a successful regional grant and received new SCBA's and SCBA equipment to replace the current equipment which is at the end of it's useful life. In order to better the chances of receiving the grant award, the participants agreed to only request SCBA's for seated riding positions. As a result, additional SCBA's are still needed for the Hazmat Unit. Additional cylinders, masks, chargers, and adapters are needed for all apparatus in the case of servicing and/or off duty callbacks in the event of an emergency.

Staff reached out LN Curtis & Sons and Bauer Compressors Inc. Bauer was non-responsive. Staff recommends authorizing City Manager to execute a purchase order with LN Curtis & Sons for the purchase of additional SCBA's and SCBA equipment, and appropriating funds out of equipment replacement in the amount of $55,053.38.

FISCAL IMPACT: Contributions have been made over the past several years to the equipment replacement fund in preparation for this purchase. Purchasing this additional equipment will keep our SCBA equipment compliant with NFPA 1500. Utilizing expired equipment would put us in violation of this standard.

FUNDING AVAILABLE: Equipment Replacement Fund (40199000.77030)

_____
Andrew Keys
Deputy City Manager/Internal Services Director

_____
Gene Stoddart
Fire Chief

APPROVED: _____
Stephen Schwabauer, City Manager

QUOTE SUMMARY

Date: 12/10/19

Quote:

		COMPANY:	LN Curtis	Bauer	
		PHONE NO.:	510-839-5111	510-909-6157	
		SALES REP.:	Chris Parano	Dan Kroetch	
QTY	UOM	DESCRIPTION			
4	ea	Fire Service SCBA	17,040.00	Non-responsive	
28	ea	45 minute cylinders	20,058.08		
10	ea	Small face pieces	2,060.00		
8	ea	60 minute cylinders	7,045.68		
4	ea	Rechargeable battery packs	778.68		
1	ea	SCBA charging kit	376.99		
1	ea	Repair tool kit	942.00		
6	ea	Station Adaptors for Quick Connect	1,732.20		
4	ea	Large face pieces	824.00		
REMARKS:		SUBTOTAL:	50,857.63		
		SALES TAX:	4,195.75		
		FREIGHT:	0.00		
		GRAND TOTAL:	55,053.38		

SIGNATURE: _____ **DATE:** December 30, 2019

Ph: 510-839-5111
TF: 800-443-3556
Fax: 510-839-5325
oaksales@lncurtis.com
DUNS#: 00-922-4163

CURTIS
TOOLS FOR HEROES

Pacific North Division
185 Lennon Lane Suite 110
Walnut Creek, CA 94598
www.LNCURTIS.com
Quotation No. 136140

Quotation

CUSTOMER:
Mokelumne Fire District
13157 East Brandt Road
Lockeford CA 95237

SHIP TO:
Mokelumne Fire District
13157 E. Brandt Road
Lockeford CA 95237

QUOTATION NO.	ISSUED DATE	EXPIRATION DATE
136140	11/14/20´9	03/31/2020

SALESPERSON
Chris Parano
cparano@lncurtis.com
559-301-5156

CUSTOMER SERVICE REP
Chris Parano
cparano@lncurtis.com
559-301-5156

REQUISITION NO.	REQUESTING PARTY	CUSTOMER NO.	TERMS	OFFER CLASS
LODI	TIM ORTEGEL	C155	Net 30	FR

F.O.B.	SHIP VIA	REQ. DELIVERY DATE
DEST	Best Way	

NOTES & DISCLAIMERS

THANK YOU FOR THIS OPPORTUNITY TO QUOTE. WE ARE PLEASED TO OFFER REQUESTED ITEMS AS FOLLOWS. IF YOU HAVE ANY QUESTIONS, NEED ADDITIONAL INFORMATION, OR WOULD LIKE TO PLACE AN ORDER, PLEASE CONTACT YOUR SALESPERSON OR CUSTOMER SERVICE REP AS NOTED ABOVE.

TRANSPORTATION IS INCLUDED IN BELOW PRICING.

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	4	EA	G1 4500 SCBA MSA CUSTOM	G1 4500# FIRE SERVICE SCBA, AS BELOW; CGA CONNECT REMOTE CONNECTION,STANDARD WITH CHEST STRAP,METAL BAND,ADJUSTABLE SWIVELING LUMBAR PAD, SOLID COVER LEFT SHOULDER,CONTINUOUS HOSE TYPE, EXTENDAIRE I, SPEAKER MODULE LEFT CHEST,PASS WITH TELEMETRY RIGHT SHOULDER, RECHARGEABLE ATO: A-G1FS-442MA2C2LCR	$4,260.00	$17,040.00
2	28	EA	10175708 MSA	45MIN 4500# G1 SCBA LOW PROFILE CYLINDER, WITH AIR, W/ QUICK CONNECT REMOTE CONNECTION	$716.36	$20,058.08
3	10	EA	10161809 MSA	SMALL G1 FACEPIECE WITH SMALL NOSECUP, INCLUDES: * 4-POINT ADJUSTABLE CLOTH HEAD HARNESS * CLOTH NECKSTRAP * FIXED PUSH-TO-CONNECT REGULATOR CONNECTION * ATO NUMBER: A-G1FP-FS1S4C1	$206.00	$2,060.00

Ph: 510-839-5111
TF: 800-443-3556
Fax: 510-839-5325
oaksales@lncurtis.com
DUNS#: 00-922-4163

CURTIS
TOOLS FOR HEROES

Pacific North Division
185 Lennon Lane Suite 110
Walnut Creek, CA 94598
www.LNCURTIS.com
Quotation No. 136140

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
4	8	EA	10175710 MSA	60MIN 4500# G1 SCBA CYLINDER, WITH AIR, W/ QUICK CONNECT REMOTE CONNECTION	$880.71	$7,045.68
5	4	EA	10148741-SP MSA	BATTERY PACK, G1, RECHARGEABLE	$194.67	$778.68
6	1	EA	10158385 MSA	G1 SCBA CHARGING STATION KIT	$376.99	$376.99
7	1	EA	10164940 MSA	KIT, REPAIR TOOLS, G1, CUSTOM 1. Speaking Diaphragm Retaining Tool (Torque Tool, G1 Facepiece) 2. 8 Point Deepwell Socket 44Mm X 3/8 Drive 3. G1 Alarm Activator Adjustment Tool 4. Crowfoot 46Mm X 3/8 In Drive 5. 9mm M8 - Cs Torque Cable Key 6. 4mm M8 Hex Cs Torque Screwdriver CAN ONLY GET THESE TOOLS FROM MSA	$942.00	$942.00
8	6	EA	10162403 MSA	QC X .75" NPTF FILL STATION ADAPTER ASSEMBLY FOR QUICK CONNECT CYLINDER, 5000PSIG NEEDED TO MAKE PARATECH AIG BAGS QUICK CONNECT/COMPRESSOR	$288.70	$1,732.20
9	4	EA	10161811 MSA	LARGE G1 FACEPIECE WITH LARGE NOSECUP, INCLUDES: * 4-POINT ADJUSTABLE CLOTH HEAD HARNESS * CLOTH NECKSTRAP * FIXED PUSH-TO-CONNECT REGULATOR CONNECTION * ATO NUMBER: A-G1FP-FL1L4C1	$206.00	$824.00

DUNS NUMBER: 009224163
SIC CODE: 5099
FEDERAL TAX ID: 94-1214350

THIS PRICING REMAINS FIRM UNTIL 03/31/2020. CONTACT US FOR UPDATED PRICING AFTER THIS DATE.

Subtotal	$50,857.63
Tax	$3,941.47
Transportation	$0.00
Total	$54,799.10

Michelle Munoz

From: Tim Ortegel
Sent: Monday, November 18, 2019 10:26 AM
To: Michelle Munoz
Subject: FW: Additional SCBA Equip. quote

From: Dan Kroetch [mailto:Dan.Kroetch@bauersf.com]
Sent: Friday, November 15, 2019 11:28 AM
To: Tim Ortegel
Cc: Michael Van Guilder Jr.
Subject: Re: Additional SCBA Equip. quote

Hello Chief Ortegel,

Thank you for the opportunity to bid on this equipment.

We respectfully decline. Have a great weekend.

Thank You,

Dan Kroetch
Sales Specialist

BAUER COMPRESSORS, INC.
Cell: (510)-909-6157
dan.kroetch@bauersf.com

From: Tim Ortegel <tortegel@lodi.gov>
Sent: Wednesday, November 13, 2019 6:09 PM
To: Dan Kroetch
Cc: Michael Van Guilder Jr.
Subject: Additional SCBA Equip. quote

Hey Dan, hope all is good. We need to order additional equipment on top of what the Grant has provided, and I need to get 3 bids.

- 4 additional complete packs
- 28 - 45 minute bottles
- 8 – 1 hr bottles
- 10 small masks
- 5 large masks
- 1 battery charger
- 4 extra batteries
- 6 quick connectors for the compressors
- Custom tool repair kit

In addition to these items we're looking to upgrade our ConSpace equipment. Could you get me prices on a separate quote for a 4 person Air Cart (I'm Guessing MSA?), 1200 ft. of air hose, and 4 Escape packs.
Thanks Dan,

Tim Ortegel
Battalion Chief
Lodi Fire Department
(209) 609-5667 c
(209) 333-5552 o

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CTY MANAGER TO EXECUTE A PURCHASE ORDER WITH L N CURTIS & SONS, OF WALNUT CREEK, FOR THE PURCHASE OF ADDITIONAL SELF CONTAINED BREATHING APPARATUS (SCBA) AND SCBA EQUIPMENT, AND FURTHER APPROPRIATING FUNDS ($55,053.38)

==========

WHEREAS, the City of Lodi is a public agency located in the County of San Joaquin, State of California; and

WHEREAS, the City of Lodi was part of a successful regional grant and received new SCBA's and SCBA equipment to replace the current equipment which is at the end of its useful life; and

WHEREAS, in order to better the chances of receiving the grant award, the participants agreed to only request SCBA's for the seated riding positions and;

WHEREAS, to keep our SCBA's in compliance with NFPA 1500; additional SCBA's and SCBA equipment are needed, and

WHEREAS, staff recommends authorizing the City Manager to execute a purchase order with L N Curtis & Sons of Walnut Creek, for the purchase of additional SCBA's and SCBA equipment; and further recommends appropriating funds from the Equipment Replacement Fund (40199000.77030) in the amount of $55,053.38.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a purchase order with L N Curtis & Sons of Walnut Creek, for the purchase of additional Self Contained Breathing Apparatus' and SCBA equipment; and

BE IT FURTHER RESOLVED that the Lodi City Counncil hereby appropriates $55,053.38 out of the equipment replacement fund (40199000.77030) for this project.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-06**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Awarding Contract for 2019 Pavement Crack Sealing Project to Graham Contractors, Inc., of San Jose ($46,082)

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution awarding Contract for 2019 Pavement Crack Sealing Project to Graham Contractors, Inc., of San Jose, in the amount of $46,082.

BACKGROUND INFORMATION: The primary cause of asphalt failure is water infiltration into the street subgrade. Crack sealing is one of the most basic, and important, preventive street maintenance practices.

This project consists of thoroughly cleaning and sealing the existing transverse and longitudinal cracks in pavement surfaces and includes other incidental and related work. This contract is intended to supplement work performed by Street Division crews to maximize the street area sealed each year. The 2019 locations are shown on Exhibit A and listed on Exhibit B.

The plans and specifications for this project were approved on November 06, 2019. The City received the following three bids for this project on December 04, 2019:

Bidder	**Location**	**Bid**	**Above/(Below) Engineer's Estimate**
Engineer's Estimate		$50,000	
Graham Contractor's, Inc.	San Jose	$46,081.80	$(3,918.20)
Pavement Coatings, CO.	Sacramento	$65,945.70	$15,945.70
Talley Oil, Inc.	Madera	$152,069.94	$105,988.14

Staff recommends awarding Contract for 2019 Pavement Crack Sealing Project to Graham Contractors, Inc., of San Jose, in the amount of $46,082.

FISCAL IMPACT: By increasing the crack sealing effort, the useful life of City streets will be extended. This project does not impact the General Fund.

APPROVED: _____

Stephen Schwabauer, City Manager

FUNDING AVAILABLE: Budgeted Fiscal Year 2019/20- TDA Streets (30599000.77020)

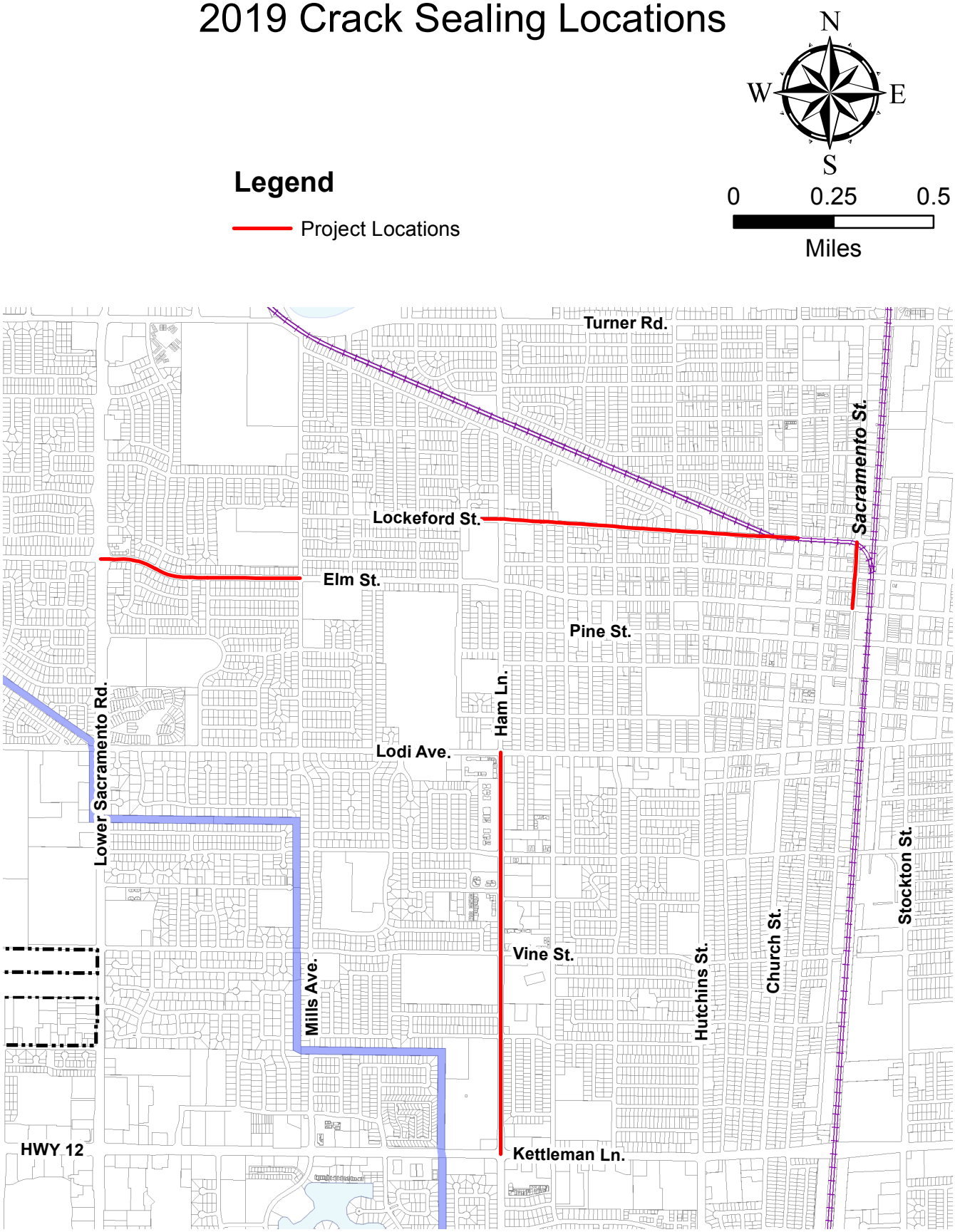
Andrew Keys
Deputy City Manager/Internal Services Director

Charles E. Swimley, Jr.
Public Works Director

Prepared by Alice Bernardino, Assistant Engineer
CES/AB/tdb
Attachments

cc: Utility Superintendent

EXHIBIT A
2019 Crack Sealing Locations



K:\WP\PROJECTS\STREETS\2019 Crack Seal\PotentialLocations.mxd

Exhibit B

Site Description

Road Name	From	To	Street		
			Length (ft)	Width (ft)	Area (SF)
Elm St.	Rutledge Dr.	Garden Dr.	468	62	29,016
Elm St.	Rutledge Dr.	Genie Wy.	307	62	19,034
Elm St.	Allen Dr.	Mills Av.	1,218	62	75,516
Elm St.	Genie Wy.	Lower Sacramento Rd.	443	62	27,466
Elm St.	Allen Dr.	Garden Dr.	240	62	14,880
Elm St.				**SUBTOTAL**	**165,912**
Ham Ln.	Tokay St.	Lodi Ave.	1,340	60	80,400
Ham Ln.	Sylvia Dr.	Iris Dr.	112	60	6,720
Ham Ln.	Vine St.	Sylvia Dr.	710	60	42,600
Ham Ln.	Tokay St.	Iris Dr.	490	60	29,400
Ham Ln.	Vine St.	Park St.	830	60	49,800
Ham Ln.	Park St.	Cardinal St.	275	60	16,500
Ham Ln.	Cardinal St.	Kettleman Ln.	1,538	60	92,280
Ham Ln.				**SUBTOTAL**	**317,700**
Lockeford St.	Pleasant Av.	Church St.	407	58	23,606
Lockeford St.	Orange Av.	Fairmont Av.	274	40	10,960
Lockeford St.	Crescent Av.	Carlo Wy.	350	40	14,000
Lockeford St.	California St.	Hutchins St.	357	40	14,280
Lockeford St.	Hutchins St.	Pleasant Av.	873	57	49,761
Lockeford St.	Fairmont Av. (SB)	Ham Ln.	575	45	25,875
Lockeford St.	Crescent Av.	Orange Av.	649	50	32,450
Lockeford St.	Carlo Wy.	California St.	424	40	16,960
Lockeford St.	Neplus Ct.	Ham Ln.	397	58	23,026
Lockeford St.	Cross St.	Neplus Ct.	703	35	24,605
Lockeford St.				**SUBTOTAL**	**235,523**
Sacramento St.	Lockeford St.	Locust St.	449	55	24,695
Sacramento St.	Elm St.	Locust St.	440	55	24,200
Sacramento St.				**SUBTOTAL**	**48,895**
				TOTAL	**768,030**

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and GRAHAM CONTRACTORS, INC., a California corporation, herein referred to as the "Contractor."

W I T N E S S E T H :

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference, to-wit:

Notice Inviting Bids	The July 1992 Edition,
Information to Bidders	Standard Specifications,
General Provisions	State of California,
Special Provisions	Business and Transportation Agency,
Bid Proposal	Department of Transportation
Contract	
Contract Bonds	
Plans	

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Section 5.600, "Measurement, Acceptance and Payment," of the General Provisions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing

wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under them, to-wit:

Perform the work necessary for thoroughly cleaning and sealing the existing transverse and longitudinal cracks and joints and random cracks in bituminous pavement surfaces and includes other incidental and related work as described in the specifications.

See Section 6-07 "Description of Bid Items" and Exhibits A and B for additional information.

CONTRACT ITEMS

Item	Description	Approx. Street Area (SF)	Price / SF	Total Cost / Street
1	Elm St.	165,912	$0.060	$9,954.72
2	Ham Ln.	317,700	$0.060	$19,062.00
3	Lockford St.	235,523	$0.060	$14,131.38
4	Sacramento St.	48,895	$0.060	$2,933.70

TOTAL : $ 46,081.80

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements and to establish lines and grades for the work as specified under the Special Provisions. All labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the specifications.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 15 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within **30 CALENDAR DAYS**.

ARTICLE IX - State of California Senate Bill 854 requires the following:

- No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

WHEN SIGNING THIS CONTRACT, THE CONTRACTOR AGREES THAT THE TIME OF COMPLETION FOR THIS CONTRACT IS REASONABLE AND THE CONTRACTOR AGREES TO PAY THE CITY LIQUIDATED DAMAGES AS SET FORTH IN SECTION 6-04.03 OF THE SPECIAL PROVISIONS. CONTRACTOR AGREES THAT THIS AMOUNT MAY BE DEDUCTED FROM THE AMOUNT DUE THE CONTRACTOR UNDER THE CONTRACT.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

CONTRACTOR:

_____

By:_____

_____
Title

(CORPORATE SEAL)

CITY OF LODI, a municipal corporation

By:_____
STEPHEN SCHWABAUER
City Manager

Date:_____

Attest:

_____
JENNIFER M. FERRAIOLO
City Clerk

Approved As To Form:

_____
JANICE D. MAGDICH
City Attorney

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING
CONTRACT FOR 2019 PAVEMENT CRACK SEALING
PROJECT TO GRAHAM CONTRACTORS, INC., OF SAN JOSE

==========

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on December 4, 2019, at 11:00 a.m., for 2019 Pavement Crack Sealing Project, described in the plans and specifications therefore approved by the City Council on November 6, 2019; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

Bidder	**Location**	**Bid**	**Above/(Below) Engineer's Estimate**
Engineer's Estimate		$50,000	
Graham Contractor's, Inc.	San Jose	$46,081.80	$(3,918.20)
Pavement Coatings, CO.	Sacramento	$65,945.70	$15,945.70
Talley Oil, Inc.	Madera	$152,069.94	$105,988.14

WHEREAS, staff recommends that the City Council award Contract for 2019 Pavement Crack Sealing Project to Graham Contractors, Inc., of San Jose, in the amount of $46,082.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award contract for 2019 Pavement Crack Sealing Project to Graham Contractors, Inc., of San Jose, in the amount of $46,082; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-07**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Awarding Contract for Blakely Park Restroom Improvements to Soracco, Inc., of Lodi ($333,587), Authorizing City Manager to Execute Change Orders ($50,000), and Reallocating Funds ($117,000)

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution awarding contract for Blakely Park Restroom Improvements to Soracco, Inc., of Lodi, in the amount of $333,587, authorizing City Manager to execute change orders in an amount not to exceed $50,000, and reallocating funds in the amount of $117,000.

BACKGROUND INFORMATION: In 2016 the public restroom building at Blakely Park was removed. That building, which was located towards the middle of the park, had been out of service since 2004 due to repeated vandalism.

This project consists of providing and installing a new pre-fabricated restroom facility, new adjacent concrete sidewalk, and other related utility improvements. The proposed location is approximately 50 feet east of Stockton Street, which is intended to deter vandalism while providing additional safety and security, due to the higher traffic visibility. The proposed project location is shown in Exhibit A.

Specifications for this project were approved on November 6, 2019. The City received the following eight bids for this project on December 11, 2019:

Bidder	Location	Bid	Above/(Below) Estimate
Engineer's Estimate		$ 287,000.00	
Soracco, Inc	Lodi	$ 333,587.00	$ 46,587.00
*JPB Design, Inc.	Orangevale	$ 348,000.00	$ 61,000.00
A.M. Stephens Const., Inc.	Lodi	$ 349,709.00	$ 62,709.00
Stratus Const. Co.	Stockton	$ 394,185.00	$ 107,185.00
* B & M Builders	Rancho Cordova	$ 403,163.00	$ 116,163.00
Diede Const., Inc.	Woodbridge	$ 437,221.52	$ 150,221.52
Royce Const. & Design, Inc.	Sonora	$ 463,800.00	$ 176,800.00
T Amarals Done Right Const.	Brentwood	$ 499,000.00	$ 212,000.00

* Non-Responsive

FISCAL IMPACT: There will be a minimal increase in maintenance costs associated with the new restroom facility that will be covered in future Parks Operations budgets. This project does not impact the General Fund.

APPROVED: _____
Stephen Schwabauer, City Manager

FUNDING AVAILABLE: Community Development Block Grant (CDBG-20001): $250,000

Additional funding for the project of $117,000 to come from a reallocation of Fiscal Year 2019/20 CDBG project funds from the Salvation Army HVAC/Refrigeration Project (CDBG-20001), as a first funding priority; or from Fiscal Year 2019/20 Playground Improvement Project funded from Measure L (PKCP-20001) as a second funding priority. CDBG funding may come available from the Salvation Army project as the project is experiencing delays and Salvation Army is unlikely to be able to spend the CDBG resources timely.

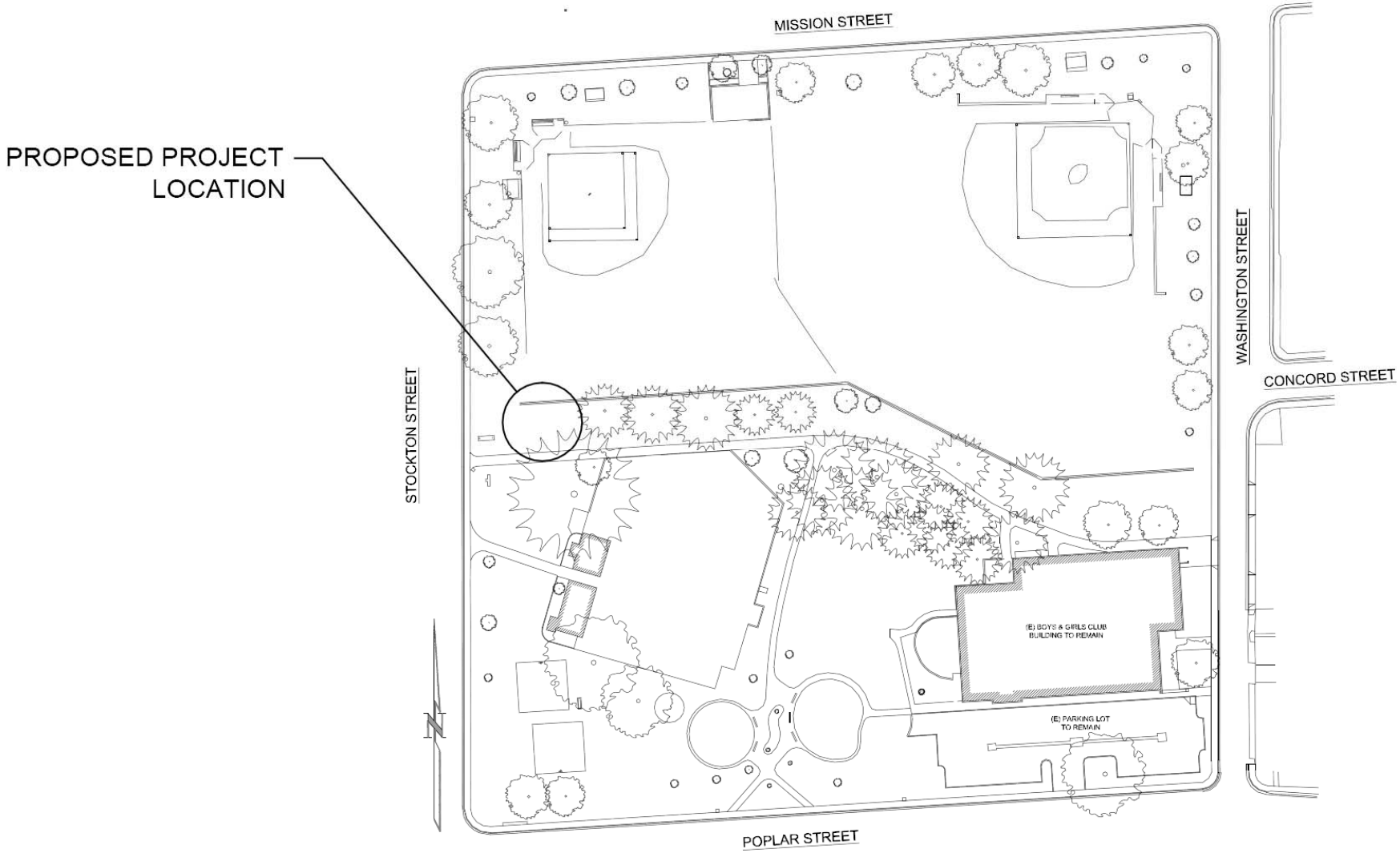
_____
Andrew Keys
Deputy City Manager/Internal Services Director

_____
Charles E. Swimley, Jr.
Public Works Director

Prepared by Sean Nathan, Senior Civil Engineer
CES/SN/tdb
Attachments

cc: Parks Project Coordinator
CDBG Coordinator

Exhibit A



PARK SITE PLAN

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and SORACCO, INC., a California corporation, herein referred to as the "Contractor."

W I T N E S S E T H:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference, to-wit:

Notice Inviting Bids	The July 1992 Edition,
Information to Bidders	Standard Specifications,
Certifications and Forms	State of California,
General Provisions	Business and Transportation Agency,
Federal Requirements	Department of Transportation
Special Provisions	
Bid Proposal	
Contract	
Contract Bonds	
Federal Minimum Wage Rates	
Plans	
Addenda	

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Section 5.600, "Measurement, Acceptance and Payment," of the General Provisions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under them, to-wit:

The work consists of furnishing and installing a prefabricated restroom building, replacing 2,200 square feet of concrete, installing various utilities to accommodate the improvements and other incidental and related work, all as described in the specifications for the above project.

For additional bid item descriptions refer to Section 6-07 "Description of Bid Items".

CONTRACT ITEMS

Item	Descriptions	Qty	Unit	Unit Price	Total
1	Mobilization, Traffic Control and Temporary Facilities	1	LS	$ 23,900.00	$ 23,900.00
2	Demolition, Clearing, Grubbing and Grading	1	LS	$ 11,525.00	$ 11,525.00
3	Concrete Sidewalks	2,200	SF	$ 12.50	$ 27,500.00
4	Utility Improvements	1	LS	$ 42,209.00	$ 42,209.00
5	Restroom Building	1	LS	$ 228,453.00	$ 228,453.00

TOTAL $ 333,587.00

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements and to establish lines and grades for the work as specified under the Special Provisions. All

labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the specifications.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 15 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within **45 CALENDAR DAYS**.

ARTICLE IX - State of California Senate Bill 854 requires the following:

- No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

WHEN SIGNING THIS CONTRACT, THE CONTRACTOR AGREES THAT THE TIME OF COMPLETION FOR THIS CONTRACT IS REASONABLE AND THE CONTRACTOR AGREES TO PAY THE CITY LIQUIDATED DAMAGES AS SET FORTH IN SECTION 6-04.03 OF THE SPECIAL PROVISIONS. CONTRACTOR AGREES THAT THIS AMOUNT MAY BE DEDUCTED FROM THE AMOUNT DUE THE CONTRACTOR UNDER THE CONTRACT.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

CONTRACTOR:

_____

By:_____

_____
Title

(CORPORATE SEAL)

CITY OF LODI, a municipal corporation

By:_____
STEPHEN SCHWABAUER
City Manager

Date:_____

Attest:

_____
PAMELA M. FARRIS
Assistant City Clerk

Approved As To Form:

_____
JANICE D. MAGDICH
City Attorney

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING CONTRACT FOR BLAKELY PARK RESTROOM IMPROVEMENTS TO SORACCO, INC., OF LODI, AUTHORIZING CITY MANAGER TO EXECUTE CHANGE ORDERS, AND REALLOCATING FUNDS

==========

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on December 11, 2019, at 11:00 a.m., for Blakely Park Restroom Improvements, described in the plans and specifications therefore approved by the City Council on November 6, 2019; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

Above/(Below) Bidder	**Location**	**Bid**	**Above/(Below) Estimate**
Engineer's Estimate		$ 287,000.00	
Soracco, Inc	Lodi	$ 333,587.00	$ 46,587.00
*JPB Design, Inc.	Orangevale	$ 348,000.00	$ 61,000.00
A.M. Stephens Const., Inc.	Lodi	$ 349,709.00	$ 62,709.00
Stratus Const. Co.	Stockton	$ 394,185.00	$ 107,185.00
* B & M Builders	Rancho Cordova	$ 403,163.00	$ 116,163.00
Diede Const., Inc.	Woodbridge	$ 437,221.52	$ 150,221.52
Royce Const. & Design, Inc.	Sonora	$ 463,800.00	$ 176,800.00
T Amarals Done Right Const.	Brentwood	$ 499,000.00	$ 212,000.00

*** Non-Responsive**

WHEREAS, staff recommends that the City Council award the contract for Blakely Park Restroom Improvements to Soracco, Inc., of Lodi, in the amount of $333,587; and

WHEREAS, staff also recommends that the City Council authorize the City Manager to execute change orders in an amount not to exceed $50,000; and

WHEREAS, staff further recommends the City Council reallocate funds in the amount of $117,000 from the FY 20 CDBG Salvation Army HVAC/Refrigeration Project (CDBG-20001) as a first funding priority; or from the FY 20 Playground Improvement Project funded from Measure L (PKCP-20001) as a second funding priority. Total funding allocation from CDBG reallocation and Measure L is $117,000 cumulative; and

WHEREAS, CDBG reallocation is subject to separate approval by City Council at a later date.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for Blakely Park Restroom Improvements to Soracco, Inc., of Lodi, in the amount of $333,587; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby authorize City Manager to execute change orders in an amount not to exceed $50,000; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby authorize reallocating funds for the Blakely Park Restroom Improvements, in the amount of $117,000, as set forth above.

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020
==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-08**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Accept Improvements Under Contract for Lodi Station Parking Garage Structural Repair Project

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Accept improvements under contract for Lodi Station Parking Garage Structural Repair Project.

BACKGROUND INFORMATION: The Lodi Station Parking Garage, located at 50 North Sacramento Street, has two elevators to convey patrons to all three floors of the parking structure. On May 15, 2018, a patron, driving a vehicle, hit the north elevator shaft, located on the third floor. The impact caused substantial damages to the elevator equipment and elevator shaft.

This project was awarded to TPA Construction, Inc., of Rocklin, on March 20, 2019, in the amount of $69,600 and consisted of performing structural repairs to the damaged elevator shaft and exterior wall of the parking structure. The contract has been completed in substantial conformance with the plans and specifications approved by City Council on January 16, 2019.

The original contract completion date was July 19, 2019, and the actual contract completion date was October 14, 2019. The difference between the contract completion date and the actual completion date was associated with various delays in the construction process. The final cost of the project was $71,286.16. The difference between the original contract amount and final contract amount is due to one change order, in the amount of $1,686, needed to repair the second level elevator door threshold, which was discovered during the elevator repair project.

Following acceptance by the City Council, as required by law, the City Engineer will file a Notice of Completion with the County Recorder's office. The notice serves to notify vendors and subcontractors that the project is complete and begins their 30-day period to file a stop notice requiring the City to withhold payments from the prime contractor in the event of a payment dispute.

FISCAL IMPACT: The cost to make the necessary repairs to the structure, elevator replacement, and all engineering and staff time spent on this incident is initially funded by Transit Capital and will be recovered through insurance claims. This project does not impact the General Fund.

APPROVED: _____

Stephen Schwabauer, City Manager

FUNDING AVAILABLE: This project was funded by Transportation Development Act funds.

Charles E. Swimley, Jr.
Public Works Director

Prepared by Lyman Chang, City Engineer/Deputy Public Works Director
CES/LC/tdb

cc: Transportation Manager
Public Works Management Analyst
Risk Manager
City Engineer/Deputy Public Works Director
TPA Construction, Inc.

AGENDA ITEM **C-09**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Accepting Public Improvements of Reynolds Ranch Buffer Trail and Authorizing City Manager to Execute Landscape Maintenance Agreement

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution accepting public improvements of Reynolds Ranch Buffer Trail and authorizing City Manager to execute Landscape Maintenance Agreement.

BACKGROUND INFORMATION: The Reynolds Ranch development includes a buffer trail system as part of the open space planning in the master plans. The buffer trail serves as a linear park feature and also a buffer between the Reynolds Ranch development and the Armstrong Road agricultural cluster area identified in the 2010 General Plan.

The buffer trail is generally 75 feet in width and consists of a 14-foot wide paved bike/pedestrian path, benches, path lights, shrubs and trees, and other miscellaneous improvements (Exhibit A) and will be opened to the public from dawn to dusk. The buffer trail improvement was part of the condition of approval for the Rubicon Apartments project. The developer, Skinner Ranch Holdings, L.P. (Developer), entered into a Public Improvement Agreement for the construction of the buffer trail fronting the project boundary.

The buffer trail improvements are now completed in conformance with the approved public improvement plans and the Developer has furnished the necessary three-year warranty bond. The Developer is also required to execute a Landscape Maintenance Agreement to maintain the park landscape elements for a period of three years.

Staff recommends accepting public improvements of Reynolds Ranch Buffer Trail and authorizing City Manager to execute Landscape Maintenance Agreement.

FISCAL IMPACT: There will be an overall increase in long-term maintenance costs for the buffer trail, which will be partially offset by Community Facilities District No. 2007-1 revenue.

FUNDING AVAILABLE: Not applicable.

Charles E. Swimley, Jr.
Public Works Director

Prepared by Lyman Chang, City Engineer/Deputy Public Works Director
CES/LC/tdb
Attachments

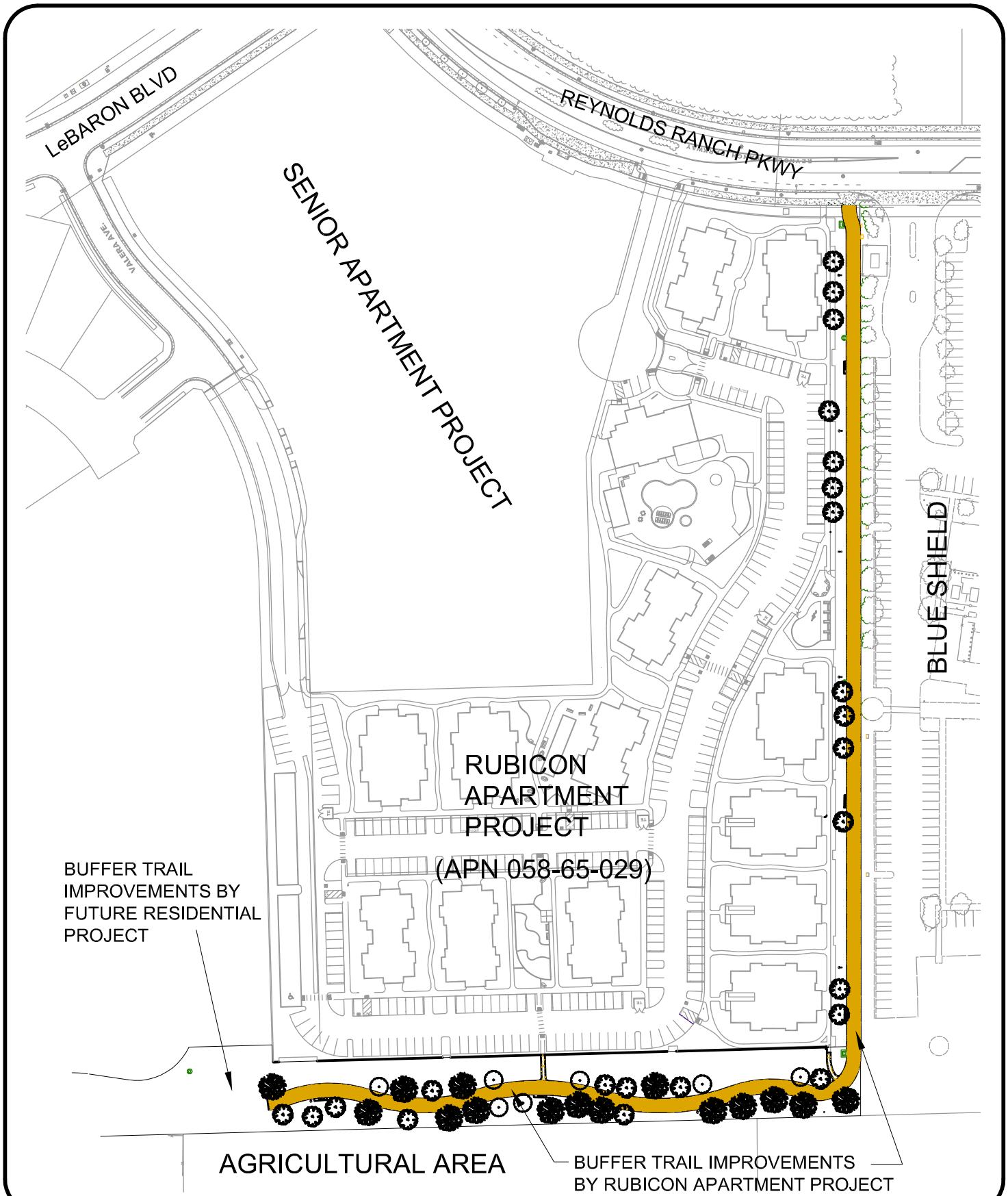
cc: City Attorney
City Engineer / Deputy Public Works Director
Skinner Ranch Holdings, L.P.
Assistant Engineer, Kiriu
PRCS Director

APPROVED: _____
Stephen Schwabauer, City Manager

CITY OF LODI

PUBLIC WORKS DEPARTMENT

Exhibit A
Reynolds Ranch Buffer Trail
Rubicon Apartment



K:\WP\DEV_SERV\Developments\Reynolds Ranch\Buffer Trail\Improvement Agreement\Reynolds Ranch Buffer Trail Exhibit.dwg, Layout1, 1/6/2020 2:31:30 PM

WHEN RECORDED, RETURN TO:
City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

LANDSCAPE MAINTENANCE AGREEMENT
for the
REYNOLDS RANCH BUFFER TRAIL IMPROVEMENTS

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, a California municipal corporation, hereinafter referred to as "City", and SKINNER RANCH HOLDINGS, L.P., a California limited partnership, hereinafter referred to as "Developer".

RECITALS:

WHEREAS, Developer submitted building permit application No. 20161804 and No. 20161758 through No. 20161770 for the development of Rubicon Apartment at Reynolds Ranch, hereinafter "Development".

WHEREAS, Developer is required to construct the buffer trail system (hereinafter "Project"), as a condition of development under the terms of the "Improvement Agreement for Public Improvements of Reynolds Ranch Buffer Trail Improvements", hereinafter "Agreement"; and

WHEREAS, City Council will accept the public improvements and dedications therein offered on the condition that Developer will first enter into and execute this Agreement with City and meet the requirements of the resolution accepting the improvements; and

NOW THEREFORE, for and in consideration of the acceptance of the Project and dedications offered, the parties agree as follows:

1. Developer agrees to maintain and upkeep the landscape and hardscape elements installed with the buffer trail including weekly trash removal from the trash cans in the trail system for a period of three (3) years from the acceptance of the Project by City.

2. Developer shall furnish a Maintenance Security in the amount of $54,890.00 as security for the maintenance costs.

3. Developer shall obtain an encroachment permit from the City for the said maintenance work within the Project area for the entire maintenance period and provide the necessary insurance per the terms of the encroachment permit. The said maintenance work shall be performed by a California state licensed contractor.

4. Developer agrees to save, defend, indemnify, and hold harmless the City, its elected and appointed officials, officers, agents and employees, from liability of any nature whatsoever arising from Developer's (or its agents) performance under this Agreement to maintain and upkeep the landscape and hardscape elements as set forth in Item No. 1 above.

5. Notices.

   All notices herein required shall be in writing, signed by the authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties.

Notices required to be given to City shall be addressed as follows:

Charles E. Swimley, Jr.
Public Works Director
City of Lodi
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910

Notices required to be given to Developer shall be addressed as follows:

Skinner Ranch Holdings, L.P.
1420 S. Mills Avenue, Suite M
Lodi, CA 95242
Attn: Bart Robertson

Notices required to be given to Surety shall be addressed as follows:

_____

_____

_____

_____

Provided that either party or the surety may change such address by notice in writing in the manner set forth above, to the other party and thereafter notices shall be addressed and transmitted to the new address.

6. Authority

The undersigned hereby represent and warrant that they are authorized by the parties they purport to represent to execute this Agreement.

[The balance of this page is intentionally left blank.]

7. Execution

In Witness Whereof, Developer and City have caused their names and corporate seals to be hereunto affixed.

SKINNER RANCH HOLDINS,
a California corporation

Dated: _____

By: Morse Skinner Properties, LLC, a California limited liability company, its general partner

By: _____
BARTON R. ROBERTSON
Manager

(CORPORATE SEAL)

CITY OF LODI,
a California municipal corporation

Dated: _____

By: _____
STEPHEN SCHWABAUER
City Manager

ATTEST:

_____
PAMELA M. FARRIS
Assistant City Clerk

(CORPORATE SEAL)

APPROVED AS TO FORM:

_____
JANICE D. MAGDICH
City Attorney

When Recorded Please Return to:
Lodi City Clerk
P.O. Box 3006
Lodi, CA 95241-1910

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL ACCEPTING REYNOLDS RANCH BUFFER TRAIL PUBLIC IMPROVEMENTS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE LANDSCAPE MAINTENANCE AGREEMENT

==========

WHEREAS, Reynolds Ranch development includes a buffer trail system as part of the open space planning in the master plans that serves as a linear park feature and also a buffer between the Reynolds Ranch development and the Armstrong Road agricultural cluster area identified in the 2010 General Plan; and

WHEREAS, the buffer trail improvements were part of the condition of approval for the Rubicon Apartments project; and

WHEREAS, the developer, Skinner Ranch Holdings, L.P. (Developer), entered into a Public Improvement Agreement for the construction of the buffer trail fronting the project boundary; and

WHEREAS, the Developer is also required to execute a Landscape Maintenance Agreement to maintain the park landscape elements for a period of three years; and

WHEREAS, staff recommends that the City Council accept the public improvements for the Reynolds Ranch Buffer Trail, and further recommends authorizing the City Manager to execute a three-year Landscape Maintenance Agreement for the project.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby accept Reynolds Ranch Buffer Trail Public Improvements; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby authorize City Manager to execute a three-year Landscape Maintenance Agreement for the project; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-10**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Accepting Public Improvements of Gateway North Subdivision, Unit No. 1, Tract No. 3940, and Amending Traffic Resolution No. 97-148, by Approving Yield Control on Larkspur Lane at Primrose Drive

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution accepting public improvements of Gateway North Subdivision, Unit No. 1, Tract No. 3940, and amending Traffic Resolution No. 97-148, by approving yield control on Larkspur Lane at Primrose Drive.

BACKGROUND INFORMATION: Gateway North Subdivision, Unit No. 1, is located west of Lower Sacramento Road and south of Lodi Shopping Center, as shown on Exhibit A. Unit No. 1 consists of 98 single-family, residential lots.

The project includes the installation of all interior subdivision public improvements; and 270 feet of street improvements along Lower Sacramento Road, from the south boundary of the Lodi Shopping Center driveway to the southerly boundary of the subdivision.

The conditions of approval require the developer to relocate various utilities along Lower Sacramento Road. Due to complications primarily associated with relocating electric utilities by Pacific Gas & Electric, the developer, Blossom Land Company (Developer), is requesting to defer the completion of the Lower Sacramento Road frontage improvements with the completion of Gateway North Subdivision, Unit No. 2, which is planned to start in January of 2020. This request is supported by Staff.

The streets to be accepted are as follows:

Streets	**Length in Miles**
Primrose Drive	0.16
Interior Streets	0.61
Total New Miles of City Streets	**0.77**

Staff recommends accepting Gateway North Subdivision, Unit No. 1, Tract No. 3940, public improvements, and amending Traffic Resolution No. 97-148, by approving yield control on Larkspur Lane at Primrose Drive.

FISCAL IMPACT: There will be an increase in long-term maintenance costs for public infrastructure and City services, such as police, fire, and parks. This cost will be partially offset by proceeds from the Community Facilities District No. 2007-1.

APPROVED: _____

Stephen Schwabauer, City Manager

FUNDING AVAILABLE: Not applicable.

Charles E. Swimley, Jr.
Public Works Director

Prepared by Lyman Chang City Engineer/Deputy Public Works Director
CS/LC/tdb
Attachments

cc: City Attorney Magdich
Public Works Management Analyst
Assistant Engineer Kiriu
Senior Civil Engineer Nathan
Senior Engineering Technician Wiman
Engineer Technician Mangrich
Blossom Land Company
MCR Engineering

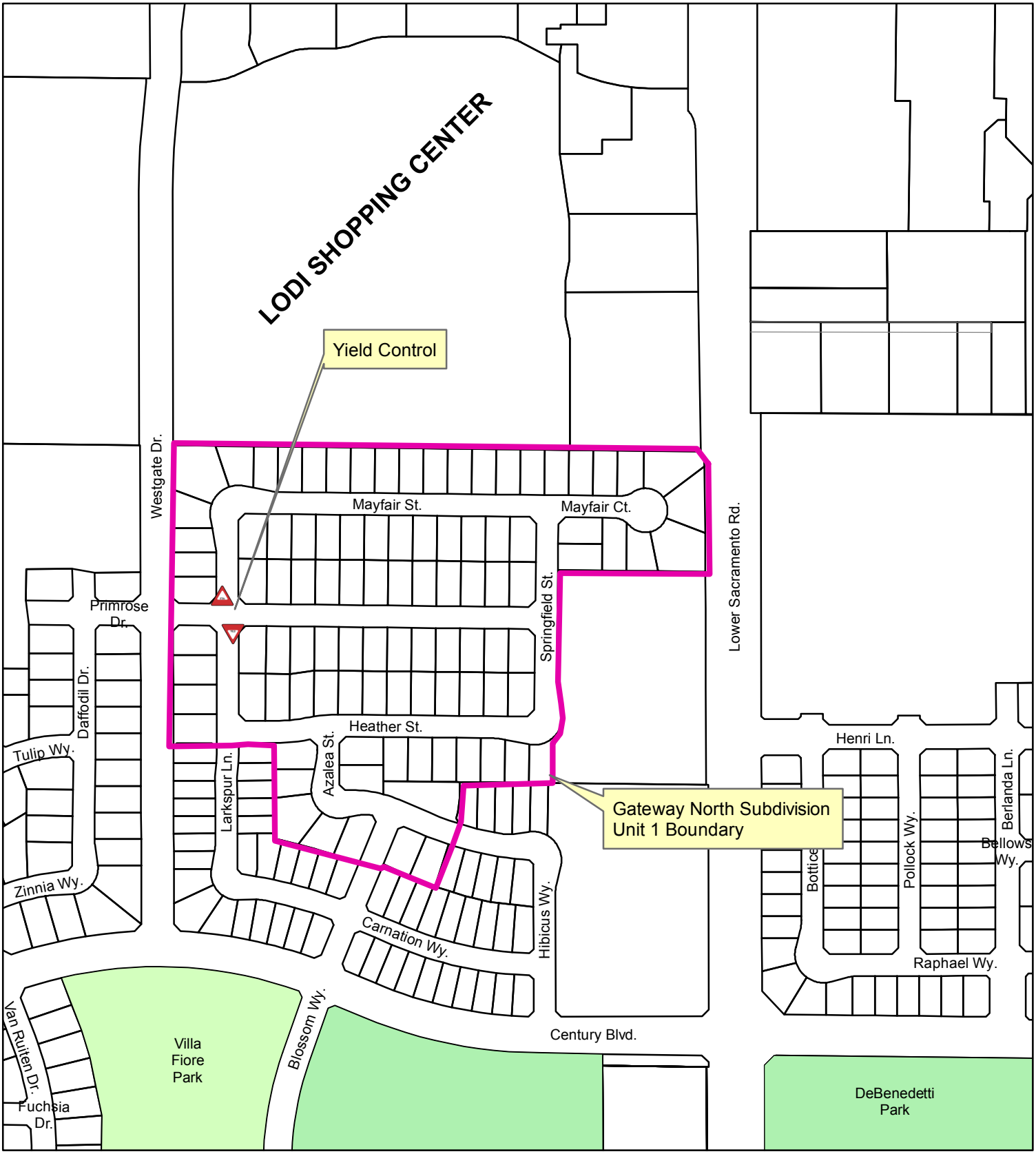


EXHIBIT A
GATEWAY NORTH SUBDIVISION
UNIT 1 VICINITY MAP

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S

Path: K:\WP\DEV_SERV\Developments\Lodi Southwest Gateway\Gateway North\Improvement Agreement\C_ExhibitA.mxd

When Recorded Please Return to:
Lodi City Clerk
P.O. Box 3006
Lodi, CA 95241-1910

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL ACCEPTING GATEWAY NORTH SUBDIVISION, UNIT NO. 1, TRACT NO. 3940, PUBLIC IMPROVEMENTS AND AMENDING TRAFFIC RESOLUTION NO. 97-148 BY GATEWAY NORTH SUBDIVISION, UNIT NO. 1, TRACT NO. 3940

==========

WHEREAS, Gateway North Subdivision, Unit No. 1, is located west of Lower Sacramento Road and south of Lodi Shopping Center; and

WHEREAS, the project includes the installation of all interior subdivision public improvements; and 270 feet of street improvements along Lower Sacramento Road, from the south boundary of the Lodi Shopping Center driveway to the southerly boundary of the subdivision; and

WHEREAS, staff is agreeable to developer's request to defer the completion of the Lower Sacramento Road frontage improvements and construct the same concurrently with the completion of Gateway North Subdivision, Unit No. 2, which is planned to start in January of 2020; and

WHEREAS, the streets to be accepted are as follows:

Streets	**Length in Miles**
Primrose Drive	0.16
Interior Streets	0.61
Total New Miles of City Streets	**0.77**

WHEREAS, staff recommends accepting Gateway North Subdivision, Unit No. 1, Tract No. 3940, public improvements; and

WHEREAS, staff also recommends amending Traffic Resolution No. 97-148 by approving yield control on Larkspur Lane at Primrose Drive.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the developer's request to defer the completion of the Lower Sacramento Road frontage improvements and construct the same concurrently with the completion of Gateway North Subdivision, Unit No. 2, which is planned to start in January 2020; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby accept Gateway North Subdivision, Unit No. 1, Tract No. 3940, public improvements; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby amend Traffic Resolution No. 97-148 by approving yield control on Larkspur Lane at Primrose Drive; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to

make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020
==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-11**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Approving Final Map and Authorizing City Manager to Execute Improvement Agreement for Interlaken Subdivision, Tract No. 4024

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution approving final map and authorizing City Manager to execute Improvement Agreement for Interlaken Subdivision, Tract No. 4024.

BACKGROUND INFORMATION: The Interlaken Subdivision is a residential development located east of Lower Sacramento Road and north of Kettleman Lane, as shown on Exhibit A. The subdivision consists of 25 single-family, residential lots and the project includes the installation of all interior subdivision public improvements and landscaping improvements fronting Lower Sacramento Road.

The developer, known as 1164 Lower Sac, LLC (Developer), has furnished the City with improvement plans, necessary agreements, guarantees, insurance certificates, and the required fees for the proposed subdivision. Development Impact Fees will be collected as part of the building permit process prior to issuing a certificate of occupancy for each single-family residence in accordance with Lodi Municipal Code 15.64.040. This project is part of the Community Facilities District No. 2007-1 (Public Services) (CFD).

Staff recommends approving final map and authorizing City Manager to execute Improvement Agreement for Interlaken Subdivision, Tract No. 4024.

FISCAL IMPACT: There will be an increase in long-term maintenance costs for public infrastructure and City services such as police, fire, and parks, and open space maintenance. This cost will be partially offset by proceeds from the CFD.

FUNDING AVAILABLE: Not applicable.

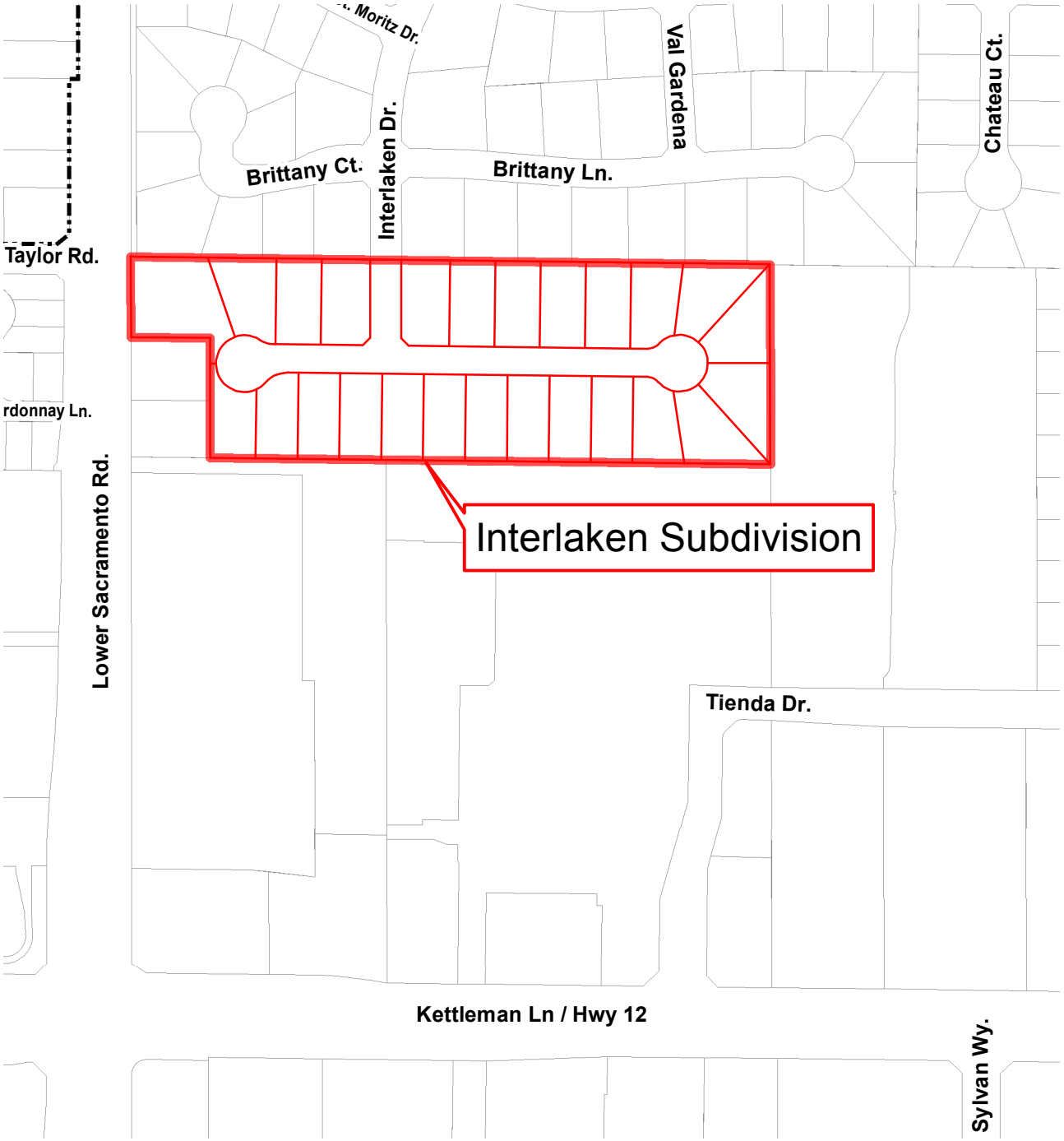
_____
Charles E. Swimley, Jr.
Public Works Director

Prepared by Karissa Kiriu, Assistant Engineer
CES/KTVK/tdb
Attachments

cc: City Attorney, Magdich
Deputy Public Works Director / City Engineer, Chang
Assistant Engineer, Kiriu
Senior Engineering Technician, Wiman
1168 Lower Sac, LLC
Baumbach & Piazza, Inc.

APPROVED: _____
Stephen Schwabauer, City Manager

Exhibit A
Interlaken Subdivision
Vicinity Map



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K:\WP\DEV_SERV\Developments\Residential\INTERLAKEN SUB. Lower Sac 1164 S - Bennett\Improvement Agreement\Info_Void\CCExhibitA.mxd

WHEN RECORDED, RETURN TO:
City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

IMPROVEMENT AGREEMENT
for the
PUBLIC IMPROVEMENTS
of the
INTERLAKEN SUBDIVISION
TRACT NO. 4024

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, a California municipal corporation, hereinafter referred to as "City", 1164 LOWER SAC, LLC, a California limited liability company, hereinafter referred to as "Developer", and G AND L BROCK CONSTRUCTION COMPANY, INC., a California corporation, hereinafter referred to as "Developer's Contractor."

RECITALS:

Developer is the developer of that certain real property situated in the City of Lodi, County of San Joaquin, commonly known as Parcel 1 (A.P.N.: 027-41-001) and more particularly described in Exhibit A and depicted in Exhibit B. Developer has presented to City for approval the final subdivision map, hereinafter called "Map", entitled "INTERLAKEN SUBDIVISION." The Map was filed with the Public Works Director for presentation to the City Council for approval, and is hereby referred to and incorporated herein;

Developer has requested approval of the Map prior to the construction and completion of public improvements, including all streets, highways or public ways, and public utilities and facilities which are a part of, or appurtenant to, the Interlaken Subdivision, hereinafter called "Project", all in accordance with, and as required by, the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of Project, which plans and specifications are now on file in the office of and endorsed with the approval of the Public Works Director or his designee.

City Council will adopt a resolution to approve the Map and accept the dedications therein offered on the condition that Developer will first enter into and execute this Agreement with City and meet the requirements of said resolution; and

Developer's Contractor is made a party to this Agreement solely to secure the Faithful Performance Bonds and Labor and Materials Bonds referred to in Paragraph 12 below and to secure the Insurance referred to in paragraph 15 below. Developer's Contractor has no other obligations under this Agreement.

This Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Titles 15 and 17 of the Lodi Municipal Code ("LMC").

NOW THEREFORE, for and in consideration of the acceptance of the dedications offered, and in order to insure satisfactory performance by Developer of Developer's obligations under State law and City Code, the parties agree as follows:

1. <u>Performance of Work by Developer</u>

   Developer will do and perform, or cause to be done and performed at Developer's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of City's Public Works Director, all of the work and improvements as shown on the approved improvement plans for the Project, Plan Set 019D011, which are on file in the Public Works Department.

The Developer shall also perform or cause to be performed the following items which are not shown on the improvement plans:

A. Street light installation and connection to City system;

B. Natural gas line installation;

C. Telephone line installation;

D. Electrical system; and

E. Cable television system.

2. Development Changes

Developer shall also perform all work and furnish all materials necessary to comply with any changes required by the Public Works Director, which, in his opinion, are necessary or required to complete the work in conformance with City Standards or are the result of changed conditions.

3. Performance of Work by City

Prior to the approval of the final map by the City, it is agreed that the Developer shall deposit with the City the amount of money shown as the "Developer Cost" on the Billing Schedule, attached hereto as Exhibit C, and by this reference made a part hereof as though fully set forth.

From payments made under the Billing Schedule, Developer elects to have the City perform or install or cause the installation of the following items:

A. Street seal coat;

B. Televideo inspection of the public sewer and storm drain lines. The fee shown on the Billing Schedule is based on the linear footage of sewer and storm drain pipe, including laterals, shown on the improvement plans. The fee will be adjusted, if necessary, when the televideo inspection is complete. Any additional fee must be paid prior to Project acceptance;

C. Storm Water Permit Compliance Inspections. The fee shown on the Billing Schedule is based on one (1) inspection per month for construction activities covering twelve months period. The fee will be adjusted, if necessary, when the improvements are complete and ready for acceptance by the City. Any additional fee must be paid prior to Project acceptance;

D. 1" x 10" water service hot tap, developer's contractor is responsible for trenching and backfill; and

E. Water meter installation for irrigation service.

Developer shall also pay all additional costs for work performed by City deemed by the Public Works Director necessary to complete the work under this Agreement in conformance with City Standards.

4. Development Impact Mitigation Fees

Development Impact Mitigation Fees for water, wastewater, street improvements, storm drain, police, fire, parks and recreation, general City facilities, art in public places are required for this Project. Payment of the Development Impact Mitigation Fees shall be collected prior to issuance of Certificate of Occupancy for each dwelling. In conformance with LMC Section 15.64.050, the fees are automatically adjusted on January 1st of each year. Fees may also be adjusted at other times by separate City Council action. The actual fees to be paid will be those in effect at the time of payment. This Agreement shall in no way limit City's ability to charge Developer the fees in effect at the time Developer pays the fees.

5. Reimbursement from Others

Developer may be eligible for reimbursement from others for the cost of certain off-site public improvements that benefit other properties. It is Developer's responsibility to request reimbursement and submit the appropriate information per LMC Section 17.62.

6. Work; Time for Commencement and Performance

Developer shall, within 365 calendar days from the date of this Agreement, perform or cause to be performed, all work and/or improvements described in this Agreement. At least 15 calendar days prior to the commencement of work hereunder, Developer shall notify the Public Works Director of the date fixed by Developer for commencement thereof, so that City can provide required inspection services.

7. Time Extension

Time is of the essence of this Agreement. City may extend the time for completion of the improvements hereunder, under the terms of an addendum to this Agreement, which shall be approved and executed by the City Manager. Any such extension may be granted without notice to Developer's surety, and extensions so granted, shall not relieve the surety's liability on the bond to secure the faithful performance of Developer under this Agreement. The City Manager shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

8. Record Drawings and Certifications

Prior to acceptance of the Project improvements, Developer shall have installed and put in place, all survey monuments as shown on the Maps and provide record drawings and certifications as described in the City of Lodi Public Improvement Design Standards.

9. Permits; Compliance with Law

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of the improvements described in this Agreement, give all necessary notices, and pay all fees and taxes required by law.

10. Superintendence by Developer

Developer shall give personal superintendence to the work of said improvements, or have a competent agent, foreman or superintendent, satisfactory to the Public Works Director, on the work site at all times during construction, with authority to act for Developer.

11. Inspection by City

Developer, shall at all times, maintain proper facilities and provide safe access for inspection by City to all parts of the work site. Inspections will be provided during normal working hours of City staff. Developer will be billed for inspections on work performed on weekends, holidays and overtime. Developer shall also pay all additional costs incurred by City for soils and materials testing and/or inspection services, including storm water compliance inspections, required as a part of City inspection activities.

12. Contract Security

Concurrently with the execution of this Agreement, Developer's Contractor shall furnish Improvement Security of at least 100 percent of the estimated cost of the public improvements required to be constructed, plus engineering costs of surveying, record drawings and certifications as security for the faithful performance of this Agreement; and an amount equal to at least 100 percent of the above costs as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement as more fully described in the State Subdivision Map Act.

The City has determined these security amounts to be as follows:

Faithful Performance:	$ 794,600.00
Labor and Materials:	$ 794,600.00

13. Warranty Security

Prior to acceptance of the Project improvements by City, Developer shall furnish warranty security of at least 10 percent of the total cost of the public improvements required to be constructed, as security for repair or replacement of defective work as provided under Paragraph 17 of this Agreement. The warranty period shall be two years following the date of acceptance of the improvements by City. If any portion of the Project receives partial acceptance during the course of construction, the warranty period for all required Project improvements shall commence upon the date of final acceptance for the entire Project.

14. Hold-Harmless Agreement

Developer hereby agrees to, and shall, hold City, its elected and appointed boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage from personal injury, including death, as well as from claims for property damage which may arise from Developer's or Developer's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by Developer or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors. Developer agrees to, and shall, defend City and its elected and appointed boards, commissions, officers, agents, and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

A. That City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in Paragraph 15 of this Agreement.

B. That the aforesaid hold-harmless agreement by Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

15. Developer's Insurance

Developer's Contractor shall not commence work under this Agreement until Developer's Contractor has obtained all insurance required under this paragraph, nor shall Developer's Contractor allow any work to commence until all similar insurance required of the contractor or subcontractor has been so obtained. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Worker's Compensation Insurance

Developer's Contractor shall maintain, during the life of this agreement, Worker's Compensation Insurance for all Developer's Contractor's employees employed at the site of improvement, and in case any work is sublet, Developer's Contractor shall require any contractor or subcontractor similarly to provide Worker's Compensation Insurance for all contractors' or subcontractors' employees, unless such employees are covered by the protection afforded by Developer's Contractor. In case any class of employees engaged in hazardous work under this Agreement at the site of the

Project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. **A waiver of subrogation is required for workers compensation insurance.** This policy may not be canceled nor the coverage reduced without 30 days prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine Street, Lodi, CA, 95240. Developer's Contractor hereby indemnifies City for any damage resulting to it from failure of either Developer's Contractor or any contractor or subcontractor to take out or maintain such Worker's Compensation insurance.

B. Comprehensive General and Automobile Insurance

Developer's Contractor shall take out and maintain during the life of this Agreement such insurance as shall insure City, its elected and appointed boards, commissions, officers, agents, and employees, Developer's Contractor and any contractor or subcontractor performing work covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from the Project or the Project property, including any public streets or easements, from Developer's Contractor or any contractors' or subcontractors' operations hereunder, whether such operations be by Developer's Contractor or any contractor or subcontractor or by anyone directly or indirectly employed by either Developer's Contractor or any contractor or subcontractor, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

   $4,000,000 Each Occurrence
   $8,000,000 General Aggregate

2. COMPREHENSIVE AUTOMOBILE LIABILITY

   $4,000,000 Combined Single Limit
   Such insurance shall cover liability arising out of any vehicle (including, owned, hired and non-hired vehicles) operated in performing any and all services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version, that provides liability coverage at least as broad as this form.

Developer's Contractor must have comprehensive automobile liability only if Developer's vehicles are used for the Project or on the Project property.

NOTE: The City of Lodi is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.

NOTE: Developer's Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.). "Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

All limits are to be designated strictly for the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. All deductibles or self-insured retentions (SIR) must be disclosed to City's Risk Manager for approval and shall not reduce the limits of liability set forth hereinabove. Insurance policies containing any deductible or SIR provision shall provide, or be endorsed to provide,

that the deductible or SIR may be satisfied by either the Named Insured(s) or the City of Lodi.

It is required that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth above, shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (i) the minimum coverage and limits specified in these insurance requirements; or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Developer's Contractor; whichever is greater.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

A. Additional Named Insured Endorsement

Pursuant to a separate endorsement (ISO form CG 2010 (11/85) or a later version, that provides liability coverage at least as broad as this form) Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed boards, commissions, officers, agents and employees as additional named insured insofar as work performed by the insured under written contract with the City of Lodi. This endorsement shall be on the form furnished by City and shall be included with Developer's Contractor's policies. An additional named insured endorsement is also required for Auto Liability.

B. Primary and Non-Contributory Insurance Endorsement

Additional insurance coverage under the Developer's Contractor's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.

C. Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the Developer's Contractor's liability.

D. Waiver of Subrogation

Include a waiver of subrogation against the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. A waiver is required for General Liability and Auto Liability.

E. Limits of Coverage

The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of Developer's Contractor shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect the City as a named insured.

F. Completed Operations Endorsement

For three years after completion of project, a certificate of insurance with a Completed Operations Endorsement, CG 20 37 07 04, will be provided to the City of Lodi.

G. Continuity of Coverage

All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Developer's Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Developer's Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Developer's

Contractor's insurance lapses or is discontinued for any reason, Developer's Contractor shall immediately notify the City and immediately obtain replacement insurance.

H. Failure to Comply

If Developer's Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Developer's Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Developer's Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Developer's Contractor shall pay such reimbursement and interest on the first (1st) day of the month following the City's notice. Notwithstanding any other provision of this Agreement, if Developer's Contractor fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Developer's Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.

I. Qualified Insurer(s)

All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

16. Title to Improvements

Title to, and ownership of, all public improvements constructed hereunder by Developer shall vest absolutely in City upon completion and acceptance of such public improvements by City.

17. Repair or Reconstruction of Defective Work

If, within a period of two (2) years after final acceptance by City of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, including the mitigation measures for dust and erosion control, fails to fulfill any of the requirements of this Agreement plans and specifications referred to herein, Developer and Developer's surety shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Developer or Developer's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Developer shall pay to City the actual cost of such repairs plus 15-percent for administration and overhead costs.

18. Landscape Maintenance

Developer shall perform regular maintenance on the hardscape and landscape element, including plants and irrigation system, installed with the Project for a period of three (3) years after the final acceptance by City. Should Developer or Developer's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require maintenance to be performed before Developer can be notified, City may, at its option, perform the necessary maintenance work, and Developer shall pay to City the actual cost of such repairs plus 15-percent for administration and overhead costs.

Developer shall furnish a Maintenance Security of at least 10% of the total cost of the landscape improvements as security for the maintenance costs.

19. Repair or Replacement of City-Owned Bypass Meter Assemblies

Developer is required by City to install bypass meter assemblies in conjunction with the installation of water mains in the City of Lodi. City will supply these assemblies upon receipt of a deposit in the amount of $5,000 for each assembly required. The purpose of the deposit is to guarantee the return of the assembly in good condition and fulfillment of the other obligations shown in the City's Policies and Procedures entitled "Metering Water Usage of New Water Mains Requiring Temporary Bypasses."

20. Mud, Debris, Dust and Erosion

Developer agrees and covenants not to permit mud or other debris to be tracked from the Project site or elsewhere onto City or County streets or onto private property without express permission. Developer further agrees not to cause damage to City or County streets.

Should any mud or debris be deposited in City or County streets or any damage is caused to City or County streets, Developer shall have the same removed or repaired forthwith, and if not removed or repaired upon notice within a specified time, City shall cause the same to be removed or repaired and Developer shall be charged for the cost of said removal or repairs.

Developer, Developer's contractor, subcontractors, and/or agents shall be responsible for dust and erosion problems created during construction, including installation of telephone, electrical, cable television and gas facilities. Developer's responsibility for dust and erosion control shall extend to include a period of two years from the date of final acceptance by City of the work performed under this Agreement.

If a dust or erosion problem arises during development or within a period of two (2) years from the date of final acceptance by City of the work performed under this Agreement, including but not limited to installation of telephone, electrical, cable television, and/or gas facilities, and has not, after notice, been abated by Developer within a specified period of time, City shall cause the same to be controlled, and Developer shall be charged with the cost of said control.

21. Fire Protection During Construction

Fire protection facilities approved by City's Fire Chief, including all-weather access road and an approved water supply capable of supplying the required fire flow, shall be installed and made serviceable in accordance with the City Fire Code (as set forth in the Lodi Municipal Code) prior to and during the time of building construction. The above may be modified when alternate methods of protection approved by the Fire Chief are provided.

22. Protection of Existing Improvements

Damage to any existing improvements, private or public utility lines installed or undergoing installation in which damage occurs during the onsite and offsite construction required of Developer under this Agreement, shall be the absolute responsibility and liability of Developer. In other words, it shall be Developer's responsibility to pay for damage to existing improvements and public or private utilities within the Project property. Damage to any existing facilities outside the limits of the Project damaged as part of the construction of the required Project improvements is also Developer's responsibility.

23. Dwelling Occupancy

City will not allow occupancy of any building or structure within the Project until all deferred fees have been paid, public improvements have been approved and accepted by the Public Works Department per established City policy (including the CalTrans Landscaping), and other requirements of City codes have been met. If building is started

prior to acceptance of the improvements, it is Developer's responsibility to inform all prospective purchasers that occupancy will not be permitted until said deferred fees are paid and public improvements are so accepted by City.

24. Developer Not Agent of City

Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

25. Notice of Breach and Default

If Developer refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, or if Developer or any of Developer's contractors, subcontractors, agents, or employees, should violate any of the provisions of this Agreement, the Public Works Director or City Council may serve written notice upon Developer and Developer's surety of breach of this Agreement, or any portion thereof, and the default of Developer.

26. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Developer's surety shall have the duty to take over and complete the work and the improvements herein specified; provided however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of this Agreement, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to City for any excess cost or damage occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

27. This Agreement shall run with the land and be binding on the Owner, its heirs, successors and assigns.

28. Notices.

All notices herein required shall be in writing, signed by the authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties.

Notices required to be given to City shall be addressed as follows:

Charles E. Swimley, Jr.
Public Works Director
City of Lodi
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910

Notices required to be given to Developer shall be addressed as follows:

Dennis G. Bennett
Manager
1164 Lower Sac, LLC
P.O. Box 1597
Lodi, CA 95241

Notices required to be given to Developer's Contractor shall be addressed as follows:

Lisa Coussons
Controller
G and L Brock Construction Company, Inc.
4145 Calloway Court
Stockton, CA 95215

Notices required to be given to Surety shall be addressed as follows:

_____

_____

_____

_____

Provided that either party or the surety may change such address by notice in writing in the manner set forth above, to the other party and thereafter notices shall be addressed and transmitted to the new address.

29. Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

[The balance of this page is intentionally left blank.]

30. Execution

In Witness Whereof, Developer, Developer's Contractor, and City have caused their names and corporate seals to be hereunto affixed.

"DEVELOPER"
1164 LOWER SAC, LLC,
a California limited liability company

Dated: 1/8/20

By: _____
DENNIS G. BENNETT
Manager

(CORPORATE SEAL)

"DEVELOPER'S CONTRACTOR"
G AND L BROCK CONSTRUCTION
COMPANY, INC.,
a California corporation

Dated: 01.08.2020

By: Lisa Coussons
LISA COUSSONS
Controller

(CORPORATE SEAL)

CITY OF LODI,
a California municipal corporation

Dated: _____

By: _____
STEPHEN SCHWABAUER
City Manager

ATTEST:

_____
PAMELA M. FARRIS
Assistant City Clerk

(CORPORATE SEAL)

APPROVED AS TO FORM:

_____
JANICE D. MAGDICH
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin)

On January 8, 2020 before me, Karen Amin, Notary Public
(insert name and title of the officer)

personally appeared Lisa Coussons,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

TCB2 THE GREAT SEAL OF THE STATE OF CALIFORNIA
KAREN AMIN
COMM. #2266462
NOTARY PUBLIC - CALIFORNIA
SAN JOAQUIN COUNTY
My Comm. Expires DEC 8, 2022
TCB2

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Joaquin

On 1/8/2020 before me, Tana Fowler, Notary Public,
(here insert name and title of the officer)

personally appeared Dennis G. Bennett,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tana Fowler, Notary Public

TANA FOWLER
Notary Public - California
San Joaquin County
Commission # 2237499
My Comm. Expires May 6, 2022

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 027-410-01

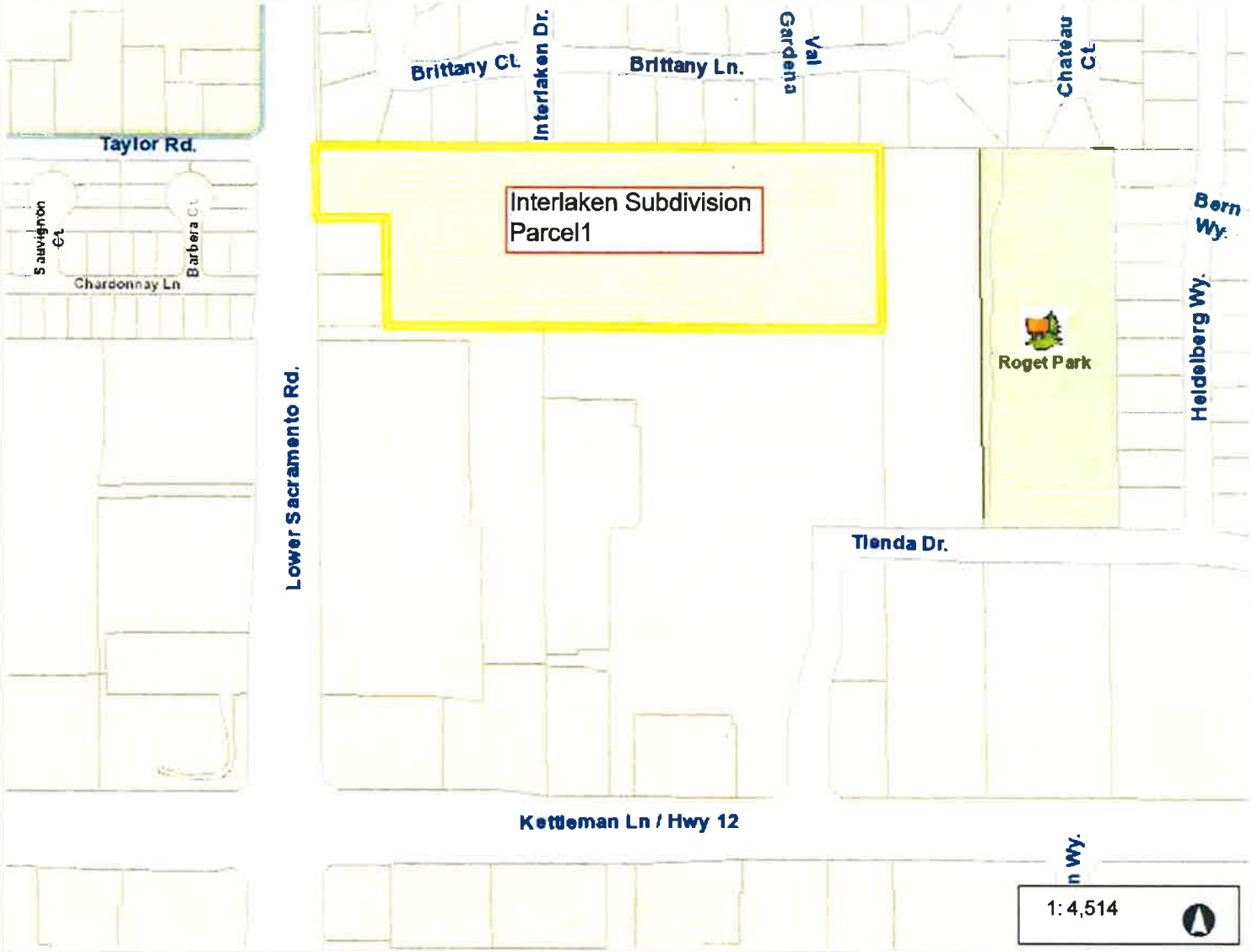
THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LODI, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 3 NORTH, RANGE 6 EAST; THENCE NORTH ALONG THE QUARTER SECTION LINE OF SAID SECTION 10, 968 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO SPIRO VLAVIANOS BY DEED RECORDED NOVEMBER 25, 1960 IN BOOK 2356 OF OFFICIAL RECORDS, PAGE 520, SAN JOAQUIN COUNTY RECORDS; THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL AND SAID SOUTH LINE EXTENDED EASTERLY AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 19, 1184 FEET; MORE OR LESS, TO THE WEST LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO WALDO E. CRANE AND ARLENE CRANE, BY DEED RECORDED IN BOOK 960 OF OFFICIAL RECORDS, PAGE 96, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH ALONG SAID WEST LINE 354 FEET, MORE OR LESS, TO THE NORTH LINE OF SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 10; THENCE WEST ALONG SAID NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 10, 1184 FEET MORE OR LESS, TO THE 1/4 SECTION LINE RUNNING NORTH AND SOUTH THRU SECTION 10; THENCE SOUTH ALONG SAID 1/4 SECTION LINE, 354 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT THE SOUTH 110 FEET OF THE NORTH 244 FEET OF THE WEST 195 FEET OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 10 AS CONVEYED IN DEED EXECUTED BY ALEC E. ZAREK, ET UX, TO JOHN VLAVIANOS AND FARRYLE VLAVIANOS, HIS WIFE, RECORDED JUNE 2, 1960, IN BOOK 2304 OF OFFICIAL RECORDS, PAGE 295, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THE SOUTH 110 FEET OF THE NORTH 354 FEET OF THE WEST 195 FEET OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 10 AS CONVEYED TO SPIRO VLAVIANOS BY DEED RECORDED NOVEMBER 25, 1960 IN BOOK 2356 OF OFFICIAL RECORDS, PAGE 520, SAN JOAQUIN COUNTY RECORDS.

Exhibit B



Legend

- Parcel Outline
- Landmarks
  - ARCH
  - CITYBUILDINGS
  - CITYHALL
  - COURT
  - DOGPARK
  - FIRESTATIONS
  - HIGH SCHOOLS
  - HOSPITALS
  - LIBRARY
  - LND-MRKS
  - PARKS
  - POLICE
  - POST OFFICE
  - SCHOOLS
  - SKATEPARK
  - SOFTBALL
  - STADIUM
  - THEATRE
  - TRAIN
- Railroads
- Waterbodies
- Canal
- Street Names
- Basins
- Parks
- Schools
- Parcels 2nd Story

752 0 376 752 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere

© City of Lodi Geographic Information Systems

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Interlaken Subdivision
Parcel 1 (A.P.N.: 027-41-001)

BILLING SCHEDULE

EXHIBIT C

Development: Interlaken Subdivision
Developer: 1164 Lower Sac, LLC
Engineer: Baumbach & Piazza, Inc.
Date: 12/18/19

Gross Acreage: 8.46
No. of Units: 25
Construction cost $794,600.00

						DEVELOPER COST		CREDITS
ENGINEERING								
Plan Check Fee	(5.0% of	$100,000)		ENGFEE		$ 5,000.00		
	(3.5% of	$200,000)		ENGFEE		7,000.00		
	(2.5% of	$494,600)		ENGFEE		12,365.00		
Inspection Fee	(4.0% of	$250,000)		ENGINS		10,000.00		
	(3.5% of	$544,600)		ENGINS		19,061.00		
Plan Check Fee Paid				ENGFEE			$	23,649.00
Improvement Agreement				ENGFEE		$2,265.00	$	
ENGINEERING SUBTOTAL						$ 55,691.00	$	23,649.00
STREET SYSTEM								
Fees:								
Storm Water Inspection Fees (Charge for 1 year inspection)		PW03	1	LS @ $	2,096.00	$2,096.00		
Charges for work by City Forces:								
Seal Coat		NC07	39,430	SF @ $	0.08	$3,154.40		
STREET SYSTEM SUBTOTAL						$5,250.40		$0.00
SEWER SYSTEM								
Fees:								
Charges for Work by City Forces:								
TV Inspection for Pipe Installation		PW03	1,100	LF @ $	1.50	1,650.00		
TV Inspection for Project Acceptance		PW03	1,100	LF @ $	1.50	1,650.00		
SEWER SYSTEM SUBTOTAL						$3,300.00		$0.00
WATER SYSTEM								
Fees:								
Charges for work by City Forces:		PW02						
1" x 10" Hot Tap for Irrigation Service			1	EA @ $	5,320.00	5,320.00		
1" Meter for Irrigation System			1	EA @ $	350.00	350.00		
WATER SYSTEM SUBTOTAL						$5,670.00		$0.00
STORM DRAIN SYSTEM								
Fees:								
Charges for Work by City Forces:								
TV Inspection for Pipe Installation		PW03	721	LF @ $	1.50	1,081.50		
TV Inspection for Project Acceptance		PW03	721	LF @ $	1.50	1,081.50		
STORM DRAIN SYSTEM SUBTOTAL						$2,163.00		$0.00
ELECTRICAL SYSTEM								
To be billed separately by Electric Utility Department								
TOTAL AMOUNT OF BILLING SCHEDULE						$72,074.40		$23,649.00

				DEVELOPER COST	CREDITS
ADDITIONAL FEES					
Reimbursement Agreements 1995-02 and 1995-04 (EXPIRED)				$0.00	
200-Year Flood Plan Certification Fee	27080000.55020	25 LOTS @ $	188	$4,700.00	
Post-Construction Storm Water Mitigation Fee	30000000.55024	312.63 CY @ $	100	$31,262.96	
TOTAL DUE PRIOR TO IMPROVEMENT PLAN APPROVAL				$84,388.36	

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING
FINAL MAP AND AUTHORIZING CITY MANAGER TO EXECUTE
IMPROVEMENT AGREEMENT FOR INTERLAKEN SUBDIVISION,
TRACT NO. 4024

==========

WHEREAS, the Interlaken Subdivision is a residential development located east of Lower Sacramento Road and north of Kettleman Lane; and

WHEREAS, the subdivision consists of 25 single-family, residential lots and the project includes the installation of all interior subdivision public improvements and landscaping improvements fronting Lower Sacramento Road; and

WHEREAS, the developer, known as 1164 Lower Sac, LLC (Developer), has furnished the City with improvement plans, necessary agreements, guarantees, insurance certificates, and the required fees for the proposed subdivision; and

WHEREAS, this project is part of the Community Facilities District No. 2007-1 (Public Services) (CFD); and

WHEREAS, staff recommends approving the final map; and

WHEREAS, staff also recommends authorizing the City Manager to execute Improvement Agreement for Interlaken Subdivision, Tract No. 4024.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the final map for the Interlaken Subdivision, Tract No. 4024; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute an Improvement Agreement for Interlaken Subdivision, Tract No. 4024; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Approving Final Map and Authorizing City Manager to Execute Improvement Agreement for Iris Drive Subdivision, Tract No. 4023

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution approving final map and authorizing City Manager to execute Improvement Agreement for Iris Drive Subdivision, Tract No. 4023.

BACKGROUND INFORMATION: The Iris Drive Subdivision is an in-fill residential development located west of Ham Lane and south of Tokay Street, as shown on Exhibit A. The subdivision consists of nine single-family, residential lots and includes the installation of all interior subdivision public improvements.

The Developer, 1458 Iris, LLC (Developer), has furnished the City with improvement plans, necessary agreements, guarantees, insurance certificates, and the required fees for the proposed subdivision. Development Impact Fees will be collected as part of the building permit process prior to issuing a certificate of occupancy for each single-family residence in accordance with Lodi Municipal Code 15.64.040. This project is part of the Community Facilities District No. 2007-1 (Public Services) (CFD).

Staff recommends approving final map and authorizing City Manager to execute Improvement Agreement for Iris Drive Subdivision, Tract No. 4023.

FISCAL IMPACT: There will be an increase in long-term maintenance costs for public infrastructure and City services such as police, fire, and parks, and open space maintenance. This cost will be partially offset by proceeds from the CFD.

FUNDING AVAILABLE: Not applicable.

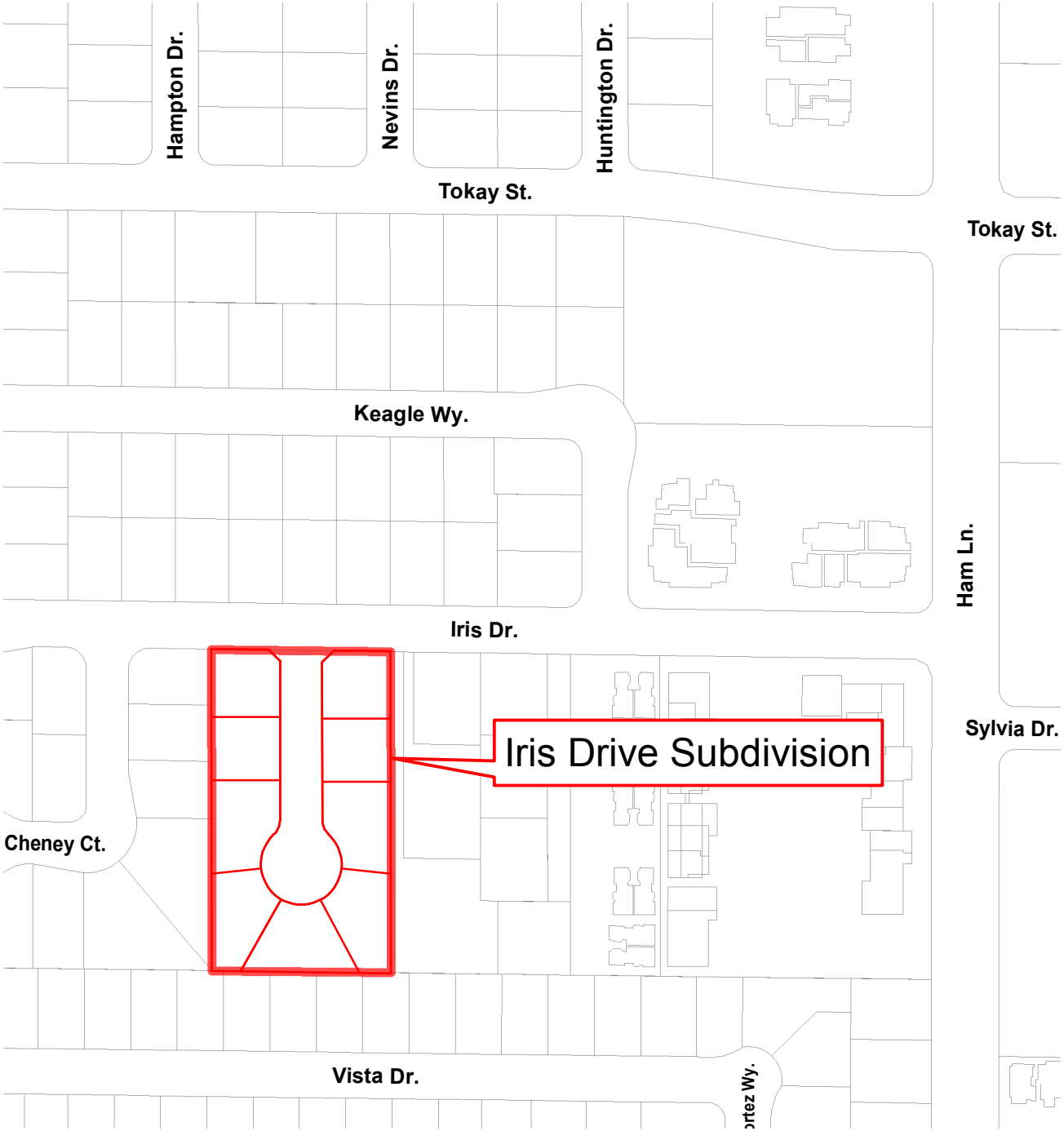
_____
Charles E. Swimley, Jr.
Public Works Director

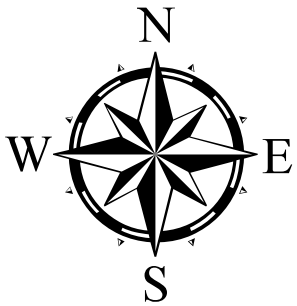
Prepared by Karissa Kiriu, Assistant Engineer
CES/KTVK/tdb
Attachments

cc: City Attorney, Magdich
Deputy Public Works Director / City Engineer, Chang
Assistant Engineer, Kiriu
Senior Engineering Technician, Wiman
1458 Iris, LLC
Baumbach & Piazza, Inc.

APPROVED: _____
Stephen Schwabauer, City Manager

Exhibit A
Iris Drive Subdivision
Vicinity Map





0 105 210 420

Feet

K:\WP\DEV_SERV\Developments\Residential\Iris 1458\Improvement Agreement\Info_Void\CCExhibitA.mxd

WHEN RECORDED, RETURN TO:
City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

IMPROVEMENT AGREEMENT
for the
PUBLIC IMPROVEMENTS
of the
IRIS DRIVE SUBDIVISION,
TRACT NO. 4023

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, a California municipal corporation, hereinafter referred to as "City", 1458 IRIS, LLC, a California limited liability company, hereinafter referred to as "Developer", and G AND L BROCK CONSTRUCTION COMPANY, INC., a California corporation, hereinafter referred to as "Developer's Contractor."

RECITALS:

Developer is the developer of that certain real property situated in the City of Lodi, County of San Joaquin, commonly known as Parcel 1 (A.P.N.: 033-04-017) and more particularly described in Exhibit A and depicted in Exhibit B. Developer has presented to City for approval the final subdivision map, hereinafter called "Map", entitled "IRIS DRIVE SUBDIVISION". The Map was filed with the Public Works Director for presentation to the City Council for approval, and is hereby referred to and incorporated herein;

Developer has requested approval of the Map prior to the construction and completion of public improvements, including all streets, highways or public ways, and public utilities and facilities which are a part of, or appurtenant to, the Iris Drive Subdivision, hereinafter called "Project", all in accordance with, and as required by, the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of Project, which plans and specifications are now on file in the office of and endorsed with the approval of the Public Works Director or his designee.

City Council will adopt a resolution to approve the Map and accept the dedications therein offered on the condition that Developer will first enter into and execute this Agreement with City and meet the requirements of said resolution; and

Developer's Contractor is made a party to this Agreement solely to secure the Faithful Performance Bonds and Labor and Materials Bonds referred to in Paragraph 12 below and to secure the Insurance referred to in paragraph 15 below. Developer's Contractor has no other obligations under this Agreement.

This Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Titles 15 and 17 of the Lodi Municipal Code ("LMC").

NOW THEREFORE, for and in consideration of the acceptance of the dedications offered, and in order to insure satisfactory performance by Developer of Developer's obligations under State law and City Code, the parties agree as follows:

1. Performance of Work by Developer

   Developer will do and perform, or cause to be done and performed at Developer's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of City's Public Works Director, all of the work and improvements as shown on the approved improvement plans for the Project, Plan Set 019D013, which are on file in the Public Works Department.

The Developer shall also perform or cause to be performed the following items which are not shown on the improvement plans:

A. Street light installation and connection to City system;

B. Natural gas line installation;

C. Telephone line installation;

D. Electrical system; and

E. Cable television system.

2. Development Changes

Developer shall also perform all work and furnish all materials necessary to comply with any changes required by the Public Works Director, which, in his opinion, are necessary or required to complete the work in conformance with City Standards or are the result of changed conditions.

3. Performance of Work by City

Prior to the approval of the final map by the City, it is agreed that the Developer shall deposit with the City the amount of money shown as the "Developer Cost" on the Billing Schedule, attached hereto as Exhibit C, and by this reference made a part hereof as though fully set forth.

From payments made under the Billing Schedule, Developer elects to have the City perform or install or cause the installation of the following items:

A. Street seal coat;

B. Televideo inspection of the public sewer and storm drain lines. The fee shown on the Billing Schedule is based on the linear footage of sewer and storm drain pipe, including laterals, shown on the improvement plans. The fee will be adjusted, if necessary, when the televideo inspection is complete. Any additional fee must be paid prior to Project acceptance;

C. Storm Water Permit Compliance Inspections. The fee shown on the Billing Schedule is based on one (1) inspection per month for construction activities covering twelve months period. The fee will be adjusted, if necessary, when the improvements are complete and ready for acceptance by the City. Any additional fee must be paid prior to Project acceptance;

D. Abandonment of existing sewer service, developer's contractor is responsible for trenching and backfill;

E. Abandonment of existing 1" water service, developer's contractor is responsible for trenching and backfill; and

F. 8" x 8" water service hot tap, developer's contractor is responsible for trenching and backfill.

Developer shall also pay all additional costs for work performed by City deemed by the Public Works Director necessary to complete the work under this Agreement in conformance with City Standards.

4. Development Impact Mitigation Fees

Development Impact Mitigation Fees for water, wastewater, street improvements, storm drain, police, fire, parks and recreation, general City facilities, art in public places are required for this Project. Payment of the Development Impact Mitigation Fees shall be collected prior to issuance of Certificate of Occupancy for each dwelling. In conformance with LMC Section 15.64.050, the fees are automatically adjusted on January 1st of each year. Fees may also be adjusted at other times by separate City Council action. The

actual fees to be paid will be those in effect at the time of payment. This Agreement shall in no way limit City's ability to charge Developer the fees in effect at the time Developer pays the fees.

5. Reimbursement from Others

Developer may be eligible for reimbursement from others for the cost of certain off-site public improvements that benefit other properties. It is Developer's responsibility to request reimbursement and submit the appropriate information per LMC Section 17.62.

6. Work; Time for Commencement and Performance

Developer shall, within 365 calendar days from the date of this Agreement, perform or cause to be performed, all work and/or improvements described in this Agreement. At least 15 calendar days prior to the commencement of work hereunder, Developer shall notify the Public Works Director of the date fixed by Developer for commencement thereof, so that City can provide required inspection services.

7. Time Extension

Time is of the essence of this Agreement. City may extend the time for completion of the improvements hereunder, under the terms of an addendum to this Agreement, which shall be approved and executed by the City Manager. Any such extension may be granted without notice to Developer's surety, and extensions so granted, shall not relieve the surety's liability on the bond to secure the faithful performance of Developer under this Agreement. The City Manager shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

8. Record Drawings and Certifications

Prior to acceptance of the Project improvements, Developer shall have installed and put in place, all survey monuments as shown on the Maps and provide record drawings and certifications as described in the City of Lodi Public Improvement Design Standards.

9. Permits; Compliance with Law

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of the improvements described in this Agreement, give all necessary notices, and pay all fees and taxes required by law.

10. Superintendence by Developer

Developer shall give personal superintendence to the work of said improvements, or have a competent agent, foreman or superintendent, satisfactory to the Public Works Director, on the work site at all times during construction, with authority to act for Developer.

11. Inspection by City

Developer, shall at all times, maintain proper facilities and provide safe access for inspection by City to all parts of the work site. Inspections will be provided during normal working hours of City staff. Developer will be billed for inspections on work performed on weekends, holidays and overtime. Developer shall also pay all additional costs incurred by City for soils and materials testing and/or inspection services, including storm water compliance inspections, required as a part of City inspection activities.

12. Contract Security

Concurrently with the execution of this Agreement, Developer's Contractor shall furnish Improvement Security of at least 100 percent of the estimated cost of the public improvements required to be constructed, plus engineering costs of surveying, record drawings and certifications as security for the faithful performance of this Agreement; and an amount equal to at least 100 percent of the above costs as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement as more fully described in the State Subdivision Map Act.

The City has determined these security amounts to be as follows:

Faithful Performance:	$ 380,400.00
Labor and Materials:	$ 380,400.00

13. Warranty Security

Prior to acceptance of the Project improvements by City, Developer shall furnish warranty security of at least 10 percent of the total cost of the public improvements required to be constructed, as security for repair or replacement of defective work as provided under Paragraph 17 of this Agreement. The warranty period shall be two years following the date of acceptance of the improvements by City. If any portion of the Project receives partial acceptance during the course of construction, the warranty period for all required Project improvements shall commence upon the date of final acceptance for the entire Project.

14. Hold-Harmless Agreement

Developer hereby agrees to, and shall, hold City, its elected and appointed boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage from personal injury, including death, as well as from claims for property damage which may arise from Developer's or Developer's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by Developer or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors. Developer agrees to, and shall, defend City and its elected and appointed boards, commissions, officers, agents, and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

A. That City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in Paragraph 15 of this Agreement.

B. That the aforesaid hold-harmless agreement by Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

15. Developer's Insurance

Developer's Contractor shall not commence work under this Agreement until Developer's Contractor has obtained all insurance required under this paragraph, nor shall Developer's Contractor allow any work to commence until all similar insurance required of the contractor or subcontractor has been so obtained. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Worker's Compensation Insurance

Developer's Contractor shall maintain, during the life of this agreement, Worker's Compensation Insurance for all Developer's Contractor's employees employed at the site of improvement, and in case any work is sublet, Developer's Contractor shall require any contractor or subcontractor similarly to provide Worker's Compensation Insurance for all contractors' or subcontractors' employees, unless such employees are covered by the protection afforded by Developer's Contractor. In case any class of employees engaged in hazardous work under this Agreement at the site of the

Project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. **A waiver of subrogation is required for workers compensation insurance.** This policy may not be canceled nor the coverage reduced without 30 days prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine Street, Lodi, CA, 95240. Developer's Contractor hereby indemnifies City for any damage resulting to it from failure of either Developer's Contractor or any contractor or subcontractor to take out or maintain such Worker's Compensation insurance.

B. Comprehensive General and Automobile Insurance

Developer's Contractor shall take out and maintain during the life of this Agreement such insurance as shall insure City, its elected and appointed boards, commissions, officers, agents, and employees, Developer's Contractor and any contractor or subcontractor performing work covered by this Agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from the Project or the Project property, including any public streets or easements, from Developer's Contractor or any contractors' or subcontractors' operations hereunder, whether such operations be by Developer's Contractor or any contractor or subcontractor or by anyone directly or indirectly employed by either Developer's Contractor or any contractor or subcontractor, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

   $4,000,000 Each Occurrence
   $8,000,000 General Aggregate

2. COMPREHENSIVE AUTOMOBILE LIABILITY

   $4,000,000 Combined Single Limit
   Such insurance shall cover liability arising out of any vehicle (including, owned, hired and non-hired vehicles) operated in performing any and all services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version, that provides liability coverage at least as broad as this form.

Developer's Contractor must have comprehensive automobile liability only if Developer's vehicles are used for the Project or on the Project property.

NOTE: The City of Lodi is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.

NOTE: Developer's Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.). "Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

All limits are to be designated strictly for the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. All deductibles or self-insured retentions (SIR) must be disclosed to City's Risk Manager for approval and shall not reduce the limits of liability set forth hereinabove. Insurance policies containing any deductible or SIR provision shall provide, or be endorsed to provide,

that the deductible or SIR may be satisfied by either the Named Insured(s) or the City of Lodi.

It is required that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth above, shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (i) the minimum coverage and limits specified in these insurance requirements; or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Developer's Contractor; whichever is greater.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

A. Additional Named Insured Endorsement

Pursuant to a separate endorsement (ISO form CG 2010 (11/85) or a later version, that provides liability coverage at least as broad as this form) Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed boards, commissions, officers, agents and employees as additional named insured insofar as work performed by the insured under written contract with the City of Lodi. This endorsement shall be on the form furnished by City and shall be included with Developer's Contractor's policies. An additional named insured endorsement is also required for Auto Liability.

B. Primary and Non-Contributory Insurance Endorsement

Additional insurance coverage under the Developer's Contractor's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.

C. Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the Developer's Contractor's liability.

D. Waiver of Subrogation

Include a waiver of subrogation against the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. A waiver is required for General Liability and Auto Liability.

E. Limits of Coverage

The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of Developer's Contractor shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect the City as a named insured.

F. Completed Operations Endorsement

For three years after completion of project, a certificate of insurance with a Completed Operations Endorsement, CG 20 37 07 04, will be provided to the City of Lodi.

G. Continuity of Coverage

All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Developer's Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Developer's Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Developer's

Contractor's insurance lapses or is discontinued for any reason, Developer's Contractor shall immediately notify the City and immediately obtain replacement insurance.

H. Failure to Comply

If Developer's Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Developer's Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Developer's Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Developer's Contractor shall pay such reimbursement and interest on the first (1st) day of the month following the City's notice. Notwithstanding any other provision of this Agreement, if Developer's Contractor fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Developer's Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.

I. Qualified Insurer(s)

All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

16. Title to Improvements

Title to, and ownership of, all public improvements constructed hereunder by Developer shall vest absolutely in City upon completion and acceptance of such public improvements by City.

17. Repair or Reconstruction of Defective Work

If, within a period of two (2) years after final acceptance by City of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, including the mitigation measures for dust and erosion control, fails to fulfill any of the requirements of this Agreement plans and specifications referred to herein, Developer and Developer's surety shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Developer or Developer's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Developer shall pay to City the actual cost of such repairs plus 15-percent for administration and overhead costs.

18. Storm Water Mitigation Device Maintenance

Developer shall perform regular maintenance on the storm water mitigation devices, including the Contech Filterra units and associated plants, installed with the Project for a period of three (3) years after the final acceptance by City. Should Developer or Developer's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require maintenance to be performed before Developer can be notified, City may, at its option, perform the necessary maintenance work, and Developer shall pay to City the actual cost of such repairs plus 15-percent for administration and overhead costs.

19. Repair or Replacement of City-Owned Bypass Meter Assemblies

Developer is required by City to install bypass meter assemblies in conjunction with the installation of water mains in the City of Lodi. City will supply these assemblies upon receipt of a deposit in the amount of $5,000 for each assembly required. The purpose of the deposit is to guarantee the return of the assembly in good condition and fulfillment of the other obligations shown in the City's Policies and Procedures entitled "Metering Water Usage of New Water Mains Requiring Temporary Bypasses."

20. Mud, Debris, Dust and Erosion

Developer agrees and covenants not to permit mud or other debris to be tracked from the Project site or elsewhere onto City or County streets or onto private property without express permission. Developer further agrees not to cause damage to City or County streets.

Should any mud or debris be deposited in City or County streets or any damage is caused to City or County streets, Developer shall have the same removed or repaired forthwith, and if not removed or repaired upon notice within a specified time, City shall cause the same to be removed or repaired and Developer shall be charged for the cost of said removal or repairs.

Developer, Developer's contractor, subcontractors, and/or agents shall be responsible for dust and erosion problems created during construction, including installation of telephone, electrical, cable television and gas facilities. Developer's responsibility for dust and erosion control shall extend to include a period of two years from the date of final acceptance by City of the work performed under this Agreement.

If a dust or erosion problem arises during development or within a period of two (2) years from the date of final acceptance by City of the work performed under this Agreement, including but not limited to installation of telephone, electrical, cable television, and/or gas facilities, and has not, after notice, been abated by Developer within a specified period of time, City shall cause the same to be controlled, and Developer shall be charged with the cost of said control.

21. Fire Protection During Construction

Fire protection facilities approved by City's Fire Chief, including all-weather access road and an approved water supply capable of supplying the required fire flow, shall be installed and made serviceable in accordance with the City Fire Code (as set forth in the Lodi Municipal Code) prior to and during the time of building construction. The above may be modified when alternate methods of protection approved by the Fire Chief are provided.

22. Protection of Existing Improvements

Damage to any existing improvements, private or public utility lines installed or undergoing installation in which damage occurs during the onsite and offsite construction required of Developer under this Agreement, shall be the absolute responsibility and liability of Developer. In other words, it shall be Developer's responsibility to pay for damage to existing improvements and public or private utilities within the Project property. Damage to any existing facilities outside the limits of the Project damaged as part of the construction of the required Project improvements is also Developer's responsibility.

23. Dwelling Occupancy

City will not allow occupancy of any building or structure within the Project until all deferred fees have been paid, public improvements have been approved and accepted by the Public Works Department per established City policy (including the CalTrans Landscaping), and other requirements of City codes have been met. If building is started prior to acceptance of the improvements, it is Developer's responsibility to inform all prospective purchasers that occupancy will not be permitted until said deferred fees are paid and public improvements are so accepted by City.

24. Developer Not Agent of City

Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

25. Notice of Breach and Default

If Developer refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, or if Developer or any of Developer's contractors, subcontractors, agents, or employees, should violate any of the provisions of this Agreement, the Public Works Director or City Council may serve written notice upon Developer and Developer's surety of breach of this Agreement, or any portion thereof, and the default of Developer.

26. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Developer's surety shall have the duty to take over and complete the work and the improvements herein specified; provided however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of this Agreement, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to City for any excess cost or damage occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

27. This Agreement shall run with the land and be binding on the Owner, its heirs, successors and assigns.

28. Notices.

All notices herein required shall be in writing, signed by the authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties.

Notices required to be given to City shall be addressed as follows:

Charles E. Swimley, Jr.
Public Works Director
City of Lodi
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910

Notices required to be given to Developer shall be addressed as follows:

Dennis G. Bennett
Manager
1458 Iris, LLC
P.O. Box 1597
Lodi, CA 95241

Notices required to be given to Developer's Contractor shall be addressed as follows:

Lisa Coussons
Controller
G and L Brock Construction Company, Inc.
4145 Calloway Court
Stockton, CA 95215

Notices required to be given to Surety shall be addressed as follows:

_____

_____

_____

_____

Provided that either party or the surety may change such address by notice in writing in the manner set forth above, to the other party and thereafter notices shall be addressed and transmitted to the new address.

29. Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

[The balance of this page is intentionally left blank.]

30. Execution

In Witness Whereof, Developer, Developer's Contractor, and City have caused their names and corporate seals to be hereunto affixed.

"DEVELOPER"
1458 IRIS, LLC,
a California limited liability company

Dated: 1/8/20

By: _____
DENNIS G. BENNETT
Manager

(CORPORATE SEAL)

"DEVELOPER'S CONTRACTOR"
G AND L BROCK CONSTRUCTION
COMPANY, INC.,
a California corporation

Dated: 01·08·2020

By: _____
LISA COUSSONS
Controller

(CORPORATE SEAL)

CITY OF LODI,
a California municipal corporation

Dated: _____

By: _____
STEPHEN SCHWABAUER
City Manager

ATTEST:

_____
PAMELA M. FARRIS
Assistant City Clerk

(CORPORATE SEAL)

APPROVED AS TO FORM:

_____
JANICE D. MAGDICH
City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin)

On January 8, 2020 before me, Karen Amin, Notary Public
(insert name and title of the officer)

personally appeared Lisa Coussons,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

TCB2 KAREN AMIN TCB2
COMM. #2266462
NOTARY PUBLIC - CALIFORNIA
SAN JOAQUIN COUNTY
My Comm. Expires DEC 8, 2022

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Joaquin

On 1/8/2020 before me, Tana Fowler, Notary Public,
(here insert name and title of the officer)

personally appeared Dennis G. Bennett,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tana Fowler, Notary Public

TANA FOWLER
Notary Public - California
San Joaquin County
Commission # 2237499
My Comm. Expires May 6, 2022

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 033-040-17

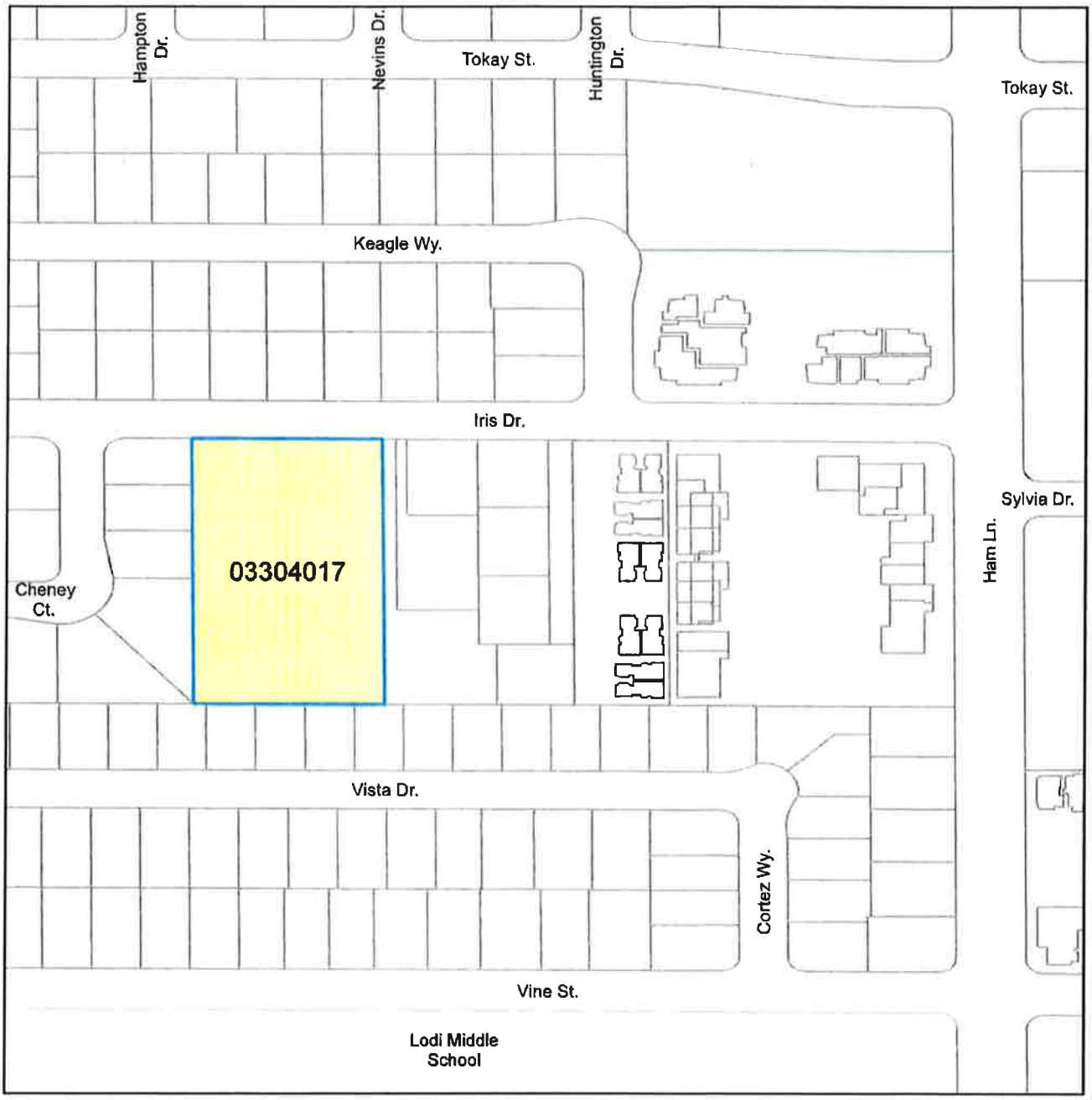
THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LODI, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PORTION OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH WEST QUARTER OF SAID SECTION 11; RUN THENCE WEST ALONG THE QUARTER SECTION LINE, 1320.6 FEET; THENCE NORTH 819.26 FEET TO A SET MONUMENT; THENCE SOUTH 89° 07' EAST AND PARALLEL WITH THE SOUTHLINE OF SAID NORTHWEST QUARTER 425.48 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN TWO-ACRE PARCEL OF LAND CONVEYED TO R. D. DECKER ET UX DATED MAY 2, 1949, AND FILED FOR RECORD MAY 23, 1949, INSTRUMENT NO. 13326, AND BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE CONTINUING SOUTH 89° 07' EAST 212.73 FEET TO THE NORTHWEST CORNER OF THE TRACT OF LAND DESCRIBED IN THE DEED TO LESLIE TRICK ET UX DATED FEBRUARY 23, 1949, AND RECORDED IN VOL. 1198, PAGE 164 OF OFFICIAL RECORDS OF SAN JOAQUIN COUNTY; THENCE SOUTH 0° 6' 30" WEST ALONG THE WEST LINE OF SAID TRICK LAND, 409.56 FEET TO A SET MONUMENT AT THE SOUTHWEST CORNER THEREOF; THENCE NORTH 89° 07' WEST 212.73 FEET TO THE SOUTHEAST CORNER OF THE LAND CONVEYED TO DECKER; THENCE NORTH 0° 06' 30" WEST ALONG THE EAST BOUNDARY OF SAID DECKER LAND 409.56 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE RIGHT OF WAY 20 FEET WIDE FOR ROADWAY PURPOSES OVER AND ALONG THAT CERTAIN PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH WEST QUARTER OF SAID SECTION 11, TOWNSHIP 3 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN; RUN THENCE NORTH 0° 10' EAST 819.26 FEET TO A SET MONUMENT AND THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 07' WEST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER, 682.32 FEET TO THE NORTHEAST CORNER OF THE ABOVE DESCRIBED TRACT OF LAND; THENCE SOUTH 0° 06' 30" WEST ALONG THE EAST LINE OF THE ABOVE-DESCRIBED TRACT OF LAND 20 FEET TO A SET MONUMENT; THENCE SOUTH 89° 07' EAST 682.32 FEET TO A POINT IN THE QUARTER SECTION LINE; THENCE NORTH 0° 06' 30" EAST 20 FEET TO THE POINT OF BEGINNING.



Iris Drive Subdivision

N
W E
S

EXHIBIT B
IRIS DRIVE SUBDIVISION
VICINITY MAP

Feet
0 190 380

BILLING SCHEDULE

EXHIBIT C

Development:	Iris Drive Subdivision	Gross Acreage:	2.00
Developer:	1458 Iris, LLC	No. of Units:	9
Engineer:	Baumbach & Piazza, Inc.		
Date:	12/12/19	Construction cost	$380,400.00

						DEVELOPER COST		CREDITS
ENGINEERING								
Plan Check Fee	(5.0% of	$100,000)		ENGFEE		$ 5,000.00		
	(3.5% of	$200,000)		ENGFEE		7,000.00		
	(2.5% of	$80,400)		ENGFEE		2,010.00		
Inspection Fee	(4.0% of	$250,000)		ENGINS		10,000.00		
	(3.5% of	$130,400)		ENGINS		4,564.00		
Plan Check Fee Paid				ENGFEE			$	12,353.00
Improvement Agreement				ENGFEE		$2,265.00	$	
ENGINEERING SUBTOTAL						$ 30,839.00	$	12,353.00
STREET SYSTEM								
Fees:								
Storm Water Inspection Fees (Charge for 1 year inspection)		PW03	1	LS @ $	2,096.00	$2,096.00		
Charges for work by City Forces:								
Seal Coat		NC07	16,170	SF @ $	0.08	$1,293.60		
STREET SYSTEM SUBTOTAL						$3,389.60		$0.00
SEWER SYSTEM								
Fees:								
Charges for Work by City Forces:								
Abandonment of Existing Service		PW03	1	EA @ $	1,827.00	1,827.00		
TV Inspection for Pipe Installation		PW03	284	LF @ $	1.50	426.00		
TV Inspection for Project Acceptance		PW03	284	LF @ $	1.50	426.00		
SEWER SYSTEM SUBTOTAL						$2,679.00		$0.00
WATER SYSTEM								
Fees:								
Charges for work by City Forces:		PW02						
8" x 8" Hot Tap			1	EA @ $	5,575.00	5,575.00		
Abandonment of Existing 1" Service			1	EA @ $	2,147.00	2,147.00		
WATER SYSTEM SUBTOTAL						$7,722.00		$0.00
STORM DRAIN SYSTEM								
Fees:								
Charges for Work by City Forces:								
TV Inspection for Pipe Installation		PW03	190	LF @ $	1.50	285.00		
TV Inspection for Project Acceptance		PW03	190	LF @ $	1.50	285.00		
STORM DRAIN SYSTEM SUBTOTAL						$570.00		$0.00
ELECTRICAL SYSTEM								
To be billed separately by Electric Utility Department								
TOTAL AMOUNT OF BILLING SCHEDULE						$45,199.60		$12,353.00

				DEVELOPER COST	CREDITS
ADDITIONAL FEES					
200-Year Flood Plan Certification Fee	27080000.55020	9 LOTS @ $	188	$1,692.00	
TOTAL DUE PRIOR TO IMPROVEMENT PLAN APPROVAL				$34,538.60	

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING FINAL MAP AND AUTHORIZING CITY MANAGER TO EXECUTE IMPROVEMENT AGREEMENT FOR IRIS DRIVE SUBDIVISION, TRACT NO. 4023

==========

WHEREAS, the Iris Drive Subdivision is an in-fill residential development located west of Ham Lane and south of Tokay Street; and

WHEREAS, the subdivision consists of nine single-family, residential lots and includes the installation of all interior subdivision public improvements; and

WHEREAS, the developer, 1458 Iris, LLC (Developer), has furnished the City with improvement plans, necessary agreements, guarantees, insurance certificates, and the required fees for the proposed subdivision. Development Impact Fees will be collected as part of the building permit process prior to issuing a certificate of occupancy for each single-family residence in accordance with Lodi Municipal Code 15.64.040; and

WHEREAS, this project is part of the Community Facilities District No. 2007-1 (Public Services) (CFD); and

WHEREAS, staff recommends approving the final map; and

WHEREAS, staff also recommends authorizing the City Manager to execute an Improvement Agreement for Iris Drive Subdivision, Tract No. 4023.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Iris Drive Subdivision, Tract No. 4023 final map; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute Improvement Agreement for Iris Drive Subdivision, Tract No. 4023; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM C-13

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Waive the Bid Process and Execute Professional Services Agreement with Garland/DBS, Inc., of Cleveland, Ohio, for Parks Division Storage Shed Gutter Replacement Project ($24,113), and Appropriating Funds ($24,113), Utilizing U.S. Communities Contract No. 14-5903

MEETING DATE: January 15, 2020

PREPARED BY: Parks, Recreation, and Cultural Services Interim Director

---

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to waive the bid process and execute Professional Services Agreement with Garland/DBS, Inc., of Cleveland, Ohio, for Parks Division Storage Shed Gutter Replacement Project in the amount of $24,113, and appropriating funds in the amount of $24,113, utilizing U.S. Communities Contract No. 14-5903.

BACKGROUND INFORMATION: The storage shed for the Parks Division is used to store parks maintenance equipment along with fertilizers. Deteriorated and rusted gutters are allowing rain water to leach into the storage shed and onto the fertilizers and equipment (Exhibit A). WGR, the City of Lodi's storm water consultant, has identified this as a storm water violation (Exhibit B), which will contaminate the storm water system and potentially lead to violation fines.

This project will remove existing gutters; supply and install new gutters and all associated accessories including new drop outlets and down spouts, remove all work-related debris, and provide off-site disposal.

Garland/DBS, Inc., of Cleveland, Ohio was the successful bidder for U.S. Communities Contract No. 14-5903 for competitively- bid roofing services. Using the U.S. Communities line item cost, the bid price of $24,113 is the maximum price an agency would be charged for the restoration services. For this project, the DBS/Garland, Inc., of Cleveland, Ohio will subcontract roof restoration services to Waterproofing Associates, Inc., of Lodi.

By using the U.S. Communities contract, the formal bidding process has already been performed, allowing staff to more efficiently procure labor and materials for specialty type work (such as roofing) while maintaining compliance with purchasing requirements. The Professional Services Agreement includes all insurance and bonding requirements included in City construction contracts. Per Lodi Municipal Code Section 3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures.

APPROVED: _____

Stephen Schwabauer, City Manager

Staff recommends that City Council authorize the City Manager to waive the bid process and execute Professional Services Agreement with Garland/DBS, Inc., of Cleveland, Ohio, for Parks Division Storage Shed Gutter Replacement Project, and appropriating funds in the amount of $24,113, utilizing U.S. Communities Contract No. 14-5903.

FISCAL IMPACT: Replacing the deteriorating gutters will put us in compliance with WGR and eliminate any violation fines. This project will not impact the General Fund.

FUNDING AVAILABLE: Parks Capital (43299000.77020) Project PKCP-20005 - $24,113

_____
Andrew Keys
Deputy City Manager/Internal Services Director

_____
Cathi DeGroot
Interim Parks, Recreation, and Cultural Services Director

CD:tl

Cc: City Attorney

Attachments

Exhibit A

Hot Spot Indicator Form

Hot Spot Indicator Form

Date: 05/15/2019

FACILITY INFORMATION

Facility ID (Unique Site ID)	City of Lodi Parks Corp Yard
Facility Name	City of Lodi Parks Corp Yard
Date	05/15/2019
Assessed By	Steve Teravskis, Noel Liner
GPS	Latitude: 38.1358 Longitude: -121.269
Receiving Water	Mokelumne River
Subwatershed (Tributary to the Receiving Water)	City of Lodi MS4

A. SITE DATA AND BASIC CLASSIFICATION

Nearest Cross Streets	Stockton & Locust Street
Site Address	125 N. Stockton Street
Owner(s) / Operators(s)	City of Lodi
Key Staff / Facility Contact	
Jason Richard	
SIC Code (If Available)	N/A
NPDES Status:	Unregulated
Category:	Miscellaneous
Basic Description of Facility Operation	
Parks Corp Yard	

B. VEHICLE OPERATIONS

N/A (Skip to Part C)	☐
B1. Types of Vehicles:	Other
Other (Please Describe)	Fleet Vehicles, Mowers, Tractors, Turf Vehicles, forklifts
B2. Approximate Number of Vehicles	30
B3. Vehicle Activities	Maintained Repaired Recycled Fueled Washed Stored
B4. Are vehicles stored and/or repaired outside?	Yes
Are these vehicles lacking runoff diversion methods?	Yes
B5. Is there evidence of spills/leakage from vehicles?	No
B6. Are uncovered outdoor fueling areas present?	Yes
B7. Are fueling areas directly connected to storm drains?	Yes
B8. Are vehicles washed outdoors?	Yes
Does the area where vehicles are washed discharge to the storm drain?	Yes
Check Box if Source of Pollution Was Observed for this Section	☐
Indicator Tally for Section B.	4.00

C. OUTDOOR MATERIALS

Hot Spot Indicator Form

Date: 05/15/2019

N/A (Skip to Part D)	☐
C1. Are loading/unloading operations present?	Yes
If yes, are they uncovered and draining towards a storm drain inlet?	Yes
C2. Are materials stored outside?	Yes
If yes, are they Liquid or Solid?	Solid
Where are they stored?	Asphalt
C4. Is staining or discoloration around the area visible?	No
C5. Does outdoor storage area lack a cover?	Yes
C6. Are liquid materials stored without secondary containment?	No
C7. Are storage containers missing labels or in poor condition? (i.e. rusting)	No
Check Box if Source of Pollution Was Observed for this Section	☐
Indicator Tally for Section C.	3.00

D. WASTE MANAGEMENT

N/A (Skip to Part E)	☐
D1. Type of Waste (Check all that Apply)	Garbage Construction Materials Hazardous Materials Green Waste Recycling
D2. Dumpster Condition (Check all that Apply)	Poor Condition Leaking or Evidence of Leakage (i.e., stains on the ground)
D3. Is the dumpster located near a storm drain inlet?	No
Check Box if Source of Pollution Was Observed for this Section	☐
Indicator Tally for Section D.	2.00

E. PHYSICAL PLANT

N/A (Skip to Part F)	☐
E1. Approximate age of Building (In years)	90
E1. Condition of Surfaces:	Clean
E1. Evidence that maintenance results in discharge to storm drains (staining/discoloration)?	No
E2. Approximate age of Parking Lot (In years)	50
E2. Condition:	Clean
E2. Surface Material:	Paved
E3. Do downspouts discharge to impervious surface?	Yes
E4. Evidence of poor cleaning practices for construction activities (stains leading to storm drain)?	No
Check Box if Source of Pollution Was Observed for this Section	☐
Indicator Tally for Section E.	2.00

F. TURF/LANDSCAPE AREAS

Hot Spot Indicator Form

Date: 05/15/2019

N/A (Skip to Part G)	☐
F1. Percent (%) of site with Forest Canopy	0
F1. Percent (%) of site with Turf Grass	2
F1. Percent (%) of site with Landscaping	0
F1. Percent (%) of site with Bare Soil	20
F2. Rate the Turf Management Status	Medium (signs of minimum or non-frequent maintenance)
F3. Does the site have evidence of permanent irrigation?	Yes
F3. "Non-Target" irrigation observed? (i.e. irrigation overflow to the storm drain system)	Can't Tell
F4. Do landscaped areas drain to the storm drain system?	Can't Tell
F5. Do landscape plants accumulate organic matter (leaves, grass clippings) on adjacent impervious surface?	Yes
Check Box if Source of Pollution Was Observed for this Section	☐
Indicator Tally for Section F.	1.00

G. STORMWATER INFRASTRUCTURE

N/A (Skip to Part H)	☐
G1. Are storm water treatment practices present? (Bioretention Areas, Infiltration Trenchs, Separators, Filters, Open Channels, Storm Water Ponds, Etc.)	No
G2. Are private storm drains located at the facility? (Catch basins)	Yes
G2. Is trash present in gutters leading to storm drains?	Yes
Sediment	4
Organic Material	2
Litter	1
Check Box if Source of Pollution Was Observed for this Section	☐
Indicator Tally for Section G	1.00

G3.CATCH BASIN INSPECTION:

Catch Basin Inspection	O-1
Catch Basin ID:	O-1
Condition:	Clean
Catch Basin Inspection	O-2
Catch Basin ID:	O-2
Condition:	Dirty
Catch Basin Inspection	O-3
Catch Basin ID:	O-3
Condition:	Clean

I. INITIAL HOTSPOTS STATUS - INDEX RESULTS

Hot Spot Indicator Form

Date: 05/15/2019

Confirmed Hotspot	
Confirmed hotspot (10 to 15 tally's and/or 1 box checked)	
Number of Checkboxes	0.00
Number of Tallys	13.00

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1
PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2019, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and GARLAND/DBS, INC., a Delaware corporation, qualified to do business in California (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Parks Division storage shed gutter replacement project (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2
SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall

remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on JANUARY 15, 2020 and terminates upon the completion of the Scope of Services or on DECEMBER 31, 2020, whichever occurs first.

ARTICLE 3
COMPENSATION

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Prevailing Wage

The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

Section 3.3 Contract Bonds

CONTRACTOR shall furnish two good and sufficient bonds:

1. A faithful performance bond in the amount of one hundred percent (100%) of the contract price; and
2. A labor and materials bond in the amount of one hundred percent (100%) of the contract price.

These bonds will be required at the time the signed contract is returned to the City.

Section 3.4 (AB 626) Public Contract Code Section 9204 – Public Works Project Contract Dispute Resolution Procedure

Section 9204 of the California Public Contract Code (the "Code") provides a claim resolution process for "Public Works Project" contracts, as defined, which is hereby incorporated by this reference, and summarized in the following:

Definitions:

"Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City under a contract for a Public Works Project.

(B) Payment of money or damages arising from work done by, or on behalf of, a contractor pursuant to a contract for a Public Works Project and payment for which is not otherwise expressly provided or to which a claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the City.

"Public Works Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

Claim Resolution Process:

(1) All Claims must be properly submitted pursuant to the Code and include reasonable documentation supporting the Claim. Upon receipt of a Claim, the City will conduct a reasonable review, and within a period not to exceed 45 days, will provide the claimant a written statement identifying the disputed and undisputed portions of the Claim. The City and contractor may, by mutual agreement, extend the time periods in which to review and respond to a Claim. If the City fails to issue a written statement, paragraph (3) applies.

Any payment due on a portion of the Claim deemed not in dispute by the City will be processed and made within 60 days after the City issues its written statement.

(2) If the claimant disputes the City's response, or if the City fails to respond to a Claim within the time prescribed in the Code, the claimant may demand in writing, by registered mail or certified mail, return receipt requested, an informal conference to meet and confer for settlement of the issues in dispute, which will be conducted within 30 days of receipt.

If the Claim or any portion thereof remains in dispute after the meet and confer conference, the City will provide the claimant a written statement, within 10 business days, identifying the remaining disputed and undisputed portions of the Claim. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after the City issues its written statement. Any disputed portion of the Claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, as set forth in the Code, unless mutually waived and agreed, in writing, to proceed directly to a civil action or binding arbitration, as applicable.

(3) A Claim that is not responded to within the time requirements set forth in the Code is deemed rejected in its entirety. A Claim that is denied by reason of such

failure does not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by the Code will bear interest at 7 percent per annum.

(5) Subcontractors or lower tier subcontractors that lack legal standing or privity of contract to assert a Claim directly against the City, may request in writing, on their behalf or the behalf of a lower tier subcontractor, that the contractor present a Claim to the City for work performed by the subcontractor or lower tier subcontractor. The request shall be accompanied by reasonable documentation to support the Claim. Within 45 days of receipt of such written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the Claim to the City and, if the original contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

The Claim resolution procedures and timelines set forth in the Code are in addition to any other change order, claim, and dispute resolution procedures and requirements set forth in the City contract documents, to the extent that they are not in conflict with the timeframes and procedures the Code.

Section 3.5 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.6 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.7 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information

requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees and costs), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence, sole negligence, or sole willful misconduct of the City of Lodi, its elected and appointed officials, directors, officers, employees and volunteers. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONTRACTOR shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. The defense and indemnification obligations

required by this Agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations set forth herein.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
221 West Pine Street
P.O. Box 3006
Lodi, CA 95241-1910
Attn: Michelle Munoz, Management Analyst

To CONTRACTOR: Garland DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Attn: Matt Egan

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

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

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. 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 force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 **City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 **Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 **Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR 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.

Section 4.17 **Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 **Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 **Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 **Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 **Federal Transit Funding Conditions**

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

PAMELA M. FERRIS
Assistant City Clerk

STEPHEN SCHWABAUER
City Manager

APPROVED AS TO FORM:
JANICE D. MAGDICH, City Attorney

By: _____

GARLAND DBS, INC., a Delaware Corporation

By: _____
Name: FRANK A. PERCACIANTE
Title: Controller

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements
Exhibit D – Federal Transit Funding Conditions (if applicable)

Funding Source: **Fund 432--Parks Capital**
(Business Unit & Account No.)

Doc ID:

CA:Rev.02.2017

Exhibit A

Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Phone: (800) 762-8225
Fax: (216) 883-2055

ROOFING MATERIAL AND SERVICES PROPOSAL

City of Lodi
Park Division Storage Shed
111 N. Stockton Street
Lodi, CA 95240

Date Submitted: 10/02/2019
Proposal #: 25-CA-191033
MICPA # 14-5903
California General Contractor License #: 949380

Purchase orders to be made out to: Garland/DBS, Inc.

Please Note: The following budget/estimate is being provided according to the pricing established under the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) with Cobb County, GA and U.S. Communities. This budget/estimate should be viewed as the maximum price an agency will be charged under the agreement. Garland/DBS, Inc. administered a competitive bid process for the project with the hopes of providing a lower market adjusted price whenever possible.

Scope of Work: Gutter Replacement

1. Set up safety and equipment.
2. Remove existing gutters.
3. Supply and install new gutters and all associated accessories for gutters.
4. Supply and install new drop outlets and down spouts.
5. Remove all work-related debris from site and dispose of offsite at an approved disposal facility.
6. Remove all safety and work zone equipment from work area.

Exhibit B

Line Item Pricing

Item #	Item Description	Unit Price	Quantity	Unit	Extended Price
	Labor & Materials - Waterproofing Associates	$ 21,152.00	1	EA	$ 21,152
	Sub Total Prior to Multipliers				**$ 21,152**
23.171	Additional repair options: Option 1 - Estimating repairs can be done on a labor and material cost plus basis	14%		%	$ 2,961
	Sub-Totals After Multipliers				**$ 24,113**

Base Bid Total Maximum Price of Line Items under the MICPA: $ 24,113

Proposal Price Based Upon Market Experience: $ 24,113

Potential issues that could arise during the construction phase of the project will be addressed via unit pricing for additional work beyond the scope of the specifications. This could range anywhere from wet insulation, to the replacement of deteriorated wood nailers. Proposal pricing valid 60 days from proposal date listed above.

Clarifications/Exclusions:

1. Permits are excluded.
2. Bonds are included.
3. Plumbing, Mechanical, Electrical work is excluded.
4. Masonry work is excluded.
5. Interior Temporary protection is excluded.
6. Any work not exclusively described in the above proposal scope of work is excluded.

If you have any questions regarding this proposal, please do not hesitate to call me at my number listed below.

Respectfully Submitted,

Matt Egan

Matt Egan
Garland/DBS, Inc.
(216) 430-3662

EXHIBIT C

NOTE: The City of Lodi is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s) to submit the required insurance documentation electronically

Insurance Requirements for Most Contracts

(Not construction or requiring professional liability)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto or if Contractor has no owned autos, then hired, and non-owned autos with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

Other Insurance Provisions:

(a) Additional Named Insured Status
The City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers are to be covered as additional insureds on the CGL and auto policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used

(b) Primary and Non-Contributory Insurance Endorsement
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage **at least as broad** as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(c) Waiver of Subrogation Contractor hereby grants to City of Lodi a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Lodi by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Lodi has received a waiver of subrogation endorsement from the insurer

NOTE: (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) and (c) above: 221 West Pine Street, Lodi, California, 95240; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

(d) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability under the Contractors commercial general liability and automobile liability policies.

(e) Notice of Cancellation or Change in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

(f) Continuity of Coverage

All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Contractor's insurance lapses or is discontinued for any reason, Contractor shall immediately notify the City and immediately obtain replacement insurance. Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

(g) Failure to Comply

If Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Contractor shall pay such reimbursement and interest on the first (1st) day of the month following the City's notice. Notwithstanding any other provision of this Agreement, if Contractor fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.

(h) Verification of Coverage

Consultant shall furnish the City with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. **Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**

(i) Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(j) Insurance Limits

The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors. Contractor's obligation to defend, indemnify and hold the City and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Contractor to procure and maintain a policy of insurance.

(k) Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors

(l) Qualified Insurer(s)

All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING CITY MANAGER TO WAIVE THE BID PROCESS AND EXECUTE PROFESSIONAL SERVICES AGREEMENT WITH GARLAND/DBS, INC., OF CLEVELAND, OHIO, FOR PARKS DIVISION STORAGE SHED GUTTER REPLACEMENT PROJECT ($24,113), AND APPROPRIATE FUNDS ($24,113), UTILIZING U.S. COMMUNITIES CONTRACT NO. 14-5903

==========

WHEREAS, the storage shed for the Parks Division is used to store parks maintenance equipment along with fertilizers; and

WHEREAS, deteriorated and rusted gutters are allowing rain water to leach into the storage shed and onto the fertilizers and equipment; and

WHEREAS, WGR, the City of Lodi's storm water consultant, has identified this as a storm water violation which will contaminate the storm water system and potentially lead to violation fines; and

WHEREAS, per Lodi Municipal Code Section §3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by the City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures; and

WHEREAS, staff recommends that the City Council authorize the City Manager to waive the formal bid process and execute a Professional Services Agreement with Garland/DBS, Inc., of Cleveland, Ohio, for Parks Division Storage Shed Gutter Replacement Project in the amount of $24,113, utilizing U.S. Communities Contract No. 14-5903; and

WHEREAS, staff further recommends that funds in the amount of $24,113 be appropriated out of the Parks Capital Fund 432 (PKCP-20005) for this project.

NOW THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to waive the formal bid process and execute a Professional Services Agreement with Garland/DBS, Inc., of Cleveland, Ohio, for Parks Division Storage Shed Gutter Replacement Project in the amount of $24,113, utilizing U.S. Communities Contract No. 14-5903; and

BE IT FURTHER RESOLVED, that funds in the amount of $24,113 be appropriated out of the Parks Capital Fund 432 (PKCP-20005) for this project; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM **C-14**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Waive the Bid Process and Execute Professional Service Agreement with Bauer Compressors, Inc, of Virginia, for the Purchase of Four Breathing Air Compressors, Installation, Training, Annual and Quarterly Maintenance (Not To Exceed $213,070), Utilizing State of California Contract No. 1-19-42-07

MEETING DATE: January 15, 2020

PREPARED BY: Fire Chief

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to waive the bid process and execute Professional Service Agreement with Bauer Compressors, Inc., of Virginia, for the purchase of four breathing air compressors, installation, training, annual and quarterly maintenance in an amount not to exceed $213,070, utilizing State of California Contract No. 1-19-42-07.

BACKGROUND INFORMATION: Currently, the City of Lodi has one stationary breathing air compressor located at Station 3, which is used to fill Self Contained Breathing Apparatus (SCBA) bottles. The compressor is now 35 years old and is at the end of its useful life. To date, there are only two of these air compressors left in California, which has made procuring parts difficult.

As approved as part of the fiscal year 2020 budget, to reduce the time a crew spends outside of their response district, the fire department would like to install breathing air compressors at each of the four stations. Each crew will be able to refill their SCBA cylinders at their assigned station immediately following an incident, eliminating the need to be out of their area while filling bottles at Station 3. This allows for quicker response times within their respective districts.

By using the State of California Contract No. 1-19-42-07, the formal bidding process has already been performed, allowing staff to more efficiently procure labor and materials for this specialty type work while maintaining compliance with purchasing requirements. Per the Lodi Municipal Code Section 3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally adopted bidding or negotiation procedures.

Staff recommends authorizing the City Manager to waive the bid process and execute Professional Services Agreement with Bauer Compressors, Inc., of Virginia for the purchase of four breathing air compressors, installation, training, annual and quarterly maintenance, utilizing State of California Contract No. 1-19-42-07.

FISCAL IMPACT: Contributions have been made over the past several years to the equipment replacement fund in preparation for this purchase and was adopted as part of the fiscal year 2020 Budget.

APPROVED: _____

Stephen Schwabauer, City Manager

FUNDING AVAILABLE: Equipment Replacement Fund (40199000.77030)

_____
Andrew Keys
Deputy City Manager/Internal Services Director

_____
Gene Stoddart
Fire Chief

Attachments

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1
PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 20 , by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Bauer Compressors, Inc, a Virginia corporation, qualified to do business in California (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for the purchase of four compressors, installation, training, quarterly and annual maintenance (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2
SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to

weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on January 20, 2020 and terminates upon the completion of the Scope of Services or on January 19, 2022, whichever occurs first.

Section 2.7 Option to Extend Term of Agreement

At its option, City may extend the term of this Agreement for an additional one (1) one (1)-year extension; provided, City gives Contractor no less than thirty (30) days written notice of its intent prior to expiration of the existing term. In the event City exercises any option under this paragraph, all other terms and conditions of this Agreement continue and remain in full force and effect.

The total duration of this Agreement, including the exercise of any option under this paragraph, shall not exceed three (3) years.

ARTICLE 3
COMPENSATION

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information

requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees and costs), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence, sole negligence, or sole willful misconduct of the City of Lodi, its elected and appointed officials, directors, officers, employees and volunteers. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONTRACTOR shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. The defense and indemnification obligations

required by this Agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations set forth herein.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
221 West Pine Street
P.O. Box 3006
Lodi, CA 95241-1910
Attn: Michelle Munoz

To CONTRACTOR: Bauer Compressors, Inc
1328 Azalea Garden Road
Norfolk, VA 23502
Attn: Mike Cohen

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

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

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. 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 force and effect. In the

event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR 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.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 Federal Transit Funding Conditions

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

JENNIFER M. FERRAIOLO
City Clerk

STEPHEN SCHWABAUER
City Manager

APPROVED AS TO FORM:
JANICE D. MAGDICH, City Attorney

By: _____

BAUER COMPRESSORS, INC, a Virginia corporation

By: _____
Name: Tim McGuire
Title: Branch Manager

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements
Exhibit D – Federal Transit Funding Conditions (if applicable)

Funding Source: **40199000 Equip Replace and 10041000.72533 Repairs to Vehicles**
(Business Unit & Account No.)

Doc ID:

CA:Rev.01.2015

Quote:

Date: December 13, 2019
To: Mike Van Guilder
Lodi Fire Department

Phone: 209-604-8222
Email: mvanguilder@lodi.gov

267 East Airway Blvd.
Livermore , CA 94551
www.bauersf.com

Qty	Part #	Description	Unit Price	Line Total
4	VT-P / E3	**VERTICUS™PLUS BREATHING AIR COMPRESSOR:** 13 SCFM / 10 HP Fixed SCBA Compressor Unit (Three Phase) 208V, 230V or 460V › BAUER breathing air purification system SECURUS › BAUER PLC 7" color HMI touchscreen display › NEMA 4 rated electrical enclosure with UL® panel › Compressor low oil pressure/high temp shutdowns › Emergency stop push button and auto start/stop control › Zero loss automatic condensate drain system with non-corrosive condensate reservoir & integrated float sensor and automatic "Full" indication and compressor safety shutdown › Interstage pressure gauges › Vertically hinged front operations panel access doors › Inlet filter maintenance indicator › Unique hinged front operations panel › Dual function cascade controls › Two (2) ASME code stamped air cylinders installed › 3-way selector valve › NFPA 1901 2016 edition compliant 2 position containment fill station accommodates SCBA or SCUBA Cylinders › Packaged together as a modular system increasing end-user site flexibility	$45,511.00	$ 182,044.00

Note: **Prices include Freight, Installation, Training and running of Stainless Steal Air line from Compressor to Fill Station @ Lodi Fire Station #1.** Quotation prices are valid for 60 days. Call 925-449-7210 if past expiration date. Thank you for the opportunity to submit this quotation. If you have any questions please give us a call.

Sincerely,

Dan Kroetch
Phone: +1 (925) 449-7210
Cell: +1 (510) 909-6157
Fax: + 1 (925)-449-7201

Subtotal	$ 182,044.00
8.250%	$15,018.63
Freight	INCLUDED
Installation/ Training	INCLUDED
Total	$ 197,062.63

Firm Fixed Price

BAUER COMPRESSORS
1328 Azalea Garden Road
Norfolk, VA 23502-1944
(757) 855-6006

Our Quotation # 035038-00
12-03-2019

To :
CITY OF LODI--FINANCIAL SERVICES
Lodi Fire Department
Attention: Accounts Payable
P.O .Box 3006
LODI CA 95240
United States

Quotation Valid Thru : 03-31-2020
Terms : NET 30

Attention : TIM ORTEGEL

Your Request : PO REQUIRED

We are pleased to quote your requirements as shown below. Our company has a reputation for delivering quality products and we look forward to the opportunity of serving you.

Item	Facility / Part / Rev / Description / Details	Quantity Quoted	Unit Price	Extended Price
001	**Default** **FEE-0022** **Rev** 000 **U/M** HR SERVICE TRAVEL TIME 2Hr/visit -1 Service -3 Air tests	8.00000	85.0000	680.00
002	**Default** **FEE-0023** **Rev** 000 **U/M** EA SERVICE LABOR -3Hr per unit for annual service -1Hr per unit for quarterly air test & calibration of CO monitor (includes point inspection)	1.00000	3,000.0000	3,000.00
003	**Default** **FEE-0028** **Rev** - **U/M** EA SERVICE PARTS* Per Unit: 60037A 058825A Oil-0024 N25326 N04735 x2 N04736 x2 *Service Parts May be different depending on units chosen.	4.00000	401.6000	1,606.40
004	**Default** **CER-0020** **U/M** EA AIR/GAS SAMPLE TEST W/CERTIFICATE - ANNUAL	16.00000	150.0000	2,400.00

Sales File

Authorized Signature

BAUER COMPRESSORS
1328 Azalea Garden Road
Norfolk, VA 23502-1944
(757) 855-6006

Our Quotation # 035038-00
12-03-2019

To :
CITY OF LODI--FINANCIAL SERVICES
Lodi Fire Department
Attention: Accounts Payable
P.O .Box 3006
LODI CA 95240
United States

Quotation Valid Thru : 03-31-2020
Terms : NET 30

Attention : TIM ORTEGEL

Your Request : PO REQUIRED

Item	Facility / Part / Rev / Description / Details	Quantity Quoted	Unit Price	Extended Price

Total Items Price **7,686.40**

This quotation is for 1ea BAUER Factory Technician to attend customer's location to complete the annual pm service of qty 4 compressors as well as quarterly air testing and CO monitor calibration.

PM Services Include: Change purification filters, change oil & oil filter (if applicable), calibrate co monitor, check safety shutdowns, complete systems check, NFPA air test.

NO FURTHER LABOR OR ANY MATERIALS ARE COVERED UNDER THIS QUOTATION AND WILL BE ADDRESSED ACCORDINGLY IF REQUIRED.

All prices are NET, in U.S. dollars. Taxes, if applicable, are not included and will be in addition to the quoted prices.

For service/repairs outside annual service - Standard rates apply
$125.00 per hr.rate
$187.50 per hr overtime rate

Thank you for the opportunity to submit our quotation.

Thank you for choosing BAUER Compressors Inc., for your compressor needs and I look forward to working with you in the future.

Very Respectfully,

Ashley Sperduto
Service Coordinator
BAUER COMPRESSORS, INC.
267 E AIRWAY BLVD.
Livermore, CA 94551
+1(925) 449-7210

Ashley.sperduto@bauersf.com
service@bauersf.com
www.bauercomp.com

Sales File

Authorized Signature

EXHIBIT C

NOTE: The City of Lodi is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s) to submit the required insurance documentation electronically

Insurance Requirements for Most Contracts
(Not construction or requiring professional liability)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto or if Contractor has no owned autos, then hired, and non-owned autos with limit no less than **$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

Other Insurance Provisions:

(a) Additional Named Insured Status
The City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers are to be covered as additional insureds on the CGL and auto policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used

(b) Primary and Non-Contributory Insurance Endorsement
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage **at least as broad** as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(c) Waiver of Subrogation Contractor hereby grants to City of Lodi a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Lodi by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Lodi has received a waiver of subrogation endorsement from the insurer

NOTE: (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) and (c) above: 221 West Pine Street, Lodi, California, 95240; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

(d) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability under the Contractors commercial general liability and automobile liability policies.

(e) Notice of Cancellation or Change in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

(f) Continuity of Coverage

All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Contractor's insurance lapses or is discontinued for any reason, Contractor shall immediately notify the City and immediately obtain replacement insurance. Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

(g) Failure to Comply

If Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Contractor shall pay such reimbursement and interest on the first (1st) day of the month following the City's notice. Notwithstanding any other provision of this Agreement, if Contractor fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.

(h) Verification of Coverage

Consultant shall furnish the City with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. **Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**

(i) Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

(j) Insurance Limits

The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors. Contractor's obligation to defend, indemnify and hold the City and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Contractor to procure and maintain a policy of insurance.

(k) Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors

(l) Qualified Insurer(s)

All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CTY MANAGER TO WAIVE THE BID PROCESS AND EXECUTE PROFESSIONAL SERVICE AGREEMENT WITH BAUER COMPRESSORS INC., OF NORFOLK, VIRGINIA FOR THE PURCHASE OF FOUR BREATHING AIR COMPRESSORS, INSTALLATION, TRAINING, ANNUAL AND QUARTERLY MAINTENANCE (NOT TO EXCEED $213,070) AND UTILIZING STATE OF CALIFORNIA CONTRACT NO. 1-19-42-07

==========

WHEREAS, the City of Lodi is a public agency located in the County of San Joaquin, State of California; and

WHEREAS, the City of Lodi currently has one breathing air compressor used to fill self-contained breathing apparatus (SCBA) bottles; and

WHEREAS, this compressor located at Station 3 is 35 years old and at the end of its useful life, and

WHEREAS, Lodi City Council approved the purchase of four breathing air compressors as part of the fiscal year 2020 budget, and

WHEREAS, per Lodi Municipal Code Section §3.20.045, State and Local Agency Contracts, the bidding process may be waived when it is advantageous for the City, with appropriate approval by the City Manager and City Council, to use contracts that have been awarded by other California public agencies, provided that their award was in compliance with their formally-adopted bidding or negotiation procedures; and,

WHEREAS, staff recommends that the City Council authorize the City Manager to waive the formal bid process and execute a Professional Services Agreement with Bauer Compressors of Norfolk, Virginia for the purchase of four breathing air compressors, installation, training, annual and quarterly maintenance, in an amount not to exceed $213,070, utilizing California State Contract No. 1-19-42-07; and

WHEREAS, contributions have been made over the past several years to the equipment replacement fund in preparation for this purchase, and was adopted as part of the fiscal year 2020 Budget.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to waive the formal bidding process, and execute a Professional Services Agreement with Bauer Compressors Inc., of Norfolk, Virginia for the purchase of four breathing air compressors, installation, training, annual and quarterly maintenance, in an amount not to exceed $213,070, utilizing California State Contract No. 1-19-42-07; and

BE IT FURTHER RESOLVED that the costs for this project be funded out of equipment replacement fund (40199000.77030); and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM C-15

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing Chief of Police to Execute Agreement for Confidential Wage and Claim Information for Use in Conducting Law Enforcement Employment Background Investigations with the Employment Development Department ($373.50)

MEETING DATE: January 15, 2020

PREPARED BY: Chief of Police

RECOMMENDED ACTION: Adopt resolution authorizing Chief of Police to execute agreement for confidential wage and claim information for use in conducting law enforcement employment background investigations with the Employment Development Department in the amount not to exceed $373.50.

BACKGROUND INFORMATION: Starting a job in law enforcement is an extensive process involving several stages rather than a simple act of recruitment. Employment history is an important step in this process. The background investigation includes checking with applicant's previous employer(s) as to the reasons a candidate stopped working for them, how long they were employed, and what they were paid. A positive exit from a previous work place is always a plus. On the other hand, if a candidate is fired as a result of misbehavior or failure to fulfil their duties, or they embellish the amount of time or what they were paid this will greatly affect their chances of getting a job in law enforcement, especially if it happens more than once.

The Employment Development Department (EDD) is able to assist our background investigators gather information regarding applicant's previous earnings and EDD claim information. This information will allow the background investigators to quickly verify application timelines and verify terms the candidates were released by. The information provided by EDD will be for the sole purpose of conducting employment background investigations for sworn officer and non-sworn position candidates.

The cost is inexpensive and can easily be absorbed in the police general fund budget. The contract is for a three year term and will not exceed $373.50.

FISCAL IMPACT: $373.50 is included in the FY 2019/20 budget, and will be included in the 2020/21 and 2021/22 budgets.

FUNDING AVAILABLE: $373.50 (10031004.72450)

_____
Andrew Keys
Deputy City Manager/Internal Services Director

_____
Tod Patterson
Chief of Police

APPROVED: _____
Stephen Schwabauer, City Manager

EXHIBIT A
(Standard Agreement)

This Agreement is entered into by and between the Employment Development Department, hereinafter referred to as the EDD, and the Lodi Police Department, hereinafter referred to as the LPD. It sets forth the terms and conditions for the release and use of the EDD's confidential information.

SCOPE OF WORK

I. Purpose

The EDD agrees to provide confidential wage and claim information to the LPD. The LPD agrees to use the confidential information provided by the EDD under this Agreement to conduct law enforcement employment background investigations for sworn officer and non-sworn candidates.

II. Legal Authority

The EDD agrees to the disclosure of personal and/or confidential information to LPD pursuant to section §603.5, Title 20 of the Code of Federal Regulations (CFR) and the §1798.24(b) of the California Civil Code (CCC)—*valid consent authorization from the data subject*.

The LPD agrees to submit a valid consent authorization—*signed and dated by the individual who is the subject of the request*—for each individual listed on the request form(s) submitted to the EDD pursuant to section §603.5, Title 20, CFR and the section §1798.24(b) of the CCC for the sole purpose of conducting background investigations for applicant of sworn and non-sworn law enforcement positions.

III. Agreement Representatives

1. The EDD's contact persons are:

AGREEMENT NEGOTIATIONS, CONFIDENTIALITY, AND TECHNICAL ASSISTANCE
Kendell Groom or Designee
Employment Development Department
Information Security Office, MIC 33
P.O. Box 826880
Sacramento, CA 94280-0001

Phone: (916) 651-2885
E-mail: Kendell.Groom@edd.ca.gov
cc: ISOPrivacyDisclosureUnit@edd.ca.gov

FISCAL

Erlinda Matienzo or Designee
Employment Development Department
Accounts Receivable Unit, MIC 70
P.O. Box 826880
Sacramento, CA 94280-0001

Phone: (916) 653-4227
E-mail: Erlinda.Matienzo@edd.ca.gov

EXHIBIT A
(Standard Agreement)

2. The LPD contact persons are:

AGREEMENT NEGOTIATIONS AND ADMINISTRATION

David Griffin, Captain
Lodi Police Department
215 W. Elm Street
Lodi, CA 95240

Phone: (209) 333-6725
E-mail: dgriffin@lodi.gov

FISCAL MATTERS

Jennell Baker-Bechthold, Department Management Analyst
Lodi Police Department
215 W. Elm Street
Lodi, CA 95240

Phone: (209) 333-6722
E-mail: jbaker@lodi.gov

CONFIDENTIALITY AND DATA SECURITY ASSIGNMENTS

Data Security and Integrity: Benjamin Buecher

Internal distribution of the EDD products: David Griffin

3. Either party may make changes to the Agreement Representatives information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

Approved as to Form:

JANICE D. MAGDICH
City Attorney

ATTACHMENT A-1
(Standard Agreement)

SPECIFICATIONS

I. METHODOLOGY

1. The LPD staff authorized under this Agreement to request the EDD's confidential information:

   a. Complete, sign, and date the EDD forms—*"Request for Wage and Claim Information"* (DE 8720-ISO) certifying to the validity of each consent authorization.

   b. Submit to the EDD for each Social Security Number (SSN) entered in the DE 8720-ISO under the assigned EDD Customer Code **E00692**, a valid "Authorization for Release of Records" (Attachment A2), signed and dated by the individual who is the subject of the request.

2. The EDD reconciles the DE 8720-ISO form against the Authorizations for Release of Records, and key enters only the qualifying SSNs. The EDD will not process or return:

   a. SSNs without an Authorization for Release of Records attached.

   b. Illegible DE 8720-ISO and/or Authorizations for Release of Records.

   c. Invalid Authorizations for Release of Records.

   d. Altered Authorizations for Release of Records.

3. On matching SSNs, the EDD produces the Abstract System (ABS) reports authorized under this Agreement.

4. On a quarterly basis, the EDD invoices LPD for all SSN transactions key entered (matched and/or unmatched SSNs).

II. RESPONSIBILITIES

1. **The EDD agrees to:**

   a. Provide an electronic template of the DE 8720-ISO and Authorization for Release of Records forms for the LPD to reproduce.

   b. Provide a PowerPoint "completion instructions" training module to be used by the LPD to train its staff on how to complete the EDD forms and read the ABS reports provided by the EDD.

   c. Use the SSNs provided by the LPD on the EDD DE 8720-ISO forms, under the assigned EDD Customer Code: **E00692**, to search the EDD files. On positive matches, the EDD will provide the following EDD ABS reports:

      (1) Unemployment Insurance (UI) Claim History (Up to 2 years old)

      (2) Disability Insurance (DI) Claim History (Up to 2 years old)

ATTACHMENT A-1
(Standard Agreement)

d. Process only the DE 8720-ISO requests that are completed to the EDD's specifications and mailed by the LPD to the EDD's Information Security Office at:

Employment Development Department
Information Security Office, MIC 33
P. O. Box 826880
Sacramento, CA 94280-0001

e. Mail the ABS reports to the LPD staff person assigned responsibility for the internal security, confidentiality, and dissemination of the EDD's confidential information to other LPD staff:

Name and Title:	David Griffin, Captain
Agency Name:	Lodi Police Department
Mailing Address:	215 W. Elm Street Lodi, CA 95240

f. Monitor and assess status of the data to ensure that the terms, conditions, and disclosure constraints stipulated in this agreement are followed. This compliance review is part of the EDD contract monitoring process.

2. **The LPD agrees to:**

a. Request only the EDD information specifically authorized under this Agreement.

b. Train all LPD staff authorized to use and request the EDD's confidential information under Exhibit A, Section III.(2.) of this Agreement, on the proper completion of the DE 8720-ISO, and the Authorization for Release of Records form.

c. Obtain a valid Authorization for Release of Records from all individuals whose names have been provided by their employers as applicants for sworn officer or non-sworn positions and whose information will be requested.

d. Include with each SSN entered on the DE 8720-ISO forms a valid and corresponding Authorization for Release of Records --*signed and dated by the individual who is the subject of the request.* A valid Authorization for Release of Records must be:

1. In writing.
2. Fully completed, signed, and dated by the data subject.
3. Presented to the EDD within 30 days of the date it is signed or within the time limit specified in the consent authorization itself if a longer duration is applicable, not to exceed 12 months.
4. Specific in terms of:

(a.) To whom **(the EDD)** the consent authorization is directed.

(b.) The time period for the information requested.

(c.) The type of information to be disclosed.

ATTACHMENT A-1
(Standard Agreement)

5. State the purpose for the request and the benefit to the data subject. In the case of a redisclosure to a fourth entity, the data subject must also authorize said redisclosure and the fourth party must be clearly identified.

e. Verify that the Authorization for Release of Records is complete and correct. No erasures or corrections may be made by the LPD without the authorization of the data subject. If any error has been made, have the data subject make and initial the correction or complete a new form.

f. Submit all requests under the EDD Customer Code: **E00692,** and use the preparer code field on the DE 8720-ISO forms for internal distribution purposes.

g. Certify on the DE 8720-ISO that the inquiry for confidential information is in full compliance with California disclosure laws and administrative policies as specified in this Agreement. Only the staff specifically authorized to request information under this Agreement may certify to its accuracy.

h. Request the ABS reports authorized in this Agreement on DE 8720-ISO forms on an "as needed" basis. Mail the forms completed to the EDD specifications to:

Employment Development Department
Information Security Office, MIC 33
P. O. Box 826880
Sacramento, CA 94280-0001

i. Use the information provided by the EDD for the sole purpose of conducting employment background investigations for sworn officer and non-sworn positions' candidates.

j. Comply with the Unemployment Insurance Code (UIC) on any matters pertaining to the access, use, and/or release of data under this Agreement. Failure to comply with this provision shall be deemed a breach of this Agreement, and shall be grounds for cancellation of this Agreement.

k. Oversee the LPD staff in their use of confidential information received from the EDD.

l. Instruct all the LPD staff with access to the information provided by the EDD under this Agreement regarding the: (1) the confidential nature of the information; (2) the requirements of this Agreement; (3) the need to adhere to the security and confidentiality provisions outlined in Exhibit D – Protection of Confidentiality Provisions; and (4) the sanctions and penalties against unauthorized use or disclosure found in sections 1094 and 2111 of the UIC, the section 1798.55 of the CCC, and the section 502 of the California Penal Code.

m. Ensure that all LPD staff assigned to work with the information provided by the EDD have signed the EDD Confidentiality Statement (Attachment D1. Rev 072017).

n. Comply with section 603.9, Title 20 of the CFR with respect to any of the EDD confidential information.

ATTACHMENT A-1
(Standard Agreement)

o. Use the information provided by the EDD only as specifically authorized under this agreement. Section 1095(u) of the UIC prohibits a private collection agency from using any the EDD information the LPD obtains under this Agreement. Therefore, nothing in this Agreement shall be construed to authorize or permit a private collection agency to use the EDD information for any purpose. Violation of this paragraph will be a basis for terminating the Agreement.

p. Dispose of the EDD's confidential information using an approved method of confidential destruction.

q. Not release the EDD's confidential information to any other public or private entity without the EDD's prior written consent.

r. Cooperate with the EDD's authority to monitor this Agreement in accordance with Exhibit D, Section II, paragraphs (e) and (f).

s. Pursuant to federal law, if LPD fails to comply with any provision of this Agreement, *including timely payment of the EDD's costs under this Agreement*, this Agreement shall be suspended and no further disclosures will be made until the EDD is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, this Agreement will be cancelled, and LPD shall surrender to the EDD all confidential information obtained under this Agreement which has not been previously returned to the EDD, and any other information relevant to the Agreement (20 C.F.R., Part 603.10(c)(1)).

3. **Joint Responsibilities. Both parties agree to:**

a. Designate staff to have primary responsibility for program liaison, coordination of activities, and to meet, when necessary, to further redefine specific program procedures.

b. Not disclose any of the EDD or the LPD information to any person or agency other than those authorize specifically under this Agreement.

c. Cooperate fully and furnish such assistance as may be mutually agreed upon by the parties hereto as being necessary and appropriate for proper performance of this Agreement.

4. **Disputes:**

In the event of a dispute between the EDD and the LPD over any part of this Agreement, the dispute may be submitted to nonbinding arbitration upon the consent of both the EDD and the LPD. An election for arbitration pursuant to this provision shall not preclude either party from pursuing any remedy for relief otherwise available.

III. ACCURACY ASSESSMENT

Individual employers and claimants report the information in the EDD's files. Since the EDD is not the originator of the information disclosed, the EDD cannot guarantee the accuracy of the information.

ATTACHMENT A-1
(Standard Agreement)

IV. TERMINATION CLAUSE

This Agreement may be terminated by either party by giving written notice 30 days prior to the effective date of such termination.

Approved as to Form:

JANICE D. MAGDICH
City Attorney

Attachment A-2
(Standard Agreement)

AUTHORIZATION FOR RELEASE OF RECORDS

To: EDD Information Security Office
P.O. Box 826880, MIC 33
Sacramento, CA 94280-001

I, _____, authorize the Employment
(TYPE OR PRINT) NAME OF INDIVIDUAL WHO IS THE SUBJECT OF THIS REQUEST

Development Department (EDD) to release a copy of the following records pertaining to myself:

- ☐ Unemployment Insurance Payment History
- ☐ Disability Insurance Payment History
- ☐ Current Base Wage Period wages as reported by my employers
- ☐ Archived wages by quarter as reported by my employers

covering the period from: _____ to _____
MONTH/DAY/YEAR MONTH/DAY/YEAR

To the following individual or entity:

Captain David Griffin
NAME OF PERSON TO WHOM RECORDS ARE TO BE SENT

Lodi Police Department
NAME OF ORGANIZATION

215 W. Elm Street
ADDRESS

Lodi, CA 95240
CITY, STATE, ZIP CODE

I also authorize LPD to use the information provided by the EDD for sole purpose of background investigations for gainful employment.

This Authorization shall remain in effect for 90 days from the date signed below

or until _____ (Not to exceed 12 months from date signed below.)
ENTER OTHER EXPIRATION DATE

Date: _____ Signature: _____
MONTH/DAY/YEAR INDIVIDUAL WHO IS THE SUBJECT OF THE REQUEST

Social Security Number: _____

The disclosure of your social security number is voluntary. However, since most EDD records are filed by social security number, EDD may be unable to locate any or all of the records requested without disclosure of your social security number.

Approved as to Form:

JANICE D. MAGDICH
City Attorney

EXHIBIT B
(Standard Agreement)

I. BUDGET DETAIL AND PAYMENT PROVISIONS

a. The maximum amount of this Agreement shall not exceed Three Hundred Seventy-Three Dollars and Fifty Cents ($373.50).

b. In consideration of the performance and completion of the foregoing in a satisfactory manner, and upon receipt of a detailed invoice, in triplicate, quarterly in arrears, the LPD shall reimburse the EDD the total amount due, based on the following product rate structure:

Requested Products Rate Structure

If the cumulative number of requested products per quarter is:	Then the cost for **Current Data** and **Archive Wages** per requested product shall be:	Then the cost for **Archive UI/DI Data** per requested product shall be:
100 or less	$ 1.0375	$2.075
101 - 500	.4375	.875
501 or more	.25	.50

c. The LPD shall be charged for the total number of products requested. Each SSN submitted may generate 1 to 2 products, depending on the types of ABS reports requested.

d. The maximum amount of this Agreement has been computed, based on an estimated 15 SSNs per quarter, as follows:

EDD ABSTRACT	FORMULA		COST
Current UI Claim History	1 product	15 x 1.0375 x 12Q	$186.75
Current DI Claim History	1 product	15 x 1.0375 x 12Q	$186.75
Total for 3-year contract			**$373.50**

e. The EDD Invoices will reference the EDD Agreement No. **M0113713** and the EDD customer code **E00692**; and shall be submitted for payment to:

Jennell Baker-Bechthold, Department Management Analyst
Lodi Police Department
215 W. Elm Street
Lodi, CA 95240

EXHIBIT B
(Standard Agreement)

f. The LPD payments must reference the EDD Invoice Number, the EDD Agreement number **M0113713** , and the EDD customer code **E00692**; and be submitted to:

Employment Development Department
Accounting Section, MIC 70
P.O. Box 826217
Sacramento, CA 94230-6217

g. Payment will be made in accordance with, and within the time specified in, Title 1, Division 3.6, Part 3, Chapter 4.5 of the Government Code.

h. Nothing herein contained shall preclude advance payments, pursuant to Article 1, Chapter 3, Part 1, Division 3, Title 2 of the Government Code of the State of California.

Approved as to Form:

JANICE D. MAGDICH
City Attorney

EXHIBIT D
(Standard Agreement)

PROTECTION OF CONFIDENTIALITY

Federal and state confidentiality laws, regulations, and administrative policies classify all the Employment Development Department (EDD) information provided under this Agreement as confidential. The federal and state laws prohibit disclosure of the EDD's confidential information to the public and mandate its protection against loss and against unauthorized access, use, disclosure, modification, or destruction.

LPD must therefore, agree to the following security and confidentiality requirements:

I. ADMINISTRATIVE SAFEGUARDS

a. Adopt policies and procedures to ensure use of the EDD's confidential information solely for purposes specifically authorized under this Agreement that meet the requirements of section §603.10, Title 20 of the Code of Federal Regulations (CFR).

b. Warrant by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee. In the event of a breach or violation of this warranty, the EDD shall have the right to annul this Agreement without liability, in addition to other remedies provided by law.

c. Warrant and certify that in the performance of this Agreement the LPD will comply with all applicable statutes, rules and/or regulations, and Agreement information security requirements, including but not limited to the following:

- **California Unemployment Insurance Code §1094** (Disclosure Prohibitions)
- **Title 20, Code of Federal Regulations §603.9 and §603.10** (Federal Unemployment Compensation Safeguards and Security Requirements)
- **California Civil Code §1798, et seq.** (Information Practices Act)
- **California Penal Code §502** (Computer Fraud Act)
- **Title 5, U.S. Code §552a** (Federal Privacy Act Disclosure Restrictions)
- **Title 42, U.S. Code §503** (Social Security Act)
- **Title 18, U.S. Code §1905** (Disclosure of Confidential Information)

d. Except for state agencies, agree to indemnify the EDD against any loss, cost, damage or liability resulting from violations of these applicable statutes, rules and/or regulations, and Agreement information security requirements.

e. Protect the EDD's information against unauthorized access, at all times, in all forms of media. Access and use the information obtained under this Agreement only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and only for the purposes defined in this Agreement.

f. Keep all the EDD's confidential information completely confidential. Make this information available to authorized personnel on a "need-to-know" basis and only for the purposes authorized under this Agreement. "Need-to-know" refers to those authorized personnel who need information to perform their official duties in connection with the use of the information authorized by this Agreement.

EXHIBIT D
(Standard Agreement)

g. Notify the EDD Information Security Office (ISO) at (916) 654-6231, immediately upon discovery, that there may have been a breach in security which has or may have resulted in compromise to the confidential information. For purposes of this section, immediately is defined within 24 hours of discovery of the breach. The notification shall be by phone and email. **It is not sufficient to simply leave a message**. The notification must include a detailed description of the incident (such as time, date, location, and circumstances) and identify responsible personnel (name, title and contact information). The verbal notification shall be followed with an email notification to <InformationSecurityOffice@edd.ca.gov>.

II. MANAGEMENT SAFEGUARDS

a. Acknowledge that the confidential information obtained by LPD under this Agreement remains the property of the EDD.

b. Instruct all personnel assigned to work with the information provided under this Agreement regarding the following:

- Confidential nature of the EDD information.
- Requirements of this Agreement.
- Sanctions specified in federal and state unemployment compensation laws and any other relevant statutes against unauthorized disclosure of confidential information provided by the EDD.

c. Require that all personnel assigned to work with the information provided by the EDD complete the EDD Confidentiality Agreement (Attachment D1):

d. Return the following completed documents to the EDD Contract Services Group:

- The EDD Indemnity Agreement (Attachment D2): Required to be completed by the LPD Chief Financial Officer or authorized Management Representative, unless LPD is a State Agency.
- The EDD Statement of Responsibility Information Security Certification (Attachment D3): Required to be completed by the Information Security Officer or authorized Management Representative.

e. Permit the EDD to make on-site inspections to ensure that the terms of this Agreement are being met. Make available to the EDD staff, on request and during on-site reviews, copies of the EDD Confidentiality Agreement (Attachment D1) completed by personnel assigned to work with the EDD's confidential information, and hereby made a part of this Agreement.

f. Maintain a system of records sufficient to allow an audit of compliance with the requirements under subsection (d) of this part. Permit the EDD to make on-site inspections to ensure that the requirements of federal and state privacy, confidentiality and unemployment compensation statutes and regulations are being met including but not limited to section §1137(a)(5)(B) of the Social Security Act.

III. USAGE, DUPLICATION, AND REDISCLOSURE SAFEGUARDS

a. Use the EDD's confidential information only for purposes specifically authorized under this Agreement. The information is not admissible as evidence in any action or special proceeding except as provided under section §1094(b) of the Unemployment Insurance

EXHIBIT D
(Standard Agreement)

Code (UIC). Section 1095(u) of the UIC does not authorize the use of the EDD's confidential information by any private collection agency.

b. Extraction or use of the EDD information for any purpose outside the purposes stated in this Agreement is strictly prohibited. The information obtained under this Agreement shall not be reproduced, published, sold, or released in original or any other form not specifically authorized under this Agreement.

c. Disclosure of any of the EDD information to any person or entity not specifically authorized in this Agreement is strictly prohibited. Personnel assigned to work with the EDD's confidential information shall not reveal or divulge to any person or entity any of the confidential information provided under this Agreement except as authorized or required by law.

IV. PHYSICAL SAFEGUARDS

a. Take precautions to ensure that only authorized personnel are given access to physical, electronic and on-line files. Store electronic and hard copy information in a place physically secure from access by unauthorized persons. Process and store information in electronic format, such as magnetic tapes or discs, in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal, or other means.

b. Secure and maintain any computer systems (network, hardware, and software applications) that will be used in the performance of this Agreement. This includes ensuring that all security patches, upgrades, and anti-virus updates are applied as appropriate to secure data that may be used, transmitted, or stored on such systems in the performance of this Agreement.

c. Store all the EDD's confidential documents in a physically secure manner at all times to prevent unauthorized access.

d. Store the EDD's confidential electronic records in a secure central computer facility. Where in-use on a shared computer system or any shared data storage system, ensure appropriate information security protections are in place. The LPD shall ensure that appropriate security access controls, storage protections and use restrictions are in place to keep the confidential information in the strictest confidence and shall make the information available to its own personnel on a "need-to-know" basis only.

e. Store the EDD's confidential data in encrypted format when recorded on removable electronic storage media, or on mobile computing devices, such as a laptop computer.

f. Maintain an audit trail and record data access of authorized users and authorization level of access granted to the EDD's data, based on job function.

g. Direct all personnel permitted to use the EDD's data to avoid leaving the data displayed on their computer screens where unauthorized users may view it. Personnel should retrieve computer printouts as soon as they are generated so that the EDD's data is not left unattended in printers where unauthorized personnel may access them.

h. Dispose of confidential information obtained from the EDD, and any copies thereof made by the LPD, after the purpose for which the confidential information is disclosed is served. Disposal means return of the confidential information to the EDD or destruction of the information utilizing an approved method of confidential destruction, which includes electronic deletion (following Department of Defense specifications) shredding, burning, or certified or witnessed destruction.

Approved as to Form:

JANICE D. MAGDICH
City Attorney

EMPLOYMENT DEVELOPMENT DEPARTMENT

CONFIDENTIALITY AGREEMENT

Information resources maintained by the State of California Employment Development Department (EDD) and provided to your agency may be confidential or sensitive. Confidential and sensitive information are not open to the public and require special precautions to protect it from wrongful access, use, disclosure, modification, and destruction. The EDD strictly enforces information security. If you violate these provisions, you may be subject to administrative, civil, and/or criminal action.

_____ an employee of **Lodi Police Department**
PRINT YOUR NAME — PRINT YOUR EMPLOYER'S NAME

hereby acknowledge that the confidential and/or sensitive records of the Employment Development Department are subject to strict confidentiality requirements imposed by state and federal law include the Unemployment Insurance Code (UIC) §§1094 and 2111, the California Civil Code (CC) §1798 et seq., the California Penal Code (PC) §502, Title 5, USC §552a, Code of Federal Regulations, Title 20 part 603, and Title 18 USC §1905.

_____ INITIAL acknowledge that my supervisor and/or the Contract's Confidentiality and Data Security Monitor reviewed with me the confidentiality and security requirements, policies, and administrative processes of my organization and of the EDD.

_____ INITIAL acknowledge responsibility for knowing the classification of the EDD information I work with and agree to refer questions about the classification of the EDD information (public, sensitive, confidential) to the person the Contract assigns responsibility for the security and confidentiality of the EDD's data.

_____ INITIAL acknowledge responsibility for knowing the privacy, confidentiality, and data security laws that apply to the EDD information I have been granted access to by my employer, including UIC §§1094 and 2111, California Government Code § 15619, CC § 1798.53, and PC § 502.

_____ INITIAL acknowledge that wrongful access, use, modification, or disclosure of confidential information may be punishable as a crime and/or result in disciplinary and/or civil action taken against me—including but not limited to: reprimand, suspension without pay, salary reduction, demotion, or dismissal—and/or fines and penalties resulting from criminal prosecution or civil lawsuits, and/or termination of contract.

_____ INITIAL acknowledge that wrongful access, inspection, use, or disclosure of confidential information for personal gain, curiosity, or any non-business related reason is a crime under state and federal laws.

_____ INITIAL acknowledge that wrongful access, use, modification, or disclosure of confidential information is grounds for immediate termination of my organization's Contract with the EDD.

_____ INITIAL agree to protect the following types of the EDD confidential and sensitive information:

- Wage Information
- Employer Information
- Claimant Information
- Tax Payer Information
- Applicant Information
- Proprietary Information
- Operational Information (manuals, guidelines, procedures)

_____ INITIAL hereby agree to protect the EDD's information on either paper or electronic form by:

- Accessing or using the EDD supplied information only as specified in the Contract for the performance of the specific work I am assigned.
- Never accessing information for curiosity or personal reasons.
- Never showing or discussing sensitive or confidential information to or with anyone who does not have the need to know.
- Placing sensitive or confidential information only in approved locations.
- Never removing sensitive or confidential information from the work site without authorization.
- Following encryption requirements for all personal, sensitive, or confidential information in any portable device or media.

"I certify that I have read and initialed the confidentiality statements printed above and will abide by them."

_____
Print Full Name (last, first, MI)

_____
Signature

Lodi Police Department
Print Name of Requesting Agency

_____
Date Signed

Check the appropriate box:

☐ Employee ☐ Student
☐ Subcontractor ☐ Volunteer
☐ Other _____
Explain

Approved as to Form:

JANICE D. MAGDICH
City Attorney

EMPLOYMENT DEVELOPMENT DEPARTMENT
INDEMNITY AGREEMENT

In consideration of access to the EDD information which is personal, sensitive, or confidential,

Lodi Police Department
(Enter Requesting Agency/Entity Name)

agrees to indemnify the EDD against any and all liability costs, damages, attorney fees, and other expenses the EDD may incur by reason of or as a result of any unauthorized use of the personal, sensitive, or confidential information or any violation of the "Confidentiality Agreement" by any and all employees of:

Lodi Police Department
(Enter Requesting Agency/Entity Name)

This obligation shall be continuous and may not be changed or modified unless agreed to in writing.

In addition, I understand that the following penalties may be incurred for any such misuse of the EDD Information:

1. Any individual who has access to returns, reports, or documents maintained by the EDD who fails to protect the confidential information from being published or open to the public may be punished by imprisonment in the county jail for up to one year or a fine of $20,000.00 or both. (Unemployment Insurance Code §§ 2111 and 2122).
2. Any person who intentionally discloses information, not otherwise public, which they knew or should have known was obtained from personal information maintained by a state agency, shall be subject to civil action for invasion of privacy by the individual to whom the information pertains. (California Civil Code §1798.53).
3. Any unauthorized access to the EDD computer data, computer systems, or unauthorized use of the EDD data is punishable by a fine or imprisonment in the county jail or both. (California Penal Code §502).

I certify that I have read, understand, and agree with the above terms.

SIGNED BY REQUESTING ENTITY REPRESENTATIVE

Janice Magdich Print Full Name	Signature
As Lodi City Attorney Print Title	12/02/2019 Date Signed
Of Lodi Police Department Print Name of Requesting Entity	Enter Name Governmental Sponsor/Entity

EMPLOYMENT DEVELOPMENT DEPARTMENT
STATEMENT OF RESPONSIBILITY

INFORMATION SECURITY CERTIFICATION

We, the IT Division Manager and the Captain hereby certify that Lodi Police Department has in place the safeguards and security requirements stated in this Interagency Agreement. We therefore accept responsibility for ensuring compliance with these requirements, as set forth in Exhibit "D" of the EDD Contract No. M0113713

IT DIVISION MANAGER SIGNATURE	CAPTAIN SIGNATURE
Benjamin Buecher	David Griffin
PRINT NAME OF IT DIVISION MANAGER	PRINT NAME
Information Security Officer	Captain
PRINT TITLE	PRINT TITLE
(209) 333-5548	(209) 333-6725
TELEPHONE NUMBER	TELEPHONE NUMBER
bbuecher@lodi.gov	dgriffin@lodi.gov
E-MAIL ADDRESS	E-MAIL ADDRESS
DATE SIGNED	DATE SIGNED

NOTE: *Return this Information Security Certification to the EDD Contract Manager with the signed copies of the Contract.*

FOR THE EDD USE ONLY

1. Information Security Certification received by:

EDD CONTRACT MANAGER NAME	DATE RECEIVED

2. The EDD information asset access approved by:

CONTRACT MANAGER OR DISCLOSURE COORDINATOR	DATE APPROVED (AFF, EMAIL, ETC.)

NOTE: *The EDD must have a signed "Information Security Certification" in its possession prior to disclosure of any personal, confidential, or sensitive information to the Lodi Police Department.*

Approved as to Form:

JANICE D. MAGDICH
City Attorney

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CHIEF OF POLICE TO EXECUTE AGREEMENT FOR CONFIDENTIAL WAGE AND CLAIM INFORMATION FOR USE IN CONDUCTING LAW ENFORCEMENT EMPLOYMENT BACKGROUND INVESTIGATIONS WITH THE EMPLOYMENT DEVELOPMENT DEPARTMENT

==========

WHEREAS, the Employment Development Department (EDD) is able to assist our background investigators gather information regarding applicant's previous earnings and EDD claim information; and

WHEREAS, this information will allow background investigators to quickly verify application timelines and verify terms the candidates were released by; and

WHEREAS, the information provided by EDD will be for the sole purpose of conducting employment background investigations for sworn officer and non-sworn position candidates.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the Chief of Police to execute a three-year agreement with the Employment Development Department for confidential wage and claim information for use in conducting law enforcement employment background investigations, in an amount not to exceed $373.50 per year, to be derived from the Safety Equipment fund (10031004.72450) in the current 2019/2020 fiscal year budget, and will be included in future budgets for 2020/21 and 2021/2022; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the Lodi City Council in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

2020-____

AGENDA ITEM **C-16**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Cooperation Agreement with Woodbridge Irrigation District and City of Stockton to Collectively Manage Groundwater Resources

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Cooperation Agreement with Woodbridge Irrigation District and City of Stockton to collectively manage groundwater resources.

BACKGROUND INFORMATION: On August 29, 2014, the California Legislature passed comprehensive groundwater legislation enacting the "Sustainable Groundwater Management Act" (SGMA). Then Governor Brown signed the legislation on September 16, 2014 and it became effective on January 1, 2015.

SGMA requires the formation of groundwater sustainability agencies (GSA's) and the development and implementation of one or more groundwater sustainability plans (GSP's) for each groundwater basin categorized by the California Department of Water Resources (DWR) as high- or medium-priority.

The Eastern San Joaquin Groundwater Authority (Authority) is a collaboration of agencies (including Lodi) within San Joaquin County that, over the past two years, has collaboratively prepared a GSP in accordance with the SGMA legislation. SGMA requires GSP adoption by all involved GSA's within the Authority prior to the GSP submittal date of January 31, 2020. On November 20, 2019, upon conducting a public hearing, Lodi City Council took action to adopt the GSP in its final form. The Authority is on schedule to submit the GSP (separately approved by all GSA's within the Authority) to DWR by the January deadline.

The SGMA legislation also allows GSAs to negotiate cooperation agreements between GSAs to jointly manage groundwater resources with neighboring jurisdictions. This can be an advantage to the agencies by sharing costs, resources and other efforts to secure future groundwater supplies and implement the GSP in compliance with the SGMA.

Lodi, Stockton, and Woodbridge Irrigation District GSA's (Party or collectively Parties) share long term interests in the Mokelumne River water supply, and since these GSA's have invested heavily to obtain groundwater sustainability, staff from all three GSA's have initiated discussions and agree it would be prudent to enter into a cooperative agreement (Agreement) to identify a framework under which Parties will work together in cooperation to collectively and effectively manage groundwater and other resources between their respective GSA's.

APPROVED: _____

Stephen Schwabauer, City Manager

The proposed Agreement is intended to allow the Parties to maintain control and autonomy over their respective water supplies, water facilities, and operations while encouraging cooperation for implementing mutually beneficial projects and/or programs with other local GSA's consistent with the GSP and SGMA legislation. The proposed Agreement will not require any contribution or commitment by any Party to share or contribute assets or resources without prior Board or Council approval. Any Party may unilaterally withdraw from the agreement at any time upon 30 days written notice to the other Parties.

FISCAL IMPACT: All Parties must mutually develop a budget and cost sharing agreement as needed for any work to be performed under the Agreement. Both the budget and cost sharing agreement must be approved by each Party's governing body by unanimous vote before any financial expenditures or obligations are incurred. At this time, no expenses associated with the Agreement are planned.

FUNDING AVAILABLE: Not applicable.

Charles E. Swimley, Jr.
Public Works Director

CES/CES/tdb
Attachment

EXHIBIT 1

COOPERATION AGREEMENT BETWEEN WOODBRIDGE IRRIGATION DISTRICT, THE CITY OF LODI AND THE CITY OF STOCKTON TO COLLECTIVELY MANAGE GROUNDWATER RESOURCES

This Cooperation Agreement ("Agreement") is made and entered into as of this _____day of _____, 20____, by and between Woodbridge Irrigation District ("WID"), the City of Lodi, a Municipal Corporation ("Lodi") and the City of Stockton ("Stockton"), a municipal corporation organized under a Charter pursuant to Government Code section 34101, and referred to herein as the "Party" or collectively as the "Parties."

The Parties are located within the boundaries of the Eastern San Joaquin Groundwater Sub-basin as defined by the Department of Water Resources Bulletin 118 ("Bulletin 118") and are subject to the Sustainable Groundwater Management Act as defined below.

RECITALS

WHEREAS, on September 16, 2014 Governor Brown signed into law the Sustainable Groundwater Management Act (Senate Bills 1168 and 1319 and Assembly Bill 1739) codified in Part 2.74 of Division 6 of the California Water Code, commencing with section 10720 ("the Act or SGMA"); and

WHEREAS, the Act went into effect on January 1, 2015; and

WHEREAS, the legislative intent of the Act was to provide sustainable management of groundwater basins, to enhance local management of groundwater, to establish minimum standards for sustainable groundwater management, and to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater; and

WHEREAS, the Act defines a local agency as a local public agency that has water supply, water management or land use responsibilities within a groundwater basin; and

WHEREAS, the Act requires that basins designated as high priority be managed by one or more Groundwater Sustainability Agencies ("GSA") and will be responsible for the development and implementation of a Groundwater Sustainability Plan ("GSP"); and

WHEREAS, the Parties jurisdictional boundaries overlay the north and western portions of the Eastern San Joaquin Groundwater Sub-basin ("Basin"), defined under Department of Water Resources Bulletin 118 and designated a high-priority basin in critical overdraft; and

WHEREAS, the Parties have Mokelumne River water rights, long-term water supply agreements, interests, water resources management, land use and/or other responsibilities within this portion of the Basin; and

WHEREAS, the Cities of Lodi, Stockton and WID are local agencies as defined under the Act and pursuant to the California Water Code Section 10723 et seq. and have elected to become GSAs; and

WHEREAS, the Act allows for multiple GSAs, interested in achieving cost-effective and sustainable groundwater management through an adopted Basin GSP, to organize through a cooperation agreement pursuant to California Water Code Section 10723 et seq.; and

WHEREAS, the Parties intend by this Agreement to set forth a framework under which the Parties will work together in cooperation to collectively manage groundwater and other resources between their GSAs in accordance with an adopted Basin GSP and in consideration of the interests of all beneficial uses and the common good of all users of groundwater within their GSAs, and to work cooperatively with other GSAs in the Basin as necessary; and

NOW, THEREFORE, it is mutually understood and agreed as follows:

I. PURPOSE AND INTENT

The Parties establish a cooperation agreement to jointly manage a portion of the Eastern San Joaquin Sub-basin within their collective jurisdictions. The purpose of this Agreement is to establish a framework to outline the intent and actions of the Parties.

It is each Party's intent, goal and objective to maintain control and autonomy over the surface water supplies, water facilities, water operations, groundwater supplies, assets and other interests to which each Party and each Party's constituents are legally entitled. Nothing in this Agreement requires any contribution or commitment by a Party to share or otherwise contribute that Party's water assets or other resources as part of the implementation of a GSP without that Party's written consent.

The Parties, to the maximum extent permitted under SGMA, agree to implement the GSP in its own service area or cause the implementation of the GSP in its own service area through written agreement, delegation or other means. Further, the Parties under this Agreement shall endeavor to not prohibit or impose conditions upon the drilling or construction of any new permitted groundwater well developed for beneficial uses or operation of a water system within the sphere of influence of another Party.

To further carry out the purpose and intent of the Agreement, the Parties agree to the following actions:

(a) The implementation and management of a GSP within this cooperation or managed area ("Area") with a boundary which includes the GSAs of the Parties as outlined on the Eastern San Joaquin Subbasin GSA Area Map attached hereto as Exhibit A and made a part hereof.

(b) The Parties may develop, fund and implement mutually beneficial projects/programs and collaborate with other local GSAs and other agencies to implement and update the GSP consistent with the goals, interests, authorities and responsibilities of the Parties.

(c) The Parties will also have discretion under this Agreement to develop a separate GSP if required for the Area and to work collaboratively with other GSAs within the Basin to enter into coordination agreements as required under the Act. In addition, in the future, the

Parties may decide to form a new entity in order to better serve the community as a GSA under a Joint Powers Agreement or other legal agreement.

(d) The implementation of a GSP for the Area or in any coordination with other GSAs in developing and implementing a Basin GSP will be consistent with the Parties' goals and objectives.

(e) Nothing in this paragraph shall prevent the Parties from seeking reimbursement or crediting for projects developed to meet the requirements of an agency to establish a sustainable water supply.

II. RIGHTS AND RESPONSIBILITIES

This Agreement shall not confer on the Parties any power to alter any water right, contract right, or any similar right held by the Parties individually or to amend any Party's water delivery practices, course of dealing, or conduct, without the affected Party's express written consent, nor shall the sharing of any intellectual property or other information or technical know-how of any Party to create any right or license to such intellectual property, information or technical know-how, except as may be expressly granted by the affected Party in writing.

All such intellectual property, information, and technical know-how that any Party may share in connection with the Party's participation pursuant to this Agreement shall remain the sole property of the affected Party.

Nothing in this Agreement shall be interpreted as superseding the land use authority, police power, or any other authorities of a Party.

III. COORDINATING COMMITTEE

A Coordinating Committee will be established and made up of at least one staff member from each Party and shall meet at least on a semi-annual basis or otherwise as needed.

The Committee shall develop a process to authorize, direct, and coordinate GSA activities of the Parties, including the development, planning, financing, environmental review, permitting, implementation, long-term monitoring, projects, and programs of the GSP for the Area, and/or for the portion of a GSP developed and implemented for the Basin that is applicable to the Area. In addition, the Committee may delegate tasks and responsibilities to other staff, organizations, consultants and/or contractors on direction from their Governing Bodies.

The Committee shall keep their Governing Bodies apprised of its activities, and may from time to time, attend Governing Body meetings for the purpose of seeking approval on proposed actions, answering questions and providing information.

In addition to being responsible for development and implementation of the GSP or portion of a Basin GSP for the Area, the Committee shall have responsibility for the following:

(i) Develop and implement a stakeholder participation plan as needed, pursuant to the requirements of the Act and the GSP regulations that involves the public and area stakeholders in developing and implementing the GSP.

(ii) Coordinate with other entities within and without the Basin regarding GSP implementation and future updates as required by the Act and the GSP regulations.

(iii) Work cooperatively to develop agreement on specific actions, recommendations and positions before communicating their GSA's positions on specific issues with other entities within the Basin, whenever feasible.

(iv) Establish positions on GSP issues which may affect the other Parties to this Agreement after majority approval of the Agreement by the Governing Bodies.

(v) Each Party's participation in this Agreement is at that Party's sole cost and expense.

(vi) The Parties shall mutually develop a budget and cost sharing agreement as needed for any work to be undertaken under this Agreement. Both the budget and cost sharing agreement shall be approved by the Governing Body of each Party by unanimous vote prior to implementation and before any financial expenditures, financial obligations or liabilities may be incurred by the Parties. Expenditures as well as any income, funding, grants or other funds received by the Parties under this Agreement must be included within a budget developed by the Committee.

IV. COMMUNICATION

To provide for consistent and effective communication between Parties, each Party agrees to designate one staff representative as its central point of contact on matters relating to this Agreement. Additional representatives may be appointed to serve as points of contact on specific actions or issues.

All notices, statements, or payments related to implementing the objectives of this Agreement shall be deemed to have been duly given if given in writing and either delivered personally or mailed by first-class, registered, or certified mail as follows to the following individuals or their successors:

Woodbridge Irrigation District
Anders Christensen, General Manager
PO Box 580
18750 N. Lower Sacramento Road
Woodbridge, CA 95258
widirrigation@gmail.com
Phone: 209-625-8438 Fax: 209-625-8663

City of Lodi
Steve Schwabauer, City Manager
221 West Pine Street
PO Box 3006
Lodi, CA 95241
sschwabauer@lodi.gov
Phone: 209-333-6700 Fax: 209-333-6807

City of Stockton
John Abrew, Director
Department of Municipal Utilities
2500 Navy Drive
Stockton, CA 95206-1191
John.Abrew@stocktonca.gov
Phone: 209-937-8758 Fax: 209-937-8577

V. TERMINATION, WITHDRAWAL AND ADDITIONAL PARTIES

(i) Termination - This Agreement may be terminated upon unanimous written consent of all the Parties.

(ii) Withdrawal - A Party may unilaterally withdraw from this Agreement without causing or requiring termination of the Agreement, effective upon thirty (30) days written notice to the remaining Parties. A Party that has withdrawn from this Agreement shall remain obligated to pay its share of expenses and obligations as outlined in the budget and cost share agreement included or accrued up to the date the Party provided notice of withdrawal. A Party withdrawing from this Agreement shall expressly retain the right and responsibility to serve as the GSA for the groundwater basin underlying its boundary or join with other GSA entities in the basin to comply with the groundwater management activities required under SGMA.

(iii) Additional Parties - Additional agencies may join the Agreement and become a Party to the Agreement provided that the prospective new Party, (a) is eligible to join a groundwater sustainability agency as provided under SGMA, (b) pays all previously incurred costs that have benefited the new Party, (c) agrees in writing to the terms and conditions of this Agreement and (d) is approved by all the Parties.

VI. AMENDMENT, INDEMNIFICATION AND INSURANCE

(i) Amendment - This Agreement may be amended only by a subsequent writing, approved and signed by all Parties. Approval from a Party is valid only after that Party's Governing Body approves the amendment at a public meeting. GSA staff, and individual Governing Body members do not have the authority, express or implied, to amend, modify, waive or in any way alter this Agreement of the terms and conditions hereof.

(ii) Indemnification - No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this Agreement. The Parties further agree, pursuant to California Government Code section 895.4, that each Party shall fully indemnify and hold harmless the other Parties and their respective agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising

out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by the indemnifying Party under this Agreement. Each Party shall additionally include within any third-party contract entered into in furtherance of this Agreement, provisions requiring the contractor, consultant or vendor to indemnify, defend and hold harmless the other Parties to the same extent as the contracting Party is indemnified.

(iii) Insurance - Each Party shall include within any third-party contract entered into in furtherance of this Agreement, provisions requiring the contractor, consultant or vendor to provide insurance coverage to the other Parties equivalent to the coverage provided to the contracting Party. Without limiting the foregoing and to extent the following policies are required by the contract, the non-contracting Parties shall: (1) be named as additional insured and provided coverage on a primary and non-contributory basis on the contractor, consultant or vendor's policies of commercial general liability and business automobile liability insurance and (2) be included in any waiver of subrogation endorsements issued on the commercial general liability, business automobile liability and workers' compensation/employer's liability policies.

VII. MISCELLANEOUS

(i) Execution in Counterpart - The Parties intend to execute this Agreement in counterparts. It is the intent of the Parties to hold one (1) counterpart with single original signatures to evidence the Agreement and to thereafter forward (# of Parties to Agreement) other original counterparts on a rotating basis for all signatures. Thereafter, each Party shall be delivered an originally executed counterpart with all Party signatures.

(ii) Term of Agreement - This Agreement shall become operative upon its execution by each of the named Parties. The term of this Agreement is indefinite and will cease existence only upon termination by the Parties.

(iii) Choice of Law - This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed.

(iv) Severability - If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

(v) Entire Agreement - This Agreement constitutes the sole, entire, integrated and exclusive agreement between the Parties regarding the contents herein. Any other contracts, agreements, terms, understandings, promises or representations not expressly set forth or referenced in this writing are null and void and of nor force and effect.

(vi) Construction and Interpretation - The Parties agree and acknowledge that this Agreement has been developed 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.

IN WITNESS WHEREOF, the Parties' hereto have executed this Agreement as of the dates set forth below.

CITY OF STOCKTON

By: _____
LAURIE MONTES
INTERIM CITY MANAGER

ATTEST:

_____
ELIZA R. GARZA, CMC
CITY CLERK

APPROVED AS TO FORM:

_____
JOHN M. LUEBBERKE
CITY ATTORNEY

CITY OF LODI

_____
STEVE SCHWABAUER
CITY MANAGER

APPROVED AS TO FORM:

_____
JANICE D. MAGDICH
CITY ATTORNEY

EXHIBIT 1

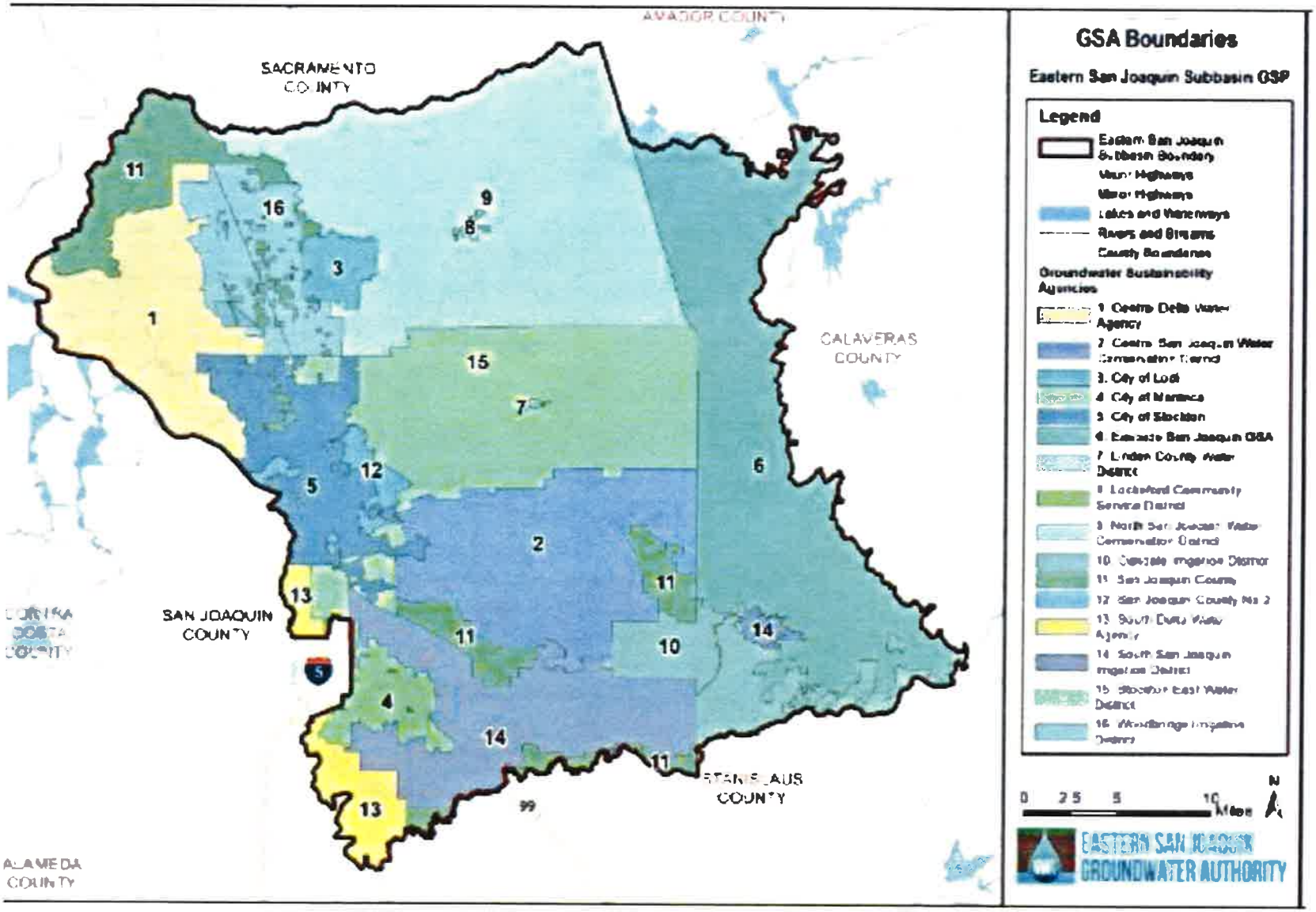
WOODBRIDGE IRRIGATION DISTRICT

By: _____

APPROVED AS TO FORM:

_____
COUNSEL

Exhibit A – GSA Area Map



RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE COOPERATION AGREEMENT WITH WOODBRIDGE IRRIGATION DISTRICT AND CITY OF STOCKTON TO COLLECTIVELY MANAGE GROUNDWATER RESOURCES

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WHEREAS, in 2014, the Governor signed legislation creating the Sustainable Groundwater Management Act ("SGMA") "to provide local groundwater sustainability agencies with the authority and technical and financial assistance necessary to sustainably manage groundwater" (Wat. Code, § 10720, (d)); and

WHEREAS, the City of Lodi is a member of the Eastern San Joaquin Groundwater Authority ("GWA"), formed to develop a groundwater sustainability plan ("GSP") and coordinate sustainable groundwater management in the Eastern San Joaquin Subbasin. Wat. Code, § 10723.6(i) of SB 1168 states that "the following agencies created by statute to manage groundwater shall be deemed the exclusive local agencies within their respective statutory boundaries with powers to become a Groundwater Sustainability Agency (GSA);" and

WHEREAS, the SGMA requires sustainable management through the development of GSPs, which can be a single plan developed by one or more GSA or multiple coordinate plans within a basin or subbasin (Wat. Code, § 10727); and

WHEREAS, the GWA submitted an Initial Notification to the Department of Water Resources (DWR) on behalf of its members to jointly develop a GSP for the Eastern San Joaquin Subbasin on February 8, 2017; and

WHEREAS, the City of Lodi's, the City of Stockton's, and Woodbridge Irrigation District's jurisdictional boundaries overlay the north and western portions of the Eastern San Joaquin Groundwater Subbasin (Basin), defined under Department of Water Resources Bulletin 118 and designated a high-priority basin in critical overdraft; and

WHEREAS, the City of Lodi, the City of Stockton, and Woodbridge Irrigation District have Mokelumne River water rights, long-term water supply agreements, interests, water resources management, land use and/or other responsibilities within this portion of the Basin; and

WHEREAS, the City of Lodi, the City of Stockton, and Woodbridge Irrigation District intend by this agreement to set forth a framework under which they will collectively manage groundwater and other resources between their GSAs, in accordance with an adopted Basin GSP and in consideration of the interests of all beneficial uses and the common good of all users of groundwater within their GSAs, and to work cooperatively with other GSAs in the Basin as necessary; and

WHEREAS, staff recommends that the City Council enter into a Cooperation Agreement with the City of Stockton and Woodbridge Irrigation District to jointly manage a portion of the Eastern San Joaquin Subbasin within their collective jurisdictions.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Lodi City Council does hereby:

1. Enter into a Cooperation Agreement between the City of Lodi, the City of Stockton, and Woodbridge Irrigation District to jointly manage groundwater resources within the Eastern San Joaquin Subbasin, a copy of which is attached as Exhibit 1 and incorporated by this reference.

2. Authorize the Municipal Utilities Department to work in collaboration with the City of Stockton and Woodbridge Irrigation District to implement the projects and programs developed in the Groundwater Sustainability Plan (GSP) to comply with the SGMA.

3. Authorize the City Manager or his designee to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution; and

4. Pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM C-17

CITY OF LODI
COUNCIL COMMUNICATION
TM

AGENDA TITLE: Adopt Resolution Approving Renewal of Chiropractic Benefit Administration Agreement with Landmark Healthplan of California; and Further Authorizing the City Manager to Execute Agreement

MEETING DATE: January 15, 2020

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Adopt resolution approving renewal of Chiropractic Benefit Administration Agreement with Landmark Healthplan of California; and further authorizing the City Manager to execute agreement.

BACKGROUND INFORMATION: The City of Lodi is contracted with Landmark Healthplan of California to provide chiropractic services to the City's full-time employees. This chiropractic plan is a stand alone policy separate from the City's medical plans offered through CalPERS.

The term of this agreement shall begin on February 1, 2020 and continue in effect until January 31, 2021. This contract shall automatically renew for successive one-year terms on each anniversary of the commencement date of this Agreement. City may terminate this Agreement by providing Landmark Healthplan with 30 calendar days' prior written notice.

FISCAL IMPACT: Annual cost of approximately $39,500.

FUNDING AVAILABLE: Included in Benefits Fund appropriations (65522000).

_____
Adele Post, Human Resources Manager

_____
Andrew Keys, Deputy City Manager/Internal Services Director

APPROVED: _____
Stephen Schwabauer, City Manager

GROUP AGREEMENT BY AND BETWEEN
LANDMARK HEALTHPLAN OF CALIFORNIA, INC.
AND
City of Lodi

CHIROPRACTIC EXPANDED BENEFIT

COVER SHEET

In consideration of the prepayment of applicable fees by Group and receipt by Landmark of the Group Application (which is made a part of this Group Agreement by reference), Group hereby agrees to offer to its Members: Covered Chiropractic Services.

1. Periodic Charges. The monthly subscription fees ("premiums") for Plan membership are as follows:

Employee Only	$4.44
Employee & One	$8.91
Employee & Family	$11.65

2. Group, or its designated agent, shall remit applicable periodic subscription fees in full on or before February 1, 2020 (the "Effective Date") for Members enrolled during the initial Open Enrollment Period. Thereafter, a full monthly subscription fee for each Member, made in accordance with the provisions herein, shall be remitted before the first business day of each month for which membership is effective. Subject to fee increases that may result pursuant to Paragraph 3.06 of this Agreement, the monthly subscription fee schedule set forth above shall remain in effect for the initial term of this Agreement as described below. Thereafter, the monthly subscription schedule shall be subject to change from year to year. The parties hereby agree to Amendments for the standard payment provisions as follows:

_____

_____

_____

3. The initial term of this Group Agreement is from February 1, 2020 through January 31, 2021. Thereafter, this Agreement shall be automatically renewed annually, subject to the termination provisions herein.

4. Eligibility Criteria. Group shall provide Plan with a description of its eligibility requirements prior to the execution of this Agreement. The composition of Group and requirements determining eligibility for membership in Group that exist at the Effective Date of this Agreement are material to the execution of this Agreement by Plan. During the term of this Agreement, no change in Group's eligibility or participation requirements shall be permitted to affect eligibility or Enrollment unless such change is agreed to by Plan pursuant to Amendments for this Agreement as specified in Paragraph 6 of this Cover Sheet.

a) New Employee Waiting Period. All new employees become eligible on the first of the month following the date of hire.

b) Employer-Sponsored Medical Plan Enrollees. Only enrollees of the employer-sponsored medical plan are eligible to enroll. Plan requires that all enrollees of the employer-sponsored medical plan enroll.

5. Effective Date of Coverage

a) Initial Open Enrollment Period. The initial Open Enrollment Period will commence prior to the Effective Date and continue up to thirty (30) calendar days thereafter for Subscribers and their eligible Dependents to enroll during this initial Open Enrollment Period. Dependents must be eligible at the time of their Enrollment. Subsequent Open Enrollment Periods shall occur on the anniversary date of the Group's Effective Date or upon a mutually agreeable date designated by both parties.

b) Enrollment, Effective Date of Coverage at a Time Other Than During the Open Enrollment Period. Any person who becomes newly eligible at a time other than during the Open Enrollment Period (e.g., newborn, adopted child,

new spouse or registered domestic partner, newly hired or newly transferred employee) shall have Coverage effective on the date eligibility was obtained if the person enrolls within thirty (30) calendar days of becoming eligible and if payment of the applicable prepayment fees and other provisions of this Agreement have been met.

c) Anyone failing to enroll during an Open Enrollment Period or within thirty (30) calendar days of becoming newly eligible must wait to enroll during Group's subsequent periodic Open Enrollment Period, unless such individual qualifies as a late enrollee pursuant to §1376.50 of the California Health & Safety Code.

6. Other Amendments to the Group Agreement.

N/A

GROUP AGREEMENT BY AND BETWEEN
LANDMARK HEALTHPLAN OF CALIFORNIA, INC.
AND City of Lodi
CHIROPRACTIC EXPANDED BENEFIT

LANDMARK HEALTHPLAN OF CALIFORNIA, INC., a California Corporation, (hereinafter referred to as "Plan"), and City of Lodi, the employer, association, labor union, trust, or other entity specified on the Cover Sheet (hereinafter referred to as "Group"), agree as follows:

DECLARATIONS

Plan is a specialized health care service plan that arranges for the provision of Covered Chiropractic Services to persons enrolled as Members on a prepaid and direct service basis through contracts with licensed Chiropractors. Group is an employer, organization or association that desires to provide Covered Chiropractic Services for its eligible Subscribers and their eligible Dependents (hereinafter referred to as "Members"). In consideration of the Group's application for the benefits provided under this Agreement (a copy of which Application has been executed by Group and submitted to Plan along with the applicable payments, and which is incorporated herein by reference) and the periodic payment of premiums by Group to Plan on behalf of the Members, Plan agrees to arrange or provide for Covered Chiropractic Services subject to all the terms and conditions of this Group Agreement.

1. DEFINITIONS:

1.01 **"Chiropractor"** means an individual who is licensed pursuant to the Chiropractic Act approved by the electors on November 7, 1922, as amended, and who is qualified to render chiropractic services.

1.02 **"COBRA"** means the Federal "Consolidated Omnibus Budget Reconciliation Act" of 1985, P.L. 99-272, as amended.

1.03 "**Combined Evidence of Coverage and Disclosure Form**" means the summary of this Group Agreement provided to the Member during Open Enrollment that sets forth the Coverage to which the Member is entitled. It includes the Schedule of Benefits, and is attached as **Exhibit A** and incorporated herein.

1.04 **"Coordination of Benefits"** means a contractual provision that applies when a Member is covered under more than one health insurance program. Such provision requires that payment of benefits be coordinated by all programs to eliminate overinsurance or duplication of benefits.

1.05 **"Co-payments"** means fees payable pursuant to this Agreement by the Member to a Participating Chiropractor at the time of the provision of Covered Chiropractic Services, which are in addition to the Plan Premiums paid by Group. No Co-payment may exceed fifty percent (50%) of the total cost of the service to the Plan..

1.06 **"Coverage"** means coverage under this Agreement pertaining to a Subscriber or Dependent.

1.07 **"Covered Chiropractic Services"** means those services within the scope of chiropractic care that are supportive or necessary to help Members achieve the physical state enjoyed before an injury or illness. In addition, services for preventive, maintenance, and wellness care for any mechanical neuromusculoskeletal condition are also covered. Services need not be pre-authorized, will not be reviewed for Medical Necessity, and include the following: examinations, manipulation, conjunctive physiotherapy, X-rays, and Emergency Services.

1.08 **"Cover Sheet"** means the Group Agreement Cover Sheet, which is incorporated into this Agreement.

1.09 **"Customer Service Department"** means the person or persons designated by Plan to whom oral and written Member complaints may be addressed. The Customer Service Department may be contacted by telephone at 1-800-298-4875, or in writing at:

Landmark Healthplan of California, Inc.
ATTN: Customer Service Department
2629 Townsgate Road, Suite 235
Westlake Village, CA 91361

1.10 **"Dependent"** means any spouse, registered domestic partner, or child (including a stepchild or legally adopted child) of a Subscriber who is enrolled hereunder, who meets all the eligibility requirements set forth in Paragraph 2.03 and for whom applicable Plan Premiums are received by Plan.

1.11 **"Eligibility Roster"** means a database provided to Plan by Group on a monthly basis that contains a list of all eligible Members for the applicable month.

1.12 **"Emergency Services"** means those services rendered for the sudden and unexpected onset of an acute illness, extreme neuromusculoskeletal pain or accidental injury to the nervous, musculoskeletal and/or skeletal body systems, that, in the reasonable judgment of the Member, requires immediate care, the delay of which could decrease the likelihood of maximum recovery, and for which the Member seeks to secure chiropractic services immediately after the onset, or as soon thereafter as practicable.

1.13 **"Enrollment"** means the execution of the Plan Enrollment Form by the Subscriber on behalf of the Subscriber and his or her Dependents and acceptance thereof by Plan, conditional upon the execution of this Agreement by Group and Plan and the timely payment of applicable Plan Premiums by Group.

1.14 **"Exclusion"** means specific conditions or circumstances set forth in the Schedule of Benefits, attached as part of **Exhibit A,** for which the Plan will not provide Coverage or remit payment for services.

1.15 "**Expanded Benefit**" means coverage for chiropractic services that are supportive or necessary to help Members achieve the physical state enjoyed before an injury or illness. In addition, services for preventive, maintenance, and wellness care for any mechanical neuromusculoskeletal condition are also covered. Services need not be pre-authorized and will not be reviewed for Medical Necessity.

1.16 **"Grievance Procedure"** means the procedure for reviewing Member complaints unrelated to the quality or appropriateness of chiropractic services.

1.17 **"Group"** means the employer, association, labor union, trust, or other entity named on the Cover Sheet that has elected Coverage for that group of Subscribers and their Dependents and is the contract holder.

1.18 **"Group Agreement"** means this Agreement between the employer group, association, labor union, trust, or other entity specified and the Plan, including, but not limited to, the Cover Sheet, referenced attachments, and any amendments hereto.

1.19 **"Late Enrollee"** means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least thirty (30) days.

1.20 **"Limitation"** means any provision other than an Exclusion that restricts Coverage under this Group Agreement.

1.21 **"Medically Necessary"** means Chiropractic Services that are:

a) necessary for the treatment or diagnosis of neuromusculoskeletal disorders;

b) established as safe and effective and furnished in accordance with generally accepted chiropractic standards to treat neuromusculoskeletal disorders in the most economically efficient manner that may be provided safely and effectively to the Member, and not furnished primarily for the convenience of the Member, the Participating Chiropractor, or other provider of service; and

c) appropriate for the symptoms, consistent with the diagnosis, and otherwise in accordance with generally accepted chiropractic practice and professionally recognized standards.

1.22 **"Medicare"** means Title XVIII of the Social Security Act (Paragraphs 1801 et seq., 2142 U.S.C. §§ 1395

et seq.), and all amendments thereto.

1.23 **"Member"** means any Subscriber or Dependent as defined in this Agreement.

1.24 **"Neuromusculoskeletal"** means conditions that display symptoms of and/or signs related to the nervous, muscular and/or skeletal body systems.

1.25 **"Non-Participating Chiropractor"** means a chiropractor who is not under contract with Plan to provide Covered Chiropractic Services to Members.

1.26 **"Open Enrollment Period"** means the period agreed upon by Plan and Group during which all eligible Group employees and their eligible Dependents may enroll in this Plan.

1.27 **"Outside Service Area"** means all geographic areas beyond the identified Service Area of Plan as approved by the Director of the California Department of Managed Health Care.

1.28 **"Participating Chiropractor"** means a Chiropractor who has contracted with Plan to provide Covered Chiropractic Services to Members at an agreed-upon compensation plus any applicable Co-payments as the total charge.

1.29 **"Plan"** means Landmark Healthplan of California, Inc., a California corporation licensed under the Knox-Keene Health Care Service Plan Act of 1975, as amended, organized to provide chiropractic health care services.

1.30 **"Plan Enrollment Packet"** means the packet of information supplied by Plan to prospective Subscribers that includes the Combined Evidence of Coverage and Disclosure Form summarizing this Agreement and contains the Plan Enrollment Form.

1.31 **"Plan Premiums"** means amounts set forth in the Cover Sheet to be paid to Plan by Group on behalf of Members in consideration of the benefits provided under this Plan.

1.32 **"Prevailing Rates"** means the rates generally prevailing in the Service Area for chiropractic and related services, as determined by Plan.

1.33 **"Quality Assurance Program"** means the procedures and standards established and administered by Plan to ensure that Covered Chiropractic Services rendered by a Participating Chiropractor comply with the professionally recognized standards of chiropractic care.

1.34 **"Schedule of Benefits"** means the schedule of Covered Chiropractic Services that are provided to Members. The Schedule of Benefits is included in the Combined Evidence of Coverage and Disclosure Form, attached as **Exhibit A** and incorporated herein.

1.35 **"Service Area"** means the geographic area designated by Plan and approved by the Director of the California Department of Managed Health Care within which Plan shall provide Covered Chiropractic Services.

1.36 **"Subscriber"** means the person who is responsible for payment to Plan or whose employment or other status, except for family dependency, is the basis for eligibility in Plan. A Subscriber must meet all the applicable eligibility requirements of this Agreement, and applicable Plan Premiums must have been received by Plan on behalf of the Subscriber.

2. ELIGIBILITY AND ENROLLMENT

2.01 Enrollment Procedure. Plan provides Covered Chiropractic Services to Members who meet the eligibility requirements stated in this Agreement, who are properly enrolled in the Plan pursuant to this Agreement and who are listed on the Eligibility Roster provided by Group. No services or benefits under this Agreement shall be available to any person not specifically enrolled.

a) **Plan Enrollment Form.** A properly completed Plan Enrollment Form must be submitted to Plan by Group for each Subscriber on behalf of the Subscriber and any Dependents.

b) **Time of Enrollment.** All Plan Enrollment Forms shall be submitted by the applicant to Group during Open Enrollment Periods, except as noted on the Cover Sheet of this Agreement.

2.02 Subscriber Eligibility. Only Subscribers meeting the eligibility requirements may be enrolled in the Plan. Loss of eligibility shall terminate Subscriber's membership in this Plan. Subscriber must meet each of the following eligibility requirements:

a) Subscriber must permanently reside within the Service Area.

b) Subscriber must meet any eligibility requirements of Group for membership in this Plan.

2.03 Dependent Eligibility. A Dependent's eligibility for Enrollment is contingent upon Subscriber's eligibility for Enrollment in this Plan, i.e., a Dependent child of an eligible Subscriber who meets the eligibility requirements set forth in Paragraph 2.02 may be enrolled as a Dependent of Subscriber.

a) Coverage for newborn children of Subscribers begins at birth. Coverage for adopted children of Subscribers begins from the date physical custody of the child is obtained by Subscriber. Plan may require Subscriber to present evidence that physical custody has been obtained, including, without limitation, adoption agency documentation. In order for Coverage to continue beyond thirty-one (31) calendar days after the date of birth or, in the case of adoption, thirty-one (31) calendar days past the date physical custody is obtained, a Plan Enrollment Form for the Dependent must be submitted to Group within thirty-one (31) calendar days of the date of birth or in the case of adoption, the date physical custody is obtained. Eligibility for an adopted child ends if the placement is interrupted before legal adoption and the child is removed from the Subscriber's custody. Newborn care is not a covered benefit at any time if the Mother of the newborn is a Dependent child of the Subscriber.

b) Dependent children are eligible up to the age of twenty-six (26) years.

c) Dependent unmarried children over the age of twenty-six (26) years who are incapable of self-sustaining employment by reason of mental retardation or physical handicap and who are dependent upon Subscriber for support and maintenance are eligible for continuing membership in this Plan, provided proof of such incapacity and dependency is provided to Plan within thirty (30) calendar days of the child's attainment of the limiting age specified in section b) above or on the Cover Sheet. Plan may periodically require proof of Dependent's incapacity and dependency, but not more frequently than annually. Such proof shall consist of a written statement by a licensed psychologist, psychiatrist, or other physician to the effect that such Dependent is incapable of self-sustaining employment by reason of mental retardation or physical handicap.

d) An application to enroll Dependents who become Dependents as a result of marriage to a Subscriber must be made within thirty (30) calendar days of the date of marriage. An application to enroll Dependents who become Dependents as a result of registration of domestic partnership with a Subscriber must be made within thirty (30) calendar days of the date a valid Declaration of Domestic Partnership is filed with the California Secretary of State, or an equivalent document is issued by a local agency of California, another state, or a local agency of another state under which the partnership was created.

2.04 Commencement of Coverage. Coverage shall commence on the date Plan accepts Subscriber's Plan Enrollment Form and verifies the s eligibility of Subscriber and his/her Dependents through the Eligibility Roster from Group. Plan's acceptance of Subscriber's Plan Enrollment Form is contingent upon receipt of the applicable Plan premium payment.

2.05 Member's Eligibility Not Affected by Health Status. A Member otherwise eligible and duly enrolled hereunder shall not be terminated from this Plan due to the Member's health status or need for chiropractic services.

3. GROUP OBLIGATIONS, NOTICES, AND PLAN PREMIUMS

3.01 Non-Discrimination. Group shall allow Plan to market its chiropractic benefit to Group's employees and shall offer Group's employees an opportunity to enroll in this Plan under no less favorable terms or conditions than Group offers enrollment in other Health Care Service Plans or Employee Health Benefit Plans. Group shall provide a payroll deduction plan comparable to that made available to any alternative health benefits plan or insurance coverage

offered by Group.

3.02 Notices to Plan. Group shall forward all completed or amended Plan Enrollment Forms to Plan for processing within thirty (30) calendar days after Group receives the Forms from Subscribers . Group acknowledges that any Plan Enrollment Forms not forwarded to Plan within thirty (30) calendar days may be rejected by Plan. Group shall forward all notices of termination to Plan within thirty (30) calendar days after Member loses eligibility or elects to terminate membership under this Agreement. Group shall be responsible for any Member Plan Premiums through the last day of the month in which notice of termination is received by Plan. Group shall also submit to Plan on or before the first (1st) Friday of each month a listing of additions and deletions to the Eligibility Roster..

3.03 Notices to Member.

a. Termination. In the event of termination of this Agreement pursuant to Paragraph 9.02 herein, Group shall promptly notify all Members enrolled through Group of the termination of their membership in this Plan. Group shall provide such notice by delivering to each Member a true, legible copy of the Notice of Cancellation sent from Plan to Group at the Member's last known address. Group shall promptly provide Plan with proof of that mailing and the date thereof. The notice of cancellation shall include information regarding the conversion rights of persons covered under the Plan contract upon termination of such contract.

b. Other Notices. In the event an increase in Co-payments or premiums or a reduction in the benefits provided under this Agreement occurs for any reason, Group shall provide its notice to its Members of such Co-payment or premium increase or benefit reduction within thirty (30) calendar days of Group's receipt of such notice from Plan. In the event of any regulatory changes, Group shall provide notice to its Members, as applicable, within thirty (30) calendar days of receipt of such regulatory changes that may affect how Group operates. Group acknowledges that the Plan may send notices to Group of the impact that state-wide emergencies may have on Plan operations. Group agrees to promptly notify its Members of such operational changes. Plan shall have no responsibility to Members in the event Group fails to provide the notices required by this Paragraph 3.03.

3.04 Rates. Plan shall provide benefits for each validly enrolled Member for which Plan Premiums are received by Plan. The rates for Plan membership are set forth in the Periodic Charges section of the Cover Sheet. Subject to Plan minimums, Group shall determine the applicability of any employee contribution toward Plan Premiums for membership in this Plan.

3.05 Due Date. Plan Premiums are due on a monthly basis and shall be paid directly by Group to Plan on or before the first (1st) business day of the month of Coverage for which Covered Chiropractic Services are provided.

3.06 Modification of Rates and Benefits. The Plan Premium rates set forth in the Periodic Charges section of the Cover Sheet, and benefits set forth in **Exhibit A** and in the Plan Enrollment Packet may be modified by Plan in its sole discretion upon thirty (30) calendar days' written notice mailed postage prepaid to Group. Any such modification shall take effect commencing the first full month following the expiration of the thirty- (30) calendar-day notice period. Notwithstanding the above, if the State of California or any other taxing authority imposes upon Plan a tax or license fee that is levied upon or measured by the monthly amount of Plan Premiums or by Plan's gross receipts or any portions of either, then upon thirty (30) calendar days' written notice to Group, Group shall remit to Plan with the appropriate payment, a pro rata amount sufficient to cover all such taxes and license fees rounded to the nearest cent.

The terms and benefits set forth in this Plan may be amended or modified without the consent of a Member if such amendments or modifications are required by law. Written notice of such amendments or modifications must be given to Member by Plan at least thirty (30) calendar days prior to the effective date of such amendment or modification.

3.07 Payments Made in Error. Should Plan pay any fees for services that were not authorized by Plan under this Agreement or that were not provided as Emergency Services, Member shall reimburse Plan for such payment. Failure to reimburse Plan or reach reasonable accommodations with Plan concerning repayment within fifteen (15) calendar days after Plan's request for reimbursement shall be grounds for termination of Member's membership pursuant to Subparagraph 10.01(a) of this Agreement. The exercise of Plan's right to terminate this Agreement shall not affect Plan's right to reimbursement from Member.

3.08 Effect of Payment. Except as otherwise provided in this Agreement, Covered Chiropractic Services shall only be provided to Members during the period in which Member's Plan Premiums are paid. Member will be billed

for Coverage for the first month of Coverage for newborn or adopted children eligible as provided in Subparagraph 2.03(a).

3.09 Notice of Practitioner Termination. If Plan determines a Group may be adversely or materially affected by the termination of, or material breach by, a Participating Chiropractor, or a Participating Chiropractor is unable to perform under this Agreement, Plan shall provide written notice to Group within thirty (30) calendar days. In the event any of Plan's Agreements with its Participating Chiropractors terminates, Plan shall remain liable for payment of Covered Chiropractic Services rendered to Members under such Chiropractor's care at the time of termination, until such services are completed or until Plan makes reasonable and medically appropriate provisions for the assumption of Covered Chiropractic Services by another Participating Chiropractor.

4. BENEFITS AND CONDITIONS FOR COVERAGE

4.01 Conditions for Coverage. Unless stated otherwise, the benefits and services described herein are covered benefits only if and to the extent they are provided, prescribed, referred to or approved by, and obtained from Participating Chiropractors. For other than Emergency Services , Plan will not pay charges incurred by a Member for services by Non-Participating Chiropractors unless authorized by the Plan. Whenever the determination of a Member's entitlement to a benefit is based on the need for Emergency Services, Plan shall have final authority governing such determination. Plan shall govern all other benefits determinations provided that such determinations are consistent with professional standards of practice and all terms and conditions of Coverage set forth in the Combined Evidence of Coverage and Disclosure Form.

4.02 Benefits. Subject to the terms, conditions, exclusions, and limitations set forth herein, upon receipt by Plan of all applicable monthly Plan Premium payments, all eligible Members shall be entitled to Covered Chiropractic Services described in the Combined Evidence of Coverage and Disclosure Form, including the Schedule of Benefits, both of which are attached hereto as **Exhibit A** and incorporated herein by this reference.

4.03 Member Obligations. Subscriber shall submit to Plan a complete Plan Enrollment Form and/or other forms or statements as Plan may reasonably request. Subscriber agrees to promptly notify Plan or Group of any changes in the information submitted in the Plan Enrollment Packet. Subscriber warrants to the best of his or her knowledge that all information contained in such application, forms and statements is true and complete, and agrees that all rights to benefits under this Agreement are subject to the condition that all such information is true and complete.

The Member or Chiropractor may decide to refuse the relationship at any time when allowed by chiropractic ethics and contract. If a Member wishes to change Participating Chiropractors, he or she can consult the Plan Practitioner Directory available through his/her Group, Plan Administrator, or Plan's Customer Service Department by telephone at 1-800-298-4875, or in writing at:

Landmark Healthplan of California, Inc.
ATTN: Customer Service Department
2629 Townsgate Road, Suite 235
Westlake Village, CA 91361

4.04 Claims. The Member is not responsible for submitting claims to Plan for Covered Chiropractic Services, except for claims for Emergency Services rendered by a Non-Participating Chiropractor. The Participating Chiropractor is responsible for submitting all other claims to Plan. Additionally, Members should be aware that Participating Chiropractors cannot balance-bill Members for Covered Chiropractic Services.

4.05 Co-payments. When applicable, Co-payments must be paid by Member at the time Covered Chiropractic Services are rendered. Failure to pay a Co-payment may result in termination of Member's Coverage under this Plan. Applicable Co-payments for services rendered to Member are set forth in the Schedule of Benefits, attached hereto as part of **Exhibit A**.

4.06 Payment for Non-Covered Services. Plan or the Participating Chiropractor may collect directly from the Member for non-covered services or for services rendered due to fraud or deception by Member.

4.07 Emergency Services. Plan shall only cover Emergency Services as defined in Section 1.12 of this Agreement. Emergency Services may be provided without pre-authorization from Plan. If Plan decides that the professional services rendered to Member by a Non-Participating Chiropractor fail to meet Emergency Services guidelines,

Plan shall have no responsibility to cover such services. Plan may elect to transfer Member to a Participating Chiropractor if such transfer would not create an unreasonable risk to Member's health.

4.08 Member's Liability to Non-Participating Chiropractors. In the event Member obtains services from a Non-Participating Chiropractor and Plan fails to pay such practitioner, the Member may be liable to the Non-Participating Chiropractor for the costs of services rendered unless such visit had the prior approval of the Plan or services were rendered as Emergency Services.

5. LIMITATION ON BENEFITS

5.01 Acts Beyond Plan's Control. In the event of circumstances not reasonably within Plan's control, such as any major disaster, epidemic, earthquakes, complete or partial destruction of Plan, war, riot, or civil insurrection that results in the unavailability of Plan's personnel or the Participating Chiropractors, Plan and Participating Chiropractors shall provide or attempt to arrange for Covered Chiropractic Services insofar as practical, according to their best judgment and within the personnel limitation of Plan and Participating Chiropractors. Neither Plan nor any Participating Chiropractor shall have any liability or obligation for the delay or failure to provide or arrange for Covered Chiropractic Services if such delay or failure is the result of any of the circumstances described above.

5.02 Inability to Provide Chiropractic Services. In the event that Plan is unable, for any reason beyond its control, to provide Covered Chiropractic Services, then Plan shall be liable for reimbursement of the expenses necessarily incurred by any Member in procuring the services through Non-Participating Chiropractors, to the extent required by the Director of the California Department of Managed Health Care.

5.03 Secondary Coverage. If any benefits to which a Member is entitled under this Agreement are also covered under another Health Benefits Plan or group insurance policy, the payable benefits hereunder shall be reduced to the extent that benefits are available to Member under such other group plan or policy, whether or not a claim is made for the same.

6. PARTIES AFFECTED BY THIS AGREEMENT: RELATIONSHIPS BETWEEN PARTIES

6.01 Member Non-Liability. In the event Plan fails to pay a Participating Chiropractor for a Covered Chiropractic Service as set forth in **Exhibit A**, a Member shall not be liable to the Participating Chiropractor for any sums owed by Plan.

6.02 Participating Chiropractors Are Independent Contractors. Plan and its Participating Chiropractors are independent contractors. None of the Participating Chiropractors or their employees or agents are employees or agents of Plan, and none of Plan's employees or agents are employees or agents of any Participating Chiropractor.

6.03 Relationship of Parties to this Agreement. Group is not the agent or representative of Plan. Accordingly, Group shall not be liable for any acts or omissions of Plan, its agents or employees, or independent contractors, or any other person or organization with which Plan has made, or hereafter shall make, arrangements for the performance of services under this Plan. Member is not the agent or representative of Plan and shall not be liable for any acts or omissions of Plan, its agents or employees.

7. GRIEVANCE PROCEDURE AND DISPUTE RESOLUTION

7.01 Member Grievance Resolution System. A Member Grievance Resolution System has been established by Plan for the receipt, processing, review and resolution of Member complaints, grievances and appeals. The Member Grievance Resolution Procedure is described in the Combined Evidence of Coverage and Disclosure form, attached as **Exhibit A** and incorporated herein. Member is bound to comply with the Member Grievance Resolution System procedures. Subject to the Member right of appeal therein, Member shall be bound by any decisions reached under the Member Grievance Resolution System. The Member Grievance Resolution System shall not be amended except upon thirty (30) calendar days' advance written notification to the Member. All complaints, grievances and appeals will be appropriately logged, retained in a confidential manner, and routinely monitored by authorized Plan staff.

7.02 Member Claims Against Participating Chiropractors. Member acknowledges that Plan's Participating Chiropractors are independent contractors and that Plan does not assume responsibility for the acts of its contracting Participating Chiropractors as such. Member claims for damages as a result of an injury caused or alleged to have been

caused by an act or failure to act by a Participating Chiropractor are not governed by this Agreement. Upon mutual agreement between the Member and Participating Chiropractor, Plan agrees to make available the Member Grievance Resolution Procedure for resolution of disputes not governed by this Agreement.

In such instance, the decisions of Plan's Director of Chiropractic Services, Plan's President and the Board of Directors shall not be binding upon the parties except upon agreement between the parties. Such grievance shall not be subject to binding arbitration, except upon agreement between the parties. Member may also seek appropriate legal action against such Participating Chiropractor.

7.03 Disputes Between Plan and Group. All disputes between Plan and Group shall be resolved by binding arbitration before the American Arbitration Association. Upon submission of a dispute to the American Arbitration Association, Plan and Group agree to be bound by the Commercial Rules of Procedure and decision of the American Arbitration Association. The California Code of Civil Procedures Paragraph 1283.05, permitting the use of depositions and other discovery methods, shall be incorporated into and made applicable to this Agreement.

8. TERM OF AGREEMENT: AUTOMATIC RENEWAL.

8.01 Term: Automatic Renewal. The term of this Agreement shall be one (1) year commencing on the date of execution, unless otherwise indicated on the Cover Sheet. This Agreement shall automatically renew for successive one-(1) year terms on each anniversary of the commencement date of this Agreement, or as indicated on the Cover Sheet, unless terminated as provided herein.

9. TERMINATION OF GROUP COVERAGE

9.01 Termination by Group. Group may terminate this Agreement by providing Plan with thirty (30) calendar days' prior written notice. Until this Agreement terminates, Group shall continue to be liable for Plan Premiums for all of its enrolled Members.

9.02 Termination by Plan

a) Nonpayment of Plan Premiums. In the event Group or its designee fails to remit Plan Premiums to Plan by the date required, Plan may terminate this Agreement. A written notice of such termination shall be provided to Group and will specify that payment of all unpaid Plan Premiums must be received by Plan within fifteen (15) calendar days of the date of receipt of the notice and that if payment is not received within the fifteen- (15) calendar-day period, no further notice shall be given and Coverage for all Members enrolled in this Plan shall terminate effective at the end of the month for which premiums were actually received by Plan. Reinstatement of this Agreement may occur only through execution of a new Group Agreement and submission of a new Plan Enrollment Form for each Subscriber in accordance with current eligibility and Enrollment requirements. Group shall remain liable for any unpaid Plan Premiums due prior to the effective date of Group termination.

b) Breach of Material Term. Plan may terminate this Agreement if Group breaches any material term, covenant or condition of this Agreement and fails to cure such breach within thirty (30) calendar days of receiving written notice of such breach from Plan. Plan's written notice of breach shall specify Group's action causing such breach. Should Group fail to cure its breach to Plan's satisfaction within thirty (30) calendar days of receiving Plan's notice of the breach, Plan may terminate this Agreement at that time.

c) Providing Misleading or Fraudulent Information. Plan may terminate this Agreement upon thirty (30) calendar days' written notice to Group in the event Group provides misleading or fraudulent information to Plan. Provision of misleading or fraudulent information includes information in any Group questionnaires or Plan Enrollment Forms.

d) Changing the Nature of Group Business. If Group materially alters the nature of its business, Plan may terminate Group upon thirty (30) calendar days' written notice. "Materially Alters" means a significant change in the business conduct by Group after commencement of this Agreement.

e) Without Cause. Plan may terminate this Agreement on ninety (90) days written notice to Group as permitted under California law.

9.03 Proration of Plan Premiums. Any portion of the Plan Premium received by Plan or payable to Plan corresponding to any unexpired full month for which payment is received or is payable, shall be prorated and returned by the owing party together with any other amounts due, less any offsets.

10. TERMINATION OF MEMBERSHIP

10.01 Termination. The rights of Members under this Agreement shall terminate upon occurrence of any of the following:

a) Nonpayment of Plan Premiums/Co-payments or Fees for Non-Covered Services. Upon fifteen (15) calendar days' written notice, Plan may disenroll any Member from Plan if applicable Plan premiums, prepaid payments or Co-payments are not paid. Such notice shall state that the receipt by Plan of the applicable Plan Premium or Co-payments within fifteen (15) calendar days shall cause Plan to revoke the notice. The notice of termination shall be revoked and membership in this Plan shall continue without interruption upon the receipt of the applicable Plan premium.

The failure of any Member to reimburse Plan for payments made in error by Plan within fifteen (15) days after the mailing of written notice of termination for nonpayment by Plan, or to reach reasonable accommodations with Plan regarding repayment shall result in the termination of Member's Enrollment in this Plan. To reinstate Coverage, Member must submit a new Plan Enrollment Form and comply with all applicable eligibility requirements.

b) Termination of Agreement by Group. In the event Group voluntarily terminates this Agreement pursuant to Paragraph 9.01 of this Agreement, Member's membership in this Plan shall terminate at the end of the month for which the last Plan Premium is received by Plan from Group on Member's behalf.

c) Member Permanently Moves Out of Service Area. Member's Enrollment in this Plan shall terminate in the event that either: (i) Member is absent from the Service Area for ninety (90) consecutive days, or (ii) Member moves from the Service Area without the intent to return. Member shall notify Plan of his or her permanent move from the Service Area within thirty (30) calendar days. Termination shall be effective the last day of the month in which Member receives notice of termination from Plan. Notice sent to Member's last known address shall be deemed effective notice for purposes hereunder.

d) Member's Loss of Eligibility. Member's Enrollment in this Plan shall terminate on the last day of the month in which Member's eligibility ceases. Continuation of benefits is available to Member as set forth in Paragraph 11.

i) Dissolution of Subscriber's Marriage or Registered Domestic Partnership, Dependent Eligibility. A Dependent spouse's membership as a Dependent of Subscriber shall terminate on the first day of the month following the month in which a final judgment or decree of dissolution of marriage is entered by the court. A Dependent registered domestic partner's membership as a Dependent of Subscriber shall terminate on the first day of the month following the month in which a final judgment or decree of dissolution of the partnership is entered by the court.

ii) A Dependent child's membership in this Plan shall continue notwithstanding dissolution of Subscriber's marriage for as long as Dependent's child remains eligible pursuant to Paragraph 2.03 of this Agreement and Plan receives Plan Premiums.

e) Member Fraud or Deception. A Member's membership in this Plan shall immediately terminate if such Member knowingly provides Plan with fraudulent information upon which Plan relies and that materially affects Member's eligibility for Enrollment or benefits under this Plan. In the event of Member fraud or deception, Plan shall mail a written notice of termination to Member.

f) Member Assists Another to Improperly Obtain Benefits. A Member's Enrollment in this Plan shall terminate immediately if such Member assists a person who is not a Member to obtain benefits under this Plan. In such instance, Plan shall mail a written notice of termination to the Member.

g) Disenrollment for Cause. Disenrollment of a Member may occur if a Member's conduct is unduly disruptive or injurious to the Participating Chiropractor/patient relationship, so that Member's treatment suffers as a result. Disenrollment for cause shall be effective on the first (1st) day of the calendar month following the month in which notice of disenrollment is given to the Member.

h) Voluntary Disenrollment by Member. A Member may voluntarily disenroll by submitting a written request for disenrollment to Group, as determined by Group. Group shall forward all disenrollment requests to Plan for processing. Group shall be responsible for any Member premiums through the last day of the month in which notice of disenrollment is received by Plan.

10.02 Written Notice of Termination. When a written notice of termination is sent to the Member pursuant to this Agreement, it shall be dated and state:

a) The cause of termination with specific reference to the Paragraph of this Agreement giving rise to the right of termination;

b) The cause for termination was not the Member's health status or requirements for health care services;

c) The effective date of termination; and

d) Notwithstanding the Member Grievance Resolution Procedure set forth in Paragraph 7.01 of this Agreement, Member may request a review before the Director of the Department of Managed Health Care for the State of California, if Member believes that his or her Plan membership was terminated as a result of Member's health status or requirements for health care services.

10.03 Non-Liability After Termination. Upon termination of this Agreement for any reason, Plan shall have no further liability to provide benefits to any Member, including, without limitation, those Members undergoing treatment for an ongoing condition. Member's right to receive benefits hereunder shall cease upon the effective date of termination.

11. CONTINUATION OF BENEFITS

11.01 Continuation of Benefits Under COBRA. Plan shall make available continuation Coverage under this Plan to Members entitled to continuation; provided that Group notifies Plan that such Coverage is desired and the Coverage is required under federal or state law, including "COBRA". The continuation Coverage under this Paragraph shall be equal to, and subject to the same limitations as, the benefits provided to other Members enrolled by Group in this Plan. Group agrees to forward to Plan in a timely manner copies of any notice regarding continuation of group Coverage provided to eligible employees and/or their Dependents.

11.02 "Cal-COBRA." The California CONTINUATION BENEFITS REPLACEMENT ACT, or "Cal-COBRA," requires that a Group with fewer than twenty (20) eligible Employees on at least 50% of its working days during the preceding calendar year, or, if the Group was not in business during any part of the preceding calendar year, employed 2 to 19 eligible employees on at least 50% of its working days during the preceding calendar quarter, offer eligible Employees and their families the opportunity for a temporary extension of Coverage (called "continuation of Coverage") in certain instances where Coverage under the plan would otherwise end. Therefore, if Group meets the above conditions, then the Parties agree to implement the provisions of **Exhibit B**, a copy of which is attached and made a part of this Agreement.

12. CONVERSION.

12.01 Subscriber Conversion Privilege. In the event the Subscriber ceases Coverage under this Agreement solely as a result of leaving Group, then Subscriber may within thirty (30) calendar days following termination of Coverage, convert his/her membership to non-Group membership for himself/herself and his or her enrolled Dependents regardless of health status or requirements for Covered Chiropractic Services.

12.02 Dependent Spouse or Registered Domestic Partner Conversion Privilege. In the event the Dependent spouse or registered domestic partner of the Subscriber ceases
to be covered under this Agreement as a result of the termination of the marriage or domestic partnership or Subscriber's death, Dependent spouse or registered domestic partner shall have the privilege of converting to a non-Group membership agreement if application for such Coverage is made within thirty (30) calendar days of termination of the marriage or domestic partnership or the Subscriber's death, whichever is applicable.

12.03 Dependent Child Conversion Privilege. In the event Subscriber's Dependent child ceases to be covered under this Agreement solely due to child's attainment of the limiting age for eligible Dependent children as specified in this Agreement, such child shall have the privilege of converting to a non-Group membership agreement under the same conditions as would apply to the Subscriber were he or she leaving the Group, if such application is made within thirty (30) calendar days of the Dependent child's attainment of the limiting age.

12.04 Terms of Conversion. Member shall convert his or her membership in accordance with such rules and regulations governing conversions under a non-Group membership agreement, as Plan may have in effect prior to the time of the application for conversion.

13. THIRD-PARTY LIABILITY

13.01 Third-Party Liability. In the case of injuries caused by a third party's act or omission and any incidental complications, Plan shall furnish the benefits of this Agreement to Member. Immediately upon obtaining a monetary recovery, Member agrees to reimburse Plan, or its nominee, for the cost of such services and benefits rendered on account of such injury. Member shall hold any such sum in trust for Plan, but said sum shall not exceed the costs incurred in perfecting the lien and the lesser of (1) (a) one-half of the total judgment or settlement, if the Member did not engage an attorney or (b) one-third of the total judgment or settlement, if the Member engaged an attorney; or (2) the amount actually paid by Plan to the Provider. Plan does not delegate to providers Plan's lien rights.

a) Member agrees that Plan's reimbursement under this Paragraph 13.01 is the first-priority claim against any third party. Thus, Plan shall be reimbursed from any recovery from a third party before payment of any other existing claims are made, including any claim by the Member for general damages. Plan may collect from the proceeds of any settlement of judgment recovered by Member or his or her legal representative regardless of whether the Member has been fully compensated.

b) Member agrees to cooperate in protecting Plan's interests under this provision. Member shall execute and deliver to Plan or its nominee any and all liens, assignments or other documents that may be necessary or proper to protect Plan's rights, or its nominee, including, but not limited to the granting of a lien right in any claim or action made or filed on Member's behalf and the signing of documents evidencing the same.

c) Member shall not settle any claim or release any person from liability without Plan's prior written consent if such release or settlement will extinguish or bar Plan's rights of reimbursement.

d) In the event Plan employs an attorney for the purpose of enforcing any part of this section against a Member based upon Member's failure to cooperate with Plan, the prevailing party in any legal action or proceeding shall be entitled to reasonable attorney's fees.

e) In lieu of payment as indicated above, Plan, at its option, may choose to be subrogated to the Member's rights to the extent of the benefits received under this Plan. Plan's subrogation right shall include the right to bring suit in the Member's name. Member shall fully cooperate with Plan when Plan exercises its subrogation right and Member shall not take any action or refuse to take any action that would prejudice the rights of Plan under this Paragraph 13.01.

14. NON-DUPLICATION OF BENEFITS/COORDINATION OF BENEFITS

14.01 Workers' Compensation. Plan shall not furnish benefits under this Agreement to any Member that duplicate the benefits to which any Member is entitled under any applicable Workers' Compensation law. Member is responsible for taking whatever action is necessary to obtain payment under Workers' Compensation laws where payment under that system can be reasonably expected. Member's failure to take proper and timely action under such circumstances will preclude Plan from responsibility for furnishing such benefits to such Member to the extent that payment of such benefits could have been reasonably expected under Workers' Compensation laws had action been taken.

a) In the event Plan, for any reason, provides benefits that duplicate the benefits to which Member is entitled under Workers' Compensation law, Member agrees to reimburse Plan or its nominee for the cost of all such services and benefits provided by Plan. Reimbursement shall be made at Prevailing Rates immediately upon obtaining a monetary recovery, whether due to settlement or judgment. Member shall hold any sum collected as the result of a Workers' Compensation action in trust for Plan. Such sum shall not exceed the lesser of the amount of the recovery

obtained by the Member or the reasonable value of all services and benefits furnished to Member or on Member's behalf by Plan on account of each incident.

b) Member agrees to cooperate in protecting Plan's interests under this provision. Member must execute and deliver to Plan or its nominee any and all liens, assignments, or other documents that may be necessary or proper to protect Plan's rights, or its nominee, including, but not limited to, the granting of a lien right in any claim or action made or filed on Member's behalf and the signing of any documents evidencing such lien. Member's failure to cooperate reasonably with Plan as provided herein may result in such Member's termination from this Plan.

14.02 Medicare Benefits. Upon Plan's request, Member shall furnish information to Plan concerning Member's eligibility for Medicare (Part A and/or Part B Coverage). If a Member is eligible to enroll in Medicare, Plan shall furnish benefits under this Agreement on Member's behalf in accordance with federal law and regulation, regardless of whether or not Member has actually enrolled in Medicare. Should the cost of Chiropractic Services exceed the coverage of any applicable Medicare coverage, Plan benefits shall be provided over and above such coverage.

a) If Plan's payment duplicates the Medicare benefits available to Member, Plan may seek reimbursement from the insurance carrier, practitioner or Member up to the amount Plan has paid for benefits that duplicate Medicare coverage.

14.03 CHAMPUS Benefits. Members shall furnish Plan with information concerning any applicable benefits from the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) to which Members may be entitled, upon request by Plan. Plan shall not furnish benefits under this Agreement that duplicate CHAMPUS benefits to which Member is entitled.

a) If Plan's payment duplicates CHAMPUS benefits available to Member, Plan may seek reimbursement up to the amount Plan has paid for benefits that duplicate such CHAMPUS coverage.

14.04 Automobile, Accident or Liability Coverage. Plan shall not furnish benefits under this Agreement that duplicate the benefits to which a Member is entitled under any other automobile, accident or liability coverage. Member is responsible for taking the necessary action to obtain benefits of such coverage and shall notify Plan of such coverage. If payment or services are provided by Plan in duplication of the benefits available to Member under other automobile, accident or liability coverage, Plan may seek reimbursement to the extent of the reasonable value of the benefits provided by Plan from the insurance carrier, practitioner and Member.

a) Should the cost of Covered Chiropractic Services exceed any other applicable coverage pursuant to this Paragraph 14.04, Plan benefits shall be provided over and above such coverage.

14.05 Coordination of Benefits. All benefits provided under this Plan are subject to Coordination of Benefits. Coordination of Benefit rules shall be applied by Plan in accordance with the Coordination of Benefits regulations and interpretive instructions promulgated by the California Department of Managed Health Care, as amended from time to time, which are incorporated into this Agreement.

15. MISCELLANEOUS PROVISIONS

15.01 Governing Law. This Agreement is subject to the laws of the State of California, specifically, the Knox-Keene Health Care Service Plan Act of 1975, as amended, and the regulations promulgated thereunder by the California Department of Managed Health Care. Any provisions required to be in this Agreement by any of the above shall bind Plan, Group, Participating Chiropractors and Member whether or not expressly provided in this Agreement.

15.02 Use of Name in Promotional/Marketing Materials. Plan reserves the right to control all use of its name, symbols, trademarks, or service marks currently existing or later established. However, either party may use the other party's name, symbols, trademarks or service marks with the prior written or verbal approval of the other party in advertising or other promotional materials or information relating to this Agreement.

15.03 Assignment. This Agreement and the rights, interests, and benefits hereunder shall not be assigned, transferred, pledged, or hypothecated in any way by either party and shall not be subject to execution, attachment or similar process, nor shall the duties imposed herein be subcontracted or delegated without the approval of the other party. Notwithstanding the above, if Plan assigns, sells, or otherwise transfers substantially all of its assets and business to another corporation, firm, or person, with or without recourse, this Agreement will continue in full force and effect as if

such corporation, firm, or person were a party to this Agreement, provided such corporation, firm, or person continues to provide Covered Chiropractic Services.

15.04 Validity. The unenforceability or invalidity of any paragraph of this Agreement shall not affect the enforceability and validity of the balance of this Agreement.

15.05 Confidentiality. Plan agrees to maintain and preserve the confidentiality of Member's medical records in accordance with state and federal laws. However, a Member authorizes the release of information and access to Member's medical records to Plan, its agents and employees, Member's Participating Chiropractor, and appropriate governmental agencies for purposes of utilization review, quality assurance, processing of any claim, financial audit, Coordination of Benefits, or for any other purpose reasonably related to the provision of benefits under this Agreement. When required by law, Plan shall obtain Member's specific written authorization for the release of Member's medical records. Plan shall not release any information to Group that would directly or indirectly indicate to Group that a Member is receiving or has received services under this Agreement, unless authorized to do so by the Member.

15.06 Amendments. Except as otherwise provided herein, this Agreement may be modified or amended upon the mutual written consent of the parties.

15.07 Attachments. Attachments referenced throughout this Agreement including the Cover Sheet are incorporated herein and made an integral part of this Agreement.

15.08 Waiver of Default. The waiver by Plan of any one or more defaults by Group or Member shall not be construed as a waiver of any other defaults, or defaults that may occur in the future, under the same or different terms, conditions or covenants contained in this Agreement.

15.09 Notice. Any notice required to be given to Group or Plan hereunder shall be in writing and sent by registered or certified mail, return receipt requested, to either Group or Plan at the addresses listed below, or at such other addresses as either Group or Plan may hereafter designate to the other:

To Plan: Landmark Healthplan of California, Inc.
ATTN: Chief Executive Officer
2629 Townsgate Road, Suite 235
Westlake Village, CA 91361

To Group: City of Lodi
ATTN: Adele Post
221 West Pine P.O. Box 3006
Lodi, CA 95241-1910

All notices shall be deemed given on the date of delivery if delivered personally or three (3) business days after such notice is deposited in the United States mail, addressed and sent as provided above.

16. EXECUTION

16.01 Execution of Agreement. Execution of this Agreement by the parties indicates their acceptance of the terms, conditions and provisions stated herein. Member accepts the terms, conditions and provisions of this Agreement upon completion and execution of the Plan Enrollment Form.

17. ARBITRATION.

17.01 Disputes Between Group and Landmark. All disputes between Group and Landmark shall be resolved by binding arbitration before JAMS, a non-judicial arbitration and mediation service. If the amount at issue is less than $200,000, then the arbitrator will have no jurisdiction to award more than $200,000. The JAMS Comprehensive Arbitration Rules and Procedures ("Rules") in effect at the time a demand for arbitration is made will be applied to the arbitration. The parties will seek to mutually agree on the appointment of an arbitrator; however, if an agreement cannot be reached within thirty (30) days following the date demanding arbitration, the parties will use the arbitrator appointment

procedures in the Rules. Arbitration hearings will be held at the neutral administrator's offices in Sacramento County, California or at another location agreed upon in writing by the parties. Civil discovery may be taken in such arbitration as provided by California law and civil procedure. The arbitrator(s) selected will have the power to control the timing, scope, and manner of the taking of discovery and will have the same powers to enforce the parties' respective duties concerning discovery as would a Superior Court of California. This includes, but is not limited to, the imposition of sanctions. The arbitrator(s) will have the power to grant all remedies provided by California law. The arbitrator(s) will prepare in writing an award that includes the legal and factual reasons for the decision. The parties will divide equally the fees and expenses of the arbitrator(s) and the neutral administrator. The arbitrator(s) will not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected pursuant to California law. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, will also apply to the arbitration.

17.02 Disputes Between Member and Landmark.

17.02.01 Member Appeals and Grievances. The Landmark Combined Evidence of Coverage and Disclosure Form attached hereto as **Exhibit A** includes a complete description of the Landmark appeals and grievance procedures and dispute resolution processes for Members.

17.02.02 Binding Arbitration. Any and all disputes of any kind whatsoever, including claims relating to the delivery of services under the Plan and claims of medical malpractice (that is as to whether any medical services rendered under the health plan were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered), except for claims subject to ERISA, between Member (including any heirs, successors, or assigns of Member) and Landmark shall be submitted to binding arbitration. Any such dispute will not be resolved by a lawsuit or resort to court process, except as the Federal Arbitration Act provides for judicial review of arbitration proceedings. Member and Landmark are giving up their constitutional rights to have any such dispute decided in a court of law before a jury, and are instead accepting the use of binding arbitration by a single arbitrator in accordance with the Comprehensive Rules of JAMS, and administration of the arbitration shall be performed by JAMS or such other arbitration service as the parties may agree to in writing. The parties will endeavor to mutually agree to the appointment of the arbitrator, but if such agreement cannot be reached within thirty (30) days following the date demand for arbitration is made, the arbitrator appointment procedures in the Comprehensive Rules will be utilized.

Arbitration hearings shall be held in Sacramento County, California or at such other location as the parties may agree to in writing. Civil discovery may be taken in such arbitration as provided by California law and the Code of Civil Procedure. The arbitrator selected shall have the power to control the timing, scope, and manner of the taking of discovery and shall further have the same powers to enforce the parties' respective duties concerning discovery as would a Superior Court of California including, but not limited to, the imposition of sanctions. The arbitrator shall have the power to grant all remedies provided by federal and California law. The parties shall divide equally the expenses of JAMS and the arbitrator. In cases of extreme hardship, Landmark may assume all or part of the Member's share of the fees and expenses of JAMS and the arbitrator, provided the Member submits a hardship application to JAMS. The approval or denial of the hardship application will be determined solely by JAMS.

The arbitrator shall prepare in writing an award that includes the legal and factual reasons for the decision. The requirement of binding arbitration shall not preclude a party from seeking a temporary restraining order or preliminary injunction or other provisional remedies from a court with jurisdiction; however, any and all other claims or causes of action including, but not limited to, those seeking damages, shall be subject to binding arbitration as provided herein. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, shall also apply to the arbitration.

17.03 Mandatory Arbitration. Group, Member, and Landmark agree and understand that any and all disputes, including claims relating to the delivery of services under the Plan and claims of medical malpractice (that is as to whether any medical services rendered under the health plan were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered), except for claims subject to ERISA, shall be determined by submission to binding arbitration in accordance with the terms of this Agreement. Any such dispute will not be resolved by a lawsuit or resort to court process, except as the Federal Arbitration Act provides for judicial review of arbitration proceedings. All parties to this Agreement are giving up the constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of binding arbitration.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

LANDMARK HEALTHPLAN
OF CALIFORNIA, INC
2629 Townsgate Road, Suite 235
Westlake Village, CA 91361
(800) 298-4875
Tax Identification Number: 68-0352158

By

George W. Vieth Jr.

Chief Executive Officer

Date: May 28, 2019

City of Lodi

221 West Pine P.O. Box 3006
Lodi, CA 95241-1910

By: _____

Print Name: Stephen Schwabauer

Title: City Manager

Date: _____

Approved as to Form:

JANICE D. MAGDICH
City Attorney

AMENDMENT **to the GROUP AGREEMENT**
between
City of Lodi
and
LANDMARK HEALTHPLAN OF CALIFORNIA, INC.

This Amendment dated December 17, 2019 is entered into by and between City of Lodi and Landmark Healthplan of California, Inc. ("Plan"), collectively referred to herein as "Parties", in order to modify the Group Agreement ("Agreement"), dated January 1, 2020 as amended.

In consideration of the recitals, covenants, conditions, and promises contained in the Agreement, the Parties agree to modify the Agreement as follows:

1. Cover Sheet, Provision 3, is deleted in its entirety and replaced with the following:

"This agreement shall renew on **February 1, 2020** and shall be automatically renewed annually, subject to the termination provisions herein."

All other provisions of the Agreement, its Addenda or Amendments not inconsistent herein shall remain in full force and effect.

This Amendment is hereby agreed to by the parties and effective on the date and year set forth above.

Please sign digitally and return via email or sign and fax to (916) 307-5250.

_____
Signature

Stephen Schwabauer, City Manager
Print Name and Title

Approved **as to Form:**

_____
JANICE D. MAGDICH
City Attorney

EXHIBIT A

SCHEDULE OF BENEFITS

Chiropractic Expanded Benefit

Your Employer Group has contracted with Landmark Healthplan of California, Inc. (Landmark) to provide you with a chiropractic benefit that requires the use of Participating Chiropractors. You can obtain a directory of Participating Chiropractors through your employer, plan administrator, or Landmark, or you can access a continuously updated directory on Landmark's Web site at www.LHP-CA.com under the "Member" option. You may also call Landmark's Customer Service Department at **1-800-298-4875** for referrals to Participating Practitioners in your area.

FREE LANGUAGE ASSISTANCE IS AVAILABLE

If you need help in understanding your Landmark chiropractic benefits or need help to handle an issue about your benefits, please contact Landmark's Customer Service Department at 1-800-298-4875 between 5:30 AM and 5 PM, Monday through Friday, for free help. We can also help you in languages other than English.

If you or your dependents would like Landmark and your doctor to use a specific language when speaking or writing to you, please go to https://www.LHP-CA.com/Survey.aspx on the Internet and complete Landmark's brief language preference survey. The survey only takes about 3 minutes to complete and your answers will be strictly confidential. If you prefer to complete a paper copy of this survey, you may request one by writing to us at:

Landmark Healthplan of California, Inc.
Attn: QM Dept. - SURVEY
2629 Townsgate Rd Suite 235
Westlake Village, CA 91361

Benefits and Co-payments	
Office Visit	**$15** co-payment
Maximum Annual Visits	**12** visits
X-ray Services*	$75 annual maximum benefit
Emergency Care**	Same co-payment as office visit
Durable Medical Equipment Purchase or Rental***	$50 annual maximum benefit

**X-ray Services must be prescribed by a Participating Chiropractor.*
***Services provided by Non-Participating Chiropractors are covered for Emergency Services only.*
****Durable Medical Equipment must be prescribed by a Participating Chiropractor.*

A. Covered Services

1. Chiropractic Treatment

Covered Chiropractic Services are those within the scope of chiropractic care that are supportive or necessary to help Members achieve the physical state enjoyed before an injury or illness. In addition, services for preventive, maintenance, and wellness care for any mechanical neuromusculoskeletal condition are also covered. Services need not be pre-authorized, will not be reviewed for Medical Necessity, and include the following:

- Examinations
- Manipulation
- Conjunctive Physiotherapy
- X-rays
- Emergency Services

2. Emergency Services

Emergency Services are covered for the sudden and unexpected onset of an acute illness, extreme neuromusculoskeletal pain or accidental injury to the nervous, musculoskeletal and/or skeletal body systems, that, in the reasonable judgment of the Member, requires immediate care, the delay of which could decrease the likelihood of maximum recovery, and for which the Member seeks to secure chiropractic services

immediately after the onset, or as soon thereafter as practicable. Emergency Services do not require pre-authorization; however, Emergency Services rendered by a Non-Participating Chiropractor are subject to Landmark's determination that the Member would reasonably have considered that Emergency Services were required.

Emergency Services rendered by a Non-Participating Chiropractor are covered only when the chiropractor rendering services can show that the services were for a neuromusculoskeletal condition and were provided to reduce the severity of the condition including pain until a Participating Chiropractor could safely assume treatment. Similarly, Emergency Services received outside of Landmark's Service Area will be covered only when the Non-Participating Chiropractor rendering services can show that the services were for a neuromusculoskeletal condition and were provided to reduce the severity of the condition including pain until a Participating Chiropractor could safely assume treatment. Under the Landmark Plan, emergency care must be transferred to a Participating Chiropractor as soon as such transfer would not create an unreasonable risk to the Member's health.

B. Second Opinions and Referrals

1. Second opinions

On occasion, a Participating Chiropractor may require a second opinion, which is for consultation only, from another chiropractor. Landmark does not require an authorization for any second opinion. Second opinions initiated by your Participating Chiropractor will not count against your maximum annual visits and will not require a Member office visit co-payment.

Second opinions initiated by Members do not require prior authorization, but will count against the maximum annual visits and will require a Member office visit co-payment.

2. Referrals to non-chiropractic practitioners

For referrals to non-chiropractic practitioners, Members or enrollees of full-service plans or HMOs will be referred to the plan or HMO practitioner network for non-neuromusculoskeletal conditions, conditions not improving with chiropractic care, and other such services that cannot be provided by another Participating Chiropractor.

C. Limitations and Exclusions

Circumstances Causing Services to be Excluded or Limited

1. Services provided by a Non-Participating Chiropractor, except for emergencies
2. Services provided outside of Landmark's Service Area, except for emergencies
3. Services incurred prior to the beginning or after the end of coverage
4. Services that exceed the maximum covered visits for the benefit year
5. X-ray services that exceed the annual maximum benefit
6. Charges incurred for missed appointments
7. Educational programs
8. Pre-employment, school entrance, or athletic physical exams
9. Services for conditions arising out of employment, including self-employment or covered under any workers' compensation act or law
10. Services for any bodily injury arising from or sustained in an automobile accident that is covered under an automobile insurance policy
11. Charges for which the Member is not legally required to pay
12. Services rendered by a person who ordinarily resides in the Member's home or who is related to the Member by marriage or blood.

Specific Services that are Excluded or Limited

1. Drugs, vitamins, nutritional supplements, or herbs
2. Experimental or investigational services
3. Vocational, stroke, or long-term rehabilitation
4. Hypnotherapy, behavior training, sleep therapy, or biofeedback
5. Rental or purchase of Durable Medical Equipment (DME)
6. Treatment primarily for purposes of weight control
7. Lab services
8. Thermography, hair analysis, heavy metal screening, or mineral studies
9. Transportation costs, including ambulance charges
10. Inpatient services
11. Massage or soft-tissue techniques
12. Manipulation under anesthesia
13. Services related to diagnosis and treatment of jaw joint or TMJ disorders
14. Treatment of non-neuromusculoskeletal disorders
15. Advanced diagnostic services, such as MRI, CT, EMG, SEMG, and NCV

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING RENEWAL OF CHIROPRACTIC BENEFIT ADMINISTRATION AGREEMENT WITH LANDMARK HEALTHPLAN OF CALIFORNIA; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

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WHEREAS, the City of Lodi utilizes Landmark Healthplan of California for the administration of the chiropractic benefits offered to City of Lodi full-time employees; and

WHEREAS, staff recommends that the City Council approve the renewal of the Chiropractic Benefit Administration Agreement with Landmark Healthplan of California; and

WHEREAS, staff further recommends that the City Council authorize the City Manager to execute the Agreement on behalf of the City of Lodi.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the renewal of the Chiropractic Benefit Administration Agreement with Landmark Healthplan of California; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the Agreement with Landmark Healthplan of California on behalf of the City of Lodi; and

BE IT FURTHER RESOLVED that the term of the Agreement shall be effective February 1, 2020 through January 31, 2021, and in the event no termination notice has been given by either party or no new agreement has been negotiated, the Agreement shall automatically renew for successive one-year terms on each anniversary of the commencement date of this Agreement; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

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I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

2020-____

AGENDA ITEM **C-18**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Accept Report on Results of Phase 1 Environmental Study and Noise Studies for Two Potential Homeless Emergency Aid Program (HEAP) Project Sites

MEETING DATE: January 15, 2020

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Accept report on results of Phase 1 Environmental Study and Noise Studies for two potential Homeless Emergency Aid Program (HEAP) project sites.

BACKGROUND INFORMATION: In December 2018, the San Joaquin Continuum of Care (SJCoC) awarded the City $1,250,000 in HEAP grant funds for its tiny home permanent supportive housing project. In May 2019, the City Council accepted the award.

City staff worked with numerous stakeholders to gather and evaluate feedback on potential sites, including Lodi's Committee on Homelessness, homeless services providers, local advocacy groups such as Take Back Lodi, local law enforcement, developers, and residents. Factors for site selection were deliberated, such as vacant lots, proximity to resources for project residents, compatibility with surrounding uses, compliance with zoning and development codes, concentration of similar type projects, property acquisition costs, and site development costs such as environmental assessments and clearance.

As a result of these discussions, two potential locations were identified: 1) 301 East Lodi Avenue and 2) 2 East Lodi Avenue (Maple Square). An environmental assessment is a factor in selecting an appropriate site, as it reveals additional costs that may need to be factored into site development and acquisition costs. Staff proposed and Council approved that an environmental assessment be conducted on these two potential sites as part of this site evaluation. Specifically, consultant Michael Baker International conducted a noise study and peer review of a previous Phase 1 Environmental Site Assessment (ESA) for 301 East Lodi Avenue, and conducted a Phase 1 Environmental Site Assessment and noise study for 2 East Lodi Avenue.

For 301 East Lodi Avenue, the consultant found that the previous Phase 1 ESA missed an evaluation of the potential contaminants from an off-site dry-cleaning plume and underground tanks. A Phase 2 ESA could evaluate these missing items. Furthermore, the noise study revealed that on-site sound levels exceeded allowable limits for residential uses so that certain measures would need to be taken to reduce the impact on residents. As for 2 East Lodi Avenue, the consultant found that the site has potential contaminants from underground fuel tanks that may or may not still be present, a petroleum pipeline under the railroad, heavy metals from the operating rail line, and a potential off-site dry-cleaning plume. A Phase 2 ESA would evaluate these items further to determine the level of contaminant, if any. The noise study revealed that noise levels would be approximately 78 dBA (A-weighted decibel scale) outdoors and 45 dBA indoors, both of which exceed permitted noise levels for residential use. City staff and the consultant are looking into whether it is possible to take actions that would reduce noise levels to a permitted level. Actions that are being researched include walls, landscaping, site layout, and building

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APPROVED: _____
Stephen Schwabauer, City Manager

materials, to name a few. More details can be found in the attached memorandums (due to the length of each study, the appendices are not attached to this report; they can be made available upon request).

The results of the environmental assessments will be factored into the viability of these two sites. Once this environmental analysis is completed, including further research into noise mitigating measures and a potential Phase 2 ESA, this information will be brought to City Council and the public for consideration of potential project sites. Then once a site is selected and the project moves forward toward construction, the environmental clearance would be conducted.

Project Description:

The City's tiny home project will create approximately five units of permanent supportive housing for homeless individuals and families or those at risk of homelessness. This supportive housing will help homeless individuals/families move from emergency shelters, motel voucher and transitional housing programs, or off the streets into long-term, affordable housing where they can continue their progress toward stable and independent living.

The project will receive tenant referrals from local organizations including Salvation Army, Lodi House, and Women's Center, as well as the Housing Authority of the County of San Joaquin (HACSJ). HACSJ will supply housing choice vouchers to tenants. Volunteer supportive housing services will be available for tenants, and tenants will sign lease agreements that include appropriate maintenance of each unit.

The City has partnered with HACSJ to manage the construction of this project. Also, the City will acquire or provide the land for the project site and HACSJ will own and manage the tiny homes project, similar to its other housing properties.

Project Budget:

The tiny homes project is estimated to cost $1,867,942, of which $128,058 is set aside for acquisition costs, including environmental assessments.

FISCAL IMPACT: The HEAP grant will provide $1.25 million in funds to cover project costs, including a set-aside of $128,058 in related property acquisition costs. The environmental assessment and clearance would be reimbursed from the HEAP grant.

FUNDING AVAILABLE: San Joaquin Continuum of Care Homeless Emergency Aid Program (HEAP) Grant: 35584000.77020

_____
Andrew Keys, Deputy City Manager/Internal Services Director

_____
Stephen Schwabauer
Community Development Director

Attachments:

1. 301 East Lodi Avenue Phase 1 Third Party Review Memorandum
2. 301 East Lodi Avenue Noise Study Memorandum
3. 2 East Lodi Avenue Phase 1 Executive Summary
4. 2 East Lodi Avenue Noise Study Memorandum

Attachment 1

Michael Baker INTERNATIONAL

We Make a Difference

MEMORANDUM

To: Patrick Hindmarsh

From: Kristen Bogue

Date: November 11, 2019

Subject: Third Party Review of the Phase I Environmental Site Assessment for the Holmes Property, located at 301, 303, and 305 East Lodi Avenue, Lodi, California

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Michael Baker International (Michael Baker) has conducted a third-party review of the *Phase I Environmental Site Assessment* (Phase I ESA), prepared by AdvancedGeo Environmental (AGE), dated July 2, 2018, for the property located at 301, 303, and 305 East Lodi Avenue, Lodi, California (the subject site).

AGE's Findings, Opinions, and Conclusions

Per the author, the Phase I ESA was performed in conformance with the scope and limitations of ASTM Standard Practice E 1527-13. AGE concluded that the Phase I ESA has revealed no evidence of *de minimis* conditions, controlled recognized environmental conditions (CRECs), or historical recognized environmental conditions (HRECs) in connection with the subject site. However, evidence of the following recognized environmental conditions (RECs) were reported:

- Former On-Site Gasoline Service Station – Past use of the property as a gasoline service station, which utilized three underground storage tanks (USTs). Records from the San Juaquin County Environmental Health Department (SJCEHD) indicate three USTs were removed from the property in 1985. No information related to soil sampling was found. In addition, records showed a fourth UST located east of the area of the removed USTs. No records related to the removal or installation of this fourth UST were found.

Michael Baker's Review and Opinions

The following is Michael Baker's opinions as to our review of the findings, opinions, and conclusions made by AGE and are considered preliminary. Michael Baker's scope of work included a review of the subject Phase I ESA (as provided). Michael Baker did not conduct any work to satisfy the conditions of a Phase I ESA (i.e., site inspection, records search, interviews, etc.) per the ASTM E 1527 Standard Practice, nor did Michael Baker conduct any soil/subsurface investigations. Michael Baker's opinions are solely based on our review of the Phase I ESA as it was provided.

1) It is acknowledged that the Phase I ESA was written per ASTM Standard Practice E 1527-13. The purpose of the ASTM E 1527 Standard Practice is to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations on scope of Comprehensive Environmental

5 Hutton Centre Drive, Suite 500 | Santa Ana, CA 92707
Office: 949-472-3505 | Fax: 949-472-8373

Response, Compensation and Liability Act (CERCLA) (42 U.S.C. Section 9601) liability (hereinafter, the "landowner liability protections," or "LLPs"). As such, in order to qualify for LLPs, after six months, the report must be updated and, after one year, the Phase I ESA is no longer valid and needs to be completely re-written (ASTM E 1527-13 Section 4.6, Continued Viability of Environmental Site Assessment). It is acknowledged that the database records search was conducted on June 14, 2018, historical documentation was obtained in June 2018, and the site reconnaissance was conducted on June 20,2018.

It is Michael Baker's understanding that this Phase I ESA is intended for use in an Environmental CEQA Compliance Document. As long as no changes to the activities at the subject site have occurred since the publication of the Phase I ESA, Michael Baker agrees that using this report for the purposes of CEQA analysis is appropriate. However, the report may not be used for the purposes of LLPs unless completely updated.

2) It is the opinion of Michael Baker that AGE should include the following findings and opinions to support the Phase I ESA conclusions for the following:

   a. Former On-Site Gasoline Service Station REC – Michael Baker agrees with AGE's conclusion that the former on-site service station has resulted in an REC on-site and additional sampling is necessary to determine whether or not a REC is actually present. However, in addition to the former UST pit sampling, it is the opinion of Michael Baker that additional sampling in areas of the former on-site piping, fuel pump island locations, and former automobile repair shop should also be conducted.

   b. Former Adjoining Dry Cleaner Facility. According to the U.S. Environmental Protection Agency (USEPA), dry cleaners are known to use a significant amount of chemicals, such as perchloroethylene (perc), which pose environmental concerns. At the end of the dry cleaning process, the cleaning fluid is separated from waste water by distillation. In the past, the waste water was often poured down floor drains. Perc can seep through the ground and contaminate surface water, groundwater, and potentially drinking water. Since a small amount of perc can contaminate a large amount of water, properties within a close proximity to dry cleaners or past dry cleaner sites have been found to potentially have subsurface contamination.

      Based on provided Sanborn Maps and City Directory Abstract, a former adjoining dry cleaner facility (Pennant Cleaners) was present at 228 East Lodi Avenue, from approximately between 1926 and 1970. The Environmental Professional should present a finding, opinion, and conclusion regarding the past adjoining drycleaner use, including the potential for groundwater contamination and/or soil vapor encroachment onto the subject site.

      Based on the distance from the subject site, approximately 143 feet south-southeast, and the high likelihood for a release due to the nature of drycleaner activities, it is Michael Baker's opinion that this past adjoining use presents a REC and sampling for potential soil vapor at the subject site, as a result of this past off-site dry cleaner, should be conducted.

Attachment 2

Michael Baker INTERNATIONAL

We Make a Difference

MEMORANDUM

To: Patrick Hindmarsh, Michael Baker International

From: Danielle Regimbal, Michael Baker International
Eddie Torres, Michael Baker International

Date: November 20, 2019

Subject: 301 East Lodi Avenue – Noise Study

PURPOSE

The purpose of this technical memorandum is to determine railway noise levels at the proposed 301 East Lodi Avenue Project (project) site due to the Amtrak/Union Pacific Railroad (UPRR) railway in the project vicinity. Additionally, this technical memorandum will identify appropriate noise recommendation measures to ensure noise levels at the project site are below the City of Lodi's noise standard.

PROJECT DESCRIPTION

The proposed project is located at 301 East Lodi Avenue within the City of Lodi (City). The project consists of one parcel (Assessor's Parcel Number [APN]: 043-067-16) comprising approximately 0.24-acre. According to the *Lodi General Plan*, the project site is designated Mixed Use Corridor. This designation includes a variety of office and general commercial uses, as well as residential uses. The project site is currently vacant land. The site is bounded by residential uses to the north and east, East Lodi Avenue to the south, and South Washington Street to the west.

The project proposes to construct a five-unit residential development. Regional access to the project site is provided via State Route 99 (SR-99) and State Route 12 (SR-12). Local access to the project site is provided via East Lodi Avenue and South Washington Street.

FUNDAMENTALS OF SOUND AND ENVIRONMENTAL NOISE

Sound is mechanical energy transmitted by pressure waves in a compressible medium such as air and is characterized by both its amplitude and frequency (or pitch). The human ear does not hear all frequencies equally. In particular, the ear de-emphasizes low and very high frequencies. To better approximate the sensitivity of human hearing, the A-weighted decibel scale (dBA) has been developed. Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range in sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound 10 dBA higher than another is perceived to be twice as loud and 20 dBA higher is perceived to be four times as loud, and so forth. Everyday sounds normally range

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from 30 dBA (very quiet) to 100 dBA (very loud). On this scale, the human range of hearing extends from approximately 3 dBA to around 140 dBA.

Noise is generally defined as unwanted or excessive sound, which can vary in intensity by over one million times within the range of human hearing; therefore, a logarithmic scale, known as the decibel scale (dB), is used to quantify sound intensity. Noise can be generated by a number of sources, including mobile sources such as automobiles, trucks, and airplanes, and stationary sources such as construction sites, machinery, and industrial operations. Noise generated by mobile sources typically attenuates (is reduced) at a rate between 3 dBA and 4.5 dBA per doubling of distance. The rate depends on the ground surface and the number or type of objects between the noise source and the receiver. Hard and flat surfaces, such as concrete or asphalt, have an attenuation rate of 3 dBA per doubling of distance. Soft surfaces, such as uneven or vegetated terrain, have an attenuation rate of about 4.5 dBA per doubling of distance. Noise generated by stationary sources typically attenuates at a rate between 6 dBA and about 7.5 dBA per doubling of distance.

There are several metrics used to characterize community noise exposure, which fluctuate constantly over time. One such metric, the equivalent sound level (L_{eq}), represents a constant sound that, over the specified period, has the same sound energy as the time-varying sound. Noise exposure over a longer period is often evaluated based on the Day-Night Sound Level (L_{dn}). This is a measure of 24-hour noise levels that incorporates a 10-dBA penalty for sounds occurring between 10:00 p.m. and 7:00 a.m. The penalty is intended to reflect the increased human sensitivity to noises occurring during nighttime hours, particularly at times when people are sleeping and there are lower ambient noise conditions. Typical L_{dn} noise levels for light and medium density residential areas range from 55 dBA to 65 dBA.

REGULATORY SETTING

State of California

State Office of Planning and Research

The State Office of Planning and Research's *Noise Element Guidelines* include recommended exterior and interior noise level standards for local jurisdictions to identify and prevent the creation of incompatible land uses due to noise. The *Noise Element Guidelines* contain a land use compatibility table that describes the compatibility of various land uses with a range of environmental noise levels in terms of the CNEL. Table 1, *Land Use Compatibility for Community Noise Environments*, presents guidelines for determining acceptable and unacceptable community noise exposure limits for various land use categories. The guidelines also present adjustment factors that may be used to arrive at noise acceptability standards that reflect the noise control goals of the community, the particular community's sensitivity to noise, and the community's assessment of the relative importance of noise pollution.

Table 1
Land Use Compatibility for Community Noise Environments

Land Use Category	Community Noise Exposure (L_{dn} or CNEL dBA)			
	Normally Acceptable	Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable
Residential - Low Density Single-Family, Duplex, Mobile Homes	50 – 60	60 – 70	70 – 75	75 - 85
Residential - Multiple Family	50 – 65	65 – 70	70 – 75	75 - 85
Transient Lodging - Motel, Hotels	50 – 65	65 – 70	70 – 75	75 - 85
Schools, Libraries, Churches, Hospitals, Nursing Homes	50 – 65	65 – 70	70 – 75	75 - 85
Auditoriums, Concert Halls, Amphitheaters	NA	50 – 70	NA	65 - 85
Sports Arenas, Outdoor Spectator Sports	NA	50 – 75	NA	75 - 85
Playgrounds, Neighborhood Parks	50 – 67.5	NA	67.5 – 72.5	72.5 - 85
Golf Courses, Riding Stables, Water Recreation, Cemeteries	50 – 70	70 – 80	80 – 85	
Office Buildings, Business Commercial and Professional	50 – 70	70 – 75	75 – 85	NA
Industrial, Manufacturing, Utilities, Agriculture	50 – 70	70 – 80	80 – 85	NA

Notes: NA: Not Applicable; L_{dn}: average day/night sound level; CNEL: Community Noise Equivalent Level, dBA = A-weighted decibels
Normally Acceptable - Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.
Conditionally Acceptable - New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.
Normally Unacceptable - New construction or development should be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.
Clearly Unacceptable – New construction or development should generally not be undertaken.

Source: Office of Planning and Research, *State of California General Plan Guidelines*, October 2017.

City of Lodi

Lodi General Plan

The Noise Element of the *Lodi General Plan* (General Plan) identifies noise-sensitive land uses and noise sources, defines areas of noise impact, and establishes policies to ensure that City residents are protected from excessive noise. The chapter contains two land use compatibility tables that describe the compatibility of various land uses with a range of environmental noise levels in terms of the L_{dn} and CNEL. Table 1 presents State's guidelines for determining acceptable and unacceptable community noise exposure limits for various land use categories. Additionally, Table 2, *Interior and Exterior Noise Standards*, presents guidelines for maximum allowable interior and exterior noise levels for various land use categories. The following lists applicable noise policies obtained from the General Plan:

Policy N-P1 *Control and mitigate noise at the source where feasible, as opposed to at the receptor end.*

Policy N-P2 *Encourage the control of noise through site design, building design, landscaping, hours of operation, and other techniques for new development deemed to be noise generators.*

Table 2
Interior and Exterior Noise Standards

Land Use	CNEL[1]	
	Interior[2]	Exterior[3]
Residential	45	60
Motels, Hotels	45	60
Public/Semi-Public	45	65
Recreational	50	65
Commercial	50	65
Industrial	65	70

Notes: CNEL = Community Noise Equivalent Level
1. The average equivalent A-weighted sound level during a 24-hour day, obtained after addition of approximately five decibels to sound levels in the evening from 7:00 p.m. to 10:00 p.m. and ten decibels to sound levels in the night from 10:00 p.m. to 7:00 a.m.
2. Indoor environment, excluding bathrooms, toilets, closets, corridors.
3. For non-residential uses, where an outdoor activity area is not proposed, the standard does not apply .

Source: City of Lodi, *Lodi General Plan*, April 2010.

Policy N-P3 *Use the noise and land use compatibility matrix (Table 9-2* [Table 1]*) and allowable noise exposure levels (Table 9-*3 [Table 2]*) as review criteria for all new land uses. Incorporate noise attenuation measures for all projects that have noise exposure levels of "conditionally acceptable" and higher. These may include:*

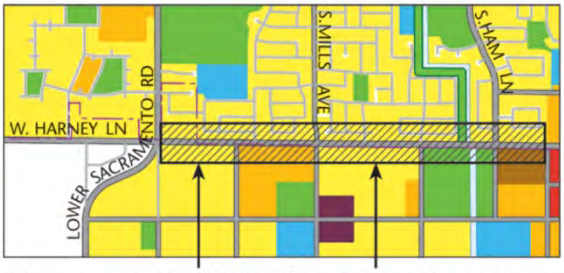
- *Façades constructed with substantial weight and insulation;*
- *Sound-rated windows in habitable rooms;*
- *Sound-rated doors in all exterior entries;*
- *Active cancellation;*
- *Acoustic baffling of vents for chimneys, fans and gable ends;*
- *Ventilation system affording comfort under closed-window conditions; and*
- *Double doors and heavy roofs with ceilings of two layers of gypsum board on resilient channels to meet the highest noise level reduction requirements.*

Policy N-P4 *Discourage noise sensitive uses such as residences, hospitals, schools, libraries, and rest homes from locating in areas with noise levels above 65 dB. Conversely, do not permit new uses likely to produce high levels of noise (above 65 dB) from locating in or adjacent to areas with existing or planned noise-sensitive uses.*

Policy N-P5 *Noise sensitive uses, such as residences, hospitals, schools, libraries, and rest homes, proposed in areas that have noise exposure levels of "conditionally acceptable" and higher must complete an acoustical study, prepared by a professional acoustic engineer. This study should specify the appropriate noise mitigation features to be included in the*

design and construction of these uses, to achieve interior noise levels consistent with Table 9-3 (Table 2).

Policy N-P6 *Where substantial traffic noise increases (to above 70 dB) are expected, such as on Lower Sacramento Road or Harney Lane, as shown on the accompanying graphic, require a minimum 12-foot setback for noise-sensitive land uses, such as residences, hospitals, schools, libraries, and rest homes.*



Minimum setback of 12 feet for noise-sensitive land uses.

Policy N-P7 *Require developers of potentially noise-generating new developments to mitigate the noise impacts on adjacent properties as a condition of permit approval. This should be achieved through appropriate means, such as:*

- *Dampening or actively canceling noise sources;*
- *Increasing setbacks for noise sources from adjacent dwellings;*
- *Using soundproofing materials and double-glazed windows;*
- *Screening and controlling noise sources, such as parking and loading facilities, outdoor activities, and mechanical equipment;*
- *Using open space, building orientation and design, landscaping and running water to mask sounds; and*
- *Controlling hours of operation, including deliveries and trash pickup.*

Policy N-P12 *Restrict the use of sound walls as a noise attenuation method to sites adjacent to State Route (SR) 99, the railroad, and industrial uses east of SR-99.*

Municipal Code

Title 9, *Public Pease, Morals and Welfare*, Chapter 9.24, *Noise Ordinance,* of the *Lodi, California Municipal Code* (Municipal Code) establishes standards concerning acceptable noise levels for both noise-sensitive land uses and noise-generating land uses. The following sections of the Municipal Code are applicable to the proposed project.

§ 9.24.020 – Public nuisance noise.

The following special noise restrictions are established without regard to their sound level impact and may be enforced without the prerequisite of a sound level measurement.

(A) General Noise Regulations. Notwithstanding any other provision of this chapter, and in addition thereto, it is unlawful for any persons to willfully make or continue or permit or cause to be made or continued, any loud, unnecessary or unusual noise which unreasonably disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal noise sensitivity.

(B) No person shall operate, or cause to be operated, any source of sound at any location within the city or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person which causes the noise level when measured on any other property to exceed: The standards which shall be considered in determining whether a violation of the provision of this section exists shall include, but not be limited to, the following:

1. *The volume of the noise;*
2. *The intensity of the noise;*
3. *Whether the nature of the noise is usual or unusual for the area and hour;*
4. *Whether the origin of the noise is natural or unnatural;*
5. *The volume and intensity of the background noise, if any;*
6. *The proximity of the noise to residential sleeping facilities;*
7. *The nature and the zoning of the area within which the noise emanates;*
8. *The density of the inhabitation of the area within which the noise emanates;*
9. *The time of day or night the noise occurs;*
10. *The duration of the noise;*
11. *Whether the noise is produced by a commercial or noncommercial activity.*

This section shall be inapplicable to emergency work as defined herein.

§ 9.24.030 – Excessive, offensive or disturbing noise.

The following activities are declared to cause excessive, offensive or disturbing noise in violation of this section, but said enumeration shall not be deemed exclusive:

(A) It is unlawful for any person to sound any horn or other signaling device on any vehicle except as an emergency or danger warning signal. This provision shall be inapplicable to the sounding of any horn, bell, whistle, siren or other audible warning device which is operated in compliance with Section 7064 of the California Public Utilities Code, or with any other state or federal provision governing railroad operations.

(B) It is unlawful to play or operate any drum, radio, phonograph, loudspeaker, sound amplifier, stereo, television, or other similar sound system, whether mobile or from a fixed location upon the public streets, public right-of-way or in public parks in such a fashion that it is clearly audible at a distance of fifty feet. The city council finds and declares that any sound or noise audible at such distance endangers the public safety and welfare by interference with normal human capability for hearing nearby traffic movement and

warning signals. This section shall be inapplicable to radio systems operated under or pursuant to Federal Communications Commission licenses in the regular course of business.

It is found and declared as a matter of legislative policy that the operation of the aforementioned equipment or instruments on the public streets and rights-of-way adjacent to public parks during the hours between ten p.m. and seven a.m. in such a manner as to be clearly audible at a distance of fifty feet or greater shall constitute prima facie evidence of a violation of this section.

(C) It is unlawful for any person, firm or corporation to cause, permit, or generate any noise or sound as described herein between the hours of ten p.m. and seven a.m. which exceeds the ambient noise level at the property line of any residential property (or, if a condominium or apartment house within any adjoining apartment) as determined at the time of such reading by more than five decibels. This section shall be applicable whether such noise or sound is of a commercial or noncommercial nature.

§ 9.24.050 – Exemptions.

This chapter (Chapter 9.24) shall not apply to the following:

(A) Sirens or other similar emergency warning devices located upon any emergency vehicle as defined by the Vehicle Code, or upon the premises of any public safety agency;

(B) Any bell, siren or similar device on any vehicle, which is required by law, and which is automatically activated by placing the vehicle transmission in reverse, or by any backing movement;

(C) Any sound equipment operating under a city license or permit, or being utilized for an activity subject to First Amendment protection;

(D) Emergency repair work as defined herein;

(E) Events in public parks or other public places, sponsored by the city;

(F) Noise necessarily generated in conjunction with health or sanitation services, including but not limited to refuse collection.

EXISTING NOISE SETTING

Existing Ambient Noise Levels

In order to quantify existing ambient noise levels in the project area, Michael Baker International conducted two noise measurements in the site vicinity on October 29, 2019; refer to Appendix A, *Noise Data*, and Exhibit 1, *Noise Measurement Locations*. The noise measurement locations are representative of typical existing noise exposure at and immediately adjacent to the site. Ten-minute measurements were taken between 11:00 a.m. and 12:00 p.m. at each location during the day. Short-term (L_{eq})

Source: Google Earth Pro, November 2019

NOT TO SCALE

Michael Baker INTERNATIONAL

PROJECT SITE

11/19 JN 175297

301 EAST LODI AVENUE
NOISE STUDY

Noise Measurement Locations

Exhibit 1

measurements are considered representative of the noise levels throughout the day. Noise measurements were taken during "off-peak" (9:00 a.m. through 3:00 p.m.) traffic noise hours as this provides a more conservative baseline. During rush hour traffic, vehicle speeds and heavy truck volumes are often low. Free-flowing traffic conditions just before or after rush hour often yield higher noise levels.[1] The average noise levels and sources of noise measured at each location are identified in Table 3, *Noise Measurements*.

Table 3
Noise Measurements

Site No.	Location	L_{eq} (dBA)	L_{min} (dBA)	L_{max} (dBA)	Peak (dBA)	Time
1	Along Lodi Avenue, approximately 90 feet east of the Washington Street and Lodi Avenue intersection	67.1	47.4	79.5	99.0	11:13 a.m.
2	Along Washington Street, approximately 36 feet north of the Washington Street and Lodi Avenue intersection.	64.0	48.3	75.0	93.8	11:25 a.m.

Note: dBA = A-weighted decibels; L_{eq} = Equivalent Sound Level; L_{min} = Minimum Sound Level; L_{max} = Maximum Sound Level
Refer to Exhibit 1, *Noise Measurement Locations* for a map of the noise measurement locations.
Source: Michael Baker International, October 29, 2019.

Meteorological conditions were clear skies, warm temperatures, with light wind speeds (9 miles per hour), and low humidity. Noise monitoring equipment used for the ambient noise survey consisted of a Brüel & Kjær Hand-held Analyzer Type 2250 equipped with a Type 4189 pre-polarized microphone. The monitoring equipment complies with applicable requirements of the American National Standards Institute for Type I (precision) sound level meters. Measured noise levels during the daytime measurements ranged from 64.0 to 67.1 dBA L_{eq}.

Existing Rail Noise Levels

Railway noise is generated from the rail traffic on the Amtrak/UPRR railway located approximately 0.2-mile west of the project site. This railroad consists of freight operations and regional passenger rail operations (Amtrak and UPRR). Noise associated with these operations includes locomotive engines, wheel-to-rail and switch noise, horn sounding, station approach and disembark bell sounding, emergency signaling devices, and stationary bells associated with the at-grade crossings at Lodi Avenue. Passenger rail movements occur through the project vicinity multiple times per day between the hours of 7:00 a.m. and 11:00 p.m. Freight trains also operate along the Amtrak/UPRR railway daily. According to the General Plan, the project site is not located within the 65 dBA railroad noise contour.

Modeled Rail Noise Levels

Noise generated by rail traffic on the Amtrak/UPRR railway was calculated using the Federal Transit Administration (FTA) Noise Impact Assessment model (version 1/29/2019). Input parameters used in Noise Impact Assessment model included train type, frequency of pass-bys during daytime (7:00 a.m. – 10:00 p.m.) and nighttime (10:00 p.m. and 7:00 a.m.) hours, speed of travel, and total number of rail cars. The Noise Impact Assessment model has a calculation output of a day-night noise levels (L_{dn}), which is

[1] California Department of Transportation, *Technical Noise Supplement to the Traffic Noise Analysis Protocol*, September 2013.

calculated differently from CNEL values. L_{dn} values are typically always within 1 dBA of CNEL values; thus, this analysis considers the L_{dn} output of the Noise Impact Assessment model to be analogous to the CNEL values required for land use planning and noise assessment.

Both passenger and freight rail were modeled to be traveling at speeds of 30 miles per hour (mph). Passenger trains were modeled with a single locomotive engine, while freight trains were assumed to have an average of three. Input parameters for daytime/nighttime pass-by frequencies were obtained from published Amtrak timetables, details from which are shown below in Table 4, *Rail Operation Assumptions*.

Freight train schedules are not standardized or publicly available. Thus, this analysis used assumptions made in the San Joaquin County *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report*, which estimated an average of 17 freight train pass-bys each day. With no additional available information on specific schedules, this study interprets "each day" to mean during daytime hours. However, this study assumes that at least one freight train will operate along this track between the nighttime hours of 10:00 p.m. and 7:00 a.m., to provide for a worst case analysis.

Table 4
Rail Operation Assumptions

Train Service	Typical Locomotives / Cars Per Train	Daytime (7:00 a.m. to 10:00 p.m.)	Nighttime (10:00 p.m. to 7:00 a.m.)	Modeled Speed (mph)
Amtrak	1 / 6	9	1	30
Freight[1]	3 / 80	17	1	30

Notes:
1. The assumptions made in the San Joaquin County *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report* accounts for all train types observed during a 90 hour study period. Therefore, the assumption of 17 trains per day (i.e. 7:00 a.m. to 10:00 p.m.) is considered conservative as it accounts for passenger rail operations as well as freight.

Sources: Environmental Science Associates, *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report*, dated September 2011.; Amtrak, *San Joaquin's (San Francisco/Oakland – Sacrament - Stockton – Merced – Fresno – Bakersfield – Southern Californian and intermediate Stations)*, effective October 28, 2019.

Due to the presence of a roadway grade crossing at Lodi Avenue, train horn sounding was modeled at the grade crossing as required by the Code of Federal Regulations (CFR) 49 CFR Part 222 Use of Locomotive Horns at Public Highway-Rail Grade Crossings. As stipulated in 49 CFR Part 222, when trains are traveling below 60 miles-per-hour, locomotive horns are required to be sounded no sooner than 15 seconds and no later than 20 seconds before the locomotive enters the crossing. Thus, at a modeled speed of 30 miles-per-hour at the crossings, or 44 feet-per-second, train horn soundings were modeled to occur at the 17-second approach mark, or, approximately 750 feet from either side of the grade crossing.

NOISE IMPACT ANALYSIS

The proposed project site is located approximately 0.2-miles east of the Amtrak/UPRR railway, which runs in a north-south direction. At the time of this analysis, the project design phase has not been conducted. Therefore, the exact location of residential buildings and outdoor activity areas within the project site are unknown. As a result, rail noise levels were modeled at the western project property line, approximately 1,040 feet (i.e. 0.2-mile) east of the rail centerline.

Exterior Noise Levels

Based on the FTA Noise Impact Assessment model and assumptions noted above, noise generated from the Amtrak/UPRR railway would not increase the ambient noise environment at the project site. This is primarily due to the Amtrak/UPRR railway distance from the project site, as well as intervening buildings acting as noise barriers between the project site and the Amtrak/UPRR railway. As a result, railway noise levels experienced at the project site would not exceed the City's exterior noise standard of 60 dB CNEL. However, it should be noted that existing ambient noise levels in the project vicinity range from range from 64.0 to 67.1 dBA; refer to Table 3. Therefore, existing ambient noise levels at the project site currently exceed the City's exterior noise standard of 60 dB CNEL. As such, Recommendation Measure NOI-1 relies on a qualified acoustical engineer to prepare an acoustical study based on the final project design. The acoustical study would incorporate exterior noise reduction features (i.e., perimeter walls, orientation of the buildings to mask noise to outdoor activity areas) to ensure exterior noise level exposure at the project site is at or below the City's exterior noise standard of 60 dB CNEL.

Interior Noise Levels

According to the General Plan, as well as Title 24 standards, the City requires interior noise levels not to exceed 45 dBA to minimize sleep interference indoors. As previously discussed, noise generated from the Amtrak/UPRR railway would not increase the ambient noise environment at the project site. However, as depicted in Table 3, exterior ambient noise levels in the project vicinity range from 64.0 to 67.1 dBA. The exterior ambient noise levels were utilized to obtain the interior noise levels using a standard exterior-to-interior attenuation rate of 24 dB with windows closed.[2] Accounting for the attenuation rate of 24 dB, interior noise levels would range from 40.0 to 43.1 dBA. Therefore, interior noise levels would not exceed the City's residential interior noise standard of 45 dBA.

Recommendation Measures:

NOI-1 Prior to the issuance of building permits, the project applicant shall retain a qualified acoustical engineer to prepare an acoustical study, based on the final project design, and shall implement any and all measures recommended as a result of the study, which shall be approved by the City of Lodi Planning Division. The acoustical study shall include the following:

- The location, minimum height, density, and building material of any perimeter walls to be constructed.
- A detailed analysis demonstrating that perimeter walls, building orientations, and/or setbacks have been incorporated into the project design, such that noise level exposure to residential receivers in all useable outdoor areas within the project site is at or below the City of Lodi's exterior noise standard (i.e., 60 dB CNEL).

[2] U.S. Environmental Protection Agency, *Protective Noise Levels (EPA 550/9-79-100)*, November 1979.

REFERENCES

Documents

1. Amtrak, *San Joaquin's (San Francisco/Oakland – Sacrament - Stockton – Merced – Fresno – Bakersfield – Southern Californian and intermediate Stations)*, effective October 28, 2019.

2. California Department of Transportation, *Technical Noise Supplement to the Traffic Noise Analysis Protocol*, 2013.

3. City of Lodi, *Lodi General Plan*, April 2010.

4. City of Lodi, *Lodi Municipal Code*, October 16, 2019.

5. Environmental Science Associates, *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report*, dated September 2011.

6. Federal Transit Administration, *Transit Noise and Vibration Impact Assessment Manual*, September 2018.

7. State Office of Planning and Research, *State of California General Plan Guidelines*, October 2017.

8. U.S. Environmental Protection Agency, *Protective Noise Levels (EPA 550/9-79-100)*, November 1979.

Websites / Programs

Federal Transit Administration, *Noise Impact Assessment Model (version 1/29/2019)*, January 2019.

Google Earth, 2019.

Attachment 3

PHASE I
ENVIRONMENTAL SITE ASSESSMENT

2 East Lodi Avenue
APN 045-310-01

City of Lodi
State of California

Prepared in General Accordance with:
ASTM E 1527-13 Standard Practice for Environmental Site Assessments

For:

City of Lodi
211 West Pine Street
Lodi, CA 95240
Attn: Mr. Steve Schwabauer

By:

Michael Baker
INTERNATIONAL

5 Hutton Centre Drive, Suite 500
Santa Ana, California 92707

December 12, 2019

JN 175297

Michael Baker
INTERNATIONAL

We Make a Difference

December 12, 2019 175297

Steve Schwabauer
City of Lodi
211 West Pine Street
Lodi, CA 95240

SUBJECT: Phase I Environmental Site Assessment for 2 East Lodi Avenue, located in the City of Lodi, California

Dear Mr. Schwabauer:

Michael Baker International (Michael Baker) is pleased to submit this Phase I Environmental Site Assessment (ESA) for the above referenced project, herein referenced as the "subject site." The goal of this Phase I ESA is to identify recognized environmental conditions (RECs) associated with the subject site. This Phase I ESA has been prepared for the sole use of the **City of Lodi,** for the above-referenced subject site. Neither this Phase I ESA, nor any of the information contained herein, shall be used or relied upon for any purpose by any person or entity other than the **City of Lodi.**

The Phase I ESA was prepared using methods consistent with the ASTM International (ASTM) E 1527-13 Standard Practice for Environmental Site Assessments, the scope of services, and inherent limitations presented in our proposal. The Phase I ESA is not intended to present specific quantitative information as to the actual presence of hazardous substances on or adjacent to the subject site, but is to identify RECs based on available information.

Should you or your staff have any questions or concerns after reviewing the enclosed report, please do not hesitate to contact me at 949/855-5747.

Sincerely,

Kristen Bogue
Environmental Professional
Planning/Environmental Services

5 Hutton Centre Drive, Suite 500 | Santa Ana, CA 92707
Office: 949.472.3505 | Fax: 949.837.4122

STATEMENT OF ENVIRONMENTAL PROFESSIONAL

I [We] declare that, to the best of my[our] professional knowledge and belief, I[we] meet the definition of Environmental Professional as defined in §312.10 of Title 40, Code of Federal Regulations (CFR) 312 and I[we] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. I[we] have developed and performed all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

_____

Signature of Michael Baker Environmental Professional
Kristen Bogue

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Appendix B: Database Records Searches
Appendix C: Documentation
Appendix D: Qualifications of the Environmental Professional

LIST OF ACRONYMS

AAI	All Appropriate Inquiries
ACM	Asbestos Containing Materials
APN	Assessor's Parcel Number
AST	Aboveground Storage Tank
ATSDR	Agency for Toxic Substances and Disease Registry
AULs	Activity and Use Limitations
bgs	Below ground surface
BTEX	Ethylbenzene and xylenes
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System (maintained by the Environmental Protection Agency)
CFR	Code of Federal Regulations
CORRACTS	facilities subject to Corrective Action under RCRA
CPSC	United States Consumer Product Safety Commission
CPSA	Central Plume Source Area
CREC	Conditional Recognized Environmental Condition
DDD	Dichlorodiphenyldichloroethane
DDE	Dichlorodiphenyldichloroethylene
DDT	Dichlorodiphenyltrichloroethane
DOGGR	California Department of Oil, Gas, and Geothermal Resources
DTSC	Department of Toxic Substances Control
EDR	Environmental Data Resources, Inc.
EHD	Environmental Health Department
EPA	United States Environmental Protection Agency
EPCRA	Emergency Planning and Community Right to Know Act (also known as SARA Title III), 42 U.S.C. §§11001-11050 et seq.)
ERNS	emergency response notification system
ESA	Environmental Site Assessment
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Maps
FOIA	U.S. Freedom of Information Act (5 U.S.C. §552 as amended by Public Law No. 104-231, 110 Stat.)
FR	Federal Register
GIS	Geographic Information System
GWET	Groundwater extraction and treatment system

HREC	Historical Recognized Environmental Condition
HWTS	Hazardous Waste Tracking System
ICs	Institutional Controls
kg	Kilogram
LAC	Lodi Area of Contamination
LBP	Lead Based Paints
lbs	Pounds
LCPA	Lodi Central Plume Area
LUFT	Leaking Underground Fuel Tank
LUST	Leaking Underground Storage Tank
MGP	Manufactured gas plant
MSDS	Material Safety Data Sheet
msl	Mean sea level
NCP	National Contingency Plan
NFA	No Further Action
NFRAP	Former CERCLIS sites where no further remedial action is planned under CERCLA
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
PAH	Polycyclic aromatic hydrocarbon (also known as polyaromatic hydrocarbons or polynuclear aromatic hydrocarbons [PNA])
PCB	Polychlorinated Biphenyls
PCE	Tetrachloroethene (also known as perchloroethylene [perc])
pCi/L	picocuries per liter
perc	Perchloroethylene (also known as tetrachloroethene [PCE])
PNA	Polynuclear aromatic hydrocarbon (also known as polycyclic aromatic hydrocarbons [PAH] or polyaromatic hydrocarbons)
REC	Recognized Environmental Condition
RCRA	Resource Conservation and Recovery Act (as amended, 42 U.S.C. §§6901 et seq.)
RWQCB	Regional Water Quality Control Board
SBBM	San Bernardino Base and Meridian
SCS	Soil Conservation Service
SVE	Soil Vapor Excavation
SWRCB	State Water Resources Control Board
TCE	Trichloroethene
TPH	Total petroleum hydrocarbons
TPH-d	Total petroleum hydrocarbons as diesel
TPH-g	Total petroleum hydrocarbons as gasoline

TPH-mo	Total petroleum hydrocarbons as motor oil
TRI	Toxics Release Inventory
TSDF	Treatment, storage, or disposal facility for hazardous waste and certain industrial waste
UPRR	Union Pacific Railroad
USDA	United States Department of Agriculture
USGS	United States Geological Survey
UST	Underground Storage Tank
VOC	Volatile organic compounds

EXECUTIVE SUMMARY

Michael Baker has performed a Phase I ESA in conformance with the scope and limitations of ASTM International (ASTM) E 1527-13 Standard Practice of the approximate 0.62-acre property located at Assessor's Parcel Number (APN) 045-310-01, City of Lodi, California, the subject site. Any exceptions to, or deletions from, this practice are described in Section 1.0, *Introduction*, of this Phase I ESA. This Phase I ESA has revealed the following evidence of recognized environmental conditions (RECs) in connection with the subject site:

- Former Firehouse. It is the opinion of Michael Baker that an underground storage tank (UST) is likely present on the subject site as a result of the past firehouse. Based on files reviewed, a firehouse was constructed on the subject site prior to 1926 and was remodeled with a garage by 1950. It is typical for fire station facilities to include gasoline or diesel USTs (from the 1940s through the 1980s). Until the mid-1980s most USTs were made of bare steel, which is likely to corrode over time and allow UST contents to seep into the soil and contaminate groundwater. With the exception of the installation of an auto garage, no evidence documenting the presence/removal of any USTs was noted. However, since the auto garage was added to the subject site by 1950, it is Michael Baker's opinion that a UST may be present on the subject site. Given the time the UST may have been installed (1940-1950), it is likely that this UST, if present, is a single-walled steel tank. Thus, it is the opinion of Michael Baker that this potential undocumented UST represents a REC at this time. A Phase II Site Investigation would be necessary to determine if contamination actually exists.

- Amtrak/UPRR railway and Petroleum Pipelines. It is the opinion of Michael Baker that petroleum hydrocarbons, lead concentrations, hazardous materials associated with treated wood, as well as herbicide/pesticide residues may be present within on-site soils, particularly along the eastern boundary. It is the opinion of Michael Baker that a REC has resulted at the time of this Phase I ESA. Further, railroad right-of-way includes a petroleum pipeline (owned by Kinder Morgan), which presents a concern to soil gas.

- Groundwater/Soil Gas Contamination. It is the opinion of Michael Baker that the following past adjoining automobile uses (potential soil gas and groundwater contamination) have resulted in a REC at the time of this Phase I ESA:
    - 1 West Lodi Avenue (Al's Signal Service Gas Station);
    - 301 South Sacramento Street (Historical Gas Station);
    - 228 South Sacramento Street (Former Auto Dealership); and

- Central Plume Area (from off-site drycleaner facility).

Section 6.1, *Findings and Opinions*, documents Michael Baker's findings and opinions as to whether or not a REC (or Conditional Recognized Environmental Condition [CREC]) is present at the subject site.

Attachment 4

Michael Baker INTERNATIONAL

We Make a Difference

MEMORANDUM

To: Patrick Hindmarsh, Michael Baker International

From: Danielle Regimbal, Michael Baker International
Eddie Torres, Michael Baker International

Date: December 11, 2019

Subject: 2 East Lodi Avenue – Noise Study

PURPOSE

The purpose of this technical memorandum is to determine railway noise levels at the proposed 2 East Lodi Avenue Project (project) site due to the adjoining Amtrak/Union Pacific Railroad (UPRR) railway. Additionally, this technical memorandum will identify appropriate noise recommendation measures to ensure noise levels at the project site are below the City of Lodi's noise standard.

PROJECT DESCRIPTION

The proposed project is located at 2 East Lodi Avenue within the City of Lodi (City). The project consists of one parcel (Assessor's Parcel Number [APN]: 045-310-01) comprising approximately 0.62-acre. According to the *Lodi General Plan*, the project site is designated Mixed Use Corridor. This designation includes a variety of office and general commercial uses, as well as residential uses.

The project site is currently developed with one structure, identified as Maple Square, located on the northwestern portion of the project site. The southern portion of the project site consists of a gravel parking lot, while the northeastern portion of the project site primarily consists of vegetation and trees. The site is bounded by East Lodi Avenue to the north, the Amtrak/UPRR railway to the east, and commercial uses to the south and west.

The project proposes to construct a five-unit residential development. Regional access to the project site is provided via State Route 99 (SR-99) and State Route 12 (SR-12). Local access to the project site is provided via East Lodi Avenue and South Sacramento Street.

5 Hutton Centre Drive, Suite 500, Santa Ana, CA 92707
Office: 949.472.3505 | Fax: 949.472.8373

FUNDAMENTALS OF SOUND AND ENVIRONMENTAL NOISE

Sound is mechanical energy transmitted by pressure waves in a compressible medium such as air and is characterized by both its amplitude and frequency (or pitch). The human ear does not hear all frequencies equally. In particular, the ear de-emphasizes low and very high frequencies. To better approximate the sensitivity of human hearing, the A-weighted decibel scale (dBA) has been developed. Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range in sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound 10 dBA higher than another is perceived to be twice as loud and 20 dBA higher is perceived to be four times as loud, and so forth. Everyday sounds normally range from 30 dBA (very quiet) to 100 dBA (very loud). On this scale, the human range of hearing extends from approximately 3 dBA to around 140 dBA.

Noise is generally defined as unwanted or excessive sound, which can vary in intensity by over one million times within the range of human hearing; therefore, a logarithmic scale, known as the decibel scale (dB), is used to quantify sound intensity. Noise can be generated by a number of sources, including mobile sources such as automobiles, trucks, and airplanes, and stationary sources such as construction sites, machinery, and industrial operations. Noise generated by mobile sources typically attenuates (is reduced) at a rate between 3 dBA and 4.5 dBA per doubling of distance. The rate depends on the ground surface and the number or type of objects between the noise source and the receiver. Hard and flat surfaces, such as concrete or asphalt, have an attenuation rate of 3 dBA per doubling of distance. Soft surfaces, such as uneven or vegetated terrain, have an attenuation rate of about 4.5 dBA per doubling of distance. Noise generated by stationary sources typically attenuates at a rate between 6 dBA and about 7.5 dBA per doubling of distance.

There are several metrics used to characterize community noise exposure, which fluctuate constantly over time. One such metric, the equivalent sound level (L_{eq}), represents a constant sound that, over the specified period, has the same sound energy as the time-varying sound. Noise exposure over a longer period is often evaluated based on the Day-Night Sound Level (L_{dn}). This is a measure of 24-hour noise levels that incorporates a 10-dBA penalty for sounds occurring between 10:00 p.m. and 7:00 a.m. The penalty is intended to reflect the increased human sensitivity to noises occurring during nighttime hours, particularly at times when people are sleeping and there are lower ambient noise conditions. Typical L_{dn} noise levels for light and medium density residential areas range from 55 dBA to 65 dBA.

REGULATORY SETTING

State of California

State Office of Planning and Research

The State Office of Planning and Research's *Noise Element Guidelines* include recommended exterior and interior noise level standards for local jurisdictions to identify and prevent the creation of incompatible land uses due to noise. The *Noise Element Guidelines* contain a land use compatibility table that describes the compatibility of various land uses with a range of environmental noise levels in terms of the CNEL. Table 1, *Land Use Compatibility for Community Noise Environments*, presents guidelines for determining acceptable and unacceptable community noise exposure limits for various land use categories. The guidelines also present adjustment factors that may be used to arrive at noise acceptability standards that

reflect the noise control goals of the community, the particular community's sensitivity to noise, and the community's assessment of the relative importance of noise pollution.

Table 1
Land Use Compatibility for Community Noise Environments

Land Use Category	Community Noise Exposure (L_{dn} or CNEL dBA)			
	Normally Acceptable	Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable
Residential - Low Density Single-Family, Duplex, Mobile Homes	50 – 60	60 – 70	70 – 75	75 - 85
Residential - Multiple Family	50 – 65	65 – 70	70 – 75	75 - 85
Transient Lodging - Motel, Hotels	50 – 65	65 – 70	70 – 75	75 - 85
Schools, Libraries, Churches, Hospitals, Nursing Homes	50 – 65	65 – 70	70 – 75	75 - 85
Auditoriums, Concert Halls, Amphitheaters	NA	50 – 70	NA	65 - 85
Sports Arenas, Outdoor Spectator Sports	NA	50 – 75	NA	75 - 85
Playgrounds, Neighborhood Parks	50 – 67.5	NA	67.5 – 72.5	72.5 - 85
Golf Courses, Riding Stables, Water Recreation, Cemeteries	50 – 70	70 – 80	80 – 85	
Office Buildings, Business Commercial and Professional	50 – 70	70 – 75	75 – 85	NA
Industrial, Manufacturing, Utilities, Agriculture	50 – 70	70 – 80	80 – 85	NA

Notes: NA: Not Applicable; L_{dn}: average day/night sound level; CNEL: Community Noise Equivalent Level, dBA = A-weighted decibels
Normally Acceptable - Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.
Conditionally Acceptable - New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.
Normally Unacceptable - New construction or development should be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.
Clearly Unacceptable – New construction or development should generally not be undertaken.

Source: Office of Planning and Research, *State of California General Plan Guidelines*, October 2017.

City of Lodi

Lodi General Plan

The Noise Element of the *Lodi General Plan* (General Plan) identifies noise-sensitive land uses and noise sources, defines areas of noise impact, and establishes policies to ensure that City residents are protected from excessive noise. The chapter contains two land use compatibility tables that describe the compatibility of various land uses with a range of environmental noise levels in terms of the L_{dn} and CNEL. Table 1 presents State's guidelines for determining acceptable and unacceptable community noise exposure limits for various land use categories. Additionally, Table 2, *Interior and Exterior Noise Standards,* presents guidelines for maximum allowable interior and exterior noise levels for various land use categories. The following lists applicable noise policies obtained from the General Plan:

Table 2
Interior and Exterior Noise Standards

Land Use	CNEL[1]	
	Interior[2]	Exterior[3]
Residential	45	60
Motels, Hotels	45	60
Public/Semi-Public	45	65
Recreational	50	65
Commercial	50	65
Industrial	65	70

Notes: CNEL = Community Noise Equivalent Level
1. The average equivalent A-weighted sound level during a 24-hour day, obtained after addition of approximately five decibels to sound levels in the evening from 7:00 p.m. to 10:00 p.m. and ten decibels to sound levels in the night from 10:00 p.m. to 7:00 a.m.
2. Indoor environment, excluding bathrooms, toilets, closets, corridors.
3. For non-residential uses, where an outdoor activity area is not proposed, the standard does not apply .

Source: City of Lodi, *Lodi General Plan*, April 2010.

Policy N-P1 *Control and mitigate noise at the source where feasible, as opposed to at the receptor end.*

Policy N-P2 *Encourage the control of noise through site design, building design, landscaping, hours of operation, and other techniques for new development deemed to be noise generators.*

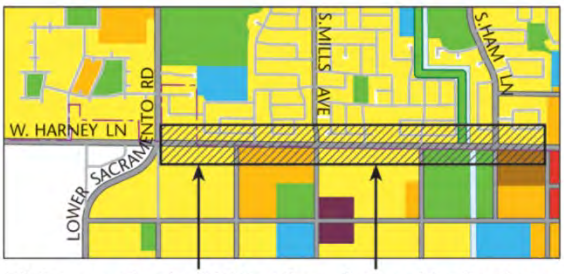
Policy N-P3 *Use the noise and land use compatibility matrix (Table 9-2* [Table 1]*) and allowable noise exposure levels (Table 9-*3 [Table 2]*) as review criteria for all new land uses. Incorporate noise attenuation measures for all projects that have noise exposure levels of "conditionally acceptable" and higher. These may include:*

- *Façades constructed with substantial weight and insulation;*
- *Sound-rated windows in habitable rooms;*
- *Sound-rated doors in all exterior entries;*
- *Active cancellation;*
- *Acoustic baffling of vents for chimneys, fans and gable ends;*
- *Ventilation system affording comfort under closed-window conditions; and*
- *Double doors and heavy roofs with ceilings of two layers of gypsum board on resilient channels to meet the highest noise level reduction requirements.*

Policy N-P4 *Discourage noise sensitive uses such as residences, hospitals, schools, libraries, and rest homes from locating in areas with noise levels above 65 dB. Conversely, do not permit new uses likely to produce high levels of noise (above 65 dB) from locating in or adjacent to areas with existing or planned noise-sensitive uses.*

Policy N-P5 *Noise sensitive uses, such as residences, hospitals, schools, libraries, and rest homes, proposed in areas that have noise exposure levels of "conditionally acceptable" and higher must complete an acoustical study, prepared by a professional acoustic engineer. This study should specify the appropriate noise mitigation features to be included in the design and construction of these uses, to achieve interior noise levels consistent with Table 9-3* (Table 2).

Policy N-P6 *Where substantial traffic noise increases (to above 70 dB) are expected, such as on Lower Sacramento Road or Harney Lane, as shown on the accompanying graphic, require a minimum 12-foot setback for noise-sensitive land uses, such as residences, hospitals, schools, libraries, and rest homes.*



Minimum setback of 12 feet for noise-sensitive land uses.

Policy N-P7 *Require developers of potentially noise-generating new developments to mitigate the noise impacts on adjacent properties as a condition of permit approval. This should be achieved through appropriate means, such as:*

- *Dampening or actively canceling noise sources;*
- *Increasing setbacks for noise sources from adjacent dwellings;*
- *Using soundproofing materials and double-glazed windows;*
- *Screening and controlling noise sources, such as parking and loading facilities, outdoor activities, and mechanical equipment;*
- *Using open space, building orientation and design, landscaping and running water to mask sounds; and*
- *Controlling hours of operation, including deliveries and trash pickup.*

Policy N-P12 *Restrict the use of sound walls as a noise attenuation method to sites adjacent to State Route (SR) 99, the railroad, and industrial uses east of SR-99.*

Municipal Code

Title 9, *Public Pease, Morals and Welfare*, Chapter 9.24, *Noise Ordinance,* of the *Lodi, California Municipal Code* (Municipal Code) establishes standards concerning acceptable noise levels for both noise-sensitive

land uses and noise-generating land uses. The following sections of the Municipal Code are applicable to the proposed project.

§ 9.24.020 – Public nuisance noise.

The following special noise restrictions are established without regard to their sound level impact and may be enforced without the prerequisite of a sound level measurement.

(A) General Noise Regulations. Notwithstanding any other provision of this chapter, and in addition thereto, it is unlawful for any persons to willfully make or continue or permit or cause to be made or continued, any loud, unnecessary or unusual noise which unreasonably disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal noise sensitivity.

(B) No person shall operate, or cause to be operated, any source of sound at any location within the city or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person which causes the noise level when measured on any other property to exceed: The standards which shall be considered in determining whether a violation of the provision of this section exists shall include, but not be limited to, the following:

1. *The volume of the noise;*
2. *The intensity of the noise;*
3. *Whether the nature of the noise is usual or unusual for the area and hour;*
4. *Whether the origin of the noise is natural or unnatural;*
5. *The volume and intensity of the background noise, if any;*
6. *The proximity of the noise to residential sleeping facilities;*
7. *The nature and the zoning of the area within which the noise emanates;*
8. *The density of the inhabitation of the area within which the noise emanates;*
9. *The time of day or night the noise occurs;*
10. *The duration of the noise;*
11. *Whether the noise is produced by a commercial or noncommercial activity.*

This section shall be inapplicable to emergency work as defined herein.

§ 9.24.030 – Excessive, offensive or disturbing noise.

The following activities are declared to cause excessive, offensive or disturbing noise in violation of this section, but said enumeration shall not be deemed exclusive:

(A) It is unlawful for any person to sound any horn or other signaling device on any vehicle except as an emergency or danger warning signal. This provision shall be inapplicable to the sounding of any horn, bell, whistle, siren or other audible warning device which is operated in compliance with Section 7064 of the California Public Utilities Code, or with any other state or federal provision governing railroad operations.

(B) It is unlawful to play or operate any drum, radio, phonograph, loudspeaker, sound amplifier, stereo, television, or other similar sound system, whether mobile or from a fixed location upon the public streets, public right-of-way or in public parks in such a fashion that it is clearly audible at a distance of fifty feet. The city council finds and declares that any sound or noise audible at such distance endangers the public safety and welfare by interference with normal human capability for hearing nearby traffic movement and warning signals. This section shall be inapplicable to radio systems operated under or pursuant to Federal Communications Commission licenses in the regular course of business.

It is found and declared as a matter of legislative policy that the operation of the aforementioned equipment or instruments on the public streets and rights-of-way adjacent to public parks during the hours between ten p.m. and seven a.m. in such a manner as to be clearly audible at a distance of fifty feet or greater shall constitute prima facie evidence of a violation of this section.

(C) It is unlawful for any person, firm or corporation to cause, permit, or generate any noise or sound as described herein between the hours of ten p.m. and seven a.m. which exceeds the ambient noise level at the property line of any residential property (or, if a condominium or apartment house within any adjoining apartment) as determined at the time of such reading by more than five decibels. This section shall be applicable whether such noise or sound is of a commercial or noncommercial nature.

§ 9.24.050 – Exemptions.

This chapter (Chapter 9.24) shall not apply to the following:

(A) Sirens or other similar emergency warning devices located upon any emergency vehicle as defined by the Vehicle Code, or upon the premises of any public safety agency;

(B) Any bell, siren or similar device on any vehicle, which is required by law, and which is automatically activated by placing the vehicle transmission in reverse, or by any backing movement;

(C) Any sound equipment operating under a city license or permit, or being utilized for an activity subject to First Amendment protection;

(D) Emergency repair work as defined herein;

(E) Events in public parks or other public places, sponsored by the city;

(F) Noise necessarily generated in conjunction with health or sanitation services, including but not limited to refuse collection.

EXISTING NOISE SETTING

Existing Ambient Noise Levels

In order to quantify existing ambient noise levels in the project area, Michael Baker International conducted two noise measurements in the site vicinity on October 29, 2019; refer to Appendix A, *Noise Data*, and Exhibit 1, *Noise Measurement Locations*. The noise measurement locations are representative of typical existing noise exposure at and immediately adjacent to the site. Ten-minute measurements were taken between 10:30 a.m. and 11:30 a.m. at each location during the day. Short-term (L_{eq}) measurements are considered representative of the noise levels throughout the day. Noise measurements were taken during "off-peak" (9:00 a.m. through 3:00 p.m.) traffic noise hours as this provides a more conservative baseline. During rush hour traffic, vehicle speeds and heavy truck volumes are often low. Free-flowing traffic conditions just before or after rush hour often yield higher noise levels.[1] The average noise levels and sources of noise measured at each location are identified in Table 3, *Noise Measurements*.

Table 3
Noise Measurements

Site No.	Location	L_{eq} (dBA)	L_{min} (dBA)	L_{max} (dBA)	Peak (dBA)	Time
1	Along Lodi Avenue, approximately 90 feet east of the Sacramento Street and Lodi Avenue intersection	68.6	47.3	90.2	108.0	10:37 a.m.
2	Along eastern project boundary, approximately 125 feet south of Lodi Avenue (including train horn and pass-by)	76.5	46.4	102.6	118.2	10:55 a.m.

Note: dBA = A-weighted decibels; L_{eq} = Equivalent Sound Level; L_{min} = Minimum Sound Level; L_{max} = Maximum Sound Level
Refer to Exhibit 1, *Noise Measurement Locations* for a map of the noise measurement locations.

Source: Michael Baker International, October 29, 2019.

Meteorological conditions were clear skies, warm temperatures, with light wind speeds (7 miles per hour), and low humidity. Noise monitoring equipment used for the ambient noise survey consisted of a Brüel & Kjær Hand-held Analyzer Type 2250 equipped with a Type 4189 pre-polarized microphone. The monitoring equipment complies with applicable requirements of the American National Standards Institute for Type I (precision) sound level meters. Measured noise levels during the daytime measurements ranged from 68.6 to 76.5 dBA L_{eq}.

[1] California Department of Transportation, *Technical Noise Supplement to the Traffic Noise Analysis Protocol*, September 2013.

Source: Google Earth Pro, November 2019

NOT TO SCALE

Michael Baker INTERNATIONAL

PROJECT SITE

12/19 JN 175297

2 EAST LODI AVENUE
NOISE STUDY

Noise Measurement Locations

Exhibit 1

Existing Rail Noise Levels

Railway noise is generated from the rail traffic on the Amtrak/UPRR railway adjoining the project site to the east. This railroad consists of freight operations and regional passenger rail operations (Amtrak and UPRR). Noise associated with these operations includes locomotive engines, wheel-to-rail and switch noise, horn sounding, station approach and disembark bell sounding, emergency signaling devices, and stationary bells associated with the at-grade crossings at Lodi Avenue. Passenger rail movements occur through the project vicinity multiple times per day between the hours of 7:00 a.m. and 11:00 p.m. Freight trains also operate along the Amtrak/UPRR railway daily. According to the General Plan, the project site is within the 65 dBA railroad noise contour.

Modeled Rail Noise Levels

Noise generated by rail traffic on the Amtrak/UPRR railway was calculated using the Federal Transit Administration (FTA) Noise Impact Assessment model (version 1/29/2019). Input parameters used in Noise Impact Assessment model included train type, frequency of pass-bys during daytime (7:00 a.m. – 10:00 p.m.) and nighttime (10:00 p.m. and 7:00 a.m.) hours, speed of travel, and total number of rail cars. The Noise Impact Assessment model has a calculation output of a day-night noise levels (L_{dn}), which is calculated differently from CNEL values. L_{dn} values are typically always within 1 dBA of CNEL values; thus, this analysis considers the L_{dn} output of the Noise Impact Assessment model to be analogous to the CNEL values required for land use planning and noise assessment.

Both passenger and freight rail were modeled to be traveling at speeds of 30 miles per hour (mph). Passenger trains were modeled with a single locomotive engine, while freight trains were assumed to have an average of three. Input parameters for daytime/nighttime pass-by frequencies were obtained from published Amtrak timetables, details from which are shown below in Table 4, *Rail Operation Assumptions*.

Freight train schedules are not standardized or publicly available. Thus, this analysis used assumptions made in the San Joaquin County *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report*, which estimated an average of 17 freight train pass-bys each day. With no additional available information on specific schedules, this study interprets "each day" to mean during daytime hours. However, this study assumes that at least one freight train will operate along this track between the nighttime hours of 10:00 p.m. and 7:00 a.m., to provide for a worst case analysis.

Table 4
Rail Operation Assumptions

Train Service	Typical Locomotives / Cars Per Train	Daytime (7:00 a.m. to 10:00 p.m.)	Nighttime (10:00 p.m. to 7:00 a.m.)	Modeled Speed (mph)
Amtrak	1 / 6	9	1	30
Freight[1]	3 / 80	17	1	30

Notes:
1. The assumptions made in the San Joaquin County *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report* accounts for all train types observed during a 90 hour study period. Therefore, the assumption of 17 trains per day (i.e., 7:00 a.m. to 10:00 p.m.) is considered conservative as it accounts for passenger rail operations as well as freight.

Sources: Environmental Science Associates, *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report*, dated September 2011.; Amtrak, *San Joaquin's (San Francisco/Oakland – Sacrament - Stockton – Merced – Fresno – Bakersfield – Southern Californian and intermediate Stations)*, effective October 28, 2019.

Due to the presence of a roadway grade crossing at Lodi Avenue, train horn sounding was modeled at the grade crossing as required by the Code of Federal Regulations (CFR) 49 CFR Part 222 Use of Locomotive Horns at Public Highway-Rail Grade Crossings. As stipulated in 49 CFR Part 222, when trains are traveling below 60 miles-per-hour, locomotive horns are required to be sounded no sooner than 15 seconds and no later than 20 seconds before the locomotive enters the crossing. Thus, at a modeled speed of 30 miles-per-hour at the crossings, or 44 feet-per-second, train horn soundings were modeled to occur at the 17-second approach mark, or, approximately 750 feet from either side of the grade crossing.

NOISE IMPACT ANALYSIS

The proposed project site is located approximately 37 feet west of the Amtrak/UPRR railway, which runs in a north-south direction. At the time of this analysis, the project design phase has not been conducted. Therefore, the exact location of residential buildings and outdoor activity areas within the project site are unknown. As a result, rail noise levels were modeled at the eastern project property line, approximately 37 feet west of the rail centerline.

Exterior Noise Levels

Based on the FTA Noise Impact Assessment model and assumptions noted above, the anticipated maximum railway noise level experienced at the project site would be approximately 78 dBA. As such, railway noise levels experienced at the project site would exceed the City's exterior noise standard of 60 dB CNEL. As noted in General Plan Policy N-P12, the City restricts the use of sound walls as a noise attenuation method to sites adjacent to the railroad. Therefore, a sound wall would not be a feasible noise reduction method for the project site. As the project design phase has not been conducted at the time of this analysis, Recommendation Measure NOI-1 relies on a qualified acoustical engineer to prepare an acoustical study based on the final project design. The acoustical study would incorporate exterior noise reduction features (i.e., perimeter walls, orientation of the buildings to mask noise to outdoor activity areas) to ensure exterior noise level exposure at the project site is at or below the City's exterior noise standard of 60 dB CNEL.

Interior Noise Levels

According to the General Plan, as well as Title 24 standards, the City requires interior noise levels not to exceed 45 dBA to minimize sleep interference indoors. The exterior noise levels were utilized to obtain the interior noise levels using a standard exterior-to-interior attenuation rate of 24 dB with windows closed.[2] Accounting for the attenuation rate of 24 dB, interior noise levels would be 54 dBA, which would exceed the City's residential interior noise standard of 45 dBA. Therefore, Recommendation Measure NOI-1 would incorporate interior noise reduction features (e.g. acoustically rated windows and doors) to ensure interior noise level exposure at the project site is at or below the City's interior noise standard of 45 dB CNEL.

Recommendation Measures:

NOI-1 Prior to the issuance of building permits, the project applicant shall retain a qualified acoustical engineer to prepare an acoustical study, based on the final project design, and shall implement

[2] U.S. Environmental Protection Agency, *Protective Noise Levels (EPA 550/9-79-100)*, November 1979.

any and all measures recommended as a result of the study, which shall be approved by the City of Lodi Planning Division. The acoustical study shall include the following:

- The location, minimum height, density, and building material of any perimeter walls to be constructed.

- A detailed analysis demonstrating that perimeter walls, building orientations, and/or setbacks have been incorporated into the project design, such that noise level exposure to residential receivers in all useable outdoor areas within the project site is at or below the City of Lodi's exterior noise standard (i.e., 60 dB CNEL).

- Demonstrate that interior noise levels due to exterior noise sources at the project site will not exceed the City of Lodi's interior noise standard of 45 dB CNEL. It is anticipated that the typical method of compliance would be to provide noise barriers where appropriate; structure setbacks; acoustically rated windows and doors; or air conditioning or equivalent forced air circulation to allow occupancy with closed windows, which, for most construction, would provide sufficient exterior-to-interior noise reduction. The acoustical study shall demonstrate and verify that interior noise levels at the project site are below the City of Lodi's 45 dBA CNEL noise standard within all habitable residential rooms.

REFERENCES

Documents

1. Amtrak, *San Joaquin's (San Francisco/Oakland – Sacrament - Stockton – Merced – Fresno – Bakersfield – Southern Californian and intermediate Stations)*, effective October 28, 2019.

2. California Department of Transportation, *Technical Noise Supplement to the Traffic Noise Analysis Protocol*, 2013.

3. City of Lodi, *Lodi General Plan*, April 2010.

4. City of Lodi, *Lodi Municipal Code*, October 16, 2019.

5. Environmental Science Associates, *Union Pacific Expansion and Modernization Project Draft Environmental Impact Report*, dated September 2011.

6. Federal Transit Administration, *Transit Noise and Vibration Impact Assessment Manual*, September 2018.

7. State Office of Planning and Research, *State of California General Plan Guidelines*, October 2017.

8. U.S. Environmental Protection Agency, *Protective Noise Levels (EPA 550/9-79-100)*, November 1979.

Websites / Programs

Federal Transit Administration, *Noise Impact Assessment Model (version 1/29/2019)*, January 2019.

Google Earth, 2019.

AGENDA ITEM C-19

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Appoint Teresa Whitmire and Tracy Williams to the Lodi Senior Citizens Commission and Roger Stafford to the Site Plan and Architectural Review Committee; Re-Post for Vacancy on the Site Plan and Architectural Review Committee; and Post for Expiring Term on the Lodi Improvement Committee

MEETING DATE: January 15, 2020

PREPARED BY: City Clerk

RECOMMENDED ACTION: Appoint Teresa Whitmire and Tracy Williams to the Lodi Senior Citizens Commission and Roger Stafford to the Site Plan and Architectural Review Committee; re-post for vacancy on Site Plan and Architectural Review Committee; and post for an expiring term on the Lodi Improvement Committee.

BACKGROUND INFORMATION: The City Council directed the City Clerk to post for expiring terms on the Lodi Senior Citizens Commission and the Site Plan and Architectural Review Committee (SPARC) on November 6, 2019.

The Mayor reviewed the applications, conducted interviews, and recommends that the City Council concur with the appointments as detailed below. Only one application was received for the two expiring terms on SPARC, so it is recommended that City Council direct the City Clerk to re-post the vacancy until filled.

There is one expiring term on the Lodi Improvement Committee. It is recommended that the City Council direct the City Clerk to post for this expiring term for a 30-day period. Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application.

APPOINTMENTS:

Senior Citizens Commission

Teresa Whitemire	Term to expire December 31, 2023
Tracy Williams	Term to expire December 31, 2023

NOTE: 3 applicants (2 applicants seeking reappointment; 1 new application; 0 applications on file); posting ordered 11/6/19; application deadline – 12/16/19.

Site Plan & Architectural Review Committee

Roger Stafford	Term to expire January 1, 2024

NOTE: 1 applicant (1 applicant seeking reappointment; 0 new applications; 0 applications on file); posting ordered 11/6/19; application deadline – 12/16/19.

POSTING:

Site Plan & Arachitectural Review Committee

Gary Yocum	Term to expire January 1, 2020

APPROVED: _____

Stephen Schwabauer, City Manager

\\cvcfilv01\administration$\Administration\CLERK\Council\COUNCOM\Appointment_Various.doc

Lodi Improvement Committee

Rehana Zaman Term to expire March 1, 2020

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Pamela M. Farris
Assistant City Clerk

PMF

AGENDA ITEM C-20

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Accept Monthly Protocol Account Report Through December 31, 2019

MEETING DATE: January 15, 2020

PREPARED BY: City Clerk

RECOMMENDED ACTION: Accept Monthly Protocol Account Report through December 31, 2019.

BACKGROUND INFORMATION: The City Council, at its meeting of July 19, 2000, adopted Resolution No. 2000-126 approving a policy relating to the City's "Protocol Account." As a part of this policy, it was directed that a monthly itemized report of the "Protocol Account" be provided to the City Council.

Attached please find the cumulative report through December 31, 2019.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: See attached.

Pamela M. Farris
Assistant City Clerk

PMF

Attachment

APPROVED: _____
Stephen Schwabauer, City Manager

council/councom/protocolreport.doc

PROTOCOL ACCOUNT SUMMARY
FISCAL YEAR 2019-20
Cumulative Report through December 31, 2019

Date	Vendor	Description	Amount	Balance
				Starting Bal. $6,500.00
8/21/19	Staples	Certificate Holders	$48.07	$6,451.93
9/19/19	Staples	Certificate Holders	$48.06	$6,403.87
10/25/19	Paper Direct	Proclamation Paper	$139.62	$6,264.25
11/4/19	Staples	Certificate Seals	$10.23	$6,254.02
11/18/19	Amazon	Supplies for Reorg.	$26.62	$6,227.40
11/20/19	Village Flowers	Community Service Award	$81.19	$6,146.21
12/2/19	Creative Trophy & Engraving	Plaques for Mayor & Community Service	$88.49	$6,057.72
12/2/19	Giuffra's	Wine Glass Rental for Reorg	$23.50	$6,034.22
12/4/19	Jan's Sweet Treats	Food for Reorg	$200.00	$5,834.22
12/4/19	Jan's Sweet Treats	Christmas Cookie Delivery	$600.00	$5,234.22
12/4/19	Save-Mart	Meat & Fruit Trays, Ice for Reorg	$101.96	$5,132.26
12/17/19	Village Flowers	City Clerk Retirement	$77.89	$5,054.37
12/17/19	Kaylee Clayton	Plates/Napkins/Creamer for Re-Org	$33.60	$5,020.77
			Total Expenditures: ($1,479.23)	*Ending Bal.* **$5,020.77**

Prepared by: PMF

AGENDA ITEM **G-01**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Public Hearing to Consider Adopting a Resolution to Approve the Community Development Block Grant (CDBG) Consolidated Plan Amendment No. 1

MEETING DATE: January 15, 2020

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Public hearing to consider adopting a resolution to approve the Community Development Block Grant (CDBG) Consolidated Plan Amendment No. 1.

BACKGROUND INFORMATION: A public hearing is required as part of the federal requirements under the U.S. Department of Housing and Urban Development for the CDBG program.

Amendment to 2019-23 Consolidated Plan

Overview

The City's 2019-23 Community Development Block Grant (CDBG) Consolidated Plan sets forth the priority needs and goals for the CDBG program for a five-year period. In October 2019, the U.S. Department of Housing and Urban Development (HUD) approved this plan. HUD also recommended that the City amend its 2019-23 Consolidated Plan to improve impact and reduce administrative burden.

In preparing initial revisions, consultant and City staff reviewed previous survey results, and collected feedback from stakeholders at a quarterly subrecipient meeting held on November 6, 2019. Subsequently, City staff collected feedback from City Council at a shirtsleeve meeting held on December 10, 2019, which focused on receiving additions, deletions, and revisions to preliminary draft goals; identifying the higher priority community needs and goals; and analyzing the use of CDBG funds for each project. On December 10, 2019, at a Lodi Improvement Committee meeting, committee members and stakeholders also provided input regarding preliminary revisions. Lastly, on December 14, 2019, consultant attended the Winter Wonderland Holiday Resource Fair and collected feedback on priority goals from approximately 50 members of the public. As a result of all this feedback, revisions were drafted and the draft Consolidated Plan Amendment was made available for a 30-day public comment period beginning December 17, 2019, and ending January 15, 2020. The draft amendment is attached to this staff report and contains a comprehensive list of the potential priority populations, priority needs, and goals/activities considered along with the feedback received on the proposed revisions.

Formation of Community Needs and Goals

The 2019-23 Consolidated Plan outlines the actions to be undertaken over the next five years, in relation to capital improvements, public services, infrastructure improvements, housing,

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APPROVED: _____
Stephen Schwabauer, City Manager

homelessness, special needs, and various other community development-type activities, as identified by the City and the community.

The process of developing the original 2019-23 Consolidated Plan community needs and goals involved a significant amount of community outreach and public involvement. The originally drafted 2019-23 Consolidated Plan goals were completed in a format very similar to the previous 2014-18 Consolidated Plan. These goals were formed based on public feedback, City Council comments, City Staff review, and locally sourced data.

Outreach to the community included the distribution and collection of a community needs survey; a workshop focused on noticing the public of CDBG funding and community needs; consultations with local organizations and stakeholders; Lodi Improvement Committee meetings that encouraged citizen participation and public comment; a 30-day public review period for the draft Consolidated and Annual Plan documents; and public hearings to allow for public feedback after the approval of the Draft 2019-23 Consolidated Plan and 2019-20 Annual Action Plan.

HUD Recommendations

HUD is recommending that the City of Lodi amend the Consolidated Plan to have more specific goals and priority needs identified in its Strategic Plan, which is the priority needs and goal setting section of the Consolidated Plan. It should be noted that no prior direction on the specificity of these goals was given by HUD and Lodi's strategic plan goals were similar to previously approved strategic plan goals. Lodi's HUD representative explained that Consolidated Plans have historically had more general goals in the past; however, HUD is now encouraging local jurisdictions to have more specific priority needs and goals. HUD also recommends that the City create specific goals for addressing affordable housing and homelessness issues in the community, since community feedback identified those as significant issues. Lastly, HUD suggests that it is better to focus funds on fewer community needs/goals and projects to reduce administrative burden on the City and applicants, while also creating a larger impact per project.

Please refer to the official HUD letter attachment at the end of this staff report for a detailed explanation of recommended improvements to the Consolidated Plan.

Consolidated Plan Amendment Process

The timeline below will be followed to amend the 2019-23 Consolidated Plan:

- **November**
  - November 6th - Collected feedback from stakeholders on priority populations, needs, and goals
  - Reanalyzed results of community survey on forming priority populations, needs, and goals
  - Staff drafted revised preliminary needs and goals
- **December**
  - December 10th - Shirtsleeve session to obtain City Council feedback on preliminary draft needs and goals
  - December 10th - Lodi Improvement Committee meeting to review preliminary draft needs and goals
  - December 14th - Community engagement at Winter Wonderland Holiday Resource Fair
  - Contact stakeholders and community members for feedback, as needed
  - Incorporate feedback and complete Consolidated Plan Draft Amendment and release for 30-day public comment period
- **January**
  - End of 30-day public comment period
  - City Council public hearing to approve Consolidated Plan Amendment

Staff Recommendation

Consultant recommends that Council review and select approximately four to five top priority needs to be incorporated into the final Consolidated Plan Amendment, and to remove any needs that are no longer considered a priority. Additionally, consultant recommends that Council review and confirm priority activities, as identified in the draft Consolidated Plan Amendment, for adoption into the final plan amendment. When evaluating the needs and activities to be prioritized, other sources of funding can be taken into consideration, as well as resident, stakeholder, and Lodi Improvement Committee feedback collected.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Stephen Schwabauer
Community Development Director

Attachments
Attachment A: HUD Grant Award Letter and Notice for Amendment
Attachment B: 2019-2023 CDBG Consolidated Plan Amendment #1

Attachment A

U.S. Department of Housing and Urban Development
San Francisco Regional Office – Region IX
One Sansome Street, Suite 1200
San Francisco, CA 94104-4430
www.hud.gov
espanol.hud.gov

OCT 23 2019

RECEIVED
OCT 29 2019
COMMUNITY DEVELOPMENT DEPT
CITY LODI

RECEIVED
OCT 28 2019
CITY MANAGERS OFFICE

The Honorable Mark Chandler
Mayor of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

Dear Mayor Chandler:

SUBJECT: Five-year Consolidated Plan / 2019-2023
Fiscal Year 2019 Annual Action Plan
City of Lodi, California

Thank you for submitting a five-year Consolidated Plan and Annual Action Plan. The plans submitted for the city of Lodi have been reviewed by HUD. The grant assistance award follows:

Community Development Block Grant	$624,641

The Department is forwarding two copies of the Grant Agreement and Funding Approval forms, along with guidance and/or conditions applicable to the CDBG program, to Joseph Wood, Neighborhood Services Manager. Mr. Wood should ensure that both copies are signed and dated by the appropriate designee, retain one copy for the city's records and return the remaining copy to the HUD San Francisco Office. Within three weeks of our receipt of your executed grant agreement the city should be able to begin draw down of these funds through the Integrated Disbursement and Information System (IDIS).

Furthering fair housing is one of the Department's highest priorities. Included in your Annual Action Plan was a certification that your jurisdiction will affirmatively further fair housing, which means that the city will (1) conduct an analysis to identify impediments to fair housing choice within your community, (2) take appropriate actions to overcome the effects of any impediments identified through that analysis, and (3) maintain records reflecting the analysis/assessment and actions. The source and amount of all funding for the actions to affirmatively further fair housing should also be noted in the Annual Action Plan. The results of actions taken during the program year to address the impediments/contributing factors identified in your AI/AFH should be reported in the Consolidated Annual Performance Evaluation Report (CAPER) submitted to HUD.

Please note the following:

- The performance reports for the FY 2018 Annual Action Plan was due on **September 30, 2019**, and should include accomplishments compared to performance goals;

- There are a number of conditions included in the CDBG grant agreement, including:
  - With the shift to grant-by-grant accounting, no obligations to be paid with FY 2019 funds may be incurred after September 1, 2026, and
  - If funds are to be used for payment of indirect costs, a schedule meeting the prescribed requirements must be attached to the grant agreement. (If applicable, note that the same requirements have been incorporated into the HOME Program grant agreement.)
- Please review and address as needed the enclosed concerns regarding Lodi's five-year Consolidated Plan (2019-2023) and PY 2019 Annual Action Plan.

HUD looks forward to working with you over the coming year to accomplish the housing and community development goals set forth in the city's Annual Action Plan and five-year Consolidated Plan. If there are any questions or if further information or assistance is required, please contact Curt Klaus, Community Planning and Development Representative, at 415-489-6599, or Curt.Klaus@hud.gov.

Sincerely,

Kimberly Y. Nash
Director
Community Planning and
Development Division

Enclosure:
Attachment for CDBG Concerns

cc:
Stephen Schwabauer, City Manager
Joseph Wood, Neighborhood Services Manager, **w/grant agreements**
Patrice Clemons, CDBG Program Specialist

ATTACHMENT

GRANTEE: City of Lodi, California

PROGRAM: Community Development Block Grant (CDBG)

SUBJECT: Five Year Consolidated Plan from Program Year 2019 through 2023, and PY 2019 Annual Action Plan Concerns

The Department has identified several elements in the city's 2019- 2023 Consolidated Plan which require clarification, revision, or need additional information in order to be consistent with the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703. These changes will likely require the city to amend its Consolidated Plan once the appropriate adjustments have been made. As noted under 24 CFR 91.215. For the categories of Affordable Housing, Homelessness, Public Housing, Other Special Needs, and Non-Housing Community Development Plan, the consolidated plan must do the following:

A. Indicate the general priorities for allocating investment geographically within the jurisdiction and among different activities and needs as identified in the tables prescribed by HUD.

B. Describe the rationale for establishing the allocation priorities given to each category of priority needs;

C. Identify any obstacles to meeting underserved needs;

D. Summarize the priorities and <u>specific objectives</u> the jurisdiction intends to initiate. For each specific objective statement, the city must identify the <u>proposed accomplishments and outcomes</u> the jurisdiction hopes to achieve over the five-year period.

E. For Fair Housing goals not addressed by these priorities and objectives, identify any additional objectives and priorities for affirmatively furthering fair housing.

The Department has identified the following shortcomings in the City of Lodi's 2019-2023 Consolidated Plan:

1. The city has not identified clear, concrete, specific needs. For example, safe neighborhoods is too broad and vague to know what would need to be achieved in order for the neighborhood to be considered safe. Furthermore, of the many things the city has identified that makes a neighborhood safe, it may not have the resources needed to be able to accomplish all of those elements and thus no neighborhood could become identified as safe during the five-year period. In contrast, one of the elements identified in this group that makes a safe neighborhood is the need for streetlights. A

neighborhood that needs streetlights is a clearly defined need and the city could identify a concrete measurable goal that was achievable.

2. The city has not identified clear, concrete goals, specific objectives or measurable outcomes is hopes to achieve. A resident reading the Consolidated Plan should be able to clearly understand what the city hopes to achieve in a measurable way, and what the actual outcomes are each year, and over the next 5 years. way. This allows the reader to be able to assess the progress the city has made towards each goal identified.

3. There are no clear, concrete, measurable goals identified for affordable housing. The city should identify specific five-year housing goals. Of note is that the city has already allocated funds for a project called Tiny Homes. The units could be counted towards a housing goal if was one identified. This accomplishment could also be credited with housing some of the city's homeless such a goal was identified.

4. There are no clear, concrete, measurable goals identified for the homeless. What does the city want to accomplish over the next five years? How many homeless does it want to assist in getting housed so they are no longer homeless? If the city identified specific goals for homeless needs, the housing created under Tiny Homes could also be credited towards those goals.

5. Some priorities identified in the survey do not appear to be included in the city's priorities while others that were not identified as priorities were funded in the first action plan. The purpose of identifying specific needs and priorities, and establishing goals connected to those priorities is to ensure CDBG funds are allocated to those needs and not others not identified as priorities. The city should consider ensuring that the review committee reviews <u>all</u> CDBG proposed projects and understands what the specific five-year goals are so that funds are only allocated to those proposals that help the city achieve the goals identified in its Consolidated Plan.

GRANTEE: City of Lodi, California

PROGRAM: FY 2019 Community Development Block Grant (CDBG)

PROGRAM NO.: B-19-MC-06-0038

Enclosed is the Grant Agreement and Funding Approval (two copies of HUD-7082) which constitutes the contract between the Department of Housing and Urban Development and the city of Lodi for the CDBG program. Please sign and date these forms (two original signatures), retain one copy for your records, and return the remaining copy to the San Francisco HUD Field Office:

U.S. Department of Housing and Urban Development
Community Planning and Development Division, 9AD
San Francisco Regional Office
One Sansome Street, Suite 1200
San Francisco, CA 94104-4430

Upon receipt of the executed Grant Agreement, the funds can then be accessed through the Integrated Disbursement and Information System (IDIS). If there is a need to add individuals authorized to access IDIS, an IDIS Access Request Form must be prepared, notarized, and returned to this office with the Grant Agreement. Also, if there is a need to establish or change the depository account to which these grant funds are to be wired, a Direct Deposit Sign-up Form (SF-1199A), along with a voided check, must be completed by you and your financial institution and mailed to this office.

Certain activities are subject to the provisions of 24 CFR Part 58 (Environmental Review Procedures for the CDBG program). Funds for such activities may not be obligated or expended unless the release of funds has been approved in writing by HUD. A request for the release of funds must be accompanied by an environmental certification.

The Special Condition in your Grant Agreement and Funding Approval concerning the review procedures under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52, restricts the obligation or expenditure of funds for the planning or construction of water or sewer facilities until the completion of the review process and receipt of written notification of Release of Funds from HUD. Because you have not submitted your Consolidated Plan for review under E.O. 12372, we assume you do not propose to use funds for activities subject to review. However, the condition requires that in the event you amend or otherwise revise your Consolidated Plan to use funds for the planning or construction of water or sewer facilities you must receive a written Release of Funds from HUD before obligating or expending funds for such activities.

I. INTRODUCTION

The City's 2019-23 Community Development Block Grant (CDBG) Consolidated Plan sets forth the priority needs and goals for the CDBG program over a five-year period. In October 2019, the U.S. Department of Housing and Urban Development (HUD) approved this plan. HUD also recommended that the City amend its 2019-23 Consolidated Plan to improve impact and reduce administrative burden.

In preparing revisions to the plan, Consultant and City staff first reviewed previous survey results, and collected feedback from stakeholders at a quarterly subrecipient meeting held on November 6, 2019. Subsequently, City staff collected feedback from City Council at a shirtsleeve meeting held on December 10, 2019, which focused on receiving additions, deletions, and revisions to preliminary draft goals; identifying the higher priority community needs and goals; and analyzing the use of CDBG funds for each project. On December 10, 2019, at a Lodi Improvement Committee meeting, committee members and stakeholders also provided input regarding preliminary revisions. Lastly, on December 14, 2019, consultant staff attended the Winter Wonderland Holiday Resource Fair and collected feedback on priority goals from approximately 50 members of the public.

As a result of this feedback, this amendment was drafted and is made available for a 30-day public comment period beginning December 17, 2019 and ending January 15, 2020.

Formation of Community Needs and Goals

The 2019-23 Consolidated Plan outlines the actions to be undertaken over the next five years, in relation to capital improvements, public services, infrastructure improvements, housing, homelessness, special needs, and various other community development-type activities, as identified by the City and the community.

The process of developing the 2019-23 Consolidated Plan community needs and goals involved a significant amount of community outreach and public involvement. The originally drafted 2019-23 Consolidated Plan goals were completed in a format very similar to the previous 2014-18 Consolidated Plan. These goals were formed based on public feedback, City Council comments, City Staff review, and locally sourced data.

Outreach to the community included the distribution and collection of a community needs survey; a workshop focused on noticing the public of CDBG funding and community needs; consultations with local organizations and stakeholders; Lodi Improvement Committee meetings that encouraged citizen participation and public comment; a 30-day public review period for the draft Consolidated and Annual Plan documents; and public hearings to allow for public feedback after the approval of the Draft 2019-23 Consolidated Plan and 2019-20 Annual Action Plan.

HUD Recommendations

HUD is recommending that the City of Lodi amend the Consolidated Plan to have more specific goals and priority needs identified in its Strategic Plan, which is the priority needs and goal setting section of the Consolidated Plan. It should be noted that no prior direction on the specificity of these goals was given by HUD and Lodi's strategic plan goals were similar to previously approved strategic plan goals.

Lodi's HUD representative explained that Consolidated Plans have historically had more general goals in the past; however, HUD is now encouraging local jurisdictions to have more specific priority needs and goals. HUD also recommends that the City create specific goals for addressing affordable housing and homelessness issues in the community, since community feedback identified those as significant issues. Lastly, HUD suggests that it is better to focus funds on fewer community needs/goals and projects to reduce administrative burden on the City and applicants, while also creating a larger impact per project.

Please refer to the official HUD letter attachment at the end of this staff report for a detailed explanation of recommended improvements to the Consolidated Plan.

Consolidated Plan Amendment Process

The timeline below outlines the 2019-23 Consolidated Plan Amendment #1 process:

November
- November 6th - Collected feedback from stakeholders on priority populations, needs, and goals
- Reanalyzed results of community survey on forming priority populations, needs, and goals
- Staff drafted revised preliminary needs and goals

December
- December 10th - Shirtsleeve session to obtain City Council feedback on preliminary draft needs and goals
- December 10th - Lodi Improvement Committee meeting to review preliminary draft needs and goals
- December 14th - Community engagement at Winter Wonderland Holiday Resource Fair
- Contact stakeholders and community members for feedback, as needed
- Incorporate feedback and complete Consolidated Plan Draft Amendment and release for 30-day public comment period

January
- End of 30-day public comment period
- City Council public hearing to approve Consolidated Plan Amendment

II. FEEDBACK ON PRIORITY POPULATIONS AND NEEDS

During the Consolidated Plan Amendment process, City staff reached out to local community stakeholders, Lodi Improvement Committee members, as well as Lodi City Council to gather feedback on the prioritization of needs and populations to be revised and selected for the 2019-23 Consolidated Plan. The information below displays the compiled results that were gathered from this outreach.

Draft - Revised Two (2) Priority Populations:

A. Very low-income persons, specifically children, youth, single-parent families, individuals, seniors, and persons with disabilities
B. Extremely low-income persons, specifically children, youth, single-parent families, individuals, seniors, and persons with disabilities

Draft – Revised Twelve (12) Priority Needs:

1. Safer Neighborhoods and more resident pride for neighborhoods within CDBG target area:
    a. Neighborhood watch groups or neighborhood policing
    b. Streetlights (Note: more information to be gathered on issue of lighting)
    c. Garbage clean ups
    d. Graffiti Abatement
    e. Locally empowered leaders

2. Park/Green Space that attracts more local resident use, especially for youth:
    a. Park cleanup
    b. Park improvements for youth recreational activities
    c. Community gardens

3. Improved Access to Transportation for priority populations:
    a. Financial assistance programs for transportation for priority populations

4. Improve access within alleys, sidewalks, and buildings for those living in the CDBG target area:
    a. Alley improvements in CDBG target area
    b. ADA improvements
    c. Sidewalk infill in CDBG target area

5. Fewer barriers to affordable housing:
    a. Create new affordable housing units
    b. Improve affordability of rental units
    c. Improve homeownership
    d. Farmworker housing

6. Improve housing conditions within CDBG target area:
    a. Critical repair program
    b. Code enforcement
    c. Housing rehabilitation
    d. Rehabilitate affordable housing units

7. Housing for homeless and at-risk homeless:
    a. Transitional/supportive housing units
    b. Emergency units
    c. Housing/rental assistance vouchers

8. Services for Children/Youth:
    a. Childcare
    b. After-school programs
    c. Gang prevention
    d. Homework help
    e. Mental health

9. Services for very-low income adults, seniors, disabled:
    a. Meal and emergency food services
    b. Mental health
    c. General supportive services

10. Services for homeless/at-risk homeless individuals:
    a. Mental Health Services
    b. General assistance
    c. Job training and employment opportunities
    d. Domestic violence and emergency health services

11. Fair housing services (HUD requires this through AFFH rule)

12. More Local Leaders in low-income neighborhoods to help make community improvements (beyond City resources) for a safer neighborhood and more pride/cultural identity within neighborhood.
    a. ABCD Program
    b. Youth leadership

HUD recommends that priority needs be identified as either high or low priority (only a high or low classification is permitted); and that the number of priority needs (high or low) be more focused or narrowed down. Based on this direction, consultant staff recommends that Council select approximately four to five priority needs to be classified as high priority, which leaves the remaining priorities to be low priority. Additionally, Council may remove or modify any of the above priority needs to narrow down the number of priorities further. The following three tables display the results that were individually collected from community stakeholders, Council members, and members of the Lodi improvement Committee regarding the community needs above. The total score represents the number of votes in favor of a high, instead of a low, priority designation for the priority need.

Total Responses:

	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12
High	7	2	1	7	7	7	9	5	10	8	2	4
Low	-3	-5	-6	-1	-1	-1	-1	-2	-1	-2	-3	-2

Remove	-0	-2	-2	-1	-1	-0	-1	-2	-1	-2	-3	-3
Keep	+2	+0	+0	+1	+3	+1	+1	+1	+2	+2	+1	+1

Total Score	6	-5	-7	6	8	7	8	2	10	6	-3	0

City Council Response:

#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12

High	IIII	II	I	IIIII	II	IIII	IIII	II	IIII	III	I	II
Low	I	I	II		I	I	I	II	I	I	I	I

Remove										I	I	III
Keep	II			I		I			I			

Total Score	5	1	-1	6	1	4	3	0	6	3	1	-2

Stakeholders Response:

	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12
High	II			I	III	III	III	III	III	III	I	II
Low	I	III	III	II						I	I	I

Remove		II	II	I							I	
Keep					II		I	I	I	I		

Total Score	1	-5	-5	0	5	3	4	4	4	4	-1	1

Lodi Improvement Committee Response:

	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11	#12
High	I			I	II		II		I	II		
Low	I	I	I	I								

Remove					I		I	I	I	I		I
Keep					I					I		

Total Score	2	-1	-1	0	2	NA	2	-1	0	2	NA	-1

III. PROPOSED REVISED GOALS

During the Consolidated Plan Amendment process, City staff reached out to local community stakeholders, Lodi Improvement Committee members, residents of the City, as well as Lodi City Council to gather feedback on the prioritization of goals to be chosen and selected for the 2019-23 Consolidated Plan. The information provided in the tables below illustrates the top goals and the top activities that were chosen to be funded.

Once this amendment has been released for 30 days to the public, Council will decide on the final goals and priority needs at a formal public hearing that will be held on January 15, 2020.

Draft-Revised Goals:

Activities highlighted in grey received overall support, based on the feedback received. Those without a highlight had lower levels of support and will be potentially be removed. *Based on HUD direction to be specific and narrow down goals, consultant staff recommends that Council identify which activities to keep and or modify, and which activities to remove. Council may want to consider the feedback received, alternative funding sources, priority needs, or other relevant factors.*

Goal #	Goal Name	Description	Draft Allocations – Will be adjusted/modified if activities change.
1	*Promote Safer Neighborhoods*	The City will support projects and/or programs that support the development of safer neighborhoods. The City will: — Evaluate streetlights in high-crime neighborhoods for maintenance and lighting — Create up to 5 neighborhood watch groups — Conduct 5 community garbage clean ups — Allocate up to $100,000 to the graffiti abatement program (*potentially removed; support for this activity was extreme – either very much in support or not much in support) — Other_____	$100,000 from public services for graffiti abatement (26.5% of public service cap) $50,000 for other Capital projects (3.1% of Capital Improvements)
2	*Improve Community Parks and Green Space in CDBG target area*	The City will improve public parks and green spaces within low-income areas of the City by implementing park and facility improvements that enhance park conditions, add youth recreational activities, and implement or maintain community gardens. The City will: — Fund up to 2 park improvement projects, including improved youth recreational activities. — Fund up to 1 green space/ community gardens project — Fund up to 5 park clean-up projects — Other_____ Notes: City anticipate receiving non-CDBG grants to support three park improvement projects.	$300,000 for 2 Park improvement projects (Facilities) (18.3% of Capital Improvements) $20,000 for other capital improvement Park projects (clean-ups, etc.) (1.2% of Capital Improvements)
3	*Infrastructure and Facility Improvements*	The City will improve public spaces within low-income areas of the City by implementing facility and public infrastructure improvements. The City will: — Fund up to 2-3 ADA improvement construction projects (including to 2-3 Gap Closure Sidewalk projects)	$513,000 for 2-3 Infrastructure/Facility projects (31.3% of Capital Improvements)

		— Fund up to 2-3 projects that support the improvement of alleyways in low-income neighborhoods — Other_____	
4	*Increase and Maintain Supply of Affordable Housing*	The City will fund activities that focus on creating and maintaining affordable housing within the City. The City will allocate up to $200,000 to: (Note: Additional funds would need to be allocated to accomplish these goals; perhaps from other non-CDBG funding sources (e.g. HOME, ESG, HEAP, etc). — Fund the creation of up to 5 new permanent/transitional affordable housing units for very low-income persons that may be disabled or senior. — Rehabilitate up to 10 housing units for disabled, senior, and low-income populations (Housing Rehab or Critical Repair) — Rental Housing Inspection and Code Enforcement programs — Other_____	$200,000 for Housing Supply and Maintenance Projects (12.2% of Capital Improvements)
5	*Build Capacity in CDBG Target Area*	The City will fund activities that help to create community cohesion and agency among residents. (Combine this with Goal 1 above?) The City will allocate up to $30,000 to: — Fund the Asset-Based Community Development (ABCD) program $_____ — Fund youth leadership initiatives $_____ — Other_____	$30,000 to ABCD and youth leadership (1.8% of Capital Improvements)
6	*Support Public Service Programs for Priority Populations*	The City will fund activities that provide access to affordable services needed by priority populations. The City will allocate up to $278,000 in funds for: — after-school programs — childcare — gang prevention — homework help for youth — meal and emergency food services — mental health for children/youth — mental health for parents, disabled, seniors — general supportive assistance — immigration services — Other_____	$278,000 to Public Services (73.5% of Public Service cap)
7	*Improve or support access to transportation for priority populations*	The City will provide funds to support or improve projects and programs that assist with public transportation. The City will allocate up to $75,000 to: — Financial Assistance for transportation programs	$75,000 to programs and projects that support access to transportation (4.6% of Capital Improvements)

		— Infrastructure that improves transportation — Other_____	
8	*Affirmatively Further Fair Housing*	The City will fund activities that focus on affirmatively furthering fair housing. The City will allocate up to $100,800 to: — Fair Housing Discrimination Testing (lower priority) — Fair Housing Help Hotline — Fair Housing Counseling and Education (higher priority) — Fair Housing Legal Assistance — Other_____	$100,800 to Fair Housing programs (100% of Fair Housing from Program Admin)
9	*Improve Housing Affordability*	The City will fund activities that focus on removing barriers to affordable housing. The City will allocate up to $150,000 in CDBG funds to: — First-time homebuyer programs — Farmworker financial assistance — Tenant-based rental assistance — Other_____ Note: HOME funds may be an eligible grant source for these programs.	$150,000 to Housing Financial Assistance (9.2% of Capital Improvements)
10	*Support Programs and Projects that Reduce and Prevent Homelessness*	The City will fund activities that provide resources and assistance to homeless and at-risk homeless populations. The City will provide up to $150,000 in CDBG funds to: — Tenant-based rental assistance — Mental health services (divergent opinions and no consensus was found on which of the other activities should be prioritized; should we remove these other activities or can we focus on support another one or two?) — Supportive and emergency services (for domestic violence victims) — Job training and employment opportunities — Transitional and supportive housing services — Other_____	$150,000 (9.2% of Capital Improvements)
11	*Create and Promote Housing for Homeless Populations*	The City will fund projects that focus on the creation of housing opportunities for homeless populations within the City, such as the creation of transitional units, permanent supportive units, and/or providing housing assistance programs. The City will: — Fund the construction of up to 6 permanent supportive housing units for homeless and at-risk homeless individuals (i.e. HEAP) — Create up to 10 new transitional/supportive/emergency housing units — Provide up to 30 individuals with housing assistance. — Other_____	$150,000 (9.2% of Capital Improvements)

Questions regarding this Consolidated Plan amendment should be directed to:

Patrice Clemons, CDBG Program Specialist
City of Lodi
221 W. Pine Street, PO Box 3006
Lodi, CA 95241-1910
209-333-6800 x3404
pclemons@lodi.gov

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE 2019-2023 CONSOLIDATED PLAN AMENDMENT NO. 1 FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

==========

WHEREAS, the Department of Housing and Urban Development (HUD) has determined that the City of Lodi, California, is a Community Development Block Grant (CDBG) entitlement community; and

WHEREAS, the City of Lodi, California, has created a Consolidated Plan which is required by the U.S. Department of Housing and Urban Development (HUD) in order for local jurisdictions to receive federal housing and community development funds under the Community Development Block Grant (CDBG) Program; and

WHEREAS, the City Council held a public hearing on May 1, 2019 where it reviewed and approved the 2019-23 Consolidated Plan; and

WHEREAS, HUD approved the 2019-23 Consolidated Plan in October 2019, and provided recommendations to the City for updating its 2019-23 Consolidated Plan to improve impact and to reduce administrative burden;

WHEREAS, the final Consolidated Plan provides a five-year outline of the actions to be undertaken in the next five years, in regard to the priorities and goals of the CDBG program in relation to public improvement, infrastructure improvements, economic development, social services, housing, homelessness, special needs, and other community development type actions identified by the City and the community; and

WHEREAS, the City of Lodi, California, has received public input regarding the proposed draft Amendment No. 1 through outreach to stakeholders, residents, Lodi Improvement Committee, and City Council; and

WHEREAS, the draft 2019-2023 Consolidated Plan Amendment No. 1 was prepared based on feedback received from community engagement; and

WHEREAS, the draft 2019-2023 Consolidated Plan Amendment No. 1 was noticed and made available to the public for review and comment beginning December 17, 2019, and was available for a minimum of 30 days; and

WHEREAS, the City Council held a public meeting on December 10, 2019, where it reviewed and commented on preliminary amendment revisions; and

WHEREAS, staff therefore recommends the revisions to the plan as reviewed and modified by the City Council on January 15, 2020; and those subsequent non-substantive changes to the draft made by staff as a result of the modifications directed by Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby approve the 2019-2023 Consolidated Plan Amendment No. 1.

Dated: January 15, 2020
==========

I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

CITY OF LODI

LEGAL ADVERTISEMENT

ADVERTISING INSTRUCTIONS

SUBJECT: COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
CONSOLIDATED PLAN AMENDMENT NO. 1

PUBLISH (DATES): December 21, 2019

ACCT#: 20104930

TEAR SHEETS WANTED: 1 EXTRA (ONLY) DELIVER TO: Community Development Dept.

AFFIDAVIT & BILL TO: Community Development - CDBG
City of Lodi
221 W. Pine Street
Lodi, CA 95241

DATE: December 18, 2019

ORDERED BY: Patrice Clemons TITLE: CDBG Program Specialist

DECLARATION OF POSTING

NOTICE OF PUBLIC HEARING FOR APPROVAL OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM DRAFT 2019-2023 CONSOLIDATED PLAN AND DRAFT 2019-2020 ANNUAL ACTION PLAN

On Thursday, December 19, 2019, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing for adoption of 2018-19 Consolidated Annual Performance Evaluation Report (CAPER) for Community Development Block Grant (CDBG) Program (attached and marked as Exhibit A) was posted at the following locations:

Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum
WorkNet Office

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2019, at Lodi, California.

ORDERED BY:

JENNIFER M. FERRAIOLO
CITY CLERK

Pamela M. Farris

PAMELA M. FARRIS
ASSISTANT CITY CLERK

KAYLEE CLAYTON
ADMINISTRATIVE CLERK

EXHIBIT A

LEGAL NOTICE

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
NOTICE OF PUBLIC HEARING FOR APPROVAL OF THE DRAFT 2019-2023
CONSOLIDATED PLAN AND DRAFT 2019-2020 ANNUAL ACTION PLAN

NOTICE IS HEREBY GIVEN that a public hearing will be held on Wednesday, April 17 at 7:00 p.m. or as soon thereafter as the matter may be heard, in the Lodi City Council Chambers, 305 West Pine Street, Lodi, CA 95241 to consider the approval of the Community Development Block Grant (CDBG) Program draft 2019-2023 Consolidated Plan and draft 2019-2020 Annual Action Plan, as well as to allow for public comment on these matters.

As a recipient of CDBG funding, the City has developed a five-year Consolidated Plan that outlines the City's priority needs and the subsequent goals to be developed for low-income and special needs residents. The five-year Consolidated Plan is designed to help the City assess the priority needs within the community regarding affordable housing and community development-related projects.

The Consolidated Plan also contains the 2019-20 Annual Action Plan, which generally describes how the City will utilize program funds for eligible activities during the 2019-2020 fiscal year. The Annual Action Plan can be amended as needed to reallocate funds to housing and community development activities.

The U.S. Department of Housing and Urban Development (HUD) provides the City an annual CDBG grant award. At the time of this publication, HUD has not announced the City's allocation amount for the 2019-2020 CDBG program year. The City is estimating that Lodi will receive approximately $630,000 in CDBG funds for the 2019-20 program year. The CDBG program provides funding for activities that benefit low-income persons, eliminate slum or blight, or serve an urgent need. Eligible activities include property acquisition, public improvements, housing rehabilitation, economic development, and public services.

Draft 2019-2023 Consolidated Plan and 2019-2020 Annual Action Plan documents were made available to the public for a 30-day review period before adoption by the City Council. The documents were released on March 19, 2019 for public review and comment and were available at City Hall and the City's Community Development website: https://www.lodi.gov/183/Community-Development-Block-Grant-Progra. A public hearing will be held on Wednesday, April 17, 2019 for review and approval of the draft Consolidated Plan and Annual Action Plan, and on May 1, 2019 another public hearing will be held to adopt the final Consolidated Plan and Annual Action Plan

The purpose of these public hearings on April 17 and May 1 will be to give citizens an opportunity to make their comments known regarding community needs, goals, and potential activities to be funded under the CDBG Program. If you have any questions or comments, you may contact the CDBG Program specialist, City of Lodi, PO Box 3006, Lodi, CA 95241, or you may telephone Patrice Clemons, (209) 333-6800 x3404.

Notice of Non-Discrimination on the Basis of Disability and Reasonable Accommodation

The City promotes fair housing and makes all its programs available to low- and moderate-income families regardless of age, race, color, religion, sex, national origin, sexual preference, marital status or handicap.

The City of Lodi does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities on the basis of disability. Reasonable accommodations will be made available to the disabled, upon request. Translators/Translation services are also available upon request. Any questions, concerns or requests related to these Notices should be directed to the following person: Patrice Clemons, (209) 333-6800 x3404.

Persons with hearing impairment, please use the California Relay Service (CRS) 7-1-1.

AGENDA ITEM **G-02**

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Public Hearing to Consider Adopting Resolution Authorizing City Manager to Execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas for Conceptual Development (Phase 1) and Design Development (Phase 2) for Replacement of Aeration Blowers and Diffusers at White Slough Water Pollution Control Facility ($225,000), in Accordance with California Government Code Section 4217

MEETING DATE: January 15, 2020

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Public hearing to consider adopting resolution authorizing City Manager to execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas for conceptual development (Phase 1) and design development (Phase 2) for replacement of aeration blowers and diffusers at White Slough Water Pollution Control Facility, in the amount of $225,000, in Accordance with California Government Code Section 4217.

BACKGROUND INFORMATION: The State of California allows public agencies to enter into energy service contracts with an Energy Service Company (ESCO) if the governing body finds the proposed project will provide energy savings over its service life. Schneider Electric Buildings Americas, Inc. is one of several ESCO's that operate in the State of California. The benefits to the public agency of entering into an ESCO agreement include project delivery efficiencies, diverting project risk, a fixed project construction price, and project performance guarantee with respect to energy savings.

Since this is the first ESCO contract being recommended for Council approval, Staff has been deliberate in choosing the appropriate size and type of energy savings project where the ESCO project delivery method will prove most beneficial to the City. The Aeration Blowers and Diffusers Replacement Project is a relatively simple project that fits this criteria. This project and a brief overview of the ESCO process was presented to Council, along with the White Slough Water Pollution Control Facility Update, at the June 25, 2019 shirtsleeve meeting.

There are currently four, 350-horsepower, constant speed aeration blowers to supply dissolved oxygen for the six aeration basins at the White Slough Water Pollution Control Facility (WSWPCF). Since the aeration demand (dissolved oxygen dosage) varies as flow conditions change, the existing constant-speed blowers utilize inlet throttling valves to pace the aeration demand by restricting airflow during times when aeration demand is less.

The blower replacement element of this project is intended to replace two of the four existing constant-speed aeration blowers with variable speed blowers. The variable speed blowers will be used in concert with the existing blowers to pace the aeration demand by either speeding up, or slowing down, as demand varies. This operational method is much more energy efficient than using inlet throttling valves to restrict the air being delivered by the constant speed blowers.

APPROVED: _____
Stephen Schwabauer, City Manager

The aeration diffuser system is designed to evenly distribute the air provided by the blowers across the area of each of the six aeration basins. The current membrane panel style diffusers were installed in 2003 and 2007. The panel membranes and associated air delivery piping network are aging and have proven to require extensive maintenance. Due to the size of the panels, maintenance staff must rent a crane to perform panel replacements. This project will consider replacing the membrane panel style diffusers with a membrane disc style diffuser. Membrane discs are much more cost effective to maintain; and safer because a crane is no longer needed to remove and replace the large panels.

Initial assessments find the replacement blowers and diffusers will save the City's wastewater utility an estimated $250,000 per year in energy costs, while providing more accurate aeration dosage control.

The not-to-exceed agreement price of $225,000 is being set aside to cover the costs of the Conceptual Development (Phase 1) and Design Development (Phase 2) of a three-phase ESCO agreement, if the Construction Phase (Phase 3) is not implemented. The Construction Phase (Phase 3) will only take place if the City is satisfied with the work performed on Phases 1 and 2 and the construction price proposal and performance guarantee is deemed satisfactory. If Phase 3 is implemented, the $225,000 costs for Phases 1 and 2 will be deferred and included as part of the construction price proposal and performance guarantee. Council will ultimately consider award of the Construction Phase based on Staff recommendation.

Under normal procedures, a public hearing is not conducted to authorize the City Manager to execute design and construction agreements; however, California Government Code Section 4217 requires public agencies to conduct a public hearing to execute energy service agreements with an ESCO.

Staff recommends conducting public hearing to consider adopting resolution authorizing City Manager to execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas for conceptual development (Phase 1) and design development (Phase 2) for replacement of aeration blowers and diffusers at White Slough Water Pollution Control Facility, in the amount of $225,000, in Accordance with California Government Code Section 4217.

FISCAL IMPACT: The replacement of aeration system blowers and diffusers at WSWPCF will save the Wastewater Utility an estimated $250,000 per year. This savings will be utilized to minimize future rate adjustments. This project will not impact the General Fund.

FUNDING AVAILABLE: Wastewater Capital (53199000.77020) - $225,000

Andrew Keys
Deputy City Manager/Internal Services Director

Charles E. Swimley, Jr.
Public Works Director

CES/CES/tdb
Attachment

AGREEMENT FOR TURNKEY DESIGN AND CONSTRUCTION ENERGY SERVICES

This Agreement for Turnkey Design and Construction Energy Services ("Agreement") is made effective as of _____ ("Effective Date") by and between the **City of Lodi,** a municipal corporation ("City") and **Schneider Electric Buildings Americas, Inc.** ("ESCO"), a Delaware corporation qualified to do business in California, set forth in the attached schedules and exhibit(s) which are listed below and incorporated fully herein, subject to the terms and conditions set forth herein:

Exhibit A: Scope of Work - Design Services
Exhibit B: Preliminary Schedule – Design Services
Exhibit C: Compensation for Design and Construction Services
Exhibit D: Scope of Work - Construction Services
Exhibit E: Preliminary Schedule – Construction Services
Exhibit F: Insurance Requirements
Exhibit G: Performance Assurance Support Services Agreement
Exhibit H Performance Guarantee
Exhibit I: Measurement & Verification ("M&V") Plan
Exhibit J: City Responsibilities for Performance Guarantee
Exhibit K: Performance Assurance Support Services

The City and ESCO may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Parties intend, and agree, subject to all other provisions of this Agreement, that the design and construction services to be completed by ESCO pursuant to Articles 1 and 2 of this Agreement and the Exhibits referenced therein (the "ESCO Services") shall include some of the following scope as further detailed in Exhibits "A" and "D".

(i) Replace current blowers and diffusers. Add a control system for same;
(ii) Energy Efficiency Improvements identified and approved, by City, during Design Phase;
(iii) Determination of Project costs and resulting energy-cost savings for approval by the City;
(iv) Preparation of construction documents and schedules, approved by City; and
(v) Construction services, including the furnishing of all labor, materials, services, and equipment necessary to complete the Project.

A(i) and A(ii) are cumulatively referred to as the "Project".

B. The Parties intend to determine the precise scope of the construction services in conjunction with completion of the design services.

C. The Parties intend that this Agreement shall be a "turnkey" agreement providing for ESCO to undertake both the design and construction phases of the Project, and the Parties have entered into this Agreement for purposes of setting forth the terms and conditions for ESCO to perform the ESCO Services for the City.

Now, in consideration of the foregoing and of the respective rights and obligations of the Parties set forth herein, the Parties agree as follows:

ARTICLE 1

DESIGN PHASE OF THE PROJECT

PART 1.1: SCOPE, TIMING AND COMPENSATION

Section 1.1.1 Scope of Article 1 Requirements. Except to the extent terms are defined in this Article 1 and used elsewhere in this Agreement and except as may be expressly provided in this Agreement, this Article 1 shall be deemed and construed to apply only to the design phase of the Project, which is to be performed prior to commencement of the construction phase of the Project.

Section 1.1.2 Scope of Design Services. The scope of the design services to be performed by ESCO under this Agreement is described in Exhibit "A." In completing the Scope of Services pursuant to this Article 1, ESCO must at all times work toward assisting the City to achieve the goals as are described in this Agreement and as otherwise may be determined in writing after the Effective Date.

Section 1.1.3 Time for Completion. Time is of the essence with respect to this Agreement and the performance by ESCO of each of its obligations pursuant to this Article 1. ESCO must complete the design phase of the Project required pursuant to this Article 1 not later than the final completion date and, if any, the applicable milestone dates specified in the "Services Schedule" set forth in Exhibit "B" attached to this Agreement. However, if, for any reason, the design phase of the Project has not been (or likely will not be) completed prior to the final completion date or an applicable milestone date, with the result that the City continues to require design services in connection with this Agreement, the City may request an extension of the term of this Agreement, and ESCO shall not unreasonably refuse, condition or delay its consent to such request. Upon receipt of any such request, the Parties shall amend this Agreement to extend the term of this Agreement on substantially the same terms as set forth herein, except that the amendment may specify such adjustments to ESCO's compensation as agreed by the Parties. In the event the Scope of Services is modified in accordance with Section 1.1.7 herein, the amendment to this Agreement providing for such modification shall specify any applicable modification to the time(s) for completion of the design phase of the Project.

Section 1.1.4 ESCO Fee. The City shall pay to ESCO, in exchange for full and satisfactory performance by ESCO of the design phase of the Project required pursuant this Article 1, the compensation set forth as the Design Fee in Exhibit "C" attached to this Agreement ("Compensation for ESCO Services"). The Design Fee shall be paid to ESCO upon full and satisfactory completion of the design phase of the Project, as those steps are described in Exhibit "A", attached to this Agreement. In the event the Scope of Services is modified in accordance with Section 1.1.6 of this Article 1, the amendment to this Agreement providing for such modification shall specify any applicable modification to the Design Fee. The Design Fee shall be deemed and construed for all purposes to be all-inclusive compensation for any and all design services, and ESCO shall in no event be entitled to any reimbursement whatsoever of any expenses or other costs incurred by ESCO in connection with the performance of the design services other than as provided in Section 1.1.5 of this Article 1. Concurrently with signing this Agreement, and as a condition precedent to commencing the performance of the design phase of the Project, ESCO must write its federal taxpayer identification number where shown on the signature page of this Agreement.

Section 1.1.5 Reimbursement of Expenses. This Section establishes the sole and exclusive bases for reimbursement to ESCO of any expenses that it incurs in connection with performance of the design phase of the Project. Any reimbursement pursuant to this Section shall be in addition to the design fee payable to ESCO pursuant to Section 1.1.4 of this Article 1, and shall be for the reasonable,

actual costs incurred by ESCO, without markup for profit, overhead or other purposes. The City shall reimburse ESCO only for expenses incurred in connection with the performance of the design phase of the Project as the City in its sole discretion may agree, and only if the reimbursement for each such expense is approved in writing by the City prior to the expense being incurred by ESCO. Without limiting the foregoing or the City's discretion as described in the foregoing, because the Design Fee payable to ESCO is intended to be all-inclusive, in no event shall the City be required to reimburse ESCO for any of the following: (i) home office overhead or personnel costs; (ii) supplies, materials, equipment, tools and other items required for performance of the design phase of the Project; (iii) postage or cost of private delivery services less than $25 for any one delivery; (iv) salary, benefits, travel, lodging and/or meal expenses of any person; (v) expenses of overtime work requiring higher than regular compensation rates; or (vi) costs of any additional insurance coverage or limits in excess of that normally carried by ESCO or any of its sub-consultants that perform any of the design services as authorized pursuant to Section 1.2.1of this Article 1(each a "Sub-Consultant").

Section 1.1.6 ESCO Invoices. City shall compensate ESCO upon successful completion of the Design and Construction Phases, outlined in Exhibit "C".

Section 1.1.7 Change in Scope of Services. The City may at any time request any decrease, reasonable increase, or other reasonable change in the Scope of Services to be performed by ESCO pursuant to this Article 1. In response to any such request, ESCO must provide to the City a written proposal that describes in reasonable detail: (i) the change; (ii) the impact of the change on the time required for performance of ESCO's obligations pursuant to this Article 1; and (iii) the impact of the change on the cost to the City for the performance of the design phase of the Project. Each proposal shall set forth any proposed adjustment to the compensation payable to ESCO using such basis (fixed fee, time and materials, etc.) as requested by the City. No proposal shall be valid or binding on the Parties unless and to the extent incorporated into an amendment to this Agreement that has been duly-approved, signed and delivered by both Parties. The Parties shall mutually agree upon the adjustments to the Design Fee attributable to any such deletion from the Scope of Services. Otherwise, if the Parties are unable to agree on and document the terms and conditions for any such deletion, the time for performance of the modified Scope of Services and the compensation to ESCO for performance of such modified Scope of Services shall be equitably adjusted as determined through any dispute resolution method authorized pursuant to this Agreement. However, in no event shall ESCO be entitled to any profit, overhead, or other amounts on account of the deleted portion of the design phase of the Project.

PART 1.2: ESCO OBLIGATIONS

Section 1.2.1 Consent Required to Use Sub-Consultants. ESCO may use a Sub- Consultant to perform a portion of the design phase of the Project to be provided pursuant to this Article 1. The City, in its sole discretion, may deny, delay or condition its approval of the use of any one or more proposed Sub-Consultants. With respect to any Sub-Consultant that the City may approve pursuant to this Section, and subject to the City's rights pursuant to Section 1.2.3 herein, the City shall not require that ESCO replace or terminate any such Sub-Consultant, and ESCO shall not replace or terminate any such Sub-Consultant: (i) absent reasonable evidence that the Sub-Consultant has failed to timely or adequately perform its obligations in connection with the design phase of the Project; or (ii) unless the Parties agree otherwise in writing.

Section 1.2.2 ESCO and Sub-Consultant Capability. ESCO represents and warrants that: (i) it has any and all licenses as are required by law to permit ESCO to enter into this Agreement and perform the design phase of the Project; (ii) any and all Sub-Consultants performing any of the design services shall be sufficiently skilled and qualified to perform the tasks, duties and responsibilities assigned to them by ESCO, and shall be licensed to practice in their respective professions to the extent required by law;

(iii) any and all persons who will provide or perform the design services, including, without limitation, all employees of any Sub-Consultants, shall have the technical expertise and experience required to perform the design services in an efficient, timely and satisfactory manner; and (iv) ESCO has sufficient financial, personnel and other resources to adequately and timely perform the design phase of the Project as required pursuant to this Article 1. Upon request of the City, ESCO shall remove from the site of the Project, and prevent from performing any of the design services, any person whom the City has determined is not performing the design services in a reasonable manner or is a threat to the safety of any person(s) or property, and ESCO shall not thereafter use such person for or in connection with performance of any of the design services.

Section 1.2.3 Required Standard of Care. ESCO must perform or cause to be performed all design services using such levels of care as are not less than the reasonable levels of care employed by other consultants providing similar services to Cities within the State of California in similar circumstances, and considering the City's goals and any facilities, financial, or other constraints or parameters described to ESCO either before or after the Effective Date.

Section 1.2.4 Compliance with Law. ESCO must perform the design phase of the Project in compliance with all applicable federal, State of California, and local laws, regulations, ordinances and other governmental requirements.

Section 1.2.5 Prevailing Wages. ESCO shall be solely responsible for determining whether performance of the design phase of the Project will constitute "public work" that is subject to payment of prevailing wages and other requirements of Section 1720 and other provisions of the California Labor Code ("Labor Code"). In such event, ESCO must comply with Part 7, Chapter 1, of the Labor Code, Title 8 of the California Code of Regulations, Section 16000 *et seq.,* and other provisions of law applicable to performance of its obligations under this Agreement.

Section 1.2.6 Reliance on City Information. ESCO shall be entitled to rely on the accuracy and completeness of any and all information provided to ESCO by the City, subject to any qualifications or limitations on such information as the City may describe and provided that ESCO may so rely only if it would be reasonable to do so.

PART 1.3: ESCO INSURANCE

Section 1.3.1 Required Insurance. Prior to commencing any of the ESCO Services, ESCO must procure at its sole cost and expense, and, during all periods as required by this Article 1, must maintain in effect, the following policies of insurance:

(I) *General Liability Insurance.* A policy of commercial general liability insurance, written on an "occurrence" basis, providing coverage with a combined single limit of not less than one million dollars for all activities conducted by ESCO pursuant to this Article 1("General Liability Policy"). The General Liability Policy must include coverage for the contractual liability assumed by ESCO pursuant to this Article 1.

(ii) *Vehicle Liability Insurance.* A policy of automobile liability insurance, written on an "occurrence" basis, with a combined single limit of not less than one million dollars per accident for bodily injury and property damage ("Vehicle Liability Policy"). The Vehicle Liability Policy must include coverage for owned, hired and non-owned automobiles.

(iii) *Workers' Compensation Insurance.* Workers' compensation insurance as required by California law and employer's liability insurance with coverage in an amount not less than one million

dollars. Notwithstanding the insurer rating standards set forth in this Article 1, coverage provided by the California State Compensation Insurance Fund shall be deemed, with respect to the workers' compensation insurance, to satisfy such insurer rating standards.

(iv) *Professional Liability Insurance.* Professional liability insurance with coverage in an amount of not less than two million dollars ("Professional Liability Policy"), which the City acknowledges shall be written on a "claims made" basis.

Section 1.3.2 Duration of Insurance. Except as provided in this Article 1 with respect to insurance written on a "claims made" basis, ESCO must maintain the insurance required pursuant to this Article 1 in effect at least until the date that is two (2) years following final payment to ESCO pursuant to this Agreement.

Section 1.3.3 Professional Liability Insurance. The Professional Liability Policy shall provide coverage for claims arising out of the performance of the design phase of the Project pursuant to this Article 1. Notwithstanding anything to the contrary: (i) ESCO must have the Professional Liability Policy, as described herein, in full force and effect prior to commencing any of the design services; (ii) each renewal or replacement of the Professional Liability Policy must have a retroactive date that is prior to the date ESCO commenced the design services; and (iii) ESCO must maintain the Professional Liability Policy in full force and effect and applicable to claims arising from the design phase of the Project, without any gaps in coverage, for a period of at least two years following final payment to ESCO pursuant to this Agreement and, if the Professional Liability Policy will not so remain in effect, ESCO must obtain at its cost a supplemental extended reporting period (i.e., tail) applicable to the Professional Liability Policy covering the remainder of such two-year period, and the obligations of this clause (iii) shall survive termination of this Agreement and/or completion of the design phase of the Project. If the claims reporting period applicable to the design phase of the Project, as specified in or determined pursuant to the Professional liability Policy for the design services, will terminate prior to the end of the two-year period following final payment to ESCO pursuant to this Agreement, then ESCO, at its cost, must obtain and provide satisfactory evidence to the City of: (i) an endorsement to extend the claims reporting period to include whatever will remain of such two-year period; or (ii) a supplemental extended reporting period (tail) applicable to the Professional Liability Policy as required to provide coverage until the end of such two-year period. Such tail coverage shall be required, for example: (i) if ESCO intends to switch insurance carriers and the prospective new carrier will not agree to cover claims arising from the design phase of the Project submitted at any time prior to the end of the two-year period following final payment to ESCO pursuant to this Agreement; (ii) if ESCO's business is to be wound- up or otherwise terminated, whether voluntarily or involuntarily; or (iii) when necessary for any other reason to ensure that professional liability insurance applicable to the design phase of the Project is in effect at all times required by this Article 1.

Section 1.3.4 Insurer Rating Standards. Except as the City, in its sole discretion, may approve in writing, in advance, the insurance policies required pursuant to this Article 1 must be issued by one or more insurers licensed to do business in the State of California and having an A.M. Best Company rating of not less than "A-" and a financial size category of not less than "VII."

Section 1.3.5 Additional Insureds. The City, the City Council and each individual member thereof, and the City's other officers, board members and commissioners, employees, volunteers, and agents (collectively, not including the City, the "City Agents"), shall all be included as additional insureds, to the extent of ESCO's acts and omissions (regardless of whether constituting negligence) in connection with this Article 1, on all insurance that ESCO is to have in effect pursuant to this Article 1, excepting the workers' compensation insurance and the Professional Liability Policy. The additional insured endorsements must be ISO Form CG 2010 04/13 and ISO Form CG 2037 04/13 combined or equivalent

approved in advance by the City.

Section 1.3.6 Waiver of Subrogation. ESCO hereby waives, on behalf of its insurers, any and all rights to subrogation against the City and the City Agents that any such insurer may acquire by virtue of the payment of any loss. Each of the General Liability Policy, the Vehicle Liability Policy, and Workers Compensation Policy must be endorsed with a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the City and the City Agents.

Section 1.3.7 ESCO Insurance is Primary. The General Liability Policy and the Vehicle Liability Policy must be endorsed to provide that they are so primary and non-contributory.

Section 1.3.8 Premiums, Deductibles and Self-Insured Retentions. ESCO shall be solely responsible and liable for paying any and all deductibles and self-insured retentions applicable to any of the insurance that ESCO must have in effect pursuant to this Article 1. However, each insurance policy subject to any deductible or self-insured retention shall provide, or be endorsed to provide, for payment or satisfaction of the deductible or self-insured retention by the City in the event of ESCO's insolvency or inability to otherwise pay or satisfy the deductible or self-insured retention. ESCO's indemnification and other obligations pursuant to Section 1.4.1of this Article 1 shall apply with respect to any and all claims arising from such premiums, deductibles, and/or self-insured retentions.

Section 1.3.9 Evidence of Coverage. Prior to commencing the design phase of the Project, ESCO must provide to the City such duly-authorized and executed certificates of insurance evidencing that the insurance policies to be maintained by ESCO pursuant to this Article 1 are in effect (each a "Certificate of Insurance"), together with a copy of each endorsement to such insurance as is required pursuant to this Article 1. The delivery of such Certificates of Insurance and endorsements shall be a condition precedent to ESCO commencing any of the design services. As applicable, the Certificates of Insurance must identify those who are additional insureds in accordance with this Article 1. Not less than thirty (30) days prior to the expiration of any insurance policy that ESCO is required to maintain pursuant to this Article 1, ESCO must provide updated Certificates of Insurance to the City evidencing the renewal of such policy.

Section 1.3.10 Notice of Change in Policies. ESCO shall notify the City within thirty (30) days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled, terminated, reduced in coverage, or will expire without renewal, or that a policy has been cancelled due to non-payment of premium.

Section 1.3.11 Review of Coverage. No failure by the City to identify any non-compliance with the requirements of this Part 1.3, shall be deemed or construed to relieve ESCO from any of its obligations in regard to such insurance-related requirements.

Section 1.3.12 Sub-Consultant Insurance. ESCO shall require that each of its Sub-Consultants independently comply with all requirements of this Part 1.3 relating to insurance covering their activities for the benefit of the City, unless the City specifically approves in writing some different standards or requirements that shall be applicable to any particular Sub-Consultant. ESCO shall require in its agreements with its Sub-Consultants that each Sub-Consultant be subject to, and that it comply with, the requirements set forth in this Part 1.3, except to the extent the City has approved any different standards or requirements applicable to any particular Sub-Consultant.

PART 1.4: INDEMNIFICATION

Section 1.4.1 Indemnification of City. ESCO shall indemnify and hold-harmless the City, the City Council and each individual member thereof, and the City's other officers, board members and commissioners, employees, volunteers and agents (collectively, not including the City, the "City Agents"), and each of them, against and from any and all third party claims, demands, actions, judgments, damages, losses, costs and expenses (including, without limitation, attorneys' fees and expenses) and other liabilities including, but not limited by, those arising from (i) the performance of design services by ESCO or any Sub-Consultant or the officers, employees, or agents of either (collectively, not including ESCO, the "Sub-Consultant Agents"); and (ii) the injury (including death) of any person or the damage to any property in connection with the design phase of the Project. The scope of the foregoing shall include, without limitation, any disputes of any nature between ESCO and any of the Sub-Consultant Agents.

Section 1.4.2 Defense of City. ESCO, at its cost and expense, shall defend the City, and, as applicable, the City Agents, with respect to any claim, demand, action, or other proceeding that is within the scope of ESCO's indemnification obligation pursuant to Section 1.4.1 of this Article 1. Each such defense must be conducted by qualified and appropriately experienced legal counsel reasonably acceptable to the City, but selected and retained by ESCO, at no cost to the City or any of the City Agents.

Section 1.4.3 Limitation on ESCO Obligations. ESCO shall not be obligated pursuant to Sections 1.4.1 and 1.4.2 of this Article 1 to the extent any claim, demand, action, judgment, damage, loss, cost or expense, or other liability results from the active negligence, sole negligence, or willful misconduct of the City or any of the City Agents.

Section 1.4.4 Applicability of Civil Code Section 2782.8. To the extent ESCO or any Sub-Consultant, as part of the design phase of the Project, will provide "design professional services" that are within the scope of Civil Code Section 2782.8, Sections 1.4.1through 1.4.3, inclusive, of this Article 1 shall be interpreted consistent with Civil Code Section 2782.8 as it exists as of the Effective Date, and, with respect to such design professional services, the obligation to indemnify the City and the City Agents shall relate only to matters arising from the negligence, recklessness, or willful misconduct of ESCO or any of the Sub-Consultant Agents.

Section 1.4.5 Notice of Potential Liabilities. The City shall promptly provide written notice to ESCO of any liabilities for which ESCO may be responsible pursuant to this Part 1.4, and, to the extent reasonable and at ESCO's cost, the City shall cooperate with ESCO in regard to the performance of its obligations pursuant to this Part 1.4.

Section 1.4.6 Payment of Costs. ESCO shall reimburse to the City, or upon request of the City shall directly pay, any and all costs, expenses, penalties, judgments, settlements, and other amounts paid or owed by the City that are payable by ESCO pursuant to the indemnity provisions of this Article 1. ESCO must pay each such amount not later than when the amount is due or within thirty (30) days of receipt of a written invoice from the City requesting payment, and any late payments by ESCO shall accrue interest at the maximum legal rate.

Section 1.4.7 Insurance Not a Limitation. The obligations of ESCO pursuant to this Part 1.4 shall not be deemed or construed to be: (i) conditioned upon or in any other manner limited by the existence of any insurance coverage maintained by a Party or other person or entity; or (ii) conditioned upon the receipt by any person or entity of, or limited to the amount of, any insurance proceeds.

Section 1.4.8 Sub-Consultant Indemnity. ESCO shall require in its agreements with its Sub-Consultants that each Sub-Consultant independently comply with all requirements of this Part 1.4 related to indemnifying, holding-harmless, and defending the City, unless and only to the extent the City specifically approves in writing some different standards or requirements that shall be applicable to any particular Sub-Consultant.

Section 1.4.9 Indemnification of ESCO.

Subsection 1.4.9.1 General Requirement. The City shall indemnify and hold harmless ESCO and the Sub-Consultant Agents, and each of them, against and from any and all claims, demands, actions, judgments, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) and other liabilities arising from the sole negligence, active negligence or willful misconduct of the City or any of the City Agents in connection with the performance of the design phase of the Project.

Subsection 1.4.9.2 Defense of ESCO. The City, at its cost and expense, shall defend ESCO and, as applicable, the Sub-Consultant Agents with respect to any claim, demand or action that is within the scope of the City's indemnification obligation pursuant to Subsection 1.4.9.1 of this Article 1. Each such defense must be conducted by qualified and appropriately experienced legal counsel reasonably acceptable to ESCO, but selected and retained by the City, at no cost to ESCO or Sub-Consultant Agents.

Section 1.4.10 Comparative Liability. Notwithstanding the foregoing provisions of this Part 1.4, to the extent any claim, demand, action, judgment, damage, loss, cost or expense, or other liability arising in connection with this Article 1 is to some extent within the scope of ESCO's obligations pursuant to Section 1.4.1of this Article 1, and to some extent is within the scope of the City's obligations pursuant to Subsection 1.4.9.1 of this Article 1, then, with respect to such liability, the Parties shall be responsible and liable on a comparative basis.

Section 1.4.11 Survival of Obligations. With respect to any and all acts, omissions or incidents occurring prior to completion of the design phase of the Project and/or termination of this Agreement, the Parties' respective rights and obligations pursuant to this Part 1.4 shall survive such completion and/or termination.

PART 1.5: TERMINATION OF SOME OR ALL OF THE DESIGN SERVICES

Section 1.5.1 City Termination for Convenience. The City, without need for cause, may terminate some or all of the design services, or upon the completion of the design phase of the Project may terminate this Agreement in its entirety, by providing written notice of termination to ESCO. Such termination shall be effective immediately upon receipt of the notice of termination by ESCO. In the event the City terminates this Agreement in its entirety pursuant to this Section, the City shall have the right to retain a contractor other than ESCO to perform any or all of the services contemplated in the construction phase of the Project.

Section 1.5.2 City Termination for Breach of Warranties. If the City at any time determines that any of the representations and/or warranties of ESCO set forth in this Article 1 are materially untrue or incorrect, and if ESCO fails to correct or remedy such breach within a reasonable period of time, then the City shall have the right to terminate this Agreement immediately and without liability (including, without limitation, any liability for paying any further compensation to ESCO), and ESCO shall be liable to the City for all costs, expenses, and damages arising therefrom. ESCO's representations and warranties pursuant to this Article 1 shall survive termination of this Agreement, regardless of whether at such time ESCO has

fully completed the design phase of the Project.

Section 1.5.3 City Termination for Cause. In addition to other termination rights it may have pursuant to this Agreement, the City may give ESCO written notice of the City's intent to terminate this Agreement for cause if the City reasonably determines that ESCO has failed to perform some or all of the design services in a satisfactory and timely manner or if ESCO otherwise has breached any of its obligations pursuant to this Agreement. ESCO must cure such failure or breach, or make arrangements satisfactory to the City for cure of such failure or breach, within the time permitted pursuant to Section 1.6.1 herein and, if ESCO does not, the City may terminate this Agreement by giving written notice of termination to ESCO, and the termination shall be effective immediately upon receipt of the notice of termination by ESCO. Nothing in this Agreement shall be deemed or construed as a waiver by ESCO of any rights it may have in regard to a wrongful termination by the City.

Section 1.5.4 ESCO Termination for Cause. ESCO may give the City written notice of ESCO's intent to terminate this Agreement for cause if ESCO reasonably determines that the City has breached any of its material obligations pursuant to this Article 1. The City must cure such breach, or make arrangements satisfactory to ESCO for cure of such breach, within the time permitted pursuant to Section 1.6.1 herein and, if the City does not, ESCO may terminate this Agreement by giving written notice of termination to the City, and the termination shall be effective immediately upon receipt of the notice of termination by the City. Nothing in this Agreement shall be deemed or construed as a waiver by the City of any rights it may have in regard to a wrongful termination by ESCO.

Section 1.5.5 Compensation to ESCO upon Termination. Subject to all other provisions of this Agreement, in the event of any termination, the City shall compensate ESCO consistent with Sections 1.1.3, 1.1.4 and 1.1.5, inclusive, of this Article 1, and Exhibit "C" hereto: (i) for those of the design services as have been fully and satisfactorily completed prior to termination; and (ii) for design services in progress by ESCO and any of its Sub-Consultants at such time, including any profit or overhead attributable to such work in progress.

Section 1.5.6 ESCO to Provide Copies of Project Documents. Not later than sixty (60) days following the effective date of a termination pursuant to this Part 1.5, regardless of the reason for such termination, ESCO must provide to the City copies of all Project Documents (defined in Subsection 3.4.2 of Article 3) relating to the terminated portion of the design services. Satisfaction of ESCO's obligations pursuant to this Section shall be a condition precedent to the City's obligation to pay any compensation or reimbursement to ESCO pursuant to Section 1.5.5 of this Article 1 or other provisions of this Agreement.

Section 1.5.7 Survival of Obligations. The Parties' respective rights and obligations pursuant to this Part 1.5 shall survive termination of this Agreement.

PART 1.6: DISPUTE RESOLUTION

Section 1.6.1 Notice and Opportunity to Cure. If one of the Parties (the "Alleging Party") alleges that the other Party (the "Defaulting Party") has breached any of its obligations pursuant to this Article 1, the Alleging Party may provide written notice thereof to the Defaulting Party, specifying in reasonable detail the nature and extent of the alleged default ("Notice of Default"). If the Defaulting Party has not cured the alleged default within thirty (30) days after receipt of the Notice of Default, then the Alleging Party in its discretion may initiate the dispute resolution process described in Section 1.6.2 of this Article 1. The giving of a Notice of Default and allowing the period for cure of the alleged default in accordance with this Section 1.6.1 shall be a condition precedent to the Alleging Party exercising any available remedy in response to the alleged default. Nothing shall be construed to prohibit the

Defaulting Party from disputing that a default has occurred. Neither the giving of any Notice of Default, nor the initiation by the Alleging Party of any dispute resolution in connection with the alleged default, shall by itself operate to terminate this Agreement.

Section 1.6.2 Informal Attempts at Dispute Resolution. If a dispute between the Parties arises out of or relates in any way to the design phase of the Project pursuant to this Article 1, including an allegation that one of the Parties has breached any of its obligations pursuant to this Article 1 (each a "Dispute"), the Parties shall attempt as provided in this Section to resolve the Dispute as quickly and as amicably as possible, including, without limitation, any Disputes as to the meaning of any provision of this Article 1, the validity of any determination or calculation required pursuant to this Article 1, or the rights or obligations of the Parties pursuant to this Article 1. If the Dispute does not relate to an alleged default or is not of such nature that a Party may give a Notice of Default, then the Party alleging the Dispute shall give to the other Party a written notice of the Dispute ("Notice of Dispute"). Within a reasonable time, not in excess of fourteen (14) calendar days, after receipt of a Notice of Dispute, the Parties shall commence attempts to informally resolve the Dispute as required pursuant to this Section. Such attempts shall include good-faith, reasonable and diligent efforts by both Parties to communicate and, if possible, to reconcile or compromise their respective positions. The participation by a Party in such attempts to informally resolve a Dispute shall be a condition precedent to such Party exercising any available remedy in response to the Dispute. If, after diligently making the attempts required pursuant to this Section for at least thirty (30) calendar days, the Parties cannot resolve Dispute, either Party may give written notice to the other Party that the attempts have been unavailing and, therefore, have been terminated effective upon receipt of that notice by the other Party.

Section 1.6.3 Exercise of Available Remedies. If attempts to resolve a Dispute pursuant to Section 1.6.2 of this Article 1 are terminated without the Dispute having been resolved to the satisfaction of either Party, the Alleging Party may initiate any legal or equitable action or other proceeding in response to the Dispute that is available pursuant to this Agreement and applicable law. In addition, however, if a Party fails to respond to, or participate in good faith in, any requests or requirements for resolution of the Dispute pursuant to Section 1.6.2 of this Article 1, the other Party, in its discretion and without needing to further comply with Section 1.6.2 of this Article 1, may initiate any legal or equitable action or other proceeding in response to the Dispute that is available pursuant to applicable law. However, in any case in which a Notice of Default has been provided pursuant to Section 1.6.1 of this Article 1, no such legal or equitable action may be initiated until the applicable period specified in Section 1.6.1 of this Article 1for cure of the alleged default has expired without the alleged default having been cured.

Section 1.6.4 Performance During Disputes. At all times while any Dispute is pending, each Party shall continue to fully perform its obligations pursuant to this Article 1 and the other provisions of this Agreement. Notwithstanding the foregoing, a Party shall not be responsible for continued performance of such obligations to the extent a default or alleged default by the other Party makes performance impossible, impractical, or unreasonable.

Section 1.6.5 Remedies Not Limited. In connection with any Dispute, and except as expressly provided in this Article 1, each Party may exercise any or all rights and remedies available pursuant to applicable law. No such available remedy shall be deemed or construed to be exclusive, and a Party may exercise any available remedy individually or in combination with any other available remedies.

ARTICLE 2

CONSTRUCTION PHASE OF THE ESCO SERVICES

PART 2.1: SCOPE, TIMING AND COMPENSATION

Section 2.1.1 Scope of Article 2 Requirements. Except to the extent terms are defined in this Article 2 and used elsewhere in this Agreement and except as may be expressly provided in this Agreement, this Article 2 shall be deemed and construed to apply only to the construction phase of the Project.

Section 2.1.2 Scope of Work. The scope of construction services to be performed by ESCO pursuant to this Article 2 is described generally in Exhibit "D" attached to this Agreement. The Parties shall determine the precise scope of the construction phase of the Project in conjunction with completion of the design phase. Subcontractors shall be selected by ESCO, subject to the City's approval. Subject to the City issuing a notice to proceed with the construction phase ("Notice to Proceed"), ESCO must complete the construction services in strict accordance with the Construction Documents (defined in Subsection 2.1.3.2. of this Article 2).

Section 2.1.3 Component Parts of Contract.

Subsection 2.1.3.1 Payment and Performance Bonds. ESCO shall provide payment and performance bonds for 100% of the sum required to secure the faithful performance of the construction phase of the Project, compliance with the terms of this Contract, and to insure ESCO'S payment obligations to its Subcontractors and suppliers related to the construction phase. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with the construction phase guarantee only the performance of the construction phase, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the construction phase.

Subsection 2.1.3.2 Construction Documents. This Agreement is but one of the agreements and other documents that, collectively, set forth the complete understanding and agreement of the Parties with respect to the performance of the construction phase of the Project. Each Agreement and other such documents (together, the "Construction Documents"), as those may be duly made or amended from time to time, is hereby incorporated as an operative and effective part of this Agreement. The Construction Documents include, but are not limited to: (i) this Agreement; (ii) any and all drawings, plans, elevations, sections, details, schedules and diagrams approved by the City that illustrate any or all of the construction phase and the written requirements approved by the City for materials, equipment, construction systems, quality workmanship, services and other things to be furnished in connection with the construction phase of the Project ("Specifications"); (iii) any and all Required Construction Forms; and (iv) any duly-authorized agreements or orders providing for changes in the scope of the construction phase.

Subsection 2.1.3.3 Complementary Nature. The Construction Documents shall be deemed and construed to be complementary and an integrated whole. Any requirement or provision set forth in one Construction Document, although not set forth in any one or more of the other Construction Documents, shall be interpreted as if set forth in or applicable to all Construction Documents.

Section 2.1.4. Commencement and Completion of the Construction Phase.

Subsection 2.1.4.1 Scheduling Goals. ESCO acknowledges that the City will schedule the construction phase for a specific period of time, in order to promote the best usage of City facilities. ESCO further acknowledges that compliance with scheduling requirements for the construction phase as provided herein, or as directed by the City, is mandatory in order to accomplish such goals and, therefore, that time is of the essence with respect to the performance of the construction phase.

Subsection 2.1.4.2 Construction Time. ESCO must commence the construction phase not later than the date(s) specified by the City as the date by which ESCO must commence the construction phase ("Commencement Date"). ESCO must fully and satisfactorily complete all of the construction services not later than the date(s) specified by the City as the date by which ESCO must complete the construction phase ("Completion Date"). ESCO must commence and proceed with the construction phase with continuous reasonable diligence to ensure full and satisfactory completion of all of the construction services within the period between such stated Commencement Date and such stated Completion Date (such period referred to herein as the "Construction Time"). Upon the mutual agreement of the Parties as to the final scope of the construction phase, the Parties shall cooperate in developing a milestone schedule, within ten (10) days after the Notice to Proceed, that is reasonably acceptable to both Parties and that provides for completion of the Project by each milestone and all Work not later than the Completion Date, while still accommodating the City's operations at the Project Site(s). Upon the Parties agreeing on such schedule, it shall be deemed and construed to be part of this Agreement without need for further action by the Parties. The schedule developed by the Parties shall set forth the Commencement Date and the Completion Date for the Project. The Construction Time may be extended as provided in the Construction Documents or as the Parties otherwise may agree in writing, including, without limitation, to account for unanticipated delays.

Subsection 2.1.4.3 "Substantial Completion" refers to and shall mean the date the individual scopes of work are sufficiently implemented in accordance with the Construction Documents that Customer may utilize the Project for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections.

Subsection 2.1.4.4 Acceptance upon Final Completion. The work encompassed within the construction phase of Project is subject to acceptance by the City Council as of the date of the regularly-scheduled meeting of the City Council following the determination by the City, in its reasonable discretion, that ESCO has fully and satisfactorily completed all of the construction phase ("Project Acceptance Date").

Subsection 2.1.4.5 Notice to Proceed. ESCO acknowledges and agrees that the City is not bound to proceed with the construction phase set forth in this Article 2, and, upon completion of the design phase provided for in Article 1, or at any other time as set forth in Article 1, the City, based on its judgment and at its sole discretion, may terminate this Agreement, compensate ESCO for the Design Fee, and choose not to proceed further with the Project. The terms and conditions set forth in this Article 2 shall go into effect upon the issuance of a written Notice to Proceed by the City.

Section 2.1.5. Compensation to *ESCO.*

Subsection 2.1.5.1 Construction Fee. The compensation payable to ESCO for the construction phase shall not exceed a specific maximum amount in exchange for which, as described in more detail in Subsection 2.1.5.3 herein, ESCO guarantees that it will perform all of its obligations pursuant to this Article 2 in strict accordance with the Construction Documents (the "Construction Fee"). As set forth in Exhibit "C" to this Agreement, the Construction Fee shall be agreed upon by the Parties prior to the issuance of any Notice to Proceed. ESCO will deliver to City a final scope and firm fixed price proposal for that scope at the completion of the design phase of the Project. Upon City approval of that proposal, City will issue a Notice to Proceed.

Subsection 2.1.5.2 Adjustment and Payment of the Construction Fee. The Construction Fee shall be subject to increase and/or decrease as provided in the Construction Documents. The City shall pay the total amount of the adjusted Construction Price to ESCO, in progress payments no more than monthly following issuance of the Notice to Proceed. In no event shall the sum total of the progress payments payable to ESCO pursuant to this Agreement exceed the adjusted Construction Price. Upon completion of the construction phase, ESCO shall provide a "final payment request" to the City that establishes the total cost of construction services as adjusted pursuant to the Construction Documents.

Subsection 2.1.5.3 Limitation on Compensation. The City's sole and exclusive liability to ESCO for full and satisfactory performance of its obligations pursuant to this Article 2 and the Construction Documents shall be deemed and construed to be limited to an amount equal to the Construction Price as it may be adjusted in accordance with the Construction Documents. ESCO hereby represents and guarantees that it can and shall satisfactorily and completely perform all of its obligations pursuant to this Article 2, including, without limitation, performing all construction services in strict accordance with the Construction Documents, without seeking funds from the City in excess of the Construction Price or requesting a redesign or change in scope of the construction phase in order to reduce ESCO's costs, and regardless of any anticipated or unanticipated increases in costs of labor, materials, equipment, or other services or things necessary in connection with the construction phase of the Project, other than as set forth in this Agreement. ESCO shall be solely responsible for any and all costs it incurs in performing its obligations pursuant to this Article 2 and the Construction Documents that are in excess of the adjusted Construction Price, without right to reimbursement from the City.

Thus, the Parties have entered into this Agreement with the understanding that the Agreement shall be deemed or construed to be a "fixed price" contract. Nothing in this Subsection 2.1.5.3 shall be deemed or construed to limit or otherwise condition ESCO's obligations pursuant to this Article 2.

PART 2.2: ESCO INSURANCE

Section 2.2.1 ESCO Insurance. ESCO must comply with the insurance-related requirements set forth in Exhibit "F" attached to this Agreement. Without limiting the foregoing, prior to commencing the construction phase of the Project, ESCO must obtain and have in effect each and every policy of insurance required pursuant to Exhibit "F" (each an "Insurance Policy" and, collectively, the "Insurance Policies"). ESCO must also ensure compliance by its subcontractors with the applicable provisions of such insurance-related requirements. Except as provided in Exhibit "F" hereto or as the City may expressly consent in writing, ESCO and each of its subcontractors must maintain required Insurance Policies in full force and effect at all times prior to the Project Acceptance Date.

PART 2.3: COMPLIANCE WITH LABOR LAW REQUIREMENTS

Section 2.3.1 Compliance Generally. In connection with the performance of the construction phase of the Project, ESCO and each of its subcontractors must comply with all requirements of the Labor Laws (defined in 2.3.2). The City will coordinate and conduct any mandatory pre-construction conference, and ESCO and each of its subcontractors must attend the conference in order to ensure they are aware of applicable labor-law requirements.

Section 2.3.2 Compliance with Labor Code Requirements. The Project is a "public works project" as defined in Section 1720 of the California Labor Code ("Labor Code") and, therefore, is subject to Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, Section 16000 et seq. (collectively, "Labor Laws"). ESCO must be, and shall be deemed and construed to be, aware of and understand the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., and other

provisions of the Labor Laws that require the payment of prevailing wage rates and the performance of other requirements on public works projects. ESCO acknowledges that the Project will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR"). ESCO, at no additional cost to the City, must: (i) comply with any and all applicable requirements of the Labor Laws, including, without limitation, requirements for payment of "prevailing wages," inspection, and submittal (electronically, as required) of payroll records, interviews of worker(s),etcetera; (ii) ensure that any and all of its Sub-contractors are aware of and comply with applicable provisions of the Labor Laws; (iii) in connection with Labor Laws compliance matters, cooperate with the DIR, the City and other entities with competent jurisdiction; and (iv) post all job-site notices required by law in connection with ESCO Services, including, without limitation, postings required by DIR regulations. ESCO or an ESCO subcontractor that has been debarred in accordance with the Labor Code, including, without limitation, pursuant to Sections 1777.1or 1777.7, is not eligible to bid on, perform, or contract to perform any portion of the ESCO Services. Wage rates for the ESCO Services shall be in accordance with the general prevailing rates of per-diem wages determined by the DIR pursuant to Labor Code Section 1770. Wage rates shall conform to those on file at the City's principal office and posted at the Project Site. The City will withhold payment to ESCO necessary to satisfy civil wage and penalty assessment issued by the Labor Commissioner. The following Labor Code sections, as may from time to time be amended, are by this reference incorporated into and are a fully operative part of Article 1 of this Agreement, and ESCO shall be solely responsible for compliance therewith:

(i) Section 1735: Anti-Discrimination Requirements;
(ii) Section 1775: Penalty for Prevailing Wage Rate Violations;
(iii) Section 1776: Payroll Records;
(iv) Sections 1777.5, 1777.6 and 1777.7: Apprenticeship Requirements;
(v) Sections 1810 through 1812: Working Hour Restrictions;
(vi) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and
(vii) Section 1815: Overtime Pay.

Section 2.3.3 Requirements for Payroll Records. ESCO must comply with all applicable provisions of Labor Code Section 1776, which relates to preparing and maintaining accurate payroll records, and making such payroll records available for review and copying by the City, the DIR's Division of Labor Standards Enforcement, and the DJR's Division of Apprenticeship Standards ("DAS"). The payroll records must be certified, maintained at the principal offices of ESCO, and made available as required by Labor Code Section 1776. ESCO must inform the City of the location at which the payroll records are located, including the street address, city and county, and must, within five (5) working days, provide a notice of any change of location and address. ESCO or an ESCO subcontractor that fails to timely comply with requests for certified payroll records, shall forfeit, as a penalty to the City, $100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and, in addition to penalties as provided by law, may be subject to debarment pursuant to Labor Code Section 1771.1. Timely provision by ESCO of certified payroll records also shall be a condition precedent to the City's obligation to make any payments to ESCO pursuant to either Article 1 or Article 2 of this Agreement.

Section 2.3.4. Penalties for Violations of Prevailing Wage Laws. In accordance with the latest Section 1775 of the Labor Code, ESCO shall forfeit, as a penalty to the City, not more than $200 and, subject to limited exceptions, not less than certain amounts specified by law, for each calendar day, or portion thereof, for each worker paid less than prevailing wage rates as determined by the DIR Director. ESCO shall pay to each worker the difference between such stipulated prevailing wage rate and the amount paid to the worker for each calendar day or portion thereof for which the worker was paid less than the applicable prevailing wage rates.

Section 2.3.5. Requirements for ESCO Registration. No contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. In addition, no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1725.5 for an unregistered contractor to submit a bid authorized by Business and Professions Code Section 7029.1 or Public Contract Code Section 20103.5, if the contractor is registered at the time the contract is awarded.

Section 2.3.6. Registration Requirements Applicable to Project. ESCO shall be responsible for ensuring that it and all ESCO subcontractors are currently and properly registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. Prior to commencing the ESCO Services: (i) ESCO must complete, execute, and submit to the City the "Certification Regarding ESCO Registration" form; and (ii) provide to the City the evidence of registration as described in the Certification Regarding ESCO Registration form. Notwithstanding anything to the contrary, if at any time during the performance of the ESCO Services, ESCO or any of its subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the City in its sole discretion may terminate this Agreement without penalty and/or replace ESCO or an ESCO-subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.

PART 2.4: ADMINISTRATION OF ARTICLE 2

Section 2.4.1 Regular Working Hours. Except as the City, in its sole discretion, may agree, ESCO shall perform the portions of the construction phase that are to occur at or in the vicinity of the Project Site(s) only: (i) on weekdays (i.e., any day, Monday through Friday, inclusive); and (ii) commencing at or after such time, and ending by or prior to such time, as may be specified in either an applicable local ordinance or any "Mitigation Monitoring Plan" adopted by the City pursuant to the California Environmental Quality Act, whichever is more restrictive.

Section 2.4.2 Taxes. The Construction Price shall be deemed and construed to include compensation to ESCO for any and all duties, sale, use, excise or other similar taxes required by federal, state or local laws in effect as of the Effective Date or promulgated thereafter, and payable in connection with the construction phase of the Project.

PART 2.5: ESCO STATUS

Section 2.5.1 Standard of Performance. ESCO represents and warrants that it and the subcontractors hired by ESCO have the professional skill, knowledge and experience necessary to perform and complete the construction phase of the Project within the Construction Time. ESCO shall apply such skill, knowledge and experience in the completion of the Project, at a minimum level at least equal to that expected generally of professionals employed in construction of facilities within the State of California. ESCO shall perform and complete the construction phase in accordance with standards not less than established by applicable laws, rules and regulations, industry and trade association standards, manufacturers' recommendations, and, if any, community or area standards. ESCO represents and warrants that all of its employees and subcontractors shall have sufficient skill, knowledge and experience to perform the construction services that will be assigned to them.

Section 2.5.2 Licenses. ESCO represents and warrants that it currently has, and that it shall maintain until completion and acceptance of the Project by City all licenses, permits, qualifications and

approvals of whatever nature as are legally required to permit ESCO to perform the construction services required pursuant to the Agreement and to complete the Project.

PART 2.6: EMPLOYEES AND SUBCONTRACTORS

Section 2.6.1 Job Superintendent. ESCO shall have present on the Project Site(s) during the course of the construction phase of the Project an experienced and competent superintendent and any necessary assistants, all satisfactory to the City, who shall supervise the construction services and the ESCO's employees and subcontractors on the Project.

Section 2.6.2 ESCO's Employees. The employees of ESCO shall at all times be under the ESCO's exclusive direction and control on the Project. ESCO shall pay all wages, salaries, and other amounts due to such personnel in connection with their performance of construction services, as required by law. ESCO shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, federal and state income tax withholdings, unemployment insurance, and workers' compensation insurance. ESCO shall employ only competent workers for performance of the construction services and shall not employ any person who is unfit or unskilled in the work assigned to him or her. ESCO shall at all times enforce strict discipline and good order among its employees and any and all subcontractors' employees performing any portions of the construction services. ESCO shall supervise and control its employees and all subcontractors' employees performing any portions of the construction phase of the Project to ensure adequate performance and discipline. ESCO shall immediately remove from the Project and Project Site(s) any person, regardless of whether employed by ESCO or any subcontractor, who is determined by the City to be uncooperative, incompetent, or a threat to the safety of persons or the Project, or who fails or refuses to perform the construction services in a manner acceptable to the City. ESCO shall not thereafter suffer or permit any such person to perform any of the construction services or to be present on or at the Project Site(s).

Section 2.6.3 Prohibition Against Unlawful Discrimination. ESCO represents and warrants that it is an equal opportunity employer and it shall not discriminate in violation of any applicable federal State, or other law, rule, regulation, or governmental requirement, including, but not limited to discrimination against any employee or applicant for employment on account of such person's race, religion, color, national origin, ancestry, sex, or age. ESCO must apply such policy of non-discrimination in connection with all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination of ESCO's employees or any subcontractors.

Section 2.6.4 Responsibility for Subcontractors. ESCO shall be responsible for ensuring that all portions of the construction phase performed by its subcontractors conform with all requirements of the Construction Documents and applicable law. ESCO shall immediately remove from the Project and Project Site(s) any subcontractor that the City determines is uncooperative, incompetent, or a threat to the safety of persons or the Project, or that fails or refuses to perform the construction services in a manner acceptable to the City.

Section 2.6.5 Subcontractor Insurance. ESCO shall ensure and verify that its subcontractors obtain and maintain all necessary liability and other insurance as required pursuant to this Agreement, the Construction Documents, and/or by law.

PART 2.7 PAYMENTS

Section 2.7.1 Payments to ESCO may be taken from an escrow account or any other available funds. ESCO may submit "Payment Request Forms" and payments shall be made to ESCO by City on a monthly basis during construction. City shall promptly request payment to ESCO from escrow agent or city personnel in an amount equal to the value of services rendered since the last interim payment as shown on the Schedule of Values provided during installation. If any payment is over thirty (30) days late from the due date stated on the invoice, Customer shall pay to ESCO a 1% late penalty per month and ESCO reserves the right to terminate this Agreement due to non-payment upon seven (7) days prior written notice to City.

Section 2.7.2 Within thirty (30) days of the Date of Commencement, City shall make payment to ESCO for expenses incurred to date and project mobilization expenses, including but not limited to engineering, project start-up and mobilization, equipment and material procurement, bonds and other expenses incurred to date ("Project Mobilization Payment") in the amount of not to exceed 20% of the implementation contract payment total of the Contract Sum as provided for on the Project Mobilization Payment invoice attached hereto as Exhibit "J" and made a part hereof.

Section 2.7.3 For the initial one (1) year beginning at the Savings Guarantee Commencement Date, City shall receive the services as described in the Performance Assurance Support Services Agreement ("PASS Agreement") (Exhibit "G") at no additional cost. Thereafter, the PASS Agreement shall automatically renew for a period of one (1) year, whereby City can maintain the current service or upgrade the level of service as provided for in Exhibit "G".

Section 2.7.4 Payments may be withheld on account of (1) Defective Work not remedied, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to its subcontractor(s) or for labor, materials or equipment, or (4) repeated failure to carry out the Work in accordance with the Construction Documents.

Section 2.7.5 Final payment shall not become due until ESCO has delivered to City a complete release of all liens arising out of this Agreement covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to City to indemnify City against such lien.

Section 2.7.6 The making of final payment to ESCO shall constitute a waiver of claims by City except those arising from (1) liens, claims, security interests or encumbrances arising out of the Contract and which are unsettled, (2) failure of the Work to comply with the requirements of the Construction Documents, or (3) terms of special warranties required by the Construction Documents.

PART 2.8: PERFORMANCE SERVICES

Section 2.8.1 For the initial one (1) year beginning at the first day of the first utility billing period following the month in which ESCO delivers to City the Project completion letter ("Savings Guarantee Commencement Date"), City shall receive the services as described in the Performance Assurance Support Services Agreement ("PASS Agreement") accompanying this Agreement at no additional cost. Thereafter, the PASS Agreement shall automatically renew for a period of one (1) year, whereby City can maintain the current service or upgrade the level of service as provided for in Exhibit "G".

Section 2.8.2 If City (1) fails or neglects to maintain City responsibilities as set forth in Exhibit J, or (2) fails to fulfill any of its other obligations or responsibilities under the Construction Documents, ESCO may, after delivery of written notice and providing City seven (7) days to cure, terminate the Agreement, including, but not limited to the termination of any obligation of ESCO to provide the Performance Guarantee, as defined in Subsection 2.8.2.3. below.

Subsection 2.8.2.1 "Annual Savings Guarantee" is the amount of energy savings guaranteed by ESCO for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.

Subsection 2.8.2.2 "Guarantee Year" is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.

Subsection 2.8.2.3 "Performance Guarantee" is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in Exhibit "H" or unless terminated earlier in accordance with the Construction Documents.

Subsection 2.8.2.4 "Savings Guarantee Commencement Date" means the first day of the first utility billing period following the month in which ESCO delivers to City the Project completion letter.

ARTICLE 3

MISCELLANEOUS

PART 3.1 WARRANTY

Section 3.1.1 ESCO warrants to City for a period of one (1) year from the corresponding dates of Substantial Completion that the materials and equipment provided by ESCO will be of good quality and new unless the Construction *Documents require or permit otherwise, and further warrants that the Work will conform to the requirements of this Agreement and the* Construction *Documents and will be free from defects, except for those inherent in the quality of the Work the* Construction *Documents require or permit (the "Warranty Period"). Work, materials, or equipment not conforming to these requirements may be considered defective. ESCO'S warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or for ESCO, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ESCO shall repair or replace defective material or equipment and re-perform Work to correct any defect within the Warranty Period. In the event warranty work by ESCO is necessary, ESCO shall provide an additional one year warranty on the corrected work only from the date the corrected work is completed or the end of the initial warranty period, whichever is later. ESCO does not warrant products not manufactured by ESCO, but it will pass on to City any manufacturer's warranty to the extent permitted.*

PART 3.2: GIVING OF NOTICE

Section 3.2.1 General Requirements. Any and all demands and notices required or permitted to be given pursuant to this Agreement (each a "Notice") must be in writing and must be given or served in accordance with this Part 3.2.

Section 3.2.2 Methods of Delivery. Each Notice must be sent via: (i) personal delivery (with name and signature of recipient obtained on delivery receipt); (ii) registered or certified United States mail (postage pre-paid and return receipt requested); (iii) FedEx, U.P.S. or other reliable, private delivery service (with name and signature of recipient obtained on electronic or other delivery receipt); or (iv) electronic mail (e-mail) transmission (with printed confirmation of transmission from the sender's machine or device retained in the sender's files and a copy of such confirmation provided to recipient upon request, and with original of the Notice deposited into the United States mail, first-class postage prepaid, within 12 hours after transmission). Neither Party may unreasonably refuse to accept delivery of any Notice in an attempt to avoid the giving or service of the Notice, and any such refusal by a Party shall be deemed and construed as a material breach of such Party's obligations pursuant to this Agreement.

Section 3.2.3 Persons to Whom Notices Must Be Sent. Notices sent to a Party must be addressed and delivered to that Party's representative as specified in 3.2.6. A Party must give Notice of each change in the Party's address, person to whom attention should be directed, or e-mail address by giving notice in accordance with this Part 3. If any such information applicable to a Party changes, and the Party does not give notice of such change in accordance with this Part 3, any subsequent Notices addressed and delivered to the Party's old contact information shall be deemed and construed to have been given or served in accordance with Section 3.2.4 herein, regardless of whether "actual receipt" has occurred.

Section 3.2.4 Effect of Receipt. A Notice shall be deemed given or served only upon actual receipt by the addressee. In the case of e-mail, "actual receipt" shall mean delivery to the recipient's e-mail in-box. However, if any Notice (including, without limitation, any Notice sent by e-mail) is delivered after 4:00p.m. on any weekday, on a weekend (Saturday or Sunday), on a day the City is closed for business, on any federal or State of California holiday, or on any City furlough day mandated by the State of California or the City Council, the Notice shall be deemed to have been given or served as of 9:00a.m. on the next subsequent business day. As an additional condition to sending a Notice by e-mail, the reference line must indicate that it is a "Notice Pursuant to Agreement for ESCO Turnkey Energy Conservation Services." Because e-mail addresses are subject to change more frequently than physical addresses, if a Notice is to be sent by e-mail, unless the sender has personal knowledge of the then-current correct e-mail address of each intended recipient, the sender must call and verify the then-current e-mail address of each intended recipient prior to sending the Notice, or must use some other method of delivering the Notice.

Section 3.2.5 Applicability of Notice Requirements. The requirements of this Part 2 shall not be deemed or construed to apply to: (i) communications between the City and/or ESCO necessary for day-to-day administration of this Agreement or performance of the ESCO Services; or (ii) service of process in accordance with any applicable law or court rule.

Section 3.2.6 Parties for Notices. Parties for Notices are as noted below:

City:
City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: Steve Schwabauer
Email: sschwabauer@lodi.gov
Telephone: 209-333-6700

ESCO:
Schneider Electric Buildings Americas Inc.
1650 West Crosby Rd
Carrollton, TX 75006
Attention: Tammy Fulop
Email: tammy.fulop@se.com
Telephone: 214-755-8590

PART 3.3: INTERESTS OF PARTIES

Section 3.3.1 Independent Contractor. ESCO is, for any and all purposes of or related to this Agreement, an independent contractor to the City. In no circumstances shall ESCO or any of its Sub-Consultants or subcontractors, or any officer, employee or agent of either, be deemed or construed to be an officer, employee or agent of the City on account of this Agreement. ESCO must at all times conduct its activities in a manner consistent with its status as an independent contractor to the City, and, except as provided in this Agreement, ESCO shall have the right to determine the methods, means and mechanisms by which it shall perform the ESCO Services. The City shall analyze the data and information provided by ESCO in connection with the design phase of the Project (Article 1) and, based on its judgment and at its sole discretion, determine whether it shall proceed with the construction phase (Article 2). ESCO shall not suffer or permit any third party (whether person or entity) to continue in any apparent belief that ESCO or any of its Sub-Consultants, subcontractors, or any officer, employee or agent of either, is an officer, employee, or agent of the City. ESCO shall be responsible for ensuring compliance with all laws related to its employees and the employees of any Sub-Consultant or subcontractor, including, without limitation, laws relating to workers' compensation and, if applicable, payment of prevailing wages. The compensation payable to ESCO hereunder shall not be increased as a result of any costs incurred by ESCO that are attributable to such compliance.

Section 3.3.2 Intellectual Property Rights. Nothing in this Agreement shall be deemed or construed to result in the City acquiring any interest or rights in any such intellectual property owned by any third parties. However, to the extent provided in this Agreement, ESCO shall indemnify, defend and hold-harmless the City and the City Agents with respect to any violation of such third-party rights by ESCO or any of its Sub-Consultants in connection with this Agreement.

PART 3.4: PROJECT RECORDS

Section 3.4.1 Project Records. ESCO shall maintain all documents, books, papers, accounting records, computer files, and other information related to the ESCO Services ("Project Records"), including, but not limited to, the Construction Documents, the Plans and Specifications, Change Orders, submittals, cut-sheets, projected energy-savings calculations, requests for information, daily reports, correspondence, permits, insurance policies, Certificates of Insurance, testing and inspection reports, records relating to the costs of administering the Project, and safety records. ESCO shall keep such accurate and comprehensive Project Records as are (i) necessary for proper administration and performance of the ESCO Services and (ii) required by law and/or this Agreement. All Project Records, as applicable, shall be maintained in accordance with generally-accepted accounting principles. In accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Project Records during the three-year period following final payment to ESCO pursuant to this Agreement. In addition, the City hereby has the right to examine, review, audit and/or copy the Records of the Project during the two-year period following final payment to ESCO pursuant to this Agreement. Therefore, ESCO shall make the Project Records available at its offices at all reasonable times during the performance of the ESCO Services and for four (4) years from final payment to ESCO pursuant to this Agreement. However, if any audit is commenced within such two (2) year period, ESCO shall make the Project Records available at all reasonable times until proceedings related to such audit are complete and all statutes of limitation related thereto have expired.

Section 3.4.2 City Ownership and Use of Documents. Any and all conceptual, preliminary, working, and final documents (both originals and reproductions), presentations, computations, analyses, and other documents, in whatever format or storage medium, obtained or prepared by ESCO or any Sub-Consultant pursuant to this Agreement (each a "Project Document") and paid for by the City in accordance with this Agreement shall be deemed and construed to be and remain the property of the City. Except for

purposes of this Agreement, and except for a copy of any Project Document that ESCO either submits to a State of California agency with competent jurisdiction or makes for purposes of including such copy as part of the Project Records, ESCO shall not permit reproductions to be made of any of the Project Documents without the advance written approval of the City, regardless of whether the Project Documents are in the possession of ESCO or any Sub-Consultant. The City may use the Project Documents as the City deems appropriate, with no compensation due to ESCO except as provided in this Agreement. The City shall have the unconditional right to use the Project Documents, for their intended purposes and, at City's sole discretion, for any other purpose, with no additional compensation due to ESCO. Except as expressly agreed in writing, the City shall not be required to employ ESCO in connection with any future use of the Project Documents. Notwithstanding anything to the contrary, ESCO acknowledges and agrees that the City will rely on the accuracy and completeness of the Project Documents when used for their intended purposes. The City shall indemnify and hold ESCO harmless with respect to any liabilities caused by City's use of the Project Documents for other than their intended purposes.

PART 3.5: INTERPRETATION OF AGREEMENT

Section 3.5.1 Fair and Reasonable Interpretations. Prior to execution and delivery of this Agreement, each Party has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of executing this Agreement and the meaning of the provisions herein. Therefore, the provisions of this Agreement shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein.

Section 3.5.2 Headings and Captions. The headings and captions set forth in this Agreement are for the convenience of the reader only and shall not be deemed or construed to establish, define or limit the meaning of any Part, Section or other provision herein.

Section 3.5.3 Recitals and Exhibits. Each Recital set forth herein and each Exhibit referenced herein and attached hereto is hereby incorporated as an effective and operative provision of this Agreement.

Section 3.5.4 Meaning of "Days." Except as expressly provided in this Agreement in any particular case, each reference in this Agreement to a specific number of days shall be construed to mean consecutive calendar days.

Section 3.5.5 Entire Agreement. This Agreement, together with the Construction Documents as set forth in Section 2.1.3.3 above, constitute the entire understanding and agreement between the Parties pertaining to the performance of the ESCO Services required by this Agreement, and all prior and contemporaneous agreements, representations and understandings of the Parties relating to such subject matter, whether oral or written, are hereby superseded and replaced.

Section 3.5.6 Modifications of Agreement. This Agreement may be amended or otherwise modified only by means of a written agreement duly-approved, signed, and delivered by both Parties.

Section 3.5.7 Waiver. A waiver by a Party of any provision of this Agreement shall be binding only if the waiver is set forth in writing and has been duly approved and signed by the waiving Party. Unless so specified in the written waiver, a waiver by a Party of any provision of this Agreement shall not constitute a waiver of any other provision(s) herein, similar or not, and shall not be construed as a continuing waiver. Except as waived in accordance with this Section, neither the failure by a Party at any time to require performance of any requirement of this Agreement, nor any forbearance or indulgence of the Party in regard to such requirement, shall in any manner affect the Party's right at a later time to

enforce the same or any other provision of this Agreement.

Section 3.5.8 Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with California law, regardless of any conflict-of-laws provisions applicable in California or any other jurisdiction. Any action, arbitration, or other proceeding arising from this Agreement shall be initiated and conducted only in the County where the Project is located.

Section 3.5.9 Correct Legal Requirements Deemed Included. Each and every provision required by any applicable law to be included in this Agreement is hereby deemed to be so included, and this Agreement shall be construed and enforced as if all such provisions are so included. If, for any reason, any provision required by any applicable law is not expressly included herein, or is not correctly included herein, then, upon request of either the City or ESCO, they shall amend this Agreement to include or incorporate, or to correctly include or incorporate, such provision.

Section 3.5.10 Severability. If a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision or requirement of this Agreement. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement. Likewise, if a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable as applied to a specific person or entity, such determination shall not affect the applicability of such provision or requirement to other persons or entities. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the inapplicable provision or requirement.

Section 3.5.11 Successors and Assigns. ESCO may not assign this Agreement without the express written consent of the City, and any attempt to do so shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties' authorized successors and assigns.

Section 3.5.12 No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own purposes, and this Agreement shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action or other proceeding by any third party.

Section 3.5.13 Agreement is Public Record. Notwithstanding anything in any proposal or any discussions or writings relating hereto: (i) nothing in this Agreement shall be deemed or construed to constitute confidential information; and (ii) this Agreement is a public record which the City may disclose in accordance with California law or otherwise.

PART 3.6 LIMITATION OF LIABILITY

Section 3.6.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either party, its officers, directors, affiliates or employees be liable for any form of indirect, special, consequential or punitive damages, including, but not limited to, loss of use, loss of production, loss of product, loss of revenue, profits or loss of data damages whether such damages arise in contract or tort, irrespective of fault, negligence or strict liability or whether such party has been advised in advance of the possibility of such damages. Notwithstanding any other provision of this Agreement and to the extent permitted by applicable law, the maximum liability of ESCO for damages hereunder shall not

exceed five million dollars ($5,000,000).

PART 3.7: EXECUTION OF AGREEMENT

Section 3.7.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties.

Section 3.7.2 Due Authority of Signatories. Each person signing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the Party he or she represents to *execute,* and thereby bind such Party *to,* this Agreement.

In Witness Whereof. The Parties have executed this Agreement as evidenced by the signatures of their authorized representatives below.

City of Lodi, a municipal corporation

By: _____

Print Name: _____

Print Title: _____

Date Signed: _____

Approved as to Form:

_____
JANICE D. MAGDICH
City Attorney

Schneider Electric Buildings Americas, Inc., a Delaware corporation qualified to do business in California

By: _____

Print Name: _____

Print Title: _____

Date Signed: _____

Fed. Tax ID No: **75-2066352**

Exhibit "A"
Scope of Work - Design Phase of the Project

1. Responsibilities

City Will:

A. Provide ESCO a minimum of twenty-six (26) months of requested electric and/or water invoices for each meter the facility.

B. Provide ESCO necessary escorted access to facilities for the purpose of performing the energy efficiency analysis, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies.

C. Provide ESCO access to key personnel to discuss operating requirements.

D. Provide ESCO equipment lists and copies, or the loan of facility plans, for the purpose of facilitating understanding of the characteristics and the current sequences of operation.

E. Meet with ESCO to establish project criteria and make project decisions necessary for ESCO to complete in a timely manner.

F. Inform ESCO at the point in which City becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.

ESCO Will:

A. Conduct a project programming meeting, facility walk-through(s) and personnel interview(s) to gain an understanding of facility operations, concerns, needs, and desired performance criteria. The Design Services effort will be completed in two phases. The first phase (Conceptual Development) will be a deeper analysis and validation of data provided by the City and qualification of applicable grants and incentives. The completion of phase one will be shared with the City and a decision to proceed with the completion of the design will be made. Should phase one's analysis reveal the project is no longer viable, then the City and ESCO will mutually agree to cease efforts with costs as defined in Exhibit "C".

B. Work with City to refine performance requirements, financial criteria, and project scope of work.

C. Provide City a final scope of work for Construction as defined in Exhibit "D", software, construction and post construction support costs.

D. Provide City a final and guaranteed energy savings and/or new revenues and a cost savings analysis demonstrating the effect of project finances and operations.

E. Provide City a lifecycle financial analysis cash flow.

F. Provide an energy analysis report sufficient to demonstrate that the anticipated cost to the City of the recommended project developed will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of the project in accordance with Government Code section 4217.10 *et seq.*

G. Provide City an Energy Services Agreement including a section detailing a post construction Performance Assurance Support Services (PASS) plan for the facilities, detailing training, measurement and verification of savings and any new revenues as set forth in Exhibit "K".

H. Provide City a final construction completion schedule.

I. Final project pricing for a turnkey installation.

2. Phases of Design

The ESCO promises and agrees, at its own cost and expense, to furnish to City all design services, and incidental and customary work necessary to fully and adequately complete the Project as described in this Exhibit "A". The Design Scope of Work shall consist of two phases: Conceptual Development (Up to Mid-term of Design) and Design Development (Design Completion).

A. Phase 1 – Conceptual Development (Project Scoping)

(i) At the Mid-term meeting, ESCO shall demonstrate for City whether recommended improvement measures are viable and financial benefits (including grants) that can be derived by their implementation can be guaranteed in an amount sufficient to cover costs associated with the project.

(ii) Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM), a clear understanding of applicable grant criteria, any other incentives, calculation of energy and operational savings, preliminary costs for the construction of the scope and a financing plan.

B. Phase 2 – Design Development (Design Completion)

(i) At the Design Completion meeting, ESCO shall present a final scope of work detailing the included ECMs, EGMs and/or FIMs, a lump-sum fixed price proposal to City, in accordance with this Agreement. The price proposal shall include a written guarantee of energy and other operational savings and shall set forth an estimated Completion Date. This cost, final scope and construction timeline will be added by Addendum to this Agreement at completion of the Design Services Phase.

3. Facilities Included

The Design Services will be performed for City's following facilities. Any additional facilities to be added in the future must be made by mutual written agreement between City and ESCO:

Facilities
12751 North Thornton Road, Lodi, CA 95242

Exhibit "B"
Preliminary Schedule – Design Phase of the Project

Following is the preliminary schedule for the design phase of the Project. A firm development schedule will be developed and presented for acceptance by City once ESCO has discussed development requirements and timing with City's partners.

Item	Target Schedule
City approves selection of ESCO and to move forward with project at regularly scheduled Council Meeting	November 6, 2019
City signs Agreement for Turnkey Design and Construction Energy Services authorizing ESCO to proceed with design services	November 7, 2019
City provides complete utility information, building plans, etc.	November 29, 2019
ESCO and City conduct a design kick-off meeting	December 11, 2019
Design Criteria Meeting	March 2, 2019
Mid-term Meeting	April 21, 2020
Final Design Phase Meeting	July 29, 2020
NTP issued allowing ESCO to proceed with the construction phase of the Project	August 12, 2020
A construction kick-off meeting is held to prepare for the construction phase	August 26, 2020

EXHIBIT "C"
Compensation for Design and Construction Services

In Exchange for full and satisfactory completion of the Design and Construction Services, the City shall compensate ESCO as provided below in this Exhibit "C" for the ESCO Services described in Exhibits "A" and "D" to this Agreement. The overall Scope of Work shall consist of three phases: Conceptual Development (Up to Mid-term of Design), Design Development (Design Completion), and Construction. The Scope of Work, including all three phases, is more particularly described in Attachments "A" and "D". Subject to the foregoing, the City shall pay to ESCO the following:

1. ***Phase 1 – Conceptual Development (Project Scoping)***

If ESCO fulfills all of its responsibilities as part of the Conceptual Development phase, City must determine within thirty (30) days of receiving all Conceptual Development deliverables whether to terminate the Contract or move to Phase 2. City shall notify ESCO in writing of its decision.

If ESCO complies with all obligations under the Contract and City terminates the Contract instead of proceeding to the next Phase, City shall pay ESCO a fee not to exceed $225,000.00, as full and final satisfaction for all services performed. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of City. If City elects to move to Phase 2, all costs incurred during Phase 1, will roll over to Phase 2.

2. ***Phase 2 – Design Development (Design Completion)***

After a Final Design Meeting and if ESCO fulfills all of its responsibilities as part of the Design Development phase, City must determine within sixty (60) days of receiving all Design Development deliverables whether to terminate the Contract or move to Phase 3.

At or before the Final Design Meeting, ESCO shall present a price proposal to City based on a guaranteed lump sum price, in accordance with this Agreement. The price proposal shall include a written guarantee of energy and other operational savings where costs of the ECMs, EEMs and/or FIMs of this Project will be offset by a combination of expected grants/incentives and energy and operational savings over the useful life of those improvements, but not more than thirty (30) years ("Performance Guarantee"). The price proposal shall set forth the Guaranteed Completion Date. The price proposal shall be a firm offer valid for ninety (90) days from submission.

If ESCO complies with all obligations under the Contract and City terminates the Contract instead of proceeding to the next Phase, City shall pay ESCO an exit fee of $225,000.00, inclusive of the Phase 1 and Phase 2 termination fees, as full and final satisfaction for all services performed. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of City upon receipt of payment. If City elects to move to Phase 3, all costs incurred during Phase 1 and Phase 2 will roll over to Phase 3.

3. ***Phase 3 – Construction***

If the City elects to proceed to Phase 3 and is satisfied with ESCO's construction price proposal and Performance Guarantee, then ESCO shall submit a formal document establishing the Price for Construction, the Guaranteed Completion Date, the scope of Work and the Performance Guarantee. Approval shall be contingent upon City's City Council holding a public hearing and finding that all of the requirements of Government Code section 4217.10 *et seq.* are met.

Once approved, City may issue a Notice to Proceed with Construction and ESCO shall begin construction work. ESCO shall perform all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete Phase 3. Compensation for construction work shall be paid monthly for work performed, in accordance with this Agreement and the General Conditions.

EXHIBIT "D"
Scope of Work - Construction Phase of the Project

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "E"
Preliminary Schedule – Construction Phase of the Project

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

EXHIBIT "F"
Construction Insurance Requirements

1. *Insurance a Condition Precedent to Commencing the Construction Phase of the Project.* Timely compliance by ESCO with all applicable requirements of this Exhibit "F" shall be deemed and construed as a condition precedent to ESCO commencing any portion of the construction phase. However, in no event shall ESCO's compliance, failure to comply, or failure to timely comply, with the requirements of this Exhibit "F" be deemed or construed to relieve ESCO of any of its responsibilities pursuant to the Construction Documents, including, without limitation the requirements to timely commence and complete the construction services. ESCO shall be responsible for all damages and costs incurred by the City arising from any failure by ESCO to comply or to timely comply with the requirements of this Exhibit "F".

2. *MINIMUM SCOPE AND LIMIT OF INSURANCE. Coverage shall be at least as broad as:*

   a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
   b. Automobile Liability: ISO Form Number CA 00 01 covering any auto or if ESCO has no owned autos, then hired, and non-owned autos with limit no less than $2,000,000 per accident for bodily injury and property damage.
   c. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
   d. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
   e. . Professional Liability (if Design/Build), with limits no less than $2,000,000 per occurrence or claim.

3. *Other Insurance Provisions:*

   a. Additional Named Insured Status

      The City, its elected and appointed boards, commissions, officers, agents, employees, and volunteers are to be covered as additional insureds on the CGL and auto policy with respect to liability arising out of work or operations performed by or on behalf of ESCO including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to ESCO's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used

   b. Primary and Non-Contributory Insurance Endorsement

      The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. For any claims related to this contract, ESCO's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the ESCO's insurance and shall not contribute with it.

   c. Waiver of Subrogation. ESCO hereby grants to City a waiver of any right to subrogation which any insurer of ESCO may acquire against the City by virtue of the payment of any loss under such insurance. ESCO agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has

received a waiver of subrogation endorsement from the insurer

NOTE: (1) The street address of the City must be shown along with (a) and (b) and (c) above: 221 West Pine Street, Lodi, California, 95240; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

d. Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability under ESCOs commercial general liability and automobile liability policies.

e. Notice of Cancellation or Change in Coverage Endorsement

This policy may not be canceled nor the coverage reduced by ESCO without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

f. Continuity of Coverage

All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, ESCO shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. ESCO shall provide proof of continuing insurance on at least an annual basis during the Term. If ESCO's insurance lapses or is discontinued for any reason, ESCO shall immediately notify the City and immediately obtain replacement insurance. ESCO agrees and stipulates that any insurance coverage provided to the City shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

g. Failure to Comply

If ESCO fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. ESCO shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify ESCO of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. ESCO shall pay such reimbursement and interest on the first (1st) day of the month following the City's notice. Notwithstanding any other provision of this Agreement, if ESCO fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, ESCO shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.

h. Verification of Coverage

ESCO shall furnish the City with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive ESCO's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.

i. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require ESCO to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

j. Insurance Limits

The limits of insurance described herein shall not limit the liability of ESCO and ESCO's officers, employees, agents, representatives or subcontractors. ESCO's obligation to defend, indemnify and hold the City and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for ESCO to procure and maintain a policy of insurance.

k. Subcontractors

ESCO shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ESCO shall ensure that City is an additional insured on insurance required from subcontractors

l. Qualified Insurer(s)

All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

EXHIBIT "G"
Performance Assurance Support Services Agreement

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "H"
Performance Guarantee

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "I"
Measurement & Verification Plan

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "J"
City Responsibilities for Performance Guarantee

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "K"
Performance Assurance Support Services

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE ENERGY SERVICE AGREEMENT WITH SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC., OF CARROLLTON, TEXAS FOR CONCEPTUAL DEVELOPMENT (PHASE 1) AND DESIGN DEVELOPMENT (PHASE 2) FOR REPLACEMENT OF AERATION BLOWERS AND DIFFUSERS AT WHITE SLOUGH WATER POLLUTION CONTROL FACILITY ($225,000) IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 4217

==========

WHEREAS, the State of California allows public agencies to enter into energy service contracts with an Energy Service Company (ESCO) if the governing body finds the proposed project will provide energy savings over its service life. Schneider Electric Buildings Americas, Inc. is one of several ESCO's that operate in the State of California; and

WHEREAS, the benefits to the public agency of entering into an ESCO agreement include project delivery efficiencies, diverting project risk, a fixed project construction price, and project performance guarantee with respect to energy savings; and

WHEREAS, the blower replacement element of this project is intended to replace two of the four existing constant-speed aeration blowers with variable speed blowers to be used in concert with the existing blowers to pace the aeration demand by either speeding up, or slowing down, as demand varies; and

WHEREAS, initial assessments find the replacement blowers and diffusers will save the City's wastewater utility an estimated $250,000 per year in energy costs, while providing more accurate aeration dosage control; and

WHEREAS, staff recommends authorizing the City Manager to execute an Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas for conceptual development (Phase 1) and design development (Phase 2) for replacement of aeration blowers and diffusers at White Slough Water Pollution Control Facility, in the amount of $225,000, in Accordance with California Government Code Section 4217.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas for conceptual development (Phase 1) and design development (Phase 2) for replacement of aeration blowers and diffusers at White Slough Water Pollution Control Facility, in the amount of $225,000, in Accordance with California Government Code Section 4217; and

BE IT FURTHER RESOLVED, pursuant to Section 6.3q of the City Council Protocol Manual (adopted 11/6/19, Resolution No. 2019-223), the City Attorney is

hereby authorized to make minor revisions to the above-referenced document(s) that do not alter the compensation or term, and to make clerical corrections as necessary.

Dated: January 15, 2020

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I hereby certify that Resolution No. 2020-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

Please immediately confirm receipt of this fax by calling 333-6702

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: **NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTING RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE ENERGY SERVICE AGREEMENT WITH SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC., OF CARROLLTON, TEXAS, FOR CONCEPTUAL DEVELOPMENT (PHASE 1) AND DESIGN DEVELOPMENT (PHASE 2) FOR REPLACEMENT OF AERATION BLOWERS AND DIFFUSERS AT WHITE SLOUGH WATER POLLUTION CONTROL FACILITY IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 4217**

PUBLISH DATE: **SATURDAY, DECEMBER 21, 2019**

LEGAL AD

TEAR SHEETS WANTED: **One (1) please**

SEND AFFIDAVIT AND BILL TO:
LNS ACCT. #5100152

PAMELA M. FARRIS, ASSISTANT CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, DECEMBER 19, 2019

ORDERED BY: PAMELA M. FARRIS
ASSISTANT CITY CLERK

Pamela M. Farris
PAMELA M. FARRIS
ASSISTANT CITY CLERK

KAYLEE CLAYTON
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

Emailed to the Sentinel at legals@lodinews.com at 9:06 (time) on 12/19/19 (date) _____ (pages)

forms\advins.doc

DECLARATION OF POSTING

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTING RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE ENERGY SERVICE AGREEMENT WITH SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC., OF CARROLLTON, TEXAS, FOR CONCEPTUAL DEVELOPMENT (PHASE 1) AND DESIGN DEVELOPMENT (PHASE 2) FOR REPLACEMENT OF AERATION BLOWERS AND DIFFUSERS AT WHITE SLOUGH WATER POLLUTION CONTROL FACILITY IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 4217

On Thursday, December 19, 2019, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider resolution authorizing City Manager to execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas, for conceptual development (Phase 1) and design development (Phase 2) for replacement of aeration blowers and diffusers at White Slough Water Pollution Control Facility in accordance with California Government Code Section 4217 (attached and marked as Exhibit A) was posted at the following locations:

Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum
Worknet Office

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2019, at Lodi, California.

ORDERED BY:

PAMELA M. FARRIS
ASSISTANT CITY CLERK

Pamela M. Farris
PAMELA M. FARRIS
ASSISTANT CITY CLERK

KAYLEE CLAYTON
ADMINISTRATIVE CLERK

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING
Date: January 15, 2020
Time: 7:00 p.m.

For information regarding this notice please contact:
Jennifer M. Ferraiolo
City Clerk
Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, January 15, 2020**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider:

a) **Resolution authorizing City Manager to execute Energy Service Agreement with Schneider Electric Buildings Americas, Inc., of Carrollton, Texas, for conceptual development (Phase 1) and design development (Phase 2) for replacement of aeration blowers and diffusers at White Slough Water Pollution Control Facility in accordance with California Government Code Section 4217.**

Information regarding this item may be obtained in the Public Works Department, 221 West Pine Street, Lodi, (209) 333-6706. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Pamela M. Farris

Pamela M. Farris
Assistant City Clerk

Dated: December 18, 2019

Approved as to form:

Janice D. Magdich
City Attorney

AVISO: Para obtener ayuda interpretativa con esta noticia, por favor llame a la oficina de la Secretaria Municipal, a las (209) 333-6702.

AGENDA ITEM **H-01**

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Lodi Improvement Committee Presentation of 2018-19 Year Accomplishments, 2019-20 Year Goals and Receive Direction on Updating Committee By-Laws

MEETING DATE: January 15, 2020

PREPARED BY: CDBG Program Specialist

RECOMMENDED ACTION: Receive Lodi Improvement Committee presentation of 2018-19 year accomplishments, 2019-20 year goals and provide direction on updating committee by-laws.

BACKGROUND INFORMATION: As set-forth in its by-laws, the Lodi Improvement Committee (LIC) is organized and created for the purposes of maintaining and improving the quality of life and appearance of Lodi by the coordinated efforts of a broad spectrum of the community. To this end, the Committee set goals for 2018-19 fiscal year. Upon completion of the 2018-19 fiscal year, the LIC documented its prior year accomplishments, discussed its purpose, and set new 2019-20 fiscal year goals.

Prior Year Goals and Accomplishments 2018-19

The Lodi Improvement Committee has been very busy. During the 2018-19 fiscal year the committee set out to achieve seven (7) goals and fourteen (14) objectives. These goals and objectives were created by committed members to implement the Committee's general purpose. The Committee created goals that were specific, measurable, attainable, results-based, time-bound, and assigned to a committee member. The 2018/19 Committee goals and objectives are as follows with an indication of completed or pending status:

1. Empower and support residents to become leaders for transforming their community, through the following methods:

    a. Approach Title One parents clubs to possibly put on an event for their students/children and empower them by inviting them to go through the Asset Based Community Development (ABCD) program, with support of LIC. = Completed
    b. LIC members provide support to the ABCD program by attending monthly meetings, participating in leadership team communications, mentor Cycle 3 projects leaders by providing support, advice, and resources, attend and promoting other ABCD related events. = Completed
    c. ABCD Cycle 3 projects will be considered for an LIC award.= Pending completion of Cycle 3 projects

2. Support the City's Community Development Block Grant (CDBG) program, which aims to create viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities.
    a. Help conduct outreach of the Consolidated Plan through co-facilitation of focus groups, survey creation/disbursement, social media/press releases, and recruit organization to

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APPROVED: _____
Stephen Schwabauer, City Manager

help support outreach. = Completed
b. Recommend to the City Council which projects to be funded under the CDBG program, including reviewing scoring rubric, assisting applicants in filling out applications and collecting information and scoring and selecting applications. = Completed

3. Help the City and Committee on Homelessness to provide more resources and assistance for homeless.
   a. Support Committee on Homelessness to obtain funding (e.g. HEAP grant application), attend monthly meetings (1st Thursday), and reporting back to the LIC. = Completed
   b. Volunteer to help with the Point-In-Time Count. = Completed
   c. Research funding and resources for public restroom facilities for homeless and report that information to the Committee on Homelessness and other City or non-city entities, as needed. = Completed

4. Encourage beautification of Lodi
   a. Recognize properties and individuals bi-annually that have improved the community through community service, projects, properties, buildings. Establish criteria. = Completed, pending criteria
   b. Increase awareness of awards through competition or voting on properties at a public event; and promoting nominations by other members of the public. = Completed

5. Improve active transportation in the City, such as pedestrian and bicycle travel.
   a. Assist City Staff in applying for two active transportation grants by gathering information needed to put in the grant and researching a second grant; advocate for approval of grants by City. = Completed

6. Promote LIC's goals in the City.
   a. Attend City Council meetings to promote committee and its goals; and provide bi-annual report on the progress of our goals. = Completed
   b. Attend a community event where information is provided about the LIC and its goals. = Completed

7. Improve health care for lower-income residents
   a. Find resources for health care services to be provided to individuals at WorkNet and CHD. = Completed

2019-20 Goals and Draft Revisions to Committee Purpose

The Committee reflected on its purpose as described in its by-laws and came up with draft goals for the next year. At the September meeting, the draft goals were presented to the public. Approximately 15 community members were present, and many provided feedback regarding these goals. Comments were generally supportive of goals and several community members offered support in partnering to help achieve those goals. Organizations represented included ABCD Leadership Team, Lodi Garden Club, Catholic Charities, Turner Wineries, Adventist Health, and Tree Lodi. The Committee heard all comments and adopted these goals for its 2019-20 fiscal year. However, these goals may be revised or new goals added/removed through-out the year. The 2019-20 goals are as follows:

1. Support leadership among Heritage residents through ABCD program by:
   a. providing support to the ABCD program through mentoring project leaders, participating in monthly meetings, supporting workshops, promoting events, and resources/connections; and
   b. providing recognition of ABCD Cycle 3 projects through an LIC award.

2. Develop viable urban communities as regulated by the Community Development Block Grant (CDBG) program and further implemented in the City's Consolidated Plan. LIC members will:

a. conduct community outreach on priority needs and goals for the annual CDBG application cycle; and
b. score applications and recommend projects and funding to the City Council.

3. Support visionary community development projects through research, then solicit feedback from the community, staff, experts, and other stakeholders to determine feasibility; identify funding opportunities; present to committees and City Council; and create sub-committees for long-term implementation. Current visionary projects include:
    a. Greenline project
    b. Shade tree design standards
    c. Public garden
    d. Parking space reductions

4. Promote LIC's goals through attendance at fairs/community events, meeting with community leaders, and presentations to the City Council twice a year.

5. Promote greater interest in LIC and civic engagement by holding at least one LIC meeting in an alternative location.

6. Reduce homelessness and increase affordable homeownership by:
   a. supporting the Lodi Committee on Homelessness by attending LCOH monthly meetings; and
   b. researching land trust options for creating affordable housing options for people experiencing homelessness; and
   c. researching homebuyer programs and sources of funding.

7. Recognize properties and community service leaders for their dedication to improving Lodi by:
   a. identifying and awarding properties, communities, and leaders; and
   b. collaborating with other groups already doing this (Tree Lodi).

The Committee also found that its existing Committee purpose could be refined to better reflect current community needs and member skills. Additionally, Committee members found current by-laws to be instructive on what negative conduct or circumstances to stop and less instructive on the actions necessary to prevent those. Instead, the Committee aims to have revised by-laws that are directive in the preventive solutions and actions that the Committee members can take that would create physical improvements, enhance sense of community/place, empower residents, provide resources to the disadvantaged or poor, and beautify Lodi, especially the Heritage District. The Committee presented these revisions at its September meeting and gathered feedback from the public. The Committee requests direction from the City Council on whether or how by-laws should be updated.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Stephen Schwabauer
Community Development Director

AGENDA ITEM H-02

CITY OF LODI
COUNCIL COMMUNICATION
TM

AGENDA TITLE: Adopt Resolution Approving Revisions to Contracts for Lodi Executive Management Employees (Excluding Council Appointees) for the Period January 1, 2020 through December 31, 2022

MEETING DATE: January 15, 2020

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Adopt resolution approving revisions to contracts for Lodi Executive Management employees (excluding Council Appointees) for the period January 1, 2020 through December 31, 2022.

BACKGROUND INFORMATION: The City has successfully negotiated contracts with all of the Mid-Management bargaining units providing amendments to compensation and benefits through 2022. Staff is requesting that the Executive Management employees be extended similar amendments as extended to all Lodi Mid-Managers.

Staff is requesting the following compensation and benefit changes for the Community Development Director (recruitment in progress), the Library Director, the Parks, Recreation and Cultural Services Director (recruitment in progress), and the Public Works Director:

- Four percent (4%) salary adjustment, effective January 13, 2020;
- One percent (1%) salary adjustment, effective July 13, 2020;
- Five percent (5%) salary adjustment, effective January 11, 2021;
- Five percent (5%) salary adjustment effective January 10, 2022;
- Employees agree to additional cost-sharing of the employer's normal contribution toward CalPERS, pursuant to Government Code Section 20516 with a one percent (1%) contribution effective July 13, 2020, one percent (1%) contribution effective January 11, 2021, and an additional one percent (1%) contribution effective January 10, 2022.

Staff is requesting the following compensation and benefit changes for the Deputy City Manager and the Electric Utility Director:

- Seven percent (7%) salary adjustment, effective January 13, 2020;
- One percent (1%) salary adjustment, effective July 13, 2020;
- Five percent (5%) salary adjustment, effective January 11, 2021;
- Five percent (5%) salary adjustment effective January 10, 2022;
- Employees agree to additional cost-sharing of the employer's normal contribution toward CalPERS, pursuant to Government Code Section 20516 with a one percent (1%) contribution effective July 13, 2020, one percent (1%) contribution effective January 11, 2021, and an additional one percent (1%) contribution effective January 10, 2022.

APPROVED: _____
Stephen Schwabauer, City Manager

The slightly higher actions for these two positions are to maintain salary differentials with classifications reporting to the Electric Utility Director and to maintain existing parity between the Electric Utility Director and the Deputy City Manager.

Staff recommends that the Council approve the revisions to compensation and other benefits for Executive Management Employees.

FISCAL IMPACT: The total long term annual cost of the proposed revisions is $300,000, of which $55,000 is applicable to FY 2019/20; $100,000 is applicable to FY 2020/21; and $145,000 is applicable to FY 2021/22.

FUNDING AVAILABLE: Budget adjustments for these increases will be needed at Mid Year Fiscal Year 2019/20. Vacancy savings are the first source for funding the increases for this and future employee contract changes. These savings have been significant in the past three years allowing the City to build up substantial reserves. In Fiscal Year 2018/19, the General Fund ended the year with over $1.5 million above its 16% fund balance reserve target. Vacancy savings and these reserves will likely be necessary to finance a portion of salary increases. Staff will first seek to prioritize Pension Stabilization Reserves held at PARS or OPEB stabilization reserves held in separate trust at CalPERS to pay eligible costs in order to preserve locally held economic and catastrophic reserves should actual reserves be needed. Staff will seek Council input prior to any use of reserves.

_____

Steve Schwabauer
City Manager

RESOLUTION NO. 2020-____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING COMPENSATION AND BENEFIT
MODIFICATIONS FOR EXECUTIVE MANAGEMENT
EMPLOYEES 2020 THROUGH 2022

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WHEREAS, the City has completed negotiations with all Mid-Management bargaining units; and

WHEREAS, it is recommended that Council approve the following compensation and benefit modifications to the Executive Management Employee contracts;

- 4% increase to base salary, effective January 13, 2020; 1% increase to base salary, effective July 13, 2020; 5% increase to base salary, effective January 11, 2021; and a 5% increase to base salary, effective January 10, 2022; for the positions of Community Development Director (recruitment in progress), Library Director, Parks, Recreation and Cultural Services Director (recruitment in progress), and Public Works Director;
- 7% increase to base salary, effective January 13, 2020; 1% increase to base salary, effective July 13, 2020; 5% increase to base salary, effective January 11, 2021; and a 5% increase to base salary, effective January 10, 2022; for the positions of Deputy City Manager and Electric Utility Director;
- Employee contribution (cost-sharing) of the employer's normal contribution toward CalPERS, pursuant to Government Code Section 20516 with 1% contribution effective July 13, 2020; 1% contribution effective January 11, 2021; and an additional 1% contribution effective January 10, 2022; for the positions of Community Development Director, Library Director, Parks, Recreation and Cultural Services Director, Public Works Director, Deputy City Manager and Electric Utility Director.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve compensation and benefit modifications to Executive Management Employee contracts as specified above.

Date: January 15, 2020

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I hereby certify that Resolution No. 2020-____ was passed and adopted by the Lodi City Council in a regular meeting held January 15, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

PAMELA M. FARRIS
Assistant City Clerk

AGENDA ITEM I-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Ordinance No. 1974 Entitled, "An Ordinance of the City Council of the City of Lodi Levying and Apportioning the Special Tax in Territory Annexed to Community Facilities District No. 2007-1 (Public Services) (Annexation No. 9)"

MEETING DATE: January 15, 2020

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1974.

BACKGROUND INFORMATION: Ordinance No. 1974 entitled, "An Ordinance of the City Council of the City of Lodi Levying and Apportioning the Special Tax in Territory Annexed to Community Facilities District No. 2007-1 (Public Services) (Annexation No. 9)," was introduced at the regular City Council meeting of December 18, 2019.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. ***Cal. Gov't Code § 36934***.

Ordinances take effect 30 days after their final passage. ***Cal. Gov't Code § 36937***.

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Pamela M. Farris
Assistant City Clerk

PMF
Attachment

APPROVED: _____
Stephen Schwabauer, City Manager

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ORDINANCE NO. 1974

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LODI LEVYING AND APPORTIONING
THE SPECIAL TAX IN TERRITORY ANNEXED TO
COMMUNITY FACILITIES DISTRICT NO. 2007-1
(PUBLIC SERVICES) (ANNEXATION NO. 9)

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WHEREAS, the City Council of the City of Lodi (the "City Council") has established Community Facilities District No. 2007-1 (Public Services) (the "CFD") pursuant to Resolution No. 2007-59 (the "Resolution of Formation"), duly adopted on April 4, 2007, for the purpose of providing for the financing of certain public services in and for the CFD; and

WHEREAS, the City Council duly adopted Resolution No. 2019-283 (the "Resolution") on December 18, 2019, wherein the City Council submitted the question of levying a special tax in territory proposed to be annexed to the CFD at the rate and according to the method of apportionment described therein; and

WHEREAS, at an election held in the territory proposed to be annexed to the CFD on December 18, 2019, the qualified electors of such territory authorized the levy of the special tax described in the Resolution; and

WHEREAS, the City Council duly adopted Resolution No. 2019-284 on December 18, 2019, wherein the City Council determined that the territory proposed to be annexed was added to the CFD (such territory being referred to herein as "Annexation No. 9").

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Lodi:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Levy of Special Tax. Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied for Fiscal Year 2020/21 at the maximum rates and apportioned in the manner specified in the Resolution.

Section 3. Collection of Special Tax. Pursuant to Section 53340 of the California Government Code and the Resolution, the special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the CFD or as otherwise determined appropriate by the City.

Section 4. Claims for Refund. Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

(a) All claims shall be filed, in writing, with the City Treasurer during the Fiscal Year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

(b) Pursuant to Government Code section 935(b), the claim shall be subject to the provisions of Government Code sections 945.6 and 946.

(c) The City Council shall act on a timely claim within the time period required by Government Code section 912.4.

(d) The procedure described in this Ordinance, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

Section 5. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 6. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

Section 7. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the Ordinance within fifteen (15) days after its passage, a summary of the Ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council, and a certified copy shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1).

Approved this _____ day of _____, 2020

_____
DOUG KUEHNE
Mayor

Attest:

_____
PAMELA M. FARRIS
Assistant City Clerk

State of California
County of San Joaquin, ss.

I, Pamela M. Farris, Assistant City Clerk of the City of Lodi, do hereby certify that uncodified Ordinance No. 1974 was introduced at a regular meeting of the City Council of the City of Lodi held December 18, 2019, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1974 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

_____
PAMELA M. FARRIS
Assistant City Clerk

Approved as to Form:

By:_____
JANICE D. MAGDICH
City Attorney

AGENDA ITEM I-02

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Ordinance No. 1975 Entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Title 6 – Animals – by Repealing and Re-Enacting Chapter 6.08, 'Prohibited Animals,' in Its Entirety"

MEETING DATE: January 15, 2020

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1975.

BACKGROUND INFORMATION: Ordinance No. 1975 entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Title 6 – Animals – by Repealing and Re-Enacting Chapter 6.08, 'Prohibited Animals,' in Its Entirety," was introduced at the regular City Council meeting of December 18, 2019.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. ***Cal. Gov't Code § 36934***.

Ordinances take effect 30 days after their final passage. ***Cal. Gov't Code § 36937***.

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

Pamela M. Farris
Assistant City Clerk

PMF
Attachment

APPROVED: _____
Stephen Schwabauer, City Manager

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ORDINANCE NO. 1975

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING
LODI MUNICIPAL CODE TITLE 6 – ANIMALS – BY REPEALING
AND RE-ENACTING CHAPTER 6.08, "PROHIBITED ANIMALS,"
IN ITS ENTIRETY

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 6.08 "Prohibited Animals" is hereby repealed and reenacted in its entirety, and shall read as follows:

CHAPTER 6.08

PROHIBITED ANIMALS

Sections:

6.08.010 Definitions
6.08.020 Livestock prohibited.
6.08.030 Wild animals prohibited.
6.08.040 Domesticated animals—Number permitted.
6.08.050 Determination of age of animal.

6.08.010 Definitions.

A. "Domesticated animals" means those nonferal animals commonly kept as household pets and includes:

1. Dogs (canis familiaris);
2. Cats (felis catus);
3. Reptiles such as lizards or nonpoisonous snakes under six feet in length; and
4. Rabbits.

B. "Livestock" means those animals commonly kept for commercial purposes, including, but not limited to:

1. Horses, mules, burros or jacks;
2. Turkeys, guinea hens, peacocks, roosters or similar fowl;
3. Bulls, cows, hogs, pigs, goats, sheep and llamas.

C. "Wild animals" means those feral animals, not commonly kept as household pets, including but not limited to:

1. The following members of the class mammalian:

a. Order Carnivora, except the domestic dog (canis familiaris) and the domestic cat (felis catus), but including, but not limited to, the family Felidea (such as ocelots, margays and cougars) and family Canidae (such as wolves, wolf hybrids, coyotes and jackals); and

b. Order Columbae (such as doves and pigeons) unless registered with a homing pigeon club—California Government Code Section 65852.6; and

c. Order Marsupialia (such as kangaroos and opossums); and

d. Order Chiroptera (bats); and

e. Order Primata (such as monkeys, chimpanzees and gorillas); and

2. Reptiles that are poisonous or in excess of six feet in length or thirty pounds in weight; and

3. Any nondomestic species when kept, maintained or harbored in such numbers or in such a manner as to constitute the likelihood of danger to themselves, to human beings or to the property of human beings.

6.08.020 Livestock prohibited.

It is unlawful to harbor, keep or have within the city any livestock as defined in Section 6.08.010 (B), with the exception of poultry animals, as set forth in Section 6.08.025 of this Chapter. It is unlawful to slaughter livestock within City limits.

6.08.025 Certain Poultry Animals Permitted:

The total number of poultry animals allowed shall not exceed five (5) in number on any one residential lot, with no more than two of those animals being ducks. Poultry animals may be kept purely for home consumption and not for commercial purposes, subject to the provisions of this Code. Permissible poultry animals include female chicken hens, ducks, and quail. Male poultry animals are prohibited.

a. Feed for poultry animals shall be contained and enclosed so as not to attract rodents, insects, and other vermin.

b. Poultry animals shall be kept in the rear yard of residential units and not permitted in the front yard.

c. Poultry animals shall be kept in fenced areas, cages or coops that are sufficiently adequate to prevent the poultry animals from escaping from the property and to prevent wildlife predators from gaining entry. Poultry animals must be secured at night in a predator-proof enclosure, cage or coop, to protect from dogs, coyotes, raccoons or other predators.

d. It is unlawful to slaughter poultry animals within City limits.

6.08.030 Wild animals prohibited.

It is unlawful to harbor, keep or have within the city any wild animal.

6.08.040 Domesticated animals—Number permitted.

A. It is unlawful to harbor, keep or have within a single household within the city more than five domesticated animals in excess of four months of age in any combination thereof, except in a licensed business, where permitted in a particular district as provided by Title 17 of this code.

B. It is unlawful to harbor, keep or have within a single household within the city more than one litter of puppies or kittens during any twelve-month period, except in a licensed business, where permitted in a particular district as provided by Title 17 of this code.

6.08.050 Determination of age of animal.

If there is any dispute as to the age of any domesticated animal, in the absence of any affidavit or sworn testimony from a person who has personal knowledge of the date of birth, a determination made by the animal control officer is conclusively presumed to be correct.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

Approved this ____ day of _____, 2019

_____
DOUG KUEHNE
Mayor

ATTEST:

_____
PAMELA M. FARRIS
Assistant City Clerk

State of California
County of San Joaquin, ss.

I, Pamela M. Farris, Assistant City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1975 was introduced at a regular meeting of the City Council of the City of Lodi held December 18, 2019, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2020, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1975 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

_____
PAMELA M. FARRIS
Assistant City Clerk

Approved to Form:

_____
JOHN P. FUKASAWA
Deputy City Attorney