LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

TM

AGENDA – REGULAR MEETING

Date: **May 5, 2010**
Time: **Closed Session 6:30 p.m.**
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:
Randi Johl, City Clerk
Telephone: (209) 333-6702

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

NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

a) Conference with Dean Gualco, Human Resources Manager (Labor Negotiator), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, Police Mid-Managers, Lodi Police Officers Association, Lodi Police Dispatchers Association, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6

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. Pledge of Allegiance

C. Presentations

C-1 National Tourism Week Proclamation
C-2 National Letter Carrier Food Drive Day Proclamation
C-3 Salvation Army Week Proclamation
C-4 National Public Works Week Proclamation (PW)
C-5 Peace Officer Memorial Month Proclamation (PD)

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

D-1 Receive Register of Claims in the Amount of $2,992,808.55 (FIN)

D-2 Approve Minutes (CLK)
a) April 7, 2010 (Regular Meeting)
b) April 20, 2010 (Shirtsleeve Session)
c) April 21, 2010 (Special Meeting)
d) April 21, 2010 (Regular Meeting)

D-3 Accept the Quarterly Investment Report as Required by Government Code Section 53646 and the City of Lodi Investment Policy (CM)

Res. D-4 Adopt Resolution Awarding the Purchase of Three Pad Mount Liquid Insulated Vacuum Switchgear and Load-Fault Interrupters to Trayer Engineering Corporation, of San Francisco ($97,552.03) (EUD)

Res. D-5 Adopt Resolution Rejecting Non-Responsive Bids, Awarding Contract for Municipal Service Center PBX Replacement Project to AdvanTel Networks, of Sacramento ($183,856.91), and Appropriating Funds ($200,000) (PW)

Res. D-6 Adopt Resolution Authorizing the City Manager to Execute Professional Services Agreement with Neil O. Anderson and Associates, of Lodi, for Testing and Inspection Services for Lodi Avenue Reconstruction Project ($43,149) and DeBenedetti Park Storm Drain Improvement Project ($10,224) (PW)

Res. D-7 Adopt Resolution Revising Fee Payment Agreement for 1341 East Kettleman Lane (PW)

Res. D-8 Adopt Resolution Establishing a Standardized Questionnaire for Bidder Qualification as Provided by Public Contracts Code 20101 (PW)

D-9 Authorize the Mayor, on Behalf of the City Council, to Send a Letter in Support of AB 1594 Regarding Prohibiting Construction of the Peripheral Canal (CM)

D-10 Authorize the Mayor, on Behalf of the City Council, to Send a Letter in Support of H.R. 4812, the “Local Jobs for America Act” (CM)

E. 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.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

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

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

H. Public Hearings

Res. H-1 Public Hearing to Approve the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to Consider Reallocation of Available Urban County CDBG Funds (CD)

Res. H-2 Public Hearing to Consider the Appeals of Brandt-Hawley Law Group on Behalf of Charles and Melissa Katzakian Regarding the Decision of the Planning Commission to Approve: (CD)

a) SPARC Review and Use Permit for Costco Wholesale Development; and

b) SPARC Review for Reynolds Ranch Shopping Center and Home Depot

I. Communications

I-1 Re-Post for Expiring Terms and Vacancies on the Greater Lodi Area Youth Commission (CLK)

J. Regular Calendar

Res. J-1 Adopt Resolution Certifying Concurrence with California Energy Commission Environmental Findings and Approving Agreements with the Northern California Power Agency for Power Sales, Project Management and Operation, Ground Lease, and Recycled Water Supply (EUD)

J-2 Consider Notice of Cost to Grant Two Years Additional Service Credit under Government Code Section 20903 (CM)

J-3 Presentation on Major Components of Fiscal Year 2010/11 Budget (CM)

K. Ordinances – None

L. 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.

_____
Randi Johl
City Clerk

AGENDA ITEM C-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: National Tourism Week

MEETING DATE: May 5, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Mayor Katzakian present a proclamation proclaiming the week of May 8 – 16, 2010, as "National Tourism Week" in the City of Lodi.

BACKGROUND INFORMATION: The Mayor was requested to present a proclamation proclaiming the week of May 8 – 16, 2010, as "National Tourism Week" in the City of Lodi. Nancy Beckman, President and CEO of Visit Lodi! Conference & Visitors Bureau, will be at the meeting to accept the proclamation.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Blair King, City Manager

council/councom/Presentation1.doc

AGENDA ITEM C-02

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: National Letter Carrier Food Drive Day

MEETING DATE: May 5, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Mayor Katzakian present a proclamation proclaiming Saturday, May 8, 2010, as "National Letter Carrier Food Drive Day" in the City of Lodi.

BACKGROUND INFORMATION: The Mayor was requested to present a proclamation proclaiming Saturday, May 8, 2010, as "National Letter Carrier Food Drive Day" in the City of Lodi. Robert Lombana with the Lodi Post Office will be at the meeting to accept the proclamation.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

Randi Johl
City Clerk

APPROVED: _____
Blair King, City Manager

council/councom/Presentation2.doc

AGENDA ITEM C-03

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Salvation Army Week

MEETING DATE: May 5, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Mayor Katzakian present a proclamation proclaiming the week of May 10 – 16, 2010, as "Salvation Army Week" in the City of Lodi.

BACKGROUND INFORMATION: The Mayor was requested to present a proclamation proclaiming the week of May 10 – 16, 2010, as "Salvation Army Week" in the City of Lodi. Lieutenant Dan Williams with the Salvation Army and Pat Patrick, President/CEO of the Chamber of Commerce, will be at the meeting to accept the proclamation.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Blair King, City Manager

council/councom/Presentation3.doc

AGENDA ITEM C-04

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: National Public Works Week Proclamation

MEETING DATE: May 5, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Present a proclamation proclaiming the week of May 16 - 23, 2010, as "National Public Works Week" in Lodi.

BACKGROUND INFORMATION: Public Works Week is a national event to educate the public on how important the contribution of Public Works is to their daily lives. This year's theme is "Public Works: Above, Below, & All Around You." National Public Works Week calls attention to the importance of Public Works in community life and seeks to enhance the prestige of the often-unsung heroes of our society – the professionals who serve the public good every day with quiet dedication. These unsung heroes are the men and women in Public Works who plan, design, build, and maintain our water, wastewater, drainage and street systems, City buildings, and fleet; who are responsible for the City's transit and solid waste services; who play a role in the quality of life in our community; and who are helping to move life forward.

A representative of the Public Works Department will be present to accept the proclamation.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst

FWS/RAY/pmf

APPROVED: _____
Blair King, City Manager

AGENDA ITEM C-05

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Peace Officer Memorial Month

MEETING DATE: May 5, 2009

PREPARED BY: Interim Chief of Police

RECOMMENDED ACTION: Proclaim the Month of May, 2010, to be known as Peace Officer Memorial Month throughout the City of Lodi.

BACKGROUND INFORMATION: The Lodi Police Department requests that the Council make this proclamation in keeping with such tributes at the state and national level. This year, the week of May 9 through May 15 is designated National Police Week, while May 7 is the date of the California Peace Officer Memorial Ceremony. These ceremonies are held annually to honor the memory of over 18,425 law enforcement officers who have lost their lives in the line of duty throughout the United States. Of the 125 line-of-duty deaths in 2009, California's loss was six officers.

Members of the Lodi Police Department, led by its Honor Guard, will hold a ceremony early the morning of May 5 at the gravesite of Officer Rick Cromwell (5/7/63 – 12/9/98), the only Lodi police officer killed in the line of duty. The group will then participate in the Stockton Police Officers Association's Memorial Services honoring fallen law enforcement officers from throughout San Joaquin County. On Friday, May 7, the Lodi Police Honor Guard will participate in the California Peace Officers' Memorial Enrollment Ceremony in Sacramento.

An inscription at the California State Memorial reads: "Go, stranger, and tell the (people) that we lie here in obedience to their laws." We urge the City Council to join in this message, honoring our fallen peace officers.

FISCAL IMPACT: None

FUNDING AVAILABLE: N/A

_____
Captain Gary Benincasa
Interim Chief of Police

APPROVED: _____
Blair King, City Manager

AGENDA ITEM D-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Receive Register of Claims through April 15, 2010 in the Total Amount of $2,992,808.55

MEETING DATE: May 5, 2010

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for $2,992,808.55.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of $2,992,808.55 through 04/15/10. Also attached is Payroll in the amount of $1,178,354.49.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

_____
Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Blair King, City Manager

As of Thursday	Fund	Name	Amount
04/15/10	00100	General Fund	1,016,172.48
	00120	Vehicle Replacement Fund	18,528.23
	00123	Info Systems Replacement Fund	8,041.83
	00160	Electric Utility Fund	61,388.98
	00161	Utility Outlay Reserve Fund	96,741.57
	00164	Public Benefits Fund	39,381.39
	00170	Waste Water Utility Fund	907,220.85
	00171	Waste Wtr Util-Capital Outlay	17,835.01
	00180	Water Utility Fund	44,594.39
	00181	Water Utility-Capital Outlay	78,309.42
	00182	IMF Water Facilities	8,943.64
	00210	Library Fund	7,146.51
	00230	Asset Seizure Fund	999.00
	00234	Local Law Enforce Block Grant	2,540.01
	00235	LPD-Public Safety Prog AB 1913	61.27
	00260	Internal Service/Equip Maint	29,013.99
	00270	Employee Benefits	466,494.74
	00300	General Liabilities	1,261.14
	00310	Worker's Comp Insurance	22,450.76
	00321	Gas Tax	14,861.04
	00325	Measure K Funds	6,479.32
	00330	RTIF County/COG	83.72
	00339	Prop.1B-Local Streets & Roads	12,883.16
	00340	Comm Dev Special Rev Fund	232.04
	00345	Community Center	15,797.74
	00346	Recreation Fund	12,642.49
	00459	H U D	3,854.34
	00502	L&L Dist Z1-Almond Estates	346.19
	00503	L&L Dist Z2-Century Meadows I	220.17
	00506	L&L Dist Z5-Legacy I,II,Kirst	569.78
	00507	L&L Dist Z6-The Villas	478.86
	00509	L&L Dist Z8-Vintage Oaks	185.24
	00510	SJ MultiSpecies Habitat Conser	13,398.80
	00550	SJC Facilities Fees-Future Dev	157.67
	01211	Capital Outlay/General Fund	4,169.51
	01212	Parks & Rec Capital	26,401.67
	01214	Arts in Public Places	15,000.00
	01218	IMF General Facilities-Adm	1,989.26
	01241	LTF-Pedestrian/Bike	5,022.00
	01250	Dial-a-Ride/Transportation	6,827.46
	01410	Expendable Trust	23,766.66
Sum			2,992,492.33
	00184	Water PCE-TCE-Settlements	316.22
Sum			316.22
Total Sum			2,992,808.55

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	04/04/10	00100	General Fund	738,328.70
		00160	Electric Utility Fund	160,499.48
		00164	Public Benefits Fund	4,976.05
		00170	Waste Water Utility Fund	91,719.06
		00180	Water Utility Fund	283.92
		00210	Library Fund	27,288.99
		00235	LPD-Public Safety Prog AB 1913	1,942.40
		00260	Internal Service/Equip Maint	21,518.45
		00321	Gas Tax	40,988.11
		00340	Comm Dev Special Rev Fund	22,488.19
		00345	Community Center	22,334.20
		00346	Recreation Fund	39,655.24
		01250	Dial-a-Ride/Transportation	6,331.70
Pay Period Total:				
Sum				1,178,354.49

AGENDA ITEM D-02

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Minutes
a) April 7, 2010 (Regular Meeting)
b) April 20, 2010 (Shirtsleeve Session)
c) April 21, 2010 (Special Meeting)
d) April 21, 2010 (Regular Meeting)

MEETING DATE: May 5, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) April 7, 2010 (Regular Meeting)
b) April 20, 2010 (Shirtsleeve Session)
c) April 21, 2010 (Special Meeting)
d) April 21, 2010 (Regular Meeting)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through D.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

_____
Randi Johl
City Clerk

Attachments

APPROVED: _____
Blair King, City Manager

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LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 7, 2010

C-1 Call to Order / Roll Call - N/A

C-2 Announcement of Closed Session - N/A

C-3 Adjourn to Closed Session - N/A

C-4 Return to Open Session / Disclosure of Action - N/A

A. Call to Order / Roll call

The Regular City Council meeting of April 7, 2010, was called to order by Mayor Katzakian at 7:05 p.m.

Present: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Absent: Council Member Mounce
Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Pledge of Allegiance

C. Presentations

C-1 Sexual Assault Awareness Month Proclamation

Mayor Katzakian presented a proclamation to Julie Phillips, representing the Women's Center of San Joaquin County, proclaiming the month of April 2010 as "Sexual Assault Awareness Month" in the City of Lodi.

C-2 National Library Week / National Library Workers' Day Proclamation (LIB)

Mayor Katzakian presented a proclamation to Nancy Martinez, Library Services Director, proclaiming the week of April 11 – 17, 2010, as "National Library Week" and Tuesday, April 13, 2010, as "National Library Workers' Day" in the City of Lodi

C-3 Keep Lodi Beautiful Month Proclamation (CD)

Mayor Katzakian presented a proclamation to Neighborhood Services Manager Joseph Wood and Waste Management representative Jennelle Bechthold proclaiming the month of April 2010 as "Keep Lodi Beautiful Month" in the City of Lodi.

C-4 Presentation of Police Silver Star Award (PD)

Police Captain Gary Benincasa presented the Silver Star award to Officer Eric Bradley for his outstanding bravery above and beyond what is expected in the normal course of duty.

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

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Johnson, to approve the following items hereinafter set forth in accordance with the report and recommendation of the

City Manager.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Noes: None
Absent: Council Member Mounce

D-1 Receive Register of Claims in the Amount of $7,206,118.89 (FIN)

Claims were approved in the amount of $7,206,118.89.

D-2 Approve Minutes (CLK)

The minutes of March 16, 2010 (Shirtsleeve Session), March 17, 2010 (Regular Meeting), March 23, 2010 (Shirtsleeve Session), March 30, 2010 (Shirtsleeve Session), and March 30, 2010 (Special Meeting) were approved as written.

D-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Kofu Park Community Building Energy Efficiency Project (PW)

Approved the plans and specifications and authorized advertisement for bids for Kofu Park Community Building Energy Efficiency Project.

D-4 Approve Plans and Specifications and Authorize Advertisement for Bids for 2010 Street Improvements Project (PW)

Approved the plans and specifications and authorized advertisement for bids for 2010 Street Improvements Project.

D-5 Approve Specifications and Authorize Advertisement for Bids for the Rejuvenation of 15,290 Feet of Underground Electric Cable in English Oaks Phase One ($145,000) (EUD)

Approved the specifications and authorized advertisement for bids for the rejuvenation of 15,290 feet of underground electric cable in English Oaks Phase One.

D-6 Approve Issuance of Request for Proposals for A-87 Compliant Cost Allocation Plans and Indirect Cost Rates (CM)

Approved the issuance of request for proposals for A-87 compliant cost allocation plans and indirect cost rates.

D-7 Adopt Resolution Approving Purchase of Telescopic Boom for Transit Vehicle Maintenance Facility from United Rentals, of Lodi ($54,827.27), and Appropriating Grant Funds ($55,000) (PW)

Adopted Resolution No. 2010-37 approving the purchase of telescopic boom for transit vehicle maintenance
facility from United Rentals, of Lodi, in the amount of $54,827.27, and appropriating grant funds in the amount of $55,000.

D-8 Adopt Resolution Awarding Contract for DeBenedetti Park - Electrical Improvements, 2350 South Lower Sacramento Road, to Angelo Utilities, of Sacramento ($223,025), and

Appropriating Funds ($270,000) (PW)

Adopted Resolution No. 2010-38 awarding contract for DeBenedetti Park - Electrical Improvements, 2350 South Lower Sacramento Road, to Angelo Utilities, of Sacramento, in the amount of $223,025, and appropriating funds in the amount of $270,000.

D-9 Adopt Resolution Awarding Contract for Lodi GrapeLine Bus Stop Improvements to Mo/Jas Construction Company, of Stockton ($35,314) (PW)

Adopted Resolution No. 2010-39 awarding contract for Lodi GrapeLine bus stop improvements to Mo/Jas Construction Company, of Stockton, in the amount of $35,314.

D-10 Adopt Resolution Approving GrapeLine Fixed Route Senior/Disabled/Medicare Fare (PW)

Adopted Resolution No. 2010-40 approving GrapeLine Fixed Route Senior/Disabled/Medicare Fare.

E. 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. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Kari Chadwick spoke in regard to March for California's Future and the path of the march toward Sacramento with a stop in Lodi. Ms. Chadwick encouraged attendance at the Lodi Rally at Hutchins Street Square on April 13, 2010, at 5:30 p.m.

Stacey Ramsey, representing his security firm, spoke in regard to loitering and vandalizing in the downtown area and offered volunteer services to assist with this challenge.

Diane Sulton, a business owner in downtown, spoke in regard to the growing problem with loitering and vandalism in the downtown area.

Suzanne Houck, a business owner in downtown, spoke in regard to the growing problem with loitering and vandalism in the downtown area.

Ralph Lee spoke in regard to his concern about the lack of parking near the Department of Motor Vehicle building in the City and the process associated with ticketing.

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

Council Member Hansen reported on his attendance at the San Joaquin Council of Governments meeting and budget for the same.

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

City Manager King stated staff will follow up with a community meeting regarding concerns about Elm Street. He also stated parking on the bridge near the Department of Motor Vehicles (DMV) facility is prohibited and the City does not benefit from tickets issued for State Code violations. In response to Council Member Hansen, Mr. King stated DMV is proceeding with the relocation to

a new office, although the specifics of the parking at the new office are not known.

H. Public Hearings

H-1 Public Hearing to Consider the Certification of the Final Environmental Impact Report and Adoption of the General Plan (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Katzakian called for the public hearing to consider the certification of the Final Environmental Impact Report (EIR) and adoption of the General Plan.

City Manager King provided a brief introduction to the subject matter of the City of Lodi General Plan.

Community Development Director Rad Bartlam and Consultant Rajeev Bhatia provided a PowerPoint presentation regarding the City of Lodi General Plan. Specific topics of discussion included purpose of the General Plan, the planning process, public participation, contents of the General Plan, introduction, land use, growth management and infrastructure, community design and livability, transportation, parks and open space, conservation, safety, noise, implementation of the General Plan, other appendices to the General Plan, changes since August 2009, and recommended action to certify the Final EIR and adopt the General Plan.

In response to Mayor Pro Tempore Hitchcock, Mr. Bhatia stated that, with respect to the policy regarding recreation and joint development of parks and drainage basins, the new policy reflects a separate space for recreation.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated the proposed General Plan seeks to separate the spaces for parks and drainage basins because there is a technical need, the standards for the Clean Water Act require additional treatment before such spaces are jointly used, there was an overall desire for park space to be park space only, and the numbers reflect what is actually on the ground with respect to parks and basins. Mr. King stated the overall yield is higher with the proposed acres for park land versus joint usage.

Mayor Katzakian opened the public hearing to receive comments from the public.

Mike Carouba spoke in support of the proposed General Plan and its pending adoption.

Ann Cerney spoke in regard to her concerns about mitigation with an acre-for-acre policy, which reflects land acquisition instead of money.

Mayor Katzakian closed the public hearing after receiving no further comments from the public.

In response to Mayor Pro Tempore Hitchcock, Public Works Director Wally Sandelin reviewed the past and current practices of parks and drainage basins, joint usage, and the standards regarding the same.

In response to Mayor Pro Tempore Hitchcock, Mr. Sandelin confirmed that State regulations are changing and the City may not be able to jointly use the spaces in the future. Mr. Sandelin stated he is not sure how other communities are handling the jointly used spaces.

In response to Mayor Pro Tempore Hitchcock, Mr. Bhatia reviewed neighborhood and community park standards and funding, impact fees application to such spaces, and the Quimby Act.

In response to Council Member Johnson, Interim Parks and Recreation Director James Rodems

stated dual capacity will be lost from this point forward but there is no loss of existing recreation use.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated there will be more park space available in the future as a result of the proposed plan based on the built plan and actual numbers.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam confirmed that the past policy was not fully implemented.

In response to Mayor Katzakian, Mr. Bartlam stated the proposed space calculation excludes school park land.

In response to Council Member Hansen, Mr. Bartlam stated there will be more opportunities for parks such as the Century Meadows Park to be built in the future as the parks will be built as a part of the development rather than at a later date.

In response to Council Member Hansen, Mr. Bartlam stated staff disagrees with the analysis in the Farm Bureau letter, the study area is not a land use designation, the County is free to do and act as it will, Section 7.34 outlines the framework for an agricultural conservation program, and the specifics of the policy will take some time to create and implement as various parties will need to assist with that effort.

A brief discussion ensued between Mayor Pro Tempore Hitchcock and Mr. Bhatia regarding the addition of language reflecting that recreational space be maximized.

In response to Mayor Pro Tempore Hitchcock, Mr. Bhatia stated the parks and drainage basin is not an issue that is common to cities outside of a certain radius because water drainage is different in different locations.

In response to Mayor Pro Tempore Hitchcock, Mr. Bhatia confirmed that park impact fees are not driving current policies for park space.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated four park acres per 1,000 residents could be changed to five park acres per 1,000 residents to alleviate park space concerns.

Council Member Johnson made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-41 certifying the Final Environmental Impact Report and General Plan; State Clearinghouse No. 009022075.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Noes: None
Absent: Council Member Mounce

I. Communications - None

J. Regular Calendar

J-1 Receive Report on Response to Comments on the Draft Environmental Impact Report/Environmental Assessment for I-5 Widening from Stockton to Southerly Limits of

the White Slough Water Pollution Control Facility (CD) NOTE: This item is carried over from the meeting of 3/17/10

This item was continued to the next regularly scheduled meeting.

J-2 Consider Waste Management's Proposal to Provide $1,000,000 for Grape Bowl Renovation (CM)

City Manager King provided a brief introduction to the subject matter of the Waste Management proposal. Specific topics of discussion included the conditional offer to provide $1 million for the Grape Bowl renovation project over an extended period of time, the term of the existing franchise agreement, the proposal associated with the conditional offer including an option to extend the current agreement beyond 2023 by seven years to 2030.

Tom Sanchez, Business Manager for Waste Management, provided a brief overview of the organization's personal and professional reasons to contribute $1,000,000 to the Grape Bowl renovation project as outlined in the letter provided by Waste Management.

In response to Mayor Pro Tempore Hitchcock, Mr. Sanchez stated Waste Management has approximately 22,000 residential customers and he is not sure about the commercial numbers.

Mayor Katzakian asked for public comment on the item.

Ann Cerney spoke in regard to her concern about the level of commitment to the Grape Bowl project and California Environmental Quality Act application.

Jason Altnow spoke in favor of the proposed contribution based on possible benefit to the community.

Greg Bishop spoke in support of the proposed contribution based on possible benefit to the community. In response to Council Member Hansen, Mr. Bishop stated that, based on his experience as a coach and former football player, the artificial turf will be a good surface for multiple uses.

Erin Aitken spoke in support of the proposed contribution and field improvements based on possible benefit to the community.

David Curran spoke in support of the proposed contribution and Grape Bowl improvements based on possible benefit to the community.

Todd Dillon spoke in support of the proposed contribution and improvements based on possible benefit to the community.

Roy Bitz spoke in opposition to the proposed contribution if it is tied to an extension because he believes the services should be competitively bid.

David Akin, representative from the Parks and Recreation Commission, provided an overview of the discussion at the Commission level, stating that, while there was not a formal vote, the overall discussion of the Commission was positive and in support.

Bob Sheppard spoke in support of the proposed contribution based on the overall benefits and history associated with having the Grape Bowl facility in the City.

Jerry Shuman spoke in support of the proposed contribution, stating the rates and services

should be shopped at the appropriate time.

In response to Council Member Hansen, Mr. King stated customer service is an element of the contract and there are options if the customer service declines.

Mayor Pro Tempore Hitchcock stated that, while she acknowledges the good service that Waste Management provides, she will not be able to support the matter without additional information regarding possible costs associated with the extension.

In response to Council Member Hansen, Mr. King stated rates is a separate piece of the contract entirely and is not tied to the current proposal.

Council Member Hansen made a motion, second by Council Member Johnson, to accept Waste Management's proposal to provide $1,000,000 for Grape Bowl renovations.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, and Mayor Katzakian
Noes: Mayor Pro Tempore Hitchcock
Absent: Council Member Mounce

J-3 Adopt Resolution Awarding Contract for Lodi Grape Bowl All-Weather Surface Project to Western Engineering Contractors, Inc., of Loomis ($592,675), Approving Purchase and Installation of All-Weather Surface through Fieldturf USA, Inc., of Montreal, Quebec ($686,000), and Appropriating Funds ($1,366,000) (PW)

City Manager King briefly introduced the subject matter of the contract for the all-weather surface project and the proposed purchase and installation of the same.

Public Works Director Wally Sandelin provided a brief presentation regarding the proposed award of contract for the all-weather surface project and the purchase and installation of the same as discussed in the relevant staff report.

Council Member Johnson made a motion, second by Council Member Hansen, to adopt Resolution No. 2010-42 awarding contract for Lodi Grape Bowl All-Weather Surface Project to Western Engineering Contractors, Inc., of Loomis, in the amount of $592,675, approving purchase and installation of all-weather surface through Fieldturf USA, Inc., of Montreal, Quebec, in the amount of $686,000, and appropriating funds in the amount of $1,366,000.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, and Mayor Katzakian
Noes: Mayor Pro Tempore Hitchcock
Absent: Council Member Mounce

J-4 Provide Direction to Amend Fee Payment Agreement for 1341 East Kettleman Lane (Holiday Inn Express) (CM)

City Manager King briefly introduced the subject matter of the proposed amendment to the fee payment agreement for the Holiday Inn Express.

Beth Kim, owner of the Holiday Inn Express, provided an overview of the family owned and operated business, the affect of the negative economy on the business, and the request for the amendment to the current fee agreement.

In response to Council Member Hansen, Ms. Kim stated a significant portion of the business is handled through on line reservations and it is the largest contribution due to business because of the brand.

In response to Council Member Hansen, Mr. King and Ms. Kim confirmed that the eight months may not be a good time frame and the hotel has the ability to generate $80,000 to $100,000 in Transient Occupancy Tax based on a $2 million annually at 9% formula.

In response to Mayor Pro Tempore Hitchcock, Mr. King stated the amendment to the fee agreement may set a precedent, although it would not impact any current projects, and the City has previously allowed deferrals with Council approval.

In response to Council Member Johnson, Mr. King stated the Council could do a deferral based upon some other structure depending upon preference, with the idea that the deferral should only occur once with an adequate amount of relief for the one-year period.

Council Member Hansen made a motion, second by Mayor Pro Tempore Hitchcock, to authorize staff to review options for a mutually acceptable deferral, amend the Fee Payment Agreement for 1341 East Kettleman Lane (Holiday In Express) accordingly, and bring back the item for final approval.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Noes: None
Absent: Council Member Mounce

J-5 Adopt Resolution Authorizing the City Manager to Execute a Purchase and Development Agreement with Eden Housing, Inc. Regarding Senior Housing Project at 2245 Tienda Drive (CD)

City Manager King briefly introduced the subject matter of the Eden Housing Purchase and Development Agreement.

Neighborhood Services Manager Joseph Wood provided a PowerPoint regarding the Purchase and Development Agreement with Eden Housing. Specific topics of discussion included terms and conditions, history of the project to date, public outreach, Planning Commission approval, and the next steps.

In response to Council Member Hansen, Katie Lamont of Eden Housing, stated Eden Housing is advantaged in competition and Department of Housing and Urban Development (HUD) funding based on its good track record. She stated five applications were submitted to HUD this year, Eden applied for all 39 units and there is a one in five chance of approval. Ms. Blackman stated she is confident that the HUD housing will come through and there are a variety of options if it does not.

In response to Council Member Johnson, Ms. Lamont stated the quality of the project remains the same regardless of the funding source, the tenant mix will be seniors, and the only variable is the age and whether it will start at 55 or 62.

In response to Mayor Pro Tempore Hitchcock, Ms. Lamont stated the project will remain an affordable senior housing project and the only variance will be the age of the seniors.

In response to Mayor Pro Tempore Hitchcock, Mr. Wood stated all funding options for the park and housing are being explored and a passive park incorporating the existing oaks is planned.

A brief discussion ensued between Mayor Pro Tempore Hitchcock, Mr. King, and Mr. Schwabauer regarding an overview of the improvements sought, how impact fees may be applied, and the requirement to spend the money on specific projects.

Council Member Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2010-43 authorizing the City Manager to execute a Purchase and Development Agreement with Eden Housing, Inc. regarding senior housing project at 2245 Tienda Drive.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Noes: None
Absent: Council Member Mounce

J-6 Receive Presentation on Proposed New Sales Tax Electric Rate Discount and Provide Electric Utility Department with Direction (EUD)

City Manager King briefly introduced the subject matter of the proposed new sales tax rate discount.

Interim Electric Utility Director Ken Weisel provided a PowerPoint presentation regarding the proposed new sales tax rate discount. Specific topics of discussion included goals, qualifications, discount, timeline, and recommended action.

In response to Mayor Pro Tempore Hitchcock, Mr. Weisel stated it is difficult to say if the proposed discount will be a cost or benefit to the Electric Fund, although it is a positive for the General Fund.

In response to Mayor Pro Tempore Hitchcock, Mr. Weisel stated the majority of the customer cost is fixed in the base rate and the discount can be affordably given.

In response to Council Member Johnson, Mr. Weisel stated the process will include getting an estimate from the customer, validating the amount, and entering into an agreement.

In response to Council Member Johnson, Mr. Weisel stated staff is making sure the discount is given to those who can use it, it is unknown whether customers will take advantage of the discount, and it is more of a pilot program at this time.

Council Member Johnson made a motion, second by Mayor Pro Tempore Hitchcock, to receive presentation on proposed new sales tax electric rate discount and authorize staff to move forward with the program as recommended.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Noes: None
Absent: Council Member Mounce

J-7 Adopt Resolution Approving Salary Range and Reclassification for the Position of Substation/Meter Superintendent (CM)

Interim Electric Utility Director Ken Weisel provided a brief PowerPoint presentation regarding the proposed salary range and reclassification for the Substation/Meter Superintendent. Specific topics of discussion included substations, organizational structure, concerns, recruitment, skills, internal pay comparisons, and the proposed recommendation.

In response to Council Member Hansen, Mr. Weisel stated staff has performed external comparisons and the position is currently about 16% below average. He stated the lack of a good candidate pool may be the result of several things but pay and reclassification is what staff is aware of at this time.

In response to Mayor Pro Tempore Hitchcock, Mr. Weisel stated the retail meter supervisions has been added to the job description and the position has been vacant for some time.

In response to Mayor Pro Tempore Hitchcock, Human Resources Manager Dean Gualco stated typically staff attaches a summary to a reclassification request, the comparisons are consistent with a superintendent and not a supervisor, and the salary change is consistent with the title and duty change.

Council Member Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2010-44 approving salary range and reclassification for the position of Substation/Meter Superintendent.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Hansen, Council Member Johnson, Mayor Pro Tempore Hitchcock, and Mayor Katzakian
Noes: None
Absent: Council Member Mounce

K. Ordinances - None

L. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 11:55 p.m.

ATTEST:

Randi Johl
City Clerk

LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, APRIL 20, 2010

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, April 20, 2010, commencing at 7:02 a.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Absent: Council Member Hansen, and Mayor Pro Tempore Hitchcock
Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Report on Fire Agency Cost Recovery Programs for Emergency Services within San Joaquin County (FD)

City Manager King provided a brief introduction to the subject matters of fire agency cost recovery programs for emergency services and the use of municipal administrative citations.

Fire Chief Kevin Donnelly provided a PowerPoint presentation regarding the fire agency cost recovery programs for emergency services within San Joaquin County. Specific topics of discussion included 11 county fire agencies surveyed, Cal Fire, applicable laws, jurisdiction, mutual aid, special response, negligence, EMS, USA Rescue, individual agencies, Tracy contract, specialized equipment and training, residential taxes, rising costs, annual recovery, and Lodi Fire services and fee schedule.

In response to Council Member Johnson, Chief Donnelly stated a special call could be a hazmat spill on the freeway once it is determined to be hazmat and fault is assigned for recovery purposes.

In response to Council Member Mounce, Chief Donnelly stated there is a handful of companies that do collections for fire services.

In response to Council Member Johnson, Chief Donnelly stated some agencies are charging for basic life support fees per unit based on a survey of the department and the average cost is $300 per call. Chief Donnelly stated that fee covers training, equipment, and actual services and Tracy charges additional for ALS calls.

In response to Council Member Johnson, Chief Donnelly reviewed the Tracy fee program and cost recovery program. He stated the Tracy consultant says as much as $800,000 could be recovered but staff is taking a more conservative approach because the subscription fee program needs to be marketed and promoted.

In response to Mayor Katzakian, Chief Donnelly stated the average subscription fees could range from $38 to $50 annually.

In response to Council Member Johnson, Chief Donnelly stated he is not sure if Tracy has a public safety sales tax and will get back to Council regarding the same.

In response to Council Member Johnson, Mr. Schwabauer stated the DUI fees can be assessed against the insurance company and/or the driver.

B-2 Report on the Use of Municipal Administrative Citations to Process Traffic Citations (PD)

Interim Police Chief Gary Benincasa provided a PowerPoint presentation regarding the administrative traffic citations and the Roseville model. Specific topics of discussion included competing traffic citation models, traffic court model, Roseville model, City benefits, driver benefits, disadvantage of the Roseville model, and the recommendation to not pursue a Roseville model at the current time in light of the challenges of the model.

In response to Council Member Johnson, Chief Benincasa stated he is not sure about the specific bail amounts as there are more than 100 separate fees.

In response to Council Member Johnson, Mr. Schwabauer stated the bail amount varies depending upon the violation and could start at $150 not including court costs. Mr. Schwabauer stated a stop sign violation could cost up to $220 with the court costs and the City would get anywhere from a quarter to a third of the actual fine amount.

In response to Council Member Mounce, Mr. King stated he is not sure about the time line for SB 949. Mr. Schwabauer stated the legislation appears to apply retroactively if it goes through as is currently written.

In response to Council Member Mounce, Mr. King stated a letter of opposition could be sent to Senator Orpeza, the author of SB 949, if the Council so desired. Mr. King stated the letter could be written in a broader context with a focus on the local government and court relationship. Mr. Schwabauer stated it could be agendized and the letter could be sent prior to the hearing on SB 994.

In response to Council Member Johnson, Mr. Schwabauer stated the City would need to hire an administrative hearing officer at a minimum and there is a risk of a due process claim that a City employee may be bias based on the City recovering fines.

In response to Council Member Johnson, Chief Benincasa stated he will forward the specific bail amounts for the Roseville model to the City Council as requested.

In response to Council Member Mounce, Mr. Schwabauer stated the presentation for recreational vehicles is complete, will be presented by Jeannie Biskup, and is scheduled for an upcoming Shirtsleeve Session.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:49 a.m.

ATTEST:

Randi Johl
City Clerk

EXHIBIT C

LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 21, 2010

A. Roll Call

The Special City Council meeting of April 21, 2010, was called to order by Mayor Katzakian at 6:00 p.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Absent: Mayor Pro Tempore Hitchcock
Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Closed Session

At 6:00 p.m., Mayor Katzakian adjourned the meeting to a Closed Session to discuss the following matters.

(A) Threatened Litigation: Government Code §54956.9(b); One Case, Potential Suit By Charles and Melissa Katzakian Regarding Costco, Home Depot and Reynolds Ranch Shopping Center Approvals Against the City of Lodi

(B) Exposure to Litigation: Government Code §54956.9(b)(3)(1); One Case, Facts and Circumstances that Might Result in Litigation Against the City of Lodi, But Which Are Not Yet Known; Parties Not Disclosed

C. Adjournment

The Closed Session adjourned at 6:20 p.m.

D. Disclosure of Closed Session Action

At 7:01 p.m., Mayor Katzakian reconvened the City Council meeting, and City Attorney Schwabauer disclosed that both items were negotiating direction only.

There being no further business to come before the City Council, the special meeting was adjourned at 6:20 p.m.

ATTEST:

Randi Johl
City Clerk

LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 21, 2010

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of April 21, 2010, was called to order by Mayor Katzakian at 6:30 p.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Absent: Council Member Hansen, and Mayor Pro Tempore Hitchcock
Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

a) Conference with Dean Gualco, Human Resources Manager (Labor Negotiator), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, Police Mid-Managers, Lodi Police Officers Association, Lodi Police Dispatchers Association, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

At 6:30 p.m., Mayor Katzakian adjourned the meeting to a Closed Session to discuss the above matter. The Closed Session adjourned at 6:52 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:01 p.m., Mayor Katzakian reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Item B(a) and B(b) of the Special Closed Session Meeting, both items were negotiating direction only.

In regard to Item C-2 (a) of the Regular Meeting, this item was discussion only.

A. Call to Order / Roll call

The Regular City Council meeting of April 21, 2010, was called to order by Mayor Katzakian at 7:01 p.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Absent: Council Member Hansen, and Mayor Pro Tempore Hitchcock
Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Pledge of Allegiance

C. Presentations

C-1 Zinfandel Month Proclamation

Mayor Katzakian presented a proclamation to Courtney Thommen, Event Manager for the Lodi

Winegrape Commission, proclaiming the month of May 2010 as "Zinfandel Month" in the City of Lodi.

C-2 Presentation of Certificate of Recognition to Lodi Electric Utility Electric Line Apprentices for Their Performance at the Tenth Public Power Lineworkers Rodeo (EUD)

Following introductory comments by Barry Fisher, Construction & Maintenance Supervisor, Mayor Katzakian presented Certificates of Recognition to Josh Ramos and Cody Ellis for their performance at the Tenth Public Power Lineworkers Rodeo.

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

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

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Noes: None
Absent: Council Member Hansen, and Mayor Pro Tempore Hitchcock

D-1 Receive Register of Claims in the Amount of $6,722,276.96 (FIN)

Claims were approved in the amount of $6,722,276.96.

D-2 Approve Minutes (CLK)

The minutes of April 6, 2010 (Shirtsleeve Session), April 6, 2010 (Special Meeting), April 7, 2010 (Special Meeting), April 13, 2010 (Shirtsleeve Session), and April 13, 2010 (Special Meeting) were approved as written.

D-3 Receive Report of Sale of Surplus Equipment (PW)

Received the report of sale of surplus equipment.

D-4 Approve Specifications and Authorize Advertisement for Bids for Janitorial Services for City Facilities (PW)

Approved the specifications and authorized advertisement for bids for janitorial services for City facilities.

D-5 Request for Authorization to Solicit Proposals to Engage an Executive Recruiting Firm to Provide Services Associated with the Recruitment of a City Manager (CM)

Approved request for authorization to solicit proposals to engage an executive recruiting firm to provide services associated with the recruitment of a City Manager.

D-6 Adopt Resolution Awarding Contract for Maintenance of Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, for Fiscal Year 2010/11, to Creative Outdoor Environment, Inc., of Lathrop ($18,447) (PW)

Adopted Resolution No. 2010-46 awarding contract for maintenance of Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, for Fiscal Year 2010/11, to Creative

Outdoor Environment, Inc., of Lathrop, in the amount of $18,447.

D-7 Adopt Resolution Authorizing the City Manager to Execute Task Order Nos. 3 and 5 of the City of Lodi Soil and Groundwater Remediation Projects with Stantec Consulting Corporation, of Rancho Cordova, for Groundwater Monitoring Services and Value Engineering Services ($65,000) (PW)

Adopted Resolution No. 2010-47 authorizing the City Manager to execute Task Order Nos. 3 and 5 of the City of Lodi Soil and Groundwater Remediation Projects with Stantec Consulting Corporation, of Rancho Cordova, for groundwater monitoring services and value engineering services in the amount of $65,000.

D-8 Adopt Resolution Approving the Agreement Between the City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for the Summer Swim League Program (PR)

Adopted Resolution No. 2010-48 approving the agreement between the City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for the Summer Swim League Program.

D-9 Adopt Resolution Authorizing the City Manager to Execute Contract Amendment for Grant-Funded Public Safety Radio Replacement Project with Delta Wireless and Network Solutions, Inc. ($80,984.72) (CM)

Adopted Resolution No. 2010-49 authorizing the City Manager to execute contract amendment for grant-funded public safety radio replacement project with Delta Wireless and Network Solutions, Inc., in the amount of $80,984.72.

D-10 Adopt Resolution Authorizing the City Manager to File Claim for 2009/10 Transportation Development Act Funds in the Amount of $1,930,253 from Local Transportation Fund and $1,500 from State Transit Assistance Fund (PW)

Adopted Resolution No. 2010-50 authorizing the City Manager to file claim for 2009/10 Transportation Development Act funds in the amount of $1,930,253 from Local Transportation Fund and $1,500 from State Transit Assistance Fund.

D-11 Receive Information Regarding New Meeting Time for the Lodi Arts Commission (COM)

The item was pulled from the agenda pursuant to staff request.

D-12 Approve Rate Increases for Kronick, Moskovitz, Tiedemann & Girard for Legal Services Rendered to the City of Lodi ($5 to $10 Per Hour Per Professional) (CA)

Approved rate increases for Kronick, Moskovitz, Tiedemann & Girard for legal services rendered to the City of Lodi in the amount of $5 to $10 per hour per professional.

D-13 Authorize the Deputy City Manager/Treasurer to Enter into Agreement with Farmers and Merchants Bank of Central California for the Issuance of a City Credit Card for Interim Police Chief Gary Benincasa and Interim City Manager Rad Bartlam (CM)

Authorized the Deputy City Manager/Treasurer to enter into agreement with Farmers and Merchants Bank of Central California for the issuance of a City credit card for Interim Police Chief Gary Benincasa and Interim City Manager Rad Bartlam.

D-14 Set Public Hearing for May 5, 2010, to Approve the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to Consider Reallocation of

Available Urban County CDBG Funds (CD)

Set public hearing for May 5, 2010, to approve the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to consider reallocation of available Urban County CDBG funds.

D-15 Set Public Hearing for May 5, 2010, to Consider the Appeal of Brandt-Hawley Law Group on Behalf of Charles and Melissa Katzakian Regarding the Decision of the Planning Commission to Approve a SPARC Review for the Reynolds Ranch Commercial Development (CD)

Set public hearing for May 5, 2010, to consider the appeal of Brandt-Hawley Law Group on behalf of Charles and Melissa Katzakian regarding the decision of the Planning Commission to approve a SPARC review for the Reynolds Ranch Commercial Development.

D-16 Set Public Hearing for May 19, 2010, to Introduce Ordinance Amending Lodi Municipal Code Chapter 13.20, "Electrical Service," by Adding New Section 13.20.320 Titled, "Schedule NST - New Sales Tax Economic Development Rate" (EUD)

Set public hearing for May 19, 2010, to introduce ordinance amending Lodi Municipal Code Chapter 13.20, "Electrical Service," by adding new Section 13.20.320 titled, "Schedule NST - New Sales Tax Economic Development Rate."

E. 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. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Jane Kenworthy of the Stockton Symphony spoke in support of the grant provided to the symphony program and the benefits of the program to the community.

Alex Aliferis spoke in regard to his concerns about overgrown trees on the east side of town and the need for tree trimming in light of the recent storms.

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

Council Member Johnson reviewed an article from the Sacramento Bee regarding AB 155, which would make it more difficult for local governments to file bankruptcy by requiring prior approval from the California Debt Commission.

Mayor Katzakian reported on his attendance at the Groundwater Banking Authority meeting and discussed groundwater management efforts at the State level.

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

City Manager King reported on the meeting to address concerns regarding Elm Street. He stated property owners, business owners, and youth were present and, although there are no specific crimes that are occurring, the concerns were noted and the meeting was positive.

In response to Council Member Mounce and responding to the citizen concern about tree trimming, Mr. King stated the City does have a trained arborist on staff and a tree trimming program for monitoring and trimming City-owned trees.

Public Works Director Wally Sandelin stated the City is divided into six districts for tree trimming purposes, the tree trimming activity has been consistent for the past five years, and staff will follow-up with the citizen regarding his concerns about a specific area that needs tree trimming.

H. Public Hearings - None

I. Communications

I-1 Post for Expiring Terms on the Library Board of Trustees, Lodi Arts Commission, and Planning Commission and Re-Post for Two Openings on the Lodi Budget/Finance Committee (CLK)

Council Member Johnson made a motion, second by Council Member Mounce, to direct the City Clerk to post for the following expiring terms and re-post for two openings on the Lodi Budget/Finance Committee:

Library Board of Trustees
George Neely, Term to expire June 30, 2010
Robert Emmer, Term to expire June 30, 2010

Lodi Arts Commission
Teri Turrentine, Term to expire July 1, 2010
Margie Lawson, Term to expire July 1, 2010
Bonnie Mayer, Term to expire July 1, 2010

Planning Commission
Tim Mattheis, Term to expire June 30, 2010

Lodi Budget/Finance Committee
Two Vacancies, Terms to expire June 30, 2013

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Noes: None
Absent: Council Member Hansen, and Mayor Pro Tempore Hitchcock

J. Regular Calendar

J-1 Receive Report on Response to Comments on the Draft Environmental Impact Report/Environmental Assessment for I-5 Widening from Stockton to Southerly Limits of the White Slough Water Pollution Control Facility (CD) NOTE: This item is carried over from the meetings of 3/17/10 and 4/7/10

City Manager King briefly introduced the subject matter of the response to comments on the draft Environmental Impact Report (EIR) for the I-5 widening.

Community Development Director Rad Bartlam provided an overview of the response to comments on the draft EIR for the I-5 widening project from Stockton to the White Slough Water Pollution Control Facility. Specific topics of discussion included the previous presentation seeking

authorization to provide comments, the anticipated improvements from Central Stockton at Charter Way to north of Eight Mile Road, submission of comments on the draft EIR outlining various impacts from the proposed project, the proposed interchange north of Eight Mile Road, CalTrans response to the City's comments essentially dismissing each of the comments without further analysis, the City's position that the interchange and widening north of Eight Mile Road is premature, the likelihood of additional discussion although the interchange may not be removed from the document, CalTrans notifying the City prior to any action on the final EIR, and the City's option of litigation if there are no additional changes. Mr. Schwabauer stated if nothing changed, staff would schedule a closed session and give the City Council an assessment on the exposure that CalTrans has on the document.

In response to Council Member Mounce, Mr. Bartlam stated the life of an EIR depends upon the type of EIR, as a broad-based EIR has a longer life span because additional work is expected on more specific projects, while a project-based EIR such as the I-5 widening would be valid for approximately five years depending upon the circumstances.

J-2 Reject Proposal from Harvey Gorrell for the Sculpture, "Crane Dance" (Formerly "Rite of Spring"), from Artist Scott Wampler (COM)

City Manager King briefly introduced the subject matter of the "Crane Dance" sculpture.

Interim Parks and Recreation Director James Rodems reviewed the original proposal for the sculpture, previous approval of the donation, follow-up conversation with the artist regarding the withdrawal of the donation, the current proposal seeking $50,000 for the sculpture, and the recommendation from the Lodi Arts Commission to reject the current proposal in light of the added conditions.

In response to Council Member Mounce, Council Member Johnson stated he is not sure what specifically soured along the way, he met with the father of the artist and saw the art in the foundry, and believes it was a bait and switch.

In response to Council Member Mounce, Mr. Rodems stated the hours of service for installation are no longer included in the $50,000 price and will be an additional cost for the City to acquire the art if it so chose.

Dave Kirsten, representing the Art in Public Places Committee, stated the current proposal to acquire the piece could exceed $80,000, the art piece is no longer a donation, and the Committee recommends rejection of the proposal based on the fact that the proposal, which now includes a purchase price, did not go through the standard policy for acquiring public art in the City.

Council Member Mounce made a motion, second by Council Member Johnson, to reject the proposal from Harvey Gorrell for the sculpture, "Crane Dance" (formerly "Rite of Spring"), from artist Scott Wampler.

VOTE:
The above motion carried by the following vote:
Ayes: Council Member Johnson, Council Member Mounce, and Mayor Katzakian
Noes: None
Absent: Council Member Hansen, and Mayor Pro Tempore Hitchcock

K. Ordinances - None

L. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:55 p.m. in memory of Frank Taormina.

ATTEST:

Randi Johl
City Clerk

AGENDA ITEM D-03

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Accept the Quarterly Investment Report as Required by Government Code Section 53646 and the City of Lodi Investment Policy

MEETING DATE: May 5, 2010

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Accept the quarterly investment report as required by Government Code Section 53646 and the City of Lodi Investment Policy.

BACKGROUND INFORMATION: Government Code Section 53646 and the City of Lodi Investment Policy require that local agency treasurers submit a quarterly report on investments to the legislative body of the local agency.

The total of all invested funds as of the quarter ending March 31, 2010 is $73,379,468.48.
The average annualized return on all invested funds over the quarter has been 0.58 percent.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: As per attached report.

Jordan Ayers
Treasurer

Attachment

APPROVED: _____
Blair King, City Manager

CITY OF LODI
INTERNAL SERVICES DEPARTMENT
BUDGET DIVISION

March 31, 2010 INVESTMENT STATEMENT

Local Agency Investment Funds *	**77.9% of Portfolio**	
Average interest earnings as of 03-31-10	0.55%	
LODI	Local Agency Inv Fund (LODI)	33,158,925.63
LPIC	Local Agency Inv Fund (LPIC)	23,998,356.25
	Subtotal LAIF	**57,157,281.88**
Certificates of Deposit	**0.7% of Portfolio**	
matures 03/08/2011	Bank of Ag. & Comm. (cost) 1.21% int.	250,000.00
matures 03/03/2011	UMPQUA Bank (cost) 1.26% int.	250,000.00
	Subtotal CD	**500,000.00**
Passbook/Checking Accounts	**21.4% of Portfolio**	
Farmers & Merchants	demand account - no interest earnings	**2,321,928.17
Farmers & Merchants - Money Mkt.	0.72% interest earnings	5,376,558.72
Farmers & Merchants - Payroll	demand account - no interest earnings	36,450.99
Farmers & Merchants - Central Plume	demand account - no interest earnings	9,257.87
Farmers & Merchants - CP Money Mkt.	0.72% interest earnings	7,977,990.85
	Subtotal P/C Accts	**15,722,186.60**
	TOTAL	**73,379,468.48**

Based on the approved budget and to the extent the budget is adhered to, liquidity is available, and the City will be able to meet its expenditure requirements for the next six months. This portfolio is in compliance with the City of Lodi Investment Policy.

_____ _____04/16/10_____
Kirk J Evans Date
Management Analyst

* In accordance with the terms of the Local Agency Investment Fund, invested funds may be utilized on the same day if transaction is initiated before 10:00 a.m.

** This amount is a compensating balance, subject to an earnings credit rate of 1%, which offsets bank service charges.

AGENDA ITEM D-04

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Awarding the Purchase of Three Pad Mount Liquid Insulated Vacuum Switchgear & Load-Fault Interrupters to Trayer Engineering Corporation of San Francisco, California ($97,552.03) (EUD)

MEETING DATE: May 5, 2010

PREPARED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution awarding the purchase of three Pad Mount Liquid Insulated Vacuum Switchgear & Load-Fault Interrupters to Trayer Engineering Corporation of San Francisco, California ($97,552.03).

BACKGROUND INFORMATION: On January 20, 2010, the City Council approved specifications and authorized advertisement for bids to procure three Pad Mount Liquid Insulated Vacuum Switchgear & Load-Fault Interrupters. They are being purchased on an as-needed basis.

The Electric Utility Department advertised bid documents on March 13**,** 2010 and the bid document was sent out to three manufacturers and suppliers. On April 8, 2010, staff received bid proposals as follows:

	Bid Item # 1	Bid Item # 2	Bid Item # 3	Total
Trayer Engineering Corporation of San Francisco, California	$26,251,17	$35,837.48	$35,463.38	**$97,552.03**
Cooper Power System Waukesha WI	Not Provided	Not Provided	Not Provided	
S & C of Chicago, IL	Not Provided	Not Provided	Not Provided	

Staff reviewed the proposal from Trayer Engineering Corporation of San Francisco, California and found it complies with the bid documents and within the estimated budget. Further, the existing switchgears in the City distribution system are from Trayer Corporation, which is an advantage to minimize the number of the spare switchgears in stock. Two switchgears will be used in DeBenedetti Park Project Phase 1 and one as a spare for the Reynolds Ranch site.

Staff recommends City Council award the purchase of three Pad Mount Liquid Insulated Vacuum Switchgear & Load-Fault Interrupters from Trayer Engineering Corporation.

FISCAL IMPACT: Funds in Electric Utility FY2009/10 Budget.

FUNDING: Included in FY 2009/10 Budget Account No. 160651.7720: $50,000.00 and transfer from 160651.7713 to 160651.7720: $47,552.03.

_____
Jordan Ayers
Deputy City Manager/Interim Services director

_____
Kenneth A. Weisel
Interim Electric Utility Director

PREPARED BY: Demy Bucaneg, Jr., P.E., Assistant Electric Utility Director
KAW/DB/lst

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2010-____

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING PURCHASE OF PAD MOUNT LIQUID
INSULATED VACUUM SWITCHGEAR & LOAD /FAULT
INTERRUPTER

==========

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 April 8, 2010 at 11:00 a.m., for the purchase of three pad mount liquid insulated vacuum switchgears & load interrupters, described in the specifications therefore approved by the City Council on January 20, 2010; and,

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

Trayer Engineering Corporation, San Francisco, CA	$97,552.03
Cooper Power System Waukesha WI	Not Provided
S & C of Chicago, IL	Not Provided

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the purchase of three pad mount liquid insulated vacuum switchgear & load interrupter from Trayer Engineering Corporation of San Francisco, CA. in the total amount of **$97,552.03.**

Dated: May 5, 2010

==========

I hereby certify that Resolution No. 2010- ____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

AGENDA ITEM D-05

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Rejecting Non-Responsive Bids, Awarding Contract for Municipal Service Center PBX Replacement Project to AdvanTel Networks, of Sacramento ($183,856.91) and Appropriating Funds ($200,000)

MEETING DATE: May 5, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution rejecting non-responsive bids, awarding the contract for the Municipal Service Center PBX Replacement Project to AdvanTel Networks, of Sacramento, in the amount of $183,856.91 and appropriating funds in the amount of $200,000.

BACKGROUND INFORMATION: This project consists of replacing the Municipal Service Center (MSC) PBX with a new Voice Over Internet Protocol (VOIP) system to provide expanded phone system capabilities and to provide pathways for technology-based communications throughout the MSC complex. Facilities served by the existing MSC PBX include: Public Works, Transit Vehicle Maintenance Facility, Warehouse, Animal Services and the Electric Utility Department.

The Request for Proposals for this project was approved by City Council on February 3, 2010. The City received the following four proposals for this project on March 16, 2010.

Bidder	Location	Proposal
Engineer's Estimate		$150,000.00
AdvanTel Networks	Sacramento	$183,856.91
Vox Network Solutions	Sacramento	$231,852.85
*NetVersant, Inc. (non-responsive)	Fremont	$162,948.75
*Cross Telecom (non-responsive)	San Jose	$182,166.88

*The NetVersant Solutions and Cross Telecom bids included "Bid Clarification" comments and have been determined to be non-responsive by the City Attorney. A city is required to reject a bid as non-responsive when the response: 1) affects the amount of the bid; 2) gives a bidder an advantage over others; 3) provides a potential vehicle for favoritism; 4) might cause other potential bidders to refrain from bidding; or 5) affects the ability to make bid comparisons (Ghillotti v. City of Richmond (1996) 45 Cal.App.4th 897). NetVersant's and Cross Telecom's clarifications give them an advantage, affect the amount of the bid and affect bid comparisons because they state they will not provide services required in the bid package.

Staff is recommending the appropriation of $200,000 to cover construction costs, testing and inspection, City staff time, and contingencies.

APPROVED: _____
Blair King, City Manager

FISCAL IMPACT: Funding will be from Electric Utility, Water Utility, Wastewater Utility and Transit funds.

FUNDING AVAILABLE: Requested Appropriation:

Electric Utility (161)	$50,000,000
Water Utility (181)	$50,000,000
Wastewater Utility (171)	$50,000,000
Transit (1250)	$50,000,000

_____
Jordan Ayers
Deputy City Manager/Internal Services Director

_____
F. Wally Sandelin
Public Works Director

Prepared by Gary Wiman, Construction Project Manager
FWS/GW/pmf
cc: City Attorney
Purchasing Officer
Management Analyst Areida-Yadav

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and ADVANTEL NETWORKS, 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:

Request for Design/Build Proposal
Bridging Documents
Bid Proposal (Contractor Provided Schedule of Values)
Special Provisions
Contract
Contract Bonds
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, furnish all labor 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 Clauses 65 and 66 Special Conditions, 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:

TOTAL CONTRACT AMOUNT **Guaranteed Maximum Price**	*$183,856.91

*Exhibit A is the Schedule of Values from Contractor dated March 15, 2010.

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 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 documents.

ARTICLE VIII – The Contractor agrees to commence work pursuant to this contract and to diligently prosecute to **completion in accordance with the following schedule:**

1. Complete design and submission of plans to the City of Lodi Building Department within 60 calendar days after the Notice to Proceed;

2. City of Lodi Design Review Time: 15 Calendar Days
3. Complete construction 30 calendar days after the date of the City of Lodi Building Permit issuance.
4. Total Construction Project (excluding Building Department Permit Review): 105 calendar days.

When signing this contract, the Contractor agrees that the times of completion for this contract are reasonable, that failure to meet the milestones completion shall result in the assessment of liquidated damages charges to the Contractor, and that the Contractor agrees to pay the City liquidated damages of **$1,000.00 per day for each day the work is not totally completed** beyond the times specified in the preceding paragraph. 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

By:_____
Blair King, City Manager

Date:_____

Attest:

_____
Randi Johl, City Clerk

Approved as to form:

_____
D. Stephen Schwabauer, City Attorney

Exhibit A

AdvanTel Networks

AdvanTel, Inc.
3265 Ramos Circle
Sacramento, CA 95827
(916) 929-9109
Contractor's License 533064

SCHEDULE OF VALUES

Submitted to: CITY OF LODI, CA

Contact: Gary R. Wiman
Phone: 209-333-6076

Account Manager :
Lynn Semingson
916-504-4171

Date: 3/16/2010

CITY OF LODI PBX REPLACEMENT

PBX UPGRADE HARDWARE AND SOFTWARE

Qty	Model	Description	Discounted Unit Cost	Extended Total Cost
1	NTWB17AB	System Upgrade Kit to CS 1000E CPPM - SA	$ 3,000.00	$ 3,000.00
2	NTAK20ADE5	Stratum 3 Clock ContrPCP Assy replaces NTAK20AD	$ 359.17	$ 718.34
1	NTDU0606E6	IP D/B RJ45 M to M Ethernet Cable (25cm)	$ 36.67	$ 36.67
5	NTDW63BAE5	ASSY, CS1000 MGC 100BT ADAPTER (ROHS)	$ 262.50	$ 1,312.50
16	NTE907AD	1 Premium Service Pkg TDM User License	$ 100.00	$ 1,600.00
103	NTE907EB	1 Premium Service Package IP User License	$ 140.00	$ 14,420.00
15	NTE968ED	Convert 1 TDM to 1 IP User License	$ 40.00	$ 600.00
1	NTHU62AC	CPPM Signaling Server (Chassis or Cabinet) - R6	$ 2,100.00	$ 2,100.00
1	NTM427ACE6	CP PM Signaling Server S/W on Compact Flash -Rls 6.0 with NTM44057E6 that includes software install files, software, PEPs blank backup 2GB CF	$ -	$ -
1	NTTK14ABE6	AC Power Cord - NA NEMA 5-15P 125V 13A 10ft	$ 16.67	$ 16.67
1	NTWB19AB	SA to HA CPPM Upgrade Kit	$ 3,250.00	$ 3,250.00
4	NTWB22AB	Conversion to MG 1000E	$ 2,400.00	$ 9,600.00
1	NTTL04EA	TM 50 Sets Licenses Expansion	$ 159.17	$ 159.17
1	NTE900PR	Standard Availabity to High Availabilty CPPM Configuration Change	$ 12,500.00	$ 12,500.00
1	NTE960JC	System Upgrade to Communication Server 1000E CPPM Standard Availability	$ 650.00	$ 650.00
1	NTM441CC	Compact Flash S/W Inst Kit Dual Processor (CPPM) R6 with 512 MB Compact	$ -	$ -
1	NTTL43AD	SRS Upgrade Upgrade to TM 4.0	$ -	$ -
584	SVOM0068	Software Release Subscription Enablement - Software Upgrade Like for Like	$ -	$ -
1	NTAK20ADE5	Stratum 3 Clock ContrPCP Assy replaces NTAK20AD	$ 359.17	$ 359.17
1	NTBK80BA	Ground Bar Option 11C for same room AC Cabinets (1 per system if 2 or	$ 38.34	$ 38.34
5	NTDU0606E6	IP D/B RJ45 M to M Ethernet Cable (25cm)	$ 36.67	$ 183.35
2	NTDU22HB	Media Gateway 1000E Chassis	$ 2,250.00	$ 4,500.00
1	NTDU23AC	Media Gateway 1000 Expander	$ 1,037.50	$ 1,037.50
1	NTHU62AC	CPPM Signaling Server (Chassis or Cabinet) - R6	$ 2,100.00	$ 2,100.00
1	NTM427ACE6	CP PM Signaling Server S/W on Compact Flash -Rls 6.0 with NTM44057E6	$ -	$ -
1	NTSF6800	Option 11C TMDI Package (1.5MB)	$ 1,576.67	$ 1,576.67
3	NTTK14ABE6	AC Power Cord - NA NEMA 5-15P 125V 13A 10ft	$ 16.67	$ 50.01
118	NTYS05BCE6	IP Phone 1140E - Graphite with Eng keycaps, no power supply (RoHS)	$ 300.00	$ 35,400.00
703	GU4300AQQ	CS1000 - Partner Assurance Software Support - Plus upgrades-SLNAQQ	$ 10.32	$ 7,254.96
703	GU4300AQQ	CS1000 - Partner Assurance Software Support - Plus upgrades-SLNAQQ	$ 10.32	$ 7,254.96
		TOTAL PBX HARDWARE / SOFTWARE		**$ 109,718.31**

DATA EQUIPMENT

Qty	Model	Description	Discounted Unit Cost	Extended Total Cost
2	HPP-J9089A#ABA	ProCurve 2610-48 PWR	$ 1,711.85	$ 3,423.70
2	HPP-J9089A#ABA	ProCurve 2610 24 PWR	$ 1,001.49	$ 2,002.98
3	HPP-J9086A#ABA	ProCurve 2610-24/12 PWR	$ 614.60	$ 1,843.80
		TOTAL DATA EQUIPMENT		**$ 7,270.48**

SALES TAX

Qty	Model	Description		
1		**TOTAL SALES TAX**		**$ 10,236.52**

LABOR/ TELECOM AND DATA

Qty	Model	Description		
1	PBX LABOR	PBX Labor, Includes Project management, 32 Hrs after hours, Train the trainer for 6-10 people , 1 day post cut on site	$ 16,600.00	$ 16,600.00
1	IT LABOR	Laor for LAN Survey, Switch Deployment, VLAN Programming	$ 5,510.00	$ 5,510.00
1	IT LABOR	LABOR ALLOWANCE FOR DATA CHANGE ORDERS	$ 5,000.00	$ 5,000.00
1	bond	SURETY BOND EXPENSE		
		TOTAL LABOR		**$ 27,110.00**

24 MONTH SUPPORT WITH VANTAGE POINT

Qty	Model	Description	Unit List	Extd List
24	Maintenance/Civic Center	24X7X365 Hardware, Software, Monitoring/ exclude phones	$ 768.35	$ 18,440.40
12	Maintenance/Service Cent	24X7X365 Hardware, Software, Monitoring/ exclude phones	$ 149.10	$ 1,789.20

		TOTAL SUPPORT		$ 20,229.60
		Octel 250, End of Support. Best efforts time and material only		
1	BOND	SURETY BOND EXPENSE		$ 9,292.00

TOTAL SCHEDULE OF VALUES PRICING POSTED ON GUARANTEED MAXIMUM PRICE PAGE	$ 183,856.91

SIGNED AND DATED BY: Lynn Semingson

PRINTED NAME LYNN SEMINGSON

PRINTED TITLE SR. ACCOUNT MANAGER

RESOLUTION NO. 2010-____

A RESOLUTION OF THE LODI CITY COUNCIL
REJECTING NON-RESPONSIVE BIDS; AWARDING
CONTRACT FOR MUNICIPAL SERVICE CENTER PBX
REPLACEMENT PROJECT AND FURTHER
APPROPRIATING FUNDS

==========

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed proposals were received and publicly opened on March 16, 2010, at 2:00 p.m. for the Municipal Service Center PBX Replacement Project, described in the Request for Proposals therefore approved by the City Council on February 3, 2010; and

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

Bidder	**Proposal**
AdvanTel Networks	$183,856.91
Vox Network Solutions	$231,852.85
NetVersant, Inc. **(non-responsive)***	$162,948.75
Cross Telecom **(non-responsive)***	$182,166.88

WHEREAS, the NetVersant and Cross Telecom proposals included "Bid Clarification" comments and have been determined to be non-responsive by the City Attorney. A city is required to reject a bid as non-responsive when the response: 1) affects the amount of the bid; 2) gives a bidder an advantage over others; 3) provides a potential vehicle for favoritism; 4) might cause other potential bidders to refrain from bidding; or 5) affects the ability to make bid comparisons (Ghillotti v City of Richmond (1996) 45 Cal.App.4th 897). The NetVersant Solutions' and Cross Telecoms' clarifications give them an advantage, affect the amount of the bid and affect bid comparisons because they decline to provide services required in the bid package; and

WHEREAS, staff recommends awarding the contract for the Municipal Service Center PBX Replacement Project to the lowest responsive bidder, AdvenTel Networks, of Sacramento, California; and

WHEREAS, staff recommends appropriating $200,000 to cover construction costs, testing and inspection, City staff time, and contingencies.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby determine that the NetVersant and Cross Telecom proposals which included "Bid Clarification" comments to be non-responsive and rejects those bids; and

BE IT FURTHER RESOLVED that the Lodi City Council does hereby award the contract for the Municipal Service Center PBX Replacement Project to the lowest responsive bidder, AdvanTel Networks, of Sacramento, California, in the amount of $183,856.91; and

BE IT FURTHER RESOLVED that funds in the amount of $200,000 be appropriated for the project from Electric Utility, Water Utility, Wastewater Utility and Transit funds.

Dated: May 5, 2010

==========

I hereby certify that Resolution No. 2010-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

AGENDA ITEM D-06

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Neil O. Anderson and Associates, of Lodi, for Testing and Inspection Services for Lodi Avenue Reconstruction Project ($43,149) and DeBenedetti Park Storm Drain Improvement Project ($10,224)

MEETING DATE: May 5, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a professional services agreement with Neil O. Anderson and Associates, of Lodi, for testing and inspection services for the Lodi Avenue Reconstruction Project in the amount of $43,149 and DeBenedetti Park Storm Drain Improvement Project in the amount of $10,224.

BACKGROUND INFORMATION: City Council awarded the construction contracts and appropriated funds for the DeBenedetti Park Storm Drain Project on October 7, 2009, and the Lodi Avenue Reconstruction Project on October 21, 2009. The firm performing the testing and inspection services had not been selected and, therefore, was not named. Council approval is required so the City may contract with the service provider.

The staff at Neil O. Anderson and Associates will provide technical support and special inspection services required by the projects' construction specifications. They will also provide support staff to supplement City inspection services on these projects. Some of the services include geotechnical analyses, concrete strength testing, asphalt gradation and compaction testing. Results of the testing are used to affirm the contractors' work has been completed in conformance with the contract.

The scope of services and fees for the Neil O. Anderson and Associates agreement is attached.

Staff recommends the Council authorize the City Manager to execute a professional services agreement with Neil O. Anderson and Associates.

FISCAL IMPACT: Funding for these services was appropriated with the project funding at the time of the construction contract award.

FUNDING AVAILABLE: Not applicable.

_____
F. Wally Sandelin
Public Works Director

Prepared by Gary Wiman, Construction Project Manager
FWS/pmf
Attachment

APPROVED: _____
Blair King, City Manager

AGREEMENT FOR CONSULTING SERVICES

ARTICLE 1
PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____ , by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and NEIL O. ANDERSON AND ASSOCIATES (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the technical support and special inspection services required in accordance with attached scope of services, Exhibit A.

CITY wishes to enter into an agreement with CONSULTANT for Lodi Avenue Reconstruction and DeBenedetti Park Storm Drain Improvements projects (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A.

ARTICLE 2
SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the scope of services as set forth in Exhibit A, attached and incorporated by this reference.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work within ten (10) days of executing this Agreement or as directed by City, and complete work under this Agreement based on a mutually agreed upon timeline.

Section 2.3 Meetings

Not Used

Section 2.4 Staffing

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

CONSULTANT represents that it is prepared to and can perform all services within the scope of services specified in Exhibit A. CONSULTANT 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 CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals.

Section 2.5 Subcontracts

CITY acknowledges that CONSULTANT may subcontract certain portions of the scope of services to subconsultants as specified and identified in Exhibit A. Should any subconsultants be replaced or added after CITY's approval, CITY shall be notified within ten (10) days and said subconsultants shall be subject to CITY's approval prior to initiating any work on the Project. CONSULTANT shall remain fully responsible for the complete and full performance of said services and shall pay all such subconsultants.

ARTICLE 3
COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of Fee Proposal, attached as a portion of Exhibit A.

CONSULTANT 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

CONSULTANT shall submit invoices for completed work on a monthly basis, 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.

Section 3.3 Costs

The fees shown on Exhibit A include all reimbursable costs required for the performance of the individual work tasks by CONSULTANT and/or subconsultant and references to reimbursable costs located on any fee schedules shall not apply. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advance, in writing, by CITY.

CONSULTANT charge rates are attached and incorporated with Exhibit A. The charge rates for CONSULTANT shall remain in effect and unchanged for the duration of the Project unless approved by CITY.

Section 3.4 Auditing

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

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT 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. CONSULTANT 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, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any subconsultants 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 Responsibility for Damage

CONSULTANT shall indemnify and save harmless the City of Lodi, the City Council, elected and appointed Boards, Commissions, all officers and employees or agent from any suits, claims or actions brought by any person or persons for or on account of any injuries or damages sustained or arising from the services performed in this Agreement but only to the extent caused by the negligent acts, errors or omissions of the consultant and except those injuries or damages arising out of the active negligence of the City of Lodi or its agents, officers or agents.

Section 4.3 No Personal Liability

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

Section 4.4 Responsibility of CITY

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

Section 4.5 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect CONSULTANT and any subcontractor performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from CONSULTANT'S operations under this Agreement, whether such operations be by CONSULTANT or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

   $1,000,000 Bodily Injury -
   Ea. Occurrence/Aggregate

   $1,000,000 Property Damage -
   Ea. Occurrence/Aggregate

   or

   $1,000,000 Combined Single Limits

2. COMPREHENSIVE AUTOMOBILE LIABILITY

   $1,000,000 Bodily Injury - Ea. Person
   $1,000,000 Bodily Injury - Ea. Occurrence
   $1,000,000 Property Damage - Ea. Occurrence

   or

   $1,000,000 Combined Single Limits

NOTE: CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage.

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

(a) Additional Named Insured Endorsement

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees and Volunteers as additional named insureds insofar as work performed by the insured under written Agreement with CITY. (This endorsement shall be on a form furnished to CITY and shall be included with CONSULTANT'S policies.)

(b) Primary Insurance Endorsement

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(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 company's liability.

(d) Notice of Cancellation or Change in Coverage Endorsement

This policy may not be canceled by the company without 30 days' prior written notice of such cancellation to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

(e) CONSULTANT agrees and stipulates that any insurance coverage provided to 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.). "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.

Section 4.6 Worker's Compensation Insurance

CONSULTANT shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of CONSULTANT'S employees employed at the site of the project and, if any work is sublet, CONSULTANT shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the

CONSULTANT. 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, CONSULTANT shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. 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 City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA, 95241.

Section 4.7 Attorney's Fees

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 court.

Section 4.8 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT 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 4.9 Notices

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally served or sent by certified mail or express or overnight delivery, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
F. Wally Sandelin, Public Works Director
221 West Pine Street
P.O. Box 3006
Lodi, CA 95241-1910

To CONSULTANT: _____
_____
_____
_____

Section 4.10 Cooperation of CITY

CITY shall cooperate fully in a timely manner in providing relevant information that it has at its disposal.

Section 4.11 CONSULTANT is Not an Employee of CITY

It is understood that CONSULTANT is not acting hereunder in any manner as an employee of CITY, but solely under this Agreement as an independent contractor.

Section 4.12 Termination

CITY may terminate this Agreement by giving CONSULTANT 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, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit A to the extent that the work has been performed. Upon termination, CONSULTANT 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 CONSULTANT with third parties in reliance upon this Agreement.

Section 4.13 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 4.14 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.

Section 4.15 Integration and Modification

This Agreement represents the entire integrated Agreement between CONSULTANT and CITY; supersedes all prior negotiations, representations, or Agreements, whether written or oral, between the parties; and may be amended only be written instrument signed by CONSULTANT and CITY.

Section 4.16 Applicable Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any court proceeding brought under this Agreement will be with the San Joaquin County Superior Court.

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 Authority

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

Section 4.19 Ownership of Documents

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

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

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

CITY OF LODI, a municipal corporation

ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
BLAIR KING
CITY MANAGER

APPROVED AS TO FORM:

Dated: _____

By _____
D. STEPHEN SCHWABAUER
CITY ATTORNEY

By: _____

Its: _____

Exhibit A

NOA is SBE & CDOT Certified

March 31, 2010

E-Mail:
Proposal No.: 2815

Mr. Gary Wiman, Project Manager
City of Lodi Public Works Department
221 West Pine Street
Lodi CA 95240

Subject: Proposal for Quality Assurance Services **- REVISED**
Lodi Avenue Reconstruction – ARRA Funded - Lodi, California

Thank you for the opportunity to submit this **all inclusive** proposal to provide QA services for the subject project.

Service	Hours/Units	Rate	Fee
Field/Lab Services Provided by NOA			
Project Inspector	200 hours	$ 84.00/hour	$ 16,800.00
Field Density Testing	30 hours	$ 84.00/hour	$ 2,520.00
4" Proctor	2 each	$190.00/each	$ 380.00
6" Proctor	1 each	$200.00/each	$ 200.00
AC Tester – Day Rate – Regular Time	56 hours	$ 84.00/hour	$ 4,704.00
AC Plant Inspector (Sample at Plant)	28 hours	$ 78.00/hour	$ 2,184.00
AC Coring – Day Rate	14 hours	$145.00/hour	$ 2,030.00
CTM 125 Sample Hwy Material	8 hours	$ 78.00/hour	$ 624.00
CTM 231 Rel Comp w/NucGauge	6 hours	$ 84.00/hour	$ 504.00
CTM 539 Sampling Fresh Concrete – Slump & % Air	8 hours	$ 78.00/hour	$ 624.00
Core Bit Charges	14 each	$ 34.00/each	$ 476.00
CTM 202 Sieve Fine Coarse Agg.	2 each	$ 80.00/each	$ 160.00
CTM 206 Specific Gravity	26 each	$140.00.each	$ 3,640.00
CTM 214 Soundness	1 each	$350.00/each	$ 350.00
CTM 216 Rel Comp Untreat	2 each	$200.00/each	$ 400.00
CTM 217 Sand Equivalent	26 each	$140.00/each	$ 3,640.00
CTM 308 Bulk Specific Gravity Bit Mix	14 each	$ 50.00/each	$ 700.00
CTM 382 Asphalt Content Ign Oven	14 each	$160.00/each	$ 2,240.00
CTM 518 Density Fresh Concrete	1 each	$ 40.00/each	$ 40.00
CTM 521 Comp Strength Cylinders (3/set)	1 each	$ 78.00/each	$ 78.00
Los Angeles Rattler	1 each	$550.00/each	$ 550.00
Grab & Sample Cement	1 each	$ 45.00/each	$ 45.00
R-Value	1 each	$260.00/each	$ 260.00
PRICES VALID 1 YEAR FROM THE DATE OF PROPOSAL	**Estimated QC Total**		$ **43,149.00**

Services provided on a time and materials basis, which means you are invoiced in 2, 4, 6 and 8 hour minimums.

If you have any questions, contact our office at (209)367-3701 or e-mail ry @ or @ .

Sincerely,

Larry Mathews

Larry Mathews
Marketing Director

March 31, 2010

E-Mail:
Proposal No.: 2821

Mr. Gary Wiman, Project Manager
City of Lodi Public Works Department
221 West Pine Street
Lodi CA 95240

Subject: Proposal for Testing & Observation Services - **REVISED**
DeBenedetti Park – Phase I Improvements - Lodi, California

Dear Mr. Wiman:

Thank you for the opportunity to submit this all-inclusive proposal to provide construction observation and testing services for the subject project.

Service	Hours/Units	Rate		Fee
Soils				
Field Density Testing – Site/Pad/Utility Trench	20 hours	$ 84.00/hour	$	1,680.00
4" Proctor	1 each	$190.00/each	$	190.00
6" Proctor	1 each	$200.00/each	$	200.00
	Estimated Soils Total		$	2,070.00
Concrete				
Concrete Observation – Sidewalk/CI PC Pipe/Outfall/Weir	68 hours	$ 78.00/hour	$	5,304.00
Rebar Observation	20 hours	$ 78.00/hour	$	1,560.00
Compression Test Cylinder	40 each	$ 26.00/each	$	1,040.00
Sample Pick Up	10 trips	$ 25.00/trip	$	250.00
	Estimated Concrete Total		$	8,154.00
	Estimated Grand Total		$	10,224.00

Services provided on a time and materials basis, which means you are invoiced in 2, 4, 6 and 8 hour minimums portal to portal. A shift differential of $3.00/hour is charged for services provided after 7:00 p.m. Overtime is billed at 1.5 times the hourly rate for work after the first 8 hours of the workday and Saturday. Double time is charged for work after 8 hours of Saturday, Sunday and holidays.

If you have questions, please call me at (209)367-3701 or e-mail larry.mathews@noanderson.com.

Sincerely,

Larry Mathews

Larry Mathews
Marketing Director

902 Industrial Way • Lodi, CA 95240 • 209.367.3701 • FAX 209-333-8303 • www.noanderson.com

RESOLUTION NO. 2010-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES AGREEMENT WITH NEIL O. ANDERSON AND ASSOCIATES FOR TESTING AND INSPECTION SERVICES FOR LODI AVENUE RECONSTRUCTION PROJECT AND DEBENEDETTI PARK STORM DRAIN IMPROVEMENT PROJECT

==========

WHEREAS, City Council awarded the construction contracts and appropriated funds for the DeBenedetti Park Storm Drain Project on October 7, 2009, and the Lodi Avenue Reconstruction Project on October 21, 2009, but the firm performing the testing and inspection services was not named. Council approval is required so the City may contract with the service provider; and

WHEREAS, Neil O. Anderson and Associates staff will provide technical support and special inspection services required by code. They will also provide support staff to supplement City inspection services on these projects; and

WHEREAS, staff recommends City Council authorize the City Manager to execute a professional services agreement with Neil O. Anderson and Associates.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement for Testing and Inspection Services with Neil O. Anderson and Associates, of Lodi, California, for the Lodi Avenue Reconstruction Project in the amount of $43,149 and the DeBenedetti Park Storm Drain Improvement Project in the amount of $10,244.

Dated: May 5, 2010

==========

I hereby certify that Resolution No. 2010-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

AGENDA ITEM D-07

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Revising Fee Payment Agreement for 1341 East Kettleman Lane

MEETING DATE: May 5, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution revising the Fee Payment Agreement for 1341 East Kettleman Lane.

BACKGROUND INFORMATION: The City Council, at the April 7, 2010 meeting, directed staff to prepare an amended fee payment agreement that lowered the interest rate, provided a delayed first payment, included an adjustable rate of interest, and capped the interest rate. Staff's recommendation is the Fee Payment Agreement will be revised each January 1 to reflect the LAIF rate plus one percent in effect on that date. The initial interest rate would be 1.6 percent until the first payment. Two first payment dates were discussed: July 1, 2011 and January 1, 2012. Staff is recommending January 1, 2012 be the date for the first payment. In addition, staff is recommending that the interest rate be capped at four percent (a maximum LAIF rate of three percent).

KFP Galt, LLC operates a business that generates substantial new property tax and occupancy tax revenue for the City. KFP Galt, LLC has substantiated a significant financial need in its request for consideration from the City. City staff has reviewed this request and, after consideration of the above factors, recommends the balance of the Development Impact Mitigation Fees and Wastewater Capacity Impact fees be paid per the attached amortization schedule.

Staff recommends adoption of a resolution that amends the Fee Payment Agreement to include a start date of January 1, 2012, an initial interest rate of 1.6 percent, and semi-annual payments for a 10-year period.

FISCAL IMPACT: Not Applicable.

FUNDING AVAILABLE: Not Applicable.

F. Wally Sandelin
Public Works Director

Prepared by Wesley K. Fujitani, Senior Civil Engineer
FWS/WKF/pmf
Attachment
cc: KFP Galt, LLC

APPROVED: _____
Blair King, City Manager

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

REVISED FEE PAYMENT AGREEMENT
1341 E. Kettleman Lane

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City" and KFP GALT LLC, hereinafter referred to as "Owner".

RECITALS:

Owner is the owner of that certain real property situated in the City of Lodi, County of San Joaquin, and described as follows:

> Parcel 2, as shown on that certain parcel map filed for record March 14, 2008 in Book 24 of Parcel Maps, Page 176, San Joaquin County Records.

Owner is desirous of complying with existing City ordinances and policies regarding payment of the Wastewater Capacity Impact Fee and Development Impact Mitigation Fees as set forth in Title13, Chapter 13.12 and Title 15, Chapter 15.64, respectively, of the Lodi Municipal Code. Owner had previously entered into a Fee Payment Agreement with the City on March 19, 2008 to cover these costs. However, Owner has requested that this Agreement be revised to reflect the current Local Agency Investment Fund (LAIF) interest rate.

Council of the City will approve the payment of the remaining fees in twenty (20) semi-annual installments on condition that the owner first enter into and execute this agreement with the City.

NOW THEREFORE, in order to insure satisfactory performance by Owner of Owner's obligations under said City Code, the parties agree as follows:

1. Owner has provided the City with three payments of TWENTY EIGHT THOUSAND FOUR AND 57/100 DOLLARS ($28,004.57). The remaining balance due for the Development Impact Mitigation Fees and Wastewater Capacity Fees is now THREE HUNDRED SEVENTY ONE THOUSAND SIX HUNDRED EIGHTY TWO AND 92/100 DOLLARS ($371,682.92).
2. Owner agrees to pay the balance of the Development Impact Mitigation Fees and Wastewater Capacity Impact Fee in twenty (20) semi-annual payments at an interest rate of 1.600 percent as shown on the attached Development Impact Mitigation Fee Payment Amortization Schedule Sheet (Exhibit A).
3. The first payment shall be due no later than January 1, 2012. All subsequent payments are due no later than January 1 and July 1 of each year.
4. Interest will be reset on January 1 of each year and charged at the LAIF interest rate plus one percent; the interest rate shall not exceed 4 percent.
5. Each payment shall be credited first on interest due and the remainder on principal.

6. Upon sale, transfer or any other conveyance of the property, all fees payable under this agreement shall become immediately due and payable. This agreement shall have no right of assignment.

7. If Owner fails to meet any specified payment as set forth in Item #2 through Item #4 above within fifteen (15) days following the due date, the City Manager or the City Council may serve written notice upon Owner for breach of this agreement and the default of Owner.

8. In the event of any such notice of breach, Owner shall have the duty to pay, in full, the balance of the required fees. If the Owner, within five days after the serving of notice, does not give the City written notice of its intention to pay in full the balance of the unpaid development impact mitigation fees and wastewater capacity impact fee, and does not make such payment within five days after its notice to City, this agreement shall be considered void. City shall institute legal proceedings to recover the balance of the unpaid fees and for any excess cost or damage occasioned City thereby.

9. A copy of the Agreement shall be recorded in the office of the San Joaquin County Records, P. O. Box 1968, Stockton, California 95201-1968.

10. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

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

    F. Wally Sandelin
    Public Works Director
    City of Lodi
    P. O. Box 3006
    Lodi, CA 95240-1910

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

    KFP Galt, LLC
    2552 Cottonwood Dr.
    Lodi, CA 95242

IN WITNESS WHEREOF, the parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a Municipal Corporation

Dated: _____ 2008

By:_____
Blair King, City Manager

Attest:_____
Randi Johl, City Clerk

KFP GALT LLC

Dated: _____ 2008

_____

Approved as to form: _____
D. Stephen Schwabauer
City Attorney

Dated: _____ 2008

RESOLUTION NO. 2010-____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
A REVISED FEE PAYMENT AGREEMENT FOR
1341 EAST KETTLEMAN LANE

==========

WHEREAS, a Fee Payment Agreement with KFP GALT, LLC, for Development Impact Mitigation Fees and Wastewater Capacity Impact Fees for 1341 East Kettleman Lane were approved by the Lodi City Council on March 19, 2008; and

WHEREAS, the agreement provided that the payment of fees be made in 20 equal semi-annual installments over a 10-year period with interest being charged at the March 2008 Local Agency Investment Fund (LAIF) rate plus one percent (5.801%); and

WHEREAS, in the two years since the agreement was executed, the LAIF has dropped to 0.60%, and KFP GALT, LLC has requested a revised Fee Payment Agreement using the current LAIF rate plus one percent; and

WHEREAS, the Fee Payment Agreement will be revised each January 1 to reflect the LAIF rate plus one percent in effect on that date. Staff also recommends that the interest rate on the Fee Payment Agreement be capped at 4 percent (a maximum LAIF rate of 3 percent); and

WHEREAS, staff is recommending that the first payment of this revised agreement be due on January 1, 2012, with the remaining payments being made in 20 semi-annual installments over a 10-year period.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Revised Fee Payment Agreement with KFP Galt, LLC, for Development Impact Mitigation Fees and Wastewater Capacity Impact Fees for project located at 1341 East Kettleman Lane.

Dated: May 5, 2010

==========

I hereby certify that Resolution No. 2010-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

AGENDA ITEM D-08

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Establishing a Standardized Questionnaire for Bidder Qualification as Provided by Public Contracts Code Section 20101

MEETING DATE: May 5, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution establishing a standardized questionnaire for bidder qualification as provided by Public Contracts Code Section 20101.

BACKGROUND INFORMATION: Public Contracts Code Section 20101 gives public entities the right to use a Bidder Qualification Questionnaire in order to ensure that prospective bidders have the appropriate experience, qualifications and financial stability to perform the work for a specific project. The Code requires "the Public Agency to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaire and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid." The uniform system of rating prospective bidders shall be based on objective criteria. An appeals process is also required to permit bidders to appeal the rating.

The proposed City of Lodi questionnaire (attached) is compiled from and modeled after an example questionnaire created by the State of California Department of Industrial Relations. The qualification questionnaire is an information and scoring utility that provides the City with contractor information regarding 1) history of the business and organizational performance, 2) compliance with occupational safety and health laws and workers' compensation and other labor legislation, 3) completion of recent projects and quality of performance, and 4) experience and resumes of project personnel. It is intended that project specific information will be added on a project-by-project basis. The qualification process will typically be used on very large projects or projects where specialty expertise and experience is required. Some projects will require the prime contractor, as well as major subcontractors, to be qualified.

The qualification process has been used with great success on previous City projects, such as Hutchins Street Square, White Sough Water Pollution Control Facility, Lodi Station Parking Structure, Police Facility and Central Plume PCE/TCE Interim Improvements Measures. Establishing a Standardized Questionnaire will eliminate the need for City Council to approve the pre-qualification questionnaire on a project-by-project basis. The Surface Water Treatment Plant construction project will be the next project the questionnaire is used for.

FISCAL IMPACT: Qualification of bidders for specific projects will help ensure the citizens of Lodi are receiving only experienced and qualified contractors to perform work.

FUNDING AVAILABLE: Not required.

_____
F. Wally Sandelin
Public Works Director

Prepared by Gary Wiman, Construction Project Manager
FWS/GW/pmf
Attachment
cc: City Attorney

APPROVED: _____
Blair King, City Manager

DATE

The City of Lodi is seeking Qualification of Bidders for the Construction of the PROJECT. **This Qualification is for Candidates seeking qualification as Prime contractor.**

Qualification Packets can be requested by emailing to gwiman@lodi.gov or by faxing the Public Works Department at (209) 333-6710. A return email address must be included to receive the documents.

All pertinent information is enclosed in the Qualification Packet and this Request.

The City of Lodi is issuing this Request for Qualifications ("RFQ") in search of **Prime Contractors** ("Candidates") who have the necessary qualifications as set forth in this RFQ to be pre-qualified to bid. Whether a Candidate has such qualifications will be determined through the evaluation process described in this RFQ. Candidates chose through this process ("Qualified Candidates") will be notified of their eligibility to bid on the PROJECT. Candidates responding to this RFQ do so with the understanding that they are not guaranteed the awarding of contracts and work.

Each Questionnaire must be signed under penalty of perjury by an individual who has the legal authority to bind the Contractor on whose behalf that person is signing. If any information provided by the Contractor becomes inaccurate, the Contractor must immediately notify the City of Lodi and provide updated accurate information in writing, under penalty of perjury.

The City of Lodi reserves the right to limit, suspend or rescind the pre-qualification status based on subsequently learning information and after giving notice of the proposed action to the Contractor and an opportunity for a hearing consistent with the hearing procedures described for appealing a pre-qualification determination.

Each Candidate shall complete and submit one (1) copy of Parts I, II, III and IV; and all other information as requested in the RFQ. Completed questionnaires may be delivered in person or via courier or U.S. mail (other means of transmission, including facsimile, will not be accepted). Submittals must be signed and dated. No telephone or telegraphic submittals will be accepted. Any submittal received after the deadline will not be considered regardless of postmark or reason for late delivery.

INFORMATION MUST BE IN A SEALED PACKAGE AND CLEARLY MARKED AS FOLLOWS:

"Qualification of Bidders for the Construction of the PROJECT.

Hand Delivery or Courier:	U.S. Mail:
City of Lodi Public Works Department Attn: Gary Wiman 221 West Pine Street Lodi, CA 95240	City of Lodi Public Works Department Attn: Gary Wiman P.O. Box 3006 Lodi, CA 95241-1910

The City of Lodi may refuse to grant pre-qualification status where the requested information and materials are not provided. There is no appeal from a denial due to an incomplete application; however, the Candidate will be informed which documents or information are required to complete the application and shall be permitted two (2) working days to submit a complete application.

All information must be received no later than 5:00 p.m. on DATE.

Firms submitting the required information by the due date and meeting the minimum scoring requirements will be invited to bid on the project. The city of Lodi will evaluate the submittals and strive to make determinations in a timely manner.

Sincerely,

Gary R. Wiman
Construction Project Manager

GENERAL INFORMATION

Failure to complete the following requirements ***may*** result in the City of Lodi refusing to list the Contractor as an approved bidder. Failure to completely address the required criteria may result in disqualification.

Firms submitting a proposal shall designate a person responsible for questions and clarifications for the Prequalification Statement. Submission of an RFQ constitutes Bidder's consent for the City to conduct reasonable investigations and reference checks of the Bidder, proposed subcontractors, suppliers and other persons and organizations.

Any **questions regarding pre-qualifications shall be directed to Gary Wiman** at (209) 333-6800 ext 2054, Fax (209) 333-6710 or email at gwiman@lodi.gov.

A) Project Description:

1) The City of Lodi PROJECT consists of:

   a) .

   b) .

   c)

B) Schedule:

1) Illustrate that the company has sufficient resources available to meet the Project Schedule. Provide a bar chart showing all ongoing work, and planned work that is to be undertaken between DATE.

2) The project is anticipated to bid in DATE with a construction schedule of ___months.

C) Project Construction Estimate:

1) The current project construction cost estimate is $000

D) Contractor Qualification Questionnaire and Instructions

1) Complete the following Sections

Draft Site Plan

CONTRACTOR QUALIFICATION QUESTIONNAIRE

These forms are intended for City of Lodi use only. The City will attempt to maintain confidentiality subject to the requirements of the California Public Records Act.

CONTACT INFORMATION

Firm Name: _____ Check One: ☐ Corporation
(as it appears on license) ☐ Partnership
☐ Sole Prop.

Contact Person: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

If firm is a sole proprietor or partnership:

Owner(s) of Company _____

Contractor's License Number(s) and expiration dates (list all licenses held):

_____

_____

_____

Tax ID Number: _____

General Tax Exemption Number: _____

Dunn and Bradstreet Number (if applicable): _____

Each prospective contractor must have a CLASS California Contractor's license which is current, active and in good standing with the California Contractors State License Board (CSLB), on the date and time the request for qualifications submittal is due and must submit this request for qualification with all portions completed, including required attachments. Each prospective Contractor must answer all of the following questions and provide all requested information, where applicable. Any prospective Contractor failing to do so may be deemed unqualified to bid. It is critical that prospective Contractors fill out all information required accurately, completely, truthfully and to the best of their knowledge. Ambiguous or incomplete information may lead to an unfavorable evaluation resulting in a determination of non-qualification.

I, the undersigned, certify and declare that I have read all the answers to this prequalification questionnaire and know their contents. The Matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

_____ _____
Signature Date

_____
Print Name

QUESTIONS AND SCORING INSTRUCTIONS

Contractor must complete all answers

QUESTIONS AND THE SCORING INSTRUCTIONS

The questions arise in four different areas:

(I) History of the business and organizational performance;

(II) Compliance with occupational safety and health laws, workers' compensation and other labor legislation;

(III) Completion of recent projects and quality of performance;

(IV) Experience and Resumes.

Note: Not all questions in the questionnaire are scorable; some questions simply ask for information about the contractor firm's structure, officers and history.

Scores Needed for Qualification

To qualify, a contractor would be required to have a passing grade within Sections I, II and III referred to below.

Section I, History of the business and organizational performance, a passing score of **65** on this portion of the questionnaire (of a maximum score of 76 on this portion of the questionnaire). Total of 16 questions.

Section II, Compliance with occupational safety and health laws, workers' compensation and other labor legislation a passing score of **45** on this portion of the questionnaire (of a maximum score of 55 points on this portion of the questionnaire). Total of 11 questions.

Section III, Completion of recent projects, a passing score of **70** on this portion of the questionnaire (of a maximum score of 90 points on this portion of the questionnaire). Total of 3 projects. Scores are based off information provided from the 3 references for the 3 reference projects. **A score of 17 or lower on any one reference will disqualify the candidate.**

Section IV, Experience and Resumes, respond to the questions and provide the information requested. Section IV is not scored. Information provided in Section IV will assist the City of Lodi in evaluating the candidates experience related specifically to Water Treatment Plant construction.

The City of Lodi will compile the scores based on the contractor's responses and the returned reference questionnaires. The City of Lodi will also consider the thoroughness of the submitted RFQ documents, attention to instruction and completeness of package. Candidates may be found not qualified if the RFQ submission package does not include all required items.

PART I. ESSENTIAL REQUIREMENTS FOR QUALIFICATION

Contractor will be immediately disqualified if the answer to any of questions 1 through 5 is "no."

Contractor MAY be disqualified if the answer to any of questions 6, 7, 8 or 9 is "yes." If the answer to question 8 is "yes," and if debarment would be the sole reason for denial of pre-qualification, any pre-qualification issued will exclude the debarment period.

If a Joint Venture, each contractor must answer the Part 1 and Part 2 Questions.

1. Contractor possesses a valid and current California Contractor's license for the project or projects for which it intends to submit a bid.
   ☐ Yes ☐ No

2. Contractor has a liability insurance policy issued by a Company licensed to do business in the state of California with a policy limit of at least $000 per occurrence and $000 aggregate.
   ☐ Yes ☐ No

3. Contractor has current workers' compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.
   ☐ Yes ☐ No ☐ Contractor is exempt from this requirement, because it has no employees

4. Have you attached your latest copy of a reviewed or audited financial statement with accompanying notes and supplemental information?
   ☐ Yes ☐ No

   NOTE: A financial statement that is not either reviewed or audited is not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

5. Have you attached a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) and authorized to issue bonds in the State of California, which states: (a) that your current bonding capacity is sufficient for the project for which you seek pre-qualification if you are seeking pre-qualification for a single project; or (if you are seeking pre-qualification valid for a year) (b) your current available bonding capacity?
   ☐ Yes ☐ No
   NOTE: Notarized statement must be from the surety company, not an agent or broker. A sample letter is attached as exhibit "A".

6. Has your contractor's license been revoked at any time in the last ten years?
   ☐ Yes ☐ No

7. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last Ten (10) years?
   ☐ Yes ☐ No

8. At the time of submitting this pre-qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?
☐ Yes ☐ No
If the answer is "Yes," state the beginning and ending dates of the period of debarment:

_____

9. At any time during the last ten years, has your firm or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?
☐ Yes ☐ No

PART II. ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

Current Organization and Structure of the Business

For Firms That Are Corporations:

1a. Date incorporated: _____
1b. Under the laws of what state: _____
1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name	Position	Years with Co.	% Ownership	Social Security #

1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.
NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or 10 per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

For Firms That Are Partnerships:

1a. Date of formation: _____

1b. Under the laws of what state: _____

1c. Provide all the following information for each partner who owns 10 per cent or more of the firm.

Name	Position	Years with Co.	% Ownership	Social Security #

1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.
NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Company	Dates of Person's Participation with Company

For Firms That Are Sole Proprietorships:

1a. Date of commencement of business. _____

1b. Social security number of company owner. _____

1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.
NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Company	Dates of Person's Participation with Company

For Firms That Intend to Make a Bid as Part of a Joint Venture:

1a. Date of commencement of joint venture. _____

1b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of firm	% Ownership of Joint Venture

History of the Business and Organizational Performance

2. Has there been any change in ownership of the firm at any time during the last three years?
NOTE: A corporation whose shares are publicly traded is not required to answer this question.
☐ Yes ☐ No
If "yes," explain on a separate signed page.

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?
NOTE: Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.
☐ Yes ☐ No
If "yes," explain on a separate signed page.

4. Are any corporate officers, partners or owners connected to any other construction firms?
NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.
☐ Yes ☐ No
If "yes," explain on a separate signed page.

5. State your firm's gross revenues for each of the last three years:

_____ _____ _____

7. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license.

_____

8. Has your firm changed names or license number in the past five years?
☐ Yes ☐ No
If "yes," explain on a separate signed page, including the reason for the change.

9. Has any owner, partner or (for corporations): officer of your firm operated a construction firm under any other name in the last five years?
☐ Yes ☐ No
If "yes," explain on a separate signed page, including the reason for the change.

10. Bonding capacity: Provide documentation from your surety identifying the following:

    Name of bonding company/surety: _____

    Name of surety agent, address and telephone number:

    _____

11. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

    _____

    _____

    _____

End of Section

Example: CERTIFICATION of SURVEY **Exhibit A**

(To be submitted on agency letterhead)

Date:

To: City of Lodi
Public Works Department
Attn: Gary Wiman
P.O. Box 3006
Lodi, CA 95241-1910

Name of Contractor: _____

City/State: _____

_____ is authorized to execute bid, performance,
(Name of Bonding Agency)
and payment bonds for the above-named contractor subject to the following conditions:

1. Contract price of any one contract does not exceed $_.
2. Total amount of uncompleted work on hand, both bonded and unbonded, does not exceed $_____.
3. This work authority expires _____ unless previously rescinded in writing. Written notice of rescission will be provided to the above addressee within seven days of such rescission.

Signed by: _____
(Authorized Bonding Agency Representative)

Section I
Questions about History of the Business and Organizational Performance
(16 Questions)

1. How many years has your organization been in business in California as a contractor under your present license number? _____ Years.
Less then 3 years = 0 points
3 years to 5 years = 3 points
5 years to 10 years = 4 points.
10 years or more = 5 points

2. Is your firm currently the debtor in a bankruptcy case?
☐ Yes ☐ No
"No" = 3 points" "Yes" = 0 points

3. Was your firm in bankruptcy any time during the last ten years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above).
☐ Yes ☐ No
"No" = 3 points" "Yes" = 0 points

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

4. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last ten years?
☐ Yes ☐ No
No = 5 points Yes = 0 points

If "yes," please explain on a separate signed sheet.

5. At any time in the last ten years, has your firm been assessed and paid liquidated damages after completion of a project, under a construction contract with either a public or private owner?
☐ Yes ☐ No
No projects with liquidated damages = 5 points.
Yes answer = 0 points
If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

6. In the last ten years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?
NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.
☐ **Yes** ☐ **No**
No = 5 points Yes = 0 points
If "yes," explain on a separate signed page. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

7. In the last ten years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?
☐ Yes ☐ No
No = 5 points Yes = 0 points

If "yes," explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than $25,000.

8. In the past ten years, has any claim **against** your firm concerning your firm's work on a construction project, been **filed in court or arbitration?**
☐ Yes ☐ No If "yes" How Many? _____
5 points for "No".
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" if 2 or more instances.
If "yes," on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

9. In the past ten years, has your firm made any claim against a project owner concerning work on a project or payment for a contract, and **filed that claim in court or arbitration**?
☐ Yes ☐ No If "yes" How Many? _____
5 points for "No".
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" if 2 or more instances
If "yes," on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

10. At any time during the past ten years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf in connection with a construction project, either public or private?
☐ Yes ☐ No If "yes" How Many? _____
5 points for "No".
3 points for "Yes" indicating no more than 1 such claim
0 points for "Yes" if 2 more instances
Subtract five points for "Yes" if more than 2 such claims
If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

11. In the last ten years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?
☐ Yes ☐ No If "yes" How Many? _____
5 points for "No".
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" if more than 1 such instances.
If "yes," explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

12. Has your firm or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?
☐ Yes ☐ No
No = 5 points Yes = <u>subtract</u> 5 points
If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

13. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?
☐ Yes ☐ No
No = 5 points Yes = <u>subtract</u> 5 points
If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

14. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
☐ Yes ☐ No
No = 5 points Yes = <u>subtract</u> 5 points
If "yes," identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

15. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.
_____%
5 points if the rate is no more than 0.8%
3 points if the rate was no higher than 1.0%
0 points for any other answer.

16. During the last ten years, has your firm ever been denied bond credit by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?
☐ Yes ☐ No
No = 5 points Yes = 0 points
If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

<u>End of Section I</u>

Section II

Questions about compliance with safety, workers compensation, prevailing wage and apprenticeship laws.

(11 questions)

1. Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past ten years?
Note: If you have filed an appeal of a citation and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

☐ Yes ☐ No If "yes" How Many? _____

5 points for "No" such instance.
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" if more than 1 such instances.
If "yes," attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

2. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past ten years?
Note: If you have filed an appeal of a citation and the appropriate appeals Board has not yet ruled on your appeal, you need not include information about it.

☐ Yes ☐ No If "yes" How Many? _____

If yes, attach a separate signed page describing each citation.
5 points for "No" such instance.
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" if more than 1 such instance.
If "yes," attach a separate signed page describing each citation.

3. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past ten years?
NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

☐ Yes ☐ No If "yes" How Many? _____

5 points for "No" such instance.
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" if more than 1 such instance.
If "yes," attach a separate signed page describing each citation.

4. How often do you require **documented** safety meetings to be held for construction employees and field supervisors during the course of a project?

_____

5 Points for answer of twice each week or more often.
3 points for an answer of once each week.
0 points for any other answer

5. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:
NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.
Current year: _____
Previous year: _____
Year prior to previous year: _____
If your EMR for any of these three years is or was 1.00 or higher, you may, if you wish, attach a letter of explanation.

NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.
5 points for three-year average EMR of .85 or less
3 points for three-year average of EMR of more than .85 but no more than 1.00
0 points for any other EMR

6. Within the last ten years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes ☐ No

5 points for "No".
0 points for or "Yes"
If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

7. Has there been more than one occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the **state's** prevailing wage laws?

☐ Yes ☐ No If "yes" How Many? _____

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.
5 points for "No" such instance.
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" and more than 1 such instance.
If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

8. During the last five years, has there been more than one occasion on which your own firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

☐ Yes ☐ No If "yes" How Many? _____

5 points for "No" such instance.
3 points for "Yes" indicating 1 such instance.
0 points for "Yes" and more than 1 such instance.
If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

9. Provide the **name, address and telephone number** of the apprenticeship program sponsor(s) (approved by the California Division of Apprenticeship Standards) that will provide apprentices to your company for use on any public work project for which you are awarded a contract by the City of Lodi.

_____

_____

5 points if at least one approved apprenticeship program is listed.
0 points for any other answer.

10. State the number of individuals who were:

(a) Employed by your firm as apprentices at any time during the past three years _____

(b) Identify the craft or crafts in which your firm employed apprenticeship training in the past three years. _____

_____

_____

(c) State the number of individuals who, during the past three years, completed apprenticeships in each craft while employed by your firm. _____

5 points if one or more persons completed apprenticeship while employed by your firm.
0 points if no persons completed apprenticeship while employed by your firm.

11. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

☐ Yes ☐ No. If "yes" How Many? _____

If yes, provide the date(s) of such findings, and attach copies of the Department's final decision(s).
5 points for either "No," or "Yes" indicating either 1 or 2 such instance.
3 points for "Yes" indicating 3 such instances.
0 points for "Yes" and more than 3 such instances.
If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

End of Section II

Section III
Question concerning recent construction projects completed

Project Examples

Using the attached Project Data Sheets, you must submit three (3) of the largest (Dollar Value) completed or ongoing projects in the last five (5) years that are more than 75% complete by your firm, and which demonstrate technical complexity in materials and construction methods for projects similar to the City of Lodi PROJECT.

Provide the names of the projects, the owners, the project managers, the size of the projects and when those projects were completed (if completed) as well as all other information requested on the attached "Project Data Sheet", for each project. The **City will forward** the reference questionnaire directly to the listed owners for completion and return to the City of Lodi. The individual furnishing the information in the reference questionnaire should be the project managers or the heads of the department in charge of the construction of the projects listed. The City of Lodi reserves the right to seek additional information from any individual who has information about the listed projects.

To effectuate the candid completion of the information requested in the reference questionnaire in section III, you are required to execute and submit the attached Release and Waiver of Liability in favor of each individual furnishing information requested in the questionnaire.

The highest possible score for each reference is 30 points. If a contractor scores less than 17 points on a single reference, the contractor is **NOT** qualified to bid on this project.

Candidate Name: _____ Date: _____

PROJECT DATA SHEET (One of Three References)

Project Name: _____

Location: _____

Owner: _____

Owner Contact (name, email and current phone number):

_____

_____

Architect or Engineer: _____

Architect or Engineer Contact (name, email and current phone number):

_____

_____

Construction Manager (name, email and current phone number):

_____

_____

Registered Managing Employee (name, email and current phone number):

_____

_____

Description of Project, Scope of Work Performed:

_____

_____

Total Value of Construction (including change orders): _____

Original Scheduled Completion Date: _____

Time Extensions Granted (number of days): _____

Actual Date of Completion: _____

Liquidated Damages? Yes _____ No _____ Claims? Yes _____ No _____

Candidate Name: _____ Date: _____

PROJECT DATA SHEET (Two of Three References)

Project Name: _____

Location: _____

Owner: _____

Owner Contact (name, email and current phone number):

_____

_____

Architect or Engineer: _____

Architect or Engineer Contact (name, email and current phone number):

_____

_____

Construction Manager (name, email and current phone number):

_____

_____

Registered Managing Employee (name, email and current phone number):

_____

_____

Description of Project, Scope of Work Performed:

_____

_____

Total Value of Construction (including change orders): _____

Original Scheduled Completion Date: _____

Time Extensions Granted (number of days): _____

Actual Date of Completion: _____

Liquidated Damages? Yes _____ No _____ Claims? Yes _____ No _____

Candidate Name: _____ Date: _____

PROJECT DATA SHEET (Three of Three References)

Project Name: _____

Location: _____

Owner: _____

Owner Contact (name, email and current phone number):

_____

_____

Architect or Engineer: _____

Architect or Engineer Contact (name, email and current phone number):

_____

_____

Construction Manager (name, email and current phone number):

_____

_____

Registered Managing Employee (name, email and current phone number):

_____

_____

Description of Project, Scope of Work Performed:

_____

_____

Total Value of Construction (including change orders): _____

Original Scheduled Completion Date: _____

Time Extensions Granted (number of days): _____

Actual Date of Completion: _____

Liquidated Damages? Yes _____ No _____ Claims? Yes _____ No _____

RELEASE AND WAIVER AGREEMENT

This Release and Waiver of Liability (hereinafter the "Release") is entered into between the City of Lodi (City) and _____, a general contractor (hereinafter "General Contractor").

RECITALS

1. The City of Lodi has issued a Request for Pre-qualification to establish a pool of general contractors qualified to bid on the PROJECT.
2. General Contractor has submitted a response to the City's Request for Pre-qualifications and has submitted three projects and three owners as references for its qualifications.
3. The City seeks candid comments on the General Contractor's performance on the listed projects from the owners and the owners' representatives.

RELEASE AND WAIVER

General Contractor hereby fully and forever releases, exonerates, discharges, and covenants not to sue the City, its commissions and boards, officers and employees, and all individuals and entities furnishing comments on general contractors' performance from and for any and all claims, causes of action, demands, damages and any and all other liabilities of any kind or description, in law, equity, or otherwise arising out of information furnished about General Contractor's performance on the projects.

INTENDED BENEFICIARIES

The City, its commissions and boards, officers and employees and all individuals and entities furnishing any information relating to General Contractor's qualifications are intended beneficiaries of this Release and Waiver and are entitled to enforce its terms.

_____ Dated: _____

GENERAL CONTRACTOR
Authorized Representative

THIS PAGE PROVIDED FOR INFORMATIONAL PURPOSES ONLY

REFERENCE QUESTIONNAIRE (for City of Lodi distribution to Contractor References)

The City of Lodi is undertaking a process to pre-qualify general contractors for the PROJECT.

The following general contractor: _____, has provided the City of Lodi with the name of your organization and the following project: _____ as references regarding the Contractor's experience and qualifications to perform work on City projects. The Contractor has signed a Release and Waiver of Liability form as to the information you provide, a copy of which is attached for your reference.

Please complete and return the questionnaire to:
City of Lodi Public Works Department
Attention: Gary Wiman
P.O. Box 3006, Lodi, CA, 95241-1910.

Please give a brief description of the project; be sure to include the value of the project and the scope of work involved.

_____

_____

_____

_____

1. On a scale of 1-5, with 5 being the best, did the Contractor respond in a timely and responsible manner to stop notices or liens on the project? _____
2. On a scale of 1-5, with 5 being the best, did the Contractor provide adequate equipment, personnel and supervision on the job? _____
3. On a scale of 1-5, with 5 being the best, was the Contractor timely in providing reports and other paperwork, including change order paperwork and scheduling updates? _____
4. On a scale of 1-5, with 5 being the best, rate how the Contractor performed in the area of turning in Operations and Maintenance manuals, completing as-built drawings, providing required training and taking care of warranty items. _____
5. On a scale of 1-5, with 5 being the best, how would you rate the quality of work overall? _____
6. On a scale of 1-5, with 5 being the best, would you like to have this contractor perform work on a similar contract for you in the future? _____

Initials of person filling out form _____ Date_____

SECTION IV
Experience and Resumes

Candidate Name: _____ Date: _____

This form must be completed and submitted along with the Candidate Contact Information Form, Parts, I, II and III of the Request for Qualifications in addition to the company resume and resumes of any staff identified in this questionnaire if you wish to be considered a qualified candidate for: PROJECT

Experience:

1) **Do you – as a company or among your principal staff – have experience in constructing at least three (3) PROJECT each with a minimum construction cost of $000 within the last 10 years?**

   YES _____ NO _____

On a separate sheet of paper, please describe qualifying project experience, including;

a) Project name and location,
b) Names of principal staff responsible for delivery of project,
c) Scope of work performed,
d) List the treatment processes constructed or modified,
e) The owners name and contact information,
f) CM firm (if applicable) including name and contact information,
g) Original contract amount/final contract amount (if different please explain, include description of significant contract modifications),
h) Original contract duration/final duration (if different please explain, include description of significant events/strategies impacting schedule changes)
i) List names and contacts for each of the major subcontractors managed on each listed project. Please describe specific work performed by others and indicate your relationship with these other firms.

2) **Do you – as a company or among your principal staff – have a minimum of 10 years of PROJECT construction experience within the last 10 years in the following?**

   Yes _____ No _____
   Yes _____ No _____
   Yes _____ No _____
   Yes _____ No _____

On a separate sheet of paper, please describe qualifying project experience, including;

a) Project name and location,
b) Scope of work performed,
c) Original contract start date and final completion date,
d) If managed only, list names of involved sub-contractors,
e) If relying on principal staff experience, please list names and individual years of experience.

3) **Do you – as a company or among your principal staff – have 5 years experience in the construction or modification of the following facilities?**

Yes _____ No _____
Yes _____ No _____
Yes _____ No _____
Yes _____ No _____
Yes _____ No _____

On a separate sheet of paper, please describe qualifying project experience, including;

f) Project name and location,
g) Scope of work performed,
h) Original contract start date and final completion date,
i) If managed only, list names of involved sub-contractors,
j) If relying on principal staff experience, please list names and individual years of experience.

4) **Do you – as a company or among your principal staff – have 10 years experience in managing or building?**

Yes _____ No _____
Yes _____ No _____
Yes _____ No _____

On a separate sheet of paper, please describe qualifying project experience, including;

k) Project name and location,
l) Scope of work performed,
m) Original contract start date and final completion date,
n) If managed only, list names of involved sub-contractors,
o) If relying on principal staff experience, please list names and individual years of experience.

5) **Does your company have field engineers and/or superintendents with a minimum of five years experience in** PROJECT **work within the last 10 years?**

YES _____ NO _____

On a separate sheet of paper, please list names of field engineers and/or superintendents, individual years of experience and their pump station project experience. Please include project start and end dates, as well as each field engineer's or superintendent's position and affiliation during each project.

PLEASE PROVIDE COMPANY RESUME AND RESUMES OF PRINCIPAL STAFF IDENTIFIED ABOVE TO DEMONSTRATE REQUIRED EXPERIENCE.

End of Section

APPENDIX A

QUALIFICATION PROTEST PROCEDURES

PROTEST PROCEDURES

Under certain circumstances, an interested party to a procurement may protest to the City of Lodi the Qualifications to bid on a specific project or contract.

All solicitation documents shall include Qualification Protest Procedures, either explicitly or by reference. These procedures are intended to ensure that valid complaints are properly handled and responded to

The term protest is utilized to describe the controversies that arise during the Qualification process as an objection to a decision on Qualification to provide a proposal or bid. The protests are challenges to actual or proposed actions of the contracting officers on specific procurements. These objections are brought by offerors, prospective offerors, or other interested parties who contend that they have been improperly treated in the procurement process. All protests must be submitted in writing.

CITY OF LODI PROTEST PROCEDURES
GENERAL CONDITIONS

The City of Lodi's review of any protest will be limited to violations of state or local laws or regulations, violations of the City of Lodi's purchasing procedures, or violations of the City of Lodi's protest procedures or failure to review a complaint or protest.

Protests must be received by the City of Lodi within a reasonable time after the Contractor receipt of notice of non-qualification but no later than fifteen (15) calendar days after the issuance of the non-qualification by the City. All other protests must be received by the City of Lodi within five (5) days of the action on which the protest is based.

The initial protest filed with the City of Lodi shall be in writing and shall:

1. Include the name, address and telephone number of the protester; and the name of a contact person.
2. Identify the number, date and description of the solicitation.
3. Contain a statement of the grounds for protest and any supporting documentation. The grounds for the protest must be supported to the fullest extent feasible. Additional materials in support of an initial protest will be considered only if filed within the time limits specified.
4. Indicate the ruling or relief desired from the City of Lodi.

A protest may be considered, even if the initial filing is late, under the following circumstances:

1. Good cause based on compelling reasons beyond the protester's control, whereby the lateness is due to the fault of the City of Lodi in the handling of his/her protest submission.
2. The City of Lodi determines the protest raised significant issues to a procurement practice or procedure.
3. A court of competent jurisdiction requests, expects or otherwise expresses interest in the City of Lodi's decision.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, clear and legible.

Any additional information requested or required by the City of Lodi from the protester, or interested parties shall be submitted as expeditiously as possible, but in no case later than five (5) days after the receipt of such request unless specifically excepted by the City of Lodi.

CONFIDENTIALITY

Materials submitted by a protester will not be withheld from any interested party outside of the City of Lodi or from any Government agency which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains proprietary materials which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

FURNISHING OF INFORMATION ON PROTESTS

The City of Lodi shall, upon request, make available to any interested party, information bearing on the substance of the protest, including:

1. Any other documents that pertain to the protest, including correspondence with the bidders; and
2. A statement by the City of Lodi explaining its actions and the reasons for them.

A conference on the merits of the protest with members of the City of Lodi Protest Review Panel (defined below) may be held at the request of the protester. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than twenty (20) days after the initial protest was filed.

WITHHOLDING OF AWARD

When a protest has been filed before the opening of bids the City of Lodi will not make an award for five days following its decision on the protest. When a protest has been filed after the award but prior to the execution of a contract, the City of Lodi will not proceed with the execution of the contract prior to the resolution of the protest. Exceptions to the above may occur if the City of Lodi determines that:

1. The items to be procured are urgently required; or
2. Delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement; or
3. Failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to the City of Lodi or other local, state or federal governments.

PROTEST REVIEW-LEVEL ONE

Upon receipt of a protest, the City Manager will appoint an ad hoc City of Lodi Protest Review Panel to review all relevant materials associated with the protest. The panel will be comprised of three (3) representatives of the City of Lodi appointed by the City Manager; Including the City Department Head, Construction Project Manager, and one other City staff member knowledgeable in the specific project. The Panel shall determine the validity of the protest and what actions will be taken.

The panel will be directed to prepare a report within fifteen (15) calendar days. The Panel will notify the protester and any interested parties of their findings and actions and of the procedures for requesting reconsideration. The report shall include the following as relevant:

1. Copies of all relevant documents;
2. A copy of the Invitation for Bid or Request for Proposal, including pertinent provisions of the specifications.

PROTEST REVIEW-LEVEL TWO

Reconsideration of a decision by the City of Lodi may be requested by the protester or any interested party. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law or fact made.

The request for reconsideration of the City of Lodi Protest Review Panel's decision shall be filed no later than ten (10) days after the Panel issues its written report, and shall be filed with the City Attorney.

Upon receipt of the request for reconsideration, the City Manger shall schedule an informal administrative hearing with the aggrieved party and the City of Lodi Protest Review Panel. The hearing shall be held not later than fifteen (15) days after the receipt of the request for reconsideration. The City Attorney shall issue, in writing, the City of Lodi's final determination of the reconsidered protest within five (5) days of the administrative hearing. The appellant process ends with the City Attorney's decision; however, the aggrieved party may ask the City Council to review the City Attorney's decision. The aggrieved party has those remedies afforded by the state courts, as well.

The City of Lodi may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction.

The City of Lodi shall not be responsible for any protests not filed in a timely manner.

End of Section

RESOLUTION NO. 2010-____

A RESOLUTION OF THE LODI CITY COUNCIL
ESTABLISHING A STANDARDIZED QUESTIONNAIRE
FOR BIDDER QUALIFICATIONS AS PROVIDED BY
PUBLIC CONTRACTS CODE 20101

==========

WHEREAS, Public Contracts Code Section 20101 gives public entities the right to use a Bidder Qualification Questionnaire in order to ensure that prospective bidders have the appropriate experience, qualifications and financial stability to perform the work for a specific project; and

WHEREAS, the Code requires the Public Agency to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaire and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria. An appeals process is also required to permit bidders to appeal the rating; and

WHEREAS, the City of Lodi questionnaire is comprised from and modeled after an example questionnaire created by the State of California Department of Industrial Relations; and

WHEREAS, the qualification process will typically be used on very large projects or technically-challenging projects where expertise and experience in certain trades is required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby establish a standardized questionnaire for bidder qualifications as provided by Public Contracts Code Section 20101.

Dated: May 5, 2010

==========

I hereby certify that Resolution No. 2010-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

AGENDA ITEM D-09

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Authorize the Mayor, on Behalf of the City Council, to Send a Letter in Support of AB 1594 Regarding Prohibiting Construction of the Peripheral Canal

MEETING DATE: May 5, 2010

PREPARED BY: City Manager

RECOMMENDED ACTION: Authorize the Mayor, on behalf of the City Council, to send a letter in support of AB 1594 regarding prohibiting construction of the Peripheral Canal.

BACKGROUND INFORMATION: Assemblywoman Huber's office has asked the City of Lodi to send a letter supporting AB 1594, which would prohibit construction of a peripheral canal unless authorized by the State Legislature via a public vote.

In addition, the bill would require several steps prior to construction of a peripheral canal:

- The Legislative Analyst's Office would have to complete an economic feasibility analysis before the Legislature could authorize construction;
- Construction and operation of a peripheral canal may not diminish or negatively affect water supplies, water rights or quality of water for water users within the Sacramento-San Joaquin Delta watershed;
- A canal may not impose any new burdens on infrastructure within, or financial burdens on persons residing in the Delta or Delta watershed.

The City has several reasons to support this legislation, which is largely opposed by water agencies in favor of exporting more Delta water to the south. The City has a long-term contract to purchase Mokelumne River water and does not want that agreement affected by interests outside this area; the Mokelumne River provides recreational and quality-of-life benefits to Lodi that may be affected by a peripheral canal, and the Lodi community has made significant investments in wastewater treatment and electricity generation on City property near Interstate 5, facilities whose operations may be adversely affected by a peripheral canal.

_____
Blair King
City Manager

APPROVED: _____
Blair King, City Manager

AGENDA ITEM D-10

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the Mayor, on Behalf of the City Council, to Send a Letter in Support of H.R. 4812, the "Local Jobs for America Act"

MEETING DATE: May 5, 2010

PREPARED BY: City Manager

RECOMMENDED ACTION: Authorize the Mayor, on behalf of the City Council, to send a letter in support of H.R. 4812, the "Local Jobs for America Act."

BACKGROUND INFORMATION: The League of California Cities is asking cities to contact their congressional representatives in support of H.R. 4812 (Miller, D-7), the "Local Jobs for America Act."

The legislation is the first major federal jobs proposal to provide cities and towns, not just states, fiscal assistance to save and create jobs in their local communities. The National League of Cities ("NLC") and city officials helped develop the bill which would put Americans back to work by restoring services in local communities, in both public and private sector jobs.

Through a funding formula based on the Community Development Block Grant program, the bill would direct $75 billion to cities, towns and counties to save municipal jobs and prevent layoffs. Of the $75 billion, $52.5 billion would go directly to communities with at least 50,000 residents, and $22.5 billion would go directly to states to distribute to communities with fewer than 50,000 residents.

H.R. 4812 also includes $23 billion to help states support an estimated 250,000 education jobs; $1.18 billion to put 5,500 law enforcement officers on the beat; and $500 million to hire and retain fire fighters and $500 million for approximately 50,000 additional on-the-job training slots to help private business expand employment.

The League of California Cities has taken a support position and sent a letter reflecting that position to the relevant members of the Legislature.

FISCAL IMPACT: Not applicable at this time as the final bill has yet to pass.

FUNDING AVAILABLE: Not applicable.

_____
Blair King
City Manager

APPROVED: _____
Blair King, City Manager

CITY COUNCIL
PHIL KATZAKIAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
BOB JOHNSON
JOANNE MOUNCE
LARRY HANSEN

CITY OF LODI

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www.lodi.gov cityclerk@lodi.gov

BLAIR KING, City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

May 5, 2010

The Honorable Jerry McNerney
312 Cannon House Office Building
Washington D.C. 20515-0538

SUBJECT: H.R. 4812 – The Local Jobs for America Act

Dear Representative McNerney:

On behalf of the City of Lodi, I write to express our strong support for H.R. 4812, the Local Jobs for America Act, and urge you to sign on as a co-sponsor of this important legislation.

The Local Jobs for America Act is an efficient response that provides just the kind of help our cities need now. The bill would direct $75 billion to local communities hardest hit by the recession to save jobs and hire vital staff and $500 million for approximately 50,000 on-the-job private sector training positions. In addition, the bill includes nearly $25 billion to support education, firefighting and law enforcement jobs.

The stark reality is that economic conditions continue to worsen for local governments across the country with many local governments experiencing or projecting record budget shortfalls and being forced to institute layoffs, furloughs, service reductions, and fee increases.

The Local Jobs for America Act is an important short-term step towards goals we know you share: keeping police officers, firefighters, and teachers on the job, restoring critical services that have been cut, and creating new jobs that meet local needs. It also importantly recognizes that, in addition to the actions local leaders are taking to steer their communities through the recession, local governments need help, and that public sector employees contribute valuable services that are indispensable to our economy and our recovery.

Thank you again for what you do to help cities and towns in our state. The City of Lodi urges you to support and co-sponsor the Local Jobs for America Act, H.R. 4218.

Sincerely,

Phil Katzakian
Mayor

C: Dan Carrigg, Legislative Director, League of California Cities

DRAFT

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.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Comments by the City Council Members on non-agenda items

AGENDA ITEM H-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Conduct a Public Hearing to Approve the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to Consider Reallocation of Available Urban County CDBG Funds

MEETING DATE: May 5, 2010

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Conduct a public hearing to consider and approve the Final 2010/11 Action Plan for the Community Development Block Grant Program, and the reallocation of available Urban County CDBG funding.

BACKGROUND INFORMATION: The 2010/11 Action Plan is the annual implementing document that provides a detailed description of each activity proposed for the fiscal year, as well as the City's CDBG budget and goals for the fiscal year.

The City will receive $810,608 in CDBG funds from the federal government for the coming fiscal year. This represents a 7.9-percent increase in CDBG funds as compared to the 2009/10 allocation.

As per federal regulations, the Action Plan documents have been available for public review and comment the past 30 days. During that period no comments from the Lodi community were received and the documents will be forwarded for approval as submitted. The City Council should authorize staff to make minor changes to the Consolidated Plan documents in response to comments received and deemed necessary by the U.S Department of Housing and Urban Development.

CDBG funds can be used for a wide range of community development projects as long as they meet a national objective. The national objectives are 1) to address the needs of low- to moderate-income persons, 2) to eliminate slum or blighted conditions, and 3) to resolve an urgent need. During the program year that begins July 1, 2010, the City plans to fund public facilities improvements, infrastructure, public services, economic development activities and program administration.

CDBG Funding Recommendations

Funding recommendations for the following categories: Planning & Administration, City projects, City service programs, community-based organization (CBO) projects, and CBO service programs, are listed below, with additional detail on the applicants and recommendations in Exhibit A (Summary of Final 2010/11 Recommendations).

APPROVED: _____

Blair King, City Manager

PLANNING & ADMINISTRATION

- Program Administration ($162,122)

CITY PROJECTS ($457,417)

- Water Meter Installation Program ($212,417)
- Van Buskirk Playground Replacement ($165,000)
- Economic Development – RLF Program ($80,000)

CITY SERVICE PROGRAMS ($91,591)

- Spay/Neuter Program ($15,000)
- Graffiti Abatement ($76,591)

CBO CAPITAL PROJECTS ($69,478)

- 180 Teen Center Expansion ($37,260)
- HVAC Replacement for Housing Authority – 719 S. Washington ($32,218)

CBO SERVICE PROGRAMS ($30,000)

- San Joaquin Fair Housing – Fair Housing Services ($20,000)
- Second Harvest Food Bank - Food Assistance Programs ($10,000)

To supplement the 2010/11 CDBG allocation from HUD, an additional $206,475.13 in Urban County CDBG funds is available for reallocation from the following projects or services from previous years:

06-12	Economic Dev. – Job Creation	$	80,000.00
07-03	Grape Bowl ADA Design	$	101,639.75
08-01	Blakely Park North Pool Deck	$	5,997.94
08-03	Elm Street Demo	$	610.28
08-05	Salvation Army Freezer	$	1,948.98
08-06	Salvation Army Hope Harbor	$	40.53
08-10	Program Admin	$	1,413.65
08-20	W. Elm Street Handicapped Parking	$	14,824.00
	Total	$	206,475.13

Funding recommendations for these reallocated Urban County Funds are listed below, with additional detail on recommendations in Exhibit B (City Manager's Recommendations for Urban County Reallocations).

ECONOMIC DEVELOPMENT ACTIVITIES ($80,000)

- Economic Development Strategy Study $ 80,000.00
    - Consultant services to develop a comprehensive Economic Development Strategy for the City of Lodi, to help create jobs, foster more stable and diversified economies, and improve living conditions, especially for the LMI population of this community. With the completion of the General Plan Update process, this study will provide a tool to help focus our resources more effectively to meet the goals and objectives for economic development. Using comparable cities that have completed this type of activity, staff has determined that the requested allocation amount is sufficient to complete the task. If approved, a Request for Proposals will be circulated to procure the required services for a negotiated fee.

CITY PROJECTS ($126,475)

- Handicap Ramp Retrofit $126, 475.13
  - Replace curb returns with ADA compliant handicap ramps at key locations in the Target Area and around public facilities. If approved, a contractor will be selected through the sealed bid process.

FISCAL IMPACT: CDBG are federal funds. Capital improvements allow for maintenance costs to be reduced. Administration costs are paid via a 20 percent set-aside of the grant funds.

FUNDING AVAILABLE: 2010/11 Community Development Block Grant
Urban County CDBG Funding

_____
Jordan Ayers, Deputy City Manager

_____
Konradt Bartlam
Community Development Director

Attachments:
Exhibit A – Summary of Final 2010/11Recommendations
Exhibit B – City Manager's Recommendations for Urban County Reallocations
2009-10 Action Plan

Summary of Final 2010/11 Funding Recommendations

Project - Organization	Project Description	Draft Recomm.	Final Recomm.
Program Administration Community Development Dept.	Overall program management, coordination, monitoring, evaluation, planning and promotion of CDBG activities.	$150,242	$162,122
Water Meter Installation Program Public Works Dept.	Provide a grant to very-low and low-income residential property owners to assist with the cost of required water meter installation. *The increased allocation amount for 2010/11 provided an additional $48,461 for this program.*	$163,956	$212,417
Van Buskirk Playground Replacement Parks & Recreation Dept.	Remove and replace the existing playground equipment and surfacing material to meet current playground regulations.	$165,000	$165,000
Economic Development - Revolving Loan Program Community Development Dept.	Provide funding for the existing Economic Development - RLF Program to facilitate business expansion and job creation to benefit Low- to Moderate-Income persons.	$80,000	$80,000
Spay and Neuter Program Animal Services	Continue the Spay/Neuter Program that offers free spay/neuter services to feral cats and cats and pit bulls owned by low-income households. Animals are also given a rabies shot if needed.	$15,000	$15,000
Graffiti Abatement Public Works	Abate graffiti on public and private properties in the CDBG Target Areas. *An additional $8,909 was allocated to this project to provide the appropriate level of funding based upon previous year's activities.*	$67,682	$76,591
Facility Expansion One-Eighty Teen Center	Interior renovations to dwelling at 11 W. Lockeford to accommodate expanded use for youth counseling services. *An additional 8 percent ($2,760) was added to cover project delivery costs for this project.*	$34,500	$37,260
HVAC Replacement - 719 S. Washington Housing Authority of SJC	Replace the existing 15+ year old HVAC systems for the 6-unit affordable housing apartment complex owned and operated by the Housing Authority at 719 S. Washington. *An additional 8 percent ($2,387) was added to cover project delivery costs for this project.*	$29,831	$32,218
Phase III - Food Bank Expansion Project Emergency Food Bank of Greater Stockton	Phase III of the Emergency Food Bank's ongoing expansion of their facilities located at 7 W. Scotts Avenue in Stockton. *Due to the current contract status of this project, 2010/11 funds would not be appropriate. Therefore those funds have been distributed to other activities that were approved during the Draft Action Plan process.*	$15,000	$0
Fair Housing Services San Joaquin Fair Housing	Provide required fair housing services, including telephone hotline for tenants and landlords, investigation of complaints, and fair housing testing.	$20,000	$20,000
Food Distribution Programs Second Harvest Food Bank	Provide support for the administration of the Food Assistance and Senior Brown Bag Programs.	$10,000	$10,000
TOTAL FUNDING			**$810,608**

Exhibit A

City Manager's Recommendations for Reallocation of Urban County CDBG Funds

Project - Organization	Project Description	Recommended Funding Amount
Economic Development Strategies Study City Manager's Office	Consultant services to develop a comprehensive Economic Development Strategy for the City of Lodi, to help create jobs, foster more stable and diversified economies, and improve living conditions, especially for the LMI population of this community.	$80,000
Handicap Ramp Retrofit Project Public Works Dept.	Replace curb returns with ADA compliant handicap ramps at key locations in the Target Area and around public facilities.	$126,475
TOTAL FUNDING		**$206,475**

Exhibit B

RESOLUTION NO. 2010-____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE FINAL 2010-11 ACTION PLAN FOR
THE FEDERAL ALLOCATION OF COMMUNITY
DEVELOPMENT BLOCK GRANT FUNDS, AND
FURTHER ALLOCATION OF AVAILABLE CDBG FUNDS
THROUGH THE URBAN COUNTY

==========

WHEREAS, the Department of Housing and Urban Development has determined that the City of Lodi, California, is entitled to Community Development Block Grant (CDBG) as an entitlement community for fiscal year 2010-11 Federal allocation; and

WHEREAS, the City Council of the City of Lodi has been made aware of the amount of the CDBG funds available for the 2010-11 Federal allocation of fiscal program year being $810,608; and

WHEREAS, the City of Lodi has held, with proper notification and at the completion of the mandatory 30 day public comment period, a public hearing at the City Council meeting of May 5, 2010, to receive comments and proposals from the public regarding the projected use of CDBG funds and provided the public with adequate information concerning the amount of funds available for community development activities, the range of eligible activities, and other important requirements; and

WHEREAS, the City of Lodi, California, has received public input regarding the proposed use of CDBG funds; and

WHEREAS, staff therefore recommends the allocation of 2010-11 CDBG as indicated in Exhibit A; and

WHEREAS, the City Council of the City of Lodi has been made aware of the need to reallocate unused Urban County CDBG funds from the following sources:

Sources of Reallocated CDBG Funds

- 06-12 Economic Dev. – Job Creation $ 80,000.00
- 07-03 Grape Bowl ADA Design $101,639.75
- 08-01 Blakely Park North Pool Deck $ 5,997.94
- 08-03 Elm Street Demo $ 610.28
- 08-05 Salvation Army Freezer $ 1,948.98
- 08-06 Salvation Army Hope Harbor $ 40.53
- 08-10 Program Admin $ 1,413.65
- 08-20 W. Elm Street Handicapped Parking $ 14,824.00

Total $206,475.13

WHEREAS, staff therefore recommends the reallocation of $206,475.13 of available Urban County CDBG funds from previous program years as indicated in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby approve the Final 2010-11 Action Plan with the Federal allocations of CDBG funds to the projects recommended by staff in the amount of $810.608, as indicated in the attached Exhibit A; and

BE IT RESOLVED that the City Council does also authorize staff to make minor changes to the Consolidated Plan documents in response to comments and/or directions received and deemed necessary by the U.S. Department of Housing and Urban Development; and

BE IT RESOLVED that the City Council of the City of Lodi does also hereby approve the reallocation of available Urban County CDBG funds, as indicated in the attached Exhibit B.

Dated: May 5, 2010

==========

I hereby certify that Resolution No. 2010-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

Summary of Final 2010/11 Funding Recommendations

Project - Organization	Project Description	Draft Recomm.	Final Recomm.
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Economic Development - Revolving Loan Program Community Development Dept.	Provide funding for the existing Economic Development - RLF Program to facilitate business expansion and job creation to benefit Low- to Moderate-Income persons.	$80,000	$80,000
Spay and Neuter Program Animal Services	Continue the Spay/Neuter Program that offers free spay/neuter services to feral cats and cats and pit bulls owned by low-income households. Animals are also given a rabies shot if needed.	$15,000	$15,000
Graffiti Abatement Public Works	Abate graffiti on public and private properties in the CDBG Target Areas. *An additional $8,909 was allocated to this project to provide the appropriate level of funding based upon previous year's activities.*	$67,682	$76,591
Facility Expansion One-Eighty Teen Center	Interior renovations to dwelling at 11 W. Lockeford to accommodate expanded use for youth counseling services. *An additional 8 percent ($2,760) was added to cover project delivery costs for this project.*	$34,500	$37,260
HVAC Replacement - 719 S. Washington Housing Authority of SJC	Replace the existing 15+ year old HVAC systems for the 6-unit affordable housing apartment complex owned and operated by the Housing Authority at 719 S. Washington. *An additional 8 percent ($2,387) was added to cover project delivery costs for this project.*	$29,831	$32,218
Phase III - Food Bank Expansion Project Emergency Food Bank of Greater Stockton	Phase III of the Emergency Food Bank's ongoing expansion of their facilities located at 7 W. Scotts Avenue in Stockton. *Due to the current contract status of this project, 2010/11 funds would not be appropriate. Therefore those funds have been distributed to other activities that were approved during the Draft Action Plan process.*	$15,000	$0
Fair Housing Services San Joaquin Fair Housing	Provide required fair housing services, including telephone hotline for tenants and landlords, investigation of complaints, and fair housing testing.	$20,000	$20,000
Food Distribution Programs Second Harvest Food Bank	Provide support for the administration of the Food Assistance and Senior Brown Bag Programs.	$10,000	$10,000
TOTAL FUNDING			**$810,608**

Exhibit A

City Manager's Recommendations for Reallocation of Urban County CDBG Funds

Project - Organization	Project Description	Recommended Funding Amount
Economic Development Strategies Study City Manager's Office	Consultant services to develop a comprehensive Economic Development Strategy for the City of Lodi, to help create jobs, foster more stable and diversified economies, and improve living conditions, especially for the LMI population of this community.	$80,000
Handicap Ramp Retrofit Project Public Works Dept.	Replace curb returns with ADA compliant handicap ramps at key locations in the Target Area and around public facilities.	$126,475
TOTAL FUNDING		**$206,475**

Exhibit B

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: **PUBLIC HEARING TO CONSIDER APPROVAL OF THE FINAL 2010/11 ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND TO CONSIDER REALLOCATION OF AVAILABLE URBAN COUNTY CDBG FUNDS**

PUBLISH DATE: **SATURDAY, APRIL 24, 2010**

LEGAL AD

TEAR SHEETS WANTED: **One (1) please**

SEND AFFIDAVIT AND BILL TO:
RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, APRIL 22, 2010

ORDERED BY: RANDI JOHL
CITY CLERK

Jennifer M. Robison

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

Faxed to the Sentinel at 369-1084 at _____(time) on _____(date) _____(pages)
LNS _____ Phoned to confirm receipt of all pages at _____(time) ____ ____MB ____JMR (initials)

forms\advins.doc

DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER APPROVAL OF THE FINAL 2010/11 ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND TO CONSIDER REALLOCATION OF AVAILABLE URBAN COUNTY CDBG FUNDS

On Friday, April 23, 2010, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider approval of the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to Consider Reallocation of Available Urban County CDBG Funds (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2010, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK

Jennifer M Robison

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

DECLARATION OF MAILING

PUBLIC HEARING TO CONSIDER APPROVAL OF THE FINAL 2010/11 ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND TO CONSIDER REALLOCATION OF AVAILABLE URBAN COUNTY CDBG FUNDS

On Friday, April 23, 2010, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider approval of the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to consider reallocation of available Urban County CDBG funds, attached hereto marked Exhibit A. The mailing list for said matter is attached hereto marked Exhibit B.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2010, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK, CITY OF LODI

Jennifer M. Robison

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING
Date: May 5, 2010
Time: 7:00 p.m.

For information regarding this notice please contact:
Randi Johl
City Clerk
Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, May 5, 2010**, 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 the following item:

a) **Approval of the Final 2010/11 Action Plan for the Community Development Block Grant (CDBG) Program and to consider reallocation of available Urban County CDBG funds.**

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. 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:

Randi Johl
City Clerk

Dated: April 21, 2010

Approved as to form:

D. Stephen Schwabauer
City Attorney

EXHIBIT B

Second Harvest Food Bank
704 E. Industrial Park Drive
Manteca, CA 95337

Emergency Food Bank
Attention: Tim Viall
7 W. Scotts Avenue
Stockton, CA 95203

One-Eighty Teen Center
17 W Lockeford Street
Lodi, CA 95240

Housing Authority of San Joaquin County
Attention: Barbara Gauss
448 S. Center Street
Stockton, CA 95203

AGENDA ITEM H-02

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Conduct a Public Hearing to Consider the Appeals of Brandt-Hawley Law Group on behalf of Charles and Melissa Katzakian Regarding the Decision of the Planning Commission to Approve:

- SPARC Review and Use Permit for COSTCO Wholesale Development; and
- SPARC Review for Reynolds Ranch Shopping Center including the Home Depot

MEETING DATE: May 5, 2010

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Conduct a Public Hearing to Consider the Appeals of Brandt-Hawley Law Group on behalf of Charles and Melissa Katzakian Regarding the Decision of the Planning Commission to Approve:

- SPARC Review and Use Permit for COSTCO Wholesale Development; and
- SPARC Review for Reynolds Ranch Shopping Center including the Home Depot

BACKGROUND INFORMATION: The appellant, Brandt-Hawley Law Group, represents property owners Charles and Melissa Katzakian. The appeals have been filed for two separate Planning Commission actions that pertain to the Reynolds Ranch commercial center. The first appeal was filed following the Planning Commission approval on February 10, 2010 of a Use Permit and SPARC review for the COSTCO Wholesale portion of the center. The second appeal was filed following the Planning Commission approval on March 24, 2010 of a SPARC review for the Reynolds Ranch commercial center, which includes the proposed Home Depot. Pursuant to Lodi Municipal Code Section 17.72.110 and 17.81.070, the appeals were filed in a timely manner and the appropriate fees were paid.

The Katzakians own and reside in the property that is bounded on the north, west and south by the development along the Highway 99 frontage Road. The house is also known as the Morse-Skinner Ranch House, which was listed on the National Register of Historic Places in 1986. It is this background that the Katzakians are basing their appeal. They argue that the original Reynolds Ranch project and Environmental Impact Report anticipated that the property would be converted from residential use to some commercial land use that would be more compatible with the proposed commercial center. This reuse has not taken place, nor is it planned in the immediate future. The attorney representing the Katzakians believes this constitutes a change in circumstance and therefore a Supplemental Environmental Impact Report should be required.

APPROVED: _____

Blair King, City Manager

The Katzakians were aware of the original Reynolds Ranch application. Their property was included in the project description environmental document and all subsequent approvals. The Final Environmental Impact Report did consider the historic resource and mitigation measures were adopted consistent with the California Environmental Quality Act. The Katzakians did not protest these actions. Since the approval of the project, the negotiations between the applicant and the Katzakians have not been successful. At this time, the residence is a legal non-conforming use that has the required commercial entitlements to be used for other activities. The environmental review was appropriate and still provides the required review for these contemplated approvals to proceed. There is nothing contained in the documents that require the conversion of this property at the time of adjacent development. In fact, the project was always thought to be a multi-phased endeavor. We believe that at some point in the future, the property will be used for commercial purposes and the anticipated development of Reynolds Ranch will be completed.

FISCAL IMPACT: Not Applicable

FUNDING AVAILABLE: Not Applicable

_____
Konradt Bartlam
Community Development Director

KB/kjc

Attachments:

1. Planning Commission Resolution PC 10-06 and 10-07
2. Staff Reports from the February 10, 2010 and March 24, 2010, Planning Commission meeting
3. Minutes for the February 10, 2010 and March 24, 2010, Planning Commission meeting
4. Appeal letters

RESOLUTION NO. P.C. 10-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI FOR THE APPROVAL OF THE REQUEST OF DAVID BABCOCK, ON BEHALF OF COSTCO WHOLESALE FOR A USE PERMIT TO ALLOW FOR AN OFF-SALE BEER, WINE AND DISTILLED SPIRITS ALCOHOLIC BEVERAGE CONTROL LICENSE AND SPARC REVIEW OF THE PROPOSED COSTCO WHOLESALE WAREHOUSE LOCATED 322 EAST HARNEY LANE

WHEREAS, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit and Site Plan and Architectural Review in accordance with the Government Code and Lodi Municipal Code Chapter 17.84, Amendments; and

WHEREAS, an application was filed by David Babcock, on behalf of COSTCO Wholesale, 3581 Mount Diablo Blvd., Suite 235, Lafayette, CA 94549; and

WHEREAS, the project site is located at 322 East Harney Lane, more particularly described as Assessor's Parcel Numbers 058-130-09 and 058-130-10 and portion of 058-130-11; and

WHEREAS, the project site is zoned Planned Development 39; and

WHEREAS, the Project is consistent with all elements of the General Plan, and in particular, the following General Plan Goals and Policies:

A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."

B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."

C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments; and

WHEREAS, approval of the requested architectural drawings will allow the construction of a commercial building that will comply with the City's Zoning Ordinance and Building Code regulations; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, the Community Development Department prepared an Environmental Impact Report (EIR), consistent with the California Environmental Quality Act (CEQA); and

WHEREAS, the Final EIR, including comments and responses to comments, was certified by the City Council on August 30, 2006; and

WHEREAS, an Addendum to the certified and Final EIR, including comments and responses to comments, was certified by the City Council on September 17, 2008; and

WHEREAS, all legal prerequisites to the approval of this request have occurred.

Based upon the evidence in the staff report and project file, the Planning Commission makes the following findings:

1. The approval of the project to construct a new 148,234 square foot COSTCO Wholesale warehouse and associated 16-pump gasoline station was considered as part of a previously approved EIR, whereby it was determined that there would not be significant impacts on the environment, cumulative or otherwise, provided mitigation measures were implemented. Those mitigation measures, which consists of intersection upgrades, will be implemented prior to a Certificate of Occupancy.
2. No new impacts were identified in the public testimony that were not addressed as normal conditions of project approval in the Initial Study.
3. The development takes into consideration physical and environmental constraints in that the new warehouse and gasoline station have been designed to take advantage of the existing grades and be integrated with the planned overpass improvements.
4. The development complies with the intent of the City development policies and regulations in that the General Plan, Goal E, Policy 3, which encourages increasing the tax base, creating employment opportunities for residents and attracting new businesses. The proposed Costco warehouse and associated gasoline station will not only add to the city's tax base but will also provide employment opportunities for residents.
5. The proposed development will be operated in a manner determined to acceptable and compatible with surrounding development in that conditions have been added that require the operator to maintain the property.
6. The sale of alcoholic beverages for off-premise consumption as part of a COSTCO Wholesale warehouse is a permitted use in the Planned Development 39 zoning District.
7. The sale of alcoholic beverages for off-premise consumption is a normal part of COSTCO Wholesale business operations and provides a convenience for customers of the business.
8. Steps can be taken by the Applicant/Operator to reduce the number of incidents resulting from the over-consumption of alcohol including the proper training and monitoring of employees serving alcohol; the careful screening of IDs of customers to avoid sales to under-aged individuals; limiting the number of drinks sold to individual customers to avoid over-consumption; providing properly trained on-site security to monitor customer behavior both in and outside of the COSTCO Wholesale; and working with the Lodi Police Dept. to resolve any problems that may arise.
9. The sale of alcohol beverages at COSTCO Wholesale warehouse is compatible with the surrounding use and neighborhood if the business is conducted properly and if the Applicant/Operator works with neighboring businesses and residents to resolve any problems that may occur.
10. The sale of alcoholic beverages at this location can meet the intent of the Planned Development 39 zoning district and can provide a public convenience or necessity for customers of the business.
11. No variance from the Lodi Municipal Code is approved by this action.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi that Use Permit Application No. 09-U-15 and SPARC Application No. 09-SP-06 is hereby approved, subject to the following conditions:

Community Development Department, Planning:

1. The developer will defend, indemnify, and hold the City, its agents, officers, and employees harmless of any claim, action, or proceeding to attack, set aside, void, or annul this approval, so long as the City promptly notifies the developer of any claim, action, or proceedings, and the City cooperates fully in defense of the action or proceedings.

2. No outside storage of material, crates, boxes, etc. shall be permitted anywhere on site, except within the trash enclosure areas as permitted by fire codes. No material shall be stacked higher than the height of any trash enclosure screen wall and gate.

3. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC (approved plan attached). At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.

4. All storage of cardboard bales and pallets shall be contained within the area designated for such use. No storage of cardboard or pallets shall be visible from public right the way.

5. The project proponent shall take reasonable necessary steps to assure the orderly conduct of employees, patrons and visitors on the premises to the degree that surrounding residents and commercial uses would not be bothered and that loitering is not permitted.

6. A minimum of two trash receptacles shall be placed at the customer entry to the Costco warehouse. Trash receptacles shall be a decorative, pre-cast concrete or metal type with a self-closing metal lid. Design of the receptacles shall be submitted with the building permit application for tenant improvements for approval by the Community Development Director.

7. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.

8. The owner shall maintain in good repair all building exteriors, walls, lighting, trash enclosure, drainage facilities, driveways and parking areas. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within 48 hours of occurrence.

9. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.

10. The applicant shall submit appropriate plans to the Community Development Department for plan check and building permit. The final plans shall include the architectural features such as the approved colors, the building elevations including the cornice, trim caps, and curbed canopy, and other elements approved by the Planning Commission. Any significant alteration to the building elevations as approved by the Planning Commission shall require approval by the Planning Commission.

11. The finished building shall be consistent with the plans approved by the Planning Commission and as conditioned herein.

12. All buildings shall comply with the requirements of Planned Development 39 zoning district and meet setback requirements. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.

13. A final color palette shall be submitted with the building permit application and shall be in substantial conformance with colors and materials approved by the Lodi Planning Commission

for the balance of the Reynolds Ranch development and shall be reviewed and approved by the Community Development Director.

14. The proposed building must comply with all Planning Commission requirements; as well as the requirements of the Community Development, the Public Works, the Electric Utility and the Fire Departments; and all other utility agencies.

15. The location and details of the cart corrals within the parking lot shall be submitted with the building permit application for review and approval by the Community Development Director. Cart corrals shall be provided in the parking lot adjacent to COSTCO Wholesale building and distributed evenly throughout the lot rather than concentrated along the main drive aisle. In addition, physical measures to prevent the removal of carts from the property shall be provided. Such measures shall be submitted with the building permit application. Further, cart corrals shall be permanent with a design that is consistent with the theme of the COSTCO Wholesale building. Portable metal corrals shall be prohibited.

16. All signage shall be in compliance with a detailed Sign Program that shall be submitted to the Development Community Director for review and approval with the first building plan review. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.

17. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.

18. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center

19. All roof mechanical equipment and any satellite dish equipment shall be fully screened from ground-level view within 150 feet of the property.

20. The loading area shown in front of the plans shall be stripped and posted with “NO PARKING – LOADING ONLY” signs to the satisfaction of the Community Development Director.

21. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:

    a) All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.
    b) The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.
    c) All parking light fixtures shall be a maximum of twenty-five 25 feet in height.
    d) All fixtures shall be consistent throughout the center.

22. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.

23. All exterior construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.

24. A reciprocal agreement for ingress, egress, and parking shall be executed between all parties within the proposed shopping center and that document shall be provided to the City prior to the issuance of a Certificate of Occupancy.

25. Sidewalks and parking lots must be kept free of litter and debris to minimize the amount of wind-blown debris into surrounding properties. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. No cleaning agent may be discharged to the storm drain. If any cleaning agent or degreaser is used, washwater shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval, and conditions of the City wastewater treatment plant.
26. The applicant shall install a decorative concrete block wall, a minimum of six feet in height and a maximum of eight feet in height at the top of slope for the length of the northern and eastern boundary line at the time of ultimate Harney Lane improvements. Said decorative wall shall be provided with creping vine or similar landscape treatment in order to discourage graffiti and other types of vandalism. In the interim, the landscape plan for the project shall concentrate screening material along the northern property frontage adjacent to Harney Lane.
27. The applicant shall submit a landscaping and irrigation plan to the Community Development Department for review and approval. Landscaping materials indicated on the conceptual landscape and irrigation plan may be changed per the review of the Community Development Director or designee but shall not be reduced in amount.
28. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
29. Project must receive and comply with all terms of the Cal Trans encroachment Permit necessary. Any conditions imposed by Cal Trans for the encroachment permit that result in site plan modifications shall be reviewed by City staff for consistency with Project approvals.
30. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced promptly.
31. No seasonal, temporary or permanent outdoor storage or display of merchandise shall be permitted.
32. COSTCO Wholesale shall operate and abide by the requirements and conditions of the State of California Department of Alcoholic Beverage Control License Type 21. The Type 21 License shall be limited to the sale of beer, wine, and liquor (distilled spirits) for consumption off the license premised where sold during the hours that the business is open.
33. COSTCO Wholesale shall insure that the sale of alcohol does not cause any condition that will cause or result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public intoxication, drinking in public, harassment of people passing by, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises, traffic violations or traffic safety based upon last drink statistics, curfew violations, lewd conduct, or police detention and arrests.
34. The Lodi Police Department may, at any time, request that the Planning Commission conduct a hearing on the Use Permit for the purpose of amending or adding new conditions to the Use Permit or to consider revocation of the Use Permit if the Use Permit becomes a serious policing problem.
35. The Use Permit shall require COSTCO Wholesale to secure an Alcoholic Beverage Control License Type 21 Off-Sale General – Package Store.

36. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.

37. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the COSTCO Wholesale store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. In the event that COSTCO has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.

38. No person who is in a state of intoxication shall be permitted within the business nor shall an intoxicated patron be sold additional alcoholic beverages. It is the responsibility of the business owner/operator to ensure no patron in state of intoxication is allowed into the building.

39. The operator of the business shall police the area surrounding the business to prevent patrons from congregating/loitering outside the premises and to prevent excessive noise or other objectionable behavior. Noise levels shall be monitored to insure that noise shall not violate the City's Noise Ordinance Section 9.24.020 and Section 9.24.030.

40. The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report for Reynolds Ranch Project (State Clearinghouse Number 2006012113)

41. The operation of the business shall comply with all applicable requirements of the Municipal Code.

42. Prior to any ground disturbance, the applicant shall notify the San Joaquin County Council of Governments (SJCOG, Inc), and shall schedule a pre-ground disturbance survey, to be performed by an SJMSCP biologist, to determine applicable Incidental Take Minimization Measures (ITMMS). The City shall not authorize any form of site disturbance until it receives an Agreement to Implement ITMMS from SJCOG, Inc.

43. The City shall not issue a building permit for the proposed project until the San Joaquin County Council of Governments determine what, if any, Incidental Take Minimization Measures (ITMMS) apply to the project and until the San Joaquin County Council of Governments verifies all applicable ITMMs have been fully and faithfully implemented.

44. No variance from any City of Lodi adopted code, policy or specification is granted or implied by this approval.

45. This resolution does not constitute a complete plan check. Complete plan check shall be completed during building permit process.

<u>Community Development Department, Building:</u>

46. All plan submittals shall be based on the City of Lodi Building Regulations and currently adopted 2007 California Building code.

47. Cooking equipment that generate grease laden vapors, including but not limited to ranges, griddles, fryers, ovens and pizza ovens shall be required to be equipped with a Type I hood. Equipment that generates heat, steam or odors only shall be required to be equipped with a Type II hood. 2007 CMC, Chapter 5.

48. Each structure including, underground fuel tank, canopy, signage, and main building are required to be submitted under separate permits. 2007 CBC, Appendix Chapter 1 Administration, Section 105.1

49. The canopy and supports over the fuel pumps shall be of non-combustible, fire resistive treated wood, 1 hour rated construction or Type IV construction. 2007 CBC, Section 406.5.2

50. 2007 CBC, Section 406.5.1 requires that motor fuel dispensing facilities meet the construction requirements of the California Fire Code. The facility shall meet the requirements of Chapter 22 of the CFC and the requirements of the Fire Chief.

51. 2007 CBC, Section 413.1 requires that high pile or rack storage meet the requirements of the California Fire Code. Sprinkler system, fire detection system, building access, smoke and heat venting and draft curtains shall be provided as required by 2007 CFC, Chapter 23 and Table 2306.2 and all requirements of the Fire Chief.

52. Storage racks over 6' high shall be submitted under separate permit and cover. Structural calculations required for racks over 8' high. Policy and Procedure No.: B-[08]-[09].

53. Walkways and sidewalks along accessible routes of travel shall be in compliance with the 2007 CBC, Section 1133B.8.5.

54. Number of Accessible parking spaces shall be provided as specified in 2007 CBC, Table 11B-6.

55. All entrances and ground floor exits must be provided with an accessible path of travel to the public way. 2007 CBC, Section 1133B.1.1.1.1

<u>Public Works Department:</u>

56. Provide specifications and calculations for the Kristar Stormwater System. The Stormwater Development Standards Plan Worksheet must be provided before the issuance of the Building Permit.

57. Outdoor loading/unloading dock areas must conform to City of Lodi's Stormwater Development Standards Plan section 3.1.5.

58. The trash enclosure shall conform to the Stormwater Design Standards section 3.1.4. The trash enclosure should be wide enough to provide separate containers for recyclable materials and other solid waste.

59. Reduce the number of connections into the City water main to one connection, conforming to Standard Plan 407 for the fire/domestic/irrigation service.

60. All project design and construction shall be in compliance with the Americans with Disabilities Act (ADA). Project compliance with ADA standards is the developer's responsibility.

61. Payment of the following prior to building permit issuance unless noted otherwise:

    a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
    b) Habitat Conservation Fee.
    c) Stormwater Compliance Inspection Fee prior to building permit issuance or commencement of construction operations, whichever occurs first.

62. Payment of the following prior to temporary occupancy or occupancy of the building unless noted otherwise:

    b) Development Impact Mitigation Fees
    c) Wastewater Capacity Impact Mitigation Fee.
    d) County Facilities Fees.
    e) Regional Transportation Impact Fee (RTIF).
    f) Water Treatment Facility Impact Mitigation Fee.

Electric Utility Department:

63. The project proponent shall prepare and submit legal description for easements for review and approval. Said legal description shall be submitted to the Lodi Electric Department, Electric Engineering Section.

64. Harney Lane street widening plans shall be submitted to the Electric Utility Department.

65. The applicant shall submit load calculations and Electric drawings to Electric Utility as part of a building permit process. Load calculations and Electric drawings are needed for service equipment location, PUE requirements, and service sizing. Should the load calculations and Electric drawings require a change of site plan, the Planning Department shall forward the site plan to the Planning Commission for review and approval.

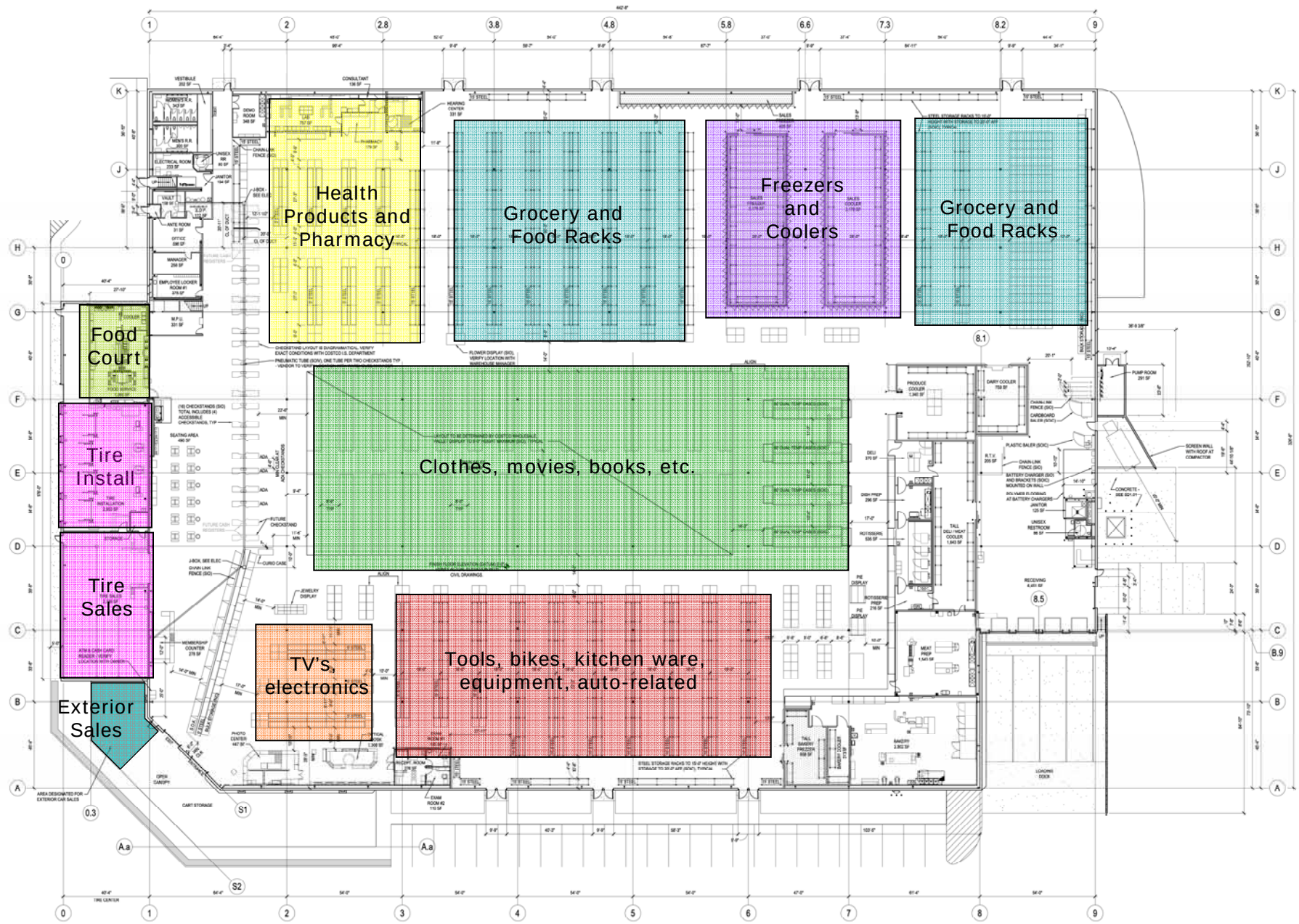
66. The Developer shall pay for Electric Utility Department charges in accordance with the Electric Department's Rules and Regulations.

Dated: February 10, 2010

I certify that Resolution No. 10-06 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on February 10, 2010 by the following vote:

AYES:	Commissioners:	Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins
NOES:	Commissioners:	None
ABSENT:	Commissioners:	Mattheis

ATTEST: _____
Secretary, Planning Commission



Floor Plan

- New Building Area = 148,234 SF

RESOLUTION NO. P.C. 10-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI FOR THE APPROVAL OF THE REQUEST OF JENNIFER KRAUTER, RMB ARCHITECTS ON BEHALF OF SAN JOAQUIN VALLEY LAND CO., FOR SPARC REVIEW OF THE PROPOSED REYNOLDS RANCH SHOPPING CENTER LOCATED 322 EAST HARNEY LANE

WHEREAS, the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit and Site Plan and Architectural Review in accordance with the Government Code and Lodi Municipal Code Chapter 17.84, Amendments; and

WHEREAS, an application was filed by Jennifer Krauter, RMB Architects on behalf of San Joaquin Valley Land Co., LLC., 227 Watt Avenue., Second Floor., Sacramento, CA; and

WHEREAS, the project site is located at 322 East Harney Lane, more particularly described as Assessor's Parcel Numbers 058-130-17, 058-130-18, 058-130-19, portion of 058-130-16 and portion of 058-110-55; and

WHEREAS, the project site is zoned Planned Development 39; and

WHEREAS, the Project is consistent with all elements of the General Plan, and in particular, the following General Plan Goals and Policies:

A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."

B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."

C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments; and

WHEREAS, approval of the requested architectural drawings will allow the construction of a commercial buildings that will comply with the City's Zoning Ordinance and Building Code regulations; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, the Community Development Department prepared an Environmental Impact Report (EIR), consistent with the California Environmental Quality Act (CEQA); and

WHEREAS, the Final EIR, including comments and responses to comments, was certified by the City Council on August 30, 2006; and

WHEREAS, an Addendum to the certified and Final EIR, including comments and responses to comments, was certified by the City Council on September 17, 2008; and

WHEREAS, all legal prerequisites to the approval of this request have occurred.

Based upon the evidence in the staff report and project file, the Planning Commission makes the following findings:

1. The approval of the proposed commercial development was considered as part of a previously approved EIR, whereby it was determined that there would not be significant impacts on the environment, cumulative or otherwise, provided mitigation measures were implemented.
2. No new impacts were identified in the public testimony that were not addressed as normal conditions of project approval in the Initial Study.
3. The project site is physically suitable for the proposed type of developed and proposed builing configurations.
4. The development complies with the intent of the City development policies and regulations in that the General Plan, Goal E, Policy 3, which encourages increasing the tax base, creating employment opportunities for residents and attracting new businesses. The proposed commercial shopping center will also provide employment opportunities for residents.
5. The design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards.
6. The proposed development will be operated in a manner determined to acceptable and compatible with surrounding development in that conditions have been added that require the operator to maintain the property.
7. No variance from the Lodi Municipal Code is approved by this action.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi that SPARC Application No. 10-SP-02 is hereby approved, subject to the following conditions:

Community Development Department, Planning:

1. The developer will defend, indemnify, and hold the City, its agents, officers, and employees harmless of any claim, action, or proceeding to attack, set aside, void, or annul this approval, so long as the City promptly notifies the developer of any claim, action, or proceedings, and the City cooperates fully in defense of the action or proceedings.
2. No outside storage of material, crates, boxes, etc. shall be permitted anywhere on site, except within the trash enclosure areas as permitted by fire codes. No material shall be stacked higher than the height of any trash enclosure screen wall and gate.
3. All storage of cardboard bales and pallets shall be contained within the area designated for such use. No storage of cardboard or pallets shall be visible from public right the way.
4. Outdoor display and/or sale of merchandise shall be limited to the specific area for such display is approved by SPARC (marked as attachment A). At no time shall outdoor storage or display be allowed outside of the specifically approved area or within the parking area, drive aisle or required sidewalks and ADA path of travel of the center.
5. No seasonal, temporary or permanent outdoor storage or display of merchandise shall be permitted within the parking lot, except as otherwise permitted by the City through the special events review process.
6. The project proponent shall provide a trash enclosure or compactor for each building. The said enclosures shall be constructed of split face C.M.U. block and shall match the color of the buildings so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets, and no attention is attracted to the functions by the use of screening materials that are different from or inferior to the principal materials of the building and landscape. The enclosures shall also have metal gates and shall have roof features per the City's Stormwater Design Standard Plan requirements.
7. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.

8. A minimum of two trash receptacles shall be placed at a customer entry to each building. Trash receptacles shall be a decorative, pre-cast concrete or metal type with a self-closing metal lid. Design of the receptacles shall be submitted with the building permit application for tenant improvements for review and approval by the Community Development Director.

9. The project proponent shall take reasonable necessary steps to assure the orderly conduct of employees, patrons and visitors on the premises to the degree that surrounding residents and commercial uses would not be bothered and that loitering is not permitted.

10. No recreational vehicles, including trailers, shall be parked or stored overnight at the shopping center. Further, no vehicle, including trailers, shall be parked at the shopping center for the principal purpose of advertising or display. It shall be a prim facie violation if the advertising medium utilized on the vehicle is a sign, device, or structure separate from the vehicle, or if the sign or device is integrally affixed to the vehicle and the *copy* is readily changeable and such sign, device or structure *exceeds* nine *square* feet in area and the vehicle is parked on the business premises for which the advertising relates, or in reasonable proximity thereto, and the location of the advertising is reasonably calculated to direct an observer towards the business. It shall still be considered that advertising was the principal purpose of the parking, notwithstanding the fact that the vehicle is driven to and from the business premises on daily basis.

11. The owner shall maintain in good repair all building exteriors, walls, lighting, trash enclosures, drainage facilities, driveways and parking areas. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within 48 hours of occurrence.

12. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.

13. The applicant shall submit appropriate plans to the Community Development Department for plan check and building permit. The final plans shall include the architectural features such as the approved colors, the building elevations including the cornice, trim caps, and curbed canopy, and other elements approved by the Planning Commission. Any significant alteration to the building elevations as approved by the Planning Commission shall require approval by the Planning Commission.

14. The finished building shall be consistent with the plans approved by the Planning Commission and as conditioned herein.

15. All buildings shall comply with the requirements of Planned Development 39 zoning district and meet setback requirements. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.

16. A final color palette shall be submitted with the first building permit application and shall be in substantial conformance with colors and materials approved by the Lodi Planning Commission.

17. The proposed building must comply with all Planning Commission requirements; as well as the requirements of the Community Development, the Public Works, the Electric Utility and the Fire Departments; and all other utility agencies.

18. The location and details of the cart corrals within the parking lot shall be submitted with the building permit application for review and approval by the Community Development Director. Cart corrals shall be provided in the parking lot adjacent to buildings and distributed evenly throughout the parking lot rather than concentrated along the main drive aisle. In addition, physical measures to prevent the removal of carts from the property shall be provided. Such measures shall be submitted with the building permit application. Further, cart corrals shall be permanent with a design that is consistent with the theme of the Reynolds Ranch shopping center. Portable metal corrals shall be prohibited.

19. All signage shall be in compliance with a detailed Sign Program that shall be submitted to the Development Community Director for review and approval with the first building plan review. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.

20. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.

21. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center.

22. All roof mechanical equipment and any satellite dish equipment shall be fully screened from ground-level view within 150 feet of the property.

23. The loading area shown in front of the plans shall be stripped and posted with "NO PARKING – LOADING ONLY" signs to the satisfaction of the Community Development Director.

24. Fire Lanes shall be identified and marked per Lodi Municipal Code Sec 15.40.100 in locations determined by the Fire Marshall. Plans with marked fire lanes shall be returned to planning and copy kept at the Fire Prevention office.

25. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:

    a) All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.
    b) The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.
    c) All parking light fixtures shall be a maximum of twenty-five 25 feet in height.
    d) All fixtures shall be consistent throughout the center.

26. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.

27. All exterior construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.

28. A reciprocal agreement for ingress, egress, and parking shall be executed between all parties within the proposed shopping center and that document shall be provided to the City prior to the issuance of a Certificate of Occupancy.

29. Sidewalks and parking lots must be kept free of litter and debris to minimize the amount of wind-blown debris into surrounding properties. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. No cleaning agent may be discharged to the storm drain. If any cleaning agent or degreaser is used, washwater shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval, and conditions of the City wastewater treatment plant.

30. The applicant shall submit a landscaping and irrigation plan to the Community Development Department for review and approval. Landscaping materials indicated on the conceptual landscape and irrigation plan may be changed per the review of the Community Development Director or designee but shall not be reduced in amount. The applicant shall provide, at minimum, 433 large parking lot trees to be distributed within the parking lot.

31. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".

32. Project must receive and comply with all terms of the Cal Trans encroachment Permit necessary. Any conditions imposed by Cal Trans for the encroachment permit that result in site plan modifications shall be reviewed by City staff for consistency with Project approvals.

33. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced promptly.

34. The operation of the business shall comply with all applicable requirements of the Municipal Code.

35. The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report for Reynolds Ranch Project (State Clearinghouse Number 2006012113).

36. Prior to any ground disturbance, the applicant shall notify the San Joaquin County Council of Governments (SJCOG, Inc), and shall schedule a pre-ground disturbance survey, to be performed by an SJMSCP biologist, to determine applicable Incidental Take Minimization Measures (ITMMS). The City shall not authorize any form of site disturbance until it receives an Agreement to Implement ITMMS from SJCOG, Inc.

37. The City shall not issue a building permit for the proposed project until the San Joaquin County Council of Governments determine what, if any, Incidental Take Minimization Measures (ITMMS) apply to the project and until the San Joaquin County Council of Governments verifies all applicable ITMMs have been fully and faithfully implemented.

38. The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report for Reynolds Ranch Project (State Clearinghouse Number 2006012113). Specifically, Mitigation Measure 3.2.2 subjects the Reynolds Ranch development to participate in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). This includes payment of Open Space Conversion fees in accordance with the fee schedule in-effect at the time construction commences. The applicant shall pay, in accordance with the SJMSCP fee schedule, the fees based on the gross acreage of the overall Reynolds Ranch project as described above, and include all public use acreage as outlined in a "per acre" schedule to be prepared in cooperation with the developer, subject to the approval of the Community Development Director prior to the issuance of the next building permit within the project by the applicant or any subsequent property owner.

39. All ground level utilities shall be screened from public view. All screening shall be done using materials that are architecturally compatible with the buildings(s) or shall be screened by landscape

40. No variance from any City of Lodi adopted code, policy or specification is granted or implied by this resolution.

41. This resolution does not constitute a complete plan check. Additional comments and conditions will be provided when more complete plans are submitted for building permit application review for the project.

<u>Community Development Department, Building:</u>

42. All plan submittals shall be based on the City of Lodi Building Regulations and currently adopted 2007 California Building code.

43. Southwest Quadrant: It appears the following sites will require additional accessible parking spaces as required by CBC 1129B Table 11B-6

    a) Major D & Major C providing 288 parking spaces 4 H/C parking spaces shown 7 H/C Parking Spaces Required.

b) Shops 5, Shops 6a, Shops 6 providing117 parking spaces 4 H/C parking spaces shown 5 H/C Parking Spaces Required.
c) Shops 7 providing 87 parking spaces 2 H/C parking spaces shown 4 H/C Parking Spaces Required.
d) Shops 8 providing 87 parking spaces 2 H/C parking spaces shown 4 H/C Parking Spaces Required.

44. Walkways and sidewalks along the accessible routes of travel (1) shall be continuously accessible, (2) have maximum 1/2" changes in elevation, (3) are minimum 48" in width, (4) have a maximum 1/4" per foot side slope, and (5) where necessary to change elevation at a slope exceeding 5% (i.e., 1:20) shall have ramps complying with 2007 CBC, Section 1133B.5. Where a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings or other elements between the pedestrian areas and vehicular areas shall be defined by a continuous detectable warning which is 36" wide, complying with 2007 CBC, Section 1133B.8.5.

45. All entrances and exterior ground floor exit doors to buildings and facilities shall be made accessible to persons with disabilities. Such entrances shall be connected by an accessible rout (complying with Section CBC 1114B1.2) to public transportation stops, to accessible parking and passenger loading zones and to public streets or sidewalks. All accessible routs are also required to comply with Detectable warnings at hazardous vehicular area CBC 1133B.8.5. Currently the partial site plans fails to show how any of the requirements will be achieved around the following buildings. Major B, Major A-1, Major, A-2, Major A-3, Major D, Major C and Drug 1.

46. Fire rated construction of walls and protection of openings shall be provided where required due to construction type, occupancy and location on property or proximity to other structures. 2007 CBC, Sections 702, 704.3, 704.8 and Tables 601, 602, 704.8

<u>Public Works Department:</u>

47. The applicant shall provide specifications and calculations for the Kristar Stormwater System. The Stormwater Development Standards Plan Worksheet must be provided before the issuance of the Building Permit.

48. Remove the eastbound stops located at the four-way stop just east of the Reynolds Ranch Pkwy and Rocky Lane intersection. By removing the stops at this intersection the traffic will have less of a chance to backup into Reynolds Ranch Pkwy.

49. The site must conform to the Stormwater Development Standards Plan (DSP) requirements. The DSP Worksheet must be provided before the issuance of the Building Permit.

50. Outdoor loading/unloading dock areas must conform to City of Lodi's Stormwater Development Standards Plan section 3.1.5.

51. The applicant shall provide a truck route for the entire site with the building permit plans for review and approval by the Public Works Department. The entrances shall be STAA Long truck compliant (see Highway Design Manuel pg 400-11).

52. The applicant shall provide locations of all utilities throughout the site with the building permit plan for review and approval by the Public Works Department. Utilities along the truck routes must be protected.

53. All offsite improvements must be completed or substantially completed and bonded at or before the time of the first Certificate of Occupancy within the project.

54. Payment of the following prior to building permit issuance unless noted otherwise:

    a. Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
    b. Habitat Conservation Fee.

c. Stormwater Compliance Inspection Fee prior to building permit issuance or commencement of construction operations, whichever occurs first.

55. Payment of the following prior to temporary occupancy or occupancy of the building unless noted otherwise:
    a. Development Impact Mitigation Fees
    b. Wastewater Capacity Impact Mitigation Fee.
    c. County Facilities Fees.
    d. Regional Transportation Impact Fee (RTIF).
    e. Water Treatment Facility Impact Mitigation Fee.

Electric Utility Department:

56. The project proponent shall prepare and submit legal description for easements for review and approval. Said legal description shall be submitted to the Lodi Electric Department, Electric Engineering Section.

57. Harney Lane street widening plans shall be submitted to the Electric Utility Department.

58. The applicant shall submit load calculations and Electric drawings to Electric Utility as part of a building permit process. Load calculations and Electric drawings are needed for service equipment location, PUE requirements, and service sizing. Should the load calculations and Electric drawings require a change of site plan, the Planning Department shall forward the site plan to the Planning Commission for review and approval.

59. The Developer shall pay for Electric Utility Department charges in accordance with the Electric Department's Rules and Regulations.

Dated: March 24, 2010
I certify that Resolution No. 10-07 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on March 24, 2010 by the following vote:

AYES:	Commissioners:	Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins
NOES:	Commissioners:	None
ABSENT:	Commissioners:	Mattheis

ATTEST: _____
Secretary, Planning Commission

Attachment:
A. Outdoor Display Area Plan

Reynolds Ranch ▪ Highway 99 & Harney Lane
Lodi, California

Exhibit A: Outdoor Display Area

LODI
PLANNING COMMISSION
Staff Report

MEETING DATE: February 10, 2010

APPLICATION NO: Use Permit 09-U-15
Site Plan and Architectural Review 09-SP-06

REQUEST: Request for Planning Commission approval of a Use Permit to allow the sale of alcoholic beverages and approve the SPARC application concerning the COSTCO Wholesale building. (Applicant: David Babcock, on behalf of COSTCO Wholesale. File Number: 09-U-15 and 09-SP-15).

LOCATION: 322 East Harney Lane. Approximately 15 acres located at the southwest corner of Harney Lane and State HWY 99.

APPLICANT: David Babcock, 3581 Mount Diablo Blvd., Suite 235**,** Lafayette, CA, CA 94549

PROPERTY OWNER: San Joaquin Valley Land Company LLC, 1420 S. Mills Ave., Suite K, Lodi, CA 95242

RECOMMENDATION: Staff recommends that the Planning Commission approve the Use Permit and SPARC requests subject to the conditions listed in the attached draft resolution.

PROJECT/AREA DESCRIPTION

General Plan Designation: NCC- Neighborhood Community Commercial.
Zoning Designation: Planned Development (39).
Property Size: Approximately 15 acres

Adjacent General Plan, Zoning and Land Use:

	General Plan	Zone	Land Use
North	LDR, Low density residential; MDR, Medium density residential	Planned Development (39)	Residences
South	NCC, community commercial and O –Office	Planned Development (39)	Vacant parcels and Blue Shield office.
East	GA, General Agriculture (San Joaquin County)	AG-40, Agricultural Uses (San Joaquin County)	State Highway 99, and east of that Agricultural, residential and cemetery uses.
West	NCC, community commercial and O –Office	Planned Development (39)	Agricultural Uses and east of that are residential uses within the Reynolds Ranch annexation.

BACKGROUND:
The Reynolds Ranch project was annexed in to the City of Lodi in 2006 as a mixed-use development. As part of the annexation process, an environmental impact report was prepared and certified, new General Plan and zoning designations were approved and a Development Agreement was signed. The development includes retail and residential uses, public park, fire station, self-storage facility, and the Blue Shield office complex, a major component of the development. Subsequently, portions of the project site have been developed, including the 20.5 acre Blue Shield office complex as well as some of the street and infrastructure improvements. Surrounding uses to this component consist of residential uses to the north, office uses to the south, commercial zoned vacant land to the west, and State Hwy. 99 as well as a single family dwelling to the east.

In the summer of 2008, the developer submitted applications for a General Plan Amendment that would increase the size of the commercial acreage from 40.5 acres to 75.6 acres, reduce the residential acreage from 96.6 acres to 78 acres, eliminate the school site, amend the environmental impact report (EIR), amend the Land Use map for Planned Development (39) to reflect the general plan changes requested, and approve a Vesting Tentative Map. The applicant's request was first considered by the Planning Commission at its hearing of August 27, 2008 and continued to September 10, 2008. At that hearing, the Planning Commission approved the Vesting Tentative Map and recommended the City Council amend the General Plan for the Reynolds Ranch development. The City Council, acting upon the Planning Commission's recommendation for approval, amended the General Plan at their meeting of September 17, 2008.

ANALYSIS
Use Permit:
COSTCO Wholesale is seeking approval of a Use Permit that would allow a Type 21 Off-Sale General ABC license. Type 21 ABC license authorizes the sale of beer, wine, and distilled spirits for consumption off the license premised where sold. Typically, grocery stores, gas stations and neighborhood stores have Type 21 ABC licenses. The Planning Commission has previously found that the sale of alcoholic beverages is incidental to a grocery store operation and that is what is being requested.

The project area belongs to Census Tract 41.02. Census Tract 41.02 covers the area Curry Avenue, east of Lower Sacramento Road, South of Harney Lane and north of Hogan Lane (approximately .16 miles north of Hogan Lane). According to ABC, Census Tract 41.02 contains 3 existing off-sale licenses with 5 licenses allowed based on the ABC criteria. Because this census tract is not over-concentrated, the Planning Commission a does not need to make a finding of public necessity and/or convenience in order to approve the Use Permit.

Site Plan and Architecture Review:
The petitioner requests approval of site plan and architecture of the proposed COSTCO Wholesale warehouse and the surrounding site improvements. The project site consists of the Costco Wholesale building as well as associated gas pumps and parking areas on an approximately 15.35 acre lot located at 322 East Harney Lane. The applicant has submitted preliminary elevations, landscape plans, conceptual signage for the development and location of a gas station. As illustrated on the plans, COSTCO Wholesale warehouse would measure 148,234 square feet and includes a gas station with six one-way lanes for fuel dispensing (16-pump stations). The COSTCO building would be located on the northeast portion of the project site, and the building entrance would face southwest toward the main interior parking lot and Reynolds Ranch Parkway. The architectural theme of the building is a contemporary style and uses construction materials commonly used in commercial shopping center developments such as concrete masonry block and metal panels. The body of the building includes split face concrete masonry block, architectural box-

ribbed and textured metal wall panels with accent awnings in warm earth tone colors. The store would have one customer entrance located at the southwest corner. Lighting fixtures are distributed approximately every 40 feet around the exterior of the building. The proposed COSTCO Wholesale warehouse is subject to the requirements of the City's Section 17.58 of the Municipal Code Design Standards for Large Retail Establishments.

The intent of the building design is to emulate similar materials, colors, and textures of Costco warehouse and gasoline stations located elsewhere. The body of the building is broken up by an offset parapet, articulated entry vestibule, and accent wall materials and colors. These architectural articulations are applied throughout the building. The northern elevation, which is adjacent to Harney Lane and residential property across the street, receives identical architectural treatment as the rest of the building. Due to the uncertainty of the timeframe for final development of a shopping center, Staff has analyzed the proposal to determine if the project can function as a stand alone development while at the same time, be incorporated into the final shopping center site design and layout. Although no application has been made for the rest of the shopping center, staff expects the rest of the shopping center to establish visually harmonious architectural theme and identity as required by the City's large scale retail ordinance which mandates the architecture and signs of a shopping center work together to establish a coherent visual identity.

As mentioned previously, the COSTCO Wholesale warehouse includes an associated gas station. The gas station includes a 2,816 square foot canopy and will be located in the southeast corner of the site along the main Reynolds Ranch Development drive and adjacent to Highway 99. A 75 square foot controller enclosure will be on the north side of the fuel station. It will be built with steel walls and finished with paint to match the warehouse building colors. There will be four covered fueling bays, each with two gas pumps which could fuel two cars each. The gas station will thus have fueling capacity for 16 cars at a time. The fueling station will also have eight stacking lanes which will allow 40 cars to wait for pumps at any given time in addition to the 16 at the fueling pumps. The gas station is automated and self-serving facility requiring a membership card. The gas station hours are identical to the warehouse hours of operation, which is Monday through Friday from 10:00 am to 8:30 pm, Saturday from 9:30 am to 6:00 pm, and Sunday from 10:00 am to 6:00 pm. Since the gas station functions as a complimentary use to the retail, there are a large proportion of shared trips between the two, which indicates that there is a minimal amount of additional trips generated by the gas station. While staff is generally supportive of the proposed architectural articulations, there are few site plan modifications that are being recommended.

Traffic Circulation/Parking

The site plan indicates two access points along the frontage on Harney Lane. The main access to the proposed shopping center is provided from Harney Lane via Reynolds Ranch Parkway. The main entrance to the project parking lot is from the proposed signaled drive which intersects Reynolds Ranch Parkway. A secondary access point is provided from Harney Lane, which is restricted to right in/right out movement. Traffic access to the shopping center is also provided from the south, though this has limited access at the moment. The project necessitates off-site improvements such installation of sidewalks, curbs and gutter along Harney Lane. Improvements to Harney Lane are proposed to occur in two phases. The initial phase will widen the street from roughly Stockton Street to the entry into the shopping center east of Reynolds Ranch Parkway. Transitional improvements will occur from that drive to the Hwy. 99 overpass. These improvements will need to be implemented prior to issuance of Certificate of Occupancy. The ultimate improvements will include a new overpass and ramps. There will be a grade difference between the existing condition and the northeast corner of the shopping center of approximately 15 feet.

Onsite parking is provided on the south and west of the COSTCO building in order to reduce the visual impact of one large paved surface. The Costco development, including the proposed gas station, requires a total 742 parking spaces (General Retail 5/1000), 755 spaces are being provided (5.09/1000), which includes fifteen ADA compliant parking stalls are also provided. The City's large box ordinance states that maximum number of off-street parking spaces cannot exceed five spaces for every one thousand square feet of building space. In this case, the applicants have provided thirteen (13) more spaces than the maximum allowable parking spaces. As shown on the site plan, there are a total of nine cart corrals distributed throughout the parking lot. Staff recommends the applicants provide at least one cart corral per driving isle in order to reduce the total number of parking spaces to conform to applicable City rules and to provide safe and pleasant shopping experience to their customers. In addition, the proposed cart corrals should be permanent with a design that is consistent with the theme of the COSTCO Wholesale building and the balance of the center.

Landscape/Signage

Projects of this size are required to provide one tree for every 500 square feet of open space and one shade tree for each 4 parking spaces. The applicant has submitted a generic landscape plan, which calls for various large shade trees, smaller trees, shrubs and ground covers distributed throughout the parking lot and on the north and east edges of the project site. Given the size of the building, the project proponent is required to provide 193 larger shade (parking lots trees) distributed within the parking lot interior and additional one tree for every 500 open space. According to the applicant project description, a substantial amount of the proposed plant material for the new site is drought tolerant and will use less water than other common species. The proposed irrigation system will use deep root watering bubblers for parking lot shade trees to minimize usage and ensure that water goes directly to the intended planting areas.

The approval of project signage is not a part of the current review and would be subject to City of Lodi codes and requirements to ensure they complement the building architecture and landscaping of the building. Signage applications and approvals would be completed separately. However, the applicant have illustrated the location and design of the signs they intend to use. The wall signs consist of the trademark red and blue raised reverse pan metal letters. It is unclear at the moment if the project will include free standing signs.

The proposed development is consistent with the City's General Plan and is an attractive addition to the City in that the proposed Costco warehouse and gasoline station will provide much needed services to the City of Lodi and enhance the City's economic viability and increase the tax base. The proposed Costco warehouse and associated gasoline station will not only add to the city's tax base but will also provide employment opportunities for residents. The COSTCO building is in full conformance with the City's Section 17.58 of the Municipal Code Design Standards for Large Retail Establishments. These standards were adopted in 2004 specifically to deal with the design of large scale retail establishments like COSTCO. The applicant has met or exceeded each of these standards as presented and conditioned. Therefore, staff is recommending that the Planning Commission approve this request.

As mentioned previously, the Costco building has frontage along Harney Lane, but ultimately this frontage will be separated by as much as 15 feet. The interim and ultimate conditions will be quite different. We believe the City code requires that a decorative masonry wall be constructed at the top of slope along this frontage. However, this will have to be done with the ultimate improvements as the grade difference will not exist until this project is complete. A condition of approval has been included in the Resolution to accommodate this situation.

PUBLIC HEARING NOTICE:
Legal Notice for the Use Permit was published on January 27, 2010. 52 public hearing notices were sent to all property owners of record within a 300-foot radius of the subject property as required by California State Law §65091 (a) 3. Public notice also was mailed to interested parties who had expressed their interest of the project. No protest letter has been received.

ALTERNATIVE PLANNING COMMISSION ACTIONS:

- Approve with additional/different conditions
- Deny the Use Permit/SPARC
- Continue the requests

Respectfully Submitted,

Immanuel Bereket
Assistant Planner

Concur,

Konradt Bartlam
Community Development Director

ATTACHMENTS:

A. Vicinity Map
B. Site Plan
C. Resolution

VICINITY MAP

N.T.S.

COSTCO WHOLESALE

HARNEY LANE AND HIGHWAY 99
LODI, CALIFORNIA

SPARC & CUP APPLICATION

REGIONAL MAP

N.T.S.

SHEET INDEX

1 TITLE SHEET
2 SITE UTILIZATION MAP
3 CONCEPT SITE PLAN
3.2 TRUCK SWEPT PATHS
4 CONCEPT FLOOR PLAN
5 CONCEPT ELEVATIONS
6 CONCEPT LANDSCAPE PLAN

NORTH

COSTCO WHOLESALE

HARNEY LN. & HWY. 99
LODI, CA

DAVID BABCOCK & ASSOCIATES

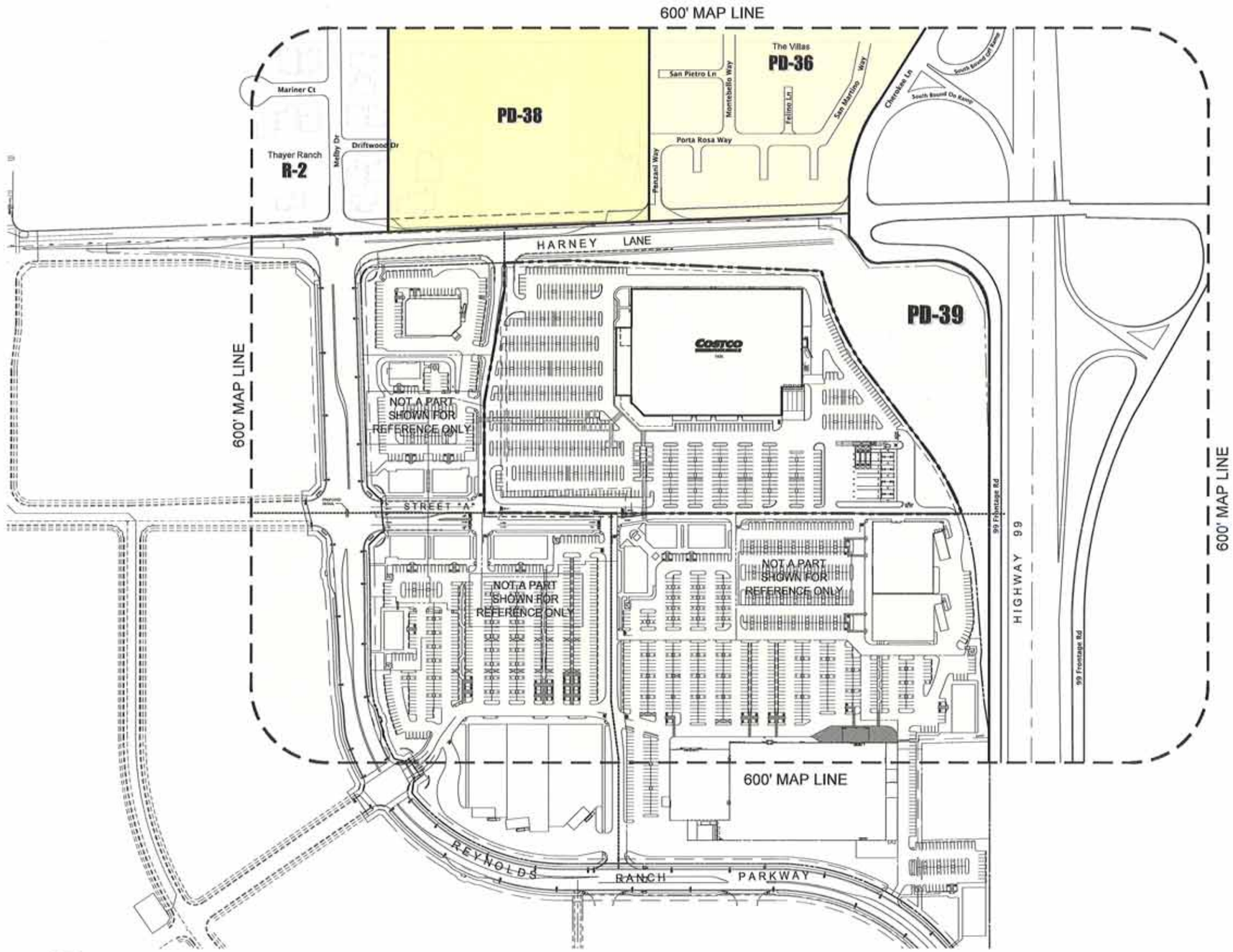
0008.P.119
FEBRUARY 5, 2010
TITLE SHEET

COSTCO WHOLESALE

LODI, CALIFORNIA

TITLE SHEET

1



ZONING LEGEND

- R-2 SINGLE FAMILY RESIDENTIAL

PD, PLANNED DEVELOPMENT

- PD-36
- PD-38
- PD-39

NORTH

COSTCO WHOLESALE

HARNEY LN. & HWY. 99
LODI, CA

DAVID BABCOCK & ASSOCIATES

0008.P.119
FEBRUARY 5, 2010

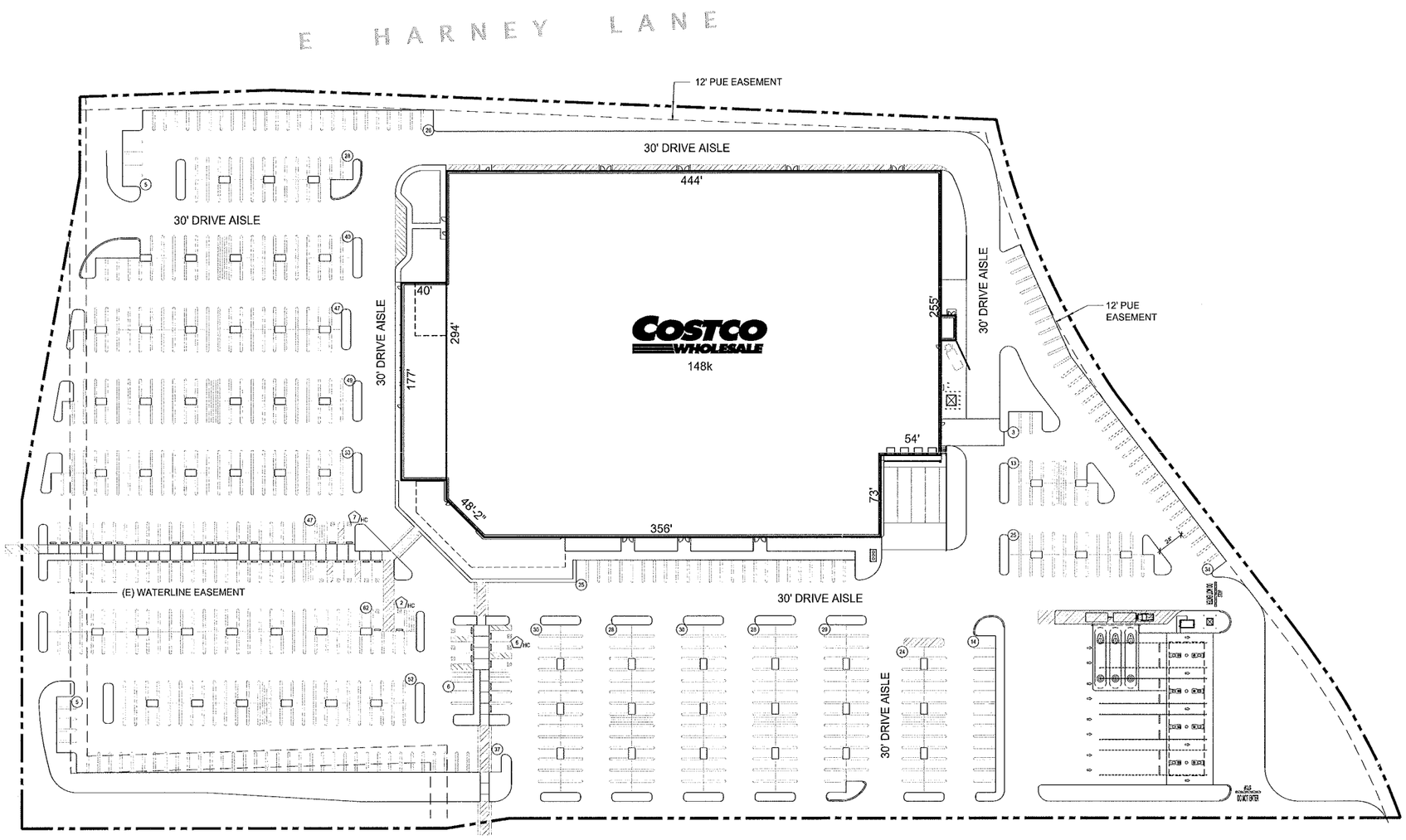
SITE UTILIZATION MAP

COSTCO WHOLESALE

LODI, CALIFORNIA

SITE UTILIZATION MAP

2

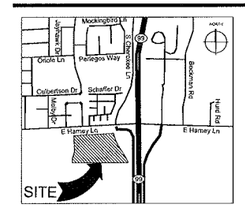


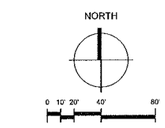
PROJECT DATA

CLIENT:	COSTCO WHOLESALE 999 LAKE DRIVE ISSAQUAH, WA 98027
PROJECT ADDRESS:	HARNEY LANE AND HWY 99 LODI, CALIFORNIA
PROPOSED COSTCO PARCEL:	15.05 ACRES (655,761.87 S.F.)
JURISDICTION:	CITY OF LODI
BOUNDARIES INFORMATION:	THIS PLAN HAS BEEN PREPARED BY USING DIGITAL DATA PROVIDED BY RSC ENGINEERING.

BUILDING DATA:		
TOTAL BUILDING AREA		148,234 S.F.
PARKING DATA:		
PARKING PROVIDED:		
# 10' WIDE STALLS		740 STALLS
#/HC HANDICAP STALLS		15 STALLS
TOTAL PARKING	(5.09/1000)	755 STALLS
CITY PARKING REQUIRED	(5.0/1000 MAX.)	742 STALLS

VICINITY MAP





COSTCO WHOLESALE

HARNEY LN. & HWY. 99
LODI, CA

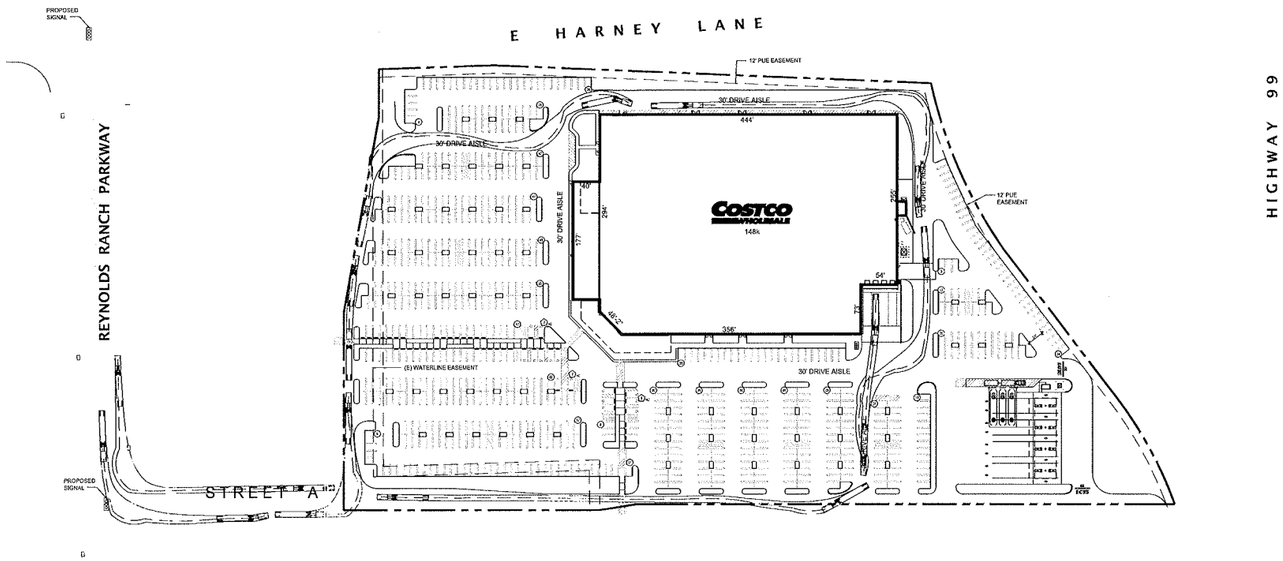
DAVID BABCOCK & ASSOCIATES
ARCHITECTURE · PLANNING · LANDSCAPE
3581 MT. DIABLO BLVD., SUITE 235
LAFAYETTE, CALIFORNIA 94549
TEL: (925) 283-5070 FAX: (925) 283-4823
www.dbabcock.com

0008.P.119
FEBRUARY 5, 2010
CONCEPT
SITE PLAN 1.30

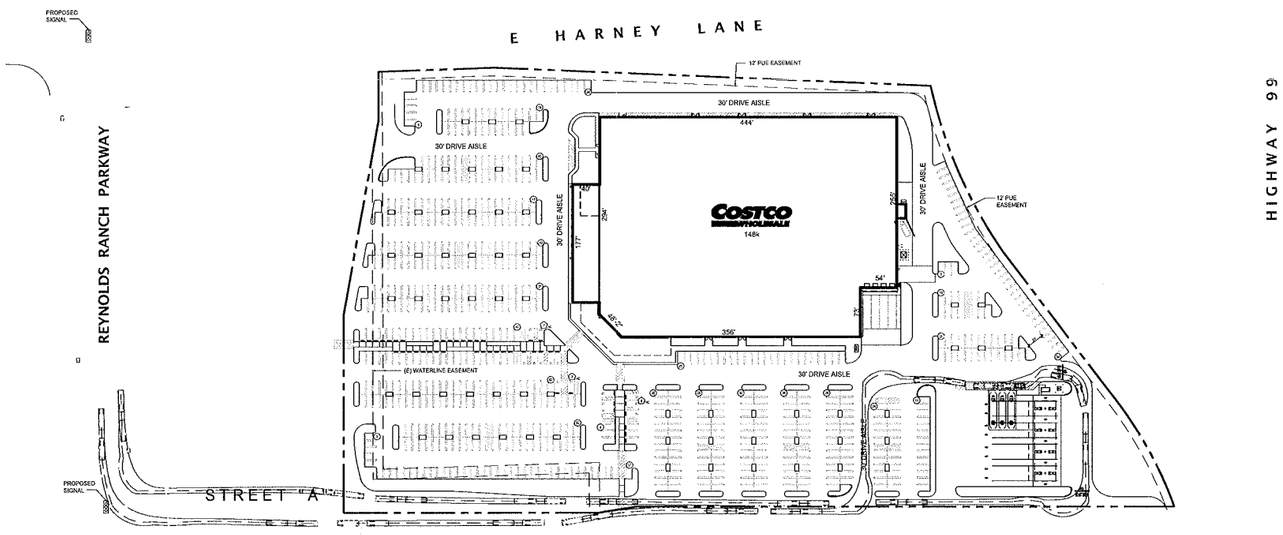
COSTCO WHOLESALE

LODI, CALIFORNIA

CONCEPT SITE PLAN - 148K



TRUCK SWEPT PATH - WAREHOUSE



TRUCK SWEPT PATH - FUEL STATION

NORTH

0 20' 40' 80' 160'

COSTCO WHOLESALE

HARNEY LN. & HWY. 99
LODI, CA

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FEBRUARY 5, 2010

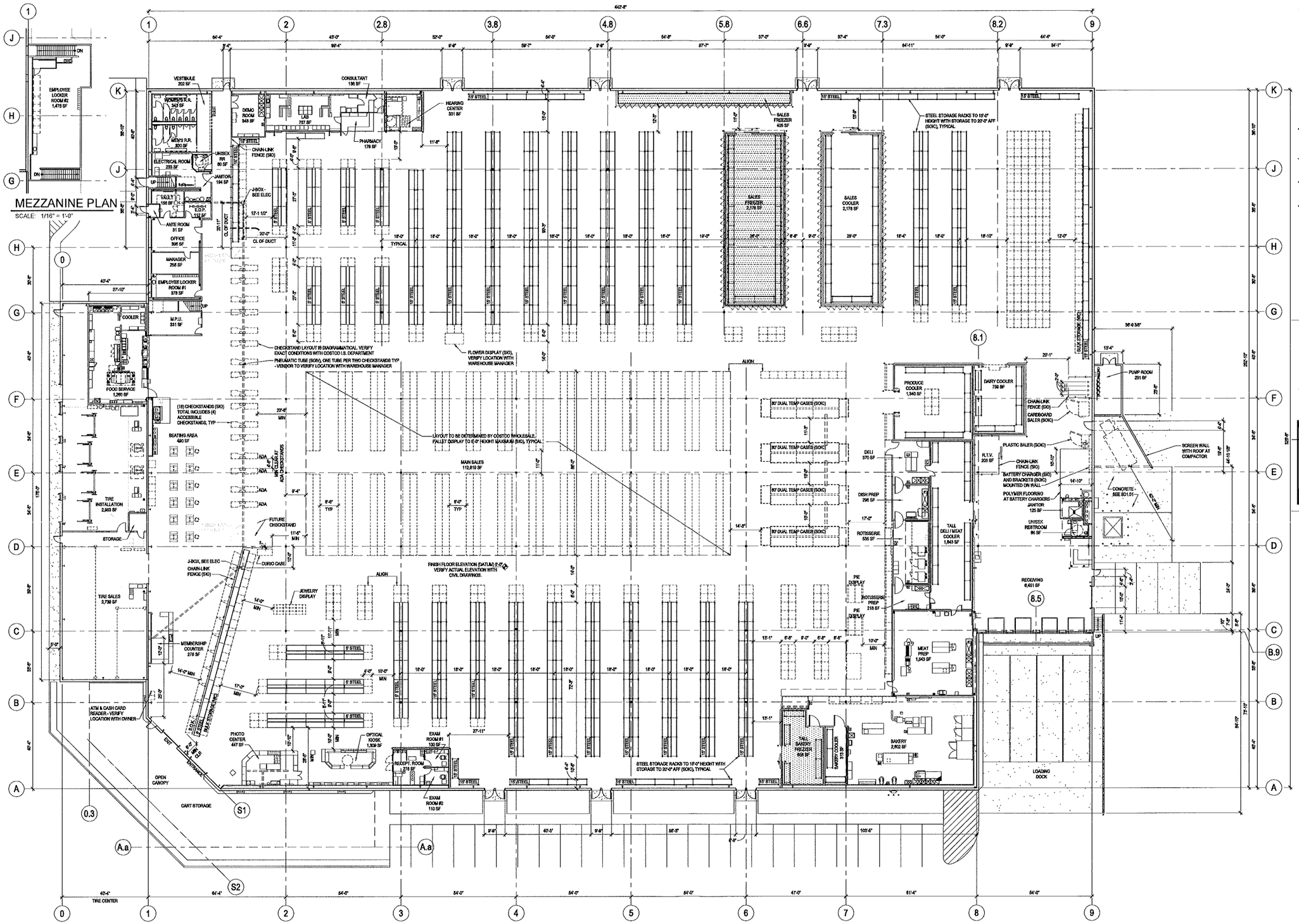
TRUCK
SWEPT PATHS

3.2

COSTCO WHOLESALE

LODI, CALIFORNIA

TRUCK SWEPT PATHS



APPROVED BY:

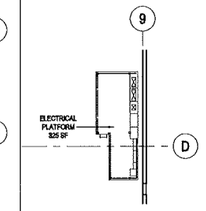
	DATE
EXECUTIVE VP	DATE
SENIOR VP	DATE
REGIONAL VP	DATE

PROJECT DATA

BUILDING DATA:	
BUILDING AREA	139,606 S.F.
TIRE CENTER	5,692 S.F.
FOOD SERVICE	1,260 S.F.
EMPLOYEE LOCKER R.M #2	1,475 S.F.
TOTAL BUILDING	148,234 S.F.
PUMP ROOM	261 S.F.

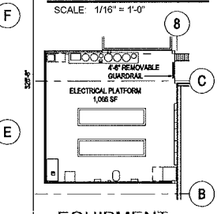
RACK COUNT:	
GROCERY RACKS (15 ft.)	184
CENTER SECTION	17,143 S.F.
HARDLINE RACKS (15 ft.)	136

NOTES:



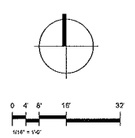
ELECTRICAL PLATFORM

SCALE: 1/16" = 1'-0"



EQUIPMENT PLATFORM

SCALE: 1/16" = 1'-0"



COSTCO WHOLESALE

LODI, CA

HARNEY LN. & HWY 99
LODI, CA

MULVANNY G2

1110 112TH AVE. NE | SUITE 500
BELLEVUE, WA | 98004
T 425.463.2000 | F 425.463.2002

MulvannyG2.com

07-0449-01
FEBRUARY 5, 2010

CONCEPT FLOOR PLAN

4

COSTCO WHOLESALE

LODI, CALIFORNIA

CONCEPT FLOOR PLAN

FEBRUARY 5, 2010

1 SOUTH ELEVATION
SCALE: 1/16" = 1'-0"

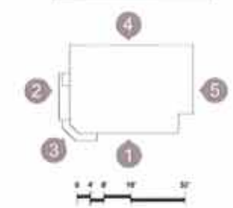
2 WEST ELEVATION
SCALE: 1/16" = 1'-0"

3 ENTRY ELEVATION
SCALE: 1/16" = 1'-0"

4 NORTH ELEVATION
SCALE: 1/16" = 1'-0"

5 EAST ELEVATION
SCALE: 1/16" = 1'-0"

KEY PLAN



COSTCO WHOLESALE
LODI, CA

MULVANNY G2

07-0449-01
FEBRUARY 5 2010
CONCEPT ELEVATIONS

5

COSTCO WHOLESALE

LODI, CALIFORNIA

CONCEPT ELEVATIONS

FEBRUARY 5, 2010

TREE LEGEND

SYMBOL	BOTANICAL / COMMON NAME
	Koelreuteria bipinnata / Chinese Flame Tree
	Lagerstroemia hyb. 'Dynamite' / Dynamite Crape Myrtle
	Lagerstroemia hyb. 'Tuscarora' / Tuscarora Crape Myrtle
	Pistacia chinensis / Chinese Pistache
	Quercus ilex / Holly Oak
	Sequoia sempervirens 'Aptos Blue' / Aptos Blue Coast Redwood
	Ulmus parvifolia 'True Green' / True Green Chinese Elm
	Zelkova serrata 'Village Green' / Village Green Japanese Zelkova

IRRIGATION SYSTEM STATEMENT

THE IRRIGATION SYSTEM WILL BE A WATER EFFICIENT LOW FLOW, LOW GALLONAGE SYSTEM DESIGNED TO PROVIDE ADEQUATE SUPPORT OF PLANT GROWTH AND INSURE DEEPLY ROOTED PLANT MATERIAL WHILE AVOIDING EXCESS WATER APPLICATION. THE SYSTEM WILL BE PROGRAMMABLE, ALLOWING OPERATION DURING EARLY MORNING HOURS, WHICH WILL CONSERVE WATER (LESS WIND EVAPORATION). IRRIGATION MATERIALS SPECIFIED FOR THE SITE WILL BE SELECTED ON THE BASIS OF DURABILITY AND EASE OF MAINTENANCE.

SHRUB LEGEND

MIX OF SHRUBS AND GROUND COVERS SHALL BE PROVIDED INCLUDING THE FOLLOWING POTENTIAL PLANT OPTIONS BELOW.

SHRUBS AND PERENNIALS

BOTANICAL / COMMON NAME	SIZE
Berberis thunbergii 'Rose Glow' / Dwarf Red Japanese Barberry	5 gal.
Chondropetalum tectorum / Cape Rush	1 gal.
Cotoneaster dammeri 'Lowfast' / Lowfast Cotoneaster	1 gal.
Dianella caerulea 'Little Becca' / Little Becca Dianella	1 gal.
Dianella revolute 'Big Rev' / Big Rev Dianella	1 gal.
Dianella revolute 'Little Rev' / Little Rev Dianella	1 gal.
Dianella tasmanica / Tasred Dianella	1 gal.
Dietes vegeta / Fortnight Lily	5 gal.
Dietes vegeta 'Variegata' / Variegated Fortnight Lily	5 gal.
Hemerocallis hyb. 'Bitsy' / Yellow Daylily (Evergreen)	1 gal.
Lavandula stoechas 'Otto Quast' / Otto Quast Lavender	1 gal.
Lomandra longifolia 'Breeze' / Breeze Mat Rush	1 gal.
Phormium tenax 'Bronze Baby' / Bronze Baby Flax	15 gal.
Phormium hyb. 'Yellow Wave'/ Yellow Wave Flax	15 gal.
Plumbago auriculata 'Royal Cape' / Royal Cape Plumbago	1 gal.
Rhamnus californica 'Mound San Bruno'/ Mound San Bruno Coffeeberry	5 gal.
Rosa 'Red Drift' / Red Drift Rose	5 gal.
Salvia leucantha 'Midnight' / Midnight Mexican Bush Sage	1 gal.

GROUND COVER

Rosemary 'Lockwood de Forest' / Lockwood de Forest Rosemary	1 gal.
Rosmarinus officinalis 'Collingwood Ingram'/ Collingwood Ingram Rosemary	1 gal.

ORNAMENTAL GRASS

Festuca mairei / Atlas Fescue	1 gal.
Pennisetum orientale / Oriental Fountain Grass	1 gal.

NORTH

0 10 20 40 80

COSTCO WHOLESALE

HARNEY LN. & HWY. 99
LODI, CA

DAVID BABCOCK & ASSOCIATES

0008.P.119
FEBRUARY 5, 2010

CONCEPT LANDSCAPE PLAN

6

COSTCO WHOLESALE

LODI, CALIFORNIA

CONCEPT LANDSCAPE PLAN

LODI
PLANNING COMMISSION
Staff Report

MEETING DATE: March 24, 2010

APPLICATION NO: SPARC: 10-SP-02

REQUEST: Request for Planning Commission approval of a SPARC application concerning the Reynolds Ranch Shopping Center. (Applicant: Jennifer Krauter, RMB Architects on behalf of San Joaquin Valley Land Co., LLC. File No. 10-SP-02).

LOCATION: 322 East Harney Lane. Approximately 15 acres located at the southwest corner of Harney Lane and State HWY 99.

APPLICANT: Jennifer Krauter, RMB Architects on behalf of San Joaquin Valley Land Co., LLC., 227 Watt Avenue., Second Floor., Sacramento, CA.

PROPERTY OWNER: San Joaquin Valley Land Company CO.,LLC, 1420 S. Mills Ave., Suite K, Lodi, CA 95242

RECOMMENDATION: Staff recommends the Planning Commission approve the site and architectural plan of the proposed Reynolds Ranch shopping center, subject to the conditions listed in the attached draft resolution.

PROJECT/AREA DESCRIPTION

General Plan Designation: NCC- Neighborhood Community Commercial.
Zoning Designation: Planned Development (39).
Property Size: Approximately 50 acres.

Adjacent General Plan, Zoning and Land Use:

	General Plan	Zone	Existing Conditions
North	NCC- Neighborhood Community Commercial.	Planned Development (39)	COSTCO site and further north are residences
South	NCC, community commercial and O –Office	Planned Development (39)	Vacant parcels and Blue Shield office.
East	GA, General Agriculture (San Joaquin County)	AG-40, Agricultural Uses (San Joaquin County)	State Highway 99, and east of that Agricultural, residential and cemetery uses.
West	NCC, community commercial and O –Office	Planned Development (39)	Agricultural Uses and east of that are residential uses within the Reynolds Ranch annexation.

SUMMARY
The project proponent requests approval of site plan and architecture of the Reynolds Ranch shopping center. The City's Zoning Code requires all plot plans for projects within the commercial zoning districts receive site plan and architecture review approval. The proposed Reynolds Ranch

commercial development involves the construction of approximately 345,795 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 19 buildings of varying sizes. The primary use will be a Home Depot. Since the Planning Commission approved the COSTCO, and since this project is within the same shopping center, staff feels the Planning Commission should review the site plan and architecture of the remainder of the shopping center to ensure consistency and architectural coherence.

BACKGROUND:
The Reynolds Ranch project was annexed in to the City of Lodi in 2006 as a mixed-use development. As part of the annexation process, an environmental impact report was prepared and certified, new General Plan and zoning designations were approved and a Development Agreement was signed. The development includes retail and residential uses, Public Park, fire station, self-storage facility, and the Blue Shield office complex, a major component of the development.

In the summer of 2008, the developer requested to amend previous approvals. Specifically, the developer requested a General Plan Amendment to increase the size of the commercial acreage from 40.5 acres to 75.6 acres and reduce the residential acreage from 96.6 acres to 78 acres. The applicant's request was first considered by the Planning Commission at its hearing of August 27, 2008 and continued to September 10, 2008. At that hearing, the Planning Commission approved the Vesting Tentative Map and recommended the City Council amend the General Plan for the Reynolds Ranch development. The City Council, acting upon the Planning Commission's recommendation for approval, amended the General Plan at their meeting of September 17, 2008.

On February 10, 2010, COSTCO Wholesale requested approval of a Use Permit to allow the sale of alcoholic beverages and approval of site plan and building elevation of the COSTCO Wholesale warehouse. At their regular hearing of February 10, 2010, the Planning Commission approved the COSTCO Wholesale's request for a Use Permit and SPARC application. The COSTCO Wholesale site is immediately north of the project site.

ANALYSIS:
Site Plan:
The project proponent requests approval of site plan and architecture of the Reynolds Ranch shopping center. The City's Zoning Code requires all plot plans for projects within the commercial zoning districts receive site plan and architecture review approval. Over time, this review has been done through the Use Permit process for shopping centers and through SPARC review for individual buildings. This item has been brought to the Planning Commission because it requires site plan and architecture review and approval. Since the Planning Commission approved the COSTCO warehouse, and since this project is within the same shopping center, staff feels the Planning Commission should review the site plan and architecture of the remainder of the shopping center to ensure consistency and architectural coherence.

The proposed Reynolds Ranch commercial development involves the construction of approximately 345,795 square feet of commercial retail uses, representing a variety of retail sales and services, to be contained in 19 buildings of varying sizes (excluding the COSTCO building). The site layout places buildings close to streets and access points. The primary use will be Home Depot, which will occupy approximately 106,154 square feet of floor area, including approximately 28,086 square feet for a garden center. Two moderate sized retailers would be located on in the eastern portion of the center. Three moderately sized spaces ranging in size from 22,000 to 33,000 sq. ft. will be located southwest of the site (west of the proposed Home Depot). The remaining shell buildings will be distributed throughout the site and will range in size from 13,225 square feet to 3,200 square feet.

These buildings will be occupied by fast food franchises, sit-down restaurants, financial services/bank, professional/business services, and other retail sales and services.

The Home Depot warehouse proposes seasonal and permanent outdoor display and sales area. The proposed seasonal outdoor display and sales area would be located within the parking lot north of the building (10,000 sq. ft), a permanent outdoor storage area would be located within the parking lot west of the building (170 sq. ft), and permanent display area immediately outside of the building. The larger seasonal outdoor display and sales area would displace approximately 40 parking spaces while the western storage area would be permanent and would occupy 17 parking stalls (attachment C). The seasonal display and sales area would be for seasonal items such as Christmas trees, trees, plants, and nursery materials etc. The permanent outdoor display area would be for items such as propane, and promotional items.

In the past the City's Planning, Building, and Fire departments have all worked diligently with applicants on concerns regarding the location of outdoor display areas. Outdoor sale and display area often cause concerns regarding safety. Outdoor display and sale of items within a parking lot of a store disrupt traffic circulation, and force patrons to load their purchases within the fire lane whereby fire lanes could be blocked, which would threaten public safety by restricting emergency vehicle access. Further, items displayed in outdoor display and sales area often cause non-storm water flows and other deleterious materials to enter the storm drain system. The most effectively way to reduce non-stormwater discharges to the stormwater drainage system is to eliminate sources of pollutants. In addition, outdoor merchandise could spill out into the drive aisles and disrupt vehicle and pedestrian circulations patterns, thereby creating safety issues.

In the past the Planning Commission has approved similar requests for outdoor display areas, particularly for home improvement businesses such as Lowe's and Lodi Shopping Center. In both of those cases the approved outdoor display area is limited to the area immediately outside of the buildings. Outdoor display, storage or sale of merchandise within the parking lot has been explicitly prohibited. Staff recommends that conditions be placed on the proposed project to limit outdoor sales immediately outside of the building (similar to Lowe's) and no additional permanent or seasonal outdoor storage/display area be permitted, unless the design is made permanent with appropriate fencing, landscaping, etc.

Architecture:

The architectural theme of the shopping center is early agricultural style articulated by canopies, overhangs, wood type siding, recessed columns, metal roofing, red bricks, and tower elements. Additionally, there is a free standing arch element provided. Sample elevations are provided under Attachment D. The proposed colors for the Home Depot include shades of gray and silver, accented with awnings, metal roof and decorative architectural elements designed to break up the mass appearance. Although the proposed architectural design of the center is consistent with the building design standards and design elements established in the LMC 17.58 *Design Standards for Large Retail Establishments*, architectural design of the previously approved COSTCO building drastically differs from the remainder of the shopping center. Staff will work with both applicants to ensure architectural coherence for the site is achieved consistent with the municipal code and conditions placed on the COSTCO approval.

Signage:

The approval of project signage is not a part of the current review and would be subject to City of Lodi codes and requirements to ensure they complement the building architecture and landscaping. Signage applications and approvals would be completed separately. However, the applicants have illustrated the location and design of the signs they intend to use. All wall mounted signs will have to

be individual letters and no cabinet “canned” signs would be permitted. This would be consistent with previously approved shopping centers (condition #19). It is unclear at the moment if the project will include free standing signs. One free standing sign per shopping center is permitted under the LMC 17.63 *Signs*. A free standing sign will require a separate building permit and, if necessary, SPARC review and approval.

Traffic Circulation/Parking:
As shown the site plan, the primary access to the proposed shopping center is provided from Harney Lane via Reynolds Ranch Parkway. As shown on the site plan, the main entrance to the project parking lot is from the proposed signaled drive which intersects Reynolds Ranch Parkway. Three secondary access points are also provided from Reynolds Ranch Parkway, located further south. These access points provide satisfactory traffic circulation in and out of the shopping center.

In accordance with Lodi Municipal Code (LMC) Section 17.58.110, buildings are located close to streets and parking is provide behind the buildings, which reduces the undesirable visual impact of the paved parking surface. Parking spaces are distributed around all buildings. The City’s large design standards for large retail establishments allows a maximum parking stalls five spaces for every one thousand square feet of building space. The proposed shopping center contains total of 345,795 square feet of tenant spaces. The proposed development allows a total 1,729 parking spaces (General Retail 5/1000), 1,728 spaces are being provided, which includes ADA compliant parking stalls for each building. Consistent with the COSTCO approval conditions and the existing Blue Shield development, parking lot light fixtures must be a maximum of twenty-five feet in height and no spillover beyond the property line will be permitted. This would ensure all light fixtures throughout the center are consistent. A condition has been added to require the applicant to provide a photometric plan prior to the issuance of building permits (condition # 25).

Landscaping:
In accordance with Lodi Municipal Code (LMC) Section 17.58.110, landscaping requirements for these types of projects are one shading tree per four parking spaces, one large tree per 500 sq. ft. of open space, 25% of all trees must be 15 gal. or larger, 25% of all shrubs must be 5 gal. or larger, and groundcover must be provided where necessary. Landscaping must achieve minimum fifty percent shading requirement within five years of planting. The applicant has submitted a generic landscape plan, which calls for various large shade trees, smaller trees, shrubs and ground covers distributed throughout the parking. Given the size of the building, the project proponent is required to provide 433 larger shade (one tree per four stalls) distributed within the parking lot interior and additional one tree for every 500 sq. ft. open space. As shown the plans, the applicant provides 418 large parking lot trees and 353 open space shading tree. Supplementing the trees, there would also be a variety of medium to small shrubs, ground cover and special grasses for swale areas for the Home Depot parking lot. Conditions of approval require the applicant to provide additional parking lot trees to reduce island-heat effect and to meet the City’s standards (condition # 30). As shown the landscape palette, substantial amount of the proposed plant material for the new site would be drought tolerant and would use less water than other common species. The proposed irrigation system uses deep root watering bubblers for parking lot shade trees to minimize usage and ensure that water goes directly to the intended planting areas.

Once site development and construction is completed, the proposed Home Depot alone will employ approximately 100 to 150 employees during three daily shifts (the store proposes to be open 24 hours a day, 7 days a week). The proposed development is consistent with the City’s General Plan and is an attractive addition to the City in that the proposed commercial development will provide much needed services to the City of Lodi, enhance the City’s economic viability, increase the tax base and provide employment opportunities for residents. The proposed development is in full

conformance with the applicable City regulations, including LMC Section 17.58 of the Municipal Code Design Standards for Large Retail Establishments. These standards were adopted in 2004 specifically to deal with the design of large scale retail establishments. The applicant's project meets or exceeded each of these standards as presented and conditioned. Therefore, staff is recommending that the Planning Commission approve this request.

PUBLIC HEARING NOTICE:
Legal Notice for the Use Permit was published on March 13, 2010. 52 public hearing notices were sent to all property owners of record within a 300-foot radius of the project site as required by California State Law §65091 (a) 3. Public notice also was mailed to interested parties who had expressed their interest of the project. No protest letter has been received.

ALTERNATIVE PLANNING COMMISSION ACTIONS:

- Approve with additional/different conditions
- Deny the SPARC request
- Continue the request

Respectfully Submitted,

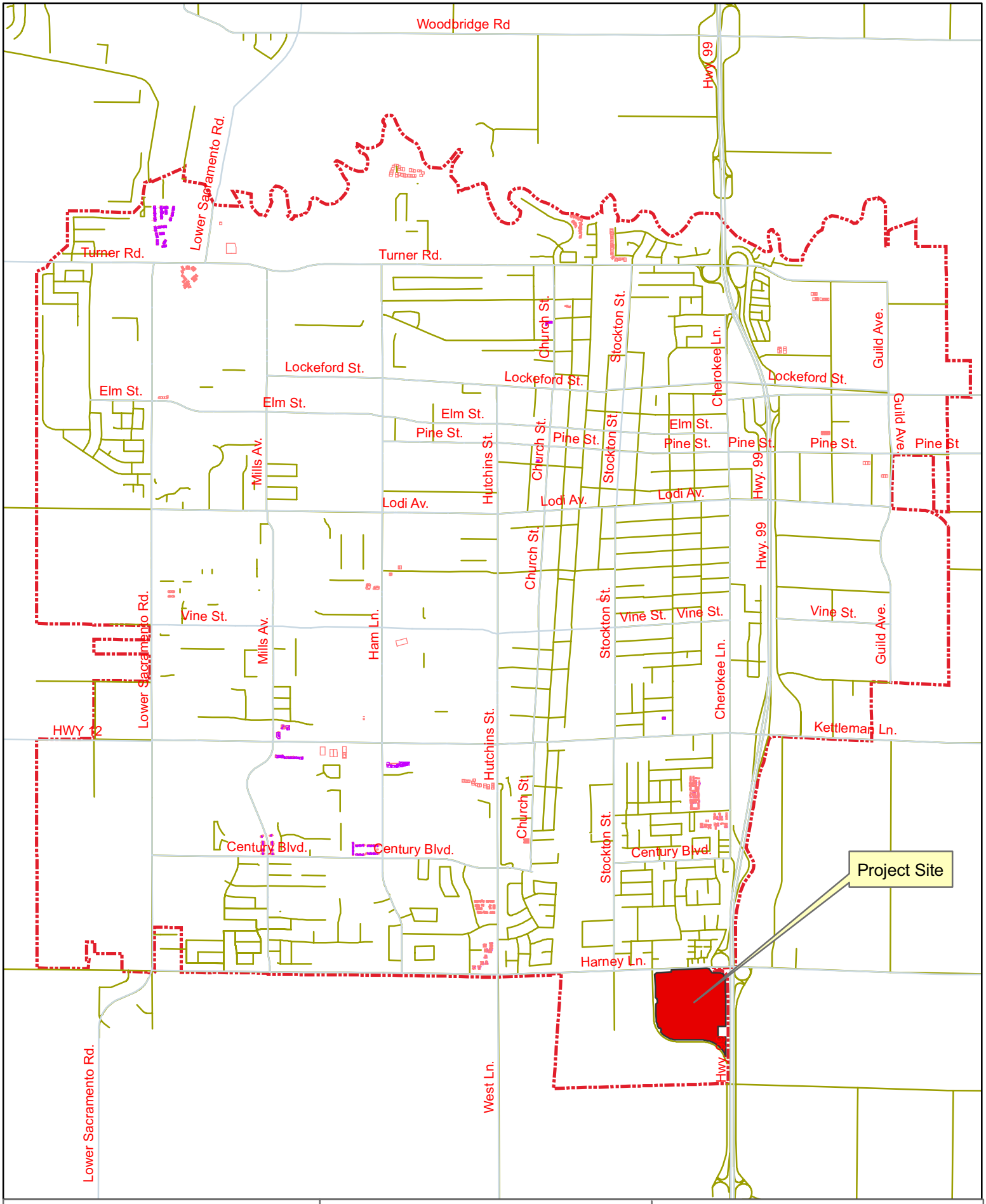
Immanuel Bereket
Assistant Planner

Concur,

Konradt Bartlam
Community Development Director

ATTACHMENTS:

A. Vicinity Map
B. Site Plan (including truck path and landscape plans)
C. Color Elevation
D. Resolution



N
W E
S

0 0.125 0.25 0.5 0.75 1 Miles

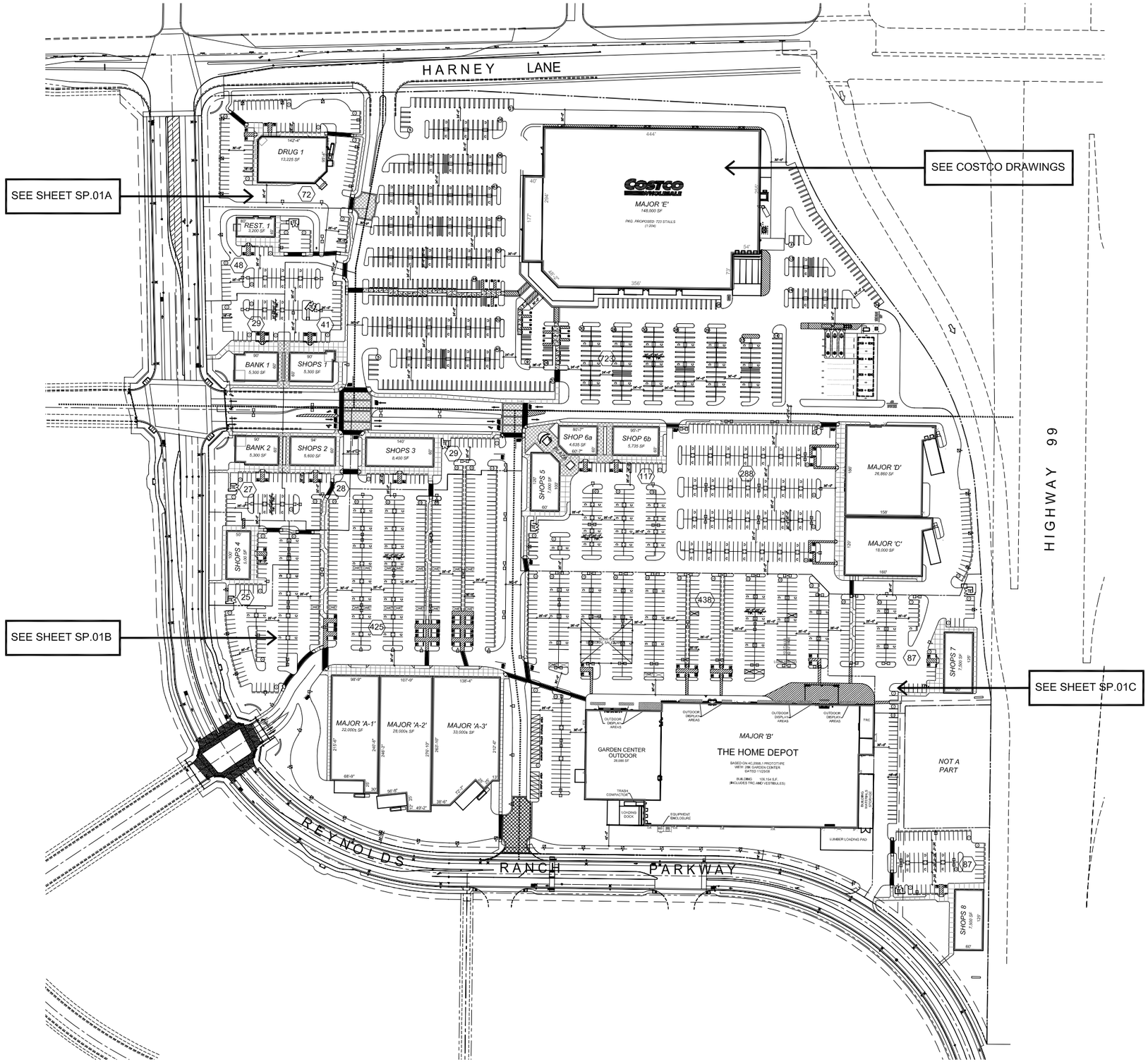
ESRI

Vicinity Map

322 East Harney Lane
Lodi, CA 95240

Legend

Reynolds Ranch Shopping Center



PROJECT STATISTICS

BUILDING	SF
MAJOR A1	22,000
MAJOR A2	28,000
MAJOR A3	33,000
MAJOR B	134,240
MAJOR C	18,000
MAJOR D	26,860
MAJOR E	148,000
DRUG 1	13,225
REST 1	3,200
BANK 1	5,300
SHOPS 1	5,300
BANK 2	5,300
SHOPS 2	5,600
SHOPS 3	8,400
SHOPS 4	5,000
SHOPS 5	7,000
SHOPS 6a	4,635
SHOPS 6b	5,735
SHOPS 7	7,500
SHOPS 8	7,500
TOTAL	493,795

TOTAL PARKING ALLOWED AT 5/K	2,469
TOTAL PARKING AVAILABLE	2,464

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

0 40 80 160 320

Scale: 1" = 80'-0"

N

Project:

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

(P) 209.333.3400
(F) 209.333.3430

Overall Site Plan

Preliminary

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A5 01.27.10

Sheet: **SP.01**

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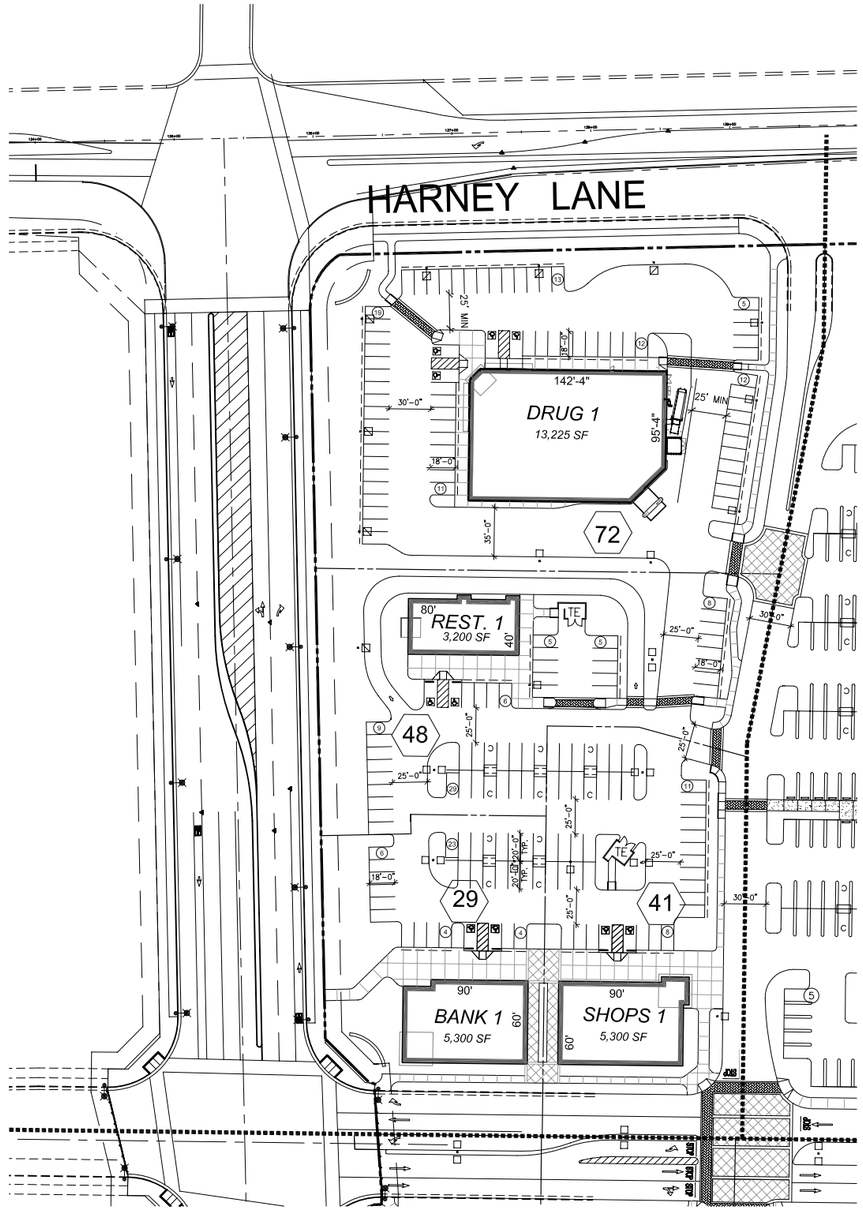
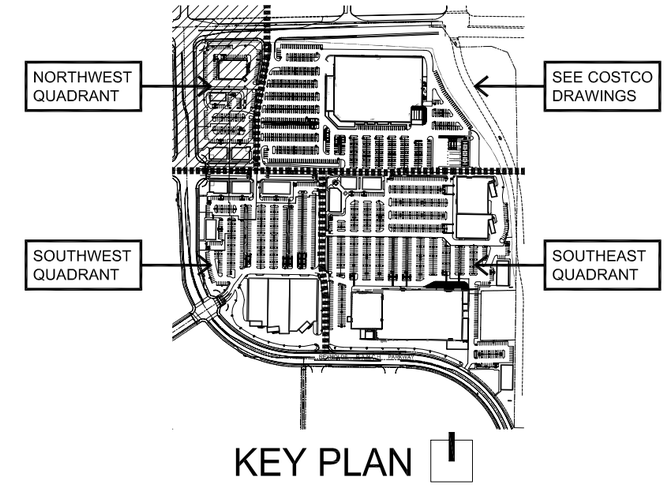


NORTHWEST QUADRANT



KEY PLAN

Project:

Reynolds Ranch

Highway 99 & Harney Way
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

(P) 209.333.3400
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Partial Site Plan

Northwest Quadrant

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A4 01.27.10

Sheet: **SP.01A**

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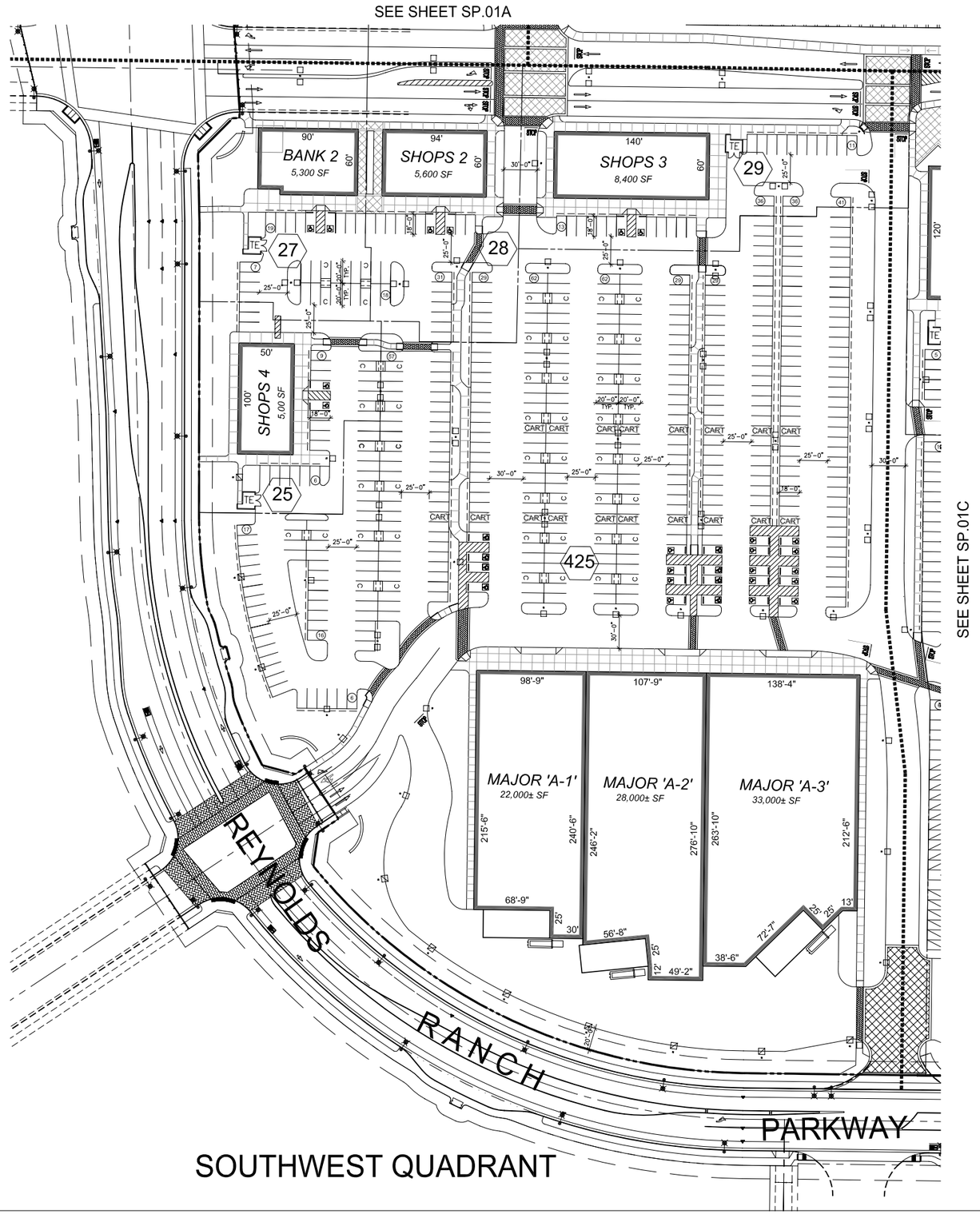
Reynolds Ranch ▪ Highway 99 & Harney Way Lodi, California

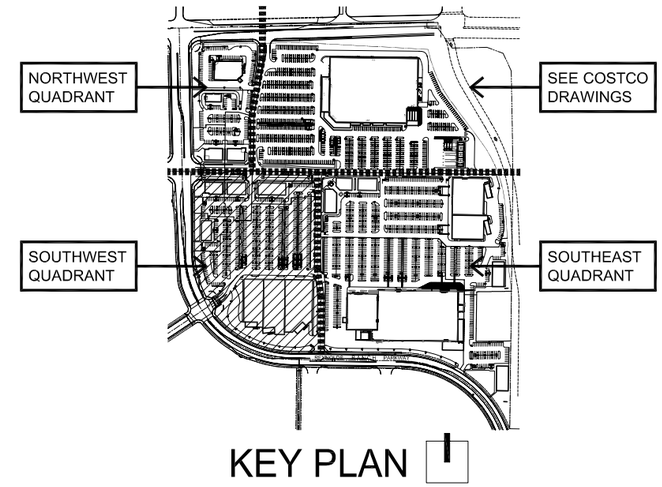
0 20 40 80 160

Scale: 1" = 40'-0"

N



SOUTHWEST QUADRANT



KEY PLAN

Reynolds Ranch ▪ Highway 99 & Harney Way Lodi, California

0 20 40 80 160

Scale: 1" = 40'-0"

N

Project:

Reynolds Ranch

Highway 99 & Harney Way
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

(P) 209.333.3400
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Partial Site Plan

Southwest Quadrant

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A4 01.27.10

Sheet: **SP.01B**

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SEE SHEET SP.01B

SEE SHEET SP.01D

SHOP 6a
4,635 SF
80'-7"
60'-7"

SHOP 6b
5,735 SF
95'-7"
60'

PLAZA

SHOPS 5
7,000 SF
120'
100'
60'

117

288

438

87

MAJOR 'D'
26,860 SF
186'
158'

MAJOR 'C'
18,000 SF
120'
160'

10,000 S.F.
SEASONAL SALES AREA

10 STALLS @ 10' WIDE

LOAD AND GO

CART

SHOPS 7
7,500 SF
125'
60'

SHOPS 8
7,500 SF
125'
60'

MATCH LINE 'A'

OUTDOOR DISPLAY AREAS

MAJOR 'B'

THE HOME DEPOT

BASED ON 4C.2008.1 PROTOTYPE
WITH 28K GARDEN CENTER
DATED 11/25/08

BUILDING 106,154 S.F.
(INCLUDES TRC AND VESTIBULES)

GARDEN CENTER
OUTDOOR
28,086 SF

TRC

TRASH COMPACTOR

LOADING DOCK

EQUIPMENT ENCLOSURE

BUILDING MATERIALS STORAGE

LUMBER LOADING PAD

WORKSPORT TRAILER STORAGE AREA

SHED DISPLAY AREA

NOT A PART

REYNOLDS RANCH PARKWAY

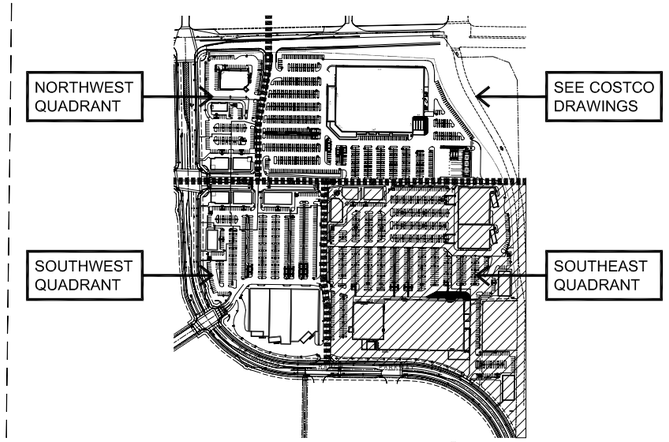
SOUTHEAST QUADRANT

MATCH LINE 'A'

0 20 40 80 160

Scale: 1" = 40'-0"

N



KEY PLAN

Project:

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

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Partial Site Plan

Southeast Quadrant

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A4 01.27.10

Sheet: **SP.01C**

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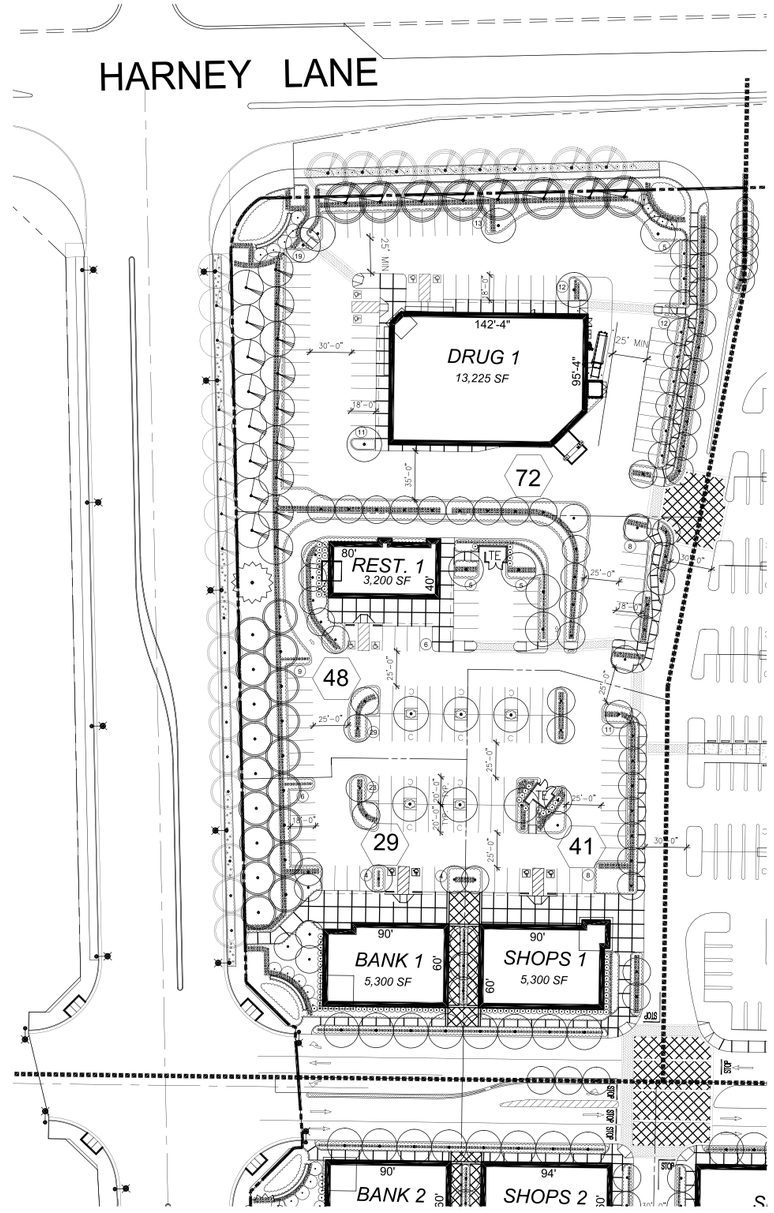
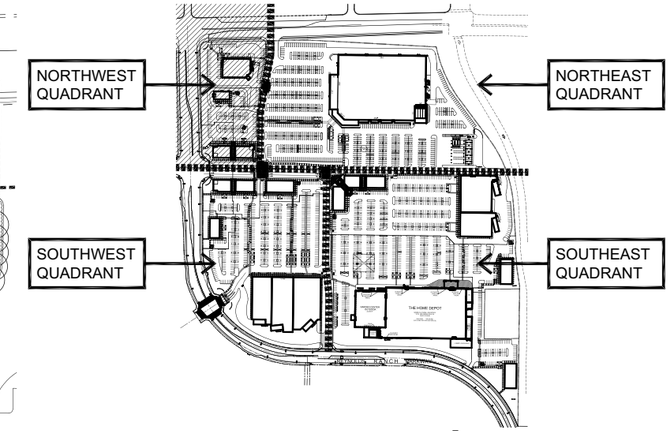
Reynolds Ranch ▪ Highway 99 & Harney Lane Lodi, California

PLANT PALETTE

SYMBOL	Botanical Name / COMMON NAME	WATER USE CATEGORY
TREES - All trees will be 15 gallon size		
Trees 30' diameter canopy such as:	Cedrus deodara DEODAR CEDAR	Medium
	Gingko biloba 'Autumn Gold' AUTUMN GOLD GINGKO	Medium
	Koelreuteria bipinnata CHINESE FLAME TREE	Medium
	Pistacia chinensis CHINESE PISTACHE	Medium
	Quercus agrifolia COAST LIVE OAK	Very Low
	Ulmus parvifolia 'True Green' TRUE GREEN CHINESE ELM	Medium
	Zelkova s. 'Village Green' VILLAGE GREEN ZELKOVA	Medium
Trees 25' diameter canopy such as:	Acer rubrum 'Red Sunset' Red Sunset Maple	Medium
	Gleditsia triacanthos 'Skyline' SKYLINE HONEY LOCUST	Medium
	Laurus N. 'Saratoga' SARATOGA SWEET BAY	Medium
	Nyssa sylvatica SOUR GUM	Medium
	Olea 'Wilsoni' WILSON OLIVE	Low
	Pyrus c. 'Redspire' REDSPIRE PEAR	Medium
Trees 20' diameter canopy such as:	Lagerstroemia 'Dynamite' DYNAMITE CRAPE MYRTLE	Low
	Lagerstroemia 'Natchez' NATCHEZ CRAPE MYRTLE	Low
	Pyrus kawakamii EVERGREEN PEAR	Medium
SHRUBS - 25% will be five gallon size and 75% will be one gallon size		
Tall Shrubs such as:	Bambusa 'Alphonse Karr' ALPHONSE KARR BAMBOO	Low
	Heteromeles arbutifolia TOYON	Low
	Phormium tenax NEW ZEALAND FLAX	Low
	Prunus lusitanica PORTUGUESE LAUREL	Low
	Rhaphiolepis 'Majestic Beauty' NCN	Low
Medium Shrubs such as:	Euonymus j. 'Green Spire' GREEN SPIRE EUONYMUS	Low
	Mahonia p. 'Ken Hartman' KEN HARTMAN MAHONIA	Low
	Myrsine africana AFRICAN BOXWOOD	Low
	Myrtus communis MYRTLE	Low
	Nandina d. 'Compacta' DWARF HEAVENLY BAMBOO	Low
	Nandina d. 'Gulfstream' GULFSTREAM HEAVENLY BAMBOO	Low
	Phlomis fruticosa JERUSALEM SAGE	Low
Small Shrubs such as:	Callistemon v. 'Little John' LITTLE JOHN WEEPING BOTTLEBRUSH	Low
	Dietes bicolor FORTNIGHT LILY	Low
	Euonymus j. 'Silver Princess' SILVER PRINCESS EUONYMUS	Low
	Juniperus r. conferta SHORE JUNIPER	Low
	Mahonia repens CREEPING MAHONIA	Low
	Nandina d. 'Harbor Dwarf' HARBOR DWARF HEAVENLY BAMBOO	Low
	Rhaphiolepis u. 'Minor' DWARF YEDDO HAWTHORN	Low
PERENNIALS - will come from one gallon cans		
Perennials such as:	Kniphofia uvaria RED HOT POKER	Low
	Lantana NCN	Low
	Pelargonium hortorum GARDEN GERANIUM	Low
	Pennisetum a. 'Hameln' HAMELN FOUNTAIN GRASS	Low
	Salvia greggiii AUTUMN SAGE	Low
	Scaevola 'Mauve Clusters' NCN	Low
	Stachys b. 'Silver Carpet' SILVER CARPET LAMB'S EARS	Low
GROUNDCOVERS - will be from flats or one gallon cans		
Groundcovers such as:	Aptenia 'Red Apple' RED APPLE APTENIA	Low
	Arctostaphylos 'Emerald Carpet' EMERALD CARPET MANZANITA	Low
	Coprosma p. 'Verde Vista' NCN	Low
	Drosanthemum hispidum. NCN	Low
	Lampranthus spectabilis TRAILING ICEPLANT	Low
	Mow Free Turf Grass Blend	Medium
	Myoporum parvifolium NCN	Low
	Osteospermum fruticosum TRAILING AFRICAN DAISY	Low
	Verbena 'Tapien' NCN	Low
VINES - will be one gallon or five gallon size		
Vines such as:	Gelsemium sempervirens CAROLINA JESSAMINE	Low





KEY PLAN

IRRIGATION SYSTEM STATEMENT

The Irrigation System will be a water efficient, low pressure, subsurface system designed to provide adequate support of plant growth and promote deeply rooted plant material. The irrigation controller will be programmable such that the system can operate during early morning hours. The schedule will be based on historic and present-day evapotranspiration data from CIMIS (the California Irrigation Management System) so that the amount of water applied more closely approximates the amount of water needed by the plant material. This will reduce over-watering

PLANT PALETTE

The plants have been chosen with a view toward limiting the choices to those with relatively lower water requirements while still reflecting the regional character of our landscape. The trees are low to medium water users while the shrubs and perennials are primarily low water users (based on WUCOLS, the Water Use Classifications of Landscape Species as published by UC Cooperative Extension). Mown turf grass will not be part of this project. 7XUI VW\OH JURXQG FRYHUV ZLOO EH IUHH· WXU meadow grasses which have less demand for irrigation, fertilization and maintenance. In particular, the plant palette has been selected with a view toward minimizing maintenance as well as low water consumption.

NORTHWEST QUADRANT: PARKING AND TREE SUMMARY

TOTAL PARKING SPACES:	190
NUMBER OF PARKING LOT TREES:	67
NUMBER OF OTHER TREES:	79
TOTAL TREES:	146

CONCEPTUAL LANDSCAPE PLAN - NORTHWEST QUADRANT

0 20 40 80 160

Scale: 1" = 40'-0"

N

THE OFFICE OF
JEFFREY F. GAMBONI
LANDSCAPE ARCHITECT 2702
3012 PACIFIC AVENUE
STOCKTON 95204
209 948 8335

Project:

Reynolds Ranch

Highway 99 & Harney Way
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

(P) 209.333.3400
(F) 209.333.3430

Conceptual Landscape Plan

Northwest Quadrant

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A4 01.19.10

Sheet: **L-1**

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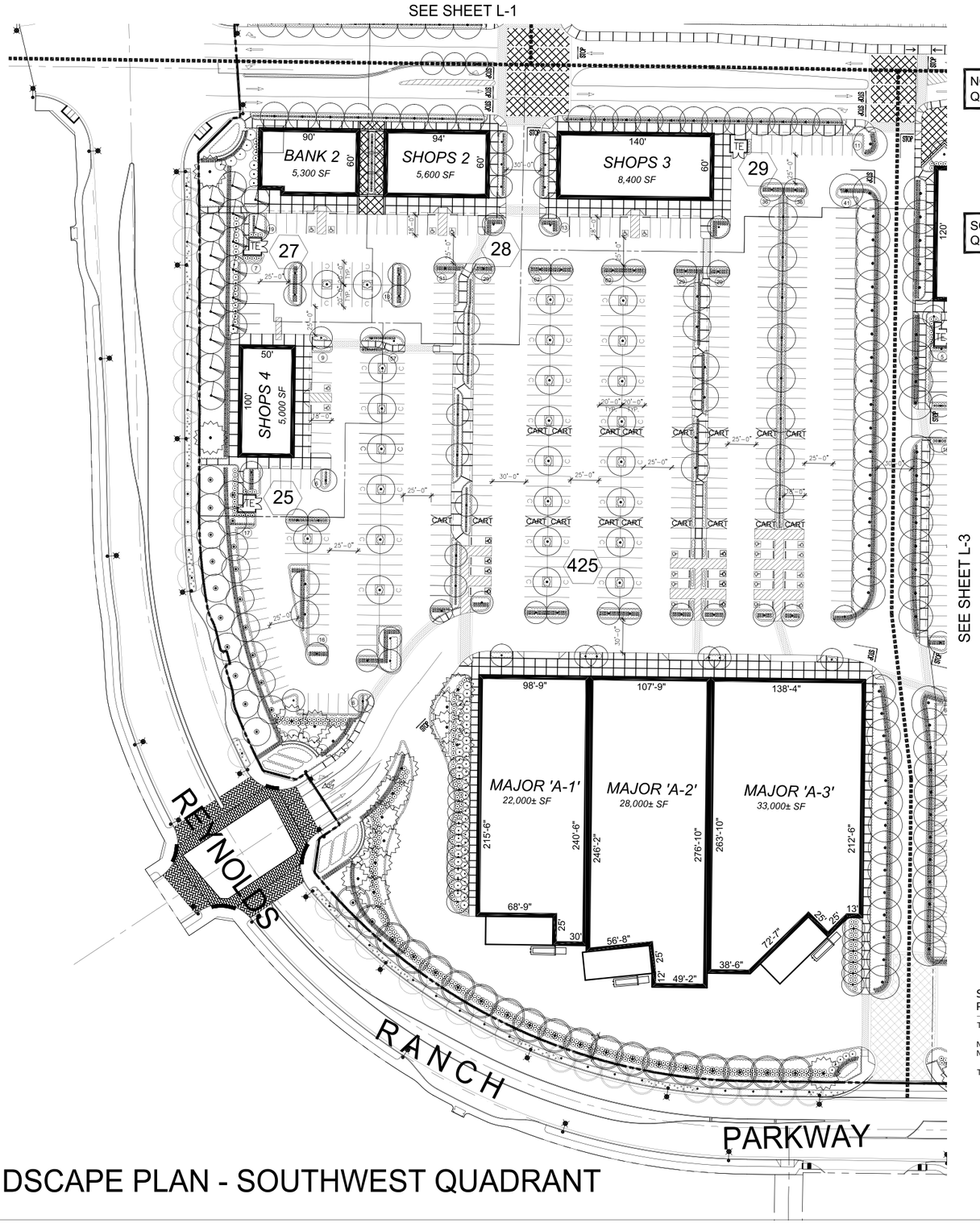
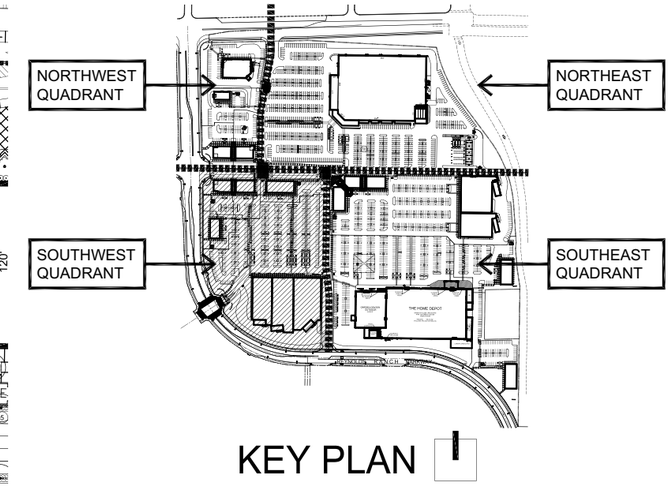
NOTE:
SEE SHEET L-1 FOR PLANT PALETTE





SOUTHWEST QUADRANT:
PARKING AND TREE SUMMARY

TOTAL PARKING SPACES:	534
NUMBER OF PARKING LOT TREES:	98
NUMBER OF OTHER TREES:	153
TOTAL TREES:	251

CONCEPTUAL LANDSCAPE PLAN - SOUTHWEST QUADRANT

Reynolds Ranch

Highway 99 & Harney Way
Lodi, California

0 20 40 80 160
Scale: 1" = 40'-0"
N

THE OFFICE OF
JEFFREY F. GAMBONI
LANDSCAPE ARCHITECT 2702
3012 PACIFIC AVENUE
STOCKTON 95204
209 948 8335

Project:
Reynolds Ranch
Highway 99 & Harney Way
Lodi, California

Developer:
San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242
(P) 209.333.3400
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Conceptual Landscape Plan
Southwest Quadrant

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A4 01.19.10

Sheet: **L-2**

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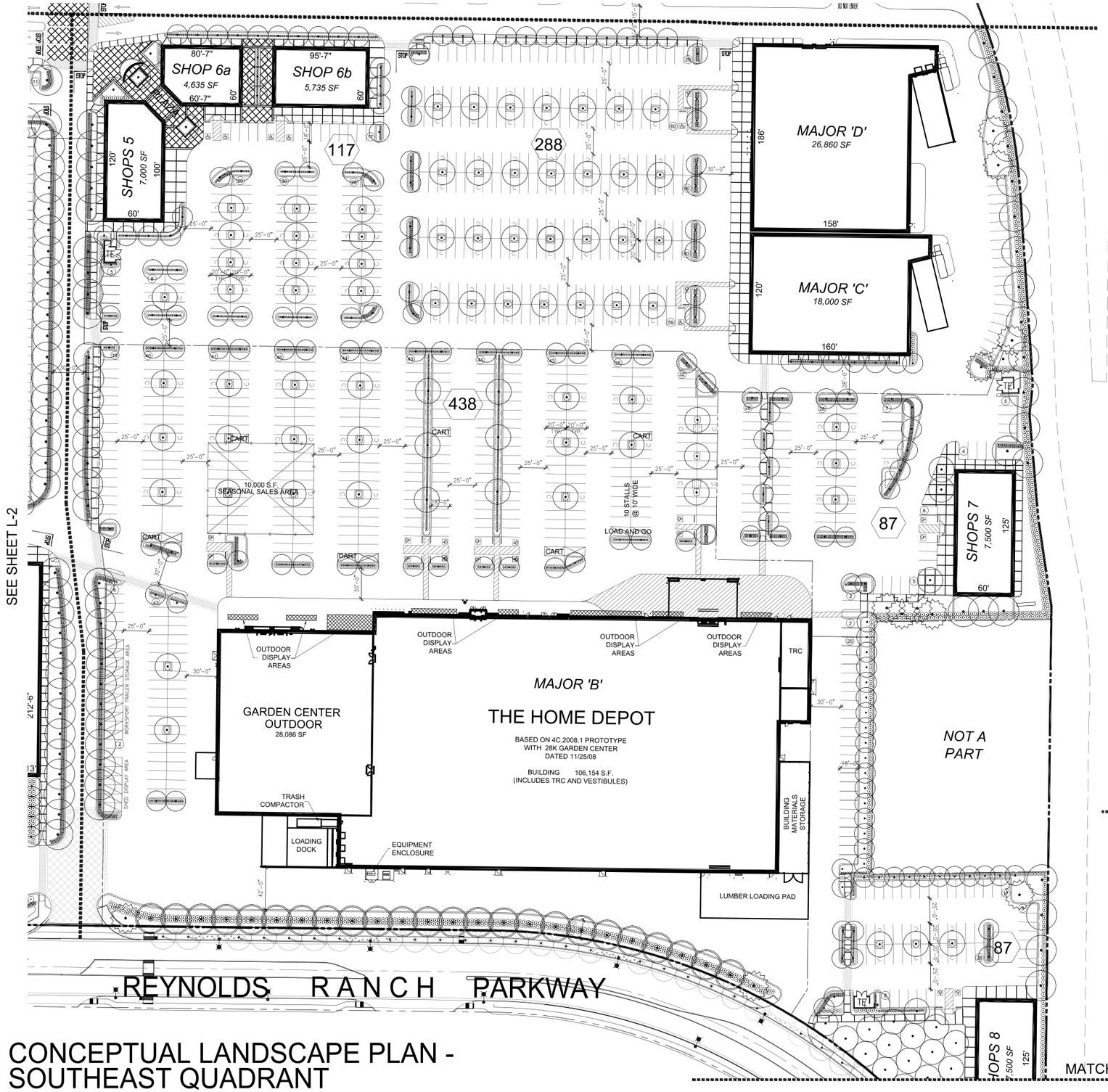
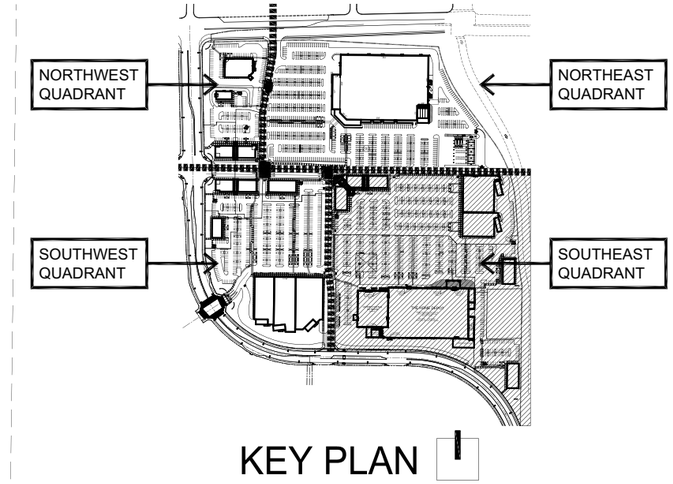


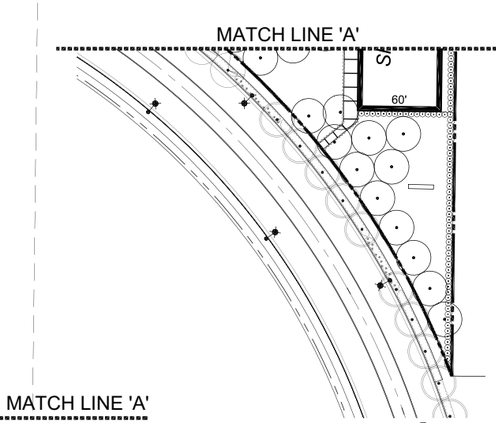


KEY PLAN

SOUTHEAST QUADRANT:
PARKING AND TREE SUMMARY

TOTAL PARKING SPACES:	1,017
NUMBER OF PARKING LOT TREES:	253
NUMBER OF OTHER TREES:	121
TOTAL TREES:	374

NOTE:
SEE SHEET L-1 FOR PLANT PALETTE



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Scale: 1" = 40'-0"

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CONCEPTUAL LANDSCAPE PLAN - SOUTHEAST QUADRANT

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

THE OFFICE OF
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LANDSCAPE ARCHITECT 2702
3012 PACIFIC AVENUE
STOCKTON 95204
209 948 8335

Project:

Reynolds Ranch

Highway 99 & Harney Way
Lodi, California

Developer:

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Lodi, CA 95242

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Conceptual Landscape Plan

Southeast Quadrant

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A4 01.19.10

Sheet: **L-3**

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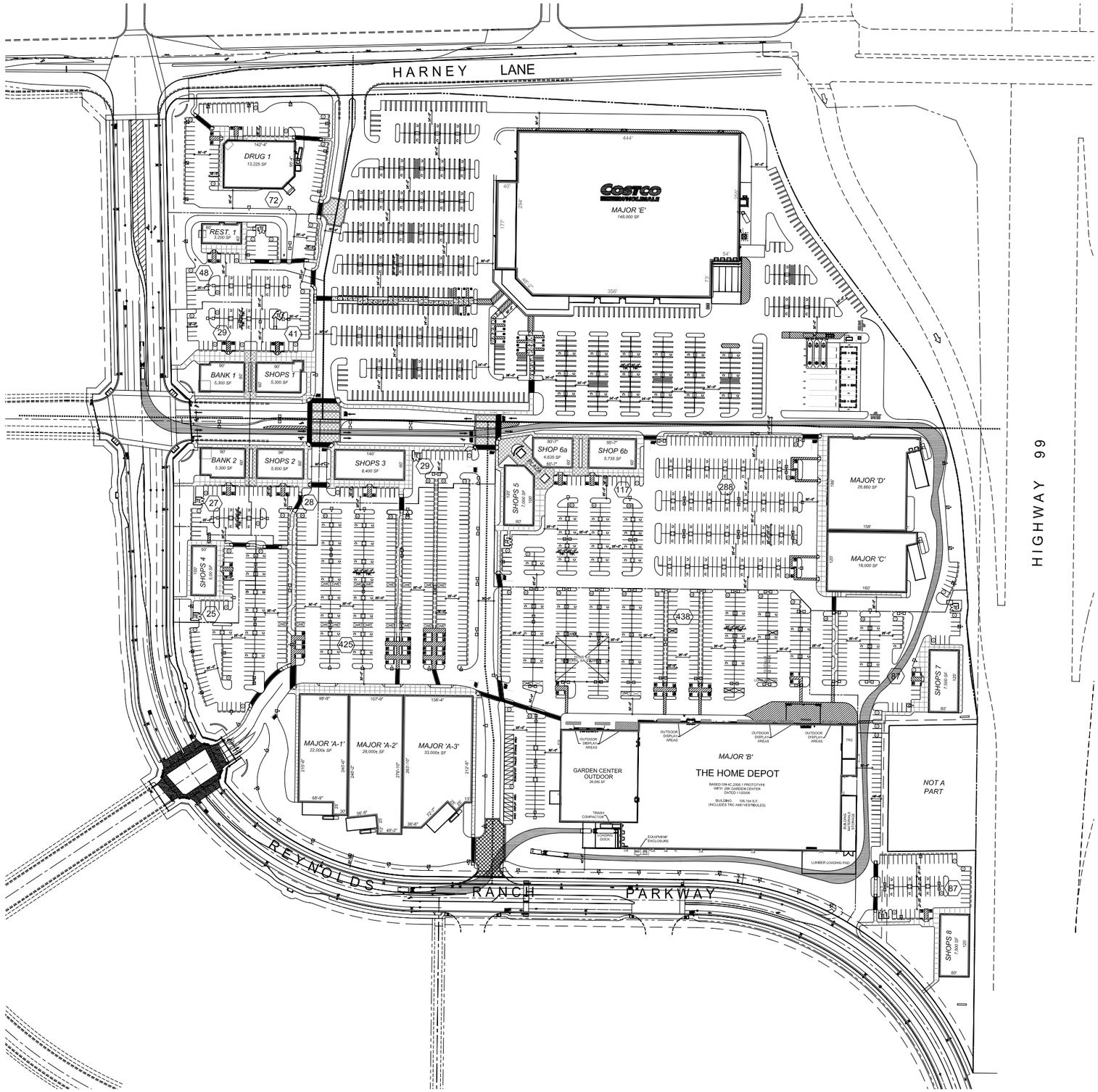

Reynolds Ranch ▪ Highway 99 & Harney Lane Lodi, California

0 40 80 160 320

Scale: 1" = 80'-0"

N

Project:

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

(P) 209.333.3400
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Truck Path

Home Depot

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A5 02.26.10

Sheet: **SP.01**

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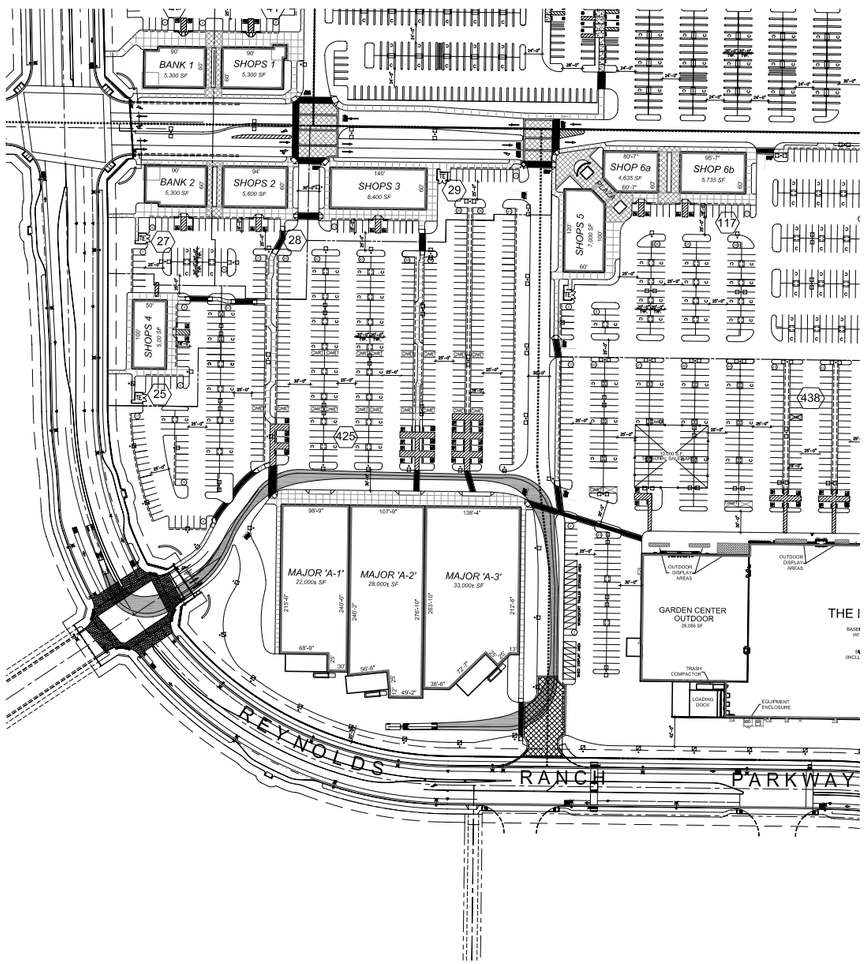
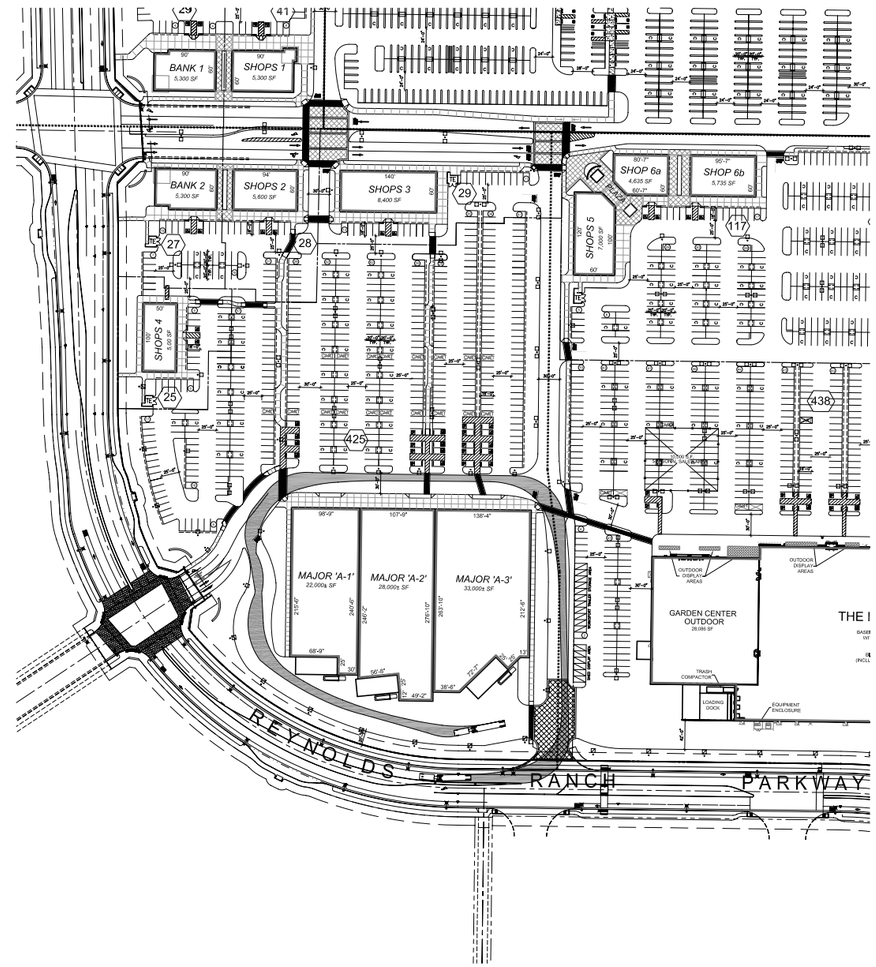


Truck Entry



Truck Exit

Project:

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

(P) 209.333.3400
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Truck Path

Major A

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A5 02.26.10

Sheet: **SP.01**

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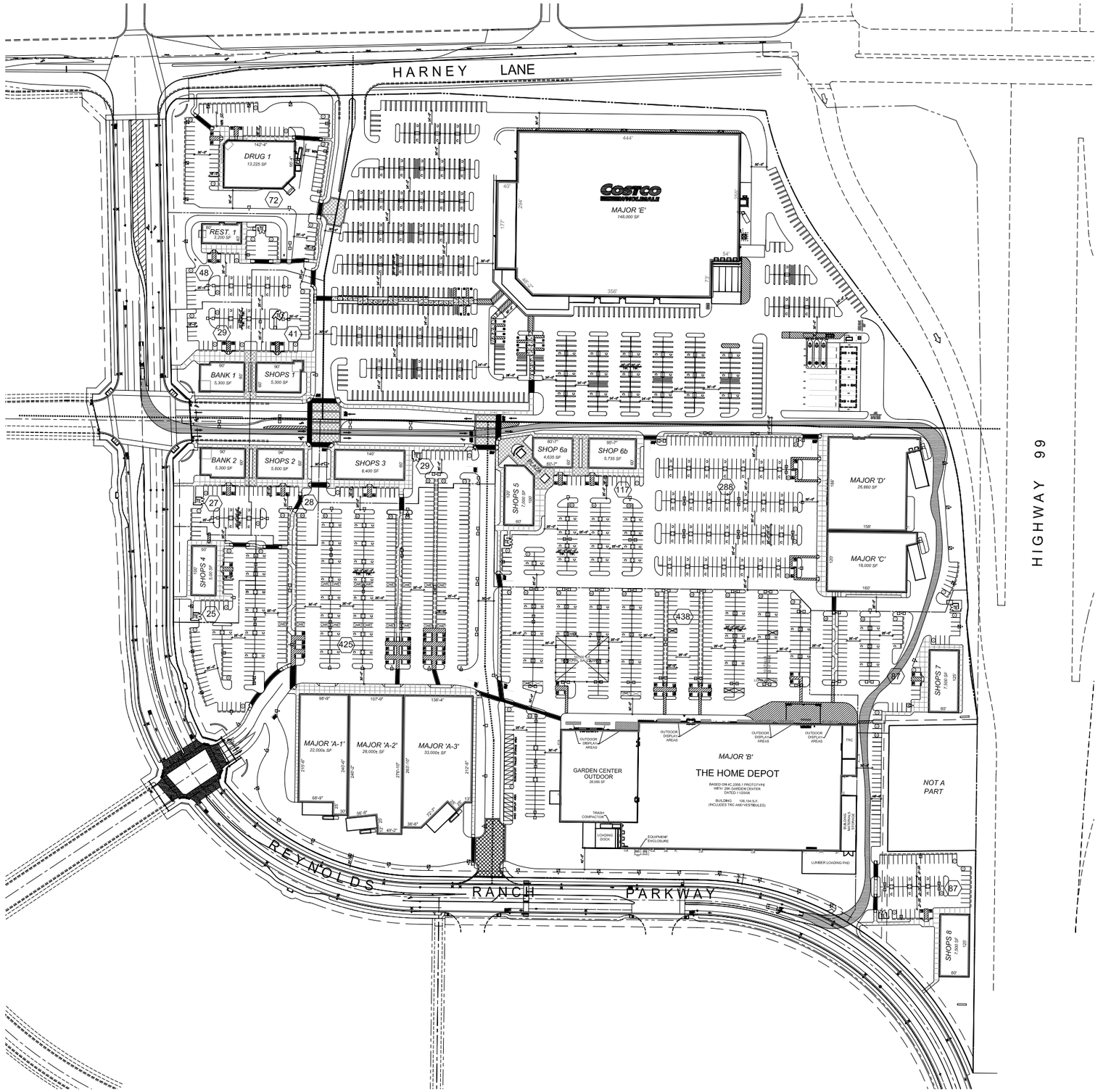
Reynolds Ranch ▪ Highway 99 & Harney Lane Lodi, California

0 40 80 160 320

Scale: 1" = 80'-0"

N



Reynolds Ranch ▪ Highway 99 & Harney Lane
Lodi, California

0 40 80 160 320

Scale: 1" = 80'-0"

N

Project:

Reynolds Ranch

Highway 99 & Harney Lane
Lodi, California

Developer:

San Joaquin Valley Land Company
1420 South Mills Avenue, Ste. 1
Lodi, CA 95242

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(F) 209.333.3430

Truck Path

Major C & Major D

Job Number:	A07-150
Date:	01.05.09
Drawn By:	BOSKO
Revised:	Iteration-A5 02.26.10

Sheet: **SP.01**

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VINTAGE CRATE LABEL ARTWORK THROUGHOUT PROJECT

STUCCO
SW 2833 Roycroft Vellum

STUCCO
SW 6363 Gingery

BRICK CLAD MONUMENT WALLS
HC MUDDOX Monterey Bay Flash

CORRUGATED METAL
AEP SPAN Zincalume Plus

PLANT TRELLIS STRUCTURE WITH WISTERIA AND UPLIGHTS AT COLUMNS

STUCCO
SW 6363 Gingery

STUCCO
SW 2834 Birdseye Maple

STUCCO
SW 2833 Roycroft Vellum

STANDING SEAM
AEP Cool Zatique II

BRICK CLAD PEDESTAL

DECORATIVE IRON GUSSET

TIMBER
SW 2841 Weathered Shingle

A07-150 02.03.10

REYNOLDS RANCH

Shop / Bank Buildings 1

Conceptual Design ■ Highway 99 & Harney Way
Lodi, CA

1

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REYNOLDS RANCH

Shop / Bank Buildings 1

Conceptual Design ■ Highway 99 & Harney Way
Lodi, CA

2

A07-150 02.03.10

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REYNOLDS RANCH

Shops Buildings 5, 6A and 6B

Conceptual Design ■ Highway 99 & Harney Way
Lodi, CA

3

A07-150 02.03.10

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STUCCO
SW 2835 Craftsman Brown

STUCCO
SW 7044 Amazing Gray

STUCCO
SW 2834 Birdseye Maple

CEMENTITIOUS HORIZONTAL SIDING
SW 6165 Connected Gray

CEMENTITIOUS HORIZONTAL SIDING
SW 6192 Coastal Plain

STANDING SEAM
AEP Cool Zatique II

STUCCO
SW 2833 Roycroft Vellum

SPLIT FACE CMU - SOLDIER COURSE
Basalite D113

STUCCO
SW 6130 Mannered Gold

SPLIT FACE CMU
Basalite D380

BRICK CLAD PEDESTAL
HC MUDDOX Monterey Bay Flash

TIMBER
SW 2841 Weathered Shingle

REYNOLDS RANCH

Major A1, A2 and A3

Conceptual Design ■ Highway 99 & Harney Way
Lodi, CA

A07-150 02.03.10

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REYNOLDS RANCH

Major A1, A2 and A3

Conceptual Design ■ Highway 99 & Harney Way
Lodi, CA

A07-150 02.03.10

RMB
RAUSCHENBACH MARVELLI BECKER
architects + engineers
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REYNOLDS RANCH

Major C and D

Conceptual Design ■ Highway 99 & Harney Way
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6

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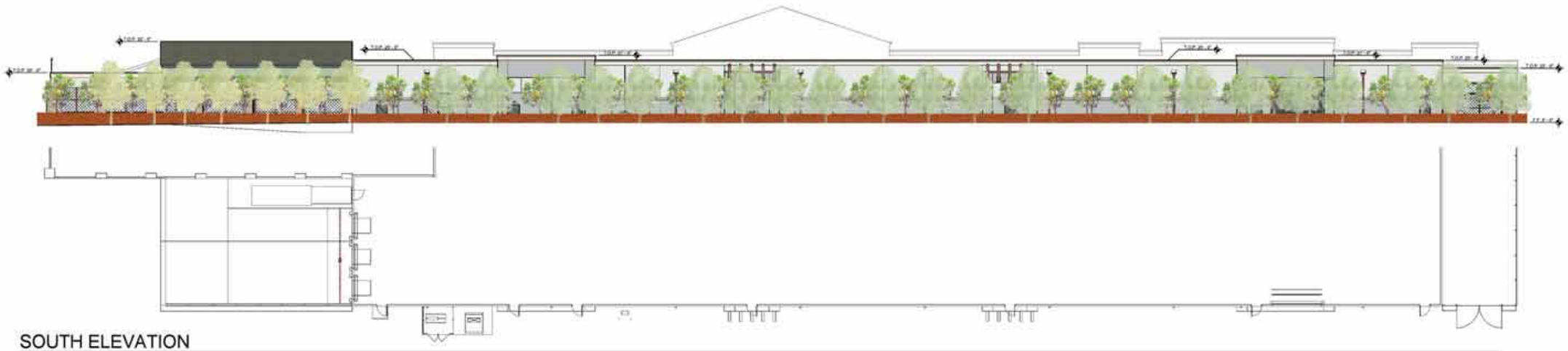
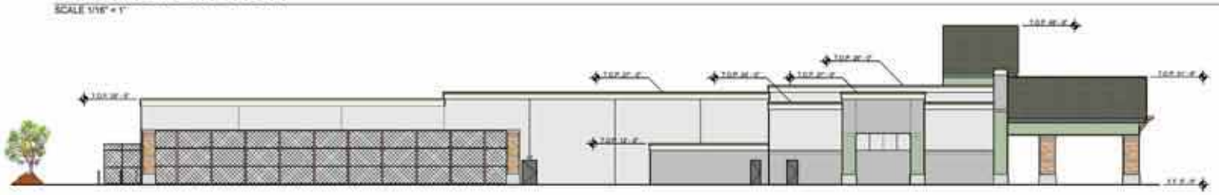
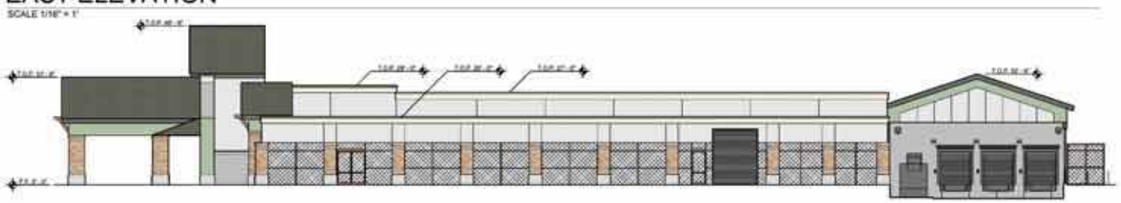
NORTH ELEVATION
SCALE 1/16" = 1'



SOUTH ELEVATION
SCALE 1/16" = 1'



EAST ELEVATION
SCALE 1/16" = 1'



WEST ELEVATION
SCALE 1/16" = 1'

Approved Color Legend:

Paint (Sherwin Williams)
SW2833 Roycroft Vellum
SW2841 Weathered Shingle
SW6363 Gingery
SW2834 Birdseye Maple
SW6192 Coastal Plain
SW8215 Renwick Olive
SW6054 Canyon Clay
SW6117 Smokey Topaz
SW2835 Craftsman Brown
SW6130 Mannered Gold
SW6180 Oakmoss (Trim only)
SW7044 Amazing Gray

Brick (HC Muddox)
Monterey Bay Flash

Metal Roofing (AEP Span)
Cool Zatique II
Terra Cotta
Parchment

Fabric Awning (Sunbrella)
Black
Parchment
Terra Cotta
Natural

SCOTT A. MOMMER CONSULTING
LAND DEVELOPMENT SERVICES
4694 WEST JACQUELYN AVENUE - FRESNO, CA 93722
TEL: 559 276-2790 FAX: 559 276-0850 SMOMMER@LARSANDERSEN.COM

ELEVATIONS

DATE: 02-02-10

SITE PLANNER	ANDREW FOX
SITE DEV. COORDINATOR	ART LUCAS
R. E. MARKET	LODI - STOCKTON
R. E. AGENDA NAME	LODI, CA.
R. E. MANAGER	JEFF HARDMAN

THE HOME DEPOT
LODI, CA.
HIGHWAY 99 AND HARNEY WAY

HOME DEPOT SITE ID #SS-00460.2001
SAM PROJECT NUMBER SM088.07

SAM-N

Miller Farms
349 E. Harney Lane
Lodi, CA 95240-6839
Ph: 209-810-7399

March 22, 2010

To: Lodi City Council; Lodi Planning Commission

Re: Impact from Reynolds Ranch on Harney Lane

Dear Lodi City Council:

For 75 years our family (3 generations) has lived and farmed the land at 349 E. Harney Lane. Our headquarters for our farming/nursery business, shops and residences are located here. For many years, the only traffic we experienced was to and from the dump and the cemetery. However, over the course of the last 20 years, Harney Lane has become an expressway for those who are too impatient to deal with all the stop lights on Kettleman Lane.

Our concerns are:

1. The amount of traffic from Reynolds Ranch that impacts our property without adequate improvements from Highway 99 to West Lane on Harney Lane.

2. How to access Harney Lane safely for our family, employees and customers with whom we do business.

3. Loss of access and financial impact.

4. The Future Development of 349 E. Harney Lane.

1. On February 25, our family had a meeting with Mr. Bartlam and Mr. Sandelin to discuss the time line for completion and proposed "improvements". My understanding is that traffic lights will be installed before the opening of Costco and that Harney Lane will be expanded to four lanes between Stockton St. and Reynolds Ranch Parkway. What is not clear is the exact timeline for completion of the Highway 99 overpass improvement and railroad underpass project. Additionally, we are concerned if funding actually exists for engineering and completion by the end of 2020. I requested from the City of Lodi engineering maps for Harney Lane from Melby Lane to the Highway 99 overpass so that I could submit them to PG@E in order to inquire about the existing 60 kv power

lines. Mr. Day from PG@E could not answer my questions because the maps I submitted are not engineering road maps. After considerable research, I discovered that engineering maps for the proposed overpass/underpass either do not exist or are for some reason being kept secret.
As local farmers, we must take a pragmatic approach to current issues. As pragmatists, we view the current real estate glut, as an edict for our family to farm this piece for at least the next 10 years. Our understanding is that once the Reynolds Ranch development is complete, there will be an additional 50,000 car movements daily on Harney Lane. However, our understanding is that the only four lane stretch that will exist will be between Melby Lane and Stockton St.. The question that my entire family banters about is: What will happen when the 30 trains that back up traffic each day increases by 50,000 vehicles? Question #2: How will we access our property?

2. At the present time ingress and egress on our property is made **safely** by both right and left hand turns. However, in the future, we will have no choice to make left turns onto Harney or onto our property.. Instead, we will be forced to maneuver our way so that only right hand turns will be made to access or leave the farm. The amount of additional time (man hours) necessary to complete this task (30 to 40 times a day) will adversely affect our daily activities and the amount of work able to completed.

3a. Although much of what we have addressed deals with monetary concerns, what concerns us even more is the safety issues that 50,000 additional automotive movements poses. Having safe access to our property and preventing car crashes and loss of life must be a priority. A car movement of concern is our mothers ability to back out of her garage. With the increased amount of traffic, she will be backing out into oncoming traffic. Currently, we must navigate the power poles that are on our side (the north) of the road. The power pole that is located at the east end of our property (but on city of Lodi owned property dedicated to the city by the Miller estate in 2005) is barricaded by barrels filled with sand; obviously some person of influence has deemed this to be a safety issue. Additionally, the pole on the west end of our land abuts the road, and we must consider barricading it to avoid liability because of the proposed increased traffic. However, if we barricade the pole, we will lose all access to our shop area. In order to remedy this possibility, fruit bearing trees will have to be removed and pavement laid down at an exorbitant cost. Please consider, that with increased traffic, the possibility of ceasing our cherry fruit stand business becomes a stark reality. Losing the fruit stand causes both an economic impact and the end to a

family treasured way of sharing our way of life with our community... all good for Reynolds Ranch, not so good for the Miller's. As we shared with Mr. Bartlam and Mr. Sandelin, we are willing to discuss the possibility of family access to our property from Driftwood off of Melby Lane. And although this may temper some of the safety concerns, it will not alleviate the financial impact imposed by the Reynolds Ranch proposition.

3b. Another major concern for the Miller Farm family is safe daily access to all parts of the farm. We traverse our property countless times each day to water our green house (located on the east side of the property), plant crops, weed, and harvest crops which must then be transported to the cold box (located on the western edge of our property). Tillers, tractors, trailers, and trucks need to move unimpeded from one part of the property to the other. Currently, we utilize Harney Lane or the frontage shoulder on the north side of Harney Lane to complete these necessary daily tasks. If Harney Lane is widened and a safety barrier constructed to separate east-bound and west-bound traffic, our property will become virtually land locked. We anticipate having to construct access roads at the cost of removing crop-bearing trees and flower beds. We further anticipate the need for 5 gates (1 electric) to provide us safe access to Harney Lane and to alleviate the inevitable "lost" trespasser and encroaching construction crew and equipment.

4. Eventually, this property will be developed, but the reality is development may take some years since a resurgence in the housing market is not being predicted any time in the near future. Until such a resurgence, we must continue to work the farm and access Harney Lane safely. Our position has never been against the Reynolds Ranch Development; we are a sensible, hardworking family with no history of delusional behavior. As long as the project managers mitigate the impact of their development on the surrounding owners and the City of Lodi, we are willing to negotiate. Considering the size of the organizations and companies that will profit for years, I believe some mutually acceptable, safe culmination is possible.
Please, if any portion of our understanding of the development process is mistaken, we invite clarification. We are not lawyers, we are farmers who have always and intend to continue to work in good faith with our neighbors whoever they may be.

Yours Very Truly:

Craig Miller

Craig Miller
Miller Farms

Kari Chadwick

Subject: Planning commsion meeting Statement

From: Katzakian [mailto:chaskat@sbcglobal.net]
Sent: Tuesday, March 23, 2010 4:57 PM
To: Kari Chadwick
Subject: Fw: Planning commsion meeting Statement

Charles & Melissa Katzakian
P.O. Box 2484
Lodi, CA. 95241

3-24-10

Dear Planning Commission,

We are the owners of the Morse Skinner Ranch House, the historic property located on the Reynolds Ranch site. We object to the proposed discretionary site plan and architectural review approval of the Reynolds Ranch Shopping Center, which relies on the 2006 project description and EIR. Supplemental environmental review is triggered by the developers' failure to comply with mitigations requiring protections of our historic property via conversion to commercial use.

Your proposed findings are not supported by substantial evidence, because the continued residential use of our property is not compatible with the commercial development on this site and was not studied in the prior EIR or Initial Study. There is no evidence supporting a finding that the development will be compatible with surrounding development. The Home Depot, in particular, provides access directly to the rear of our residential property, and parking surrounds us. The City's Resolution 2006-162 approving this project said that the project would "adaptively reuse the Morse Skinner Ranch House and water tower, a significant historic resource." Yet at this time the historic house remains in residential use, NOT adaptive reuse, and we have been given no viable alternative but to stay there.

We note that although we brought this problem to the Commission's attention last month relative to the Costco SPARC approval, the current staff report makes no mention of the historic Morse Skinner Ranch House or our land use incompatibilities.

Since the project description for Reynolds Ranch always described commercial reuse of the historic property, such as for a restaurant; there has never been any EIR analysis of the incompatibility of continued residential land use. Yet that is what the developers now propose. The current application therefore cannot be approved due to this significant project change to remove a key project component affecting our historic property, and a supplemental EIR is required before you can consider approval of the Home Depot or other commercial development of Reynolds Ranch.

Charles & Melissa Katzakian

Susan Brandt-Hawley
Brandt-Hawley Law Group
☎ 707.938.3900

LODI PLANNING COMMISSION
REGULAR COMMISSION MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, FEBRUARY 10, 2010

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of February 10, 2010, was called to order by Chair Cummins at 7:00 p.m.

Present: Planning Commissioners – Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins

Absent: Planning Commissioners – Mattheis

Also Present: Community Development Director Konradt Bartlam, Deputy City Attorney Janice Magdich, Assistant Planner Immanuel Bereket, Public Works Director Wally Sandelin and Administrative Secretary Kari Chadwick

2. MINUTES

"January 27, 2010"

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, approved the Minutes of January 27, 2010 as written. (Commissioner Olson and Chair Cummins abstained because they were not in attendance of the subject meeting)

3. PUBLIC HEARINGS

a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Cummins called for the public hearing to consider the request to certify the proposed Mitigated Negative Declaration 08-ND-03 as adequate environmental documentation for the proposed project; request for a Tentative Parcel Map to divide one parcel in to two lots and approve the site plan and architecture of the proposed development including affordable housing development standard concessions at 2245 Tienda Drive. (Applicant: Eden Housing. File Number 09-MND-03, 09-P-01 and 09-SP-04)

Director Konradt Bartlam gave a brief PowerPoint presentation based on the staff report. There is one concession that is being asked for and that is for the number of parking spaces. There currently is not a separate parking requirement for senior housing. The closest requirement is for multi-family housing which is two spaces per unit. The applicant is asking for three-quarters of a space per unit. Staff has reviewed this and compared it to comparable projects and believes it is a reasonable standard for the project proposed. Staff is recommending approval of the project as presented.

Commissioner Heinitz stated his concerns regarding the lack of parking and the nature of Tienda Drive as a thoroughfare to the Target Shopping Center. There is also the school directly across the street. Tienda Drive is somewhat of an upscale neighborhood entering into Sunwest. He also added that if he were to bring a project before staff for an apartment building two covered parking spaces would be required per unit. The parking that is being recommended isn't even covered. The units on Wimbledon which closely resembles this project seems to have more parking spaces and with all the empty hard spaces that are on the plan he fells that there could be more parking provided. Director Bartlam stated that there are examples in town, like the Arbor project and the Vintage, that supply less than two parking spaces per unit and they are straight senior projects with no income restriction. The project located in Manteca which Mr. Bartlam visited a couple of times has the same situation as this project and has less than one space per unit and not all of the spaces are being utilized. The average age of the tenants is close to 80 and the income is in the very low range. Heinitz stated that there are transportation and other amenities that are being supplied to those other projects that are not being offered with this project.

Commissioner Olson stated her concerns regarding the parking also and would like to know which demographic sector is being targeted. Mr. Bartlam stated that the demographics here will be the same as the demographics in Manteca, income earnings will be $10,000-$15,000 per year in most cases. Rents will be gauged to be no more than thirty percent of their income. The target group that is in need and the one that staff and Eden Housing feels will be reached is the single female in their seventies. Olson asked what kind of stock Lodi currently has. Bartlam stated that there are only a couple of projects just for seniors, the Arbors and the LOEL Center has sixteen units mostly within walking distance of the center. The downtown hotel is also an example that would be at the same income level and it has no parking. Olson asked if overflow parking would be on the street. Mr. Bartlam stated that it would, but overflow parking is not anticipated.

Hearing Opened to the Public

- Faye Blackman, Eden Housing representative, came forward to answer questions. Ms. Blackman gave a brief presentation of the company's assets and introduced the rest of the team that accompanied her here tonight. The target tenant is the single female in her seventies.
- Chair Cummins asked if the target age is over 70 years of age. Ms. Blackman stated that that is correct.
- Commissioner Heinitz asked about the other developments managed by Eden and what types of amenities are offered in and around the property. Ms Blackman stated that other projects are in and around public transport. Eden also creates relationships with local senior centers and has reached out to the LOEL Center and the Senior Center located at Hutchins Street Square and is looking forward to working with them. Heinitz asked about transportation for grocery shopping, doctor's appointments, etc. Ms Blackman stated that there is a bus stop about a quarter mile away that services four lines and for the seniors that don't use the bus , or the City's Dial-a-Ride system Eden feels there will be other support groups to assist them.
- Vice Chair Hennecke asked if there will be more demand for the 55 to 70 in the near future. Ms Blackman stated that she does not foresee any demand issues in this category. Hennecke asked if any one bedroom units have couples living in them. Ms Blackman stated that there are few couples living in the one bedroom units. Eden allows up to three people living in the one bedroom units, a couple with their care provider, but this is not very common. Hennecke asked if in the case where there are two or more people living in the residence does only one of them have to be 55 or older. Ms Blackman stated that only one needs to be 55 years of age.
- Commissioner Kiser stated his concerns with the lack of parking, his concern over a senior having to walk a quarter mile to catch a bus, and his concern over three people sharing a one bedroom apartment. Ms Blackman stated that three people in a one bedroom apartment is very rare and isn't expected, but is allowed. Kiser asked if there will be a bus service to take the residents to the LOEL Center for dinner since this project does not provide dinners. Ms Blackman stated that Eden is working with the LOEL Center to provide this type of service. Kiser stated that he will have a problem approving the project if those amenities are not in place.
- Commissioner Olson stated that she is hearing a great deal of support by City staff and is confident that staff will make sure that the transportation is provided. Olson pointed out the potential PV System and asked why it is just a potential system. Ms. Blackman stated that the PV system is very expensive and Eden is trying to identify a funding source. Mr. Bartlam stated that Staff has been working with the Electric Utilities Department to help find a funding source.
- Commissioner Heinitz stated his concern with three people living in a one bedroom unit and whether or not that is legal under the Uniform Housing Codes, and if there are three people one would probably be a support staff that will have need of a vehicle. Peter Waller, architect for the project, came forward to address the concerns with the lack of parking

spaces. There is a strong push for an open space concept with this project and adding additional parking contradicts that goal. One of the reasons is for on site storm water management. This allows for less impact on the City wide storm drainage system. If this was a regular multi-family complex then two parking spaces per unit would be provided, but it isn't and Eden is just asking for the project to be pictured as what it is. Mr. Waller explained some of the items that will be used to make this project as green as possible. Heinitz stated that he is in total support of this project, but has an issue with the lack of parking because of the overflow being on Tienda Drive. Mr. Waller stated that there has not with all of the other projects done by Eden been parking issue. It would not be beneficial for Eden to not supply enough parking for their tenants, or supply too much parking.

- Commissioner Kiser stated that in addition to concerns with parking there is a concern with the PV System being shown that may not happen and the roofing material that is being used is not going to fit in with the surrounding area. Kiser is concerned that what is being shown to the Commission isn't going to happen. Mr. Waller stated that the roofing shingles will be a thirty or forty year shingle. Kiser stated that what is shown is not a thirty or forty year composition shingle and the PV System that is shown may not be used. Mr. Waller stated that the solar is being shown because the intention is to put them on the buildings and there may have been objections if they were not shown and added later and the roofing shingles will be a thirty or forty year asphalt shingle. Kiser would like to be shown what is going to be done not what could be.
- Commissioner Hennecke asked about the spaces next to the office being designated as visitor parking. Mr. Waller stated that they will be designated for visitors.
- Commissioner Heinitz stated his concern for the quality of the project being presented for this area and the emphasis that is being placed on expense. Mr. Waller asked if there is a specific answer that would be more satisfactory that would be satisfactory for the roof. Heinitz stated that he doesn't want a verbal promise, he wants it in writing.
- Director Bartlam stated that this is the site plan and architectural review and if the Commission wishes to require architectural changes to the project then they have discretion to do so. Mr. Bartlam pointed out that the Wine and Roses project used an asphalt shingle. This is a two phase project, so maybe the Commission could place conditions for one parking space per unit on the first phase and at the appropriate time Eden can bring back the second phase for any alterations, but conditioning it this way could cost valuable living units. If there are specific conditions the Commission wants to place on the type of roofing shingles or the PV System used, then that is your prerogative and now is the time to do it.
- Commissioner Olson stated that she is very excited about the project and that she feels the Commission's questions are valid. She also stated that the City could have made this go a little easier by showing that there would be support services going to this location, and then .75 parking spaces would be great. Mr. Bartlam stated that the City has a very accomplished Dial-A-Ride program. Staff is bringing forward a recommendation for what is believed to be a project that is in the best interest of the community based on staff's experience. Olson stated that she is all for giving the builder the benefit of the doubt, but believes that there are other support issues beyond the building that will make this a successful project. She is inclined to work with Eden through the first phase rather than not have the senior housing that is so desperately needed.
- Commissioner Kiser stated his agreement with Commissioner Olson, but would like to see a condition requiring an architectural roofing shingle.
- Katie Lamont, representative for Eden Housing, came forward to address concerns. The seniors that come to live at an Eden project stay with Eden until they can no longer live on their own. The facilities are staffed with a coordinator that is there to make sure that the amenities that are needed get supplied. This project when put to an internal test for green point scale rating rated a 127, so the commitment to green building is a very high priority. Solar isn't the first item that is looked at for a project because there are so many other items that are higher on the green scale. The parking has been determined by past experiences with all the projects that Eden has done, and would not be brought to the Commission for

approval with inadequate parking as suggested. After having many discussions with Tracy Williams with the LOEL Center there is transportation services to and from the project site to the center through the public bus transportation system and Dial-A-Ride. The LOEL Center has five vans at their disposal that Eden is in discussions with Ms. Williams for the use of one of them to help with the transportation of Eden's residents to and from the Center and home. There will also be other support areas such as family and friends that will provide transportation.

- Commissioner Kirsten asked if there is a demand for senior housing in Lodi. Ms. Lamont stated that the City sending out a RFP (Request For Proposals) for the project indicates the need. Ms Blackman stated that there is a waiting list with 150 people on it for the current senior housing units in Lodi. Kirsten stated that the market drives this type of project. Ms Blackman agreed. Kirsten stated his understanding of the cost factor for the affordability and wanted to know if the concerns that are being expressed could drive up the cost or are the items doable from an affordability aspect. Ms Blackman stated that there is a point that will put the project out of the affordability range. Eden is an owner/builder/manager company and the projects are built to a lasting standard. Kirsten stated that he is concerned about the lack of parking also, but will defer that to Eden at this time. He would not like to see the project loose units at the cost of parking. Kirsten asked about other projects having PV systems and the return they have had. Ms Blackman stated that there is one project that is currently having a PV system installed.
- Keith Land, former board member for the LOEL Center, came forward to support the project. The LOEL Center has 16 units and only 7 parking spaces are utilized because of the cost of maintaining the vehicles. The Center offers congregational meals and currently serves 53 meals per day. Through the CDBG program offered by the City of Lodi the Center has received enough money to remodel the kitchen and with the remodel the meal capacity will be 500 meals per day. The goal of the LOEL Center is to start providing Meals-On-Wheels to seniors all around the City. Mr. Land stated that he sat on the board that chose Eden Housing for this project and stated that in his opinion Eden is the cream of the crop. Mr. Land has been to the Manteca project site five times and there is always parking even during the grand opening.
- Commissioner Hennecke asked how the seniors get around town. Mr. Land stated that there is a combination of ways, family, bus, and Dial-A-Ride that get the seniors around to their various appointments.

<u>Public Portion of Hearing Closed</u>

- Commissioner Hennecke asked if there is a way to incorporate a bus stop in front of this project. Director Sandelin stated that a bus route does not currently go down Tienda Drive. A route study would have to be done to determine the need, but based on the clientele being served here Mr. Sandelin feels they would much rather use Dial-A-Ride.
- Chair Cummins stated that Commissioner Mattheis and he were a part of the group that picked Eden for this project and feels that this is a benefit to the City. He does not feel that this project should be held to the same standards as a single family custom built home like the ones you will find in the adjacent development. Cummins shared that his mother lives in a similar type development in Michigan and it is very nice.
- Commissioner Heinitz stated that his main concern is the lack of parking. If the Commission were to leave the condition at .75 spaces per unit for phase one would phase two come back, so that it can be determined if that was adequate. Mr. Bartlam stated that he recommends changing the condition to reflect the one space per unit for the first phase then let Eden come back to request less if they find that one space is more than enough. Worst case scenario Eden looses a few units in the back on phase two.
- Commissioner Kirsten stated that there is an urgent need for this type of housing in our area and is comfortable with the parking assessments provided by Eden and would hesitate to increase the parking at this time. Kirsten would like the Commission to not condition the project out of the affordability range or to take away any of the green space.

- Commissioner Olson stated her agreement with Commissioner Kirsten and would support the project with the current parking so as to not loose any units and with an added condition for the architectural roofing shingles if that is something the other Commissioners felt strongly about.
- Commissioner Heinitz agreed with his fellow Commissioners other than erring on the side of caution for the first phase and requiring one parking space per unit and then going with the .5 spaces per unit on the second phase which would then equal out to be .75.
- Commissioner Hennecke stated his agreement with Commissioner Kiser regarding the architectural roof shingles and as far as the parking he is comfortable with the plan as proposed. He then asked if staff new what the utilization of the bus transit and Dial-A-Ride system is for the other senior housing projects. Mr. Bartlam and Sandelin stated that they did not have those numbers directly in front of them, but could get them and bring them back.
- Commissioner Kiser stated appreciation to his fellow Commissioners in their support for the architectural roofing shingles. He would also like to err on the side of caution for the parking spaces and require one per unit now and let Eden come back and ask to alter it for phase two.
- Director Bartlam stated the possible added language for the altered condition #5:
    - At a minimum a thirty year architectural grade shingle will be used.
- Commissioner Kirsten added to condition #4; that there be a 1 to 1 ratio for parking for phase one.

MOTION / VOTE:

The Planning Commission, on motion of Kirsten, Kiser second, approved the request of the Planning Commission to certify the proposed Mitigated Negative Declaration 08-ND-03 as adequate environmental documentation for the proposed project at 2245 Tienda Drive subject to the conditions in the Resolution. and;

Approved the request of the Planning Commission for a Tentative Parcel Map to divide one parcel in to two lots and approve the site plan and architecture of the proposed development including affordable housing development standard concessions at 2245 Tienda Drive subject to the conditions in the Resolution with the added verbiage as stated above. The motion carried by the following vote:

Ayes: Commissioners – Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins
Noes: Commissioners – None
Absent: Commissioners – Mattheis

b) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Cummins called for the public hearing to consider the request for a Use Permit to allow the sale of alcoholic beverages and approve the SPARC application concerning the COSTCO Wholesale building. (Applicant: David Babcock, on behalf of COSTCO Wholesale. File Number: 09-U-15 and 09-SP-15)

Director Konradt Bartlam gave a brief PowerPoint presentation based on the staff report. Mr. Bartlam provided a look at what is proposed for the balance of the center that was submitted after the packet delivery.

Commissioner Kiser asked what the time line is for the reconstruction build out for Harney Lane. Director Sandelin stated that the widening of Harney Lane west of Stockton Street running easterly to a point east of the second Costco driveway should be completed prior to the store opening. There are some additional interchange improvements that will be complete prior to the store opening. Kiser asked when the store is projected to be open. Mr. Bartlam stated no later than late summer. Kiser asked if the Haney Lane improvements would be complete in time. Mr. Sandelin stated they would.

Commissioner Heinitz asked about the Highway interchange improvements making the traffic more difficult. Director Sandelin stated that one of the original mitigation measures was to make improvements to the two wrap intersections, one on the east side of the interchange and the other

on the west side. Staff is working with CalTrans and has received a verbal commitment from them to have those improvements done by late summer.

Director Bartlam pointed out that there have been a few changes made to the Resolution which are shown on the Resolution provided on the Blue Sheets.

Hearing Opened to the Public

- David Babcock, Real-estate Development Director for Costco, came forward to answer questions. Mr. Babcock provided some background information on the Costco Company and the positive effects that the company has on the communities that they reside.
- Commissioner Kirsten asked if having the Costco visible from the freeway will help attract traffic that wouldn't normally stop in Lodi into the shopping center helping to create sale tax dollars for Lodi. Mr. Babcock stated that if you are a Costco member you are able to stop at any center to do your shopping and when you purchase something the zip code related to that card is recorded and there are many occasions that an out of the area member is found shopping at other out of their area warehouses. Kirsten stated that he and his family shop at the Costco in Stockton as do other families from Lodi, so this should help to bring those tax dollars back to our town.
- Commissioner Heinitz asked if the numbers of how many shoppers from the 95240 area shop at the Stockton store. Mr. Babcock stated that he does not have access to those numbers.
- Commissioner Hennecke asked if this store is likely to bring in customers from outside the immediate area. Mr. Babcock stated that it is projected to serve not only Lodi, but the surrounding area.
- Chair Cummins asked how many new stores that are being built or in the planning stages of being built in California. Mr. Babcock stated that this is the only store currently being built in northern California.
- Commissioner Olson stated her concerns over the amount of asphalt and would like to here more about the areas that are being addressed in regards to sustainability. Mr. Babcock stated that the lighting inside the store is being supplemented with skylights and the heating and cooling are regulated very closely with very sophisticated controls. Landscaping is a major part of the project that will help to deflect heat from the outside to inside. This all lends a hand in reducing the energy consumption of the building.
- Commissioner Hennecke asked if there will be any additional items such as solar panels being used on the project. Mr. Babcock stated that with the amount of skylights that are proposed with this project it would be unbeneficial to cover them up with solar panels.
- Melissa and Charles Katzakian, owners of the Morse-Skinner Ranch, came forward to object to the project. The project is relying on the 2006 project description and EIR. The developer has failed to comply with mitigations which require protection of the historical property, Morse/Skinner Ranch, via conversion to commercial use. Condition number five of the resolution has not been met because of the residential use of our property being surrounded by the commercial development with this project and future projects to the site. As part of the City's Resolution 2006-162 which approved the original project states that the project would adaptively reuse the Morse-Skinner Ranch and water tower, but to date this has not happened. There has not been an EIR analysis to consider the incompatibility of the continued residential land use of our property. Mrs. Katzakian does not believe that this project can be approved until a supplemental EIR has been done to take in to account the residential use of the property.
- Kathy Curley, property owner on Harney Lane directly north of the project, came forward to request clarification on the timeline of the project being finished and the improvements made to Harney Lane. Mr. Bartlam stated that the questions will be addressed once the public hearing is closed to the public.

Public Portion of Hearing Closed

- Director Sandlin stated that there are two different improvement projects that are scheduled to occur prior to the opening of the first use at the Reynolds Ranch Project. The four lane widening generally between Stockton Street and just east of the driveway entering the project site. The second improvement project which is being processed now as an encroachment permit through CalTrans will add turn lane improvements on both ends of the interchange and will also add signalized intersection improvements at the intersections of the existing ramps.

Hearing Re-opened to the Public

- David Babcock came forward to question a few of the conditions in the Resolution.
    - #3 – Costco would like to have an outdoor display area.
    - #15 – While accommodating this condition a few parking spaces may need to be sacrificed. This may limit any expansion requests in the future which would require more parking spaces to be sacrificed. Chair Cummins stated that Costco currently has thirteen more spaces than required. Mr. Babcock stated that that is correct.
    - #21c – The parking lot light fixture height is set at 25 feet; Costco would like to put theirs up at 35 feet.
    - #53 and 55 – These two items talk about specific ADA requirements and the concern is that they may be too specific in their verbiage. ADA requirements are legal requirements that Costco will follow to the legal letter.
- Chair Cummins asked about the parking lot fixtures being increased to a height of 35 feet. Bartlam stated that the 25 foot height is typical of what has been required in the Lodi area. When you get to the 35 foot level there is more light spilling over into the outlining areas.
- Chair Cummins asked for clarification on what the request is on outside storage. Babcock stated that he would like to be able to take care of the occasional outside displays on an administrative level. Cummins asked if the concern on condition number 53 and 55 was with the specific language not the requirements to ADA. Mr. Babcock stated that that is correct.
- Commissioner Kiser stated the understanding for wanting the 35 foot high light fixtures but is concerned with the light spilling over into the residential windows at night. Mr. Babcock stated that every precaution would be taken to ensure that light would not be spilling over into the surrounding residential areas. Kiser asked if staff prefers the 25 foot standard. Bartlam stated that the recommendation is at the 25 foot level because staff feels that is adequate.
- Commissioner Heinitz asked about the clarification on the outside storage based on past experiences. Mr. Babcock stated that the outside storage would be on a temporary part-time basis. Heinitz asked if the verbiage regarding the outside storage being on a temporary part-time basis. Mr. Bartlam stated that the condition does not state that there can not be any outdoor storage just that the area for storage needs to be approved by SPARC.
- Commissioner Olson asked if the rest of the center is desirous of having the lighting standards at the 35 foot level. Mr. Babcock stated that yes they are. Mr. Bartlam stated that staff has not had a chance to take a good look at the plans for the rest of the shopping center, but staff will want the lighting to be consistent throughout the center.
- Commissioner Hennecke asked if the outdoor display would be similar to the one at the Stockton store near the tire shop. Mr. Babcock stated that it would. Hennecke asked if there were any special conditions placed on the Lowes outdoor storage. Bartlam stated that Lowes currently has an outdoor storage plan that has been approved by the City.

Public Portion of Hearing Closed

- Director Bartlam stated that there is enough flexibility in condition number 15 to allow for outdoor storage with the plan submitted by Costco. The concerns regarding condition 53 and 55 comes down to the fact that the ADA requirements will have to be met and approved by the Building Division. Condition number 53 can be shortened if it is the desire of the Commission to read:

    - *Walkways and sidewalks along accessible routes of travel shall be in compliance ~~(1) continuously accessible, (2) have maximum 1/2" changes in elevation, (3) are minimum 48" in width, (4) have a maximum 1/4" per foot side slope, and (5) where necessary to change elevation at a slope exceeding 5% (i.e., 1:20) shall have ramps complying with 2007 CBC, Section 1133B.5. Where a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings or other elements between the pedestrian areas and vehicular areas shall be defined by a continuous detectable warning which is 36" wide, complying~~ with the 2007 CBC, Section 1133B.8.5.*

- Chair Cummins asked for clarification on the language allowing the outdoor storage. Mr. Bartlam stated that the floor plan slide from the PowerPoint which shows the outdoor storage could be added to the resolution as an attachment constituting the approval of the outdoor storage if that is the Commissions desire.

- Commissioner Kiser stated his concerns with the request in increasing the height of the light standards. The Blue Shield project has the light standards at 25 foot.

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Kirsten, Kiser second, approved the request of the Planning Commission for a Use Permit to allow the sale of alcoholic beverages and approved the SPARC application concerning the COSTCO Wholesale building located at the SW corner of Harney Lane and Hwy 99 subject to the conditions in the Blue Sheet Resolution with the changes discussed above. The motion carried by the following vote:

Ayes: Commissioners – Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins
Noes: Commissioners – None
Absent: Commissioners – Mattheis

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Director Bartlam referenced the memo in the packet and stated that staff is available for questions.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

None

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

None

9. ART IN PUBLIC PLACES

None

10. COMMENTS BY THE PUBLIC

None

11. COMMENTS BY STAFF AND COMMISSIONERS

None

12. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 9:37 p.m.

ATTEST:

Konradt Bartlam
Planning Commission Secretary

LODI PLANNING COMMISSION
REGULAR COMMISSION MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, MARCH 24, 2010

1. CALL TO ORDER / ROLL CALL

The Regular Planning Commission meeting of March 24, 2010, was called to order by Chair Cummins at 7:00 p.m.

Present: Planning Commissioners – Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins

Absent: Planning Commissioners – Mattheis

Also Present: Community Development Director Konradt Bartlam, Deputy City Attorney Janice Magdich, Assistant Planner Immanuel Bereket, and Administrative Secretary Kari Chadwick

2. MINUTES

"February 10, 2010"

MOTION / VOTE:

The Planning Commission, on motion of Commissioner Heinitz, Kiser second, approved the Minutes of February 10, 2010 as written.

3. PUBLIC HEARINGS

a) Notice thereof having been published according to law, an affidavit of which publication is on file in the Community Development Department, Chair Cummins called for the public hearing to consider the request for approval of a SPARC application concerning the Reynolds Ranch Shopping Center. (Applicant: Jennifer Krauter, RMB Architects on behalf of San Joaquin Valley Land Co., LLC. File No. 10-SP-02)

Director Bartlam gave a brief PowerPoint presentation based on the staff report.

Commissioner Olson asked if the Morse/Skinner Ranch is on a historical registry or if the owners have a State Historic Preservation Office (SHPO) Letter. Director Bartlam stated that it is on a federal registry.

Commissioner Kiser asked if the timeline for the Harney lane improvements is still gong to be on schedule with the opening of the center. Director Bartlam stated that the off site improvements for Harney Lane are included in condition number 53.

Hearing Opened to the Public

- Dale Gillespie, applicant, came forward to answer questions. Mr. Gillespie asked to revise condition number 38 of the resolution which pertains to the Habitat Fees. He would like to create a schedule for the Community Development Director showing the fees for the roads and detention basin distributed evenly amongst all of the permits for the project.

- Commissioner Heinitz asked when the first planning for this project started. Gillespie stated that the planning of this project started in late 2005 early 2006.

- Kiser asked for clarification regarding the fees being distributed. Mr. Gillespie stated that for all of the public spaces he would like to have a schedule dividing those spaces evenly amongst all of the permits within the project area.

- Hennecke asked if there was a fee schedule already presented. Mr. Bartlam stated that the fee schedule that is referenced in the condition is the San Joaquin COG schedule. The fee

schedule that Mr. Gillespie is referring to is something he is going to be presenting. Mr. Bartlam stated that he will read into the record the proposed language at the appropriate time. Hennecke asked if this will impact the construction of the basin or other public spaces. Mr. Bartlam stated that the basin and pumping station were constructed at the time of the Blue Shield project. Mr. Gillespie added that it isn't the intention to have any of the fees frozen, just distributed evenly.

- Kiser asked if this is similar to what Manteca is proposing to help spur the economy. Mr. Bartlam stated that this is not similar. This is meant to be more of a fair share proposal for the entire project.

- Chair Cummins asked if there is a groundbreaking date set. Mr. Gillespie stated that possibly in July of this year.

Public Portion of Hearing Closed

- Commissioner Kiser stated his appreciation of the architecture of the project and recommends approval.
- Commissioner Kirsten stated that there are legitimate concerns regarding the traffic, but doesn't feel that there is anyone that would like to stand in the way of the project. He also feels that the traffic issues will get worked out in the end.
- Commissioner Hennecke asked to hear the revised verbiage for condition number 38. Mr. Bartlam stated that:
    - The project shall incorporate all mitigation measures as specified in the adopted Final Environmental Impact Report for Reynolds Ranch Project (State Clearinghouse Number 2006012113). Specifically, Mitigation Measure 3.2.2 subjects the Reynolds Ranch development to participate in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMHCP). This includes payment of Open Space Conversion fees in accordance with the fee schedule in-effect at the time of construction commences. Prior to issuance ~~of the first building permit for the Reynolds Ranch development, the applicant shall pay, in accordance SJMHCP fee schedule, for the construction and completion of the on site detention basin (9.93 acres), Reynolds Ranch Parkway (11.98 acres), pump station (.20 acre) and easement A (5.24 acres)~~ the applicant shall pay in accordance with the San Joaquin Multi-Species Habitat Plan fee schedule the fees based upon the gross acreage of the overall Reynolds Ranch Project as described and include all public use acreage as outlined in a per acre schedule to be prepared with the developer which will be subject to the approval of the Community Development Director prior to the next building permit issuance within the project by the applicant or any other subsequent property owner.

MOTION / VOTE:

The Planning Commission, on motion of Kiser, Heinitz second, approved the request of the Planning Commission for a SPARC application concerning the Reynolds Ranch Shopping Center subject to the conditions in the Resolution. The motioned carried by the following vote:

Ayes: Commissioners – Heinitz, Hennecke, Kirsten, Kiser, Olson, and Chair Cummins
Noes: Commissioners – None
Absent: Commissioners – Mattheis

4. PLANNING MATTERS/FOLLOW-UP ITEMS

None

5. ANNOUNCEMENTS AND CORRESPONDENCE

None

6. ACTIONS OF THE CITY COUNCIL

Director Bartlam referenced the memo in the packet and stated that staff is available for questions. Mr. Bartlam added that the appeal that was filed on the Costco approval is set to go to the City Council on May 5th.

7. GENERAL PLAN UPDATE/DEVELOPMENT CODE UPDATE

Director Bartlam stated that the General Plan is scheduled for adoption on the April 7th City Council meeting. Within the next thirty days a draft Housing Element should be ready for the Commission's review.

8. ACTIONS OF THE SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE

None

9. ART IN PUBLIC PLACES

Commissioner Kirsten stated that the Committee met today and the donation of the "Right to Spring" sculpture may have hit a snag. The owner has decided to place some conditions on the donation that would place penalties on the project if it wasn't in place where they wanted it placed by a certain date. The owner also mentioned that the item is still for sale, so if the City doesn't act in time the donation could just go away.

10. COMMENTS BY THE PUBLIC

None

11. COMMENTS BY STAFF AND COMMISSIONERS

Director Bartlam stated that the 700 Forms are due by April 1st in the City Clerk's office.

12. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:35 p.m.

ATTEST:

Konradt Bartlam
Planning Commission Secretary

BRANDT-HAWLEY LAW GROUP

Susan Brandt-Hawley

Chauvet House PO Box 1659
Glen Ellen, California 95442

Legal Assistant
Jeanie Stapleton

February 23, 2010

RECEIVED
2010 FEB 23 PM 3:41
CITY CLERK
CITY OF LODI

Mayor Phil Katzakian and
Members of the City Council
c/o Randi Johl, City Clerk
City of Lodi
221 W. Pine Street
Lodi, CA 95240
Cityclerk@lodi.gov

Subject: Appeal of Planning Commission Action
File No. 09-U-15 and 09-SP-15
Use Permit and SPARC for COSTCO

Dear Honorable Mayor Katzakian and Councilmembers:

On behalf of Charles and Melissa Katzakian, owners of the Historic Morse Skinner Ranch House on the Reynolds Ranch site, and Lodi Tomorrow, I appeal the referenced actions of the Planning Commission taken on February 10, 2010. This is filed within the 10 business day period required by the Municipal Code.

The original Reynolds Ranch approvals were based on a project description that stated in relevant part that "the proposed project would adaptively reuse the Morse Skinner Ranch House and water tower, a significant historic resource listed on the National Register of Historic Places and eligible for listing on the California Register of Historical Resources." The EIR analysis and project approvals always anticipated that the historic site would be adaptively reused in a manner compatible with the big box retail planned for the commercial site, such as a restaurant, following federal standards for rehabilitation and reuse.

Thus, the land use incompatibilities of continued residential use on the Reynolds Ranch site were not anticipated and have never been studied as required by the California Environmental Quality Act.

707.938.3900 fax 707.938.3200 susanbh@preservationlawyers.com

The bases for this appeal include, among other things, that the COSTCO approvals, including the use permit and SPARC review, require analysis in a supplemental EIR because there are unstudied land use and historic resource incompatibilities with continuing residential use of the Morse Skinner Ranch House. The developers' change of the project to continue residential use rather than to adaptively reuse the Morse Skinner Ranch House has not been approved or subjected to environmental review. The owners of the historic property have requested relocation in light of the imminent development of the large-scale retail. Unless and until that occurs in a manner consistent with the approved project description, the land use incompatibilities require the City to conduct supplemental CEQA review prior to consideration of approval of the COSTCO permits or other retail approvals. Further, the Planning Commission's findings, including that the proposed development will be "acceptable and compatible with surrounding development," are not supported by substantial evidence.

We will provide further evidence and testimony at the appeal hearing.

Thank you.

Sincerely,

Susan Brandt-Hawley

cc: City Attorney Steve Schwabauer
Steve Herum

BRANDT-HAWLEY LAW GROUP
Environment/Preservation
Chauvet House PO Box 1659
Glen Ellen, California 95442

Susan Brandt-Hawley

Legal Assistant
Jeanie Stapleton

RECEIVED
2010 APR -2 PM 2:32
CITY CLERK
CITY OF LODI

April 2, 2010

Mayor Phil Katzakian and
Members of the City Council
c/o Randi Johl, City Clerk
City of Lodi
221 W. Pine Street
Lodi, CA 95240
Cityclerk@lodi.gov

Subject: Appeal of Planning Commission Action of March 24, 2010
SPARC 10-SP-02
322 East Harney Lane; Reynolds Ranch Shopping Center

Dear Honorable Mayor Katzakian and Councilmembers:

On behalf of Charles and Melissa Katzakian, owners of the Historic Morse Skinner Ranch House on the Reynolds Ranch site, and Lodi Tomorrow, I appeal the referenced actions of the Planning Commission taken on March 24, 2010. This is filed within the 10 business day period required by the Municipal Code.

The original Reynolds Ranch approvals were based on a project description that stated in relevant part that "the proposed project would adaptively reuse the Morse Skinner Ranch House and water tower, a significant historic resource listed on the National Register of Historic Places and eligible for listing on the California Register of Historical Resources." The EIR analysis and project approvals always anticipated that the historic site would be adaptively reused in a manner compatible with the big box retail planned for the commercial site, such as a restaurant, following federal standards for rehabilitation and reuse.

Thus, the land use incompatibilities of continued residential use on the Reynolds Ranch site were not anticipated and have never been studied as required by the California Environmental Quality Act.

This discretionary site plan and architectural review approval of the

707.938.3900 ◦ fax 707.938.3200 ◦ susanbh@preservationlawyers.com

Reynolds Ranch Shopping Center relies on the 2006 project description and EIR. Supplemental environmental review is triggered by the developers' failure to comply with mitigations requiring protections of our historic property via conversion to commercial use.

The Planning Commission's findings are not supported by substantial evidence, because the continued residential use of our historic property is not compatible with the commercial development on this site and was not studied in the prior EIR or Initial Study. The Home Depot, in particular, provides access directly to the rear of our residential property, and planned parking will substantially surround us. Our historic house remains in residential use, NOT adaptive reuse, and we have been given no viable alternative but to stay there.

We note that although we brought this problem to the Commission's attention last month relative to the Costco SPARC approval, the current staff report makes no mention of the historic Morse Skinner Ranch House or land use incompatibilities. The current application cannot be approved due to the removal of a key project component affecting our historic property. A supplemental EIR is required before you can consider approval of the Home Depot or other Reynolds Ranch commercial development.

We will provide further evidence and testimony at the appeal hearing.

Thank you.

Sincerely,

Susan Brandt-Hawley

cc: City Attorney Steve Schwabauer
Steve Herum

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: **PUBLIC HEARING TO CONSIDER APPEALS OF BRANDT-HAWLEY LAW GROUP ON BEHALF OF CHARLES AND MELISSA KATZAKIAN REGARDING THE DECISION OF THE PLANNING COMMISSION TO APPROVE: 1. SPARC REVIEW AND USE PERMIT FOR COSTCO WHOLESALE DEVELOPMENT; AND 2. SPARC REVIEW FOR REYNOLDS RANCH SHOPPING CENTER AND HOME DEPOT**

PUBLISH DATE: **SATURDAY, APRIL 24, 2010**

LEGAL AD

TEAR SHEETS WANTED: **One (1) please**

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, APRIL 22, 2010

ORDERED BY: RANDI JOHL
CITY CLERK

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

Faxed to the Sentinel at 369-1084 at 2:30pm (time) on 4/22/10 (date) 2 (pages)
LNS _____ Phoned to confirm receipt of all pages at _____(time) ____JMR ____CF ____MB (initials)

forms\advins.doc

DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER APPEALS OF BRANDT-HAWLEY LAW GROUP ON BEHALF OF CHARLES AND MELISSA KATZAKIAN REGARDING THE DECISION OF THE PLANNING COMMISSION TO APPROVE: 1. SPARC REVIEW AND USE PERMIT FOR COSTCO WHOLESALE DEVELOPMENT; AND 2. SPARC REVIEW FOR REYNOLDS RANCH SHOPPING CENTER AND HOME DEPOT

On Friday, April 23, 2010, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider appeals of Brandt-Hawley Law Group on behalf of Charles and Melissa Katzakian regarding the decision of the Planning Commission to approve: 1. SPARC review and Use Permit for Costco Wholesale Development; and 2. SPARC review for Reynolds Ranch Shopping Center and Home Depot (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2010, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK

Jennifer M. Robison

JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

DECLARATION OF MAILING

PUBLIC HEARING TO CONSIDER APPEALS OF BRANDT-HAWLEY LAW GROUP ON BEHALF OF CHARLES AND MELISSA KATZAKIAN REGARDING THE DECISION OF THE PLANNING COMMISSION TO APPROVE: 1. SPARC REVIEW AND USE PERMIT FOR COSTCO WHOLESALE DEVELOPMENT; AND 2. SPARC REVIEW FOR REYNOLDS RANCH SHOPPING CENTER AND HOME DEPOT

On Friday, April 23, 2010, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider appeals of Brandt-Hawley Law Group on behalf of Charles and Melissa Katzakian regarding the decision of the Planning Commission to approve: 1. SPARC review and Use Permit for Costco Wholesale Development; and 2. SPARC review for Reynolds Ranch Shopping Center and Home Depot, attached hereto Marked Exhibit A. The mailing list for said matter is attached hereto, marked Exhibit B.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2010, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK, CITY OF LODI

JENNIFER M ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Forms/decmail.doc

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING
Date: May 5, 2010
Time: 7:00 p.m.

For information regarding this notice please contact:
Randi Johl
City Clerk
Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, May 5, 2010**, 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 the following matter:

a) **Appeals of Brandt-Hawley Law Group on Behalf of Charles and Melissa Katzakian Regarding the Decision of the Planning Commission to Approve:**

1. **SPARC Review and Use Permit for Costco Wholesale Development; and**
2. **SPARC Review for Reynolds Ranch Shopping Center and Home Depot**

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. 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 W. 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:

Randi Johl
City Clerk

Dated: April 21, 2010

Approved as to form:

D. Stephen Schwabauer
City Attorney

Appeal of Reynolds Ranch & Costco PC approvals (5-5-10 City Council Meeting) EXHIBIT B

OWNER	ADDRESS	CITY	STATE	ZIP
KATZAKIAN, CHARLES S & MELISSA	PO BOX 2484	LODI	CA	95241
ROBERT L & C W REYNOLDS FAM LL	23290 N PEARL RD	ACAMPO	CA	95220
SKINNER RANCH HOLDINGS LP	1420 S MILLS AVE SUITE L	LODI	CA	95242
SOUTH RIVER RANCH LLC	4920 E HOGAN LN	LODI	CA	95240
ROBERT & CAROLYN REYNOLDS ETAL	PO BOX 725	WOODBRIDGE	CA	95258
MILLER, DONALD W & NANCY C TR	4071 E HARNEY LN	LODI	CA	95240
LOGAN, WENDELL & DORATHEA	311 E HARNEY LN	LODI	CA	95242
THAYER, WALTER A & JOANNE M TR	325 E HARNEY LN	LODI	CA	95240
MILLER, DONALD W & NANCY C TR	349 E HARNEY LN	LODI	CA	95240
MILLER, DONALD W & NANCY C TR	349 E HARNEY LN	LODI	CA	95240
CHUGHTAI, AFTAB & FARHAT ETAL	12350 DEL AMO BLVD APT 1610	LAKEWOOD	CA	90715
WARREN, FRANK L & MAXINE	308 DRIFTWOOD DR	LODI	CA	95240
BUSTILLOS, ANDREW L & STACEY	314 DRIFTWOOD DR	LODI	CA	95240
HABER, BONIFACIO A JR & RIZALI	PO BOX 51525	PALO ALTO	CA	94303
KUMARI, VIJAY & SARITA	PO BOX 18085	SAN JOSE	CA	95158
SINGH, KASHMIR ETAL	2513 MERCATO LN	LODI	CA	95240
GAWEL, JASON & KIMBERLY	PO BOX 411	SEASIDE	CA	93955
AIELLO, KEN & JENNIFER	2506 MARANO LN	LODI	CA	95240
TROXCLAIR, CRAIG & ELIZABETH	2512 MARANO LN	LODI	CA	95240
LOPEZ, ROBERTO & GUADALUPE	2511 MARANO LN	LODI	CA	95240
MENDOZA, ELVIS O	2505 MARANO LN	LODI	CA	95240
BARAZON, LITA V	2504 VALLINI LN	LODI	CA	95240
ELECTRONIC MORTGAGE SERVICING	2756 E BIDWELL ST STE 300	FOLSOM	CA	95630
HERRERA, JESUS RAMIREZ & MARIA	2509 VALLINI LN	LODI	CA	95240
TROXCLAIR, CRAIG & ELIZABETH	2512 MARANO LN	LODI	CA	95240
MEZA, JOSEFINA ETAL	437 PORTA ROSSA WAY	LODI	CA	95240
EIGHT DIGITS LLC	6777 EMBARCADERO DR #3	STOCKTON	CA	95219
GAMA, JOSE	2450 MONTEBELLO WAY	LODI	CA	95240
WILSON, GERMAYNE ETAL	2458 MONTEBELLO WAY	LODI	CA	95240
YOUNG, GARVIN & STEPHANIE	1824 VICTORIA DR	LODI	CA	95242
KERLIN, DELRAY & CYNTHIA J G	1808 AUTUMN WAY	LODI	CA	95242
KHAN, JOHER M	1112 RIVERGATE DR	LODI	CA	95240
ROMAN CATHOLIC WELFARE CORP ST	1105 N LINCOLN ST	STOCKTON	CA	95203
DELTA PACKING COMPANY PTP	6021 E KETTLEMAN LN	LODI	CA	95240
FELKINS, JEANETTE L TR	23480 N DEVRIES RD	LODI	CA	95242

	Company	FirstName	LastName	Address1	City	State	PostalCode	Minutes
1.		Keith	Selleseth	2350 St. Anton Drive	Lodi	CA	95242	
2.		Senator Dave	Cogdill	1308 W. Main St., Suite C	Ripo n	CA	95366	
3.		Anne M.	Cerney	900 W. Vine Street	Lodi	CA	95240	
4.		Ernest	Golladay	1924 Edgewood Dr.	Lodi	CA	95242-2305	
5.		Bertha	Castro	2912 Fernwood Dr.	Lodi	CA	95242	
6.	Baumbach & Piazza, Inc.	Steve	Pechin	323 W. Elm Street	Lodi	CA	95240	
7.	CalTrans, District 10	Attn: IGR	Planning	P.O. Box 2048	Stock ton	CA	95201	
8.	Coldani Realtors	Leonard	Bull	1806 W. Kettleman Lane	Lodi	CA	95242	X
9.	Lew-Garcia-Davis	Mr. Gary S.	Davis	P.O. Box 1033	Ceres	CA	95307-1033	
10.	Lodi District Chamber of Commerce			24 S. School St.	Lodi	CA	95240	X
11.	Lodi Improveme nt Committee			P.O. Box 3006	Lodi	CA	95241	
12.	Lodi Unified School District	Attn: Art	Hand Jr.	1305 E. Vine Street	Lodi	CA	95240	X
13.	San Joaquin County Assessor's Office	Attn: Debbie	Garretson	24 S. Hunter Street, Room 303	Stock ton	CA	95202	
14.	S. J. County Planning Depart.			1810 E. Hazelton Avenue	Stock ton	CA	95205	X
15.	Teichert Constructi on	Terry	Miles	PO Box 1118	Stock ton	CA	95201	
16.	Western Real Estate News			500 S. Airport Blvd.	South San Franc	CA	94080-9881	

	Company	FirstName	LastName	Address1	City	State	PostalCode	Minutes
					isco			

Kari Chadwick – Sent e-Notification

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Kari Chadwick - Sent e-Notification

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Kari Chadwick – sent e-Notification

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Kari Chadwick – sent e-Notification

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AGENDA ITEM I-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Re-Post for Expiring Terms and Vacancies on the Greater Lodi Area Youth Commission

MEETING DATE: May 5, 2010

PREPARED BY: City Clerk

RECOMMENDED ACTION: Direct the City Clerk to re-post for the expiring terms and vacancies on the Greater Lodi Area Youth Commission.

BACKGROUND INFORMATION: At the March 3, 2010, City Council meeting, the City Clerk's Office was directed to post for the expiring terms and vacancies on the Greater Lodi Area Youth Commission, and since that time, another Student Appointee has resigned. Due to the fact that none of the current Commissioners are seeking reappointment and there were too few applications received, it is recommended that the following vacancies be re-posted for another 15-day period.

Greater Lodi Area Youth Commission

(Adult Advisor)

David Molvik	Term to expire May 31, 2010

(Student Appointees)

Evan Beau Benko	Term to expire May 31, 2010
Shelby Gotelli	Term to expire May 31, 2010
Joshua Gums	Term to expire May 31, 2010
Mykenzie Mattheis	Term to expire May 31, 2010
Emily McConahey	Term to expire May 31, 2010
Priyank Patel	Term to expire May 31, 2011
Gordon Wong	Term to expire May 31, 2011

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

APPROVED: _____
Blair King, City Manager

council/councom/PostingRepost.doc

AGENDA ITEM J-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Certifying Concurrence with California Energy Commission Environmental Findings and Approving Agreements with the Northern California Power Agency for Power Sales, Project Management and Operation, Ground Lease, and Recycled Water Supply (EUD)

MEETING DATE: May 5, 2010

SUBMITTED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution certifying concurrence with California Energy Commission environmental findings and approving agreements with the Northern California Power Agency for power sales, project management and operation, ground lease, and water supply.

BACKGROUND INFORMATION: Lodi Energy Center (LEC) will be a 280-megawatt combined-cycle powerplant built and owned by the Northern California Power Agency on City of Lodi property. The plant will be built south of Lodi's White Slough Water Pollution Control Facility, between the NCPA Combustion Turbine Plant 2 (CT-2 or STIG) and I-5. Upon completion, LEC will be the most energy efficient gas-powered power plant in Northern California.

Based on an average price of $7 per million British thermal units for natural gas fuel, the LEC is expected to produce electricity at an all-in cost of about 7.2 cents per kilowatt hour, while emitting 28 percent less carbon dioxide than the sources it will displace. Due to a variety of factors, the plant's actual average capability is expected to be 296 MW.

The California Energy Commission unanimously approved the license for the Lodi Energy Center on April 21. That set the stage for the power sale agreement, which NCPA will use to obtain financing for project construction, and the management and operation agreement, which sets the rules for the plant's operation.

CEQA

The California Energy Commission (CEC) is the lead agency under the California Environmental Quality Act for LEC. The CEC Final Decision on NCPA's Application for Certification (AFC) includes environmental analysis, findings, and mitigation measures and serves as the environmental impact report for LEC. On April 21, 2010, the CEC issued its Final Decision that LEC, as conditioned, will not have any significant environmental impact. Because Lodi is a "responsible agency" under CEQA, it must consider the lead agency's findings for each significant effect of the Project and make its own appropriate findings. The attached resolution makes all necessary findings for Lodi acting as a responsible agency. A copy of the order approving the AFC is forthcoming. Lodi must file a Notice of Determination (attached) of its approval with the San Joaquin County Clerk.

APPROVED: _____

Blair King, City Manager

Power Sale Agreement

NCPA must have 100 percent subscription before financing the project. Lodi's currently designated 9.3561 percent Generation Entitlement Share (GES) of LEC would provide 26.20 MW and about 40 percent of Lodi's annual electric energy need. Since other participants may seek an increase or reduce their participation levels, staff recommends that the City Council authorize a range in Lodi's GES from 8.57 percent to 10 percent (or about 24 to 28 MW at a 280 MW LEC capacity level), and authorize the City Manager to set that level prior to execution of the Power Sale Agreement (PSA).

The PSA provides that the LEC will be governed by a Project Participant Committee (PPC). Each participant will have one representative on the PPC, with votes weighted based upon GES. There are 14 LEC participants.

Other PSA highlights are similar to other NCPA projects in which Lodi participates. The PSA is attached.

Project Management and Operation

The Project Management and Operation Agreement (PMOA) provides that NCPA manage and operate the LEC Project based on NCPA's capabilities and experience in operating similar projects. The PMOA is attached.

Other Agreements

In addition, the final water supply agreement and final ground lease, implementing the Memorandum of Understanding which Council previously approved on September 2, 2009, are attached. A Purchase and Sale Agreement for the Giant Garter Snake Mitigation Conservation Easement will be on the May 19 Agenda after SJCOG sets the final mitigation easement terms.

FISCAL IMPACT: For Lodi electric ratepayers, the savings are projected to range from $42 million to $49 million over the projected 30-year life of the LEC. Upon project financing, the Electric Utility Department will receive a $4.7 million reimbursement for its share of project development costs. In addition, the City will receive $40,000 in annual lease payments, plus a minimum of $960,000 from recycled water sales, both escalating at 2.5 percent a year for at least 10 years.

FUNDING: Lodi's share of the LEC will be paid through future electric rates (160652).

_____
Jordan Ayers,
Deputy City Manager/Internal Services Director

_____
Kenneth A. Weisel,
Interim Electric Utility Director

KAW/lst

RESOLUTION NO.____

A RESOLUTION OF THE CITY OF LODI MAKING FINDINGS AS A RESPONSIBLE AGENCY UNDER CEQA; APPROVING THE LODI ENERGY CENTER POWER SALES AGREEMENT AND THE PROJECT MANAGEMENT AND OPERATION AGREEMENT; AND APPROVING THE LODI ENERGY CENTER AMENDED AND RESTATED GROUND LEASE AGREEMENT AND AGREEMENT TO SUPPLY RECYCLED WATER

==========

WHEREAS, Lodi has elected to participate in the 280 MW (nominal) Lodi Energy Center (LEC) being developed by NCPA, and;

WHEREAS, Lodi's Generation Entitlement Share in the LEC is 9.3561% or a nominal 26.20 MW, and;

WHEREAS, the California Energy Commission (CEC) has approved the LEC Application for Certification (AFC) on April 21, 2010 and such approval by the CEC includes various environmental analysis, findings and mitigation measures under the terms of the Warren-Alquist Act (Public Resources Code Section 25500 *et seq*.). The CEC's analysis, findings, and mitigation measures, constitute the equivalent of an environmental impact report for purposes of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 *et seq*.) as a "certified regulatory program" pursuant to CEQA Guidelines Section 15251(j). The CEC has acted as the "lead agency" for this Project for purposes of environmental analysis. As a consequence, rather than conducting its own independent environmental analysis under CEQA, Lodi is acting as a "responsible agency" under CEQA and is thus responsible for considering the analysis, findings and mitigation measures of the CEC and reaching Lodi's independent conclusions on whether and how to approve the LEC. (CEQA Guidelines Section 15096.), and

WHEREAS, Lodi acting as a responsible agency has independently considered the analysis, findings, and mitigation measures prepared by CEC as reflected in Exhibit A attached to this Resolution, and

WHEREAS, NCPA and Participants have prepared a Power Sales Agreement (PSA) which upon execution by all the LEC Participants and NCPA will permit financing, construction and operation of the Project, and;

WHEREAS, the Lodi City Council understands that if one or more other Project Participants reduce or increase their GES, Lodi may revise its GES to a GES between a minimum of 8.57% and a maximum of 10% to effectuate Project financing and construction, and;

WHEREAS, the City of Lodi is desirous of NCPA managing and operating the LEC on its behalf, and on behalf of other Project participants, and NCPA and Participants have prepared a Project Management and Operation Agreement (PMOA) which upon execution by LEC Participants and NCPA provides for LEC management and operation by NCPA, and;

WHEREAS, the City of Lodi acknowledges that the PSA forms a Project Participant Committee (PPC) which will provide Project governance and to establish, and from time to time revise, directives related to LEC capital expenditures, budgets, operations and maintenance, among other items, and that Lodi is to designate a Lodi official responsible for serving as Lodi's representative and alternate representative on the PPC, and;

WHEREAS, NCPA and the City of Lodi have prepared an Amended and Restated Ground Lease Agreement which upon execution by the City of Lodi and NCPA will provide

payment to the City of Lodi for the LEC's location and use of land owned by the City of Lodi for the life of the LEC, and;

WHEREAS, NCPA and the City of Lodi have prepared an Agreement to Supply Recycled Water which upon execution by the City of Lodi and NCPA will provide recycled water to LEC from the City of Lodi's White Slough Water Pollution Control Facility for the life of the LEC,

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby acting in its capacity as a responsible agency for purposes of the California Environmental Quality Act (CEQA), Lodi hereby makes the findings as provided in Exhibit A of this resolution and hereby directs the City Manager or his designee to record a Notice of Determination in the County of San Joaquin reflecting these findings; and

BE IT FURTHER RESOLVED that the City Council hereby approves the Power Sales Agreement and the Project Management and Operation Agreement, and authorizes the City Manager or his designee to execute these two agreements with such non-substantive changes as the City Manager finds beneficial on behalf of Lodi and to adjust Lodi's Generation Entitlement Share as reflected in the PSA and PMOA to between a minimum of 8.57% and a maximum of 10% to effectuate Project financing and construction and authorizes the Electric Utility Director to administer these agreements; and

BE IT FURTHER RESOLVED that the City Council hereby designates the Electric Utility Director or his designee as the Lodi's representative on the PPC and authorizing the Electric Utility Director to designate alternate representatives and notify NCPA of such designations; and

BE IT FURTHER RESOLVED that the City Council hereby approves the Amended and Restated Ground Lease Agreement and the Agreement to Supply Recycled Water between NCPA and the City of Lodi and authorizes the City Manager or his designee to execute these agreements with such non-substantive changes as the City Manager finds beneficial on behalf of the City of Lodi and authorizes the City Manager or his designee to administer these agreements.

Dated: May 5, 2010
==========

I hereby certify that Resolution No. 2010-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

EXHIBIT A

ENVIRONMENTAL FINDINGS

The Participant makes the following findings pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq*., and the Guidelines implementing CEQA ("CEQA Guidelines") Code of Regulations, title 14, Section 15000 *et seq*.

1. The California Energy Commission ("CEC") is the lead agency for this Project under CEQA.

2. The CEC is a certified regulatory agency pursuant to CEQA Section 21080.5 and CEQA Guidelines Sections 15250 – 15253.

3. As a certified regulatory agency, rather than an Environmental Impact Report ("EIR"), the CEC prepares an "EIR substitute" as the CEQA documentation for the Project.

4. The CEC's EIR substitute for this Project is the Presiding Member's Proposed Decision ("PMPD") released on March 10, 2010 and approved by the CEC on April 21, 2010 without substantive change.

5. Participant is a responsible agency for the Project under CEQA.

6. Participant finds that the CEC's process meet all of the conditions of CEQA Guidelines Section 15253 that would allow Participant to use and rely upon the CEC findings. Specifically, Participant finds that:

    a. The CEC is the first to grant a discretionary approval for the Project.

    b. The CEC provided Participant the opportunity to consult with the CEC and to comment on the PMPD.

    c. The PMPD considers both the significant environmental impacts of the Project that are within the jurisdiction of the Participant, if any, and considers alternatives to the Project.

    d. The CEC exercised its powers as lead agency by considering all of the environmental impacts of the Project and made the appropriate findings pursuant to CEQA Guidelines Section 15091 for each significant impact of the Project.

7. Participant has considered the PMPD and the environmental impacts of the Project described in the PMPD, pursuant to CEQA Guidelines 15096 subdivision (f).

8. The PMPD concludes that, as conditioned, the Project will not have any significant adverse effects on the environment. Thus, pursuant to CEQA Guidelines 15096 subdivision (g), Participant finds that there are no alternatives or mitigation measures within the powers of Participant to adopt that would substantially reduce or avoid any significant environmental impact of the Project.

9. Pursuant to CEQA Guidelines 15096 subdivision (h), Participant is required to make findings pursuant to CEQA Guidelines Section 15091 for each significant impact of the Project. Participant has considered the PMPD, the description of the Project's environmental impacts contained therein, the findings of fact and conclusions of law contained therein, and the conditions of certification contained therein, and, exercising its independent judgment, Participant finds the following:

    a. For all environmental impacts of the Project, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effects as identified in the PMPD.

    b. These findings are supported by substantial evidence in the record.

    c. The conditions of certification imposed on the Project by the CEC are within the authority of the CEC and will be monitored and enforced by the CEC.

10. That approval of both the Power Sales Agreement and Project Management and Operation Agreement, providing for the financing, construction and operation of the Project has no impacts on the environment not addressed within the prior CEC analysis.

To:

☐ Office of Planning and Research

For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:
1400 Tenth St.
Sacramento, CA 95814

☒ County Clerk
County of: San Joaquin
44 North San Joaquin Street, #260
Address: Stockton, CA 952002
Phone: (209) 468-3939

From:
Public Agency: City of Lodi Electric Utility
Address: 1331 South Ham Lane
Lodi, CA 95242-3995
Contact: Ken Weisel
Phone: 209-333-6764

Lead Agency (if different from above):
California Energy Commission
Address: 1516 Ninth Street, MS- 15
Sacramento, CA 95814
Contact: Rod Jones
Phone: 916-654-5191

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): _____.
Project Title: Lodi Energy Center ("LEC") Project.
Project Location (include county): The site for the LEC project is 4.4 acres of land in the city of Lodi, 6 miles west of the Lodi city center, located near Interstate-5 (I-5) approximately 1.7 miles south of State Route 12. (San Joaquin County).
Project Description:

The LEC is a natural gas-fired, combined-cycle nominal 296-megawatt (MW) power generation facility located in the City of Lodi, CA.

This is to advise that the City of Lodi Electric Utility has approved the above described project on
☐ Lead Agency or ☒ Responsible Agency

_____ and has made the following determinations regarding the above described project:
(Date)

1. The project WILL NOT have a significant effect on the environment.
2. The California Energy Commission ("CEC") is a certified regulatory agency under Public Resources Code section 21080.5 and CEQA Guidelines section 15251. The CEC prepared a substitute document for an Environmental Impact Report pursuant to Guidelines section 15252.
3. Measures to mitigate the impacts of the LEC were made conditions of approval of the project.
4. The CEC, through a Compliance Project Manager, will monitor, oversee, and verify compliance with the conditions of CEC approval of the project.
5. A Statement of Overriding Consideration WAS NOT adopted for the project.
6. Findings WERE made pursuant to the provisions of CEQA.

This is to certify that the CEC's substitute document in place of an EIR and the record of project approval is available to the General Public at:
1331 South Ham Lane, Lodi, CA

Signature (Public Agency) _____
Title_____

Date _____ Date Received for filing at OPR_____

Authority cited: Section 21083, Public Resources Code.
Reference: Sections 21000-21174, Public Resources Code.

LODI ENERGY CENTER POWER SALES AGREEMENT

By and Among

NORTHERN CALIFORNIA POWER AGENCY

and

EACH OF THE PUBLIC AGENCIES SIGNATORY HERETO

Dated as of _____, 2010

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LODI ENERGY CENTER
POWER SALES AGREEMENT

1. **PARTIES**. This Lodi Energy Center Power Sales Agreement, dated as of _____, 2010, is by and among the Northern California Power Agency, a joint exercise of powers agency and a public entity organized under the laws of the State of California, and each of the undersigned entities.

2. **RECITALS**. This Agreement (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Section 4) is made with reference to the following facts among others.

   2.1 NCPA was created pursuant to provisions contained in the Act and the Joint Powers Agreement by its members for the purpose of jointly and cooperatively undertaking planning, financing, development, construction, management, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.

   2.2 Pursuant to the terms of the Act and the Joint Powers Agreement, NCPA has the power to plan, develop, finance, own, acquire, design, construct, operate, maintain and repair electric generation and transmission projects or cause such projects to be planned, developed, financed, designed, constructed, operated, maintained and repaired, and to provide by agreement with a public agency of the State of California to perform such activities.

   2.3 The Participants include certain members of NCPA and certain entities which are not members of NCPA.

   2.4 All Participants have need for an economical, reliable source of electric capacity and energy to meet the demands of their current and future customers and their own power supply requirements.

   2.5 To address the Participants' need for an economical, reliable source of electric capacity and energy, the Participants have previously entered into the Development Agreement with NCPA in order to provide funding for certain planning, licensing, engineering and development activities related to the Project.

   2.6 Pursuant to the Development Agreement NCPA has completed certain planning, licensing, engineering and development activities related to the Project and has reported the results of such activities to the Participants.

   2.7 The Parties desire to proceed with the financing, construction, operation and maintenance of the Project, and the sale of the Project Capacity and Energy to the Participants, as provided in this Agreement to satisfy a portion of the Participants' need for an economical, reliable source of electric capacity and energy.

   2.8 NCPA and the Participants have determined that it is desirable to enter into this Agreement with the intent that this Agreement shall supersede the Development Agreement and the Development Agreement shall terminate upon the Effective Date, in each case except as provided in Section 25.

2.9 NCPA is to take or cause to be taken all steps necessary to secure such governmental permits, licenses and approvals as are necessary for, and will then proceed as appropriate with, the financing, engineering, design, equipment procurement, construction, capital improvement, operation and maintenance of the Project as provided in this Agreement.

2.10 NCPA is to own the Project and is to finance the Costs of Construction of the Project and to operate the Project on the terms and conditions provided in this Agreement and the PMOA.

2.11 NCPA intends to issue Bonds to pay the Indenture Group A Participants' share of the Costs of Construction of the Initial Facilities and all Financed Capital Improvements.

2.12 NCPA intends to issue Bonds to pay the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Initial Facilities, and, unless the Indenture Group B Participant requests NCPA to issue Bonds for such purposes as provided in this Agreement, the Indenture Group B Participant shall provide Capital Contributions to fund its share of Additional Costs of the Initial Facilities and the Costs of Construction of all Financed Capital Improvements.

2.13 The Indenture Group C Participant is to provide Capital Contributions for its share of the Initial Estimate of the Costs of Construction of the Initial Facilities, and, unless the Indenture Group C Participant requests NCPA to issue Bonds for such purpose as provided in this Agreement, the Indenture Group C Participant shall provide Capital Contributions to fund its share of Additional Costs of the Initial Facilities and the Costs of Construction of all Financed Capital Improvements.

2.14 In order to enable NCPA to issue Bonds as provided in this Agreement, this Agreement provides that the payment obligations of the Participants hereunder, while limited to Enterprise Revenues, are unconditional and not subject to set off or reduction for any reason and that NCPA's rights hereunder, including the right to receive payments hereunder from the Participants in the various Indenture Groups, are to be pledged to the appropriate Trustees, as security for the payment of the related Bonds, and the interest thereon, subject to the application thereof to such purposes and on such terms as provided in this Agreement and the applicable Indentures.

3. AGREEMENT. For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and in order to pay NCPA for each Participant's share of the cost of the Capacity and Energy of the Project, it is agreed by and between the Parties hereto as set forth in this Agreement.

4. DEFINITIONS. The terms defined in this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto shall have the meanings ascribed thereto as set out below:

4.1 Accumulated Maximum Step-Up Percentage. The maximum total GES which can be allocated to each Indenture Group A Participant as a result of a GES Step-Up which shall be [thirty-five] percent ([35]%) of such Indenture Group A Participant's GES set forth in Appendix A as of the Effective Date. The Accumulated Maximum Step-Up Percentage shall not include any GES an Indenture Group A Participant voluntarily accepts in a GES Lay-Off pursuant to Section 22.2.1.

4.2 Act. The Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 of the California Government Code, as amended and supplemented.

4.3 Additional Costs. Those Costs of Construction of the Initial Facilities and/or a Financed Capital Improvement in excess of the Initial Estimate of the Costs of Construction of the Initial Facilities or such Financed Capital Improvement.

4.4 Agreement. This Lodi Energy Center Power Sales Agreement, as it may be amended or supplemented from time to time in accordance with its terms. This Agreement is declared by NCPA and each member of NCPA which is a Participant to be a "Third Phase Agreement" under the terms of the Member Service Agreement between NCPA and such Participant.

4.5 Bankruptcy Code. Title 11 of the United States Code, as amended.

4.6 BART. The San Francisco Bay Area Rapid Transit District.

4.7 Billing Statement. The written billing statement to each Participant prepared or caused to be prepared each month by, or on behalf of, NCPA pursuant to Section 17.3.

4.8 Bonds. Bonds, notes, bond anticipation notes, or other evidences of indebtedness issued by, or loans taken out by, or Public Finance Contracts entered into by, NCPA pursuant to an Indenture from time to time to: (i) finance or refinance the Costs of Construction of the Initial Facilities or Financed Capital Improvements; or (ii) to provide credit enhancement for or economically modify NCPA's payment obligations with respect to such bonds, notes, bond anticipation notes, other evidences of indebtedness or loans.

4.9 Capacity. As of any time the ability of the Project at such time to generate or produce electricity, expressed in kW or MW.

4.10 Capital Budget. The budget prepared by NCPA for Costs of Construction of the Initial Facilities and each Capital Improvement pursuant to Section 7.3.

4.11 Capital Contribution. With respect to Additional Costs of the Initial Facilities and the Costs of Construction of each Financed Capital Improvement and the Indenture Group B Participant or the Indenture Group C Participant which has given (or has been deemed to have given) NCPA a Capital Contribution Notice with respect to its share of such Costs of Construction, the amount of payment or payments by such Participant to be made in accordance with Section 14.4, 14.5, 16.4 or 16.5.

4.12 Capital Contribution Notice. With respect to the Indenture Group B Participant and/or the Indenture Group C Participant, a notice provided to NCPA by such Participant to the effect that it intends to make a Capital Contribution in lieu of having NCPA issue Bonds for its share of any Additional Costs of the Initial Facilities or the Costs of Construction of a Financed Capital Improvement.

4.13 Capital Improvement. Any unit of property, property right, land or land right which is a replacement, repair, addition, modification, improvement or betterment to the Project or any electrical transmission or fuel facilities (including but not limited to natural gas pipelines, gas reserves and storage facilities) relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of

property constituting a part of the Project or related electrical transmission or fuel facilities which: (i) is acquired or constructed after the Commercial Operation Date; (ii) which has an estimated useful life in excess of one year; (iii) the Costs of Construction of which is not treated as an Operation and Maintenance Expense; and (iv) which is either (a) consistent with Prudent Utility Practice and, except for Required Costs, has received Participant Committee Approval or (b) required by any governmental agency having jurisdiction over the Project and reviewed by the Participant Committee.

4.14 CDWR. The State of California Department of Water Resources.

4.15 Contributions in Aid of Construction. With respect to the Costs of Construction of each Non-Financed Capital Improvement, the amount of payment or payments by the Participants to be made in accordance with Section 15.

4.16 Costs of Construction. With respect to the Initial Facilities and each Capital Improvement, all costs and expenses of planning, designing, acquiring, constructing and installing the Initial Facilities or such Capital Improvement, placing the Initial Facilities or such Capital Improvement in operation, disposal of the Initial Facilities or such Capital Improvement, decommissioning of the Initial Facilities or such Capital Improvement and obtaining governmental approvals, certificates, permits and licenses with respect thereto heretofore or hereafter paid or incurred by NCPA but shall not include Financing Costs or Indenture Deposits. The term Costs of Construction shall include funds required for all of the following with references to the Project being references to the Initial Facilities and each Capital Improvement as appropriate:

(a) All costs of planning, developing, constructing and mitigating impacts of the Project, placing the Project in operation, decommissioning of the Project, and obtaining governmental approvals, certificates, permits and licenses with respect thereto, including air emission credits.

(b) All costs of transmission facilities or project enhancements and replacement parts related to, or for the benefit of, the Project.

(c) Costs of preliminary investigation and development, the performance or construction of feasibility and planning studies for the Project, Project licensing, and the securing of regulatory approvals, as well as costs for land and land rights, water and water rights, engineering, contractors' fees, labor, materials, equipment and legal fees relating to the Project, including costs incurred under the Development Agreement.

(d) Costs of utility services and supplies during construction.

(e) To the extent not included in Total Monthly Power Costs, all costs related to the construction or acquisition of resources and facilities, and the requisite supplies of fuel, fuel transportation and water for the Project.

(f) To the extent not included in Total Monthly Power Costs, all costs relating to injury and damage claims arising out of the development and construction/ improvement of the Project less proceeds of insurance.

(g) To the extent not included in Total Monthly Power Costs, legally required or permitted federal, state and local taxes relating to the Project.

(h) Working capital and reserves in such amounts as shall be required during construction of the Project and for placing the Project in operation.

(i) Training and testing costs which are properly allocable to the construction of the Project or placing the Project in operation.

(j) All costs of insurance applicable to the period of construction and placing the Project in operation.

(k) Amounts payable with respect to capital costs for the expansion, reinforcement, enlargement, movement, reconstruction or other improvement of facilities determined by NCPA as necessary in connection with the utilization of the Project and the costs associated with the removal from service or reductions in service of any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of the Project.

(l) All costs required to be paid to NCPA under the PMOA which are applied or are to be applied thereunder to the payment of Costs of Construction.

(m) All other costs incurred by NCPA and properly allocable to the acquisition, construction, placing in operation or decommissioning of the Project or any portion thereof.

4.17 Commercial Operation Date. The initial date on which the Initial Facilities can be commercially operated and dispatched, as approved by the Participant Committee in consultation with NCPA.

4.18 Default Mitigation Sale. A sale of Project Capacity and/or Energy pursuant to Section 22.2.3 with respect to the GES of a Defaulting Participant.

4.19 Default Mitigation Sale Fund. The fund to be established and maintained by NCPA pursuant to Section 21.6.

4.20 Defaulting Participant. As of any time, a Participant as to which a Payment Default has occurred and is continuing.

4.21 Development Agreement. The Second Phase Agreement for Funding the Planning and Development Activities of the Lodi Energy Center, that became effective on or about March 1, 2008, among NCPA and the Participants. Except as provided in Section 25, the Development Agreement is superseded by this Agreement.

4.22 Effective Date. The date described in Section 32.

4.23 Energy. The electricity produced by the Project expressed in kWh or MWh.

4.24 Enterprise. With respect to: (i) each Participant other than CDWR, BART and the City of Oakland, the electric utility owned by such Participant; (ii) with respect to CDWR, the State Water Resources Development System (as defined in California Water Code

Section 12931); (iii) with respect to BART, its rail transit system; and (iv) with respect to the City of Oakland, the Port of Oakland (as defined in the Charter of the City of Oakland); in each case as constituted on the Effective Date and as the same may be improved, replaced and expanded.

4.25 Enterprise Revenues. With respect to each Participant all income, rents, rates, fees charges and other revenues derived by the Participant from the ownership or operation of its Enterprise; provided, however that a Participant's Enterprise Revenues shall not include any moneys which by law are limited to uses other than the payment of operating expenses of the Participant's Enterprise or, with respect to Capital Contributions and Contributions in Aid of Construction, capital costs of the Project.

4.26 Financed Capital Improvement. A Capital Improvement for which the Costs of Construction is to be paid with the proceeds of Bonds and/or Capital Contributions.

4.27 Financing Costs. With respect to any Bonds, all costs and expenses incurred by NCPA in connection with the authorization, sale, and delivery of such Bonds.

4.28 Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending immediately before 12:01 a.m. on the next following July 1, or such other 12 month period as shall be adopted by NCPA as its fiscal year.

4.29 Fuel Cost. All amounts which have received Participant Committee Approval and are payable by NCPA in connection with the acquisition of natural gas for, and delivery of natural gas to, the Project, including the cost associated with contract payments under minimum or guaranteed payment provisions.

4.30 Fuel Cost Component. The amounts described in Section 17.1.2.

4.31 Funding Notice. A notice provided by NCPA to Participants pursuant to Section 14.2 or Section 16.2.

4.32 General Reserve Fund. The fund to be established and maintained by NCPA pursuant to Section 21.5.

4.33 GES. The generation entitlement share (expressed as a percentage) of a Participant to a portion of the Project Energy and Capacity, as such generation entitlement share may be amended or revised from time to time in accordance with a GES Lay-Off or a GES Step-Up. The GES of each Participant as of the Effective Date is set forth in Appendix A of this Agreement.

4.34 GES Lay-Off. An increase in the GES of a Participant pursuant to Section 22.2.1.

4.35 GES Step-Up. An increase in the GES of an Indenture Group A Participant pursuant to Section 22.2.2.

4.36 ICS. The indenture cost share of a Participant in an Indenture Group which is the portion of the Indenture Cost Component for such Indenture Group allocable to such Participant which is: (a) as of any time with respect to each Participant in Indenture Group A, the percentage obtained by dividing the GES of such Participant as of such time by the GES of all Indenture Group A Participants as of such time; (b) with respect to the Indenture

Group B Participant, 100%; and (c) with respect to the Indenture Group C Participant, 100%.

4.37 Indenture. One or more indentures of trust, resolutions, loan agreements, standby bond purchase agreements, reimbursement agreements, contracts or other applicable debt instruments or documents providing for the issuance of, or otherwise relating to, Bonds, as from time to time amended and supplemented in conformity with its provisions and the provisions of this Agreement.

4.38 Indenture Cost Component. The amounts described in Section 17.1.3.

4.39 Indenture Deposits. With respect to each Indenture, the amounts, other than the Costs of Construction, which are required to be deposited in a fund or account pursuant to such Indenture at the time Bonds are issued thereunder, including:

(a) The deposit or deposits from the proceeds of Bonds in any funds or accounts established pursuant to an Indenture to pay capitalized interest on such Bonds.

(b) The deposit or deposits from the proceeds of Bonds in any fund or account established pursuant to an Indenture to meet any respective debt service reserve requirements for Bonds.

(c) The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any obligations issued for the purpose of financing the Costs of Construction, including any related costs of financing.

4.40 Indenture Group(s). One or more of Indenture Group A, Indenture Group B and/or Indenture Group C.

4.41 Indenture Group A. A subset of the Participants consisting of the California Cities of Azusa, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Oakland, Santa Clara and Ukiah, and BART, the Plumas-Sierra Rural Electric Cooperative and the Power and Water Resources Pooling Authority.

4.42 Indenture Group Approval. With respect to the approval or authorization of any action, transaction, program or procedure relating to an Indenture or Bonds by the NCPA Commission after the Effective Date, that such action, transaction, program or procedure has been approved by: (i) with respect to the Indenture Group A Participants the Indenture Group A Non-Defaulting Participants as provided in Section 8.4; (ii) with respect to Indenture Group B, the Indenture Group B Participant if not then a Defaulting Participant; and (iii) and with respect to Indenture Group C, the Indenture Group C Participant if not then a Defaulting Participant.

4.43 Indenture Group B. A subset of the Participants consisting of the California Department of Water Resources.

4.44 Indenture Group C. A subset of the Participants consisting of the Modesto Irrigation District.

4.45 Initial Estimate. With respect to the Initial Facilities, [$375,300,000] and with respect to each Capital Improvement, the Initial Estimate shall be the first estimate of the Costs of Construction of such Capital Improvement approved by the Participant Committee whether by way of a Capital Budget setting forth such estimate or otherwise.

4.46 Initial Facilities. The electric generating station and related facilities, including shared facilities, and rights described in Appendix B, as such Appendix B may be amended from time to time prior to the Commercial Operation Date.

4.47 Interconnection Agreement. Any agreement between NCPA and a third party regarding terms and conditions for establishing and maintaining an interconnection between the Project and the Point of Delivery.

4.48 Joint Powers Agreement. The Amended and Restated Northern California Power Agency Joint Powers Agreement, dated as of January 1, 2008, by and among the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, California, the Plumas-Sierra Rural Electric Cooperative, the Turlock Irrigation District, the Port of Oakland, the Truckee-Donner Public Utilities District and the Bay Area Rapid Transit District as the same may be amended and supplemented.

4.49 kW. Kilowatt.

4.50 kWh. Kilowatt hour.

4.51 Major Contracts. Major Contracts are: (i) the PMOA; (ii) each Interconnection Agreement; (iii) Project fuel procurement and management agreements; (iv) agreements for supplying the Project with water; (v) the lease of the Project site; and (vi) any other contract or agreement relating to the Project, other than an NCPA Multiple Project Contract, which has a total cost of more than five hundred thousand dollars and which is designated as a Major Contract by the Participant Committee, as such contracts or agreements may be entered into before, on or after the Effective Date and as they may be amended, revised or supplemented from time to time in accordance with their respective terms. No NCPA Multiple Project Contract shall constitute a Major Contract.

4.52 Mandatory Budget Amendment. The term Mandatory Budget Amendment shall have the meaning ascribed to this term in Section 7.2.3.

4.53 MW. Megawatt.

4.54 MWh. Megawatt hours.

4.55 NCPA. The Northern California Power Agency, a joint exercise of powers agency, created pursuant to the Act and the Joint Powers Agreement, and its successors.

4.56 NCPA Administrative Costs. That portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and

payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, that are charged directly or apportioned to the development, financing, construction, improvement, maintenance, operation or decommissioning of the Project.

4.57 NCPA Multiple Project Contract. A contract entered into by NCPA which relates to providing services, supplies or commodities with respect to the planning, financing, constructing, managing, operating, maintaining and/or improving of electric generation and/or transmission facilities, including related equipment, property, rights or facilities, with respect to the Project and one or more other NCPA projects and/or programs.

4.58 Non-Defaulting Participant. As of any time, each Participant which is not a Defaulting Participant as of such time.

4.59 Non-Financed Capital Improvement. A Capital Improvement, the Costs of Construction of which is to be paid with Contributions in Aid of Construction.

4.60 Non-Financed Capital Improvement Cost Component. The amounts described in Section 17.1.4.

4.61 OandM Step-Up. An increase in the amount payable by a Participant for Operation and Maintenance Expenses beyond such Participant's GES as a result of a Payment Default by another Participant which increase shall be calculated pursuant to Section 17.1.5.

4.62 OandM Step-Up Cost Component. The amounts described in Section 17.1.5.

4.63 OandM Step-Up Share. As of any time of calculation and with respect to each Non-Defaulting Participant, the quotient obtained by dividing (i) the GES of such Non-Defaulting Participant by (ii) the sum of the GES of all Non-Defaulting Participants.

4.64 Operating Cost Component. The amounts described in Section 17.1.1.

4.65 Operating Fund. The fund to be established and maintained by NCPA pursuant to Section 21.2.

4.66 Operating Reserve Fund. The fund to be established and maintained by NCPA pursuant to Section 21.3.

4.67 Operating Reserve Requirement. As of any time, an amount determined in accordance with the PMOA as equal to approximately 60 days of Operation and Maintenance Expenses in the Project Annual Budget in effect as of such time.

4.68 Operation and Maintenance Expenses. The costs paid or incurred by NCPA for operating and maintaining the Project including, but not limited to (a) all Fuel Costs; (b) all costs of water supply in connection with the Project; (c) all costs and expenses of management of the Project, including on-site operating staff and NCPA Administrative Costs; (d) all costs and expenses of maintenance and repair of the Project, including all expenses necessary or appropriate in the judgment of NCPA to maintain and preserve the Project in good repair and working order; (e) payments in-lieu of taxes to any public agency in connection with the Project; (f) all costs, expenses and charges of accountants, engineers and other consultants; (g) any cost or expense paid by NCPA to comply with

requirements of law applicable to the Project or the NCPA's ownership or operation thereof or in any capacity in connection with the Project or any activity in connection therewith; (h) costs of repairs, replacements and reconstruction of the Project that do not entail Capital Improvements; (i) costs relating to litigation and other adversarial proceedings (including attorneys' fees and disbursements and other amounts paid as a result thereof); (j) insurance costs (including amounts to fund any self-insurance program); (k) taxes and any other governmental charges required to be paid by NCPA with respect to the Project; (l) any costs payable in connection with the output of the Project; (m) all costs related to the conducting of the business of NCPA with respect to the Project; and (n) any other costs relating to the operation or maintenance of the Project, including without limitation any costs relating to funding or maintaining working capital or similar reserves approved by NCPA and the Participant Committee.

4.69 Outstanding. The term Outstanding, when used with respect to an obligation under an Indenture, means the obligation has not been discharged in accordance with the Indenture.

4.70 Participant Committee. The committee established in accordance with Section 8 of this Agreement.

4.71 Participant Committee Approval. The term Participant Committee Approval shall have the meaning ascribed to such term in Section 8.3.

4.72 Participant Monthly Power Costs. With respect to a Participant and a given month, the costs payable by such Participant pursuant to Section 17.2.

4.73 Participants. Those entities (other than NCPA) executing this Agreement, together in each case with their successors. Appendix A of this Agreement lists all Participants.

4.74 Party. The term Party, when capitalized, means NCPA or a Participant and the term Parties, when capitalized, means NCPA and all the Participants collectively.

4.75 Payment Default. The term Payment Default has the meaning ascribed to such term in Section 22.1.1.

4.76 PMOA. The Lodi Energy Center Project Management and Operations Agreement among NCPA and the Participants, relating to the Project, as it may be amended or supplemented from time to time in accordance with its terms.

4.77 Point of Delivery. The first point of interface between the Project facilities and the transmission facilities controlled by the entity which regulates the transmission of Energy from the Project under applicable laws and regulations. As of the Effective Date, the Point of Delivery is the first point of interface between the Project facilities and the facilities controlled by the balancing authority for the control area where the Project is located pursuant to the Western Electricity Coordinating Council.

4.78 Project. The Lodi Energy Center consisting of the Initial Facilities and all Capital Improvements.

4.79 Project Annual Budget. For any Fiscal Year, the Project budget in effect for such Fiscal Year pursuant to Section 7.2, including any amendments thereto.

4.80 Project Net Revenues. For any period of time, the Project Revenues less the Operation and Maintenance Expenses during such period and less the deposits to the Operating Reserve Fund during such period.

4.81 Project Revenues. All gross income and revenue received or receivable by NCPA from the ownership or operation of the Project, including all rates and charges for the Capacity and Energy of the Project and the other services and facilities of the Project, all proceeds of insurance covering business interruption loss relating to the Project, any Subsidy received by NCPA and all other income and revenue howsoever derived by NCPA from the ownership or operation of the Project or otherwise arising from the Project, including the proceeds of sales of Project Capacity and/or Energy pursuant to Section 6 and Section 22, but not including Contributions in Aid of Construction, Capital Contributions or grants to the extent restricted by the donor to exclude the application to be made of such grant pursuant to this Agreement.

4.82 Prudent Utility Practice. Any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior hereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with sound utility business and financial practices approved by the Western Electricity Coordinating Council or the North American Electric Reliability Corporation (or any successors to such organizations), reliability, safety and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at a reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of governmental agencies of competent jurisdiction and official electric industry reliability organizations and shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project.

4.83 Public Finance Contract. A contract or arrangement described in Section 5922 of the California Government Code as in effect on the dated date of this Agreement.

4.84 Reconciliation Statement. A statement prepared by NCPA pursuant to Section 17.5 or Section 17.6.

4.85 Required Costs. The: (i) Additional Cost of the Initial Facilities or a Financed Capital Improvement which: (a) arise while any obligations remain Outstanding under an Indenture; and (b) are either (y) required by law or governmental regulation, including environmental regulation, for the operation of the Project or (z) necessary to complete the Initial Facilities or the Financed Capital Improvement, as applicable, as a facility performing the functions intended for the Initial Facilities or such Financed Capital Improvement; and (ii) costs and expenses under a NCPA Multiple Project Contract when the use of such NCPA Multiple Project Contract in connection with the Project has been approved by the Participant Committee.

4.86 Revenue Account. The account in the Revenue Fund with respect to an Indenture Group as described in Section 21.1.

4.87 Revenue Fund. The fund to be established and maintained by NCPA pursuant to Section 21.1

4.88 Subsidy. With respect to Taxable Subsidy Bonds, a payment from the United States with respect to such Taxable Subsidy Bonds or the interest thereon or other benefit from the United States (such as a tax credit) in connection with such Taxable Subsidy Bonds.

4.89 Taxable Bonds. Bonds, other than Taxable Subsidy Bonds, the interest on which is not excluded from gross income for federal income tax purposes.

4.90 Taxable Subsidy Bonds. Bonds, the interest on which is not excluded from gross income for federal income tax purposes and as to which NCPA or an owner of a Bond is entitled to receive a Subsidy.

4.91 Tax-Exempt Bonds. Bonds, the interest on which is excluded from gross income for certain federal income tax purposes.

4.92 Tax Status. With respect to a Tax-Exempt Bond, the exclusion from gross income for federal income tax purposes of interest on such Bond and with respect to a Taxable Subsidy Bond, the right of NCPA or the owner of a Bond to receive a Subsidy with respect to such Bond.

4.93 Threshold Amount. An amount equal to $5,000,000 or such larger amount as shall be approved by the Participant Committee pursuant to Section 8.3.2.

4.94 Total Monthly Power Costs. The term Total Monthly Power Costs shall have the meaning ascribed to such term in Section 17.1.

4.95 Trustee. A bank or other financial institution, if any, at the time serving as trustee under an Indenture or, if there is no such trustee(s) under an Indenture, the respective lender or counterparty or other party entitled to receive payments under such Indenture.

4.96 Uncontrollable Forces. With respect to a Party hereto, any cause beyond the control of such Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other person or entity to comply with then current contracts, an act of god, fire, flood explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license, or permit, inability of any party or any person or entity engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of NCPA to sell or issue its Bonds pursuant to acceptable terms.

4.97 Rules of Construction. Except where the context otherwise requires, words of any gender shall include correlative words of the other genders; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include

firms, associations, trusts, corporations or governments or agencies or political subdivisions thereof. Unless otherwise indicated, references to a Section shall be to such Section of this Agreement. The term "include" and its derivations are not limiting and shall be construed as meaning "including but not limited to". The phrase "Participants in an Indenture Group" and any similar phrase shall refer: (i) as to Indenture Group A, the Indenture Group A Participants; (ii) as to Indenture Group B, the Indenture Group B Participant; and (iii) as to Indenture Group C, the Indenture Group C Participant. The phrase "an Indenture relating to an Indenture Group" and any similar phrase shall refer: as to Indenture Group A, an Indenture with respect to Bonds or other obligations payable from Indenture Group A Project Net Revenues; as to Indenture Group B, an Indenture with respect to Bonds or other obligations payable from Indenture Group B Project Net Revenues; and as to Indenture Group C, an Indenture with respect to Bonds or other obligations payable from Indenture Group C Project Net Revenues.

The phrase "Project Revenues relating to an Indenture Group" and any similar phrase shall refer: as to Indenture Group A, the Project Revenues relating to the Indenture Group A Participants' GES; as to Indenture Group B, the Project Revenues relating to the Indenture Group B Participant's GES; and as to Indenture Group C, the Project Revenues relating to the Indenture Group C Participant's GES. The phrase "NCPA shall issue Bonds for a Participant" or any similar phrase shall be construed to mean that NCPA shall use its best reasonable efforts to issue Bonds payable from the Project Net Revenues related to such Participant's GES, subject to any legal limitations on such issuance, limitations applicable to the terms of such Bonds, the credit evaluations for the applicable Indenture Group Participants' Enterprise Revenues and the market conditions applicable to such issuance. References to Indentures herein shall apply only to Indentures under which obligations thereunder remain Outstanding.

The phrase "approved by the Participant Committee" and any similar phrase in connection with any action, procedure or agreement shall be construed to mean that such action, procedure or agreement has received Participant Committee Approval.

The term "construction" include planning, designing, permitting, acquiring, constructing, installing, equipping, and furnishing.

Unless otherwise specified herein, references to a day or days shall be to a calendar day or days, as applicable. Unless otherwise specified herein, references to a month or months shall be to a calendar month or months, as applicable.

Unless otherwise specified herein, the application at any time of a Participant's GES to such Participant's right to Project Capacity and Energy, right to vote on Participant Committee matters, obligation to make payments hereunder or any other matter hereunder determined by reference to such Participant's GES shall refer to such Participant's then current GES and/or the applicable percentage thereof at the time of such application.

The captions or headings in this Agreement and the Table of Contents are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Agreement.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Representations and Warranties. NCPA and each Participant (except as noted below) do hereby represent, warrant and covenant to the other Parties as of the Effective Date as follows:

5.1.1 it is a duly organized and validly existing entity under the laws of the State of California;

5.1.2 all authorizations necessary for it to enter into this Agreement and to legally perform its obligations hereunder have been received and are in full force and effect;

5.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary actions and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, or order applicable to it;

5.1.4 this Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and equitable principles;

5.1.5 it is not insolvent or a debtor in a proceeding under the Bankruptcy Code and there are no proceedings pending or being contemplated by it nor, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;

5.1.6 there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement, the Major Contracts or other material agreements relating to the Project;

5.1.7 no event of default or potential event of default with respect to it has occurred and is continuing in any way material to its entering with and performing its obligations under this Agreement and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

5.1.8 it has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

5.1.9 each Participant, on its own behalf, represents, warrants and covenants that it has entered into this Agreement in connection with the conduct of the business of its Enterprise and it has the capacity or ability to take delivery of its GES of all Capacity and Energy produced by the Project as contemplated under this Agreement; and

5.1.10 NCPA represents, warrants and covenants that it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to

manage, operate and to make available to each Participant its GES of all Capacity and Energy produced by the Project as contemplated under this Agreement

6. **SALE AND PURCHASE OF PROJECT OUTPUT.** NCPA hereby sells to each Participant, and each Participant hereby purchases from NCPA, on the terms and conditions set forth in this Agreement, such respective Participant's GES of the Capacity of the Project and the Energy associated with such Capacity. Subject to the provisions of Section 22 and Section 23, the Energy from the Project shall be delivered to each Participant at the Point of Delivery. Participants shall not be responsible for purchasing, nor have any right to purchase, capacity or energy from any other facility owned by NCPA other than the Project unless a Participant and NCPA expressly agree in writing to such purchase.

7. **OBLIGATIONS OF NCPA AND PARTICIPANTS.**

7.1 General Obligations of NCPA as Project Operator. NCPA shall be responsible for planning, designing, obtaining applicable financing, constructing, improving, insuring, contracting for, managing, administering, operating and maintaining the Project as provided in this Agreement and the PMOA to effectuate the delivery of each Participant's GES of Capacity and Energy to such Participant. In the event of any conflict between the provisions of this Agreement and any provisions of the PMOA, the provisions of this Agreement shall control.

7.2 Project Annual Budget.

7.2.1 Not less than 60 days prior to the beginning of each Fiscal Year, NCPA shall prepare and submit to the Participant Committee the Project Annual Budget for such Fiscal Year which shall set forth the estimated Total Monthly Power Costs for each month of such Fiscal Year and the related Participant Monthly Power Cost for each month in the Fiscal Year. The Project Annual Budget for a Fiscal Year may be part of a multi-year budget containing such information. The Project Annual Budget for a Fiscal Year may include formulas or other methods for allocating NCPA Administrative Costs to the Project and other NCPA projects and programs; provided that, unless another allocation method is requested by NCPA and approved by the Participant Committee, NCPA shall use the same allocation method for allocating each category of NCPA Administrative Costs to the Project as for other NCPA projects and programs.

7.2.2 The Participant Committee shall promptly upon receipt thereof review and act to approve or modify the proposed Project Annual Budget. The use of NCPA Multiple Project Contracts to provide facilities, services or materials to the Project shall be subject to the approval of the Participant Committee but the rates and charges for such facilities, services or materials shall not be subject to the approval of the Participant Committee. Any allocations of NCPA Administrative Costs which are consistent with Section 7.2.1 shall not be subject to the approval of the Participant Committee.

7.2.3 At any time during a Fiscal Year, NCPA may prepare an amendment to the then current Project Annual Budget and submit such amendment to the Participant Committee for review and approval. At any time during a Fiscal Year that the Project Annual Budget for such Fiscal Year does not provide sufficient funds to pay when due all Total Monthly Power Costs for such Fiscal Year, NCPA shall

prepare and submit to the Participant Committee an amendment to the Project Annual Budget (a "Mandatory Budget Amendment") which shall provide sufficient Project Revenues to pay when due all the Total Monthly Power Costs for such Fiscal Year. The Participant Committee shall be provided the opportunity to review and discuss each Mandatory Budget Amendment with NCPA, but the Participant Committee shall not have the power to disapprove a Mandatory Budget Amendment.

7.2.4 The Project Annual Budget, and any amendment thereto other than a Mandatory Budget Amendment, shall not go into effect until it has received Participant Committee Approval. Each Mandatory Budget Amendment shall go into effect immediately without the requirement for Participant Committee Approval.

7.2.5 If by the first day of a Fiscal Year a Project Annual Budget for such Fiscal Year has not received Participant Committee Approval, then the Project Annual Budget for the immediately preceding Fiscal Year, with such modifications as shall be necessary to provide for all Total Monthly Power Costs for the then current Fiscal Year, shall be the Project Annual Budget for the then current Fiscal Year. Such Project Annual Budget shall be subject to Mandatory Budget Amendments as provided in this Agreement.

7.2.6 In the event a Project Annual Budget for a Fiscal Year receives Participant Committee Approval after the first day of such Fiscal Year, such Project Annual Budget shall replace and supersede any Project Annual Budget which is in effect for such Fiscal Year pursuant to Section 7.2.5.

7.3 Capital Improvements and Capital Budgets. NCPA shall develop and present to the Participant Committee a description, together with an estimated budget of the Costs of Construction, of all Capital Improvements which are necessary for the operation and maintenance of the Project in accordance with Prudent Utility Practice and those other Capital Improvements which NCPA determines will be of benefit to the Project. NCPA shall present each proposed Capital Improvement, and its budget, to the Participant Committee as early as NCPA deems practical. NCPA shall make a recommendation as to whether each Capital Improvement should be a Financed Capital Improvement or a Non-Financed Capital Improvement. Not less than 60 days prior to the beginning of each Fiscal Year, NCPA shall prepare and submit to the Participant Committee a budget (the "Capital Budget") for all Capital Improvements to be funded. Each Capital Budget shall include the estimate of all Costs of Construction during the next succeeding three years. The Capital Budget shall show the sources of funding, including Bonds, expected to be available for the Costs of Construction of each Capital Improvement and the estimate of funds to be collected from the Participants as Contributions in Aid of Construction for Non-Financed Capital Improvements as a part of Total Monthly Power Costs during each of the succeeding three Fiscal Years. Subject to the provisions of Section 8.10, each Capital Improvement, other than a Capital Improvement related to Required Costs, and each Capital Budget except for Required Costs, shall be subject to Participant Committee Approval.

7.4 Reports. NCPA shall prepare and issue to the Participants the reports required by the PMOA at the times required by the PMOA.

7.5 Records and Accounts. NCPA shall keep, or cause to be kept, accurate records and accounts of each of the facilities comprising the Project, as well as the financial transactions relating to the Project and of the operations of the Project, all as provided in this Agreement, the PMOA and each Indenture. NCPA shall establish and maintain such funds, accounts and subaccounts as are required by this Agreement and the Indentures and in addition as NCPA may find necessary or convenient in connection with the Project.

7.6 Periodic Audits. All transactions of NCPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. NCPA shall select certified accountants experienced in electric utility accounting, and arrange for annual audits of the books and accounting records with respect to the Project and its operations, and any cost reimbursable consultant or cost reimbursable contractor or other professional relevant to the construction or operation of the Project. Such audit may be a separate audit or included as part of NCPA's general annual audit. Such audit shall be completed and submitted to NCPA as soon as reasonably practicable after the close of the Fiscal Year. NCPA shall promptly furnish to Participants copies of all applicable audits. No more frequently than once every calendar year, a Participant may, at its sole cost and expense, audit or cause to be audited the Project related books and cost records and any cost reimbursable consultant or cost reimbursable contractor or other professional relevant to the construction, management or operation of the Project. Each such audit shall be conducted at a mutually agreed upon time and place. NCPA shall cooperate fully in any such audit.

7.7 Provide Participant Information. Each Participant agrees to supply NCPA, upon request, with such information and documentation with respect to the Project, and its operations and finances, as NCPA shall reasonably determine to be necessary or desirable for the design, development, financing, refinancing, construction, improvement, operation, maintenance and decommissioning of the Project and to allow NCPA to respond to requests for information with respect from any federal, state or local regulatory or other authority with respect to the Project or such Participant's participation therein.

7.8 Provide NCPA Information. NCPA agrees to supply each Participant, upon request, with such information and documentation with respect to the Project, and its operations and finances, as such Participant shall reasonably determine to be necessary or desirable for the design, development, financing, refinancing, construction, improvement, operation, maintenance and decommissioning of the Project and to allow such Participant to respond to requests for information with respect from any federal, state or local regulatory or other authority with respect to the Project or NCPA's ownership or operation thereof.

7.9 Consultants and Advisors Available. NCPA shall make available to the Participant Committee, upon its request, all Project related consultants and advisors, including financial advisors and bond counsel, that are retained by NCPA, and such consultants and advisors shall be authorized to consult with and advise the Participant Committee on Project matters. All reports prepared by such consultants and advisors with respect to the Project shall be provided to the Participant Committee; provided, however, that such reports need not be provided to the Participant Committee, if, as set forth in an opinion of counsel to NCPA and filed with the Participant Committee, such report is subject to attorney-client privilege or attorney work product privilege and the provision of such report to the Participant Committee would adversely affect such privilege; provided, however, that under such circumstances the Parties shall cooperate in developing

nondisclosure agreements, joint defense agreements, or other mechanisms in order to afford the Participant Committee the opportunity to view such privileged documents with appropriate protections; provided that no such nondisclosure agreements, joint defense agreements, or other mechanism shall result in a waiver of the attorney-client privilege.

7.10 Deposit of Insurance Proceeds. NCPA, in consultation with the Participant Committee, shall promptly deposit the amount of any insurance proceeds received by NCPA as a result of damage or destruction to all or any portion of the Project into appropriate Project accounts, as shall be determined by NCPA in accordance with the applicable terms of each Indenture.

8. PARTICIPANT COMMITTEE.

8.1 Establishment of Participant Committee. Subject to the provisions of Section 8.11, the Participant Committee is established by this Agreement in order to provide for effective cooperation and interchange of information, and to provide coordination on a prompt and orderly basis, among the Participants and NCPA in connection with the various management, financial, administrative, operational and technical matters which may arise from time to time in connection with developing, financing, constructing, improving, maintaining, operating and decommissioning the Project. Except with respect to matters relating to an Indenture or Bonds, or as otherwise provided by this Agreement, NCPA shall comply with all lawful directions of the Participant Committee with respect to the Project which have received Participant Committee Approval, while not stayed or nullified, to the fullest extent authorized by law and to the extent such directions are not inconsistent with, and do not impair NCPA's ability to perform its obligations under any applicable Indenture. With respect to matters relating to an Indenture or Bonds for an Indenture Group, NCPA shall comply with all lawful directions of the applicable Indenture Group Participants which have received Indenture Group Approval from the applicable Indenture Group, while not stayed or nullified, to the fullest extent authorized by law and to the extent such directions are consistent with and do not impair NCPA's ability to perform its obligations under any applicable Indenture.

8.2 Participant Committee Operations.

8.2.1 The Participant Committee shall consist of one representative from each Participant which is not a Defaulting Participant. Each representative shall be entitled to cast one vote in matters as to which a majority of Participants is used to determine approval by the Participant Committee and a vote (expressed as a percentage) equal to the GES of the Participant it represents in matters as to which a percentage of GES is used to determine approval by the Participant Committee. NCPA shall be entitled to one non-voting representative on the Participant Committee and each subcommittee thereof. NCPA and each Participant shall, within 30 days after the Effective Date, give notice to NCPA and each other Participant of its representative on the Participant Committee. The Participant Committee shall conduct its first meeting within 45 days of the Effective Date.

8.2.2 Alternate representatives may be appointed for a Participant by similar notice to act on the Participant Committee, or on any subcommittee established by the Participant Committee, in the absence of the regular representative or to act on specified occasions with respect to specified matters. Each Participant shall give

notice to NCPA and each other Participant of its alternate representative on the Participant Committee. An alternate representative may attend all meetings of the Participant Committee but may vote only if the representative for whom she/he serves as alternate is absent and only one alternate representative of a Participant may vote on any single motion or resolution. Each Participant shall promptly give notice to the other Participants and NCPA of any changes in the designation of its representative(s) and/or alternate representative(s) on the Participant Committee or any subcommittee thereof, and NCPA shall promptly give notice to the Participants of any changes in the designation of NCPA's representative on the Participant Committee or any subcommittee thereof.

8.2.3 The Chairperson of the Participant Committee shall be designated by nomination and vote of the Participant Committee. The Chairperson does not have a vote by virtue of his/her office, but may vote as a representative or alternate representative of one or more Participant(s) as provided above. The Chairperson of the Participant Committee shall be responsible for calling and presiding over meetings of the Participant Committee. The Chairperson shall promptly call a meeting of the Participant Committee in any manner permitted by law at the request of representatives of any two or more Participants. Participant Committee meetings may be conducted and actions of the Participant Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, telegraph, letter, e-mail or by any combination thereof, to the extent permitted by law.

8.2.4 A quorum for the Participant Committee taking any action shall consist of either: (i) the representatives of a majority of the Non-Defaulting Participants; or (ii) the representatives of Non-Defaulting Participants holding a GES of not less than a majority of the aggregate GES of all Non-Defaulting Participants.

8.3 Participant Committee Approval.

8.3.1 The approval, disapproval or authorization by the Participant Committee of any action, transaction, program or procedure relating to the Project having an aggregate cost impact on the Participants of less than the Threshold Amount shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect of a majority of the quorum of the meeting; provided, however, that if the representative of any Non-Defaulting Participant requests, at any time prior to, at or within 10 days after the Participant Committee meeting that such action, transaction, program or procedure be approved, disapproved or authorized, that such action, transaction, program or procedure be approved by a GES vote, then the approval, disapproval or authorization of such action, transaction, program or procedure by the Participant Committee shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect by the representatives of Non-Defaulting Participants then holding a GES of not less than 65% of the GES of all then Non-Defaulting Participants; and provided further that such 65% shall be reduced by the amount that the GES of each Participant having a GES in excess of 34% exceeds 34% but in no event shall such 65% be reduced below 50.10%.

8.3.2 The approval, disapproval or authorization by the Participant Committee of any action, transaction, program or procedure relating to the Project having an aggregate cost impact on the Participants at or above the Threshold Amount shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect of a majority of the quorum of the meeting; provided, however, that if the representative of any Non-Defaulting Participant requests, at any time prior to, at or within 10 days after the Participant Committee meeting that such action, transaction, program or procedure was approved, disapproved or authorized, that such action, transaction, program or procedure be approved by a GES vote, then the approval, disapproval or authorization of such action, transaction, program or procedure by the Participant Committee shall be given by the vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect by the representatives of Non-Defaulting Participants then holding a GES of not less than 75% of the GES of all then Non-Defaulting Participants; and provided further that such 75% shall be reduced by the amount that the GES of each Participant having a GES in excess of 24% exceeds 24% but in no event shall such 75% be reduced below 50.10%.

8.3.3 Approval or authorization by the Participant Committee in accordance with this Section 8.3 shall constitute "Participant Committee Approval" of an action, transaction, program or procedure. Disapproval by the Participant Committee in accordance with this Section 8.3 shall establish that an action, transaction, program or procedure has failed to receive "Participant Committee Approval." A Participant Committee Approval shall be evidenced by a copy of the resolution, motion or minute order approving, disapproving or authorizing the action, transaction, program or procedure certified by the secretary or an assistant secretary of the Participant Committee or a copy of the minutes of the Participant Committee meeting, or an extract thereof, with respect to the resolution, motion or minute order or other act approving, disapproving or authorizing the action, transaction, program or procedure certified by the Secretary or an assistant Secretary of the Participant Committee.

8.4 Indenture Group Approval.

8.4.1 The approval or authorization of any action, transaction, program or procedure relating to Bonds or an Indenture by the Indenture Group A Participants shall be given at a meeting of the representatives to the Participant Committee of the Indenture Group A Participants. A quorum for the Indenture Group A representatives to the Participant Committee taking any action shall consist of either: (i) the representatives of a majority of the Non-Defaulting Indenture Group A Participants; or (ii) the representatives of Non-Defaulting Indenture Group A Participants holding a GES of not less than a majority of the aggregate GES of all Non-Defaulting Indenture Group A Participants. One of the representatives to the Participant Committee of the Indenture Group A Participants shall be appointed Secretary for the meeting and shall prepare written minutes of the meeting. The approval or authorization of any action, transaction, program or procedure relating to Bonds or an Indenture by the Indenture Group A Participants shall be given by the approving vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect of a majority of the quorum of the meeting; provided,

however, that if the representative of any Non-Defaulting Indenture Group A Participant requests, at any time prior to, at or within 10 days after the Indenture Group A Participant Committee representatives meeting, that such action, transaction, program or procedure be approved by a GES vote, then the approval or authorization of such action, transaction, program or procedure by the Indenture Group A Participant Committee representatives shall be given by the approving vote for a resolution, motion, minute order or other appropriate act noted in the meeting minutes to that effect by the representatives of Non-Defaulting Indenture Group A Participants then holding a GES of not less than 65% of the GES of all then Non-Defaulting Indenture Group A Participants; except that, for the purposes of this Section 8.4.1 only, the GES of any Non-Defaulting Indenture Group A Participant in excess of 35% shall be reduced to 35% so the representative of a single Non-Defaulting Indenture Group A Participant shall not be able to prevent the approval or authorization of any action, transaction, program or procedure by the Indenture Group A Participant Committee representatives pursuant to this Section 8.4.1.

8.4.2 Approval by the Indenture Group A Participants in accordance with this Section 8.4 shall constitute "Indenture Group Approval" of such action, transaction, program or procedure by the Indenture Group A Participants. An Indenture Group Approval by the Indenture Group A Participants shall be evidenced by a copy of the resolution, motion or minute order approving the action, transaction, program or procedure certified by the Secretary of the meeting at which such action was taken or a copy of the minutes of the Indenture Group A Participants' meeting, or an extract thereof, with respect to the resolution, motion or minute order or other act approving the action, transaction, program or procedure certified by the Secretary of the meeting at which such action was taken.

8.5 Participant Committee Responsibilities. Subject to the limitations on Participant Committee actions and approvals contained in this Agreement, the Participant Committee shall have the following responsibilities:

8.5.1 Elect a Chairperson, Vice Chairperson, Secretary and such other Participant Committee positions as deemed necessary and prudent, to conduct the business of the Participant Committee pursuant to this Agreement.

8.5.2 Establish a schedule of Participant Committee meetings, which shall be held at least four (4) times each year, and the permitted locations for such meetings.

8.5.3 Exercise general supervision over the subcommittees established by the Participant Committee.

8.5.4 Perform such other functions and duties as may be provided for under the PMOA or as may otherwise be appropriate or beneficial to the Project and not in conflict with this Agreement or any Indenture.

8.6 Subcommittees. The Participant Committee may establish, as needed, subcommittees including, but not limited to, fuel, auditing, legal, contracts, financial, engineering, operating, insurance, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Participant Committee; provided, however, such authority, membership or duties shall

not conflict with the provisions of this Agreement or any Indenture or any other Project-related agreements. Each such subcommittee shall take direction from and be responsible to the Participant Committee.

8.7 Written Record. All actions, resolutions, determinations and reports made by the Participant Committee and each subcommittee thereof shall be set forth in a written record and/or meeting minutes by a person or persons designated by the Participant Committee to keep such written record.

8.8 Costs of Consultants. The Participant Committee shall not employ consultants or others in connection with the activities of the Participant Committee but the Participant Committee may direct NCPA to employ consultants and others in connection with such activities and the costs thereof shall be included in the Project Costs of Construction or Total Monthly Power Costs, as appropriate.

8.9 Representative's Expenses. Any expenses incurred by any representative or alternate representative of any Participant or group of Participants serving on the Participant Committee, any subcommittee thereof or any other Project committee or subcommittee in connection with his/her duties on such committee or subcommittee shall be paid by the Participant or Participants which he/she represents and shall not be payable under this Agreement unless the Participant Committee has taken appropriate action to authorize payment for such expenses to a representative or alternative representative for the performance of a Project related activity.

8.10 Inaction by Participant Committee. If the Participant Committee is unable or fails to act with respect to any matter which it is authorized to determine, resolve, approve, disapprove or otherwise act upon within seven days of the initial Participant Committee meeting wherein such matter was discussed and an opportunity to act was presented, or within any shorter time limits specified in this Agreement or the PMOA, then (i) if urgent action is required in the judgment of NCPA, (ii) the Participant Committee has not disapproved such action and (iii) the action is in furtherance of the purposes of this Agreement, NCPA is authorized to take such action, in a manner consistent with Prudent Utility Practice, as NCPA in its sole discretion deems necessary for its timely performance under this Agreement or the PMOA pending the resolution of any such inability or failure of the Participant Committee to act.

8.11 Compliance With Indentures. It is recognized by NCPA and Participants that the planning, financing, constructing, managing, operating and maintaining of the Project must comply in all respects with requirements of all applicable Indentures, and all licenses, permits and regulatory provisions necessary for such planning, financing, constructing, operating managing and maintaining, and it is therefore agreed that, notwithstanding any other provision of this Agreement, no action by the Participant Committee shall require NCPA to act in any manner inconsistent with any such requirements, or to refrain from acting as thereby required, and if the Participant Committee or NCPA shall fail to make recommendations or act with respect to any matter in connection with an action that is required to be taken pursuant to any of the foregoing, NCPA shall take such action(s), consistent with Prudent Utility Practice, as it deems appropriate to assure compliance with the foregoing.

9. CHARACTER AND CONTINUITY OF SERVICE.

9.1 Curtailment of Deliveries. NCPA may temporarily interrupt operation of the Project and/or curtail deliveries of Capacity and Energy to Participants (in proportion to the GES of each Participant to the GES of all Participants) if NCPA determines that such interruption or curtailment is necessary in case of emergencies or in order to install equipment in or make repairs to or replacements, investigations or inspections of Project facilities or to perform other maintenance work on Project facilities; provided, however, that NCPA shall use reasonable efforts to keep such interruptions or curtailment to a reasonable time and schedule such interruption or curtailment as provided in the PMOA. No such interruption or curtailment shall relieve any Participant of its obligations to make payments under this Agreement.

9.2 Uncontrollable Forces. NCPA shall not be required to provide, nor shall NCPA be liable for failure to provide, Capacity or Energy under this Agreement to the extent such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces; provided, however, that no Participant shall be thereby relieved of its obligations to make payments under this Agreement.

10. PROJECT CAPACITY AND ENERGY AVAILABILITY.

10.1 Availability of Project. NCPA shall make available or cause to be made available, and each Participant shall be entitled to receive, such Participant's GES of the Capacity of the Project and the Energy associated with such Capacity, in each case on the terms and conditions of this Agreement. Subject to the terms and conditions of this Agreement, and the lawful direction of the Participant Committee pursuant to this Agreement, NCPA shall operate the Project, or cause the Project to be operated, in a manner consistent with the purposes of this Agreement and in conformity with the principles contained in the PMOA, as the same may be amended and supplemented from time to time.

10.2 Availability of Services. NCPA will remain available to do all things necessary and practical to deliver or cause to be delivered to or for each Participant, such Participant's GES of the Capacity and Energy of the Project. Such delivery of Project Energy will be at the Point of Delivery. Wheeling or delivery services provided by NCPA to deliver Project Energy to Participants to any location other than the Point of Delivery shall be at the requesting Participant's sole expense and as provided in service schedules and/or protocols developed pursuant to the PMOA and approved by NCPA and the applicable Participant.

11. FUEL PROCUREMENT. NCPA shall procure, schedule and balance, or shall cause the procurement, scheduling, and balancing of, fuel supplies to operate the Project in a manner consistent with the purposes of this Agreement and in conformity with the principles contained in the PMOA, as the same may be amended and supplemented from time to time.

12. METERING. NCPA, pursuant to the PMOA, shall provide for installation, maintenance and calibration of meters and shall provide, or cause to be provided, all necessary metering equipment for determining the quantity of Project Energy delivered; provided, however, that any Participant may, by arrangement with NCPA and at its own expense, check existing metering or metering records and/or, with the approval of the Participant Committee, install additional metering equipment.

13. RESTRICTIONS ON DISPOSITION.

13.1 Sales of Capacity and Energy by Participants. Subject to the restrictions contained in Section 13 and the rights of NCPA under Section 22, each Participant may sell or otherwise dispose of the Capacity and/or Energy associated with such Participant's GES; provided that before making any such sale or other disposition for a period exceeding 12 months, each Participant shall offer such Capacity and/or Energy to the Non-Defaulting Participants (on the same terms and conditions it offers such Capacity and/or Energy to others) in the priority set forth in Section 22.2.5 in the case of a sale or other disposition by an Indenture Group A Participant and in the priority set forth in Section 22.2.6 in the case of a sale or other disposition by the Indenture Group B Participant or the Indenture Group C Participant, in each case as if NCPA were offering Capacity and Energy in a Default Mitigation Sale.

13.2 Limitations Concerning Private Use; Transfer of Capacity and Energy. Each Participant within an Indenture Group recognizes that Bonds issued with respect to such Indenture Group may be Taxable Bonds, Taxable Subsidy Bonds, or Tax-Exempt Bonds and that any Taxable Subsidy Bonds and or Tax-Exempt Bonds shall be subject to the respective provisions of federal income tax law that limit, among other things, the arrangements permitted with respect to sale, assignment, delegation or other disposition of GES, Capacity and/or Energy. To the extent that a Participant's GES has been financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds, such Participant shall comply with the tax covenants contained in the respective Indentures relating to such Bonds including the private use permitted under such covenants. Except as provided in Section 22, no sale, assignment, delegation or other disposition of all or any portion of any Participant's Project rights and obligations hereunder, including Capacity and/or Energy, that have been financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds, shall be effective until (i) such Participant shall have given prior written notice thereof to NCPA; and (ii) NCPA's bond counsel shall have rendered an opinion to the effect that (A) such sale, assignment, delegation or other disposition will not adversely affect the Tax Status of any such Taxable Subsidy Bond or Tax-Exempt Bond, including as a result of any remedial action taken or to be taken in connection with such sale, assignment, delegation or other disposition; and (B) such sale, assignment, delegation or other disposition is within any private use restriction or other limitation on such sale, assignment, delegation or other disposition with respect to such Participant's GES of Project Capacity and/or Energy (and not the Project as a whole) in connection with such Taxable Subsidy Bonds and/or Tax-Exempt Bonds. Notwithstanding the immediately preceding sentence, each Participant may (without giving such notice or obtaining such opinion) contract to provide Energy and/or Capacity to which it is entitled hereunder in a transaction which complies with tax-related guidelines established by NCPA and approved by NCPA's bond counsel from time to time pursuant to this Section 13.2.

13.3 Participant Liability as Result of Loss of Tax Status of Bonds. If a Participant's Project GES has been financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds, and such Participant's action (or inaction) (i) adversely affects the Tax Status of any such Taxable Subsidy Bond or Tax-Exempt Bond or (ii) requires any action or payments by NCPA or any other Participant concerning such Tax Status, then such Participant shall be responsible for all costs related to its action (or inaction) and any related actions or payments by NCPA or any other Participant (including, without limitation, payments to Bondholders, payments to the Internal Revenue Service, costs incident thereto, audit expenses, and related attorney and consultants' fees).

13.4 Restrictions on Elimination of Payment Obligations. So long as any obligations remain Outstanding under an Indenture, no sale, assignment or other disposition of a Participant's GES shall release such Participant from its obligations under this Agreement except to the extent of moneys received by NCPA as a result of such sale, assignment or other disposition of GES, less NCPA's related costs and expenses; provided however, that such obligations may be eliminated or reduced if no obligations remain Outstanding under an Indenture and the Participant Committee and NCPA's Commission determine to eliminate or reduce such obligations, which determination shall not be unreasonably withheld.

13.5 Restrictions on Disposition of Participant's Entire System. A Participant shall not sell, lease or otherwise dispose of all or substantially all of its Enterprise except on 90 days prior written notice to the other Parties and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions shall be met: (i) such Participant shall assign its GES to such purchaser, lessee or disposee of said Enterprise, and such purchaser, lessee or disposee shall assume and agree to fully perform and discharge all the Participant's obligations hereunder; (ii) such sale, lease or other disposition shall not, in and of itself, cause the rating of any affected Bonds for the Indenture Group of which such Participant is a member to be downgraded, suspended or withdrawn (which fact shall be evidenced by letters of the rating agencies then rating such Bonds); (iii) NCPA shall determine (which determination shall not be unreasonably withheld) that such sale, lease or other disposition will not materially adversely affect the value of this Agreement as security for the payment of any applicable Indenture Cost Component; and (iv) unless waived by NCPA after consultation with its bond counsel, NCPA's bond counsel shall render an opinion to the effect that such sale, lease or other disposition of the Participant's GES financed with the proceeds of Taxable Subsidy Bonds and/or Tax-Exempt Bonds will not adversely affect the Tax Status of such Taxable Subsidy Bonds and/or Tax-Exempt Bonds, including as a result of any remedial action taken or to be taken in connection with such sale, lease or other disposition. NCPA, such Participant and such Participant's purchaser, lessee or disposee shall execute a supplement to this Agreement and any other necessary Project-related documents, as determined by NCPA in consultation with its general counsel and bond counsel, to reflect the transfer of the Participant's GES. All costs related to such sale, lease or disposition shall be paid by the Participant requesting such action.

14. COST OF CONSTRUCTION OF INITIAL FACILITIES.

14.1 Allocation of Costs of Construction. Each Participant's share of the Costs of Construction of the Initial Facilities shall be equal to such Participant's GES of such Costs of Construction. The Participants in each Indenture Group shall satisfy their respective obligations with respect to the Costs of Construction of the Initial Facilities either by authorizing NCPA to issue Bonds to provide funds for such share or by delivering to NCPA Capital Contributions as provided in Section 14.6.

14.2 Additional Costs. NCPA shall propose and submit to the Participant Committee its estimate of any Additional Costs for the Initial Facilities as soon as practical. The Additional Costs of the Initial Facilities, other than Required Costs, are subject to Participant Committee Approval. Within 30 days of the Participant Committee Approval of such estimate of Additional Cost of the Initial Facilities, or the submission to the Participant Committee in the case of Required Costs, NCPA shall provide the Indenture Group B Participant and the Indenture Group C Participant with a Funding Notice stating

the amount needed for such Participant's share of such Additional Cost, the date or dates when such amounts are due and the date that Participant must provide NCPA a request to issue Bonds to provide funds for such Participant's share of such Additional Costs.

14.3 Indenture Group A. NCPA shall issue Bonds to finance the Indenture Group A Participants' share of the Costs of Construction of the Initial Facilities. Such Bonds shall provide the funds necessary for the Indenture Group A Participants' share of the Costs of Construction of the Initial Facilities and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds.

14.4 Indenture Group B. NCPA shall issue Bonds to finance the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Initial Facilities. Such Bonds shall provide the funds necessary for the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Initial Facilities and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds. If there are Additional Costs for the Initial Facilities, at the request of the Indenture Group B Participant, NCPA shall issue Bonds to finance the Indenture Group B Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group B Participant does not submit written request to NCPA to issue Bonds for such Participant's share of such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group B Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date specified in the Funding Notice.

14.5 Indenture Group C. The Indenture Group C Participant hereby delivers its Capital Contribution Notice with respect to the Initial Estimate of the Costs of Construction of the Initial Facilities. If there are Additional Costs for the Initial Facilities, at the request of the Indenture Group C Participant, NCPA shall issue Bonds to finance the Indenture Group C Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group C Participant does not submit written request to NCPA to issue Bonds for such Participant's share of such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group C Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date specified in the Funding Notice.

14.6 Capital Contribution Notice. At any time prior to the date for the delivery of a request to NCPA to issue Bonds set forth in a Funding Notice for any Additional Costs of the Initial Facilities the Indenture Group B Participant and/or the Indenture Group C Participant may deliver a Capital Contribution Notice with respect to such Costs of Construction.

14.7 Capital Contributions.The Capital Contribution related to each Capital Contribution Notice shall be either: (i) paid to NCPA by the first date set forth in the applicable Funding Notice; or (ii) deposited with a trustee reasonably acceptable to NCPA by the first date set forth in the applicable Funding Notice on terms which permit the release of funds to NCPA upon the trustee's receipt of a requisition signed by NCPA setting forth

the Costs of Construction to be paid with such withdrawal and certifying that the amount of such withdrawal is to be applied within 30 days of such withdrawal to the payment of the Costs of Construction described in the requisition and that the amount of such withdrawal does not exceed the GES of the Indenture Group B Participant or the Indenture Group C Participant, as applicable, with respect to the Costs of Construction described in the requisition. Amounts held by a trustee to make Capital Contributions shall not be available for any purpose other than making the Capital Contributions required by the applicable Funding Notice unless and until NCPA submits a certificate to the applicable trustee to the effect that the amounts so held by such trustee are no longer required to pay the Costs of Construction for which such deposit was made because all Costs of Construction of the applicable Initial Facilities or Financed Capital Improvement have been paid or the construction of such Initial Facilities or Financed Capital Improvement have been terminated.

15. COST OF CONSTRUCTION OF NON-FINANCED CAPITAL IMPROVEMENTS.

15.1 Allocation of Costs of Construction.Each Participant's share of the Costs of Construction of the Non-Financed Capital Improvements shall be equal to such Participant's GES of such Costs of Construction. Each Participant shall satisfy its respective obligations with respect to the Costs of Construction of all Non-Financed Capital Improvements by making Contributions in Aid of Construction included in such Participant's Billing Statements.

15.2 Contributions in Aid of Construction. The Contributions in Aid of Construction for a Non-Financed Capital Improvement shall be net of all earnings on the investment of the unspent Contributions in Aid of Construction held by NCPA or by a Trustee on behalf of NCPA and all receipts, revenues and other moneys received by NCPA from the sale of surplus equipment, materials and supplies associated with such Non-Financed Capital Improvement.

16. COST OF CONSTRUCTION OF FINANCED CAPITAL IMPROVEMENTS.

16.1 Allocation of Costs of Construction. Each Participant's share of the Costs of Construction of each Financed Capital Improvement shall be equal to such Participant's GES. The Participant(s) in each Indenture Group shall satisfy their respective obligations with respect to the Costs of Construction of a Financed Capital Improvement either by having NCPA issue Bonds to provide funds for such share or by delivering to NCPA Capital Contributions as provided in Section 16.

16.2 Costs of Construction. NCPA shall propose and submit to the Participant Committee its estimate of the Costs of Construction of each Financed Capital Improvement and its estimate of any Additional Costs for such Financed Capital Improvement as soon as practicable. The Costs of Construction of each Financed Capital Improvement, other than Required Costs, are subject to Participant Committee Approval. Within 30 days of the Participant Committee approval of such estimates, or the submission to the Participant Committee in the case of Required Costs, NCPA shall provide each Participant in Indenture Group B and Indenture Group C with a Funding Notice stating the amount needed for such Participant's share of such Costs of Construction, the date or dates on which that amount is due and the date by which the Participant must provide NCPA a request for NCPA to issue Bonds for such Participant's share of such Costs of Construction.

16.3 Indenture Group A. NCPA shall issue Bonds to finance the Indenture Group A Participants' shares of the Costs of Construction of all Financed Capital Improvements. Such Bonds shall provide the funds necessary for the Indenture Group A Participants' share of the Costs of Construction of such Financed Capital Improvements and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds.

16.4 Indenture Group B. NCPA shall issue Bonds to finance the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of each Financed Capital Improvement, at the request of the Indenture Group B Participant; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group B Participant does not submit written request to NCPA to issue Bonds for such Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement, the Indenture Group B Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Costs of Construction on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice. Such Bonds shall provide the funds necessary for the Indenture Group B Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds. If there are Additional Costs for the Financed Capital Improvement, at the request of the Indenture Group B Participant, NCPA shall issue Bonds to finance the Indenture Group B Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group B Participant does not submit written request to NCPA to issue Bonds for such Participant's share of such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group B Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice.

16.5 Indenture Group C. NCPA shall issue Bonds to finance the Indenture Group C Participant's share of the Initial Estimate of the Costs of Construction of each Financed Capital Improvement at the request of the Indenture Group C Participant; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group C Participant does not submit written request to NCPA to issue Bonds for such Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement, the Indenture Group C Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Costs of Construction on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice. Such Bonds shall provide the funds necessary for the Indenture Group C Participant's share of the Initial Estimate of the Costs of Construction of the Financed Capital Improvement and all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds. If there are Additional Costs for the Financed Capital Improvement, at the request of the Indenture Group C Participant, NCPA shall issue Bonds to finance the Indenture Group C Participant's share of such Additional Costs, all Financing Costs related to such Bonds and all Indenture Deposits required in connection with such Bonds; provided that if, by the date specified in the applicable Funding Notice, the Indenture Group C Participant does not submit written request to NCPA to issue Bonds for such Participant's share of

such Additional Costs, Financing Costs and Indenture Deposits, the Indenture Group C Participant shall be deemed to have delivered a Capital Contribution Notice with respect to such Additional Costs on the date specified in the Funding Notice which Capital Contribution shall be due and payable on the date or dates specified in the Funding Notice.

16.6 Capital Contribution Notice. At any time prior to the date for the delivery of a request to NCPA to issue Bonds set forth in a Funding Notice for the Initial Estimate of the Costs of Construction of a Financed Capital Improvement or any Additional Costs of a Financed Capital Improvement, including all related Financing Costs and Indenture Deposits, the Indenture Group B Participant and/or the Indenture Group C Participant may deliver a Capital Contribution Notice with respect to such Costs of Construction. All Capital Contributions in connection with a Financed Capital Improvement shall be held and applied as provided in Section 14.7.

17. CHARGES AND BILLINGS.

17.1 Total Monthly Power Costs. In the month preceding the first month when any of the Total Monthly Power Costs are not to be paid from other available funds, NCPA shall prepare and send to the Participants a Billing Statement, as provided in Section 17.3, identifying the Total Monthly Power Costs to be paid by each Participant. Such Billing Statement shall separately identify each component of the Total Monthly Power Costs as set forth in this Section 17.1. Such Billing Statement shall be due and payable as provided in Section 17.3.

All of NCPA's Project related costs for any month resulting from the development, construction, financing, ownership, management, operation and maintenance of the Project and renewals and replacements to the Project, including all Capital Improvements, to the extent not paid from the proceeds of Bonds, Contributions in Aid of Construction or Capital Contributions, shall constitute "Total Monthly Power Costs" for such month. NCPA shall apply, as a credit against the Operating Cost Component of Total Monthly Power Costs, all receipts, revenues and other moneys relating to the Project received by NCPA from the sale of surplus equipment, materials, supplies or other such sources not otherwise applied as a credit against the Costs of Construction. Total Monthly Power Costs shall consist of (i) an Operating Cost Component (described in Section 17.1.1); (ii) a Fuel Cost Component (described in Section 17.1.2); (iii) an Indenture Cost Component (described in Section 17.1.3); (iv) a Non-Financed Capital Improvement Cost Component, if applicable (described in Section 17.1.4); and (v) an OandM Step-Up Cost Component, if applicable (described in Section 17.1.5); all of which shall include, but not be limited to, the items of cost and expense referred to in this Section 17.1 that are accrued or paid by NCPA during each Month of each Fiscal Year.

In the event any Fiscal Year shall consist of fewer than twelve months, the fraction set forth in this Section 17.1 shall be adjusted accordingly and, in the event of any revision of the Project Annual Budget after the commencement of any Fiscal Year, the amounts determined pursuant to this Section 17.1 shall be appropriately adjusted so that any increase or decrease in the portion of the Project Annual Budget applicable to the relevant component of the Total Monthly Power Cost shall be evenly apportioned over the remaining months of such Fiscal Year; provided that the Fuel Cost Component may be revised to reflect the billing procedures adopted pursuant to Section 17.1.2.2.

17.1.1 Operating Cost Component. The Operating Cost Component of the Total Monthly Power Costs for each month applies to all Participants based upon their respective GES. The Operating Cost Component for a month shall consist of the sum of: (i) one-twelfth of the Operation and Maintenance Expenses, other than Fuel Costs, for the Fiscal Year included in the then current Project Annual Budget and not otherwise included under Section 17.6 or Section 17.9; plus (ii) one-twelfth of the Operating Reserve Requirement; provided that the Operating Cost Component shall not include any amount with respect to the Operating Reserve Requirement to the extent there is on deposit in the Operating Reserve Fund an amount equal to the Operating Reserve Requirement, and provided further, that the Operating Cost Component for a month shall not be less than the amount required to pay (a) the accrued and unpaid Operation and Maintenance Expenses, other than Fuel Costs, for which funds are not available in the Operating Fund and (b) the expected Operation and Maintenance Expenses for the next succeeding month.

17.1.2 Fuel Cost Component.

17.1.2.1 Except as provided in Section 17.1.2.2, the Fuel Cost Component of Total Monthly Power Costs for a month applies to all Participants based upon their respective GES. The Fuel Cost Component shall consist of the Fuel Cost included in the then current Project Annual Budget for the next succeeding month and not otherwise included under Section 17.6 or Section 17.9.

17.1.2.2 Notwithstanding the billing procedures set forth in Section 17.1.2.1 and subject to the requirements of Section 8.11 and the requirement that all Fuel Costs for each month be billed to the Participants, the Participant Committee may approve alternative billing procedures for billing Fuel Costs in the PMOA. The alternative billing procedures for Fuel Costs may include billing for Fuel Costs more frequently than monthly, billing Fuel Costs based on actual costs rather than budgeted costs, more frequent reconciliations than provided in Section 17.6 of actual Fuel Costs with billings of Fuel Costs based on estimates and provision for the delivery of fuel to the Project by a Participant. If such alternative basis for billing Fuel Costs is included in the PMOA, then the Fuel Cost Component shall be billed in accordance with such procedures.

17.1.3 Indenture Cost Component. The Indenture Cost Component of the Total Monthly Power Costs with respect to each Indenture Group for each month applies to all Participants in the Indenture Group based upon their respective ICS. The Indenture Cost Component of Total Monthly Power Costs for each month for each Indenture Group shall consist of the amounts payable by NCPA to the Trustee under each Indenture relating to such Indenture Group during the next succeeding month.

17.1.4 Non-Financed Capital Improvement Cost Component. The Non-Financed Capital Improvement Cost Component of the Total Monthly Power Costs for each month applies to all Participants based upon their respective GES. The Non-Financed Capital Cost Component of Total Monthly Power Costs for each

month in each Fiscal Year consists of one-twelfth of the Contributions in Aid of Construction provided in the Project Annual Budget for Non-Financed Capital Improvements for such Fiscal Year.

17.1.5 OandM Step-Up Cost Component. The OandM Step-Up Cost Component of the Total Monthly Power Costs for each month applies to all Non-Defaulting Participants based upon their respective OandM Step-Up Share. The OandM Step-Up Component of Total Monthly Power Costs for each month consists of the amount by which the actual transfers from the respective Revenue Accounts to the Operating Fund pursuant to Section 21.2 and to the Operating Reserve Fund pursuant to Section 21.3 in the preceding month were less than the amounts required to be transferred to such funds pursuant to such Sections.

17.2 Participant Monthly Power Costs. The amount of the Total Monthly Power Costs to be paid by each Participant for a particular month shall be the sum of the following:

17.2.1 Each Participant's GES multiplied by the Operating Cost Component of the Total Monthly Power Costs (as provided in Section 17.1.1) for such month.

17.2.2 Each Participant's GES multiplied by the Fuel Cost Component of the Total Monthly Power Costs for such month unless an alternate billing procedure is included in the PMOA as provided in Section 17.1.2.2, in which case each Participant shall be billed for Fuel Costs as provided in the PMOA (as provided in Section 17.1.2).

17.2.3 Each Participant's ICS multiplied by the Indenture Cost Component of the Total Monthly Power Cost for the Indenture Group of such Participant (as provided in Section 17.1.3) for such month.

17.2.4 Each Participant's GES multiplied by the Non-Financed Capital Cost Component of the Total Monthly Power Costs (as provided in Section 17.1.4) for such month.

17.2.5 Each Non-Defaulting Participant's OandM Step-up Share multiplied by the OandM Step-Up Component of the Total Monthly Power Costs (as provided in Section 17.1.5) for such month.

17.3 Billing Statement. On or about the twenty-fifth (25th) day of each month, but not later than the last day of such month, during the term hereof, commencing the month preceding the first month when any of the Total Monthly Power Costs are not to be paid from other available funds, NCPA shall invoice each Participant for the amount of its Participant Monthly Power Costs by providing such Participant with a Billing Statement for such Participant Monthly Power Costs. Such Billing Statement shall detail the costs described in Sections 17.1 and 17.2 and shall set forth any adjustments as a result of correcting Billing Statements for prior months made in accordance with Sections 17.4, 17.5, 17.6 and 17.10. Subject to any credits available pursuant to Section 17.4, each Billing Statement shall be paid in full by the applicable Participant by the 30th day after the date of such Billing Statement. The Participant Committee may recommend the adoption of an alternative Billing Statement procedure in connection with Billing Statements. Any such recommended alternative Billing Statement implementation is subject to the approval of the NCPA Commission and shall satisfy the requirements of

each Indenture, shall be fiscally prudent and shall assure coverage of all anticipated and actual Project related costs and obligations of NCPA.

17.4 Disputed Billing Statement.

17.4.1 A Participant may dispute the accuracy of any data in any Billing Statement by delivering notice of such dispute to NCPA within 30 days of the delivery of such Billing Statement to the Participant. If no notice of dispute with respect to a Billing Statement is given within such 30 day period, such data shall be conclusively deemed correct. In case any portion of any Billing Statement received by a Participant shall be in dispute, such Participant shall nevertheless pay NCPA the full amount of such Billing Statement by the time required by this Agreement. NCPA will review the basis for a Participant's dispute of such data and will advise the Participant with regard to NCPA's position relative thereto within 30 days following receipt of written notification from the Participant of such dispute.

17.4.2 If NCPA agrees there is a mistake in a Billing Statement, the amount of the error will be debited or credited, as applicable, to a subsequent Billing Statement to such Participant as soon as reasonably practical.

17.4.3 If NCPA disagrees with the Participant that there is an error in the data in a Billing Statement, then NCPA shall meet with the Participant and explain the basis for the Billing Statement and attempt to resolve the matter. If NCPA and the Participant cannot reach an agreement on the matter within 180 days of NCPA's receiving the notice of the dispute, either Party may pursue any remedy available at law or in equity to enforce its rights hereunder; provided that the Participant shall not be relieved of any of its obligations hereunder, including its obligations to make all payments hereunder in full without any setoff or other reduction for any cause whatsoever.

17.4.4 Except as expressly provided with respect to a dispute as to the accuracy of the data in a Billing Statement, nothing in Section 17.4 shall be construed as waiving or limiting a Participant's rights under this Agreement, including without limitation a Participant's right to require Participant Committee Approval for any action requiring such approval hereunder.

17.5 Reconciliation of Total Monthly Power Costs. As soon as practicable after the end of each Fiscal Year, NCPA will submit to each Participant a detailed statement of the actual aggregate Participant Monthly Power Costs and other amounts payable hereunder, including credits thereto, for all of the months of such Fiscal Year, and the adjustments of the aggregate Participant Monthly Power Costs and other amounts payable hereunder, if any, for any prior Fiscal Year, based on the annual audit of accounts provided for in Section 7.6. The Participant Committee may request that NCPA perform a more frequent billing reconciliation pursuant to this Section 17.5, and NCPA shall make reasonable efforts to perform such reconciliations. If, on the basis of the statement submitted as provided in this Section 17.5, the actual aggregate Participant Monthly Power Costs and other amounts payable by a Participant for any Fiscal Year exceed the amount thereof which such Participant has been billed, such Participant shall pay NCPA such amount within 30 days of receipt of NCPA's invoice therefor. If, on the basis of the statement submitted pursuant to this Section 17.5, the actual aggregate Participant Monthly Power

Costs or other amounts payable by a Participant for any Fiscal Year are less than the amount billed to such Participant, NCPA shall, unless otherwise directed by such Participant, credit such excess against such Participant's next monthly Billing Statement. In the event that the failure of any Participant in any Indenture Group to make its payments in accordance with this Agreement shall have resulted in the application of amounts in any reserve or working capital fund under an Indenture relating to such Indenture Group or under this Agreement, and other Participants shall have made up the deficiency created by such application or paid additional amounts as a result of a draw on such reserve or working capital fund, amounts thereafter paid to NCPA by such Participant for application to such past due payments including interest shall be credited on the next Billing Statements of those Participants which have made up such deficiency to the extent funds are available in the applicable account in the General Reserve Fund. The amount so credited shall be deposited in the applicable account in the Revenue Fund.

17.6 Reconciliation of Fuel Cost Billing. Except as another procedure is approved by the Participant Committee and included in the PMOA, as soon as practicable after the end of each month, NCPA shall compare the actual Fuel Costs payable during such month with the amount billed for the Fuel Cost Component with respect to such month. NCPA shall increase or decrease, as necessary, the respective Fuel Cost Component, or other component of the Total Monthly Power Costs if necessary, of each Participant's Billing Statement for the next month in which such adjustment can reasonably be made to reflect the difference between the amount billed for the Fuel Cost Component and the amount paid or payable for the Fuel Cost Component for the month under review.

17.7 Interest on Late Payments. If any Participant fails to fully pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the monthly equivalent of the Bank of America N.A. "prime" rate of interest then in effect plus two percent (2%) per annum on the unpaid amount of the bill, until such Billing Statement is paid in full. Payments by a Participant shall be credited first to accrued interest and then to any shortfall in the payments of the Billing Statement. If Bank of America N.A. ceases to publish such "prime" rate, the Participant Committee shall determine an alternative institution or comparable rate which shall be used to calculate interest on late payments.

17.8 Prepayment of Participant Monthly Power Costs. Any Participant may, at any time, deposit moneys with NCPA in addition to amounts then due and payable hereunder or, upon the prior approval of NCPA, utilize any credits due or amounts owed by NCPA to such Participant under any Project-related agreement or other arrangement resulting in a credit to such Participant for the purpose of prepaying all or any portion of such Participant's monthly Billing Statements. Such deposits and amounts received by NCPA resulting in a credit to a Participant shall be deposited into an account established by, or at the direction of, NCPA. Moneys in such account shall be invested consistent with NCPA's then current investment policy, and the resulting investment income shall be credited to such account on behalf of such Participant. Payment of the amount of any Billing Statement or other billings as provided for in this Agreement shall be made from moneys available in such account, or from available credits, to the extent set forth in written directions from such Participant to NCPA and received by NCPA at least seven days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce such Participant's obligations under this Agreement to make payments with respect to a GES Lay-Off or an OandM Step-Up, if applicable.

17.9 Costs or Expenses Incurred for the Sole Benefit of Less than All Participants. Notwithstanding anything to the contrary in this Agreement, if a particular Project cost or expense is incurred by NCPA for the sole benefit of one or more Participants (but less than all Participants), unless otherwise approved by the Participant Committee, then such cost or expense shall be allocated only to such benefitting Participant or Participants, in which event only such benefitting Participant or Participants (and no other Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by NCPA for the sole benefit of one or more Participants (but less than all Participants) shall be payable from available amounts in the applicable account or accounts in the General Reserve Fund related to the benefitting Participant or Participants or shall be billed to such Participant or Participants separately from the Billing Statement to such Participant or Participants for Participant Monthly Power Costs. Subject to any credits available pursuant to Section 17.4, each bill submitted to a Participant pursuant to this Section 17.9 shall be paid in full by such Participant by the 30th day after the date of such bill.

17.10 Disputed Reconciliation Statement.

17.10.1 A Participant may dispute the accuracy of any Reconciliation Statement by delivering notice of such dispute to NCPA within 75 days of the delivery to the Participant Committee of the results of NCPA's computations reflected in such Reconciliation Statement. If no notice of dispute with respect to a Reconciliation Statement is given within such 75 day period such data shall be conclusively deemed correct. In case any portion of any Reconciliation Statement received by a Participant shall be in dispute, such Participant shall nevertheless pay NCPA the full amount of each Billing Statement reflecting such Reconciliation Statement by the time required by this Agreement. NCPA will review the basis for a Participant's dispute of the data in a Reconciliation Statement and will advise the Participant with regard to NCPA's position relative thereto within 30 days following receipt of written notification by the Participant of such dispute.

17.10.2 If NCPA agrees there is a mistake in the data in a Reconciliation Statement, the amount of the error will be debited or credited, as applicable, to a subsequent Billing Statement to such Participant as soon as reasonably practical.

17.10.3 If NCPA disagrees with the Participant that there is an error in the data in a Reconciliation Statement, then NCPA shall meet with the Participant and explain the basis for the Reconciliation Statement and attempt to resolve the matter. If NCPA and the Participant cannot reach an agreement on the matter within 180 days of NCPA's receiving the notice of the dispute, either Party may pursue any remedy available at law or in equity to enforce its rights hereunder; provided that the Participant shall not be relieved of any of its obligations hereunder, including its obligations to make all payments hereunder in full without any setoff or other reduction for any cause whatsoever.

17.10.4 Except as expressly provided with respect to a dispute as to the accuracy of the data in a Reconciliation Statement, nothing in Section 17.10 shall be construed as waiving or limiting a Participant's rights under this Agreement, including without limitation a Participant's right to require Participant Committee Approval for any action requiring such approval hereunder.

18. PARTICIPANT PAYMENT OBLIGATIONS AND RATE COVENANT.

18.1 Unconditional Payment Obligation. Beginning with the month preceding the month that moneys need to be collected from Participants to cover Total Monthly Power Costs, each Participant shall pay NCPA the amount of its Participant Monthly Power Costs set forth in the Billing Statements submitted by or on behalf of NCPA to such Participant in accordance with the provisions of Section 17 and, including, without duplication, any amount as a result of the operation of Sections 22 and 23. Each Participant acknowledges and agrees that (a) NCPA's willingness to enter into this Agreement to plan, develop, finance, construct, operate and maintain the Project was induced and dependent upon each Participant's purchase of Capacity and Energy as herein provided; (b) NCPA's willingness to sell Capacity and Energy to each Participant was induced and dependent upon such Participant's purchase of Capacity and Energy as herein provided; and (c) each Participant's payment obligation for amounts due hereunder from its Enterprise Revenues is the absolute and unconditional obligation of such Participant. The obligations of each Participant to make all payments required to be made by such Participant hereunder from Enterprise Revenues are incurred by such Participant for the benefit of holders of Bonds issued by NCPA for such Participant and such payment obligations are absolute and unconditional. Each Participant agrees to make all payments required to be made by such Participant hereunder whether or not the Project or any part thereof is developed, constructed, is operable, operating or retired, and whether or not any Capacity or Energy is made available or furnished to such Participant at all times or at all, and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output in whole or in part for any reason whatsoever. Except for credits allowed pursuant to Section 17.5 and/or Section 17.8, all payments required to be made by a Participant hereunder shall be absolutely net, free of any deductions, and are not subject to any reduction, whether by offset, recoupment, counterclaim or otherwise. Each Participant shall make all payments required to be made by such Participant hereunder notwithstanding the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California, or any political subdivision of either of these, or any failure of any Party, a Trustee or any other person to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, any applicable Indenture(s) or any other agreement, including without limitation any agreement referred to in Sections 8.5, 14, 15 or 16; provided, however, that nothing contained in this Section 18.1 shall constitute a waiver of a Participant's right to commence an action to enforce its rights under this Agreement (including without limitation Sections 22 and 23) or its right to net portions of such Participant's payments hereunder pursuant to Section 17.8.

18.2 Payments an Operating Expense of Enterprise. The obligation of each Participant to make payments to NCPA under this Agreement (other than Capital Contributions and Contributions in Aid of Construction) shall constitute a cost of purchased electric capacity and energy and be payable as an operating expense of the Participant's Enterprise (and with respect to CDWR, as a maintenance and operation cost of CDWR's Enterprise pursuant to California Water Code Section 12937(b)(1)). Each Participant will annually in each and every fiscal year of the Participant during the term of this Agreement include in its Enterprise budget, as an Enterprise operating expense, whether or not any other items are included, an appropriation or commitment from its Enterprise Revenues sufficient to satisfy all payments required to be made by the Participant in such

fiscal year under this Agreement (other than Capital Contributions and Contributions in Aid of Construction) which are not paid from other available funds of the Participant until all such payments required to be made by the Participant under this Agreement have been paid in full.

18.3 Rate Covenant. Each Participant covenants and agrees that it will fix rates and charges for the commodities and services provided by its Enterprise which will provide the Participant at all times with Enterprise Revenues which will be sufficient, together with other funds available to make such payments, to meet when due its obligations under this Agreement and all other obligations payable from the Enterprise Revenues on a basis prior to or on a parity with such obligations.

18.4 Special Obligation. The obligation of each Participant to make any and all payments hereunder is a special obligation of such Participant which the Participant is obligated to make solely from its Enterprise Revenues. The obligation of each Participant to make payments hereunder does not constitute a debt of such Participant or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction, nor a pledge of the full faith and credit and taxing power of such Participant or any other entity. Nothing herein shall be construed as prohibiting any Participant, in its sole discretion, from using any funds other than Enterprise Revenues for the purpose of satisfying any provisions of this Agreement, or from entering into contracts or incurring other obligations payable from its Enterprise Revenues on parity with such Participant's obligation to make payments hereunder.

18.5 Enterprise. Each Participant shall operate and maintain its Enterprise in a business like fashion and in accordance with Prudent Utility Practice.

19. PARTICIPANTS' OBLIGATIONS SEVERAL. Each Participant shall be solely responsible and liable for its performance under this Agreement and for the maintenance and operation of its Enterprise. The obligation of each Participant to make payments under this Agreement is a several obligation and not a joint obligation with the other Participants. Nothing in this Section 19 shall limit or otherwise affect the applicable GES Step-Up or the OandM Step-Up obligations of the each Participant pursuant to this Agreement.

20. PLEDGE UNDER INDENTURES. All or any portion of NCPA's rights under this Agreement with respect to the Participants in an Indenture Group, including NCPA's rights to the payments required to be made by the Participants in the applicable Indenture Group in accordance with or pursuant to any provision of this Agreement, may be assigned and pledged by NCPA to secure its obligations under each Indenture relating to such Indenture Group, including interest and any other payments due under such Indenture, subject to the application of the Project Revenues of such Indenture Group to such purposes and on such terms as provided in this Agreement. Such rights may include all of NCPA's right, title and interest in, to and under this Agreement with respect to the obligations of the Participants in the applicable Indenture Group, including without limitation its rights to receive from Participants in such Indenture Group all or any portion of the payments to be made by such Participants pursuant to this Agreement and all other Project Revenues related to such Indenture Group including Project Revenues received pursuant to actions taken pursuant to Sections 22 and/or 23, and its rights to enforce any obligations of such Participants under this Agreement. Each Participant does hereby acknowledge and approve any and all such pledges and assignments of NCPA. NCPA may direct the Participants in an Indenture Group to make all or any portion of such payments directly to a Trustee under an

Indenture relating to such Indenture Group and upon such directions the applicable Participants agree to make such payments to the designated Trustee.

21. FUNDS; APPLICATION OF PROJECT REVENUES.

21.1 Revenue Fund. NCPA shall establish and maintain as long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Revenue Fund and which shall consist of three accounts: the Indenture Group A Revenue Account, with respect to the Indenture Group A Participants; the Indenture Group B Revenue Account, with respect to the Indenture Group B Participant; and the Indenture Group C Revenue Account, with respect to the Indenture Group C Participant. Upon receipt thereof NCPA shall deposit: (i) in the Indenture Group A Revenue Account, all Project Revenues received in connection with the Indenture Group A Participants' GES; (ii) in the Indenture Group B Revenue Account, all Project Revenues received in connection with the Indenture Group B Participant's GES; and (iii) in the Indenture Group C Revenue Account, all Project Revenues received in connection with the Indenture Group C Participant's GES; provided, however, that the proceeds of Default Mitigation Sales shall be deposited directly into the applicable account within the Default Mitigation Sale Fund as provided in Section 21.6. Moneys in the Revenue Fund shall be applied as provided in this Agreement.

21.2 Operating Fund. NCPA shall establish and maintain so long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Operating Fund. Moneys in the Operating Fund shall be applied by NCPA to the Operation and Maintenance Expenses of the Project. Not later than the last day of each month, NCPA shall transfer from each Revenue Account to the Operating Fund the amount specified in the applicable Indenture Group Participants' Billing Statements for the immediately preceding month which is attributable to Operation and Maintenance Expenses.

21.3 Operating Reserve Fund. NCPA shall establish and maintain so long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Operating Reserve Fund. Moneys in the Operating Reserve Fund shall be applied by NCPA to the Operation and Maintenance Expenses of the Project in the event that the moneys in the Operating Fund are insufficient to make such payments. Not later than the last day of each month, after making the transfer required by Section 21.2, NCPA shall transfer from each Revenue Account to the Operating Reserve Fund the amount specified in the applicable Indenture Group Participants' Billing Statements for the prior month which is attributable to the Operating Reserve Requirement. Not later than the last day of each month, after making the transfer required by Section 21.2, NCPA shall transfer to each Revenue Account from the Operating Reserve Fund the pro rata amount (based on the GES attributable to each Indenture Group) by which the amount on deposit in the Operating Reserve Fund exceeds the Operating Reserve Requirement.

21.4 Indenture Transfers. Not later than the last day of each month, after making the transfers required by Section 21.2 and Section 21.3, NCPA shall transfer from each Revenue Account to each Trustee under an Indenture with respect to the Indenture Group related to such Revenue Account the amount applicable to such Indenture in the applicable Indenture Group Participants' Billing Statements for the immediately preceding month

attributable to amounts due under each such Indenture. In the event the amount available in an account in the Revenue Fund is not sufficient to make all payments in such month required by all Indentures relating to the Indenture Group with respect to such account, available amounts in such account shall be applied as provided in the applicable Indentures.

21.5 General Reserve Fund. NCPA shall establish and maintain as long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center General Reserve Fund and which shall consist of three accounts: the Indenture Group A General Reserve Account, with respect to the Indenture Group A Participants; the Indenture Group B General Reserve Account, with respect to the Indenture Group B Participant; and the Indenture Group C General Reserve Account, with respect to the Indenture Group C Participant. Not later than the last day of each month, after making the transfers required by Sections 21.2, 21.3 and 21.4, NCPA shall (i) transfer all moneys remaining in the Indenture Group A Revenue Account to the Indenture Group A General Reserve Account; (ii) transfer all moneys remaining in the Indenture Group B Revenue Account to the Indenture Group B General Reserve Account, and (iii) transfer all moneys remaining in the Indenture Group C Revenue Account to the Indenture Group C General Reserve Account. Amounts in each account in the General Reserve Fund shall be applied (i) first as provided in each Indenture related to the Indenture Group for which such account was established and (ii) second, as shall be approved by an Indenture Group Approval of the Indenture Group for which such account was established.

21.6 Default Mitigation Sale Fund. NCPA shall establish and maintain as long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund designated as the Lodi Energy Center Default Mitigation Sale Fund and which shall consist of a separate account in the Default Mitigation Sale Fund for each Defaulting Participant for which a Default Mitigation Sale has been made. The proceeds of all Default Mitigation Sales made on behalf of the Defaulting Participant on whose behalf the account was established, less the expenses incurred in connection with such sales, including transmission costs, shall be deposited in the account in the Default Mitigation Sale Fund relating to such Defaulting Participant. Amounts in each account in the Default Mitigation Sale Fund shall be applied to the payment of amounts due and unpaid pursuant to the Billing Statements sent to the Defaulting Participant on whose behalf the account was established.

21.7 Revolving Construction Fund.

21.7.1 Except as provided in this Section 21.7, all Bonds proceeds to be used to pay Costs of Construction shall be held by the Trustee under the Indenture pursuant to which such Bonds were issued and released to NCPA upon a requisition therefor identifying the Costs of Construction to be paid with the requisitioned Bond proceeds. Except as provided in this Section 21.7, all Capital Contributions shall be held by a trustee or escrow agent under a trust or escrow instrument pursuant to which such Capital Contributions are to be released to NCPA upon a requisition therefor identifying the Costs of Construction to be paid with the requisitioned funds.

21.7.2 NCPA shall establish and maintain so long as this Agreement remains in effect, as a fund separate and apart from all other funds and moneys of NCPA, a fund

designated as the Lodi Energy Center Revolving Construction Fund. In connection with the construction, acquisition and placing in operation of the Initial Facilities and any Financed Capital Improvement, NCPA may requisition from the Bond proceeds and any Capital Contributions available for the Costs of Construction of the Initial Facilities or such Financed Capital Improvements, as applicable, amounts so that the balance in the Revolving Construction Fund shall be maintained at one million dollars or such higher amount as shall be approved by the Participant Committee. Moneys in the Revolving Construction Fund shall be applied by NCPA to the Costs of Construction of the Initial Facilities or Financed Capital Improvements, as applicable.

21.8 Payment of Costs of Construction. In connection with the construction and placing in operation of the Initial Facilities and any Financed Capital Improvement, NCPA shall make requisitions from the Bond proceeds and any Capital Contributions to pay the Costs of Construction of the Initial Facilities or such Financed Capital Improvements, as applicable, pro rata among the Indenture Groups based on the ratio of the GES of each Indenture Group to the GES of all Indenture Groups.

21.9 Investment of Funds. Subject to any further limitations on the investment of such funds contained in an Indenture, amounts in any fund or account established hereunder which is held by NCPA may be invested by NCPA in any investments which at the time of investment are: (i) then legal for the investment of public funds; (ii) consistent with the NCPA investment policy; and (iii) consistent with any further limitations on the investment of such amounts approved by the Participant Committee; provided that no such amounts may be invested for a period longer than the time NCPA expects to disburse such amounts.

22. PAYMENT DEFAULT AND REMEDIES.

22.1 Payment Default.

22.1.1 Upon failure of a Participant to make any payment in full when due under this Agreement (including any Contributions in Aid of Construction specified in a Billing Statement and any Capital Contribution due under a Funding Notice), NCPA shall promptly provide written notice to such Participant in accordance with Section 35. If said failure is not cured (including any applicable late payment interest) within 30 days from the date such notice is effective under Section 35, it shall constitute a "Payment Default". The notice provided by NCPA pursuant to this Section 22.1.1 shall be entitled "NOTICE OF DEFAULT AND LOSS OF RIGHTS TO CAPACITY AND ENERGY OF LODI ENERGY CENTER" and shall set forth in reasonable summary the nature of the default and the type and amount of any payments that are then due and unpaid and shall include a statement to the effect that failure to cure such default and make full and timely payments of all amounts due and payable hereunder within 30 days from the date such notice is effective under Section 35, could result in the allocation of all or a portion of the Defaulting Participant's GES in a GES Lay-Off, the sale or other disposition of the Capacity and Energy associated with such Participant's GES in a Default Mitigation Sale and, in the case of the Indenture Group A Participants, the automatic allocation of all or a portion of its GES in a GES Step-Up.

22.1.2 If the Defaulting Participant in good faith disputes the legality or validity of any amounts stated in the notice as being due and unpaid, it shall nevertheless make such payment within said 30-day period under written protest directed to NCPA. Such protest shall specify the reasons upon which the protest is based. Any such protest shall be treated as a dispute in a monthly Billing Statement and NCPA and the Defaulting Participant shall proceed as provided in Section 17.4.

22.1.3 Not less than ten days prior to any allocation of a Defaulting Participant's GES pursuant to a GES Lay-Off or a GES Step-Up, NCPA shall provide an additional written notice to the Defaulting Participant concerning such allocation of such GES, which notice shall be clearly entitled "NOTICE OF ALLOCATION OF GENERATION ENTITLEMENT SHARE IN LODI ENERGY CENTER." No further notice shall be required.

22.1.4 All allocations and sales of a Defaulting Participant's GES to another Participant through a GES Lay-Off or a GES Step-Up, and all Default Mitigation Sales, shall constitute sales of Project Capacity and Energy on behalf of and for the account of the Defaulting Participant and the Defaulting Participant shall remain liable to NCPA to pay the full amounts due on its Billing Statements (both before and after the Payment Default) for its GES as if such sales had not been made, except that such liability shall be discharged to the extent that NCPA receives payments with respect to any GES Lay-Off, GES Step-Up or Default Mitigation Sale of the Defaulting Participant's GES. In addition to all amounts due under Billing Statements as provided in this Section 22.1.4, NCPA in all cases, and Non-Defaulting Indenture Group A Participants in the case of a GES Step-Up, shall be entitled to recover from the Defaulting Participant any and all damages, legal fees and other costs incurred by NCPA as a result of such Participant's default.

22.2 Remedies on Payment Default.

22.2.1 GES Lay-Off.

22.2.1.1 Upon a Payment Default by any Participant, such Participant shall no longer be entitled to receive its GES of Project Capacity and Energy and NCPA shall apply such Capacity and Energy as provided in this Agreement. Upon a Payment Default by any Participant, NCPA shall notify each Non-Defaulting Participant that the GES of the Defaulting Participant is available for a GES Lay-Off. During the 60 day period following a Payment Default, NCPA shall use commercially reasonable efforts to arrange a GES Lay-Off or GES Lay-Offs of all of the GES of the Defaulting Participant. During such 60 day period NCPA shall also use commercially reasonably efforts to arrange Default Mitigation Sales of the Capacity and Energy associated with the GES of the Defaulting Participant. Not later than 60 days after a Payment Default, each Non-Defaulting Participant and entities other than Participants may agree to accept all or a portion of the Defaulting Participant's GES in a GES Lay-Off in accordance with the priority provisions of Section 22.2.5 or Section 22.2.6, as applicable.

22.2.1.2 The amount of any GES Lay-Off accepted by a Participant shall be added and become a part of such Participant's GES for all purposes of this Agreement. If any of the GES of a Defaulting Participant is accepted in a GES Lay-Off by a Participant in that Indenture Group, another Indenture Group or an entity other than a Participant, the accepting Participant or entity shall be responsible for all costs hereunder in connection with the GES accepted, including the ICS of the Defaulting Participant related to such accepted GES.

22.2.1.3 Notwithstanding any GES Lay-Off, the Defaulting Participant shall remain liable hereunder for all amounts payable hereunder with respect to its GES, including its ICS, except to the extent payments are received from the Participant or other entity entering into such GES Lay-Off as provided in Section 22.2.1.

22.2.2 GES Step-Up.

22.2.2.1 On the 61st day following a Payment Default by any Indenture Group A Participant, unless all of the GES of the Indenture Group A Defaulting Participant has been allocated in GES Lay-Offs pursuant to Section 22.2.1, NCPA shall notify each Indenture Group A Non-Defaulting Participant that its GES and its ICS has been automatically increased for the remaining term of this Agreement as provided in Section 22.2.2.2.

22.2.2.2 On the 61st day following a Payment Default by any Indenture Group A Participant, the GES of each Indenture Group A Non-Defaulting Participant shall be automatically increased by the amount (expressed as a percentage) obtained by: (i) multiplying the GES of the Indenture Group A Defaulting Participant which has not been accepted by another entity pursuant to a GES Lay-Off pursuant to Section 22.2.1 by (ii) the quotient obtained by dividing the GES of such Indenture Group A Non-Defaulting Participant by the GES of all Indenture Group A Non-Defaulting Participants, but in no event shall any GES Step-Up cause any Indenture Group A Participant's GES to exceed, without consent of such Participant, its Accumulated Maximum Step-Up Percentage.

22.2.3 Default Mitigation Sales. In connection with each Payment Default, NCPA shall use commercially reasonable efforts to sell, on behalf of and for the account of the Defaulting Participant and on commercially reasonable terms given the circumstances of such sale, the Capacity and Energy with respect to the GES of each Defaulting Participant which has not been allocated to another entity pursuant to a GES Lay-Off or a GES Step-Up. The proceeds of such sales, less the expenses incurred in connection with such sales, including transmission costs, shall be deposited in the account in the Default Mitigation Sale Fund relating to the Defaulting Participant pursuant to Section 21.6.

22.2.4 Deficiency Cure. In consideration of the allocation of GES pursuant to a GES Step-Up or a GES Lay-Off, each entity receiving any such GES shall pay to NCPA its pro rata share of any deficiency in Billing Statement payments by the

Defaulting Participant related to such GES Step-Up or GES Lay-Off. Such share shall be based on the ratio that the GES Step-Up and/or GES Lay-Off of such entity bears to the GES Step-Ups and GES Lay-Offs of all entities in connection with the applicable Payment Default.

22.2.5 Priority Of Offers- Indenture Group A Defaulting Participant.

22.2.5.1 Indenture Group A Non-Defaulting Participants shall receive the first offer from NCPA of a GES Lay-Off of the GES of an Indenture Group A Defaulting Participant. Such offer shall be made pro rata based on the ratio that each Indenture Group A Non-Defaulting Participant's GES bears to the aggregate of the GES of all Indenture Group A Non-Defaulting Participants. If any of the GES of an Indenture Group A Defaulting Participant remains after such first offer, Indenture Group A Non-Defaulting Participants shall receive the second offer from NCPA of a GES Lay-Off of the remaining GES of the Indenture Group A Defaulting Participant. If the Indenture Group A Non-Defaulting Participants offer to take more GES than is available on such second offer, such available GES shall be allocated among the Indenture Group A Non-Defaulting Participants offering to acquire such GES pro rata based on the ratio that each offering Indenture Group A Non-Defaulting Participant's GES bears to the aggregate of the GES of all offering Indenture Group A Non-Defaulting Participants.

22.2.5.2 Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the third offer from NCPA of a GES Lay-Off of any GES of an Indenture Group A Defaulting Participant remaining after the allocations pursuant to Section 22.2.5.1 have been made. Such third offer shall be made pro rata based on the ratio that each Indenture Group B and Indenture Group C Non-Defaulting Participant's GES bears to the aggregate GES of all Indenture Group B and Indenture Group C Non-Defaulting Participants. If any of the GES of an Indenture Group A Defaulting Participant remains after such third offer, Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the fourth offer from NCPA of a GES Lay-Off of such remaining GES of the Indenture Group A Defaulting Participant. If the Indenture Group B and Indenture Group C Non-Defaulting Participants offer to take more GES than is available on such fourth offer, such available GES shall be allocated between the Indenture Group B and Indenture Group C Non-Defaulting Participants offering to acquire such GES pro rata based on the ratio that each offering Indenture Group B and Indenture Group C Non-Defaulting Participant's GES bears to the aggregate GES of all offering Indenture Group B and Indenture Group C Non-Defaulting Participants.

22.2.5.3 Indenture Group A Non-Defaulting Participants shall receive the first offer from NCPA of a Default Mitigation Sale of the Capacity and Energy associated with the GES of an Indenture Group A Defaulting Participant remaining after the GES Lay-Off and GES

Step-Ups have been completed. Such offer shall be made pro rata based on the ratio that each Indenture Group A Non-Defaulting Participant's GES bears to the aggregate GES of all Indenture Group A Non-Defaulting Participants. Thereafter if any of the Capacity and Energy associated with the GES of a Defaulting Participant remains, Indenture Group A Non-Defaulting Participants shall receive the second offer from NCPA of a Default Mitigation Sale of the remaining Capacity and Energy. If the Indenture Group A Non-Defaulting Participants offer to take more Capacity and Energy associated with the GES than is available on such second offer, such available Capacity and Energy shall be allocated among the Indenture Group A Non-Defaulting Participants offering to acquire such Capacity and Energy pro rata based on the ratio that the GES of each offering Indenture Group A Non-Defaulting Participant bears to the aggregate GES of all offering Indenture Group A Non-Defaulting Participants.

22.2.5.4 Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the third offer from NCPA of a Default Mitigation Sale of the Capacity and Energy associated with the GES of an Indenture Group A Defaulting Participant remaining after the allocations pursuant to Section 22.2.5.3 have been made. Such third offer shall be made pro rata based on the ratio that the GES of each Indenture Group B and Indenture Group C Non-Defaulting Participant bears to the aggregate GES of all Indenture Group B and Indenture Group C Non-Defaulting Participants. If any of the Capacity and Energy associated with the GES of an Indenture Group A Defaulting Participant remains after such third offer, Indenture Group B and Indenture Group C Non-Defaulting Participants shall receive the fourth offer from NCPA of a Default Mitigation Sale of such remaining Capacity and Energy. If the Indenture Group B and Indenture Group C Non-Defaulting Participants offer to take more of such Capacity and Energy than is available on such fourth offer, such available Capacity and Energy shall be allocated between the Indenture Group B and Indenture Group C Non-Defaulting Participants offering to acquire such Capacity and Energy pro rata based on the ratio that the GES of each offering Indenture Group B and Indenture Group C Non-Defaulting Participant bears to the aggregate of the GES of the offering Indenture Group B and Indenture Group C Non-Defaulting Participants.

22.2.5.5 If, after all the allocations pursuant to Section 22.2.5.1, Section 22.2.5.2, Section 22.2.5.3 and Section 22.2.5.4 have been made, any portion of the Capacity and Energy associated with the Defaulting Participant's GES remains unallocated, it shall be offered for sale by NCPA to any electric utility or other qualified purchaser that is not a Participant.

22.2.6 <u>Priority of Offers-Indenture Group B and C Defaulting Participants</u>.

22.2.6.1 Non-Defaulting Participants shall receive the first offer from NCPA of a GES Lay-Off of the GES of a Defaulting Participant in Indenture Group B or Indenture Group C. Such offer shall be made pro rata based on the ratio that each Non-Defaulting Participant's GES bears to the aggregate GES of all Non-Defaulting Participants. Thereafter if any of the GES of a Defaulting Participant in Indenture Group B or Indenture Group C remains after such first offer, Non-Defaulting Participants shall receive the second offer from NCPA of a GES Lay-Off of the remaining GES of the Defaulting Participant in Indenture Group B or Indenture Group C. If the Non-Defaulting Participants offer to take more of such GES than is available on such second offer, such available GES shall be allocated among the Non-Defaulting Participants offering to acquire such GES pro rata based on the ratio the GES of each offering Non-Defaulting Participant bears to the aggregate of the GES of all offering Non-Defaulting Participants.

22.2.6.2 Non-Defaulting Participants shall receive the first offer from NCPA of a Default Mitigation Sale of the Capacity and Energy associated with the GES of an Indenture Group B or Indenture Group C Defaulting Participant remaining after the allocations pursuant to Section 22.2.6.1 have been made. Such offer shall be made pro rata based on the ratio that each Non-Defaulting Participant's GES bears to the aggregate of the GES of all Non-Defaulting Participants. If any of the Capacity and Energy associated with the GES of an Indenture Group B or Indenture Group C Defaulting Participant remains after such first offer, Non-Defaulting Participants shall receive the second offer from NCPA of a Default Mitigation Sale of the remaining GES of the Indenture Group B or Indenture Group C Defaulting Participant. If the Non-Defaulting Participants offer to take more of the Capacity and Energy associated with Indenture Group B or Indenture Group C Defaulting Participant's GES than is available on such second offer, such available Capacity and Energy shall be allocated among the Non-Defaulting Participants offering to acquire such Capacity and Energy pro rata based on the ratio that the GES of each offering Non-Defaulting Participant bears to the aggregate of the GES of all offering Non-Defaulting Participants.

22.2.6.3 If, after all the allocations pursuant to Section 22.2.6.1 and Section 22.2.6.2 have been made, any portion of the Capacity and Energy associated with the Indenture Group B or Indenture Group C Defaulting Participant's GES remains unsold, it shall be offered for sale by NCPA to any electric utility or other qualified purchaser that is not a Participant.

22.2.7 Effect on Tax Status. No GES Lay-Off or Default Mitigation Sale shall be made by NCPA if such action would adversely affect the Tax Status of any Bond.

22.2.8 Other Remedies. In addition to all other remedies provided for herein, in the event of a Payment Default by a Participant, NCPA, any other Participant and/or any Trustee may bring any suit, action, or proceeding in law or in equity,

including an action for damages, mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any applicable covenant, agreement or obligation of this Agreement against the Defaulting Participant.

22.2.9 Defaulting Participant Remains Liable. Notwithstanding the allocation and sale of an Indenture Group A Defaulting Participant's GES to another Indenture Group A Participant pursuant to Section 22.2.2, the Indenture Group A Defaulting Participant shall remain liable, in addition to all amounts due under Billing Statements as provided in this Section 22.2.9, to NCPA and the Indenture Group A Participants receiving such GES for any damages sustained by NCPA and/or such Indenture Group A Participants as a result of the Payment Default by the Indenture Group A Defaulting Participant.

22.2.10 Costs of Enforcement. In the event of a Payment Default by a Participant, NCPA and each other Party shall be entitled to recover from the Defaulting Participant any and all legal fees and costs incurred as a result of enforcing its rights hereunder.

23. DEFAULTS OTHER THAN PAYMENT DEFAULTS.

23.1 Remedies on Participant Default. In the event of any default by a Participant in the performance of any covenant, agreement or obligation under this Agreement, other than a Payment Default, any other Party and/or any Trustee may send notice of such default to the applicable Participant and request that such default be remedied. If the applicable Participant does not remedy such default within 60 days of such notice, any other Party and/or any Trustee may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to recover any damages incurred as a result of such default and/or to enforce any applicable covenant, agreement or obligation of this Agreement against the defaulting Party.

23.2 Remedies on NCPA Default. In the event of any default by NCPA in the performance of covenant, agreement or obligation under this Agreement, any other Party and/or any Trustee may send notice of such default to NCPA and request that such default be remedied. If NCPA does not remedy such default within 60 days of such notice, any other Party and/or any Trustee may bring any suit, action, or proceeding in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to cause NCPA to comply with each applicable covenant, agreement or obligation on its part under this Agreement.

23.3 Costs of Enforcement. In the event of a default by a Participant of any of its covenants, agreements, or obligations hereunder, other than a Payment Default (which is addressed in Section 22.2.10), each other Party shall be entitled to recover from such Participant any and all legal fees and costs incurred as a result of enforcing its rights hereunder.

24. INDEMNIFICATION AND RELATED MATTERS.

24.1 Release. Each Participant agrees that, to the extent permitted by law, neither NCPA nor any of its commissioners, directors, officers, employees or agents shall be liable to any Participant for loss of profits or direct or consequential loss or damage suffered by such

Participant as a result of (i) the performance or non-performance by NCPA or any of its commissioners, directors, officers, employees or agents under any Project-related agreement (whether negligent or otherwise) or (ii) the performance or non-performance (whether negligent or otherwise) of NCPA or any of its commissioners, directors, officers, employees or agents under this Agreement. Each Participant releases NCPA and its commissioners, directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of NCPA under this Agreement or the performance or non-performance by NCPA under any Project-related agreement. The provisions of this Section 24.1 shall not be construed so as to relieve NCPA from any obligation under this Agreement, the PMOA, or other Project-related agreement. No such performance or non-performance by NCPA shall relieve any Participant from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. Each Participant acknowledges and expressly waives the provisions of California Civil Code Section 1542 as applicable hereto.

24.2 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 24.1 shall, to the extent permitted by law, apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, each Participant may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of NCPA and each Participant shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by such Participant in accordance with Section 17.4.

24.3 Indemnification for Claims of Retail Customers. Each Participant shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with service to any of its retail customers caused by the operation or failure of operation of the Project or any portion thereof under this Agreement and, to the fullest extent permitted by law, shall indemnify, defend and hold harmless each of the other Participants and NCPA, as Project operator, as issuer of Bonds and in every other capacity, and its commissioners, directors, officers, employees and agents from any such claim, action or judgment.

24.4 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 24.1, 24.2 and 24.3, each Party may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty of another Party hereunder.

24.5 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in Section 24, the provisions of Section 24 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.

24.6 NCPA Commissioners, Officers, Employees, Agents Not Individually Liable; No General Liability of NCPA. It is hereby recognized and agreed that no member of NCPA's Commission, officer, employee or agent of NCPA or member of NCPA in its capacity as a member of NCPA shall be individually liable in respect of any undertakings by NCPA under any Project-related agreement, including this Agreement. The undertakings by NCPA under this Agreement shall never constitute a debt or

indebtedness of NCPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit but shall be payable only from the funds provided and available to NCPA under this Agreement.

24.7 Liability of Participants Strictly Limited to the Project. NCPA's debts, liabilities and obligations shall not constitute debts, liabilities or obligations of any Participant except to the extent that such Participant has specifically contracted to be liable under this Agreement or another written agreement. Accordingly, except as set forth in this Agreement and any other written agreement between NCPA and such Participant with respect to the Project, NCPA and all Participants agree that no Participant or NCPA member shall have any liability or responsibility for, and no claim may be asserted against any Participant in connection with, any other project, undertaking or contract of NCPA, past, present or future. NCPA shall, to the fullest extent permitted by law, indemnify and hold harmless, but only from Project Revenues available therefor, each of the Participants and all other NCPA members from any such claim, action or judgment (including the obligation to pay reasonable attorneys' fees and other costs of defense).

25. REIMBURSEMENT OF PROJECT DEVELOPMENT COSTS. Notwithstanding that this Agreement supersedes the Development Agreement, Section 4 of the Development Agreement remains in effect pursuant to its terms.

26. REFUNDING BONDS AND BOND RELATED DOCUMENTS.

26.1 Refunding Bonds. In the event that the Participant Monthly Power Costs for an Indenture Group may be reduced by the refunding of any Bonds issued with respect to such Indenture Group, or in the event it shall otherwise be advantageous, in the opinion of NCPA to refund any such Bonds, NCPA may issue and sell refunding Bonds for such Indenture Group in accordance with the respective Indenture(s), applicable law, and this Agreement, including Section 8.1.

26.2 Bond-Related Documents. Participants in each Indenture Group agree to supply NCPA, upon request, with such information and documentation, including opinions of counsel for each Participant, as NCPA shall reasonably determine to be necessary or desirable to facilitate the issuance and maintenance of Bonds for such Indenture Group and to comply with continuing disclosure requirements (including, but not limited to, requirements under Rule 15c2-12 of the United States Securities and Exchange Commission), to obtain credit ratings, bond insurance, credit facilities, liquidity facilities and to complete other transactions and matters relating to such Bonds.

27. INDENTURES AND GOVERNMENTAL REQUIREMENTS.

27.1 Agreement Subject to Indentures and Governmental Requirements. It is recognized by the Parties hereto that NCPA, in undertaking the planning, financing, construction, improvement, management, operation and maintenance of the Project, must comply with the requirements of each Indenture and all licenses, permits and approvals or other governmental authorizations necessary for such planning, financing, construction, operation and maintenance and it is therefore agreed that this Agreement is made subject to the provisions of the each Indenture, and all such licenses, permits, approvals and governmental authorizations.

27.2 NCPA Covenant to Comply With Indentures and Certain Governmental Requirements. NCPA covenants and agrees for the benefit of each Participant to comply in all material respects with all terms, conditions and covenants of each Indenture, and all licenses, permits, approvals and governmental authorizations relating to the Project, provided that NCPA shall not be prevented from contesting the validity or applicability of any requirements relating to such licenses, permits, approvals and governmental authorizations in good faith by appropriate proceedings.

28. EXPRESS THIRD-PARTY BENEFICIARIES. In addition to any rights which a Trustee may have as an assignee of NCPA's rights hereunder, each Trustee shall be an express third party beneficiary hereof and shall have the right as a third party beneficiary to initiate and maintain suit to enforce this Agreement to the extent provided in the applicable Indenture. No person other than a Trustee shall be a third party beneficiary of this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than NCPA, the Participants and each Trustee, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of NCPA, the Participants and each Trustee.

29. COUNTERPARTS. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

30. OBSERVANCE OF LAWS. NCPA and each Participant shall at all times comply with all federal and state laws and regulations applicable to their respective performances of this Agreement.

31. FURTHER ASSURANCES. NCPA and each Participant agree to execute and deliver all further instruments and documents (including any certification demonstrating compliance with other contracts that control such Party's right to execute and deliver this Agreement, if any), and take all further actions that may be reasonably necessary for, or to evidence, such Party's performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

32. EFFECTIVE DATE. This Agreement shall become effective on the first day when all of the following have occurred (i) this Agreement shall have been executed and delivered by NCPA and Participants subscribing to 100% of Project GES, and (ii) each such Participant shall have delivered to NCPA an opinion of an attorney or firm of attorneys in substantially the form attached hereto as Appendix C. NCPA will provide a written notice of the Effective Date to each Participant within seven days of the Effective Date; provided that failure to provide such notice shall not affect the establishment of the Effective Date.

33. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date. Unless terminated earlier pursuant to this Section 33, the term of this Agreement shall expire on the later of (i) the expiration of the useful life of the Project as approved by the Participant Committee; and (ii) the date on which (A) no obligations remain Outstanding under an Indenture and (B) all costs, obligations and liabilities of NCPA to decommission, salvage, discontinue, and dispose of the Project have been provided for.

34. SUCCESSORS. The rights and obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors of the Parties to this Agreement.

35. **NOTICES**. All notices, requests and other communications under this Agreement shall be in electronic or written form (including telegram, facsimile, e-mail or similar writing) and shall be given to the Party to whom addressed, at its address or facsimile number or e-mail address set forth in Appendix D hereto, or such other address or facsimile number or e-mail address as such Party may hereafter specify in writing to NCPA; provided that any notice of a Payment Default and each Funding Notice shall be hand-delivered by overnight messenger service and deemed effective upon such delivery. NCPA shall maintain a master list of all such addresses, facsimile numbers and e-mail addresses for NCPA and all Participants and shall promptly provide a copy of any notice, request or other communication received from a Participant to all other Participants. Each such notice, request or communication shall be effective (i) if given by e-mail, telecopy or other electronic means by 5 p.m. on a Business Day to the number on the master list maintained by NCPA pursuant to this Section 35, when the appropriate confirmation of receipt is received; or (ii) if given by e-mail, telecopy or other electronic means after 5 pm on a Business Day to the number on the master list maintained by NCPA pursuant to this Section 35 and the appropriate confirmation of receipt is received, on the Business Day following the date on which sent by such e-mail, telecopy or other electronic means; or (iii) if given by mail, five days after such communication is deposited in the United States mail with first class postage prepaid, addressed to the address on the master list maintained by NCPA pursuant to this Section 35.

36. **SEVERABILITY**. In case any one or more of the provisions of this Agreement (other than the unconditional obligation of the Participants to make all payments due hereunder from Enterprise Revenues without deduction or setoff), shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision (other than the unconditional obligation of the Participants to make all payments due hereunder from Enterprise Revenues without deduction or setoff) had not been contained herein unless a court holds that such provisions are not separable from all other provisions of this Agreement.

37. **AMENDMENTS TO AGREEMENT.** Each amendment to this Agreement shall be in writing signed by all the Parties; provided, however, that any amendment of this Agreement affecting the Plumas Sierra Rural Electric Cooperative shall be effective only upon the prior written consent of the Rural Utilities Service of the United States Department of Agriculture. So long as any obligations of NCPA remain Outstanding under any Indenture and any Indenture has not been fully satisfied in accordance with its terms, this Agreement shall not be terminated, amended, modified or otherwise altered in any manner which will materially reduce the respective payments to be made by each Participant or extend the time of such payments provided herein or which will materially impair or materially adversely affect the rights of the owners from time to time of the Bonds or the obligations to be performed under any Indenture.

38. **ASSIGNMENTS**. Except as provided in the next sentence, so long as any obligations remain Outstanding under an Indenture with respect to an Indenture Group, and except as otherwise provided in this Section 38 and in this Agreement with respect to GES Lay-Offs, GES Step-Ups, and sales of Capacity and Energy, no Party shall assign any of its rights or obligations hereunder and any purported such assignment shall be null and void. The Indenture Group C Participant may assign and transfer its rights to the Capacity and Energy in connection with any financing of its share of the Costs of Construction of the Initial Facilities and/or any Financed Capital Improvement; provided that no such assignment and transfer shall relieve the Indenture Group C Participant of any of its obligations hereunder or affect the status of the Indenture Group C Participant as a Participant hereunder. When no obligations remain Outstanding under an Indenture, and except as otherwise provided herein with respect to GES Lay-Offs, GES Step-Ups

and sales of Capacity and Energy, a Party may assign any of its rights or obligations hereunder; provided that (i) such Party shall first offer to assign such rights and obligations to the Non-Defaulting Participants on the same terms, and (ii) no such assignment shall relieve the assigning Party of any of its obligations hereunder.

39. OFFICIAL FILE. NCPA shall maintain or cause to be maintained an official file containing a true and correct copy of this Agreement executed by all Parties, together with current Appendices hereto and history of changes to such Appendices, and which official file shall be made available upon request to any Participant or any Trustee.

40. GOVERNING LAW. This Agreement shall be interpreted, governed by and construed under the laws of the State of California without reference to any conflict of law principles.

41. SPECIAL PROVISIONS APPLYING TO CDWR AND NCPA ONLY.

41.1 California General Terms and Conditions. The State of California General Terms and Conditions and Certification Clauses shown in Appendix E and Appendix F are incorporated in this Agreement. Appendix E and Appendix F apply only to CDWR and NCPA concerning this Agreement.

41.2 Department of General Services Review. The Parties to this Agreement acknowledge that this Agreement, as it applies to CDWR, must be reviewed and approved by the Director of the Department of General Services, or his designee, before it becomes of full force and effect. CDWR shall provide a letter opinion from CDWR Counsel indicating that Department of General Services' review and approval of this Agreement has occurred and that all relevant procedural requirements for State of California contracting have been met.

42. APPENDICES. This Agreement includes the following Appendices:

Appendix A: Lodi Energy Center Project Participation Shares

Appendix B: Description of Initial Facilities

Appendix C: Opinion of Independent Counsel

Appendix D: Participant Addresses for Notice

Appendix E: State of California General Terms and Conditions

Appendix F: Certification Clauses

IN WITNESS WHEREOF, each Participant has executed this Agreement with the approval of its governing body, and NCPA has executed this Agreement in accordance with the authorization of its Commission.

SIGNATURE PAGES

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

BAY AREA RAPID TRANSIT DISTRICT

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Approved as to Legal Form

_____

By: _____

Date: _____

Date: _____

CITY OF AZUSA

Approved as to Legal Form

_____

By: _____

Date: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF BIGGS

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF GRIDLEY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Approved as to Legal Form

_____

By: _____

Date: _____

Date: _____

CITY OF HEALDSBURG

Approved as to Legal Form

_____

By: _____

Date: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF LODI

_____

Date: April 20, 2010

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF LOMPOC

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF SANTA CLARA

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF UKIAH

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

Approved as to Legal Form

_____

By: _____

Date: _____

Date: _____

MODESTO IRRIGATION DISTRICT

Approved as to Legal Form

_____

By: _____

Date: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

PLUMAS-SIERRA RURAL ELECTRIC
COOPERATIVE

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

CITY OF OAKLAND ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

POWER AND WATER RESOURCES
POOLING AUTHORITY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

NORTHERN CALIFORNIA
POWER AGENCY

_____

Date: _____

Approved as to Legal Form

By: _____

Date: _____

STATE OF CALIFORNIA DEPARTMENT OF
WATER RESOURCES

_____

Date: _____

Approved as to Legal Form and Legal Sufficiency

By: _____

Date: _____

APPENDIX A

LODI ENERGY CENTER
PROJECT PARTICIPANT SHARES

Participant*	Generation Entitlement Share (GES)*	MW**	Indenture Cost Share (ICS)*
California Department of Water Resources	%		
City of Azusa	%		
City of Biggs	%		
City of Gridley	%		
City of Healdsburg	%		
City of Lodi	%		
City of Lompoc	%		
City of Oakland - Port of Oakland	%		
City of Santa Clara	%		
City of Ukiah	%		
Modesto Irrigation District	%		
Plumas-Sierra Rural Electric Cooperative	%		
Power and Water Resources Pooling Authority	%		
San Francisco Bay Area Rapid Transit District	%		
Total	100.000%		

* As of the Effective Date.
** Based on the expected nameplate capacity of the Initial Facilities.

APPENDIX B

DESCRIPTION OF THE INITIAL FACILITIES

The Initial Facilities of the Lodi Energy Center consist of a natural gas fueled, combined-cycle electric generating station located in Lodi, California, including a gas fired combustion turbine generator, a heat recovery steam generator, a selective catalytic reduction pollution control system, a steam turbine generator, control and administrative buildings, wet mechanical-draft cooling towers, recirculating water system, auxiliary cooling water heat exchangers, interconnection and transformer facilities, land rights, water rights, governmental permits, Emission Reduction Credits, all appurtenant facilities and resources, including fuel and water, as well such facilities' share of any shared facilities and resources used in common with the existing 49-MW NCPA Combustion Turbine Project Number Two – Unit One (the "STIG Plant") as listed below and related facilities on or adjacent to the site of the Lodi Energy Center, together with all other rights, equipment and facilities ancillary to or associated with such electric generating station.

The following existing elements of the STIG Plant's infrastructure will be shared between the Project and the STIG Plant:

- The anhydrous ammonia system, including both the 12,000-gallon storage tank and unloading facilities.
- The 230-kilovolt switchyard and interconnect.
- The fire systems, including fire water storage tanks and diesel-fired emergency fire pump.
- The domestic water systems, including eye wash stations and emergency showers.
- The existing Class I underground injection well.

The following facilities will be modified or built as part of the Initial Facilities:

- The administration building, including the control room, office space, maintenance shop and communication systems. These facilities will be shared by both the Project and the STIG Plant.
- The warehouse facilities. These facilities will be shared by both the Project and the STIG Plant.
-

The following facilities will be modified or built with the cost of such modification or building included in the Costs of Construction of the Initial Facilities but will not be shared by the Project and the STIG Plant and are not a part of the Project:

- The existing commercial cooling tower for the STIG Plant will be relocated to accommodate the Project.
- The existing gas metering station for the STIG Plant will be relocated to accommodate the Project.

The remaining facilities and activities at the STIG Plant will not be shared between the Project and the STIG Plant and are not part of the Project.

APPENDIX C

OPINION OF INDEPENDENT COUNSEL TO PARTICIPANT

Commissioners
Northern California Power Agency
651 Commerce Drive
Roseville, California 95678

MONTH XX, 20YY

[underwriter or lender]

[credit facility provider, if any]

[bond counsel]

Ladies and Gentlemen:

I am counsel to _____, a _____ (the "[City] [District] [CDWR]") in connection with the Lodi Energy Center Power Sales Agreement, dated as of _____ (the "Power Sales Agreement") among the [City] [District] [CDWR], the Northern California Power Agency ("NCPA") and the other public entities named therein, and I have acted as counsel to the [City] [District] [CDWR] in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the [City] [District] [CDWR], (ii) all necessary documentation of the [City] [District] [CDWR] relating to the authorization, execution and delivery of the Power Sales Agreement and (iii) an executed counterpart of the Power Sales Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Power Sales Agreement

Based upon the foregoing and an examination of such other information, instruments and documents as I deem necessary or advisable to enable me to render this opinion, I am of the opinion that:

1. The [City] [District] [CDWR] is a _____ duly created, organized and existing under the laws of the State of California (the "State") and duly qualified to operate and maintain its Enterprise.

2. The Participant has full legal right, power and authority to enter into the Power Sales Agreement and to carry out and consummate all transactions contemplated thereby, and the [City] [District] [CDWR] has complied with the provisions of applicable law in all matters relating to such transactions.

3. The Power Sales Agreement has been duly authorized, executed and delivered by the [City] [District] [CDWR], is in full force and effect and, assuming due authorization, execution and delivery by NCPA and the other Participants of the Power Sales Agreement, constitutes the legal, valid and binding obligation of the [City] [District] [CDWR] enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization and other similar laws affecting creditors' rights generally and to general principles of equity.

4. No order, filing, exemption of or registration with, approval, consent or authorization of any governmental or public agency, authority or person is required in connection with the execution and delivery by the [City] [District] [CDWR] of the Power Sales Agreement, or the performance by the [City] [District] [CDWR] of its obligations thereunder.

5. The [City] [District] [CDWR] is not in material breach of or default under, and the authorization, execution and delivery of the Power Sales Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under: (i) any instrument relating to the organization, existence or operation of the [City] [District] [CDWR]; (ii) any loan agreement, lease agreement, indenture, bond, note, Public Finance Contract, credit facility, resolution, commitment, agreement or other instrument to which the [City] [District] [CDWR] is a party or by which it or its property or assets is bound or affected, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a material default or event of default under any such instrument, which breach or default would have a material adverse impact on NCPA's ownership or operation of the Project or the ability of the [City] [District] [CDWR] to fully perform its obligations under the Power Sales Agreement; or (iii) any applicable constitutional provision, law, ruling, administrative regulation, ordinance, judgment, order or decree to which the [City] [District] [CDWR] (or any of its officers in their respective capacities as such) or its properties is subject.

6. There is no action or suit (with service of process having been accomplished) or proceeding, inquiry or investigation at law or in equity before any court, public board or body, pending or, to my knowledge after due inquiry, threatened against or affecting the [City] [District] [CDWR] or any entity affiliated with the [City] [District] [CDWR] or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the right, power or authority of the [City] [District] [CDWR] referred to in paragraph 2 above or the validity of the proceeding taken by the [City] [District] [CDWR] in connection with the authorization, execution or delivery of the Power Sales Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Power Sales Agreement, or which, in any way, would adversely affect the validity or enforceability of the Power Sales Agreement or the ability of the [City] [District] [CDWR] to comply with its obligations thereunder.

7. The obligations of the [City] [District] [CDWR] to make payments under the Power Sales Agreement (other than Capital Contributions and Contributions in Aid of Construction) constitute a cost of purchased electric capacity and energy and the [City] [District] [CDWR] is obligated to make such payments from its Enterprise Revenues as an operating expense.

Very truly yours,

APPENDIX D

PARTICIPANT ADDRESSES FOR NOTICE

Northern California Power Agency

Northern California Power Agency
Attn: Ed Warner, Lodi Energy Center Manager
651 Commerce Drive
Roseville, California, 95678
Telephone: (209)728-1387 x-22 or (209)768-5887
Facsimile:
Email: Ed.Warner@ncpagen.com

With a copy to

Northern California Power Agency
Attn: Ken Speer, Assistant General Manager-Generation Sevices
651 Commerce Drive
Roseville, California, 95678
Telephone:
Facsimile:
Email: Ken.Speer@ncpa.com

City of Azusa

City of Azusa
Azusa Light & Water Department
Attn: George Morrow, Electric Utility Director
729 N. Azusa Avenue
P.O. Box 9500
Azusa, California 91702-9500
Telephone: (626)812-5214
Facsimile: (626)334-3163
Email: gmorrow@ci.azusa.ca.us

Bay Area Rapid Transit District

Bay Area Rapid Transit District
Attn: Frank Schultz, Power Resources Manager
300 Lakeside Drive, 16th Floor
Oakland, California 94612-3534
Telephone: (510)464-6435
Facsimile: (510)464-6118
Email: fschult@bart.gov

Modesto Irrigation District

Modesto Irrigation District
Attn: Gregory Salyer, P.E.,
Resource Planning and Development Manager
P.O. Box 4060
1231 Eleventh Street
Modesto, California 95352
Telephone: (209)526-7550
Facsimile: (209)526-7575
Email: gregs@mid.org

California Department of Water Resources:

Department of Water Resources
Attn: Chi Doan
Chief, Power Contracts Branch
3310 El Camino Avenue, LL94
Sacramento, California 95821
Telephone: (916) 574-0612
Facsimile: (916) 574-0660
Email: chi@water.ca.gov

Plumas-Sierra Rural Electric Cooperative

Plumas-Sierra REC
Attn: Bob Marshall, General Manager
73233 Highway 70
Portola, California 96122-7064
Telephone: (530)832-4261
Facsimile: (530)832-6070
Email: marshall@psln.com

City of Biggs

City of Biggs
Attn: Pete Carr, City Administrator
465 "C" Street
P.O. Box 307
Biggs, California 95917-0307
Telephone: (530)868-5493
Facsimile: (530)868-5239
Email: biggs1@biggs-ca.gov

City of Gridley

City of Gridley
Attn: Rob Hickey, City Administrator
685 Kentucky Street
Gridley, California 95948-2117
Telephone: (530)846-5695
Facsimile: (530)846-3229
Email: rhickey@gridley.ca.us

City of Healdsburg

City of Healdsburg
Attn: Elizabeth Kirkley, Electric Utility Director
435 Allan Court
Healdsburg, California 95448
Telephone: (707)431-3346
Facsimile: (707)431-2710
Email: ekirkley@ci.healdsburg.ca.us

City of Lodi

City of Lodi
Attn: Ken Weisel, Acting Utility Director
221 W. Pine Street
Lodi, California 95240
Telephone: (209)333-6762
Facsimile: (209)333-6839
Email: kweisel@lodielectric.com

City of Lompoc

City of Lompoc
Attn: Ronald Stassi, Utility Director
100 Civic Center Plaza
P.O. Box 8001
Lompoc, California 93438-8001
Telephone: (805)875-8299
Facsimile: (805)875-8399
Email: r_stassi@ci.lompoc.ca.us

City of Oakland- Port of Oakland

Port of Oakland
Attn: _____
_____
Oakland, California _____
Telephone: _____
Facsimile: _____
Email: _____

City of Santa Clara

Silicon Valley Power
Attn: John Roukema, Electric Utility Director
1500 Warburton Avenue
Santa Clara, California 95050
Telephone: (408)261-5490
Facsimile: (408)249-0217
Email: jroukema@siliconvalleypower.com

City of Ukiah

City of Ukiah
Attn: Mel Grandi, Utility Director
300 Seminary Avenue
Ukiah, California 95482
Telephone: (707)463-6298
Facsimile: (707)463-6740
Email: mgrandi@cityofukiah.com

Power and Water Resources Purchasing Authority

Power and Water Resources Purchasing Authority
Attn: Kent W. Palmerton, General Manager
2106 Homewood Way, Ste 100
Carmichael, California 95608
Telephone: (916) 483-5368
Facsimile: (916) 485-3537
Email: kent@wkpalmerton.com

APPENDIX E

STATE OF CALIFORNIA

GENERAL TERMS AND CONDITIONS

This Appendix E contains standard terms required by the State of California and which apply only to NCPA as part of the Agreement to which this Appendix E is an appendix.

1. APPROVAL: This Agreement is of no force or effect until signed by both NCPA and CDWR and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

3. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

4. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all Major Contracts.

5. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in Appendix F to the Agreement are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

6. TIMELINESS: Time is of the essence in this Agreement.

7. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

8. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

   (a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

   (b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

9. PRIORITY HIRING CONSIDERATIONS: If the Agreement includes services in excess of $200,000, NCPA shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Public Contract Code Section 10353.

APPENDIX F

CERTIFICATION CLAUSES

THIS APPENDIX F CONTAINS THE STATE OF CALIFORNIA CCC 307. CCC 307 CONTAINS SEVEN (7) PROVISIONS PERTAINING TO CONTRACTOR CERTIFICATION CLAUSES AND EIGHT (8) PROVISIONS PERTAINING TO DOING BUSINESS WITH THE STATE OF CALIFORNIA, ALL OF WHICH ARE INCLUDED FOR REFERENCE. CCC 307 APPLIES TO THIS AGREEMENT ONLY WITH RESPECT TO NCPA AND CDWR AND AS ACCEPTED, MODIFIED OR DESCRIBED BY PROVISION BELOW.

CONTRACTOR CERTIFICATION CLAUSES

1) STATEMENT OF COMPLIANCE – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.

2) DRUG-FREE WORKPLACE REQUIREMENTS – ACCEPTED.

3) NATIONAL LABOR RELATIONS BOARD CERTIFICATION – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.

4) CONTRACT FOR LEGAL SERVICES $50,000 OR MORE- PRO BONO REQUIREMENT – NOT APPLICABLE; NCPA IS NOT PERFORMING LEGAL SERVICES FOR CDWR.

5) EXPATRIATE CORPORATIONS – ACCEPTED.

6) SWEATFREE CODE OF CONDUCT – NOT APPLICABLE, NCPA IS NOT FURNISHING ANY APPAREL, GARMENTS OR CORRESPONDING ACCESSORIES TO CDWR.

7) DOMESTIC PARTNERS - NOT APPLICABLE / WAIVED PER PUBLIC CONTRACT CODE SECTION 10295.3 (C)(4).

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

CONTRACTOR CERTIFICATION CLAUSES

1. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

   a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

   b. Establish a Drug-Free Awareness Program to inform employees about:

      1) the dangers of drug abuse in the workplace;

      2) the person's or organization's policy of maintaining a drug-free workplace;

      3) any available counseling, rehabilitation and employee assistance programs; and,

      4) penalties that may be imposed upon employees for drug abuse violations.

   c. Every employee who works on the proposed Agreement will:

      1) receive a copy of the company's drug-free workplace policy statement; and,

      2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made

false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

2. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

3. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

1) CONFLICT OF INTEREST – ACCEPTED.

2) LABOR CODE/WORKERS' COMPENSATION – ACCEPTED.

3) AMERICANS WITH DISABILITIES ACT - ACCEPTED.

4) CONTRACTOR NAME CHANGE – ACCEPTED.

5) CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA – NOT APPLICABLE, NCPA IS NOT A CORPORATION.

6) RESOLUTION – ACCEPTED.

7) AIR OR WATER POLLUTION VIOLATION – ACCEPTED.

8) PAYEE DATA RECORD FORM STD. 204 – NOT APPLICABLE, NCPA IS A GOVERNMENTAL ENTITY.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Lodi Energy Center

Project Management and Operations Agreement

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PARTIES

This Lodi Energy Center Project Management and Operations Agreement (this "Agreement"), made and entered into as of this 1st day of _____, 2010, by and between the NORTHERN CALIFORNIA POWER AGENCY, a joint powers agency and public entity organized under the laws of the State of California ("NCPA"), and each of the undersigned entities ("Participants", sometimes hereinafter referred to individually as "Participant" and, together with NCPA, as "Parties" or individually as "Party").

RECITALS

This Agreement (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Article 1 of this Agreement) is made with reference to the following facts among others:

A. NCPA was created pursuant to the provisions relating to the joint exercise of powers contained in the Act and the JPA by its members for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.

B. Pursuant to the terms of the Act and the JPA, NCPA has the power to plan, develop, finance, own, acquire, design, construct, operate, maintain and repair electric generation and transmission projects or cause such projects to be planned, financed, developed, acquired, constructed, operated, maintained and repaired, and to provide by agreement with a public agency of the State of California to perform such activities.

C. The Participants have investigated the feasibility of constructing a generating facility called the Lodi Energy Center, including all necessary and appurtenant facilities thereto, the applicable portion of any common facilities, interconnection facilities and all related facilities (hereinafter referred to as the "Project," as more fully described in Appendix B of the Power Sales Agreement ("PSA") entitled "Description of the Initial Facilities"), in order to, among other things, provide Capacity and Energy, including related Attributes, for the Participants.

D. NCPA has entered into a PSA with the Participants for the sale of, in the aggregate, the entire output of the Project to the Participants.

E. NCPA will own the Project and, pursuant to the terms of the PSA, is responsible for the ownership, operation and maintenance of the Project.

F. The PSA provides for the establishment of a Participant Committee ("PPC"), composed of representatives of the Parties to the PSA, to exercise the powers and duties of the PPC with respect to the operation and maintenance of the Project.

G. The purpose of this Agreement is to set forth the agreement among the Parties on the management and operation of the Project.

H. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint design, construction and operation of the Project.

I. The Participants are public entities which seek to obtain the benefits of the Project to economically meet the needs of their ratepayers or for their operations or facility loads.

J. This Agreement is intended to promote and ensure equitable and fair treatment of all Participants; specifically, it is intended that all Participants may seek the benefits of the Project, without disadvantaging any other Participant.

K. The Parties generally intend that NCPA as Project operation manager will operate the Project when it is economic to do so, and Participants will take available Energy and Capacity and other Attributes proportionally according to their GES.

AGREEMENT

For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows:

A. DEFINITIONS: The definitions in the PSA are incorporated herein by reference. Other terms are defined in Article 1 - "Definitions" and Agreement Schedule 0.00. In the event of a conflict between the PSA and any definition in this Agreement, the PSA's definition applies, unless the Parties agree otherwise.

B. RELATION TO PSA: This Agreement does not amend, alter or revise the PSA, and Participants retain all rights and obligations under the PSA. In the event of a conflict between the PSA and this Agreement, the PSA shall prevail.

C. RULES OF CONSTRUCTION: The Rules of Construction in the PSA contained in Section 4.96 apply to this Agreement.

ARTICLE 1

DEFINITIONS

Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

1.1. "Act" has the meaning given to it in Section 4.2 of the PSA.

1.2. "Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Project.

1.3. "Balancing Authority" means the responsible entity that integrates resource plans ahead of time and maintains generation-load interchange-balance within a Balancing Authority Area, and supports the applicable interconnected electric system network frequency in real time, or as redefined by the North American Electric Reliability Corporation or its successor.

1.4. "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area, or as redefined by the North American Electric Reliability Corporation or its successor.

1.5. "Billing Statement" has the meaning given it in Section 4.7 of the PSA.

1.6. "Business Day" means Monday through Friday, except for federal or state holidays.

1.7. "CAISO" means the California Independent System Operator, a non-profit public benefit corporation responsible for the provision of fair and open transmission access and maintaining reliable and efficient operation of that portion of the electric grid within the State of California referenced pursuant to Chapter 2.3, Part 1, Division 1 of the California Public Utilities Code.

1.8. "Capacity" has the meaning given to it in Section 4.9 of the PSA.

1.9. "Commercial Operation Date" has the meaning given to it in Section 4.17 of the PSA.

1.10. "Commission" means the governing body of NCPA established pursuant to the NCPA JPA.

1.11. "CT1" means the Combustion Turbine Project No. 1, which consists of five General Electric Frame 5 simple cycle electrical generating units rated at a nominal generating capacity of 25 megawatts (MW) per unit. The units are located in three locations: one unit at the City of Lodi, two units at the City of Alameda and two units at the City of Roseville.

1.12. "CT2" means the Combustion Turbine Project No. 2, which is an LM5000, steam injected electrical generating facility rated at a nominal generating capacity of 49.9 megawatts (MW). The CT2 is sometimes also referred to as the "STIG", and is located in Lodi, California, on property adjacent to the City of Lodi White Slough Water Pollution Control Facility WPCF.

1.13. "Defaulting Participant" has the meaning given to it in Section 4.20 of the PSA.

1.14. "Delegation of Authority" means the authority that the PPC delegates to NCPA under Agreement Schedule 8.00.

1.15. "Economic Operations" means the Project is operated with the intent to maximize the sum of the benefits less the sum of the costs and a pre-determined PPC approved margin. Economic Operations is further defined in Agreement Schedule 1.00.

1.16. "Effective Date" for this Agreement means the date described in Article 14.1 of this Agreement.

1.17. "Energy" has the meaning given it in Section 4.23 of the PSA.

1.18. "Exporting Participant" means a Participant who has no load in the Balancing Authority Area in which the Project is located and is an original signatory to the Second Phase Agreement.

1.19. "Facilities Agreement" means that certain agreement executed by and between NCPA and certain of its members dated September 22, 1993, as amended through February 2, 2007.

1.20. "Facilities Committee" means the committee established pursuant to the Facilities Agreement.

1.21. "FERC" means the Federal Energy Regulatory Commission.

1.22. "Fiscal Year" has the meaning given it in Section 4.28 of the PSA.

1.23. "General Manager" means the General Manager of NCPA who is the person designated by the Commission as General Manager pursuant to the NCPA JPA and NCPA bylaws.

1.24. "GES" has the meaning given it in Section 4.33 of the PSA.

1.25. "JPA" has the meaning given it in Section 4.48 of the PSA.

1.26. "JPA Cost Assessment" means that annual contribution determined by the Commission assessment pursuant to Article IV, Section 3(a) of the JPA.

1.27. "JPA Cost Assessment Rate" means that rate determined during NCPA's annual budget process for the JPA Cost Assessment defined in Section 1.26 of this Agreement, which shall require approval by the Commission and may be up to $0.15 per megawatt hour pursuant to Article IV, Section 3(a) of the JPA.

1.28. "LEC" means the Lodi Energy Center, which will be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 280 megawatts (MW).

1.29. "NCPA Administrative Costs" has the meaning given to it in Section 4.56 of the PSA.

1.30. "NCPA Member" means any signatory to the NCPA JPA.

1.31. "Non-NCPA Member Participant" means any participant to an NCPA project that is not an NCPA Member.

1.32. "Participant" means an entity that is a signatory to the PSA, and any successor to a Participant pursuant to the PSA.

1.33. "PMOA Schedules" or "Agreement Schedules" means the procedures, protocols and guidelines, appended to and part of this Agreement, which are subject to change or amendment from time to time, as set forth in this Agreement.

1.34. "PPC Approval" means the approval granted by the PPC, pursuant to Section 4.71 of the PSA.

1.35. "Point of Delivery" has the meaning given to it in Section 4.77 of the PSA.

1.36. "Project Agreement" means an agreement, including any Second Phase Agreement, PSA or Project Management and Operations Agreement, between NCPA and Project Participants to enable NCPA on behalf of Project Participants to carry out plans for the construction, operation and financing of the LEC Project.

1.37. "Project Annual Budget" has the meaning given to it in Section 4.79 of the PSA.

1.38. "Prudent Utility Practice" has the meaning given it in Section 4.83 of the PSA.

1.39. "PSA" means the Power Sales Agreement entered into among the Parties.

1.40. "Scheduling Coordinator" means the authorized agent who can execute transactions with the Balancing Authority.

1.41. "Second Phase Agreement" means the Second Phase Agreement for Funding the Planning and Development Activities of the Lodi Energy Center that became effective on or about March 1, 2008, among NCPA and the Participants.

1.42. "Shared Facilities" means the facilities attached as Agreement Schedule 4.00 and which may be revised from time to time based upon the recommendations and approvals of the Facilities Committee, the PPC and the Commission.

ARTICLE 2

PROJECT PARTICIPANTS

A list of Project Participants along with their respective GES in the Project is provided in the PSA, Appendix A, and is incorporated herein. NCPA shall maintain and update as needed a list of Participants and their respective GES in Agreement Schedule 9.00.

ARTICLE 3

NCPA'S OBLIGATIONS

3.1 General Responsibilities. NCPA will be responsible for planning, negotiating, designing, financing, constructing, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the delivery and sale to each Participant of its share of Capacity and Energy, including other Attributes, from the Project, Certain specific delegations to NCPA are described under Agreement Schedule 8.00, Delegation of Authority.

3.2 NCPA Staff. The General Manager shall hire such staff as necessary to carry out NCPA's obligations pursuant to this Agreement and shall have full authority and responsibility for all personnel issues including, but not limited to, hiring, setting salaries, replacements, discharging, disciplinary actions, authorizing training and related travel.

3.3 Duties and Authority. The General Manager shall be responsible for and have commensurate authority to take any and all actions and perform all functions necessary to:

a. Carry out directions of the PPC and Commission with respect to matters related to this Agreement;

b. Direct and carry out all responsibilities of NCPA pursuant to this Agreement, Project Agreements, Agreement Schedules, or any other agreement between NCPA and Participants related to the Project. Examples of said responsibilities include but are not limited to the following:

1. Acquire property, easements, and water rights as necessary to construct and operate the Project;

2. Obtain Federal, State, and local permits, licenses, opinions and rulings as necessary to construct and operate the Project;

3. Direct the design and construction of the Project;

4. Recommend methods for financing the Project;

5. Operate and maintain the Project in accordance with all legal and regulatory requirements and Prudent Utility Practice;

6. Provide for scheduling and dispatch services, as outlined in Article 5;

7. Develop a billing system and bill Participants in accordance with the terms and conditions of the PSA and NCPA billing procedures;

8. Prepare and submit proposed budgets for the Project for the ensuing Fiscal Year to the Commission and PPC;

9. Prepare financial data, reports and operating information pertaining to the Project;

10. Prepare and maintain necessary operating, maintenance, and environmental health and safety procedures pertaining to the Project;

11. Arrange for the fuel delivery and management for the Project, including, as appropriate, contracts with third parties for such delivery and management service, or such other fuel supply management structure as approved by the PPC;

12. Propose to the PPC amendments to this Agreement and its Agreement Schedules, exhibits, or appendices; and

13. Prepare a planned outages and curtailment schedule for the Project prior to the beginning of each Fiscal Year for PPC Approval.

ARTICLE 4

PROJECT PARTICIPANT COMMITTEE

4.1 Establishment of PPC

The establishment of the PPC shall be governed by the provisions of the PSA, Section 8.1.

4.2 PPC Operations

The operations of the PPC shall be governed by the provisions of the PSA, Section 8.2.

4.3 PPC Approval

PPC Approval shall be governed by the provisions of the PSA, Section 8.3 and Article 4.4 of this Agreement.

4.4 PPC Responsibilities

The PPC shall have the following responsibilities related to this Project, in addition to those listed in Section 8.5 of the PSA:

4.4.1 Elect a Chairperson, Vice Chairperson and/or other PPC positions as deemed necessary and prudent, to conduct the business of the PPC pursuant to this Agreement and the PSA.

4.4.2 If the pre-construction studies or other related Project development activities have not been completed by the Effective Date of this Agreement, oversee the continuation and completion of such studies or activities.

4.4.3 Review and approve the proposed acquisition of property, easements and water rights by NCPA staff.

4.4.4 Review and approve project studies conducted by NCPA staff or consultants related to the Project.

4.4.5 Review and approve proposed NCPA actions relative to obtaining Federal, State, and local permits, licenses, opinions and rulings.

4.4.6 Review and approve plans, procedures and contracts for the procurement of fuel, equipment, materials and services.

4.4.7 Provide liaison among NCPA and the Participants at the management level with respect to the development, financing, construction, improvement, maintenance, repair, replacement and operation of the Project.

4.4.8 Exercise general supervision over any committee or subcommittee established.

4.4.9 Make recommendations to NCPA with respect to the development, financing, management, construction, improvement, maintenance, repair, replacement and operation of the Project.

4.4.10 Review, modify and approve the form of written statistical and administrative reports and information and other similar records to be furnished to the PPC by NCPA.

4.4.11 Review and approve annual maintenance schedules.

4.4.12 Review, modify and approve dispatch and scheduling criteria contained in Agreement Schedule 1.00.

4.4.13 Review, modify and approve all Project budgets and revisions, including operating and capital budgets, prepared and submitted by NCPA.

4.4.14 Review, modify and approve recommendations by NCPA made pursuant to the provisions of this Agreement and the PSA.

4.4.15 Review, modify and approve all Project financing or other provisions for the payment or financing thereof, with such review, modification and approval subject to each Participant's association with a particular Indenture Group or Indenture Groups as applicable, as identified in Section 8.4 of the PSA,.

4.4.16 Review, modify and approve Project related liability, business interruption and other applicable insurance including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of an uninsured claim that NCPA may settle without PPC Approval.

4.4.17 Review, modify and approve procedures for Participants' optional Capital Contributions, as described in Section 14.5 of the PSA.

4.4.18 Establish a schedule of meetings, which shall be held at least four (4) times each year and conducted in accordance with the Ralph M. Brown Act.

4.4.19 Initiate, review and make recommendations concerning proposed amendments to the PSA, this Agreement and to its Agreement Schedules.

4.4.20 Perform such other functions and duties as may be provided for under the PSA, this Agreement, or as may otherwise be appropriate or beneficial to the Project.

4.5 Additional Subcommittees

The PPC may establish subcommittees pursuant to Section 8.6 of the PSA.

4.6 Written Record

Any written records maintained or generated by the PPC shall be made pursuant to Section 8.7 of the PSA.

4.7 Change in Representative

Each Participant shall promptly give notice in writing to the other Participants and NCPA of any changes in the designation of its representative(s), including any change in its voting representative, on any committee or subcommittee, and NCPA shall promptly give notice to the Participants of any changes in the designation of NCPA's representative on the PPC or any committee or subcommittee.

4.8 Costs of Consultants

The employment and costs of consultants shall be governed by Section 8.8 of the PSA.

4.9 Representative's Expenses

Any expenses incurred by any representative or alternate representative of any Participant shall be governed by Section 8.9 of the PSA.

4.10 Inaction by PPC.

Any inaction or inability to act by the PPC shall be governed by Section 8.10 of the PSA.

4.11 Compliance With Indentures

Compliance with the Indenture Groups for the planning, financing, constructing, managing, operating and maintaining the Project shall be governed by Section 8.11 of the PSA.

ARTICLE 5

PROJECT OPERATIONS AND DISPATCH SERVICES

5.1 Operations.

NCPA will operate the Project by adhering to all applicable governing laws and regulations, Prudent Utility Practices, and in accordance with the principles and guidelines outlined in this Article, and which shall be reflected in the protocols in Agreement Schedule 1.00 (Scheduling and Dispatch Operations and Economic Criteria), including its exhibits, and Agreement Schedule 2.00 (Gas Supply Procurement, Delivery and Management). The Project shall be managed and operated in a manner which shall not diminish the rights of a Participant to receive its GES. The following principles and guidelines shall be followed in operating the Project:

5.1.1 Economic Operations.

a. NCPA will operate the Project on an Economic Operations basis as further described in Agreement Schedule 1.00.

b. NCPA shall allocate Project Energy and Capacity consistent with Section 6 of the PSA and costs (e.g. fuel requirements) consistent with Section 17 of the PSA to Participants in accordance with their respective GES.

c. If a Participant desires physical delivery of its GES of Energy, Capacity and/or other Attributes, NCPA will deliver such Participant's GES of Project Energy, Capacity and/or other Attributes to a Participant at the Point of Delivery designated by the Balancing Authority for the Project or effect a unit contingent export. If a Participant does not desire physical delivery of its GES of Energy, Capacity and/or other Attributes, NCPA shall liquidate such Participant's GES of Project Energy, Capacity and/or other Attributes in the markets on behalf of such Participant. NCPA has no obligation to provide transmission service to any Participant pursuant to this Agreement beyond the Point of Delivery. The Project Participant will be responsible for all costs related to the scheduling and delivery of Project Energy, Capacity and other Attributes beyond the Point of Delivery.

d. If the Project is not scheduled to operate based on Economic Operations criteria during one or more periods pursuant to Agreement Schedule 1.00, and the Project is available for operations, then any Participant (or group of Participants) may request that NCPA operate the Project for such periods. The Participant(s) must bear the full costs for such operation. Agreement Schedule 3.00 contains the procedures and cost responsibilities of such requests.

e. The PPC shall approve and may, from time to time, revise the calculations and parameters (e.g. heat-rate curves, start-up costs, physical operating plant limits, shutdown costs, and the like) used by NCPA to determine Economic Operations as set forth in Agreement Schedule 1.00.

f. The Project will be bid and operated in a manner to preserve the value of all Energy, Capacity and other Attributes.

g. Forward commitments by NCPA of Project Energy, Capacity and other Attributes will be limited to the daily and spot markets; however, an individual Participant(s) may allow NCPA to enter into forward commitments beyond the daily and spot market periods up to its GES of Energy, Capacity and other Attributes. Such forward commitments shall be executed under a separate agreement between NCPA and the individual Participant(s) and shall not affect the GES of the other Participants.

h. In the case of a Defaulting Participant, the limitation on forward commitments identified in Section 5.1.1 (g) shall not limit any actions or remedies available under the PSA.

5.1.2 Fuel Procurement.

a. NCPA is responsible for arranging for fuel procurement, delivery and management service on a daily basis, as described in Agreement Schedules 1.00 and 2.00.

b. NCPA may contract with a third party for such fuel procurement, delivery and management service, or may use another fuel supply management structure as approved by the PPC.

c. Each Participant shall be responsible for its GES of all costs of fuel and fuel management services. Participants may provide up to their GES of the Project's total fuel requirements, as provided in Agreement Schedules 1.00 and 2.00, provided that no additional costs are incurred by other Participants by reason of such self-supply of fuel.

d. Billing charges will include fuel commodity and transportation charges to the plant burner tip plus any applicable ancillary charges (e.g. fuel management administration fees, scheduling imbalance adjustments, and the like), adjusted for Participant supplied fuel. Any additional charges resulting from Participant supplied fuel will be fully charged to such Participant.

e. Forward commitments by NCPA for fuel will be limited to the daily and spot markets; however, individual Participant(s) may allow NCPA to enter into forward commitments beyond the daily and spot market periods up to its GES of fuel. Such forward commitments shall be executed under a separate agreement between NCPA and the individual Participant(s) and shall not affect the GES of the other Participants.

f. In the case of a Defaulting Participant, the limitation on forward commitments identified in Section 5.1.2(e) shall not limit any actions or remedies available under the PSA.

ARTICLE 6

ALLOCATION OF NCPA ADMINISTRATIVE COSTS AND JPA COST ASSESSMENT FOR NON-MEMBERS

6.1 NCPA Administrative Costs

NCPA Administrative Costs, including power management costs, shall be allocated to Participants pursuant to Section 7.2 of the PSA.

6.2 Additional Cost for Non-Members

Since NCPA members pay a JPA Cost Assessment under the JPA, they will not be subject to an additional JPA Cost Assessment under this Agreement. However, Non-NCPA Member Participants will be subject to the JPA Cost Assessment in accordance to this Article 6.2, and NCPA shall use the same JPA Cost Assessment Rate that the NCPA Members pay, but only as applied to each Participant's respective GES of Energy. Such JPA Cost Assessment shall be charged in twelve equal billings, be separately identified for each Non-NCPA Member Participant and be included in the Billing Statements. If a Non-NCPA Member Participant later becomes an NCPA Member, such Participant will no longer be required to pay the additional costs as described in this Article 6.2. If an NCPA Member Participant later withdraws from NCPA and is no longer a NCPA Member, such Participant will thereafter be subject to the JPA Cost Assessment as described in this Article 6.2.

6.2.1. JPA Cost Assessment.

a. Until a full calendar year after the Commercial Operation Date is achieved, the forecast methodology below shall be used to determine the JPA Cost Assessment for each Non-NCPA Member Participant:

JPA Cost Assessment = JPA Cost Assessment Rate x GES x 80% capacity factor x 280 MW x 8760 hours

The JPA Cost Assessment for the first Fiscal Year shall be prorated for the remaining number of months of commercial operation in the first Fiscal Year.

b. Subsequent Fiscal Years will be based on the previous full calendar year's actual generation measured in MWh.

ARTICLE 7

DIFFERENTIAL TRANSMISSION COST ADJUSTMENT

7.1 Differential Transmission Cost Adjustment

Each Participant acknowledges that Exporting Participant(s) may or could have their GES of Project Energy delivered to a different Balancing Authority. As a result, such Exporting Participant(s) may be subject to additional or duplicative Balancing Authority Area charges. All Participants agree that the PPC is authorized to establish, approve, implement, administer and revise from time to time a differential transmission cost adjustment to mitigate or partially mitigate additional or duplicative Balancing Authority Area charges applicable to affected Exporting Participant(s) when Project Energy is delivered to such Exporting Participant(s)' load. NCPA will track the cumulative charges and benefits for each Exporting Participant. The PPC will consider the following general principles, and such other protocols and guidelines as it deems necessary, pursuant to Agreement Schedule 7.00, in determining the differential transmission cost adjustment.

7.1.1 Limitations

Any differential transmission cost adjustment shall apply only to Exporting Participant(s) and shall be limited to that portion of the Exporting Participant(s)' GES of the Project that is exported from the Balancing Authority Area in which the Project is located to another Balancing Authority Area adjacent to the Project and in which the Exporting Participant has load.

7.1.2 Calculation Methodology

The established differential transmission cost adjustment shall be understandable by all Participants, calculable, and based on publicly available information sources or agreed upon factors as determined by the PPC, pursuant to Agreement Schedule 7.00.

7.1.3 Mitigation

All Parties agree to cooperate as reasonably required to establish such Project protocols and guidelines that reduce the expected amount and incidence of the differential transmission cost adjustment, as more particularly described in Agreement Schedule 7.00.

7.1.4 Other Benefits

All Parties agree that, to the extent that an Exporting Participant receiving the benefit of the differential transmission cost adjustment attains additional Project value above what such Exporting Participant would have attained, or would likely have attained, if the Project had been located in the same Balancing Authority Area as such Exporting Participant's load subject to Section 7.1.1, these additional benefits will be netted from the differential transmission cost adjustment as approved by the PPC,

pursuant to Agreement Schedule 7.00. If at the end of the Fiscal Year, the cumulative charges are greater than the cumulative benefits for an Exporting Participant, the Exporting Participant shall be reimbursed the net amount or credited the net amount by the Project. Any reimbursement will be billed to all Project Participants based upon their GES. If at the end of the Fiscal Year, the cumulative benefits are greater than the cumulative charges for an Exporting Participant, the Exporting Participant shall reimburse or credit the Project up to any differential transmission cost adjustments the Exporting Participant previously received. Any reimbursement received by the Project shall be reimbursed or credited to all Project Participants based on their GES up to the amount of differential transmission cost adjustments each Participant has paid. For each Exporting Participant, the PPC shall review the cumulative charges and benefits and make determination of when payments shall be reimbursed to avoid large accumulation of obligations under this Article. Any such reimbursement shall be calculated and credited pursuant to Agreement Schedule 7.00. Cumulative charges and benefits that are not reimbursed at the end of a Fiscal Year shall be carried over to the next Fiscal Year.

7.1.5 Billing

Any differential transmission cost adjustment approved for implementation by the PPC will be billed according to the procedures approved by the PPC in Agreement Schedule 7.00 and shall be allocated to all Participants in proportion to their respective GES.

7.1.6 Annual Review

The PPC shall at least annually review the application and result of any applied differential transmission cost adjustment, The PPC shall compare this cost adjustment against the net of the actual transmission cost differential experienced and other benefits received during the same period by the Exporting Participants, and collect or refund any significant under or over cost adjustment amounts. In addition, the PPC shall make any needed changes to the differential transmission cost adjustment methodology used in Agreement Schedule 7.00 for the subsequent period.

7.1.7 Audit Rights

Any Participant, at its own expense and upon reasonable notice to NCPA and the PPC, may review and audit the calculation and implementation of the differential transmission cost adjustment.

ARTICLE 8

ACCOUNTING AND AUDITING

8.1 Records and Accounts

NCPA shall keep records and accounts for the Project pursuant to Section 7.5 of the PSA and Article 19 of this Agreement.

8.2 Settlement Data

NCPA will make settlement data, including underlying data received from the Balancing Authority, available to the Participants. Procedures and formats for the provision of such settlement data will be established by the PPC and NCPA from time to time.

8.3 Periodic Audit

NCPA shall arrange for periodic audits to be performed, pursuant to Section 7.6 of the PSA.

ARTICLE 9

BILLING AND BILLING DISPUTES

Billing and billing disputes shall be handled in accordance with Section 17 of the PSA.

In addition to the monthly Billing Statements provided for in the PSA, NCPA may submit additional invoices to the Participants to fund Project Funds as authorized under the PSA and as provided for in Article 12 and Agreement Schedule 5.00 and the Participants shall pay such invoices when due.

ARTICLE 10

AGREEMENT SCHEDULES

10.1 Agreement Schedules

Agreement Schedules shall be established for the implementation of this Agreement. The Agreement Schedules may be adopted, amended or deleted by the PPC subject to the provisions of the PSA and this Agreement. NCPA Commission approval to adopt, amend or delete an Agreement Schedule may be required, as described in Article 10.3 below. Upon PPC Approval, adoptions, amendments, or deletions of Agreement Schedules shall be effective immediately without the necessity of approval by the governing board or commission of any Participant. NCPA shall upon adoption, amendment or deletion of an Agreement Schedule ensure that each Participant is promptly provided notice of such adoption, amendment or deletion.

10.2 Scope of Agreement Schedules

Agreement Schedules provide detailed descriptions, procedures, protocols and guidelines (including operating and cost recovery procedures) for the operation of the Project.

10.3 Agreement Schedules Requiring NCPA Commission Approval

If an Agreement Schedule could be reasonably viewed as having an impact on other NCPA projects, but specifically excluding impacts to market prices, approval by both the PPC and NCPA Commission will be required to adopt, amend, or delete such Agreement Schedule. Those Agreement Schedules requiring approval of both PPC and the NCPA Commission shall be described in Agreement Schedule 0.00, and as new Agreement Schedules are added after the Effective Date which requires NCPA Commission approval, Agreement Schedule 0.00 will be amended to reflect such additions.

ARTICLE 11

SHARED FACILITIES AND COST SHARING

11.1 Shared Facilities

Participants desire to equitably share and use facilities and equipment common to two or more NCPA projects, including the CT1, CT2 and LEC projects, for the purpose of reducing costs and improving efficiencies for all participants of these projects. Such Shared Facilities and the basis for such cost sharing shall be included in the Schedules to the Facilities Agreement, which governs the operations of the CT1 and CT2..

11.1.1 Construction of Facilities: The Project will construct and pay for any new Shared Facilities required as a result of the LEC, and particularly facilities to be shared between the LEC and CT1 and/or CT2, pursuant to the applicable project agreements.

11.1.2 Joint Use of Facilities: NCPA and the Participants may use, operate and maintain the Shared Facilities, attached as Agreement Schedule 4.00, according to the terms and conditions of this Agreement and the percentage allocation of costs associated with such Shared Facilities detailed in Agreement Schedule 4.00. Nothing in this Agreement may be construed to create a lease, sale, or other disposition of real or personal property of NCPA.

11.1.3 Use of Shared Facilities: As applicable, the LEC, CT1 and CT2 projects will utilize the Shared Facilities and equipment as listed in Agreement Schedule 4.00. In addition thereto, the LEC, CT1 and CT2 projects and personnel will have:

a. Vehicular and pedestrian access rights.

b. Use of Shared Facilities for the purpose of locating, accessing, operating, maintaining, repairing and replacing pipelines.

c. Access for locating, accessing, operating, constructing, maintaining, repairing and replacing the steam pipeline(s), natural gas pipeline(s) and any associated equipment currently on the LEC and/or CT2 sites or to be installed in the future.

d. Access to the office building currently on the CT2 site for the installation, use, maintenance, repair and replacement of process control systems and related computer hardware associated with the LEC, CT1 and CT2.

e. Access to the Shared Facilities for the purpose of locating, operating, repairing and replacing such improvements as may be necessary from time to time.

f. Personnel associated with LEC, CT1 and CT2 shall provide reasonable notice, each to the other, regarding any work to be conducted consistent with the above.

11.2 Shared Cost Allocation

Shared costs shall be allocated among the LEC, CT1 and/or CT2 in one or more of the following ways, pursuant to Agreement Schedule 4.00:

a. Headcounts allocated to each project; or
b. Capacity; or
c. Actual usage; or
d. Such other allocation mechanisms as may be determined in Agreement Schedule 4.00.

The shared cost allocations set forth in Agreement Schedule 4.00 may be revised from time to time when operational conditions or factors used for the shared cost allocation(s) change. In such event, the PPC and the NCPA Facilities Committee will provide their respective recommendations and approvals to the Commission regarding any proposed modifications to the allocations set forth in Agreement Schedule 4.00.

11.3 Other Costs

The LEC, CT1 and CT2 projects will each be solely responsible for the payment of any and all taxes, insurance, utilities, maintenance, improvements and labor directly attributable to the construction, operation and maintenance of the respective projects. The LEC, CT1 and CT2 projects must pay the shared cost allocations imposed on such projects as detailed in Agreement Schedule 4.00. The Project will pay all costs for which it is responsible in a timely manner and will ensure no claims or liens are filed against the Project or the LEC site property leased from the City of Lodi.

11.4 Sale of Shared Facilities

In the event NCPA seeks to sell any of the Shared Facilities the LEC, CT1 and CT2 projects must be given reasonable notice and an opportunity to purchase such Shared Facilities.

ARTICLE 12

PROJECT FUNDS

12.1 Project Funds

In accordance with Section 21 of the PSA, this Article and Agreement Schedule 5.00 of this Agreement, Project Funds shall be established and approved as set forth therein. Project Funds shall be classified as either "Mandatory Project Funds" or "Additional Project Funds." NCPA shall maintain records and provide reports for each Project Fund pursuant to Section 7.5 of the PSA and Article 19 of this Agreement.

12.2 Mandatory Project Funds

The Project is financed by the issuance of notes, bonds, or other public debt ("Bonds") secured by the provisions of multiple Indentures of Trust. The Indenture of Trust ("Indenture") is a contract(s) between NCPA and the holders of the related debt instruments. Each Indenture establishes, among other things, various interrelated Project Funds that are established for the protection of the holders of the Bonds. Such Project Funds established in any NCPA Indenture or that are otherwise legally required shall be classified as Mandatory Project Funds and are not subject to change by the PPC. A listing of the Mandatory Project Funds for the Project is included in Agreement Schedule 5.00.

12.3 Additional Project Funds

Additional Project Funds may be established by from time to time, consistent with the PSA and this Agreement, provided their establishment does not affect the funding, maintenance, or operation of any Mandatory Project Fund. As described in Agreement Schedule 5.00, certain Additional Project Funds are established by the Commission, the PPC, or both.

Funding mechanisms for all Additional Project Funds will be determined on a case-by-case basis with PPC Approval.

NCPA shall maintain separate accounts for all Additional Project Funds. The interest accrued on the balance of an Additional Project Fund shall be treated and accounted for as an addition to the balance of such Additional Project Fund. A listing of the Additional Project Funds for the Project is included in Agreement Schedule 5.00.

ARTICLE 13

POTENTIAL PROJECT IMPACTS

13.1 Notification

A Participant shall promptly notify NCPA and the PPC of any new or materially changed plan(s) for additions to, retirements of, or changes in transmission or other facilities, which are subject to the control of such Participant, and which the Participant believes or reasonably should know could materially affect the Capacity, Energy, or other Attributes of the Project. The PPC may review such plan(s) and suggest remedial actions, but such remedial actions shall not be binding on such Participant.

ARTICLE 14

TERM OF AGREEMENT

14.1 Effective Date

This Agreement shall become effective on the date on which it has been duly executed and delivered to NCPA by all Parties. To the extent the PSA and this Agreement are not simultaneously executed, certain rights and obligations under this Agreement may relate back to the effective date of the PSA.

14.2 Termination

This Agreement shall continue in effect until terminated by the first of the following to occur: (i) the retirement of the Project; (ii) the written consent of all Participants and NCPA; or (iii) the expiration or termination of the PSA as to all Parties. Notwithstanding the preceding, no termination of this Agreement shall take place unless there shall have been provided reserves for, or a means of paying for, satisfactory to the PPC, any claims against the Project yet to be paid or settled, pursuant to Section 33 of the PSA.

ARTICLE 15

NOTICES

15.1 NOTICES

All notices, requests and other communications under this Agreement shall be provided in the manner described in Section 35 of the PSA.

ARTICLE 16

WAIVER

16.1 Waiver

No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the NCPA Commission, as to NCPA, and by Participant's authorized representative, as to each Participant. Any such waiver in any particular instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

ARTICLE 17

UNCONTROLLABLE FORCES

17.1 Uncontrollable Forces

Except for any obligation to make payments pursuant to this Agreement or other agreements relating to the Project, a Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces, as defined in Section 4.95 of the PSA.

ARTICLE 18

LIABILITY

18.1 Liability and Indemnity

Section 24 of the PSA in its entirety is incorporated to apply to this Agreement.

18.2 Counsel Representation

Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement as indicated in the signature blocks to this Agreement evidencing the approval as to form by each Participant's legal counsel. In light of this representation, those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in the litigation or settlement in a manner inconsistent with the provisions of Section 24 of the PSA were intentionally so drafted by the Parties.

ARTICLE 19

REPORTS

19.1 Reports to Participants

NCPA shall prepare and make available to each Participant the following reports:

19.1.1 Project operating reports;

19.1.2 Statements of financial position and revenues, expenses and changes in accumulated net revenues;

19.1.3 Project Annual Budget status report;

19.1.4 Annual and monthly Project operational forecasts of projected Project Energy, Capacity and other Attributes based on historic operations and market conditions, forecasted market conditions and scheduled Project maintenance activities, and other information as approved by the PPC; and

19.1.4 Such additional reports as may be required under any applicable Project Agreement, Agreement Schedule, or as requested from time to time by the PPC or the Participants.

19.2 Reports to Other Agencies

NCPA will submit such reports and records which are required or may be required by any local, state, regional, federal, or international agencies, as such reports and records are required for NCPA to fulfill its obligations under this Agreement.

ARTICLE 20

ASSIGNMENT OF AGREEMENT

20.1 Binding Upon Successors

This Agreement, including the Agreement Schedules, shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement, pursuant to Section 34 of the PSA.

20.2 Assignment

Assignment of this Agreement shall be effective only if made in conjunction with an assignment made pursuant to the PSA.

ARTICLE 21

SETTLEMENT OF DISPUTES

21.1 Attorneys' Fees

In the event of a default by a Participant of any of its covenants, agreements, or obligations hereunder, each other Party shall be entitled to recover from such Participant any and all legal fees and costs incurred as a result of enforcing its rights hereunder.

21.2 Venue

In the event that any Party brings any action against any other Party(ies) under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Sacramento.

ARTICLE 22

MISCELLANEOUS PROVISIONS

22.1 Amendments

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by all the Parties. Provided, however, that Agreement Schedules may be adopted, amended or deleted in accordance with Article 10 of this Agreement.

22.2 Integrated Agreement

This is an integrated agreement and contains all of the understandings of the Parties.

22.3 Severability

In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

22.4 Governing Law

This Agreement shall be interpreted, governed by and construed under the laws of the State of California without reference to any conflict of law principles.

22.5 Additional Parties

Subsequent to the initial execution of this Agreement, any new signatory to the PSA shall also become a Party to this Agreement. In such event, NCPA shall issue a new Agreement Schedule 9.00 reflecting the new Party's participation and GES.

22.6 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form thereto but having attached to it one or more signature pages.

IN WITNESS WHEREOF, each Participant has executed a counterpart of this Agreement with the approval of its governing body, and represents and warrants that the Participant has all requisite authority, and has duly agreed to be bound by all of the terms and conditions of this Agreement, and NCPA has executed each counterpart of this Agreement in accordance with the authorization of its Commission.

ARTICLE 23

SPECIAL PROVISIONS APPLYING TO CDWR AND NCPA ONLY

23.1 Special Provisions

The State of California General Terms and Conditions and Certification Clauses shown in Appendix A are incorporated in this Agreement. Appendix A applies only to CDWR and NCPA concerning this Agreement.

NORTHERN CALIFORNIA POWER AGENCY

Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF BIGGS
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF GRIDLEY
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF HEALDSBURG
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF LODI
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF LOMPOC
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

PLUMAS SIERRA RURAL ELECTRIC COOPERATIVE
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF SANTA CLARA
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

MODESTO IRRIGATION DISTRICT
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF UKIAH
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CITY OF AZUSA
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

BAY AREA RAPID TRANSIT
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

CALIFORNIA DEPARTMENT OF WATER RESOURCES
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

PORT OF OAKLAND
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

POWER AND WATER RESOURCES POOLING AUTHORITY
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

SILICON VALLEY POWER
Approved as to form:

By:_____ By:_____

Title:_____ Title:_____

Project Management and Operations Agreement
Agreement Schedule 0.00

Introduction to PMOA Agreement Schedules

Separate Agreement Schedules have been established for this Agreement. Agreement Schedules will provide detailed descriptions, protocols, procedures and guidelines (including operating and cost recovery procedures) for the Project pursuant to this Agreement.

Agreement Schedules will provide for:

- Project operating procedures and protocols.
- Project specific accounting requirements.
- Project billing procedures.
- The establishment and maintenance of Project Funds.
- Fuel purchasing procedures and protocols.
- Other topics as needed in the future.

The Agreement Schedules will be organized as follows:

- Agreement Schedule 1.00 = Scheduling and Dispatch Operations and Economic Criteria
    - Exhibit 1 = Heat Rate
    - Exhibit 2 = VOM
    - Exhibit 3 = Margin
    - Exhibit 4 = GenBenefit
    - Exhibit 5 = CAISO Settlement Charge Matrix*
- Agreement Schedule 2.00 = Fuel Supply Procurement, Delivery and Management
- Agreement Schedule 3.00 = Participant Requested Operations During Non-Economic Periods
- Agreement Schedule 4.00 = Shared Facilities and Cost Sharing*
- Agreement Schedule 5.00 = Project Funds**
- Agreement Schedule 6.00 = Contact List
- Agreement Schedule 7.00 = Differential Transmission Cost Adjustment
- Agreement Schedule 8.00 = Delegation of Authority
- Agreement Schedule 9.00 = LEC Project Participants and their Shares
- Agreement Schedule 10.00 = Billing and Payments
- Appendix A = General Terms and Conditions between CDWR and NCPA

Agreement Schedules marked with * above require NCPA Commission approval, pursuant to Article 10 of this Agreement. Agreement Schedules marked with ** above require NCPA Commission approval for certain sections of the Agreement Schedule as detailed in such Agreement Schedule.

Definitions as set forth in Article 1 of this Agreement shall have the same meaning in the Agreement Schedules. IEEE and NERC standard definitions shall also be applicable in the Agreement Schedules. The following additional terms, when used in these Agreement Schedules, in either the singular or the plural, shall have the following meanings:

1. "All Resources Bill" ("ARB") means the single, combined monthly bill from NCPA to a Participant that includes all operating project, plant, and other program costs and revenues contained in the then fiscal year operating Project Annual Budget at the summary level, pursuant to Section 17 of the PSA. The ARB provides year-to-date tracking of budget amounts billed, third party revenues collected, prior month's billing adjustments and various other details. In the PSA, the ARB is referred to as the Billing Statement.

2. "A/S" means Ancillary Services as defined in the CAISO tariff, which include capacity reserve services/products, e.g. Regulation-Up (RegU), Regulation-Down (RegD), Spin, Non-Spin or as revised by the CAISO from time-to-time.

3. "Balancing Authority" or "BA" is the CAISO in these Agreement Schedules.

4. "DAM" means the Day Ahead Market as defined in the CAISO tariff.

5. "Fuel Management Contract" means the Project Gas Supplier and Management Agreement (see Agreement Schedule 2.00).

6. "$GasPrice_{PG\&E\ Citygate}$" means the cost for gas delivered at the PG&E Citygate.

7. "GenBenefit" means generation benefits to be determined by the PPC pursuant to Exhibit 4 of Agreement Schedule 1.00, e.g., avoided transmission wheeling access charge for behind the meter generation.

8. "GMC" means the Grid Management Charge as defined in the CAISO tariff.

9. "Heat Rate" or "Heat Rate Curve" is the measure of generating plant/project efficiency in MMBtu per MWh (see Exhibit 1 of Agreement Schedule 1.00).

10. "IST" means an Inter-SC Trade, which is a commitment between two SCs as defined in the CAISO tariff.

11. "LDC" means PG&E's Local Distribution Charges, as defined in the PG&E Gas Tariffs as a volumetric charge for costs to transport gas from the PG&E Citygate to the Project meter in dollars per MMBtu.

12. "LMP_{LEC}" means the CAISO's Locational Marginal Price for Energy at the Point of Delivery of the Lodi Energy Center in $/MWh.

13. "Margin" ($/MWh) as used in the Economic Operation is to be determined by PPC pursuant to Exhibit 3 of Agreement Schedule 1.00,

14. "MP" means market price from the applicable market.

15. "MSSA" means Metered Subsystem Aggregator for Metered Subsystem entities (MSS). Certain NCPA Members are MSS as defined by the CAISO Tariff and the CAISO's MSS and MSSA Agreements.

16. "Operation and Maintenance Expenses" has the meaning given it in the PSA, Section 4.68.

17. "Other Revenues" means revenue from Capacity (e.g., CAISO A/S) and other Attributes provided by the Project.

18. "PG&E Citygate" means any point where the backbone natural gas pipeline system of PG&E connects with its local distribution gas pipeline system.

19. "Project Capacity" is the total Project generating capability in MWs.

20. "Project Emergency Situation" means situations that require NCPA to take immediate action, including the expenditure of funds to act appropriately under the situation to protect Project personnel, environment, Project equipment including Shared Facilities, and safety and security of the surrounding areas.

21. "Project Generation" is the total Energy produced by the Project as measured at the Point of Delivery in MWhs.

22. "Project Node" means the Point of Delivery designated by the CAISO for determination of the LMP_{LEC}.

23. "SC" means Scheduling Coordinator as defined by the CAISO tariff.

24. "SCID" means a name designated by the CAISO for a Scheduling Coordinator.

25. "Self-Scheduling" means being a price taker by submitting bids with no specification of prices into the CAISO's markets for the products provided by the Project, and as more specifically defined in the CAISO tariff.

26. "VOM" means variable operation and maintenance cost in $/MWh, including but not limited to startup/shutdown costs ($/startup or $/shutdown), running costs, and overhaul costs ($/specified number of hours of operation) (see Exhibit 2 of Agreement Schedule 1.00).

Agreement Schedule 1.00

Scheduling and Dispatch Operations and Economic Criteria

General Operating Protocol Guideline

NCPA shall be the SC for the Project and shall operate and schedule the Project in accordance with the directives of the PPC as manifested in Article 5 and this Agreement Schedule 1.00. NCPA shall comply with applicable regional and Balancing Authority tariffs, business practice manuals, regulations, scheduling requirements and timelines as published or as changed from time to time.

NCPA Scheduling and Bidding Principles

1. NCPA will schedule the Project output using scheduling option (a) or (b) as shown below. A Participant may additionally elect option (c) up to its GES.

   a. Awarded schedules resulting from bidding into the CAISO markets: Except as noted in option (b), NCPA will submit Energy and A/S bids into the CAISO markets based on Economic Operations. Economic Operations of the Project shall mean the following over the CAISO scheduling period (currently 24 hours/day):

   [LMP_{LEC} + MP(s) for A/S + value of other Attributes] ≥ [Heat Rate x ($GasPrice_{PG\&E\ Citygate}$ + LDC) + VOM + Margin – GenBenefit + CAISO GMC]

   Participants will receive their GES of revenues based on (i) the LMP_{LEC} for Energy and (ii) the applicable MP(s) for A/S provided from Project Capacity. In addition, if there are other applicable revenues from Attributes, Participants will receive their GES of these revenues. Participants will also receive bid cost recovery revenues from the CAISO when the sum of the product of Energy price bids and the awarded Energy scheduled, the startup costs, and Project minimum operating level costs is greater than the sum of the LMP_{LEC} revenues for Energy from the Project over the CAISO scheduling period (currently 24 hours/day).

   b. Self-Scheduling: If the CAISO markets do not function correctly, NCPA may elect to Self-Schedule the Project Energy and Capacity and shall inform the Participants of such action as soon as possible. Participants will receive their GES of revenues based on (i) the LMP_{LEC} for Energy, and (ii) the applicable MP(s) for A/S provided from Project Capacity. In addition, if there are other applicable revenues from Attributes, Participants will receive their GES of these revenues.

   c. IST or unit contingent export: Each Participant has the right to request physical delivery of part or all of its GES of Project Energy and/or Energy associated with its GES of Capacity, in which case NCPA will schedule as follows:

i. For delivery inside of the CAISO Balancing Authority Area, NCPA will schedule a physical IST(s) in the DAM or the hour-ahead market at the Project Node.

ii. For delivery_outside of the CAISO Balancing Authority Area, NCPA will schedule/coordinate a unit contingent export as described in the CAISO Business Practice Manuals and in accordance with regional scheduling and tagging practices.

Participants requesting physical delivery shall be responsible for all related CAISO and NCPA costs, charges, and credits (e.g. due to scheduling, transmission, scheduling/pricing differences, outage, etc.). Exhibit 5 of this Agreement Schedule contains the details for CAISO costs, charges and credits.

2. NCPA will produce monthly reports summarizing the results of the previous months' bidding results. This information will be reviewed by the PPC to provide changes or adjustments in the bidding principles.

3. NCPA will schedule the Project using the NCPA SCID but outside of the NCPA MSSA portfolio.

4. The SC options (i.e. NCPA SCID, unique SCID to the Project, included as a part the MSSA, etc.) and calculations/parameters involved in making the economic determinations and estimations are subject to review and revision by the PPC from time to time based on Project operating experience, Project production costs, market conditions, and other factors affecting the assessment of Project cost and the value of Project Energy, Capacity, and other Attributes.

Scheduling Timelines and Economic Criteria

The following provides a listing of the daily scheduling and dispatching activities, information requirements, and timelines:

Day Ahead ("DA") Bilateral Market for the bilateral electricity and fuel markets (Activity time-frame is normally 5:00 – 7:00 am the day before the trading day):

NCPA will forecast expected Economic Operations and fuel requirements to determine DA Energy and A/S bids for the CAISO's markets. NCPA shall make such bids over the entire scheduling period when the Project is available for operations.

Fuel requirements (MMBtu/day) – NCPA will manage the fuel supply with the objective of minimizing fuel imbalances by considering forecasts and historical results of the DAM and actual operations.

NCPA will allocate expected Project output and fuel requirements by Participants' GES by 6:30 am.

Participant(s) may supply its own fuel requirements up to Participant's GES of the Project fuel requirements at full Project output.

i) Participant(s) providing its own fuel supply will notify and schedule with NCPA by 6:30 AM. The information required from Participant(s) is as follows: Gas supplier ID and the amount (MMBtu/day). Delivery shall be at PG&E Citygate.

(1) At or after 6:30 AM, NCPA will order remaining fuel supply and/or sell excess fuel supply.

(2) The price at burner-tip is the sum of the day ahead PG&E City Gate Index (or quote) and LDC, pursuant to the Fuel Management Contract per Agreement Schedule 2.00.

ii) NCPA will notify the Project Gas Supplier and Manager of the Fuel Management Contract (see Agreement Schedule 2.00) 1.5 hours prior to 9:30 AM and 2 hours prior to 4:00 PM for the day ahead fuel nominations, and 2 hours prior to 8:00 AM and 3:00 PM on the trading day for the day of fuel nominations. These nomination revisions help mitigate fuel imbalances but do not establish the price for the changes. In general, the price for differences or changes after the day ahead bilateral fuel market, that closes at approximately 7 AM PPT, is established by quote or the change is left as an imbalance to be priced at the next available day ahead bilateral fuel market (at the PG&E Citygate).

CAISO DAM: NCPA schedules and bids the Project in the CAISO DAM. (Activity time frame is 10:00 AM – 1:30 PM):

a. NCPA may Self-Schedule Project output (from the Project minimum operating level up to entire Project Capacity) at the Project Node prior to 10:00 AM.

b. NCPA will bid the remaining Project output that is not Self-Scheduled into the DAM based upon Energy and A/S bids determined using the forecasted Economic Operations at the Project Node prior to 10:00 AM.

   Energy and A/S bids are awarded by 1:30 PM, and NCPA subsequently shall notify the Project Gas Supplier and Manager of fuel supply changes and revise initial fuel supply requirements.

c. If a Participant is using an IST, such Participant must submit its request to NCPA and schedule a DAM IST(s) at the Project Node prior to 8:30 AM. The CAISO will verify the IST after 12:00 PM.

d. If a Participant is using a unit contingent export from the CAISO Balancing Authority Area, such Participant must coordinate/schedule the unit contingent export with NCPA prior to 8:30 AM.

e. Each Participant(s) is responsible for scheduling its load, export, or sales to a third party including all costs and revenues associated with such schedules.

NCPA Dispatch Operations

a. Real-Time ("RT") CAISO market: This is the CAISO's Hour Ahead Scheduling Process ("HASP"), and it includes the following, which must be submitted 75 minutes prior to the next trading hour:

   i) Supplemental Energy bids
   ii) A/S bids
   iii) Unit contingent exports and ISTs. (Any Participant changes to its DAM unit contingent exports or ISTs must be provided to NCPA 135 minutes or 105 minutes prior to the next trading hour, respectively.)

b. NCPA dispatch operations include all 24x7 dispatch functions and tasks:

   i) To match Project output with fuel nominations and to awarded schedules of Energy and A/S;
   ii) To adjust for emergency operations; and
   iii) To adjust and coordinate for reliability and safety requirements.

Settlements:

As the SC of the Project using NCPA's SCID, NCPA shall review, validate, and reconcile CAISO invoices, and file timely disputes and appropriately pursue resolution of disputes with the CAISO. Current CAISO charge types and, if applicable, the basis for allocation of CAISO charges and payments to the Project are detailed in Exhibit 5 of this Agreement Schedule.

EXHIBIT 1

Heat Rate

[To Be Determined During Testing Of The Project]

EXHIBIT 2

VOM

[To Be Determined Prior to Commercial Operation Date]

EXHIBIT 3

Margin

[To be determined by the PPC prior to Commercial Operation Date. If not determined by the PPC prior to Commercial Operation Date, NCPA shall develop and use a Margin for this Exhibit 3 until the PPC determines and approves the Margin.]

EXHIBIT 4

GenBenefit

[To Be Determined at a Later Date By The PPC As Appropriate]

EXHIBIT 5

CAISO Settlement Charge Matrix

The attached matrix details the option chosen by the Participants to utilize NCPA's current SCID.

Agreement Schedule 2.00

Fuel Supply Procurement, Delivery, and Management

NCPA is responsible for the fuel supply procurement, delivery, and management for the Project and will develop and negotiate the Project Gas Supplier and Management Agreement ("Fuel Management Contract"). NCPA will analyze the proposals from fuel suppliers for these services and recommend a fuel supplier for the Fuel Management Contract to the PPC for its approval. This Fuel Management Contract will govern, for example, the daily fuel scheduling (nominations), fuel purchasing/sales, fuel balancing and fuel pricing. In addition, it will allow Participants and NCPA to arrange for the delivery of third party fuel (fuel which is not purchased under the Fuel Management Contract) to the Project. To provide alternate/additional fuel supply sources, NCPA may execute third party fuel supply agreements in the future as approved by the PPC. Any additional charges resulting from Participant supplied fuel will be fully charged to such Participant.

The PPC and NCPA will develop the protocols for this Agreement Schedule once the Fuel Management Contract is executed.

Agreement Schedule 3.00

Participant Requested Operations During Non-Economic Periods

[To Be Developed at a Later Date by the PPC]

Agreement Schedule 4.00

Shared Facilities and Cost Sharing

Listing of Shared Facilities and Allocations to Projects

	Cost Allocation to NCPA Project (%)			
Facility	**CT1**	**CT2**	**LEC**	**Total**
MW Capacity	124.9	49.9	280.0	454.8
Capacity CT1, CT2, LEC %	27.50%	11.00%	61.50%	100.00%
Capacity CT2, LEC %	0.00%	15.10%	84.90%	100.00%
Headcount for FTE-2012	3.0	4.5	17.5	25.0
Headcount % CT1, CT2, LEC	12.00%	18.00%	70.00%	100%
Cooling Tower Usage CT2/LEC (based on calculation below)	0%	1.30%	98.70%	100.00%
Vehicle Usage CT1/CT2/LEC (based on estimated usage)	90.00%	5.00%	5.00%	100.00%
Anhydrous Ammonia System				
Fixed O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
Variable O&M CT2/LEC (based on actual Ammonia usage)		Usage	Usage	
Administration / Warehouse Building				
O&M, Capital (based upon Headcount % CT1, CT2, LEC)	12.00%	18.00%	70.00%	100.00%
Fire System				
O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
230 KV Switchyard (Common Equip)				
O&M, Capital (based on Capacity CT2, LEC %)	0.00%	15.13%	84.87%	100.00%
Tooling and Special Equipment				
(based on Headcount % CT1, CT2, LEC)	12.00%	18.00%	70.00%	100%

Cooling Tower/Closed Cooling Water/Injection Well Systems				
O&M, Capital (based on Cooling Tower Usage CT2/LEC)	0.00%	1.30%	98.70%	100.00%
Vehicle Usage				
O&M, Capital (based on Vehicle Usage CT1/CT2/LEC)	90.00%	5.00%	5.00%	100.00%

Cooling Tower CT2/LEC Usage calculation:

Inputs
S_h = Number of Operating Hours of CT2
L_h = Number of Operating Hours of LEC

Constants
S_f = Design flowrate for CT2 cooling water = 4,416 GPM
L_f = Design flowrate for LEC cooling water = 64,584 GPM

Formula

$$\text{CT2 Percentage} = S_{\%} = \frac{(S_h * S_f)}{(S_h * S_f) + (L_h * L_f)} * 100$$

$$\text{LEC Percentage} = L_{\%} = 100 - S_{\%}$$

Agreement Schedule 5.00

Project Funds

Project Funds are classified as either "Mandatory Project Funds" or "Additional Project Funds," as outlined in Article 12. A listing of the current funds established for the LEC Project is below:

Mandatory Project Funds Established and Approved by the Commission:

Revenue Fund: See PSA Section 21.1

Operating Fund: See PSA Section 21.2. A fund used to pay current Operation and Maintenance Expenses.

Operating Reserve Fund: Referenced in Section 21.3 of the PSA. The minimum balance, referred to as the Operating Reserve Requirement in Section 4.67 of the PSA, in the Operating Reserve Fund shall be equal to 60 days of Operation and Maintenance Expenses for the LEC Project. The minimum balance may be increased by the PPC from time to time.

a) Such Operating Reserve Fund shall include amounts for:

1. Working capital required for operating purposes to fund expenditures made prior to receipt of revenue collections.

2. Maintenance account for anticipated periodic operating costs including, but not limited to, scheduled and unscheduled maintenance other than ordinary repairs and replacements, e.g., overhaul, inspection, etc.

General Reserve Fund: See PSA Section 21.5.

Default Mitigation Sale Fund: See PSA Section 21.6.

Revolving Construction Fund: See PSA Section 21.7.2.

Construction Fund: See PSA Section 21.7.1. All Costs of Construction, as defined in Section 4.16 of the PSA, shall be paid from this fund.

Debt Service Fund: This Debt Service Fund shall hold amounts collected to pay bond interest and principal until they are due to the bond holders. Amounts are transferred to the trustee on a monthly basis for this purpose and the trustee pays amounts due to bondholders from this Fund, generally on a semi-annual basis.

Debt Service Reserve Fund: A reserve equal to one-half of the maximum annual debt service over the life of the outstanding debt. This Debt Service Reserve Fund may be used to pay debt service in the event that amounts in the Debt Service Fund are not sufficient.

Costs of Issuance Fund: This fund is used to pay the costs of issuing bonds, including but not limited to legal services, financing and consulting fees, underwriter's discount, fees for the verification agent, trustee, escrow agent and rating agencies, printing costs and other miscellaneous expenses related to financing,

Rebate Fund: This fund shall hold monies due to the United States government for arbitrage rebate payments as required under the Bond Indenture, and by tax laws of the United States.

Additional Project Funds Established and Approved by the Commission:

Scheduling Reserve Funds include the following two funds:

1. *Reserves for Estimated CAISO Scheduling Charges*:

   a) Initial Amount. NCPA shall invoice Participants in proportion to their GES and deposit in the Scheduling Reserve Fund an amount equal to NCPA's estimate of the three highest months of projected CAISO GMC and export related charges for the succeeding twelve (12) months for the LEC Project.

   b) Periodic Reviews. At least quarterly, NCPA shall review the balance in this account to ensure the aggregate amount is equal to the current projection of the three highest months of the Project's projected CAISO GMC and export related charges for the succeeding twelve months. Any funds on deposit in the Scheduling Reserve Fund in excess of one hundred ten per cent (110%) of this current projection shall be credited back to the Project Participants on the ARB. If the funds on deposit in the Scheduling Reserve Fund are less than ninety per cent (90%) of this current projection, NCPA shall prepare an invoice in accordance with Article 9 which shall be due within 30 days of the invoice or include the billing on the next ARB to bring the balance back to 100 per cent (100%) of this current projection.

   c) Emergency Additions. In the event that the funds in the Scheduling Reserve Fund are insufficient to allow payment of a CAISO invoice, NCPA shall notify Participants and then prepare and send a special or emergency invoice to the Participants in accordance with Article 9. Such special or emergency invoice will be due as necessary to permit NCPA to make timely payments to the CAISO. Participants acknowledge that under some circumstances this may require same day payment of invoices.

2. *Reserves for CAISO Security Deposits:*

   a) Prior to the date NCPA provides any SC services for the Project, NCPA shall invoice the Participants for any security or other deposit required by the CAISO for the Project, and such security deposit shall be maintained by NCPA as may be required by the CAISO thereafter.

   b) Any changes in security or other deposits required by the CAISO for the Project may be provided by NCPA from the Scheduling Reserve Fund, and NCPA shall invoice the Participants within three (3) working days of this payment to the CAISO in proportion to Participants' GES.

c) NCPA shall allocate any security or deposit required by the CAISO for the Project to the Participants in proportion to their GES.

Additional Project Funds Established and Approved by the PPC:

None at this time.

Additional Project Funds Established and Approved by both the PPC and the NCPA Commission:

None at this time.

Agreement Schedule 6.00

Contact List

PARTICIPANT ADDRESSES FOR NOTICE

Northern California Power Agency

Northern California Power Agency
Attn: Ed Warner, Lodi Energy Center Manager
651 Commerce Drive
Roseville, California, 95678
Telephone: (209) 728-1387 x-22 or (209) 768-5887
Facsimile:
Email: Ed.Warner@ncpagen.com

With a copy to

Northern California Power Agency
Attn: Ken Speer, Assistant General Manager-Generation Services
651 Commerce Drive
Roseville, California, 95678
Telephone:
Facsimile:
Email: Ken.Speer@ncpa.com

City of Azusa

City of Azusa
Azusa Light & Water Department
Attn: George Morrow, Director of Utilities
729 N. Azusa Avenue
P.O. Box 9500
Azusa, California 91702-9500
Telephone: (626) 812-5214
Facsimile: (626) 334-3163
Email: gmorrow@ci.azusa.ca.us

Bay Area Rapid Transit District

Bay Area Rapid Transit District
Attn: Frank Schultz, Power Resources Manager
300 Lakeside Drive, 16th Floor
Oakland, California 94612-3534
Telephone: (510) 464-6435
Facsimile: (510) 464-6118
Email: fschult@bart.gov

Modesto Irrigation District

Modesto Irrigation District
Attn: Gregory Salyer, P.E.,
Resource Planning and Development Manager
P.O. Box 4060
1231 Eleventh Street
Modesto, California 95352
Telephone: (209) 526-7550
Facsimile: (209) 526-7575
Email: gregs@mid.org

California Department of Water Resources:

Department of Water Resources
Attn: Chi Doan
Chief, Power Contracts Branch
3310 El Camino Avenue, LL94
Sacramento, California 95821
Telephone: (916) 574-0612
Facsimile: (916) 574-0660
Email: chi@water.ca.gov

Plumas-Sierra Rural Electric Cooperative

Plumas-Sierra REC
Attn: Bob Marshall, General Manager
73233 Highway 70
Portola, California 96122-7064
Telephone: (530) 832-4261
Facsimile: (530) 832-6070
Email: marshall@psln.com

City of Biggs

City of Biggs
Attn: Pete Carr, City Administrator
465 "C" Street
P.O. Box 307
Biggs, California 95917-0307
Telephone: (530) 868-5493
Facsimile: (530) 868-5239
Email: biggs1@biggs-ca.gov

City of Gridley

City of Gridley
Attn: Rob Hickey, City Administrator
685 Kentucky Street
Gridley, California 95948-2117
Telephone: (530) 846-5695
Facsimile: (530) 846-3229
Email: rhickey@gridley.ca.us

City of Healdsburg

City of Healdsburg
Attn: Elizabeth Kirkley, Electric Utility Director
401 Grove Street
Healdsburg, California 95448
Telephone: (707) 431-3346
Facsimile: (707) 431-2710
Email: ekirkley@ci.healdsburg.ca.us

City of Lodi

City of Lodi
Attn: Kenneth A. Weisel, Interim Electric Utility Director
1331 S. Ham Lane
Lodi, California 95242
Telephone: (209) 333-6762
Facsimile: (209) 333-6839
Email: kweisel@lodielectric.com

City of Lompoc

City of Lompoc
Attn: Ronald Stassi, Utility Director
100 Civic Center Plaza
P.O. Box 8001
Lompoc, California 93438-8001
Telephone: (805) 875-8299
Facsimile: (805) 875-8399
Email: r_stassi@ci.lompoc.ca.us

City of Oakland- Port of Oakland

Port of Oakland
Attn: Wing Lau, Port Supervising Engineer
530 Water Street, PO Box 2064
Oakland, California 94607
Telephone: (510) 627-1457
Facsimile: (510) 763-1877
Email: wlau@portoakland.com

City of Santa Clara

Silicon Valley Power
Attn: John Roukema, Electric Utility Director
1500 Warburton Avenue
Santa Clara, California 95050
Telephone: (408) 261-5490
Facsimile: (408) 249-0217
Email: jroukema@siliconvalleypower.com

City of Ukiah

City of Ukiah
Attn: Mel Grandi, Utility Director
300 Seminary Avenue
Ukiah, California 95482
Telephone: (707) 463-6298
Facsimile: (707) 463-6740
Email: mgrandi@cityofukiah.com

Power and Water Resources Purchasing Authority

Power and Water Resources Purchasing Authority
Attn: Kent W. Palmerton, General Manager
2106 Homewood Way, Ste 100
Carmichael, California 95608
Telephone: (916) 483-5368
Facsimile: (916) 485-3537
Email: kent@wkpalmerton.com

Agreement Schedule 7.00

Differential Transmission Cost Adjustment
[To be finalized by the PPC prior to Commercial Operation Date]

Sample Differential Transmission Cost Adjustment using MID as the Exporting Participant:

The differential transmission cost adjustment is to be computed including cost and cost offset information and calculations including, but not limited to, the following cost and cost offset categories:

1. ***CAISO Charges*:**

The CAISO has over 130 different charge codes associated with different types of transactions and services. Certain charges represent pre-determined rates, while others are more market-based and are subject to variation due to market or system conditions. Only a subset of the CAISO charges would comprise part of the differential transmission cost adjustment. The costs included in this Agreement Schedule shall be from the actual CAISO invoices received.

The CAISO posts online its currently applicable and historical GMC and transmission access charges (TAC) at the following website locations:

- GMC: http://www.caiso.com/docs/2005/03/20/2005032013150120093.html
- TAC: http://www1.caiso.com/docs/2002/02/05/2002020510502821880.html

2. ***Western Area Power Administration (Western) Charges and Other Western Factors*:**

Western's transmission service rate will be a deduction in the differential transmission cost adjustment calculation. Western's transmission service charges are known and available in advance of the settlement period and are currently displayed at the following website:

- http://www.wapa.gov/sn/marketing/rates/

Other Western factors that might be deductions in the differential transmission cost adjustment calculation include adjustments/estimates for alternative interconnection related costs (the additional cost and/or debt service burden, for example, had the LEC been interconnected to the Western transmission system instead of the PG&E transmission system) of the LEC Project. In addition, the cost and/or operational burden differentials associated with the provision of LEC related system reserve arrangements shall be quantified and based upon such reasonably identifiable costs and obligations given LEC interconnection to the CAISO system or the Western system and the resulting net cost differential shall be used in computing the differential transmission cost adjustment.

3. ***Other Benefit Factors*:**

The differential transmission cost adjustment is to reflect adjustments to account for other elements of value which can be identified as a function of plant location in either the CAISO or Western Balancing Authority Areas. Such factors include, but are not limited to, ancillary services revenues, markets and prices, the ability to exchange capacity and/or energy between other entities within a particular control area and thus avoid all or some differential transmission cost adjustment, the ability to share cost savings resulting from "behind the meter" generation within the CAISO, and other differential costs and/or benefits that may accrue to LEC Participants due to Project location in either the Western or CAISO Balancing Authority Areas.

4. *Cumulative Balancing Accounts*:

NCPA will track 2 cumulative balancing accounts for each Exporting Participant. The first is the cumulative charges and benefits for an Exporting Participant. . . The second is the cumulative net payments made by the Project to an Exporting Participant.

If at the end of the Fiscal Year, the cumulative charges are greater than the cumulative benefits for an Exporting Participant, the Exporting Participant may be reimbursed the net amount by the Project and all Project Participants will be billed based upon their GES. If at any time the cumulative benefits are greater than the cumulative charges for an Exporting Participant, the Exporting Participant shall reimburse the Project up to any differential transmission cost adjustments the Exporting Participant previously received and all Project Participants will be reimbursed based upon their GES and up to the amount of differential transmission cost adjustments each Participant has paid. For each Exporting Participant, the PPC shall review the cumulative charges and benefits and make determination of when payments shall be reimbursed to avoid large accumulation of obligations.

Sample Differential Transmission Cost Summary Table for MID

Item	Particulars	Estimated Rate	Benefits	Charges	Cumulative Charges-Benefits Account Balance	Cumulative adjustments paid by the Project to the Exporting Participant
1	CAISO Charges					
	GMC (export and load)	($2.15)		($452,896)		
	CAISO TAC (HV, $/MWh)	($5.26)		($1,105,862)		
	Other Applicable CAISO Chgs ($/MWh)			$0		
	Total CASIO Charges ($/MWh)	**($7.41)**		($1,558,758)		
2	Western Charges					
	Western/CVP Xmission Rate ($/MWh)	$1.38	$290,131			
	Proxy Western Reserves Impact ($/kw-yr)	$30.00	$180,000			
	Differential of capital cost for a Western Interconnect vs CAISO		$174,245			
	Other Applicable Western Chgs ($/MWh)		$0			
	Total Western Charges ($/MWh)		$644,376			
3	Other Benefit Adjustments					
	Net Behind Meter / Energy Swap Impacts					
	Net A/S Obligations and Sales Value		$857,143			
	Estimated Western A/S Sales Value					
	Other Applicable Adjustments ($/MWh)					
	Total Adjustments ($/MWh)		$857,143			
4	Net affect on MID					
	Net MID Differential ($/MWh)		($57,240)			
5	Reimbursement Calculations					
	PPC approved reimbursement to MID		$57,240			$57,240
	PPC approved reimbursement from MID to Project		$0			0
6	Cumulative Balance Accounts					
	Beginning Cumulative (Charges-Benefits)				0	
	Beginning Cumulative Reimbursement to MID					0
	Ending Cumulative (charges-benefits)				$0	
	Ending Cumulative Reimbursement to MID					$57,240

Assumptions/Model Inputs		Notes
MID Exported energy out of CAISO	210240	1
Western reserve sharing requirement for capacity	20%	2
Reserve Pricing from CAISO $/kw-yr	$30.00	3
Additional Capital Costs of connecting to Western	$25,000,000	4
Net Behind the meter / Energy Swaps		5
Net Ancillary Services Revenue from CAISO	$8,000,000	6
Estimated Ancillary Services Revenue from Western		7
CAISO GMC		8
CAISO TAC		9
Western Transmission Rate		10

Notes

1. The actual energy exported from CAISO to MID. Obtained from CAISO Invoices.

2. Western Reserve resource sharing requirement will be estimated by an independent consultant to determine what the requirement would have been from Western if the plant was interconnected to Western.

3. Reserve pricing will be determined using CAISO market for capacity.

4. Additional Capital Costs. PPC has approved the value of $xxxxx for this category. The interest rate will be the weighted interest rate of Indenture Group A and B. This is the data NCPA has available. Could be the weighted interest of Indenture Group A, B, C. PPC decision.

5. Net Behind Meter / Energy Swap Impacts is the benefit received by the project times MID GES for any revenues associated with a behind the meter generation as a result of City of Lodi installing a new transmission line that avoids CAISO charges.

6. Net Ancillary Services Revenue from CAISO- Based upon actual invoice received from the CAISO minus any costs or lost opportunity revenue as a result of A/S sales.

7. Estimated net ancillary services revenue from Western will be estimated by an independent consultant to determine what the net A/S revenue sales would have been if this project was interconnected to the Western Balancing Authority Area.

8. CAISO GMC will be the actual invoices received from the CAISO. For this sheet we have estimated the costs assuming that the entire MID share of Energy is exported and using the current CAISO tariffs.

9. CAISO TAC will be the actual invoices received from the CAISO. For this sheet we have estimated the costs assuming that MID share of Energy is exported and using the current CAISO tariffs.

10. Western Transmission Rate will be the published and based upon the full MID GES of energy from this project.

Estimated GMC Costs for MID Utilizing CAISO 2010 Rates (Monthly Figures)

Charge Code	Description	Rate	MWh	Costs
4503	Core Reliability Services (CRS) Exports	$1.829	210,240	$384,529
4505	Energy Transmission Services (ETS) Net Energy	$0.314	210,240	$66,015
4511	Forward Scheduling	$2.532	572	$1,448
4535	Market Usage Instructed Energy	$0.230	2,040	$469
4537	Market Usage Forward Energy	$0.225	1,930	$434
	Total			$452,896
	Estimated Average Rate for MID			$2.154

Table Notes:

(1) Estimate based on applicable components of the GMC from CAISO invoices to MID under MRTU.
(2) Based on GMC rates effective as of April 1, 2010.
(3) MID's LEC monthly energy deliveries based on a 80 percent capacity factor and a 30 MW MID Capacity share of a 280 MW LEC Project.
(4) The PPC may add, delete or revise applicable CAISO Charge Codes.

Agreement Schedule 8.00

Delegation of Authority

For NCPA to efficiently and economically operate the Project, the PPC has adopted the following Delegation of Authority, as modified by the PPC from time to time:

1. Issuance of Purchase Orders: NCPA is authorized to issue Purchase Orders (POs) for goods and services for the Project for an amount not to exceed $100,000 per PO, except under the "Project Emergency Situation" section below.

2. Project Emergency Situation: Under a Project Emergency Situation, NCPA is authorized to take immediate action, including the expenditure of funds to act appropriately under the situation to protect Project personnel, environment, Project equipment including Shared Facilities, and safety and security of the surrounding areas.

3. Contracts: NCPA is authorized to execute contracts and agreements for the Project for an amount not to exceed $100,000 per contract or agreement.

4. Personnel: NCPA is authorized to handle all Project personnel issues in accordance with Article 3. However, any increase in Project staffing level will be subject to PPC approval.

5. Project Outages: NCPA is authorized to schedule Project outages after consulting with PPC.

6. Forced Outages: NCPA is authorized to take immediate action when subjected to forced outages, and NCPA will attempt to advise the PPC of any such action.

7. Permits: NCPA is authorized to request appropriate modifications to the Project's permits necessary to comply with the then existing regulatory standards, report non-compliances with appropriate clarifications/explanations, and pay fines for violation/non-compliance.

Agreement Schedule 9.00

LEC Project Participants and their shares

Lodi Energy Center (GES) Generation Entitlement Shares	
Project Participant	**Generation Entitlement Share**
Azusa	2.7857%
BART	6.2500%
Biggs	0.2679%
CDWR	33.3332%
Gridley	1.9643%
Healdsburg	1.5714%
Lodi	9.3561%
Lompoc	2.0000%
Modesto Irrigation District	10.7143%
Plumas-Sierra REC	0.7857%
Port of Oakland	1.1607%
PWRPA	2.6679%
Silicon Valley Power	25.3571%
Ukiah	1.7857%
Total	100.0000%

Agreement Schedule 10.00

Billing and Payments

Billing and payment shall be made pursuant to Sections 17 and 18 of the PSA.

APPENDIX A

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: Included as Article 22.1 of this Agreement.

3. ASSIGNMENT: Superseded by Article 20 of this Agreement.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. DISPUTES: Disputes are addressed in Article 21 of this Agreement.

6. TERMINATION FOR CAUSE: Superseded by Article 14.2 of this Agreement.

7. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

8. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

9. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

10. TIMELINESS: Time is of the essence in this Agreement.

11. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

12. GOVERNING LAW: Article 22.4 addresses governing law.

13. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

    (a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

    (b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

14. UNENFORCEABLE PROVISION: Article 22.3 addresses this topic.

CERTIFICATION CLAUSES

THIS APPENDIX A CONTAINS THE STATE OF CALIFORNIA CCC 307. CCC 307 CONTAINS SEVEN (7) PROVISIONS PERTAINING TO CONTRACTOR CERTIFICATION CLAUSES AND EIGHT (8) PROVISIONS PERTAINING TO DOING BUSINESS WITH THE STATE OF CALIFORNIA, ALL OF WHICH ARE INCLUDED FOR REFERENCE. CCC 307 APPLIES TO THIS AGREEMENT ONLY WITH RESPECT TO NCPA AND CDWR AND AS ACCEPTED, MODIFIED OR DESCRIBED BY PROVISION BELOW.

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.

2. DRUG-FREE WORKPLACE REQUIREMENTS – ACCEPTED.

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION – NOT APPLICABLE, NCPA IS A PUBLIC ENTITY.

4. CONTRACT FOR LEGAL SERVICES $50,000 OR MORE- PRO BONO REQUIREMENT – NOT APPLICABLE; NCPA IS NOT PERFORMING LEGAL SERVICES FOR CDWR.

5. EXPATRIATE CORPORATIONS – ACCEPTED.

6. SWEATFREE CODE OF CONDUCT – NOT APPLICABLE, NCPA IS NOT FURNISHING ANY APPAREL, GARMENTS OR CORRESPONDING ACCESSORIES TO CDWR.

7. DOMESTIC PARTNERS - NOT APPLICABLE / WAIVED PER PUBLIC CONTRACT CODE SECTION 10295.3 (C)(4).

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

CONTRACTOR CERTIFICATION CLAUSES

1. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

   1) the dangers of drug abuse in the workplace;

   2) the person's or organization's policy of maintaining a drug-free workplace;

   3) any available counseling, rehabilitation and employee assistance programs; and,

   4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

   1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

2. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

3. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

1) CONFLICT OF INTEREST – ACCEPTED.

2) LABOR CODE/WORKERS' COMPENSATION – ACCEPTED.

3) AMERICANS WITH DISABILITIES ACT - ACCEPTED.

4) CONTRACTOR NAME CHANGE – ACCEPTED.

5) CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA – NOT APPLICABLE, NCPA IS NOT A CORPORATION.

6) RESOLUTION – ACCEPTED.

7) AIR OR WATER POLLUTION VIOLATION – ACCEPTED.

8) PAYEE DATA RECORD FORM STD. 204 – NOT APPLICABLE, NCPA IS A GOVERNMENTAL ENTITY.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

1403257.3

AGREEMENT TO SUPPLY RECYCLED WATER

This Agreement To Supply Recycled Water (**"Agreement"**) is made on _____ (the **"Effective Date"**) between Northern California Power Agency (**"NCPA"**), a joint powers agency, and the City of Lodi (**"Lodi"**), a municipal corporation, (Lodi and NCPA are herein referred to singularly as **"Party"** and collectively as **"Parties"**) in order to provide recycled water from the Lodi Waste Water Treatment Plant to NCPA for use in conjunction with its power generating facilities, including without limitation, NCPAs Lodi Energy Center, a combustion turbine power plant (**"LEC** or **"Project"**).

RECITALS

A. The Parties concur with California Water Code sections 13510-13512, that prudent water management in California requires effective water conservation and reuse to meet diverse water needs;

B. The Parties believe that it is sound public policy to develop Recycled Water resources through economically, financially, and environmentally sound projects;

C. The Parties believe that the use of existing facilities benefits the ratepayers and constituents of both Parties by enabling the productive use of existing facilities;

D. The Parties declare their intent to establish and maintain a business relationship that utilizes the reliable supply of Recycled Water from the Lodi White Slough Water Pollution Control Facility (**"WSWPCF"**) for the CT2 power plant and LEC Project;

E. The Parties are authorized to enter into this Agreement pursuant to the following laws, regulations and orders:

(i) NCPAs enabling legislation, Amended and Restated Joint Powers Agreement dated January 1, 2008, which permits NCPA to construct, operate, and maintain facilities for the generation and transmission of electric power;

(ii) California Code of Regulations, Title 22, Division 4, Chapter 3, which provides standards for Recycled Water quality; and

(iii) The State Water Resources Control Board (**"SWRCB"**) Recycled Water Policy and the associated implementing resolution (State Water Board Resolution No. 2009-0011), and additional pertinent orders as the SWRCB or the Regional Water Quality Control Board (**"RWQCB"**) may from time to time propound.

F. NCPA desires to use treated waste water effluent from the Lodi WSWPCF for cooling tower make-up water and/or for other uses as appropriate at the LEC.

NOW, THEREFORE, for good and valuable consideration, the amount and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. GENERAL PURPOSE AND INTENT

The purpose of this Agreement is to provide the terms and conditions under which Lodi will provide Recycled Water to NCPA. For the purposes of this Agreement, the following will apply:

1.1 Subsequent agreements between the Parties regarding specific Recycled Water projects will be implemented in accordance with this Agreement;

1.2 Lodi provides Recycled Water to one (or more) energy projects owned and operated by NCPA including the Combustion Turbine 2 Project. It is anticipated and planned that Lodi will provide Recycled Water for the LEC;

1.3 The Parties recognize that it may be appropriate to negotiate additional agreements relating to specific Recycled Water projects pursuant to the conditions imposed in this Agreement;

1.4 The Parties recognize that it may be appropriate to consider modifying this Agreement in a mutually acceptable manner to maintain a fair and positive business relationship, particularly when legal, statutory, or regulatory changes materially affect the ability to produce or purvey Recycled Water.

2. DEFINITIONS

When used in this Agreement, the terms described below will have the meanings as set forth in this section:

2.1 **"Combustion Turbine 2 Project"** (**"CT2"**) is a LM5000 simple cycle electrical generating facility rated at a nominal generating capacity of 49.9 megawatts (MW). The CT2 is located in Lodi, California on property near the City of Lodi WSWPCF.

2.2 **"Existing Recycled Water Facilities"** means those Lodi Recycled Water production and delivery facilities on the Lodi WSWPCF site or within Lodi easements outside the WSWPCF site as of the Effective Date of this Agreement including without limitation, the filter plant, the filter plant pumps and appurtenances, conveyance facilities to and from the clearwell, the clearwell, the meter, the clearwell pumping station including effluent and backwash pumps, the 8-inch industrial Recycled Water pipeline from the clearwell to the terminating point at the NCPA CT2 facility, and those Lodi Recycled Water production, delivery and distribution facilities as of the Effective Date of the Agreement including, without limitation, Recycled Water storage tanks; generally shown on Exhibit B (Map).

2.3 **The "Lodi Energy Center"** ("**LEC**") will be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 280 megawatts (MW). The LEC is proposed to be constructed on a parcel of approximately 4.4 acres located adjacent to the Lodi WSWPCF to the east, treatment and holding ponds associated with the WSWPCF to the north, the existing CT2 (STIG plant) to the west, and the San Joaquin County Mosquito and Vector Control Facility to the south.

2.4 **"Lodi Treatment Plant Site"** means that area within the current treatment plant property boundaries as shown on Amended Exhibit A.

2.5 **"NPDES permit"** means the National Pollutant Discharge Elimination System permit issued by the RWQCB to each Party respectively as the context requires.

2.6 **"Recycled Water"** or **"Reclaimed Water"** means water that results from the treatment of wastewater, meets all applicable requirements established from time to time by pertinent federal or state agencies having jurisdiction and regulating the use of Recycled Water (including the RWQCB) and that is suitable for appropriate and approved non-potable uses, including without limitation the requirements of California Code of Regulations, Title 22, Division 4, Chapter 3 specifically for use in a cooling tower. For the purpose of this Agreement, Recycled Water and Reclaimed Water are considered synonymous.

2.7 **"Recycled Water Facilities"** includes both existing Recycled Water Facilities and facilities proposed to be constructed by Lodi or NCPA for the purpose of producing, delivering, and/or distributing Recycled Water.

3. TERM

This Agreement shall become effective on the Effective Date stated above and remain in place for the term of the Amended and Restated Ground Lease between the Lodi and NCPA dated of same date and any extensions thereof.

4. PAST COSTS

4.1 Lodi will not seek any compensation from NCPA for Lodi's past costs associated with the providing Recycled Water to the CT2 plant, or to other Existing Recycled Water Facilities constructed, or studies undertaken and completed, prior to the Effective Date of this Agreement.

4.2 Similarly, NCPA will not seek compensation from Lodi for the costs associated with the existing NCPA Recycled Water Facilities constructed or studies undertaken and completed prior to the Effective Date of this Agreement.

4.3 Each Party may recover capital funds invested in Recycled Water Facilities since _____, through the sale of Recycled Water subsequent to the Effective Date of this Agreement.

5. Intentionally Left Blank

6. DEVELOPMENT OF FUTURE PROJECTS BY LODI

Future recycled water projects may be developed by Lodi. However, Lodi's development of future projects may not affect NCPAs right to Recycled Water under this Agreement and may not diminish the quality, quantity, price, availability and delivery of Recycled Water. Lodi will inform NCPA of planning activities regarding future recycled water projects. Joint planning efforts may be undertaken by the Parties through mutual agreement.

7. AGREEMENT TO USE RECYCLED WATER

NCPA hereby agrees to use Recycled Water for the LEC and CT2 Projects. NCPA agrees to use the Recycled Water for the purposes of generating electricity or for the use of irrigating landscaping that is associated with its generating facilities. Lodi will supply Recycle Water to the standards contained in California Code of Regulations, Title 22, for the specific use in power plants cooling towers.

8. RESPONSIBILITY AT DELIVERY POINT

The delivery point of the Recycled Water will be the WSWPCF Clearwell Pumping Station. Lodi will be responsible for all facilities for the treatment, transportation, conveyance and storage of the Recycled Water up to the delivery point. NCPA will be responsible for facilities for the treatment, transportation, storage or use of the Recycled Water from the point of delivery.

9. PRICE AND QUANTITY OF RECYCLED WATER FOR THE LEC

Commencing upon the operation of the LEC, or on another mutually agreed upon date, Lodi agrees to provide Reclaimed Water to the LEC in accordance with California Code of Regulations Title 22, Division 4, Chapter 3 and the following terms:

9.1 Lodi will supply NCPA 1600 acre feet per year ("**afy**") of Recycled Water, which will be considered the **"Base Water Allocation."**

9.2 NCPA will pay for the Base Water Allocation regardless of whether it uses the full allotment.

9.3 The initial price for the Base Water Allocation will be $600 per afy **("Price for Water").**

9.4 NCPA may increase its Recycled Water usage from 1600 afy to 1800. In the event NCPA increases its Recycled Water usage above 1600 afy, it will pay one

hundred twenty-five percent (125%) the Price for Water for any Recycled Water above 1600 afy.

9.5 NCPA will pay for Recycled Water usage above 1800 afy at one hundred-fifty percent (150%) the Price for Water.

9.6 The Price for Water will increase at a rate of two and one-half percent (2.5%) per year on the anniversary of the date that water is first supplied to the LEC under this Agreement.

9.7 On the ten (10) year anniversary date of the Effective Date of this Agreement, either Lodi or NCPA may initiate a review of the then existing Price for Water based on then existing market circumstances for Reclaimed Water used in an industrial capacity such as a power plant. Such review will be conducted by a mutually acceptable objective third party. Any supported adjustment to the then existing Price for Water shall not exceed more than or less than twenty-five percent (+/- 25%) of the then existing Price for Water.

9.8 NCPA will make a one-time payment of Three Hundred Thousand Dollars ($300,000 US) within thirty (30) days after the NCPA secures financing for the LEC.

10. OBLIGATION TO SUPPLY WATER

Lodi will deliver Recycled Water twenty-four (24) hours per day. Lodi will supply the Recycled Water year round and will not ration Recycled Water to NCPA in the event of a drought. The amount of Recycled Water received by NCPA shall be confirmed by monthly meter readings performed by NCPA. If Lodi fails to supply the minimum amount in a calendar year then NCPA may take reasonable steps to procure Water from other vendors or suppliers without affecting its rights under this Agreement.

11. INTERRUPTION OF DELIVERY

The Parties acknowledge that it is impossible to anticipate all the events that may occur which would prevent Lodi from delivering Recycled Water to NCPA pursuant to the Agreement. It is the intention of the Parties that Lodi may be relieved of the responsibility for providing Recycled Water when it is not reasonably within its means to do so. Such events shall include but are not limited to:

11.1 Acts of God (earthquakes, floods, etc.),

11.2. Orders by regulatory bodies or a court of competent jurisdiction. (changes in water use requirements), or

11.3 Equipment failure and unanticipated treatment upsets,

12. WATER QUALITY REPRESENTATION

Notwithstanding the prior statements above regarding water quality, this Agreement does not guarantee water quality at any given time. A violation of Lodi's NPDES permit that effects its ability to deliver Title 22 water quality for use at the NCPA Power Plants is not to be constructed as a breach of this Agreement. Lodi shall notify the on duty NCPA operator as soon as practical after it experiences such an occurrence.

13. RESPONSIBILITY FOR COMPLIANCE WITH LAW

A. Lodi represents and warrants that is has complied with all laws related to its ability to sell recycled water and has enacted any and all appropriate resolutions or ordinances required to sell or provide recycled water to NCPA.

B. Each Party will be responsible for its own acts and omissions and for compliance with all applicable laws with respect to its respective undertakings under this Agreement, including without limitation all waste discharge requirements and warnings required by the RWQCB or otherwise in connection with Recycled Water. Should one Party learn or have reason to believe that a violation of such laws, statutes, ordinances, orders and/or regulations by itself or the other Party has occurred or is threatened, that Party must promptly so inform the other Party.

14. EFFECT OF AGREEMENT

14.1 This Agreement supersedes all prior oral or written representations, statements, promises, premises, negotiations, or agreements for Recycled Water only between the Parties. This Agreement does not affect other contracts, written representation, statements or promises between NCPA and Lodi. This Agreement may be modified or amended only by written agreement of the two Parties.

14.2 This Agreement is the product of negotiations between the Parties with regard to which the Parties have had ample opportunity to consult with their respective attorneys, and each Party therefore agrees that the rule of construction that documents are construed against the drafter thereof shall have no application to this Agreement. This Agreement is entered into under and shall be governed by and interpreted under California law. Captions and headings in this Agreement are solely for convenience in locating provisions, and they are not to be construed as limiting, expanding, or otherwise affecting the provisions of this Agreement.

15. SUCCESSORS AND ASSIGNS

Neither Party may assign or delegate any right or obligation hereunder without first having received the written consent duly executed of the other Party. The Agreement shall bind and shall inure to the benefit of any successors or assign of either Party following such consent but does not otherwise create duties or obligations to or

rights in third parties not parties to this Agreement, nor will this Agreement affect the legal liability of either Party by imposing any standard of care different from that otherwise imposed by law.

16. NOTICES

All notices or communications of any kind which either Party may desire or be required to give or serve upon the other Party under this Agreement, must be in writing and either (i) delivered personally, or (ii) sent by facsimile transmission to the telephone numbers set forth below with the original deposited in the U.S. mail, postage prepaid, first class, addressed as set forth below, or (iii) sent by Certified Mail, return receipt requested, postage pre-paid, first class, addressed as set forth below. Such notices will be deemed effective upon personal delivery or transmission by facsimile; a notice sent only by Certified Mail will be deemed effective upon date received as set forth in the respective receipts. Each Party may designate at any time a different address, facsimile number, or telephone number for receipt of communications.

City of Lodi
Attn: City Manager
221 West Pine Street
Lodi, CA 95240
Fax: (209)333-6807

Northern California Power Agency
Attn: General Manager
651 Commerce Drive
Roseville, CA 95678
Fax: (916)783-7693

With a copy to:

City of Lodi
Attn: City Attorney
221 West Pine Street
Lodi, CA 95240
Fax: (209)333-6807

Northern California Power Agency
Attn: General Counsel
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814
Fax: 916-556-1516

17. INDEMNIFICATION

17.1 NCPA agrees to indemnify and defend Lodi and its officers, directors and employees from any loss, cost, expense, liability, claim or demand, including reasonable attorneys' fees, as to property damage and bodily and personal injury, including death, arising out of the sole negligence or willful misconduct of NCPA or its officers, directors, employees, or agents in connection with this Agreement or arising out of NCPAs breach of this Agreement.

17.2 Lodi agrees to indemnify and defend NCPA, its officers, directors and employees from any loss, cost, expense, liability, claim or demand, including reasonable attorneys' fees, as to property damage and bodily and personal injury, including death, arising out of the sole negligence or willful misconduct of Lodi or its

officers, directors, employees, or agents in connection with this Agreement or arising out of Lodi's breach of this Agreement.

17.3 If the negligence or willful misconduct of both NCPA and Lodi or their respective officers, directors, employees, or agents is a cause of such damage or injury, the loss, cost, expense, claim, demand or liability shall be shared between NCPA and Lodi in proportion to their relative degree of negligence, willful misconduct, or comparative faults, and the obligation to defend shall apply for such proportion. For the purpose of this section, the term "fault" shall include breach of this Agreement.

18. INSURANCE

Each Party must procure and maintain, at its own expense, casualty insurance insuring the Recycled Water Facilities against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State fire insurance coverage, in an amount sufficient to cover the full replacement value of the Recycled Water Facilities. NCPA and Lodi shall procure and maintain, each at its own expense, liability coverage at least as broad as the most current ISO Commercial General Liability policy form, with minimum limits of five million dollars ($5,000,000) per occurrence and the following requirements:

18.1 Each Party must name the other Party and its officers, directors, board/council members, employees, agents, representatives, and volunteers as additional insureds.

18.2 NCPAs insurance shall be primary with respect to NCPA facilities and equipment, except that Lodi's insurance shall be primary for any covered event arising from Lodi's use of the facilities. Lodi's insurance shall be primary with respect to Lodi's facilities and equipment, except that NCPAs insurance shall be primary for any covered event arising from NCPAs use of the facilities. The Parties' respective policies must provide for cross-liability coverage for NCPA and Lodi and for severability of interests.

18.3 All or any portion of the required insurance coverage may be met by self-insurance or by policies that include self-insured retentions or deductibles larger than those typically carried by similarly situated non-self-insured entities. Within sixty (60) days of the Effective Date each Party shall advise the other Party of its self-insurance program, self-insured retentions, or deductibles. If a Party elects to self-insure, it must provide the other Party with the same benefits and protections as if the self-insured Party carried insurance with a private insurance company satisfying the requirements of this Agreement.

18.4 The foregoing requirements are not intended to and may not in any manner limit or qualify the liabilities and obligations otherwise assumed by NCPA or the Lodi pursuant to this Agreement, including but not limited to, the provisions in this Agreement concerning indemnification.

19. DISPUTE RESOLUTION

19.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

19.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 19.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 19.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. (**"JAMS)** if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

19.2.2 The rules and procedures for arbitration shall be as follows:

19.2.2.1 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

19.2.2.2 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

19.2.2.3 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

19.2.2.4 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the

Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

19.2.2.5 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

19.2.2.6 Each Party may be represented by counsel.

19.2.2.7 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, 'order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

19.2.2.8 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said.court.

19.2.2.9 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to

obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of an award, order, or decision in a non-judicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 19.2.2.9.

19.2.2.10 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

19.2.2.11 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

19.2.2.12 Unless otherwise provided in this Agreement or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.

19.2.2.13 Except as modified or stated to the contrary in this Section 19, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

20. TERMINATION

This Agreement may only be terminated by a mutual written agreement.

21. SURVIVAL

The provisions of the Agreement concerning past costs (Section **4),** replacement of prior contracts (Section 5), applicable insurance provisions (Section 18) are continuing in nature and shall survive any termination of this Agreement.

22. AMENDMENTS

This Agreement is not subject to modification or amendment, except in writing as executed by both NCPA and Lodi, which writing shall expressly state that it is intended by the Parties to amend the terms and conditions of this Agreement.

23. CONTROLLING LAW

This Agreement and all matters relating to it shall be governed by the laws of the State of California.

24. WHOLE AGREEMENT

This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all discussions, negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

25. ASSIGNMENT

This Agreement cannot be assigned without written amendment signed by both Parties.

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized officers, as set forth below:

NORTHERN CALIFORNIA POWER AGENCY

_____
James H. Pope
General Manager

,Attest

_____
Denise Dow, Assistant Secretary

Approved as to Form

_____
Michael F. Dean, General Counsel

CITY OF LODI

_____
City Manager

Attest

_____
City Clerk

Approved as to Form

_____
City Attorney

EXHIBIT A

LODI TREATMENT PLANT SITE

LEGEND

- - - - BOUNDARY OF CITY-OWNED LAND

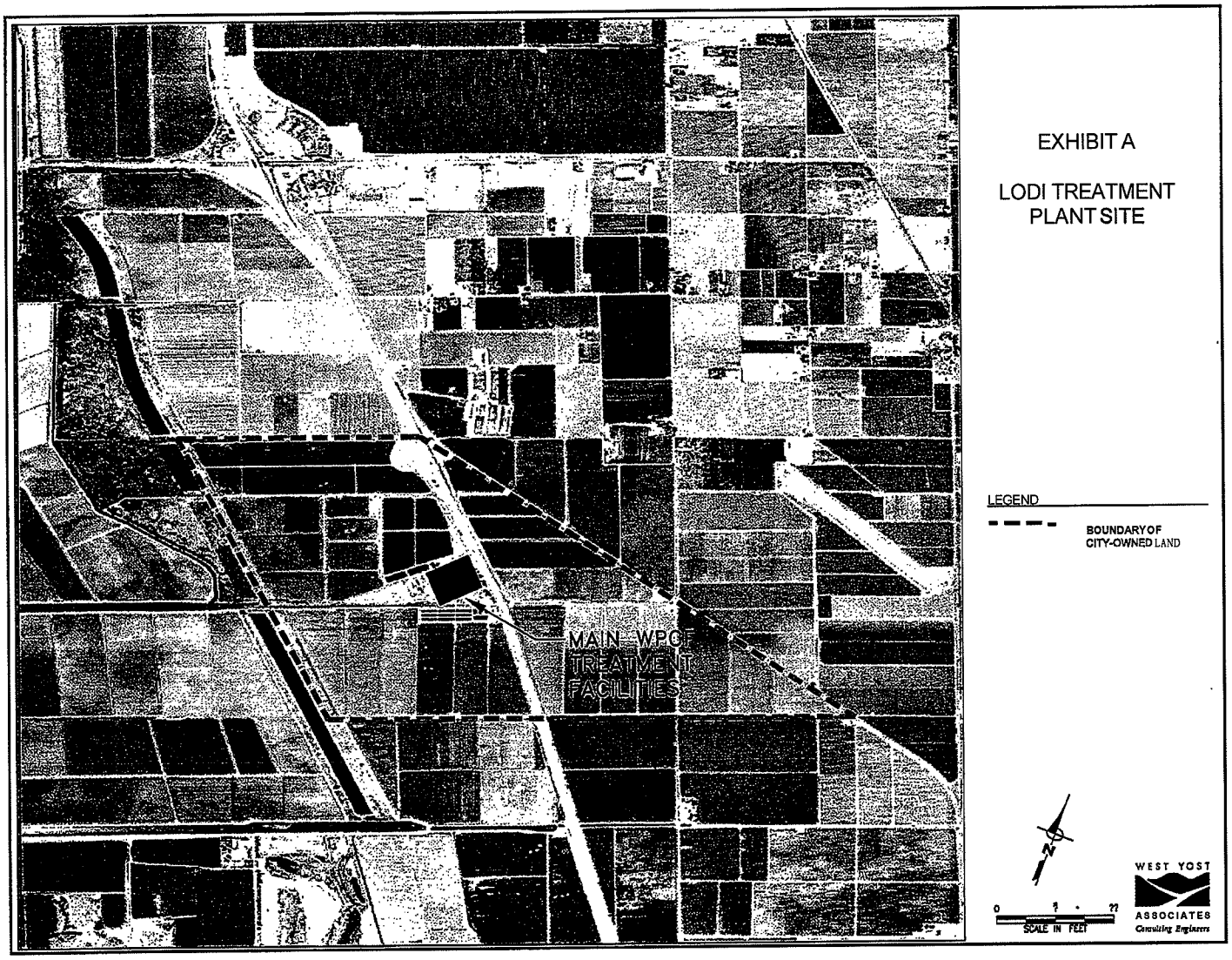
N

0 ? ??

SCALE IN FEET

WEST YOST ASSOCIATES

Consulting Engineers


MAIN WPCF
TREATMENT
FACILITIES
EXHIBIT A
LODI TREATMENT
PLANT SITE
LEGEND
BOUNDARY OF
CITY-OWNED LAND
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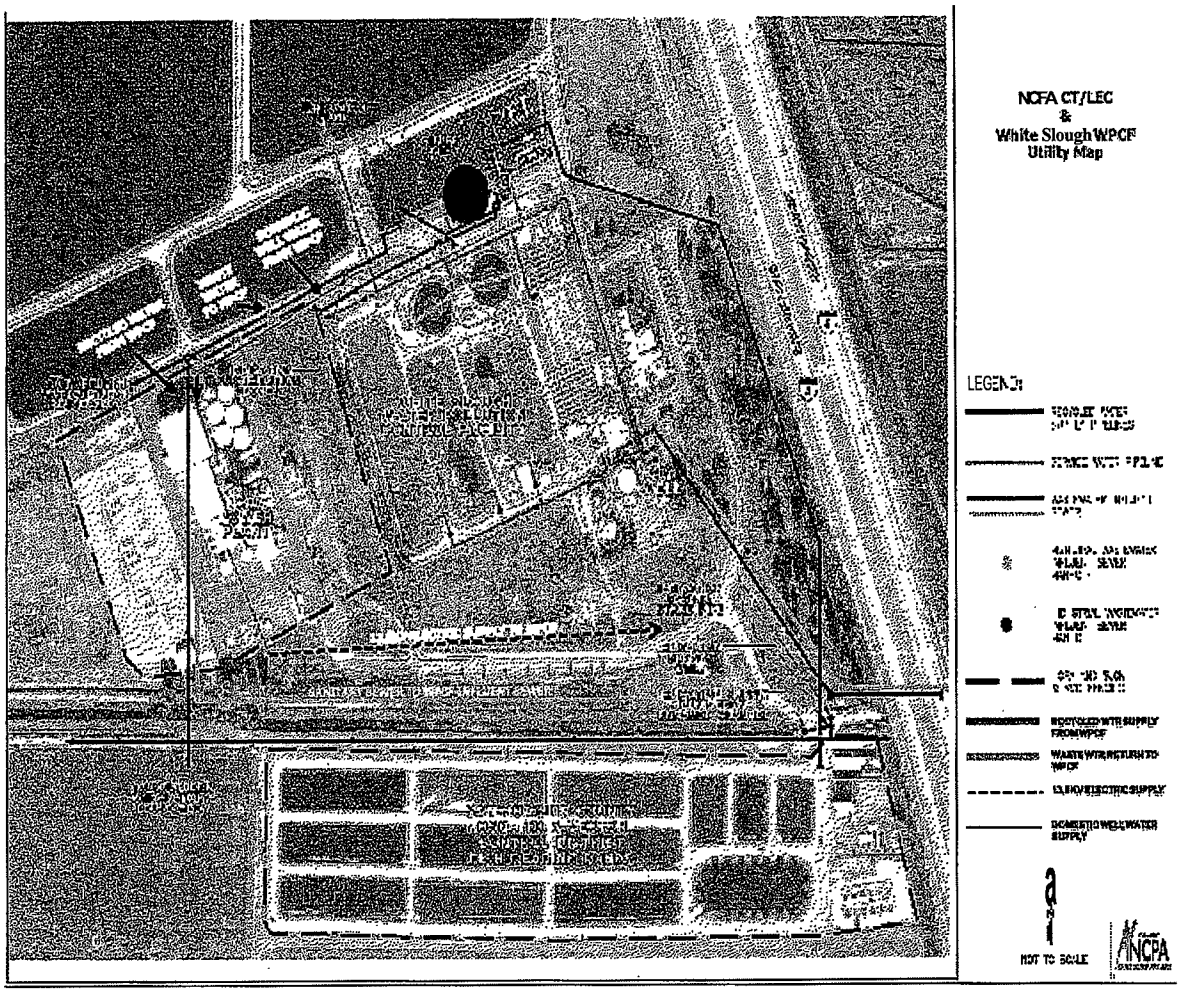
SCALE IN FEET
WEST YOST
ASSOCIATES
Consulting Engineers

EXHIBIT B

Diagram / Map of Recycled Water Facilities



AMENDED AND RESTATED GROUND LEASE

THIS AMENDED AND RESTATED GROUND LEASE (this **"Lease"**or this **"Agreement"),**dated this _____ day of _____, 2010 **("Effective Date"),** is entered into by and between the CITY OF LODI, a California municipality **("Landlord"),**and NORTHERN CALIFORNIA POWER AGENCY, a California joint powers agency **("Tenant").** Landlord and Tenant, and their successors and assigns, are singularly referred to as a **"Party"**and jointly referred to as the **"Parties."**

RECITALS

A. WHEREAS, the Parties entered into that certain Ground Lease dated February 17, 1993 **("Original Lease");**and

B. WHEREAS, the Parties desire to amend and restate the Original Lease in its entirety as set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the Original Lease is fully amended and restated as follows:

I. Definitions. When used in this Agreement, the terms described below will have the meanings as set forth in this Section.

1.1 **"Base Rent"** is the rent for the CT2 site under the Lease and is defined further in Section 7.1.1.

1.2 **'Commencement Date"** means January 1, 1993, the date that the Lease commenced.

1.3 **"CT2 Project"** refers to the Combustion Turbine 2 Project, which is a LM5000 simple cycle electrical generating facility rated at a nominal generating capacity of 49.9 megawatts. The CT2 is located in Lodi, California on property near the City of Lodi White Sough Water Pollution Control Facility.

1.4 **"Easement Area"** refers to the easement on the east side of the Leased Premises for the construction of a road and is more fully defined in Section 3.

1.5 **"Effective Date"** means the date first written above upon which the Parties entered into the Amended and Restated Lease.

1.6 **"Landlord"** refers to the City of Lodi, a California municipality.

1.7 **"Leased Premises"** or **"Premises"** refers to the real property in the City of Lodi that is the subject of this Lease, as more fully described in Section 2.

1.8 **The "Lodi Energy Center"** (**"LEC"**) will be a natural gas-fired, combined-cycle electrical generating facility rated at a nominal generating capacity of 255 megawatts (MW). The LEC is proposed to be constructed on a parcel of approximately 4.4 acres located adjacent to the Lodi WSWPCF to the east, treatment and holding ponds associated with the WSWPCF to the north, the existing CT2 (STIG plant) to the west, and the San Joaquin County Mosquito and Vector Control facility to the south.

1.9 The **"LEC Rent"** means the rent to be paid for the portion of the Leased Premises to be used for the LEC and is more fully defined in Section 7.2.1.

1.10 The **"Original Lease"** refers to that certain Ground Lease dated February 17, 1993.

1.11 **"Offer"** refers to a bona fide offer from a third party to purchase all or a portion of the Leased Premises.

1.12 **"Party"** singularly refers to either the Landlord or the Tenant and **"Parties"** refers to the Landlord and Tenant collectively.

1.13 **"Project"** refers to the construction, operation and maintenance of. gas turbine power generation plant and incidental ancillary uses including without limitation, the transmission of energy.

1.14 **"Tenant"** refers to the Northern California Power Agency, a California joint powers agency.

1.15 **"Term"** refers to the term of the Lease as defined in Section 6.

1.16 **"Utilities"** refers to various utility lines, pipelines and a test well located on or below the Leased Premises.

2. Premises.

Landlord leases to Tenant and Tenant leases from Landlord that real property in the City of Lodi, County of San Joaquin, California, described on the map in Exhibit A attached hereto and incorporated into this Agreement by reference (the **"Leased**

Premises" or the **"Premises")** for the term (described below) and upon the terms and conditions set forth in this Agreement.

3. Easements. In addition to the Premises, Tenant needs additional land adjacent to the east side of the Leased Premises for a road. A map identifying the additional area (the **"EasementArea")** is contained in Exhibit B attached to this Agreement and incorporated herein by this reference. Landlord likewise needs access to this area to maintain the adjacent berm. Tenant and Landlord agree to enter into and record the Easement Agreement contained in Exhibit C attached to this Agreement and made a part hereof pursuant to which Tenant shall be provided with an access and roadway easement across the Easement Area throughout the term of this Lease as such may be extended. Tenant's rights to use the Easement Area shall be exclusive aside from access rights reserved to Landlord as set forth in the Easement Agreement.

4. Use. Tenant may use the Leased Premises for the purpose of the construction, operation and maintenance of gas turbine power generation plants and incidental ancillary uses including without limitation, the transmission of energy, (collectively, the **"Project),** and for any other lawful purpose.

5. Landlord's Retained Rights.

5.1 Landlord maintains various utilities, pipelines and a test well (collectively **"Utilities")** located on or below the Leased Premises. The Utilities are described more fully in Exhibit D attached hereto and incorporated herein by this reference. Landlord hereby retains the right to access the Leased Premises, upon seventy two (72) hours written notice to Tenant (except in the event of emergency), to repair or maintain or remove the Utilities. Landlord agrees not to interfere with Tenant's activities on the Premises and will expeditiously repair or replace any damage that Landlord causes on the Premises at Landlord's sole expense. With a minimum of seventy two (72) hours notice to Landlord, Tenant, at its sole expense, may relocate any or all of Landlord's Utilities. The schedule for such relocation shall be at a time mutually agreed upon by the Parties. Tenant agrees to reconstruct the Utilities to standards acceptable to Landlord.

5.2 Landlord must remove the groundwater monitoring well located on the south east corner of the Premises, as shown on Exhibit A, within ninety (90) days of the Effective Date of this Agreement.

6. Term: Extension. The Term of this Lease shall commence on January 1, 1993 **("CommencementDate"),** and shall terminate (unless extended pursuant to this Section 6 or earlier terminated in accordance with the provisions of this Lease) on the fiftieth (50th) anniversary of the Commencement Date **("Term").** Subject to Landlord's retained rights as described in Sections 3 and 5, Tenant's right to exclusive possession of the Leased Premises shall commence on the Commencement Date. Tenant shall have the right to extend the Term of this Lease on all the terms and conditions set forth herein for an additional period of fifty (50) years, to be exercised by written notice to Landlord during the last year of the initial Term of this Lease.

7. Rent

7.1 Rent for CT2 Site.

7.1.1 Annual Rent. On or before July 1 of each year during the term of this Lease, Tenant agrees to pay to Landlord in advance annual rent **("Base Rent')** in the amount of Twenty Thousand Three Hundred Ten Dollars ($20,310) for the following Lease Year (i.e., each twelve (12) month period during the term of this Lease, commencing on July 1 and ending on June 30).

7.2 Rent for LEC.

7.2.1 Annual Rent. In addition to the Base Rent, commencing upon the earliest of the date upon which: (i) the California Energy Commission issues the AFC License for the Lodi Energy Center Unit Project **("LEC"),** (ii) the Project Participants execute the Phase 3 agreements supporting construction of the LEC, or (iii) the Project Participants execute Power Purchase Agreements supporting construction of the LEC, Tenant agrees to pay to Landlord advance annual rent in the amount of Forty Thousand Dollars ($40,000.00) (the **"LEC Rent")** on or before July 1 of each year for the following Lease Year. For the initial Lease Year for which LEC Rent is payable pursuant to this Section 7.2.1, the LEC Rent shall be prorated on the basis of a 365 day year and shall be payable for the number of days remaining in such initial Lease Year.

7.2.2 Annual Rental Adiustments. During the ten (IO) year period commencing on July 1 of the first full Lease Year after the obligation to pay LEC Rent commences, the LEC Rent will increase by two and one half percent (2.5%) annually starting after the first full year. The rental increase will go into effect on July 1st of each year.

7.3 Rental Adjustments. Other than as specified in Section 7.2.2, and in this Section 7.3, there shall be no adjustment to the Base Rent or the LEC Rent payable pursuant to this Agreement. On the ten (10) year anniversary of the Effective Date of this Agreement, either Tenant or Landlord may initiate a review of the then existing Base Rent and/or LEC Rent based on the market conditions at the time of the requested review. Such review must be conducted by a mutually acceptable neutral third party. The Parties will share equally in the cost of any mutually approved neutral third party's services. Any supported adjustment to the then existing Base Rent or LEC Rent may not vary by more than twenty five percent (25%) up or down (+/- 25%) from the then existing rent.

7.4 Pavments. All rent to be paid by Tenant to Landlord under this Agreement must be in lawful money of the United States of America and must be paid without deduction or offset, prior notice or demand, and at such place or places as may be designated from time to time by Landlord.

8. Utilitv Pavments. During the term of this Lease, except for utility payments related to Landlord's Utilities, Tenant agrees to pay all charges and expenses in connection with utility services and to protect Landlord and the Leased Premises from all such charges and expenses.

9. Repairs and Maintenance.

9.1 At all times during the term of this Lease, Tenant shall, at its cost and expense, maintain the Leased Premises and all improvements thereon in good order and repair and safe condition, including but not limited to, fences and roadways predominantly used by Tenant. Tenant will keep Landlord apprised of the volume and nature of truck traffic upon the Leased Premises.

9.2 Except as provided in this Agreement, Landlord shall not be obligated to make any changes, alterations, additions or repairs in, on or about the

Leased Premises or any part hereof or any improvements installed thereon. Tenant waives all provisions of law that may impose a duty of repair on Landlord.

9.3 Tenant shall indemnify and save harmless Landlord against all actions, claims and damages by reason of (1) Tenant's failure to perform Tenant's obligations set forth in this Section 9, or (2) Tenant's nonobservance or nonperformance of any law, ordinance or regulation applicable to the Leased Premises, and any liability or duty to repair imposed by the laws of the State of California.

9.4 Tenant agrees to construct a perimeter fence around the Leased Premises,

9.5 Notwithstanding Tenant's obligations to maintain and repair the Property in this Section 9, Tenant will have no obligation to maintain or repair any of Landlord's Utilities identified in Exhibit D.

10. Mechanic's Liens.

10.1 Covenant Against Liens and Claims. Tenant shall not allow or permit to be enforced against the Leased Premises or any part thereof, any mechanic's, material men's, contractor's or subcontractor's liens arising from any claim growing out of work of any construction, repair, restoration, operation, replacement or improvement, or any other claim or demand no matter how the same may arise. Tenant shall pay or cause to be paid all of said liens, claims or demands, arising as a result of Tenant's activities before any lawsuit is brought to enforce them against the Leased Premises. Tenant agrees to indemnify and hold the Landlord and the Leased Premises free and harmless from all liability for any and all such liens, claims and demands arising as a result of Tenant's activities, together with reasonable attorneys' fees and all costs and expenses incurred by Landlord in connection therewith except to the extent any such liens, claims, demands, fees, costs and expenses arise as a result of Landlord's actions or failure to act.

10.2 Tenant's Right to Contest Liens. Notwithstanding anything to the contrary set forth above, if Tenant shall in good faith contest the validity of any such lien, claim or demand, then Tenant shall, at its expense, defend itself and Landlord against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Leased Premises.

10.3 Landlord Paying Claims. In the event Tenant fails to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment or other charge upon or in connection with the Leased Premises that is the responsibility of Tenant pursuant to this Lease, or any lien or claim for labor or material employed or used or any claim for damages arising out of Tenant's construction, repair, restoration, replacement, maintenance and use of the Leased Premises and any improvements thereon, or any judgment on any contested lien or claim that results from Tenant's activities on the Leased Premises, or any insurance premium or expense in connection with the Leased Premises and improvements that Tenant is obligated to provide pursuant to this Lease, or any other claim, charge or demand which Tenant has agreed to pay or cause to be paid under the terms of this Lease, and if Tenant, after ten (10) business days' written notice from Landlord to do so fails to pay and discharge the same, or in the event Tenant contests such tax, assessment, claim or charge then Landlord may, at its option, pay any such tax, assessment, insurance expense, lien, claim, charge or demand, or settle or discharge any action therefore, or judgment thereon, and all costs, expenses and other sums incurred or paid by Landlord in connection with any of the foregoing shall be paid by Tenant to Landlord upon demand, together with interest thereon at Bank of America's prime rate from the date incurred or paid. Any default in such repayment by Tenant shall constitute a breach of the covenants and conditions of this Lease.

11. Insurance and Indemnity.

11.1 Landlord's Nonliability. Except for (a) Landlord's Utilities; (b) Landlord's activities to maintain, install, remove or access its Utilities; or (c) any other negligent or willful act or omission by Landlord, its employees, agents, invitees or volunteers that results in injury or damage to persons or property, Landlord shall not be liable for any loss, damage or injury of any kind to any person or property arising from Tenant's use of the Leased Premises, or any part thereof, or caused by any defect in any building, structure or other improvements thereon or in any equipment or other facility therein installed by Tenant, or caused by or arising from any act or omission of Tenant or any of its agents, employees, licensees or invitees, or by or from any accident on the Leased Premises or any fire or other casualty thereon, or occasioned by the

failure of Tenant to maintain the Leased Premises and all improvements thereto in a safe condition, or arising from any other cause.

11.2 Indemnification of Landlord. Notwithstanding anything to the contrary contained in this Lease, and irrespective of any insurance carried by Tenant for the benefit of Landlord under the terms of this Lease, Tenant agrees to protect, indemnity and hold the Landlord and the Leased Premises harmless from any and all damages and liabilities at any time occasioned by or arising out of (1) any act, activity or omission of Tenant, or of anyone holding under Tenant, or (2) the occupancy or use of the Leased Premises or any part thereof, by or under Tenant, or (3) any state or condition of the Leased Premises or any part thereof arising after the Commencement Date of the Original Lease and caused by Tenant.

11.3 Liability Insurance. Tenant shall procure and maintain at all times during the term of this Lease, at its sole cost and expense, a policy or policies of commercial general liability insurance by the terms of which NCPA is a named Insured and the City of Lodi is an additional insured and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the Leased Premises or any improvements thereon or any part thereof, with a combined single limit for bodily injury and property damage in an amount of not less than Five Million Dollars ($5,000,000). Such public liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Landlord and shall contain a provision (provided such provisions are available without increased premium) that the Landlord, although named as an additional insured shall nevertheless be entitled to recover under that policy for any loss, injury or damage to the Landlord, its agents and employees or the property of such persons by reason of the negligence of Tenant. Tenant may at its option self-insure upon the foregoing terms.

11.4 Certificate of Insurance. All policies of insurance procured and maintained by Tenant hereunder shall be issued by companies having not less than Best'sA: Class X rating and shall be issued in the name of the Landlord and Tenant for the mutual and joint benefit and protection of the parties. Executed copies of all insurance policies or a certificate thereof shall contain a provision that not less than

thirty (30) days' written notice shall be given to Landlord prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

11.5 Failure to Provide Insurance. If Tenant fails or refuses to procure or to maintain insurance as required by this Lease or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in force and paid for, Landlord shall have the right at Landlord's election, upon ten (10) days advance written notice, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as added rent due from Tenant with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. Landlord shall give prompt notice of the payments of such premiums, stating the amounts paid and the names of the insurer or insurers; and Landlord shall provide copies of insurance policies to Tenant.

11.6 Waiver of Subrogation. Each Party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. This provision is intended to restrict each Party (as permitted by law) to recovery against insurance carriers to the extent of such coverage, and waive fully, for the benefit of each Party, any rights or claims that might give rise to a right of subrogation by any insurance carrier.

12. Landlord's Covenants.

12.1 Water Supply to CT2 Project. Landlord shall make available to Tenant a minimum of 550,000 gallons per day of reclaimed water meeting the requirements of California Code of Regulations, Title 22, Division 4, Chapter 3 from the White Slough Water Pollution Control Facility to the CT2 project.

12.2 Water Supply to the LEC Project. Landlord agrees to make available to Tenant reclaimed water for the LEC project upon the terms and conditions contained in the Agreement to Supply Recycled Water attached to this Agreement as Exhibit E and incorporated herein.

12.3 Discharge of Water. Landlord shall upon payment by Tenant of applicable connection fees, accept Tenant's domestic wastewater from the Project into the White Slough Water Pollution Control Facility or other suitable treatment plant.

13. Repair and Restoration. If during the term of this Lease any building or improvement on the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant may, at its sole cost and expense, repair or restore the same or may elect not to repair or restore. If Tenant elects not to repair or restore, Tenant may in its sole discretion choose to terminate this Lease effective as of the date of such damage or destruction. Any monies received by Landlord as compensation for damage or loss to improvements installed by Tenant on the Premises shall be paid to Tenant and are hereby assigned to Tenant.

14. Assignment and Subletting. Tenant may not encumber, assign, sublease or otherwise transfer this Lease, or any right or interest hereunder, or in or to any of the improvements constructed or installed on the Leased Premises, in whole or in part, without the prior written consent of Landlord which consent will not be unreasonably withheld, conditioned or delayed.

15. Default. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

15.1 Failure to pay an installment of rent or other sum;

15.2 Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Tenant at the time and in the manner as provided in this Lease;

15.3 Failure to maintain the Leased Premises or cause the same to be maintained as provided for in this Lease;

15.4 Abandonment of the Leased Premises after completion of construction for a continuous period of one hundred twenty (120) days; or

15.5 Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease.

16. Remedies in Event of Default. Upon any default of Tenant, and in the event the default is due to the failure of Tenant to make the payment of any installment of rent or other sum when due, and in the event Tenant fails to remedy such default within ten (10) business days after written notice to do so, or upon any other default by Tenant, and in the event that Tenant fails to remedy such other default within thirty (30) days after written notice from Landlord so to do specifying the nature of such default, or

if such default cannot be cured within thirty (30) days and Tenant has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Tenant, then and in any of these events, in addition to any other remedy Landlord may have by operation of law, Landlord shall have the right but not the obligation without any further demand or notice, to reenter the Leased Premises and eject all persons from the Leased Premises, using due process of law, and immediately terminate Tenant's right to possession of the Premises, and repossess the same by summary proceedings or other appropriate action, and Landlord shall thereupon be entitled to receive from Tenant all damages allowed by law.

17. Estoppels Certificates. Landlord and Tenant shall, respectively, at any time and from time to time upon not less than ten (10) business days' prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

17.1 That this Lease is unmodified and in full force and effect or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications;

17.2 That to its knowledge the requesting party is not in default under this Lease or if any such default exists, the specific nature and extent thereof;

17.3 The date to which rent and other charges have been paid in advance, if any; and

17.4 Such other information pertaining to this Lease as may reasonably be requested.

Each certificate delivered pursuant to this Section 17 may be relied on by any prospective purchaser or transferee of the Leased Premises or of Landlord's or Tenant's interest hereunder or by any fee mortgagee of the Leased Premises or of Landlord's or Tenant's interest hereunder or by any assignee of any such mortgagee.

18. Ownership of Improvements. Title to any buildings, improvements or fixtures which may be placed on the Premises by Tenant shall remain in Tenant. Landlord agrees to subordinate all rights, if any, which Landlord may have in any of such improvements to the rights of Tenant. Tenant may remove the improvements at

any time during the term of this Lease. Any improvements remaining on the Premises after expiration or sooner termination of the Lease shall become the property of Landlord.

19. Payments and Notices. Any notice to be given or other document to be delivered by either party to the other party may be given by personal delivery or may be deposited in the United States mail in the State of California, duly registered or certified] with postage prepaid, and addressed to the party for whom intended as follows, or it may be sent via facsimile with a hard copy deposited in the United States mail addressed to the party to whom it was intended with sufficient postage pre-paid and will be duly given upon receipt of successful transmission to the following facsimile numbers:

To Landlord:	City of Lodi Attn: City Manager 221 West Pine Street Lodi, CA 95240 Facsimile: 209-333-6807
To Tenant:	Northern California Power Agency Attn: Assistant General Manager Generation Services 651 Commerce Drive Roseville, CA 95678 Facsimile: 916-783-7693

Either party may from time to time by written notice to the other party designate a different address which shall be substituted for the one specified above. If any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

20. Right of First Refusal. Landlord shall not at any time during the term of this Lease as such may be extended sell or convey or agree to sell or convey all or any portion of the Leased Premises without first having complied with the requirements of this Section 20. If Landlord desires to sell or convey all or any portion or portions of the Leased Premises, Landlord must obtain from a third party a bona fide arms' length offer (the "Offer") and Landlord must submit a written copy of the Offer to Tenant and must

give Tenant forty-five (45) days within which to elect to meet the Offer. If Tenant elects to meet the Offer, Tenant will give Landlord written notice thereof and closing must be held within forty-five (45) days thereafter, whereupon Landlord will convey to Tenant all or any portion of the Leased Premises which are the subject of the Offer. At closing, Landlord shall deliver to Tenant a grant deed, sufficient to convey to Tenant fee simple title to the subject portion of the Leased Premises free and clear of all liens, restrictions and encumbrances. Landlord shall pay all transfer taxes in connection with such conveyance. This right of first refusal shall continue as to any and all portions of the Leased Premises throughout the term of this Lease as such may be extended. In the event Tenant elects not to meet any Offer, Landlord may thereafter sell the portion or portions of the Leased Premises which are the subject of the Offer only to the party who made the Offer and only strictly in accordance with the terms thereof. To prevent Landlord from defeating the rights of Tenant hereunder, Landlord agrees that Landlord will at no time accept an offer to purchase all or any portion of the Leased Premises together with any other property of Landlord in contravention of Tenant's right to purchase the Leased Premises.

21. Abandonment of Wells

21.1 Abandonment and Closure of Injection Wells. Upon termination of this Lease, Tenant, at its sole expense, will abandon and close any and all-injection wells utilized on the Premises by Tenant. Such abandonment shall be done in compliance with all applicable state and federal laws and regulations and under the direction of the California Department of Oil and Gas.

21.2 Abandonment Of Southeast Corner Test Well. The Landlord at its sole expense will abandon and close the test well located in the southeast corner of the Premises and will abandon the well in a timeframe mutually agreed to by the Parties. Such abandonment shall be done in compliance with all applicable local, state and federal laws and regulations.

22. Dispute resolution.

22.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Lease to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In

such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

22.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 22.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 22.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

22.2.1 The rules and procedures for arbitration shall be as follows:

22.2.2 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

22.2.3 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

22.2.4 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all

decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

22.2.5 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

22.2.6 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at the hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

22.2.7 Each Party may be represented by counsel.

22.2.8 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or

proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

22.2.9 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

22.2.10 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of an award, order, or decision in a non-judicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 22.2.10.

22.2.11 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

22.2.12 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C.§ 1. Except as otherwise provided in this Lease, any motion, application,

complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

22.2.13 Unless otherwise provided in this Lease or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Lease during the pendency of arbitration proceedings.

22.2.14 Except as modified or stated to the contrary in this Section 22, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

23. Miscellaneous.

23.1 Attorneys' Fees. Except as otherwise provided in Section 22 respecting attorneys' fees in mediation and arbitration, in the event any action is brought by Landlord or Tenant against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

23.2 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of either party to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default under this Lease.

23.3 Holding Over. If Tenant holds over the Leased Premises after the expiration of the term hereof with the consent of Landlord, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations in this Lease, and Tenant hereby agrees to pay to Landlord the same monthly rent as provided in this Lease; provided, however; that nothing herein contained may be construed to give Tenant any rights to so hold over and to continue in possession of the Leased Premises after the expiration of the term hereof.

23.4 Surrender at End of Term. Upon the end of the term of this Lease, as provided herein, or any extension thereof, or sooner termination of this Lease,

Tenant shall surrender to Landlord all the Leased Premises, together with all improvements as hereinabove provided, and all fixtures. Upon surrender of the Premises, Tenant shall, if directed by the Public Works Director, remove at its own expense any and all equipment remaining thereon.

23.5 Lease Binding Upon Successors and Assigns. Subject to the limitations on assignment and subleasing, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only Landlord and Tenant, but each of their successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the successors and assigns of the Parties as if in every case expressed.

23.6 Inspection. Landlord reserves the right for Landlord and Landlord's agents and representatives to enter upon the Leased Premises at any reasonable time with seventy-two (72) hours advance written notice for the purpose of attending to Landlord's interest hereunder and to inspect the Leased Premises.

23.7 Relationship of Parties. The relationship of the Parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that merely as a result of this Lease, Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venture with Tenant in the conduct of Tenant's business or otherwise, except as provided by the Phase 2 and Phase 3 combustion turbine project number 2 agreements or the LEC agreements or any similar agreement.

23.8 Time of the Essence. Time is expressly declared to be of the essence of this Lease.

23.9 Memorandum of Lease. This Agreement will not be recorded, but the Parties agree to execute and deliver a Memorandum of this Lease in recordable form, which Memorandum shall be recorded in the office of the Recorder in San Joaquin County, California.

23.10 Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within five (5) days after written demand from Landlord to Tenant any quitclaim deed or other document required

by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

23.11 Number and Gender. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm, entity or association. If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

23.12 Headings and Titles. The marginal headings or titles to the paragraphs of this Lease are not a part of this Lease and have no effect upon the construction or interpretation of any part of this Lease.

23.13 Entire Agreement. This Lease and the Exhibits hereto contain the entire agreement of the Parties hereto with respect to the matters covered hereunder, and no previous written or oral agreements, statements or promises made by any Party to this Agreement respecting the lease of the Premises that are not contained in this Lease will be binding or valid.

23.14 Force Majeure. Except as to the payment of rent, neither of the Parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of the Parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Lease.

23.15 Disclaimer of Representation. Except as otherwise specifically provided in this Lease, Landlord has made no representations or warranties to the Tenant concerning the Leased Premises, the present use thereof or the suitability for Tenant's intended use of the property. The foregoing disclaimer includes, without limitation, topography, climate, air, water, water rights, utilities, present and future zoning, soil, subsoil, drainage, access to public roads, proposed routes of roads, or extension thereof, or effect of any state or federal environmental protection laws or regulations. Tenant represents and warrants to Landlord that Tenant and its

representatives have made or will make their own independent inspection and investigation of the Leased Premises and Tenant, in entering into this Lease, is relying solely on such inspection and investigation. No patent or latent physical condition of Leased Premises, whether or not known or discovered, will affect the rights of either party hereto. Any agreement, warranties or representations relating to this Lease and not expressly contained in this Agreement shall in no way bind either Tenant or Landlord. Landlord and Tenant waive any right or rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

23.16 Quiet Enioyment. This Lease is subject and junior only to all existing easements, covenants, conditions and restrictions and other matters and encumbrances of record as of the date of this Lease or that are a part of this Lease. As long as Tenant is not in default of any provision of this Lease, Tenant shall have quiet enjoyment of the premises.

23.17 Termination. Tenant may terminate this Lease at any time upon six (6) months advance notice.

23.18 Counterparts. This Lease may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Ground Lease as of the date first set forth above.

LANDLORD:

CITY OF LODI, a municipal corporation

_____

Blair King, City Manager

ATTEST:

_____

Randi Johl, J.D., City Clerk

TENANT:

NORTHERN CALIFORNIA POWER AGENCY

_____

James H. Pope, General Manager

ATTEST

_____

Denise Dow, Assistant Secretary

APPROVED AS TO FORM:

D. Stephen Schwabauer
City Attorney

APPROVED AS TO FORM

Michael F. Dean, General Counsel

EXHIBIT LIST

EXHIBIT A	Legal Map and Description of Premises
EXHIBIT B	Roadway and Incidental Purpose Easement
EXHIBIT C	Easement Agreement
EXHIBIT D	Utilities

Lease Exhibit A

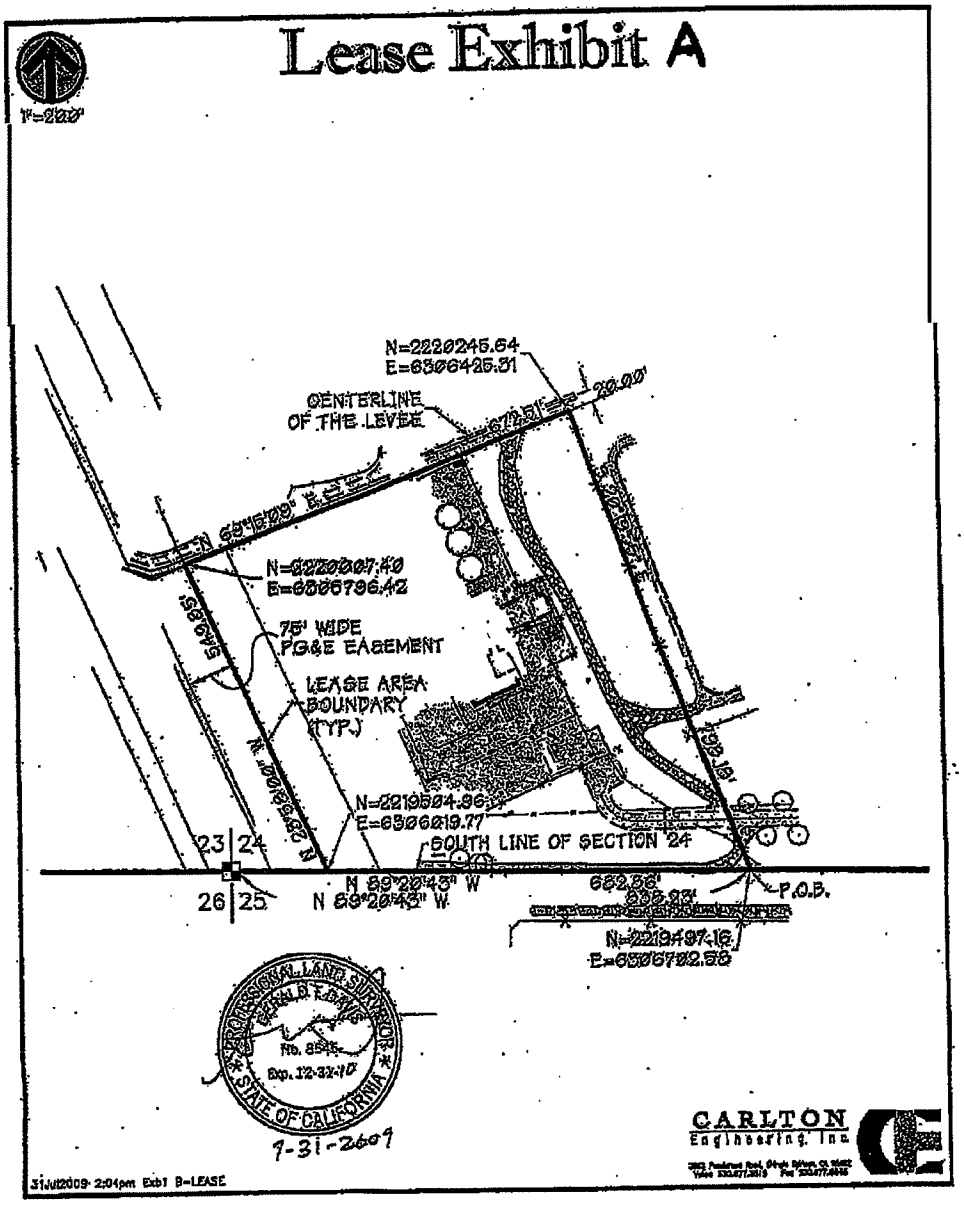


EXHIBIT *A*

Lease Area

All that real property situated in the southwest one-quarter of Section 24, Township 3 Worth, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North 89°20'42" West 888.23 feet. Thence from said Point of Beginning North 89°20'42" West 682.85 feet along said South line, thence leaving said South line along the East boundary of an easement granted to Pacific Gas & Electric Company described in that Deed dated September 6, 1957 recorded in Book 2013 of Official Records at Page 426, San Joaquin County Records, North 23°58'00" West 549.85 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds, thence parallel with and 20.00 feet distant from the centerline of said levee North 69°15'09" East 672.51 feet, thence South 20°19'55" East 798.18 feet to the Point of Beginning.

Containing 16.1 Acres (439,050 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 33 Page 175 with San Joaquin County Recorder's Office.

PROFESSIONAL LAND SURVEYOR
GERALD T. DAVIS
No. 8545
Exp. 12-31-10
STATE OF CALIFORNIA

7-31-2009

EXHIBIT B

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 20.00 feet in width, the centerline of which is described as follows:

BEGINNING AT A POINT on the East boundary of a lease parcel to Northern California Power Agency (NCPA) from which the Southwest corner of said Section 24 bears the following two (2) courses: 1) South 20°19'35" East 88.05 feet along said East boundary to the South line of said Section 24, 2) North 89°20'43" West 838.23 feet along the South line of said Section 24 to the Southwest corner thereof. Thence from said Point of Beginning North 89°30'37" East 483.64 feet along the centerline of an existing asphalt road to the beginning of a curve to the left, thence through said curve to the left having a Radius of 273.31 feet, an Arc Length of 526.14, and being subtended by a Chord bearing North 34°21'38" East 448.58 feet, thence North 20°47'20" West 347.74 feet to the beginning of a curve to the right, thence through said curve to the right having a Radius of 84.40 feet, an Arc Length of 74.71 feet, and being subtended by a Chord bearing North 04°54'09" East 72.29 feet, thence North 29°55'37" East 44.45 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 88.66 feet, an Arc Length of 78.43 feet, and being subtended by a Chord bearing North 04°34'49" East 75.91 feet, thence North 20°46'02" West 1048.49 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 3013.60 feet, an Arc Length of 99.99 feet, and being subtended by a Chord bearing North 21°43'04" West 99.99 feet, thence North 22°40'06" West 489.23 feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of 1070.10 feet, an Arc Length of 109.96 feet, and being subtended by a Chord bearing North 24°33'16" West 109.94 feet, thence North 26°26'26" West 44.61 feet to the North line of the Southwest One-Quarter of said Section 24.

The sidelines of said strip of land shall be lengthened or shortened to terminate at the North line of the Southwest One-Quarter of said Section 24 and the East boundary of said NCPA Lease parcel, respectively.

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.

Containing 1.54 Acres (67,148 Sq. Ft.)

PROFESSIONAL LAND SURVEYOR
GERALD L. DAVIS
No. 8545
Exp: 12-31-10
STATE OF CALIFORNIA
7-31-2009

Road Easement Exhibit B

1"=400'

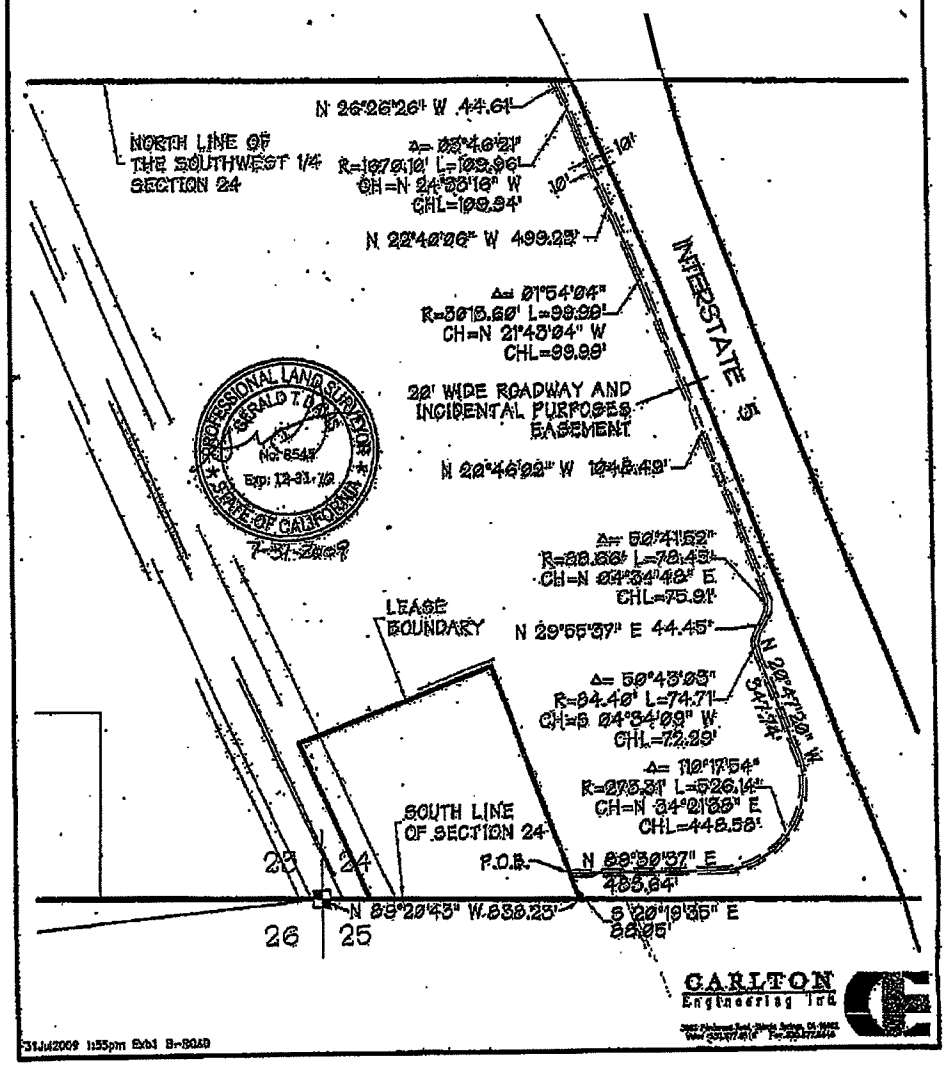


EXHIBIT C

EASEMENT AGREEMENT

Recording Requested by
and when Recorded, return to:

Northern California Power Agency
Attn: Assistant General Manager
651 Commerce Drive
Roseville, CA 95678

EXEMPT FROM RECORDING FEES PER GOVERNMENT
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE)

This Easement Agreement **("Agreement")** is made and entered into this ___ day of _____, 2009, and is by and between the City of Lodi, a California municipality **("City")** and the Northern California Power Agency, a California joint powers agency **("NCPA').** The City and NCPA, and their successors and assigns, are singularly referred to as a **"Party"** and jointly referred to as the **"Parties."**

RECITALS

A. The Parties entered into that certain Amended and Restated Ground Lease dated as of the same date as this Agreement for property located in the City adjacent to the White Water Slough Water Pollution Control Facility as more fully identified on the map attached hereto as Exhibit A (the **"Property"**) for the purpose of constructing, operating and maintaining gas turbine power generation plants;

B. NCPA is constructing a new gas turbine power plant on the Property and is in need of additional land adjacent to the east side of the Property, also identified in the map attached as Exhibit A to this Agreement, (the **"Land"**) for the purpose of constructing a road;

C. The City uses the Land to maintain the berm located immediately adjacent to the Land;

D. The Parties recognize that their uses for the Land are not mutually exclusive and that the City can provide NCPA with a non-exclusive easement to construct its road while at the same time maintaining the City's access to maintain the berm.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. The City hereby grants, conveys, and dedicates to NCPA for use as a roadway or buffer over the Land identified on Exhibit A and more fully defined in the legal description attached hereto as Exhibit B (the **"Easement").** NCPAs right to use the Land will be exclusive with the exception of the City's use to maintain, construct or reconstruct the berm shown in Exhibit A. The City covenants that, save the rights retained by the City to maintain the berm, it will not grant any rights to any other persons or entities.

2. Character of Easement. The Easement granted in this Agreement is expressly for the benefit of NCPA to use as a roadway for access to, or buffer adjacent to the Lodi Energy Center Project located on the Property. The Property is thus the dominant estate and the Land upon which the Easement is located is the servient estate. The Easement created by this Agreement is appurtenant to the Property that is the dominant estate to which it relates, shall run with the land and may not be transferred, assigned or encumbered except as an appurtenance to the dominant estate.

3. Easement Runs with the Land/Successors and Assigns. Each covenant contained in this Agreement (a) constitutes a covenant running with the Land; (b) binds successors in interest of each Party, and (c) will inure to the benefit of each Party's successors in interest. Any person or entity accepting a deed or other instrument conveying, granting, leasing or assigning any property affected or benefitted by this Agreement or any portion thereof or interest therein will take title subject to this Agreement, and such person will be deemed to have assumed all of the applicable obligations imposed in this Agreement with regard to such property regardless of whether this Agreement is mentioned in the deed, lease or other instrument. Whenever a reference in this Agreement is made to the City or NCPA, the reference will be deemed to also mean a reference to the successors in interest of each Party, or the Parties, as applicable, as if in every case so expressed.

4. Term of Easement. This Agreement will remain in full force and effect concurrently with the term of the Amended and Restated Ground Lease and any extensions thereto.

5. Rent. The rent for the easement will be $1.00 per year and will be paid in advance on or before July 1st of each year.

6. Maintenance of the Easement. NCPA will, at its sole cost, maintain the Easement in a safe condition as appropriate for the use to which NCPA will put the Easement. In the event NCPA installs a roadway, it will be for the sole use of NCPA and will not be made a public roadway. NCPA will not be required to install curbs, gutters or sidewalks, or paint any markings on the road. The road will not be available for access or use by the general public. The City will, at its sole cost, maintain the berm adjacent to the roadway.

7. No Barriers. The Parties agree that absent the written consent of the Parties and with the exception of the berm, no wall, fence, or barrier of any kind which impairs or impedes access to, or use of, the Easement will be constructed or maintained on or adjacent to the Easement, nor will the Parties do anything that will prevent, impair or discourage the use or exercise of the entire Easement or the free access and movement across the Easement area.

8. Indemnification. NCPA will indemnify, defend, protect and hold harmless, the City, its elected and appointed officials, employees, and agents from and against all claims, demands, liabilities, judgments, losses, costs and expenses arising out of or related to NCPAs or its agent's, employee's or invitee's use and maintenance of the Easement. The City will indemnify, defend, protect and hold harmless, NCPA, its elected and appointed officials, employees, and agents from and against all claims, demands, liabilities, judgments, losses, costs and expenses arising out of or related to the City's or its agent's, employee's or invitee's use of the Easement and maintenance of the berm.

9. Insurance. At all times during the term of this Agreement, NCPA shall include the Easement in the insurance it is obligated to maintain on the Property under the Amended and Restated Ground Lease.

10. Default/Remedies. An **"Event of Default"** under this Agreement occurs if either Party fails to comply with any of the covenants or obligations in this Agreement or fails to commence to cure with reasonable diligence such failure within ten (10) days after receipt of written notice from the other Party of the default. Upon the occurrence of an Event of Default under this Agreement, the aggrieved Party may pursue all remedies at law or in equity, including without limitation, the remedy of specific performance of this Agreement.

11. Dispute Resolution

11.1 Mediation. The Parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither Party may proceed with arbitration until the completion of mediation, the mediation being an express condition precedent to further remedies. The Parties may, however, agree in writing to proceed directly to arbitration. Each Party will pay an equal share of the costs of retaining the professional mediator but will bear its own costs, including, but not limited to its own attorneys' fees associated with participating in any mediation.

11.2 Binding arbitration. Should the Parties be unable or unwilling to resolve their dispute through the mediation process provided in Section 11.1 above, either Party may give written notice to the other Party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section 11.2. The Party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the Parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an arbitrator in accordance with then current procedures. The arbitrator must be a retired judge of the Superior Court of California or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the

Presiding Judge of the San Joaquin Superior Court will appoint an arbitrator in accordance with its then current procedures.

11.2.2 The rules and procedures for arbitration shall be as follows:

11.2.2.1 The arbitrator must be selected and arbitration must be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.

11.2.2.2 The arbitration proceedings must be conducted in San Joaquin County, California, at a time and location as agreed to in writing by the Parties, or in absence of an agreement, as designated by the arbitrator.

11.2.2.3 Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration. The California Evidence Code shall generally guide the arbitrator in making such decisions.

11.2.2.4 The arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the Parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the arbitrator must follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the arbitrator will have no authority or jurisdiction to enter an award, order, or decision for consequential, special, exemplary or punitive damages. The arbitrator may also grant such ancillary relief as is necessary to make effective the award, order, or decision, including the issuance of declaratory relief, compelling specific performance, or any other relief or action permitted by California law.

11.2.2.5 Both Parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the arbitrator will have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either Party will have the right to demand in writing that the other Party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at

hearing. The responding Party's list(s) must be served personally or by registered or certified mail on the requesting Party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.

11.2.2.6 Each Party may be represented by counsel.

11.2.2.7 No later than sixty (60) days following closing of the arbitration hearing, the arbitrator will make an award, order, or decision and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award, order, or decision. The arbitrator may include in his or her award, order, or decision pre-award interest and post-award interest at the legal rate where authorized by law. The Party against whom the award, order, or decision is made or remedy or relief ordered will have thirty (30) days after receipt of the award, order, or decision to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision. If the award, order, or decision is mailed, it will be deemed to be received within five (5) days after deposit in the mail.

11.2.2.8 If no such action or proceeding is timely commenced, the award, order, or decision will thereupon immediately become final. The Party against whom the award, order, or decision is made or remedy or relief ordered shall within thirty (30) days after the award, order, or decision becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award, order, or decision. The Party in whose favor the award, order, or decision is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of San Joaquin a Judgment upon the award, order, or decision rendered by the arbitrator, which may thereafter be entered in the records of said court.

11.2.2.9 If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of San Joaquin to obtain judicial review of the award, order, or decision, the Parties will have the right to seek vacation or modification of any portion of the award, order, or decision according to the grounds provided by California law at the time for the vacation or modification of

an award, order, or decision in a nonjudicial arbitration. The findings of fact of the arbitrator will be binding on all Parties and shall not be subject to further review except as allowed by the appeal provisions of this Section 11.2.2.9.

11.2.2.10 The arbitrator will be paid a per diem or hourly charge as established at the time of appointment. Each Party will bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the arbitrator's compensation, will be shared equally.

11.2.2.11 This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C. § 1. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

11.2.2.12 Unless otherwise provided in this Agreement or otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.

11.2.2.13 Except as modified or stated to the contrary in this Section 11, the rules and procedures of the Arbitrator in effect at the time of the arbitration will apply to the arbitration procedure.

12. Memorandum of Agreement. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of Agreement substantially in the form of Exhibit C hereto. NCPA shall cause such Memorandum of Agreement to be recorded against the Property in the County of San Joaquin Recorder's Office within three (3) business days after the execution thereof. The Parties agree to record a reconveyance of the Easement upon termination of the Amended and Restated Ground Lease.

13. Miscellaneous.

13.1 Payments and Notices. Any notice to be given or other document to be delivered by either Party to the other Party may be given by personal delivery or may be deposited in the United States mail in the State of California, duly registered or certified, with postage prepaid, and addressed to the Party for whom intended as follows, or it

may be sent via facsimile and will be duly given upon receipt of successful transmission to the following facsimile numbers:

To City:	City of Lodi Attn: City Manager 221 West Pine Street Lodi, CA 95240 Facsimile: 209-333-6807
To NCPA:	Northern California Power Agency Attn: Assistant General Manager Generation Services 651 Commerce Drive Roseville, CA 95678 Facsimile: 916-783-7693

Either Party may from time to time by written notice to the other Party designate a different address which shall be substituted for the one specified above. If any notice or other document is sent by registered or certified mail, as provided above, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof.

13.2 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions in this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of either Party to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default under this. Agreement.

13.3 Holding Over. If NCPA holds over the Leased Premises (as that term is defined in the Amended and Restated Ground Lease) after the expiration of the term of the Amended and Restated Ground Lease with the consent of City, either express or implied, this Agreement shall likewise remain in full force and effect for as long as the Amended and Restated Ground Lease remains in full force and effect, subject to all the covenants, conditions and obligations in this Agreement.

13.4 Relationship of Parties. It is expressly understood and agreed that merely as a result of this Agreement, the City does not in any way nor for any purpose become a partner of NCPA or a joint venture with NCPA in the conduct of NCPA's business or otherwise, except as provided by the Phase 2 and Phase 3 combustion turbine project number 2 agreements or the LEC agreements or any similar agreement.

13.5 Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement will continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

13.6 Attorneys' Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover attorneys' fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

13.7 Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

13.8 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender includes the feminine and neuter genders, and the word "person" includes corporation, firm, entity or association.

13.9 Headings and Titles. The marginal headings or titles to the sections of this Agreement are not a part of this Agreement and have no effect upon the construction or interpretation of any part of this Agreement.

13.10 Entire Agreement. This Agreement and the Exhibits hereto contain the entire agreement between the Parties with respect to the matters covered hereunder, and no other previous agreement, statement or promise made by any Party hereto which is not contained in this Agreement shall be binding or valid.

13.11 Force Majeure. Except as to the payment of rent, neither of the Parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the

control of the Parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Agreement.

13.12 Termination. NCPA may terminate this Agreement at any time upon six (6) months advance notice, but in all cases, the Easement granted in this Agreement will terminate concurrently with the termination of the Amended and Restated Ground Lease.

13.13 Counterparts. This Agreement may be executed in counterparts each of which is deemed an original, and all such counterparts constitute one and the same Agreement.

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

CITY:	**NCPA:**
CITY OF LODI, a municipal corporation	NORTHERN CALIFORNIA POWER AGENCY
_____	_____
Blair King, City Manager	James H. Pope, General Manager
Date:_____	Date:_____
ATTEST:	ATTEST
_____	_____
Randi John, J.D., City Clerk	Denise Dow, Assistant Secretary
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____

D. Stephen Schwabauer,
City Attorney

Michael F. Dean,
General Counsel

STATE OF CALIFORNIA)

) ss

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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 hislherltheir authorized capacity(ies), and that by hislherltheir 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.

Notary Public

STATE OF CALIFORNIA)

) ss

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) islare subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in hislherltheir authorized capacity(ies), and that by hislherltheir 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.

Notary Public

EXHIBIT LIST

Exhibit A	Map of the Property
Exhibit B	Legal Description
Exhibit C	Memorandum of Easement

EXHIBIT C

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 26.00 feet in width, the sidelines of which shall be shortened or extended to terminate respectively at the South line of said Section 24 and 20.00 feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North 89°20'43" West 838.23 feet. Thence from said Point of Beginning North 20°19'35" West 798.18 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds.

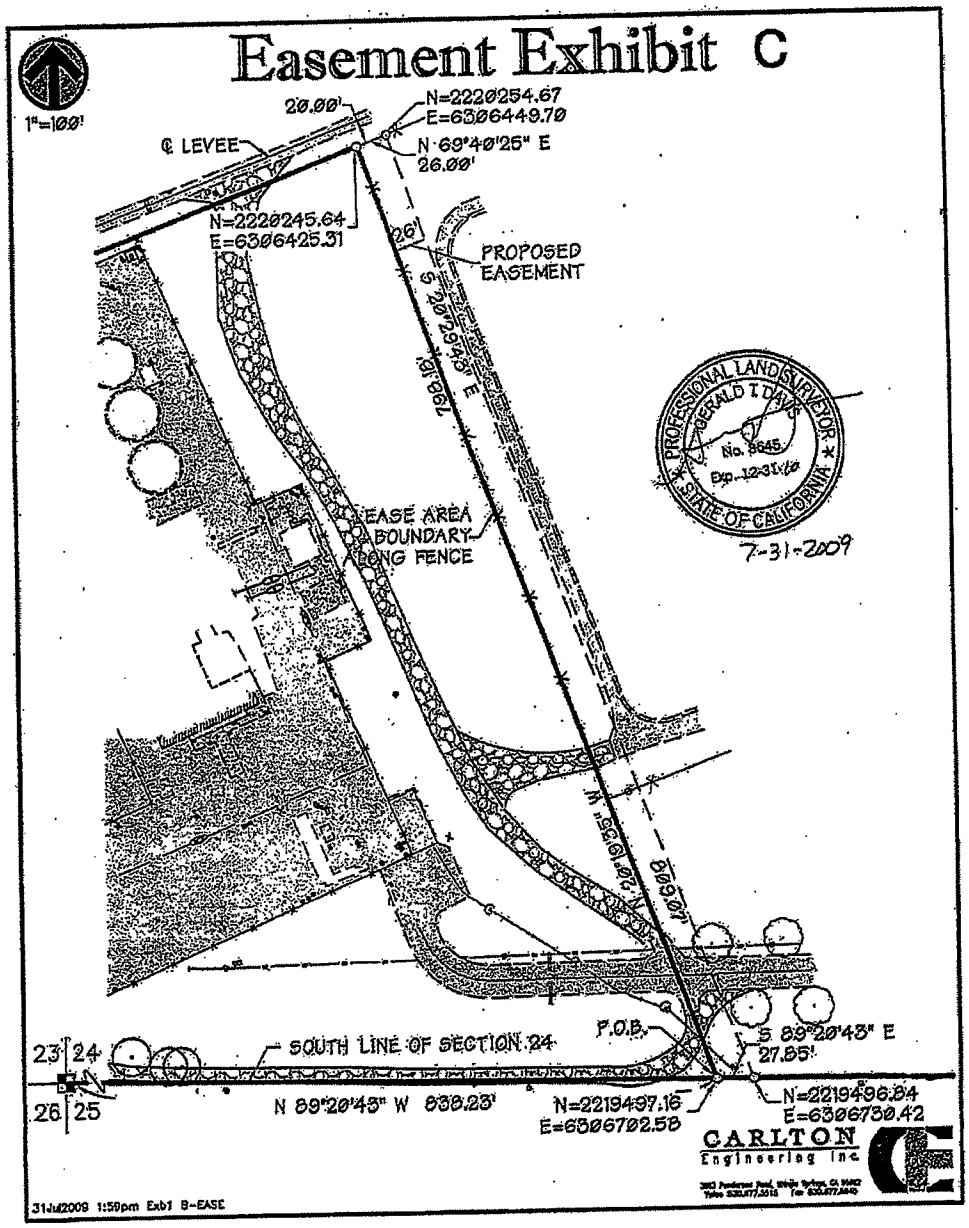
Containing 0.5 Acres (20,885 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.

PROFESSIONAL LAND SURVEYOR
GERALD T. KING
No. 6645
Exp. 12-31-10
STATE OF CALIFORNIA

7-31-2009

Easement Exhibit C



Recording Requested by
and when Recorded, return to:

Northern California Power Agency
Attn: Assistant General Manager
651 Commerce Drive
Roseville, CA 95678

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

MEMORANDUM OF EASEMENT

This Memorandum of Easement (this **"Memorandum"**) dated as of _____, 2009, is made by and between the City of Lodi, a municipal corporation **("City")** and the Northern California Power Agency, a California joint powers agency **("NCPA).** The City and NCPA are jointly referred to as the **"Parties."**

Pursuant to an Easement Agreement by and between the City and NCPA (the **"EasementAgreement"),** the City has granted to NCPA an easement, on the terms and conditions set forth in the Easement Agreement on real property located in the City of Lodi, San Joaquin County, California and more particularly described in Attachment 1 attached hereto and incorporated herein (the **"EasementArea").** NCPAs use of the Easement Area shall be exclusive, with the exception of the City's right to use the Easement Area for maintenance, construction or reconstruction of the berm shown on Attachment 2 attached hereto and incorporated herein.

This Memorandum incorporates all of the terms and provisions of the Easement Agreement as though fully set forth herein. The term of the Easement Agreement runs concurrently with the term of the Amended and Restated Ground Lease on the dominant estate.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Easement Agreement. In the event of any inconsistency between this Memorandum and the Easement Agreement, the Easement Agreement shall control.

This Memorandum and the Easement Agreement shall bind and inure to the benefit of the Parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first written above.

CITY:	**NCPA:**
CITY OF LODI, a municipal corporation	NORTHERN CALIFORNIA POWER AGENCY
_____	_____
Blair King, City Manager	James H. Pope, General Manager
Date:_____	Date:_____

ATTACHMENT LIST

Attachment 1	Map of Property
Attachment 2	Legal Description

EXHIBIT C

Roadway and Incidental Purposes Easement

All that real property situated in the Southwest one-quarter of Section 24, Township 3 North, Range 5 East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book 1023 Page 463 Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land 26.00 feet in width, the sidelines of which shall be shortened or extended to terminate respectively at the South line of said Section 24 and 20.00 feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

BEGINNING AT A POINT on the South line of said Section 24 from which the Southwest corner of said Section 24 bears North 89°20'43" West 838.23 feet. Thence from said Point of Beginning North 20°19'35" West 798.18 feet to a point measuring 20.00 feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds.

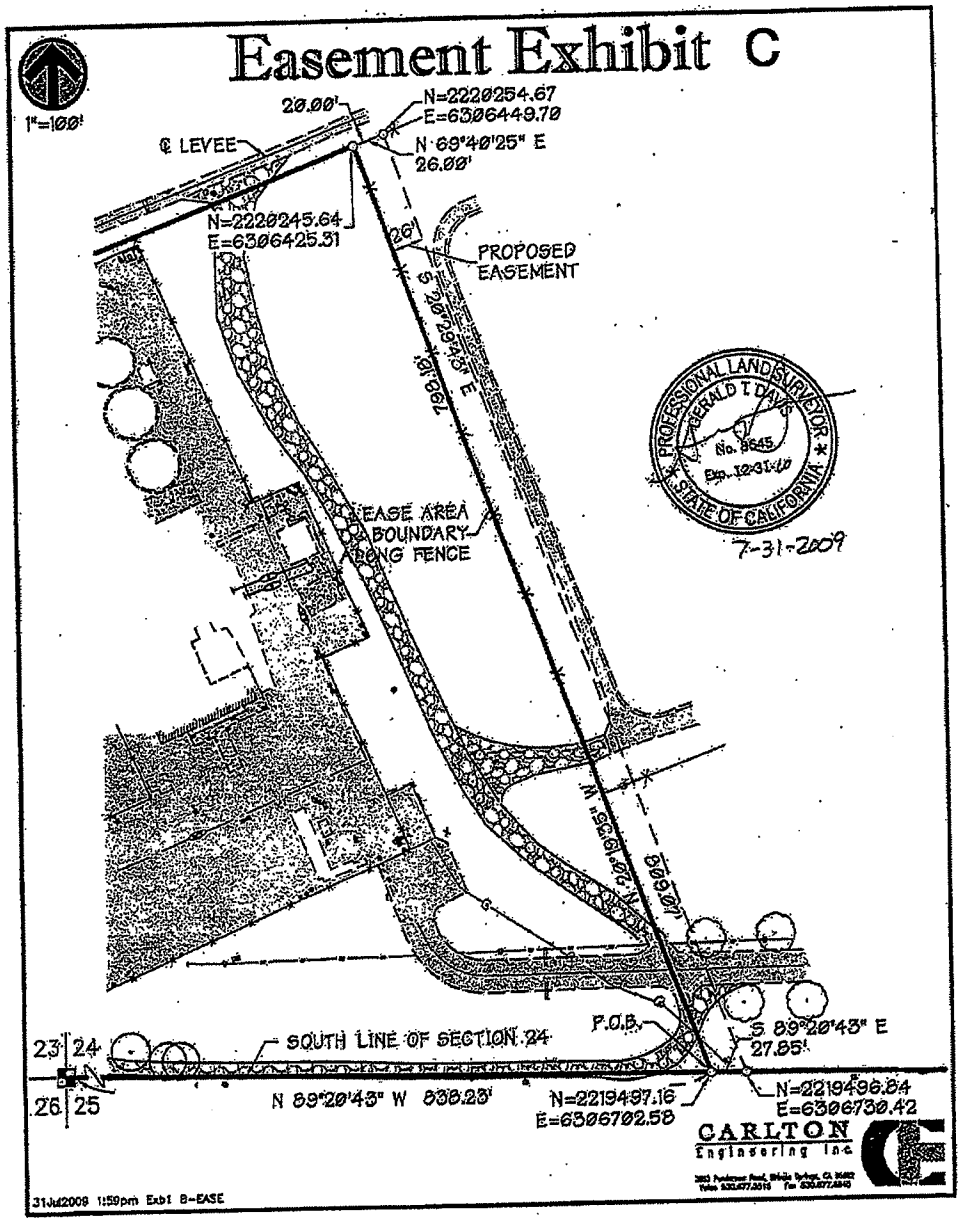
Containing 0.5 Acres (20,885 Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book 32 Page 175 with San Joaquin County Recorder's Office.

PROFESSIONAL LAND SURVEYOR
GERALD L. MILLS
No. 8545
Exp. 12-31-10
STATE OF CALIFORNIA

7-31-2009

Easement Exhibit C



PROFESSIONAL LAND SURVEYOR
GERALD T. DAVIS
No. 8645
Exp. 12-31-10
STATE OF CALIFORNIA

7-31-2009

STATE OF CALIFORNIA)

) ss

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Notary Public

STATE OF CALIFORNIA)

) ss

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

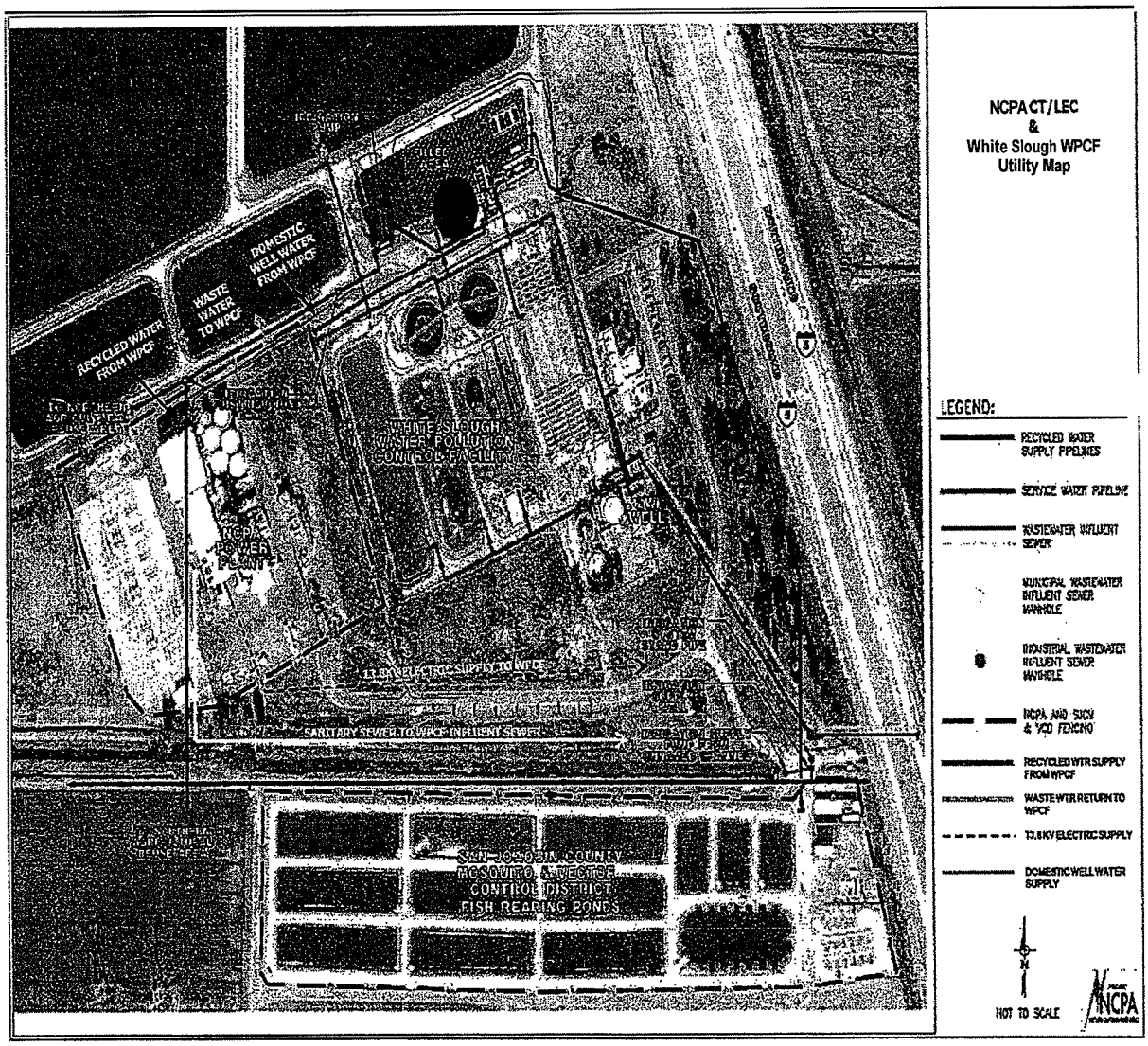
WITNESS my hand and official seal.

Notary Public

1298448.2

EXHIBIT D

UTILITIES



Lodi Energy Center Participants	Project Participation Percentage	Nominal Project Capacity (MW)
Azusa	2.7857%	7.80
BART	6.2500%	17.50
Biggs	0.2679%	0.75
CDWR	33.3332%	93.33
Gridley	1.9643%	5.50
Healdsburg	1.5714%	4.40
Lodi	9.3561%	26.20
Lompoc	2.0000%	5.60
Modesto ID	10.7143%	30.00
Plumas-Sierra	0.7857%	2.20
Port of Oakland	1.1607%	3.25
PWRPA	2.6679%	7.47
Silicon Valley Power	25.3571%	71.00
Ukiah	1.7857%	5.00
Total	100.0000%	280.00

AGENDA ITEM J-02

CITY OF LODI
COUNCIL COMMUNICATION
TM

AGENDA TITLE: Consider Notice of Cost to Grant Two Years Additional Service Credit Under Government Code Section 20903.

MEETING DATE: May 5, 2010

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Consider notice of cost to grant two years additional service credit Government Code Section 20903.

BACKGROUND INFORMATION: The CalPERS two-year additional service credit program, as established under California Government Code Section 20903, allows the City (as part of a budget reduction process) to offer a retirement incentive of two years service credit to employees. The current PERS contract allows the City, with Council approval, to offer the program to Miscellaneous and Fire (sworn) employees.

The specific resolution would limit the two-year additional service credit incentive to the current Street Maintenance Worker II, Park Maintenance Worker II, and Fire Captain classifications.

The program requires that participating employees be at least 50 years of age, have five years of service credit with PERS, and retire within a specified period of time as identified by the City. The intended effect of offering this incentive is an overall reduction in the workforce.

Government Code Section 7507 requires that the costs to provide this benefit as stated in Attachment A be made public at a public meeting at least two weeks prior to the adoption of the resolution. This communication serves as that public notice.

As stated earlier, the cost of the program must be made public for a minimum of two weeks. At the May 19, 2010 Council meeting, staff will present the resolution adopting the two years service credit purchase for those employees who will be offered this retirement option.

FISCAL IMPACT: The cost of this benefit will be amortized over 20 years and included in the City's CalPERS employer contribution rate beginning in FY 2012/2013.

FUNDING AVAILABLE: Not applicable.

Respectfully submitted,

_____
Dean Gualco, Human Resources Manager

APPROVED: _____
Blair King, City Manager

ATTACHMENT A

TWO YEARS ADDITIONAL SERVICE CREDIT
Section 20903

Estimated Employer Cost

Classification	Name	Annual Pay Rate	Cost Factor	PRSA* Yes or No	No PRSA	COLA 3%, 4%, 5%	Additional Employer Contributions
Streets Maintenance Worker II	Daniel Guerrero	$ 46,411.48	0.56	Yes		No	$ 25,990.43
Streets Maintenance Worker II	Dana Watt	$ 46,411.48	0.47	Yes		No	$ 21,813.40
Park Maintenance Worker II	Jorge Estrella	$ 44,207.26	0.53	Yes		No	$ 23,429.85
Park Maintenance Worker II	Antonio Gonzalez	$ 44,207.26	0.57	Yes		No	$ 25,198.14
Fire Captain	Pete Iturraran	$ 86,842.68	0.87	No	0.95	No	$ 71,775.48
Fire Captain	Rick Gerlack	$ 86,842.68	0.87	No	0.95	No	$ 71,775.48
Fire Captain	Timothy Thalken	$ 86,842.68	0.87	No	0.95	No	$ 71,775.48
Fire Captain	Brian Jungeblut	$ 86,842.68	0.87	No	0.95	No	$ 71,775.48

Salary Savings: $ 528,608.20

Estimated Increase in Employer Contribution: 0.001267345

(Based on $22,857,080 annual payroll for Misc. & Fire)

Actual Annual Cost: $ 28,297.87

AGENDA ITEM J-03

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Presentation on Major Components of Fiscal Year 2010/11 Budget

MEETING DATE: May 5, 2010

PREPARED BY: City Manager

RECOMMENDED ACTION: Receive presentation on major components of Fiscal Year 2010/11 Budget.

BACKGROUND INFORMATION: The Fiscal Year (FY) 2010/11 budget will be balanced with revenues in excess of expenses. The budget has several components, policy decisions, and a major cornerstone. The major cornerstone of the FY 2010/11 budget is proposed labor agreements that prevent the necessity of lay-offs and major service reductions. Currently, management is meeting with all labor groups and agreements are expected to be reached soon. Until, at a minimum, tentative agreements have been reached, it is premature to release the FY 2010/11 budget. Again, it is expected that agreements are forthcoming in the very near future. A total of eight agreements need to be reached.

The budget is on schedule to be ready for public review mid-May in time for adoption in early June.

It is proposed, depending upon the status of the budget, to provide the Council with the basic information and major variables that make up the FY 2010/11 budget.

For example:

- General Fund Budget will be balanced without the use of reserves;
- Status of unrestricted General Fund reserves;
- Impacts of the Lodi Energy Center on the budget;
- Unintended consequences of cutting costs in the FY 2009/10 budget – the build up of Compensatory Time Off;
- Impact of increased cost for retirement and health insurance;
- The proportionate distribution of the General Fund revenue among departments;
- Efforts to reduce Police Department costs;
- No proposed changes in funding for arts programs, 4th of July, economic development, and contribution to organizations;
- Labor costs; and
- Capital projects.

FISCAL IMPACT: The All Funds budget expenditures for FY 2010/11 are $179,630,540. The General Fund is $41,321,750.

_____
Blair King
City Manager

APPROVED: _____
Blair King, City Manager