



# LODI CITY COUNCIL

Carnegie Forum  
305 West Pine Street, Lodi

## AGENDA – REGULAR MEETING

Date: May 18, 2016

Time: Closed Session 6:45 p.m.  
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

**Jennifer M. Ferraiolo**  
City Clerk

Telephone: (209) 333-6702

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

**C-1 Call to Order / Roll Call**

**C-2 Announcement of Closed Session**

- a) Threatened Litigation: Government Code §54956.9(b); One Application; Potential Suit by Rodney Olsen against City of Lodi; WCAB Claim No. CLMN-547486; (DOI: 8/21/2012) (CM)

**C-3 Adjourn to Closed Session**

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

**C-4 Return to Open Session / Disclosure of Action**

**A. Call to Order / Roll Call**

**B. Presentations**

- B-1 Quarterly Update from the Greater Lodi Area Youth Commission (PRCS)

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

- C-1 Receive Register of Claims in the Amount of \$4,104,147.04 (FIN)
- C-2 Approve Minutes (CLK)
  - a) April 20 and May 4, 2016 (Regular Meetings)
  - b) April 26 and May 3, 2016 (Shirtsleeve Sessions)
- C-3 Accept Quarterly Report of Purchases between \$10,000 and \$20,000 (CM)
- C-4 Accept Quarterly Investment Report as Required by the City of Lodi Investment Policy (CM)
- Res. C-5 Adopt Resolution Authorizing City Manager to Purchase Law Enforcement Carbine Rifles through Adamson Police Products (\$54,240.44) and Trijicon Optics (\$31,347) and Appropriating Funds (\$85,587.44) (PD)
- Res. C-6 Adopt Resolution Awarding Bids for Purchase of Electric Utility Wire and Cable from AWG, of Miami, Florida (\$51,358.86) and Pacific Utilities, of Concord (\$17,658) (EU)
- C-7 Accept Donation from Michael-David Family Foundation for Summer Recreation Program (PRCS)
- Res. C-8 Adopt Resolution Authorizing City Manager to Execute Agreement with Vigilant Solutions for LEARN Software, Purchase Automated License Plate Readers, and Authorize Future Purchases (\$22,490) (PD)
- Res. C-9 Adopt Resolution Approving Agreement Between City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for the Summer Swim League Program (PRCS)
- Res. C-10 Adopt Resolution Approving Activity Guide Printing Agreement with Casey Printing, Inc., of King City, for Fiscal Year 2016/17 (\$21,700.89) and Authorize Staff to Execute Two One-Year Extensions (PRCS)
- Res. C-11 Adopt Resolution Authorizing City Manager to Execute Advisory Services Attachment to Single Member Services Agreement with Northern California Power Agency and Authorizing City Attorney to Execute Conflicts Waiver with Meyers Nave for Astoria 2 Solar Project (EU)

C-12 Receive Report Regarding Communication Pertaining to Senate Bill 1069 (Wieckowski) – Accessory Dwelling Units (CLK)

**D. Comments by the Public on Non-Agenda Items**

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

Public comment may only be made on matters within the Lodi City Council's jurisdiction (Government Code Section 54954.3, Lodi City Council Protocol Manual Section 6.3I). The Council cannot take action or deliberate on items that are not on this agenda unless there is an emergency and the need to take action on that emergency arose after this agenda was posted (Government Code Section 54954.2(b)(2)). All other items may only be referred for review to staff or placement on a future Council agenda.

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

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

**G. Public Hearings**

Ord. G-1 Public Hearing to Introduce Ordinance to Modify the Zoning Code to Require Design Review  
(Introduction) for Multi-Family Structures in the Medium Density Residential and High Density Residential Zoning Designations (CD)

**H. Communications – None**

**I. Regular Calendar**

I-1 Receive Electric Utility Strategic Planning Customer Survey Report by GreatBlue Research, Inc. (EU)

I-2 Provide Direction Regarding City Council Representation for Electric Utility Strategic Planning (EU)

I-3 Provide Direction Regarding Lodi Electric Utility Customer Advisory Board (EU)

Ord. I-4 Introduce Ordinance Amending Lodi Municipal Code Chapter 1.08 – General Penalty – by  
(Introduction) Repealing and Reenacting Section 1.08.010 (A), “General Penalty” (CA)

Ord. I-5 Introduce Ordinance Amending Lodi Municipal Code Title 5 – Permits and Regulations – by  
Ord. Repealing and Reenacting Chapter 5.24, “Taxicab Transportation Service,” and Chapter 5.25,  
(Introduction) “Pedicabs,” in Their Entirety to Update, Standardize, and Clarify Appeal Procedures, Renewal Procedures and Requirements, Insurance Requirements, Health and Safety Requirements, and Definitions (CA)

**J. Ordinances – None**

**K. 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.

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Jennifer M. Ferraiolo  
City Clerk

*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 72 hours prior to the meeting date. Language interpreter requests must be received at least 72 hours in advance of the meeting to help ensure availability. Contact Jennifer M. Ferraiolo at (209) 333-6702. Solicitudes de interpretación de idiomas deben ser recibidas por lo menos con 72 horas de anticipación a la reunión para ayudar a asegurar la disponibilidad. Llame a Jennifer M. Ferraiolo (209) 333-6702.*

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# CITY OF LODI COUNCIL COMMUNICATION

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**AGENDA TITLE:** Quarterly Update from the Greater Lodi Area Youth Commission

**MEETING DATE:** May 18, 2016

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

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**RECOMMENDED ACTION:** Receive quarterly update from Greater Lodi Area Youth Commission (LYC).

**BACKGROUND INFORMATION:** The LYC desires to stay more connected to the City Council and the community by having current commissioners provide a quarterly report on the activities of the Commission.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

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Jeff Hood  
Parks, Recreation, and Cultural Services Director

Prepared by: JCW

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APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager



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# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Receive Register of Claims through April 28, 2016 in the total amount of \$4,104,147.04

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Internal Services Director

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**RECOMMENDED ACTION:** Receive the attached Register of Claims for \$4,104,147.04

**BACKGROUND INFORMATION:** Attached is the Register of Claims in the amount of \$4,104,147.04 through 4/28/16. Also attached is Payroll in the amount of \$1,372,330.62

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** As per attached report.

\_\_\_\_\_  
Jordan Ayers  
Internal Services Director

JA/nes

Attachments

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**APPROVED:** \_\_\_\_\_  
Stephen Schwabauer, City Manager

# Council Report

## City of Lodi, CA - v10.5 Live

### 4/15/2016 through 4/28/2016

Fund			Amount
100 - General Fund			1,761,589.61
120 - Library Fund			20,925.04
140 - Expendable Trust			29,763.41
200 - Parks Rec & Cultural Services			75,218.40
205 - Boating & Waterways Grant			1,472.00
270 - Comm Dev Special Rev Fund			14,328.13
301 - Gas Tax-2105 2106 2107			32,463.75
302 - Gas Tax -2103			20.00
303 - Measure K Funds			20,230.90
307 - Federal - Streets			25,497.12
331 - LTF-Pedestrian/Bike			20,081.00
350 - H U D			2,979.72
432 - Parks & Rec Capital			4,152.61
434 - Arts in Public Places-IMF			300.00
500 - Electric Utility Fund			277,806.50
501 - Utility Outlay Reserve Fund			54,813.60
504 - Public Benefits Fund			50,592.06
508 - Environmental Compliance			322.41
530 - Waste Water Utility Fund			82,669.97
531 - Waste Wtr Util-Capital Outlay			910,067.41
560 - Water Utility Fund			64,001.92
561 - Water Utility-Capital Outlay			2,932.64
565 - PCE/TCE Rate Abatement Fund			1,012.00
590 - Central Plume			107,010.00
600 - Dial-a-Ride/Transportation			307,084.99
601 - Transit Capital			46,675.28
603 - Prop 1B - TSSSDRA			15.93
650 - Internal Service/Equip Maint			68,840.56
655 - Employee Benefits			117,827.98
801 - L&L Dist Z1-Almond Estates			3,452.10
<b>Total</b>			<b>4,104,147.04</b>

**Council Report: Payroll**  
**City of Lodi, CA - v10.5 Live**  
**Pay Period 4/24/2016**

<b>Fund</b>	<b>Description</b>	<b>Amount</b>
100	General Fund	798,475.44
120	Library Fund	26,089.93
200	Parks Rec & Cultural Services	123,836.55
214	LPD-OTS Grants	10,231.95
219	LPD-ABC Grant	1,948.70
270	Comm Dev Special Rev Fund	28,265.90
301	Gas Tax-2105 2106 2107	29,426.25
500	Electric Utility Fund	173,055.86
530	Waste Water Utility Fund	130,382.89
560	Water Utility Fund	21,159.32
600	Dial-a-Ride/Transportation	8,823.24
650	Internal Service/Equip Maint	20,634.59
<b>Report Total</b>		<b>1,372,330.62</b>



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# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Approve Minutes  
a) April 20, 2016 (Regular Meeting)  
b) April 26, 2016 (Shirtsleeve Session)  
c) May 3, 2016 (Shirtsleeve Session)  
d) May 4, 2016 (Regular Meeting)

**MEETING DATE:** May 18, 2016

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Approve the following minutes as prepared:  
a) April 20, 2016 (Regular Meeting)  
b) April 26, 2016 (Shirtsleeve Session)  
c) May 3, 2016 (Shirtsleeve Session)  
d) May 4, 2016 (Regular Meeting)

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

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

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Jennifer M. Ferraiolo  
City Clerk

Attachments

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APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, APRIL 20, 2016**

- 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 20, 2016, was called to order by Mayor Chandler at 7:02 p.m.

Present: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Absent: Mayor Pro Tempore Kuehne

Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

B. Presentations

B-1 Library Volunteer of the Year Award (LIB)

Mayor Chandler recognized Nancy Potts for her service with the Library Foundation, Gene Chow for his service as a Homework Help volunteer, and Diane Freggiaro for her service with Friends of the Library and the Friends Bookstore.

Ms. Potts announced that the Library Foundation's annual dinner is October 1 and that the Library is accepting donations for its Teen Scene and many other Library programs. She encouraged the public to take advantage of the Homework Help Program and to donate used books to the Friends of the Library bookstore.

Mr. Chow stated he initially began tutoring adults, but eventually migrated toward tutoring youth because of the greater benefit, value, and longer-lasting affect tutoring young people has on a community. He further stated he was proud of the City's efforts on cost control.

Ms. Freggiaro stated she was proud of what the Friends of the Library and all of its dedicated, hard-working volunteers do on an on-going basis. She encouraged the public to visit the Friends' bookstore and to donate used books.

Radhika Rao, Vice President of the Library Foundation, thanked Council and staff for their continued support of the Library; presented each with homemade cookies; and congratulated the three well-deserving award recipients.

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

Council Member Johnson made a motion, second by Council Member Nakanishi, 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, Council Member Nakanishi, and Mayor Chandler  
Noes: None  
Absent: Mayor Pro Tempore Kuehne

C-1 Receive Register of Claims in the Amount of \$3,334,493.30 (FIN)

Claims were approved in the amount of \$3,334,493.30.

C-2 Approve Minutes (CLK)

The minutes of March 16, 2016 (Regular Meeting), April 5, 2016 (Shirtsleeve Session), April 6, 2016 (Regular Meeting), and April 12, 2016 (Shirtsleeve Session) were approved as written.

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for White Slough Water Pollution Control Facility 2016 Improvements Corrosion Repair Project (PW)

Approved plans and specifications and authorized advertisement for bids for White Slough Water Pollution Control Facility 2016 Improvements Corrosion Repair Project.

C-4 Approve Plans and Specifications and Authorize Advertisement for Bids for Shady Acres Stormwater Pump Replacement Project (PW)

Approved plans and specifications and authorized advertisement for bids for Shady Acres Stormwater Pump Replacement Project.

C-5 Adopt Resolution Awarding Bid for Purchase of One 60/12kV Power Transformer from Virginia Transformer Corporation, of Roanoke, Virginia (\$476,814) (EU)

Adopted Resolution No. 2016-48 awarding the bid for purchase of one 60/12kV power transformer from Virginia Transformer Corporation, of Roanoke, Virginia, in the amount of \$476,814.

C-6 Adopt Resolution Awarding Contract for Lodi Public Library Children's Area Expansion Project to Swierstok Enterprise, Inc., dba Pro Builders, of Orangevale (\$263,000), Accepting Donation from Library Foundation (\$152,000), and Appropriating Funds (\$304,000) (PW)

Adopted Resolution No. 2016-49 awarding the contract for the Lodi Public Library Children's Area Expansion Project to Swierstok Enterprise, Inc., dba Pro Builders, of Orangevale, in the amount of \$263,000; accepting donation from Library Foundation in the amount of \$152,000; and appropriating funds in the amount of \$304,000.

C-7 Accept Public Improvements for Saint Anne's Plaza Project (PW)

Accepted public improvements for Saint Anne's Plaza Project.

C-8 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Solenis, LLC, of Wilmington, Delaware, to Purchase Dewatering Polymer for White Slough Water Pollution Control Facility and Authorizing Public Works Director to Execute Extension (\$250,000) (PW)

Adopted Resolution No. 2016-50 authorizing the City Manager to execute a Professional Services Agreement with Solenis, LLC, of Wilmington, Delaware, to purchase dewatering polymer for White Slough Water Pollution Control Facility and authorizing the Public Works Director to execute an extension, in the amount of \$250,000.

C-9 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with WMB Architects, Inc., of Stockton, for Design Services for Lodi Library Teen Scene

Project (\$50,000), Accepting Donation from Library Board of Trustees (\$50,000), and Appropriating Funds (\$50,000) (PW)

Adopted Resolution No. 2016-51 authorizing the City Manager to execute a Professional Services Agreement with WMB Architects, Inc., of Stockton, for design services for the Lodi Library Teen Scene Project in the amount of \$50,000; accepting donation from Library Board of Trustees in the amount of \$50,000; and appropriating funds in the amount of \$50,000.

C-10 Authorize City Manager to Execute Amended Option to Lease and Associated Ground Lease with Pacific Gas and Electric Company for the Location of a Compressed Air Energy Storage Facility at White Slough Water Pollution Control Facility (CM)

This item was pulled from the Consent Calendar at the request of the City Manager in order to respond to a citizen's concerns expressed in the Blue Sheet item (filed).

City Manager Schwabauer stated that he met with citizen Mike Lusk regarding his contention that lease revenue from the White Slough Water Pollution Control Facility is enterprise fund revenue and, as a result of Proposition 218, required to be kept in the enterprise fund. He explained that staff's position is that it is general fund revenue based on the purchase documents for the land, which coincides with the issuance of the tax-funded bonds. The taxing power was exercised by Council to create a number of revenue sources for projects, which included the acquisition of the land that is proposed to be leased. The tax is a function of the general fund and the source of revenue was general fund revenue. Mr. Schwabauer stated that documents submitted by Mr. Lusk in the Blue Sheet item do not substantiate his position. The fact that the land was acquired through a bond supported by a tax measure supports staff's argument.

In response to Council Member Mounce, Mr. Schwabauer stated this measure was a property tax from 1965 to 1995. With regard to the Blue Sheet item that referenced a 1997 staff report stating that lease revenue would go to the sewer utility reserves, Mr. Schwabauer opined that, at the time, the budget process and fiscal situation was such that a characterization of how to fund projects was unnecessary; however, the current fiscal situation requires that an evaluation be done to ensure the general fund collects the monies it is entitled to. Council Member Mounce questioned how Mr. Lusk's concerns could be eased in this regard, stating she too does not want to make a misstep by putting the money into the general fund if it rightfully belongs in the utility fund or by burdening the ratepayers with increased rates. Mr. Schwabauer believed that neither staff nor Council will convince Mr. Lusk otherwise, but he was willing to meet with him further to review the information and documentation. He pointed out that his concern is not an issue for today because the lease option commences in 2021 at the earliest and the lease revenue will not be realized for many years. The reason for entering the lease now is because this is a complicated construction project that requires environmental and engineering review with a lengthy public approval process. In order to begin the review process, PG&E needs site control today. Mr. Schwabauer believed there was significant time to further analyze Mr. Lusk's concerns, but for the time being nothing has been presented that changes his opinion that the land was purchased with general fund revenue. In further response to Council Member Mounce, Mr. Schwabauer confirmed that, if Mr. Lusk's argument was proven, there would be time to amend the issue relating to lease revenue.

City Attorney Magdich stated that the City would receive option income of \$50,000 per year for six years, so the only exposure would be \$350,000. She further confirmed that staff has discussed this matter and reviewed the documents and concur that the property was purchased with general fund money and the revenue can be returned to the general fund reserve. Further, this is not a Proposition 218 issue because it was not adopted by voters until 1996 and there is no provision that Proposition 218 is retroactive.

Council Member Johnson commended Mr. Lusk for his perseverance on this issue and suggested staff review the bond documents with the underwriter. Mr. Schwabauer stated that bond counsel reviewed this opinion in context with the most recent bond issue and confirms staff's characterization, but he stated that staff could hire another attorney for a second opinion.

Council Member Nakanishi stated he was satisfied with staff's opinion and it would be counterproductive to continue researching the matter.

At Council Member Mounce's suggestion, Mr. Schwabauer stated he would contact the Assessor's Office to locate tax records with the line item regarding the taxes imposed by the City. Council Member Mounce also commended Mr. Lusk for taking the time to research the issue and study City budgets.

Mike Lusk stated he is uncertain about whether or not staff's supposition is correct and explained that his motivation stems from the citizen outcry regarding electric utility rates and the hope they could be reduced. He disagrees with the argument that it is a general tax, stating the documentation he reviewed indicated it would be an additional tax added to the tax and placed into a fund solely designated for the sewer building. He believed there were too many unanswered questions that affect both the PG&E and NCPA leases and that he will continue to review the documents.

In response to Council Member Nakanishi, Mr. Schwabauer stated that the water utility paid the Parks and Recreation Department for the land at the Surface Water Treatment Plant.

In response to Council Member Mounce, Mr. Schwabauer stated that PG&E needs to move forward with site control or find another site; therefore, he requested that Council take action on this item tonight, adding that staff can still address Mr. Lusk's concerns in the future.

Council Member Johnson made a motion, second by Council Member Nakanishi, to authorize the City Manager to execute Amended Option to Lease and Associated Ground Lease with Pacific Gas and Electric Company for the location of a Compressed Air Energy Storage Facility at White Slough Water Pollution Control Facility.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

C-11 Adopt Resolution Authorizing City Manager to Execute and Deliver All Documents Related to Funding Agreement for the White Slough Water Pollution Control Facility Storage Expansion Project (PW)

Adopted Resolution No. 2016-52 authorizing the City Manager to execute and deliver all documents related to the funding agreement for the White Slough Water Pollution Control Facility Storage Expansion Project.

C-12 Set Public Hearing for May 4, 2016, to Consider Adoption of the 2016/17 Annual Action Plan for the Community Development Block Grant Program (CD)

Set public hearing for May 4, 2016, to consider adoption of the 2016/17 Annual Action Plan for the Community Development Block Grant Program.

D. Comments by the Public on Non-Agenda Items

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

Public comment may only be made on matters within the Lodi City Council's jurisdiction (Government Code Section 54954.3, Lodi City Council Protocol Manual Section 6.3I). The Council cannot take action or deliberate on items that are not on this agenda unless there is an emergency and the need to take action on that emergency arose after this agenda was posted (Government Code Section 54954.2(b)(2)). All other items may only be referred for review to staff or placement on a future Council agenda.

Mike Lusk requested that Council hold a Shirtsleeve Session to discuss the possibility of a sales tax measure for the purpose of funding Police and Fire and the looming \$91 million California Public Employees Retirement System debt.

Mr. Schwabauer stated that Council will discuss a potential sales tax measure at its May 3, 2016, Shirtsleeve Session.

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

Council Member Mounce stated that the City Clerk tracks Council Member requests that go back to early 2014, adding that many of the requests have gone unanswered. She requested that staff devote time to resolving the pending items once the budget sessions are completed.

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

None.

G. Public Hearings

G-1 Public Hearing to Consider Adopting Resolution Approving the Automated License Plate Reader System Software (Vigilant/LEARN) Lodi Police Department Usage Policy (PD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Chandler called for the public hearing to consider adopting resolution approving the Automated License Plate Reader (ALPR) System Software (Vigilant/LEARN) Lodi Police Department Usage Policy.

Captain David Griffin provided a PowerPoint presentation on the ALPR Policy. Specific topics of discussion included equipment and data usage, policy, Public Records Act requests, civil code, and employee accountability.

In response to Council Member Mounce, Captain Griffin stated that each user will have his or her own password to track who accessed the system and when. He further stated that he would provide Council with information on how often the passwords will change.

City Attorney Magdich stated that, with regard to Public Records Act requests, the Supreme Court ruled that these records are privileged and cannot be produced; only collected for law enforcement purposes. Captain Griffin stated that the only data collected is a photograph of the car and license plate, along with the date, time, and location.

Mayor Chandler opened the public hearing for public comment.

Alex Aliferis expressed his concern about potential violations of the Fourth Amendment, tracking of citizens, what data the system will store and for how long, searches without warrants, if it will hinder officers from taking care of other matters, if the information will be sold, and if this will increase future lawsuits on violations of privacy.

City Manager Schwabauer responded that the City will not sell the information as it is not publicly available and considered by the courts to be privileged and not subject to the Public Records Act; the data is stored for one year on a rolling calendar and deleted unless it is evidence of a crime; and the search and seizure law is not applicable when one enters a public sphere. Ms. Magdich pointed out that this is governed by the Civil Code, which is clear the information cannot be sold or given to anyone not in law enforcement and includes civil penalties that would apply. The legislation established that this practice not be implemented until the governing board and community have an opportunity learn about the system, training, and how the information is stored and collected. The draft policy is based on Lexipol and was reviewed by the City Attorney's Office that it conforms with policy.

Council Member Johnson questioned if the public should hear the full presentation, which was

provided at a previous Shirtsleeve Session, on how the system works. Council Member Nakanishi pointed out that the presentation was already given and he felt it was unnecessary to do so again. Mayor Chandler asked those in attendance if they were interested in receiving the full presentation, and no one indicated interest. Council Member Mounce stated she heard from neighbors about the system and that they were supportive, adding that she believed the public was adequately informed. Council Member Nakanishi added that this system will help deter gang activity, stating that Lodi is the only jurisdiction in this area that has not implemented this technology.

There being no further public comments, Mayor Chandler closed the public hearing.

In response to Council Member Mounce, Captain Griffin stated that six local jurisdictions are using this technology, including Stockton, Tracy, California Highway Patrol, and Manteca.

Council Member Nakanishi made a motion, second by Council Member Mounce, to adopt Resolution No. 2016-53 approving the Automated License Plate Reader System Software (Vigilant/LEARN) Lodi Police Department Usage Policy.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

G-2 Public Hearing to Consider Adopting Resolution Approving the 2015-2023 Draft Housing Element (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 Chandler called for the public hearing to consider adopting resolution approving the 2015-2023 Draft Housing Element.

City Planner Craig Hoffman provided a presentation regarding the 2015-2023 Draft Housing Element. Specific topics of discussion included housing needs of the City for 2015-2023; requirement that the Housing Element be reviewed and certified by the Department of Housing and Community Development (HCD) every five to eight years; HCD's review and comments on the City's proposed draft; request to include affordable housing and migrant farm worker housing; review process; and Council approval.

In response to Council Member Mounce, Mr. Hoffman confirmed that the requirement for affordable housing and migrant farm worker housing does not include funding from the State. He stated that Lodi does not look at who the housing is for and is more interested in diverse housing. HCD is satisfied with Lodi's response to the requirement. Council Member Mounce stated that Lodi should require affordable housing and projects such as duplexes and multi-family uses when development projects come forward. Mr. Hoffman agreed, stating that some of the new developments include diversity in housing and there are upcoming projects that propose multi-family housing units.

In response to Council Member Nakanishi, Mr. Hoffman stated that the Housing Element is a year-and-a-half process which includes: 1) review by the San Joaquin Council of Governments of housing needs; 2) staff update; 3) stakeholder meetings; 4) Planning Commission public hearing; 5) recommendation to Council for submittal to State for review; 6) comments from the State; 7) second review process; and 8) final Council approval and submittal to State for certification.

Mayor Chandler opened the public hearing for public comment.

Alex Aliferis stated that he resides on the east side, which has a high number of renters and vacant homes.

There being no further public comments, Mayor Chandler closed the public hearing.

Council Member Johnson made a motion, second by Council Member Mounce, to adopt Resolution No. 2016-54 approving the 2015-2023 Draft Housing Element.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

H. Communications

H-1 Monthly Protocol Account Report (CLK)

Council Member Mounce made a motion, second by Council Member Johnson, to approve the monthly Protocol Account Report through March 31, 2016.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

I. Regular Calendar

I-1 Ratification of Employment Agreement Entered into Between City Manager Stephen Schwabauer and Public Works Director Charles E. Swimley, Jr. (CM)

City Manager Schwabauer provided a presentation regarding ratification of employment agreement with Public Works Director Charles Swimley. Specific topics of discussion included appointment as Interim Director in December; positive performance review from the development community, Public Works Department, and City staff during those five months; Mr. Swimley's friendly, respectful, and responsive service to the community; and recommendation.

Council Member Mounce expressed support for Mr. Swimley's appointment, adding that, despite her aversion to the severance package in the contract, the City Manager's positive leadership has created an amazing team and she was willing to overlook that condition in the contract.

Mayor Chandler and Council Members Nakanishi and Johnson also expressed support for Mr. Swimley and his hard work, dedication, and responsiveness.

Mr. Swimley recognized his predecessors in the department and all they have done to build a strong, sound department and their contributions to the community. He expressed affinity for his staff and City employees and thanked his wife and family for their continued support throughout his career.

Council Member Mounce made a motion, second by Council Member Johnson, to ratify Employment Agreement entered into between City Manager Stephen Schwabauer and Public Works Director Charles E. Swimley, Jr.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None  
Absent: Mayor Pro Tempore Kuehne

- I-2 Adopt Resolution Approving Side Letter Agreements Amending the Memorandums of Understanding or Statement of Benefits Between the City of Lodi and its Various Bargaining Groups, Confidential Employees, Executive Management, and Council Appointees Regarding a One-Time, Non-PERSable Payment to Partially Off-Set Increased Medical Premiums for Employees Who Are Currently Enrolled in One of the City's Medical Plans and Appropriating Funds (\$50,850) (CM)

This item was pulled from the agenda and will be brought back to Council at its next meeting.

- I-3 Consider Notice of Cost to Grant Two Years Additional Service Credit Under Government Code Section 20903 (CM)

Human Resources Manager Adele Post provided a presentation regarding the notice of cost to grant two years additional service credit under Government Code Section 20903. Specific topics of discussion included notification requirements; California Public Employees Retirement System law that allows two-year service credit; application to specific classifications identified by an agency; eligibility; reduction in workforce; estimated cost savings of \$260,000 for two-year period versus the employer's cost of \$52,000 over a five-year amortization period of \$10,000 a year; and action at next meeting to adopt resolution.

In response to Council Member Mounce, City Manager Schwabauer confirmed that the employee in question is not being forced out as he plans to retire in the distant future and this incentive encourages him to retire early should he opt to take advantage of it. The employee has tenure and, if laid off, would bump another employee.

This item was for notification purposes only; no action required.

- J. Ordinances - None

- K. Adjournment

There being no further business to come before the City Council, Mayor Chandler adjourned the meeting at 8:26 p.m. in memory of Mr. Glenn Robison, retired Assistant City Engineer, who passed away on April 5, 2016.

ATTEST:

Jennifer M. Ferraiolo  
City Clerk

**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, APRIL 26, 2016**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, April 26, 2016, commencing at 7:01 a.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Pro Tempore Kuehne

Absent: Council Member Nakanishi, and Mayor Chandler

Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

B. Topic(s)

B-1 Receive Presentation Regarding Fiscal Year 2016/17 Budget (CM)

Deputy City Manager Jordan Ayers provided a PowerPoint presentation regarding the Fiscal Year 2016/17 budget. Specific topics of discussion included overview, housing, development, employment, labor relations, California Public Employees Retirement System (Cal-PERS) projections, General Fund revenues, top ten General Fund revenue sources, sales tax, property tax, in-lieu franchise (PILOT), in-lieu - VLF, operating transfers, fund balance, and reserve status.

In response to Mayor Pro Tempore Kuehne, City Manager Schwabauer stated that he expects the old Wal-Mart building will submit plans within the next six months and be completed within the following eight months. He stated that staff has a concept of what is in Wal-Mart, but beyond that, no specific numbers on how many jobs will be created.

In response to Council Member Mounce, Mr. Ayers stated that staff does not have the exact number on the impact of sick leave for part-time employees. The part-time sick leave law went into effect July 1, 2015, and through March 31, 2016, part-timers used 480 hours of sick leave at roughly \$7,000; however, the unknown component is how often another part-time employee covered those hours of the sick employee versus not covering the shift of the absent employee. Staff would need to meet with each department to ascertain those figures. At this time, there are part-time employees who have sick leave on the books, which is a potential liability of over \$36,000. Part-time sick leave is on a use-it-or-lose-it basis, and if an employee returns, the leave can still be applied.

In response to Council Member Mounce, Mr. Schwabauer explained that the Cal-PERS projections have increased, but staff has the five-year projection and is currently reviewing the data to see if the City can meet the higher rates.

Council Member Mounce questioned how the City could have 179 new utility accounts, to which Mr. Ayers explained that the number is a combination of new houses and businesses, adding that a new business coming into town counts as a new one, even though there is a net zero.

In response to Council Member Mounce, Mr. Ayers explained that Digital, Infrastructure, and Video Competition Act (DIVCA) funds are restricted to capital purchases used to get the City's message out to the public. For example, the funds could be used to repair the projector at the Carnegie Forum, but not to replace chairs or wallpaper.

In response to Mayor Pro Tempore Kuehne, Mr. Schwabauer stated that DIVCA funding could be used for WiFi at Hutchins Street Square only if it is used to project a message to a televised audience.

Council Member Mounce stated there was a time when Council held some contentious meetings at Hutchins Street Square and suggested DIVCA funding could be used for something like that if the facility were used in that manner with greater frequency. Mr. Schwabauer stated there have been some improvements at the Square paid for with DIVCA funds as it is Council's secondary televised meeting point, but each project needs to be evaluated on its own merits. In response to Council Member Mounce, Mr. Schwabauer stated he believed there was no policing agency over the Act and use of funds. Parks, Recreation, and Cultural Services Director Jeff Hood stated that DIVCA money can be used to build secondary television studios or for access and stated that the fiber optic system from the Carnegie Forum to Comcast could be extended to include the Square if televised meetings were held there or for the broadcast of local content. It could also help pay for infrastructure for video contact at other facilities, such as the Grape Bowl and Lodi Lake, to enhance broadcast capabilities.

In response to Council Member Johnson, Mr. Ayers stated the DIVCA fund grows annually by roughly \$100,000. Council Member Johnson stressed that there needs to be a plan on how to use the funding because the account continues to grow rapidly. Mr. Hood stated that, when he served as the Communications Specialist, he was more involved in managing the program for local access, but since his reassignment four years ago, this program is not overseen by anyone. He stated that, if there is Council interest, staff can do a team approach and develop a plan on how to use the funding.

Council Member Mounce stated that the sound from televised Council meetings is poor and it should be improved to ensure the broadcast is consistent. Mr. Hood stated that some of the sound issues can be attributed to operator error.

Council Member Johnson agreed that there is an issue with the sound of the televised meetings and further suggested using DIVCA funding to upgrade the City's website, which is a communication tool that would benefit the community. Mr. Ayers stated this issue is on staff's radar to update, but there is no in-house talent to design a website and it would need to be a scheduled project. Mr. Schwabauer added that DIVCA funds may not be the source for this project, but staff would look into it. The purpose of DIVCA funds is to get the message out to the public via cable communication and comes from a fee to the cable companies as a result of their impact on the community.

Council Member Mounce requested that staff break down the in-lieu franchise increase and what the methodology was behind the 179 new accounts and send her the information. She further requested once again that staff look into the League of California Cities accounting software and plug in the City's numbers to see if it mirrors staff's projections.

Mike Lusk suggested that DIVCA funding could be used to televise Shirtsleeve Sessions as many of the topics presented are detailed, only to be glossed over at the televised Council meeting. With regard to sick leave for part-time employees, he questioned how much money was spent in overtime to cover those shifts. Mr. Ayers explained that, in the case of part-time employees, those shifts that were covered would be at the same rate of the part-time employee because they do not accrue overtime.

Alex Aliferis questioned if the City has considered using private services for various functions, stating that many states have successful private-public relationships to manage city functions and bring down costs. He expressed concern over the Cal-PERS projections, particularly if the economy worsens.

Mike Carouba suggested the City should include growth rate and general fund information from other communities and compare them to Lodi to assess the needs. If a community is growing at a small percentage but drawing down at double the rate, the growth is on the top end and additional funding is needed. He believed this analysis would help the public understand why the City does not have all of the things it wants.

Council Member Mounce stated that the public voted for the 2 percent growth rate and, in comparison to other cities that had high development, when the economy crashed Lodi did not

suffer as greatly as others. Lodi was at the bottom on foreclosures.

Mr. Carouba stated he was comfortable with a 2 percent growth rate, but, in reality, the growth rate is 0.1 percent, and Lodi needs to discover a way to get more money.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:37 a.m.

ATTEST:

Jennifer M. Ferraiolo  
City Clerk

**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, MAY 3, 2016**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, May 3, 2016, commencing at 7:00 a.m.

Present: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Absent: None

Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

NOTE: Mayor Pro Tempore Kuehne left the meeting at 7:59 a.m.; and Council Member Nakanishi left the meeting at 8:10 a.m.

B. Topic(s)

B-1 Receive Information from Staff on Potential Uses for Potential Sales Tax Measure Revenue (CM)

City Manager Schwabauer provided a PowerPoint presentation regarding possible uses for potential sales tax measure revenue. Specific topics of discussion included overview; additional revenue objectives; Fire Department spending plan; Police Department spending plan; Parks, Recreation, and Cultural Services (PRCS) spending plan; PRCS needs; and discussion points. Mr. Schwabauer explained that a general tax can be spent on non-specific purposes and requires a 50 percent plus one public approval to pass; whereas, a special tax is dedicated to a specific purpose and requires a two-thirds vote of the public to pass. Regardless of general versus special, a four-fifths vote of the Council is required to support the ballot measure.

Council Member Nakanishi stated he could not support a tax measure because it is not a suitable time to do so. He expressed concern that Lodi has an unfunded liability and it may be necessary to make a decision on a tax measure years down the line if the fiscal condition worsens; a decision he prefers to come from Council. Additionally, any money spent today will increase ongoing costs, and that is something the City should not do at this time.

Mayor Pro Tempore Kuehne stated that PRCS has done a stellar job in assessing the needs, polling and surveying, and doing the necessary legwork that convinces him maintenance is a top priority. He expressed concern that there may not be enough time to do a sufficient job to get the PRCS tax as a solo item on the next ballot, but he was willing to support the measure and let the citizens speak as to whether they want this or not. He further opined that adding Police and Fire to the ballot would likely water down the measure and he would prefer to see the public safety measure stand on its own, adding that the timing was insufficient to place it on the next ballot because there may not be ample time to educate voters and walk the precincts. Mayor Pro Tempore Kuehne stated the recommendation is that it be a 1/8 percent special tax, requiring a two-thirds vote of the citizens, with a spending plan to make the public aware of how the money will be spent. He suggested that the 2018 election cycle include a ballot measure for public safety because he was concerned that a measure will all three issues would fail.

Mayor Chandler questioned what the Department Heads thought of the timing on the public safety measure. Police Chief Tod Patterson opined that a standalone measure seems to work the best, stating there is a short time before the election and he would like to see how the PRCS measure fares with the public. In the meantime, the Department will do what it needs to in order to prepare for a potential public safety measure. Fire Chief Larry Rooney concurred with

Chief Patterson, stating that he believed there was insufficient time to educate the public on the issue.

In response to Mayor Chandler, Parks, Recreation, and Cultural Services Director Jeff Hood stated there is no commission or foundation set up to solicit funds for this measure, but one could be created by the community as there are many local groups that are parks specific.

Council Member Johnson stated that he was not opposed to exploring a combined sales tax measure. The PRCS deferred maintenance is appalling and cannot continue in the same fashion, and the issue is whether or not to include public safety. Council Member Johnson questioned the proposed spending plans and whether some of the positions, such as lieutenant, crime prevention officer, and dispatcher, were necessary because the more important need is additional police officers on the street. In response to Council Member Johnson, Chief Patterson stated that in the past the crime prevention officer was a lateral duty for a dispatcher, and Mr. Schwabauer added that currently a retired officer handles the duties in a part-time capacity. Council Member Johnson stated that he does not question the need for funds, rather, he is questioning the proposed use of the funds because he would prefer to see it dedicated to combatting crime. With regard to Fire, he questioned what the current call volume is and whether it makes more sense to hire additional permanent personnel or to continue with overtime hours. He stated that overall he supports pursuing a measure that would cover PRCS, Police, and Fire, but he was uncertain of the makeup of the spending plan.

Council Member Mounce stated that it was her suggestion to package the measure together because it makes no sense to fix the parks if they continue to be overrun with gangs, drugs, vandalism, blight, and homelessness because public safety cannot meet the needs. She agreed that the PRCS maintenance is lacking, stating the City is \$40 million in arrears in repairs, but sales tax money over a 20-year period will only scratch the surface and, after 20 years, the price will only quadruple. Council Member Mounce stated that she believes the City needs additional police officers on the street, park officers in the parks, and code enforcement officers to make any sort of difference. She stated that PRCS should take the lead on the measure to ensure its success. The Strategic Plan and survey appear to indicate public support for the PRCS measure, and she believed that people will support paying more for things they value and, for her, she finds significant value in police and fire and their service to the community; therefore, she believed the measure should be a complete package drilled down to those items the community wants and needs. If Lodi strives to be less like Stockton, it needs great park facilities, a Fire Department that will respond timely, and enough police officers to ensure the community is safe. A PRCS measure alone will not suffice, and perhaps more time is needed to communicate to the public why it is important to create a community it wants. Council Member Mounce stated she would only support a special tax if it includes an oversight committee with a 10- to 15-year sunset clause.

In response to Mayor Chandler, Mr. Hood stated that the only public outreach has been through the survey and a follow-up questionnaire that corroborated the survey, but without clear direction from Council, staff felt it was not appropriate to drill down further with additional surveys of other demographics or groups.

Mr. Schwabauer asked for clarification from Council on which direction to proceed. It appeared Council primarily agreed that, if the City moves forward this year, it would be for all or none; however, he doubted there was adequate support to put a measure on the ballot for all three issues: PRCS, Police, and Fire. Once Council determines what issues are moving forward, he will need input on the makeup of the spending plan, oversight committee, sunset clause, etc.

Mayor Chandler stated he felt it may be too much to get done this year and the half cent is a million dollars short.

Mayor Pro Tempore Kuehne stated he would not support a combined measure, but would support a standalone PRCS special tax with an oversight committee and sunset clause. His fear is that a combined measure would fail and that does not give public safety an opportunity to market its position to citizens. He would like to see the PRCS measure move forward this year

and the public safety measure move forward on its own in the near future.

Council Member Johnson suggested that, if the City moves forward with all three issues at the 2018 election and includes a sunset clause, it use the additional time to consider a 1/2 cent sales tax that could cover all of the needs, including any hidden maintenance or equipment replacements needs for public safety as well.

Mike Lusk agreed that PRCS is in dire straights and supports additional funding for the department based on the deferred maintenance needs for its facilities; however, he would not be supportive of building any new facilities, adding that new facilities in a subdivision should be paid for by the developer through impact fees. Mr. Lusk stated that he is a proponent for a sales tax that would support Police, Fire, and the California Public Employees Retirement (Cal-PERS) debt and that those three issues alone equate to \$5 million, which would be 1/2 percent sales tax. He believed a long campaign was unnecessary to prove the need for additional police officers and a survey would be redundant because the need for a special tax would speak for itself and the public can either vote for or against it. Mr. Lusk believed that the PRCS measure should be a separate ballot measure from public safety and Cal-PERS debt, pointing to the past failed sales tax measure that would have given \$7 million, out of \$18 million, to public safety. He believed that two years was too long to wait and the public is educated enough to vote on the issue now.

In response to Mayor Chandler, Mr. Schwabauer stated that the 2016 ballot appears to be less impacted with ballot measures, while the 2018 ballot may have a Measure K extension and a school district measure. From a crowded ballot aspect, 2016 would likely be a better year to put forth a measure.

In light of that information, Mayor Pro Tempore Kuehne stated he would not be opposed to having the PRCS measure as one issue and the public safety issue as a separate measure on the 2016 ballot, but he was uncertain as to what rates they should each be.

Mr. Schwabauer explained that a 1/8 percent sales tax would raise what the Recreation Commission asked for and 1/4 percent would be sufficient for the public safety issue, adding that those amounts would be less confusing to the public than a combined measure of 3/8 percent. The proposed amounts of 1/8 percent and 1/4 percent would raise the dollars for both spending plans, but staff would need agreement from Council on the spending plans.

Mayor Pro Tempore Kuehne reiterated that he would prefer a special tax with an oversight committee and would defer to Council on the duration of a sunset clause for the PRCS measure and whether or not there should be one at all on public safety.

In response to Myrna Wetzel, Mr. Schwabauer explained that park officers work for the Police Department, but their staffing is determined by the PRCS Director according to the needs. In further response, Mr. Hood explained that the PRCS sales tax measure is solely for capital repairs, replacement, and maintenance; not for personnel. Currently, PRCS funds the equivalent of one part-time officer for parks, and that funding level would not be increased. Mr. Schwabauer explained that the proposed spending plan provided at this meeting funds three areas: 1) Engine No. 1 and training in the Fire Department; 2) new police officers in the Police Department; and 3) park improvements. The proposal does not fund additional park officers, but additional officers on the street could allow the Department to fund park officers on an additional basis. Ms. Wetzel stated that she believed the public would be inclined to support the measure if they were aware it could put more officers in the parks, but perhaps not if it were for construction of facilities. Mr. Schwabauer reiterated that this measure would not fund the construction of new parks in the City or in subdivisions; rather, it is proposed to preserve the City's current assets, including Lodi Lake, which is slowly washing away due to severe erosion. The City has an obligation to either protect its assets or let them go, and that is what the PRCS spending plan addresses - it will reclaim them; not build anything new. Ms. Wetzel pointed out that the presentation mentioned more than just Lodi Lake, to which Mr. Schwabauer responded that the majority of the list is for repairs or replacements, while other items are to finish partially completed or damaged parks and facilities. In further response to Ms. Wetzel, Mr. Schwabauer stated that citizens have volunteered hours to help maintain Candy Cane Park, but not for the replacement of the \$70,000 play

structure. Mr. Hood added that funding continues to be set aside in the budget to replace the structure, but there are no donations lined up to handle the entire cost.

Council Member Mounce expressed concern that Ms. Wetzel, who attends every Shirtsleeve Session and follows City business, does not understand how funds from the sales tax measure would be used, which proves this issue will be confusing for the public to understand. She believed greater effort needs to be made on communicating the goals of this measure to the public.

Mayor Chandler agreed, stating that the synopsis of the spending plan was a simple explanation and more work is needed to refine and better explain the list of goals.

Mr. Hood stated that the presentation was simplified, but assured Council that he has an extensive list of what each park project would consist of, including costs.

Council Member Mounce stated that she believed redevelopment failed because it was too ambiguous, adding that if the math does not add up on this measure and the goals are too vague the public will not support it. The citizens should know what they are getting out of this measure and the timeline of when projects will be done. Mr. Hood stated he has a detailed plan on what will be accomplished each year, much of which is based on the survey results. Some of the projects include repairs at Lodi Lake, including the parking lots, erosion control measures, park furniture and drinking fountains, and nature trail, as well as improvements at PRCS facilities and other parks. Council Member Mounce stated that a specific, detailed list is what needs to be presented to the public and, if it is not ready, it needs to be tightened up before it is presented. Mr. Hood confirmed that the list is 90 percent complete.

Larry Long, Chair of the Recreation Commission, stressed that the community is losing Lodi Lake, Pigs Lake is slowly washing away, and the roadway at the Lake is in significant disrepair. The Commission spent considerable time determining the needs in order for the public to understand what will be done with the sales tax money. Whether the measure is a standalone or combined effort, it must pass or many of the parks will be forced to close because of unsafe conditions. Based on the Strategic Plan and survey results, the Commission feels the votes are there to pass the measure, and he urged Council to put it on the ballot.

Council Member Mounce stated that some of the confusion may stem from the presentation of the Strategic Plan, which listed community wants for new facilities, walking tracks, and multi-family destinations and not about repairing Lodi Lake before it washes away. She believed if new facilities were combined with maintenance, the measure would not be successful and that significant effort will be necessary to fine-tune the spending plan and educate the public by walking the precincts.

Mr. Long agreed, stating that any ballot measure requires educating the public with precinct walks and signage and that volunteers and donations will be necessary to accomplish this.

Mr. Schwabauer stated there is nothing in the spending plan for those new, creative ideas that came out of the Strategic Plan.

Alex Aliferis stated that 7.5 percent of sales tax goes to the State; the current sales tax is the highest in 15 states; and the cap for cities and counties is 1 percent. He questioned that, if the current budget cannot maintain the parks, why is the City adding more and why is it not setting aside money every year. Mr. Aliferis stated he believed that staff should be in the field working, instead of in the office, and pointed out that the average firefighter is paid 55 percent more than those in other states and that the budget is 60 percent public safety. He stated he has an issue with overpaid salaries and the Cal-PERS component, which will only increase if more police officers are added to the force. He believed that, if the public safety measure were to pass, it would still not cover the costs, adding that many communities are turning to private security, which is likely the direction Lodi is headed as well.

Mr. Schwabauer responded that there are two people in PRCS who do not run a program or wield

a shovel: the PRCS Director and Management Analyst; however, Parks Superintendent Dutra and all of the Department employees work extremely hard to maintain the City's assets. He reiterated that this proposal does not construct anything new; it maintains what the City has today.

Mr. Lusk expressed appreciation for the PRCS staff, stating they have the City's interests at heart and deserve credit for the efforts they have made. He stated that he, too, thought the spending plan included items presented in the Strategic Plan and he would like further information to clear up that confusion. He supported pursuing a tax measure for the vote of the people and suggested the City consider a 1/2 percent sales tax because anything less will fall short and, if the City came back with another measure to make up the difference, it would likely be unsuccessful.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:12 a.m.

ATTEST:

Jennifer M. Ferraiolo  
City Clerk

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, MAY 4, 2016**

- 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 May 4, 2016, was called to order by Mayor Chandler at 7:02 p.m.

Present: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Absent: None

Also Present: City Manager Schwabauer, Deputy City Attorney Fukasawa, and City Clerk Ferraiolo

B. Presentations

B-1 Proclamation for Bike Month and Bike to Work Day (PW)

Mayor Chandler presented a proclamation to Kari McNickle with San Joaquin Council of Governments' Commute Connection and the San Joaquin Bicycle Coalition proclaiming May 2016 as Bike Month and May 26, 2016, as Bike to Work Day in Lodi. Ms. McNickle announced that Bike to Work Day will take place on May 26, 2016, with a community event on School Street next to the plaza; many prizes will be given out, including a \$500 certificate to a bike shop; the Farmers' Market will offer free bicycle parking and free GrapeLine rides during the market; Thursdays in June will be car-free days; and anyone interested was encouraged to visit the website at [www.mycommuteconnection.com](http://www.mycommuteconnection.com).

B-2 Proclamation for Stroke Awareness Month (CLK)

Mayor Chandler presented a proclamation to Mary Nicholson, Founding Director of Healings in Motion, proclaiming May 2016 as Stroke Awareness Month in Lodi.

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

Council Member Mounce made a motion, second by Council Member Johnson, 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, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

C-1 Receive Register of Claims in the Amount of \$2,340,285.62 (FIN)

Claims were approved in the amount of \$2,340,285.62.

C-2 Approve Minutes (CLK)

The minutes of April 19, 2016 (Shirtsleeve Session) were approved as written.

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Blakely Park Restroom Demolition (PRCS)

Approved plans and specifications and authorized advertisement for bids for the Blakely Park Restroom Demolition.

C-4 Approve Specifications and Authorize Advertisement for Bids for 2016 GrapeLine Bus Stop Accessibility and Shelter Improvements (PW)

Approved specifications and authorized advertisement for bids for 2016 GrapeLine Bus Stop Accessibility and Shelter Improvements.

C-5 Approve Specifications and Authorize Advertisement for Bids for 2016 Storm Drainage Improvements (PW)

Approved specifications and authorized advertisement for bids for 2016 GrapeLine Bus Stop Accessibility and Shelter Improvements.

C-6 Approve Specifications and Authorize Advertisement for Bids for 2016/17 Landscape Maintenance of Miscellaneous Areas and Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 (PW)

Approved specifications and authorized advertisement for bids for 2016/17 Landscape Maintenance of Miscellaneous Areas and Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1.

C-7 Adopt Resolution Approving Purchase of Data Center Equipment; Authorizing City Manager to Execute Professional Services Agreement with DSA Technologies, of Elk Grove (\$707,984); and Appropriating Funds (\$642,495) (CM)

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

In response to Council Member Mounce, City Manager Schwabauer stated the room that houses the computer backbone was recently rebuilt and is now being moved.

Information Technology Division Manager Benjamin Buecher reported that he conducted a survey of the equipment and data network and discovered that two-thirds of the equipment was no longer in service or manufactured, which leaves the City out of compliance and the equipment no longer supported by many of the vendors. In order to keep the system running, staff has had to search for parts on the Internet. Additionally, the data network backbone is slow and hinders departments from doing their work and performing data transfers at an optimal level. The secondary backup is virtually non-existent and not set up correctly.

Council Member Mounce stated that the City's auditor expressed concern in the past about the location of the server because it was susceptible to flooding in its current location and questioned if this project would address those concerns. Mr. Buecher stated that no equipment will be relocated out of the basement, but the equipment will be upgraded with new warranty and support. Mr. Schwabauer added that the new equipment will be moved above grade. Council Member Mounce was pleased to see the concern of the auditor is being taken care of, stating that the City's data is too important to lose or have destroyed.

In response to Council Member Nakanishi, Mr. Buecher stated there may be resellers who are interested in buying the outdated equipment, but typically the obsolete equipment is taken out of commission, stripped of all data, and given to a third-party entity for destruction.

Council Member Mounce made a motion, second by Mayor Pro Tempore Kuehne, to adopt Resolution No. 2016-68 approving the purchase of data center equipment; authorizing the City Manager to execute Professional Services Agreement with DSA Technologies, of Elk Grove, in the amount of \$707,984; and appropriating funds in the amount of \$642,495.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

C-8 Adopt Resolution Awarding Contract for Well No. 23 Granular Activated Carbon Replacement Project to Calgon Carbon Corporation, of Pittsburgh, Pennsylvania (\$87,660) (PW)

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

In response to Council Member Nakanishi, Public Works Director Charlie Swimley stated that Well No. 23 is located on Harney Lane, west of Stockton Street; there are seven well locations treated with granular activated carbon (GAC) filtration systems; this project will continue indefinitely with one GAC replacement each budget year; and the GAC filter on No. Well 23 was last replaced in 2008.

Council Member Johnson made a motion, second by Council Member Nakanishi, to adopt Resolution No. 2016-69 awarding contract for Well No. 23 Granular Activated Carbon Replacement Project to Calgon Carbon Corporation, of Pittsburgh, Pennsylvania, in the amount of \$87,660.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

C-9 Adopt Resolution Awarding Contract for 2016 Extruded Traffic Stripes, Various City Streets, to Centerline Striping Company, Inc., of Elk Grove (\$52,625) (PW)

Adopted Resolution No. 2016-55 awarding the contract for 2016 Extruded Traffic Stripes, Various City Streets, to Centerline Striping Company, Inc., of Elk Grove, in the amount of \$52,625.

C-10 Adopt Resolution Awarding Contract for Lodi Bus Wash Improvements Project to Diede Construction, Inc., of Woodbridge (\$425,569) (PW)

Adopted Resolution No. 2016-56 awarding the contract for Lodi Bus Wash Improvements Project to Diede Construction, Inc., of Woodbridge, in the amount of \$425,569.

C-11 Accept Improvements Under Contract for Water Meter Program Phase 5 and Adopt Resolution Appropriating Funds (\$213,548) (PW)

Accepted the improvements under the contract for Water Meter Program Phase 5 and adopted Resolution No. 2016-57 appropriating funds in the amount of \$213,548.

C-12 Accept Improvements Under Contract for Lodi Transit Station Restroom/Vault Improvement Project (PW)

Accepted the improvements under the contract for Lodi Transit Station Restroom/Vault Improvement Project.

C-13 Accept Improvements Under Contract for Fire Station No. 2 Replacement Project (PW)

Accepted the improvements under the contract for Fire Station No. 2 Replacement Project.

C-14 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with WGR Southwest, Inc., of Lodi, for Storm Water Compliance Services for White Slough Water Pollution Control Facility (\$55,736) (PW)

Adopted Resolution No. 2016-58 authorizing the City Manager to execute a Professional Services Agreement with WGR Southwest, Inc., of Lodi, for storm water compliance services for White Slough Water Pollution Control Facility in the amount of \$55,736.

C-15 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement for a Database Conversion with MilSoft Utility Solutions, of Abilene, Texas (\$45,000) (EU)

Adopted Resolution No. 2016-59 authorizing the City Manager to execute a Professional Services Agreement for a database conversion with MilSoft Utility Solutions, of Abilene, Texas, in the amount of \$45,000.

C-16 Adopt Resolution Authorizing City Manager to Apply for San Joaquin Valley Air Pollution Control District Alternative Fuel Vehicle Grant (\$33,922) (PD)

Adopted Resolution No. 2016-60 authorizing the City Manager to apply for San Joaquin Valley Air Pollution Control District Alternative Fuel Vehicle Grant in the amount of \$33,922.

C-17 Adopt Resolution Authorizing City Manager to Apply for Funding Allocation Administered by California Office of Emergency Services for CAD Console Workstations, a 911 System Upgrade, and a 911 Logging System Upgrade (\$364,000) (PD)

Adopted Resolution No. 2016-61 authorizing the City Manager to apply for funding allocation administered by California Office of Emergency Services for CAD console workstations, a 911 system upgrade, and a 911 logging system upgrade in the amount of \$364,000.

C-18 Adopt Resolution Implementing Portal-to-Portal Reimbursement for Office of Emergency Services Mutual Aid (FD)

Adopted Resolution No. 2016-62 implementing portal-to-portal reimbursement for Office of Emergency Services mutual aid.

C-19 Adopt Resolution Approving the Naming of Salas Park Southeast Baseball Diamond "David Akin Field" (PRCS)

Adopted Resolution No. 2016-63 approving the naming of the Salas Park southeast baseball diamond "David Akin Field."

C-20 Adopt the Following Resolutions Pertaining to the November 8, 2016, General Municipal Election: a) Resolution Calling and Giving Notice of the General Municipal Election; b) Resolution Requesting the San Joaquin County Board of Supervisors to Render Specified Services for the Conduct of a General Municipal Election; c) Resolution Setting Forth the Council's Policy Regarding Impartial Analyses, Arguments, and Rebuttal Arguments for Any Measure(s) That May Qualify to be Placed on the Ballot; and d) Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidates' Statements Submitted to the Voters at the General Municipal Election (CLK)

Adopted the following resolutions pertaining to the November 8, 2016, general municipal election: a) Resolution No. 2016-64 calling and giving notice of the general municipal election; b) Resolution No. 2016-65 requesting the San Joaquin County Board of Supervisors to render specified services for the conduct of a general municipal election; c) Resolution No. 2016-66 setting forth the Council's policy regarding impartial analyses, arguments, and rebuttal arguments for any measure(s) that may qualify to be placed on the ballot; and d) Resolution No. 2016-67 adopting regulations for candidates for elective office pertaining to candidates' statements submitted to the voters at the general municipal election.

C-21 Set Public Hearing for May 18, 2016, to Consider Adopting Ordinance to Modify the Zoning Code to Require Design Review for Multi-Family Structures in Medium Density Residential and High Density Residential Zoning Designations (CD)

Set public hearing for May 18, 2016, to consider adopting ordinance to modify the zoning code to require design review for multi-family structures in Medium Density Residential and High Density Residential Zoning designations.

C-22 Set Public Hearing for June 1, 2016, to Consider Adopting Resolution Setting Pre-Approved Engineering News Record Adjustment Index for Wastewater Rates for Residential, Commercial, and Industrial Customers (PW)

Set public hearing for June 1, 2016, to consider adopting resolution setting pre-approved Engineering News Record adjustment index for wastewater rates for residential, commercial, and industrial customers.

C-23 Set Public Hearing for June 1, 2016, to Consider Adopting Resolution Adopting 2015 Urban Water Management Plan Update (PW)

Set public hearing for June 1, 2016, to consider adopting resolution adopting 2015 Urban Water Management Plan update.

D. Comments by the Public on Non-Agenda Items

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

Public comment may only be made on matters within the Lodi City Council's jurisdiction (Government Code Section 54954.3, Lodi City Council Protocol Manual Section 6.3I). The Council cannot take action or deliberate on items that are not on this agenda unless there is an emergency and the need to take action on that emergency arose after this agenda was posted (Government Code Section 54954.2(b)(2)). All other items may only be referred for review to staff or placement on a future Council agenda.

Lyndsey Grant with Community Partnership for Families, along with several members of the youth group, The Breakers, provided a brief presentation to Council regarding some of the group's upcoming events. Theresa Juarez stated that The Breakers was created to prevent gang violence and, in partnership with many great organizations, has created a place that creates resources and mentors. Christian Perez invited the public to attend its first event, which is a handball tournament on May 7, 2016, at 12 p.m. at Twin Arbors Athletic Club. Martha Saragoza invited the public to attend its Art in the Park event on Wednesday, May 25, 2016, at Lodi Lake, at which a community canvass will be created on youth violence and will be presented at the first annual walk on June 5, 2016.

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

Council Member Nakanishi encouraged the public to attend the San Joaquin County Board of Supervisors meeting along with him on May 12, 2016, at 5:30 p.m. at the Board's Chambers on San Joaquin Street in Stockton. The subject of the meeting is water and will focus on areas such as Delta issues and California WaterFix; the Sustainable Groundwater Management Act; flood control; and water management plan.

Council Member Johnson complimented the Public Works Department, Transit staff, and the Police Department for the successful meeting today at the transit station for public input on issues and concerns relating to the transit system. He wished more people had attended, but those who participated were very informative and expressed concerns about security at the station and surrounding area and the homeless infiltration into the area, as well as a disturbing situation with a particular bus rider, which is being addressed by the Police Department. The suggestion of improved lighting at the back of the old tire shop where buses are stored over night was brought up, and Council Member Johnson asked staff to get back to him on the status of his previous request that staff look into requiring business and property owners to install security lighting in the alleys.

Council Member Mounce reported on her attendance at the League of California Cities Legislative Action Days, at which council members from across the state met with legislators to discuss items of importance to cities and to educate them on the harmful affects certain legislation has on cities. She thanked Mayor Chandler and Mayor Pro Tempore Kuehne for attending and reported that efforts are still underway to create a transportation bill, which will likely not progress until after the election, and legislation that would address affordable housing and homelessness. Another issue on the forefront is a California Environmental Quality Act reform, some of which the League supports; however, a portion of the mandate will take away local control, and the League is working hard to protect cities in that regard. Council Member Mounce also attended the League Board meeting, which she conducted on behalf of the Board President in her capacity as First Vice President. She further expressed disappointment that the article in the Lodi News-Sentinel this morning did not accurately reflect the discussion at the Shirtsleeve Session regarding a potential sales tax measure because it gave the impression that she favored one department over another. She explained that it takes all City departments to make this a great community and that this Council would not impose the tax; it is up to the voters to determine if they want to tax themselves and how to spend the money. The measure would require a supermajority vote and would include a sunset clause and an oversight committee. Council Member Mounce stated she is still anxious to review a draft tree ordinance to ensure that what happened at Lodi Lake when trees were removed without Council knowledge does not happen again and she hopes the matter will be on a Council agenda in the very near future. Finally, Council Member Mounce stated she received a complaint from a Heritage School teacher regarding water quality and requested Public Works perform water testing in the area, preferably by an outside firm so there is no question about the results. Public Works Director Charlie Swimley stated that staff routinely contracts out the lab work and he would be happy to take a sample for testing.

Mayor Chandler thanked Council Member Mounce for her representation and leadership on the League of California Cities, stating she works hard to protect local cities.

Mayor Pro Tempore Kuehne agreed, stating that he had an opportunity to observe Council Member Mounce at Legislative Action Days and at meetings with Senator Galgiani and Assemblymember Cooper. He stated Council Member Mounce was direct and concise with her comments and thoroughly explained the League's stance and proposed direction. Mayor Pro Tempore Kuehne reported on his attendance at the San Joaquin Council of Governments (SJCOG) OneVoice trip to Washington D.C., at which he participated in over 52 meetings in four days with congress members, senators, and their representatives. During OneVoice, he received a call from the Lodi News-Sentinel reporter asking about the meetings and he expressed appreciation for the newspaper's interest and efforts to report on the activities. In addition to OneVoice, he also participated in meetings and subcommittee meetings for SJCOG, Local Agency Formation Commission, and budget meetings, as well as attending the Visit Lodi! tourism luncheon.

Mayor Chandler reported on the Visit Lodi! tourism luncheon at Wine and Roses, which celebrated the many strides made in tourism over the last year, including the Amgen Tour, which will be returning on May 18; recognition of Robin Knowlton and her work with the Lodi Bicycle Coalition; recognition of David and Michael Phillips for their wine publicity and awards; and recognition of the Lodi Winegrape Commission for encouraging visitors to come to Lodi.

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

City Manager Schwabauer responded to an earlier comment by Council Member Mounce regarding a tree ordinance, stating that he directed staff to prepare a policy for Council adoption that would address City trees that are to be removed in the course of a City project to be clearly illustrated by size and location in the staff report. In addition, he requested that the Public Works Department locate an appropriate tree to replace the one removed from Lodi Lake, as brought up by Donna Phillips at previous meetings; however, it will be impractical to replace a tree that had an 18-inch trunk with another one of the same size because it would likely not survive and would be expensive to plant because of the cost to rent a crane. He assured Council that staff will do its best to accommodate Ms. Phillips.

G. Public Hearings

G-1 Public Hearing to Consider Adopting Resolution Approving 2016/17 Annual Action Plan for the Community Development Block Grant Program (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 Chandler called for the public hearing to consider adopting resolution approving 2016/17 Annual Action Plan for the Community Development Block Grant (CDBG) Program.

Neighborhood Services Manager Joseph Wood provided a PowerPoint presentation regarding the 2016/17 CDBG Annual Action Plan. Specific topics of discussion included 2016/17 Annual Action Plan process and outreach, 2014-2018 Consolidated Plan, 2016/17 allocations for Community-Based Organizations (CBO), 2016/17 allocations for City projects and activities, public service cap, CDBG process, and Neighborhood Revitalization Strategy Area.

Council Member Mounce expressed appreciation to the community for being involved on a level that was scarce in the past and for verbalizing what is important to them because that is the only way the City will know what needs to be done. She further complimented staff for reaching out to the community and utilizing social media, such as Nextdoor.

Council Member Mounce stated she was anxious to learn the specifics about the neighborhood strategy areas, but she is cautious of it because of redevelopment. She questioned where the funds would come from, to which Mr. Wood stated that CDBG funds would provide administrative relief in those areas and the Plan would identify the target area. There is already a target area of the low-income census tracts, but this would narrow the focus to where the greatest concentration of poverty exists, while still following State Department of Housing and Urban Development (HUD) guidelines. When this program is brought back to Council, it will include a more robust explanation and strategy area.

Council Member Mounce stated she was inclined to support the action, subject to public comments; however, her greatest concern is the alley improvement project and the change in how they are being handled, stating she will not lose site of this program and will continue to ensure the alleys are improved. Mr. Wood assured her that the members of the Lodi Improvement Committee feel the same and are monitoring to ensure the alleys are taken care of as well.

In response to Council Member Johnson, Mr. Wood stated that, if approved this evening, the Action Plan will be submitted to HUD; staff will compile the guidelines of the housing rehabilitation and down payment assistance programs in June or July; and bring those guidelines to Council for approval in August. Mr. Wood estimated that, with the funding amount of \$125,000, it is probable that five loans in the amount of \$20,000 to \$25,000 could be given out as part of the down payment assistance program; perhaps a sixth one if the loan amounts were smaller. In further response, Mr. Wood confirmed that any unused funds can be carried over to future years. He stated the 30-year loans are deferred because staff does not have the capacity to take on loan servicing, which is typical among most jurisdictions.

Council Member Nakanishi stated that the neighborhood revitalization strategy area appears to require a significant amount of work, i.e. studies, asset-based community development methodology, and surveys, for only a small amount of funding and questioned how much money from other areas would be put toward it. Mr. Wood stated that information will be borne out of the next cycle of funding, which will identify the community-based organizations, what they are trying to accomplish, and how their applications can meet those needs. Council Member Nakanishi stated that it seems to be a cumbersome task.

Mayor Chandler opened the public hearing for public comment.

In response to Maria Rosado with California Human Development, Council Member Nakanishi clarified that his point is that it would be easier to reallocate the money without all of the meetings. Ms. Rosado opined that the result of the surveys and getting the community involved through meetings was more valuable than the money and time spent because it allows the community's voice to be heard. She stated it was a difficult process to develop a survey with questions the community could easily understand, while encouraging people to respond, but she was grateful for the opportunity. She thanked Mr. Wood and his staff for all of their hard work and efforts.

Council Member Nakanishi stated he realizes now how important and worthwhile this effort is despite the small amount of money.

There being no further public comments, Mayor Chandler closed the public hearing.

Council Member Mounce made a motion, second by Mayor Pro Tempore Kuehne, to adopt Resolution No. 2016-70 approving 2016/17 Annual Action Plan for the Community Development Block Grant Program.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

H. Communications

H-1 Appointment to the Lodi Improvement Committee (CLK)

Council Member Mounce made a motion, second by Council Member Johnson, to make the following appointment:

Lodi Improvement Committee

Sunil Yadav, term to expire March 1, 2019

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

I. Regular Calendar

I-1 Consider Authorizing Harney Lane Road Closure Between Hutchins Street and Stockton Street for the Construction of Harney Lane Grade Separation Project (PW)

This item was pulled from the agenda.

I-2 Adopt Resolution Approving the Reclassification of One Senior Administrative Clerk to the Position of Administrative Secretary (CM)

Human Resources Manager Adele Post provided a presentation regarding the reclassification of one Senior Administrative Clerk to the position of Administrative Secretary. Specific topics of discussion included classification study and confirmation that duties conducted by the incumbent were consistent with the higher position; duties include serving as secretary to the Department Head and Library Board and serving as the office manager; recommendation; and concurrence by the bargaining unit, AFSCME - General Services.

Council Member Johnson made a motion, second by Council Member Mounce, to adopt Resolution No. 2016-71 approving the reclassification of one Senior Administrative Clerk to the position of Administrative Secretary.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

I-3 Adopt Resolutions Approving Side Letter Agreements Amending the Memorandums of Understanding or Statement of Benefits Between the City of Lodi and a) its Various Bargaining Groups and Confidential Employees and b) Executive Management Regarding a One-Time, Non-PERSable Payment to Partially Off-Set Increased Medical Premiums for Employees Who Are Currently Enrolled in One of the City's Medical Plans and Appropriating Funds (\$50,850) (CM)

NOTE: Due to a conflict as members of the listed groups, Deputy City Manager Jordan Ayers, Deputy City Attorney John Fukasawa, and Human Resources Manager Adele Post left the Chambers and returned at the conclusion of the item.

City Manager Schwabauer provided a presentation regarding the one-time non-PERSable payment to partially off-set increased medical premiums for employees who are currently enrolled in the City's medical plans. Specific topics of discussion included rapidly increasing health care costs; the various levels of coverage and their increases this year - i.e. employee \$712, employee plus one \$1,420, and family \$1,852; recommendation to provide a partial payment to address the increase of roughly 20 percent, with the employee covering 80 percent of the increase; reimbursement amounts of \$150 for employee, \$300 for employee plus one, and \$400 for family; and cost to the City of \$92,000, which is \$50,850 from the general fund and the remainder from the utility accounts.

Council Member Mounce clarified for the public that the City capped its insurance premium so that future growth is borne by the employees; however, employee groups requested an increase during negotiations to cover the health care costs, but the City was not in the position to do so. Council believes it is necessary to take care of the employees with its small amount of undesignated funds because they worked with the City over the years to balance the budget, for which Council is grateful.

Council Member Johnson stated that the cost is not significant, many private companies do not offer health insurance for their employees, and the health care costs will continue to rise dramatically into the future. He believed, however, there was a finite number of times the City could contribute in this regard, pointing out that only 10 percent of employees moved to a less expensive plan when the premiums increased. He stated he would not support the request.

Council Member Mounce agreed that many private employers do not provide health care or a living wage and, as a result, those individuals receive free health care through the Affordable Care Act, for which Lodi employees are ineligible. She pointed out that many individuals choose a plan based on their family's health needs and what is offered, which may account for some not

moving to a less expensive plan. Council Member Mounce stated that the League of California Cities is developing its own market place health care that would give cities an opportunity to divorce from Cal-PERS and offer a more affordable health care plan.

Council Member Nakanishi stated that health care is important to everyone and the cost is steadily increasing due to passage of the Affordable Care Act. Those who do not have insurance are subsidized by those that do. Over the last recession, employees took pay cuts that saved the City \$7 million, and the City is taking care of its employees by utilizing a small amount of reserves toward the increased health care cost to thank them for their contribution.

Council Member Mounce made a motion, second by Council Member Nakanishi, to adopt the following resolutions approving side-letter agreements amending the Memorandums of Understanding or Statement of Benefits between the City of Lodi and a) its various bargaining groups and Confidential employees (Resolution No. 2016-72) and b) Executive Management (Resolution No. 2016-73) regarding a one-time, non-PERSable payment to partially off-set increased medical premiums for employees who are currently enrolled in one of the City's medical plans and appropriating funds in the amount of \$50,850.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: Council Member Johnson

Absent: None

I-4 Adopt Resolution Amending Statement of Benefits Between the City of Lodi and Council Appointees Regarding a One-Time, Non-PERSable Payment to Partially Off-Set Increased Medical Premiums for Employees Who Are Currently Enrolled in One of the City's Medical Plans (CM)

NOTE: Due to a conflict as a Council Appointee, City Manager Schwabauer left the Chambers and returned at the conclusion of the item. Further, Deputy City Manager Jordan Ayers pointed out that, although City Clerk Ferraiolo is a Council Appointee, she does not have a conflict as she does not take the City's insurance and is, therefore, ineligible to receive the benefit.

Human Resources Manager Adele Post informed Council that the facts on this item are identical to those from Item I-2.

Council Member Mounce made a motion, second by Mayor Pro Tempore Kuehne, to adopt Resolution No. 2016-74 amending Statement of Benefits between the City of Lodi and Council Appointees regarding a one-time, non-PERSable payment to partially off-set increased medical premiums for employees who are currently enrolled in one of the City's medical plans.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: Council Member Johnson

Absent: None

I-5 Adopt Resolution to Grant Designated Period for Two Years Additional Service Credit in Accordance with Government Code Section 20903 (CM)

Human Resources Manager Adele Post provided a presentation regarding the two-year additional service credit. Specific topics of discussion included notification of the buy-out for the Recreation Superintendent at the previous meeting; buy-out is an optional benefit under the Code; estimated employer cost is roughly \$52,000 amortized over five years at roughly \$10,000 each year; estimated cost savings due to the two-year vacancy is \$212,000; recommendation; and time period of no less than 80 days and no more than 180 days from date of resolution to retire, which

is September 1, 2016.

Council Member Mounce expressed support for Recreation Superintendent Mike Reese, stating that the City is losing a great talent, a wealth of historical knowledge, and a hard-working employee, but she would support the request because he wishes to start his retirement.

Mayor Pro Tempore Kuehne made a motion, second by Council Member Mounce, to adopt Resolution No. 2016-75 to grant designated period for two years additional service credit in accordance with Government Code Section 20903.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

J. Ordinances - None

K. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 8:27 p.m.

ATTEST:

Jennifer M. Ferraiolo  
City Clerk



**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Accept Quarterly Report of Purchases between \$10,000 and \$20,000  
**MEETING DATE:** May 18, 2016  
**PREPARED BY:** Deputy City Manager

**RECOMMENDED ACTION:** Accept Quarterly Report of Purchases between \$10,000 and \$20,000.

**BACKGROUND INFORMATION:** During the first calendar quarter of 2016, the following purchases were awarded. Background information for each purchase is attached as Exhibits A through L.

Exh.	Date	Contractor	Project	Award Amt.
A	01/04/2016	Anixter	Reel stand with brake	\$10,728.72
B	01/14/2016	National Meter & Automation	Water meter inventory	\$17,820.00
C	01/25/2016	DC Frost	UV critical parts	\$14,067.50
D	02/23/2016	A-1 Auto Electric	Dump truck CNG tank replacement	\$12,326.50
E	03/02/2016	Platt	Cable inventory	\$19,979.89
F	03/02/2016	Sacramento Exercise Equipment	Gym equipment for Police Department	\$10,352.71
G	03/07/2016	DC Frost/Parkson	Diffuser membrane replacement	\$19,544.40
H	03/08/2016	Mallory Safety & Supply	SWAT equipment	\$19,045.11
I	03/21/2016	Belkorp Golf & Turf	Field groomer	\$15,626.00
J	03/21/2016	National Ladder & Scaffold Co	Entry ladders for aeration tanks	\$11,811.72
K	03/22/2016	One Source	Reynolds Ranch – various items	\$11,170.12
L	03/23/2016	Platt	Cable inventory	\$12,955.57

**FISCAL IMPACT:** Varies by project.

**FUNDING AVAILABLE:** All purchases were budgeted in the 2015-2016 Financial Plan.

\_\_\_\_\_  
 Jordan Ayers  
 Deputy City Manager

Attachments

APPROVED: \_\_\_\_\_  
 Stephen Schwabauer, City Manager

# RECOMMENDATION FOR CONTRACT AWARD

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**PROJECT NAME:** Reel Stand w/ brake  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** Anixter  
**AWARD AMOUNT:** \$10,728.72  
**DATE OF RECOMMENDATION:** January 4, 2016

---

**BIDS OR PROPOSALS RECEIVED:**

Anixter	\$10,728.72
Reel-O-Matic	\$11,622.00

**“NO BID” or NO RESPONSE RECEIVED:**  
All Phase

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

The award is for \$10,728.72 to Anixter for the Reel Stand with Brake.

Reel-O-Matic quoted \$10,250 plus shipping (\$1372) and FOB Oklahomo City.

**FUNDING:** 50199000-77020

Prepared by: Thomas Dean

Title: Electric Materials Technician

Reviewed by: \_\_\_\_\_

# RECOMMENDATION FOR CONTRACT AWARD

---

**PROJECT NAME:** INVENTORY  
**DEPARTMENT:** PUBLIC WORKS DEPARTMENT  
**CONTRACTOR:** NATIONAL METER AND AUTOMATION  
**AWARD AMOUNT:** \$17,820.00  
**DATE OF RECOMMENDATION:** 01-14-2016

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**BIDS OR PROPOSALS RECEIVED:**  
NATIONAL METER AND AUTOMATION \$17,820.00

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**  
NATIONAL METER AND AUTOMATION IS THE CITY OF LODI'S SOLE SOURCE PROVIDER. THESE METERS BEING PURCHASED ARE FOR THE CITY OF LODI'S WATER METER INVENTORY.

**FUNDING:** 560.13496

Prepared by: Shawn Tallerico

Title: Sr. Storekeeper

Reviewed by: \_\_\_\_\_

Purchase Order No.

**EXHIBIT C**

**RECOMMENDATION FOR CONTRACT AWARD**

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**PROJECT NAME:** UV Critical Parts  
**DEPARTMENT:** PW  
**CONTRACTOR** DC Frost  
**AWARD AMOUNT:** \$14,067.50  
**DATE OF RECOMMENDATION:** January 25, 2016

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**BIDS OR PROPOSALS RECEIVED:**  
sole source purchase  
DC Frost \$14,067.50

**“NO BID” or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This is a sole source project. The parts are needed for routine and annual maintenance. Monies have been allocated for \$225,000 for fiscal year 2015-2016. This purchase is to address the immediate needs of the UV.

**FUNDING:** 53053003.77030

Prepared by: Karen D. Honer

Title: Wastewater Plant Superintendent

Reviewed by: \_\_\_\_\_

# RECOMMENDATION FOR CONTRACT AWARD

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PROJECT NAME: Dump Truck CNG Tank Replacement  
 DEPARTMENT: Public Works  
 CONTRACTOR: A-1 Auto Electric, Fresno CA  
 AWARD AMOUNT: \$12,326.50  
 DATE OF RECOMMENDATION: 02/23/2016

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**BIDS OR PROPOSALS RECEIVED:**

A-1 Auto Electric	\$12,326.50
D&R Automotive	\$13,739.42
Premier Truck Service	\$15,550.00

**"NO BID" or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

City of Lodi Parks Department owns and operates a 2003 compressed natural gas powered Freightliner FL60 dump truck vehicle # 07-018. Compressed Natural Gas (CNG) vehicle mounted tanks have a life span of fifteen years after the date the tank was manufactured and must be removed from service after that date. Two of the three tanks on the truck expired September 2015 which puts the vehicle out of service. Fleet Services recommends replacing the tanks since a replacement truck is approximately \$90,000.00. Fleet Services has evaluated this truck and believes it still has many useful years with the installation of new tanks.

**FUNDING:** 65055000.72533

Prepared by: Randy Laney 

Title: Fleet Services Supervisor

Reviewed by: \_\_\_\_\_

Purchase Order No.

# RECOMMENDATION FOR CONTRACT AWARD

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**PROJECT NAME:** Cable Acquisition  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** Platt  
**AWARD AMOUNT:** \$19,979.89  
**DATE OF RECOMMENDATION:** March 2, 2016

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**BIDS OR PROPOSALS RECEIVED:**

Platt	\$19,979.89
General Pacific	\$20,427.01
Anixter	\$23,436.00

**“NO BID” or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This is cable needed for inventory.

**FUNDING:** 500-13496

Prepared by: Thomas Dean

Title: Electric Materials Technician

Reviewed by: \_\_\_\_\_

Purchase Order No.

## RECOMMENDATION FOR CONTRACT AWARD

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**PROJECT NAME:** Gym Equipment  
**DEPARTMENT:** Police  
**CONTRACTOR** Sacramento Exercise Equipment  
**AWARD AMOUNT:** \$10,352.71  
**DATE OF RECOMMENDATION:** March 2, 2016

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**BIDS OR PROPOSALS RECEIVED:**

Sacramento Exercise Equipment Center	\$10,352.71
Precor Home Fitness	\$12,144.60

**“NO BID” or NO RESPONSE RECEIVED:**

Promaxima\*

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Three vendors were contacted for replacement gym equipment. Two vendors quoted the heavy equipment, but did not provide pricing for the kettlebells and hand weights. After reviewing all three quotes, Sacramento Exercise Equipment provided the department with the best deal for all equipment. If comparing quoted items only, Sacramento Exercise Equipment was the second lowest bid, however, this vendor quoted pricing for all items requested, preventing the department to seek out additional vendors for the smaller items. They will also pickup old equipment and included a \$750 credit, whereas the other two vendors will not.

**FUNDING:** 21099000.77020

Prepared by: Paula O'Keefe

Title: Management Analyst

**RECOMMENDATION FOR CONTRACT AWARD**

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**PROJECT NAME:** Diffuser membrane replacement for Aeration Basin #6  
**DEPARTMENT:** Public Works  
**CONTRACTOR** DC Frost/ Parkson  
**AWARD AMOUNT:** \$19,544.40  
**DATE OF RECOMMENDATION:** 03/07/16

---

**BIDS OR PROPOSALS RECEIVED:**  
DC Frost- Distributor for Pakson- sole source \$19,544.40

**“NO BID” or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

There are six aeration basins at White Slough WPCF. Each basin contains 34 or 58 floor diffusers, depending on the basin. The diffusers are needed to inject air into the wastewater to support the growth of the aerobic microorganisms that consume bacteria. Staff will be performing preventive and repair maintenance by replacing the 34 diffuser membrane in the #6 aeration basin.

**FUNDING:** 53053003.77030

Prepared by: Karen D. Honer

Title: Wastewater Plant Superintendent

Reviewed by: \_\_\_\_\_

Purchase Order No.

# RECOMMENDATION FOR CONTRACT AWARD

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**PROJECT NAME:** SWAT Equipment  
**DEPARTMENT:** Lodi Police Department  
**CONTRACTOR** Mallory Safety & Supply  
**AWARD AMOUNT:** \$19,045.11  
**DATE OF RECOMMENDATION:** 03/08/16

---

**BIDS OR PROPOSALS RECEIVED:**

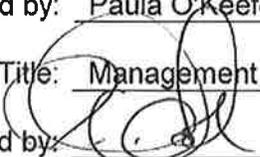
Mallory Safety&Supply	\$19,045.11
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**“NO BID” or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Mallory Safety & Supply is a under contract with U.S. Communities, a national purchasing co-op designed to provide competitively bid pricing for customers. Mallory Safety & Supply's contract# RQ11-205753-10A was competitively bid in 2011 and has been amended to expire on September 30, 2016.

**FUNDING:** 10032000.72306

Prepared by: Paula O'Keefe  
Title: Management Analyst  
Reviewed by: 

# RECOMMENDATION FOR CONTRACT AWARD

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**PROJECT NAME:** Field Groomer  
**DEPARTMENT:** Parks, Recreation and Cultural Services  
**CONTRACTOR** Belkorp Golf & Turf  
**AWARD AMOUNT:** \$15,626.00  
**DATE OF RECOMMENDATION:** March 21, 2016

---

**BIDS OR PROPOSALS RECEIVED:**

Belkorp Golf & Turf	\$15,626.00
Stotz Equipment	\$17,689.81
Pacific Golf & Turf	\$18,021.96

**“NO BID” or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

The Parks Division has purchased like kind unit in previous budget cycles. The unit has proven to serve us well. It has increased the efficiency of ballfield preparation and field grooming. It has greatly lessened the chance of on the job injuries due to affixed impliments.

**FUNDING:** Vehicle Repalcement Account

Prepared by: Steve Dutra

Title: Park Superintendent

Reviewed by: \_\_\_\_\_

# RECOMMENDATION FOR CONTRACT AWARD

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**PROJECT NAME:** ENTRY LADDERS FOR AERATION TANKS  
**DEPARTMENT:** PUBLIC WORKS  
**CONTRACTOR:** NATIONAL LADDER & SCAFFOLD CO  
**AWARD AMOUNT:** \$11,811.72  
**DATE OF RECOMMENDATION:** 3-21-16

---

**BIDS OR PROPOSALS RECEIVED:**  
COTTERMAN \$14,015.16  
NATIONAL LADDER & SCAFFOLD CO. \$11,811.72

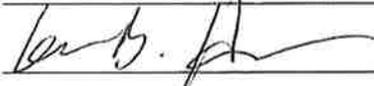
**"NO BID" or NO RESPONSE RECEIVED:**  
MCMASTER CARR

**BACKGROUND INFORMATION & BASIS FOR AWARD:**  
WHITE SLOUGH MAINTINANCE STAFF RECOMMEND THE PURCHASE OF LADDERS QUOTED BY NATIONAL LADDER CO TO FACILATE THE ENTRY OF THE AERATION TANKS FOR PREVENTIVE AND CORRECTIVE MAINTINANCE

**FUNDING:** 53053003.72306

Prepared by: KELLY POWERS

Title: WWW SUPERVISOR

Reviewed by: 

# RECOMMENDATION FOR CONTRACT AWARD

---

**PROJECT NAME:** Reynolds Ranch  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** One Source  
**AWARD AMOUNT:** \$11,170.12  
**DATE OF RECOMMENDATION:** March 22, 2016

---

**BIDS OR PROPOSALS RECEIVED:**  
One Source \$11,170.12

**“NO BID” or NO RESPONSE RECEIVED:**  
Anixter  
All-Phase

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

This award is for 11 different items needed for the Reynolds Ranch project. One Source was the lowest bidder for each item. No other company bid on all of the items being awarded to One Source.

**FUNDING:** 500.13496

Prepared by: Thomas Dean

Title: Electric Materials Technician

Reviewed by: \_\_\_\_\_

## RECOMMENDATION FOR CONTRACT AWARD

---

**PROJECT NAME:** Cable  
**DEPARTMENT:** Electric Utility  
**CONTRACTOR** Platt  
**AWARD AMOUNT:** \$12,955.57  
**DATE OF RECOMMENDATION:** March 23, 2016

---

**BIDS OR PROPOSALS RECEIVED:**

Platt	\$12,955.57
General Pacific	\$15,087.60
Okonite*	\$12,825.00

**“NO BID” or NO RESPONSE RECEIVED:**

**BACKGROUND INFORMATION & BASIS FOR AWARD:**

Okonite does not meet the City of Lodi requirements

**FUNDING:** 500-13496

Prepared by: Thomas Dean

Title: Electric Materials Technician

Reviewed by: \_\_\_\_\_

Purchase Order No.



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Accept the Quarterly Investment Report as Required by the City of Lodi Investment Policy

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Deputy City Manager

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**RECOMMENDED ACTION:** Accept the quarterly investment report as required by the City of Lodi Investment Policy.

**BACKGROUND INFORMATION:** Government Code Section 53646 has been amended to no longer mandate this report on investments to the legislative body of the local agency. Nevertheless, it is encouraged, and the report is attached for City Council review.

The total of all invested funds as of the quarter ending March 31, 2016 is \$91,637,698.75.  
The average annualized return on all invested funds over the quarter is 1.64%.

The total earnings on all invested funds for FY 2015-16 are \$494,379.81.  
The average annualized return on all invested funds for FY 2015-16 is 0.70%.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** As per attached report.

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Jordan Ayers  
Treasurer

Attachment

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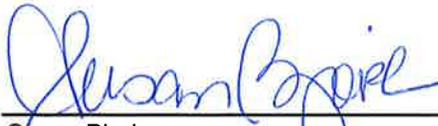
APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager



**CITY OF LODI  
INTERNAL SERVICES DEPARTMENT  
BUDGET DIVISION**

**March 31, 2016 Investment Statement**

<b>Investment:</b>	<b>Earnings for Qtr Ending 03/31/16:</b>	<b>Ending Balance:</b>
<b>Local Agency Investment Funds*</b>		
40.4% of portfolio	0.47% interest earnings	37,022,721.63
	<b>Subtotal LAIF</b>	<b>37,022,721.63</b>
<b>CalTRUST Investment Trust of California</b>		
48.0% of portfolio		
Short-Term Account	1.08% interest earnings	12,150,156.82
Medium-Term Account	3.64% interest earnings	31,851,465.82
	<b>Subtotal CalTRUST</b>	<b>44,001,622.64</b>
<b>Certificates of Deposit</b>		
1.4% of portfolio		
Central Valley Comm (matures 6/18/16)	0.20% interest earnings	250,000.00
F&M Bank (matures 11/04/16)	0.60% interest earnings	250,000.00
Umpqua Bank (matures 10/21/16)	0.40% interest earnings	250,000.00
Bank of the West (matures 03/10/17)	0.50% interest earning	250,000.00
BBVA Compass (matures 03/11/17)	0.60% interest earnings	248,500.00
	<b>Subtotal CDs</b>	<b>1,248,500.00</b>
<b>Passbook/Checking Accounts</b>		
10.2% of portfolio		
Farmers & Merchants **	demand acct	1,715,180.12
Farmers & Merchants - Money Market	0.35% interest earnings	4,384,314.86
Farmers & Merchants - Payroll	demand acct	57,865.96
Farmers & Merchants - CP Money Market	0.35% interest earnings	3,207,493.54
	<b>Subtotal P/C Accts</b>	<b>9,364,854.48</b>
	<b>TOTAL</b>	<b>91,637,698.75</b>

  
 \_\_\_\_\_  
 Susan Bjork  
 Supervising Budget Analyst

  
 \_\_\_\_\_  
 Date

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

\*\* This account carries a compensating balance required to obtain an earnings credit to offset service charges.



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Purchase Law Enforcement Carbine Rifles through Adamson Police Products (\$54,240.44) and Trijicon Optics (\$31,347) and Appropriating Funds (\$85,587.44)

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Chief of Police

---

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to purchase law enforcement carbine rifles through Adamson Police Products (\$54,240.44) and Trijicon Optics (\$31,347) and appropriating funds in the amount of \$85,587.44

**BACKGROUND INFORMATION:** Historically, the Lodi Police Department has routinely outfitted patrol vehicles with rifles that are used by different officers during shifts. Over the last several years, the department evaluated the need to outfit each individual officer with a patrol rifle and determined the purchase necessary to increase officer and public safety. Each officer will be assigned a rifle to carry on their patrol shift, allowing for superior stand-off capability to protect themselves and citizens when coming into contact with armed criminals.

The purpose of the patrol rifle is to extend range and accuracy. The rifle can handle scenarios including counter-sniping, long-range defense, improved penetration against cover and against criminals wearing soft body armor. The rifles also require a separate scope that will be set to the specifications of the individual officer to which it has been assigned to ensure accuracy and proficiency in use.

The Police Department contacted representatives from the following companies that offer the law enforcement Colt Carbine rifles and accessories: Adamson Police Products, ProForce Law Enforcement, and LCAction Police Supply. The department evaluated all proposals and chose the Adamson Police Products for price point and trade-in rebate for 40 used rifles in the amount of \$22,865, for a total overall cost of \$54,240.44.

The Police Department decided to request separate quotes for the scopes from Trijicon optics. The department received quotes from Trijicon, Inc., Adamson Police Products, and ProForce Law Enforcement. After evaluation of all quotes received, the department determined the best price point for the scopes through the manufacturer, Trijicon, Inc., in the amount of \$31,347.

Funding was not appropriated in the FY 15/16 budget, however the department determined this project is eligible for Citizens' Option for Public Safety (COPS) program funding, and feels this is the best use of that resource.

**FISCAL IMPACT:** Funding through Citizens' Option for Public Safety (COPS) program is available.

**FUNDING AVAILABLE:** 21399000.77020 \$85,587.44

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APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

Adopt Resolution Authorizing City Manager to Purchase Law Enforcement Carbine Rifles through Adamson Police Products (\$54,240.44) and Trijicon Optics (\$31,347) and Appropriate Funds

May 18, 2016

Page 2

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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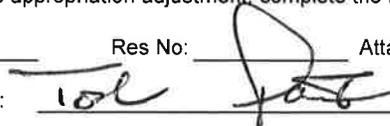
Tod Patterson  
Chief of Police

Prepared by: Paula O'Keefe, Management Analyst

1. AA# \_\_\_\_\_  
 2. JV# \_\_\_\_\_

CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST			
TO:	Internal Services Dept. - Budget Division		
3. FROM:	Police	5. DATE:	5/9/16
4. DEPARTMENT/DIVISION:			

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW					
	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	213	<del>213</del>	32205	Unreserved Fund Balance	\$ 85,587.44
B. USE OF FINANCING	213	21399000	77020	Capitol Projects	\$ 85,587.44

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET
<p>Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.</p> <p>The Lodi Police Department would like to purchase rifles for each officer and appropriate AB1913 funding.</p>
<p>If Council has authorized the appropriation adjustment, complete the following:</p> <p>Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.</p> <p>Department Head Signature: <u></u></p>

8. APPROVAL SIGNATURES	
Deputy City Manager/Internal Services Manager	Date

Submit completed form to the Budget Division with any required documentation.  
 Final approval will be provided in electronic copy format.

RESOLUTION NO. 2016-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO  
PURCHASE 75 LAW ENFORCEMENT CARBINE  
RIFLES AND ACCESSORIES THROUGH ADAMSON  
POLICE PRODUCTS AND 75 TRIJICON OPTICS  
THROUGH TRIJICON, INC., AND FURTHER  
APPROPRIATING FUNDS

=====

WHEREAS, historically, the Lodi Police Department has routinely outfitted patrol vehicles with rifles that are used by different officers during shifts; and

WHEREAS, over the last several years, the department evaluated the need to outfit each individual officer with a patrol rifle and determined the purchase necessary to increase officer and public safety. Each officer will be assigned a rifle to carry on their patrol shift, allowing for superior stand-off capability to protect themselves and citizens when coming into contact with armed criminals; and

WHEREAS, the purpose of the patrol rifle is to extend range and accuracy and enable officers to handle scenarios including counter-sniping, long-range defense, improved penetration against cover and against criminals wearing soft body armor. Each rifle requires a separate scope that will be set to the specifications of the individual officer to which it has been assigned to ensure accuracy and proficiency in use; and

WHEREAS, the Police Department solicited proposals for law enforcement Carbine rifles and accessories from Trijicon, Inc.; Adamson Police Products; ProForce Law Enforcement; and LC Action Police Supply, and evaluated all proposals to ensure the department met all procurement requirements; and

WHEREAS, the Police Department also solicited proposals for scopes from Trijicon, Inc.; Adamson Police Products; and ProForce Law Enforcement; and

WHEREAS, a summary of the proposals are shown as follows:

<b>Vendor</b>	<b>Law Enforcement 75 Carbine Rifles &amp; Accessories</b>
Adamson Police Products	\$54,240.44
ProForce Law Enforcement	\$55,172.18
LC Action Police Supply	\$58,222.00
Trijicon Optics	No Bid

<b>Vendor</b>	<b>75 Each Trijicon Optics (Scopes)</b>
Adamson Police Products	\$44,711.25
ProForce Law Enforcement	\$33,022.89
LC Action Police Supply	No Bid
Trijicon, Inc.	\$31,347.00

WHEREAS, funding was not appropriated in the Fiscal Year 2015/16 General Fund budget; however the department determined this project is eligible for the Citizens' Option for Public Safety (COPS) program funding, and feels this is the best use of that resource; and

WHEREAS, staff recommends that the City Council authorize the City Manager to purchase 75 law enforcement Carbine rifles and accessories, in an amount not to exceed \$54,240.44 through Adamson Police Products, and rifle scopes through Trijicon, Inc., in an amount not to exceed \$31,347; and

WHEREAS, staff further recommends appropriating funds from the Citizens' Option for Public Safety (COPS) Program in the amount of \$85,587.44 for the above-referenced purchases.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to purchase 75 law enforcement Carbine rifles and accessories in an amount not to exceed \$54,240.44 through Adamson Police Products, and purchase rifle scopes through Trijicon, Inc., in an amount not to exceed \$31,347; and

BE IT FURTHER RESOLVED that funds in the amount of \$85,587.44 are hereby appropriated from the Citizens' Option for Public Safety (COPS) Program for the above-referenced purchases.

Dated: May 18, 2016

=====

I hereby certify that Resolution No. 2016-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2016, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS: --

JENNIFER M. FERRAILOLO  
City Clerk



**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Adopt Resolution Awarding Bids for the Purchase of Electric Utility Wire and Cable from AWG of Miami, Florida (\$51,358.86) and Pacific Utilities of Concord (\$17,658)

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** Adopt resolution awarding bids for the purchase of Electric Utility wire and cable from AWG of Miami, Florida (\$51,358.86) and Pacific Utilities of Concord (\$17,658).

**BACKGROUND INFORMATION:** On April 6, 2016, the City Council authorized the advertisement of bids to replenish inventory consumed as a result of ongoing maintenance and development projects.

The Electric Utility advertised bids on April 13 and 16, 2016. On May 3, 2016, bids were opened with two suppliers submitting proposals. Staff reviewed the proposals and deemed the following as the lowest responsive bids and compliant with the approved specifications.

4/0 MCM, 600V, single conductor	AWG	\$ 2,527.20
350 MCM, 600V, single conductor	AWG	\$ 2,200.50
500 MCM, 600V, single conductor	AWG	\$ 8,829
750 MCM, 600V, single conductor	Pacific Utilities	\$17,658
350 MCM, 600V, triplex	AWG	\$ 7,616.16
750 MCM, 600V, quadruplex	AWG	\$30,186

**FISCAL IMPACT:** Procurement cost is \$69,016.86

**FUNDING AVAILABLE:** Included in FY2015/16 Budget Account No. 500.13496

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Hasan Shahriar, P.E., Senior Power Engineer  
EAK/HS/JLM/lst

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

### 5/3/2016 Low Voltage Cable, Bid Opening, Preliminary Summary

		AWG				Pac-Utilities / Prysmian			
		Lead	Feet	(\$/ft)	Tot	Lead	Feet	(\$/ft)	Tot
Bid Item-1	4/0 600V 1C	8-9 weeks	5,000	\$ 0.51	\$ 2,527.20	10-12 weeks	10,000	\$ 0.54	\$ 5,410.80
Bid Item-2	350 600V 1C	8-9 weeks	2,500	\$ 0.88	\$ 2,200.50	10-12 weeks	10,000	\$ 0.89	\$ 8,856.00
Bid Item-3	500 600V 1C	8-9 weeks	7,500	\$ 1.18	\$ 8,829.00	9-11 weeks	10,000	\$ 1.21	\$ 12,096.00
Bid Item-4	750 600V 1C	8-9 weeks	10,000	\$ 2.03	\$ 20,250.00	9-11 weeks	10,000	\$ 1.77	\$ 17,658.00
Bid Item-5	350 600V 3C	1-week	4,000	\$ 1.90	\$ 7,616.16	9-11 weeks	10,000	\$ 2.40	\$ 23,976.00
Bid Item-6	750 600V 4C	8-9 weeks	5,000	\$ 6.04	\$ 30,186.00	9-11 weeks	10,000	\$ 6.45	\$ 64,530.00
			34,000		\$ 71,608.86		60,000		\$ 132,526.80

	AWG	Prysmian
Avg price per foot	\$ 2.09	\$ 2.21
Total bid	\$ 71,608.86	\$ 132,526.80

RESOLUTION NO. 2016-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING  
THE BID FOR THE PURCHASE OF ELECTRIC UTILITY  
WIRE AND CABLE FROM AWG, OF MIAMI, FLORIDA, AND  
PACIFIC UTILITIES, OF CONCORD

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 May 3, 2016, at 11:00 a.m., for the purchase of wire and cable for the Electric Utility Department, described in the specifications therefore approved by the City Council on April 6, 2016; and

WHEREAS, the bids meeting the City's specification with the lowest costs are shown below:

4/0 MCM, 600V, single conductor	AWG	\$ 2,527.20
350 MCM, 600V, single conductor	AWG	\$ 2,200.50
500 MCM, 600V, single conductor	AWG	\$ 8,829.00
750 MCM, 600V, single conductor	Pacific Utilities	\$17,658.00
350 MCM, 600V, triplex	AWG	\$ 7,616.16
750 MCM, 600V, quadruplex	AWG	\$30,186.00

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the bid for the purchase of wire and cable to the respective bidders as shown above: AWG, of Miami, Florida, in an amount not to exceed \$51,358.86; and Pacific Utilities, of Concord, California, in an amount not to exceed \$17,658.

Dated: May 18, 2016

I hereby certify that Resolution No. 2016-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2016, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

JENNIFER M. FERRAILOLO  
City Clerk



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Accept Donation from Michael-David Family Foundation for Summer Recreation Program

**MEETING DATE:** May 18, 2016

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

**RECOMMENDED ACTION:** Accept donation from Michael-David Family Foundation for summer recreation program.

**BACKGROUND INFORMATION:** Many years ago, the City provided a free drop-in summer recreation program for children in various parks. That program was eventually ended due to budget constraints and replaced by a fee-based summer camp at Lodi Lake Park, which has been suspended due to low participation.

The Parks, Recreation and Cultural Services Department recently developed financial scenarios to determine the feasibility of reviving the free drop-in program on a limited basis -- if funded by donations -- in Lodi's lowest-income neighborhoods. Staff was delighted that the Michael-David Family Foundation expressed interest in funding the program, and followed up with a check for \$7,500 to cover the cost of three hours of drop-in recreation, three days a week, at Blakely and Hale parks, during summer break.

Accepting the donation will allow staff to operate the program from 9 a.m. to noon, Monday, Wednesday and Friday, at these parks in Lodi's lowest-income neighborhoods. The new program will bring supervision, safety and hands-on fun to the neighborhood children. Activities will include "messy" art, carom boards, sports, board games and a chance to bring back feelings of a time when parents didn't hesitate to send their children to play in the parks. Children will feel safe playing in the parks, and our experienced staff will engage children in conversation, play sports and teach them how to play board games -- and let them know to bring friends.

**FISCAL IMPACT:** Staffing costs will be offset by the donation.

**FUNDING AVAILABLE:** Accepting the donation will support staff costs (20073102).

\_\_\_\_\_  
Jordan Ayers, Deputy City Manager/Internal Services Director

\_\_\_\_\_  
Jeff Hood  
Parks, Recreation and Cultural Services Director

JH:tl  
cc: City Attorney

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Agreement with Vigilant Solutions for LEARN Software, Purchase of Automated License Plate Readers and Authorize Future Purchases (\$22,490)

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Chief of Police

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute agreement with Vigilant Solutions for LEARN Software, purchase automated license plate readers and authorize future purchases (\$22,490).

**BACKGROUND INFORMATION:** Pursuant to State Senate Bill 34, the Lodi Police Department conducted a Public Hearing on April 20, 2016, as required, regarding the future operation of an Automated license plate reader (ALPR) system. Also during the April 20 Council Meeting, the Lodi City Council adopted the Lodi Police Department ALPR policy.

An ALPR is a computer-based system that utilizes special cameras to capture license plate information and collect the images in a nationwide database. Through the use of the ALPR camera system, the department will upload images to LEARN, a commercial database only accessible to law enforcement agencies. The LEARN Commercial Data subscription provides real-time data to law enforcement agencies that assist in locating vehicles.

ALPR camera systems are used by law enforcement nationwide. The camera's primary purpose is two-fold: 1) as an investigative tool, and 2) as a real-time alert system that compares license plates as they are read to the state/federal law enforcement database of stolen vehicles, vehicles involved in AMBER alerts, and vehicles connected to reports of missing persons. Local law enforcement is notified if a license plate read matches a database entry, allowing law enforcement agencies to locate and stop the vehicle once the license plate has been visually verified.

The ALPR shall be restricted to legitimate law enforcement uses to further the goal of enhancing public safety by providing information to national law enforcement agencies. This is enforced through the adoption of the Lodi Police Department ALPR policy. The policy provides guidance for the capture, storage and use of digital data obtained through the use of Automated license plate reader (ALPR) technology and ensures that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties. This privacy policy is available to the public in writing, and posted conspicuously on the department web site. There has been some intent from private parties and the Public Works Department to fund single location cameras and vehicle cameras. However, those discussions have not matured to a point that specific purchases can be made.

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

Adopt Resolution Authorizing City Manager to Execute Agreement with Vigilant Solutions for LEARN Software, Purchase Automated License Plate Readers and Authorize Future Purchases (\$22,490)  
May 4, 2016  
Page Two

Staff asks that City Council approve the proposed expenditures for the purchase of equipment and installation with Lehr Automotive and authorize the City Manager to execute the agreement with Vigilant Solutions for the LEARN database subscription. Staff also requests that City Council approve purchasing authority for future ALPR systems, with funding through Public Works Transit grants and community donations on an as-made basis.

**FISCAL IMPACT:** The department included the expenditure amount of \$22,490 in the FY 15/16 General Fund budget allocation, with annual subscription in the amount of \$7500 to be included in future fiscal years' General Fund allocation. Funding for future equipment purchases may be allocated through Public Works Transit grants.

**FUNDING AVAILABLE:** Vigilant LEARN commercial database subscription and ALPR equipment and installation: \$22,490 (10032000.72306)

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Jordan Ayers  
Deputy City Manager/Internal Service Director

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Tod Patterson  
Chief of Police



**Lehr Auto Electric**  
**4707 Northgate Blvd.**  
**Sacramento, California 95834**  
**(P) 916-267-5547**



Attention:	Lodi Police Department	Date:	1/28/2016
Project Name:	ILP Three camera System	Quote Number:	STA-0441-01

## PROJECT QUOTATION

We at Vigilant Solutions are pleased to quote the following systems for the above referenced project:

Qty	Model #	Description
(1)	VS-ILP-1M2RE	<p><b>Intelligence Led Policing Package w/ 3-Camera Mobile LPR Hardware (Reaper) - Up to 100 Sworn</b></p> <p><u>Hardware Includes:</u></p> <ul style="list-style-type: none"> <li>• 3-Camera Mobile LPR system - Quantity = 1 LPR System (Reaper Cameras)               <ul style="list-style-type: none"> <li>o Power over Ethernet (POE) LPR cameras w/ Integrated processors</li> <li>o Lens configuration to be confirmed by customer at time of order</li> </ul> </li> </ul> <p><u>Software / Services Include:</u></p> <ul style="list-style-type: none"> <li>• CarDetector Mobile LPR Software for MDC Unit               <ul style="list-style-type: none"> <li>o Includes Mobile Hit Hunter Data Access Feature</li> </ul> </li> <li>• LEARN Software as a Service (SaaS) including:               <ul style="list-style-type: none"> <li>o LEARN Data Analytic Tools</li> <li>o Unlimited Commercial LPR data Access</li> <li>o Hosting, data and system management of LPR data</li> <li>o LEARN-Mobile Companion SmartPhone application (Android &amp; iPhone)</li> </ul> </li> <li>• First year Standard Service Package for hosted LPR server access</li> <li>• FaceSearch Hosted Facial Recognition               <ul style="list-style-type: none"> <li>o Image gallery of up to 5,000 images</li> </ul> </li> </ul>
(1)	VSBSCSVC-01	<p><b>Vigilant LPR Basic Service Package for Hosted/Managed LPR Deployments</b></p> <ul style="list-style-type: none"> <li>• Managed/hosted server account services by Vigilant               <ul style="list-style-type: none"> <li>o Includes access to all LEARN and CarDetector software updates</li> </ul> </li> <li>• Priced per camera per year for up to 14 total camera units registered</li> <li>• Requires new/existing Enterprise Service Agreement (ESA)</li> </ul>
(1)	VSPK1SVC-01	<p><b>Vigilant LPR Standard Service Package for Hosted/Managed LPR Deployments</b></p> <ul style="list-style-type: none"> <li>• Optional Service Package Benefits               <ul style="list-style-type: none"> <li>o Extended access to Vigilant 'Private Data' via CarDetector Mobile Hit Hunter</li> <li>o Unlimited access to Vigilant's Mobile Companion LPR application for Smartphones</li> </ul> </li> <li>• Priced per camera per year for up to 14 total camera units</li> <li>• Requires Basic Service Package</li> </ul>
(1)	SSUPLN-COM	<p><b>Vigilant Start Up &amp; Configuration of Hosted/Managed LEARN Server Account</b></p> <ul style="list-style-type: none"> <li>• New client account setup via national LPR server</li> <li>• Required for all hosted/managed LEARN client accounts</li> </ul>
(1)	SSUPSYS-COM	<p><b>Vigilant System Start Up &amp; Commissioning of 'In Field' LPR system</b></p> <ul style="list-style-type: none"> <li>• Vigilant technician to visit customer site</li> <li>• Includes system start up, configuration and commissioning of LPR system</li> <li>• Applies to mobile (1 System) and fixed (1 Camera) LPR systems</li> </ul>
(1)	VSPTRNG	<p><b>Vigilant End User Training for LPR Systems</b></p> <ul style="list-style-type: none"> <li>• End user training for Vigilant products               <ul style="list-style-type: none"> <li>o Covers all client purchased applications</li> <li>o Includes classroom and field operation training</li> </ul> </li> <li>• Vigilant certified technician to visit site and perform one training class</li> </ul>

(1)	VSPTRVL-01	<b>Vigilant Certified Partner Travel via Client Site Visit</b> <ul style="list-style-type: none"> <li>• Vigilant certified technician to visit client site</li> <li>• Includes all travel costs for onsite support services</li> </ul>
(1)	VS-LBB-02-E	<b>LPR Camera Mounting Brackets - Light Bar Mounting Style - Complete Set</b> <ul style="list-style-type: none"> <li>• LPR Camera Mounting Bracket - Rooftop under light bar</li> <li>• Compatible with most Whelen, Code3, TOMAR, Federal Signal, Argent S2 Light Bars</li> <li>• Mounts up to four (4) LPR cameras</li> </ul>
(1)	Installation	<b>Install ALPR 4 camera System on Patrol Car</b> <ul style="list-style-type: none"> <li>• Installed at Lehr Location</li> <li>• Certified Vigilant Install</li> </ul>
(1)	Tax	<b>Tax @ 8%</b>

**Quote Notes:**

1. All prices are quoted in USD and will remain firm and in effect for 60 days.
2. Complete system to be delivered within 30 days of AOR (After Receipt of Order).
3. No permits, start-up, installation, and or service included in this proposal unless explicitly stated above.
4. Central compute resource hardware sold separately unless explicitly stated above.
5. All hardware components to have standard One (1) year hardware warranty.
6. All software to have standard one (1) year warranty for manufacturer defects.
7. Compatibility with Vigilant Solutions hardware/software to be confirmed prior to sale.
8. Software is manufactured under strict Vigilant Solutions standard.
9. Compliance to local codes neither guaranteed nor implied.
10. This Quote does not include anything outside the above stated bill of materials.
11. Lehr is a Sole Source provider for Vigilant Solutions in CA, HI and NV - see attached

**Quoted by: Steve Adair - 916-267-5547 - steve@lehrauto.com**

<b>Total Price</b> (including sales tax)	<b>\$22,482.40</b>	
Accepted By:	Date:	P.O#

**Approved as to form**

**Deputy City Attorney**





## Enterprise Service Agreement (ESA)

This Vigilant Solutions Enterprise Service Agreement (the "Agreement") is made and entered into as of this \_\_\_\_\_ Day of \_\_\_\_\_, 2016 by and between **Vigilant Solutions Inc.**, a Delaware corporation, having its principal place of business at 2021 Las Positas Court Suite # 101, Livermore, CA 94551 ("Vigilant") and \_\_\_\_\_, a law enforcement agency (LEA) or other governmental agency, having its principal place of business at 221 W. Pine St, Lodi, Ca. 95240 ("Affiliate").

**WHEREAS**, Vigilant designs, develops, licenses and services advanced video analysis software technologies for the law enforcement and security markets;

**WHEREAS**, Vigilant provides access to license plate data as a value added component of the Vigilant law enforcement package of license plate recognition equipment and software;

**WHEREAS**, Affiliate will separately purchase License Plate Recognition (LPR) hardware components from Vigilant and/or its authorized reseller for use with the Software Products (as defined below);

**WHEREAS**, Affiliate desires to license from and receive service for the Software Products provided by Vigilant;

**THEREFORE**, In consideration of the mutual covenants contained herein this Agreement, Affiliate and Vigilant hereby agree as follows:

### I. Definitions:

**"CLK"** or **"Camera License Key"** means an electronic key that will permit each license of Vigilant's CarDetector brand LPR software or LineUp brand facial recognition software (one CLK per camera) to be used with other Vigilant LPR hardware components and Software Products.

**"Effective Date"** means sixty (60) days subsequent to the date set forth in the first paragraph of this Agreement.

**"Software Products"** means Vigilant's Law Enforcement & Security suite of Software Products including CarDetector, Law Enforcement Archival & Reporting Network (LEARN), Mobile Companion for Smartphones, Target Alert Service (TAS) server/client alerting package, FaceSearch, LineUp and other software applications considered by Vigilant to be applicable for the benefit of law enforcement and security practices.

**"Enterprise License"** means a non-exclusive, non-transferable license to install and operate the Software Products, on any applicable media, without quantity or limitation. This Enterprise Service Agreement allows Affiliate to install the Software Products on an unlimited number of devices, in accordance with the selected Service Package(s), and allow benefits of all rights granted hereunder this Agreement.

**"User License"** means a non-exclusive, non-transferable license to install and operate the Software Products, on any applicable media, limited to a single licensee.

**"Service Package"** means the Affiliate designated service option(s) which defines the extent of use of the Software Products, in conjunction with any service and/or benefits therein granted as rights hereunder this Agreement.



“**Service Fee**” means the amount due from Affiliate prior to the renewal of this Agreement as consideration for the continued use of the Software Products and Service Package benefits according to Section VIII of this Agreement.

“**Service Period**” has the meaning set forth in Section III (A) of this Agreement.

“**Technical Support Agents**” means Affiliate’s staff person specified in the Contact Information Worksheet of this Agreement responsible for administering the Software Products and acting as Affiliate’s Software Products support contact.

“**LEA LPR Data**” refers to LPR data collected by LEAs and available on LEARN for use by other LEAs. LEA LPR Data is freely available to LEAs at no cost and is governed by the contributing LEA’s retention policy.

“**Private LPR Data**” refers to LPR data collected by private commercial sources and available on LEARN with a paid subscription.

## II. Enterprise License Grant; Duplication and Distribution Rights:

Subject to the terms and conditions of this Agreement, Vigilant hereby grants Affiliate an Enterprise License to the Software Products for the Term provided in Section III below. Except as expressly permitted by this Agreement, Affiliate or any third party acting on behalf of Affiliate shall not copy, modify, distribute, loan, lease, resell, sublicense or otherwise transfer any right in the Software Products. Except as expressly permitted by this Agreement, no other rights are granted by implication, estoppels or otherwise. Affiliate shall not eliminate, bypass, or in any way alter the copyright screen (also known as the “splash” screen) that may appear when Software Products are first started on any computer. Any use or redistribution of Software Products in a manner not explicitly stated in this Agreement, or not agreed to in writing by Vigilant, is strictly prohibited.

## III. Term; Termination.

A. **Term.** The initial term of this Agreement is for one (1) year beginning on the Effective Date (the “Initial Term”), unless earlier terminated as provided herein. Sixty (60) days prior to the expiration of the Initial Term and each subsequent Service Period, Vigilant will provide Affiliate with an invoice for the Service Fee due for the subsequent twelve (12) month period (each such period, a “Service Period”). This Agreement and the Enterprise License granted under this Agreement will be extended for a Service Period upon Affiliate’s payment of that Service Period’s Service Fee, which is due 30 days prior to the expiration of the Initial Term or the existing Service Period, as the case may be. Pursuant to Section VIII below, Affiliate may also pay in advance for more than one Service Period.

B. **Affiliate Termination.** Affiliate may terminate this Agreement at any time by notifying Vigilant of the termination in writing thirty (30) days prior to the termination date, and deleting all copies of the Software Products. If Affiliate terminates this Agreement prior to the end of the Initial Term, Vigilant will not refund or prorate any license fees, nor will it reduce or waive any license fees still owed to Vigilant by Affiliate. Upon termination of the Enterprise License, Affiliate shall immediately cease any further use of Software Products. Affiliate may also terminate this agreement by not paying an invoice for a subsequent year’s Service Fee within sixty (60) days of invoice issue date.

C. **Vigilant Termination.** Vigilant has the right to terminate this Agreement by providing thirty (30) days written notice to Affiliate. If Vigilant’s termination notice is based on an alleged breach by Affiliate, then Affiliate shall have thirty (30) days from the date of its receipt of Vigilant’s notice of termination, which shall set forth in detail



Affiliate's purported breach of this Agreement, to cure the alleged breach. If within thirty (30) days of written notice of violation from Vigilant Affiliate has not reasonably cured the described breach of this Agreement, Affiliate shall immediately discontinue all use of Software Products and certify to Vigilant that it has returned or destroyed all copies of Software Products in its possession or control. If Vigilant terminates this Agreement prior to the end of a Service Period for no reason, and not based on Affiliate's failure to cure the breach of a material term or condition of this Agreement, Vigilant shall refund to Affiliate an amount calculated by multiplying the total amount of Service Fees paid by Affiliate for the then-current Service Period by the percentage resulting from dividing the number of days remaining in the then-current Service Period, by 365.

#### IV. **Warranty and Disclaimer; Infringement Protection; Use of Software Products Interface.**

A. **Warranty and Disclaimer.** Vigilant warrants that the Software Products will be free from all Significant Defects (as defined below) during the lesser of the term of this Agreement (the "Warranty Period") or one year. "Significant Defect" means a defect in a Software Product that impedes the primary function of the Software Product. This warranty does not include products not manufactured by Vigilant. Vigilant will repair or replace any Software Product with a Significant Defect during the Warranty Period; *provided, however*, if Vigilant cannot substantially correct a Significant Defect in a commercially reasonable manner, Affiliate may terminate this Agreement and Vigilant shall refund to Affiliate an amount calculated by multiplying the total amount of Service Fees paid by Affiliate for the then-current Service Period by the percentage resulting from dividing the number of days remaining in the then-current Service Period, by 365. The foregoing remedies are Affiliate's exclusive remedy for defects in the Software Product. Vigilant shall not be responsible for labor charges for removal or reinstallation of defective software, charges for transportation, shipping or handling loss, unless such charges are due to Vigilant's gross negligence or intentional misconduct. Vigilant disclaims all warranties, expressed or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose. In no event shall Vigilant be liable for any damages whatsoever arising out of the use of, or inability to use, the Software Products.

B. **Infringement Protection.** If an infringement claim is made against Affiliate by a third-party in a court of competent jurisdiction regarding Affiliate's use of any of the Software Products, Vigilant shall indemnify Affiliate, and assume all legal responsibility and costs to contest any such claim. If Affiliate's use of any portion of the Software Products or documentation provided to Affiliate by Vigilant in connection with the Software Products is enjoined by a court of competent jurisdiction, Vigilant shall do one of the following at its option and expense within sixty (60) days of such enjoinder: (1) Procure for Affiliate the right to use such infringing portion; (2) replace such infringing portion with a non-infringing portion providing equivalent functionality; or (3) modify the infringing portion so as to eliminate the infringement while providing equivalent functionality.

C. **Use of Software Products Interface.** Under certain circumstances, it may be dangerous to operate a moving vehicle while attempting to operate a touch screen or laptop screen and any of their applications. It is agreed by Affiliate that Affiliate's users will be instructed to only utilize the interface to the Software Products at times when it is safe to do so. Vigilant is not liable for any accident caused by a result of distraction such as from viewing the screen while operating a moving vehicle.



## **V. Software Support, Warranty and Maintenance.**

Affiliate will receive technical support by submitting a support ticket to Vigilant's company support website or by sending an email to Vigilant's support team. Updates, patches and bug fixes of the Software Products will be made available to Affiliate at no additional charge, although charges may be assessed if the Software Product is requested to be delivered on physical media. Vigilant will provide Software Products support to Affiliate's Technical Support Agents through e-mail, fax and telephone.

## **VI. Camera License Keys (CLKs).**

Affiliate is entitled to use of the Software Products during the term of this Agreement to set up and install the Software Products on an unlimited number of media centers within Affiliate's agency in accordance with selected Service Options. As Affiliate installs additional units of the Software Products and connects them to LPR cameras, Affiliate is required to obtain a Camera License Key (CLK) for each camera installed and considered in active service. A CLK can be obtained by Affiliate by going to Vigilant's company support website and completing the online request form to Vigilant technical support staff. Within two (2) business days of Affiliate's application for a CLK, Affiliate's Technical Support Agent will receive the requested CLK that is set to expire on the last day of the Initial Term or the then-current Service Period, as the case may be.

## **VII. Ownership of Software.**

A. Ownership of Software Products. The Software Products are copyrighted by Vigilant Solutions and remain the property of Vigilant Solutions. The license granted under this Agreement is not a sale of the Software Products or any copy. Affiliate owns the physical media on which the Software Products are installed, but Vigilant Solutions retains title and ownership of the Software Products and all other materials included as part of the Software Products.

B. Rights in Software Products. Vigilant Solutions represents and warrants that: (1) it has title to the Software and the authority to grant license to use the Software Products; (2) it has the corporate power and authority and the legal right to grant the licenses contemplated by this Agreement; and (3) it has not and will not enter into agreements and will not take or fail to take action that causes its legal right or ability to grant such licenses to be restricted.

## **VIII. Data Sharing.**

If Affiliate is a generator as well as a consumer of LPR Data, Affiliate at its option may share its LEA LPR Data with similarly situated LEAs who contract with Vigilant to access LEARN (for example, LEAs who share LEA LPR Data with other LEAs). Vigilant will not share any LEA LPR Data generated by the Affiliate without the permission of the Affiliate.

## **IX. Ownership of LPR Data.**

Vigilant retains all title and rights to Private LPR Data. Affiliate retains all rights to LEA LPR Data generated by the Affiliate. Should Affiliate terminate agreement with Vigilant, a copy of all LEA LPR Data generated by the Affiliate will be created and provided to the Affiliate. After the copy is created, all LEA LPR Data generated by the Affiliate will be deleted from LEARN at the written request of an authorized representative of the Affiliate.



**X. Service Package, Fees and Payment Provisions.**

A. Service Package. This Enterprise License Agreement is based on one (1) of the three (3) following Service Package Options. Please select one (1):

Please 'Check'  
One (1) Option

Service Package - Basic LPR Service Package:

- Vigilant Managed/Hosted LPR server LEARN Account
  - Access to all Vigilant Software including all upgrades and updates
  - Unlimited user licensing for the following applications:
    - LEARN, CarDetector and TAS

Service Package - Option # 1 – Standard LPR Service Package:

- All Basic Service Package benefits
  - Unlimited use of CarDetector – Mobile Hit Hunter (CDMS-MHH)
  - Unlimited use of Vigilant’s LPR Mobile Companion smartphone application

Service Package - Option # 2 – ‘Intelligence Led Policing (ILP)’ Service Package:

- All Service Package Option # 1 benefits
  - Mobile or Fixed LPR hardware up to level of Tier (choice of either fixed or mobile packages, details in Exhibit A)
    - Reaper Cameras
    - Raptor 3 Cameras
  - Use of Vigilant Facial Recognition technologies up to level of Tier (details in Exhibit A)
    - FaceSearch Account
    - FaceSearch Mobile Companion
    - Templates up to limit for FaceSearch Account (details in Exhibit A)
  - Tiered based on size of department (Tier 1 up to 100 sworn officers, Tier 2 up to 200 sworn officers, Tier 3 up to 700 sworn officers, Tier 4 up to 2,000 sworn officers as well as Fusion Centers)
  - States, Federal Agencies and Departments with greater than 2,000 sworn fall under a, “Custom” Tier which will be defined in the Annual Service Fee Schedule if applicable.

B. Service Fee. Payment of each Service Fee entitles Affiliate to all rights granted under this Agreement, including without limitation, use of the Software Products for the relevant Service Period, replacement of CLKs, and access to the updates and releases of the Software Products and associated equipment driver software to allow the Software Products to remain current and enable the best possible performance. The annual Service Fee due for a particular Service Period is based on the number of current Vigilant issued CLK’s at the time of Service Fee invoicing, and which will be used by Affiliate in the upcoming Service Period. A schedule of annual Service Fees is shown below:



Annual Service Fee Schedule (multiplied by number of CLK's Issued)				
Total # of CLK's under this ESA	0-14 CLK's	15-30 CLK's	31-60 CLK's	Over 60
Basic Service	\$500.00	\$425.00	\$375.00	\$250.00
Standard (Option # 1)	\$725.00	\$615.00	\$540.00	\$365.00
ILP Subscriber CLK Renewal Fees	\$500.00	\$425.00	\$375.00	\$250.00
Annual Service Fee Schedule for Intelligence-Led Policing (ILP) Service Package				
Tier	Reaper	Raptor 3		
ILP Tier 1 (Option # 2)	\$10,630	\$12,500		
ILP Tier 2 (Option # 3)	\$27,260	\$29,500		
ILP Tier 3 (Option # 2)	\$62,390	\$69,500		
ILP Tier 4 (Option #2)	\$120,650	\$129,500		
Annual Service Fee Schedule for Image Enrollment				
# of Images	Up to 250,000	250,001 to 500,000	500,001 to 1 Million	Over 1 Million
Per Image Fee	\$0.30	\$0.25	\$0.18	\$0.15

Payment of the Service Fee is due thirty (30) days prior to the renewal of the then-current Service Period. All Service Fees are exclusive of any sales, use, value-added or other federal, state or local taxes (excluding taxes based on Vigilant's net income) and Affiliate agrees to pay any such tax. Service Fees may increase by no higher than 4% per year for years after the first year of this agreement. For ILP (Option # 2) Tier packages, the Tier amount is due for subsequent periods and Basic Service CLK fees are due for all cameras from previous periods (this is in addition to the Annual Subscription Fee).

C. **Advanced Service Fee Payments.** Vigilant Solutions will accept advanced Service Fee payments on a case by case basis for Affiliates who wish to lock in the Service Fee rates for subsequent periods at the rates currently in effect, as listed in the table above. If Affiliate makes advanced Service Fee payments to Vigilant Solutions, advanced payments to Vigilant Solutions will be applied in full to each subsequent Service Period's Service Fees until the balance of the credits is reduced to a zero balance. System based advanced credits shall be applied to subsequent Service Fees in the amount that entitles Affiliate continued operation of the designated camera unit systems for the following Service Period until the credits are reduced to a zero balance.

D. **Price Adjustment.** Vigilant has the right to increase or decrease the annual Service Fee from one Service Period to another; *provided, however*, that in no event will a Service Fee be increased by more than the greater of (i) 4% of the prior Service Period's Service Fees, (ii) the published rate of inflation in the United States for the prior year then ended, or (iii) prices identified in the original proposal. If Vigilant intends to adjust the Service Fee for a subsequent Service Period, it must give Affiliate notice of the proposed increase on or before the date that Vigilant invoices Affiliate for the upcoming Service Period.



**XI. Miscellaneous.**

A. Limitation of Liability. IN NO EVENT SHALL VIGILANT SOLUTIONS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES INCLUDING DAMAGES FOR LOSS OF USE, DATA OR PROFIT, ARISING OUT OF OR CONNECTED WITH THE USE OF THE SOFTWARE PRODUCTS, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF VIGILANT SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL VIGILANT SOLUTIONS'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY AFFILIATE TO VIGILANT SOLUTIONS FOR THE SOFTWARE PRODUCTS LICENSED UNDER THIS AGREEMENT.

B. Confidentiality. Affiliate acknowledges that Software Products contain valuable and proprietary information of Vigilant Solutions and Affiliate will not disassemble, decompile or reverse engineer any Software Products to gain access to confidential information of Vigilant Solutions.

C. Assignment. Neither Vigilant Solutions nor Affiliate is permitted to assign this Agreement without the prior written consent of the other party. Any attempted assignment without written consent is void.

D. Amendment; Choice of Law. No amendment or modification of this Agreement shall be effective unless in writing and signed by authorized representatives of the parties. This Agreement shall be governed by the laws of the state of California without regard to its conflicts of law.

E. Complete Agreement. This Agreement constitutes the final and complete agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, written or oral, with respect to such subject matter.

F. Relationship. The relationship created hereby is that of contractor and customer and of licensor and Affiliate. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

G. No Rights in Third Parties. This agreement is entered into for the sole benefit of Vigilant Solutions and Affiliate and their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

H. Construction. The headings used in this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.



I. Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

J. Federal Government. Any use, copy or disclosure of Software Products by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided by DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (Oct 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227 (ALT III), as applicable.

K. Right to Audit. Affiliate, upon thirty (30) days advanced written request to Vigilant Solutions, shall have the right to investigate, examine, and audit any and all necessary non-financial books, papers, documents, records and personnel that pertain to this Agreement and any other Sub Agreements.

L. Notices; Authorized Representatives; Technical Support Agents. All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by facsimile transmission indicating receipt at the facsimile number where sent; (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested. All notices and communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time to time change the notice address set forth below by delivering 30 days advance notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

<p><b>Vigilant Solutions, Inc.</b>          Attn: Sales Administration          2021 Las Positas Court - Suite # 101          Livermore, CA 94551</p>	<p><b>Affiliate:</b> <u>Lodi Police Department</u>  <b>Attn:</b> <u>Paula O'Keefe</u>  <b>Address:</b> <u>215 W. Elm Street</u>  <u>Lodi, Ca. 95240</u></p>
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M. Authorized Representatives; Technical Support Agents. Affiliate's Authorized Representatives and its Technical Support Agents are set forth below (Last Page). Affiliate's Authorized Representative is responsible for administering this Agreement and Affiliate's Technical Support Agents are responsible for administering the Software Products and acting as Affiliate's Software Products support contact. Either party may from time to time change its Authorized Representative, and Affiliate may from time to time change its Technical Support Agents, in each case, by delivering 30 days advance notice to the other party in accordance with the notice provisions of this Agreement.



IN WITNESS WHEREOF, the parties have executed the Agreement as of the Effective Date.

Manufacturer: Vigilant Solutions, Inc.

Authorized Agent: Neil T. Schlisserman

Title: Vice President of Sales

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Affiliate Organization: City of Lodi \_\_\_\_\_

Authorized Agent: Steve Schwabauer \_\_\_\_\_

Title: City Manager \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Approved as to form**  
**Deputy City Attorney** *[Signature]*



**Enterprise Service Agreement**

**Contact Information Worksheet**

Please complete the following contact information for your Vigilant Solutions Enterprise License program.

<b>Enterprise License Agreement Holder</b>			
Company / Agency Name:		City of Lodi	
Company / Agency Type:		Lodi Police Department	
Address:	215 W. Elm Street		
	Lodi, Ca. 95240		
<b>Primary Contact</b>			
Name:	David Griffin		
Title:	Captain	Phone:	209-333-6800 x 6800
Email:	dgriffin@pd.lodi.gov		
<b>Supervisor Information</b>			
Name:	Tod Patterson		
Title:	Chief of Police	Phone:	209-333-6725
Email:	tpatterson@pd.lodi.gov		
<b>Financial Contact (Accounts Payable)</b>			
Name:	Paula O'Keefe		
Title:	Management Analyst	Phone:	209-333-6722
Email:	pokeefe@pd.lodi.gov		
<b>Technical Support Contact # 1</b>			
Name:			
Title:		Phone:	
Email:			
<b>Technical Support Contact # 2</b>			
Name:			
Title:		Phone:	
Email:			

For questions or concerns, please contact Vigilant Solutions' sales team:

[sales@vigilantsolutions.com](mailto:sales@vigilantsolutions.com)

1-925-398-2079



Exhibit A: Option # 2 ILP Tier Package Components

Part #	Item Description
<b>VS-ILP-1M-RE / VS-ILP-1M-R3</b>	<b>ILP Mobile Bundle for Agencies of Up to 100 Sworn</b> Includes: <ul style="list-style-type: none"> <li>- Agency license for LEARN SaaS</li> <li>- Unlimited access to private LPR data</li> <li>- One (1) 2-camera mobile LPR system</li> <li>- First year of Basic and Standard Service Packages</li> <li>- LEARN-Mobile Companion</li> <li>- Mobile Hit Hunter</li> <li>- Agency license for FaceSearch</li> <li>- Image gallery up to 5,000 images</li> </ul>
<b>VS-ILP-1F-RE / VS-ILP-1F-R3</b>	<b>ILP Fixed Bundle for Agencies of Up to 100 Sworn</b> Includes: <ul style="list-style-type: none"> <li>- Agency license for LEARN SaaS</li> <li>- Unlimited access to private LPR data</li> <li>- Two (2) fixed camera LPR systems</li> <li>- First year of Basic and Standard Service Packages</li> <li>- LEARN-Mobile Companion</li> <li>- Mobile Hit Hunter</li> <li>- Agency license for FaceSearch</li> <li>- Image gallery up to 5,000 images</li> </ul>
<b>VS-ILP-2M-RE / VS-ILP-2M-R3</b>	<b>ILP Mobile Bundle for Agencies of 51 to 200 Sworn</b> Includes: <ul style="list-style-type: none"> <li>- Agency license for LEARN SaaS</li> <li>- Unlimited access to private LPR data</li> <li>- Two (2) 2-camera mobile LPR system</li> <li>- First year of Basic and Standard Service Packages</li> <li>- LEARN-Mobile Companion</li> <li>- Mobile Hit Hunter</li> <li>- Agency license for FaceSearch</li> <li>- Image gallery up to 20,000 images</li> </ul>
<b>VS-ILP-2F-RE / VS-ILP-2F-R3</b>	<b>ILP Fixed Bundle for Agencies of 51 to 200 Sworn</b> Includes: <ul style="list-style-type: none"> <li>- Agency license for LEARN SaaS</li> <li>- Unlimited access to private LPR data</li> <li>- Four (4) fixed camera LPR systems</li> <li>- First year of Basic and Standard Service Packages</li> <li>- LEARN-Mobile Companion</li> <li>- Mobile Hit Hunter</li> <li>- Agency license for FaceSearch</li> <li>- Image gallery up to 20,000 images</li> </ul>



<p><b>VS-ILP-3M-RE / VS-ILP-3M-R3</b></p>	<p><b>ILP Mobile Bundle for Agencies of 201 to 700 Sworn</b>  Includes:  - Agency license for LEARN SaaS  - Unlimited access to private LPR data  - Four (4) 2-camera mobile LPR system  - First year of Basic and Standard Service Packages  - LEARN-Mobile Companion  - Mobile Hit Hunter  - Agency license for FaceSearch  - Image gallery up to 50,000 images</p>
<p><b>VS-ILP-3F-RE / VS-ILP-3F-R3</b></p>	<p><b>ILP Fixed Bundle for Agencies of 201 to 700 Sworn</b>  Includes:  - Agency license for LEARN SaaS  - Unlimited access to private LPR data  - Eight (8) fixed camera LPR systems  - First year of Basic and Standard Service Packages  - LEARN-Mobile Companion  - Mobile Hit Hunter  - Agency license for FaceSearch  - Image gallery up to 50,000 images</p>
<p><b>VS-ILP-4M-RE / VS-ILP-4M-R3</b></p>	<p><b>ILP Mobile Bundle for Fusion Centers and Agencies of 701 to 2000 Sworn</b>  Includes:  - Agency license for LEARN SaaS  - Unlimited access to private LPR data  - Five (5) 2-camera mobile LPR system  - First year of Basic and Standard Service Packages  - LEARN-Mobile Companion  - Mobile Hit Hunter  - Agency license for FaceSearch  - Image gallery up to 100,000 images</p>
<p><b>VS-ILP-4F-RE / VS-ILP-4F-R3</b></p>	<p><b>ILP Fixed Bundle for Fusion Centers and Agencies of 701 to 2000 Sworn</b>  Includes:  - Agency license for LEARN SaaS  - Unlimited access to private LPR data  - Ten (10) fixed camera LPR systems  - First year of Basic and Standard Service Packages  - LEARN-Mobile Companion  - Mobile Hit Hunter  - Agency license for FaceSearch  - Image gallery up to 100,000 images</p>



**VIGILANT SOLUTIONS - SOFTWARE SERVICE PROGRAM  
STATE AND LOCAL LAW ENFORCEMENT AGENCY AGREEMENT**

This Agreement is made and entered into effective \_\_\_\_\_, 2016 (the "Effective Date") between Vigilant Solutions, Inc., a Delaware corporation ("Vigilant") and \_\_\_\_\_, City of Lodi, 221 W. Pine Street, Lodi, Ca. 95240, an Originating Agency Identifier (ORI) credentialed law enforcement agency ("Agency").

A. Vigilant stores and disseminates to law enforcement agencies publicly and privately gathered license plate recognition (LPR) data as a valued added component of the Vigilant law enforcement package of LPR equipment and/or software; and

B. Agency desires to obtain access to Vigilant's Software Service with available publicly and privately collected LPR data via the Law Enforcement Archival Reporting Network (LEARN) server;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

**1. Definitions.**

(a) **Confidential Information.** Refers to any and all (i) rights of Vigilant associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask works, trademark and trade name rights and similar rights, trade secrets rights, patents, designs, algorithms and other industrial property rights, other intellectual and industrial property and proprietary rights of every kind and nature, whether arising by operation of law, by contract or license, or otherwise; and all registrations, applications, renewals, extensions, combinations, divisions or reissues of the foregoing; (ii) product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, and past, current and planned research and development; (iii) current and planned manufacturing and distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, and business plans; (iv) computer software and programs (including object code and source code), database technologies, systems, structures, architectures, processes, improvements, devices, discoveries, concepts, methods, and information of Vigilant; (v) any other information, however documented, of Vigilant that is a trade secret within the meaning of applicable state trade secret law or under other applicable law, including but not limited to the LEARN Software Service and the Private LPR Data; (vi) information concerning the business and affairs of Vigilant (which includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, personnel training techniques and materials, and purchasing methods and techniques, however documented; and (vii) notes, analysis, compilations, studies, summaries and other material prepared by or for Vigilant containing or based, in whole or in part, upon any information included in the foregoing.

(b) **LEA.** Refers to a law enforcement agency.

(c) **LEARN Software Service.** Refers to a web based (hosted) suite of software applications consisting of analytical and investigative software located on a physical database server that also hosts LPR Data.

(d) **License Plate Recognition ("LPR").** Refers to the process of utilizing cameras, either stationary or mounted on moving vehicles, to capture and interpret images of vehicle license plates.

(e) **LPR Data.** Refers to both LEA LPR Data and Private LPR Data.



(f) **LEA LPR Data.** Refers to LPR data collected by LEAs and available on the LEARN Software Service for use by other LEAs. LEA LPR Data is freely available to LEAs at no cost and is governed by the contributing LEA's retention policy.

(g) **Private LPR Data.** Refers to LPR data collected by private commercial sources and available on the LEARN Software Service with a paid subscription.

(h) **User.** Refers to an individual who is an agent and sworn officer of Agency and who is authorized by Agency to access the LEARN Software Service on behalf of Agency through login credentials provided by Agency.

## 2. Licensed Access to the LEARN Software Service.

(a) **Grant of License.** During the term of this Agreement, Vigilant grants Agency a non-exclusive, non-transferable right and license to access the LEARN Software Service for use in accordance with the terms of this Agreement.

(b) **Authorized Use.** Agency is prohibited from accessing the LEARN Software Service other than for law enforcement purposes.

(c) **Ownership of Private LPR Data and LEARN Software.** Except for the rights expressly granted by Vigilant to Agency under this Agreement, Vigilant retains all title and rights to the Private LPR Data and the LEARN Software. Nothing contained in this Agreement shall be deemed to convey to Agency or to any other party any ownership interest in or to any LPR Data or the LEARN Software.

(d) **Restrictions on Use of LEARN Software Service.** Except as expressly permitted under this Agreement, Agency agrees that it shall not, nor will it permit a User or any other party to, without the prior written consent of Vigilant, (i) copy, duplicate or grant permission to the LEARN Software Service or any part thereof; (ii) create, attempt to create, or grant permission to the source program and/or object program associated with the LEARN Software Service; (iii) decompile, disassemble or reverse engineer any software component of the LEARN Software Service for any reason, including, without limitation, to develop functionally similar computer software or services; or (iv) modify, alter or delete any of the copyright notices embedded in or affixed to the copies of any components of the LEARN Software Service. Agency shall instruct each User to comply with the preceding restrictions.

(e) **Third Party Software and Data.** If and to the extent that Vigilant incorporates the software and/or data of any third party into the LEARN Software Service, including but not limited to the LEA LPR Data, and use of such third party software and/or data is not subject to the terms of a license agreement directly between Agency and the third party licensor, the license of Agency to such third party software and/or data shall be defined and limited by the license granted to Vigilant by such third party and the license to the LEARN Software Service granted by Vigilant under this Agreement. Agency specifically acknowledges that the licensors of such third party software and/or data shall retain all ownership rights thereto, and Agency agrees that it shall not (i) decompile, disassemble or reverse engineer such third party software or otherwise use such third party software for any reason except as expressly permitted herein; (ii) reproduce the data therein for purposes other than those specifically permitted under this Agreement; or (iii) modify, alter or delete any of the copyright notices embedded in or affixed to such third party software. Agency shall instruct each User to comply with the preceding restrictions.

(f) **Non-Exclusive Licensed Access.** Agency acknowledges that the right or ability of Vigilant to license other third parties to use the LEARN Software Service is not restricted in any manner by this Agreement, and that it is Vigilant's intention to license a number of other LEAs to use the LEARN Software Service. Vigilant shall have no liability to Agency for any such action.



**3. Other Matters Relating to Access to LEARN Software Service.**

(a) **Accessibility.** The LEARN Software Service, LPR Data and associated analytical tools are accessible to LEAs ONLY and are accessible pursuant to one of the following two methods:

(1) **LEARN Private Data Subscription.** Access to the LEARN Software Service through a private data subscription allows for private data to be used at a much deeper level to include partial plate queries, geo-fence queries, and analytic reports such as common plate and possible associate analysis.

(2) **Application Programming Interface (API).** The API access method allows for integration of the LPR Data into external third-party analytic tools. The API does NOT provide ownership rights to the LPR Data, only access during the subscription period. The API is available only in conjunction with a LEARN Private Data Subscription.

(b) **Access to LEA LPR Data.** LEA LPR Data is provided as a service to LEAs at no additional charge.

(c) **Eligibility.** Agency shall only authorize individuals who satisfy the eligibility requirements of “Users” to access the LEARN Software Service. Vigilant in its sole discretion may deny LEARN Software Service access to any individual based on such person’s failure to satisfy such eligibility requirements.

(d) **Account Security (Agency Responsibility).**

(1) Agency shall be responsible for assigning an account administrator who in turn will be responsible for assigning to each of Agency’s Users a username and password (one per user account). An unlimited number of User accounts is provided. Agency will cause the Users to maintain username and password credentials confidential and will prevent use of such username and password credentials by any unauthorized person(s). Agency shall notify Vigilant immediately if Agency believes the password of any of its Users has, or may have, been obtained or used by any unauthorized person(s). In addition, Agency must notify Vigilant immediately if Agency becomes aware of any other breach or attempted breach of the security of any of its Users’ accounts.

(2) User logins are restricted to agents and sworn officers of the Agency. No User logins may be provided to agents or officers of other local, state, or Federal LEAs. LPR Data must reside within the LEARN Software Service and cannot be copied to another system, unless Agency purchases Vigilant’s API.

(e) **Data Sharing.** If Agency is a generator as well as a consumer of LPR Data, Agency at its option may share its LEA LPR Data with similarly situated LEAs who contract with Vigilant to access the LEARN Software Service (for example, LEAs who share LEA LPR Data with other LEAs).

(f) **Subscriptions.** LEARN Software Service software applications and LPR Data is available to Agency and its Users on an annual subscription basis with a limited number of usage credits (described below).

Product Code	Description	Usage Credits
VS-LDS-1	Level 1 Software Service	30,000
VS-LDS-2	Level 2 Software Service	150,000
VS-LDS-3	Level 3 Software Service	625,000
VS-LDS-4	Level 4 Software Service	Unlimited

Usage credits are utilized as follows: queries use 1 credit each, basic reports use two credits each, and analytical reports use 4 credits each. Agency’s administrator has the capability to measure utilization of usage credits. The annual subscription price and related product code for the LEARN Software Service are set forth in Agency’s purchase order.

(g) **Annual Usage Credit Limit.** If Agency approaches its annual usage credit limit, Vigilant shall contact Agency with options to enable continued access to the LEARN LPR Database Server. Options are as follows: (i) initiate a new annual subscription on the date annual usage credits are fully utilized; or (ii) continue with the current subscription but pay an excess usage fee for excess usage equal to 1.2 times the prorated cost per usage credit and renew



at the same level the following year. For example, if a product code VS-LDS-2 subscriber uses 225,000 usage credits in a given subscription year period, such subscriber would be able to renew at the VS-LDS-3 product code level the following year OR remain at the VS-LDS-2 product code level and pay an excess usage fee of  $(1.2) * (225,000 - 150,000) * (\text{Annual Contract Fee } \$\$\$ / 150,000)$  prior to renewing the VS-LDS-2 contract for the subsequent year.

**(h) Available API.** Vigilant offers an API whereby Agency may load LPR Data and provide for ongoing updating of LPR Data into a third-party system of Agency's choosing (the "API"). This service is offered as an optional service and in addition to the LEARN Private Date Subscription.

#### **4. Restrictions on Access to LEARN Software Service.**

**(a) Non Disclosure of Confidential Information.** Agency and each User will become privy to Confidential Information during the term of this Agreement. Agency acknowledges that a large part of Vigilant's competitive advantage comes from the collection and analysis of this Confidential Information and Agency's use, except as expressly permitted under this Agreement, and disclosure of any such Confidential Information would cause irreparable damage to Vigilant.

**(b) Restrictions.** As a result of the sensitive nature of the Confidential Information, Agency agrees, except to the extent expressly permitted under this Agreement, (i) not to use or disclose, directly or indirectly, and not to permit Users to use or disclose, directly or indirectly, any LPR location information obtained through Agency's access to the LEARN Software Service or any other Confidential Information; (ii) not to download, copy or reproduce any portion of the LPR Data and other Confidential Information; and (iii) not to sell, transfer, license for use or otherwise exploit the LPR Data and other Confidential Information in any way. Additionally, Agency agrees to take all necessary precautions to protect the Confidential Information against its unauthorized use or disclosure and exercise at least the same degree of care in safeguarding the Confidential Information as Agency would with Agency's own confidential information and to promptly advise Vigilant in writing upon learning of any unauthorized use or disclosure of the Confidential Information.

**(c) Third Party Information.** Agency recognizes that Vigilant has received, and in the future will continue to receive, from LEAs associated with Vigilant their confidential or proprietary information ("**Associated Third Party Confidential Information**"). By way of example, Associated Third Party Confidential Information includes LEA LPR Data. Agency agrees, except to the extent expressly permitted by this Agreement, (i) not to use or to disclose to any person, firm, or corporation any Associated Third Party Confidential Information, (ii) not to download, copy, or reproduce any Associated Third Party Confidential Information, and (iii) not to sell, transfer, license for use or otherwise exploit any Associated Third Party Confidential Information. Additionally, Agency agrees to take all necessary precautions to protect the Associated Third Party Confidential Information against its unauthorized use or disclosure and exercise at least the same degree of care in safeguarding the Associated Third Party Confidential Information as Agency would with Agency's own confidential information and to promptly advise Vigilant in writing upon learning of any unauthorized use or disclosure of the Associated Third Party Confidential Information.

**(d) Non-Publication.** Agency shall not create, publish, distribute, or permit any written, electronically transmitted or other form of publicity material that makes reference to the LEARN Software Service or this Agreement without first submitting the material to Vigilant and receiving written consent from Vigilant thereto. This restriction is specifically intended to ensure consistency with other media messaging.

**(e) Non-Disparagement.** Agency agrees not to use proprietary materials or information in any manner that is disparaging. This prohibition is specifically intended to preclude Agency from cooperating or otherwise agreeing to allow photographs or screenshots to be taken by any member of the media without the express consent of



Vigilant. Agency also agrees not to voluntarily provide ANY information, including interviews, related to Vigilant, its products or its services to any member of the media without the express written consent of Vigilant.

(f) **Manner of Use.** Agency must use its account in a manner that demonstrates integrity, honesty, and common sense.

(g) **Survival of Restrictions and Other Related Matters.**

(1) Agency shall cause each User to comply with the provisions of this **Section 4**.

(2) Agency agrees to notify Vigilant immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this **Section 4** by Agency or any User, and Agency shall reasonably cooperate with Vigilant to regain possession of the Confidential Information, prevent its further unauthorized use, and otherwise prevent any further breaches of this **Section 4**.

(3) Agency agrees that a breach or threatened breach by Agency or a User of any covenant contained in this **Section 4** will cause irreparable damage to Vigilant and that Vigilant could not be made whole by monetary damages. Therefore, Vigilant shall have, in addition to any remedies available at law, the right to seek equitable relief to enforce this Agreement.

(4) No failure or delay by Vigilant in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof.

(5) The restrictions set forth in this **Section 4** shall survive the termination of this Agreement for an indefinite period of time.

## 5. Term and Termination.

(a) **Term.** This Agreement shall be for a term of one (1) year from the Effective Date of this Agreement.

(b) **Termination.**

(1) Agency may terminate this Agreement upon thirty (30) days prior written notice to Vigilant for any reason.

(2) Vigilant may terminate this Agreement upon:

(A) a failure on the part of Agency to pay any amount due and payable to Vigilant under this Agreement within thirty (30) days following receipt of written notice from Vigilant of such failure; or

(B) a material breach of any other provision of this Agreement by Agency or any User which remains uncured for thirty (30) days following receipt of written notice from Vigilant of such material breach.

(c) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all licensed rights granted in this Agreement will immediately cease to exist and Agency must promptly discontinue all use of the LEARN Software Service, erase all LPR Data accessed through the LEARN Software Service from its computers, including LPR Data transferred to an API, and return all copies of any related documentation and other materials.

(d) **No Refunds.** Upon termination of this Agreement for any reason whatsoever, whether by Agency or Vigilant, Agency shall not be entitled to a refund of the annual subscription fee, or any portion thereof.

## 6. Miscellaneous.

(a) **Notices.** Any notice under this Agreement must be written. Notices must be addressed to the recipient and either (i) hand delivered; (ii) placed in the United States mail, certified, return receipt requested; (iii) deposited with an overnight delivery service; or (iv) sent via e-mail and followed with a copy sent by overnight delivery



or regular mail, to the address or e-mail address specified below. Any mailed notice is effective three (3) business days after the date of deposit with the United States Postal Service or the overnight delivery service, as applicable; all other notices are effective upon receipt. A failure of the United States Postal Service to return the certified mail receipt to the dispatcher of such notice will not affect the otherwise valid posting of notice hereunder.

Vigilant's address for all purposes under this Agreement is:

Vigilant Solutions, Inc.  
Attn: Steve Cintron  
2021 Las Positas Court, Suite #101  
Livermore, California 94551  
Telephone: 925-398-2079  
E-mail: [steve.cintron@vigilantsolutions.com](mailto:steve.cintron@vigilantsolutions.com)

Agency's address for all purposes under this Agreement is:  
City of Lodi - Lodi Police Department  
Attn: Paula O'Keefe  
215 W. Elm Street Lodi, Ca. 95240  
Telephone: 209-333-6722  
E-mail: [pokeefe@pd.loodi.gov](mailto:pokeefe@pd.loodi.gov)

with a copy to:

Holland, Johns & Penny, L.L.P.  
Attn: Margaret E. Holland  
306 West Seventh Street, Suite 500  
Fort Worth, Texas 76102  
Telephone: 817-335-1050  
E-mail: [meh@hjllp.com](mailto:meh@hjllp.com)

Either party may designate another address for this Agreement by giving the other party at least five (5) business days' advance notice of its address change. A party's attorney may send notices on behalf of that party, but a notice is not effective against a party if sent only to that party's attorney.

**(b) Disclaimer.** Vigilant makes no express or implied representations or warranties regarding Vigilant's equipment, website, online utilities or their performance, availability, functionality, other than a warranty of merchantability and fitness for the particular purpose of searching for license plate locations in the database and performing other related analytical functions. Any other implied warranties of merchantability or fitness for a particular purpose are expressly disclaimed and excluded.

**(c) Limitations of Liability.** VIGILANT WILL NOT BE LIABLE FOR AGENCY'S USE OF THE LPR DATA OR LEARN SOFTWARE SERVICE APPLICATIONS AND WILL NOT BE LIABLE TO AGENCY UNDER ANY CIRCUMSTANCES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR GOODWILL OR ANTICIPATED PROFITS OR LOST OF BUSINESS). TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS PROHIBITED OR OTHERWISE UNENFORCEABLE VIGILANT'S CUMULATIVE LIABILITY TO AGENCY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED \$10,000.00.

**(d) Indemnification.** Agency agrees to indemnify, defend and hold harmless Vigilant and its employees, representatives, agents, officers, directors, and corporate employees (each, an "Indemnified Party"), against any and all claims, suits, actions, or other proceedings brought against the Indemnified Party based on or arising from any



claim (i) resulting from Agency's or a User's breach of this Agreement, (ii) that involves any vehicle owned or operated by Agency, (iii) or any employee or independent contractor hired by Agency or (iv) any and all claims based on Agency's or a User's actions or omissions. Agency will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by the Indemnified Party in connection with or arising from any such claim, suit, action, or proceeding up to \$5,000,000. Because this \$5,000,000 limit may not exceed appropriations available at the time of the losses, and nothing in this Agreement may be construed as implying that Congress will at a later date appropriate funds sufficient to cover those losses, Agency shall administratively reserve sufficient funds to satisfy its obligations hereunder.

**(e) Independent Contractor Status.** Each party will at all times be deemed to be an independent contractor with respect to the subject matter of this Agreement and nothing contained in this Agreement will be deemed or construed in any manner as creating any partnership, joint venture, joint enterprise, single business enterprise, employment, agency, fiduciary or other similar relationship.

**(f) Assignment of this Agreement.** Agency may not assign its rights or obligations under this Agreement to any party, without the express written consent of Vigilant.

**(g) No Exclusivity.** Vigilant may at any time, directly or indirectly, engage in similar arrangements with other parties, including parties which may conduct operations in geographic areas in which Agency operates. Additionally, Vigilant reserves the right to provide LPR Data to third-party entities for purposes of promotions, marketing, business development or any other commercially reasonable reason that Vigilant deems necessary and appropriate.

**(h) No Reliance.** Agency represents that it has independently evaluated this Agreement and is not relying on any representation, guarantee, or statement from Vigilant or any other party, other than as expressly set forth in this Agreement.

**(i) Governing Law; Venue.** THIS AGREEMENT IS GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS-OF-LAWS PRINCIPLES. THE PARTIES HERETO CONSENT THAT VENUE OF ANY ACTION BROUGHT UNDER THIS AGREEMENT WILL BE IN TARRANT COUNTY, TEXAS.

**(j) Amendments.** Except as otherwise permitted by this Agreement, no amendment to this Agreement or waiver of any right or obligation created by this Agreement will be effective unless it is in writing and signed by both parties. Vigilant's waiver of any breach or default will not constitute a waiver of any other or subsequent breach or default.

**(k) Entirety.** This Agreement and the Agency's purchase order, setting forth Vigilant's LEARN Software Service being purchased by Agency pursuant to this Agreement and the related product code and subscription price, represent the entire agreement between the parties and supersede all prior agreements and communications, oral or written between the parties. Except to the limited extent expressly provided in this **Section 6(k)**, no contrary or additional terms contained in any purchase order or other communication from Agency will be a part of this Agreement.

**(l) Force Majeure.** Neither party will be liable for failure to perform or delay in performing any obligation under this Agreement if nonperformance is caused by an occurrence beyond the reasonable control of such party and without its fault or negligence such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, delays of common carriers, or any other cause beyond the reasonable control of such party.

**(m) Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement by persons duly authorized as of the date and year first above written.

Company: Vigilant Solutions, Inc.

Authorized Agent: Joseph L. Harzewski III

Title: Vice President of Sales

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Agency: City of Lodi \_\_\_\_\_

Authorized Agent: Steve Schwabauer \_\_\_\_\_

Title: City Manager \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Approved as to form \_\_\_\_\_  
Deputy City Attorney 

*[signature page – LEARN Software Service  
State and Local Law Enforcement Agency Agreement]*



## Vigilant Insurance Requirements Exhibit

**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect Contractor 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 Contractor's operations under this Agreement, whether such operations be by Contractor, 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**  
\$2,000,000 Each Occurrence  
\$4,000,000 General Aggregate
2. **COMPREHENSIVE AUTOMOBILE LIABILITY**  
\$1,000,000 Combined Single Limit  
Such insurance shall cover liability arising out of any vehicle (including, owned, hired and non-hired vehicles) operated in performing any and all services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version, that provides liability coverage at least as broad as this form.
3. **ERRORS AND OMISSIONS / TECHNOLOGY**  
\$3,000,000 Per Claim  
\$6,000,000 Annual Aggregate  
Covering all acts, errors, omissions, negligence, network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, and payable whether incurred by City of Lodi or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for, or on behalf of, City of Lodi.  
Such insurance shall be maintained in force at all times during the term of the agreement and provide an Extended Reporting Period (ERP) for a period of one year thereafter, for services completed during the term of the agreement.

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

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

Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

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

- (a) **Additional Named Insured Endorsement**  
Pursuant to a separate endorsement (ISO form CG 2010 (11/85) or a later version, that provides liability coverage at least as broad as this form) such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers as additional named insureds. An additional named insured endorsement is also required for Auto Liability.
- (b) **Primary and Non-Contributory Insurance Endorsement**  
Additional insurance coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.

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

- (c) Waiver of Subrogation  
Include a waiver of subrogation against the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. A waiver is required for General Liability and Auto Liability.
- (d) Limits of Coverage  
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of Contractor shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect the City as a named insured.
- (e) Completed Operations Endorsement  
For three years after completion of project, a certificate of insurance with a Completed Operations Endorsement, CG 20 37 07 04, will be provided to the City of Lodi.
- (f) 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.
- (g) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.
- (h) Continuity of Coverage  
All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Contractor's insurance lapses or is discontinued for any reason, Contractor shall immediately notify the City and immediately obtain replacement insurance.
- (i) Failure to Comply  
If Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Contractor shall pay such reimbursement and interest on the first (1<sup>st</sup>) day of the month following the City's notice. Notwithstanding and other provision of this Agreement, if Contractor fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.
- (j) Qualified Insurer(s)  
All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

**Workers Compensation Insurance** The Contractor shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor 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 Contractor. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. **A waiver of subrogation is required for workers compensation insurance.** This policy may not be canceled nor the coverage reduced without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

**NOTE: The City reserves the right to obtain a full certified copy of any insurance policy or endorsements required. Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**

RESOLUTION NO. 2016-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH VIGILANT SOLUTIONS FOR LEARN SOFTWARE; AUTHORIZING PURCHASE AND INSTALLATION OF AUTOMATED LICENSE PLATE READER EQUIPMENT; AND FURTHER AUTHORIZING FUTURE PURCHASES

WHEREAS, pursuant to State Senate Bill 34, the Lodi Police Department conducted a Public Hearing on April 20, 2016, as required, regarding the future operation of an Automated License Plate Reader (ALPR) system; and

WHEREAS, at their April 20, 2016 meeting, the City Council also adopted the Lodi Police Department ALPR policy, which provides guidance for the capture, storage and use of digital data obtained through the use of ALPR technology and ensures that the collection, use, maintenance, sharing and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties; and

WHEREAS, an ALPR is a computer-based system that utilizes special cameras to capture license plate information and collect the images in a nationwide database. Through the use of the ALPR camera system, the department will upload images to LEARN, a commercial database only accessible to law enforcement agencies; and

WHEREAS, ALPR camera systems are used by law enforcement nationwide and its primary purpose is two-fold: 1) as an investigative tool, and 2) as a real-time alert system that compares license plates as they are read to the state/federal law enforcement database of stolen vehicles, vehicles involved in AMBER alerts, and vehicles connected to reports of missing persons; and

WHEREAS, the ALPR is restricted to legitimate law enforcement uses to further the goal of enhancing public safety by providing information to national law enforcement agencies.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute an Agreement with Vigilant Solutions for LEARN software, and further authorizes the purchase of ALPR equipment and installation by Lehr Automotive in an amount not to exceed \$22,490; and

BE IT FURTHER RESOLVED that the City Council hereby authorizes future ALPR equipment purchases if funds become available through Public Works Transit grants and community donations.

Date: May 18, 2016

I hereby certify that Resolution No. 2016-\_\_\_ was passed and adopted by the Lodi City Council in a regular meeting held May 18, 2016, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

JENNIFER M. FERRAILO  
City Clerk



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** 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

**MEETING DATE:** May 18, 2016

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

**RECOMMENDED ACTION:** 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.

**BACKGROUND INFORMATION:** The Parks, Recreation and Cultural Services Department currently provides a summer swim league program to more than 400 children. This City has had a contract for the use of the Twin Arbors Athletic Club ("TAAC") pool since 2003.

As a way of accommodating facility needs, staff has partnered with TAAC to gain access to its pools. In exchange, TAAC is allowed to organize its own team and participate in the City-sponsored Summer Swim League. The benefits of the public/private partnership are twofold: (1) It provides the City use of aquatic facilities that the City does not have; and, (2) It creates another program offering for TAAC which has resulted in the expansion of the Summer Swim League.

Staff recommends approval of the agreement, which will enable the swimming pools at TAAC to be used for swim meets and allow for a team composed of TAAC members to participate in the league. Meets will be held on select Friday nights in June and July 2016. The term of this agreement is May 31, 2016, to July 15, 2016.

**FISCAL IMPACT:** No funds will be exchanged. This is an in-kind trade. The use of multiple pools (TAAC, Tokay High School, and Lodi High School) will enhance scheduling efficiency and allow for Friday night versus Saturday meets.

**FUNDING AVAILABLE:** Not applicable.

\_\_\_\_\_  
Jeff Hood  
Parks, Recreation and Cultural Services Director

JMR:tl

cc: City Attorney

Attachments

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

**MEMORANDUM OF UNDERSTANDING  
(Summer Swim League)**

THIS Memorandum of Understanding ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by Spare Time Incorporated, d.b.a. Twin Arbors Athletic Club, ("TAAC") and the CITY OF LODI, a municipal corporation ("City").

Background

A. City's Parks, Recreational and Cultural Services Department operates a six week summer swim league at the City owned Enze Pool, Lodi High School Pool and Tokay High School Pool. Currently, the City has four teams, each comprised of approximately 100 participants, TAAC also operates swimming programs at its privately owned pool facilities at 2040 W. Cochran Rd, Lodi, and 1900 S Hutchins St, Lodi, CA.

B. TAAC again desires to organize a team to participate in the summer swim league. City is willing to permit TAAC to do so during the City's 2016 summer swim league. However, in order to accommodate the fourth team, City requires the use of one or both of TAAC's pool facilities.

C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Participation. TAAC and City agree that TAAC will establish an additional team named the "Dolphins" comprised of the members of its club to participate in the City's summer swim league.

2. Administration. Generally, the Dolphins team and its members will be treated identically to the City teams, and the Dolphins will practice at TAAC's facilities. Dolphins team members will register with and pay the City's Parks and Recreation program fees. City will pay the Dolphins coach the same stipend paid to the City coaches. City shall have the right to oversee and supervise the Dolphin's coach and program, including all appropriate background checks of Dolphins' staff (whether paid or volunteer) and monitoring practices and swim meets to ensure compliance with all applicable laws, regulations, and City standards. TAAC shall cooperate with City's efforts to perform background checks and monitoring.

3. Fees/Recruiting Prohibited. No fees, other than those referred to in paragraph 2 of this Agreement and TAAC's standard membership fee shall be charged to any Dolphin team member. Members must be an active member of TAAC as of May 1<sup>st</sup> of the current year. However, TAAC like other teams may accept donations and have fundraisers to solicit sponsorships. TAAC shall not engage in any efforts to recruit memberships during swim meets. TAAC shall not recruit members of City teams and TAAC members who wish to retain their affiliation with a City team must not be pressured to join the TAAC team. However, TAAC will be permitted to inform its members that it is establishing a team to compete in the City's 2016 summer swim league, and that TAAC members may join TAAC's team by signing up through the City's Parks and Recreation Department subject to being an active member of TAAC as of May 1<sup>st</sup> of the current year.

4. Use of Facilities. During the term of this Agreement, TAAC agrees to allow the use of its facilities, including but not limited to the showers, dressing areas, bathrooms, and spectator areas for Dolphins practice and for swim meets between any teams in the summer swim league Monday through Thursday. No fees shall be charged to (1) the City for use TAAC's facilities; or (2) any child or spectator for any purpose, including but not limited to entry fees, or shower fees, during the swim meets. TAAC shall have the right to designate which of its Lodi pool facilities will be used for practices on whatever notice it deems appropriate and shall also have the right to designate which of its Lodi pool facilities will be used for swim meets on at least 30 days written notice to City, as long as practices are consistent with above times. The meets held at TAAC pools will involve the Dolphins and a City team. At no time will two City teams use TAAC pool for swim meets. Swim meets may be held on the following Friday evenings from 4:30 p.m. to 8:30 p.m. at the TAAC pool: June 17, July 1 and July 8, 2016.

5. Term. The term of this Agreement shall be from May 31, 2016 to July 15, 2016, unless otherwise terminated as provided herein.

6. Maintenance. TAAC shall, at its own expense, maintain its Lodi premises and pool facilities and any buildings and or equipment on or attached to the premises in a safe condition, in good repair and in a manner suitable to City. City shall be entitled to inspect TAAC's pool facilities upon demand to ensure compliance with this paragraph.

7. Utilities. TAAC shall provide utility service to the premises at its sole cost and expense.

8. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

9. Optional Termination. Either party may terminate this Agreement in writing upon at least 48 hours prior written notice. In the event of an early termination, the City, in its sole discretion, will determine which one of the following options to give to the entire Dolphins team:

- a. Join another of the teams in the City's 2016 summer swim league;
- b. Continue on the Dolphins team for the remainder of the season with a coach to be supplied by the City without the use of the TAAC facilities; or
- c. Terminate their participation in the league and receive a pro-rated refund of the fees paid to the City's Parks, Recreational and Cultural Services Department.

10. Indemnity and Insurance.

a. Indemnification by City: Except to the extent caused by the negligence or intentional misconduct of TAAC or of any agent, servant or employee of TAAC, City ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless TAAC and all associated, affiliated, allied and subsidiary entities of TAAC, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

- i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of

any person, firm or corporation, to the extent arising out of or resulting from the operation and/or maintenance of the summer swim league or City's failure to comply with any applicable federal, state or local statute, ordinance or regulation.

b. Indemnification by TAAC: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, TAAC ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of TAAC, its personnel, employees, agents, contractors or subcontractors on the TAAC premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

c. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

d. Notice, Cooperation and Expenses: Each party must give the other prompt written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

e. Insurance: During the term of the Agreement, both parties must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the types and limits of insurance as set forth in Exhibit A, attached hereto and made a part hereof.

f. Evidence of Insurance: TAAC shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise TAAC in writing of any claim or litigation that may result in liability to TAAC. TAAC shall immediately advise City in writing of any claim or litigation that may result in liability to City.

g. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self insurance program that complies with all laws and regulations governing self insurance.

13. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Returned Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

To City: Parks, Recreation & Cultural Services  
P. O. Box 3006  
221 W. Pine Street  
Lodi, CA 94240  
Fax: (209) 333-0162  
Attn: Jeff Hood, Director

To TAAC: Twin Arbors Athletic Club  
1900 S Hutchins Street  
Lodi, CA 95242  
Phone: (209) 334-4897  
Attn: Dennis Kauffman, General Manager

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

15. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights here under shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

16. Miscellaneous.

a. TAAC and City represent that each, respectively, has full right, power, and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no

representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in introduction above.

CITY OF LODI, a municipal corporation

SPARE TIME INCORPORATED,  
dba TWIN ARBORS ATHLETIC CLUB

By: \_\_\_\_\_  
STEPHEN SCHWABAUER  
City Manager

By: \_\_\_\_\_  
DENNIS KAUFMAN  
General Manager

Attest:

\_\_\_\_\_  
JENNIFER M. FERRAILOLO  
City Clerk

Approve as to Form:

\_\_\_\_\_  
JANICE D. MAGDICH  
City Attorney



## SPARE TIME INC. / T.A.A.C. - EXHIBIT A

**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect Contractor 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 Contractor's operations under this Agreement, whether such operations be by Contractor, 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 Each Occurrence  
\$2,000,000 General Aggregate

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

Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

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

- (a) **Additional Named Insured Endorsement**  
Pursuant to a separate endorsement (ISO form CG 2010 (11/85) or a later version, that provides liability coverage at least as broad as this form) such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers as additional named insureds.
- (b) **Primary and Non-Contributory Insurance Endorsement**  
Additional insurance coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.

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

- (c) **Waiver of Subrogation**  
Include a waiver of subrogation against the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers.
- (d) **Limits of Coverage**  
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of Contractor shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect the City as a named insured.
- (e) **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.
- (f) **Notice of Cancellation or Change in Coverage Endorsement**  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

**Insurance Requirements for Contractor** (continued)

(g) **Continuity of Coverage**

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

(i) **Failure to Comply**

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

(j) **Qualified Insurer(s)**

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

**NOTE: The City reserves the right to obtain a full certified copy of any insurance policy or endorsements required. Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**

RESOLUTION NO. 2016-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE AGREEMENT BETWEEN THE CITY OF LODI AND SPARE TIME, INC., dba TWIN ARBORS ATHLETIC CLUB, FOR THE USE OF POOLS AT TWIN ARBORS ATHLETIC CLUB FACILITIES

WHEREAS, the Parks, Recreation and Cultural Services Department currently provides a summer swim league program to more than 400 children; and

WHEREAS, this program continues to grow, with no additional facilities available to expand the program; and

WHEREAS, over the years, City staff has partnered with Twin Arbors Athletic Club to gain access to its pools in order to expand the program; and

WHEREAS, the benefits of the public/private partnership have been twofold: 1) it has provided the City use of aquatics facilities that it does not currently have; and 2) it has created another program offering for Twin Arbors Athletic Club, which has resulted in the expansion of the Summer Swim League; and

WHEREAS, staff therefore recommends that the City Council approve the agreement, which would allow the swimming pools at Twin Arbors Athletic Club to be used for swim meets and practices and allow a team comprised of Twin Arbors members to participate in the league.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the agreement between the City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for use of pools at Twin Arbors Athletic Club facilities for the period May 31, 2016 to July 15, 2016; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement on behalf of the City of Lodi.

Dated: May 18, 2016

I hereby certify that Resolution No. 2016-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2016, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

JENNIFER M. FERRAILOLO  
City Clerk



**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Adopt Resolution Approving Activity Guide Printing Agreement with Casey Printing, Inc. of King City for Fiscal Year 2016/17 (\$21,700.89), and Authorize Staff to Execute Two One-year Extensions

**MEETING DATE:** May 18, 2016

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

**RECOMMENDED ACTION:** Adopt resolution approving Activity Guide printing agreement with Casey Printing, Inc. of King City for Fiscal Year 2016/17 in the amount of \$21,700.89 and authorize staff to execute two one-year extensions.

**BACKGROUND INFORMATION:** The City of Lodi Activity Guide is the vehicle used to promote City-sponsored sports, recreation and arts activities. Approximately 22,000 guides are distributed three times per year, throughout Lodi and the surrounding areas. The proposed printing agreement with Casey Printing is for Fiscal Year 2016/17, with the option for renewal for two consecutive years. The following companies responded to the Request for Quote:

Casey Printing, Inc.	\$21,700.89
Folger Grapics	\$22,950.00
Tokay Press	\$24,969.00

Staff recommends approving the printing agreement with Casey Printing, Inc. The company has produced the past 17 issues, offering printing, binding, duplication, layout, delivery to four drop centers, and estimated tax at a competitive price and the highest quality. This agreement will cover three issues; September 2016, January 2017 and May 2017 for a total of 66,000 copies, with options for two successive years.

**FISCAL IMPACT:** Registrations for City-sponsored activities would be significantly lower without this marketing product.

**FUNDING AVAILABLE:** Appropriation to be included in 2016/17 PRCS budget (20073001.72301).

\_\_\_\_\_  
Jordan Ayers, Deputy City Manager/Internal Services Director

\_\_\_\_\_  
Jeff Hood  
Parks, Recreation and Cultural Services Director

JH:tl

cc: City Attorney

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager



# Terms & Conditions of Sale

This contract is entered into by and between Casey Printing, Inc., a California Corporation, hereafter referred to as CASEY, and "Customer" pursuant to the Terms and Conditions of Sale listed below.

Customer City of Lodi

### 1. Quotation

A quotation not accepted within 30 days is subject to increase or decrease based upon any increase or decrease in the cost of labor and materials at the time of acceptance.

### 2. Accuracy of Specifications

Quotations are based on the accuracy of the specifications provided. CASEY can quote a job at the time of submission if copy, film, tapes, disks, or other input materials do not conform to the information on which the original quotation was based.

### 3. Orders

Acceptance of orders is subject to credit approval and contingencies such as fire, water, strikes, theft, vandalism, act of God, and other causes beyond CASEY'S control. Canceled orders require compensation for incurred costs and related obligations.

### 4. Experimental Work

Experimental or preliminary work performed at the customer's request will be charged at current rates and may not be used until CASEY has been reimbursed in full for the amount of the charges billed.

### 5. Creative Work

Creative work, such as sketches, copy, dummies and all preparatory work created or furnished by CASEY, shall remain its exclusive property and no use of same shall be made, nor any ideas obtained therefrom be used, except upon compensation based upon current rates charged for our various services.

### 6. Condition of Copy

Upon receipt of original copy, manuscript or customer furnished artwork, should it be evident that the condition of the copy differs from that which had been originally described and consequently quoted, the original quotation shall be rendered void and a new quotation issued.

### 7. Preparatory Materials

Artwork, type, plates, negatives, positives and other items when supplied by CASEY shall remain the property of CASEY.

Color Separations, Dies and other Printing Aids are regarded as having been sold to the customer prior to physical use because of separate listing and pricing.

### 8. Electronic Manuscripts/Images

It is the customer's responsibility to maintain a copy of the original file. CASEY is not responsible for accidental damage to media supplied by the customer or for the accuracy of furnished input or final input. Until digital input can be evaluated by CASEY, no claims or promises are made about CASEY'S ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize customer-supplied files will be charged at prevailing rates.

### 9. Alterations

An alteration is work performed in addition to the original specifications. Such additional work shall be charged for at CASEY'S current rates for labor and materials.

### 10. Prepress Proofs

Proofs shall be submitted with original copy. Corrections are to be made on "master set", returned marked "O.K." or "O.K with corrections" and signed and dated by customer. CASEY shall not proceed with work until proofs are returned. If revised proofs are desired, request must be made when proofs are returned. CASEY regrets any errors that may occur undetected through production, but cannot be held responsible for errors if the work is printed per customer's O.K.; or if changes are communicated verbally. CASEY shall not be responsible for errors if the customer has refused to accept or return proofs, or has instructed CASEY to proceed without submission of proofs.

### 11. Press Proofs

Unless specifically provided in writing in CASEY'S quotation, no press proofs will be provided. An inspection sheet of any form or signature can be submitted for customer review and approval, at no charge, provided customer is available at CASEY'S facilities during the time of press makeready. Any changes, corrections or lost press time due to customer's change of mind or delay will be charged for at CASEY'S current rates for labor and materials.

### 12. Color Proofing

Because of differences in equipment, paper, inks, and other conditions between color proofing and production pressroom operations, a reasonable variation in color between color proofs and the completed job is to be expected. When a variation of this kind occurs, it will be considered acceptable performance.

### 13. Overruns or Underruns

Overruns or underruns will not exceed 10 percent of the quantity ordered. CASEY will bill for the actual quantity delivered within this tolerance. If the customer requires a guaranteed quantity, the percentage of tolerance must be stated at the time of quotation.

### 14. Customer's Property

CASEY shall charge the customer at current rates, for handling and storing customer's stock, printed matter or other materials held more than 30 days.

CASEY will maintain fire and extended coverage on all property belonging to the customer, while such property is in CASEY'S possession. CASEY'S liability for such property shall not exceed the amount recoverable from such insurance.

It is understood that the gratuitous storage of customers property is solely for the benefit of the customer.

### 15. Delivery

Unless otherwise specified, the price quoted is for single shipment, without storage, F.O.B. CASEY'S loading dock. Proposals are based on continuous and uninterrupted delivery of complete order, unless specifications distinctly state otherwise, and shall be charged for at CASEY'S current rates. Charges related to delivery from customer to CASEY, or from customers supplier to CASEY are not included in any quotations unless specified. Materials delivered from customers or their suppliers are verified with delivery tickets as to cartons, packages or items shown only. The accuracy of quantities indicated on such tickets cannot be verified and CASEY cannot accept liability for shortage based on supplier's tickets. Title for finished work shall pass to the customer upon delivery to carrier at shipping point or upon mailing of invoices for finished work or segment, whichever occurs last.

### 16. Production Schedules

Production schedules, if and when established, will be adhered to by the customer and CASEY, provided that CASEY shall not incur any liability or penalties for delay due to state of war, riot, civil disorder, fire, strikes, accidents, action of Government or civil authority and act of God or other causes beyond the control of CASEY. Any cost due to delay caused by customer shall be charged for at CASEY'S current rates. Delay caused by customer may result in the rescheduling of work to the available open production time frame.

### 17. Customer Furnished Materials

Camera copy, artwork, electronic/magnetic media, special dies, paper stock, color separations and other customer furnished materials shall be manufactured and delivered to CASEY'S specifications. Additional cost due to delays or impaired production caused by deficiencies in customer supplied materials shall be charged to the customer at CASEY'S current rates.

### 18. Taxes

All taxes and assessments levied by any governmental authority are the responsibility of the customer. All amounts due for taxes and assessments will be added to the customer's invoice. No tax exemption will be granted unless the customer's "Exemption Certificate" (or other official proof of exemption) accompanies the purchase order. If, after the customer has paid the invoice, it is determined that more tax is due, then the customer must promptly remit the required taxes to the taxing authority or immediately reimburse CASEY for any additional taxes paid.

### 19. Terms

Payment shall be cash one-half upon acceptance of quotation and one-half upon delivery of the printing job. Claims for defects, damages, shortages must be made by the customer in writing within 14 days after delivery. Failure to make such claim within the stated period shall constitute irrevocable acceptance and an admission that they fully comply with terms, conditions and specifications. CASEY'S sole liability shall be limited to the stated selling price of any defective goods, or replacement of defective goods at CASEY'S option. As security for payment of any sum due or to become due under terms of any Agreement, CASEY shall have the right, if necessary, to retain possession of and shall have a lien on all customer property in CASEY'S possession including work in process and finished work, whether related to this job or not. The extension of credit or the acceptance of notes, trade acceptances or guarantee of payment shall not affect such security interest and lien.

Customer agrees to pay interest on all accounts 30 days past due at the rate of 1.5% per month. If legal action is brought to enforce the terms of this contract, Customer agrees to pay all court cost and reasonable attorney's fees. Customer agrees to pay a reasonable returned check fee of not less than \$25, in accordance with section 1719 of the Civil Code of the State of California.

### 20. Liability

#### 1. Disclaimer of Express Warranties

CASEY warrants that the goods are as described in this Contract, but no other express warranty is made with respect to the goods. If any sketches, copy, dummies, samples, and/or all preparatory work was shown to customer, such were used merely to illustrate the general type and quality of the goods and not to represent that the goods would necessarily conform to them.

#### 2. Disclaimer of Implied Warranties

CASEY'S sole warranty is that the services will conform to the description contained in this contract, will be free of defects of materials and workmanship and conform to CASEY'S standard quality. There are no warranties which extend beyond the description or the face hereof.

[U.C.C. Section 2316(2).]

relating to  
Barlow  
CASEY

### 21. Indemnification

The customer shall save, indemnify, defend and hold harmless CASEY from any and all loss, cost, expense, and damages on account of any and all manner of claims, demands, actions and proceedings that may be instituted against CASEY on any and all grounds, regardless of responsibility for negligence and which might arise in connection with the agreed work, including but not limited to allegations or claims that the said printing violates any copyright or any proprietary right of any person, or that it contains any matter that is libelous or scandalous, or invades any person's right to privacy or other personal or economic rights. The customer agrees to defend promptly and continue the defense of any such claim, demand, action or proceeding that may be brought against CASEY, at the customer's sole expense, provided that CASEY shall promptly notify the customer with respect thereto, and provided further that CASEY shall give to the customer such reasonable time as the exigencies of the situation may permit in which to undertake and continue the defense thereof. CASEY reserves the right, in CASEY'S sole discretion, to refuse to print any matter which, in his judgement, he or she shall deem improper, libelous or scandalous.

4-7-16

### 22. Venue

The parties agree that this contract is entered into in ~~Monterey~~ San Joaquin County, California. If legal action is brought on behalf of either party to enforce its terms, proper venue shall be in the County of ~~Monterey~~ San Joaquin, California.

San Joaquin Barlow CASEY 4-7-16

San Joaquin Barlow CASEY 4-7-16

Signature

Date

Print or Type Name

CITY COUNCIL  
Mark Chandler, Mayor  
Bob Johnson, Mayor Pro Tempore  
Doug Kuehne  
JoAnne Mounce  
Alan Nakanishi



KONRADT BARTLAM  
City Manager  
  
JEFF HOOD  
Director  
Parks, Recreation and  
Cultural Services

HUTCHINS ST. SQUARE COMMUNITY CENTER  
125 S. Hutchins Street, Lodi, CA 95240  
PH (209) 333-5511  
FAX (209) 367-5906

*Sent  
2/26/16*

## Request for Quote

Date: February 3, 2016

Vendor Tax ID No. 77-0292474

Vendor Contact Elissa Smith  
Name Casey Printing, Inc

Address 398 E. San Antonio Dr.  
King City, CA 93930

Phone/Fax Main: 831 385-3221  
Elissa: 707 747-1634

Email elissa@caseyprinting.com

City of Lodi Business License #

**Response Deadline:**  
March 1, 2016

**Return To**

City of Lodi  
Parks, Recreation & Cultural Services  
Attn: Veronica Carloni  
P.O. Box 3006  
Lodi, CA 95241  
(209) 333-5511  
fax (209)367-5906

**Questions**

Veronica Carloni, Program Coordinator  
(209) 333-5511  
vcarloni@lodi.gov

### Description

The City of Lodi produces the Parks, Recreation & Cultural Services Activity Guide three times a year (September, January and May). Each edition requires 22,000 printed copies. The City is soliciting bids for a one-year (three editions) contract term, with two one-year options (three editions each) at the City's discretion for a minimum of three and maximum of nine editions beginning July 1, 2016. Pricing should be valid for a one-year time period subject to renewal each following year. The City will select the vendor based on the best value to the City considering cost, references and quality of the sample provided. The selected vendor will be expected to sign the standard Professional Services Agreement (attached). **Responses are due March 1, 2016.**

### Directions:

1. Complete the Vendor Information above.
2. Complete the Quote Form on Page 2.
3. Answer the questions on Page 3.
4. Provide three (3) professional references for similar work.
5. Provide a sample of work that matches the City's specifications, or closely matches (indicate specifications of example provided).
6. Provide any additional comments.

Please complete the following worksheet. Additional backup may be provided or requested.

Description	QTY	Unit Price	Single Issue Cost	Extended Issues Price
City of Lodi Parks, Recreation & Cultural Services Activity Guide 22,000 copies per edition, 3 issues per contract year			5741.00	\$ 5741.00 each ISSUE
<b>Finished Size/Dimensions</b> Pages: 24 text pages + cover 8.25 inches x 10.75 inch page size				included
<b>Services</b> Layout and Graphic Design Services			980.00	980.00 per ISSUE
<b>Paper Stock</b> Cover stock: 70# Gloss Stock Text stock: 40# Norbrite 80b				included
<b>Ink</b> Cover: 4cp/4cp full bleeds Text: 2/2 (Black + 1 PMS color) Black plate change to remove mailing indicia from office copies				
<b>Finishing</b> Fold collate, saddle stitch, trim and carton pack (not to exceed 40 lbs) Special bundle request for Lodi Unified School District & Newspaper Request. Total qty 14,000. (see pick and pack list attachment)				
<b>Proofs</b> Initial proofs are provided in PDF format Final Hard copy color proof is required				
<b>Proof Corrections</b>				
<b>Mail</b> Ink jet of approx 4,000 qty mail list. Prepare USPS Bulk Mail paperwork				
<b>Postage</b> Postage Indicia Mark. Presort bulk mail. Approx 4,000 qty. Provide estimate of mailing costs per catalog. (new list is provided each time in excel.)			1069.00	1069.00 per issue
<b>Delivery/Shipping</b> Four drops estimated  Lodi Unified School District (10,000 qty est.) 1305 E. Vine Street, Lodi  Lodi New Sentinel (5,000 qty est.) 125 N. Church Street, Lodi  USPS (mail list - 4,000 qty est.)  Hutchins Street Square (Remaining office copies) 125 S. Hutchins Street, Lodi				450.00 per issue
<b>Additional Items:</b>				
Estimated Tax 3,000 office copies only Rate% 8			62.63	62.63

PER ISSUE

Grand Total	GRAPHIC DESIGN, PRINTING, DELIVERY + TAX				\$ 7233.63
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Please answer the following questions.

ESTIMATED POSTAGE ADD \$ 1069.00

1. How long is the production time?

7-10 WORKING days after approval of final proof.

2. How much time is necessary for the layout and design services?

5-7 WORKING Days.

3. What is the anticipated price increase, if any, for years 2 and 3, and what is it based upon?

1-2% increase for each additional year, based on changes in material and

**References**

Reference #1

Name

Organization

Address

Phone

What work was performed?

Reference #2

Name

Organization

Address

Phone

What work was performed?

Reference #3

Name

Organization

Address

Phone

What work was performed?

Please see  
attached for  
References.

**Additional Comments/Notes:**

RESOLUTION NO. 2016-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE AGREEMENT WITH CASEY PRINTING, INC., OF KING CITY, FOR THE PRODUCTION OF THE LODI COMMUNITY ACTIVITY GUIDE FOR FISCAL YEAR 2016/17 AND TWO ONE-YEAR EXTENSION OPTIONS FOR FISCAL YEARS 2017/18 AND 2018/19; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

=====

WHEREAS, the City of Lodi Activity Guide is a publication utilized to promote City-sponsored sports, recreation and arts activities; and

WHEREAS, approximately 22,000 guides are distributed three times per year throughout Lodi and the surrounding areas; and

WHEREAS, Request for Quotes (RFQ) for the City of Lodi Activity Guide were released on February 3, 2016, and three vendors submitted proposals for consideration and are listed as follows:

<b>Vendors</b>	<b>Quote Amount</b>
Casey Printing, Inc.	\$21,700.89
Folger Graphics	\$22,950.00
Tokay Press	\$24,969.00

WHEREAS, the low bidder, Casey Printing, Inc., has produced the past 17 issues of the Lodi Community Activity Guide, offering competitive pricing, quality printing, binding, duplication, layout, and delivery to drop centers; and

WHEREAS, the approval of this Agreement will cover the publication of three issues in Fiscal Year 2016/17, totaling 66,000 copies, and will provide the City with the opportunity to receive the same services at the same price, excluding any increase in higher material prices which would be negotiated by staff, in Fiscal Years 2017/18 and 2018/19; and

WHEREAS, staff recommends that the City Council approve the Agreement with Casey Printing, Inc., of King City, for the publication of the Lodi Community Activity Guide in a total amount not to exceed \$21,700.89 for Fiscal Years 2016/17, 2017/18, and 2018/19, and further authorizing staff to negotiate with Casey Printing, Inc., any rise in material costs for the two one-year extensions if in the best interests of the City to do so.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Agreement with Casey Printing, Inc., of King City, California, to produce the next three issues of the Lodi Community Activity Guide for Fiscal Year 2016/17 in an amount not to exceed \$7,233.63; and

BE IT FURTHER RESOLVED that staff is hereby authorized to utilize two one-year extension options that include three editions each for Fiscal Years 2017/18 and 2018/19 in an amount not to exceed \$7,233.63 per year, with the exception of increased material prices which can be negotiated with staff if necessary and in the best interests of the City to do so; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Agreement on behalf of the City of Lodi.

Dated: May 18, 2016

=====

I hereby certify that Resolution No. 2016-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2016, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

JENNIFER M. FERRAILOLO  
City Clerk

2016-\_\_\_\_



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Advisory Services Attachment to Single Member Services Agreement with Northern California Power Agency and Authorizing City Attorney to Execute Conflicts Waiver with Meyers Nave for Astoria 2 Solar Project

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute an Advisory Services Attachment to the Single Member Services Agreement with the Northern California Power Agency (NCPA) and authorizing the City Attorney to execute a Conflicts Waiver with Meyers Nave for the Astoria 2 Solar Project.

**BACKGROUND INFORMATION:** On June 18, 2014, the Lodi City Council approved a Power Purchase Agreement (PPA) with Recurrent Energy for the Astoria 2 Solar Project (Project). The environmental attributes to be generated as part of the Project will assist Lodi with meeting its Renewables Portfolio Standard obligations.

The Project is currently under construction and scheduled for commercial operation by December 2016. In addition to Lodi, other parties to the PPA include the Southern California Public Power Authority (SCPPA), Power and Water Resources Pooling Authority (PWRPA) and the cities of Corona, Moreno Valley, and Rancho Cucamonga. In anticipation of project operation, all parties to the PPA have started meeting to discuss a project implementation plan to outline details associated with the terms and conditions of the PPA including, but not limited to, scheduling and operation procedures and project billing/invoicing.

As a member of NCPA, Lodi currently relies on NCPA to, among many tasks, manage its power portfolio as it relates to existing generation, execute purchases in both the short- and long-term energy markets and provide scheduling coordination and risk management services. These activities are all covered under existing agreements with NCPA. In 2012, Lodi executed a Single Member Services Agreement (SMSA) with NCPA which allows Lodi to request specialized services from NCPA as its advisor or agent when such services do not clearly fall within an existing approved NCPA agreement. These requested services are then identified through an Advisory Services attachment to the SMSA.

Because Lodi does not currently own and/or manage any of its own generation, it does not have staff with the expertise and knowledge of the intricate nature of the day-to-day activities associated with the California Independent System Operator (CAISO) markets.

Therefore, Lodi has requested that NCPA provide technical advisory services under the SMSA for the Project prior to and during commercial operation. This will ensure that Lodi's comprehensive power portfolio resources, including Astoria 2, are all managed in one location. A description of those advisory

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

services is included as Exhibit A. The cost associated with NCPA's assistance will be billed on a time and material basis, are anticipated to be minimal in nature, and are included in the current power supply budget.

In addition, because Meyers Nave represents Lodi in the Project and may continue to offer legal services in that regard, as well as advise NCPA on the SMSA, Meyers Nave has requested Lodi execute a Conflicts Waiver, included as Exhibit B.

**FISCAL IMPACT:** The costs associated with the SMSA Advisory Services will be billed on a time and material basis.

**FUNDING AVAILABLE:** Included in the annual power supply budgets – 50060500 and 50862500.

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Melissa Price, Rates & Resources Manager

EAK/MP/Ist

SINGLE MEMBER SERVICES AGREEMENT  
by and between the  
CITY OF LODI  
and the  
NORTHERN CALIFORNIA POWER AGENCY

ATTACHMENT A  
ADVISORY SERVICES

In accordance with the terms and conditions of the Single Member Services Agreement for Special Transactions by and between the City of Lodi and the Northern California Power Agency ("Lodi SMSA") dated July 11, 2012, Northern California Power Agency ("NCPA") may provide certain Advisory Services to the City of Lodi ("Member"). Advisory Services includes technical, economic, financial, legal, risk and credit analysis, and other advice of a professional manner. Member has requested NCPA to provide Advisory Services as described herein, and NCPA has agreed to provide such Advisory Services in consideration of the costs of such activities as described herein.

**Scope of Advisory Services**

Member has entered into a Power Purchase Agreement ("PPA") among RE Astoria 2 LLC, Southern California Public Power Authority ("SCPPA"), Power and Water Resources Pooling Authority ("PWRPA"), and the cities of Lodi, Corona, Moreno Valley and Rancho Cucamonga (collectively referred to as the "Cities"), to take energy and capacity output, including any associated renewable attributes, from the RE Astoria 2 solar facility ("Project"). Member has also entered into the Astoria 2 Solar Project Buyers Joint Project Agreement ("Buyers Joint Project Agreement") among SCPPA, PWRPA and the Cities, under which SCPPA shall act as the buyers' agent regarding administration of the PPA.

While SCPPA shall act as the buyers' agent for certain activities, pursuant to the Buyers Joint Project Agreement, Member shall remain responsible for certain roles and responsibilities as further described in the PPA and Buyers Joint Project Agreement. Member has requested NCPA to act on behalf of member as Member's Agent regarding management of Member's obligations as set forth in the PPA and the Buyers Joint Project Agreement.

Pursuant to this Attachment A, NCPA agrees to act on behalf of Member as its agent for certain duties and responsibilities as specified in the PPA and Buyers Joint Project Agreement ("Advisory Services"). Advisory Services shall include, but are not limited to: (i) contract management and administration, (ii) monitoring development, implementation and operation

of the Project, and (iii) representing Member on the Buyers Joint Project Committee. The regular duties to be performed by NCPA are expected to include the following:

- Receive communications from and provide timely response to SCPPA including, but not limited to, notices, studies, reports, and compliance status regarding Project development, construction, implementation and operation;
- Provide a monthly summary of all communications received from SCPPA and/or the Project developer to Member;
- Consult with and make necessary recommendations to Member on decisions and/or actions required pursuant to the PPA and Buyers Joint Project Agreement;
- Process any and all invoices from SCPPA on behalf of Member, to the extent applicable, in a timely manner;
- Accept on behalf of and transfer all Renewable Energy Credits (RECs) associated with the Project to Member in a timely manner; and
- Attend Committee meetings (either in person or remotely) and act as Member's authorized representative.

#### **Cost of Advisory Services**

NCPA shall invoice Member for all costs associated with work performed on behalf of Member as described herein on a time and material basis through the All Resources Bill, and by executing this Attachment A Member hereby agrees to compensate NCPA for any and all costs associated with NCPA's provision of Advisory Services described herein.

Pursuant to the terms and conditions of the Lodi SMSA and this Attachment A, the undersigned hereby approves the scope of Advisory Services described herein. The Parties have caused this Advisory Services Attachment A to be executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF LODI**

**NCPA**

\_\_\_\_\_  
By: Stephen Schwabauer  
City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: Randy Howard  
Date:

APPROVED AS TO FORM:

APPROVED AS TO FORM

\_\_\_\_\_  
Janice D. Magdich  
City Attorney 

\_\_\_\_\_  
Michael Dean, General Counsel

ATTEST:

\_\_\_\_\_  
Jennifer Ferraiolo  
City Clerk

**SINGLE MEMBER SERVICES AGREEMENT  
FOR  
SPECIAL TRANSACTIONS  
BY AND BETWEEN THE  
CITY OF LODI  
AND THE  
NORTHERN CALIFORNIA POWER AGENCY**

This Single Member Services Agreement for Special Transactions (the "Agreement") is entered into as of the 11<sup>th</sup> day of July, 2012 ("Effective Date"), by and between the Northern California Power Agency ("NCPA"), a California joint powers and public entity having its central office at 651 Commerce Drive, Roseville, California and the City of Lodi ("Member"), a municipal corporation and member of NCPA, having its central office at 221 W. Pine Street, Lodi, California. NCPA and the Member are occasionally herein referred to individually as a "Party" or collectively as the "Parties". This Agreement is premised on the following.

**RECITALS:**

WHEREAS, NCPA provides, among other services to its membership: electric generation facility development and power resource pooling services to the majority of its member public entities and an associate nonprofit member,

and technical, operational, and maintenance services on behalf of the majority of member and associate member entities, for the operation and maintenance of NCPA electric generating projects in which they are invested, as well as dispatch, scheduling coordination, trading and risk management services, so that the members of NCPA on the whole, exercising their common powers pursuant to the Joint Exercise of Powers Act, may supply electrical power and energy for their residential, commercial, and industrial customers or own use on a reliable, cost-effective, and environmentally sensitive basis, with the advantages of the economy of scale, which may, under some circumstances, benefit all of NCPA's members; and

WHEREAS, the Member, as a member of NCPA, while it looks to NCPA in part for the services described above, it nevertheless wishes to request that NCPA provide special services, in the nature of an advisor or agent, by which the Member may receive an advantage by avoiding the cost of the embedded expertise that it would have to employ in the absence of NCPA, and the risks associated therewith, so that the Member may, at its sole risk, and without hazard to NCPA and its other members, receive benefits, when other NCPA members may not share interests in this Member's particular effort; and

WHEREAS, this Agreement has been drawn to first protect NCPA and its members from any exposure to liability of any kind that might result from any

act or omission in the performance of this Agreement, to the fullest extent permitted by law, due to the fact that NCPA will be acting for the Member and not for any other member in its performance of this Agreement and due to the further fact that the benefit of this Agreement to the other members is limited to the extent to which the challenges of this Agreement develop in NCPA further skill and expertise, but not to any economic or financial benefit for which those members should be liable; and

WHEREAS, the Member desires to utilize the benefits of the investment in, and expertise available through the auspices of NCPA, and NCPA having weighed the consideration herein, and the protection the Member intends to provide NCPA and its other members in this Agreement, wishes to assist the Member;

Now, Therefore, in consideration of the premises and the mutual covenants and conditions set forth herein, the Parties have entered into this Agreement.

#### **Article 1 – SCOPE OF SERVICES**

Upon mutual agreement, and subject to the General Conditions described below, NCPA will provide to the Member Advisory Services, Agency Services, Pooled Subscription Services, and Power Procurement Services (Services), for

Power Transactions, Gas Transactions, and Financial Transactions (collectively Transactions), as defined and described in this Agreement.

**1.1 General Conditions.** NCPA shall not be obligated under this Agreement to provide any Services to, or undertake any Transactions for, the Member, notwithstanding that fact that the Member may have completely and faithfully complied with each and every term, condition, and covenant of this Agreement. NCPA may decline to furnish any Service or Transaction requested by the Member in the sole and absolute discretion of NCPA, acting by and through its Commission without the vote of the Member, and such discretion of the Commission shall not be subject to review or to the dispute resolution provisions of this Agreement or of other agreements between the Member and NCPA; provided, however, that, notwithstanding the foregoing, should NCPA have agreed in a written Confirmation, as provided for in Attachment B hereto, to provide any Service to or undertake any Transaction for the Member; provided that the Member is then at the time of the Confirmation not in default of, and has completely and faithfully complied with each and every term, condition, and covenant of this Agreement, then NCPA shall provide such Service or undertake such Transaction.

**1.2 Power Transactions.** Power Transactions mean Transactions for electrical power, and electrical capacity, energy, exchange, and ancillary services,

or high voltage electric transmission transactions, with parties that are not members of NCPA for the purpose of serving the Member which would benefit and affect the Member, not be of interest to other NCPA members or practicably capable of execution through the NCPA Pooling Agreement or the NCPA Facilities Agreement, and are not subject to a right of refusal.

**1.3 Gas Transactions.** Gas Transactions mean natural gas supply, storage, transportation, and delivery transactions, with parties that are not members of NCPA, for the purpose of serving the Member which would benefit and affect the Member, and not be of interest to other NCPA members or practicably capable of execution through the NCPA Pooling Agreement and the NCPA Facilities Agreement, or the Third Phase Agreements for other natural gas-fueled NCPA projects, and are not subject to a right of refusal.

**1.4 Financial Transactions.** Financial Transactions mean natural gas and electric power national exchange-based transactions, or such financial transactions with parties that are not members of NCPA, for the purpose of hedging or protecting the Member's exposure to the market risks of volatility in the natural gas and electric power markets which would benefit and affect the Member, and not be of interest to other NCPA members, or practicably capable of execution through the NCPA Pooling Agreement or the Third Phase Agreements for other NCPA projects, and not subject to a right of refusal.

**1.5 Advisory Services.** Advisory Services mean technical, economic, financial, legal, risk and credit analysis, and other advice of a professional nature, related to the potential or ongoing Services that NCPA may provide the Member under this Agreement, on a flat monthly retainer basis, for the costs directly associated with this Agreement, shown initially on Attachment A to this Agreement. Advisory Services also include such services provided by NCPA on an hourly fee basis for potential and ongoing Transactions and Agency Services, that will recover for NCPA all of its costs to protect the other NCPA members. NCPA may adjust the monthly retainer and hourly fees as it determines may be required, in its sole discretion, during the preparation and adoption of the NCPA Annual Budget.

**1.6 Agency Services.** Agency Services mean services that NCPA may provide in the capacity of the exclusive agent of the Member, as principal, subject to the General Conditions of this Agreement, to execute and perform Transactions, on an hourly fee basis, that will recover for NCPA all of its costs to protect the other NCPA members.

**1.7 Pooled Subscription Services.** Pooled Subscription Services mean services that NCPA may provide the Member and other members of NCPA as an Advisory Service and an Agency Service, where the Member and at least another member of NCPA (Cooperating Member) has executed a Single Member Services

Agreement for Special Transactions substantially in the form of this Agreement. Pooled Subscription Services include Power Transactions, Gas Transactions, or Financial Transactions that would benefit and affect the Member and the Cooperating Member or Members, and not be of interest to other NCPA members, or practicably capable of execution through the NCPA Pooling Agreement or the Third Phase Agreements for other NCPA projects, and that are not subject to a right of refusal.

**1.8 Power Procurement Services.** Power Procurement Services mean execution of Power Transactions by NCPA in its own name on behalf of the Member where the Member is constrained from the ability to directly contract with the counter party for such Power Transaction.

## **Article 2 – REQUEST FOR SERVICES**

**2.1 Member Request.** After the Effective Date, NCPA shall provide the Member with Advisory Services in consideration of the payment of the monthly retainer. Upon receipt of a written request for Advisory Services with respect to potential Transactions and Agency Services, NCPA will respond to the Member, subject to the General Conditions, with a proposal for fee-based Advisory Services related to the requested potential Transactions or Agency Services, including the number and identity of NCPA personnel, by job

classifications, the hourly estimates, all special programs and services, such as national price reporting services, all materials and equipment, all other pertinent information, such as required outside support, a schedule and an estimate of costs, that would be components of the fee for the fee-based Advisory Services.

**2.2 NCPA Costs of Response.** Before responding, NCPA shall estimate, and provide to the Member the estimate, NCPA's expected costs for responding to the Member Request. The Member shall advance such estimated costs before NCPA provides its response, subject to the General Conditions.

NCPA will not respond if it does not receive the advance within twenty days of the date of NCPA's estimate. NCPA will not be liable to the Member if NCPA, after expending all or a part of the advance of estimated costs, declines to respond to, or suggests alternatives to the Member Request, in NCPA's discretion, exercised under the General Conditions.

Notwithstanding the foregoing, if services are ultimately not provided by NCPA, the Member may submit a written request for refund of all unexpended advanced funding of estimated costs related to a specific Member Request. After receipt of the written request for unexpended funds, NCPA will refund unexpended advanced funding to the Member less any outstanding costs, invoices, and other liabilities for which NCPA may be liable as a result of any

services provided or the cost of providing the estimate, as determined in its sole discretion.

**2.3 Mutual Agreement on Scope of Services.** If, after the payment or tender of payment for all of the actual costs to NCPA of responding to the Member Request, or after agreement on the allocation of budget costs, the Member and NCPA agree to the Services that NCPA should provide, NCPA and the Member shall execute and deliver a Confirmation of the Transactions and Services, including any Advisory and Agency Services, that NCPA will provide, if and as requested by the Member.

**2.4 Authentication of Delegation.** Before responding to any Member Request, and again prior to confirming any Services or Transactions, NCPA is entitled to require an authentication of the delegation of any authority of the governing body of the Member to a manager of the Member, by a formal resolution and legal opinion, to confirm that the delegation is appropriate in all respects given the then current documents and the proposed Transactions and Services to be effected thereon. In addition, NCPA may require, as part of the General Conditions, that the Member or its authorized manager delegate authority to NCPA before it undertakes to perform any Services or execute any Transaction on behalf of the Member, in form and substance acceptable to NCPA, in its sole discretion, as provided in the General Conditions. Any delegation of

authority to Member's manager shall require a resolution of the governing body of the Member affirmatively delegating to the manager of the Member the authority required for Transactions or Services under this Agreement.

**2.5 Confirmations.** No obligation as might be imposed by law on NCPA or its other members shall arise unless a written Confirmation accepting that obligation in respect to a Transaction or Service, described in detail in the Confirmation, shall have been accepted by the Member without qualification, and approved by the NCPA Commission. A failure of a Disclosure Statement to describe a risk or effect of a Transaction or Service shall not excuse the Member from its liability therefore, given that the Member shall in all situations be wholly responsible for the Disclosure Statement.

### Article 3 – DUE DILIGENCE

**3.1 Creditworthiness of Member.** At the time of making a request for a Transaction, the Member shall advance to NCPA, if required by NCPA, the estimated fee expense for obtaining the unqualified opinion of a nationally ranked certified public accounting firm stating that the Member will have the financial capacity to timely pay and retire all of the costs and liabilities that may be associated with the requested Transaction. Notwithstanding the delivery of an unqualified opinion, pursuant to the General Conditions NCPA may request

the Member to include in a Confirmation covenants to maintain certain financial ratios, to maintain special and reserve funds, to provide security to NCPA, and to raise rates, tariffs, fees or other sources of Revenue.

**3.2 Legal Opinion.** At the time of making a request for a Transaction, the Member shall advance to NCPA, if required by NCPA, the estimated fee expense for obtaining the opinion of a nationally ranked municipal bond law firm (i) that the legal capacity of the Member to delegate the authority to execute and deliver the contract for the Service or Transaction from the governing body to a Member employee or to NCPA, and bind the Member with legal, valid, binding, and enforceable obligations, is without ambiguity under any applicable charter, ordinances, state and federal laws, and regulations, and (ii) that the requested Transaction will not result in any risk of losing the tax exemption for the interest paid on any of the tax exempt obligations of NCPA.

**3.3 Continuing Disclosure.** Annually the Member shall present NCPA with its audited financial statements. NCPA may request the Member to report contemporaneously in writing on significant events that may materially adversely affect the Member's financial capability to timely pay and retire all of the costs and liabilities associated with any outstanding Transaction.

#### **Article 4 – REPRESENTATIONS AND WARRANTIES**

4.1 **Initial Representations and Warranties.** On the Effective Date and the date of entering into each Transaction, the Member represents and warrants to NCPA that:

- (i) it is duly organized, validly existing and in good standing under the laws of California and of the United States;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement);
- (iii) the execution, delivery and performance of this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement) are within its powers, have been duly authorized by all necessary action 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, order or the like applicable to it;
- (iv) this Agreement, each Transaction (including any Confirmation accepted in accordance with this Agreement), and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation

enforceable against it in accordance with its terms; subject to any Equitable Defenses.

- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any legal proceedings or investigations that could materially adversely affect its ability to perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement) and as to whether this Agreement and each such Transaction (including any Confirmation accepted in accordance

with this Agreement) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of NCPA in providing Advisory Services, and the Member is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement); and

- (ix) it has entered into this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement) in connection with the conduct of its public service utility enterprise and it has the capacity or ability to make or take delivery of all products referred to in any Transaction to which it is a party.

**4.2 Further Representations and Warranties.** On the Effective Date and the date of entering into each Transaction, the Member further represents and warrants to NCPA that: (i) all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the laws of the State of California and the charter, ordinances, bylaws or other regulations, (ii) all persons making up the governing body of the Member are the

duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the state and local, and other applicable law, (iii) entry into and performance of this Agreement and each Transaction by the Member are for a proper public purpose within the meaning of all relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the relevant constitutional, organic or other governing documents and applicable law, (v) the Member's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures or agreements to which it is a party, and all other relevant constitutional, organic or other governing documents and applicable law; (b) not subject to any prior claim under any and all bond ordinances or indentures or agreements to which it is a party, and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all of the Member's obligations hereunder and under each Transaction and (c) are payable from operating funds of the Member, (vi) entry into and performance of this Agreement and each Transaction by the Member will not adversely affect the exclusion from gross income for federal income tax purposes

of interest on any obligation of the Member or NCPA otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of the Member or create any kind of lien on, or security interest in, any property or revenues of the Member which, in either case, is proscribed by any provision of any relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

**4.3 Primacy of NCPA Projects.** Notwithstanding the availability of NCPA personnel and equipment the Member acknowledges and agrees that the first priority for NCPA personnel are the other NCPA projects in which more than one member participates, and that the Services and Transactions that NCPA provides under this Agreement are subordinate to NCPA's duties to serve the other members.

## **Article 5 – APPROVED TRANSACTIONS**

**5.1 Preparation of Contract Form Risk Disclosure Statements.** At Member's request, NCPA shall prepare a Risk Disclosure Statement to inform the Member of the risks involved in Contract Forms for which the Member requests approval.

**5.2 Governing Body Approval of Contract Forms.** Transactions shall be executed only on Contract Forms approved by the Member's governing body by resolution or by Member's manager with written delegated authority, after presentation of the complete form, and authorized deviations, as well as the Risk Disclosure Statement.

**5.3 Preparation of Counterparty Risk Disclosure Statements.** At Member's request NCPA shall prepare a Counterparty Risk Disclosure Statement to inform the Member or Member's manager with written delegated authority of the risks of entering Transactions with the proposed Counterparties.

**5.4 Governing Body Approval of Counterparty Lists.** Transactions shall be entered only with Counterparties approved by the Member's governing body by resolution or by Member's manager with written delegated authority, in conjunction with any requested Counterparty Risk Disclosure Statement.

**5.5 Preparation of Contract Damages Risk Disclosure Statements.** NCPA shall prepare a Contract Damages Risk Disclosure Statement for each Transaction to inform the Member or Member's manager of the risks of entering a particular Transaction. Member acknowledges that such Contract Damages Risk Disclosure Statements, while representing NCPA's understanding of the risks inherent in a particular Transaction, may not fully encompass all such risks. NCPA shall not be liable to Member for any failure to fully disclose risks to

Member, and Member acknowledges its responsibility to undertake due diligence with respect to any proposed Transaction.

#### **5.6 Governing Body Adoption of Contract Damages Risk**

**Limitations.** Transactions shall be entered only after the Member's governing body has approved by resolution, or after approval by Member's manager with written delegated authority, the particular Transaction after presentation by NCPA of the Contract Damages Risk Disclosure Statement and Member's governing body by resolution or Member's manager with written delegated authority in writing has adopted the following limits:

**5.6.1 Limits on Terms of Contracts.** The Member has adopted by resolution or Member's manager with delegated authority has adopted the following limits on terms of Contracts that may be used in Transactions: **None.**

**5.6.2 Limits on Net Present Value at Risk During Terms of Contracts.** The Member has adopted by resolution or Member's manager with delegated authority has adopted the following limits on the net present value at risk during the terms of Contracts approved by the Member for Transactions: **None.**

### **Article 6 – OPERATING ACCOUNT AND SECURITY**

**6.1 Operating Account.** The Operating Account is an account established at NCPA pursuant to this Agreement. The Operating Account is established to: (i) make timely payments to NCPA under this Agreement and to a Counterparty pursuant to a Transaction and to protect NCPA from potential Member default by providing funds and time to cure, (ii) to bridge timing differences between the receipt of payments from the Member and the date payments are due a Counterparty, (iii) satisfy any security deposit requirements, and (iv) provide security against Member default.

**6.2 Initial Amount.** Before the effective date of a Transaction, the Member shall deposit in the Operating Account an amount equal to the highest three (3) months of projected Counterparty invoices for the succeeding twelve (12) months. NCPA shall maintain a detailed accounting of the Operating Account. Interest earned on the Operating Account shall be credited to the Member. Any losses in the Operating Account, due for example to the compulsory sale of investments to comply with a requirement of the Counterparty, shall be allocated to the Member. Provided, however, that in the event that the Counterparty to any Transaction is willing to accept contract terms such that NCPA is required to pay the Counterparty only as, if, when and to the extent that NCPA is paid by the Member, then to that extent and with respect to

that Transaction the amount deposited into the Operating Account shall be an amount equal to the highest one (1) month of projected Counterparty invoices.

**6.3 Periodic Reviews.** Prior to the effective date of a Transaction and at least quarterly thereafter, NCPA shall review the balances in the Operating Account to ensure the amount is equal to the current projection of the highest three (3) months of the Member's projected Counterparty invoices for the succeeding twelve (12) months. Any funds in excess of one hundred ten percent (110%) of this amount shall be credited to the Member. If the funds on deposit in the Operating Account are less than ninety percent (90%) of this amount, NCPA shall prepare an invoice to the Member who shall remit such funds within thirty (30) days of the invoice date.

**6.4 Emergency Additions.** In the event that the funds in the Operating Account are insufficient to allow payment of a Counterparty invoice, NCPA shall notify the Member and then prepare and send a special or emergency assessment to the Member.

**6.5 Return of Funds.** On the termination of this Agreement and all Transactions, the Member may apply to NCPA for the return of its Operating Account funds ninety (90) days after the effective date of such termination. NCPA shall, in its sole discretion, as determined by a vote of the Commission, excluding the vote of the Member, estimate the then outstanding liabilities of the

Member, including any estimated contingent liabilities, such as by way of example Counterparty invoices subject to dispute or to revision by the Counterparty or the Federal Energy Regulatory Commission, and retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. NCPA may apply any remaining Operating Account funds to any remaining obligation of the Member, including but not limited to revised Counterparty invoices.

**6.6 Counterparty Security Deposit.** Any security or other deposit required by a Counterparty for a Transaction shall be provided by the Member prior to the date NCPA provides any Agency Services and shall be maintained as may be required thereafter.

**6.7 Changes in Security.** Any changes in security or other deposits required by the Counterparty may be released by NCPA from the Operating Account, and NCPA shall invoice the Member within ten (10) working days for the total NCPA released to the Counterparty.

**6.8 General Operating Reserve Election:** In connection with fulfilling the Operating Account requirements of this Agreement, Member may elect to maintain the funds required under sections 6.1 through 6.7 above through its individual account in the NCPA General Operating Reserve (G.O.R.). If Member chooses to satisfy its Operating Account requirements in this manner, it will

provide NCPA with an irrevocable Letter of Direction for NCPA to utilize Member's G.O.R in this manner, provided however, nothing herein shall prohibit NCPA and Member from subsequently establishing an escrow account with an independent financial institution in place of holding the aforementioned deposit in the NCPA G.O.R.

#### **Article 7 – PAYMENTS AND DEFAULTS**

**7.1 Billing and Payment.** Payments by Member for Services shall be made in advance. Monthly billing statements prepared by NCPA shall be sent to the Member showing the Member's unpaid balance for Transactions and Services and other expenses relating to this Agreement estimated by NCPA for the succeeding month. This information may be provided on monthly billing statements prepared by NCPA pursuant to other Project Agreements with Member. NCPA will provide the monthly billing statements electronically if requested by the Member; otherwise NCPA shall mail the statements by U.S. Postal Service, first class postage pre-paid.

**7.1.1 Disputed Monthly Billing Statement.** In case any portion of any billing statement received by Member from NCPA shall be in bona fide dispute, Member shall pay NCPA the full amount of such billing statement and, upon determination of the correct amount,

the difference between such correct amount and such full amount, if any, shall be credited to Member by NCPA.

**7.2 Application of Operating Account.** NCPA may apply the Member's Operating Account to the payment of any portion of the monthly billing statement. If Member does not timely pay the billing statement, Application of such funds shall not relieve the Member from any late payment charges.

**7.3 Late Payments.** Amounts shown on each billing statement are due and payable at the time noted on the invoice, but not later than thirty (30) days after the date of the invoice, except that any amount due on a Friday, holiday or weekend may be paid on the following working day. Any amount due and not paid by the Member shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA then in effect, plus two percent per annum computed on a daily basis until paid.

**7.4 Settlement Data.** NCPA will make settlement data, including underlying data received from a Counterparty, available to the Member.

**7.5 Audit Rights.** The Member shall have the right to audit at its expense any data created or maintained by NCPA pursuant to this Agreement or pursuant to a Transaction on thirty (30) days written notice, unless otherwise agreed by the Member and NCPA.

**7.6 Failure To Pay.** If the Member fails to pay any amount due to NCPA within thirty (30) days of the date of the estimated or final invoice enumerating such amounts, the Member is in default and material breach under this Agreement.

**7.7 Other Material Breaches.** If the Member is in default or in breach of any of its covenants under any other agreement with NCPA, it shall also be considered in material default of this Agreement.

**7.8 Cure Period.** Upon written notice by NCPA, the Member shall cure any default within five (5) working days.

**7.9 Cure of Defaults.** A default shall be cured by the payment of any monies due NCPA, including any late payment charges, and repayment of any funds drawn from the Operating Account. A default under any other agreement with NCPA shall be cured by compliance with the covenant.

**7.10 Remedies in the Event of a Material Default.** NCPA may suspend the provision of any Agency Service or Advisory Service to the Member with a default which has not been cured within the Cure Period, including deducting sums in default from the Operating Account of the defaulting Member, demanding further assurances, and taking any other legal or equitable action before or after the Cure Period to compel the correction of the default, as for example, to mandate the collection of a surcharge to produce Revenues to secure

the cure of the default, (and the selection of one remedy shall not preclude the use of other remedies), on behalf of NCPA and other Members (in which event the defaulting Member shall not have the right to vote while such defaulting Member is in material default as determined by the NCPA Commission).

**7.11 Obligations in the Event of Default.** In the event that the Member's share of the Operating Account is insufficient to cover all invoices related to a Transaction or Service provided to the defaulting Member, (i) the defaulting Member shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default quickly; and provided, however, (ii) that neither NCPA nor any other member shall be liable under this Agreement for the obligations of the defaulting Member, and the Member shall be solely responsible and liable for performance of its obligations under this Agreement and each Transaction.

## **Article 8 – TERM OF THIS AGREEMENT**

**8.1 Term of This Agreement.** The term of this Agreement will be ten (10) years from its Effective Date. Six (6) months prior to the fifth-year anniversary date, the Parties will meet to review the Agreement. During the review period and following good-faith negotiations to resolve outstanding issues, either Party may terminate the Agreement. Notwithstanding the foregoing, either Party may, at any time during the term of the Agreement, terminate this Agreement on a date at least ninety (90) days after delivery of a written notice of termination to the other Party, provided that, no termination shall become effective until the termination of all Transactions.

#### **Article 9 – NO IMMUNITY CLAIM**

**9.1 No Immunity Claim.** The Member warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of a court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

#### **Article 10 – MEMBER COVENANTS**

The definitions in this Article 10 apply to the covenants in section 10.3 and elsewhere in this Agreement.

**10.1 Electric System.** Electric System means, with respect to the Member, all properties and assets, real and personal, tangible and intangible, of the Member now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Member is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Member's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

**10.2 Revenues.** Revenues means, with respect to the Member, all income, rents, rates, fees, charges, and other moneys derived by the Member from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and

income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System, and (iii) the proceeds derived by the Member directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (a) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Member or (b) contributions from customers for the payment of costs of construction of facilities to serve them.

**10.3 Member Covenants.** The Member covenants and agrees to (i) establish and collect rates and charges for the services and commodities provided by its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and all Transactions combined and to pay all other amounts payable from, and all lawful charges against or liens upon, the Revenues; (ii) make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System; (iii) make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement and any transaction (such payments are not subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists); and (iv) operate its Electric System and the business in connection therewith in an efficient manner

and at reasonable cost and to maintain its Electric System in good repair, working order, and condition.

#### **Article 11 – DELEGATION OF MEMBER AUTHORITY**

**11.1. Delegation to Member Agent.** The Member hereby designates as its authorized agent, the Member manager, to whom by resolution the Member has delegated its authority to execute on its behalf forms of contracts pursuant to this Agreement for use in Transactions subject to the Contract Damages Risk Limitations adopted by the Member's governing body pursuant to section 5.6.

**11.2. Delegation to NCPA.** The Member by resolution or Member's manager with written delegated authority will delegate to NCPA all of the Member's governing body's authority to enter into a Transaction with the delegation to NCPA confirming an Agency Service or Power Procurement Service for such Transaction. Such delegation shall not be revoked by Member or Member's manager during the term of the Transaction.

#### **Article 12 – TRANSACTION LITIGATION**

**12.1 Transaction Litigation.** In the event of bankruptcy or insolvency of Member or litigation, dispute resolution, governmental inquiry, including investigations or legislative inquiries, relating to any matter involving this

Agreement or any Service or Transaction, NCPA may select Counsel of its choice to advise and represent NCPA and the Member, and the Member shall pay NCPA for such expenses, as billed pursuant to this Agreement. Provided, however, that NCPA will not initiate litigation against third persons related to or arising out of this Agreement without Member's concurrence.

**Article 13 – UNCONTROLLABLE CIRCUMSTANCES & SUSPENSION OF  
PERFORMANCE**

13.1 **Definition.** In this Agreement "Uncontrollable Circumstances" shall mean acts, events or conditions not reasonably foreseeable by a Party which prevent the affected Party from performing its obligations under this Agreement, except the obligation for the payment of money, if and only if such acts, events or conditions and their effects (i) are beyond the reasonable control of such Party (or any third Party over whom such Party has control), (ii) are not reasonably avoidable, (iii) cannot be mitigated or eliminated through reasonably available alternative actions, and (iv) are not a result of the willful or negligent action or inaction of such Party or of any third Party over whom such Party has control.

Examples of Uncontrollable Circumstances include, but are not limited to, the following:

13.1.1 An act of God, landslide, lightning, earthquake, fire, explosion, storm, flood, or weather conditions precluding construction activity from progressing;

13.1.2 Acts of a public enemy, war, blockade, insurrection, strike, riot or civil disturbance, sabotage or similar occurrence or a mandate, directive, order, or restraint of any governmental, regulatory or judicial body or agency, or the exercise of the power of eminent domain, police power, inverse condemnation or other taking by or on behalf of any public, quasi-public or private entity; or

13.1.3 A Change in Law. In this Agreement, a Change in Law shall mean a material change in the requirements of the Scope of Services or the operation or maintenance of the Project, made by a governmental authority, that becomes effective on or after the date of this Agreement.

**13.2 Suspension of Performance.** The suspension of performance due to Uncontrollable Circumstances shall be no longer than reasonably required, and the Party suffering the Uncontrollable Circumstances shall use its best reasonable efforts to overcome such circumstances and partially or fully remedy its inability to perform. The Party suffering the Uncontrollable Circumstance

shall give the other Party notice that is reasonable under such circumstances, including written notice as soon as practicable.

#### **Article 14 - INDEMNIFICATION, DEFENSE, AND RELEASE**

**14.1 Indemnity Obligation of Member.** The Member hereby assumes all responsibility and liability for the Transactions and Services provided under the Agreement as if they were performed by the Member's employees and accordingly intends to protect NCPA, its member entities, governing officials, officers, agents, and employees against claims or losses of any kind whatsoever resulting from Transactions and Services provided pursuant to this Agreement. The Member is willing to take on such complete responsibility as an inducement to NCPA to enter into this Agreement. NCPA would not enter into this Agreement absent such inducement for NCPA's sole source of revenue comes from its members, which cannot be exposed to the risks of loss or damage due to Transactions, Services, or this Agreement. Thus, the Member (the "Indemnifying Party") agrees to indemnify, defend and hold harmless NCPA and its members, including their respective governing officials, officers, agents, and employees ("Indemnified Party or Parties"), from and against any and all claims, administrative actions, suits, losses, damages, expenses and liability of any kind or nature, including, without limitation, reasonable attorneys' fees ("Claim" or

collectively "Claims") including but not limited to those caused by any breach of contract, negligence, active or passive, gross negligence or willful misconduct of the Indemnifying Party, its officers, employees, subcontractors or agents, to the maximum extent permitted by law, but only as to Claims related to this Agreement.

**14.2 Notice and Defense.** Promptly after receipt by an Indemnified Party of any Claim or notice of a Claim or the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in section 14.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or Parties shall, at the expense of the Indemnifying Party, have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party or Parties.

**14.3 Failure to Assume Defense.** Should any of the Indemnified Parties be entitled to indemnification under section 14.1 as a result of a Claim by a third Party, and should the Indemnifying Party fail to assume the defense of such Claim after reviewing notification thereof as provided in section 14.2, then such Indemnified Party may, at the expense of the Indemnifying Party, contest or settle such Claim. To the extent that any of the Indemnified Parties is required to initiate and prevails in legal proceedings against the Indemnifying Party to enforce rights under this Article, the Indemnifying Party shall pay all costs and attorneys' fees incurred by the Indemnified Party in enforcing its rights. In addition to the foregoing, a failure to assume defense as provided may be deemed by NCPA a material breach of this Agreement.

**14.4 Release and Covenant Not to Sue.** The Member hereby forever releases and discharges NCPA, its members, governing officials, officers, agents, employees, and subcontractors (Released Parties) from any and all liabilities, claims, demands or causes of action that the Member may hereafter have for injuries, damages, or losses of any kind whatsoever arising out of the Transactions, Services or this Agreement performed or not performed, or inadequately performed by NCPA, including, but not limited to, losses caused by the passive or active negligence of the Released Parties or hidden, latent, or obvious defects in equipment or materials used.

The Member understands and acknowledges that the Project and the Services have inherent dangers that no amount of care, caution, instruction or expertise can eliminate and the Member expressly and voluntarily assumes all risk of death, personal injury, damages or losses of any kind whatsoever sustained in connection with the Project and the Services, including the risk of passive or active negligence of the Released Parties, or hidden, latent, or obvious defects in the materials used.

The Member hereby forever covenants not to sue the Released Parties for any injuries, damages, or losses, or liabilities, claims, demands or causes of action related thereto, to which the foregoing release applies.

## **Article 15 - GENERAL PROVISIONS**

**15.1 Independent Contractor.** NCPA shall be an independent contractor with respect to the Services to be performed hereunder. Neither NCPA nor its subcontractors, nor their agents or employees, shall be deemed to be the servants, employees, or agents of the Member, notwithstanding Article 14.

**15.2 Occupational Safety and Health Act.** The Member shall design, equip, and maintain and operate in accordance with all applicable rules, regulations, orders, standards and interpretations promulgated under the Occupational Safety and Health Act (1970) (OSHA), as amended and in effect as

of the day of execution of this Agreement or such similar act as adopted by the State of California, if applicable.

**15.3 Proprietary Information.** To the extent permitted by law, in particular the California Public Records Act, the Parties shall maintain the confidentiality of proprietary information.

**15.4 Patents.** The Member shall defend, indemnify and hold harmless NCPA from any suit or action brought against NCPA based on a claim that any item, materials or equipment procured pursuant to this Agreement, or any part thereof, furnished or specified by NCPA or the Member hereunder or any use thereof for purposes of this Agreement, constitutes an infringement of any claim of patent.

**15.5 Binding Effect: Successors and Assigns.**

15.5.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

15.5.2 Neither Party hereto shall assign or convey any of its rights, titles or interests under this Agreement without the prior written consent of the other Party hereto.

**15.6 Not for Benefit of Third Parties.** This Agreement and each and every provision thereof is for the exclusive benefit of the Parties hereto and not

for the benefit of any other party except that the other member entities are intended to benefit from the protections provided them in this Agreement in Article 14.

**15.7 Choice of Law.** This Agreement is made and is to be performed in California and any dispute arising therefrom shall be governed and interpreted in accordance with California laws.

**15.8 Article Headings and Subheadings.** All article headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

**15.9 No Waiver.** No waiver by a Party of any breach or default by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach of default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of a waiver by a Party in any one instance shall not limit or waive the necessity to obtain such Party's waiver in any future instance. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.

**15.10 Good Faith and Fair Dealing.** The Parties agree to deal fairly and to act in good faith in the performance or enforcement of this Agreement.

Wherever this Agreement requires a consent or approval of a Party hereto, such

consent or approval shall not be unreasonably withheld or delayed except as otherwise specifically provided herein.

**15.11 Severability.** In the event that any of the provisions of this Agreement, or portions or applications thereof, are held to be unenforceable or invalid by any court of competent jurisdiction, the Member and NCPA shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

**15.12 Legal Capacity.** Each Party represents and warrants that it has the legal capacity to enter into this Agreement and to perform all obligations undertaken herein.

**15.13 No Counterparts.** This Agreement and any amendments will not be executed in counterparts but in one or more duplicate originals which shall constitute but one and the same instrument.

**15.14 Further Assurances.** If either Party reasonably determines that any further instruments, representation of assurance of payment, or performance, or any other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and

assurances and do all such things as the first Party reasonably deems necessary or desirable to carry out the terms of this Agreement.

**15.15 Hazardous Waste.** Although it is not presently contemplated that any Service or Transaction will involve "Hazardous Waste," if on the contrary they do, then this section 15.15 shall apply. "Hazardous Waste" means (A) any product, substance, chemical, element, compound, mixture, solution, material, pollutant, contaminant or waste whose presence, nature, quantity or intensity of use, manufacture, processing, treatment, storage, disposal, transportation, spillage, release, or effect, either by itself or in combination with other materials, is regulated, monitored, or subject to reporting by any federal, state or local government entity; (B) those terms that are included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "extremely hazardous substances", "toxic substances", or "oil and hazardous substances", as defined in one or more of the following environmental laws: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sec. 11001 *et seq.* ("EPCRTKA"); the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 *et seq.* ("TSCA"); the Federal Water

Pollution Control Act, 33 U.S.C. Sec. 1251 *et seq.* (the "Clean Water Act"); the Clean Air Act, 42 U.S.C. Sec. 7401 *et seq.* ("CAA"); the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 5101 *et seq.* ("HMTA"); the Safe Drinking Water Act, 42 U.S.C. Sec. 300f *et seq.* ("SDWA"), or comparable state cleanup statutes, and in the regulations promulgated pursuant to said laws, all as amended from time to time; or (C) any material, pollutant, substance or waste that comprises, in whole or in part, includes, or is a by-product or constituent of (i) petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel), (ii) asbestos, (iii) polychlorinated biphenyls, (iv) flammables or explosives, (v) biochemical agents, or (vi) radioactive materials.

If, during the course of performing the Services or Transactions, either Party becomes aware of any Hazardous Waste that exists on or under the location of the Service or Transaction, whether or not created or brought on the location by a Party, the Party that so became aware shall report such condition to the Member in writing immediately and before disturbing (or further disturbing) the Hazardous Waste. NCPA shall not be liable for any Hazardous Waste on or under the location notwithstanding the fact that NCPA may have created, brought on, or released the Hazardous Waste into, over, on, or under the

location. The Member shall be solely liable for any Hazardous Waste at the location because of NCPA or any of its employees or subcontractors, and the Member shall perform all cleanup, removal, remediation and disposition services with respect thereto. In the event NCPA encounters Hazardous Waste at the location, NCPA shall take reasonable actions necessary to mitigate costs to the Member or liability of the Member due to such Hazardous Waste. The cost of actions taken by NCPA pursuant to this section shall be fully reimbursed by the Member to NCPA.

**15.16 Status of Parties and Regulatory Compliance.** The Parties acknowledge that this Agreement is formed between two public agencies. Neither Party shall have any claim against the members, governing officials, officers, employees or agents of either Party.

The Member is subject to the regulatory compliance requirements of several agencies. The Member shall be solely responsible for, and shall reimburse NCPA for any costs of compliance with any permits or license conditions, including any fines or penalties, to the maximum extent permitted by law.

**15.17 NCPA's Organization.** The Member is responsible for assuring for itself that NCPA's personnel are appropriately trained, educated, and skilled to competently perform the Services. The Member acknowledges and agrees that

NCPA makes no warranties or representations regarding the qualifications of its employees, agents, and subcontractors.

**15.18 Acknowledgments and Interpretation.** The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. The Parties acknowledge that in executing this Agreement they rely solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made by any other Party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provisions.

**15.19 Default Termination.** Upon the occurrence of a material default, the non-breaching Party shall notify in writing the breaching Party of its intent to terminate this Agreement if the breach is not cured within thirty (30) days. If the breaching Party does not cure the event of default within such thirty (30) day period, the non-breaching Party may immediately terminate this Agreement for Default. Written notice of termination shall be delivered to the breaching Party at the address shown on page one (1) of this Agreement or as changed. Either party may provide a new address for such notice at any time by providing written notice to the other party.

**15.20 Default Termination Remedies.** In the event of a default termination for material breach or abandonment by Member, NCPA may by appropriate court action or actions, either at law or in equity, preserve its position to recover damages and expenses associated with the breach; and/or pursue, concurrently or separately, other remedies available in law, in equity or in bankruptcy in anticipation of pursuing its remedies pursuant to Article 16 of this Agreement.

**15.21 Survival.** The terms of this Agreement shall survive any termination or cancellation hereof to the extent necessary to allow a Party to enforce any remedy granted hereunder in connection with such termination or cancellation. The terms of Article 14 of this Agreement, entitled "Indemnification, Defense, and Release" shall survive any termination or cancellation, in perpetuity as to the Release, and otherwise for ten (10) years and one day after the effective date of termination or cancellation.

## **Article 16 - DISPUTE RESOLUTION**

**16.1 Negotiations.** The Parties will attempt in good faith to resolve through negotiation any dispute, arising out of or relating to this Agreement. Either Party may initiate negotiations by providing written notice in letter form to the other Party, setting forth the subject of the dispute and the relief requested.

The recipient of such notice will respond in writing within five (5) days with a detailed statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting by negotiations, they shall consider mediation.

During any dispute and negotiation the Member shall continue to timely pay NCPA for Services rendered and Transactions for which obligations remain unsatisfied, even though such dispute may concern those Services or Transactions. NCPA agrees to continue performing the Services, provided that no payment due from the Member is overdue.

**16.2 Mediation.** The Parties agree that any and all disputes arising out of or relating to this Agreement that are not resolved by their mutual agreement after negotiations pursuant to section 16.1, should be submitted to mediation before JAMS, or its successor or similar alternative dispute resolution (ADR) organization of respected, retired judges, or to a private judge, as the Member may determine, in its reasonable discretion, and with the written consent of NCPA, provided that the Member will be responsible for all of the expenses of

mediation. Either Party may commence the mediation process called for in this Agreement by filing a written request for mediation with JAMS, its successor, or another ADR organization or private judge with a copy to the other Party. The Parties agree that they will participate in the mediation in good faith when and if the Member determines to invoke mediation as a dispute resolution remedy, at its expense.

**16.3 Waiver of Certain Judicial Rights.** If the Parties fail to either negotiate or mediate a mutually satisfactory resolution of any dispute, then upon written notice given twenty (20) days in advance, either Party may terminate this Agreement, subject to any unpaid or unreimbursed compensation or costs payable by the Member to NCPA, and without affecting the survival of Article 14, entitled "Indemnification, Defense, and Release" for its full term, notwithstanding any default hereunder by NCPA.

## **Article 17 – LIMITATION OF LIABILITY**

**17.1 Limitation of Liability.** To the extent the law allows, NCPA, its members, governing officials, officers, employees, and agents shall have no liability to the Member under this Agreement with respect to all claims however caused, arising out of the performance or non-performance of the Services and obligations under this Agreement, whether based in contract, warranty, tort

(including negligence), strict liability, or otherwise, including without limitation, liability for consequential damages pursuant to Article 18. NCPA shall not be required to carry any insurance, and even if insurance is carried by NCPA, such insurance shall not be available to the Member for any claim, death, damages, injuries, losses of any kind whatsoever, unless, and solely to the extent, that the Member procures such insurance of its own accounts, and pays, and is solely responsible for any and all premiums and costs related to such coverage. If notwithstanding the foregoing limitations of this Section 17.1, liability is imposed, then such total liability shall be limited to the net present value of the expertise NCPA gained through this Agreement that is of value to its other members.

#### **Article 18 – CONSEQUENTIAL DAMAGES**

**18.1 Consequential Damages.** NCPA, its members, governing officials, officers, employees, and agents (excluding counterparties) shall not be liable to the Member, for incidental, indirect, punitive, exemplary, special or consequential loss or damage arising out of or relating to this Agreement, including, but not limited to, loss of use, customer claims and damages, loss of revenue, loss of power sales, loss of electric system reliability, outages and cascading disturbances, principal office expenses, delay, loss by reason of plant

shutdown or inability to operate, increased cost of operating and maintaining the Project, debt service, rental payments or contractual damages incurred by the Member or to others. The Member is and will remain through the survival provisions of Article 15 of this Agreement, solely responsible for such risks, losses, damages and costs, however described; including consequential damages that may be suffered by NCPA, its members, governing officials, officers, employees, and agents (excluding counterparties) arising from this Agreement.

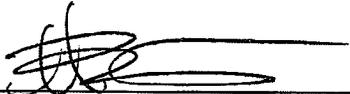
IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the Effective Date, having acknowledged and accepted the terms, conditions, promises, and covenants of this Agreement, as evidenced by the following signatures of the representatives of the Parties, who are represented and warranted to be fully and lawfully authorized, by all necessary official action, to execute and deliver this Agreement.

MEMBER:

NCPA:

CITY OF LODI

Northern California Power  
Agency

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Name: Konradt Bartlam

Name: James H. Pope

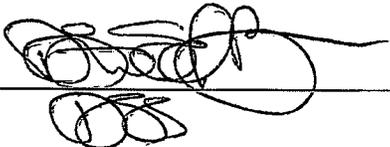
Title: City Manager

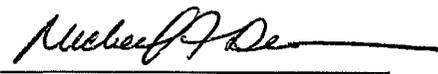
Title: General Manager

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

APPROVED AS TO FORM:

By:  \_\_\_\_\_

By:  \_\_\_\_\_  
Michael Dean, General Counsel

ATTEST:

By:  \_\_\_\_\_  
RANDI JOHL, City Clerk

SINGLE MEMBER SERVICES AGREEMENT  
by and between the  
CITY OF LODI  
and the  
NORTHERN CALIFORNIA POWER AGENCY

ATTACHMENT A  
ADVISORY SERVICES

In accordance with the terms of the Agreement between Northern California Power Agency ("NCPA") and the City of Lodi ("Member"), NCPA may provide certain Advisory Services to Member, which includes technical, economic, financial, legal, risk and credit analysis, and other advice of a professional manner. Member has requested NCPA to provide the Advisory Services listed in this Attachment A, and NCPA has agreed to provide such Advisory Services in consideration of the costs of such activities as described herein.

**Scope of Advisory Services**

NCPA shall provide, at its discretion, Advisory Services to Member to assist Member in developing contract instruments to be utilized to consummate transactions in its own name for Energy and Renewable Energy Certificate ("REC") products. Such Advisory Services may include development of special terms and conditions to be used by Member in conjunction with industry standard contracts and/or development of bilateral contracts. NCPA may assist Member, through active and passive participation, in negotiation activities required to develop contract instruments and to consummate transactions. Notwithstanding the scope of Advisory Services provided herein, all Advisory Services supplied by NCPA to Member shall be in accordance with the terms and conditions of the Agreement.

**Cost of Advisory Services**

Member agrees to pay for any and all costs associate with NCPA's provision of Advisory Services. In accordance with Article 7 of the Agreement, all payments due from Member for Advisory Services shall be made in advance. Therefore, listed below is the estimated cost for the Advisory Services to be provided to Member. Upon completion of the Advisory Services, NCPA shall bill or credit Member for the difference between the estimated and actual costs of Advisory Services. Such invoicing will be conducted in accordance with the Agreement.

**Northern California Power Agency  
 Single Member Services Agreement - City of Lodi  
 Estimated Cost of Advisory Services**

**Scope: Development & Negotiation of Contract Instruments**

<u>Advisory Services (Estimated Costs)</u>	<u>Rate \$/Hr</u>	<u>Total Hours</u>	<u>Total Costs</u>
NCPA Staff Hourly Fee Basis	\$ 160	80	\$ 12,800
Legal Counsel Hourly Fee Basis	\$ 400	44	\$ 17,600
			<u>\$ 30,400</u>

<u>Advisory Services (# of Hours Staff/Legal Counsel)</u>	<u>NCPA Staff</u>	<u>Legal Counsel</u>
Contract Instrument Terms & Conditions Development	20	28
Development of REC Product Types	16	8
Request for Proposals / Limited Solicitation -- Evaluation	16	-
Contract Negotiations	8	4
Other Regulatory and Support Activities	8	4
Settlement & Operations	12	-
	<u>80</u>	<u>44</u>

The undersigned hereby approve the scope of Advisory Services and associated costs estimate described in this Attachment A, in accordance with the Agreement.

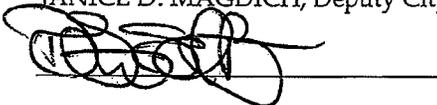
CITY OF LODI



By: Konradt Bartlam  
 City Manager

Date:

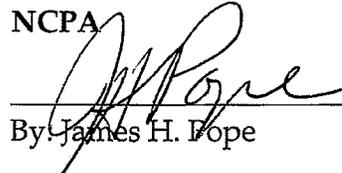
APPROVED AS TO FORM:  
 D. STEPHEN SCHWABAUER, City Attorney  
 JANICE D. MAGDICH, Deputy City Attorney



ATTEST:

  
 RANDI JOEHL, City Clerk

NCPA



By: James H. Fope

Date: 7/11/12

APPROVED AS TO FORM:



Michael Dean  
 General Counsel



RESOLUTION NO. 2012-78

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE SINGLE MEMBER SERVICES  
AGREEMENT BY AND BETWEEN THE CITY OF LODI  
AND THE NORTHERN CALIFORNIA POWER AGENCY,  
AND FURTHER AUTHORIZING THE CITY MANAGER TO  
EXECUTE SAID AGREEMENT

=====

WHEREAS, on April 12, 2011, the Governor of the State of California signed California Senate Bill 2 of the First Extraordinary Session, SBX1-2, Chapter 1, Statutes of 2011, First Extraordinary Session, (SBX1-2), known as the California Renewable Energy Resources Act, which became effective on December 10, 2011; and

WHEREAS, SBX1-2 requires that the amount of electricity generated from eligible renewable energy resources be increased to an amount that equals at least 20% of the total electricity sold to retail customers in California by December 31, 2013, 25% by December 31, 2016, and 33% by December 31, 2020; and

WHEREAS, while Lodi will need to adopt a Renewable Energy Resources Procurement Plan (RPS Procurement Plan) to meet the requirements of SBX1-2, the California State Energy Commission (CEC) still has not published the details of the requirements for such RPS Procurement Plans, though they were required to do so no later than December 31, 2011; and

WHEREAS, staff anticipates bringing a RPS Procurement Plan to Council for approval in the first quarter of fiscal year 2012/13; and

WHEREAS, SB1X-2 requirements will require different amounts of varying types of renewable resources in various years; these different types are called Portfolio Content Categories (PCC); and

WHEREAS, in anticipation of the RPS Procurement Plan staff has completed a preliminary analysis; based on this analysis it is expected that no net purchases will be required to meet SBX1-2 requirements through calendar year 2013; and

WHEREAS, analysis has also shown that Lodi has a surplus of the more valuable PCC 1, which includes renewable resource products that are scheduled from an eligible renewable energy resource directly into a California balancing authority; Lodi's surplus comes mostly from our entitlements to Northern California Power Agency (NCPA) geothermal plants; and

WHEREAS, this excess PCC 1 may be sold and replaced with a much less expensive PCC 3 resource; PCC 3 includes unbundled renewable energy credits that do not qualify under the criteria for other Content Categories; and this exchange of PCC types may result in savings to Lodi of as much as \$2 million this fiscal year; and

WHEREAS, NCPA is currently working to modify the Market Power Purchase Agreement (MPP) to enable NCPA to make these types of transactions for the MPP Participants, which includes Lodi; unfortunately it is unlikely that the MPP can be modified in time to make the transactions that need to be completed this year; and

WHEREAS, Lodi itself has neither the time nor experience to complete these transactions on our own in the available time frame; and

WHEREAS, NCPA has developed the Single Member Services Agreement (SMSA) and scope of work (Advisory Services) to facilitate such independent transactions, by assisting its members in carrying out economic and timely transactions; and

WHEREAS, the SMSA will allow additional scopes of work to be attached to it in the future, as needed from time to time; any additional scopes of work will require separate approvals by both NCPA and Lodi; potential transactions that come out of this process will still need to be approved in accordance with Lodi's existing approval process.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Single Member Services Agreement by and between the City of Lodi and the Northern California Power Agency and authorizing the City Manager to execute said agreement with administration by the Electric Utility Director.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-78 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi,  
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk



555 Capitol Mall, Suite 1200  
 Sacramento, California 95814  
 tel (916) 556-1531  
 fax (916) 556-1516  
 www.meyersnave.com

Michael F. Dean  
 Attorney at Law  
 Direct Dial: (916) 556-1531  
 mdean@meyersnave.com

APR 11 2016

CITY ATTORNEY'S OFFICE

April 6, 2016

Janice Magdich,  
 City Attorney  
 City of Lodi  
 P.O. Box 3006  
 Lodi, CA 95241

**Re: *Request for Conflicts Waiver Regarding the Lodi SMSA Advisory Services Schedule***

Dear Ms. Magdich:

As you are aware, Meyers Nave acts as the General Counsel to the Northern California Power Agency ("NCPA"). In that capacity we have been asked by NCPA to advise regarding a proposed Lodi - NCPA Single Member Services Agreement ("SMSA") Advisory Services Schedule. NCPA is a joint powers agency composed of a number of cities and other local government agencies that have municipal electric utilities. The City of Lodi ("Lodi") is a member of NCPA.

The subject of the proposed SMSA Services Schedule would be the provision of certain services by NCPA to Lodi relating to a non-NCPA project, the RE Astoria II solar project, in which Lodi is a participant. Meyers Nave has represented Lodi in the negotiation of the Joint Buyers Agreement and the Power Purchase Agreement ("PPA") for the RE Astoria II project, but these RE Astoria II project agreements did not involve NCPA in any way. On occasion, Lodi still consults with Meyers Nave regarding the RE Astoria II project agreements. If the SMSA Advisory Services Schedule is approved, NCPA would provide various services to Lodi during the operation of the RE Astoria II project, including billing, acting as Lodi's agent under the Joint Buyers Agreement, and attending certain buyers' committee meetings on Lodi's behalf.

In addition to the above, we also currently represent Lodi in connection with other unrelated land use matters.

As attorneys, we are governed by the California Rules of Professional Conduct. As stated in Rule 3-310(C) below, Meyers Nave **must obtain the informed written consent of both clients prior to representing one client against another.** The purpose of this letter is to inform both clients of the potential conflict and obtain your written consent. Pertinent

Janice Magdich  
Re: Request of Conflicts Waiver  
April 6, 2016  
Page 2

sections of Rule 3-310(C) of the California Rules of Professional Conduct provide as follows:

Rule 3-310(C): A member shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict;

While we would simultaneously represent both Lodi and NCPA in matters relating to the RE Astoria II project (NCPA with respect to the approval of the NCPA-Lodi SMSA Advisory Services Schedule, and Lodi with respect to the Joint Buyers Agreement and the PPA) we have no reason to believe that any dispute exists between Lodi and NCPA that creates an actual conflict of interest. However, should any party in the future assert a position inconsistent with the other's interests, we would be unable to represent either party. We believe that the potential for actual conflict is minimal, however, as both parties share the same interest in agreeing to the terms of the SMSA Advisory Services Schedule and the business terms of the NCPA-Lodi relationship are contained in the SMSA itself, which is already in place. The Advisory Services Schedule would merely list the additional services to be provided under the terms of the existing SMSA.

By this letter we are requesting that Lodi provide written consent to allow Meyers Nave to represent NCPA related to the SMSA Advisory Schedule matter. This NCPA representation was contemplated at the time of the retainer of Meyers Nave by Lodi for the RE Astoria II project. By signing this letter and returning it to us, however, you formally acknowledge that we have disclosed this matter and confirm that Lodi does not object to our representation of NCPA in the SMSA Advisory Schedule matter, adverse to Lodi. You further agree that you will not assert any conflict of interest concerning such representation or attempt to disqualify Meyers Nave from representing NCPA notwithstanding such adversity.

If, after review and consideration of the foregoing, Lodi consents to our representation of NCPA in the matter described above, please sign the enclosed copy of this letter. We have asked for a similar consent from NCPA.

Very truly yours,



Michael F. Dean  
Attorney at Law

Janice Magdich  
Re: Request of Conflicts Waiver  
April 6, 2016  
Page 3

cc: Conflicts Dept.

City of Lodi consents to the representation described above.

Dated: \_\_\_\_\_

---

By: Janice Magdich  
Its: City Attorney



2630249.1

RESOLUTION NO. 2016-\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADVISORY SERVICES ATTACHMENT TO THE SINGLE MEMBER SERVICES AGREEMENT WITH THE NORTHERN CALIFORNIA POWER AGENCY AND FURTHER AUTHORIZING THE CITY ATTORNEY TO EXECUTE A CONFLICTS WAIVER WITH MEYERS NAVE FOR THE ASTORIA 2 SOLAR PROJECT

WHEREAS, on June 18, 2014, the Lodi City Council approved a Power Purchase Agreement with Recurrent Energy for the Astoria 2 Solar Project (Project); and

WHEREAS, the Project is currently under construction and scheduled for commercial operation by December 2016; and

WHEREAS, in 2012, Lodi executed a Single Member Services Agreement (SMSA) with Northern California Power Agency (NCPA) which allows Lodi to request specialized services from NCPA as its advisor or agent when such services do not clearly fall within an existing approved NCPA agreement; and

WHEREAS, Lodi has requested that NCPA provide technical advisory services under the SMSA for the Project prior to and during commercial operation; and

WHEREAS, the cost associated with NCPA's assistance will be billed on a time-and-material basis, is anticipated to be minimal in nature, and is included in the current power supply budget; and

WHEREAS, because Meyers Nave represents Lodi in the Project and may continue to offer legal services in that regard, as well as advise NCPA on the SMSA, Meyers Nave has requested Lodi execute a Conflicts Waiver.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute an Advisory Services Attachment to the Single Member Services Agreement with NCPA for the Astoria 2 Solar Project; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes the City Attorney to execute a Conflicts Waiver with Meyers Nave for the Astoria 2 Solar Project.

Dated: May 18, 2016

I hereby certify that Resolution No. 2016-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2016, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

JENNIFER M. FERRAILOLO  
City Clerk



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Receive Report Regarding Communication Pertaining to Senate Bill 1069 (Wieckowski) – Accessory Dwelling Units

**MEETING DATE:** May 18, 2016

**PREPARED BY:** City Clerk

**RECOMMENDED ACTION:** Receive report regarding communication pertaining to Senate Bill 1069 (Wieckowski) – Accessory Dwelling Units.

**BACKGROUND INFORMATION:** The City received a request for communication from the League of California Cities regarding SB 1069 (Wieckowski). There was a need to send a letter of opposition immediately in light of a pending hearing.

SB 1069 would restrict a local agency's ability to impose requirements on second units, which would be renamed "accessory dwelling units" (ADU). SB 1069 is so prescriptive that it removes any local land use flexibility and limits the public engagement process. The measure departs significantly from existing law which prescribes the minimum standards of a local ordinance of an ADU and instead prescribes the maximum standards of an ADU, thereby removing all local land use flexibility.

In addition, this measure could result in rate hikes to existing private and public utility customers. Under SB 1069, an ADU cannot be considered a new residential unit for purposes of calculating utility connection fees. The cumulative impact of thousands of new units on a water or sewer system could create financial strains for utility agencies, resulting in rate hikes on existing customers who have already paid their fair share to be part of that system.

The attached letter, electronically signed by the Mayor, was sent out on May 11, 2016. A copy of the initial request, along with the text of the bill, is also attached. This report is provided for informational purposes only, pursuant to policy.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

\_\_\_\_\_  
Jennifer M. Ferraiolo  
City Clerk

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

CITY COUNCIL

MARK CHANDLER, Mayor  
DOUG KUEHNE,  
Mayor Pro Tempore  
BOB JOHNSON  
JOANNE MOUNCE  
ALAN NAKANISHI

# CITY OF LODI

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May 11, 2016

Honorable Bob Wieckowski  
Member, California State Senate  
State Capitol Building, Room 3086  
Sacramento, CA 95814  
Via FAX: (916) 651-4910

RE: **SB 1069 (Wieckowski) Accessory Dwelling Units** (Version 4/26/16)  
**Notice of Opposition**

The City of Lodi is opposed to SB 1069 that would further restrict a local agency's ability to impose requirements on second units, which would be renamed "accessory dwelling units."

SB 1069 is so prescriptive that it removes any local land use flexibility and limits the public engagement process. The measure departs significantly from existing law which prescribes the minimum standards of a local ordinance of an ADU and instead prescribes the maximum standards of an ADU thereby removing all local land use flexibility.

In addition, this measure could result in rate hikes to existing private and public utility customers. Under SB 1069, an ADU cannot be considered a new residential unit for purposes of calculating utility connection fees. The cumulative impact of thousands of new units on a water or sewer system could create financial strains for utility agencies, resulting in rate hikes on existing customers who have already paid their fair share to be part of that system.

Local governments must balance competing priorities when determining the conditions attached to the development of accessory dwelling units. Working with residents of our communities, cities must look at the potential impacts on the community that result from these units, such as, impaired neighborhood character, spillover effects on nearby homes and businesses due to inadequate parking, and loss of privacy for existing homeowners.

For these reasons, the City of Lodi opposes SB 1069.

Sincerely,

*/s/ Mark Chandler*

Mark Chandler  
Mayor, City of Lodi

cc: Senator Cathleen Galgiani, Fax: (916) 651-4905  
Assemblymember Jim Cooper, Fax: (916) 319-2109  
Stephen Qualls, League of California Cities, [squalls@cacities.org](mailto:squalls@cacities.org)  
Meg Desmond, League of California Cities, [mdesmond@cacities.org](mailto:mdesmond@cacities.org)

## Jennifer Ferraiolo

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**From:** Stephen R. Qualls <squalls@cacities.org>  
**Sent:** Tuesday, May 10, 2016 9:23 AM  
**Subject:** URGENT: CALLS NEEDED  
**Attachments:** Action Alert SB 1069 (Wieckowski) Accessory Dwelling Units.docx; SB 1069 SAMPLE letter.docx; sb\_1069\_bill\_20160426\_amended\_sen\_v96.pdf; Talking Points SB 1069 (Wieckowski).pdf

ACTION ALERT!!

SB 1069 (Wieckowski)  
Second Units and Removal of Local Land Use Authority

OPPOSE

Politics of Housing in Sacramento

The Legislature has unofficially made this the year of housing. There has been a host of hearings in both the Senate and Assembly on the housing crisis and housing affordability. The League has been proactive in supporting several measures that increase affordable housing funding and allow for program flexibility at the local level. However, there has been an alarming trend to introduce measures that seek to take away local control and create mandates for local governments in the housing and land use arena. In years past, the League has had to contend with just a few of these challenging proposals, but now the theme is clear. Advocates want to do something to increase housing production in the state and in their view it is easier to pass legislation that 1) circumvents the public engagement process; 2) increases the possibility of endless litigation; and 3) removes local authority and eases restrictions on housing production rather than measures that may create a burden on the state's general fund that will actually create new housing.

Background on SB 1069:

SB 1069 would rename second units as "Accessory Dwelling Units" or "ADUs." Accessory dwelling units refers to accessory apartments, second units, or granny flats — all of which are additional living quarters on single-family lots that are independent of the primary dwelling unit. These spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. Existing law gives a property owner the ability to construct an accessory dwelling unit on their property, should they meet certain local zoning and building requirements.

SB 1069 would limit the ability of cities to impose certain standards on accessory dwelling units. Specifically, it would:

- Repeal the ability of local governments to enact ordinances that prohibit accessory dwelling units;
- Impose a burdensome requirement for local agencies to act on an accessory dwelling unit permit application within 90-days after the submittal of a complete building permit;
- Prohibit local agencies from imposing parking standards on units that meet certain conditions;
- Prohibit the imposition of sewer and water connection fees which will create practical impediments to the development of ADUs and unfunded capital costs for sewer and water providers; and
- Creates a new unfunded state-mandated local program.

Arguments/Talking Points

- SB 1069 is so prescriptive that it removes any local land use flexibility and limits the public engagement process.
  - o This measure departs significantly from existing law which prescribes the minimum standards of a local ordinance of an ADU and instead prescribes the maximum standards of an ADU thereby removing all local land use flexibility.
  - o Local governments must balance competing priorities when determining the conditions attached to the development of accessory dwelling units.
  - o Working with residents of our communities, cities must look at the potential impacts on the community that result from these units, such as, impaired neighborhood character, spillover effects on nearby homes and businesses due to inadequate parking, and loss of privacy for existing homeowners.
  - o This measure is so prescriptive that it removes the ability of the community to participate in the planning process for ADUs.
  
- This measure could result in rate hikes to existing private and public utility customers.
  - o Under SB 1069, an ADU cannot be considered a new residential unit for purposes of calculating utility connection fees.
  - o The cumulative impact of thousands of new units on a water or sewer system could create financial strains for utility agencies resulting in rate hikes on existing customers who have already paid their fair share to be part of that system.
  
- SB 1069 could result in increased litigation to cities.
  - o This measure would force cities to approve a dwelling that it may consider dangerous or unsafe by removing the ability to require a sprinkler system and creates large loopholes for the construction of potentially unsafe and unsustainable residences.

**ACTION:**

SB 1069 passed the Senate Appropriations Committee today. The bill is eligible to be heard on the Senate Floor as early as this Thursday, May 12. Please CALL your Senator and urge their NO vote on the floor ASAP.

You may also send a letter of CITY OPPOSITION to your Senator. Talking points and a sample letter are attached or you may use the League's Action Center ([http://www.cacities.org/Policy-Advocacy/Action-Center/SB-1069-\(Wieckowski\)-Accessory-Dwelling-Units-\(Ver\)](http://www.cacities.org/Policy-Advocacy/Action-Center/SB-1069-(Wieckowski)-Accessory-Dwelling-Units-(Ver))) to submit a letter online.

You can look up your Senator's contact information through the following link: <http://findyourrep.legislature.ca.gov/>

Stephen Qualls  
 Central Valley Regional Public Affairs Manager League of California Cities

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## **ACTION ALERT!!**

### **SB 1069 (Wieckowski) Second Units and Removal of Local Land Use Authority**

#### **OPPOSE**

##### **Politics of Housing in Sacramento**

The Legislature has unofficially made this the year of housing. There has been a host of hearings in both the Senate and Assembly on the housing crisis and housing affordability. The League has been proactive in supporting several measures that increase affordable housing funding and allow for program flexibility at the local level. However, there has been an alarming trend to introduce measures that seek to take away local control and create mandates for local governments in the housing and land use arena. In years past, the League has had to contend with just a few of these challenging proposals, but now the theme is clear. Advocates want to do something to increase housing production in the state and in their view it is easier to pass legislation that 1) circumvents the public engagement process; 2) increases the possibility of endless litigation; and 3) removes local authority and eases restrictions on housing production rather than measures that may create a burden on the state's general fund that will actually create new housing.

##### **Background on SB 1069:**

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spillover effects on nearby homes and businesses due to inadequate parking, and loss of privacy for existing homeowners.

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- **This measure could result in rate hikes to existing private and public utility customers.**
  - Under SB 1069, an ADU cannot be considered a new residential unit for purposes of calculating utility connection fees.
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AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 13, 2016

AMENDED IN SENATE APRIL 6, 2016

**SENATE BILL**

**No. 1069**

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**Introduced by Senator Wieckowski**  
(Coauthor: Assembly Member Atkins)

February 16, 2016

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An act to amend Sections 65582.1, 65583.1, 65589.4, 65852.150, 65852.2, and 66412.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, as amended, Wieckowski. Land use: zoning.

The Planning and Zoning Law authorizes the legislative body of a city or county to regulate, among other things, the intensity of land use, and also authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential zones, as specified. That law makes findings and declarations with respect to the value of 2nd units to California's housing supply.

This bill would replace the term "second unit" with "accessory dwelling unit" throughout the law. The bill would add to those findings and declarations ~~that~~ *that, among other things*, allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock and these units are an essential component of housing supply in California.

*The Planning and Zoning Law authorizes the ordinance for the creation of 2nd units in single-family and multifamily residential zones to include specified provisions regarding areas where accessory dwelling units may be located, standards, including the imposition of*

*parking standards, and lot density. Existing law, when a local agency has not adopted an ordinance governing 2nd units as so described, requires the local agency to approve or disapprove the application ministerially, as provided.*

This bill would *instead* require ~~an~~ the ordinance for the creation of accessory dwelling units to include ~~specified provisions regarding areas where accessory dwelling units may be located, standards, and lot density;~~ the provisions described above. The bill would prohibit the imposition of parking standards under specified circumstances. The bill would revise requirements for the approval or disapproval of an accessory dwelling unit application when a local agency has not adopted an ordinance. The bill would also require the ministerial approval of an application for a building permit to create an accessory dwelling unit within the existing space of a single family residence or accessory structure, as specified. ~~By~~

By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65582.1 of the Government Code is
- 2 amended to read:
- 3 65582.1. The Legislature finds and declares that it has provided
- 4 reforms and incentives to facilitate and expedite the construction
- 5 of affordable housing. Those reforms and incentives can be found
- 6 in the following provisions:
- 7 (a) Housing element law (Article 10.6 (commencing with
- 8 Section 65580) of Chapter 3).
- 9 (b) Extension of statute of limitations in actions challenging the
- 10 housing element and brought in support of affordable housing
- 11 (subdivision (d) of Section 65009).
- 12 (c) Restrictions on disapproval of housing developments
- 13 (Section 65589.5).

- 1 (d) Priority for affordable housing in the allocation of water and  
2 sewer hookups (Section 65589.7).
  - 3 (e) Least cost zoning law (Section 65913.1).
  - 4 (f) Density bonus law (Section 65915).
  - 5 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
  - 6 (h) By-right housing, in which certain multifamily housing are  
7 designated a permitted use (Section 65589.4).
  - 8 (i) No-net-loss-in zoning density law limiting downzonings and  
9 density reductions (Section 65863).
  - 10 (j) Requiring persons who sue to halt affordable housing to pay  
11 attorney fees (Section 65914) or post a bond (Section 529.2 of the  
12 Code of Civil Procedure).
  - 13 (k) Reduced time for action on affordable housing applications  
14 under the approval of development permits process (Article 5  
15 (commencing with Section 65950) of Chapter 4.5).
  - 16 (l) Limiting moratoriums on multifamily housing (Section  
17 65858).
  - 18 (m) Prohibiting discrimination against affordable housing  
19 (Section 65008).
  - 20 (n) California Fair Employment and Housing Act (Part 2.8  
21 (commencing with Section 12900) of Division 3).
  - 22 (o) Community redevelopment law (Part 1 (commencing with  
23 Section 33000) of Division 24 of the Health and Safety Code, and  
24 in particular Sections 33334.2 and 33413).
- 25 SEC. 2. Section 65583.1 of the Government Code is amended  
26 to read:
- 27 65583.1. (a) The Department of Housing and Community  
28 Development, in evaluating a proposed or adopted housing element  
29 for substantial compliance with this article, may allow a city or  
30 county to identify adequate sites, as required pursuant to Section  
31 65583, by a variety of methods, including, but not limited to,  
32 redesignation of property to a more intense land use category and  
33 increasing the density allowed within one or more categories. The  
34 department may also allow a city or county to identify sites for  
35 accessory dwelling units based on the number of accessory  
36 dwelling units developed in the prior housing element planning  
37 period whether or not the units are permitted by right, the need for  
38 these units in the community, the resources or incentives available  
39 for their development, and any other relevant factors, as determined  
40 by the department. Nothing in this section reduces the responsibility

1 of a city or county to identify, by income category, the total number  
2 of sites for residential development as required by this article.

3 (b) Sites that contain permanent housing units located on a  
4 military base undergoing closure or conversion as a result of action  
5 pursuant to the Defense Authorization Amendments and Base  
6 Closure and Realignment Act (Public Law 100-526), the Defense  
7 Base Closure and Realignment Act of 1990 (Public Law 101-510),  
8 or any subsequent act requiring the closure or conversion of a  
9 military base may be identified as an adequate site if the housing  
10 element demonstrates that the housing units will be available for  
11 occupancy by households within the planning period of the  
12 element. No sites containing housing units scheduled or planned  
13 for demolition or conversion to nonresidential uses shall qualify  
14 as an adequate site.

15 Any city, city and county, or county using this subdivision shall  
16 address the progress in meeting this section in the reports provided  
17 pursuant to paragraph (1) of subdivision (b) of Section 65400.

18 (c) (1) The Department of Housing and Community  
19 Development may allow a city or county to substitute the provision  
20 of units for up to 25 percent of the community’s obligation to  
21 identify adequate sites for any income category in its housing  
22 element pursuant to paragraph (1) of subdivision (c) of Section  
23 65583 where the community includes in its housing element a  
24 program committing the local government to provide units in that  
25 income category within the city or county that will be made  
26 available through the provision of committed assistance during  
27 the planning period covered by the element to low- and very low  
28 income households at affordable housing costs or affordable rents,  
29 as defined in Sections 50052.5 and 50053 of the Health and Safety  
30 Code, and which meet the requirements of paragraph (2). Except  
31 as otherwise provided in this subdivision, the community may  
32 substitute one dwelling unit for one dwelling unit site in the  
33 applicable income category. The program shall do all of the  
34 following:

35 (A) Identify the specific, existing sources of committed  
36 assistance and dedicate a specific portion of the funds from those  
37 sources to the provision of housing pursuant to this subdivision.

38 (B) Indicate the number of units that will be provided to both  
39 low- and very low income households and demonstrate that the

1 amount of dedicated funds is sufficient to develop the units at  
2 affordable housing costs or affordable rents.

3 (C) Demonstrate that the units meet the requirements of  
4 paragraph (2).

5 (2) Only units that comply with subparagraph (A), (B), or (C)  
6 qualify for inclusion in the housing element program described in  
7 paragraph (1), as follows:

8 (A) Units that are to be substantially rehabilitated with  
9 committed assistance from the city or county and constitute a net  
10 increase in the community's stock of housing affordable to low-  
11 and very low income households. For purposes of this  
12 subparagraph, a unit is not eligible to be "substantially  
13 rehabilitated" unless all of the following requirements are met:

14 (i) At the time the unit is identified for substantial rehabilitation,  
15 (I) the local government has determined that the unit is at imminent  
16 risk of loss to the housing stock, (II) the local government has  
17 committed to provide relocation assistance pursuant to Chapter 16  
18 (commencing with Section 7260) of Division 7 of Title 1 to any  
19 occupants temporarily or permanently displaced by the  
20 rehabilitation or code enforcement activity, or the relocation is  
21 otherwise provided prior to displacement either as a condition of  
22 receivership, or provided by the property owner or the local  
23 government pursuant to Article 2.5 (commencing with Section  
24 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and  
25 Safety Code, or as otherwise provided by local ordinance; provided  
26 the assistance includes not less than the equivalent of four months'  
27 rent and moving expenses and comparable replacement housing  
28 consistent with the moving expenses and comparable replacement  
29 housing required pursuant to Section 7260, (III) the local  
30 government requires that any displaced occupants will have the  
31 right to reoccupy the rehabilitated units, and (IV) the unit has been  
32 found by the local government or a court to be unfit for human  
33 habitation due to the existence of at least four violations of the  
34 conditions listed in subdivisions (a) to (g), inclusive, of Section  
35 17995.3 of the Health and Safety Code.

36 (ii) The rehabilitated unit will have long-term affordability  
37 covenants and restrictions that require the unit to be available to,  
38 and occupied by, persons or families of low- or very low income  
39 at affordable housing costs for at least 20 years or the time period  
40 required by any applicable federal or state law or regulation.

1 (iii) Prior to initial occupancy after rehabilitation, the local code  
2 enforcement agency shall issue a certificate of occupancy indicating  
3 compliance with all applicable state and local building code and  
4 health and safety code requirements.

5 (B) Units that are located either on foreclosed property or in a  
6 multifamily rental or ownership housing complex of three or more  
7 units, are converted with committed assistance from the city or  
8 county from nonaffordable to affordable by acquisition of the unit  
9 or the purchase of affordability covenants and restrictions for the  
10 unit, are not acquired by eminent domain, and constitute a net  
11 increase in the community's stock of housing affordable to low-  
12 and very low income households. For purposes of this  
13 subparagraph, a unit is not converted by acquisition or the purchase  
14 of affordability covenants unless all of the following occur:

15 (i) The unit is made available for rent at a cost affordable to  
16 low- or very low income households.

17 (ii) At the time the unit is identified for acquisition, the unit is  
18 not available at an affordable housing cost to either of the  
19 following:

20 (I) Low-income households, if the unit will be made affordable  
21 to low-income households.

22 (II) Very low income households, if the unit will be made  
23 affordable to very low income households.

24 (iii) At the time the unit is identified for acquisition the unit is  
25 not occupied by low- or very low income households or if the  
26 acquired unit is occupied, the local government has committed to  
27 provide relocation assistance prior to displacement, if any, pursuant  
28 to Chapter 16 (commencing with Section 7260) of Division 7 of  
29 Title 1 to any occupants displaced by the conversion, or the  
30 relocation is otherwise provided prior to displacement; provided  
31 the assistance includes not less than the equivalent of four months'  
32 rent and moving expenses and comparable replacement housing  
33 consistent with the moving expenses and comparable replacement  
34 housing required pursuant to Section 7260.

35 (iv) The unit is in decent, safe, and sanitary condition at the  
36 time of occupancy.

37 (v) The unit has long-term affordability covenants and  
38 restrictions that require the unit to be affordable to persons of low-  
39 or very low income for not less than 55 years.

1 (vi) For units located in multifamily ownership housing  
2 complexes with three or more units, or on or after January 1, 2015,  
3 on foreclosed properties, at least an equal number of  
4 new-construction multifamily rental units affordable to lower  
5 income households have been constructed in the city or county  
6 within the same planning period as the number of ownership units  
7 to be converted.

8 (C) Units that will be preserved at affordable housing costs to  
9 persons or families of low- or very low incomes with committed  
10 assistance from the city or county by acquisition of the unit or the  
11 purchase of affordability covenants for the unit. For purposes of  
12 this subparagraph, a unit shall not be deemed preserved unless all  
13 of the following occur:

14 (i) The unit has long-term affordability covenants and  
15 restrictions that require the unit to be affordable to, and reserved  
16 for occupancy by, persons of the same or lower income group as  
17 the current occupants for a period of at least 40 years.

18 (ii) The unit is within an “assisted housing development,” as  
19 defined in paragraph (3) of subdivision (a) of Section 65863.10.

20 (iii) The city or county finds, after a public hearing, that the unit  
21 is eligible, and is reasonably expected, to change from housing  
22 affordable to low- and very low income households to any other  
23 use during the next five years due to termination of subsidy  
24 contracts, mortgage prepayment, or expiration of restrictions on  
25 use.

26 (iv) The unit is in decent, safe, and sanitary condition at the  
27 time of occupancy.

28 (v) At the time the unit is identified for preservation it is  
29 available at affordable cost to persons or families of low- or very  
30 low income.

31 (3) This subdivision does not apply to any city or county that,  
32 during the current or immediately prior planning period, as defined  
33 by Section 65588, has not met any of its share of the regional need  
34 for affordable housing, as defined in Section 65584, for low- and  
35 very low income households. A city or county shall document for  
36 any housing unit that a building permit has been issued and all  
37 development and permit fees have been paid or the unit is eligible  
38 to be lawfully occupied.

39 (4) For purposes of this subdivision, “committed assistance”  
40 means that the city or county enters into a legally enforceable

1 agreement during the period from the beginning of the projection  
2 period until the end of the second year of the planning period that  
3 obligates sufficient available funds to provide the assistance  
4 necessary to make the identified units affordable and that requires  
5 that the units be made available for occupancy within two years  
6 of the execution of the agreement. “Committed assistance” does  
7 not include tenant-based rental assistance.

8 (5) For purposes of this subdivision, “net increase” includes  
9 only housing units provided committed assistance pursuant to  
10 subparagraph (A) or (B) of paragraph (2) in the current planning  
11 period, as defined in Section 65588, that were not provided  
12 committed assistance in the immediately prior planning period.

13 (6) For purposes of this subdivision, “the time the unit is  
14 identified” means the earliest time when any city or county agent,  
15 acting on behalf of a public entity, has proposed in writing or has  
16 proposed orally or in writing to the property owner, that the unit  
17 be considered for substantial rehabilitation, acquisition, or  
18 preservation.

19 (7) In the third year of the planning period, as defined by Section  
20 65588, in the report required pursuant to Section 65400, each city  
21 or county that has included in its housing element a program to  
22 provide units pursuant to subparagraph (A), (B), or (C) of  
23 paragraph (2) shall report in writing to the legislative body, and  
24 to the department within 30 days of making its report to the  
25 legislative body, on its progress in providing units pursuant to this  
26 subdivision. The report shall identify the specific units for which  
27 committed assistance has been provided or which have been made  
28 available to low- and very low income households, and it shall  
29 adequately document how each unit complies with this subdivision.  
30 If, by July 1 of the third year of the planning period, the city or  
31 county has not entered into an enforceable agreement of committed  
32 assistance for all units specified in the programs adopted pursuant  
33 to subparagraph (A), (B), or (C) of paragraph (2), the city or county  
34 shall, not later than July 1 of the fourth year of the planning period,  
35 adopt an amended housing element in accordance with Section  
36 65585, identifying additional adequate sites pursuant to paragraph  
37 (1) of subdivision (c) of Section 65583 sufficient to accommodate  
38 the number of units for which committed assistance was not  
39 provided. If a city or county does not amend its housing element  
40 to identify adequate sites to address any shortfall, or fails to

1 complete the rehabilitation, acquisition, purchase of affordability  
2 covenants, or the preservation of any housing unit within two years  
3 after committed assistance was provided to that unit, it shall be  
4 prohibited from identifying units pursuant to subparagraph (A),  
5 (B), or (C) of paragraph (2) in the housing element that it adopts  
6 for the next planning period, as defined in Section 65588, above  
7 the number of units actually provided or preserved due to  
8 committed assistance.

9 (d) A city or county may reduce its share of the regional housing  
10 need by the number of units built between the start of the projection  
11 period and the deadline for adoption of the housing element. If the  
12 city or county reduces its share pursuant to this subdivision, the  
13 city or county shall include in the housing element a description  
14 of the methodology for assigning those housing units to an income  
15 category based on actual or projected sales price, rent levels, or  
16 other mechanisms establishing affordability.

17 SEC. 3. Section 65589.4 of the Government Code is amended  
18 to read:

19 65589.4. (a) An attached housing development shall be a  
20 permitted use not subject to a conditional use permit on any parcel  
21 zoned for an attached housing development if local law so provides  
22 or if it satisfies the requirements of subdivision (b) and either of  
23 the following:

24 (1) The attached housing development satisfies the criteria of  
25 Section 21159.22, 21159.23, or 21159.24 of the Public Resources  
26 Code.

27 (2) The attached housing development meets all of the following  
28 criteria:

29 (A) The attached housing development is subject to a  
30 discretionary decision other than a conditional use permit and a  
31 negative declaration or mitigated negative declaration has been  
32 adopted for the attached housing development under the California  
33 Environmental Quality Act (Division 13 (commencing with Section  
34 21000) of the Public Resources Code). If no public hearing is held  
35 with respect to the discretionary decision, then the negative  
36 declaration or mitigated negative declaration for the attached  
37 housing development may be adopted only after a public hearing  
38 to receive comments on the negative declaration or mitigated  
39 negative declaration.

1 (B) The attached housing development is consistent with both  
2 the jurisdiction’s zoning ordinance and general plan as it existed  
3 on the date the application was deemed complete, except that an  
4 attached housing development shall not be deemed to be  
5 inconsistent with the zoning designation for the site if that zoning  
6 designation is inconsistent with the general plan only because the  
7 attached housing development site has not been rezoned to conform  
8 with the most recent adopted general plan.

9 (C) The attached housing development is located in an area that  
10 is covered by one of the following documents that has been adopted  
11 by the jurisdiction within five years of the date the application for  
12 the attached housing development was deemed complete:

- 13 (i) A general plan.
- 14 (ii) A revision or update to the general plan that includes at least  
15 the land use and circulation elements.
- 16 (iii) An applicable community plan.
- 17 (iv) An applicable specific plan.

18 (D) The attached housing development consists of not more  
19 than 100 residential units with a minimum density of not less than  
20 12 units per acre or a minimum density of not less than eight units  
21 per acre if the attached housing development consists of four or  
22 fewer units.

23 (E) The attached housing development is located in an urbanized  
24 area as defined in Section 21071 of the Public Resources Code or  
25 within a census-defined place with a population density of at least  
26 5,000 persons per square mile or, if the attached housing  
27 development consists of 50 or fewer units, within an incorporated  
28 city with a population density of at least 2,500 persons per square  
29 mile and a total population of at least 25,000 persons.

30 (F) The attached housing development is located on an infill  
31 site as defined in Section 21061.0.5 of the Public Resources Code.

32 (b) At least 10 percent of the units of the attached housing  
33 development shall be available at affordable housing cost to very  
34 low income households, as defined in Section 50105 of the Health  
35 and Safety Code, or at least 20 percent of the units of the attached  
36 housing development shall be available at affordable housing cost  
37 to lower income households, as defined in Section 50079.5 of the  
38 Health and Safety Code, or at least 50 percent of the units of the  
39 attached housing development available at affordable housing cost  
40 to moderate-income households, consistent with Section 50052.5

1 of the Health and Safety Code. The developer of the attached  
2 housing development shall provide sufficient legal commitments  
3 to the local agency to ensure the continued availability and use of  
4 the housing units for very low, low-, or moderate-income  
5 households for a period of at least 30 years.

6 (c) Nothing in this section shall prohibit a local agency from  
7 applying design and site review standards in existence on the date  
8 the application was deemed complete.

9 (d) The provisions of this section are independent of any  
10 obligation of a jurisdiction pursuant to subdivision (c) of Section  
11 65583 to identify multifamily sites developable by right.

12 (e) This section does not apply to the issuance of coastal  
13 development permits pursuant to the California Coastal Act  
14 (Division 20 (commencing with Section 30000) of the Public  
15 Resources Code).

16 (f) This section does not relieve a public agency from complying  
17 with the California Environmental Quality Act (Division 13  
18 (commencing with Section 21000) of the Public Resources Code)  
19 or relieve an applicant or public agency from complying with the  
20 Subdivision Map Act (Division 2 (commencing with Section  
21 66473)).

22 (g) This section is applicable to all cities and counties, including  
23 charter cities, because the Legislature finds that the lack of  
24 affordable housing is of vital statewide importance, and thus a  
25 matter of statewide concern.

26 (h) For purposes of this section, “attached housing development”  
27 means a newly constructed or substantially rehabilitated structure  
28 containing two or more dwelling units and consisting only of  
29 residential units, but does not include an accessory dwelling unit,  
30 as defined by paragraph (4) of subdivision (i) of Section 65852.2,  
31 or the conversion of an existing structure to condominiums.

32 SEC. 4. Section 65852.150 of the Government Code is amended  
33 to read:

34 65852.150. (a) The Legislature finds and declares all of the  
35 following:

36 (1) Accessory dwelling units are a valuable form of housing in  
37 California.

38 (2) Accessory dwelling units provide housing for family  
39 members, students, the elderly, in-home health care providers, the

1 disabled, and others, at below market prices within existing  
2 neighborhoods.

3 (3) Homeowners who create accessory dwelling units benefit  
4 from added income, and an increased sense of security.

5 (4) Allowing accessory dwelling units in single-family or  
6 multifamily residential zones provides additional rental housing  
7 stock in California.

8 (5) California faces a severe housing crisis.

9 (6) The state is falling far short of meeting current and future  
10 housing demand with serious consequences for the state's  
11 economy, our ability to build green infill consistent with state  
12 greenhouse gas reduction goals, and the well-being of our citizens,  
13 particularly lower and middle-income earners.

14 (7) Accessory dwelling units offer lower cost housing to meet  
15 the needs of existing and future residents within existing  
16 neighborhoods, while respecting architectural character.

17 (8) Accessory dwelling units are, therefore, an essential  
18 component of California's housing supply.

19 (b) It is the intent of the Legislature that an accessory dwelling  
20 unit-ordinance adopted by a local agency has the effect of providing  
21 for the creation of accessory dwelling units and that provisions in  
22 this ordinance relating to matters including unit size, parking, fees  
23 and other requirements, are not so arbitrary, excessive, or  
24 burdensome so as to unreasonably restrict the ability of  
25 homeowners to create accessory dwelling units in zones in which  
26 they are authorized by local ordinance.

27 SEC. 5. Section 65852.2 of the Government Code is amended  
28 to read:

29 65852.2. (a) (1) A local agency may, by ordinance, provide  
30 for the creation of accessory dwelling units in single-family and  
31 multifamily residential zones. The ordinance shall do all of the  
32 following:

33 (A) Designate areas within the jurisdiction of the local agency  
34 where accessory dwelling units may be permitted. The designation  
35 of areas may be based on criteria, that may include, but are not  
36 limited to, the adequacy of water and sewer services and the impact  
37 of accessory dwelling units on traffic flow and public safety.

38 (B) Impose standards on accessory dwelling units that include,  
39 but are not limited to, parking, height, setback, lot coverage,  
40 architectural review, maximum size of a unit, and standards that

1 prevent adverse impacts on any real property that is listed in the  
2 California Register of Historic Places. However, notwithstanding  
3 subdivision (d), a local agency shall not impose parking standards  
4 for an accessory dwelling unit in any of the following instances:

5 (i) The accessory dwelling unit is located within one-half mile  
6 of public transit or shopping.

7 (ii) The accessory dwelling unit is located within an  
8 architecturally and historically significant historic district.

9 (iii) The accessory dwelling unit is part of the existing primary  
10 residence.

11 (iv) When on-street parking permits are required, but not offered  
12 to the occupant of the accessory dwelling unit.

13 (v) When there is a car share vehicle located within one block  
14 of the accessory dwelling unit.

15 (C) Provide that accessory dwelling units do not exceed the  
16 allowable density for the lot upon which the accessory dwelling  
17 unit is located, and that accessory dwelling units are a residential  
18 use that is consistent with the existing general plan and zoning  
19 designation for the lot.

20 (2) The ordinance shall not be considered in the application of  
21 any local ordinance, policy, or program to limit residential growth.

22 (3) When a local agency receives its first application on or after  
23 July 1, 2003, for a permit pursuant to this subdivision, the  
24 application shall be considered ministerially without discretionary  
25 review or a hearing, notwithstanding Section 65901 or 65906 or  
26 any local ordinance regulating the issuance of variances or special  
27 use permits, within 90 days of submittal of a complete building  
28 permit application. A local agency may charge a fee to reimburse  
29 it for costs that it incurs as a result of amendments to this paragraph  
30 enacted during the 2001–02 Regular Session of the Legislature,  
31 including the costs of adopting or amending any ordinance that  
32 provides for the creation of accessory dwelling units.

33 (b) (1) When a local agency that has not adopted an ordinance  
34 governing accessory dwelling units in accordance with subdivision  
35 (a) receives its first application on or after July 1, 1983, for a permit  
36 pursuant to this subdivision, the local agency shall accept the  
37 application and approve or disapprove the application ministerially  
38 without discretionary review pursuant to this subdivision unless  
39 it adopts an ordinance in accordance with subdivision (a) within  
40 90 days after receiving the application. Notwithstanding Section

1 65901 or 65906, every local agency shall ministerially approve  
2 the creation of an accessory dwelling unit if the accessory dwelling  
3 unit complies with all of the following:

4 (A) The unit is not intended for sale separate from the primary  
5 residence and may be rented.

6 (B) The lot is zoned for single-family or multifamily use.

7 (C) The lot contains an existing single-family dwelling.

8 (D) The accessory dwelling unit is either attached to the existing  
9 dwelling and located within the living area of the existing dwelling  
10 or detached from the existing dwelling and located on the same  
11 lot as the existing dwelling.

12 (E) The increased floor area of an attached accessory dwelling  
13 unit shall not exceed 50 percent of the existing living area.

14 (F) The total area of floorspace for a detached accessory  
15 dwelling unit shall not exceed 1,200 square feet.

16 (G) Requirements relating to height, setback, lot coverage,  
17 architectural review, site plan review, fees, charges, and other  
18 zoning requirements generally applicable to residential construction  
19 in the zone in which the property is located.

20 (H) Local building code requirements that apply to detached  
21 dwellings, as appropriate.

22 (I) Approval by the local health officer where a private sewage  
23 disposal system is being used, if required.

24 (2) No other local ordinance, policy, or regulation shall be the  
25 basis for the denial of a building permit or a use permit under this  
26 subdivision.

27 (3) This subdivision establishes the maximum standards that  
28 local agencies shall use to evaluate proposed accessory dwelling  
29 units on lots zoned for residential use that contain an existing  
30 single-family dwelling. No additional standards, other than those  
31 provided in this subdivision or subdivision (a), shall be utilized or  
32 imposed, except that a local agency may require an applicant for  
33 a permit issued pursuant to this subdivision to be an  
34 ~~owner-occupant~~ *owner-occupant or that the property be used for*  
35 *rentals of terms longer than 30 days.*

36 (4) ~~No changes in zoning ordinances or other ordinances or any~~  
37 ~~changes in the general plan shall be required to implement this~~  
38 ~~subdivision.~~ A local agency may amend its zoning ordinance or  
39 general plan to incorporate the policies, procedures, or other  
40 provisions applicable to the creation of accessory dwelling units

1 if these provisions are consistent with the limitations of this  
2 subdivision.

3 (5) An accessory dwelling unit that conforms to this subdivision  
4 shall not be considered to exceed the allowable density for the lot  
5 upon which it is located, and shall be deemed to be a residential  
6 use that is consistent with the existing general plan and zoning  
7 designations for the lot. The accessory dwelling units shall not be  
8 considered in the application of any local ordinance, policy, or  
9 program to limit residential growth.

10 (c) A local agency may establish minimum and maximum unit  
11 size requirements for both attached and detached accessory  
12 dwelling units. No minimum or maximum size for an accessory  
13 dwelling unit, or size based upon a percentage of the existing  
14 dwelling, shall be established by ordinance for either attached or  
15 detached dwellings that does not otherwise permit at least a  
16 500-foot accessory dwelling unit or a 500-foot efficiency unit to  
17 be constructed in compliance with local development standards.  
18 Accessory dwelling units shall not be required to provide fire  
19 sprinklers if they are not required for the primary residence.

20 (d) Parking requirements for accessory dwelling units shall not  
21 exceed one parking space per unit or per bedroom. These spaces  
22 may be provided as tandem parking on an existing driveway.  
23 Off-street parking shall be permitted in setback areas in locations  
24 determined by the local agency or through tandem parking, unless  
25 specific findings are made that parking in setback areas or tandem  
26 parking is not feasible based upon fire and life safety conditions.  
27 This subdivision shall not apply to a unit that complies with  
28 paragraph (1) of subdivision (b).

29 (e) Notwithstanding subdivisions (a) to (d), inclusive, a local  
30 agency shall ministerially approve an application for a building  
31 permit to create within a single-family residential zone one  
32 accessory dwelling unit per single-family lot if the unit is contained  
33 within the existing space of a single-family residence or accessory  
34 structure, has independent exterior access from the existing  
35 residence, and the side and rear setbacks are sufficient for fire  
36 safety. Accessory dwelling units shall not be required to provide  
37 fire sprinklers if they are not required for the primary residence.

38 (f) Fees charged for the construction of accessory dwelling units  
39 shall be determined in accordance with Chapter 5 (commencing  
40 with Section 66000). Accessory dwelling units shall not be

1 considered new residential uses for the purposes of calculating  
2 private or public utility connection fees, including water and sewer  
3 service.

4 (g) This section does not limit the authority of local agencies  
5 to adopt less restrictive requirements for the creation of accessory  
6 dwelling units.

7 (h) Local agencies shall submit a copy of the ordinances adopted  
8 pursuant to subdivision (a) to the Department of Housing and  
9 Community Development within 60 days after adoption.

10 (i) As used in this section, the following terms mean:

11 (1) “Living area,” means the interior habitable area of a dwelling  
12 unit including basements and attics but does not include a garage  
13 or any accessory structure.

14 (2) “Local agency” means a city, county, or city and county,  
15 whether general law or chartered.

16 (3) For purposes of this section, “neighborhood” has the same  
17 meaning as set forth in Section 65589.5.

18 (4) “Accessory dwelling unit” means an attached or a detached  
19 residential dwelling unit which provides complete independent  
20 living facilities for one or more persons. It shall include permanent  
21 provisions for living, sleeping, eating, cooking, and sanitation on  
22 the same parcel as the single-family dwelling is situated. An  
23 accessory dwelling unit also includes the following:

24 (A) An efficiency unit, as defined in Section 17958.1 of Health  
25 and Safety Code.

26 (B) A manufactured home, as defined in Section 18007 of the  
27 Health and Safety Code.

28 (j) Nothing in this section shall be construed to supersede or in  
29 any way alter or lessen the effect or application of the California  
30 Coastal Act (Division 20 (commencing with Section 30000) of  
31 the Public Resources Code), except that the local government shall  
32 not be required to hold public hearings for coastal development  
33 permit applications for second units.

34 SEC. 6. Section 66412.2 of the Government Code is amended  
35 to read:

36 66412.2. This division shall not apply to the construction,  
37 financing, or leasing of dwelling units pursuant to Section 65852.1  
38 or accessory dwelling units pursuant to Section 65852.2, but this  
39 division shall be applicable to the sale or transfer, but not leasing,  
40 of those units.

1     SEC. 7. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 a local agency or school district has the authority to levy service  
4 charges, fees, or assessments sufficient to pay for the program or  
5 level of service mandated by this act, within the meaning of Section  
6 17556 of the Government Code.

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**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Public Hearing to Introduce an Ordinance to Modify the Zoning Code to Require Design Review for Multi-Family Structures in the Medium Density Residential and High Density Residential Zoning Designations

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Community Development Director

**RECOMMENDED ACTION:** Public hearing to introduce an ordinance to modify the Zoning Code to require design review for multi-family structures in the Medium Density Residential and High Density Residential zoning designations.

**BACKGROUND INFORMATION:** On April 13, 2016, the Planning Commission held a public hearing to review the Zoning Code, accept public testimony, and adopted a resolution recommending the City Council modify the existing zoning code to require the Site Plan and Architecture Review Committee to review multi-family structures in the Medium Density Residential and High Density Residential zoning designations.

The City of Lodi adopted the current General Plan in April 2010 and then adopted the current development code in March of 2013. The new development code required most new structures in Lodi to go through a formal design review process.

The existing zoning code however, does not require design review for multi-family dwelling units that are added to existing residential lots. Within the Medium Density Residential zoning district, a number of new multi-family structures have been built that change the massing and scale of properties and the new structures do not necessarily match the architecture of existing structures.

Staff is not opposed to the density of these properties and is not looking to reduce allowed uses. Some review needs to take place however, in regard to the aesthetic change of these properties and the change in property massing and scale.

Lack of design review over new multi-family structures was an oversight and not the original intention by staff in the adoption of the current development code. The previous development code did require design review of multi-family projects.

Section 17.40.020 – Table 4-2 provides the existing review standards.

**B. Applicability.** Table 4-2 identifies when Site Plan and Architectural Approval is required, and the responsible review authority.

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

<b>TABLE 4-2 Applicability of Site Plan and Architectural Approval</b>			
<b>Type of Project</b>	<b>Site Plan and Architectural Approval Requirement</b>		
	<b>Exempt</b>	<b>Director Review</b>	<b>SPARC Review</b>
Individual single-family homes and accessory structures, including additions and alterations, under individual applications in the R-1, R-1E, and R-2 zoning districts.	√		
Ground floor additions and alterations deemed visually or functionally insignificant by the Director.	√		
Multiple single-family detached homes and accessory structures in the R-1, R-1E, and R-2 zoning districts. (1)			√
Multi-family dwellings and accessory structures in the RMD and RHD zoning districts. <del>(1)</del> <b>(4)</b>			√
Temporary structures that will be removed within one year. (2)			√
Additions and alterations in all zoning districts, except the R-1, R-1E, R-2, RMD, and RHD zones, that do not meet the specific criteria above. (2) (3)			√
Nonresidential development containing up to 10,000 square feet of total gross structure area. (3)			√
Nonresidential development containing 10,000 square feet or more of total gross structure area. (3)			√
All other land uses.			√

**Notes:**

- (1) Only where the same basic design will be used more than once in the same subdivision.
- (2) Landscaping plans may be required.
- (3) Site Plan and Architectural Approval shall be required for new structures and addition or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on the site and where the cumulative square footage of a development project exceeds 10,000 square feet, even though individual structures may be less than 10,000 square feet.
- (4) Site Plan and Architectural approval shall be required for new multi-family projects on vacant parcels and new construction, additions or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on a developed site.**

Staff recommends adding new note 4 to Multi-family dwellings and accessory structures in the RMD and RHD zoning districts.

New Note 4 – Site Plan and Architectural approval shall be required for new multi-family projects on vacant parcels and new construction, additions or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on a developed site.

**ENVIRONMENTAL ASSESSMENTS:**

The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures are required.

**RECOMMENDATION**

The Planning Commission recommended that the City Council modify the existing zoning code to require the Site Plan and Architecture Review Committee to review multi-family structures in the Medium Density Residential and High Density Residential zoning designations.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

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Steve Schwabauer  
Community Development Director

Attachments:

- 1) Planning Commission Staff Report
- 2) Planning Commission Resolution
- 3) City Council Draft Ordinance



# **CITY OF LODI PLANNING COMMISSION**

## **Staff Report**

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**MEETING DATE:** April 13, 2016

**APPLICATION NO:** Zoning Code: 2016-08 Z

**REQUEST:** Request for Planning Commission to modify the zoning code to require multi-family structures in the Medium Density Residential and High Density Residential zoning designations to require design review and make recommendation to the City Council. (Applicant: City of Lodi; File 2016-07 Z; CEQA Determination: Exempt per Section 15321)

**LOCATION:** The RMD and HDM zoning designations

**APPLICANT:** City of Lodi  
221 West Pine Street.  
Lodi, CA 95240

### **RECOMMENDATION**

Staff recommends that the Planning Commission adopt the attached resolution recommending the City Council modify the existing zoning code to require multi-family structures in the Medium Density Residential and High Density Residential zoning designations to require design review from the Site Plan and Architecture Review Committee.

### **BACKGROUND / ANALYSIS**

The City of Lodi adopted the new General Plan in April 2010 and then adopted the new development code in March of 2013. The new development code required most new structures in Lodi to go through a formal design review process.

However, the existing zoning code does not require design review for multi-family dwelling units that are added to existing residential lots. Within the Medium Density Residential zoning district, a number of new multi-family structures have been built that change the massing and scale of properties and the new structures do not necessarily match the architecture of existing structures.

Staff is not opposed to the density of these properties and is not looking to reduce allowed uses. However, some review needs to take place in regard to the aesthetic change of these properties and the change in property massing and scale.

Staff believes that this was an oversight and not the original intention by staff to not have design review over new multi-family structures. The previous development code did require design review of multi-family projects.

Section 17.40.020 – Table 4-2 provides the existing review standards.

- B. Applicability.** Table 4-2 identifies when Site Plan and Architectural Approval is required, and the responsible review authority.

<b>TABLE 4-2 Applicability of Site Plan and Architectural Approval</b>			
<b>Type of Project</b>	<b>Site Plan and Architectural Approval Requirement</b>		
	<b>Exempt</b>	<b>Director Review</b>	<b>SPARC Review</b>
Individual single-family homes and accessory structures, including additions and alterations, under individual applications in the R-1, R-1E, and R-2 zoning districts.	√		
Ground floor additions and alterations deemed visually or functionally insignificant by the Director.	√		
Multiple single-family detached homes and accessory structures in the R-1, R-1E, and R-2 zoning districts. (1)			√
Multi-family dwellings and accessory structures in the RMD and RHD zoning districts. <del>(1)</del> <b>(4)</b>			√
Temporary structures that will be removed within one year. (2)			√
Additions and alterations in all zoning districts, except the R-1, R-1E, R-2, RMD, and RHD zones, that do not meet the specific criteria above. (2) (3)			√
Nonresidential development containing up to 10,000 square feet of total gross structure area. (3)			√
Nonresidential development containing 10,000 square feet or more of total gross structure area. (3)			√
All other land uses.			√

**Notes:**

- (1) Only where the same basic design will be used more than once in the same subdivision.
- (2) Landscaping plans may be required.
- (3) Site Plan and Architectural Approval shall be required for new structures and addition or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on the site and where the cumulative square footage of a development project exceeds 10,000 square feet, even though individual structures may be less than 10,000 square feet.
- (4) Site Plan and Architectural approval shall be required for new multi-family projects on vacant parcels and new construction, additions or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on a developed site.**

Staff recommends adding new note 4 to Multi-family dwellings and accessory structures in the RMD and RHD zoning districts.

New Note 4 – Site Plan and Architectural approval shall be required for new multi-family projects on vacant parcels and new construction, additions or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on a developed site.

**ENVIRONMENTAL ASSESSMENTS:**

The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an “Enforcement action by regulatory agencies” because it is the “adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing

the general rule, standard, or objective.” No significant environmental impacts are anticipated and no mitigation measures are required.

**PUBLIC HEARING NOTICE:**

Legal Notice for this item was published in the Lodi News Sentinel on Saturday, April 2, 2016.

**RECOMMENDED MOTIONS**

Should the Planning Commission agree with staff’s recommendation, the following motion is suggested:

“I move that the Planning Commission adopt the attached resolution recommending the City Council amend the Zoning Code to allow SPARC review of new multi-family housing structures.”

**ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve the request with attached or alternate conditions
- Deny the request
- Continue the request.

Respectfully Submitted,

Concur,

Craig Hoffman  
City Planner

Stephen Schwabauer  
Community Development Director

**ATTACHMENTS:**

1. Draft Resolution

**RESOLUTION NO. P.C. 16-10**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI RECOMMENDING THE CITY COUNCIL AMEND THE ZONING CODE TO REQUIRE MULTI-FAMILY STRUCTURES IN THE MEDIUM DENSITY RESIDENTIAL AND HIGH DENSITY RESIDENTIAL ZONING DESIGNATIONS TO REQUIRE DESIGN REVIEW.**

- WHEREAS,** the Planning Commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, on the requested determination, in accordance with the California Government Code Section 65402.(a); and
- WHEREAS,** the project proponent is City of Lodi, 221 West Pine Street, Lodi, CA 95240; and
- WHEREAS,** The City of Lodi adopted the new General Plan in April 2010 and then adopted the new development code in March of 2013. The new development code required most new structures in Lodi to go through a formal design review process; and
- WHEREAS,** The existing zoning code does not require design review for multi-family dwelling units that are only built once; and
- WHEREAS,** Within the Medium Density Residential zoning district, a number of new multi-family structures have been built that change the massing and scale of properties and the new structures do not necessarily match the architecture of existing structures; and
- WHEREAS,** Staff is not opposed to the density of these properties and is not looking to reduce allowed uses. However, some review needs to take place in regard to the aesthetic change of these properties and the change in property massing and scale; and
- WHEREAS,** Staff believes that this was an oversight and not the original intension to not have design review over new multi-family structures. The previously development code did require design review of multi-family projects; and
- WHEREAS,** all legal prerequisites to the adoption of this Resolution have occurred; and

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

1. The project was found to be Categorically Exempt according to the California Environmental Quality Act, Article 19 §15321, Class 21 (a) (2). The project is classified as an "Enforcement action by regulatory agencies" because it is the "adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective." No significant environmental impacts are anticipated and no mitigation measures are required.
2. Modifications to the development code would allow design review over new multi-family structures and will be consistent with the development standards of the adopted General Plan and will be subject to Zoning regulations.
3. The modifications to the zoning code will be consistent with State law.
4. Modifications to the development code would be subject to the provisions of other laws or ordinances and will not be detrimental to the health, safety or general welfare of persons residing or working in the City or be detrimental or injurious to the health, safety, peace or general welfare of the City.

**NOW, THEREFORE, BE IT DETERMINED AND RESOLVED** by the Planning Commission of the City of Lodi that the following proposed language be recommended for approval and adoption by the City Council and included in the municipal code as follows:

Section 17.40.020

**B. Applicability.** Table 4-2 identifies when Site Plan and Architectural Approval is required, and the responsible review authority.

<b>TABLE 4-2 Applicability of Site Plan and Architectural Approval</b>			
<b>Type of Project</b>	<b>Site Plan and Architectural Approval Requirement</b>		
	<b>Exempt</b>	<b>Director Review</b>	<b>SPARC Review</b>
Individual single-family homes and accessory structures, including additions and alterations, under individual applications in the R-1, R-1E, and R-2 zoning districts.	√		
Ground floor additions and alterations deemed visually or functionally insignificant by the Director.	√		
Multiple single-family detached homes and accessory structures in the R-1, R-1E, and R-2 zoning districts. (1)			√
Multi-family dwellings and accessory structures in the RMD and RHD zoning districts. <del>(4)</del> <b>(4)</b>			√
Temporary structures that will be removed within one year. (2)			√
Additions and alterations in all zoning districts, except the R-1, R-1E, R-2, RMD, and RHD zones, that do not meet the specific criteria above. (2) (3)			√
Nonresidential development containing up to 10,000 square feet of total gross structure area. (3)			√
Nonresidential development containing 10,000 square feet or more of total gross structure area. (3)			√
All other land uses.			√

**Notes:**

- (1) Only where the same basic design will be used more than once in the same subdivision.
- (2) Landscaping plans may be required.
- (3) Site Plan and Architectural Approval shall be required for new structures and addition or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on the site and where the cumulative square footage of a development project exceeds 10,000 square feet, even though individual structures may be less than 10,000 square feet.
- (4) Site Plan and Architectural approval shall be required for new multi-family projects on vacant parcels and new construction, additions or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on a developed site.**

**Dated: April 13, 2016**

I certify that Resolution No. 16-10 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held on April 13, 2016 by the following vote:

**AYES:** Commissioners: Cummins, Kiser, Olson, Slater and Vice-Chair Hennecke

**NOES:** Commissioners: None

**ABSENT:** Commissioners: Kirsten and Chair Heinitz

ATTEST

  
Secretary, Planning Commission

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
 LODI AMENDING LODI MUNICIPAL CODE CHAPTER 17.40 -  
 PERMIT APPROVAL OR DISAPPROVAL BY REPEALING AND  
 REENACTING SECTION 17.40.020 (B) APPLICABILITY TABLE  
 4-2 FOR SITE PLAN AND ARCHITECTURAL APPROVAL



NOW, THEREFORE, the City Council of the City of Lodi does ordain as follows:

Section 1. Lodi Municipal Code Section 17.40.020 (B) Applicability Table 4-2 “Site Plan and Architectural Approval” is hereby repealed and reenacted to read as follows:

**B. Applicability.** Table 4-2 identifies when Site Plan and Architectural Approval is required, and the responsible review authority.

<b>TABLE 4-2 Applicability of Site Plan and Architectural Approval</b>			
<b>Type of Project</b>	<b>Site Plan and Architectural Approval Requirement</b>		
	<b>Exempt</b>	<b>Director Review</b>	<b>SPARC Review</b>
Individual single-family homes and accessory structures, including additions and alterations, under individual applications in the R-1, R-1E, and R-2 zoning districts.	√		
Ground floor additions and alterations deemed visually or functionally insignificant by the Director.	√		
Multiple single-family detached homes and accessory structures in the R-1, R-1E, and R-2 zoning districts. (1)			√
Multi-family dwellings and accessory structures in the RMD and RHD zoning districts. <b>(+) (4)</b>			√
Temporary structures that will be removed within one year. (2)			√
Additions and alterations in all zoning districts, except the R-1, R-1E, R-2, RMD, and RHD zones, that do not meet the specific criteria above. (2) (3)			√
Nonresidential development containing up to 10,000 square feet of total gross structure area. (3)			√
Nonresidential development containing 10,000 square feet or more of total gross structure area. (3)			√
All other land uses.			√

**Notes:**

- (1) Only where the same basic design will be used more than once in the same subdivision.
- (2) Landscaping plans may be required.
- (3) Site Plan and Architectural Approval shall be required for new structures and addition or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on the site and where the cumulative square footage of a development project exceeds 10,000 square feet, even though individual structures may be less than 10,000 square feet.

**(4) Site Plan and Architectural approval shall be required for new multi-family projects on vacant parcels and new construction, additions or reconstruction projects that are equal to 50 percent or greater of the floor area of the existing structures on a developed site.**

Section 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council, and a certified copy shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1).

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
MARK CHANDLER  
Mayor

Attest:

\_\_\_\_\_  
JENNIFER M. FERRAILOLO  
City Clerk

State of California  
County of San Joaquin, ss.

I, Jennifer M. Ferraiolo, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held May 18, 2016, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

\_\_\_\_\_  
JENNIFER M. FERRAIOLO  
City Clerk

Approved as to Form:  
Lodi City Attorney's Office

By: \_\_\_\_\_  
JANICE D. MAGDICH  
City Attorney 



*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 INTRODUCE AN ORDINANCE TO MODIFY THE ZONING CODE TO REQUIRE DESIGN REVIEW FOR MULTI-FAMILY STRUCTURES IN MEDIUM DENSITY RESIDENTIAL AND HIGH DENSITY RESIDENTIAL ZONING DESIGNATIONS

**PUBLISH DATE:** SATURDAY, MAY 7, 2016

**LEGAL AD**

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

**SEND AFFIDAVIT AND BILL TO:** JENNIFER M. FERRAILOLO, CITY CLERK  
**LNS ACCT. #0510052** City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED:** THURSDAY, MAY 5, 2016

**ORDERED BY:** JENNIFER M. FERRAILOLO  
CITY CLERK

*Pamela M. Farris*  
PAMELA M. FARRIS  
DEPUTY CITY CLERK

\_\_\_\_\_  
ELIZABETH BURGOS  
ADMINISTRATIVE CLERK

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

LNS Emailed to the Sentinel at dianer@lodinews.com at 9:20 (time) on 5/5/16 (date) \_\_\_\_\_ (pages)  
Phoned to confirm receipt of all pages at \_\_\_\_\_ (time) ES PMF (initials)



## DECLARATION OF POSTING

### **PUBLIC HEARING TO INTRODUCE AN ORDINANCE TO MODIFY THE ZONING CODE TO REQUIRE DESIGN REVIEW FOR MULTI-FAMILY STRUCTURES IN MEDIUM DENSITY RESIDENTIAL AND HIGH DENSITY ZONING DESIGNATIONS**

On Thursday, May 5, 2016, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing for discussion of the Community Development Block Grant program (attached and marked as Exhibit A), was posted at the following locations:

Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum  
WorkNet Office

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

Executed on May 5, 2016, at Lodi, California.

ORDERED BY:

**JENNIFER M. FERRAILOLO  
CITY CLERK**

A handwritten signature in blue ink that reads "Pamela M. Farris".

PAMELA M. FARRIS  
DEPUTY CITY CLERK

---

ELIZABETH BURGOS  
ADMINISTRATIVE CLERK



## CITY OF LODI

Carnegie Forum  
305 West Pine Street, Lodi

## NOTICE OF PUBLIC HEARING

Date: May 18, 2016

Time: 7:00 p.m.

For information regarding this notice please contact:

**Jennifer M. Ferraiolo**

**City Clerk**

**Telephone: (209) 333-6702**

### NOTICE OF PUBLIC HEARING

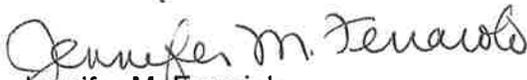
NOTICE IS HEREBY GIVEN that on **Wednesday, May 18, 2016**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following item:

- a) **Introduce an ordinance to modify the zoning code to require design review for multi-family structures in Medium Density Residential and High Density Residential zoning designations.**

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, 2<sup>nd</sup> Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

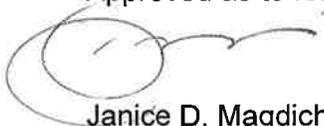
If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

  
Jennifer M. Ferraiolo  
City Clerk

Dated: **May 4, 2016**

Approved as to form:

  
Janice D. Magdich  
City Attorney



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Receive Electric Utility Strategic Planning Customer Survey Report by GreatBlue Research, Inc.

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Electric Utility Director

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**RECOMMENDED ACTION:** Receive Electric Utility Strategic Planning Customer Survey Report by GreatBlue Research, Inc.

**BACKGROUND INFORMATION:** In December 2015, the City Council adopted a resolution authorizing the City Manager to execute an agreement for Electric Utility strategic planning and facilitation with Hometown Connections International, LLC.

The first phase of this effort was the customer engagement portion performed by Hometown's market research partner, GreatBlue Research, Inc. It has more than 35 years of experience in diverse markets and has conducted thousands of research studies. GreatBlue's core competencies leverage both quantitative and qualitative research methodologies. The data produced is statistically reliable with thoughtful, concise insight into how the findings answer the study objectives. GreatBlue utilizes data analytics software that is integrated into its computer-aided interview platform ensuring quality, high-end data analysis.

The goal for the Electric Utility's (EU) customer research effort was to gain an understanding of the current satisfaction levels for both residential and commercial/industrial customers in order to help strategically guide the improvement of the EU, its product and service offerings. The methodology used included customer focus groups and telephonic surveys. The purpose of the focus group meetings was to facilitate discussions within each group to determine which issues warranted addressing in the telephone surveys. These surveys allow for a deeper dive, along with the ability to uncover more comprehensive feedback while the individual is engaged and communicating. Respondents have the opportunity to interact anonymously with the researcher conducting the telephone interview and the ability to provide their feedback immediately.

On March 24, 2016, GreatBlue held two 90-minute customer focus group sessions; one for commercial customers and the other for residential customers. Staff then reviewed the transcripts and worked with GreatBlue to develop the subject matter used in the phone surveys. After completion of the telephonic interviews GreatBlue analyzed the data, and identified key findings, trends, deriving insights, and actionable recommendations.

GreatBlue has incorporated the results of the focus groups as well as the telephone surveys and is prepared to present their findings to the City Council.

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APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

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Elizabeth A. Kirkley  
Electric Utility Director



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Provide Direction Regarding City Council Representation for Electric Utility Strategic Planning

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** Provide direction regarding City Council representation for Electric Utility Strategic Planning.

**BACKGROUND INFORMATION:** In December 2015, the City Council adopted a resolution authorizing the City Manager to execute an agreement for Electric Utility strategic planning and facilitation with Hometown Connections International, LLC.

The first phase of this effort was a customer engagement service performed by Hometown Connection's market research partner, GreatBlue Research, Inc. This report will be presented to the City Council on tonight's agenda. The information in the report will be utilized in the strategic planning process.

The next phase will be an open and transparent process with decisions and priorities shared broadly with staff and the community allowing for participation by all stakeholders. Hometown Connections will provide training and facilitation on how to effectively utilize the strategic planning process with a two-team approach to develop and execute a strategic plan for Lodi's Electric Utility.

The first team, the Advisory Team, will be comprised of the EU Director, City Manager, and City Council members. This team will be responsible for setting major policy direction, removing road blocks, reviewing and approving the strategic plan throughout the process.

The second team, the Implementation Team, will be comprised of the EU Director and senior EU staff responsible for developing and implementing the strategic plan. The Implementation Team will act in support of the Advisory Team, providing operational, financial and customer service information, as well as other insights as needed for the Advisory Team to act with appropriate and current information.

Staff is seeking direction from the City Council regarding their desire for council representation on the Advisory Team.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** Not applicable.

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Elizabeth A. Kirkley  
Electric Utility Director

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Provide Direction Regarding Lodi Electric Utility Customer Advisory Board

**MEETING DATE:** May 18, 2016

**PREPARED BY:** Business Development Manager

**RECOMMENDED ACTION:** Provide direction regarding Lodi Electric Utility customer advisory board.

**BACKGROUND INFORMATION:** At the January 6, 2016 City Council meeting the concept of establishing a customer advisory board for the Electric Utility (EU) was discussed as a possible means of improving transparency and customer service.

Council directed staff to contact other publicly-owned utilities with advisory bodies established with similar intent. Included was an interest in learning about advisory body composition, manner in which they were selected, as well as the amount of staff support time involved and cost. Council directed staff to return with additional details for further consideration.

Following the meeting, staff reached out to several publicly-owned utilities, including those within the Northern California Power Agency and American Public Power Association. While the vast majority of utilities reported they do not use these types of advisory bodies, staff was able to identify five examples of utilities that do. They are diverse in nature, with a variety of organizational structures, and each has its own purpose and membership composition. A summary table is attached.

### Alameda Municipal Power Board – Alameda, California

The City of Alameda has established the Alameda Municipal Power (AMP) Board as a separate authority and governing board for the control and management of Alameda's electric utility; whereas, in Lodi the governing board for the EU is the City Council. The AMP Board establishes goals, approves major purchases, sets strategic direction, and creates the framework for local control of the utility. The AMP Board consists of five commissioners, four of which represent four distinct fields of engineering. They are appointed to the AMP Board by the Mayor with the concurrence of the City Council, in accordance with Alameda's City Charter. The City Manager also sits on the AMP Board, as an ex officio fifth commissioner. Although considerable staff support is necessary to hold the monthly meetings, they are in lieu of council meetings in terms of governing the utility.

### Electric Utility Commission – Austin, Texas

The City of Austin established the Electric Utility Commission (EUC) as an advisory body to review and analyze all policies and procedures of the electric utility, including the electric rate structure, fuel costs and charges, customer services, capital investments, new generation facilities, selection of types of fuel, budget, strategic planning, regulatory compliance, billing procedures, and the transfer of electric utility

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

revenues from the utility fund to the general fund. Ten of the EUC's appointed members are appointed by council members and the 11<sup>th</sup> at-large member is appointed by the Mayor. Members are not required to be residents but may live within the service areas. Staff support is extensive and includes an assigned staff member from the government relations office as well as the utility staff making presentations at each meeting. Monthly meetings are typically three to four hours in length.

#### Imperial Irrigation District Energy Consumer Advisory Committee – El Centro, California

IID's Energy Consumers Advisory Committee provides advice and recommendations to the IID Board of Directors regarding fiscal, strategic planning, and board policy matters that affect the Energy Department. The committee comprises 20 representatives. In the Imperial Valley, each director is responsible for the selection of two appointees for his or her division—totaling 10 representatives. The Coachella Valley is also represented by 10 members; however, they are nominated by the cities and the county of Riverside. Indio, Coachella and La Quinta are allowed two nominations each, while Palm Desert and Rancho Mirage share a delegate. The unincorporated areas are served by three representatives nominated by the county. After nomination, each representative is then ratified by the IID board. All members must reside within the IID's electrical service area. IID staff supports the meetings and depending upon the agenda, the staff time involved with preparing and making presentations can be considerable. Monthly meetings are typically one to two hours in length.

#### Naperville Public Utilities Advisory Board – Naperville, Illinois

The Board serves in an advisory capacity to the City Council, City Manager and the Public Utilities Director in matters relating to rates, budgets and capital improvements for electric, water and wastewater systems. The Board also reviews plans for facilities expansion and system improvements. Members include one Council Member, and five residents or persons with their primary employment in Naperville. The six-member Board is supported by staff and gathers as needed during their three-year terms; generally every other month.

#### Stockton Water Advisory Group – Stockton, California

The Water Advisory Group was formed by the City Council to foster citizen input and transparency in the operations of the Municipal Utilities Department. The Water Advisory Group reports directly to the Council Water Committee and is tasked with advising the Committee on current and future issues impacting water, wastewater, and storm water utilities for the City of Stockton, including the review of the Department of Municipal Utilities monthly Operations and Maintenance Report. Each of the seven members must reside in one of the Stockton Municipal Utilities' three utility service areas. Candidates are nominated by the Mayor and each Council Member then approved by the full Council. The term of service is the same as that of the Council Member. Staff time includes the regular support and/or involvement of up to 15 employees, including the Municipal Utilities Director serving as the Ex-Officio Secretary. Cost to support the Group has ranged from approximately \$10,000 to \$20,000 per year.

**FISCAL IMPACT:** Unknown at this time. Additional staff time will be required.

**FUNDING AVAILABLE:** Not applicable.

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Adam Brucker  
Business Development Manager

## *UTILITY BOARD EXAMPLES*

<b>UTILITY</b>	<b>PURPOSE</b>	<b>COMPOSITION</b>	<b>APPOINTMENT</b>	<b>MEETINGS</b>
Alameda Municipal Power Board Alameda, California	Governing board to establish goals, approve major purchases, set direction, and create the framework for local control for the utility	5 Commissioners: Civil Engineer, Electrical Engineer, Mechanical Engineer, Mining Engineer, Member-at-Large (City Manager)	4 – Mayor appoints w/ City Council concurrence 1 – City Manager  4-year terms	Monthly 3 <sup>rd</sup> Mon 7 p.m.
Electric Utility Commission Austin, Texas	Review and analyze all policies and procedures of the electric utility	11 Commissioners Residency not required	1 – Mayor 10 – Council  4-year staggered terms	Monthly 3 <sup>rd</sup> Wed 10 a.m.
Energy Consumer Advisory Committee El Centro, California	Provide advice and recommendations to the Board of Directors of the Imperial Irrigation District	20 Representatives: 10 – Imperial Valley 10 – Coachella Valley	Imperial District Director; City Councils; Board of Supervisors; General Manager  4-year staggered terms	Monthly 1 <sup>st</sup> Monday 6:00 p.m.
Public Utilities Advisory Board Naperville, Illinois	Advisory capacity to the City Council, City Manager and the Public Utilities Director in matters relating to rates, budgets and capital improvements for electric, water and wastewater	1 – Councilmember 5 - residents or persons with their primary employment in Naperville	Mayor nominates w/ approval by full Council  3-year terms	As needed 5:00 p.m.
Water Advisory Group Stockton, CA	Foster citizen input and transparency in the operations of the Municipal Utilities Department	7 - must reside in one of the Stockton Municipal Utilities' three service areas	Mayor and each City Council Member nominates w/ approval by full Council  Term coincides with Council Member nomination	Monthly 1 <sup>st</sup> Wed 3:30 p.m.  Quarterly Council Water Committee



**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Introduce Ordinance Amending Lodi Municipal Code Chapter 1.08 – General Penalty, by Repealing and Reenacting Section 1.08.010 (A) “General Penalty”

**MEETING DATE:** May 18, 2016

**PREPARED BY:** City Attorney

**RECOMMENDED ACTION:** Introduce Ordinance Amending Lodi Municipal Code Chapter 1.08 – General Penalty, by Repealing and Reenacting Section 1.08.010 (A) “General Penalty”

**BACKGROUND INFORMATION:** The San Joaquin County Superior Court recently upgraded the court’s computer system, and as part of that process has reviewed the Lodi Municipal Code (LMC) in relation to the authority of the City Attorney to downgrade violations classified as misdemeanors to infractions. Currently, LMC section 1.08.010(A) reads. . .“any person violating any of the provisions or failing to comply with any of the mandatory requirements of this code or the ordinances of the City is guilty of a misdemeanor, unless the violation is made an infraction by ordinance.” In the prosecution of LMC violations there are circumstances that warrant the exercise of prosecutorial discretion by the City Attorney or the Deputy City Attorney; for example, in the instance of a defendant charged with a Penal Code violation and LMC violation we may determine to downgrade the LMC violation from a misdemeanor to an infraction, or dismiss the charge, in order to obtain a plea by the defendant on the Penal Code violation. In addition, facts and circumstances may warrant that a misdemeanor charge under the LMC be reduced to an infraction. The City Attorney’s office has historically exercised prosecutorial discretion in this regard and in light of the request by the court asks that council memorialize that discretion in the LMC so that it may be recognized by the court.

Staff therefore recommends amending Lodi Municipal Code section 1.08.010(A) to give the City Attorney prosecutorial discretion to downgrade LMC misdemeanor violations to infractions if the change is deemed appropriate in the interests of justice.

**FISCAL IMPACT:** Not applicable.

**FUNDING:** Not applicable.

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Janice D. Magdich  
City Attorney

APPROVED:

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Stephen Schwabauer, City Manager

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE LODI CITY COUNCIL  
AMENDING LODI MUNICIPAL CODE CHAPTER 1.08 –  
GENERAL PENALTY – BY REPEALING AND  
REENACTING SECTION 1.08.010 (A), GENERAL  
PENALTY”

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Chapter 1.08 – General Penalty – is hereby amended by repealing and reenacting Section 1.08.010 (A), “General Penalty,” and shall read as follows:

- A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this code or the ordinances of the city is guilty of a misdemeanor, unless the violation is made an infraction by ordinance ~~or~~ or at the discretion of the prosecuting attorney.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council, and a certified copy shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1).

Approved this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
MARK CHANDLER  
Mayor

ATTEST:

\_\_\_\_\_  
JENNIFER M. FERRAILOLO  
City Clerk

State of California  
County of San Joaquin, ss.

I, Jennifer M. Ferraiolo, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held May 18, 2016, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. FERRAIOLO  
City Clerk

Approved to Form:

JANICE D. MAGDICH  
City Attorney





**CITY OF LODI  
COUNCIL COMMUNICATION**

TM

**AGENDA TITLE:** Introduce Ordinance Amending Lodi Municipal Code Title 5 – Permits and Regulations – by Repealing and Reenacting Chapter 5.24 “Taxicab Transportation Service” and Chapter 5.25 “Pedicabs” in their Entirety to Update, Standardize and Clarify Appeal Procedures, Renewal Procedures and Requirements, Insurance Requirements, Health and Safety Requirements, and Definitions

**MEETING DATE:** May 18, 2016

**PREPARED BY:** City Attorney

**RECOMMENDED ACTION:** Introduce ordinance amending Lodi Municipal Code Chapters 5.24 and 5.25 by repealing and reenacting Chapter 5.24 “Taxicab Transportation Service” and Chapter 5.25 “Pedicabs” in their entirety, to update, enhance, standardize and clarify appeal procedures, renewal procedures and requirements, insurance requirements, health and safety requirements, and definitions.

**BACKGROUND INFORMATION:** California Government Code Section 53075.5 requires cities to regulate taxicab transportation services and adopt certain minimum licensing standards. The City has regulated taxicabs by ordinance since as early as 1940 and the existing ordinance Chapter 5.24 was last updated in 1996. The existing pedicab ordinance Chapter 5.25 was enacted in 2006. In drafting the proposed ordinance changes, staff reviewed taxicab ordinances from other cities, consulted with the City Clerk, Police Department, Risk Manager, and Deputy City Manager. Staff found that the proposed changes are necessary to update, enhance, clarify, and standardize the regulations and procedures of the taxicab and pedicab ordinances. In addition, the proposed amendments make minor ministerial revisions and correct grammatical errors. For the reasons set forth hereunder, staff recommends adopting the changes to Chapter 5.24 “Taxicab Transportation Service” and Chapter 5.25 “Pedicabs” of the Lodi Municipal Code (LMC) as shown in the revised ordinances attached as Exhibit A (Chapter 5.24 “Taxicab Transportation Service”) and Exhibit B (Chapter 5.25 “Pedicabs”).

**LMC Chapter 5.24 – “Taxicab Transportation Service”**

First, the existing taxicab ordinance lacks a clearly defined process to allow applicants or licensees to appeal City licensing or suspension decisions. To address this deficiency, the proposed amended ordinance adopts an appeal process similar to that set forth in the existing pedicab ordinance (LMC Chapter 5.25).

Next, the existing license renewal procedures and requirements lack clarity and could create confusion for the public. The proposed amendments address this issue by providing clearly defined license renewal procedures and requirements for applicants.

In addition, the existing definitions do not adequately address recent trends in transportation services or expressly exempt activities that have been preempted by state law. As a result, the existing taxicab

APPROVED: \_\_\_\_\_  
Stephen Schwabauer, City Manager

ordinance creates uncertainty for City staff and the public. The proposed amendments to the definition section of the ordinance seeks to address frequent questions raised by the public and staff regarding the types of transportation activities required to be licensed under the LMC. The definitional changes account for modern trends in transportation services and exclude activities preempted by state regulation. Transportation services that are excluded from local licensing and regulation under the proposed ordinance include services such as limousines, shuttle and tour bus operations, and transportation network companies such as Uber and Lyft. The proposed definition section retains the requirement that licensed taxicabs have an appearance of a traditional taxicab and operate on a fare basis, thereby excluding fixed-rate medical transportation services which are likely to become more prevalent as the population ages.

The existing insurance requirements for taxicabs are outdated. The proposed amendments reflect adjustments for inflation and current best practices in the insurance industry.

Lastly, the existing ordinance lacks clearly defined health, safety, and inspection standards. To address these deficiencies, the revised ordinance will require each taxicab to be inspected by the Lodi Police Department and a licensed mechanic to insure that taxicabs operating within the city are in a safe and clean operating condition prior to licensing and annually for license renewal.

#### **LMC Chapter 5.25 – “Pedicabs”**

The proposed revisions to the pedicab ordinance (LMC Chapter 5.25) are primarily intended to make the permit renewal period consistent with the taxicab permit renewal period. The existing pedicab ordinance provides for annual renewal of the permit on the date of issuance of the permit whereas the proposed revision would mirror the taxicab ordinance requirement that pedicab permits be renewed in January of each year.

**FUNDING AVAILABLE:** Not applicable.

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John P. Fukasawa  
Deputy City Attorney

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING  
LODI MUNICIPAL CODE TITLE 5 "PERMITS AND REGULATIONS"  
BY REPEALING AND REENACTING CHAPTER 5.24 –  
"TAXICAB TRANSPORTATION SERVICE" IN ITS ENTIRETY

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 5 "Permits and Regulations" is hereby amended by repealing and reenacting Chapter 5.24 "Taxicab Transportation Service" in its entirety, and shall read as follows:

CHAPTER 5.24 – TAXICAB TRANSPORTATION SERVICE

Sections:

Article I. General Provisions

- 5.24.010 Definitions.
- 5.24.020 Compliance with Chapter.

Article II. Owners

- 5.24.030 Owner's Permit--Taxicabs.
- 5.24.040 Owner's Permit--Fee.
- 5.24.050 Owner's Permit--Expiration.
- 5.24.060 Owner's Permit--Qualifications.
- 5.24.070 Owner's Duties.
- 5.24.080 Insurance Requirements.
- 5.24.090 Owner's Permit—Revocation--Grounds.
- 5.24.100 Owner's Permit—Revocation--Investigation.
- 5.24.110 Owner's Permit—Transferability

Article III. Drivers

- 5.24.120 Driver's Permit--Required.
- 5.24.130 Driver's Permit--Fee.
- 5.24.140 Driver's Permit—Qualifications—Police Chief Approval.
- 5.24.150 Driver's Duties.
- 5.24.160 Driver's Drug and Alcohol Testing.
- 5.24.170 Testing Procedures.
- 5.24.180 Information Request.
- 5.24.190 Reporting of Subsequent Conviction and Driver's License Status.
- 5.24.200 Revocation or Suspension of Taxicab Driver's Permit.
- 5.24.210 Hearing—Revocation or Suspension of Taxicab Driver's Permit.
- 5.24.220 Return of Taxicab Driver's Permit.

Article IV. Renewal Procedure

- 5.24.230 Owner's Permit Renewal.

5.24.240 Driver's Permit Renewal.

Article V. Maintenance and Inspection of Taxicabs

5.24.250 Annual Inspection of Taxicabs.

5.24.260 Authority of Police Department to Inspect Taxicabs.

5.24.270 Unsafe or Unsuitable Taxicabs.

5.24.280 Things Deemed to Make a Taxicab Unsafe or Unsuitable.

5.24.290 Cleaning of Interior.

5.24.300 Cleaning of Exterior.

5.24.310 Age of Vehicle.

Article VI. Appeals

5.24.320 Right of Appeal from Denial of Issuance or Renewal of Taxicab Owner's Permit or Taxicab Driver's Permit.

5.24.330 Procedure Upon Appeal.

Article I. - General Provisions

5.24.010 Definitions.

The following terms, as used in this chapter, are defined as follows, unless the particular provision or context requires otherwise:

- A. "Operate within the city" or "operate within the corporate limits of the city" means the soliciting, accepting, picking up or embarking within the city of a passenger or passengers for transportation or conveyance to any point within or without the city. Prepaid round trips which originate outside the city limits shall not constitute a defined operation under this subsection.
- B. "Taxicab" means every vehicle operated over the public streets of the city, the vehicle being routed under the direction of the passenger and which, in addition to such specifications, is of a distinctive color and appearance such as is commonly used in this state for taxicabs, and is operated at rates per mile, or for waiting time, or both. **The following types of transportation services are not taxicabs for the purpose of this chapter: limousines, transportation network companies, and charter or scheduled bus transportation, as each is defined in the California Public Utilities Code; paratransit services as defined in the California Vehicle Code; and airport shuttles and wine tour operators operating on a prearranged contract basis.**
- C. "Owner" means the corporation, business entity, or person who is registered with the Department of Motor Vehicles as the owner of the vehicle, or who has a legal right to possession of the vehicle pursuant to a lease or rental agreement.

5.24.020 Compliance with Chapter.

The provisions of this chapter shall be observed by all persons operating taxicabs within the city, and it is unlawful to operate any taxicab in violation of any of such provisions.

All applications submitted pursuant to this chapter shall be on a form prescribed by the City Clerk.

## Article II. - Owners

### 5.24.030 Owner's Permit—Taxicabs.

No individual or company shall operate any taxicab on or over any streets of the city without having first obtained approval from the City Clerk.

Every vehicle used by an Owner in transportation for compensation shall be licensed, inspected, and insured annually as set forth in this chapter.

### 5.24.040 Owner's Permit—Fee.

The owner or lessee of any taxicab obtaining any permit under this chapter shall pay unto the City Clerk a ~~business tax permit fee~~ as prescribed by the city. No permit issued under the provisions of this chapter shall be valid until the City Clerk endorses thereon an acknowledgment of the payment of the ~~tax fee~~ for the current year. Such ~~tax fee~~ shall be due and payable to the City Clerk on the first day of January of each year and delinquent thirty days thereafter.

### 5.24.050 Owner's Permit—Expiration.

Any permit issued under this chapter shall expire at the end of the calendar year in which it is issued; provided, that the ~~tax fee~~ therefor is paid in accordance with the provisions of this chapter. Unless suspended or revoked, it shall be renewed upon application for renewal ~~within thirty days of expiration as set forth in section 5.24.230.~~

### 5.24.060 Owner's Permit—Qualifications.

The owner's permit required by this chapter shall be granted in writing by the City Clerk, upon a satisfactory showing by the applicant that:

- A. Applicant has submitted a financial statement which has been reviewed by the Finance Director. The purpose of this requirement is to insure that the applicant or permit holder makes use of the permit and that the permit is obtained and used by the person or entity identified in the application documents rather than an undisclosed third party.

Initial applications shall include:

1. A statement of all assets, liabilities, and equities of the taxicab business or owner; and
2. A statement of the expected revenues and expenses of the taxicab business operation for the next year.

Renewal applications shall include:

1. A statement of all assets, liabilities, and equities of the taxicab business as of the application date;

2. A statement of the actual revenues and expenses of the taxicab business for the past year; and
  3. A statement of the expected revenues and expenses of the business for the next year.
- B. Applicant has submitted evidence of insurance coverage as set forth in Section 5.24.080.
- C. The applicant's vehicle or vehicles are possessed of the following qualifications as determined by the chief of police:
1. The vehicle must meet all requirements of the Vehicle Code of the state in regard to equipment and mechanical condition. Further, it must be maintained in a safe, clean and sanitary condition throughout as set forth in Sections 5.24.250 through 5.24.310.
  2. The vehicle must bear, visibly painted in a distinctive color, in figures at least three inches high, a number of one or two digits, which number shall not be the number of any other vehicle earlier granted a vehicle permit under this chapter. The number shall be specified in the application and noted on the permit. The vehicle must also bear, visibly painted in a distinctive color, in letters at least one and one-half inches high, the name of the owner or lessee thereof.
  3. The vehicle must carry in a conspicuous position within its passenger compartment a clear, intelligible and legible statement of the fares or charges to be made in connection with the use of the vehicle. A copy of such fares and charges shall be filed with the City Clerk as well.
  4. A taxicab over the entire exterior normally covered with paint must be painted in a distinctive color or system of colors; and the color or system of colors shall be so selected that the vehicle may not reasonably be confused with any ordinary private vehicle.
- D. The applicant shall provide annually a list and photograph, prepared under oath, of all vehicles to be used in transportation for compensation, and/or which have been used in transportation for compensation during the preceding year. The list shall identify each vehicle by year, make, model, license plate, and vehicle identification number.
- E. Applicant possesses a current City of Lodi business license and/or home occupation permit as required in section 17.36.060.
- F. Applicant's business activities do not violate any land use or zoning laws, including, but not limited to the prohibition of parking, storing, dispatching or repairing commercial vehicles in a residential zoning district pursuant to sections 17.36.060(B)(2)(c), 17.36.060(B)(2)(i), and 17.36.060(C)(10).

5.24.070 Owner's Duties.

No person owning or leasing a taxicab, shall, while such vehicle owned or leased is being operated, do the following:

- A. Fail to maintain as to such vehicle the qualifications required for a permit for such vehicle under this chapter;
- B. Do any act, or employ any person to do any act, which would be forbidden by Section 5.24.150 if done by a person driving or operating a taxicab;
- C. Rent or lend the vehicle to any person who operates it, or permit any person to operate it, except himself or his duly authorized agent.

Prior to placing any new or additional vehicle into service, the owner shall:

- D. Inform the City Clerk in writing of the acquisition or transfer of the vehicle into taxicab operations;
- E. Provide the date upon which such vehicle will be put into service;
- F. Provide all information required under Section 5.24.060(D);
- G. Provide proof of inspection as required in Sections 5.24.250 and 5.24.260;
- H. Provide proof of insurance as required in Section 5.24.080; and
- I. Provide any other information requested by the City Clerk related to such vehicle, its ownership, or use in the owner's business operations.

#### 5.24.080 Insurance and Indemnification Requirements.

In order to ensure the safety of the public, it is unlawful for any person who owns a taxicab to allow it to be operated or driven or to obtain a permit for its operation under this chapter unless and until such person has complied with the provisions of this section.

The owner or lessee of any taxicab must secure ~~his~~ **their** ability to answer to any claim for damage to person or property which may arise ~~against him~~ by reason of the operation of any vehicle as follows:

- A. ~~Public General~~ liability insurance in the minimum limits of ~~not less than one hundred thousand million~~ **not less than two million** dollars for injury or death to any person and ~~three hundred thousand~~ **not less than two million** dollars for injury or death of more than one person in the same accident;
- B. ~~Automobile~~ insurance in the minimum limits of ~~not less than five hundred thousand~~ **not less than five hundred thousand** dollars;
- ~~B.C. Public liability-i~~ Insurance for property damage in the minimum ~~sum~~ **sum** limits of ~~not less than fifty thousand~~ **not less than fifty thousand** dollars; ~~and~~
- ~~C.D.~~ A certificate evidencing such insurance shall be filed with the ~~city's~~ **city's** risk manager and shall name the city, its officers, agents and employees as additional insureds-;

Any person or entity issued a permit pursuant to this Chapter shall, and by acceptance of the permit does, to the maximum extent permitted by law, agree to indemnify and hold harmless the city of Lodi, its officers, employees and agents from any and all damages, claims, liabilities, costs, suits, or other expense resulting from and arising out of the permit holder's operations.

5.24.090 Owner's Permit—Revocation—Grounds.

The owner's permit required by this chapter may be revoked or suspended if ~~it appears that any one or more~~ of the following conditions exist:

- A. ~~That any of~~ the qualifications required for the granting of the owner's permit are no longer met by the permittee or ~~his the permittee's~~ vehicle or vehicles;
- B. ~~That t~~The permittee has been convicted of any violation of restrictions imposed upon ~~him the permittee~~ as owner or lessee under this chapter, or ~~that he the permittee~~ has become bankrupt;
- C. ~~That for any other reasonable cause the permittee's vehicle or vehicles have ceased to be fit and proper vehicles to be operated as taxicabs~~ The permittee has failed to maintain his/her vehicle or vehicles as required in 5.24.250 to 5.24.310; or
- D. ~~That~~The permittee is in violation of any of the provisions of this chapter.

5.24.100 Owner's permit—Revocation—Investigation **and Hearing.**

For the purpose of ascertaining whether any cause exists for the suspension or revocation of an owner's permit under this chapter, the chief of police may, and on direction of the city council or upon complaint shall, cause strict inquiry to be made into the conduct of the permittee, the sufficiency and validity of ~~his the permittee's~~ security, and the conditions of ~~his the permittee's~~ vehicle or vehicles.

~~An owner's permit may be revoked for any cause which would have warranted denial thereof in the first instance, for a failure to comply with any of the provisions of this chapter, a failure to comply with any conditions imposed upon the owner's permit or when taxicab business operations have ceased for 10 consecutive days. If an owner's permit is granted and operation of the service for which the permit is granted does not commence within four months of the date of the approval thereof, the permit shall be automatically null and void. A revocation may be appealed through the procedure set forth in 5.24.320. If the owner's permit is revoked, the holder of the permit shall not reapply for six months from the date of revocation.~~

5.24.110 Owner's Permit—Transferability.

Any owner's permit issued under the provisions of this chapter may be sold, assigned, leased, transferred or inherited as other property only upon **written** authorization of the City Clerk. **In the event a permit is transferred, the transferee must satisfy all requirements of this Chapter prior to engaging in taxicab business.**

Article III. - Drivers

5.24.120 Driver's Permit—Required.

No person shall drive or operate any taxicab within the city unless ~~he he/she~~ holds a permit, to be known as a driver's permit, therefor, as provided in this chapter, and no person shall drive or operate a taxicab within the corporate limits of the city under or by virtue of any driver's permit which has been suspended or revoked as provided in this chapter.

5.24.130 Driver's Permit—Fee.

Every driver under this chapter shall pay unto the City Clerk an annual license fee in the sum prescribed by ~~city resolution of the City Council, as amended from time to time. Fees for a~~ Owner-drivers ~~who pay the owner's permit fee shall have the driver's permit fee be waived.~~ The fee shall be due and payable the first day of January of each year and ~~shall be~~ delinquent thirty days thereafter.

5.24.140 Driver's Permit—Qualifications—Police Chief Approval.

- A. A driver's permit or renewal thereof shall be issued to each applicant complying with the provisions of this chapter; such permit shall be issued by the City Clerk pursuant to a finding by the chief of police that the applicant for a permit or for renewal is a person of good character, and one who will not endanger the public interests and safety.

~~Applicants shall be subject to a criminal background check prior to the issuance of a driver's permit. Thereafter a licensee shall be subject to a criminal background check upon request of the chief of police.~~

- B. ~~A person~~ An applicant or licensee who, within the past ten years, has been convicted of any of the below-listed offenses is not eligible to be granted or hold a driver's permit:

1. A felony, or of any crime under the laws of this state that would amount to a felony;
2. Any crime in this state or elsewhere in which fraud or intent to defraud was an element;
3. Unlawfully possessing or distributing controlled substances as defined in the laws of the state or elsewhere;
4. Any sex offense or crime involving moral turpitude; or
5. Driving while under the influence of alcohol or drugs.

- C. The applicant must hold a valid and appropriate driver's license issued by the Department of Motor Vehicles of the state, under the Vehicle Code of the state.

- D. The applicant, ~~or licensee upon request,~~ must be fingerprinted by the Lodi police department.

- E. Any person having been denied a driver's permit may ~~appeal such decision as set forth in section 5.24.320 make written application for review to the chief of police. The chief of police may, having given due consideration for the proper protection of the public health, safety, morals, good order and general welfare of the inhabitants of the city and upon evidence of the good moral character and rehabilitation of the applicant, waive any of the above-enumerated restrictions and conditions and recommend said driver's permit.~~

- F. Drivers operating as an independent contractor shall submit proof of a current city of Lodi business license and/or home occupation permit as required in section 17.36.060 and ensure that their business activities do not violate any land use or zoning laws.

G. It shall be sufficient grounds to deny or revoke a driver's permit if any person fails to disclose any relevant information, or provides false or misleading information pursuant to this Section.

#### 5.24.150 Driver's Duties.

No person driving or operating a taxicab shall, while operating such vehicle, do the following:

- A. Fail to maintain the qualifications required for an operator's permit under this chapter;
- B. Refuse without good cause to accept as a passenger any person desiring transportation who shall tender money sufficient to pay ~~his the~~ fare to ~~his their~~ stated destination;
- C. Transport passengers to their stated destination over an unnecessarily circuitous route;
- D. Refuse to load and unload for any passenger such hand baggage as may not exceed the reasonable internal capacity of the vehicle, and such other baggage as may not reasonably exceed its capacity in trunk or top; or, after being requested, refuse to carry such baggage to or from such buildings as the passenger may enter or leave;
- E. Make false representations by word, act, conduct or appearance regarding the name or identity of persons owning or leasing the taxicab he operates, or regarding his own identity; or refuse to give his name and the number of his vehicle to any person requesting them;
- F. Refuse or fail, after being requested, to give a receipt for any fare paid;
- G. Fail or neglect to report to the police department within twenty-four hours all property left in his vehicle by any passenger-; or
- H. Charge passengers in excess of the posted rate or fee.

#### 5.24.160 Driver's Drug and Alcohol Testing.

No person shall be issued , or have renewed, a driver's permit until they have presented certification to the City Clerk that they have tested negative for alcohol (breath alcohol concentration of less than 0.02 percent) and each of the controlled substances specified in Part 40 (commencing with Section 40.1) of the Title 49 of the Code of Federal Regulations. The date of testing shall be within ten days of the date of issuance or renewal of a driver's permit. Test results are confidential and shall not be released without the consent of the applicant, except as authorized or required by law. Cost for such testing is the obligation of the applicant or ~~employee~~ employer of the applicant.

#### 5.24.170 Testing Procedures.

Applicant shall show a valid California driver's license at the time and place of testing. Testing procedures shall be substantially as set forth in Part 40 (commencing with Section 40.1 ) of Title 49 of the Code of Federal Regulations. The city may at random require a permitted driver to be retested. If such a test is required by city, city shall pay the cost for such testing.

5.24.180 Information Request.

Upon the request of a driver applying for a permit, **or renewal**, the City Clerk shall give the applicant a list of the consortia certified pursuant to Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations that the City Clerk knows offers tests in or near the city.

5.24.190 Reporting of Subsequent Conviction and Driver's License Status.

Any person issued a taxicab driver's permit who subsequently is convicted of any felony or misdemeanor offense, or who ceases to possess a valid state of California driver's license of the class required by state law for the type of motor vehicle such person drives, shall immediately so inform the chief of police and his or her employer.

5.24.200 Revocation or Suspension of Taxicab Driver's Permit.

- A. The chief of police may suspend, for a period not to exceed thirty days, and may revoke a driver's permit if the permittee:
1. Misrepresents facts relevant to the fitness of the driver if such misrepresentation becomes known after a permit has been issued;
  2. Violates the traffic laws of the city, county or state;
  3. Is convicted for misdemeanor reckless driving;
  4. Drives a taxicab known to the operator not to be in good order and repair;
  5. Knowingly falsifies material and relevant facts on an application for a taxicab permit;
  6. Is convicted or pleads nolo contendere to the violation of any law involving alcohol;
  7. Is convicted or pleads nolo contendere to the violation of any law involving moral turpitude;
  8. Operates any vehicle in a manner which constitutes a misdemeanor under the laws of the state of California; or
  9. Repeatedly fails to comply with the applicable provisions of this chapter or the rules and regulations prescribed by the chief of police.
- B. The chief of police shall immediately suspend, for a period not to exceed thirty days, and may revoke a taxicab driver's permit of any driver upon the receipt of information reasonably sufficient and reliable to establish that the driver has committed a violation of law involving:
1. A felony;
  2. A sex offense;

3. Soliciting for prostitution;
  4. A narcotics offense; or
  5. Has had a license to drive issued by the state of California either suspended or revoked by the State.
- C. The chief of police shall immediately revoke the taxicab driver's permit if that driver has been found guilty by final judgment of a court of competent jurisdiction of a violation of the law involving:
1. A felony;
  2. A sex offense;
  3. Soliciting for prostitution; or
  4. A narcotics offense.
- D. Upon suspension or revocation, the driver shall immediately surrender the taxicab driver's permit to the chief of police. In the event of suspension, the chief of police shall return the taxicab driver's permit to its driver immediately after termination of the suspension period.

5.24.210 Hearing--Revocation or Suspension of Taxicab Driver's Permit.

Every taxicab driver whose permit has been suspended or revoked shall have the right to appeal such decision as provided in section 5.24.320.

5.24.220 Return of Taxicab Driver's Permit.

Taxicab driver's permits shall become void upon termination of employment. The employer shall notify the City upon termination of employment. Taxicab driver permits shall be returned to the City upon termination of employment or a determination of revocation.

Article IV. – Renewal Procedure

5.24.230 Owner's Permit Renewal.

A permit holder must submit a renewal application along with the following items, and any other information deemed necessary by the City Clerk or chief of police, no later than 30 days prior to the end of the calendar year in which the current permit was issued:

- A. Renewal fee, as set forth in section 5.24.040;
- B. Proof a current city of Lodi business license and/or home occupation permit, as set forth in section 5.24.060;
- C. Financial statement, as set forth in section 5.24.060;
- D. Proof of insurance, as set forth in section 5.24.080;

- E. A list and photograph, prepared under oath, of all vehicles to be used in transportation for compensation, and/or which have been used in transportation for compensation during the preceding year, as set forth in section 5.24.060(D);
- F. Proof of a mechanic's inspection, as set forth in section 5.24.250; and
- G. Proof of passing drug and alcohol testing, as set forth in section 5.24.260.

5.24.240 Driver's Permit Renewal.

A permit holder must submit a renewal application with the following items, and any other information deemed necessary by the City Clerk or chief of police, no later than 30 days prior to the end of the calendar year in which the current permit was issued:

- A. Renewal fee, as set forth in section 5.24.130;
- B. Proof of a current valid driver's license, as set forth in section 5.24.140(C);
- C. Proof of a current city of Lodi business license, as set forth in section 5.24.140(F); and
- D. Proof of completion of a drug and alcohol test, as set forth in section 5.24.160.

Article V. – Maintenance and Inspection of Taxicabs

5.24.250 Annual Inspection of Taxicabs.

To ensure continued maintenance of safe operating conditions, taxicabs, and their equipment, operating or used pursuant to this chapter shall be inspected annually by a licensed automobile mechanic. The costs of inspections shall be paid by the vehicle owner. Proof of inspection shall be submitted annually with a renewal application.

5.24.260 Authority of Police Department to Inspect Taxicabs.

The chief of police, or any member of the police department under his/her direction, shall have the right, at any time after displaying proper identification, to enter into or upon any taxicab for the purpose of ascertaining whether or not any of the provisions set forth herein are being violated.

The chief of police or designee shall inspect all vehicles subject to the provisions this chapter prior to issuing or renewing any permit.

5.24.270 Unsafe or Unsuitable Taxicabs.

It is unlawful and an infraction for the owner of any taxicab licensed pursuant to this chapter to maintain a taxicab in an unsafe or unsuitable condition. Any taxicab which is found to be unsafe or in any way unsuitable for taxicab service shall be immediately ordered out of service, and before again being placed in service, the owner shall provide evidence to the chief of police, or any member of the police department under his/her direction, that the vehicle is safe, and shall submit the vehicle to inspection.

5.24.280 Things Deemed to Make a Taxicab Unsafe or Unsuitable.

For the purposes of this section, the existence of the following named things, but not to the exclusion of other things, shall be deemed to make a taxicab unsafe or unsuitable for taxicab service:

- A. Excessive leakage of oil, grease, gas or any other substance from any part of the taxicab;
- B. Defects in the frame or structural body of the taxicab;
- C. The failure of any movable parts of the car, including doors, window, hoods, trunk, lights, etc. to function in the proper working order;
- D. The failure to maintain the tires, lights, turning signals or brakes in safe operating condition;
- E. The failure to maintain the motor or other mechanical parts of the car in good and safe operating condition;
- F. The failure to have an exhaust system properly installed and in good working condition that complies with State law;
- G. Large or excessive dents or scratches in the body of the taxicab;
- H. Improper maintenance of the exterior paint in the proper color scheme;
- I. Excessive wear and tear on the upholstery, floor mats and other parts of the interior of the taxicab;
- J. The failure to have adequate interior lighting in proper working condition; or
- K. The excessive emission of odors such as tobacco/smoke products from the interior of the taxicab.

5.24.290 Cleaning of Interior.

The interior of every taxicab in service, shall be kept in a clean and sanitary condition at all times.

5.24.300 Cleaning of Exterior.

The exterior of every taxicab in service, shall be kept in a clean condition at all times.

5.24.310 Age of Vehicle.

Taxicabs in service shall be no older than seven (7) years from the manufacture date indicated on the vehicle by the manufacturer.

## Article VI - Appeals

### 5.24.320 Right of Appeal from Denial of Issuance or Renewal of Taxicab Owner's Permit or Taxicab Driver's Permit.

- A. The City Clerk or chief of police shall notify the applicant that the issuance or renewal of his or her taxicab owner's permit or taxicab driver's permit has been denied. The City Clerk or chief of police shall also notify the applicant of the right to appeal the denial to the City Manager.
- B. Any written appeal shall be filed with the City Clerk within ten calendar days of transmittal of the written notice to the person affected by such decision. Service shall be by regular postal service or personal delivery.
- C. A denial of issuance or renewal shall remain in effect until a duly filed appeal is heard as set forth in Section 5.24.330.
- D. If no appeal is filed within the time allowed, the city's decision to not issue or renew the taxicab owner's permit or taxicab driver's permit shall be considered final.

### 5.24.330 Procedure Upon Appeal.

- A. An applicant or permittee shall file an appeal within ten calendar days from the service of the notice of denial, suspension, or revocation from the City Clerk or chief of police.
- B. Appeals to the City Manager:
  1. Any decision of the City Clerk or chief of police which is a denial to issue or renew, or a suspension or revocation of a taxicab owner's permit or taxicab driver's permit, shall not become final until ten calendar days after the date of transmittal of the written notice to the person affected by such decision, during which period the party to the action may appeal the decision in the manner provided herein at any time prior to the expiration of the ten-day period. If no appeal is taken before the expiration of the ten-day period, the decision of the City Clerk or chief of police shall be final.
  2. The appeal of any decision shall be in writing signed by the party to the action briefly setting forth the reasons why such decision is not proper, stating an address at which the appellant will receive notices and filed with the City Manager.
  3. The City Manager shall upon receipt of the appeal set the matter for hearing before a hearing officer. The hearing officer shall be an attorney or recognized mediator designated by the city attorney. The hearing shall be scheduled for not more than thirty calendar days after receipt of the appeal unless a longer time is requested or consented to by the appellant.
  4. The hearing shall not be conducted under the formal Rules of Evidence, but shall be subject to such standards of procedure and evidence as reasonable people would utilize in the conduct of serious business.
  5. The appellant (or a representative) shall have the right to present his or her case in person.

6. The hearing officer shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as set forth in Chapter 1.10 of this code.
  7. If the hearing officer refuses to issue or restore a taxicab owner's permit or taxicab driver's permit, the party to the action, or such party's agent, shall not file a new application within three hundred sixty five days from the date of final action by the hearing officer.
  8. If the hearing officer suspends a taxicab owner's permit or taxicab driver's permit, the hearing officer shall impose a period of suspension of not more than thirty days.
  9. If the hearing officer's action is to grant or restore a taxicab owner's permit or taxicab driver's permit, the hearing officer shall direct the City Clerk to issue or restore the certificate or license.
- C. Any party dissatisfied with the decision of the hearing officer may carry the matter forward under the provisions for administrative mandamus (Code of Civil Procedure Section 1094.5) as it now exists or may later be amended.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council, and a certified copy shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1).

Approved this \_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
 MARK CHANDLER  
 Mayor

ATTEST:

JENNIFER M. FERRAILO  
 City Clerk

State of California  
County of San Joaquin, ss.

I, Jennifer M. Ferraiolo, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held May 18, 2016, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. FERRAIOLO  
City Clerk

Approved as to Form:

JANICE D. MAGDICH  
City Attorney



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING  
LODI MUNICIPAL CODE TITLE 5 "PERMITS AND REGULATIONS"  
BY REPEALING AND REENACTING CHAPTER 5.25 –  
"PEDICABS" IN ITS ENTIRETY

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 5 "Permits and Regulations" is hereby amended by repealing and reenacting Chapter 5.25 "Pedicabs" in its entirety, and shall read as follows:

CHAPTER 5.25 - PEDICABS

Sections:

- 5.25.010 Purpose.
- 5.25.020 Definitions.
- 5.25.030 Permit Requirements to Operate Pedicab.
- 5.25.040 Application for Pedicab Operating Permit.
- 5.25.050 Pedicab Operating Permit Fee.
- 5.25.060 Duration of Validity of Pedicab Operating Permit.
- 5.25.070 Pedicab Operating Permit Renewal.
- 5.25.080 Denial of Pedicab Operating Permit.
- 5.25.090 Suspension or Revocation of Pedicab Operating Permit.
- 5.25.100 Identification Badges Issued to Pedicab Operators with a Pedicab Operating Permit.
- 5.25.110 Pedicab Decal.
- 5.25.120 Application for Pedicab Decal.
- 5.25.130 Requirements for Issuance of Pedicab Decal.
- 5.25.140 Pedicab Decal Fee.
- 5.25.150 Duration of Validity of Pedicab Decal.
- 5.25.160 Pedicab Decal Renewal.
- 5.25.170 Denial of Pedicab Decal for Failure to Comply with Chapter.
- 5.25.180 Suspension or Revocation of Pedicab Decal.
- 5.25.190 Other Laws Applicable to Pedicab Owners and Operators.
- 5.25.200 Report of Accidents.
- 5.25.210 Minimum Age for Pedicab Operators.
- 5.25.220 Driver's License Requirement to Operate Pedicab.
- 5.25.230 Business License Requirement to Operate Pedicab.
- 5.25.240 Equipment Regulations for the Operation of Pedicabs.
- 5.25.250 Insurance Requirements.
- 5.25.260 Fare Schedule.
- 5.25.270 Right of Appeal from Denial of Issuance of Pedicab Operating Permit or Decal.
- 5.25.280 Right of Appeal from Suspension or Revocation of Pedicab Operating Permit or Decal.
- 5.25.290 Procedure Upon Appeal.
- 5.25.300 Enforcement Authority.
- 5.25.310 Enforcement Remedies.
- 5.25.320 Strict Liability Offenses.
- 5.25.330 City Held Harmless.
- 5.25.340 General Pedicab Operation.

5.25.010 Purpose.

The city council finds that regulations governing pedicabs, operators, and owners are necessary to protect the general safety and welfare of passengers using pedicabs for hire and pedestrians within the city.

5.25.020 Definitions.

For purposes of this chapter, the following terms are defined as follows:

- A. "City Clerk" means the City Clerk for the City of Lodi or his or her designee.
- B. "Decal" means the numbered decal issued by the City of Lodi to a pedicab owner for display on the pedicab to indicate that the pedicab is permitted to operate.
- C. "Identification badge" means a badge that identifies the operator with a color passport-size photo.
- D. "Operates within the city" means the soliciting, accepting, picking-up, or embarking within the city of a passenger or passengers for transportation or conveyance to any point within or without the city for receipt of any form of consideration.
- E. "Operator" means any individual who operates a pedicab whether as an owner, an employee of the owner, or as an independent contractor within the City of Lodi.
- F. "Owner" means any person who owns, leases, or otherwise has possession of a pedicab.
- G. "Pedicab" means:
  - 1. A bicycle (as defined by the California Vehicle Code) that has three or more wheels, that transports, or is capable of transporting, passengers on seats attached to the bicycle, that is operated by an individual, and that is used for transporting passengers for receipt of any form of consideration; or
  - 2. A bicycle (as defined by the California Vehicle Code) that pulls a trailer, sidecar, or similar device, that transports, or is capable of transporting, passengers on seats attached to the trailer, sidecar, or similar device, that is operated by an individual, and that is used for transporting passengers for receipt of any form of consideration.
- H. "Pedicab operating permit" means a written permit issued by the City of Lodi authorizing a person to operate a pedicab.
- I. "Person" means both singular and plural, and shall mean any individual, firm, corporation, association, partnership, or society exclusive of public agencies.
- J. "Police chief" means the chief of police for the City of Lodi or his or her designee.

5.25.030 Permit Requirement to Operate Pedicab.

It is unlawful for any person to operate a pedicab within the city without first having obtained a pedicab operating permit issued by the city pursuant to this chapter. Pedicab operating permits are the property of the city and are not transferable to any other operator.

5.25.040 Application for Pedicab Operating Permit.

- A. Before operating a pedicab, an applicant shall apply for a pedicab operating permit in person.
- B. The pedicab operating permit application form shall be in a form prescribed by the City Clerk.
- C. The applicant shall provide the following information to complete the application under oath or affirmation:
  - 1. The applicant's full name and residence address;
  - 2. The applicant's date of birth; and
  - 3. The applicant's valid California driver's license.
- D. The applicant shall provide the following material to complete the application:
  - 1. Proof that the applicant is eighteen years or older;
  - 2. Proof of ability to drive lawfully in the United States;
  - 3. Proof of a valid City of Lodi business license;
  - 4. A complete set of fingerprints;
  - 5. Two recent color passport-sized photographs; and
  - 6. Such other material as the City Clerk may require to evaluate the fitness of the applicant to be granted a pedicab operating permit.
- E. Each applicant must sign the application which shall contain a warning that the application may be denied or the permit suspended or revoked if the applicant misrepresents, or fails to disclose, facts relevant to the fitness of the applicant to be granted a pedicab operating permit.
- F. The City Clerk shall investigate the facts stated in an application for a pedicab operating permit and other relevant data.
- G. When an application has been denied, the applicant may not reapply for a pedicab operating permit within three hundred sixty five days from the date of denial, unless denial is without prejudice.

5.25.050 Pedicab Operating Permit Fee.

The city shall charge a nonrefundable fee to recover the cost of activities associated with the administration, regulation, and issuance of pedicab operating permits as may from time to time be determined by the city council.

5.25.060 Duration of Validity of Pedicab Operating Permit.

~~Pedicab operating permits shall be valid for a period of one year from date of issuance.~~  
Any permit issued pursuant to this chapter shall expire at the end of the calendar year in which it is issued and must be renewed within 30 days of the date of expiration.

5.25.070 Pedicab Operating Permit Renewal.

Pedicab operating permits shall be renewable annually upon filing and approval of a new application and payment of a pedicab operating permit fee as determined by the city council.

5.25.080 Denial of Pedicab Operating Permit.

The City Clerk may deny issuance of a pedicab operating permit if an applicant:

- A. Fails to comply with the requirements of this chapter;
- B. Misrepresents, **or fails to disclose**, facts relevant to the fitness of the applicant;
- C. Does not possess a valid driver's license issued by state of California;
- D. Has any type of driving restrictions issued by the state of California;
- E. Is currently required to register pursuant to California Penal Code section 290;
- F. Has been convicted of a crime involving moral turpitude or narcotics; or
- G. Has been convicted for hit and run, driving a vehicle recklessly or while under the influence of intoxicating alcohol or drugs within the seven years immediately preceding application for a pedicab operating permit.

5.25.090 Suspension or Revocation of Pedicab Operating Permit.

- A. The City Clerk may suspend, for a period not to exceed thirty days, and may revoke a pedicab operating permit if the operator:
  - 1. Misrepresents, **or fails to disclose**, facts relevant to the fitness of the operator if such misrepresentation becomes known after a permit has been issued;
  - 2. Violates the traffic laws of the city, county or state;
  - 3. Is convicted for misdemeanor reckless driving;
  - 4. Drives a pedicab known to the operator not to be in good order and repair;

5. Knowingly falsifies material and relevant facts on an application for a pedicab operating permit;
  6. Is convicted or pleads nolo contendere to the violation of any law involving alcohol;
  7. Is convicted or pleads nolo contendere to the violation of any law involving moral turpitude;
  8. Operates any vehicle in a manner which constitutes a misdemeanor under the laws of the state of California; or
  9. Repeatedly fails to comply with the applicable provisions of this chapter or the rules and regulations prescribed by the City Clerk.
- B. The City Clerk shall immediately suspend, for a period not to exceed thirty days, and may revoke a pedicab operating permit of any operator upon the receipt of information reasonably sufficient and reliable to establish that the operator has committed a violation of law involving:
1. A felony;
  2. A sex offense;
  3. Soliciting for prostitution;
  4. A narcotics offense; or
  5. Has had a license to drive issued by the state of California either suspended or revoked by the State.
- C. The City Clerk shall immediately revoke the pedicab operating permit if that operator has been found guilty by final judgment of a court of competent jurisdiction of a violation of the law involving:
1. A felony;
  2. A sex offense;
  3. Soliciting for prostitution; or
  4. A narcotics offense.
- D. Upon suspension or revocation, the operator shall immediately surrender the pedicab operating permit to the City Clerk. In the event of suspension, the City Clerk shall return the pedicab operating permit to its operator immediately after termination of the suspension period.

5.25.100 Identification Badges Issued to Pedicab Operators with a Pedicab Operating Permit.

- A. The city shall issue an identification badge to an individual after that individual has been issued a pedicab operating permit.

- B. While the pedicab is in operation, the pedicab operator shall wear the identification badge at all times on his or her person, in a manner clearly visible to the public.
- C. It is unlawful for a pedicab operator to fail to wear an identification badge, in a manner clearly visible to the public, while operating a pedicab.
- D. Identification badges are the property of the city and are not transferable to any other operator. In the event that an operator's pedicab operating permit is suspended or revoked, the operator shall also immediately surrender the identification badge to the City Clerk. In the event of a suspension, the City Clerk shall return the identification badge to its holder immediately after termination of the suspension period.

5.25.110 Pedicab Decal.

- A. It is unlawful for any owner to lease, rent, or allow a pedicab to be operated for hire within the city without first having obtained a decal issued pursuant to this chapter. The decal shall be affixed to the pedicab on the rear or back side of the pedicab in a manner clearly visible to the public.
- B. It is unlawful for any person to operate a pedicab that does not have a valid decal affixed to it.
- C. Decals are the property of the city and are not transferable to any other pedicab.

5.25.120 Application for Pedicab Decal.

- A. Before allowing a pedicab to be operated for hire, an owner shall obtain a pedicab decal.
- B. The pedicab decal application form shall be prescribed by the City Clerk.
- C. The applicant shall provide the following information to complete the application:
  - 1. The full name and address of the applicant;
  - 2. The name and address of all legal and registered owners of the pedicab;
  - 3. A description of the pedicab, including trade name, if any, serial number or owner identification number, and body style;
  - 4. Seating capacity of the pedicab;
  - 5. Route(s) or area(s) over which the applicant proposes to operate the pedicab; and
  - 6. Proof of insurance in accordance with Section 5.25.250 of this Chapter.

5.25.130 Requirements for Issuance of Pedicab Decal.

Pedicab decals will be issued only when a pedicab meets all of the following requirements:

- A. A battery-operated headlight capable of projecting a beam of white light for a distance of three hundred feet shall be permanently affixed to the pedicab;

- B. Battery-operated taillights shall be permanently affixed on the right and the left, respectively, at the same level on the rear exterior of the passenger compartment. Taillights shall be red in color and plainly visible from all distances within five hundred feet to the rear of the pedicab;
- C. Side-mounted rearview mirrors affixed to the right and left side of the pedicab so located as to reflect to the driver a view of the street for a distance of at least two hundred feet to the rear of the pedicab.
- D. Seat belts for each available passenger seat; and
- E. Those requirements related to bicycles as set forth in California Vehicle Code Section 21201.

All pedicabs must be inspected by the police department to ensure compliance with the requirements provided in this section.

5.25.140 Pedicab Decal Fee.

The city shall charge a nonrefundable fee to recover the cost of activities associated with the administration, regulation, and issuance of pedicab decals.

5.25.150 Duration of Validity of Pedicab Decal.

Pedicab decals shall ~~be valid for a period of one year from date of issuance~~ expire at the end of the calendar year in which they were issued.

5.25.160 Pedicab Decal Renewal.

Pedicab decals shall be renewable annually upon filing of ~~a new application and payment of a pedicab decal fee.~~ a renewal application on a form prescribed by the City Clerk and submittal of the following:

- A. Decal renewal fee;
- B. Proof of ability to drive lawfully in the United States;
- C. Proof of a valid City of Lodi business license;
- D. Proof of insurance in accordance with Section 5.25.250 of this Chapter; and
- E. A list of all pedicabs to be used in operation and proof of inspection for each, in accordance with Section 5.25.130 of this Chapter.

5.25.170 Denial of Pedicab Decal for Failure to Comply with Chapter.

The city may deny issuance of a pedicab decal if the City Clerk determines that the pedicab does not meet the requirements of this chapter or applicable state law.

5.25.180 Suspension or Revocation of Pedicab Decal.

- A. Decals may be suspended by the City Clerk for a period of one to thirty days or revoked at any time if the owner:
1. Fails to comply with the applicable provisions of this chapter;
  2. Fails to maintain insurance as required by Section 5.25.250;
  3. Fails to notify the City Clerk thirty days prior to the effective date of liability insurance cancellation or change of insurer;
  4. Fails to maintain pedicabs in good order and repair as prescribed herein;
  5. Provides false statements on an application for a decal;
  6. Fails to pay any fees or damages lawfully assessed upon the ownership or operation of any pedicab licensed under this chapter; or
  7. Violates any of the provisions of this chapter or any applicable city, state, or federal laws, rules, or regulations.
- B. Decals which have been suspended shall forthwith be surrendered to the City Clerk for a period covering the term of suspension. The City Clerk shall return the decal to its holder immediately after termination of the suspension period.
- C. Decals which have been revoked shall forthwith be surrendered to the City Clerk by the holder thereof.
- D. The City Clerk shall notify in writing and by certified mail, any decal holder whose permit has been suspended or revoked. Such notice shall state any and all reasons for such action as well as all laws or regulations violated by the decal holder.

5.25.190 Other Laws Applicable to Pedicab Owners and Operators.

Pedicab owners and operators are subject to all applicable city, county, state, and federal laws, rules, and regulations.

5.25.200 Report of Accidents.

Each holder of a pedicab decal and pedicab operating permit involved in any accident resulting in property damage or personal injury of any kind, shall within forty-eight hours thereof give written report thereof to the City Clerk. A copy of a report required under state law shall be deemed sufficient for such purposes; otherwise, such report shall contain all information required with respect to reports otherwise required under state law.

5.25.210 Minimum Age for Pedicab Operators.

It is unlawful for any individual under the age of eighteen to operate a pedicab.

5.25.220 Driver's License Requirement to Operate Pedicab.

- A. It is unlawful for any individual without a motor vehicle driver's license issued by the state of California to operate any pedicab within the city.
- B. While the pedicab is in operation, the pedicab operator shall have his or her valid driver's license on his or her person at all times.

5.25.230 Business License Requirement to Operate Pedicab.

It is unlawful for a person to operate a pedicab without first obtaining a business license from the city.

5.25.240 Equipment Regulations for the Operation of Pedicabs.

- A. It is unlawful for any person to operate, or cause to be operated, a pedicab which fails to meet the equipment requirements of Section 5.25.130 of this chapter.

5.25.250 Insurance Requirements.

In order to ensure the safety of the public, it is unlawful for any person who owns a pedicab to allow it to be operated or driven or to obtain a permit for its operation under this chapter unless and until such person has complied with the provisions of this section.

- A. The owner or operator of any pedicab operated under this chapter must secure his or her ability to answer to any claim for damage to person or property which may arise against him or her by reason of the operation of the pedicab as follows:
  - 1. Public liability insurance in the minimum limits of one hundred thousand dollars for injury or death to any person and three hundred thousand dollars for injury or death of more than one person in the same accident;
  - 2. Public liability insurance for property damage in the minimum amount of fifty thousand dollars for any one occurrence;
  - 3. The policy of insurance is endorsed to provide a hold harmless clause in favor of the city;
  - 4. The policy provides that thirty-days notice of cancellation of insurance be sent to the City Clerk; and
  - 5. A certificate evidencing insurance shall be filed with the City Clerk and the risk manager for the city, and must name the city, its officers, agents and employees as additional insureds.
- B. The insurance required under this section shall remain in full force, at a level at least equal to the minimum requirements set forth above, or the pedicab decal will be subject to revocation or suspension pursuant to this chapter.

5.25.260 Fare Schedule.

- A. Every pedicab shall have permanently affixed to the outside thereof, in a place readily to be seen by passengers, a frame covered with clear plastic, or similar material, enclosing a card upon which shall be printed in plain, legible letters the schedule of rates authorized for carriage in such pedicab.
- B. It is unlawful for an operator to deceive any passenger who rides in the vehicle, or who expresses a desire to ride in such vehicle, as to that passenger's destination or the rate to be charged.
- C. It is unlawful for any operator to demand from a passenger a fare greater than the fare contained in the posted fare schedule.
- D. Section 5.25.260(C) does not apply to fares for special tours, provided that the fare for the special tour is agreed upon between the passenger and the operator prior to the beginning of the tour.

5.25.270 Right of Appeal from Denial of Issuance of Pedicab Operating Permit or Decal.

- A. The City Clerk shall notify the applicant that the issuance of his or her pedicab operating permit or decal has been denied. The City Clerk shall also notify the applicant of the right to appeal the denial to the City Manager. Any written appeal shall be filed with the City Clerk within ten calendar days after service of notice of denial. Service shall be by regular postal service or personal delivery. The applicant shall set forth in the appeal the reason why the denial is not proper.
- B. If no appeal is filed within the time allowed, the decision of the City Clerk to not issue the pedicab operating permit or decal shall be considered final.
- C. The City Manager shall direct an appeal to be heard within fifteen days after a notice of appeal is filed with the City Clerk as required by this section.
- D. A denial shall remain in effect until a duly filed appeal is heard by a hearing officer under the procedures set forth in Section 5.25.290

5.25.280 Right of Appeal from Suspension or Revocation of Pedicab Operating Permit or Decal.

- A. The city shall notify the pedicab operator or owner that his or her pedicab operating permit or decal has been suspended or revoked. The City Clerk shall also notify the pedicab owner or operator of the right to appeal the suspension or revocation to the City Manager. Any written appeal shall be filed within ten calendar days after service of notice of suspension or revocation. The pedicab operator or owner shall set forth in the appeal the reason why the suspension or revocation is not proper.
- B. If no appeal is filed within the time allowed, the pedicab operating permit or decal shall be considered suspended or revoked and the pedicab operator or owner shall immediately surrender the pedicab operating permit or decal to the City Clerk in the manner prescribed by the City Clerk.

- C. Once a timely appeal is filed, the suspension or revocation of the operating permit or decal shall be stayed pending the final determination by the hearing officer as set forth in Section 5.25.290.

5.25.290 Procedure Upon Appeal.

- A. If an applicant served with a notice of denial, suspension, or revocation chooses to appeal, he or she shall file an appeal within ten calendar days from the service of the notice from the City Clerk.

- B. Appeals to the City Manager:

1. Any decision of the City Clerk which is a denial to issue or a suspension or revocation of any pedicab operating permit or decal shall not become final until fifteen days after the date of transmittal of the written notice to the person affected by such decision, during which period the party to the action may appeal the decision in the manner provided herein at any time prior to the expiration date of the fifteen-day period. If no appeal is taken before the expiration of the fifteen-day period, the decision of the City Clerk shall be final.
2. The appeal of any decision shall be in writing signed by the party to the action briefly setting forth the reasons why such decision is not proper, stating an address at which the appellant will receive notices and filed with the City Clerk.
3. The City Clerk shall upon receipt of the appeal set the matter for hearing before a hearing officer. The hearing officer shall be an attorney or recognized mediator designated by the city attorney. The hearing shall be scheduled for not more than thirty calendar days after receipt of the appeal unless a longer time is requested or consented to by the appellant.
4. The hearing shall not be conducted under the formal Rules of Evidence, but shall be subject to such standards of procedure and evidence as reasonable people would utilize in the conduct of serious business.
5. The appellant (or a representative) shall have the right to present his or her case in person.
6. The hearing officer shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as set forth in Chapter 1.10 of this code.
7. If the hearing officer refuses to issue or restore a pedicab operating permit or decal, the party to the action, or such party's agent, shall not file a new application within three hundred sixty five days from the date of final action by the hearing officer.
8. If the hearing officer suspends a pedicab operating permit or decal, the City Clerk shall determine a period of suspension of not more than thirty days.
9. If the hearing officer's action is to grant or restore a decal or permit, the hearing officer shall direct the City Clerk to issue or restore the certificate or license.

- C. Any party dissatisfied with the decision of the hearing officer may carry the matter forward under the provisions for administrative mandamus (Code of Civil Procedure Section 1094.5) as it now exists or may later be amended.

5.25.300 Enforcement Authority.

The city is authorized to administer and enforce the provisions of this chapter. The city may exercise any enforcement powers as provided in this code.

5.25.310 Enforcement Remedies.

Any person violating the provisions of this chapter is guilty of an infraction, unless otherwise noted, punishable on conviction as set forth in Chapter 1.08 of this code. The city attorney may also seek injunctive relief and civil penalties in the superior court for violations of the provisions of this chapter.

5.25.320 Strict Liability Offenses.

Violations of this chapter shall be treated as strict liability offenses.

5.25.330 - City Held Harmless.

A decal holder shall, and by acceptance of the decal does, to the maximum extent permitted by law, agree to indemnify and hold harmless the City of Lodi, its officers, employees and agents from any and all damages, claims, liabilities, costs, suits, or other expense resulting from and arising out of the decal holder's operations.

5.25.340 General Pedicab Operation.

- A. Any pedicab permitted by the city as a pedicab shall be operated according to the pedicab provisions of this chapter and the applicable provisions of the California Vehicle Code governing the operation of bicycles.
- B. Each operator shall carry in the vehicle a current map of the city. Upon request, the operator shall make the map available to the passenger.
- C. Every pedicab while in operation for the solicitation or transportation of passengers shall be attended by the operator at all times except when such operator is actually engaged in loading or unloading the vehicle, or in answering telephones in connection with the business.
- D. An operator shall not leave the pedicab operating permit in an unattended or unsecured pedicab.
- E. No owner or operator of a pedicab shall knowingly permit such pedicab to be used for unlawful purposes or knowingly to transport persons therein to places for such purposes. Violation of this provision is a misdemeanor under this chapter.
- F. Every pedicab operating under this chapter must be inspected by the police department for the city at such intervals as may be established by the chief of police, to insure the continued maintenance of safe operating conditions.

- G. Every person owning or operating, or causing to be operated, any pedicab under this chapter must thoroughly wash each pedicab, when so operated, at least once a week, and shall also sweep and clean each of the pedicabs daily.
- H. It is unlawful for any person operating, or causing to be operated, any pedicab to permit the same to remain standing upon the street for the purpose of loading or unloading passengers unless the side of the pedicab is within a legal parking stall or other designated loading zone.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council, and a certified copy shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1).

Approved this \_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
MARK CHANDLER  
Mayor

ATTEST:

JENNIFER M. FERRAIOLO  
City Clerk

State of California  
County of San Joaquin, ss.

I, Jennifer M. Ferraiolo, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held May 18, 2016, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2016, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. FERRAIOLO  
City Clerk

Approved as to Form:

JANICE D. MAGDICH  
City Attorney

